File No. CI 22-01-37801

THE KING'S BENCH
Winnipeg Centre

BETWEEN:

CHIEF HEIDI COOK on behalf of MISIPAWISTIK CREE NATION;
CHIEF SHELDON KENT on behalf of BLACK RIVER FIRST NATION;
CHIEF DAVID MONIAS on behalf of PIMICIKAMAK CREE NATION;
ASSEMBLY OF MANITOBA CHIEFS,

plaintiffs,

- and -

THE GOVERNMENT OF MANITOBA and
THE ATTORNEY GENERAL OF CANADA,

defendants

Proceeding under *The Class Proceedings Act*, CCSM c C 130

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STATEMENT OF DEFENCE OF THE DEFENDANT THE GOVERNMENT OF MANITOBA

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STATEMENT OF DEFENCE

1. The defendant, the Government of Manitoba ("Manitoba"), admits the allegations contained in paragraphs 55, 56, 66, and 67 of the fresh as amended statement of claim (the "Claim").

2. Manitoba has no knowledge in respect of the allegations contained in paragraphs 9, 19, 20, 26, 27, 35, 36, 45, 48, 49, 50, 52, 53, 108, 109, and 110 of the Claim.

3. Manitoba denies the allegations contained in paragraphs 13, 14, 22, 25, 28, 31, 34, 37, 38, 40, 41, 46, 54, 57, 69, 71, 72, 88, 95, 106, 113, 114, 131, 132, 135, 137, 144, 145, 146, 147, and 157, as well as all other allegations of fact in the Claim except as are hereinafter expressly admitted, and denies that the plaintiffs are entitled to the relief claimed in paragraph 1 of the Claim, or to any relief at all.

4. In answer to the Claim as a whole and, in particular, paragraphs 2, 3, 4, 11, 12, 14, 22, 28, 30, 37, 38, 39, 40, 54, 61, 62, 63, 64, 65, 95, 115, 131, 132, 133, 136, and 137, much of the Claim is presented in a narrative format that contains allegations based on personal experiences of individuals who are not plaintiffs, all of which Manitoba has no knowledge of, and/or are intertwined with evidence and argument. Manitoba says paragraphs 2, 3, 4, 11, 12, 14, 22, 28, 30, 37, 38, 39, 40, 54, 61, 62, 63, 64, 65, 95, 115, 131, 132, 133, 136, and 137 contain evidence and/or argument.

Overview of Legislation and Child Welfare System

5. In further answer to paragraphs 2, 3, 4, 61, 62, 63, 64 and 65 of the Claim, Manitoba says that the historic laws, policies, and practices referenced in these paragraphs are not at issue in this action. Further, Manitoba denies that its management of child welfare within the province has been conducted in a manner to assimilate First Nations children, or that it has employed discriminatory practices to destroy First Nations families, cultures or First Nations as alleged, or at all, within the proposed class period as alleged within the Claim, from January 1, 1992 to date (the "Material Time").

6. In answer to paragraph 5 of the Claim, Manitoba says that it has collaborated with Canada in funding the child welfare system affecting First Nations on and off reserve and that, generally speaking, First Nations children on-reserve who are provided child welfare services are funded by Canada, while First Nations children living off-reserve, along with Metis and Inuit children, who receive child welfare services are subject to provincial child welfare funding. Manitoba denies the plaintiffs' allegation that Canada and Manitoba have collaborated in designing the child welfare system affecting First Nations on or off reserve and says that:

(a) the child welfare system affecting all children off reserve (including the children of First Nations members situated off-reserve) was designed by

Manitoba prior to the Material Time using a process which included considering recommendations and advice obtained from third parties (including Indigenous groups), and ultimately led to:

(i) the dissolution of The Children's Aid Society of Winnipeg and establishment of six new community-based child welfare agencies in 1985; and

(ii) the enactment of *The Child and Family Services Act*, CCSM c C80 (the "**CFSA**") which replaced *The Child Welfare Act*, CCSM c C80, in 1986;

(iii) the CFSA preserved then-existing Children's Aid Societies and child welfare committes as child and family services agencies, and provided for the establishment of First Nations agencies by way of tripartite agreements between Canada, Manitoba and First Nations bands or tribal councils (the "**Tripartite Agreements**"); and

(b) in both the period immediately prior to January 1, 1992 and throughout the Material Time, Canada and Manitoba have had shared responsibilities with respect to the design and delivery of child welfare services to First Nations children on-reserve. Canada's involvement in this regard was entering into the Tripartite Agreements, by which Canada provided funding to First Nations agencies, and the First Nations agencies delivered child welfare services to children on-reserve following the requirements of the CFSA.

7. In answer to paragraph 6 of the Claim, Manitoba says that sections 92(13) and 92(16) of the *Constitution Act, 1867*, give Manitoba the authority over property and civil rights in the province.

8. In further answer to paragraph 6 of the Claim, Manitoba says that:

(a) the governance of Manitoba Child and Family Services ("**CFS**") includes two statutes – the CFSA and *The Child and Family Services Authorities Act,* CCSM c C90 (the "**CFSAA**") – and their regulations, including the *Child and Family Services Authorities Regulation*, MR 183/2003 (the "**Regulation**");

(b) the CFSAA establishes four designated child welfare authorities (the "**Authorities**") responsible for administering and providing for the delivery of child and family services in Manitoba pursuant to the duties outlined in the CFSAA. The Authorities have mandated certain child welfare agencies under Part I of the CFSA for the purpose of providing child and family services (the "**Agencies**"), under the oversight of the Authorities;

(c) the Authorities include three Indigenous authorities, being the First Nations of Northern Manitoba Child and Family Services Authority, the Southern First Nations Network of Care (the "**Southern Network**"), and the Metis Child and Family Services Authority, along with one General Child and Family Services Authority. Pursuant to the CFSAA, the Authorities are corporations and, subject to that Act, have all the rights, powers and privileges of natural persons;

(d) pursuant to the CFSA, the Agencies are each corporations without share capital mandated as Agencies, whose purposes are to provide child and family services under the CFSA and/or *The Adoption Act,* CCSM c A2. With the exception of two Agencies (Winnipeg Child and Family Services and Rural and Northern Child and Family Services), the Agencies are public bodies but do not fall within the governmental structure of Manitoba. They

were and are created as separate legal entities with their own boards of directors and board appointment process as set out in the CFSA and the CFSAA;

(e) under the CFSA, the Authorities are legislatively, through the Agencies, responsible for administering and providing for the delivery of child and family services within the province of Manitoba in accordance with the CFSA, the CFSAA, and the Regulation;

(f) certain of the responsibilities and duties of the Agencies are set out at subsection 7(1) of the CFSA. The Agencies are the guardians of children in care. The Agencies are responsible for the care and control, maintenance and education of the children in care, and they act for and on behalf of the children in care;

(g) the responsibilities and duties of the Authorities are set out at sections 17 through 21 of the CFSAA, the responsibilities of Manitoba are set out at section 24 of the CFSAA, and both are further particularized in Part 3 of the Regulation. Manitoba:

(i) admits that it is responsible for establishing policies and standards for the provision of child and family services pursuant to subsection 24(b) of the CFSAA;

(ii) denies that it is responsible for developing culturally appropriate standards of services, practices, and procedures, and says that this responsibility lies with the Authorities pursuant to subsection 19(c) of the CFSAA;

(iii) denies that it is responsible for ensuring that Agencies are providing the standard of services and are following the procedures and practices established, and says that such responsibility lies with the Authorities pursuant to subsections 19(e), 19(f), 19(g), 19(h), 19(i), and 19(k) of the CFSAA;

(iv) says that with respect to all Agencies providing services off reserve, Manitoba has the power to fix rates payable for services provided under the CFSA pursuant to subsection 6.6(1) of the CFSA, but says that a new funding formula was enacted in 2019 pursuant to subsection 24(d) of the CFSAA, whereby Manitoba is only responsible for allocating funding and other resources to the Authorities. Pursuant to subsection 19(h) of the CFSAA, it is the Authorities' responsibility to determine how funding ought to be allocated among the Agencies they have mandated;

(v) says that the responsibilities respecting the licensing of foster homes, group homes, treatment centres, and other child care facilities are shared between Manitoba and the Authorities pursuant to subsections 19(n), 19(o) and 19(p) of the CFSAA, paragraph 4(1)(b.1) of the CFSA, the *Foster Home Licensing Regulation,* MR 18/99, and the *Child Care Facilities (Other Than Foster Homes) Licensing Regulation*, MR 17/99; and

(vi) admits that it provides licensing in Manitoba for group homes and other group living settings for children and youth such as treatment centres, but denies that it is responsible for the day to day operations and supervision of group homes and treatment centres

which are provided by Agencies and community organizations. Further, Manitoba denies that it is responsible for the licensing and supervision of foster homes, and says that such responsibility lies with the Authorities and their Agencies pursuant to subsection 19(n) of the CFSAA and the *Foster Home Licensing Regulation,* MR 18/99;

(h) the procedure for designating an Authority to a child and family in need of protection is prescribed by the Regulation. Generally, the "culturally appropriate authority" (as that term is defined in the Regulation) will be designated, but unless and until the child is made a permanent ward of an Agency by the Court (see below), the child's adult family members – or in the case of a child subject to an independent living arrangement under the CFSA, a parent or an expectant parent, the child – have the right to choose which Authority will provide child welfare services to the child and family;

(i) the CFSA (ss. 17, 21, 27, and 38) and the Regulation (s. 37), provide that the Authorities, the Agencies, the Director of Child and Family Services, and peace officers have a collective duty to apprehend a child who is in need of protection, based on reasonable and probable grounds, if apprehension is consistent with the best interests of the child. However, the final determination as to whether an apprehended child requires ongoing protection is made by the Court, not by any CFS entity (CFSA, s. 38(1)).

9. In answer to paragraph 7 of the Claim, Manitoba says that the principles respecting the provision of child welfare services alleged therein comprise some, but not all, of the principles that the Legislative Assembly of Manitoba declared to be the

fundamental principles guiding the provision of services to children and family within the Preamble of the CFSA. Manitoba says that:

(a) the principle alleged at subparagraph 7(f) is inaccurate. It is, and has always been, that decisions to place children are based on the best interests of the child and not on the basis of the family's financial status; and

(b) paragraph 7 omits the following additional fundamental principles set out by the Legislative Assembly of Manitoba:

(i) the safety, security and well-being of children and their best interests are fundamental responsibilities of society;

(ii) the family is the basic unit of society and its well-being should be supported and preserved;

(iii) the family is the basic source of care, nurture and acculturation of children and parents have the primary responsibility to ensure the well-being of their children; and

(iv) communities have a responsibility to promote the best interest of their children and families and have the right to participate in services to their families and children.

Relationship Between the Parties

10. In answer to paragraph 8 of the Claim, Manitoba admits that subsection 91(24) of the *Constitution Act, 1867* establishes that Canada has legislative authority over Indians and Lands reserved for Indians. Further, Manitoba says that under the First Nations Child and Family Services ("**FNCFS**") program, Canada undertook to administer and fund child

welfare services provided to First Nations children, youth and families ordinarily resident on reserve (typically if apprehended on reserve), on Crown land or in the Yukon. Manitoba denies the remaining allegations of fact in this paragraph.

11. In answer to paragraphs 10, 107, 111, 112, 124, and 125, and to the Claim as a whole, Manitoba acknowledges the existence of a fiduciary relationship between Manitoba and First Nations, and that Manitoba has a public duty of care to provide Manitoban children with child welfare services. However, Manitoba denies:

(a) that it owed the proposed "Class Members" (as that term is defined in the Claim) the fiduciary duties or duties consistent with the honour of the Crown as alleged in the Claim, or at all; and

(b) that it owed a duty of care to provide child welfare services that prioritized the interests of First Nations children,

and puts the plaintiffs to the strict proof thereof.

12. In the alternative, if it is determined that Manitoba owed a duty of care to provide child welfare services that prioritized the interests of First Nations children, which is denied, Manitoba says that any such duty does not override the statutory duty to ensure the safety, security and well-being of children and their best interests.

13. In answer to paragraph 11 of the Claim, Manitoba admits that it received advice and reports from third parties with respect to the third parties' views on child welfare in the province as it relates to First Nations. Manitoba also admits that it received expert advice, including from Indigenous and First Nations experts, to review the state of child welfare in the province as it relates to First Nations, in an effort to better serve First Nations as they recovered from the legacies of colonialism, residential schools, the 60's Scoop, and other national policies which caused or contributed to poverty, lower education rates, and

conditions of social and familial functioning on First Nations. Manitoba denies that it failed to consider or take action on such advice and reports, denies the balance of the allegations in this paragraph regarding prejudice and ineptitude, and puts the plaintiffs to the strict proof thereof.

14. In answer to paragraph 12 of the Claim, Manitoba denies that its policies, practices, and actions have caused harm to the plaintiffs or proposed Class Members as alleged, or at all, and denies the remaining allegations of fact in this paragraph. Manitoba further says that:

(a) the intention was for any steps taken by the Authorities and the Agencies to protect children to be done in accordance with the legislation and in the best interests of the children;

(b) the majority of apprehension decisions respecting First Nations children after implementation of the CFSAA were made by Indigenous-led Agencies; and

(c) the majority of children in care are under the guardianship of Indigenous Agencies, which are overseen by Indigenous-led Authorities.

15. In answer to paragraphs 15, 16, 17, 18, 126, 127, 128, 129, 130, 134, 135, 139, 140, 141, and 142 of the Claim, Manitoba says that the right to remedies under subsection 24(1) of the *Charter* is vested in individual persons. Manitoba therefore says that no damages are owed to the proposed Class Members under subsection 24(1) of the *Charter* or otherwise.

Responses to Allegations of Plaintiffs Respecting the Parties

16. In answer to paragraph 21 of the Claim, Manitoba admits that Southeast CFS provides child and family services in eight First Nations in southeastern Manitoba, including Black River First Nation, and admits the numbers of Black River First Nation children in care at the times alleged in this paragraph. Manitoba further admits that Southeast CFS was placed under administration pursuant to section 4.1 of the CFSA in 2008, and that the Order of Administration respecting Southeast CFS was lifted on or about December 18, 2015. Manitoba denies the remaining allegations of fact in this paragraph, and says that the decision to place Southeast CFS under administration was made by an Authority – not Manitoba. Manitoba does not have the ability to put an Agency under administration.

17. In answer to paragraph 23 of the Claim, Manitoba admits that Southeast Collegiate was established to provide culturally-informed high school education to First Nations children in Winnipeg. Manitoba denies the remaining allegations of fact in this paragraph, and says that First Nations children in care regularly attend the schools of their choice – including schools that are not in the provincial school system (both private schools and schools located on-reserve). Manitoba provided written confirmation of same to the Southeast Tribal Council and the Southeast Resource Development Council Corporation in May 2023 and June 2023, respectively.

18. In answer to paragraphs 24, 30, and 33 of the Claim, Manitoba denies the facts alleged in these paragraphs and says that:

(a) from the beginning of the Material Time until the implementation of the plan prepared by the Aboriginal Justice Inquiry – Child Welfare Initiative ("**AJI-CWI**") from in or about February 2003 to October 2005, the regular practice was to provide notification to First Nations when children of their members

were taken into care. These notifications provided the First Nations with the ability to keep track of the children taken into care for registration purposes;

(b) the regular practice throughout the balance of the Material Time was to provide notification to First Nations Agencies designated to serve First Nations when children of those First Nations were taken into care, on the understanding that: (i) this would provide the First Nations with the ability to keep track of the children taken into care for registration purposes, and (ii) the First Nations Agencies would provide culturally appropriate planning and services in the manner required of the Authorities (and, in turn, the Agencies) pursuant to the CFSAA and the Regulation (see above);

(c) from time to time, the First Nations Agencies managing certain of the apprehended children's cases may not have been in a position to confirm with the children's parents or family members whether the child should be registered with a particular First Nation due to a lack of information. Any failures or omissions in this regard (which failures or omissions Manitoba does not admit and holds the plaintiffs to the strict proof thereof) relate to actions of the Agencies and fall within the scopes of responsibility of the Agencies and the Authorities set out above.

19. In answer to paragraph 29 of the Claim, Manitoba:

(a) says that it transferred the budget and staff for prevention services following Devolution (as defined below). While Manitoba set the rates payable for child welfare services, the associated funds were paid to the individual Authorities and it was the Authorities who were responsible to allocate the funds to the Agencies. Manitoba says that the rates in place at the material times were sufficient to provide prevention services. Further,

and in the alternative, Manitoba says that if there are any issues with respect to how funds were allocated, all such allocation decisions were the responsibility of the individual Authorities;

(b) in the alternative, Manitoba says that prevention services were also available from entities outside the provincial child welfare regime, including other provincial departments such as Manitoba Families (other than CFS), Manitoba Health, Manitoba Education and Early Childhood Learning, Manitoba Housing (which, during the Material Time, has operated both under the Department of Families and as a standalone entity), and other provincially funded community organizations, in an effort to prevent the provincial child welfare regime from becoming involved with families and children for whom there are no protection concerns; and

(c) in the further alternative, and particularly with respect to children and families in need of prevention services on reserve, Manitoba says that until recently, few of the prevention services offered by Manitoba through the provincial child welfare regime or outside of it have been made available by Canada to First Nations children and families on reserve;

(d) denies that home support requests were met with resistance, and says that the vast majority of such requests were approved;

(e) denies that Manitoba, the Authorities, or the Agencies prioritized child apprehensions over prevention and wellness services, and says that the final determination of whether children require protection and should remain in care rests with the Court (see paragraph 8 above);

(f) denies that intake and investigation services were not transferred following Devolution; and

(g) with respect to intake and investigation services, says that following Devolution, all on-reserve Designated Intake Agencies ("DIAs") were Indigenous-led, that several major areas of Manitoba were covered by Indigenous-led DIAs (e.g., Thompson), and that the DIA responsible for Winnipeg was overseen by the Southern Network with general oversight from all of the Authorities (on account of the volume of work pertaining to Winnipeg and the effects of same on all Authorities).

20. In answer to paragraphs 32 and 39 of the Claim, Manitoba:

(a) says that the Authorities and their Agencies determine where to place children, and Manitoba facilitates placement into group care providers only if the Authorities and their Agencies request them;

(b) says that, pursuant to CFS Standard for Practice – 1.1.1 Placement Priorities, in deciding on a placement resource, the intake worker considers the following caregivers in order of priority:

(i) one of the child's parents;

(ii) with another adult member of the child's family, with an adult who belongs to the same community;

(iii) with an adult who belongs to an Indigenous group, community or people other than the one to which the child belongs;

(iv) with any other adult that can meet the child's needs; or

(v) with or near children who have the same parent as the child, or who are otherwise members of the child's family;

(c) denies the remaining allegations of fact in these paragraphs;

(d) in the alternative, says that:

(i) amendments to the CFSA were enacted in 2023 that codified existing federal standards calling for placement priorities to protect family and culture connections, along with prevention and pre-natal interventions; and

(ii) Manitoba, the CFS Authorities and the CFS Agencies adopted the above referenced federal standards in practice in 2020, but the substance of prioritizing family-based, community-based, and culturally-based placements in provincial CFS Standard for Practice – 1.1.1 Placement Priorities (see above), was the established method of practice throughout the Material Time.

21. In answer to paragraph 42 of the Claim, Manitoba says that the Assembly of Manitoba Chiefs ("**AMC**") was originally founded as the Manitoba Indian Brotherhood in 1967, and has no knowledge of the remaining allegations of fact in this paragraph.

22. In answer to paragraph 43 of the Claim, Manitoba admits that the AMC published a report titled "Bringing Our Children Home" in 2014 (the "BOCH Report"), and that the BOCH Report provides ten recommendations to overhaul child welfare in the province. Manitoba denies the remaining allegations of fact in this paragraph, and says that the BOCH Report speaks for itself.

23. In answer to paragraph 44 of the Claim, Manitoba admits that the First Nations Family Advocate Office ("**FNFAO**") was created on June 1, 2015, and that it was given the name "Abinoojiyak Bigiiwewag – Our Children Are Coming Home". Manitoba says that the FNFAO is an external entity that operates independently from Manitoba, the Authorities and the Agencies. Manitoba denies the remaining allegations of fact in this paragraph.

24. In answer to paragraph 47 of the Claim, Manitoba admits that the First Nations Family Advocate Office (the "**FNFAO**") released a report titled "Keewaywin: Our Way Home, Manitoba First Nations Engagement on First Nations Child and Family Services" in September of 2017 (the "**Keewaywin Report**"). Manitoba says that the Keewaywin Report speaks for itself, and denies the remaining allegations of fact in this paragraph. Further, Manitoba says that:

(a) the Keewaywin Report found that First Nations must lead child-welfare reform; and

(b) there are 64 First Nations in Manitoba, but the Keewaywin Report indicates that only 20 First Nations participated in the engagement sessions leading to its creation. As such, the Keewaywin Report was not representative of Manitoba's First Nations.

25. In answer to paragraph 51 of the Claim, Manitoba:

(a) admits that on March 19, 2018, Bill 18 – The Children and Family Services Amendment Act (Taking Care of Our Children) was introduced at the legislature ("**Bill 18**"). Bill 18 established a legislative basis for supporting the provision of customary care to Indigenous children through agreements and living arrangements made with Indigenous communities. Bill 18 received royal assent on June 4, 2018, but was not proclaimed;

(b) says that, among other things, the 2023 amendments to the CFSA to be proclaimed authorize the entering into of customary care agreements;

(c) denies the allegation that the reforms discounted the exercise of First Nations laws, customs, and traditions; and

(d) denies all remaining allegations of fact in this paragraph.

The Proposed Class Members

26. In answer to paragraphs 58 and 59 of the Claim, Manitoba says that the plaintiffs, either individually or as a proposed class, lack the standing to challenge or raise issue with the design and funding of the child welfare system in Manitoba.

27. In answer to paragraph 60 of the Claim, Manitoba pleads and relies on ss. 1, 6, 9, and 10(1) of *The Limitations Act,* SM 2021 c 44, to the extent that they apply to claims of the proposed Class Members pertaining to persons for whom two or more years have elapsed since they attained the age of 18.

Past Dealings Between the Parties

28. In answer to paragraph 68 of the Claim, Manitoba:

(a) admits the past harms that have been perpetuated against First Nations peoples by federal and provincial governments prior to the Material Time, and among other issues, the widespread poverty among First Nations peoples that the harms resulted in;

(b) Manitoba denies the remaining allegations of fact in this paragraph;

(c) In particular, Manitoba denies that the child welfare legislation in place in Manitoba during the Material Time was designed to institutionalize children,

and says that the legislation has always prioritized the best interests of the children; and

(d) Manitoba says that the poverty issues and related harms set out above existed before the beginning of the Material Time, and were not caused by the CFS system.

29. In answer to paragraph 70 of the Claim, Manitoba says that the Plaintiff, AMC, was a party to the Indian Child Welfare Sub-Committee since its inception.

30. In answer to paragraphs 70, 71, 72, 73, 74, 75, 76, and 77 of the Claim, Manitoba says that the reports and documents referenced by the plaintiffs speak for themselves.

31. In answer to paragraphs 78, 79, 80, 81, and 82 of the Claim, Manitoba says that:

(a) it regularly reviewed, considered and assessed the child welfare system and the issues identified in the reports referenced by the plaintiffs in light of new and emerging information regarding best practices in the field. Where feasible, Manitoba acted in good faith to implement updates to the child welfare system resulting from same;

(b) as a result of the findings in the Report of the Aboriginal Justice Inquiry ("**AJI**"), Manitoba established the Aboriginal Justice Inquiry-Child Welfare Initiative ("**AJI-CWI**") with the goal of transferring child welfare services to First Nations of Manitoba;

(c) this process is what is known as "Devolution", which recognized the need for culturally appropriate care to be provided to Indigenous children;

(d) Devolution involved collaboration with the Manitoba Metis Federation ("**MMF**") on behalf of the Metis people, the Assembly of Manitoba Chiefs

("**AMC**") on behalf of Southern First Nations, Manitoba Keekatinowi Okimakanak ("**MKO**") on behalf of Northern First Nations and the Government of Manitoba, and therefore Manitoba denies the allegation that the reforms were imposed unilaterally by Manitoba and Canada; and

(e) a greater exercise of Indigenous oversight of the child welfare system was accomplished through amendments to the CFSA (throughout the Material Time and, most recently, the 2023 amendments to be proclaimed), the introduction of the CFSAA, and a variety of agreements executed between Manitoba, MMF, MKO, and AMC.

Responses to Plaintiffs' Further Allegations

32. In answer to paragraph 83 of the Claim, Manitoba acknowledges that a Memorandum of Understanding for the Integration of Funding for First Nations CFS Agencies in Manitoba covering the period from October 1, 2010 to March 31, 2015 (the "**2011 MOU**") was entered into, and says that the 2011 MOU speaks for itself.

33. In answer to paragraph 84 of the Claim, Manitoba acknowledges that the number of First Nations children in the care of CFS Agencies increased from 2005 to 2016, and says that the increase in this figure coincided with a multitude of factors, including the establishment of Indigenous-led Authorities and emerging best practices at the time.

34. In answer to paragraph 85 of the Claim, Manitoba says that the reports referenced speak for themselves.

35. In answer to paragraphs 86 and 87, and the Claim as a whole, Manitoba admits that it introduced "Single Envelope Funding" (as that term is defined in the Claim) in 2019, and says that:

(a) many of the proposed Class Members' allegations relate to grievances against the CFS Agencies that provided their members with services, for which the plaintiffs and proposed Class Members have no standing to advance against Manitoba;

(b) in the alternative, from January 1, 2005 to April 1, 2019, there were two primary streams of funding for the Agencies providing services to Manitoba communities: (1) general operating funding ("operating funding") and (2) child maintenance funding. Manitoba was the primary funder of the operating funding for the Agencies through the Authorities, but Canada provided a level of operational funding in respect of on-reserve First Nations Agencies;

(c) effective April 1, 2019, the funding model employed by Manitoba shifted from a formula-based model of funding to a new model of funding referred to as "Single Envelope Funding";

(d) Single Envelope Funding gives the Authorities control over the distribution of funding, which strengthens the Authorities' ability to deliver culturally appropriate supports and services;

(e) the upfront annual allocation of funds to the Authorities offers a more efficient and predictable funding system, with improved policies and clarity in direction;

(f) Single Envelope Funding also gives the Authorities and the Agencies the flexibility they need to direct resources towards prevention and maintenance services;

(g) since adopting Single Envelope Funding, the number of children in care in Manitoba has decreased, and many Agencies are operating at a surplus; and

(h) Manitoba denies the remaining allegations of fact in these paragraphs, and puts the plaintiffs to the strict proof thereof.

36. In answer to paragraph 89 of the Claim, Manitoba denies the allegations of fact contained therein and says that the number of children in care in Manitoba has decreased from March 31, 2019, to March 31, 2023.

37. In answer to paragraphs 90, 91, 92, 93, and 94 of the Claim, Manitoba says that the issues alleged with respect to Manitoba and Children's Special Allowance ("CSA") payments are subject to ongoing proposed class proceedings in Manitoba. As a result, the issues raised in paragraphs 90, 91, 92, 93, and 94 are an abuse of process as they will be adjudicated in the other proceedings, and the plaintiffs have not sought leave to advance claims respecting these issues in the other proceedings. Manitoba pleads and relies on *The Court of King's Bench Act*, CCSM c C280, and in particular section 94 thereof.

38. In answer to paragraph 96 of the Claim, Manitoba says that it ceased funding CFS by way of per child maintenance amounts in 2019 when it introduced its Single Envelope Funding model, and denies the remaining allegations of fact in this paragraph. Further, Manitoba says that the previous funding model paid on invoiced actual costs for children in care. This included expenses such as respite and support, and special needs for individual children. These amounts were paid in addition to the basic maintenance amounts, and were calculated by Agencies for each child in their care. Further, Manitoba says that all funding decisions of the type referred to in this paragraph are the function of

the executive and legislative branch of government, and constitute core policy decisions outside the jurisdiction of this Court, from which Manitoba is immune from suit (see below).

39. In answer to paragraphs 97, 98, 99, and 100 of the Claim, Manitoba has no knowledge of the source of the figures alleged by the plaintiffs, but Manitoba acknowledges that there were a disproportionate number of Indigenous children in care in Manitoba throughout the Material Time.

40. In answer to paragraph 101 of the Claim, as set out above, Manitoba denies that Manitoba, the Authorities, or the Agencies prioritize child apprehensions over prevention and wellness services, and says that adequate funding is being provided to the Agencies (through the Authorities) for prevention services. Further, and in the alternative, Manitoba says that:

(a) the CFS system (*i.e.*, the Authorities and the Agencies) is not the only governmental department providing prevention services; there are a number of other social services, government departments, and provincially funded community organizations which directly or indirectly provide services the aim of which is to prevent children from coming into the care of CFS, including by way of alleviating poverty issues; and

(b) by way of example, other departments of government which provide prevention services are Manitoba Families (other than CFS), Manitoba Health, Manitoba Education and Early Childhood Learning, Manitoba Housing (which, during the Material Time, has operated both under the Department of Families and as a standalone entity), and Apprenticeship Manitoba (the latter addresses issues of poverty).

41. In answer to paragraph 102 of the Claim, Manitoba denies the allegation that CFS practices continue to systemically target (or have ever systemically targeted) families with prior experience in CFS for investigation and apprehension. Further, to the extent that the plaintiffs' allegations in this paragraph pertain to Structured Decision-Making ("SDM"), an assessment tool used by Agencies for children in care, Manitoba:

(a) acknowledges that SDM includes previous child protection investigations and/or assessments involving any adult members of the current household who were alleged perpetrators as a risk, but says that this is one of several risks identified in SDM (for example, substance misuse is also considered a factor which increases the risk of harm under SDM). Further, Manitoba says that SDM expressly excludes as risks other previous familial contact with CFS, such as:

(i) investigations and/or assessments of allegations that were perpetrated by an adult who does not currently live in the household;

(ii) investigations and/or assessments in which children in the home were identified as perpetrators of abuse and/or neglect;

(iii) referrals that were screened out; and

(iv) referrals that were assigned for a response for reasons other than family protection (for example, voluntary requests for services or family enhancement response);

(b) says that the SDM process requires CFS workers to take a nuanced approach to interpretation that considers the whole of the analysis;

(c) denies that SDM is discriminatory with respect to First Nations children in care or their families;

(d) says that SDM was at one time considered to be a best practice in the field;

(e) says that a number of Indigenous Agencies voluntarily use SDM as an assessment tool; and

(f) says that reports relied upon by the plaintiffs in other paragraphs of the Claim recommend the standardized use of SDM as an assessment tool.

42. In answer to paragraph 103 of the Claim, Manitoba says that pursuant to subsections 19(c) and 19(l) of the CFSAA, the Authorities are the entities responsible to ensure that First Nations children are provided culturally appropriate placements. Manitoba denies the remaining allegations of fact in this paragraph.

43. In answer to paragraph 104 of the Claim, Manitoba admits the allegations of fact in the first two sentences, denies the allegations of fact in the final sentence, and says that Manitoba does make investments in addiction treatment services (including culturally-appropriate and Indigenous-led treatment) outside of the provincial child welfare regime. The said addiction treatment services are available to all Manitobans, including Manitobans involved with CFS. Further, and in the alternative, Manitoba says that the decisions of its government respecting amounts invested in any particular programs or services (including addiction treatment) constitute core policy decisions respecting which Manitoba is immune from suit.

44. In answer to paragraph 105 of the Claim, Manitoba denies the allegations of fact in this paragraph and says that there are certain transition supports for children aging out of care that have expanded over time as best practices in the field evolved including, *inter alia*, community grants to fund independent living and tuition waiver programs.

45. In answer to paragraphs 115, 116, 117, 118, 119, 120, and 121 of the Claim, Manitoba says that the reports referenced speak for themselves.

46. In answer to paragraphs 122 and 123 of the Claim, Manitoba denies that the statements referred to therein constitute admissions by Manitoba respecting any alleged breaches of duties owed by Manitoba pertaining to the provincial child welfare regime, as alleged or at all.

47. In answer to paragraph 133 of the Claim, Manitoba says that:

(a) all matters pertaining to birth alerts are subject to ongoing proposed class proceedings in Manitoba. As a result, the issues respecting birth alerts raised in paragraph 133 are an abuse of process as they will be adjudicated in the other proceedings, and the plaintiffs have not sought leave to advance claims respecting these issues in the other proceedings. Manitoba pleads and relies on *The Court of King's Bench Act*, CCSM c C280, and in particular section 94 thereof;

(b) in the alternative, the practice of birth alerts ended effective July 1, 2020;

(c) the decisions to issue birth alerts were initiated by the Agencies and not by Manitoba, and that Manitoba was not notified of these decisions until they were made by the Agencies;

(d) the majority of birth alerts issued within the Material Time (i.e., from January 1, 1992 to June 30, 2020) were issued for assessment purposes, and not for apprehension purposes, and that all apprehensions of children following a birth alert were based on decisions of the Agencies – not Manitoba – and subject to a hearing in Court to confirm the decision to apprehend; and

(e) Manitoba denies the remaining allegations of fact in this paragraph.

48. In answer to paragraphs 136 and 138 of the Claim, Manitoba says that all matters pertaining to CSA payments and any breaches of section 15 of the *Charter* related to them are subject to ongoing proposed class proceedings in Manitoba. As a result, the issues raised in paragraphs 136 and 138 are an abuse of process as they will be adjudicated in the other proceedings, and the plaintiffs have not sought leave to advance claims respecting these issues in the other proceedings. Manitoba pleads and relies on *The Court of King's Bench Act*, CCSM c C280, and in particular section 94 thereof. Manitoba therefore denies that it is estopped from litigating the plaintiffs' allegation that it has violated the *Charter* rights of individual members of First Nations or any of the proposed Class Members (*i.e.*, First Nations) with respect to Manitoba's management of child welfare.

49. In answer to paragraph 196(a) of the Claim (the numbering of which appears to be a typographical error, as it falls between paragraphs 142 and 143), Manitoba denies that it breached any proposed Class Members' (*i.e.,* First Nations') rights pursuant to section 35 of the *Constitution Act, 1982,* and says that Manitoba was not a party to either of the proceedings at the Canadian Human Rights Tribunal or Federal Court referenced within the Claim.

50. In answer to paragraph 143 of the Claim, Manitoba denies that it breached any proposed Class Members' (*i.e.*, First Nations') rights pursuant to section 36 of the *Constitution Act, 1982,* and says that the plaintiffs and proposed Class Members have no standing to bring claims under section 36. Further, and in the alternative, Manitoba:

(a) promoted equal opportunities for First Nations children off-reserve, relative to other Manitoban children;

(b) furthered the economic development of First Nations children off-reserve and reduced the disparity in their opportunities relative to other Manitoban children; and

(c) provided essential public services of reasonable quality to First Nations children off-reserve.

51. In answer to paragraphs 148, 149, 150, and 151 of the Claim, Manitoba denies that it is liable for any of the acts or omissions of the Authorities, the Agencies, or their respective servants, agents and/or employees as alleged in the Claim (the existence of which Manitoba denies and holds the plaintiffs to the strict proof thereof), as the Authorities and the Agencies constitute separate legal entities independent from Manitoba.

52. In further answer to paragraph 151 and to the Claim as a whole, and in the alternative, Manitoba denies that any of the acts and/or omissions of Manitoba or its respective servants, agents and/or employees as alleged in the Claim (the existence of which Manitoba denies and holds the plaintiffs to the strict proof thereof) were operational decisions, and says that any such acts and/or omissions constituted core policy decisions pertaining to the funding of social services in the province, which are outside the jurisdiction of this Court. Manitoba says that, among other things, all decisions respecting the type and scope of services to be provided to the public – including child welfare services – along with decisions respecting which entities will provide the services, and how the services will be funded, constitute core policy decisions of the executive and legislative branch of government, respecting which Manitoba is immune from suit.

53. In answer to paragraphs 152, 153, 154, 155, and 156 of the Claim, Manitoba:

(a) denies that the proposed Class Members suffered damages as alleged, or at all;

(b) in the alternative, says that no act or omission on its part was a legal cause of any injury, loss and/or damage to the proposed Class Members; and

(c) in the further alternative, says that the proposed Class Members have failed to act reasonably to mitigate any injury, loss and/or damage that they may have sustained, and that any injuries, losses and/or damages which the proposed Class Members may have suffered were caused or contributed to by the acts, omissions, breaches of duty and/or negligence of the proposed Class Members.

54. Manitoba pleads and relies upon:

(a) *The Proceedings Against the Crown Act,* CCSM c P140;

(b) *The Public Officers Act,* CCSM c P230;

(c) *The Limitations Act,* SM 2021 c 44;

(d) *The Child and Family Services Act,* CCSM c C80;

(e) *The Child and Family Services Authority Act*, CCSM c C90;

(f) *Child and Family Services Authorities Regulation*, MR 183/2003;

(g) *The Adoption Act,* CCSM c A2;

(h) *The Court of King's Bench Act*, CCSM c C280;

(i) *The Class Proceedings Act,* CCSM c C130;

(j) *The Court of King's Bench Act,* CCSM c C280; and

(k) *The Crown Liability and Proceedings Act,* RSC, 1985 c C50.

55. Manitoba therefore submits that this action should be dismissed against Manitoba, with costs.

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