

QB File No. \_\_\_\_\_

**THE QUEEN'S BENCH**  
Winnipeg Centre

BETWEEN:

**MARTIN GREEN,**

applicant,

- and -

**THE UNIVERSITY OF WINNIPEG**

respondent

**APPLICATION UNDER: Court of Queen's Bench Rule 14**

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**NOTICE OF APPLICATION**

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**NOTICE OF APPLICATION**

TO THE DEFENDANT:

A LEGAL PROCEEDING HAS BEEN COMMENCED by the applicant. The claim made against you is set out in the following pages.

THIS APPLICATION will come on for a hearing before a judge on \_\_\_\_\_,  
\_\_\_\_\_ at \_\_\_\_\_am/pm at the Law Courts Building, 408 York Avenue, Winnipeg MB.

IF YOU WISH TO oppose this application, you or a Manitoba Lawyer acting for you must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must serve a copy of the evidence on the applicants lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but not later than 2:00 pm on the day before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGEMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

January\_\_\_\_\_, 2013

Issued by: \_\_\_\_\_

Registrar

TO: THE UNIVERSITY OF WINNIPEG

## APPLICATION

1. The applicant makes application for:

- a) A DECLARATION that RESPONDENT should grade and return the assignment known as Assignment #5 from course 4861.150, including therewith such reasons and comments as are customarily given when grading assignments of this kind.
- b) An order for costs on a solicitor-client basis.
- c) Such further and other Orders as counsel may request and this Honorable Court may deem appropriate.

2. The grounds for this application are:

- a) The Court of Queen's Bench Rule 14.05 permits a proceeding to be commenced by Application where the relief claimed included the determination of rights which depend on the interpretation of a contract.
- b) On or about September 10<sup>th</sup> 2011 the applicant was enrolled in course number 4861.50 and consequently entered into a contractual relationship with the RESPONDENT.
- c) As part of his duties under the contractual relationship the applicant was required to submit said assignment in the first week of January 2012.
- d) The applicant claims that the assignment was submitted on time; or, in the alternative that if it was incomplete at the time of submission, that the missing portion was later submitted with the knowledge and permission of the instructor.
- e) Subsequently the applicant was expelled from the University.
- f) Over the course of the next year, the applicant made several requests to the University to mark and return the assignment. These requests were mostly

ignored.

- g) Eventually the RESPONDENT claimed that the assignment was never properly submitted; or, in the alternative, that it was not responsible for providing grades to students who have been removed from the program.
- h) The applicant claims that if he properly submitted the assignment then it ought to be graded on its merits; and that in the alternative, if the assignment was not properly completed, then it ought to be given a failing grade or such other grade as the instructor deems appropriate. In either alternative the RESPONDENT ought to grade the assignment and notify the applicant thereof.
- i) The applicant claims that the RESPONDENT's reasons for refusal were made maliciously and knowingly for the purpose of frustrating the applicant's legitimate rights, and he should therefore be entitled to costs on this application.
- j) The plaintiff relies on the provisions of The University of Winnipeg Act and also on his contractual rights under the common law.

3. The following documentary evidence will be used at the hearing of the application:

- a) The pleadings herein.
- b) The Affidavit of Martin Green, to be sworn and filed.
- c) Such further and other material as counsel may advise and this Honorable Court may permit.

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(date of issue)

Martin Green  
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