

CLAIM

1. The plaintiff claims:
 - a) general damages;
 - b) special damages;
 - c) aggravated, punitive and exemplary damages;
 - d) pre-judgement and post-judgement interest; and
 - e) costs.

2. The plaintiff, Martin Green (“Green”) resides in the City of Winnipeg.

- ~~3. The defendant John ANCHAN (“Anchan”) resides in the Province of Manitoba and was Associate Dean of Education at the University of Winnipeg at all times material to this cause of action.~~

3. The defendant Dave BELL (“Bell”) resides in the Province of Manitoba and was an instructor at the University of Winnipeg at all times material to this cause of action.

4. The defendant Lauralyn CANTOR (“Cantor”) resides in the Province of Manitoba and was an instructor at the University of Winnipeg at all times material to this cause of action.

5. The defendant Don METZ (“Metz”) resides in the Province of Manitoba and was an instructor at the University of Winnipeg at all times material to this cause of action.

6. The defendant Colin RUSSELL (“Russell”) resides in the Province of Manitoba and was Registrar at the University of Winnipeg at all times material to this cause of action.

7. The defendant THE UNIVERSITY OF WINNIPEG (“the University”) is a body corporate established in the Province of Manitoba by the University of Winnipeg Act C.C.S.M. c. U70 and authorised *inter alia* to generally promote and carry on the work of a university.

8. The defendant JANE DOE is a person unknown to the defendant but known to the UNIVERSITY, who resides in the Province of Manitoba at a place known to the UNIVERSITY.

9. At all material times the individual defendants BELL, METZ, CANTOR, and RUSSELL were acting in their official capacity as an employees of the University of Winnipeg.

10. At all times material to the cause of action herein expressed, the individual defendants named in para 9 were employees and agents of the UNIVERSITY OF WINNIPEG which is liable vicariously for any tortuous consequences of their actions.

11. The plaintiff was a student in the Faculty of Education at the University of Winnipeg from September 12 2011 until January 11th 2012. He was in the first year of a two-year program which would under normal circumstances have allowed him to be certified as a teacher in the Province of Manitoba upon graduation in the spring of 2013.

12. The Teacher Certification Program at the University consisted of two components: an academic component and a teaching practicum. Successful completion of both components was necessary in order to graduate from the program.

13. The plaintiff was assigned to regular weekly practicum duties at Gordon Bell High School (Gordon Bell), with a four-week teaching bloc to commence on November 21st 2011, after the end of fall term classes.

14. On October 27th 2012 John Anchan, the Associate Dean of Education, contacted the defendants BELL, CANTOR and METZ to invite them to a meeting for the purposes of discussing concerns raised about the Plaintiff. The meeting took place on the following day.

15. On November 10th, 2011 a second meeting was held with the same participants. At this second meeting Anchan told Bell, Cantor and Metz that he needed them to write letters of complaint about Green; and following the meeting, those named defendants did in fact write letters of complaint.

16. Around that time the plaintiff received a phone call from Christy Campbell, the office assistant to the Deans, requesting his attendance at a meeting with the Deans.

~~16. The plaintiff requested written notification as to the purpose of the meeting. Between November 10th and November 16th the plaintiff and Campbell exchanged several emails, in which Campbell disclosed that the purpose of the meeting was to discuss complaints against the Plaintiff from staff and students in the Education Faculty.~~

~~17. Upon further learning from Campbell that his failure to attend the meeting would result in proceedings under the University of Winnipeg Non-Academic Misconduct Policy, the plaintiff asked Campbell if his attendance at the meeting was required under that policy..~~

17. Upon being informed that it was intended as an informal meeting, Upon learning that his failure to attend the meeting would result in proceedings under the University of Winnipeg Non-Academic Misconduct Policy, the plaintiff told Campbell that he felt it was not in his best interests to attend. As a result, the proposed meeting never took place.

18. On November 21st 2011, upon reporting to Gordon Bell for his scheduled teaching block, the plaintiff was told by the Principal, Arlene Skull, to leave the building. Later that day the University informed the plaintiff that his practicum teaching duties had been suspended. The circumstances of this suspension are presently the subject of Case No. CI12-01-79879 filed by the Plaintiff on September 20th 2012 with the Manitoba Court of Queen's Bench.

19. On Nov. 22nd, 2011, an official complaint of non-academic misconduct was filed by the Associate Dean of Education with the Registrar of the University , the defendant RUSSELL. The information submitted to RUSSELL included letters of complaint from:

- a) Professor David Bell
- b) Professor Lauralyn Cantor
- c) Professor Don Metz
- d) JANE DOE, a student not known to the plaintiff
- e) Principal Arlene Skull of Gordon Bell

f) other material including notes of meetings, etc.

20. Pursuant to Section IV.1.f of the University policy on non-academic misconduct (“the policy”), the Registrar requested the Associate Dean of Sciences, Danny Blair (“Blair”) to conduct an impartial investigation of the complaints filed against Green.

21. According to Section IV.1.c of the Policy, a complaint of non-academic misconduct

“shall be a detailed written description of the incident. This shall include the time and place, person or persons involved, and all relevant information concerning the incident.”

22. On Nov. 27th 2011 Blair reported to Russell that there was an abundance of evidence within the written complaints as to Mr. Green’s non-academic behavior. He further urged that the University take measures to ensure that the Plaintiff not be allowed to pursue a degree in Education which might eventually allow him to teach children.

23. On the 6th of December 2011, Russell emailed the plaintiff, requesting a meeting with Green ~~as called for in Section IV.1.h of the policy.~~ Green replied the next day with a request for written disclosure of the allegations against him.

24. On the 20th of December, the plaintiff received a letter from Russell which included what Russell characterised as a summary and included references to complaints from staff and students at the University, as well as complaints from staff at Gordon Bell.

25. The next day the plaintiff responded to Russell, indicating that because of the incompleteness of the information provided, he (Green) was unable to respond to the complaints. Green asserted his rights to see and requested disclosure of:

a) the written reasons provided by the principal of Gordon Bell for his removal from the practicum;

- b) the Third Party Report regarding the complaints of misconduct; and,
- c) disclosure of other complaints by the staff at Gordon Bell as referred to in Russell's letter.

26. On January 3rd 2012, Russell responded to the plaintiff, declining to provide the documentation requested, and repeating his request for a meeting with the plaintiff. The Plaintiff again refused to meet without further disclosure of the charges against him. This impasse persisted over the course of the following week, with further exchanges of correspondence.

~~30. Russell responded on the same day, repeating his insistence on a meeting with the plaintiff and refusing to comply with the Plaintiff's request for disclosure.~~

27. On January 6th, after receiving a failing grade in a term paper, the Plaintiff wrote the Registrar indicating that he wished to present evidence of malice on the part of the professor who had assigned the grade. He asked the Registrar to convene a meeting appropriate for such a hearing. The Registrar denied his request.

28. On January 10th, 2012, the Registrar wrote the plaintiff indicating that he had received fresh allegations of misconduct from Professor Don Metz, in which Green's behavior was described as "disruptive and threatening", and as a result the Registrar was suspending Green from attending classes effective immediately, until such time as Green met with the Registrar.

~~36. On the morning of the 11th of January, the plaintiff reported to Russell's office. He demanded a written copy of Metz's complaint. Russell refused the plaintiff's demand.~~

29. The plaintiff demanded to know under what authority he had been suspended, and what steps he might take to appeal the suspension. Russell replied that the suspension was merely a means to induce the Green to meet with him; and if Green would now agree to discuss the complaints against him, the suspension would be lifted.

30. The plaintiff replied that he would not waive his rights to disclosure under such pressure; and since Russell could give him no valid reason for the suspension, he would be attending class that afternoon.

31. When the plaintiff reported to his class on the afternoon of the 11th of January, the Russell met him at the door accompanied by a security guard. Russell gave Green a letter which stated that Green was suspended from class due to concerns with his disruptive and aggressive behavior.

32. The plaintiff accepted the letter and read its contents. He told Russell he would be just a moment and entered the classroom, where he engaged in a brief communication, including some gestures, with a third party.

33. When the Green exited the class, Russell asked him to disclose the meaning of a gestures he had seen. Green replied that it had been a private communication. Russell told him that he had seen a gesture that would commonly be understood as a threat. Green left the building without responding further.

34. Russell subsequently had campus security draw up a barring order preventing the plaintiff from being anywhere on University property. No reason was provided for the barring order. ~~That same evening Russell emailed a copy of the order to Green, and undertook to render a decision as soon as possible on the non-academic misconduct.~~

35. On Jan. 12th 2012, the plaintiff wrote the President of the University, with copies to the Registrar, the Dean of Education, and the Academic Vice President, demanding the opportunity to appeal the barring order. In the event that the University was not willing to hear his appeal, the plaintiff demanded that the University treat the barring order as a *de facto* expulsion and refund his tuition.

36. On January 12th, 2012, plaintiff received a response from John Corlett ("Corlett"), Academic Vice-President of the University. Corlett declined to allow Green to appeal the barring notice, but offered as an alternative a full refund of tuition fees provided Green would agree to withdraw from his program of study. Green refused to withdraw voluntarily, and the offer to refund tuition fees was withdrawn.

~~45. On January 18th, 2012, which was the final date for withdrawal from second-term courses without financial penalty, Corlett wrote the plaintiff asking him to confirm his intentions to withdraw from the program. Green replied that he was waiting for the Registrar's ruling on the issue of non-academic misconduct.~~

37. On January 20th, the Registrar found the plaintiff guilty of non-academic misconduct and recommended to the President of the University that he be suspended from the program.

38. On January 23rd, the plaintiff received a letter from the President of the University affirming the suspension. The plaintiff was told he would be allowed to appeal in writing for re-instatement after a period of one year. The Plaintiff wrote back indicating his intention to appeal.

~~48. The President further informed the plaintiff he would receive a partial tuition refund calculated on the equivalent basis of the plaintiff having voluntarily withdrawn from the program on the date of the suspension order.~~

~~49. On January 24th 2012 the plaintiff notified the University in writing of his intention to appeal. The intent to appeal was acknowledged by Corlett.~~

39. On January 27th 2012 the plaintiff wrote Corlett asking that arrangements be provided made so the plaintiff could contact potential witnesses from among his classmates, most of whom he knew only by first name. Since he was barred from campus, he would only be able to contact many of them with the help of the University. This request was denied.

~~52. On February 2nd, 2012, the plaintiff wrote the university requesting full disclosure of all evidence used by the Registrar in making his decision, in order that he could argue his appeal. The Registrar replied on the same day refusing to disclose evidence.~~

40. On February 8th, 2012, the plaintiff wrote the University, requesting the right to appeal:

a) his suspension for non-academic misconduct:

- i) before the Student Discipline Appeals Committee, on the basis that the facts presented warranted neither the finding nor the penalty, and
 - ii) before the University Board of Regents, on procedural grounds;
- b) his removal from the practicum;
 - c) the suspension orders barring him from attending classes;
 - d) the trespassing order barring him from all university property;
 - e) punitive and unfair marks he had been given on assignments prior to his suspension.

41. On February 19th, 2102, Corlett wrote the plaintiff that the University would not allow an appeal of the trespassing order, and noting that the matter of non-academic misconduct would be heard by a panel of the Board of Regents.

~~55. On February 22nd, 2012, the plaintiff wrote the University noting that it had not replied to his requests to appeal items noted above in paras. 53(b), 53(c), and 53(e). The University did not reply.~~

~~56. On February 28th, the plaintiff wrote to the University noting that he had received a check from them for \$1350. He noted that this fell short of the full refund that had been undertaken by the Corlett in their earlier correspondence, and asked for a clarification. The University did not reply.~~

~~57. On March 3rd, the plaintiff wrote to Mr. Craig Lee ("Lee"), the chairman of the University Board of Regents, requesting the right to appeal the trespassing order before the Board of Regents. He also noted the University's failure to acknowledge his requests to appeal the removal of his practicum privileges, the classroom suspension order, the course marks, and the tuition refund. Lee did not reply.~~

42. On March 15th, 2012, the plaintiff received an letter from Grace O'Farrell, chair of the Student Discipline Appeals Committee ("the committee"), informing him that the date for his appeal hearing had been set for Friday March 23rd 2012, and that he would be allowed thirty minutes to argue his case.

43. The plaintiff responded on the same day, requesting that he be provided with
- a) all documents pertaining to his case that had already been made available to the committee, and
 - b) all reports filed by the same committee with regard to its proceedings over the previous five years.
46. On March 16th, 2012, the committee replied to Green by providing the following documents:
- a) Notice of Appeal;
 - b) Non-Academic Conduct and Discipline Policy;
 - c) Certification Practicum Student Handbook;
 - d) Third Party Report dated November 27, 2011; and
 - e) Non-Academic Misconduct Report dated January 20, 2012.
47. The committee also noted, with regard to the plaintiff's inquiry in item 43(b), that there had been no reports filed by the committee in the previous five years
48. The plaintiff wrote the committee, noting that the Third Party Report (item 46(d) above) made explicit reference to five written submissions filed against the plaintiff, saying "there is an abundance of evidence within (these) written complaints indicating that Mr. Green's behaviour....may legitimately be consider as Non-Academic....". The plaintiff requested that both he and and the committee members be given access to those five documents, in order that he could respond to the evidence therein.
49. On March 20th, 2012, the University provided the plaintiff the following four documents, which were also circulated to the members of committee:
- a) Letter from Prof. David Bell to John Anchan, Associate Dean, Education Faculty (undated);
 - b) Letter from Prof. Don Metz to Ken McClusky, Dean of Education dated Nov. 10th 2011;
 - c) Letter from Prof. Laurelyn Cantor "to whom it may concern", undated.
 - d) email to Ken McCluskey from JANE DOE, dated Oct. 31 2011

~~65.— The University did not disclose to the committee members or to Green that the letters of Bell, Metz and Cantor had been written at the request of Anchan after conferring with each other about the contents of those letters.~~

50. On March 23rd, 2012, the plaintiff appeared before the Committee to argue his appeal.

~~68.— The committee chair, Grace Farrell (Farrell) asked Russell and Anchan if they had anything to add to the written submissions already received by the committee. Russell submitted the letter of Jan.23rd from the President of the University. Farrell allowed the committee members time to read the letter.~~

~~69.— The plaintiff objected that the University ought to have provided the letter in advance along with its other written submissions, and that it was prejudicial to his case to allow them to introduce it at this late hour. He also argued that it contained no evidence, and on the contrary contained prejudicial and inflammatory assertions about the plaintiff.~~

~~70.— Farrell disregarded the plaintiff's objections and allowed the committee members to read the letter.~~

~~71.— The plaintiff asked Russell whether the University would honor its commitment to refund his tuition. Farrell ruled that the question was inadmissible.~~

~~72.— The plaintiff asked why the committee had disclosed only four of the five letters of complaint referred to in the Third Party Report. The committee replied that since the missing letter dealt with events at Gordon Bell, it was not part of the present proceedings.~~

51. The plaintiff requested the opportunity to poll committee members as to bias. Farrell ruled that the plaintiff had waived his right to argue bias by failing to submit his objections in writing prior to the meeting.

52. The plaintiff requested that since thirty minutes was insufficient time to present his case, he be allowed as much time as necessary. Farrell rejected this request.

53. The plaintiff began making his defence against the written charges. He argued against the accusations by Bell and JANE DOE, but was cut off by Farrell in the middle of his arguments against the accusation by Cantor. He was not allowed to respond to the accusations by Metz.

54. The plaintiff noted that a stenographer was present at the meeting, and requested that a transcript be made available to him. The committee refused this request.

~~81. Following his presentation, a committee member asked the plaintiff to comment on the allegations of a threatening gesture as made by Russell in his report of Jan. 20th 2012 (see para. 60e above). The plaintiff replied that since the event in question took place subsequent to the commencement of action for non-academic misconduct, those subsequent allegations were not part of the present proceedings; and since he had not been given access to the evidence against him, he did not wish to comment.~~

~~82. Farrell stated that since the event in question took place on the university campus, it was indeed part of the present case, and that the committee members ought to take it into account in reaching their decision. The plaintiff was not allowed to respond to this ruling.~~

55. On March 27th, 2012, the committee unanimously upheld the finding of misconduct and the associated penalties.

56. On March 28th, 2012, the plaintiff wrote Craig Lee, chairman of the Board of Regents, requesting:

- a) intervention on his behalf to have his grade appeals heard;
- b) an opportunity to to appeal his misconduct conviction on procedural grounds;
- c) a transcript of the appeal hearing of March 23rd;
- d) the securing of the physical evidence which the plaintiff had requested at that meeting;
- e) a refund of his tuition fees as promised by the Vice President Academic in earlier correspondence, and

f) a hearing of his appeal of the trespassing order, and release of relevant evidence in the possession of the University.

57. On March 31st, 21012, Lee acknowledged receipt of the plaintiff's letter. No further response was forthcoming.

58. On June 15th, 2012, the plaintiff wrote the Associate Dean of Education asking whether he would be allowed to re-enter the program in September of 2013, after the expiry of his suspension. In his response on the 29th of June, Anchan expressed concerns about the expected difficulty of finding a school willing to accept the plaintiff for his practicum placement, and added that in any event the Education Faculty would be unlikely to consider Green's re-admission without, among various other conditions, the submission of reports from health/medical experts.

The Plaintiff's Claims

59. The Plaintiff claims that in their written complaints against the Plaintiff, the defendants Bell, Cantor and Metz did maliciously defame and libel the Plaintiff, as set out in paras. 65-75 below.

60. Further, or in the alternative, the Plaintiff claims that in fostering and prosecuting the said written complaints and failing to allow the Plaintiff adequate opportunity to respond to the allegations against him, the University did variously engage in a ~~conspiracy to injure~~, an intentional breach of duty of care, a breach of contract and a denial of due process as set out in paras 76-97 below.

61. The Plaintiff claims that in implementing the trespassing order against the Plaintiff, the University and Colin Russell did maliciously defame the plaintiff as set out in paras. 98-106 below.

62. The Plaintiff claims that insofar as the defendants actions were motivated by a belief that the plaintiff suffered from a mental disability, that they violated his Charter Rights as set out in paras 107-111 below.

63. The plaintiff claims that in her written complaint against the plaintiff, the

defendant JANE DOE did maliciously defame and libel the plaintiff, as set out in paras. 112-117 below.

64. The Plaintiff claims that insofar as the defendants' actions were motivated by a desire to silence the Plaintiff's right to express his opinions, that they violated his Charter Rights as set out in paras 118-131 below.

The Plaintiff's Claims of Defamation against Bell, Cantor, and Metz

65. In an undated letter sent to the Associate Dean of Education on or around Nov. 10th 2011, the defendant BELL wrote of the plaintiff words including but not limited to:

- a) "Marty Green has shown himself to be a rude and disrespectful student, both to myself and to several of his fellow students."
- b) "My attempt to discuss this situation with Marty was ended abruptly and impolitely by Marty".
- c) "I have more examples of inappropriate behavior if needed....I find Marty's behavior in my classes to be well outside any acceptable standard.

66. The plaintiff claims defamatory meaning in the aforesaid words of Bell as follows:

- a) In 65a, the words are defamatory on their face value without consideration of additional inferences. (Hereafter this claim will be referred to as "face value").
- b) In 65b, the plaintiff pleads "face value"; and further, that the words are defamatory because they infer the Plaintiff behaved inappropriately and rudely in refusing to engage the defendant in a discussion.
- c) In 65c, the plaintiff pleads "face value"; and further, that the words are defamatory because they infer that there were many occasions where the Plaintiff behaved inappropriately, and that the defendant was justified in his negative assessment based on the Plaintiff's conduct on those alleged occasions.

67. In an undated letter sent to the Associate Dean of Education on or around Nov 10th 2011 the defendant CANTOR wrote of the plaintiff under the heading "Concerning Non-

Academic Misconduct: Marty Green” words including but not limited to:

- a) “I feel that Marty Green’s behavior in class has had an adverse effect on the well-being of his fellow students...”
- b) ~~“Marty’s assignment did not meet any of the criteria clearly explained in the course syllabus...”~~
- c) ~~“He told me he did not feel the assignment was relevant. Included in his paper was a detailed account of one of his classes, and the way he was mistreated by the professor”.~~
- d) “At the conclusion to one of the final presentations, Marty made an inappropriate request of an ASL interpreter. The student who had invited the interpreter was embarrassed and offended...”

68. The plaintiff claims defamatory meaning in the aforesaid words of Cantor as follows:

- a) In 67a the words are defamatory because they infer that the defendant’s negative feelings about the Plaintiff are based on her objective observations of improper behavior on the part of the Plaintiff.
- b) In 67d, the plaintiff pleads “face value”; further, that the words are defamatory because they infer that based on the Plaintiff’s behavior, the student was justified in feeling offended; and further because the aforesaid innuendo was amplified and reinforced by the following special circumstance; namely, that the defendant CANTOR attached to her letter a copy of an email from the said student in which revulsion and disgust was expressed with regard to the Plaintiff’s behavior.

69. In a letter sent to the Associate Dean of Education on Nov. 10th 2011, the defendant Metz wrote of the plaintiff words including but not limited to:

- a) “I’m concerned that...his tendency to have sudden angry outbursts and aggressive actions can lead to potential difficulties in a school environment with children.”
- b) “Marty jumped up to the board...he was not invited by the presenter to do this, and he has demonstrated this behavior of “taking over” from other students

regularly in the past.”

- c) “...he was not able to solve the problem, and was interfering with the presentation.”
- d) “Marty instantly became extremely angry and aggressively ran towards me and began shouting at me in an intimidating manner...”
- e) “Marty again lost his temper and shouted at me...”
- f) “Marty quickly became frustrated with the equipment.”
- g) “He became extremely agitated...”
- h) “He then angrily accused me of accusing him of not reading the lab manual.”
- i) “Marty then left without resolving his problems.”

70. The Plaintiff claims defamatory meaning in the aforesaid words of METZ as follows:

- a) In 69a, the words are defamatory because they infer that there were several occasions where the Plaintiff displayed inappropriate anger or rage; that said conduct by the plaintiff was indicative of a character flaw which could result in inappropriate behavior if placed in charge of children; and that the defendant was justified in his negative assessment based on the Plaintiff's conduct on those alleged occasions.
- b) In 69b, the plaintiff pleads “face value”; and further, that the words are defamatory because they infer that on this and other occasions, the Plaintiff had behaved inappropriately in class by interfering with other students' presentations.
- c) In 69c, the words are defamatory because they infer that the Plaintiff's attempt to solve the problem on the board was inappropriate and disruptive; and further, that the words “interfering with the presentation” are defamatory at face value.
- d) In 69d the Plaintiff pleads “face value”.
- e) In 69e the Plaintiff pleads “face value”.
- f) In 69f the words are defamatory because they infer that the Plaintiff lacked an appropriate degree of competence in the skills being evaluated. The defamatory meaning was aggravated because the skills in question were in the Plaintiff's declared area of expertise. The words are further defamatory in inferring that the Plaintiff made a display of frustration which was inappropriate.

- g) In 69g the words are defamatory because they infer that the Plaintiff showed an inappropriate lack of composure.
- h) In 69h the words are defamatory because they infer that the Plaintiff made an inappropriate, intemperate and unfounded accusation against the instructor.
- i) In 69i the words are defamatory because as in (f) above they infer a lack of competence in the Plaintiff's declared area of expertise; and further, that the Plaintiff displayed a lack of appropriate diligence by leaving without solving his problem.

71. In an email to the Registrar on January 10th, 2013, the defendant METZ wrote of the plaintiff the words "disruptive and threatening" to describe the plaintiff's behavior. The Plaintiff claims these words are defamatory on their face value without consideration of additional inferences; and that he is entitled to plead additional words and context pending discovery of email records presently controlled by the University.

72. The plaintiff claims that taken as a whole, the aforesaid words of the defendants BELL, CANTOR and METZ, in their plain and ordinary meaning meant or were understood to mean that the Plaintiff was a ~~troublemaker, a substandard student,~~ psychologically disturbed an obnoxious and disruptive presence in class and someone not fit by reasons of character and temperament to be a schoolteacher; and that those statements were in fact so understood by those who read those words.

73. The plaintiff claims that as a result of the aforesaid, he became despised and feared among the staff of the Education Faculty and the university at large; and as a result thereof he was ultimately forced to abandon his studies and relinquish his dream of a career in teaching.

74. Further, by reason of said defamation, the Plaintiff has suffered loss and damage for which he claims herein, including, but not limited to the following:

- a) Injury to the Plaintiff's character and reputation
- b) Emotional distress, anxiety, embarrassment and humiliation
- c) He has been brought into public scandal and contempt.

d) His hopes and dreams of a career in teaching have been ruined.

75. The Plaintiff states that the said false and malicious imputation of misconduct was done recklessly, carelessly, willfully and with malice with the intention of damaging the Plaintiff and his academic and/or future academic endeavours and/or his future employment opportunities and consequently the Plaintiff should be awarded aggravated, exemplary and punitive damages.

~~102. Further, or in the alternative, the plaintiff claims that in agreeing to contribute to a body of evidence for the purpose of discrediting him, and in subsequently doing so as described above, the defendants Anchan, Bell, Cantor and Metz carried out a conspiracy to injure the plaintiff for which they are tortiously liable and for which the plaintiff is entitled to damages.~~

The Plaintiff's Claims With Regard to ~~Conspiracy to Injure~~, Breach of Duty of Care, Breach of Contract, and Denial of Due Process

76. The plaintiff claims that by accepting him as a student and allowing him to register in the Teacher Certification program, the university contracted with the plaintiff, inter alia, to:

- a) properly teach the plaintiff according to the curriculum;
- b) afford the plaintiff all the opportunities normally available to other students in the program;
- c) treat the plaintiff in a courteous and proper manner, without malice or prejudice;
- d) not expel the plaintiff from the program without good cause
- e) carry out any disciplinary proceedings against the plaintiff in accordance with the principles of natural justice and the published policies of the University

77. The plaintiff claims that as a publicly funded body, chartered by an Act of the Legislature and empowered to confer degrees which are de facto prerequisites for employment in various fields, the University has a duty of care to ensure that its students are not arbitrarily or maliciously or without due process deprived of the

opportunity to pursue such degrees.

78. The plaintiff notes that by virtue of their recognition as quasi-judicial bodies, the University's disciplinary officers and committees are given immunity from civil recourse associated with the carrying out of disciplinary procedures even if those duties are carried out with malice, and further empowered to secure immunity from civil recourse to witnesses who offer testimony against the plaintiff, even if that testimony is false and malicious; and that the University therefore has a corresponding duty of care to treat the Plaintiff in accordance with the principles of natural justice, including the duty to afford the Plaintiff the same opportunity to expose testimony for its falsehood and malice through its disciplinary review process as he would have otherwise had in a court of law.

79. The Plaintiff claims that the sanctions executed against him, prior to Russell's finding of non-academic misconduct, including

- a) the removal of his practicum privileges,
- b) his suspension from classes, and
- c) the subsequent no-trespassing order,

amounted to a *de facto* expulsion without cause, and in the aforesaid circumstances the Plaintiff ought to have been entitled to a full refund of his tuition fee. By failing to so refund his fees the University therefore violated its contractual obligation to the Plaintiff.

80. The plaintiff claims that those three sanctions were executed maliciously and without due process, contrary to the legal contract between the University and the plaintiff, and in breach of the duty of care owed the plaintiff by the university, in that:

- a) in executing those sanctions the University failed to adhere to its own published procedures for dealing with non-academic misconduct
- a) in executing those sanctions the University relied on false and malicious information
- b) the University refused, despite repeated requests by the plaintiff, to provide him with the information they had relied upon in imposing those sanctions
- c) the plaintiff was never given the opportunity to cross-examine witnesses whose

allegations were damaging to the plaintiff

d) the plaintiff was never given the opportunity to present arguments against those sanctions or the accusations which lay behind them.

81. The plaintiff claims that by depriving him of his practicum priveleges without the opportunity to appeal, the University was attempting to unfairly pressure the plaintiff into abandoning not only his right to full disclosure of the evidence against him in the misconduct proceedings, but also his right to continue in the program altogether.

82. The plaintiff claims likewise that in suspending him from classroom attendance without the opportunity to appeal, the University was attempting to unfairly pressure the plaintiff into abandoning his rights as stated in para.81.

83. The plaintiff claims likewise that in barring him from the property without the opportunity to appeal, the University was attempting to unfairly pressure the plaintiff as stated in para. 81.

84. The Plaintiff claims that in refusing to allow him to present evidence of malicious treatment on the part of his professors in connection with his grade appeal, the University violated its contractual obligations to treat the Plaintiff in a courteous and proper manner, and afford him all the opportunities normally available to students including the right to due process.

~~111. The plaintiff claims that at their meeting of October 28th 2011, the defendants Anchan, Bell, Cantor and Metz entered into a conspiracy to injure the plaintiff by monitoring his activities and keeping track of incidents which they thought could be used to discredit him.~~

~~112. The plaintiff claims that the said defendants further carried out their illegal conspiracy when they met a second time and agreed to write letters of complaint about Green which exaggerated and misconstrued various incidents to Green's discredit.~~

85. The plaintiff claims that in filing his formal complaint of misconduct with the Registrar, Dean Anchan deliberately and maliciously or in the alternative carelessly and

recklessly failed to observe the rules of evidence as set out in the Policy, whereby complaints must be signed, dated and include full details of all incidents, thereby breaching the duty of care owed the plaintiff by the university.

86. The plaintiff claims that the Dean Blair should have rejected the complaints of Bell, Cantor, Principal Skull and the unidentified student on the grounds that those complaints did not comply with the regulations of the Policy (para. 21); and that by failing to do so, he carelessly and recklessly compromised the plaintiff's right to a fair hearing, thereby breaching the duty of care owed the plaintiff by the university.,

87. The plaintiff claims that Dean Blair should have identified the complaints from Gordon Bell as being irrelevant to the charges of non-academic misconduct and outside the jurisdiction of the Registrar to adjudicate; and by failing to so identify those complaints and sever them from the proceedings with regard to Non-Academic Misconduct, he carelessly and recklessly compromised the plaintiff's right to a fair hearing, in breach of the duty of care owed the plaintiff by the university.

88. The plaintiff claims that the Registrar knew or should have known that the complaints submitted by Bell, Cantor, Principal Skull and the unidentified student did not meet the requirements of the Policy, and so knowing he persisted in maliciously relying upon those complaints to find the Plaintiff guilty of misconduct.

89. The plaintiff claims that the Registrar knew or should have known that the complaints from Principal Skull were irrelevant to the charges of non-academic misconduct and outside his jurisdiction to adjudicate, and so knowing he persisted in maliciously relying upon those complaints to find the Plaintiff guilty of misconduct.

90. The plaintiff claims that the university's finding of non-academic misconduct was made maliciously and without due process in that

- a) in making its finding the University relied on false, malicious, inadmissible and irrelevant information
- b) in making its finding the University relied on evidence which had not been subjected to the impartial review process as required by Univeristy policy.

- c) the University refused, despite repeated requests by the plaintiff, to provide him with the information they had relied upon in making its finding, and
- d) the plaintiff was never given the opportunity to present arguments against the finding of misconduct or the accusations which lay behind it.

91. The plaintiff claims that the university denied the plaintiff the benefit of the appeal process to which he ought to have been entitled in that:

- a) the University unfairly prejudiced the members of the appeal committee by providing them with an abundance of written material prejudicial to the plaintiff which had no connection to the specific charges against him;
- b) the University provided members of the appeal committee with written evidence prejudicial to the plaintiff which did not meet the university's own rules for admissibility of evidence;
- c) the University failed to disclose that the letters of complaint from the professors had been written at the request of the Associate Dean.
- d) the University did not allow the plaintiff sufficient time to respond to the allegations against him;
- e) the university did not allow the plaintiff to cross-examine his accusers
- f) the university did not allow the plaintiff to call witnesses in his own defence.

92. The plaintiff claims that the university ignored the plaintiff's request to dispute the finding of misconduct before the Board of Regents on procedural grounds, even though his right to make that argument was guaranteed in the University's own policy.

93. The plaintiff claims that taken as a whole, the University's actions against him were wanton, capricious, and malicious.

94. The plaintiff claims that the University's actions have made it virtually impossible to pursue a career in teaching, and thereby resulted in grievous damage to his ability to pursue a livelihood.

95. The plaintiff claims that the University's actions caused him grievous emotional distress and severe loss of reputation.

96. The plaintiff claims that the University's actions caused him immediate financial losses including loss of earning opportunity while attending classes the cost of tuition fees, and other incidental expenses.

96a. The Plaintiff claims that in the course of these proceedings, the University unfairly withdrew a sponsorship which the Plaintiff had been awarded to attend and speak at a conference of student teachers in Calgary, in violation of the University's contractual duty to not arbitrarily deprive him of the same opportunities available to all other students.

97. As a result of all of the foregoing, the plaintiff claims to be entitled to damages.

The Plaintiff's Claims With Regard to Defamation by RUSSELL

98. On the 11th of January, 2012, the defendant RUSSELL caused an order to be drawn up and published barring the plaintiff from University property for a period of one year. No reason for the order was included in the barring notice.

99. The barring notice was subsequently emailed to the Plaintiff and copied to staff at the University including Academic Vice President John Corlett.

100. The defendant RUSSELL knew, or ought to have known, that the publication of the barring order would in the natural course of events become known to the Deans of Education and other members of the university community including staff and students, as well as family, friends and other colleagues of the plaintiff; and in fact the existence of the barring order did become so known.

101. The act of issuing of the barring order ~~against a student in otherwise good standing~~ and the words written in the accompanying cover letter were by innuendo understood to mean that plaintiff ~~must have~~ had committed some outrageous or offensive act which warranted said order; and in fact, due to special circumstances as particularized below, the order was so understood among those who became aware of its existence, including but not limited to the Deans of Education, the Vice-President Academic and the President of the University, as well as members of the plaintiff's own

family.

102. The aforesaid words and actions of Russell in issuing and publicizing the trespassing order would have been understood in the defamatory sense as claimed above by virtue of the following circumstances:

- a) It is extremely rare for a student registered in a professional program to be barred from campus property unless he has committed some type of outrage.
- b) The plaintiff's alleged propensity to mental instability and erratic behavior was already a topic of speculation among faculty members.
- c) The plaintiff had previously been accused of making threats against the University or its staff members.
- d) Earlier the same day, prior to issuing the order, Russell had been heard telling the Plaintiff in the presence of security staff that he had seen him make a gesture that would ordinarily be understood as a threat..

103. The Plaintiff subsequently wrote the University demanding to be informed of the reasons for the barring order, and to be given the opportunity to dispute said order. The University refused this demand and refused or ignored all subsequent requests by the Plaintiff for the right to appeal. In doing so the University deliberately and maliciously, or in the alternative carelessly and recklessly deprived the Plaintiff of any opportunity to mitigate the damages caused by the RUSSELL's actions, in breach of the natural duty of care owed the Plaintiff under the circumstances.

104. The plaintiff states that in causing said order to be issued, the defendant RUSSELL falsely and maliciously, or in the alternative recklessly and carelessly acted in a way that was defamatory to the Plaintiff and meant to disparage, discredit and prejudice the plaintiff in his pursuit of a teaching career; and that furthermore, or in the alternative, the University breached its duty of care to the Plaintiff by not affording him the opportunity to respond to RUSSELL's imputation of outrageous conduct.

105. Further, by reason of said defamation, the Plaintiff has suffered loss and damage for which he claims herein, including, but not limited to the following:

- a) Injury to the Plaintiff's character and reputation
- b) Emotional distress, anxiety, embarrassment and humiliation
- c) He has been brought into public scandal and contempt.
- d) His hopes and dreams of a career in teaching have been ruined.

106. Further, or in the alternative, the Plaintiff states that the said false and malicious imputation of misconduct was done recklessly, carelessly, willfully and with malice with the intention of damaging the Plaintiff and his academic and/or future academic endeavours and/or his future employment opportunities and consequently the Plaintiff should be awarded aggravated, exemplary and punitive damages.

The Plaintiff's Claims With Regard to Discrimination

107. The plaintiff claims that the severity of the sanctions imposed against him was motivated in part by a perception on the part of the University that the plaintiff was subject to a mental disability.

108. The plaintiff claims that his treatment by the University, as described in the foregoing, was motivated in part by the belief that suspicion of a mental disability was a valid reason to exclude the suspected individual from the teaching profession.

109. The plaintiff claims that the University made no attempt to determine whether the plaintiff's perceived disability was in fact an impediment to his ability to function as a student or potentially as a teacher; and furthermore, or in the alternative, they made no effort to make reasonable adjustments to the plaintiff's conditions of study or work so as to accommodate his perceived disability.

110. As a result of the foregoing, the plaintiff pleads that the University violated the his right to be free from discrimination because of a mental disability, insofar as that right is guaranteed him in the Canadian Charter of Rights and Freedoms, and he is therefore entitled to aggravated and punitive damages.

111. The plaintiff relies on the Canadian Charter of Rights and Freedoms and the Manitoba Human Rights Code.

The Plaintiff's Claims With Regard to Defamation by Jane Doe

112.. In an letter sent to the Dean of Education on or around Oct 31st 2011, the defendant JANE DOE wrote of the plaintiff words including but not limited to:

- a) "he is prone to personal attacks on other students and has verbally attacked our professor, Dave Bell."
- b) "he has reduced one student to tears..."

113. The plaintiff claims that taken as a whole and read in context, the aforesaid words of the JANE DOE, in their plain and ordinary meaning meant or were understood to mean that the Plaintiff ~~had viciously, intentionally and without provocation inflicted grievous emotional distress on a fellow classmate~~ was guilty of a malicious and unprovoked verbal assault on an innocent classmate, and that those statements were in fact so understood by those who read those words.

114. The Plaintiff further claims the the characterization of himself as being "prone to personal attacks on other students" is defamatory in its plain and ordinary meaning without the consideration of further innuendo.

115. The plaintiff claims that as a result in part of the aforesaid, the Deans of Education became convinced that the Plaintiff was a person of despicable character and proceeded to take action in order to remove him from the program..

116. Further, by reason of said defamation, the Plaintiff has suffered loss and damage for which he claims herein, including, but not limited to the following:

- a) Injury to the Plaintiff's character and reputation
- b) Emotional distress, anxiety, embarrassment and humiliation
- c) He has been brought into public scandal and contempt.
- d) His hopes and dreams of a career in teaching have been ruined.

117. The Plaintiff states that the said false and malicious imputation of misconduct was done recklessly, carelessly, willfully and with malice with the intention of damaging the Plaintiff and his academic and/or future academic endeavours and/or his future

employment opportunities and consequently the Plaintiff should be awarded aggravated, exemplary and punitive damages.

The Plaintiff's claims with regard to Freedom of Expression

118. On various occasions as particularized below, the Plaintiff's instructors in the Education program, including the named defendants BELL, CANTOR and METZ and in addition a fourth instructor GEORGE BUSH (who is not a defendant in the present action) expressed displeasure with certain opinions expressed by the Plaintiff.

119. In an assignment submitted to Professor Cantor in September of 2011, the Plaintiff was asked to write about his family background, personal beliefs, traditions and practices. Students were assured that the contents of the essay would be strictly confidential. In his essay the Plaintiff wrote comments which could be considered critical of another instructor and the President of the University. Subsequently, in a letter to the Deans of Education, Professor Cantor described the contents of the Plaintiff's essay and expressed concern with them.

(all subsequent paragraphs from 120 to 132 are to be read as part of the amended claim, lack of underlining notwithstanding)

120. On September 29th 2011, the Plaintiff was attending a class instructed by Professor Bush in which that instructor criticized the class for certain behaviors. The Plaintiff expressed the opinion that the professor ought not to be criticizing the class, whereupon the instructor launched into a heated tirade directed against the Plaintiff, characterizing him *inter alia* as being disrespectful.

121. In October 2011, the plaintiff was assigned by Professor Metz to do a presentation on Conservation of Momentum. In a discussion with the professor, the Plaintiff expressed disagreement with the professor's recommended method of teaching "Conservation of Momentum". Subsequently, Professor Metz reported the discussion to the Deans of Education, expressing disdain for the Plaintiff's position. Later, the Plaintiff presented the topic in class using his own preferred method, and was subsequently given a grade of 60%, including a failing grade for the "theory" component.

122. In October 2011, Professor Bell was speaking in class about the purpose of education. The Plaintiff made a brief statement to the class expressing disagreement with the professor, but the professor did not reply. Subsequently, in a major assignment, the Plaintiff wrote about the earlier disagreement, elaborating on his position. He also identified several difficulties he had found with the curriculum and wrote about how he would deal with them. Professor Bell gave the Plaintiff a grade of 55% on the assignment, writing: "Too much effort went into finding fault with the curriculum, me, Prof. Metz, all U of W instructors, etc."

123. In November 2011, the Plaintiff became involved in an in-class disagreement with Professor Bush over how one might teach the concept of "moles" in Grade Eleven Chemistry. The professor expressed disdain for the Plaintiff's opinion in front of the class, saying "Obviously you don't know very much about chemistry". On a subsequent term paper, the Plaintiff wrote about how he would teach moles in Grade Eleven Chemistry. He also identified a problem with one of the lab exercises included in the curriculum and proposed a means of rectifying the problem. Professor Bush gave him a failing grade on the term paper.

124. On the same essay, students were asked to explain how their lesson plans reflected the Constructivist philosophy of education. The Plaintiff explained in his essay why he did not subscribe to the Constructivist ideology, and was given a mark of zero for that portion of the assignment.

125. Subsequently the Plaintiff appealed his grade to the Departmental Committee. The Departmental Committee ratified the failing grade without giving reasons. The Plaintiff appealed to the Senate. Upon being pressed for reasons, the Departmental Committee revealed that they had not read the paper prior to ratifying Professor Bush's failing grade. When the Plaintiff subsequently tried to assert his right to argue his case before the Senate Committee, his appeal was denied and the case closed.

126. In November of 2011 Professor Metz invited a vendor of educational software to speak to the class. In a class discussion, the Plaintiff expressed reservations about the educational value of the vendor's merchandise. In a subsequent meeting, Professor

Metz complained to his colleagues and the Deans of Education that he had invited a guest “who was criticized (by the Plaintiff) in less than five”.

127. In the same meeting, involving the four named instructors, the Deans of Education and the defendant WOLOSHYN, the following remarks were recorded concerning the Plaintiff:

- a) “all the time disagreeing with others”
- b) “expresses his contempt for everything and everyone”
- c) “a diatribe on curriculum and the dept.”
- d) “accused other instructors by name”
- e) “disparages instructors”

128. In the final exam of Professor Bush’s course, which was an “open-book” exam, the Plaintiff explained why he did not bring the permitted material into the exam, and in doing so expressed negative opinions about the value of said material. Professor Bush gave him a grade of 50% on the exam. When the Plaintiff appealed the grade, Professor Bush characterised the appeal as a form of harassment, going so far as to seek a protective order preventing the Plaintiff from having any further contact with him. In his written application for the court order, Professor Bush quoted excerpts from the Plaintiff’s exam paper as described above in support of his application.

129. The Plaintiff claims that his instructors gave him grades much lower than would otherwise have been warranted by the quality of the work because they disagreed with his opinions; and that to the extent that they did so in their capacities as employees and agents of the University, that the University thereby violated his right to freedom of thought, belief, opinion and expression as guaranteed by the Charter of Rights and Freedom, and he is therefore entitled to damages.

130. The Plaintiff claims that his instructors disparaged and criticized him in front of the other students in the program because they resented his expressing opinions different from their own; and that by ultimately creating an atmosphere where the Plaintiff was unfairly characterised as a troublemaker and feared and resented by his

classmates, they laid the grounds for his removal from the program and thereby violated his right to freedom of expression etc. as expressed in para 154 above.

131 The Plaintiff claims that the University revoked his sponsorship to the Conference of Student Teachers in Calgary because they wished to prevent him from expressing his opinions, and in doing so they violated his right to freedom of expression etc. as expressed in para 154 above.

132. The Plaintiff claims that his instructors recommended, and the University carried out, disciplinary proceedings which culminated in his removal from the program in large measure because they wished to prevent him from continuing to express opinions contrary to their own; and that to the extent that they did so, the University violated his right to freedom of thought, belief, opinion and expression as guaranteed by the Charter of Rights and Freedoms, and he is therefore entitled to damages.