

File No. CI 13-01-83238

THE QUEEN'S BENCH
Winnipeg Centre

BETWEEN:

MARTIN GREEN

Plaintiff,

- and -

**JOHN ANCHAN, DAVE BELL, LAURALYN CANTOR, DON METZ, COLIN RUSSELL,
JANE DOE, and THE UNIVERSITY OF WINNIPEG.**

Defendants.

**NOTICE OF MOTION TO STRIKE-OUT STATEMENT OF CLAIM
MASTER'S UNCONTESTED LIST**

Hearing Date: Monday, October 21, 2013 at 9:30 a.m.

OCT 11 2013

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Plaintiff,

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NOTICE OF MOTION TO STRIKE-OUT STATEMENT OF CLAIM

THE Defendants, except Jane Doe, will make a motion before the presiding Master on Monday, October 21, 2013 at 9:30 a.m., or as soon after that time as the Motion can be heard, at the Law Courts Building, 408 York Avenue, Winnipeg, Manitoba.

THE MOTION IS FOR:

1. An Order that the Plaintiff's Statement of Claim, filed April 29, 2013 and amended August 29, 2013, be struck in its entirety;
2. In the alternative, an Order striking out those paragraphs which the Court deems appropriate;

3. An Order that the Plaintiff bear the costs of the Motion; and
4. Such further and other grounds as counsel may advise and this Honourable Court may deem just.

THE GROUNDS FOR THE MOTION ARE:

1. Queen's Bench Rule 25.11.
2. The Statement of Claim is scandalous, frivolous and vexatious.
3. The Statement of Claim is an abuse of process of the court.
4. The Statement of Claim fails to disclose a reasonable cause of action.
5. Paragraphs 65-75, 98-106, and 112-117 of the Statement of Claim attempt to plead defamation. However, all alleged statements were made with absolute privilege; or alternatively qualified privilege, under the authority of the University of Winnipeg's Student Non-Academic Conduct and Discipline Policy passed pursuant to the *University of Winnipeg Act* ('Act'), and are not actionable.
6. Paragraphs 107 – 111 of the Statement of Claim attempt to plead discrimination, which is not a recognized tort.
7. The Plaintiff has not provided a factual foundation for differential treatment on the basis of an actual or perceived mental disability; a request by the Plaintiff for accommodation on the basis of a mental disability; and/or a failure on the part of the Defendants to adequately respond to a request for accommodation on the basis of a mental disability.
8. The Plaintiff has not suffered any damages as a result of the alleged

discrimination, nor could the alleged discrimination have a causal link to the damages claimed by the Plaintiff.

9. Paragraphs 14-58, 60, 76-97, and 118-132, are all concerned with the academic, and non-academic, internal processes and protocols of the University of Winnipeg ("University") and the court lacks jurisdiction over such matters.
10. Paragraphs 14-58, 60, 76-97, and 118-132, are all concerned with the academic, and non-academic, internal processes and protocols of the University.
11. The Plaintiff did not bring a judicial review application, which would have been the proper course of action.
12. The Plaintiff has not suffered any damages as a result of the alleged breach of duty of care, breach of contract, and/or denial of due process, nor is there any causal link between the grounds of action alleged and the damages pleaded.
13. The Defendants rely on sections 12(1), 12(2), 24(2) of the *University of Winnipeg Act*, C.C.S.M., c. U70 ("Act").
14. The Defendants rely on sections 12(2)(d) and 12(2)(e) of the *Act*, which gives the University jurisdiction over the non-academic conduct of students and its own rules and procedures, and the Policy for Student Non-Academic Conduct and Discipline, passed pursuant thereto.
15. The University has the authority to deal with matters of academic and non-academic matters relating to student conduct.
16. The Courts do not have jurisdiction to entertain the action commenced by the Plaintiff.
17. The Plaintiff's claim concerns the internal process of the University, and the

appropriate course of action for the Plaintiff would have been a judicial review application in a timely fashion, and the current claim is an abuse of process.

18. The Plaintiff has brought several Court proceedings all arising out of his suspension from the University, as such, this Statement of Claim is frivolous, scandalous, vexatious, and an abuse of process.
19. The Defendants further rely on such further and other grounds as counsel may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

1. The Statement of Claim;
2. The Plaintiff's Particulars, filed September 25, 2013;
3. The Court record for CI12-01-79879;
4. The Court record for CI13-01-81365;
5. The Court record for CI13-01-81654;
6. The Court record for CI13-01-82216; and
7. Such further and other evidence as counsel may advise and this Honourable Court may allow.

October 11, 2013

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