

File No. CI22-01-33952

**THE QUEEN'S BENCH  
Winnipeg Centre**

Feb 23 2022 11:57  
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CHARGE/FEE PAID: 150.00

BETWEEN:

**RENISE MLODZINSKI, EVAN MALTMAN, and KYLE DU VAL**

plaintiffs,

– and –

**UNIVERSITY OF WINNIPEG, MANITOBA HEALTH AND SENIORS CARE,  
THE HER MAJESTY THE QUEEN IN RIGHT OF MANITOBA, DR. BRENT  
ROUSSIN, CHIEF PUBLIC HEALTH OFFICER FOR THE PROVINCE OF  
MANITOBA, and THE MINISTRY OF ADVANCED EDUCATION, SKILLS AND  
IMMIGRATION FOR THE PROVINCE OF MANITOBA**

defendants

MOTION UNDER *Queen's Bench Rules*, rule 25.11

FILED  
QUEEN'S BENCH

**NOTICE OF MOTION  
MASTER'S UNCONTESTED LIST  
Hearing Date: March 3, 2022, at 9:30 a.m.**

FEB 23 2022  
LAW COURTS  
WINNIPEG

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defendants

**NOTICE OF MOTION**

THE DEFENDANT, THE UNIVERSITY OF WINNIPEG (this "Defendant" or "U of W") will make a motion before the presiding Master on Thursday, March 3, 2022, at 9:30 a.m., or as soon after that time as the motion can be heard, at 408 York Avenue, Winnipeg, MB R3C 0P9.

The motion will be heard by **teleconference**. The call-in number and ID for the teleconference is as follows: Toll-free dial-in number: **1-855-342-6455**; Conference ID Number: **5589296**.

**THE MOTION IS FOR:**

1. An Order striking the Statement of Claim as against this Defendant, without leave to amend;

2. Costs; and
3. Such further and other relief as this Court may deem just.

**THE GROUNDS FOR THE MOTION ARE:**

Dispute

4. The U of W established a Mandatory COVID-19 Vaccination Policy (University Classification & Policy Number: A-001-21) ("Policy").
5. The Plaintiffs at all material times were subject to the Policy.
6. The Plaintiffs, as set out in the Statement of Claim, seek remedies against this Defendant because of the Policy.

Ambit of the Collective Agreement

7. The Plaintiffs are, and were at all material times, unionized employees of this Defendant pursuant to the Collective Agreement between the U of W and The University of Winnipeg Faculty Association Collegiate Division ("UWFA") commencing on March 29, 2015 ("Collective Agreement").
8. This Defendant established the Policy further to its obligation to maintain a safe and healthy learning, living, and working environment for the U of W Community. Such obligation is provided for in the Collective Agreement.

The manner in which this Defendant responds to such obligation is part of the administration of the Collective Agreement.

9. The fact that the Plaintiffs' have chosen to claim in the Statement of Claim that their rights or freedoms – as guaranteed by the *Canadian Charter of Rights and Freedoms* – are infringed or denied, does not alter the essential character of the dispute between the Plaintiffs and this Defendant as arising out of the Collective Agreement.
10. The remedial powers pursuant to the Collective Agreement fail to disclose a remedial gap sufficient to justify the exercise of the Court's jurisdiction over the Statement of Claim.

Queen's Bench Rules, R. 25.11(1)

11. Given the dispute and the ambit of the Collective Agreement, the Court is without jurisdiction to adjudicate the subject-matter of the Plaintiffs' claim, as set out in the Statement of Claim, as against this Defendant because the differences between the Plaintiffs and this Defendant, in their essential character, concern the meaning, application, or alleged violation a Collective Agreement and, therefore, they must be resolved pursuant to its terms.
12. As such, the Statement of Claim does not disclose a reasonable cause of action as against this Defendant and it should be struck pursuant to the *Queen's Bench Rules*, R. 25.11(1)(c) or 25.11(1)(d), respectively.
13. In the alternative, the Statement of Claim is an abuse of process of the Court and it should be struck pursuant to the *Queen's Bench Rules*, R. 25.11(1)(c)

given the Plaintiffs' claim that UWFA has violated *The Labour Relations Act*,  
CCSM c L10, s. 20.

14. Such further and other grounds as counsel may advise and the Court may permit.

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

15. Statement of Claim filed January 10, 2022;
16. Affidavit of Marcie MacDonald affirmed February 23, 2022 and filed; and
17. Such further and other material as counsel may advise and this Court may permit.

February 23, 2022

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