

THE KING'S BENCH
Winnipeg Centre
(Proceeding under *The Class Proceedings Act*)

BETWEEN:

CINDY FRIESEN,

Plaintiff,

- and -

THE ATTORNEY GENERAL OF MANITOBA,

Defendant.

FILED SEP 18 2023

STATEMENT OF CLAIM

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File No. 935

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BETWEEN:

CINDY FRIESEN,

Plaintiff,

- and -

THE ATTORNEY GENERAL OF MANITOBA,

Defendant.

STATEMENT OF CLAIM

TO THE DEFENDANT:

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

IF YOU WISH TO DEFEND THIS PROCEEDING, you or a Manitoba lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the King's Bench Rules, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it in this court office, **WITHIN TWENTY DAYS** after this statement of claim is served on you, if you are served in Manitoba.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty

days. If you are served outside Canada and the United States of America, the period is sixty days.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

IF YOU PAY THE PLAINTIFF'S CLAIM, and \$750.00 for costs, within the time for serving and filing your statement of defence, you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the plaintiff's claim and \$750.00 for costs and have the costs assessed by the court.

**A. ANTHONISZ
DEPUTY REGISTRAR
COURT OF KING'S BENCH
FOR MANITOBA**

September 18, 2023

Issued by _____

Deputy Registrar
100C - 408 York Avenue
Winnipeg, Manitoba
R3C 0P9

TO: THE ATTORNEY GENERAL OF MANITOBA
104 Legislative Building
450 Broadway Avenue
Winnipeg, Manitoba. R3C 0V8

Attention: Mr. Kelvin Goertzen

CLAIM

1. The Plaintiff claims on her own behalf and on behalf of all class members:

- a) Damages for breach of fiduciary duty;
- b) Damages for the tort of negligence;
- c) Damages for the tort of misfeasance in public office;
- d) An Order that the action(s) of the Defendant violates the rights of the Plaintiff under sections 2(a), 7, 8, and 12 of the *Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982*, being Schedule B to the *Canada Act 1982, (U.K.), 1982, c. 11* (the "Charter") not to be subject to the deprivation of:
 - i) the fundamental right to freedom of conscience;
 - ii) the right to life, liberty and security of the person;
 - iii) the right to not be subjected to unreasonable search; and
 - iv) the right to not be subjected to any cruel and unusual treatment or punishment;and that the said violations are not a reasonable limit on the Plaintiff's rights under section 1 of the Charter;
- e) Damages pursuant to section 24(1) of the Charter;
- f) Special damages in an amount to be proven at trial;
- g) Aggravated, exemplary and punitive damages for the Defendant's bad faith conduct;
- h) Costs of this action on a solicitor and client basis;
- i) In the alternative, the costs of this action on a substantial indemnity basis;
- j) such further and other relief as may seem just to this Honourable Court.

THE PARTIES

2. The Plaintiff, Cindy Friesen, was, at all material times, a resident of the Province of Manitoba and held gainful employment therein as were all members of the proposed class.
3. The Defendant, the Attorney General of Manitoba, is the Minister of His Majesty the King in Right of Manitoba (the “Government of Manitoba”) and is named in these proceedings by virtue of the *Proceedings Against the Crown Act C.C.S.M. c. P140 (the “PACA”)*. The Government of Manitoba is vicariously liable for the acts and/or omissions of Crown employees as its servants in accordance with section 3 and section 4(2) of PACA.

THE RELEVANT EVENTS

4. The COVID-19 pandemic in the Province of Manitoba was a viral pandemic of coronavirus disease 2019 (“COVID-19”), a novel infectious disease caused by severe acute respiratory syndrome coronavirus 2 (“SARS-CoV-2”).
5. The Government of Manitoba officially reported its first cases of COVID-19 on March 12, 2020. A state of emergency was declared on March 20, 2020, under the *Emergency Measures Act*, and the Government of Manitoba implemented its first lockdown on April 1, 2020 (the “First Lockdown”). During the First Lockdown the Government of Manitoba ordered the closure of all non-essential businesses.
6. In comparison to other Provinces, case counts remained relatively low in Manitoba throughout the spring and summer months, and the Government of Manitoba began lifting some of its health orders on May 4, 2020.

7. By September 2020, the Province Manitoba had begun to develop a harsher second wave which led to restrictions being re-implemented in parts of the Province. By November 12, 2020, all of Manitoba was placed under the highest critical level of the province's tier-based response system.
8. At this time the Government of Manitoba reintroduced strong restrictions on gatherings and non-essential activities similar to the aforementioned First Lockdown.
9. While some restrictions were eased in early 2021, strong restrictions (the "Restrictions") on gatherings, retail capacity, and sectors of businesses were reintroduced by the Government of Manitoba in May 2021. This was due to an alleged harsher third wave of COVID-19 fuelled by variants of SARS-CoV-2.
10. The Plaintiff states that the Restrictions were mandated by relevant provision(s) of The Public Health Act C.C.S.M. c. P210 (the "Act") and that the Government of Manitoba, its employees, representatives and assigns and those assisting in enforcing the Restrictions had an obligation to act in good faith toward the Plaintiff.
11. These Restrictions were ultimately phased out in February and March of 2022.
12. At no time did the Government of Manitoba mandate that persons residing and/or working in the Province of Manitoba must take vaccination(s) for COVID-19 against their will.
13. At no time did the Government of Manitoba directly prosecute or penalize persons who did not obtain vaccination(s) for COVID-19 by way of criminal and/or regulatory offence or by virtue of any applicable statute(s) and/or regulation(s).

14. The Government of Manitoba actively prosecuted and/or penalized sectors of businesses that did not comply with the Restrictions.
15. The Plaintiff and the proposed members of the class were placed on leave without pay by their employers and/or terminated from their employment as a direct result of failing to obtain vaccination(s) for COVID-19, failing to disclose their vaccination status to their employers and/or submit to repeated Covid-19 testing.
16. The actions of the Government of Manitoba, which included, *inter alia*, imposing the Restrictions and actively prosecuting and/or penalizing sectors of businesses that did not comply with the Restrictions, resulted in the Plaintiff and the proposed members of the class being placed on leave without pay by their employers and/or terminated from their employment for failing to obtain vaccination(s) for COVID-19, failing to disclose their vaccination status to their employers and/or submit to repeated Covid-19 testing, as their employers were attempting to avoid prosecution and/or penalization by the Government of Manitoba for not complying with the Restrictions.

FIDUCIARY DUTY / NEGLIGENCE / MISFEASANCE IN PUBLIC OFFICE

17. The Government of Manitoba has had a fiduciary relationship with the Plaintiff and the proposed Class Members since the Restrictions were put in place, the particulars of which are as follows:

- a. The Government of Manitoba since the Restrictions were in place has had a significant scope for the exercise of discretion and power over the Plaintiff;
 - b. The Government of Manitoba since the Restrictions were in place could unilaterally exercise said power of discretion so as to affect the Plaintiff's legal or practical interests;
 - c. The Plaintiff since the Restrictions were in place has been peculiarly vulnerable to or at the mercy of the Government of Manitoba;
 - d. At all times material to this action, in reliance on the Act utilized by the Government of Manitoba in mandating the Restrictions and on the faith and trust which the Plaintiff had to necessarily place in The Government of Manitoba, the Plaintiff had the reasonable expectation that the Government of Manitoba would act in good faith and in accordance with the law and solely in the Plaintiff's best interest(s).
 - e. The Plaintiff states that the Government of Manitoba, in enacting and enforcing the mandates, did not have accurate or complete scientific information to support the Restrictions, did not uniformly enforce the Restrictions within Manitoba and acted in bad faith and not in the best interest(s) of the Plaintiff.
18. The Government of Manitoba further owed a duty of care to the Plaintiff to ensure that her employment was not jeopardized and/or unilaterally modified by virtue of her employer's reaction(s) to and/or compliance with any Government of Manitoba Restrictions as related to the COVID-19 pandemic.

19. The Plaintiff states that the Government of Manitoba knew or ought to have known that by implementing the Restrictions, the employer of the Plaintiff would refuse the Plaintiff entry to her place of employment and/or unilaterally modify her employment contract by demanding vaccination status and/or repeated Covid-19 testing in the event vaccinations were refused or vaccination status was not disclosed by the Plaintiff to her employer.
20. The Plaintiff states that the employer of the Plaintiff refused the Plaintiff entry to her place of employment and/or unilaterally modified her employment contract when the Plaintiff refused vaccination, vaccination status was not disclosed by the Plaintiff to her employer and/or repeated Covid-19 testing was refused by the Plaintiff. The Plaintiff's employer did so as a direct and/or compulsory reaction to the Restrictions as mandated by the Government of Manitoba.
21. The resultant effect was that the Plaintiff and members of the proposed Class were placed on leave without pay and/or terminated from her/their place(s) of employment.
22. The Plaintiff states that the actions of the Government of Manitoba amount to breach of fiduciary duty and make claim for damages resulting from same.
23. The Plaintiff states that the actions of the Government of Manitoba amount to the tort of negligence and make claim for damages resulting from same.
24. The Plaintiff further states that the actions of the Government of Manitoba amount to the tort of misfeasance in public office carried out in bad faith and make claim for damages resulting from same.

CHARTER VIOLATIONS

25. The Government of Manitoba owed a duty of care to the Plaintiff to ensure that her rights pursuant to sections 2(a), 7, 8, and 12 as guaranteed by the Charter were not violated, jeopardized or modified by virtue of any Government of Manitoba Restrictions as related to the COVID-19 pandemic.
26. The Plaintiff states the Restrictions as imposed by the Government of Manitoba resulted in the treatment of the Plaintiff by her employer by specifically being refused entry at her place of employment and the unilateral modification of her employment contract, specifically the requirement to demonstrate vaccination status and/or be subjected to repeated Covid-19 testing.
27. The refusal of entry at her place of employment, the unilateral modification of the Plaintiff's employment contract and the treatment suffered by the Plaintiff was a direct consequence of the Plaintiff's employer being forced to obey the Restrictions put in place by the Government of Manitoba which ultimately resulted in the Plaintiff being placed on leave without pay and/or terminated from her employment.
28. The Plaintiff makes claim for damages for the violation of her section 2(a), 7, 8, and 12 Charter rights and pleads and relies upon section 24(1) of the Charter.

THE CLASS

29. This action is brought as a proposed class action by the Plaintiff pursuant to the *Class Proceedings Act* C.C.S.M. c. C130 on behalf of all persons who were placed on leave without pay and/or terminated from their employment due to the Government of Manitoba imposed Restrictions.

30. There are questions of law and fact common to the proposed class. The claims of the Plaintiff are typical of the claims of the proposed class members and the Plaintiff herein will adequately represent and protect the interests of the said proposed class.
31. Separate actions by individual members of the proposed class would create a risk of inconsistent adjudications with respect to individual members of the proposed class.
32. The Plaintiff also seeks costs and prejudgment interest, if applicable.
33. The Plaintiff proposes that this action be tried in the City of Winnipeg in the Province of Manitoba.

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