

CANADA

PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

NO: 500-06-001245-238

SUPERIOR COURT  
(Class Actions)

---

**ARIELLE** 

Applicant

v.

**DESJARDINS SÉCURITÉ FINANCIÈRE,  
COMPAGNIE D'ASSURANCE VIE**, legal  
person having its head office at 200, rue des  
Commandeurs, Lévis, Québec, G6V 6R2

and

**FÉDÉRATION DES CAISSES DESJARDINS  
DU QUÉBEC**, legal person having its head  
office at 100, rue des Commandeurs, Lévis,  
Québec, G6V 7N5

and

**ALLIANCE POUR LA SANTÉ ÉTUDIANTE  
AU QUÉBEC INC. (d.b.a. ASEQ |  
STUDENTCARE)**, legal person having its  
head office at 2700-1000 Sherbrooke Street  
West, Montreal, Quebec, H3A 3G4

and

**UNIVERSITÉ CONCORDIA**, legal person  
having its head office at 1455 De Maisonneuve  
Boulevard West City and District of Montreal,  
Province of Quebec, H3G 1M8

Defendants

---

**AMENDED APPLICATION TO AUTHORIZE THE BRINGING OF A CLASS ACTION**  
**(ARTICLES 571 AND FOLLOWING C.C.P.)**

---

**TO ONE OF THE HONOURABLE JUDGES OF THE SUPERIOR COURT, SITTING IN AND FOR THE DISTRICT OF MONTREAL, YOUR APPLICANT STATES:**

**INTRODUCTION:**

1. Applicant wishes to institute a class action on behalf of the following class:

All students enrolled or who were enrolled in a CEGEP or university and who were automatically subscribed to a <u>health</u> , medical or dental insurance plan for which they paid the insurance premiums to or for the benefit of the defendants.  (hereinafter the “ <b>Class</b> ” or the “ <b>students</b> ”)	Tous les étudiants inscrits ou qui ont été inscrits à un CÉGEP ou à une université et qui ont été automatiquement inscrits à un régime d'assurance <u>santé</u> , médicale ou dentaire pour lesquels ils ont payé les primes d'assurance aux défenderesses ou à leur bénéfice.  (ci-après le « <b>Groupe</b> » ou les « <b>étudiants</b> »)
--	---

2. This class action concerns the illegal manner in which students in the province of Quebec (including those studying outside of Quebec and for whom article 3119 CCQ applies) are automatically subscribed to health and/or dental insurance policies provided by Defendant *Alliance pour la santé étudiante au Québec* (a.d.b.a. as ASEQ | Studentcare, and hereinafter referred to as “**ASEQ**”), insured by Defendant *Desjardins sécurité financière, compagnie d'assurance vie* (hereinafter “**Desjardins**”) and paid to or for the benefit of Desjardins and/or ASEQ;
3. Applicant communicates extracts of the CIDREQ for the Defendants herewith *en liasse* as **Exhibit P-1**;
- 3.1 Defendants act illegally by:
- a) Subscribing the Class members to a group insurance plan without their consent, either before or after these members were subscribed;
  - b) Invoicing the Class members without their consent and without informing them that they had no obligation to pay the amounts indicated on the invoice with respect to the insurance (i.e. that the insurance is optional);
  - c) Imposing an arbitrary deadline to opt-out that is based neither on legislation nor regulations, nor on the consent of the Class members; and
  - d) Failing to send the insurance policy to Class members;

## **THE ISSUE:**

4. In the “À propos” section of its website, ASEQ describes itself and its functions as follows, **Exhibit P-2** (<https://aseq.ca/rte/fr/ASEQcommon?superUid=Gettoknowus>):

En tant que **fournisseur principal des régimes étudiants de soins de santé et dentaires** au Canada, notre priorité est de fournir à nos membres des régimes simples, engageants et fiables, mais ce n'est pas tout. Explorez les pages suivantes pour découvrir comment nous servons les étudiantes et étudiants membres de nos régimes.

### **Notre histoire**

Fondé en 1996, ASEQ | Studentcare découle de l'union de leaders étudiants qui mirent leurs forces en commun afin de promouvoir une vision commune : offrir des régimes de soins de santé et dentaires qui seraient toujours simples, engageants et fiables pour la communauté étudiante postsecondaire.

Avec cette vision en tête, ASEQ | Studentcare travaille sans relâche pour démystifier les couvertures d'assurance et pour aider des milliers d'étudiantes et d'étudiants à gérer leurs soins de santé. Nous sommes le premier fournisseur de régimes de soins de santé et dentaires à posséder notre propre centre d'appel et à offrir les services de retrait en ligne. Les étudiantes et étudiants ont maintenant le contrôle sur leurs soins de santé avec le pouvoir de personnaliser leur couverture et une plus grande flexibilité.

Nous sommes **le plus important fournisseur de régimes étudiants de soins de santé et dentaires au Canada, avec plus de 1 000 000 membres répartis dans plus de 100 associations étudiantes** à travers le pays.

### **Notre rôle**

Définir votre « fournisseur de régime »

Votre Régime étudiant de soins de santé et dentaires offre des bénéfices importants qui ne sont pas couverts par le régime d'assurance maladie provincial. Au nom de votre association étudiante, ASEQ | Studentcare:

- Négocie un régime collectif qui inclut les meilleurs bénéfices au meilleur prix pour permettre aux membres d'économiser des millions de dollars en soins médicaux;
- Informe les étudiantes et étudiants sur les détails du régime avec le site Internet, les brochures, les courriels, les affiches

présentes sur le campus, etc.

- Réponds à toute question concernant le régime, avec le Centre de service aux membres, ou résous les problèmes complexes avec la compagnie d'assurance;
- Récolte les impressions et les commentaires des membres à propos du Régime;
- Et plus encore !

5. According to a September 17, 2020 article published in La Presse by Stéphanie Grammond titled "***Eh, oh ! les étudiants, ne payez pas 350 \$ d'assurances superflues***", ASEQ and Desjardins collect \$50 million in insurance premiums annually from students, Applicant disclosing **Exhibit P-3**:

Inutile d'être assuré en double, n'est-ce pas ? Alors, faites vite. Pour se retirer, les étudiants disposent d'une fenêtre de quatre à six semaines, au début de la session d'automne.

Dans les cégeps, la date butoir arrive donc d'ici quelques jours. Dans les universités, qui commencent un peu plus tard, la période de retrait se termine dans quelques semaines, selon les établissements.

Bon an, mal an, **quelque 150 000 étudiants du Québec paient 50 millions de dollars en primes d'assurance maladie**. Environ 90 000 étudiants, soit le tiers de la clientèle assurable, se retirent du plan qui est offert par l'entremise de l'Alliance pour la santé étudiante au Québec (ASEQ) et de diverses associations étudiantes.

Mais certains étudiants n'y voient que du feu. **Ils paient à leur insu pour une protection qu'ils n'utilisent pas.**

...

Ces obstacles peuvent décourager certains étudiants de se désister. Mais **d'autres ne réalisent tout simplement pas que l'assurance est facultative.**

« Dans le portail étudiant, la facturation de ces assurances ne saute pas aux yeux à travers la ventilation de tous les autres frais obligatoires », déplore M. Dessureault.

6. Earlier that year (March 8, 2020), Ms. Grammond had exposed the severity and widespread nature of the student-insurance problem in her La Presse article titled "***Les étudiants assurés en bloc***", communicated as **Exhibit P-4**. The Applicant is clearly not alone in alleging that he was misled by the Defendants who – in addition to not complying with the *Insurers Act*, A-32.1 – concealed important information from him:

**Si c'était écrit "frais optionnels" sur la ligne, juste ça, ça sonnerait une cloche** qu'on n'est pas obligé de payer. Mais il faut cliquer sur le point d'interrogation pour le savoir. **C'est caché, caché.**

...

La mère se juge doublement perdante, car elle paie pour une protection dont elle n'a pas besoin et dont sa fille ne s'est jamais servie puisqu'elle ne savait même pas qu'elle était assurée.

...

L'adhésion automatique critiquée

Claude-Jean Durette a une dent contre le principe d'adhésion automatique avec droit de retrait des programmes d'assurances offerts par l'ASEQ aux étudiants du Québec.

« C'est un *opting-out*. Ça n'a pas de bon sens ! Les gens ne s'occupent pas de ça. **J'ai payé la facture la première année sans le voir** », lance-t-il. Ce n'est que lorsque sa fille est arrivée en deuxième année à HEC Montréal qu'il s'est aperçu qu'on prélevait des frais pour les assurances. **De peine et de misère, il a réussi à se soustraire du programme, en retard, grâce à l'intervention de l'Ombudsman des étudiants.**

Dans les différents établissements scolaires, les étudiants disposent d'une fenêtre de quatre semaines au début de la session d'automne pour se retirer. **Mais il est impossible d'enlever les frais directement sur la facture en ligne.** Les étudiants doivent plutôt se rendre sur le site internet de l'ASEQ pour se désinscrire, puis payer leurs droits de scolarité en soustrayant eux-mêmes les frais d'assurances.

**La complexité de ces démarches peut décourager les étudiants de se retirer. De nombreuses études de finances comportementales ont démontré que les mécanismes par défaut influencent considérablement les décisions financières.**

L'ASEQ rétorque qu'environ 90 000 étudiants québécois se sont soustraits de son plan, l'an dernier, soit 30 à 35 % des étudiants assurables. « **On se dit que ça ne doit pas être si compliqué** », affirme le vice-président, Patrice Allard.

Mais pourquoi ne pas inverser le processus ? Au lieu d'une adhésion automatique, pourquoi ne pas laisser les étudiants intéressés faire les démarches pour s'inscrire au programme ?

...

Pour garder le maximum d'étudiants dans le régime, sept associations au Québec exigent même que les étudiants fournissent une preuve

qu'ils sont assurés ailleurs pour pouvoir se retirer du régime de l'ASEQ. **Légalement, rien n'exige pourtant que les étudiants soient couverts par une assurance maladie ou dentaire.**

...

Le hic, c'est que bien des étudiants disposent déjà de ce type de protection avec le régime d'assurances de l'employeur de leurs parents.

« La majorité des programmes d'assurances collectives couvrent les enfants à charge jusqu'à 21 ans et jusqu'à 26 ans lorsqu'ils sont aux études à temps plein », explique Pierre Chamberland, spécialiste en régimes collectifs chez Burrowes courtiers d'assurances.

Dans ce cas, vaut-il la peine de prendre une assurance en plus avec l'université ? « **Bien non ! C'est totalement inutile, quant à moi !** », s'exclame-t-il.

...

Remarquez qu'au Québec, **Desjardins est le seul et unique assureur de toutes les associations étudiantes**, même si la coopérative n'a pas d'entente d'exclusivité avec l'ASEQ.

7. Applicant notes that Mr. Allard's cynical response that "*On se dit que ça ne doit pas être si compliqué*" is absurd and certainly not a ground of defense for imposing and selling insurance premiums to students illegally; if anything, it is an admission that it is complicated for students to opt-out of these insurance regimes, which is contrary to the basic principles of contract formation (art. 1378 CCQ provides that a contract requires "la volonté" of **both** parties);
8. As evidence of just how complicated it is for students to opt-out, contrary to Mr. Allard's contentions, Applicant communicates as **Exhibit P-5** the Google reviews for ASEQ (with a dismal rating of 1.3 / 5 stars on 295 reviews), with many students testifying as to their struggles in "opting-out" and then the delays in obtaining the refund even after they deciphered the opt-out process and managed to successfully opt-out. Indeed, Applicant is aware of some students who even give up on trying to opt-out because it is too complicated and time consuming (ASEQ often doesn't answer to the requests of Class members to opt-out), which is precisely what the ASEQ and Desjardins bank on in imposing this opt-out regime;
9. Ms. Grammond's article (Exhibit P-4) also revealed troubling allegations made by the AMF against ASEQ and the questionable methods it used to obtain contracts from the student associations:

L'enquête a fait ressortir que l'ASEQ signait des contrats de courtage et d'administration allant parfois jusqu'à huit ans avec les associations étudiantes, apprend-on dans la demande introductive d'instance produite par l'AMF.

Cela peut faire sourciller quand on sait que les jeunes qui forment l'exécutif d'une association ne sont élus que pour une seule année.

**L'enquête de l'AMF a aussi démontré que différentes associations avaient reçu des versements totalisant 123 000 \$ de la part de l'ASEQ lors de la signature de l'entente.**

« Ceci constituait assurément un incitatif important pour le renouvellement du contrat d'assurance au bénéfice de l'association étudiante pouvant ainsi mettre en doute le bien-fondé de ce renouvellement. » (Extrait du jugement rendu à la suite de l'enquête de l'AMF)

10. Applicant communicates the judgment referred to above (*Autorité des marchés financiers c. Alliance pour la santé étudiante au Québec inc.*, 2016 QCTMF 54) as **Exhibit P-6**;
11. On February 9, 2022, Marie-Eve Fournier published an article in La Presse titled "Assurance maladie sur les campus Les étudiants partent en guerre contre l'AMF", in which Desjardins admits to no longer being able to offer medical and dental insurance to the 300,000 students that were automatically subscribed to its insurance policies by ASEQ, following the AMF's new requirement that enrolment in its group insurance plan no longer be automatic through school invoices (as was in the case of the Applicant), as it appears from **Exhibit P-7**:

Desjardins cessera « à regret » d'offrir l'assurance maladie et dentaire aux **300 000 étudiants** qui fréquentent des cégeps et universités du Québec. **L'Autorité des marchés financiers (AMF) exige désormais que l'adhésion à ce régime collectif ne soit plus automatique par l'entremise de facture scolaire**, ce que la coopérative juge impossible à satisfaire. De leur côté, les associations étudiantes fulminent et promettent de se battre sur tous les fronts contre cette « ingérence » dans leurs affaires.

**Certains étudiants ne le savent peut-être pas, mais ils paient chaque session une certaine somme pour avoir accès à un régime d'assurances** qui couvre la santé, les soins dentaires et de la vue, ainsi que les voyages, dans certains cas.

...

Au fil des ans, **l'adhésion par défaut** a suscité des plaintes et des critiques, notamment d'étudiants déjà couverts par les assurances de leurs parents. C'est vrai qu'à première vue, l'idée d'assurer des personnes sans leur demander leur avis est discutable. En plus, on peut avoir l'impression – malgré les 85 000 retraits – **que le système complique intentionnellement la vie des étudiants qui ne veulent pas s'assurer en les forçant à se rendre sur le site de l'ASEQ, dans des délais assez réduits.**

**Pour l'AMF, c'est clair comme de l'eau de roche : tout cela n'est pas « équitable ». Et « le temps était venu de faire appliquer la Loi sur les assureurs »** après « des années de discussions » et de recherche de compromis qui n'ont abouti à rien d'acceptable, selon elle.

Exigences impossibles à satisfaire

C'est dans ce contexte que **Desjardins – qui détient environ 95 % du marché de l'assurance collective** étudiante au Québec – a récemment reçu une lettre de l'AMF, ai-je appris. **Le chien de garde des marchés financiers y sommait la coopérative de modifier le mode de perception de la prime afin que l'adhésion soit « volontaire » et que l'étudiant consente à payer la prime « de façon éclairée ».**

...

Devant ces exigences « impossibles à satisfaire », Desjardins a décidé de ne pas renouveler les contrats conclus avec 57 associations étudiantes. Ces contrats resteront toutefois en vigueur jusqu'en août.

...

À l'ASEQ, on a peu d'espoir de trouver un assureur pour prendre le relais. **« Si Desjardins, qui a les reins solides, juge que ce n'est pas viable, il n'y a pas un autre joueur qui va vouloir l'offrir »**, dit son porte-parole Marc-André Ross.

...

Pour les 57 associations, le moment est particulièrement mal choisi par l'AMF pour sévir puisque la pandémie a exacerbé les problèmes de santé mentale. **Elles précisent que les réclamations se sont élevées à 5 millions de dollars en 2020-2021.** « Qu'advierait-il si ce filet venait à disparaître en raison de votre excès de zèle ? »

12. Applicant hereby alleges that by confirming that their insurance policies will not be viable if the students have to take a positive action to confirm their acceptance of medical or dental insurance, both Desjardins and ASEQ have admitted that they are well aware that the majority of students do not want to have these insurance policies automatically imposed on them (otherwise Desjardins would be confident that the same number of students would simply accept their insurance offerings when given the choice – as required by law – and similar to when an employee in a company selects which insurance regime, if any, they want from their company);
13. Applicant notes that according to the information reported by Stéphanie Grammond (Exhibit P-3), ASEQ and Desjardins collect **\$50 million** in insurance premiums annually, while the information reported by Marie-Eve Fournier (Exhibit P-7) is that there were only **\$5 million** in claims, leaving a surplus of **\$45 million** annually;
14. Applicant communicates the AMF notice referred to above in Ms. Fournier's article as



**Exhibit P-8**, in which the AMF unambiguously states:

**Position de l'autorité**

...

**L'Autorité conclut que le mode de perception de la prime**, par l'entremise duquel cette dernière est automatiquement incluse à la facture émise par l'établissement d'enseignement et qui implique que tout étudiant qui souhaite s'exclure de l'assurance se voit dans l'obligation d'exercer son droit de retrait dans les délais imposés, **ne permet pas d'assurer le traitement équitable du consommateur.**

15. Applicant also communicates a subsequent and related AMF consultation document as **Exhibit P-9**, in which the AMF reemphasizes the following:

*La Loi sur les assureurs*, qui est entrée en vigueur en juin 2019, est par ailleurs venue préciser que, dans le contexte particulier d'un contrat d'assurance collective auquel une personne peut adhérer sans qu'un représentant en assurance certifié n'agisse auprès d'elle au moment de l'adhésion, ce qui est le cas en l'espèce, **l'assureur doit veiller à ce que l'adhérent soit informé des renseignements qui lui sont nécessaires à une prise de décision éclairée et à l'exécution du contrat.**

C'est dans ce contexte et au terme de plusieurs années de démarches que **l'Autorité a exigé, par voie d'instructions émises aux assureurs concernés, qu'à compter de la session d'automne 2022 soient mises en place des mesures additionnelles afin de s'assurer que chaque étudiante et étudiant :**

- **consente de façon éclairée**, au moment opportun et **par une action positive simple**, au paiement d'une prime en contrepartie de son adhésion volontaire au régime d'assurance;
- soit informée ou informé en temps utile, avant ou au plus tard au moment de son adhésion, des renseignements qui lui sont nécessaires à une prise de décision éclairée.

16. On February 9, 2022, a subsequent article was published in *Le Soleil* titled "*Assurances étudiantes: l'AMF fait marche arrière*", communicated as **Exhibit P-10**. It appears that after *La Presse* reported on Desjardins' threat to backout of the insurance plans earlier that same day (Exhibit P-7), the AMF decided to take a different approach and proceed by way of public consultations. Nevertheless, the Defendants conduct was – and still is – illegal:

L'AMF a fait parvenir de nouvelles instructions aux compagnies d'assurance en décembre. **L'organisme réglementaire demande**

**que les étudiants n'aient plus à s'exclure du plan d'assurance s'ils n'en ont pas besoin (opt-out), mais qu'ils y adhèrent de leur plein gré s'il répond à leurs besoins (opt-in).** Des discussions à cet effet se tenaient depuis 2016, notamment en raison de centaines de plaintes reçues annuellement de la part d'étudiants et de leurs parents.

Ils disent qu'ils ne savaient pas qu'ils payaient pour des assurances dont ils n'ont pas besoin. **Nous voulons rendre le processus plus équitable, plus clair et plus transparent. À nos yeux, le mode de perception des primes n'assure pas un traitement équitable.** Les étudiants ne peuvent se retirer que dans des délais imposés et dont la durée est laissée aux associations étudiantes.

...

Selon **Desjardins, qui assure 200 000 étudiants québécois, il est tout simplement impossible de se plier aux souhaits de l'AMF. L'assureur mettra donc fin, dès septembre, à son entente avec l'Alliance pour la santé étudiante au Québec (ASEQ),** le principal fournisseur des régimes de soins de santé et dentaires au Québec et au Canada.

**L'AMF se base sur la Loi sur les assurances, qui exige qu'un assuré soit informé pour prendre une décision éclairée,** et qu'il dispose d'un délai raisonnable. « Aucun droit d'association n'est menacé. Les assurances collectives demeurent, insiste M. Théberge. **Si le produit est bon, les étudiants vont continuer de le prendre.** Nous n'avons pas d'inquiétudes à ce sujet. »

En théorie, l'AMF pourrait imposer des sanctions de 10 000 \$ par jour aux compagnies qui ne se conformeraient pas à ses instructions. « Nous n'en sommes pas là du tout. On en est à faire une demande qui nous apparaît toute simple. **On a une loi à appliquer », insiste Sylvain Théberge.**

17. Applicant submits five (5) main causes of action. *First*, the Defendants never adequately informed the Applicant (or the Class members) that the insurance was **optional** thereby vitiating her consent pursuant to articles 1401 and 1407 CCQ (as stated in Exhibit P-4, "*c'est caché*"). Indeed, insurance contracts are *uberrima fides* contracts where the Defendants should have made it abundantly clear that the medical and dental insurance policies that they **sell** to students are **optional**. This would be achieved by making the insurance an "**opt-in**" regime as opposed to an "**opt-out**" regime;
18. The "opt-out" nature of the Defendants' insurance regime gives rise to a *second* cause of action, which is that – after automatically subscribing all students to, and charging them for, the insurance these students never requested – the Defendants then impose

an arbitrary delay to withdraw from the insurance policy which they just subscribed the students to without ever asking;

19. For example, ASEQ ensures that the following information (or similar) is included on their respective universities' websites, Applicant disclosing the example of Université de Montréal as **Exhibit P-11** (<https://www.faecum.qc.ca/services/assurances-aseq>):

Périodes de retraits et changement de couverture du régime :

Si vous ne voulez pas conserver les assurances de l'ASEQ, soumettez une demande de retrait sur le site [www.aseq.ca](http://www.aseq.ca). Les dates limites de changement de couverture sont :

- le 15 octobre 2022, pour la session d'automne ;

- le 15 février 2023, pour les personnes nouvellement inscrites à la session d'hiver.

\* Notez que si vous êtes inscrit ou inscrite au régime d'assurance à la session d'automne, il est impossible de vous retirer à l'hiver.

- 19.1 Applicant communicates an example from the website of Concordia University ("Concordia") as **Exhibit P-21** (<https://www.concordia.ca/health/insurance.html>):

### **Concordia student union health plans**

Students who meet certain criteria are automatically enrolled in the Concordia Student Health Plan. To determine if they meet the criteria to be automatically enrolled, as well as to see a summary of benefits, undergraduate students can consult the Concordia Student Union (CSU) Health and Dental Plan and graduate students can consult the Graduate Students' Association (GSA) Health and Dental Plan.

Undergraduate and graduate students who are enrolled can learn details about the Concordia Student Health Plan through the Studentcare website.

If you would like to **opt-out of your student health plan**, you can find more information on the Studentcare pages for undergraduate students or for graduate students.

20. The main problem is that the above information is **never** indicated on the students' invoice. Most of the time, students do not even consult their detailed invoice (which must be downloaded separately on their student portals and which does not appear by default); the students just pay the amount actually appearing on the university's portal (which shows a total and not the breakdowns), as it appears, for example, from **Exhibit P-12** (the situation is the same for all of the other CEGEPS and universities served by ASEQ and Desjardins);

21. The other problem is that these deadlines to withdraw from the insurance policy are arbitrarily chosen by the same Defendants who forced the students into having an insurance contract they never asked for and which they (Desjardins and ASEQ) profit from; therefore, Desjardins and ASEQ obviously have a financial interest for the students not to discover this information so they are “prescribed” from “opting-out”. Again, this is contrary to the spirit of an insurance contract which requires both parties to act in utmost good faith;
22. *Third*, as provider of the student health and dental plans, ASEQ contracted with Desjardins to automatically insure the plans of hundreds of thousands of students in Quebec (and likely millions over the class period which was suspended due to Covid), without a single one of these students ever providing enlightened consent (because the insurer and the plan is automatically imposed by ASEQ and Desjardins: see *Autorité des marchés financiers c. Alliance pour la santé étudiante au Québec inc.*, 2016 QCTMF 54, par. 38, Exhibit P-6). This is contrary to section 62 of the *Insurers Act*, which stipulates:

<p><b>62.</b> An authorized insurer must see that the client <b>or the participant</b>, as the case may be, is provided in sufficient time with the information necessary <b>to make an enlightened decision</b> and for contract performance purposes</p> <p>(1) if the insurer deals with the client otherwise than through a firm, independent representative or independent partnership registered for an insurance sector; or</p> <p>(2) if the <b>insurer has underwritten a group insurance of persons contract in which a person may enroll as a participant without interacting with an insurance representative at the time of enrollment.</b></p> <p>Such information includes</p> <p>(1) the extent of the coverage considered and the exclusions;</p> <p>(2) the time limits, in accordance with the Civil Code, within which a loss must be reported and within which the insurer is required to pay the sums insured or the indemnity provided for; and</p>	<p><b>62.</b> Un assureur autorisé doit veiller à ce que le preneur <b>ou, selon le cas, l'adhérent</b> soit informé en temps utile des renseignements qui lui sont nécessaires à <b>une prise de décision éclairée</b> et à l'exécution du contrat, dans chacun des cas suivants:</p> <p>1° lorsqu'il traite avec le preneur autrement que par l'intermédiaire d'un cabinet, d'un représentant autonome ou d'une société autonome inscrits dans une discipline de l'assurance;</p> <p>2° lorsqu'il a souscrit un <b>contrat d'assurance collective de personnes auquel une personne peut adhérer sans qu'un représentant en assurance n'agisse auprès d'elle au moment de l'adhésion.</b></p> <p>Ces renseignements comprennent notamment:</p> <p>1° l'étendue de la garantie considérée et quelles en sont les exclusions;</p> <p>2° les délais, conformes au Code civil, à l'intérieur desquels un sinistre doit être déclaré ainsi que ceux à l'intérieur desquels</p>
--	--

<p>(3) the information required to communicate to the insurer a complaint to be registered in the complaints register provided for in subparagraph 3 of the second paragraph of section 50, including the time limit within which a complaint must be communicated.</p>	<p>l'assureur est tenu de payer les sommes assurées ou l'indemnité prévue; 3° l'information nécessaire à la communication à l'assureur d'une plainte devant être consignée au registre des plaintes prévu au paragraphe</p> <p>3° du deuxième alinéa de l'article 50, y incluant le délai à l'intérieur duquel cette communication doit être faite.</p>
---	---

23. In the present case, it is impossible for Class members to provide enlightened consent or make an enlightened decision for an insurance product they never asked for and which was automatically imposed on them, which Applicant submits is illegal;
24. *Fourth*, the Defendants never communicated the insurance policy to the Applicant or to the Class members (nor did any member consent to the contract), contrary to section 64 of the *Insurers Act*, A-32.1, and the statutory right of a client to an insurance contract:

<p><b>64.</b> The client for an insurance contract may, if <b>no insurance representative interacted with the client at the time the latter consented to the contract</b>, cancel the contract within <b>10 days after receiving the policy</b>, unless the contract has already expired at that time or, in the case of a travel insurance contract, unless a trip that falls under the coverage has already started.</p> <p>A <b>participant may also</b>, if no insurance representative interacted with the participant at the time he or she enrolled, <b>cancel his or her enrollment on the same condition and within the same time limit after receiving the insurance certificate</b>.</p> <p>In the case of an individual insurance of persons contract, the policy referred to in the first paragraph is the one that evidences the existence of the final contract.</p> <p>If an insurance contract is made or a participant enrolls under that contract at the same time another contract is entered into, the other contract retains all its effects despite the cancellation of the insurance contract or of the enrollment, as the case may be.</p>	<p><b>64.</b> Le preneur d'un contrat d'assurance peut, <b>si aucun représentant en assurance n'agissait auprès de lui au moment où il y a consenti</b>, le résoudre dans les <b>10 jours suivant la réception de la police</b>, à moins qu'à ce moment il n'ait déjà pris fin ou, dans le cas d'un contrat d'assurance-voyage, qu'un voyage mettant en jeu la garantie n'ait débuté.</p> <p>Un <b>adhérent peut également résoudre son adhésion</b>, si au moment de celle-ci aucun représentant en assurance n'agissait auprès de lui, à <b>la même condition et dans le même délai à compter de la réception de l'attestation d'assurance</b>.</p> <p>À l'égard d'un contrat d'assurance individuelle de personnes, la police visée au premier alinéa est celle qui constate l'existence du contrat définitif.</p> <p>Lorsque la formation du contrat d'assurance ou l'adhésion à celui-ci ont eu lieu à l'occasion de la conclusion d'un autre contrat, cet autre contrat conserve tous ses effets, malgré la résolution, selon le cas, du contrat d'assurance ou de l'adhésion.</p>
---	--

<p>The first and second paragraphs do not apply to insurance expiring within 10 days after the client's consent or the participant's enrollment, as the case may be.</p>	<p>Les premier et deuxième alinéas ne s'appliquent pas à l'assurance prenant fin dans les 10 jours suivant le consentement du preneur ou, selon le cas, l'adhésion de l'adhérent.</p>
--	---

24.1 Fifth, given that Title II of Quebec's Consumer Protection Act (the "CPA") applies to insurance contracts, the Defendants have violated several provisions of the CPA, including sections 228 and 230a), thereby rendering ss. 253 and/or 272 applicable:

<p><b>228.</b> No merchant, manufacturer or advertiser may fail to mention an important fact in any representation made to a consumer.</p>	<p><b>228.</b> Aucun commerçant, fabricant ou publicitaire ne peut, dans une représentation qu'il fait à un consommateur, passer sous silence un fait important.</p>
<p><b>230.</b> No merchant, manufacturer or advertiser may, by any means whatever, <b>(a)</b> charge any sum whatever for any goods or services that he has sent or rendered to a consumer without the consumer having ordered them;</p>	<p><b>230.</b> Aucun commerçant, fabricant ou publicitaire ne peut, par quelque moyen que ce soit: <b>a)</b> exiger quelque somme que ce soit pour un bien ou un service qu'il a fait parvenir ou rendu à un consommateur sans que ce dernier ne l'ait demandé;</p>
<p><b>253.</b> Where a merchant, manufacturer or advertiser makes use of a prohibited practice in case of the sale, lease or construction of an immovable or, in any other case, of a prohibited practice referred to in paragraph a or b of section 220, a, b, c, d, e or g of section 221, d, e or f of section 222, c of section 224 or a or b of section 225, or in section 227, <b>228</b>, 229, 237 or 239, <b>it is presumed that had the consumer been aware of such practice, he would not have agreed to the contract or would not have paid such a high price.</b></p>	<p><b>253.</b> Lorsqu'un commerçant, un fabricant ou un publicitaire se livre en cas de vente, de location ou de construction d'un immeuble à une pratique interdite ou, dans les autres cas, à une pratique interdite visée aux paragraphes a et b de l'article 220, a, b, c, d, e et g de l'article 221, d, e et f de l'article 222, c de l'article 224, a et b de l'article 225 et aux articles 227, <b>228</b>, 229, 237 et 239, <b>il y a présomption que, si le consommateur avait eu connaissance de cette pratique, il n'aurait pas contracté ou n'aurait pas donné un prix si élevé.</b></p>
<p><b>272.</b> If the merchant or the manufacturer fails to fulfil an obligation imposed on him by this Act, by the regulations or by a voluntary undertaking made under section 314 or whose application has been extended by an order under section 315.1, the consumer may demand, as the case may be, subject to the other recourses provided by this Act, ...</p>	<p><b>272.</b> Si le commerçant ou le fabricant manque à une obligation que lui impose la présente loi, un règlement ou un engagement volontaire souscrit en vertu de l'article 314 ou dont l'application a été étendue par un décret pris en vertu de l'article 315.1, le consommateur, sous réserve des autres recours prévus par la présente loi, peut demander, selon le cas:</p>

<p>(c) that his obligations be reduced; (d) that the contract be rescinded; (e) that the contract be set aside; or (f) that the contract be annulled, without prejudice to his claim in <b>damages</b>, in all cases. He may also claim <b>punitive damages</b>.</p>	<p>... c) la réduction de son obligation; d) la résiliation du contrat; e) la résolution du contrat; ou f) la nullité du contrat, sans préjudice de sa demande en <b>dommages-intérêts</b> dans tous les cas. Il peut également demander des <b>dommages-intérêts punitifs</b>.</p>
--	---

24.2 Although the Applicant's contract is with Defendant Concordia, Applicant hereby alleges that, with respect to the violations of ss. 228 and 230a) CPA, Defendants ASEQ and Desjardins committed the extra-contractual fault of associating themselves with the breach of contract by Concordia (for ASEQ and Desjardins, it is a fault against honesty to knowingly associate oneself with the breach of contract, as decided by the Supreme Court of Canada and applied by the Courts in the situation of a class action alleging CPA violations: see *Gillich c. Mercedes-Benz West Island*, 2020 QCCS 1582, par. 44-45);

25. As alleged above, this unacceptable situation has been going on for years to the detriment of students who are more often than not financially vulnerable. Applicant is aware that students have filed complaints with the Concordia Student Union ("CSU"), Desjardins, ASEQ and FAÉCUM to no avail and is bringing this action to: (1) obtain justice for past, present and future students in the province of Quebec; (2) obtain an injunction forcing the Defendants to cease perpetuating the illegal practices described herein; (3) obtain compensation on an aggregate basis for all Class members; and (4) hold the Defendants accountable;
26. Every Class member who was automatically subscribed by ASEQ to Desjardins' medical and/or dental insurance (and who was otherwise forced to "opt-out" or be charged") is entitled to claim and obtain a full refund of the insurance premiums and punitive damages pursuant to section 272 CPA;
27. The damages are the same for every Class member, based on the amount ASEQ caused their respective universities or CEGEPS to add on to their tuition invoices for medical and/or dental insurance;

### **PUBLIC DECLARATIONS MADE BY THE DEFENDANTS TO THE MEDIA ABOUT THE PRESENT LAWSUIT**

27.1 The initial authorization application was filed on **June 7, 2023**, and on **June 14, 2023**, – even prior to being served – the representatives of the Defendants made public declarations to the media concerning the merits of the case to a journalist from La

Presse, as it appears from the article titled “Assurance maladie sur les campus Une action collective déposée”, communicated as **Exhibit P-23**;

27.2 It is obvious that the purpose of these public declarations was an attempt by the Defendants to discredit the initial plaintiff who brought the class action forward and to influence the public narrative, without ever addressing the legal issues raised in the lawsuit. For instance, Marc-André Ross, spokesperson of ASEQ, is quotes as follows:

Porte-parole de l'ASEQ, une tierce partie jouant le rôle de courtier entre fournisseurs d'assurances et associations étudiantes, Marc-André Ross a affirmé que l'avocat derrière la demande d'action collective allait « à la pêche avec de la dynamite en s'en prenant à des régimes d'assurance utilisés par des centaines de milliers de personnes ».

L'Autorité des marchés financiers (AMF) aurait assuré à l'ASEQ à plusieurs reprises qu'elle n'allait plus toucher au mécanisme « opt-in » ou « opt-out ». « Ils ont compris que les étudiants aiment beaucoup ces régimes d'assurance et que ces régimes sont très utilisés », a affirmé le porte-parole de l'ASEQ. Selon Marc-André Ross, si le régime devenait « opt-in », il serait discriminatoire puisqu'il se baserait sur des caractéristiques individuelles comme le genre, la nationalité ou le bagage génétique de l'individu.

27.3 **First**, the reason why these insurance plans are used “*par des centaines de milliers de personnes*” is because they are unlawfully forced into them. **Second**, this case is not about whether “*les étudiants aiment beaucoup ces régimes d'assurance*”, rather whether these students have given enlightened consent to subscribe to such insurance. **Third**, the purpose of this action is **not** to terminate the collective insurance regimes, but to leave it accessible to those students who actually wish to have it by way of an “opt-in”; if Mr. Ross is correct and his plans are indeed loved by hundreds of thousands of students, then there will certainly be no issue with asking these same students to opt-in. **Fourth**, the assertion that asking students to “opt-in” makes the regime “*discriminatoire*” is devoid of any sense or reason. Asking students to opt-in to a collective insurance is no way whatsoever discriminatory. On this point, Mr. Ross is admitting that the Defendants are well aware that they will not obtain valid consent and that the plans may not be as profitable for his organization if such consent is sought by the student. Unfortunately for ASEQ, loss of profits is not yet a recognized means of defense for transgressing the law;

27.4 As for Desjardins, the La Presse article cited its spokesperson, Jean-Benoît Turcotti, as follows (Exhibit P-23):

Desjardins a envoyé par courriel à La Presse une déclaration stipulant que l'assurance collective offerte aux étudiants par l'entremise de leur association étudiante était « **un produit largement utilisé et apprécié des étudiants depuis plus de 25 ans** ». Selon le porte-



parole Jean-Benoît Turcotti, les allégations sont « dépourvues de fondement ». « Nous rectifierons les allégations formulées et nous contesterons le recours pour la préservation des droits et avantages des étudiants », a ajouté M. Turcotti.

27.5 It is reassuring to know that Desjardins is concerned about preserving the students' "droits", which, of course, includes section 62 of the *Insurers Act* (i.e. the right to "make an enlightened decision" for an insurance contract), which Mr. Turcotti completely ignores. Moreover, if the product is as appreciated by the students as Desjardins states, then they should have no qualms about asking students to give their consent (i.e. "opt-in") in advance in order to be in the regime;

27.6 In their public declarations to La Presse, both ASEQ and Desjardins try to create a *faux débat* as to whether the plans are appreciated by some students, as opposed to addressing the heart of the litigation, which is that many students are automatically subscribed to an insurance that they do not want or even need, and never gave enlightened consent for such insurance contrary to section 62 of the *Insurers Act* and the basic rules of contract formation;

**I. CONDITIONS REQUIRED TO AUTHORIZE THIS CLASS ACTION (s. 575 CCP):**

**A) THE FACTS ALLEGED APPEAR TO JUSTIFY THE CONCLUSIONS SOUGHT:**

***(i) Applicant's claims against the Defendants***

28. In the Fall of 2017, Applicant was a student at Concordia's BA Economics program [...] and in 2019 she switched to Human Resource Management and Marketing (Bcomm), as it appears from a copy of her invoices dated Fall 2017 to Winter 2021, communicated *en liasse* as Exhibit P-22;

29. As it further appears from these invoices (P-22), Applicant was automatically subscribed to "CSU Dental Insurance" ("assurance dentaire") [...] and to "CSU Health Insurance" ("assurance santé") [...] for the following semesters and amounts:

Fall 2017	\$59.00
Winter 2018	\$116.00
Fall 2020	\$69.00
Winter 2021	\$176.04
<b>Total:</b>	<b>\$420.04</b>

30. In 2017-2018, Applicant was a dependent under her mother's insurance, so she had absolutely no need or use for the studentcare (health and dental insurance). She was unaware that these fees were optional at the time and just paid her tuition – as it appeared on her portal – in its entirety;

31. In 2019, Applicant discovered that she can opt-out of the optional health and dental insurance and did so before the arbitrary deadline (which, in fact, she did not even

know about and coincidentally opted-out of “on time”).

- 31.1 For the Fall 2020 semester, Applicant again tried to opt-out (around late October or early November, 2020, i.e. when her tuition payment was due), however she was told by studentcare (ASEQ) and Concordia that she was too late and was imposed an insurance that she did not want or need (\$69.00 charged in the Fall of 2020 and \$176.04 charged in the Winter of 2021). Like many other students, Applicant tried to dispute these charges to no avail;
- 31.2 Applicant spent significant time and energy pleading her case to ASEQ who refused to let her opt-out and forced her to pay the fees for insurances that she did not need. ASEQ’s unreasonable and unlawful position caused the Applicant stress, troubles and inconveniences, as well as moral damages that she hereby claims in the amount of \$1000.00, on her behalf and on behalf of each student who tried to opt-out after ASEQ’s arbitrary deadline and were refused;
32. Applicant hereby alleges that prescription should not run against her and Class members until the notices are disseminated (should the present class action be authorized), because it was impossible in fact for her and Class members to act. Indeed, Class members could not have acted previously as it would be unreasonable to expect that: (i) the average student should suspect their university of mounting such an illegal “opt-out” insurance scheme; or (ii) that their university would add items on their tuition invoices that would not have to be paid by the deadline indicated on that invoice. The Applicant’s situation is a perfect example of this reality, since she was covered under her mother’s insurance and had no reason whatsoever to agree to essentially throwing her money in the garbage. In the present case, the Defendants’ conduct (consisting of presenting an invoice that appears to be mandatory, including the use of the words “Total Charges” and “Term Balance”) misleads the Applicant and Class members and the Courts have found that such conduct causes an impossibility to act;
33. Applicant adds that her Fall 2020 and Winter 2021 insurance charges are clearly not prescribed. She further adds that prescription was suspended due to Covid and that many students made partial payments for insurance coverage in the Winter 2020 semester (ending in May of 2020, which cannot be segregated (including for the purposes of prescription) from the partial payments they made for the exact same insurance policies in the Fall 2019 semester (if a student does not take positive action to opt-out early in the Fall of 2019 semester, that insurance coverage continues into the Winter 2020 semester and the final payment for that insurance is due in January 2020 (i.e. the month in which the universities send out the invoice for the balance of the payment for said insurance; there is no prescription issue with the January 2020 tuition invoices because of the Covid suspension);
34. Applicant emphasizes that her invoices (Exhibit P-22) make no mention whatsoever that these fees are optional. Even if the insurance had an asterisk next to it (which is the case of UdeM), it is essential to note that: (i) it is still illegal to opt-in students to an insurance without them requesting it; and (ii) it was impossible for any of the Class

members to cancel the insurance in the Winter semester. Therefore, in the case of UdeM, not only is the information at the bottom of the page in the asterisk note wholly insufficient for the Fall semester (because it does not expressly state that it is optional), but for the Winter semester it is simply wrong and misleading to refer students to “*les procédures de désistement aux assurances et cotisations automatiques non obligatoires*” because it is impossible for students to opt-out at that time (Exhibit P-14);

35. Applicant did not want dental or health insurance but was forced to pay for health and dental insurance for four (4) university semesters because she did not “opt-out” in time, which is illegal, in bad faith and contrary to the basic principles of contract acceptance. Unfortunately, not all students are aware that these insurances are optional and many paid the full amount for their entire studies, without ever giving enlightened consent for this insurance coverage;
36. [...] Applicant also expresses her dismay that Desjardins – a private third-party with whom she never agreed or accepted to contract with (**especially given the notorious privacy breach which was made public in June 2019**) has her personal information in their possession, without her consent and in violation of her rights to privacy, *inter alia* under the Quebec Charter. Applicant hereby alleges an intentional breach of her constitutionally protected privacy rights by the Defendants;
37. Applicant is seeking the reimbursement of all sums paid corresponding to the dental and health insurance, i.e. the total annual premium of \$175.00 for 2017-2018 (paid in successive installments of \$59.00 + \$116.00 and which cannot be disassociated because they are related to a single insurance policy and annual premium, with the same maximal coverages and deductibles) and \$245.04 (paid in successive installments of \$69.00 + \$176.04 and for which the same reasoning applies);
38. [...]
39. In total since September 2019, the Applicant paid \$420.04 to the Defendants or for their benefit on account of health and dental insurance and which she hereby claims from the Defendants solidarily, given that they all took part in these illegal transactions [...];
40. [...];
41. [...];
42. [...] Applicant is aware that Desjardins had no qualms about literally stripping students of their money (including those who had no use whatsoever for the optional insurances) and that the only way to obtain a refund for an insurance policy she never asked for and never wanted was to take legal action (see, of example, the formal answer given by Desjardins to another Class member who filed a complaint, communicated as Exhibit P-19);
43. Applicant further notes that in Exhibit P-19 Desjardins did indeed understand that it should use larger font (caps lock) when it believes that important information should

stand out (the use of the word “AVANT” in caps in the second line above) and invites Desjardins to communicate information about the OPTIONAL insurance policies it imposes on students with, at least, the same emphasis (or include a pop-up so that students can take a positive action to accept the policy and its costs as suggested by the AMF);

44. Applicant does not want Desjardins to hold any of her personal information and hereby demands that they destroy it from their systems and physical records within 48 hours of knowledge of the present application;
45. Applicant communicates herewith *en liasse* copies of the Desjardins insurance policies for 2021 and 2022-23, which were located online in preparing to file the present application on June 6, 2023, as **Exhibit P-20**;
46. In light of the above, Applicant has suffered ascertainable loss as a result of the Defendants’ fraudulent practices and failures to comply with the law, notably the amount of \$420.04;
47. Applicant’s damages are a direct and proximate result of the Defendants’ misconduct;

***(ii) Applicant’s claim for punitive damages (s. 49 of the Charter and s. 272 CPA)***

48. There is no doubt that Desjardins and ASEQ are acting intentionally and Desjardins’ system and generic response [...] to the complaints of Class members speaks precisely to that intention (Exhibit P-19);
49. Despite recently being the subject of one of the biggest privacy scandals in the province’s history, Desjardins did not even address the Class member’s concerns regarding them having access to his personal information;
- 49.1 Concordia, together with the other Defendants, have participated in the breach of several provisions of the CPA, which allows Class members to claim punitive damages pursuant to s. 272 CPA;
50. The Defendants’ overall conduct before, during and after the violation is lax, careless, passive and ignorant with respect to privacy rights and to their own obligations;
51. Applicant therefore claims an amount to be determined in punitive damages for: **(i) their breaches of the CPA; and (ii) the violation of her right to privacy, on her behalf and on behalf of all Class members, and that the Defendants be condemned, solidarily, to pay this amount pursuant to section 272 CPA and sections 5 and 49 of the Quebec Charter. The violations to the Class members’ privacy rights are also alleged pursuant to arts. 3, 35 and ff. and 1457 CCQ, as well as An Act respecting the Protection of Personal and Private Information in the Private Sector, CQLR c P-39.1, including articles 5, 10, and 14 (Quebec) and sections 5 and ff. and Schedule 1 of PIPEDA;**
52. It is worth noting that section 5 of Quebec’s *An Act respecting the Protection of Personal and Private Information in the Private Sector* stipulates: “Any person

collecting personal information to establish a file on another person or to record personal information in such a file may collect only the information necessary for the object of the file. ***Such information must be collected by lawful means***”;

53. ASEQ and Desjardins did not collect the Applicant’s private information lawfully because she never consented to her personal data being shared with/between ASEQ and Desjardins;

53.1 The Defendants’ reactions and conduct after the violations confirm that their breaches were intentional, including the comments they made publicly to the media on June 14, 2023, even before being served in this file (Exhibit P-23);

54. It also follows that if this Honourable Court concludes that the insurance contracts were concluded in violation of sections 62 or 64 of the *Insurers Act*, then Desjardins did not collect the Applicant’s information (and that of all Class members) by lawful means;

55. The patrimonial situations of the Defendants are significant enough that a meaningful amount of punitive damages is appropriate in the circumstances;

**B) THE CLAIMS OF THE CLASS MEMBERS RAISE SIMILAR ISSUES:**

56. The recourses of the Class members raise identical, similar or related questions of fact or law, namely:

- a) In the sale of their health, medical and dental insurance policies, do the Defendants act in utmost good faith? Do they act in bad faith?
- b) Is it legal for the Defendants to automatically subscribe students to health, medical and dental insurance policies? If not, are Class members entitled to the full reimbursement of the amounts paid to the Defendants’ benefit?
- c) If it is legal for the Defendants to automatically subscribe students to health, medical and dental insurance policies, did the Defendants adequately inform the students that the insurance was optional?
- d) If the Defendants did adequately inform the students that the insurance was optional, can the Defendants impose an arbitrary delay for students to “opt-out” of the insurance policy?
- e) Do the Defendants violate sections 62 or 64 of the *Insurers Act*?
- f) Did the Defendants violate the privacy rights of the Class members by communicating their private information, without their consent to Desjardins? If so, are Class members entitled to punitive damages under the *Charter*?
- g) Are Class members entitled to compensatory damages and in what amount?

- h) Should an injunctive remedy be ordered to prohibit the Defendants from continuing to perpetrate their illegal conduct, as well as their concealment of important facts?
  - i) When does prescription start and how long was prescription suspended for, either by fraud or by the declaration of a health emergency due to Covid?
  - j) Are Desjardins and ASEQ solidarily liable with all of the CEGEPS and universities for whom ASEQ provides insurance and for whom Desjardins is the insurer?
  - k) Did the Defendants violate the CPA and, if so, are Class members entitled to compensatory and punitive damages?
  - l) Are Class members entitled to damages for stress, troubles and inconveniences, as well as moral damages? If so, in what amounts?
  - m) Did Defendants ASEQ and Desjardins commit the extra-contractual fault of associating themselves with the breach of contract by the CEGEPS and universities?
57. Individual questions, if any, pale by comparison to the common questions that are significant to the outcome of the present Application;
58. Applicant submits that all Class members have a common interest both in proving the commission of a prohibited practice by the Defendants and in maximizing the aggregate of the amounts unlawfully charged to them by the Defendants on account of insurance;
59. In this case, the legal and factual backgrounds at issue are common to all the Class members, namely whether the Defendants can impose a highly constrictive and time-limited opt-out insurance regime on students and those who do not take positive actions to opt-out or cancel;
60. Every Class member paid for an insurance policy which they did not agree to with enlightened consent;
61. By reason of the Defendants' unlawful conduct, the Applicant and Class members have suffered a prejudice, that are claimed collectively, every time they paid for health, medical and/or dental insurance;
62. In addition to a reimbursement and damages, Applicant and Class members are also entitled to punitive damages pursuant to section 272 CPA and sections 5 and 49 of the Quebec Charter;
63. All of the damages to the Class members are a direct and proximate result of the Defendants' faults;

64. The damages sustained by the Class members flow, in each instance, from a common nucleus of operative facts, namely, the Defendants' automatically enrolling students into insurance policies they never consented to, and then sent their private information to Desjardins, again without their knowledge consent;
65. The Applicant has only named Concordia as a Defendant at this stage because her primary contract is with Concordia and it may be necessary to do so in order to invoke the CPA. Applicant has not named any of the other CEGEPS and universities as Defendants at this stage, even though they are solidarily liable with ASEQ and Desjardins due to the fact that they include the illegal insurance premiums on the invoices that they issue to students and then collect payments for said amounts that are then remitted entirely (presumably) to Desjardins and/or ASEQ. Applicant nonetheless reserves her right to amend these proceedings to name all of the CEGEPS and universities whose student associations are part of ASEQ (i.e. FAÉCUM CSU who are two of ASEQ's 200+ student associations) and automatically covered by – and whose students paid insurance premiums to the benefit of – Desjardins should the latter not agree to fully refund the premiums unlawfully collected prior to the authorization hearing;
66. Another reason is that the universities and CEGEPS are not able to remove the insurance premiums from the student's invoice (even at the student's request as the Applicant tried to do directly with Concordia, where studentcare has an office) because the student's name must appear on a list provided by ASEQ, and this only if the student figured out that he/she must and then took the time to "opt-out" within the arbitrary delays imposed by ASEQ (this information was provided [...] by the UdeM);
67. Although the Applicant herself does not have a personal cause of action against, or a legal relationship with, each of the universities and CEGEPS, the Class contains enough members with personal causes of action against each of these institutions and, in any event, ASEQ and Desjardins are solidarily liable with each of them;
68. In the circumstances, requiring a separate class action against each of the CEGEPS and universities based on very similar questions of fact and identical questions of law would be a waste of resources and could result in conflicting judgments;

### **C) THE COMPOSITION OF THE CLASS**

69. The composition of the Class makes it difficult or impracticable to apply the rules for mandates to take part in judicial proceedings on behalf of others or for consolidation of proceedings;
70. As mentioned in the La Presse articles cited above, there are several hundreds of thousands of former and current students forming part of the Class. Marc-André Ross, spokesperson of ASEQ, admitted that there are "des centaines de milliers" of Class members (Exhibit P-23). These members are very numerous and are dispersed across the province;
71. The names of all persons included in the Class are not known to Applicant, but all are

known to the Defendants. Applicant is aware of some Class members who filed formal complaints which were systematically refused by Desjardins, ASEQ, Concordia and UdeM (see, for example, Exhibits P-17 and P-19);

72. These facts demonstrate that it would be impractical, if not impossible, to contact each and every Class member to obtain mandates and to join them in one action;
73. In these circumstances, a class action is the only appropriate procedure for all of the members of the Class to effectively pursue their respective rights and have access to justice without overburdening the court system;

#### **D) THE REPRESENTATIVE PLAINTIFF**

74. Applicant requests that she be appointed the status of representative plaintiff for the following main reasons:
  - a) she is a member of the Class and has a personal interest in seeking the conclusions that she proposes herein;
  - b) she is competent, in that she has the potential to be the mandatary of the action if it had proceeded under article 91 of the *Code of Civil Procedure*;
  - c) her interests are not antagonistic to those of other Class members;
75. Additionally, Applicant respectfully adds that:
  - a) She has mandated her attorneys to file the present application for the sole purpose of having her rights, as well as the rights of other Class members, recognized and protected so that they may be compensated for the damages that they have suffered as a consequence of the Defendants' faults and so that the Defendants can be held accountable;
  - b) She has the time, energy, will and determination to assume all the responsibilities incumbent upon her in order to diligently carry out the action;
  - c) She has reviewed this application and the exhibits;
  - d) She understands the nature of this action;

#### **II. DAMAGES**

76. Applicant estimates that the Defendants have generated aggregate amounts in the hundreds of millions of dollars while intentionally choosing to ignore the laws in Quebec, all the while making a conscious decision to put profits before the law;
77. The Defendants must be held accountable for the breach of obligations imposed on them by legislation in Quebec and Canada;
78. In light of the foregoing, the following aggregate damages may be claimed by Class



members against the Defendants:

- a) Reimbursement of the full amount of the health, medical and dental insurance premiums imposed by the Defendants and paid by the Class members to the Defendants or for their benefit;
- b) compensatory damages in an amount to be determined;
- c) punitive damages in an amount to be determined for the intentional breach of obligations imposed on Defendants pursuant to section 272 CPA and sections 5 and 49 of the Quebec Charter; and
- d) damages for stress, troubles and inconveniences, as well as moral damages in amounts to be determined.

### **III. NATURE OF THE ACTION AND CONCLUSIONS SOUGHT**

79. The action that the Applicant wishes to institute on behalf of the members of the Class is an action in damages, with injunctive relief;
80. The conclusions that the Applicant wishes to introduce by way of an originating application are:
  1. **ALLOW** the class action of the Plaintiff and the members of the Class against the Defendants;
  2. **ORDER** the Defendants to cease automatically subscribing students to insurances [...] and to cease forcing the “opt-out” method instead of the “opt-in” method;
  3. **CONDEMN** each of the Defendants, solidarily, to pay the Plaintiff and each Class member compensation equal to the amount paid on account of health, medical and dental insurance;
  4. **CONDEMN** each of the Defendants, solidarily, to pay the Plaintiff and each Class member compensatory damages for breach of their privacy rights;
  5. **CONDEMN** each of the Defendants, solidarily, to pay an amount to be determined on account of punitive damages;
  6. **CONDEMN** each of the Defendants, solidarily, to pay an amount to be determined on account of moral damages and damages for stress, troubles and inconveniences;
  7. **CONDEMN** each Defendant, solidarily, to pay interest and the additional indemnity on the above sums according to law from the date of service of the *Application to Authorize a Class Action*;

8. **ORDER** that all of the above condemnations be subject to collective recovery;
9. **ORDER** that the claims of individual Class members be the object of collective liquidation if the proof permits and alternately, by individual liquidation;
10. **ORDER** the Defendants to deposit in the office of this Court the totality of the sums which forms part of the collective recovery, with interest and costs;
11. **CONDEMN** the Defendants, solidarily, to bear the costs of the present action including the cost of exhibits, notices, the cost of management of claims and the costs of experts, if any, including the costs of experts required to establish the amount of the collective recovery orders;
12. **RENDER** any other order that this Honourable Court shall determine;

81. The Applicant requests that this class action be exercised before the Superior Court of the province of Quebec, in the district of Montreal, because she is a consumer and resides in this district;

**FOR THESE REASONS, MAY IT PLEASE THE COURT:**

1. **AUTHORIZE** the bringing of a class action in the form of an originating application in damages and injunctive relief;
2. **APPOINT** the Applicant the status of representative plaintiff of the persons included in the Class herein described as:

All students enrolled or who were enrolled in a CEGEP or university and who were automatically subscribed to a <u>health</u> , medical or dental insurance plan for which they paid the insurance premiums to or for the benefit of the defendants. (hereinafter the “ <b>Class</b> ” or the “ <b>students</b> ”)	Tous les étudiants inscrits ou qui ont été inscrits à un CÉGEP ou à une université et qui ont été automatiquement inscrits à un régime d'assurance <u>santé</u> , médicale ou dentaire pour lesquels ils ont payé les primes d'assurance aux défenderesses ou à leur bénéfice. (ci-après le « <b>Groupe</b> » ou les « étudiants »)
--	--

3. **IDENTIFY** the principal questions of fact and law to be treated collectively as the following:
  - a) In the sale of their health, medical and dental insurance policies, do the Defendants act in utmost good faith? Do they act in bad faith?
  - b) Is it legal for the Defendants to automatically subscribe students to health, medical and dental insurance policies? If not, are Class members entitled to the full reimbursement of the amounts paid to the Defendants' benefit?

- c) If it is legal for the Defendants to automatically subscribe students to health, medical and dental insurance policies, did the Defendants adequately inform the students that the insurance was optional?
  - d) If the Defendants did adequately inform the students that the insurance was optional, can the Defendants impose an arbitrary delay for students to “opt-out” of the insurance policy?
  - e) Do the Defendants violate sections 62 or 64 of the *Insurers Act*?
  - f) Did the Defendants violate the privacy rights of the Class members by communicating their private information, without their consent to Desjardins? If so, are Class members entitled to punitive damages under the *Charter*?
  - g) Are Class members entitled to compensatory damages and in what amount?
  - h) Should an injunctive remedy be ordered to prohibit the Defendants from continuing to perpetrate their illegal conduct, as well as their concealment of important facts?
  - i) When does prescription start and how long was prescription suspended for either by fraud or by the declaration of a health emergency due to Covid?
  - j) Are Desjardins and ASEQ solidarily liable with all of the CEGEPS and universities for whom ASEQ provides insurance and for whom Desjardins is the insurer?
  - k) Did the Defendants violate the CPA and, if so, are Class members entitled to compensatory and punitive damages?
  - l) Are Class members entitled to damages for stress, troubles and inconveniences, as well as moral damages? If so, in what amounts?
  - m) Did Defendants ASEQ and Desjardins commit the extra-contractual fault of associating themselves with the breach of contract by the CEGEPS and universities?
4. **IDENTIFY** the conclusions sought by the class action to be instituted as being the following:
- 1. **ALLOW** the class action of the Plaintiff and the members of the Class against the Defendants;
  - 2. **ORDER** the Defendants to cease automatically subscribing students to insurances [...] and to cease forcing the “opt-out” method instead of the “opt-in” method;
  - 3. **CONDEMN** each of the Defendants, solidarily, to pay the Plaintiff and each

Class member compensation equal to the amount paid on account of health, medical and dental insurance;

4. **CONDEMN** each of the Defendants, solidarily, to pay the Plaintiff and each Class member compensatory damages for breach of their privacy rights;
  5. **CONDEMN** each of the Defendants, solidarily, to pay an amount to be determined on account of punitive damages;
  6. **CONDEMN** each of the Defendants, solidarily, to pay an amount to be determined on account of moral damages and damages for stress, troubles and inconveniences;
  7. **CONDEMN** each Defendant, solidarily, to pay interest and the additional indemnity on the above sums according to law from the date of service of the *Application to Authorize a Class Action*;
  8. **ORDER** that all of the above condemnations be subject to collective recovery;
  9. **ORDER** that the claims of individual Class members be the object of collective liquidation if the proof permits and alternately, by individual liquidation;
  10. **ORDER** the Defendants to deposit in the office of this Court the totality of the sums which forms part of the collective recovery, with interest and costs;
  11. **CONDEMN** the Defendants, solidarily, to bear the costs of the present action including the cost of exhibits, notices, the cost of management of claims and the costs of experts, if any, including the costs of experts required to establish the amount of the collective recovery orders;
  12. **RENDER** any other order that this Honourable Court shall determine;
5. **ORDER** the publication of a notice to the Class Members in accordance with article 579 C.C.P., pursuant to a further order of the Court, and **ORDER** the Defendants to pay for said publication costs;
  6. **FIX** the delay of exclusion at thirty (30) days from the date of the publication of the notice to the members, date upon which the members of the Class that have not exercised their means of exclusion will be bound by any judgment to be rendered herein;
  7. **DECLARE** that all Class members that have not requested their exclusion, be bound by any judgment to be rendered on the class action to be instituted in the manner provided for by law;
  8. **RENDER** any other order that this Honourable Court shall determine;

9. **THE WHOLE** with costs including publication fees.

Montreal, June 30, 2023

*(s) LPC Avocat Inc.*

---

**LPC AVOCAT INC.**

Mtre Joey Zukran

Attorney for the Applicant

276 Saint-Jacques Street, Suite 801

Montréal, Québec, H2Y 1N3

Telephone: (514) 379-1572

Telecopier: (514) 221-4441

Email: [jzukran@lpclex.com](mailto:jzukran@lpclex.com)

**SUMMONS**  
(ARTICLES 145 AND FOLLOWING C.C.P)

---

**Filing of a judicial application**

Take notice that the Applicant has filed this Amended Application for Authorization to Institute a Class Action and to Appoint the Status of Representative Plaintiff in the office of the **Superior Court of Quebec** in the judicial district of **Montreal**.

**Defendant's answer**

You must answer the application in writing, personally or through a lawyer, at the courthouse of **Montreal** situated at **1 Rue Notre-Dame E, Montréal, Quebec, H2Y 1B6**, within 15 days of service of the Application or, if you have no domicile, residence or establishment in Quebec, within 30 days. The answer must be notified to the Applicant's lawyer or, if the Applicant is not represented, to the Applicant.

**Failure to answer**

If you fail to answer within the time limit of 15 or 30 days, as applicable, a default judgment may be rendered against you without further notice and you may, according to the circumstances, be required to pay the legal costs.

**Content of answer**

In your answer, you must state your intention to:

- negotiate a settlement;
- propose mediation to resolve the dispute;
- defend the application and, in the cases required by the Code, cooperate with the Applicant in preparing the case protocol that is to govern the conduct of the proceeding. The protocol must be filed with the court office in the district specified above within 45 days after service of the summons or, in family matters or if you have no domicile, residence or establishment in Québec, within 3 months after service;
- propose a settlement conference.

The answer to the summons must include your contact information and, if you are represented by a lawyer, the lawyer's name and contact information.

**Change of judicial district**

You may ask the court to refer the originating Application to the district of your domicile or residence, or of your elected domicile or the district designated by an agreement with the plaintiff.

If the application pertains to an employment contract, consumer contract or insurance contract, or to the exercise of a hypothecary right on an immovable serving as your main residence, and if you are the employee, consumer, insured person, beneficiary of the insurance contract or hypothecary debtor, you may ask for a referral to the district of your domicile or residence or the district where the immovable is situated or the loss occurred. The request must be filed with the special clerk of the district of territorial jurisdiction after it has been notified to the other parties and to the office of the court already seized of the originating application.

### **Transfer of application to Small Claims Division**

If you qualify to act as a plaintiff under the rules governing the recovery of small claims, you may also contact the clerk of the court to request that the application be processed according to those rules. If you make this request, the plaintiff's legal costs will not exceed those prescribed for the recovery of small claims.

### **Calling to a case management conference**

Within 20 days after the case protocol mentioned above is filed, the court may call you to a case management conference to ensure the orderly progress of the proceeding. Failing this, the protocol is presumed to be accepted.

### **Exhibits supporting the application**

In support of the Application for Authorization to Institute a Class Action and to Appoint the Status of Representative Plaintiff, the Applicant intends to use the following exhibits:

- Exhibit P-1:** *En liasse*, CIDREQ for the Defendants;
- Exhibit P-2:** Extract of the "À propos" section of the ASEQ website (<https://aseq.ca/rte/fr/ASEQcommon?superUid=Gettoknowus>);
- Exhibit P-3:** September 17, 2020 article published in La Presse by Stéphanie Grammond titled "*Eh, oh ! les étudiants, ne payez pas 350 \$ d'assurances superflues*";
- Exhibit P-4:** March 8, 2020, La Presse article titled "*Les étudiants assurés en bloc*" by Stéphanie Grammond;
- Exhibit P-5:** Google reviews for ASEQ;
- Exhibit P-6:** Copy of the judgment: *Autorité des marchés financiers c. Alliance pour la santé étudiante au Québec inc.*, 2016 QCTMF 54;
- Exhibit P-7:** February 9, 2022, article in La Presse titled "*Assurance maladie sur les campus Les étudiants partent en guerre contre l'AMF*", by Marie-

Eve Fournier;

- Exhibit P-8:** “Avis de l’autorité” (AMF) from early 2022;
- Exhibit P-9:** AMF consultation document dated June 15, 2022;
- Exhibit P-10:** February 9, 2022, article published in le Soleil titled “Assurances étudiantes: l’AMF fait marche arrière”;
- Exhibit P-11:** Extract of the Université de Montréal website (<https://www.faecum.qc.ca/services/assurances-aseq>);
- Exhibit P-12:** *En liasse*, screen captures of the Université de Montréal centre étudiant portal showing the amounts due;
- Exhibit P-13:** Copy of Université de Montréal invoice dated September 3, 2021;
- Exhibit P-14:** Copy of Université de Montréal invoice dated January 7, 2022;
- Exhibit P-15:** Copy of Université de Montréal invoice dated September 7, 2022;
- Exhibit P-16:** Copy of Université de Montréal invoice dated March 1, 2023;
- Exhibit P-17:** Complaint form filed by the Applicant and sent to Desjardins on February 17, 2023;
- Exhibit P-18:** Copy of Université de Montréal statement dated March 17, 2023;
- Exhibit P-19:** May 30, 2023, response from Desjardins;
- Exhibit P-20:** *En liasse*, copies of the Desjardins insurance policies for 2021 and 2022-2023.
- Exhibit P-21:** Extract of Concordia University’s website (<https://www.concordia.ca/health/insurance.html>);
- Exhibit P-22:** *En liasse*, copies of Applicant’s Concordia tuition statements from Fall 2017 to Winter 2021;
- Exhibit P-23:** Copy of the La Presse article dated June 14, 2023.

These exhibits are available on request.



## Notice of presentation of an application

If the application is an application in the course of a proceeding or an application under Book III, V, excepting an application in family matters mentioned in article 409, or VI of the Code, the establishment of a case protocol is not required; however, the application must be accompanied by a notice stating the date and time it is to be presented.

Montreal, June 30, 2023

*(s) LPC Avocat Inc.*

---

**LPC AVOCAT INC.**

Mtre Joey Zukran

Attorney for the Applicant

276 Saint-Jacques Street, Suite 801

Montréal, Québec, H2Y 1N3

Telephone: (514) 379-1572

Telecopier: (514) 221-4441

Email: [jzukran@lpclex.com](mailto:jzukran@lpclex.com)

**NOTICE OF PRESENTATION**  
(articles 146 and 574 al. 2 C.C.P.)

---

**TO: Desjardins sécurité financière, compagnie d'assurance vie**  
200, rue des Commandeurs  
Lévis, Québec, G6V 6R2

**Fédération des caisses Desjardins du Québec**  
100, rue des Commandeurs  
Lévis, Québec, G6V 7N5

**Alliance pour la santé étudiante au Québec (ASEQ)**  
2700-1000 Sherbrooke Street West  
Montreal, Quebec, H3A 3G4

**Université Concordia**  
1455 De Maisonneuve Boulevard West  
Montreal, Quebec, H3G 1M8

**DEFENDANTS**

**TAKE NOTICE** that the Applicant's *Amended Application to Authorize the Bringing of a Class Action* will be presented before the Superior Court at **1 Rue Notre-Dame E, Montréal, Quebec, H2Y 1B6**, on the date set by the coordinator of the Class Action Division.

**GOVERN YOURSELVES ACCORDINGLY.**

Montreal, June 30, 2023

*(s) LPC Avocat Inc.*

---

**LPC AVOCAT INC.**

Mtre Joey Zukran  
Attorney for the Applicant  
276 Saint-Jacques Street, Suite 801  
Montréal, Québec, H2Y 1N3  
Telephone: (514) 379-1572  
Telecopier: (514) 221-4441  
Email: [jzukran@lpclex.com](mailto:jzukran@lpclex.com)