



ASEQ's Memorandum

Prepared by ASEQ | Studentcare
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Translated from the original French

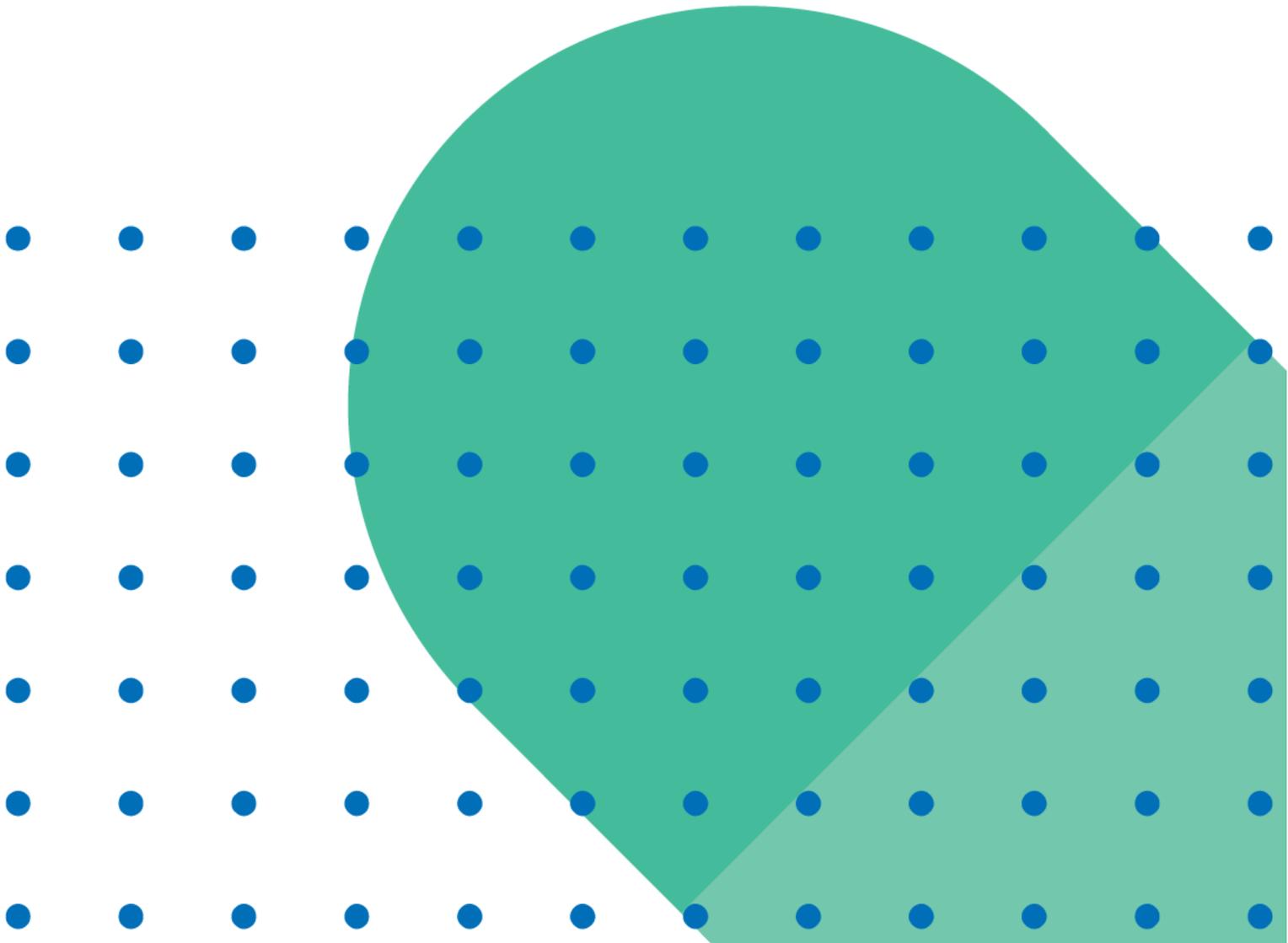


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General Introduction

Since at least 2012, the Autorité des marchés financiers (AMF) has been interested in group plans offered by student associations in Quebec. Over the years, the AMF has therefore directed numerous questions to parties involved in these plans (firms and insurers), issued directives (such as a directive requiring the removal of so-called “conditional” opt-outs in 2019) and also, in December 2021, ordered insurers to stop distributing these plans in their current form as of September 2022.

Following the reaction to this decision, the AMF reconsidered its position, suspended its December 2021 instructions, and began consulting the interested parties.

This Memorandum presents the position of ASEQ | Studentcare (ASEQ), a firm that works in the field of group insurance for student associations in Quebec.

The Objectives of the AMF

In June 2022, the AMF published a consultation document calling on all interested persons to share their opinions. In this document, the AMF states that it wishes to address elements that it calls “issues”:

- Automatic enrolment in an insurance plan without prior confirmation of the student’s need
- The quality of information pertaining to the product and its cost
- The time of opt outs and the duration of the opt-out period
- The mechanism for refunding premiums

Specifically, the AMF stated that the objectives of its consultation were as follows:

- To keep insurance products accessible to the student clientele
- To ensure that students are adequately protected as insurance product consumers

ASEQ's Memorandum

As we will demonstrate in the pages that follow, ASEQ feels that in their current form, the group plans offered by student associations are necessary from a social point of view, founded in law, and economically advantageous for the student population.

In essence, it is ASEQ's position that student plans meet a real need; are very well suited to the reality of students' lives; comply with applicable group insurance standards and relevant jurisprudence; and adhere to the specific legal framework in place for student associations in Quebec.

Specifically, we will address the following topics in our memorandum:

- Automatic enrolment in a group insurance plan
- The concrete and conclusive quantitative data that demonstrates that students are well informed of the plans and of the terms under which they are administered, including the rules and periods for opting out and receiving a refund of the student assessment (contribution)

ASEQ has opted to separate its position into two main parts:

1. The first part will provide a general overview of the plans, their fundamentals, and especially, their real impact on students' lives. We will share important data and speak to the social importance of the plans.
2. The second part will focus on the legal foundations of the model. It will remind the reader of the major concepts that exist in the field of group insurance in Quebec, all of which have been upheld in abundance by the courts. This part is the more technical of the two.

To conclude, we will return to our analysis of the elements identified as issues by the AMF, present ASEQ's position, and propose avenues to pursue as next steps.

Introduction to Student Plans

Group insurance plans offered by student associations have existed for over a quarter century in Quebec. These highly utilized plans allow student associations to make insurance coverage available to their members for care that is not, to a large extent, offered at no cost by the public health insurance plan.

Any attempt to undermine the stability of this model would hinder the ongoing efforts of student associations to improve the often precarious situations experienced by their members.

In this section, ASEQ will provide explanations regarding the group insurance plans offered by student associations, outlining their nature and how they work. It will also present arguments in an attempt to persuade the AMF not to upend a product that students utilize and are familiar with.

The Nature of the Plans

The current model of student group insurance plans allows associations to fulfil their primary mission, which is to protect the rights of their members, provide them with access to services, and improve their wellbeing for the duration of their postsecondary studies.

These plans offer students enhanced access to health care, including psychological care. The automatic billing model inherent to the principle of group insurance limits the negative impacts on certain students who would otherwise be discriminated against and considered ineligible for coverage due to criteria such as sex at birth, pre-existing medical conditions, age, etc. The collective nature of the product that is currently offered provides a solution to this problem. The existing mechanism also guarantees that plans are affordably priced, as students, as a group, are known to experience financial precarity. This is a considerable advantage.

No other model would maintain these two crucial advantages: the absence of discrimination and an affordable cost for the target population.

These plans are used quite extensively by the members of ASEQ partner student associations. In 2021, student plans in Quebec had an overall usage rate of 90%.¹ For example, in aggregate, the group insurance plans administered by ASEQ in Quebec have allowed students to make over \$32 million in claims in 2020–2021, including over \$4.6 million for psychological care (one of the most used benefits in student plans); over \$18.4 million for dental care; and over \$2.6 million for vision care.

It is not unrealistic to suggest that the very existence of these plans prevents students from abandoning their studies, by offering them access to psychological support in challenging times. Students can also remain physically active by treating their injuries more rapidly thanks to the plans. In general, it is certainly undeniable that group insurance plans allow students to be more successful in their studies, thus supporting the development of tomorrow's citizens.

In summary, we share the opinion common among insurers who operate in this field that student plans are a high-quality, useful, and affordable product that, in its current form, perfectly responds to the needs and realities of students.

¹ Usage rates are claims paid as a percentage of premiums collected.

How the Plans Work

Student associations are granted the right to collect assessments (contributions) from their members under the *Act Respecting the Accreditation and Financing of Students' Associations*. Associations exercise this right by collecting the amounts necessary to pay the premium owed to the insurers that insure such plans.

This act, which has been tested and upheld before the courts,² allows associations to require educational institutions to add automatic contributions to their bills. These contributions are used to fund the projects and services of the student association.³

Historically, all these contributions have been set through the democratic consultation of association members. Whether through referenda or at general assemblies held for this purpose, student association members have largely, with only a handful of exceptions in the past 25 years, chosen to vote yes to such contributions in order to fund group insurance plans,⁴ and have given their representatives the mandate to enter into the master policies required to implement this democratic will. The framework established by the National Assembly has implemented legislative mechanisms that are directly inspired by—even, it is fair to say, copied from—the legal framework in effect for worker's unions in Quebec.

Under the act, student associations can decide whether contributions to fund a service are mandatory (meaning that they cannot be refunded to the student) or optional (meaning that a student can obtain a refund of the student contribution under terms set by the student association). Associations have exercised this right by deciding to allow opt outs from the contribution, which results in the member being removed from the insurance plan. Each year, students therefore have the opportunity to choose whether they wish to keep their coverage, whether in whole or in part, in order to adapt their insurance to their needs. They can also choose to enrol their families in the plan, which is a major benefit, available to all student parents.

Note that generally, student associations almost always ask that a survey be conducted prior to implementation in order to identify students' insurance coverage needs. Moreover, various consultations over the years have consistently affirmed that Quebec students want the option to benefit from these services.⁵

These elements are not trivial. Student plan members ***request*** this service from their association. They are in full possession of the facts when they give their student association the mandate to establish such group plans. These plans are not imposed on them without their knowledge or against their will—quite the opposite! Student plans take shape in compliance with the democratic rules set out in the act. This mandate received from their members cannot be ignored.

The opt-out period generally lasts for four weeks. This month-long period in which coverage can be modified is a reasonable length of time for students to learn about the coverage before opting out or

² *Proulx v. Quebec (Attorney General)*, 2015 QCCS 1042

³ In addition to group insurance plans, student associations may offer a variety of services: drop-in daycare for student parents; pooled mass transit fares (known as UPasses); telehealth services; student newspapers; student cafes and bars; legal protection programs; student radio stations; various investment funds; student assistance programs; etc.

⁴For example, in a 2020 referendum, 83% of AGEUQAT members were in favour of instituting a group insurance plan. These members were aware that they would be automatically billed for the plan with the right to opt out.

⁵In surveys conducted between 2016 and 2019, an average of 84% of respondents answered “yes” to the question: “are you aware of the existence of the plan?”

not. It also maintains the financial health of the plan, and therefore, an affordable price for students who choose to maintain coverage. This balance is crucial to the survival of student group insurance plans. If the period in which coverage can be modified were too long, or if coverage could be modified at multiple points throughout the school year, this would definitively affect the financial engineering of the plan and throw the cost off balance.

The policyholders (associations) are aware that students' situations can change, and that they can experience extraordinary life events. For this reason, exceptional opt outs may be granted outside the designated period. This is the case for students who are admitted to programs late, for example, as well as students experiencing special circumstances, such as hospitalization. Likewise, several exceptional opt-ins are granted each year. This is when students who had opted out wish to re-enrol in the plan because they have lost their jobs (and therefore their employer's coverage) or because they go on maternity leave, for example. Moreover, it would be an error to assume that students who have other insurance, such as a parent's plan, cannot take advantage of the benefits offered by their student plan. In fact, their coverage can be combined to obtain a reimbursement of up to 100%. In addition, some students prefer the confidentiality offered by their student plan rather than asking their parents to make claims for their care. It is also an error to state that students who opt out of their plan do so because they object to its existence or the way it works. In surveys conducted between 2016 and 2019, when asked, "Do you think that the association should continue to offer the student health and dental plan?" an average of 88% of respondents answered "for." An average of 38% of respondents were students who had opted out of the plan.

Each year, the associations, ASEQ, and college and university administrators use a number of modes of communication to inform students of their coverage and their right to opt out. Current tools include email, websites, agenda pages, student portals, bills, information booths, webinars, seminars, training, social media, posters, brochures, contact cards, etc. Group plans for students have existed in their current form for over 25 years. Today's students expect to have access to this service when enrolling in their classes. Campuses that do not yet benefit from insurance receive numerous requests from students who want it to be implemented. Furthermore, many individuals who return to education become aware of the major advantages of having such comprehensive, quality coverage at such a low price as a student.

The number of opt outs that have taken place each year (tens of thousands) for over a quarter century demonstrates that students are well informed of the existence of their plans and of their right to opt out, and that the opt-out periods currently in place are reasonable.

Of course, student associations (and ASEQ) continue to seek innovative ways to communicate with students to enable them to make an informed choice. Communications are, and will always be, constantly evolving.

Arguments

As we understand it, the AMF believes that because a student is able to opt out of the non-mandatory automatic contribution,⁶ the product is therefore optional. Moreover, the AMF is of the opinion that automatic enrolment in optional insurance products is prohibited in Quebec. It believes that enrolment must be done on a voluntary basis for optional products, and that students must therefore enrol on an individual basis.⁷

This position is not that of the group insurance industry, and it is at odds with past practices of all insurance stakeholders in Quebec. It is not our position, either. Moreover, this position has never been supported with clear legal standards. Nowhere can standards (laws, regulations, etc.) be found that indicate that “automatic enrolment in group insurance is prohibited if said insurance is optional.”

The AMF’s position appears to lead to two possible logical conclusions, both of which, in our opinion, are much more problematic than the current model, which is accepted by all and complies with legal and regulatory requirements: that student plans become individual enrolment plans; or that student plans become mandatory.

Offering a plan with individual enrolment rather than a group plan entails many major disadvantages for associations and their student populations and would cause quasi-insurmountable operational problems.

Student associations do not have legal or realistic means by which to collect funds from all their members other than through the student contributions set out in the act, which are *all* automatic, regardless of whether or not they are mandatory. Requiring associations to ask each student to individually enrol in a plan would be simply unrealistic and would call into question the fundamental principles of group insurance and student contributions set out in the act.

Doing so would also put an end to all the abovementioned advantages provided by group insurance. If the enrolment process was modified in this way, the plan would be more like (or identical to) individual insurance, a much more expensive option than the group plans currently offered by student associations.

In addition, enrolment in an individual plan generally involves completing a health status questionnaire so that the risk presented by a given person can be assessed and the cost of that person’s insurance can be determined. This would discriminate against a portion of the student population with pre-existing conditions by charging them more or denying them access to insurance outright. Under the current model, all students pay the same price regardless of gender, age, or health status, thereby

⁶Under the abovementioned provisions of the *Act Respecting the Accreditation and Financing of Students’ Associations*.

⁷The AMF’s position has been presented in various ways over the years, and has touched on a variety of different topics (for example, the rights of associations to be group insurance policyholders for their members; or the need for the intervention of a natural person to enroll a student in group insurance); for the purposes of this document, we have selected the position expressed by the AMF in August 2019, [REDACTED] “[translation] However, the enrolment of an insured is fundamental to group insurance, and the insured cannot come into being except through a positive action on his or her part, except when participation in group insurance, or in some of its coverage, is mandatory. In such a case only, enrolment shall be limited to the transmission of a list of group members eligible for insurance from the policyholder to the insurer.”

ensuring equity among all students. This principle is very important to the associations and their members.

Following this logic, based on complaints filed by students,⁸ the AMF would essentially put an end to the current plans and direct them towards a different model with much more disadvantages than the current situation.

Based on our incomplete understanding of the AMF's statement, the issue appears to be as follows: Are students well informed of their right to opt out of the student contribution?

The numbers speak for themselves.

In 2020–2021:⁹

1. 292,466 students were eligible for the service offered by student associations that work with ASEQ in Quebec.
2. Of that number, 85,369 opted out of student plans in whole or in part, making the overall opt-out rate 29.19%.
3. The 207,097 students who kept any of the coverage offered under the plans collectively used it at a rate of 90%. For the majority of Quebec campuses, this usage rate is over 85%.

This data alone clearly indicates that:

- Students are aware that an insurance plan exists and know how to opt out of, or use, said plan.
- Students can easily opt out of the student contribution. Over 85,000 did so with ASEQ alone last year in Quebec.
- Those who keep their plans use them at very high rates.

In short, the data shows that the insurance product, its distribution model, and the benefits covered meet a real need that is balanced and sustained, year after year, by students and the associations that represent them.

If the AMF continues along the path it set in its *Instructions aux assureurs* (instructions to insurers) in December 2021, and, for example, all associations choose to make their plans mandatory,¹⁰ a situation would arise in which more than 85,000 students (!!) would be forced to keep insurance coverage that they clearly do not want.

Student association plans would therefore no longer be optional, and students would no longer have a “choice” to make, which would make the system compliant with the concerns expressed by the AMF.¹¹

We strongly believe that this would be a serious error.

⁸ Over the past 10 years, for plans administered by ASEQ in Quebec, an average of 7.9 students have complained to the AMF annually. This number must, of course, be compared to the number of students who opted out of the contribution: in 2020–2021, for example, 85,369 students partially or fully opted out without any problems.

⁹ Referred to here is the 2020–2021 coverage year, which largely corresponds to the academic year from September 1, 2020 to August 31, 2021.

¹⁰ This is most likely the avenue that, despite its obvious flaws, best accommodates the objectives set out this document under “The Nature of the Plans.”

¹¹ [REDACTED]: “[...] except when participation in group insurance, or in some of its coverage, is mandatory. In such a case only, enrolment shall be limited to the transmission of a list of group members eligible for insurance from the policyholder to the insurer.”

Conclusion

The *Act Respecting the Accreditation and Financing of Students' Associations* establishes a mechanism that, following a favourable vote by students, enables automatic enrolment in health and dental plans for these students. It also allows them to opt out of contributing if they wish to do so.

The current plans work. They have worked for over 25 years.

These plans solve real problems for real people. They allow very large groups of people in often precarious financial situations to access essential services such as psychological care at an affordable price and without discrimination.

These plans are requested by the student community—students literally vote for them—and, when students are consulted after their implementation, a large number support their continuation.

Members of student associations are educated, intelligent, and perfectly able to act as they choose—including by opting out. They do so in *very* large numbers.

The vast majority of Quebec student associations, and of actors involved in student plans (firms and insurers) are entirely willing to work together to make corrections to aspects that may be of particular concern to the AMF while upholding the collective rights of associations. In ASEQ's case, we have been doing so since 2016.

Ultimately, though, after 10 years of work by the AMF in this area, we must reiterate what has always been our position: student plans are necessary, and putting an end to them would be a serious error.

Appendices

This section aims to meet several distinct objectives for ASEQ.

First, it is important for ASEQ to clearly articulate its understanding of the legal framework that governs group insurance in Quebec, and to specify how, in our opinion, this legal framework is respected by student plans. ASEQ has never had a chance in the past to explain to the AMF its interpretation of the applicable standards, and in this section we hope to accomplish that task.

Secondly, we feel it is important to show the AMF that ASEQ has not behaved in an imprudent or risky manner by administering these plans; a reading in good faith of the following pages will show any observer that ASEQ thoroughly researched the legal standards that apply to group insurance products for students, and that we are confident that ASEQ has always acted in full accordance with the law, and especially for the benefit of the largest possible amount of people.

Thirdly, this seems to us to be a good opportunity to present a perspective that is clearly different from that of the AMF. We plan to show in this section that a) in our view, the applicable legal framework is clear and allows student associations to offer the plan that they offer; but b) if the AMF is still not reassured after familiarizing itself with the following section, the AMF can then at least agree that the claims of the student associations, ASEQ, and the insurers are not based only on speculation or thin air. And that if any legal uncertainty still persists on the AMF's side, that the very high quality of the products offered and the solidity of the bases on which student plans operate will convince the AMF to work to resolve this uncertainty—and not to put an end to the current student plans.

Finally, it is important to note that the following pages ***evidently do not constitute a legal opinion.*** ASEQ is not a law firm, and evidently does not claim to give legal advice. This is, however, a summary of different opinions received over the years and various information compiled by ASEQ.

A. Automatic Enrolment in Group Insurance and the Right of Student Associations to be Policyholders in a Group Insurance Master Policy

After a brief review of a fundamental principle in Canadian and Quebec law, we will demonstrate in the coming pages that:

1. A student association can act as policyholder in a group insurance master policy.
2. In group insurance, a student association acts as a mandatary for its members, which has legal consequences.
3. Automatic enrolment in group insurance is very solidly established in the law.
4. There is absolutely no doubt that if group insurance were to be mandatory for all students, the student plans would be compliant.
5. No legal basis exists for the claim that simply allowing opt outs at the beginning of the year, thereby granting additional rights to insured members, fundamentally alters the legal nature of the plans; or especially, that removing this right would create a much more detrimental situation for individuals who are members of student associations.

In summary, we will demonstrate that the only thing that student plans appear to do differently than the majority of other group plans is to allow students to make a choice at the beginning of the school year. We will also demonstrate that the AMF's current logic leads to only one possible conclusion under the applicable law in this area: if student associations wish to continue to offer group plans to their members, they must make them mandatory.

To us, this is a misguided conclusion, especially given the absence of corresponding legal standards.

1. Is something that is not specifically prohibited by a standard (law, regulation, etc.) legally permissible?

Yes, clearly.

The principle that an action is legal if not expressly prohibited by law is firmly and clearly established in Canadian law. The Supreme Court of Canada has ruled that “absent a law to the contrary, individuals are free to do as they please. By contrast, the police (and more broadly, the state) may act only to the extent that they are empowered to do so by law.”¹²

This passage has always been interpreted to mean both that:

1. any action is legal if not expressly prohibited by law; and
2. state actors, in contrast, may only act in accordance with that which the law authorizes them to do.

This point was specified by Justice Marie Deschamps of the Supreme Court (bold underlining is our own):¹³

“Since that which is not prohibited is permitted, the freedom to perform an act or engage in an activity simply means that the act or activity is not prohibited. Two categories of lawful acts must therefore be distinguished: (1) acts that are positively authorized as exceptions to prohibitions; and (2) **acts that are simply not prohibited by law in any way.**”¹⁴

This principle is likely why some actors in the area of Quebec student plans (ASEQ, the student associations, the insurers, etc.) are perplexed.

The Supreme Court is clear: a public authority must be able to cite a legal rule that ***expressly*** states that, for example, automatic enrolment in group insurance is prohibited, and a public authority like the AMF is entitled to act ***only*** within the parameters set out by law.

In the past 10 years, we have never seen a legal text that indicates that automatic enrolment in group insurance is prohibited when this insurance is not mandatory.

¹² *R v Mann*, 2004 SCC 52 at para 15

¹³ *Quebec (Attorney General) v Lacombe*, 2010 SCC 38 at para 121

¹⁴ It also clear that this principle applies to Quebec civil law. In 2007, the Superior Court of Québec upheld the principle establishing that anything that is not prohibited is authorized.

2. Can a student association act as policyholder in a group insurance master policy?

The answer is undoubtedly yes.

Under Article 2392 of the *Civil Code of Quebec* and Section 60 of the *Regulation Under the Act Respecting Insurance (RARI)*, Quebec student associations can assuredly act as policyholders in group insurance for the benefit of their members.

Article 2392 of the *Civil Code of Quebec* reads as follows:

“2392. Insurance of persons covers the life, physical integrity or health of the insured.

Insurance of persons is divided into individual insurance and group insurance.

Group insurance of persons covers, under a master policy, the participants in a specified group and, in some cases, their families or dependents” (underlining is our own).

Section 60 of the RARI provides further specification:

“60. A specified group of persons is a group whose members share common activities or interests before a group insurance plan is offered to them, including socio-economic or cultural interests.

The group may be composed of such persons as, for example,

- (1) persons currently or formerly employed by one or more employers;
- (2) persons having the same profession or usual occupation;
- (3) the members of a financial services cooperative;
- (4) the members of a mutual insurance association.”

It is clear that members of a student association share at minimum common activities and socio-economic interests.

Associations as Policyholders

Academic writers in the field of group insurance have addressed the matter of specified groups in abundant fashion. They have concluded that the members of a group must have activities or interests in common before a group insurance policy is entered into. A group may not be formed for the sole purpose of entering into a master policy. Student associations in Quebec obviously meet this criterion.¹⁵ In addition, the examples of groups set out in the RARI are, in the opinion of these same writers, non-limiting.¹⁶

What is more, “associations” are acknowledged as potential policyholders for group insurance master policies:¹⁷

“[translation] [...] a specified group is often composed of persons who work for the same employer or who are affiliated with the same union or association” (underlining is our own).

The opinion of these legal experts specialized in group insurance is furthered by insurance industry guidelines. A section of Canadian Life and Health Insurance Association (CLHIA) Guideline G3 defines a group insurance “member” as follows:¹⁸

“‘Plan Member’ means the primary person insured under the Group Insurance plan, such as the employee, union member or association member, but does not include a person insured through the primary person” (underlining is our own).

A separate CLHIA guideline specifies who can act as a sponsor of group insurance:¹⁹

“‘Plan Sponsor’ is an employer, union, association or other entity that provides group health or dental benefits to its Covered Individuals” (underlining is our own).

¹⁵ The relevance of a student association offering a group insurance plan to its members has been tested and upheld by the Supreme Court of British Columbia in *Epp v AMS*, 2006 BCSC 659. While the legal context invoked was quite different (it dealt with the *Consumer Protection Act*) and the case was heard in another province, the court nonetheless clearly indicated, ruling in the student association’s favour, that offering a group plan to its members was certainly within the association’s mandate.

¹⁶ Élyse Lemay and Sylvia Reiter, “Assurance de personnes: le nouveau Règlement sur les assurances,” *Barreau du Québec, Service de la formation continue, Développements récents en droit des assurances*, Cowansville, Éditions Yvon Blais, vol. 337 (2011): 115.

¹⁷ Suzanne Hardy-Lemieux, Alain Roch and Geneviève Faribault, *L’assurance de personnes au Québec* (Farnham: CCH/FM, 2013), 12 012.

¹⁸ Section 4 (e) of CLHIA Guideline G3.

¹⁹ Section 4 of CLHIA Guideline G4.

The Specific Case of Student Associations

Finally, a more specific analysis of the legal framework that applies to student associations in Quebec corroborates the more general points set out above.

The *Act Respecting the Accreditation and Financing of Students' Associations* (ARAFSA) expressly states that a student association represents its members and acts on their behalf, including by offering them services:²⁰

“3. For the administration of this Act, a students' association or a students' association alliance is an organization whose main purposes are to represent students or students' associations, respectively, and to promote their interests, particularly respecting teaching, educational methods, student services and the administration of the educational institution” (underlining is our own).

More specifically, as with any other service offered by a student association, group insurance is established through the implementation of a student assessment (contribution) following a consultation conducted by the association. The student association is thereby given a mandate, in accordance with Section 52 of the ARAFSA, following a referendum, a general assembly, or both:

“52. To finance its activities, an accredited students' association or students' association alliance, by by-law approved by a majority of the students voting at a special meeting or referendum for that purpose, may fix an assessment payable by each student represented by the alliance.

The by-law must provide whether the assessment is refundable or not and, where such is the case, in which cases and on what conditions it may be refunded” (underlining is our own).

It is therefore clear that a student association has the necessary legal qualifications to act as policyholder in a group insurance master policy, and additionally, that it has legal means to implement such a master policy for its members.

²⁰ *Act Respecting the Accreditation and Financing of Students' Associations*, RSQ c A-3.01, s 3.

3. Does a student association act as mandatory for its members when entering into a group insurance master policy?

Yes.

Once they have been mandated by their members to establish group insurance, and through their representative power referenced above (Section 3 of the ARAFSA), student associations executing the mandate of their democratic bodies bind their members to the group insurance master policy.

It is important to note this point: for all associations that work with ASEQ in Quebec, a member vote was held before establishing a non-mandatory automatic contribution (whether by referendum or at general assemblies held for this purpose). The student association members, the “consumers” (to use a term sometimes employed by the AMF), requested this contribution and approved its objectives and conditions.

It must also be noted that, in rare cases, students voted no to the implementation of a student plan—and consequently, these associations do not offer a plan to their members.

In ASEQ’s case, all the Quebec associations who currently have a plan had a favourable vote; and all those who had a negative vote have no group insurance plan to benefit their members.

The importance of the mandate given by members has been upheld by the courts:²¹

“[translation] 32 The policy is first signed by the policyholder and the insurer, and the policyholder specifically chooses every single condition of the policy. This type of policy is negotiated point by point, paragraph by paragraph, by representatives acting for and on behalf of potential members.

33 Unlike an individual insurance policy, this situation can in no way be said to concern a contract of adhesion” (underlining is our own).

The academic writer Michel Gilbert goes further:²²

“[translation] 53. *Consequences of the power of representation* – Obviously, if the policyholder has the mandate to negotiate and enter into a master policy for the benefit of the group members, the latter will therefore find themselves bound by the terms of the policy entered into between the policyholder and the insurer.

More fundamentally, the members of the group will then be deemed to have negotiated, through the policyholder, the main aspects of the master policy which, therefore, can hardly be qualified as a contract of adhesion within the meaning of the *Civil Code of Quebec*” (underlining is our own).

In group insurance master policy situations, the general rules of a mandate, as set out in the *Civil Code of Quebec*, will therefore apply:²³

“[translation] When the policyholder is vested with the power to represent the members of the group for the purposes of negotiating and concluding the

²¹ *Moreau v Excellence, compagnie d'assurance*, 1999 QCCS CanLII 11490

²² Michel Gilbert, *L'assurance collective en milieu de travail*, 2nd ed. (Cowansville: Éditions Yvon Blais, 2006), 37.

²³ *Ibid.*, p. 37.

master policy, the policyholder's intent supersedes that of the members of the group, pursuant to the rules of the mandate.”

It is therefore as mandatory for its members as defined in the *Civil Code of Quebec* that a student association, following the formal process set out in Section 52 of the ARAFSA, enters into a group insurance master policy.

This mandatory power has clear legal consequences:²⁴

“2160. A mandator is liable to third persons for the acts performed by the mandatory in the performance and within the limits of his mandate unless, under the agreement or by virtue of usage, the mandatory alone is liable.

The mandator is also liable for any acts which exceeded the limits of the mandate, if he has ratified them” (underlining is our own).

Therefore, the rules of the mandate, while more restrictive in relation to a variety of obligations towards the mandator, nevertheless remain very flexible in relation to the notion of consent and adhesion. The student association, when executing the mandate granted by its democratic bodies, is therefore deemed to have made its members adhere.

The mandate granted by student association members has legal consequences. The association has the power to bind its members under the mandate.

²⁴ *Civil Code of Quebec*, a 2160.

4. Is automatic enrolment in group insurance legal under Quebec and Canadian law?

Yes, clearly.

In addition to the general provisions mentioned earlier relating to the mandate held by the student association, it is useful to specifically address the matter of automatic enrolment in group insurance in Quebec law.

Lack of Prohibition

We must first reiterate the principle discussed earlier, and upheld by the Supreme Court of Canada, that to our knowledge, there is no legal standard (law or regulation) that prohibits automatic enrolment in group insurance.

In Canadian law, this argument is not trivial. Neither the AMF nor any other public authority can prohibit behaviour if such a prohibition is not found in a law or regulation.

Wording of Relevant Provisions of Laws and Regulations

Next, it is important to situate group insurance and analyze the legal basis for its existence. In this respect, Article 2392 of the *Civil Code of Quebec* is once again relevant, as is Section 59 of the RARI:

“2392. Insurance of persons covers the life, physical integrity or health of the insured.

Insurance of persons is divided into individual insurance and group insurance.

Group insurance of persons covers, under a master policy, the participants in a specified group and, in some cases, their families or dependents”²⁵ (underlining is our own).

This article sets out the fundamental principles of group insurance of persons in Quebec.

An initial reading, which, as we will see below, was upheld by the courts, appears to indicate that it is ***belonging to the group*** that triggers the coverage: “group insurance of persons covers” individuals “in a specified group.” This article of the *Civil Code* imposes no conditions for the validity of coverage other than belonging to the group.

Of course, in the case of student associations in Quebec, Section 26 of their incorporating act makes ***belonging to the group*** automatic.

Section 59 of the RARI provides additional clarity in the same vein:

“59. A group life insurance contract or a group sickness or accident insurance contract may be issued under a master policy solely to cover the participants in a specified group and, in some cases, their families or dependents” (underlining is our own).

²⁵ *Civil Code of Quebec*, a 2392

Clear Jurisprudence

The principle of automatic enrolment in group insurance under Quebec law was also clearly upheld by the Court of Appeal of Quebec in 1996, by the Honourable Judges Michaud, Beauregard and Otis.²⁶ In their unanimous ruling, these judges clearly asserted that:

“[translation] In the case of group insurance, the insurer does not study each file beforehand but rather automatically insures all persons who are part of a predetermined group, provided that they meet pre-established conditions” (underlining is our own).

This is an interpretation of Article 2392 of the *Civil Code of Quebec* (and of Section 59 of the *Regulation Under the Act Respecting Insurance*), which also emphasizes belonging to the *group*, not enrolling in the insurance.

This decision has been upheld by other rulings in Quebec. In 2013, the Court of Appeal of Quebec, in the words of the Honourable Judges Thibault, Pelletier and Bouchard (unanimous),²⁷ asserted that:

“[translation] a group insurance plan [...] that the appellants benefited from because they belonged to the group of specified persons” (underlining is our own).

The Honourable Judge Dominique Langis then asserted in 2015 that:²⁸

“[translation] The Court of Appeal of Quebec has acknowledged the particularity of group insurance. The insurer of this form of insurance does not study each file beforehand, unlike in an individual insurance contract, but rather automatically insures all persons that are part of a predetermined group, provided that they meet the preconditions” (underlining is our own).

Again in 2018, the Honourable Judge Steve Guénard of the Court of Québec cited²⁹ the Honourable Judge Langis (who herself cited the three judges of the Court of Appeal in the *L'Espérance-Morrisette* case) to explain the automatic nature of group insurance.

Once again in 2018, the Honourable Judge Christian Boutin reiterated the exact same logic and asserted that:³⁰

“[translation] The parties are bound by a group insurance contract. The policy is number 28300, and its effective date is May 1, 2011. By becoming an employee of Services administratifs Cominar inc., the plaintiff thereby became insured for the duration of the policy (*Civil Code of Quebec*, s 2392, 3)” (underlining is our own).

²⁶ *L'Espérance Morrisette v Les coopérants et l'Industrielle Alliance*, 1996 R.R.A. 576

²⁷ *Tremblay v La Capitale, assureur de l'administration publique inc.*, 2013 QCCA 410

²⁸ *Morrisette v Desjardins Sécurité financière*, 2015 QCCQ 9246

²⁹ *Rolland v Compagnie d'assurances du Canada sur la vie*, 2018 QCCQ 463

³⁰ *Akoua v Industrielle Alliance, assurances et services financiers inc.*, 2018 QCCQ 8658

In the same vein, the Honourable Judge Michel A. Caron clearly indicated, *a contrario*, that it is the act of joining the group that triggers the coverage. In the case in question, the group wished to cover dentists who had not joined the association:³¹

“[translation] the Court must conclude that in the absence of a clear provision in a law, and association for which membership is optional and voluntary cannot represent or compel a person who is not one of its members to enrol in a group insurance contract.”

When we juxtapose this last argument with Section 26 of the ARAFSA, which establishes the automatic enrolment of students in their association, the same logic is found, which provides a basis for all the legal rulings pertaining to group insurance and is in perfect agreement with the L’Espérance-Morrisette case cited above.

Finally, we have not even mentioned the numerous legal rulings that, while they do not directly address the matter of automatic enrolment in group insurance, have mentioned this aspect without any judge deeming it necessary to invalidate it.³²

Academic Writers

In addition to these clear rulings from the courts, several academic writers have discussed automatic enrolment in group insurance at length.

The author Michel Gilbert has specifically discussed a scenario that applies perfectly to group insurance plans offered by Quebec student associations. His statement is extremely important:³³

“[translation] 53. *Consequences of the power of representation* – Obviously, if the policyholder has the mandate to negotiate and enter into a master policy for the benefit of the group members, the latter will therefore find themselves bound by the terms of the policy entered into between the policyholder and the insurer.

More fundamentally, the members of the group will then be deemed to have negotiated, through the policyholder, the main aspects of the master policy which, therefore, can hardly be qualified as a contract of adhesion within the meaning of the *Civil Code of Quebec*.

When the policyholder is vested with the power to represent the members of the group for the purposes of negotiating and entering into the master policy, the policyholder’s intent supersedes that of the members of the group, pursuant to the rules of the mandate” (underlining is our own).

Here, the elements referred to previously take on their full importance:

1. The duty of associations to represent the interests of their members;³⁴
2. The capacity of associations to be policyholders in a group insurance master policy;
3. The legal consequences of their representation mandate under the *Civil Code of Quebec*.

³¹ *Sogedent Assurances inc. v Régie de l’assurance maladie du Québec*, 2006 QCCS 3970 at para 25
In this vein, one may consult, for example, *S.M. v Québec (Régie de l’assurance maladie du Québec)*, 2009 QCTAQ CanLII 75119.

³³ Michel Gilbert, *L’assurance collective en milieu de travail*, 2nd ed. (Cowansville: Éditions Yvon Blais, 2006).

³⁴ *Act Respecting the Accreditation and Financing of Students’ Associations*, RSQ c A-3.01, s 3.

The mandate granted by students to their associations, and the power of associations to act as policyholders in group insurance master policies, therefore have legal consequences that are recognized, clear, and understood by the courts and by academic writers in the insurance law field in Quebec.

Student association plans adhere to all these elements in every respect.

Position of the Industry

In addition, the Canadian insurance industry and its Quebec chapter are of the same opinion.

In a letter sent to the AMF in 2016, Lyne Duhaime, President of CLHIA-Quebec, reiterated the insurers' lack of understanding with regard to the AMF's position as it concerns the basic principles of group insurance.

In summary, the understanding that insurers operating in Quebec have of the law is the same as that outlined in the present document: that automatic enrolment in group insurance, regardless of whether a plan is mandatory, is legal under Quebec law.

5. Conclusion

Taking into account all information in the public domain relating to the rules governing group plans such as those of student associations, it would be difficult for an observer acting in good faith to understand the legal foundations of the AMF's position.

Without repeating the other arguments that have been put forward over the years and, it appears, left by the wayside, or the variations on the AMF's rationale, no one understands the origin of the following position: ***because*** a student association allows members to opt out at the beginning of the year, it therefore loses its right to contract group insurance. That the only way to make student plans "legal" would be to either: require individual, voluntary enrolment (making these plans the only group plans in Quebec to have this requirement, despite the clarity of the law in this area, and therefore essentially making the plans individual plans, with all the known consequences [i.e. health questionnaire, increased costs]); or make these plans mandatory, without allowing students to opt out.

We feel that in either scenario, the student plans would be much less suited to the needs of the student community, to students' lives, and to the legal framework governing student associations in Quebec.

B. Section 62 of the *Insurers Act*

In its most recent communications, the AMF presented a novel argument: that student plans are not compliant due to the language in Section 62 of the *Insurers Act*.³⁵ This seems like an opportune moment to elaborate on this element.

The complete wording of Section 62 is as follows:

“62. An authorized insurer must see that the client or the participant, as the case may be, is provided in sufficient time with the information necessary to make an enlightened decision and for contract performance purposes

- (1) if the insurer deals with the client otherwise than through a firm, independent representative or independent partnership registered for an insurance sector; or
- (2) if the 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.

Such information includes

- (1) the extent of the coverage considered and the exclusions;
- (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
- (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.”

³⁵ *Insurers Act*, RSQ, c A-32.1.

1. Historical Background and Jurisprudence

The current version of Section 62 of the *Insurers Act* was enacted in July 2018. This section did not replace another section. It is a new provision that has no history.

It is also important to note that at the time of writing this Memorandum, Section 62 of the *Insurers Act* has not been used in a legal ruling in Quebec.

Finally, the deliberations in the National Assembly when this section was adopted shed little light on the legislator's true intentions, other than to confirm that the legislator wanted specific information to be shared with the client (policyholder) or participant.

2. Analysis

There is therefore little material on which to base an understanding of what AMF means when it cites this section as being the legal basis for the non-compliance of student plans.

A close reading of the section indicates that the insurer must ensure:

- that the participant or client is provided in sufficient time with the information necessary to make an enlightened decision; and
- that this information must include the coverage and exclusions in the policy, the time limits in which a loss must be reported, the time limits within which the insurer is required to pay indemnity provided for in the policy, and information relating to the complaints process.

We have already seen that enrolment in a group insurance plan may be automatic for the participant. But even without taking that fact into consideration, the possibilities inherent in the AMF's position are, in our opinion, not applicable. Either:

- the AMF is referring to information that the ***client*** (i.e. the student association) must have when entering into the master policy, which is currently absolutely the case (the categories of information set out in Section 62 have been in student associations' possession for decades); or
- the AMF is referring to the participants. Again, it has been demonstrated on numerous occasions (and supported in abundance by quantitative data) that students have access to numerous sources of information about their plans.

3. Conclusion

In short, the substantive obligation created by Section 62 seems to us to be that of providing information. This obligation has been fully met by insurers for decades.

We must add that it is surprising that the AMF is using a legal provision from 2018 to justify a decision it made in 2015.

C. Rights and Authority of Participants

As we have seen in the preceding pages, automatic enrolment in group insurance is legal under Quebec law. The notion that the right to opt out that associations grant to their members would substantially modify their rights as policyholders (according to the AMF, by rendering their group plans non-compliant *subito presto*) does not seem well founded to us.

In addition to these arguments, it may be relevant to add commentary on the legal nature of group insurance master policies, as interpreted by Quebec courts.

In essence, the courts have abundantly upheld that group insurance master policies are contracts with three parties (the insurer, the policyholder and the participant), but have stated clearly and explicitly that effectively, participants have few rights.

Whether one is in agreement with the law in this area is not up for discussion in this section. What matters is to highlight the applicable rules in group insurance.

1. Jurisprudence on the Rights of Participants

Numerous rulings have directly or indirectly addressed the rights of participants in group insurance plans. Case law confirms that the members of a group covered by group insurance have little power.

In general, the Honourable Judges Thibault, Pelletier, and Bouchard of the Court of Appeal of Quebec described the status of the relationship between the three parties by stating unanimously in 2013 that:³⁶

“[translation] As the Court set out in *Côté v La Compagnie Mutuelle d’assurance-vie du Québec*, group insurance creates a tripartite relationship between the policyholder, the insurer and the participant. The true stakeholders are the policyholder and the insurers, who can modify the terms of the policy. The participant has no power to negotiate.”

Specifically, various courts have, for example, ruled that master policy policyholders can force their members to enrol in group insurance, rendering it mandatory,³⁷ and that a master policy can be modified through an agreement between the policyholder and the insurer without consultation of the covered persons.³⁸

In summary, whether on general or specific topics, the courts are clear: persons insured under a group insurance master policy have little power. Rather, it is the insurers and policyholders who negotiate the master policy.

³⁶ *Tremblay v La Capitale, assureur de l’administration publique inc.*, 2013 QCCA 410 at para 31

³⁷ For example, one may consult

- *K.M. v Québec (Régie de l’assurance maladie)*, 2018 QCTAQ CanLII 50918 at para 4 and 28
- *Syndicat des employés d’entretien de l’Université de Montréal, section locale 1186 v Université de Montréal*, 2018 QCSAT CanLII 3048 at para 140, 142 and 145
- *Roy v Desjardins, Sécurité financière*, 2017 QCCQ 316 at para 40 and 44
- *Dynamex Canada Inc. v Mamona*, 2002 FCT 393 at para 26

³⁸ *Tremblay v La Capitale, assureur de l’administration publique inc.*, 2013 QCCA 410 at para 73

2. Legal Writings

Unsurprisingly, academic writers in the area of insurance law are also clear and unanimous on these matters.

For example, several academic writers have written that:³⁹

“[translation] Group insurance is, in reality, a tripartite contractual relationship between the insurer, the policyholder and the participants. They are all governed by the same contract. However, in the application of this contractual relationship, only two of these parties, the policyholder and the insurer, are true stakeholders, because they have decision-making power with regard to the formation and taking effect of the contract, its administration, the payment of premiums and claims, and the termination or renewal of the contract.” (underlining is our own).

In the same vein, Jean-Paul Albert characterizes the insured’s lack of power as a fundamental characteristic of group insurance:⁴⁰

“[translation] 16-043. The five fundamental principles of group insurance are as follows:

[...] the insured employee cannot choose the amount or type of coverage, in order to prevent the employee from choosing coverage that would be beneficial for him or herself, but disadvantageous for the plan overall” (underlining is our own).

Finally, in a citation that applies perfectly to student associations, Michel Gilbert writes:⁴¹

“[translation] 53. *Consequences of the power of representation* – Obviously, if the policyholder has the mandate to negotiate and enter into a master policy for the benefit of the group members, the latter will therefore find themselves bound by the terms of the policy entered into between the policyholder and the insurer.

[...]

When the policyholder is vested with the power to represent the members of the group for the purposes of negotiating and entering into the master policy, the policyholder’s intent supersedes that of the members of the group, pursuant to the rules of the mandate [...]” (underlining is our own).

³⁹ Isabelle Nadia Tremblay, Suzanne Hardy-Lemieux, Alain Roch, Isabelle Hudson and André Bois, *L’assurance de personnes au Québec. L’assurance collective – Les parties en présence*, vol. 1 (Montreal: LexisNexis, 2022), 1-4345 and 1-4346.

⁴⁰ Jean Paul Albert, *Guide sur les régimes de retraite et les avantages sociaux au Québec*, 5th ed. (Montreal: LexisNexis Canada, 2020)

⁴¹ Michel Gilbert, *L’assurance collective en milieu de travail*, 2nd ed. (Cowansville: Éditions Yvon Blais, 2006).

3. Conclusion

It is relevant to revisit these elements because the AMF's actions regarding student plans at times appear to draw on consumer protection (which is legally not the purview of the AMF, but rather of the Office de protection du consommateur, and ultimately, of the Minister of Justice), in that they appear to confuse individual insurance (in which a person takes positive action by voluntarily purchasing insurance coverage) and group insurance (in which the policyholder makes decisions on behalf of its members). We therefore feel that it is relevant to review the elements above.

D. Sound Commercial Practices

Another subject that merits the attention of parties interested in student plans is the possible impact of the AMF's Sound Commercial Practices on such plans.

We must first specify that the Sound Commercial Practices published by the AMF are neither laws voted on by the National Assembly nor regulations approved by the Cabinet. However, they are rules set out by the AMF that aim to guide actors in the insurance industry (and others) to ensure the fair treatment of “consumers.”⁴²

We will provide an overview of the main Sound Commercial Practices promoted by the AMF and determine whether student plans appear to fail to meet these obligations—should they apply.

Page 3 of the *Sound Commercial Practices Guideline* presents topics with which financial actors must concern themselves:⁴³

1. Fair treatment of consumers is a core component of the governance and corporate culture of the financial institution.
2. The design and marketing of new products take into account the needs of the various target consumer groups.
3. Consumers have information allowing them to be properly informed and make enlightened decisions regarding products, before, during and after the purchase thereof.
4. Incentives do not affect the fair treatment of consumers.
5. Product advertising is accurate, clear and not misleading.
6. Claims are examined diligently and settled fairly, using a procedure that is simple and accessible to claimants.
7. Complaints are examined diligently and fairly, using a procedure that is simple and accessible to consumers.
8. The protection of the confidentiality of personal information policy adopted by a financial institution ensures compliance with the provisions of *An Act Respecting the Protection of Personal Information in the Private Sector* and reflects best practices in this area.

Points 4, 6, 7 and 8 do not appear to have been the subject of any communications from the AMF regarding student plans. We will therefore briefly analyze points 1, 2, 3 and 5.

⁴² One can easily argue that the term “consumer” is difficult to apply to the context of group insurance, except when referring to the policyholder. As seen in previous sections, a specific characteristic of group insurance is that it essentially allows a policyholder and insurer to enter into a master policy and apply this policy to the policyholder's members.

⁴³ Autorité des marchés financiers, “Ligne directrice sur les saines pratiques commerciales,” June 2013: 3. Document consulted online on September 5, 2022: https://lautorite.gc.ca/fileadmin/lautorite/reglementation/lignes-directrices-assurance/ligne-directrice-saines-pratiques-commerciales_fr.pdf

1. Fair Treatment of Consumers

If we accept that the Sound Commercial Practices were developed with group members covered by group insurance in mind—which appears to be far from the case—we can attempt to understand the AMF’s expectations by analyzing the document. Again on page 3, the AMF describes the aspects related to the fair treatment of consumers as follows:

1. The confidence of consumers when dealing with a financial institution
2. Whether the products offered are suited to the target group’s needs
3. The accessibility of information to consumers throughout the product’s purchase cycle⁴⁴
4. Whether products are consistent with how they are represented publicly
5. The ease with which a complaint or claim can be filed

While all actors in the area of student plans (student associations, financial services firms, insurers, etc.) are always willing to improve their practices, none of the five points mentioned here appear to present any issues.

In the case of ASEQ, the insurer for associations located in Quebec is Desjardins Financial Security. We believe that this institution’s reputation is one of the best in Quebec, if not indeed the best.

The coverage offered by the products ***is*** perfectly suited to students’ needs. The usage figures prove this without a shadow of a doubt. Additionally, these products have all been approved through the democratic consultation of student association members. It is therefore difficult to argue that they do not meet the ***right*** needs. We would even go so far as to say that, in their current form, student group insurance plans are precisely calibrated to suit those needs; in short, that modifying them in one way or another would go ***against*** the Sound Commercial Practices.

The information available is abundant, clear, and accessible at any time. While improvements are always possible, the simple fact that over 85,000 students opt out of the contributions each year, and that the remaining students use the plans extensively, demonstrates that the information (both for opting out of the contribution and for learning how to use the coverage) is sufficient.

The physical, psychological, and dental health products are straightforward and do not appear to present any issues regarding their consistency with the information provided.

Finally, given the hundreds of thousands of claims submitted over the years and the complaints received by the AMF, no one can claim that these mechanisms are deficient.

In short, the AMF’s expectations for the fair treatment of consumers appear, in our opinion, to be fully met.

⁴⁴ Here again is an element that is difficult to apply to group insurance: the AMF refers to the “purchase” of products by the consumer in its guideline, but as we have seen, the negotiation to “purchase” group insurance, as upheld by Quebec courts for decades, takes place between the policyholder and the insurer, and does not involve each insured individual.

2. Suitability of Products for Needs

As mentioned above, two main arguments satisfy the AMF's expectations in this area:

- The products have been used in abundance for decades.
- The products are approved through the democratic consultation of students.

And of course, the policyholder approves for these products to be distributed to its members.

This precise element is without a doubt the most important for the current actors involved in student plans. Within the reality of student life, in compliance with the democracy required by the *Act Respecting the Accreditation and Financing of Students' Associations*, the products offered seem to us to be perfectly aligned with the needs of student associations—and of their members.

3. Information During the Purchasing Process

Again, the *Sound Commercial Practices Guideline* appears, in our opinion, to be a foreign document in the context of the legal framework applicable to group insurance. But for the purposes of this document, we will posit that if the information were not sufficient or adequate, one of two scenarios would arise:

1. Too many students would be unable to opt out of the student contribution (due to a lack of information), and the premiums collected would be significantly unbalanced with the claims paid, the usage rate of student plans being the best indicator of this ratio; or
2. Too many students would be unable to make claims (due again to a lack of information), and the usage rate would be much too low to justify the existence of student plans.

In short, the simple fact that nearly 30% of students opt out of contributing to the plans, and that year after year, the overall usage rate of student plans is between 85% and 90%, demonstrates that the information needed to opt out and to make claims is perfectly suited to the prices paid by students.

The proof is in the pudding: hundreds of thousands of transactions that take place each year (including both opt outs and claims), which demonstrates that the information is available for anyone who wishes to obtain it.

4. Accuracy of Advertising

Again, the hundreds of thousands of annual transactions show, both in terms of opt outs and claims, that the information shared with the insured members is adequate, accurate, and clear.

5. Conclusion

In short, even if we cast doubt on the basic premise by treating group insurance plan participants as “consumers” who make a “purchase,” the rules set out by the AMF are, in our opinion, being followed. We remind you that student plans have existed for over 25 years and have long been an integral part of campus life. They are not hidden. They are adopted democratically and transparently and widely used by students. They clearly meet the needs of these groups.

General Conclusion

- Student associations' group plans are born from the democratic will of the student associations' members, from their positive action of voting collectively in favour of implementation by virtue of a clear legal framework that has been upheld before the courts.
- This vote gives a clear mandate to student associations to establish such plans.
- Students who wish to opt out of the student contribution that funds student associations' group plans do so in large numbers.
- Students who do not opt out of the contribution use their plans at very high rates.
- These plans have been part of university and college life for decades.
- These plans adhere to laws and regulations, jurisprudence, legal writings, and industry practices in the field of group insurance in Quebec.
- The AMF's approach appears to us to lead to two possible logical conclusions, neither of which is desirable in our view: the end of group plans and their conversion to individual plans, or the creation of mandatory plans.

We feel that these are the overarching conclusions that one must come to when examining the issue of group plans offered by student associations in Quebec.

Of course, these plans exist in an evolving environment that is constantly changing, if only because technology is constantly changing. We therefore can—and *must*—continue to refine the practices of these plans, whether with regard to covered benefits (i.e. the addition of psychology benefits a number of years ago), communications (i.e. following changes on social media), or the understanding of the student community's social reality (i.e. the creation of the Social Collective by ASEQ).

This is exactly what ASEQ has been doing for over 25 years. As a leader in this segment of the insurance market, ASEQ has been making improvements and innovating since it was founded. It has done so while adhering to the existing framework of standards, and of course, remaining open to improving its practices and adapting them to students' changing lives.

We sincerely hope that the points presented in this document will be able to convince the AMF that the current situation of student group insurance plans does not require intervention on its part.

However, if despite all the information provided in this document as well as all of the positions expressed by Quebec student associations, the AMF does not modify its position, we still hope that the AMF will come to two general conclusions:

- Student plans are good products, highly used, and adapted to the needs of student association members.
- The legal arguments that support these plans cannot be completely ignored.

Next Steps

Although ASEQ, in good faith, is absolutely convinced that no legislative or other changes are necessary, we understand that it is possible that the AMF may not share this opinion at the end of its consultation. If this were to be the case, we suggest that the course of action to pursue would then be to aim to clear up any legal uncertainty that might remain.

We believe that student plans are good products, and that the two other possibilities (i.e. individual plans or mandatory group plans) would create more problems than solutions.

Therefore, if despite all the displays of support for student plans that we are confident the AMF will receive during its consultation, the AMF still finds that its original position has not changed, we then submit the following three points:

- First, if the position of the AMF remains the same after the consultation, it seems certain to us that a number of actors involved in the student community and the world of group insurance will question the relevance of said consultation—an issue of reputation, in our opinion, concerning the credibility of the exercise and its participants.
- Secondly, instead of forcing conversions into products that seem to us certainly less desirable, we hope that the AMF will instead choose to eliminate any legal doubt it identifies, with the clear objective in mind of allowing student plans as they exist today to continue to be offered.
- Finally, we would like to express our wish that in the future, the AMF will communicate more frequently and more clearly with the actors involved in student plans.

Regarding the first point, it should suffice to recall the doubts expressed by student associations last winter when the AMF announced its consultation, and their request—which was refused—that the AMF not be in charge of said consultation, because its position already seemed very firm. Without resorting to cynical arguments, it would certainly be strange to find that all of this has served absolutely no purpose—that nothing, absolutely nothing, in the numerous testimonials and in all the information received by the AMF has changed its position by one iota. This would send a very peculiar message about the nature of the consultation that is coming to a close.

Regarding the second point, we repeat: students want these products and use them extensively. This is not “hidden” protection, included without students’ knowledge inside more prominent financial tools and on which the policyholder did not collectively consult them—quite the contrary! Also, our understanding of the AMF’s position on automatic enrolment seems to us a relatively minor issue in comparison to the immense benefits offered by these plans, and to the democratic governance exercised in their implementation and in the years that follow.

We would venture to believe that the AMF is of the opinion that these are good products. If at the end of its consultation, the AMF still thinks that uncertainties exist, then let us work together to resolve them, whether it be to address them in a general manner for group insurance in Quebec, or to address them in a precise manner only for these specific plans. For our part, ASEQ commits to participating in this exercise if the AMF should decide to take this direction.

And finally, regarding the third point, all we can do is reach out (as we have done in the past) to improve communication between the AMF and the actors involved in student plans. In all honesty, it seems inconceivable to us that after more than 6 years of work by the AMF, we—as subjects whose rights can be recognized and exercised in court—are still uncertain of the true position of the AMF. We are firmly convinced that more regular discussions, perhaps even a permanent mechanism of exchange, would be much more beneficial for all actors involved—including the AMF.

Ultimately, everyone wants the rules to be respected—and the first step to ensuring that seems to us to be for everyone to share their understanding of the nature of these rules.

Here again, ASEQ would be happy to be able to regularly discuss these issues with the AMF—if this invitation has been well received, we also commit to being responsible and constructive participants in this. As we have mentioned on numerous past occasions, ASEQ also remains committed to collaborating with the AMF on any other issue raised by the latter.

In closing, we can only reiterate our conviction that the group plans offered by insurers, in collaboration with firms such as ASEQ and Major Group and at the request of Quebec student associations, do useful work and respond to real social needs.

We hope that the AMF will reach the same conclusion, and that even if this is not the case, the AMF will choose a dialogue-based approach and focus on what is truly important—helping students who need it.



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