

Court File No.:

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**B E T W E E N:**

**UNIVERSITY OF OTTAWA STUDENT'S UNION**

**Plaintiff**

**- and -**

**GREEN SHIELD CANADA**

**Defendant**

**STATEMENT OF CLAIM**

**TO THE DEFENDANT**

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

**IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a Statement of Defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the Plaintiff' lawyer or, where the Plaintiff do not have a lawyer, serve it on the Plaintiff, and file it, with proof of service in this court office, WITHIN TWENTY DAYS after this Statement of Claim is served on you, if you are served in Ontario.**

**If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your Statement of Defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.**

**Instead of serving and filing a Statement of Defence, you may serve and file a Notice of Intent to Defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your Statement of Defence.**

**IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.**



IF YOU PAY THE PLAINTIFF'S CLAIM, and \$5,000 for costs, within the time for serving and filing your Statement of Defence you may move to have this proceeding dismissed by the Court. If you believe the amount claimed for costs is excessive, you may pay the Plaintiff claim and \$400 for costs and have the costs assessed by the Court.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

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Date \_\_\_\_\_ Issued by \_\_\_\_\_  
Local Registrar

Address of  
court office:

**TO: GREENSHIELD CANADA**  
5140 Yonge Street, Suite 2100  
Toronto, ON  
M2N 6L7

**Jordan Ingster**  
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Lawyer for Greenshield Canada

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## CLAIM

1. The Plaintiff, University of Ottawa Student Union (“UOSU”), claims from the Defendant, Green Shield Canada (“Green Shield”), as follows:

- a. A Declaration that the Claims Fluctuation Reserve funds and those in addition to the Claims Fluctuation Reserve Funds (“Reserve Funds”), as defined in the Retention Accounting Agreement, currently held by Green Shield, or a portion of said funds, constitute an express or constructive trust for the benefit of the University of Ottawa undergraduate student body, as represented in this action by the UOSU;
- b. An Order that any deficits in revenue incurred in the Green Shield Canada Group Benefit Plan during the 2018-2019 and 2019-2020 benefit period be paid from the Reserve Funds held by Green Shield;
- c. An Order that all remaining Reserve Funds currently held by Green Shield be held in escrow in a separate account, subject to the limitations set out above in 1(b), pending the determination of the within action;
- d. Prejudgment and post-judgment interest in accordance with the *Courts of Justice Act*;
- e. Costs of this action on a substantial indemnity basis, including all applicable taxes thereon; and,
- f. Such further and other relief as this Honorable Court may deem just.

## THE PARTIES

2. The Defendant, Green Shield, is a not-for-profit prepaid health benefits company with regional offices in Toronto, Ontario, Canada.



3. The Plaintiff, UOSU, is the exclusive, democratically elected student association representing undergraduate students registered at the University of Ottawa. Effective May 1, 2019 it represents the interests of the University of Ottawa's undergraduate student body pursuant to Articles 1.2 and 2.1 of the UOSU Constitution.

#### **RELATIONSHIP BETWEEN THE PARTIES**

4. At all material times, undergraduate students at the University of Ottawa funded a health and dental benefit program. This program was created by a student referendum authorizing the creation of a separate, mandatory student fee which is restricted in use for the sole purposes of the health and dental program.

5. Until April 30, 2019, the Student Federation of the University of Ottawa ("SFUO") acted as the elected student association representing undergraduate students registered at the University of Ottawa.

6. The SFUO entered into a not-for-profit Group Benefit Plan Contract with Green Shield on or about September 10, 2010 ("**Green Shield Contract**" or "**Plan**") and a Retention Accounting Agreement on behalf of the undergraduate students of the University of Ottawa. This agreement is still in place today; however, it is set to expire on April 30, 2019.

7. The Green Shield Contract was for the provision of prepaid health and dental benefits, defined as "Eligible Services", to eligible Plan Members and eligible dependents.

8. The Plan Members are contractually defined as, *inter alia*, eligible University of Ottawa undergraduate students and St. Paul University Students.





9. From 2010 to the date of pleading, the Green Shield Group Benefit Plan was administered by the SFUO as the Plan Sponsor.

10. In a democratic referendum held February 8-11, 2019, undergraduate students at the University of Ottawa chose the UOSU to represent them over the SFUO.

11. Pursuant to Article 1.2 of the UOSU's Constitution, UOSU's mandate is as follows:

*1.2 The mandate of the UOSU is to advocate on behalf of and provide services to undergraduate students at the University of Ottawa. The UOSU shall work to improve the academic and social lives of its Members, and to create a fairer and more inclusive academic and social environment at the University of Ottawa.*

#### **GREEN SHIELD GROUP BENEFIT PLAN CONTRACT AND GREEN SHIELD RETENTION ACCOUNTING AGREEMENT**

12. The Green Shield Contract is a contract of prepayment. The preamble and Section 2 of the Green Shield Contract state as follows:

- a) *“This is a contract of prepayment”. Its purpose is to arrange for the prepayment of the costs of Eligible Services provided to, and consumed by, eligible Plan Members and their covered dependents of the Plan Sponsor.”* (preamble and recitals)
- b) *“.....this Contract will be effective and binding on Green Shield and the Plan Sponsor and on behalf of and for the benefit of eligible Plan members and their dependents.”* (section 2, Page 3)

13. Under Section 1 of the Green Shield Contract, Plan Members are individuals who met the eligibility requirements.



14. Pursuant to section 3 of the Green Shield Contract, SFUO had the administrative responsibility of providing Green Shield with the written particulars of the eligible persons to be enrolled as Plan Members and/or their Dependents.

15. Green Shield is not an insurer and the retention accounting agreement is not a profit-sharing contract.

16. By contrast, the Group Benefit Plan prepayment or “retention accounting” model sees individual eligible students (Plan Members), who are the beneficiaries of the Plan, prepay Green Shield for services that they may or may not require in the future (“**Health Plan Fees**”). No funds come from the SFUO, who acts as the Plan Sponsor (administrator) and Trustee for the Health Plan Funds.

17. Any prepaid funds that are not used within a certain calendar year accrue to the benefit of the Plan Members. As per Article 5.1 of the Retention Accounting Agreement, surpluses are calculated annually at the end of each benefit year based on the rates paid less actually claims paid, in addition to limited other charges. Surpluses are allocated into a distinct Claims Fluctuation Reserve (“**CFR**”) until it is fully funded. The CFR is used to offset claims and administration cost fluctuations in excess of the base rate paid. Surplus in excess of a fully funded CFR are kept in a separate and distinct account. Together the CFR plus funds in excess of the CFR are collectively referred to herein as the Reserve Funds as per section 2 of the Green Shield Contract. . Among other things, the Reserve can be used to offset a loss situation in the future (where the claims are greater than the pre-paid costs) or to increase the overall scope of coverage.

18. Undergraduate students pay the Health Plan Fees alongside their tuition to the University of Ottawa, who transferred said funds to the SFUO under an Agreement between the SFUO and



the University of Ottawa dated July 8, 2012. This agreement was terminated on December 24, 2018. The SFUO Health Plan Fees were kept separate and distinct from all other SFUO income and remitted in their entirety to Green Shield.

19. Subsequent to December 24, 2018, the transfer of funds was governed by an Interim Agreement. Under this Agreement the Health Plan Fees were to be transferred directly from the University to Green Shield, or alternatively to the SFUO to be immediately transferred to Green Shield.

20. From May 1, 2019 forward, the Health Plan Fees will be collected by the University of Ottawa and remitted to the UOSU pursuant to Section 3.1 of the Main Agreement, dated April 8, 2019, between the University of Ottawa and the UOSU. They will be transferred to Green Shield.

21. Health Plan Fees are not to be intermixed with its other revenue streams as they represent prepaid costs of eligible services by individual student members; as a result of this:

- i. Health Plan Fees do not appear in the SFUO or the UOSU revenues;
- ii. Health Plan Fees are a separate line item on students' university invoices;
- iii. Health Plan Fees are tracked and managed and transferred separately by the University to the SFUO and now the UOSU;
- iv. When the SFUO's agreement with the University was terminated in December 2018, the Interim Agreement specifically provided that the Health Plan Fees would be transferred directly from the University to Green Shield, or if necessary, the SFUO purely to immediately hand over to Green Shield.



v. When the SFUO improperly used Health Plan funds for its operating budget, it had to create a special accounting in its audited financial statements, and a separate agreement with Green Shield, to pay back the funds out of its operating budget and not out of Health Plan Fees.

22. The Health Plan Fees and any accrued reserves cannot be used for any other purpose by Green Shield, the SFUO or the UOSU as any reserves accrue to the benefit of the student beneficiaries who are Plan Members.

23. To this end, the Plan Members, as represented by SFUO, entered into a Retention Accounting Agreement for the Group Benefit Plan Contract with Green Shield on or about 2010.

#### **FUNDS HELD BY GREEN SHIELD**

24. The Plaintiff states that Green Shield has collected premiums from students pursuant to Plan Members (both University of Ottawa and St-Pauls students) and paid out claims pursuant to the Plan.

25. Green Shield holds a substantial Reserve funds of \$1,022,887.76 as of August 31, 2018, which sum is increasing, and which was generated through the collection of premiums. The Plaintiff states that the Reserve are trust funds being held for the benefit of the Plan Members, University of Ottawa and St-Pauls students.

26. The Retention Accounting Agreement confirms the common industry understanding that accrued Reserves are not “surplus” to the needs of the Plan. Prepaid costs not immediately needed to pay for services are held as Reserves by the Plan Sponsor in student health plans. They are an essential tool for the financial management of the Plan. In any given year, the Plan may incur





surpluses or deficits, with the resulting funds transferred to or from the reserve funds, which provide long term stability and risk mitigation.

27. If Green Shield incurs future deficits, as it has in the past and may in the future, these excess funds which are held in a separate account may still be needed to fund the operation of the Plan. If the SFUO chose to leave the funds on deposit with Green Shield, at least temporarily, that did not change their nature as funds paid by students, restricted to the Health Plan, and held in trust by the SFUO for the benefit of the Plan Members.

28. SFUO's bylaws and referenda reinforce and further articulate the beneficial interest held by Plan Members in the Reserve funds.

29. Section 6.2.1 of SFUO's bylaws expressly states that the Health and Dental plan belongs to the Plan Members:

*6.2.1 Contracts and agreements related to the members' health and dental plan shall be negotiated and subject to renewal on an annual basis.*

30. This is reinforced by virtue of section 9.2, 9.3 and 2.3.3. of SFUO's bylaws which exclude the Health and Dental plan as part of the funds expressly owned and operated by SFUO.

## **RESERVE FUNDS ARE HELD BY AN EXPRESS TRUST**

31. The Plaintiff states that the Reserve Funds are held by an express trust by Green Shield for the benefit of the Plan Members:

- a. The Reserve funds were created with certainty of intention that the prepaid monies, restricted to the Health Plan, be held in trust for the benefit of the students by the Plan Sponsor and Green Shield Canada;



- b. The Health Plan Fee is restricted in use for the sole purposes of the Health Plan;
- c. All revenues for the Plan come from fees from eligible students, who are the beneficiaries of the Plan;
- d. The Reserve funds are held in trust with certainty of object and beneficiaries;
- e. The Plan Members are clearly identifiable as the beneficiaries of the prepaid funds, including but not limited to the Reserve Funds;
- f. No funds come from the SFUO itself, who acts as the Plan Sponsor (administrator) on behalf of the members students, who are the beneficiaries, and as Trustee for the Health Plan funds;
- g. The Reserve Funds are held in trust with certainty of subject matter as the funds are clearly identifiable or traceable. At all material times, the Plan Sponsor and Green Shield can determine how much Plan Member beneficiaries of the trust are entitled to receive.

## **BREACH**

32. Green Shield has been asked unilaterally to remit the reserve funds to SFUO, as represented by its Receiver in Bankruptcy for SFUO's own use and benefit.

33. In breach of its contractual and/ or fiduciary obligations in equity, Green Shield has not acknowledged that the Plan Members have beneficial ownership over the funds held by Green Shield.



34. The Plaintiff states that the University of Ottawa undergraduate students are entitled to and have a proprietary interest in all or some of reserve funds for the sole benefit of the Plan Members.

35. Therefore, the representative Plaintiff states that it is entitled to the relief set out in paragraph 1.

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### **UNJUST ENRICHMENT**

36. In the alternative, the representative Plaintiff claims the Reserve Funds are held in a constructive trust as restitution from the Defendant's unjust enrichment.

37. The Plaintiff pleads and relies upon the doctrine of unjust enrichment. The Plaintiff states that the Defendant was enriched by the prepayment of claims by Plan Members pursuant to the the Health Plan; the Plan Members suffered a corresponding loss to their detriment should the funds not be used for their benefit; and there is no juristic reason for the benefit.

### **DAMAGES**

38. The representative Plaintiff, states that it has and will continue to suffer damages in an amount that cannot yet be known as a result of the breach of contract by Green Shield. The full particulars of these damages will be provided prior to the trial of this action.

39. The representative Plaintiff proposes that the trial of the action be held at the City of Ottawa.



April 24, 2019

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