

ONTARIO SUPERIOR COURT OF JUSTICE

BETWEEN:

DANIEL DIXON, DAVINA DIXON and
REBECCA DIXON

Plaintiffs

-and-

DR. NORMAN BARWIN

Defendant

Proceeding under the Class Proceedings Act, 1992

STATEMENT OF CLAIM

TO THE DEFENDANTS:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiffs. 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 Plaintiffs' lawyer or, where the Plaintiffs do not have a lawyer, serve it on the Plaintiffs, 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.

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.

Date: November 1, 2016



Local Registrar

Address of Court Office:
161 Elgin Street
Ottawa, ON K2P 2K1

TO: Dr. Norman Barwin
c/o Karen Hamway
Gowling WLG (Canada) LLP
2600-160 Elgin Street
Ottawa, ON K1P 1C3

CLAIM

1. The Plaintiff, Rebecca Dixon, claims on her own behalf and on behalf of all members of her Plaintiff class against the Defendant:
 - a. General damages for pain, suffering and loss of enjoyment of life;
 - b. Special damages in an amount yet to be determined for out-of-pocket costs, the particulars of which will be provided prior to trial;
 - c. Damages for loss of income, loss of competitive position in the employment market and/or other economic loss in amounts yet to be determined, the particulars of which will be provided prior to trial;
 - d. Damages for past and future care costs, including any subrogated claim on behalf of OHIP, the particulars of which will be provided prior to trial;
 - e. To the extent that Rebecca or any member of her Plaintiff Class required child support, the loss of opportunity to pursue the Defendant for child support under the *Family Law Act*, R.S.O. 1990, Chapter F.3;
 - f. An Order that the Defendant provide the Plaintiff Rebecca Dixon and all members of her Plaintiff class with a DNA sample for the purposes of determining whether or not the Defendant is their biological father;
 - g. Punitive damages;
 - h. Pre-judgment and post-judgment interest in accordance with the *Courts of Justice Act*, R.S.O. 1990, c. C43 as amended;
 - i. Costs of this action on a substantial indemnity basis plus HST; and
 - j. Such further and other relief as this Honourable Court may deem just.

2. The Plaintiff, Davina Dixon, claims on her own behalf and on behalf of all members of her Plaintiff class against the Defendant:
 - a. General damages for pain, suffering and loss of enjoyment of life and damages for breach of contract;
 - b. Special damages in an amount yet to be determined for out-of-pocket costs, the particulars of which will be provided prior to trial;

- c. Damages for loss of income, loss of competitive position in the employment market and/or other economic loss in amounts yet to be determined, the particulars of which will be provided prior to trial;
 - d. Damages for past and future care costs, including any subrogated claim on behalf of OHIP, the particulars of which will be provided prior to trial;
 - e. An Order that the Defendant preserve any and all records in relation to Davina Dixon and the members of her Plaintiff Class;
 - f. Punitive and aggravated damages;
 - g. Pre-judgment and post-judgment interest in accordance with the *Courts of Justice Act*, R.S.O. 1990, c. C43 as amended;
 - h. Costs of this action on a substantial indemnity basis plus HST; and
 - i. Such further and other relief as this Honourable Court may deem just.
3. The Plaintiff, Daniel Dixon, claims on his own behalf and on behalf of all members of the Plaintiff Daniel Dixon's class against the Defendant:
- a. General damages for pain, suffering and loss of enjoyment of life and damages for breach of contract;
 - b. Special damages in an amount yet to be determined for out-of-pocket costs, the particulars of which will be provided prior to trial;
 - c. Damages for loss of income, loss of competitive position in the employment market and/or other economic loss in amounts yet to be determined, the particulars of which will be provided prior to trial;
 - d. Damages for past and future care costs, including any subrogated claim on behalf of OHIP, the particulars of which will be provided prior to trial;
 - e. An Order that the Defendant preserve any and all records in relation to Daniel Dixon and the members of his Plaintiff class;
 - f. Punitive and aggravated damages;
 - g. Pre-judgment and post-judgment interest in accordance with the *Courts of Justice Act*, R.S.O. 1990, c. C43 as amended;
 - h. Costs of this action on a substantial indemnity basis plus HST; and
 - i. Such further and other relief as this Honourable Court may deem just.

PARTIES

4. The Plaintiff, Rebecca Dixon (“Rebecca”), is an individual who resides in the City of Ottawa in the Province of Ontario. Rebecca was born on June 1, 1990 and is presently 26 years of age. Rebecca brings this action pursuant to the *Class Proceedings Act, 1992* on behalf of the following class:

All persons who were conceived at the Broadview Fertility Clinic with the wrong biological material i.e. with biological material other than the material selected or chosen by their parents for the purposes of artificial insemination.

5. The Plaintiff, Davina Dixon (“Davina”), is an individual who resides in the City of Ottawa in the Province of Ontario. At all material times, Davina was married to the Plaintiff Daniel and is the mother of the Plaintiff Rebecca. Davina brings this action pursuant to the *Class Proceedings Act, 1992* on behalf of the following class:

All patients of Dr. Barwin who were inseminated at the Broadview Fertility Clinic with the wrong biological material i.e. with sperm other than the sperm they consented to being used by Dr. Barwin for the purposes of artificial insemination.

6. The Plaintiff, Daniel, is an individual who resides in the City of Ottawa in the Province of Ontario. Daniel is married to Davina and is the father of Rebecca. Daniel brings this action pursuant to the *Class Proceedings Act, 1992* on behalf of the following class:

All patients of Dr. Barwin:

- a) who were not inseminated by way of artificial insemination at the Broadview Fertility Clinic, but became a parent to a child conceived with the assistance of Dr. Barwin and whose DNA does not match the DNA of the child’s intended sperm donor and/or;
- b) who provided their sperm to Dr. Barwin to be used for artificial insemination pursuant to their instructions and it was not so used; and/or
- c) who provided their sperm to Dr. Barwin for safe-keeping and preservation and it was not.

7. The Defendant, Dr. Barwin, was a duly qualified medical practitioner who represented himself to the Plaintiffs as a specialist in infertility. At all material times, Dr. Barwin was

the director and owner of the Broadview Fertility Clinic (the "Clinic") and was vicariously liable for the conduct, representations, omissions and/or negligence of the Clinic's employees, agents, servants and contractors.

BACKGROUND

8. Davina and Daniel wanted to become parents but were unable to conceive a child. In and around 1989, Davina and Daniel contracted with Dr. Barwin and the Clinic for the purposes of assisting them in conceiving a child together.
9. Before starting fertility treatments, Dr. Barwin collected and stored a sample of Daniel's sperm at his Clinic. During her fertility treatments, Davina believed and Dr. Barwin represented to her that he was inseminating her with her husband's biological material, that is, sperm belonging to Daniel. At all material times, Daniel and Davina intended that Daniel's sperm and **only** Daniel's sperm would be used to inseminate Davina.
10. Davina and Daniel returned to Dr. Barwin's clinic on a number of occasions in 1989 for insemination attempts. Before each attempt, Dr. Barwin would show Daniel and Davina the straw containing Daniel's sperm which was labeled with Daniel's name.
11. As a result of the artificial insemination procedures, Davina became pregnant in or around the fall of 1989. She gave birth to Rebecca on June 1, 1990.
12. From the time of Rebecca's birth and into her childhood, teenage, and young adult years, Rebecca, Daniel, and Davina believed that Rebecca was Daniel's biological daughter.
13. It was not until 2016 that the Plaintiffs began to worry that there may have been a mix-up in Dr. Barwin's Clinic. In or around February 2016, Davina saw a Facebook post that stated words to the effect that it was unusual for two individuals with blue eyes to give birth to a child with brown eyes. She was concerned because she and Daniel have blue eyes and Rebecca has brown eyes.

14. Davina assumed the Facebook post could not be true, but nonetheless booked an appointment with her family doctor in hopes that he would reassure her that the Facebook post was a myth. Rather than allay Davina's fears, her family doctor suggested that the family perform a DNA test as between Rebecca and Daniel. Alternatively, he suggested that they test Rebecca's blood type as against Daniel's blood type.
15. The Plaintiffs proceeded with testing Rebecca's blood type. She tested as type O-positive. Daniel has type AB blood.
16. From available medical and other research, the Plaintiffs learned that it was impossible for an individual with type AB blood to conceive a child with type O blood.
17. By way of paternity DNA test dated April 15, 2016, the Plaintiffs confirmed that Daniel could not be the biological father of Rebecca. The probability of his paternity was 0.0%.

Dr. Barwin is Rebecca's biological father

18. After discovering that Daniel was not Rebecca's biological father, the Plaintiffs researched the media coverage regarding prior legal proceedings that had been commenced against Dr. Barwin. They could not help but notice that Rebecca bore an uncanny physical resemblance to Dr. Barwin.
19. In or around May 2016, Rebecca submitted a sample of her DNA to the ancestry website known as 23andMe. Through this website, she learned that her largest ancestry composition was Ashkenazi Jewish in the range of almost 60 percent.
20. Dr. Barwin is a well-known member of the Jewish community in Ottawa.
21. In September 2016, Rebecca connected over the Internet with a woman named Kathryn Palmer ("Kat") who lives in Vancouver, British Columbia and who Rebecca learned is a biological child of Dr. Barwin.
22. Kat was born on January 31, 1991 and is presently 25 years of age. Like Rebecca, she was conceived at Dr. Barwin's Clinic in Ottawa. Her parents, Lyon and Janet Palmer

(respectively, “Lyon” and “Janet”), saw Dr. Barwin for his help in conceiving a child in or around the beginning of 1990 due to fertility problems. Lyon and Janet decided to proceed with artificial insemination by way of an anonymous sperm donor. They specifically selected an anonymous sperm donor with certain traits and characteristics that were important to them.

23. With Dr. Barwin’s assistance, Janet became pregnant in the spring of 1990 and gave birth to Kat on January 31, 1991. At all material times, Dr. Barwin represented to Janet and to Lyon that he was using the anonymous sperm selected by Janet and Lyon for the purposes of inseminating Janet. Until late 2015, Kat and her parents believed that Kat was conceived with anonymous sperm.
24. In or around the summer of 2015, Kat became curious about her genetic background. In hopes of finding her half-siblings, and perhaps even locating her sperm donor, Kat submitted a sample of her DNA to the ancestry website Family Tree DNA. Through this company, Kat was matched with a second cousin who lived in New York City. Kat was immediately in touch with this match and, in tracing the cousin’s family history, she determined that this cousin was a relative of Dr. Barwin.
25. In August 2015, Kat contacted Dr. Barwin with this information and inquired into whether he was her biological father. Dr. Barwin took it upon himself to conduct a DNA test as between them. On October 27, 2015, in an email to Kat, Dr. Barwin confirmed that he was her biological father.
26. In September 2016, Kat and Rebecca compared their respective DNA test results from 23andMe and Family Tree DNA. The results showed that they had 29 shared segments in common, a number of segments which strongly suggested that they were half-siblings.
27. Kat and Rebecca underwent DNA testing. On October 24, 2016, the DNA test results concluded that they were half-sisters by way of the same biological father.

DUTIES OWED TO THE PLAINTIFFS BY THE DEFENDANT

Duties owed to Rebecca Dixon and the members of her Plaintiff Class

28. There is sufficient proximity between the Defendant and Rebecca and the members of Rebecca's Plaintiff class such that it was reasonably foreseeable that Rebecca and the members of Rebecca's Plaintiff class would suffer damages if Dr. Barwin used the wrong biological material at the time of their conception.

29. As a result, Dr. Barwin owed Rebecca and the members of her Plaintiff class duties of care in tort, the breaches of which give rise to claims for negligence, negligent misrepresentation, and/or infliction of mental suffering.

30. Furthermore, Dr. Barwin had the unilateral ability to exercise discretion or power so as to affect the interests of Rebecca and the other members of her Plaintiff class, all of whom were vulnerable to his actions. Accordingly, Dr. Barwin also owed fiduciary obligations to Rebecca and to the other members of her Plaintiff class.

Duties owed to Davina Dixon and the members of her Plaintiff Class

31. The Defendant owed the following duties to Davina and the members of her Plaintiff class:
 - a. Contractual duties giving rise to a claim for breach of contract;
 - b. Duties in tort, the breaches of which give rise to a claim for negligence, battery, negligent misrepresentation, and/or infliction of mental suffering; and
 - c. Fiduciary duties.

Duties owed to Daniel Dixon and members of his Plaintiff Class

32. The Defendant owed the following duties to Daniel and the members of his Plaintiff class:
 - a. Contractual duties giving rise to a claim for breach of contract;
 - b. Duties in tort, the breaches of which give rise to a claim for negligence, negligent misrepresentation, and/or infliction of mental suffering; and

- c. Fiduciary duties.

LIABILITY OF THE DEFENDANT

Breach of Contract

33. It was an express or implied term or a warranty of Dr. Barwin's contracts with his patients, including his contract with Daniel and Davina and the members of their Plaintiff classes, that:
- a. the Defendant would employ a degree of skill, expertise and/or experience within acceptable norms in the assisted conception process;
 - b. the only sperm that would be used to inseminate Davina and all members of her Plaintiff class would be sperm they specifically selected for the insemination procedure;
 - c. that under no circumstances would Dr. Barwin's sperm be in any way involved in the process;
 - d. that any sperm Dr. Barwin collected from Daniel and all members of his Plaintiff class would not be used for the purposes of inseminating other patients without their knowledge or consent;
 - e. that any sperm Dr. Barwin collected from Daniel and all members of his Plaintiff class would be safely stored while in Dr. Barwin's possession and control;
 - f. that prior to an insemination attempt, Dr. Barwin would conduct any and all appropriate tests to ensure that he was using the correct or designated biological material; and
 - g. that Daniel's sperm or sperm collected from his Plaintiff class would be returned to them after Dr. Barwin completed the insemination procedure or that Dr. Barwin would obtain their consent to dispose of their sperm in a safe and timely manner.

34. The Defendant and/or any employees, servants, agents or contractors for whom the Defendant is vicariously liable, breached the implied or express terms of the contract or the warranties provided by the Defendant by:
 - a. recklessly or negligently inseminating Davina and all members of her Plaintiff class with sperm from a donor who they did not select for the purposes of insemination and for which they did not consent to being placed in their bodies;
 - b. recklessly, carelessly, or negligently using his own sperm to inseminate Davina and other members of her Plaintiff class without their consent, knowledge, or approval;
 - c. recklessly or negligently handling, storing, preserving and/or labeling the sperm donated by Daniel and other members of his Plaintiff class;
 - d. failing to employ a degree of skill, expertise and/or experience within acceptable norms when collecting and using the sperm donated by the public and by Daniel and members of his Plaintiff class; and
 - e. failing to take appropriate steps or have in place appropriate procedures to prevent contamination among sperm samples and equipment.
35. Further or in the alternative, the Defendant has breached implied warranties or conditions under *the Sales of Goods Act*, R.S.O. Chapter S.1, or under the common law, pertaining to fitness for use and merchantability.
36. It was reasonably foreseeable that the Defendant's failures, including but not limited to, the failure to safeguard, label and safely store his patients' sperm, including Daniel's sperm and the sperm of the members of his Plaintiff class, would result in damages and consequential losses for the Plaintiffs and their respective members' classes.

37. Further, it was reasonably foreseeable that Dr. Barwin's use of his own sperm to inseminate Davina and other members of her Plaintiff class would result in damages and consequential losses for the Plaintiffs and their respective member classes.
38. Dr. Barwin's contract with his patients, including Davina and Daniel and the respective members of their Plaintiff classes, implicitly provided them with a psychological benefit. Specifically, the opportunity to conceive and ultimately raise a biological child together afforded them with intangible benefits such as peace of mind after their fertility struggles. The Plaintiffs state that it was foreseeable that the manner in which Dr. Barwin breached this contract would cause them to suffer from psychological harm and in fact has caused them to suffer from psychological harm.

Battery

39. Davina and members of her Plaintiff class consented to the insemination procedure on the basis that Dr. Barwin would be using the sperm they selected under their contract with Dr. Barwin. In view of the Defendant's failure to use the designated sperm, their consent for the insemination procedure was vitiated.
40. Davina consented and only consented to Dr. Barwin using her husband's sperm for the purposes of artificial insemination. As a result of Dr. Barwin's use of his own sperm in the insemination procedure, Dr. Barwin violated her bodily integrity.
41. Dr. Barwin's failure to use the correct or designated sperm for the purposes of inseminating Davina and other members of her class constitutes medical battery.

Negligence

42. The Defendant owed a duty of care to his patients and to the children he helped his patients' conceive, including Daniel, Davina, Rebecca and the members of their Plaintiff classes, to take care at the time of conception that he use the biological material selected by his patients for the purposes of artificial insemination.

43. Dr. Barwin's conduct and/or the conduct of the employees, servants, agents or contractors for whom Dr. Barwin is vicariously liable fell below the standard of care and was negligent. The particulars of negligence include but are not limited to the following:
- a. failing to use the sperm selected by Davina, Daniel and the members of their Plaintiff classes to conceive Rebecca and the other members of Rebecca's class;
 - b. inseminating Davina and the other members of her Plaintiff class with his own sperm or with sperm not selected by them without obtaining their consent, prior approval, or agreement;
 - c. failing to keep proper records with respect to the identification and storage of sperm samples he collected from his patients, including from Daniel and members of Daniel's Plaintiff class, prior to and following insemination procedures;
 - d. failing to prevent the contamination of his patient's sperm straws, including the straws of Daniel and other members of Daniel's class;
 - e. contaminating sperm straws from anonymous sperm donors and from his own patients, including those of Daniel and other members of Daniel's class, with his own sperm;
 - f. failing to implement sufficient or any policies and procedures for the identification, preservation and storage of sperm;
 - g. failing to implement sufficient or any policies and procedures to prevent contamination among sperm samples while in storage and at the time of insemination;

- h. failing to implement sufficient or any policies and procedures with respect to record keeping, including implementing sufficient or any policies and procedures regarding the collection and distribution of Dr. Barwin's own sperm;
 - i. conducting business in such a way as to make it impossible to monitor the storage, use, contamination and/or destruction of sperm in his Clinic, including the use and storage of Dr. Barwin's own sperm;
 - j. employing methods or procedures which he knew or ought to have known would result in the improper collection, storage, use, return and/or destruction of sperm stored and collected at Dr. Barwin's Clinic including:
 - i. patient sperm;
 - ii. anonymous donor sperm; and
 - iii. Dr. Barwin's own sperm;
 - k. failing to employ competent servants, agents or employees;
 - l. failing to adequately train its servants, agents and employees in maintaining proper records and in preventing contamination among sperm straws stored and collected at Dr. Barwin's Clinic; and
 - m. failing to comply with the ordinary standards and ethics expected of a medical practitioner.
44. Further or in the alternative, Dr. Barwin represented that he possessed sufficient skill, expertise and/or experience to securely and safely handle Daniel's sperm and the sperm of Daniel's Plaintiff class and to safely and properly inseminate Davina and the members of her Plaintiff class.
45. Davina and Daniel and the members of their requisite Plaintiff classes relied on the Defendant's representations that he would safely and properly inseminate Davina and the members of her Plaintiff class with the sperm they had selected for the purposes of

insemination. As a result of Dr. Barwin's failure to use the correct biological material at the time of Rebecca's conception and the conception of the members of Rebecca's Plaintiff class, the Plaintiffs and the members of the Plaintiff classes have suffered damages.

Misrepresentation

46. Dr. Barwin knowingly, recklessly and/or carelessly misrepresented, by his words and actions, the paternity of all members of Rebecca's Plaintiff class to the Plaintiffs and the members of their Plaintiff classes when he knew or ought to have known that Rebecca and the members of her Plaintiff class were not of the biological material selected by their parents at the time of their conception. Furthermore, Dr. Barwin knowingly, recklessly, or carelessly concealed from the Plaintiffs and the members of their Plaintiff classes the true paternity of Rebecca and the members of her class, including that he may be their biological father.

47. Dr. Barwin knew or ought to have known that the Plaintiffs and the members of their Plaintiff classes relied on his representations that he inseminated his patients, including Davina and the members of her Plaintiff class, with the biological material that they selected for the purposes of artificial insemination. Further, Dr. Barwin knew or ought to have known that the Plaintiffs and the members of the Plaintiff classes would suffer damages if Dr. Barwin failed to follow through on his representations.

Infliction of mental suffering

48. The Defendant's careless or negligent misrepresentation of the paternity of Rebecca and the members of her Plaintiff class from the Plaintiffs and their Plaintiff classes was a wanton and reckless disregard for their interests. It was foreseeable that they and the members of their Plaintiff classes would suffer from mental harm and shock when they learned that Rebecca and the members of her Plaintiff class were not conceived with the correct biological material and that they have in fact suffered from psychological harm.

49. In the case of Rebecca and any other member of her Plaintiff class who is of Dr. Barwin's biological material, it was foreseeable that the Plaintiffs and their Plaintiff classes would suffer from additional mental harm and shock upon learning that it is Dr. Barwin himself who is the father and that they have in fact suffered from psychological harm.

Breach of trust and fiduciary duty

50. The relationship between Dr. Barwin and his patients, including Daniel, Davina and the members of their Plaintiff classes, was one of trust and reliance. Dr. Barwin saw his patients at a particularly vulnerable time in their lives – a time when they were coming to him for his help in conceiving a child. Daniel, Davina, and the members of their Plaintiffs' classes relied on Dr. Barwin and trusted him with his help in conceiving a child. At all material times, Dr. Barwin owed Daniel, Davina, and the members of their Plaintiffs' classes a fiduciary duty.
51. Davina and the members of Davina's Plaintiff class trusted that Dr. Barwin would use the sperm they had specifically selected for the purposes of artificial insemination. Dr. Barwin breached Davina's bodily integrity and the bodily integrity of the members of Davina's Plaintiff class when he inseminated them with sperm that they did not know about, did not consent to, and would not have consented to had they known the sperm's true origins.
52. Daniel and the other members of his Plaintiff class put the outmost faith and trust in Dr. Barwin when they provided Dr. Barwin with their sperm samples and relied on Dr. Barwin to help them conceive a child who was of their biological material. Dr. Barwin breached this trust and reliance when he did not use the sperm from Daniel and the members of his Plaintiff class to inseminate Davina and the members of Davina's Plaintiff class.
53. Dr. Barwin further breached his patients' trust, including the trust of the Plaintiffs and their member classes, when he failed to disclose to his patients that their children may not be of the genetic material that they selected and, furthermore, that Dr. Barwin himself may be their biological father.

54. The relationship between parent and child is fiduciary in nature. The Defendant knew or ought to have known that Rebecca and other members of her Plaintiff class were conceived with his genetic material. As a result, the Defendant owed fiduciary obligations to Rebecca and to the members of Rebecca's Plaintiff class who are also of Dr. Barwin's biological material.
55. The Plaintiffs state that Dr. Barwin breached his fiduciary duties to Rebecca and the members of her Plaintiff class by concealing from them that he was their biological father, thereby depriving them of the opportunity to have any relationship or connection with their biological father and biological half-siblings.
56. The Plaintiffs state that in the circumstances, Dr. Barwin's conduct amounted to a breach of trust and/or breach of fiduciary duty.

DAMAGES

57. As a result of Dr. Barwin negligence, breach of contract, and breach of fiduciary duty, the Plaintiffs and the members of the Plaintiff classes are entitled to general damages for their pain, suffering, and loss of enjoyment of life.
58. The Plaintiffs and the members of their classes have suffered damages for loss of income, loss of competitive position in the employment market and/or other economic loss in amounts yet to be determined, the particulars of which will be provided prior to trial
59. The Plaintiffs and the members of their classes have incurred out-of-pocket expenses, including for DNA testing, blood type testing, and for genetic testing. Further particulars of their out-of-pocket expenses will be provided prior to trial.
60. As a further result of Dr. Barwin's actions, Rebecca and the members of her Plaintiff class were deprived of knowing their full medical history. They were also deprived of the chance to search for and potentially locate any half-siblings or other familial relationships.

61. To the extent that Rebecca or other members of her Plaintiff class may have required child support, Dr. Barwin's actions deprived her and the other members of her Plaintiff class who are of Dr. Barwin's biological material from claiming or asserting any rights they may have or had against him under the *Family Law Act*, R.S.O. 1990, Chapter F.3
62. The Plaintiffs and the members of their classes have and will continue to require individual and family counselling, and other medical treatment in order to come to terms with what has happened to them. Further particulars of the cost of this treatment, including any OHIP subrogated claim, will be provided prior to trial.
63. The Plaintiffs further state that the Defendant's reckless and wanton conduct, including the cavalier use of his own sperm in his insemination procedures, demonstrated a reprehensible disregard for the health, safety and rights of the Plaintiffs, the members of the Plaintiff classes and of the general public, thus warranting an award of punitive damages.
64. The Plaintiffs plead and rely upon the provision of *the Negligence Act*, R.S.O. 1990, c. N.1 and the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended, *Family Law Act*, R.S.O. 1990, C. F.3, and the *Sale of Goods Act*, R.S.O. 1990, Chapter S.1.
65. The Plaintiffs propose that the trial of this action be heard in Ottawa, Ontario.

Date: November 1, 2016

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DIXON ET AL
Plaintiffs

-and-

BARWIN
Defendant

Court file no. 16- 70454 CP

ONTARIO SUPERIOR COURT OF JUSTICE
Proceeding under the Class Proceedings Act, 1992

Proceeding commenced at Ottawa

STATEMENT OF CLAIM

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