

ONTARIO SUPERIOR COURT OF JUSTICE

BETWEEN:

DAVINA DIXON, DANIEL DIXON and
REBECCA DIXON

Plaintiffs

-and-

DR. NORMAN BARWIN

Defendant

Proceeding under the Class Proceedings Act, 1992

FRESH AS AMENDED 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

Registrar
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, Davina Dixon, claims on her own behalf and on behalf of all members of her Plaintiff class against the Defendant for:
 - a. An Order certifying this action as a class proceeding pursuant to the *Class Proceedings Act, 1992*, SO 1992, c 6, as amended and appointing Davina Dixon as a representative Plaintiff as set out at paragraph 4;
 - b. General damages for pain, suffering and loss of enjoyment of life and damages for breach of contract;
 - c. Damages for breach of contract, breach of trust, battery and/or for mental distress;
 - d. Special damages in an amount yet to be determined for out-of-pocket costs, the particulars of which will be provided prior to trial;
 - e. 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;
 - f. 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;
 - g. An Order that the Defendant preserve any and all records in relation to Davina Dixon and the members of her Plaintiff Class;
 - h. Punitive and aggravated damages;
 - i. Pre-judgment and post-judgment interest in accordance with the *Courts of Justice Act*, R.S.O. 1990, c. C43 as amended;
 - j. Costs of this action on a substantial indemnity basis plus HST; and
 - k. Such further and other relief as this Honourable Court may deem just.

2. 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 for:
 - a. An Order certifying this action as a class proceeding pursuant to the *Class Proceedings Act, 1992*, SO 1992, c 6, as amended and appointing Daniel Dixon as a representative Plaintiff as set out at paragraph 5;

- b. General damages for pain, suffering and loss of enjoyment of life and damages for breach of contract
 - c. Damages for breach of contract, breach of trust and/or for mental distress;
 - d. Special damages in an amount yet to be determined for out-of-pocket costs, the particulars of which will be provided prior to trial;
 - e. 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;
 - f. 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;
 - g. An Order that the Defendant preserve any and all records in relation to Daniel Dixon and the members of his Plaintiff class;
 - h. Punitive and aggravated damages;
 - i. Pre-judgment and post-judgment interest in accordance with the *Courts of Justice Act*, R.S.O. 1990, c. C43 as amended;
 - j. Costs of this action on a substantial indemnity basis plus HST; and
 - k. Such further and other relief as this Honourable Court may deem just.
3. The Plaintiff, Rebecca Dixon, claims on her own behalf and on behalf of all members of her Plaintiff class against the Defendant for:
- a. An Order certifying this action as a class proceeding pursuant to the *Class Proceedings Act, 1992*, SO 1992, c 6, as amended and appointing Rebecca Dixon as a representative Plaintiff as set out at paragraph 6;
 - b. General damages for pain, suffering and loss of enjoyment of life;
 - c. Special damages in an amount yet to be determined for out-of-pocket costs, the particulars of which will be provided prior to trial;
 - d. 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;
 - e. 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;

- 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-and/or to permit any member who is his biological child to access necessary medical and health information contained in his DNA;
- g. Punitive damages;
- h. Damages for loss of care, guidance and companionship pursuant to the *Family Law Act*, R.S.O. 1190, Chapter F.3.;
- i. Pre-judgment and post-judgment interest in accordance with the *Courts of Justice Act*, R.S.O. 1990, c. C43 as amended;
- j. Costs of this action on a substantial indemnity basis plus HST; and
- k. Such further and other relief as this Honourable Court may deem just.

PARTIES

4. 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:

- (a) *All patients of Dr. Barwin who received artificial insemination services from Dr. Barwin at the Ottawa Hospital and/or the Broadview Fertility Clinic; and/or*
- (b) *All individuals who were artificially inseminated with material that had previously been entrusted to Dr. Barwin or stored with Dr. Barwin.*

5. 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 individuals who:

- (a) *were the spouse or partner of a patient who Dr. Barwin artificially inseminated at the Ottawa Hospital or Broadview Fertility Clinic; and/or*

(b) entrusted their sperm to Dr. Barwin to be used for artificial insemination and/or for safe-keeping and preservation.

6. 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. Rebecca brings this action pursuant to the *Class Proceedings Act, 1992* on behalf of the following class:

All individuals conceived and born by Davina Dixon’s class as a result of artificial insemination performed by Dr. Barwin or from biological material previously stored with Dr. Barwin.

7. The Defendant, Dr. Barwin, was a duly qualified medical practitioner who represented himself to the Plaintiffs as a specialist in infertility. In and around 1974 to 1984, Dr. Barwin operated a fertility practice at the Ottawa Hospital’s Fertility Clinic. In 1984, Dr. Barwin left the Ottawa Hospital and established his own fertility Clinic, the Broadview Fertility Clinic (the “Clinic”). The Clinic continued to operate until 2014. At all material times, Dr. Barwin was vicariously liable for the conduct, representations, omissions and/or negligence of the employees, agents, servants and/or contractors at his own Clinic and previously at the Ottawa Hospital.

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. The couple selected Dr. Barwin to assist them because of his reputation and expertise in fertility medicine. At all material times, Daniel and Davina put their trust in Dr. Barwin and his Clinic and Dr. Barwin and Broadview Fertility Clinic were paid for the fertility services provided.
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. 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. 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 a claim for negligence.
29. 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

30. 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 and medical battery; and
 - c. Fiduciary duties.

Duties owed to Daniel Dixon and members of his Plaintiff Class

31. 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; and
 - c. Fiduciary duties.

LIABILITY OF THE DEFENDANT

Breach of Contract

32. 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.
33. 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. 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. negligently using his own sperm to inseminate Davina and other members of her Plaintiff class without their consent, knowledge, or approval;
 - c. 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.

34. 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.
35. 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.
36. 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.
37. 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 mental distress and psychological harm and in fact has caused them to suffer from mental distress and psychological harm.

Medical Battery

38. 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.
39. 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.

40. 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

41. 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.
42. 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 at the Ottawa Hospital's Fertility Clinic and/or at the Broadview Fertility 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 the Ottawa Hospital's Fertility Clinic and/or at the Broadview Fertility 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 the Ottawa Hospital's Fertility Clinic and/or at the Broadview Fertility Clinic,; and
 - m. failing to comply with the ordinary standards and ethics expected of a medical practitioner.
43. 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.

44. 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.

Breach of trust and fiduciary duty

45. 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.
46. 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.
47. 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.

48. 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.
49. 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.
50. 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.
51. The Plaintiffs state that in the circumstances, Dr. Barwin's conduct amounted to a breach of trust and/or breach of fiduciary duty.

DR. BARWIN'S DNA

52. Other than Kat Palmer, neither Rebecca nor the members of Rebecca's Plaintiff class have been able to compare their DNA to Dr. Barwin's DNA. In order for all members of Rebecca's Plaintiff class to determine conclusively whether Dr. Barwin is or is not their biological father, the Plaintiffs seek an Order that Dr. Barwin provide a sample or samples of his DNA for the purposes of paternity DNA testing.
53. Further, the Plaintiffs seek an Order for the production of Dr. Barwin's DNA for the purpose of extracting genetic and medical information into the future to allow all members of Rebecca's Plaintiff class to ascertain their biological ancestry and complete their medical background. The Plaintiffs state that Dr. Barwin should bear the cost of keeping and storing such sample(s).

DAMAGES

54. The Plaintiffs and their respective Plaintiff classes claim damages in all cases where, as a result of Dr. Barwin's negligence, breach of contract and/or breach of fiduciary duty:
- a. the sperm identified by the Plaintiffs in Davina's and/or Daniel's classes to be used in the process of artificial insemination was not used and instead other sperm, including Dr. Barwin's own, was used to conceive children in Rebecca's class;
 - b. the sperm identified by the Plaintiffs in Davina's and/or Daniel's class to be used was contaminated with other sperm in the possession of Dr. Barwin, including his own, such that the children in Rebecca's class were conceived with unintended sperm;
 - c. the sperm left in the possession of Dr. Barwin by members of Daniel's class was used in the process of artificial insemination of patients other than those intended by the members of Daniel's class.
55. The said Plaintiffs and the members of their classes claim general damages for their pain and suffering and loss of enjoyment of life.
56. The said 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.
57. The said 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.
58. As a further result of Dr. Barwin's actions, Rebecca and the said 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. In addition, the members of this class have had and will continue to have difficulties determining who their biological fathers and half-siblings are. The damages for this class include funds to allow them to investigate and determine their biological ancestry and relationships and to complete their medical backgrounds, now or in the future.

59. Rebecca and the said members of her Plaintiff class have suffered a loss of care, guidance and companionship due to their lost biological connection to their intended fathers.
60. The said 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.
61. The Plaintiffs further state that the Defendant's conduct warrants an award of punitive damages.
62. 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.
63. The Plaintiffs propose that the trial of this action be heard in Ottawa, Ontario.

Date: November 1, 2016

Nelligan O'Brien Payne LLP
300-50 O'Connor Street
Ottawa, ON K1P 6L2

**Peter J.E. Cronyn/Frances Shapiro
Munn/Jessica Fullerton**
LSO #19086L / LSO No. 63493P/LSO#
54903A
T: (613) 231-8213 / (613) 231-8355/ (613)
231-8366
F: (613) 788-3659 / (613) 788-3697/ (613)
788-3651
peter.cronyn@nelliganlaw.ca
frances.shapiromunn@nelliganlaw.ca
jessica.fullerton@nelliganlaw.ca

Lawyers for the Plaintiffs

DAVINA DIXON et al.

- and -

Dr NORMAN BARWIN

Plaintiff(s)

Defendant(s)

Court File No. 16-70454CP

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at OTTAWA

FRESH AS AMENDED STATEMENT OF
CLAIM

NELLIGAN O'BRIEN PAYNE LLP

Barristers & Solicitors
50 O'Connor Street - Suite 300
Ottawa ON K1P 6L2

Frances Shapiro Munn LSO # 63493P
Tel: (613) 231-8355
Fax: 613-788-3697
E-mail: frances.shapiromunn@nelliganlaw.ca

Lawyers for the PLAINTIFFS

Courthouse Box No. 285

AMENDED THIS 29 DAY / JOUR
MODIFIÉE DE
OF / DE October 20 19
PURSUANT TO RULE 26.02(a)
CONFORMÉMENT A LA REGLE
OR ORDER
OU A L'ORDONNANCE
DATED THIS / FAIT CE
DAY / JOUR OF / DE 20.....
REGISTRAR, SUPERIOR COURT OF JUSTICE
GREFFIER, COUR SUPÉRIEURE DE JUSTICE

