

LONG FORM NOTICE OF SETTLEMENT

The \$13.375 million settlement of a class action lawsuit brought on behalf of Dr. Barwin’s former fertility patients and their children has now been approved by the court.

THIS IS A FORMAL NOTICE, APPROVED BY THE COURT, OF A CLASS ACTION SETTLEMENT. PLEASE READ THIS NOTICE CAREFULLY AS IT MAY AFFECT YOUR, YOUR SPOUSE, AND YOUR CHILD’S RIGHTS.

- You may qualify for **compensation** if:
 - You and/or your spouse gave consent to Dr. Barwin to undergo artificial insemination (“AI”) procedures administered by him (or at another fertility clinic with semen previously stored with him) and you bore a child whose biological father does not accord with the consent you provided to him.
 - You are the child of former patients of Dr. Barwin and your biological father does not accord with the consent of your parents at the time of the AI procedure.
 - You entrusted semen to Dr. Barwin for storage and/or safekeeping and your semen was used in the course of AI performed by Dr. Barwin that resulted in the birth of one or more children for another unrelated patient.
- The court has now approved a \$13,375,000.00 settlement. Legal fees, disbursements, applicable taxes, and administration costs will be deducted from the settlement amount.
- If you are a Class Member, you may **now make a claim for compensation**.
- You must complete a Claim Form and submit it by February 28, 2022.
- Claim Forms are included with this notice.
- You may visit nelliganlaw.ca/class-actions/dr-barwin for more information or to download a copy of the Claim Form that corresponds to your class. If you have questions about how to submit your claim form, you may contact the Claims Administrator, toll free, at 1-866-753-2594.
- The lawyers acting for the class are Nelligan Law. You may contact Nelligan Law as follows:

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| Peter Cronyn | Jessica Fullerton |
| Tel: 613-231-8213 | Tel: 613-231-8366 |
| Fax: 613-788-3659 | Fax: 613-788-3651 |

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| peter.cronyn@nelliganlaw.ca | Jessica.fullerton@nelliganlaw.ca |
| Frances Shapiro Munn Tel: 613-231-8355 Fax: 613-788-3697 frances.shapiromunn@nelliganlaw.ca | Robyn Beaulne – law clerk Tel: 613-231-8214 Fax: 613-788-2370 robyn.beaulne@nelliganlaw.ca |

INFORMATION ABOUT THE SETTLEMENT

1. Why did I get this?

You received this notice because you may have been a fertility patient of Dr. Barwin or a child of a fertility patient of Dr. Barwin between 1973 and 2012.

A judge of the Ontario Superior Court of Justice has approved a settlement for former patients and their children in the class action lawsuit of *Davina Dixon, Daniel Dixon, and Rebecca Dixon v. Dr. Norman Barwin*, Court File No. 16-70454CP.

The action alleges Dr. Barwin’s patients in Canada gave him consent to use specific semen for AI procedures administered by him (or at another fertility clinic with semen previously stored with him). The action also alleges that Dr. Barwin’s patients entrusted their semen to him for safekeeping. The action alleges that Dr. Barwin used semen in the AI procedures that did not accord with the consent of his patients and/or that he failed to safekeep the semen entrusted to him.

If you were a fertility patient of Dr. Barwin at any time in Canada, or a child of a former fertility patient of Dr. Barwin in Canada, you may qualify for compensation from the settlement.

2. Why is this a class action?

In a class action, a person called a “representative plaintiff” pursues a defendant on behalf of others who have similar claims. These individuals are a “class” or “class members.” The court resolves the issues for all class members in one case. Persons who have removed themselves from the class (opted out) or previously received compensation in return for a signed release are not included in the class action.

The representative plaintiffs in this class action are: Davina Dixon, Daniel Dixon, and Rebecca Dixon. In 1989, Davina and Daniel saw Dr. Barwin at the Broadview Fertility Clinic for AI services. They consented to Daniel’s sperm being used in the AI procedure. Their daughter, Rebecca, was born on June 1, 1990.

Through DNA testing, the Dixons discovered that Rebecca was not Daniel’s biological daughter and was, in fact, a biological child of Dr. Barwin.

You may only qualify for compensation if you fall under one of the three classes. The classes are defined as:

Mother Class:

All patients of the defendant who were administered artificial insemination (AI) in Canada during the Class Period by either (i) the Defendant, or (ii) at another fertility clinic, with semen originally entrusted to the Defendant, from which AI they conceived and gave birth to a child whose biological father does not accord with the consent given by these patients in regard to the semen.

Spouse/Partner/Former Patient Class:

1. All persons who were a partner or spouse of a Mothers Class Member when the AI was administered and who agreed to have their own semen or specified donor semen used for the AI of a Mothers Class Member, but where the biological father of the child born of the AI does not accord with their said agreement; and
2. All patients of the defendant in Canada who entrusted their semen to the defendant for storage, safe-keeping or specific purpose but which semen was used in the course of AI performed by the defendant during the Class Period that resulted in the birth of one or more children who do not accord genetically with the consent these patients gave in regard to the storage and/or use of their semen.

Child Class:

All persons conceived and born by Mother Class Members as a result of AI performed by the defendant during the Class Period with semen entrusted to the defendant whose biological father does not accord with the consent given by their biological mother for the AI.

The Dixons each represent a Plaintiff class in this class action. Davina is the representative Plaintiff for the Mother Class, Daniel is the representative Plaintiff for the Spouse/Partner/Former Patient Class, and Rebecca is the representative Plaintiff of the Child Class.

3. Who is included in the Settlement?

You will only qualify for compensation where you can demonstrate with DNA evidence or other compelling evidence that you qualify for one of the following three (3) categories:

Harm Category 1: Cases where a couple went to see Dr. Barwin (typically husband and wife) and where the couple consented to the Spouse/Partner's semen to be used in the process of artificial insemination. Claimants will qualify for compensation where they have DNA evidence showing that the child or children conceived with Dr. Barwin's assistance or with semen previously entrusted to Dr. Barwin is/are not the biological child of the man in the couple.

The Claimants in this category include, the Mother, the Spouse/Partner and their Child(ren) conceived with semen other than the Spouse/Partner's semen.

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| Mother Class | up to \$50,000 |
| Spouse/Partner Class | up to \$50,000 |
| Children Class | up to \$40,000 |
| In cases where the Mother and Spouse/Partner had more than one child who qualifies for compensation under this category, they will be entitled up to a further \$10,000 each, in total. | |

Harm Category 2: Cases where a parent or parent(s) had one or more children by way of artificial insemination administered by Dr. Barwin and where the couple consented to a specific donor or donors being used in the artificial insemination procedure(s). Claimants will qualify for compensation where they have DNA evidence demonstrating that (a) their child or children do not match their sperm donor; or (b) the parent(s) consented to the same donor being used for all their children and the children do not share the same sperm donor. In some cases, Claimants may prove their case by way of reliable evidence other than a legal DNA tests where, for instance, they are unable to locate their sperm donor.

The Claimants in this category include, the Mother, the Spouse/Partner of the mother and any Child(ren) who were conceived by artificial insemination with semen other than the semen consented to by their Mother.

Harm Category 2A:

In cases where the Child(ren) is/are the biological offspring of Dr. Barwin:

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| Mother Class | up to \$40,000 |
| Spouse/Partner Class | up to \$40,000 |
| Children Class | up to \$30,000 |

Harm Category 2B:

In cases where the biological father has been identified otherwise or not all:

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|----------------------|----------------|
| Mother Class | up to \$30,000 |
| Spouse/Partner Class | up to \$30,000 |
| Children Class | up to \$30,000 |

In cases where the Mother and Spouse/Partner had more than one child who qualifies for compensation under either Harm Category 2A and/or 2B, they will be entitled up to a further \$10,000 each, in total.

Harm Category 3: Cases where an individual entrusted semen with Dr. Barwin for the purposes of storage and safe-keeping or other specified purpose and that semen resulted in the conception of one or more children for another unrelated patient. Claimants will qualify for compensation where they provide DNA evidence that the semen entrusted with Dr. Barwin resulted in the conception and birth of another unrelated patient’s child or children. Anonymous sperm donors are excluded from this claim.

The Claimants in this category are the Former Patients who entrusted the semen with Dr. Barwin.

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| Former Patient | up to \$25,000 |
| In cases where there is more than one such child conceived using the Former Patient’s semen, up to a further \$5,000 per additional child up to a maximum of \$10,000 in total. | |

The settlement does not include donors or individuals who left semen with Dr. Barwin for the purposes of sperm donation where they consented to that semen being used with other patients.

You must make a claim by February 28, 2022. If you do not make a claim by that date, you will forfeit your right to any potential compensation.

If you have already been in touch with Class Counsel and you have worked with Class Counsel to obtain DNA or other compelling evidence to prove your claim, Class Counsel will assist you in completing the Claim Form and sending it to the claims Administrator by February 28, 2022.

If you are not sure whether you are included in the Settlement, you may call:1-866-753-2594 with questions or visit nelliganlaw.ca/class-actions/dr-barwin.

You may also contact Class Counsel as follows:

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| Peter Cronyn Tel: 613-231-8213 Fax: 613-788-3659 peter.cronyn@nelliganlaw.ca | Jessica Fullerton Tel: 613-231-8366 Fax: 613-788-3651 Jessica.fullerton@nelliganlaw.ca |
| Frances Shapiro Munn Tel: 613-231-8355 | Robyn Beaulne – law clerk Tel: 613-231-8214 |

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| Fax: 613-788-3697 frances.shapiro@nelliganlaw.ca | Fax: 613-788-2370 robyn.beaulne@nelliganlaw.ca |
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4. Who are the lawyers for the Plaintiffs?

The Court has appointed Nelligan Law in Ottawa to represent you and other Class Members as Class Counsel. The lawyer's fees have been approved by the Court and will be paid out of the \$13,375,000.00 settlement. You are not personally liable for the lawyer's fees. Class Counsel will assist you with making your Claim and ensuring all necessary documentation is provided to the Administrator to make your Claim. You will not be personally liable to Nelligan Law for any fees incurred to complete your Claim Form and make your claim.

5. What does the settlement provide?

The settlement provides a fund of money from which Class Members will receive compensation. The total amount of the settlement is \$13,375,000.00. This is called the Settlement Fund. Legal fees, disbursements, administration costs, notice plan costs, and applicable taxes will be deducted from the Settlement Fund.

The claim you submit will be confidential and you do not have to attend in court. You must tell the truth when you complete your Claim Form.

More details are in a document called the Settlement Agreement and attached Schedule 1, the Plan of Allocation, available at: nelliganlaw.ca/class-actions/dr-barwin.

6. How much will my payment be?

The claims Administrator will determine the amount of compensation you are entitled to based on the category of harm for which you qualify.

You may receive up to the following amounts depending on the total number of eligible Claimants.

| <u>Mother Class</u> | |
|---|-------------------|
| Harm Category 1 | up to \$50,000.00 |
| Harm Category 2A | up to \$40,000.00 |
| Harm Category 2B | up to \$30,000.00 |
| In cases under Harm Categories 1, 2A and/or 2B, where more than one child qualifies for compensation, up to a further \$10,000, in total. | |

| <u>Spouse/Partner/Former Patient Class</u> | |
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| Harm Category 1 | up to \$50,000.00 |
| Harm Category 2A | up to \$40,000.00 |
| Harm Category 2B | up to \$30,000.00 |
| In cases under Harm Categories 1, 2A and/or 2B, where more than one child qualifies for compensation, up to a further \$10,000, in total. | |
| Harm Category 3 | up to \$25,000.00 |
| In cases of Harm Category 3, where there is more than one child conceived using the Former Patient's semen, up to \$5,000 per additional child up to a maximum of \$10,000, in total | |
| <u>Child Class</u> | |
| Harm Category 1 | up to \$40,000.00 |
| Harm Category 2A and 2B | up to \$30,000.00 |

There may not be sufficient funds to compensate all Claimants on the amounts set out above. In that scenario, the value of each category will be adjusted downward such that each Claimant receives the proportionate share of the settlement based on his or her Harm Category.

You may only receive compensation from one Harm Category. If you qualify for more than one Harm Category, the Administrator will select the Harm Category that provides you with the highest level of compensation for which you qualify.

If there are any funds remaining after the end of the Claim Period, the remaining funds will be distributed on a pro rata basis to all Class Members.

7. Do I pay taxes on this money?

You are receiving money to compensate you for pain and suffering in a personal injury claim. There is no income tax payable on money for pain and suffering in personal injury claims (see CRA Bulletin IT-365R2).

8. Can I get out of the settlement now and start my own claim?

It is too late to get out or "opt out" of the settlement. The deadline to do so has passed.

If you have opted out of the settlement, you are not entitled to money from this settlement.

9. How can I ask for money from the settlement?

You must fill in a Claim Form and send it to the claims Administrator along with the OrchidPro legal DNA test or other compelling evidence that proves your claim. You can obtain and complete the form online:

- At our website: nelliganlaw.ca/class-actions/dr-barwin
- At the administrator's website: <https://barwinclassaction.ca>

You can also call at 1-866-753-2594 to ask for the form.

Please follow the instructions on the Claim Form carefully. Class Counsel is available to help you complete the form and send your DNA test results to the Claims Administrator.

You will need to swear an oath that the information you provide on the Claim Form is true.

You can email a copy of your claim form to barwinclassaction@ricepoint.com.

You can also mail a copy of your Claim Form. You must mail your Claim Form by February 28, 2022.

Send the form to:

RicePoint Administration Inc.
P.O. Box 4454, Toronto Station A
25 the Esplanade
Toronto, ON M5W 4B1

10. What do I need to include with the Claim Form?

You will need a legal OrchidPro DNA test to prove your claim. You should attach a copy of your DNA test results with your Claim Form. Where Class Counsel has coordinated your DNA test, Class Counsel will assist you in ensuring that your DNA test results are delivered to the Administrator. Some cases may not have a legal OrchidPro DNA test to prove your claim. For instance, if you or your children were donor conceived and you have been unable to locate your donor, you may be able to prove your claim in another fashion (e.g. through blood tests). In those cases, you should explain why you were not able to obtain an OrchidPro DNA test, outline the other steps you have taken to investigate your claim, and attach a copy of the other evidence you have to prove your claim.

As part of your Claim Form, you will need to complete a description or narrative of your claim. The description should contain the details as to when you saw Dr. Barwin, the reason you saw him, and the outcome leading to your claim.

In addition to DNA evidence, you will need to prove either:

- You are a former patient of Dr. Barwin;
- If you are making a claim in the Spouse/Partner Class that you were the spouse or partner to a former patient of Dr. Barwin on whom he performed AI; and
- If you are making a claim in the Children Class, that you are the offspring of a former patient(s).

If you have any medical records, correspondences, or any other documents that proves you or your parent(s) were a patient of Dr. Barwin, please provide copies of those documents with your Claim Form.

Additionally, Dr. Barwin's legal counsel has access to a database containing the names of some of Dr. Barwin's former patients from the years 1985 onwards. We may be able to verify you were a patient or your parent(s) were a patient by confirming with Dr. Barwin's legal team that you or your parent(s) are listed on that database.

Where your claim arises prior to the database (i.e. you or your parents saw Dr. Barwin prior to 1985) or you are not listed on the database, Class Counsel will work with you to obtain other contemporaneous records you saw Dr. Barwin (such as notes from a family doctor or the hospital) and/or Class Counsel will ask you to swear an affidavit testifying you were a former patient of Dr. Barwin.

11. What if my claim is denied or I disagree with a decision of the Administrator?

If your claim is denied or you wish to dispute a decision of the Administrator, you may request a review of the decision by the Referee. A Referee is a third party appointed by the parties to review decisions of the Administrator and resolve disputes between Class Members and the Administrator. The Referee will review a copy of your Claim Form, your request for reconsideration, and a copy of the Administrator's decision or determination.

12. Where can I get help with my claim form?

Class Counsel will assist you in completing the Claim Form and ensuring you have completed the necessary DNA tests to prove your claim. You can visit Class Counsel website at <https://nelliganlaw.ca/class-actions/dr-barwin/> and/or contact the lawyers below:

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| Peter Cronyn Tel: 613-231-8213 Fax: 613-788-3659 peter.cronyn@nelliganlaw.ca | Jessica Fullerton Tel: 613-231-8366 Fax: 613-788-3651 Jessica.fullerton@nelliganlaw.ca |
| Frances Shapiro Munn | Robyn Beaulne – law clerk |

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| Tel: 613-231-8355 Fax: 613-788-3697 frances.shapiromunn@nelliganlaw.ca | Tel: 613-231-8214 Fax: 613-788-2370 robyn.beaulne@nelliganlaw.ca |
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You can also contact the claims Administrator at:

- Toll free: 1-866-753-2594
- Website: <https://barwinclassaction.ca>.