

## Plan of Allocation

### Explanatory Notes

#### Harm Category 1

- This category includes couples where the couple consented to artificial insemination using the sperm from the Spouse/Partner
- The couples were expecting their child(ren) to be a product of the two of them
- They have now learned that their child(ren) are not the biological child(ren) of both parents, as intended
- This has caused significant problems in the familial relationships
  - For the parents, the fracturing of the belief that their child(ren) are the product of the two of them
  - For the child(ren), the fracturing of the belief that they are the biological child(ren) of both parents and learning they are only half-siblings to their siblings
  - For the children, a loss of identity
- For the parents, a breach of trust on the part of Dr. Barwin
- In cases where his own sperm was involved, a further breach of trust
- However, for the families where the biological father is not known there are different but equally troubling aspects including loss of medical history, loss of identity, and concerns that the child(ren) have half-siblings they do not know about.
- As a result, there is not a rational justification to differentiate between the members of this Harm Category based on whether Dr. Barwin was the biological father or not.
- The children in this Harm Category receive slightly less than their parents because of the breach of trust in the doctor/patient relationship which the children did not sustain
- In circumstances where more than one child qualified in this category, the parents should receive additional compensation for the resulting complications and as applicable in some cases, the added loss that their children are not full siblings as intended
- Because no claimant can recover under more than one Harm Category, compensation in Category 1 includes the situation where it is learned that a former patient's sperm was used to conceive one or more children with other patients (which would otherwise be Category 3 claims)

#### Harm Category 2

- This category includes all parents who consented to artificial insemination using a specified donor
- Parents were thoughtful and deliberate about the specified donor chosen to conceive their child(ren) and build their family

- In many families, two children were conceived and considerable reliance and trust was placed on Dr. Barwin to ensure that the same specified donor was used, as instructed, to ensure that the children would be full siblings
- The parent(s) have now learned that their child(ren) are not the biological child(ren) of the specified donor they chose
- The level of compensation in this Harm Category is slightly lower than Harm Category 1 because there are not the problems encountered with the familial relationships listed above in Harm Category 1
- For the parents, there is a breach of trust by Dr. Barwin in not honouring their consent
- In cases where his own sperm was used there was an additional level of breach of trust which warrants a slightly higher level of compensation for the parents in this Harm Category
- For the children, there is a fracturing of the understanding of their biological background and learning, in some cases, they no longer share the same biological father as their sibling
- For the children, a resulting loss of identity and potential loss of medical history
- Except for those where Dr. Barwin is the biological father, the children and the parents receive the same amount because the harm does not warrant different treatment
- In circumstances where more than one child qualified in this category, the parents should receive additional compensation for the resulting complications and the added loss that their children are not full siblings as was intended

### Harm Category 3

- This category includes patients or couples who left sperm with Dr. Barwin for the purposes of storage and safe-keeping and it was used in the conception of one or more children of another patient(s)
- Claimants in this Harm Category will only qualify if they do not fall within any other Harm Category
- For the individual who left the sperm, there are complications knowing that they have one or more biological children with whom they have had no involvement
- There are significant legal and other complications which arise with the revelation of this biological connection
- In some circumstances, this individual and their partner have not been able to conceive children of their own
- There are complications which arise in regard to the existing family of the patient and potential half-sibling relationships
- In cases where the patient's sperm was used to conceive multiple children with other patients additional compensation is provided up to a maximum to take into account the resulting multiple complexities
- We did consider the possibility of claims on the part of spouses of these patients because many of them clearly sustained a loss too but the legal foundation for their claims would be tenuous and so we tried to be generous in this category with the expectation it would be shared by the couple

