

Dr. Barwin Class Action Frequently Asked Questions (FAQs)

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CLASS ACTION

General

- **What is this lawsuit about?**

A proposed settlement in a certified class action lawsuit was initiated in Ontario alleging Dr. Barwin’s patients in Canada gave him consent to use specific semen for artificial insemination (“AI”) procedures administered by him or entrusted their semen to him for later use or storage only. The claim alleges that Dr. Barwin’s mishandling of the semen in some cases, during AI or in the course of storage, did not accord with the consent of his patients in breach of his common law duties of care, among other things, resulting in the birth of children whose biological fathers do not accord with the consents provided by the relevant patients. The class action was certified by the Ontario Superior Court on July 28, 2021.

The Defendants, while not admitting liability, have agreed to a proposed settlement of this class action. The proposed settlement must be approved by the court before it can be implemented.

- **Need more information?**

If you need further information, please contact Class Counsel for details.

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Claims

- **What is an eligible claim (or who is an eligible claimant)?**

An eligible claim (making you an eligible claimant) means that you fall within one of the classes (see below for the definition of the classes) and that as one of the members of those classes you can demonstrate that you fall within one of the Harm Categories. This is also described below.

- **How do I make a claim?**

The claims period will not start until after the settlement is approved by the court. The approval hearing is set for November 1, 2021. Once the claim period starts, you can start the claims process by going to the website devoted to administrating the claims: www.barwinclassaction.ca. You will find all of the necessary forms and information there.

- **When do I make a claim?**

You will not be able to make a claim until after the settlement is approved by the court. The approval hearing is set for November 1, 2021. In the meantime, you can take steps to establish that you are an eligible claimant (establishing that you or your parents were patients of Dr. Barwin and that he performed AI for them or you entrusted semen with Dr. Barwin and arranging the necessary DNA test to determine if you fall within one of the Harm Categories) by contacting class counsel at Nelligan Law (see below for contact information)

- **What do I need to do to make a claim?**

Following the settlement approval hearing when the claims period opens, you should deliver a completed Claim Form to the Claims Administrator along with notarized copy of government issued photo identification and Orchid Pro Legal Chain of Custody DNA test that shows the nature of your claim, and if not possible to obtain, the next best evidence. You can deliver by mail, courier, or personal delivery at:

Mailing Address:
RicePoint Administration Inc.
P.O. Box 4454, Toronto Station A
25 The Esplanade
Toronto, ON M5W 4B1

Courier Address:
RicePoint Administration Inc.
100 University Ave.
8th Floor
Toronto, ON M5J 2Y1

- **What class am I in?**

Mothers 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:

- a. 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 conceived during the Class Period and born of the AI does not accord with their said agreement; and
- b. 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.

Children 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.

- **What Harm Category am I in?**

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.

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 semen donor; or (b) the parent(s) consented to the same donor being used for all of their children and the children do not share the same semen 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 semen 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.

Harm Category 2B: In cases where the biological father has been identified otherwise or not all.

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 semen donors are excluded from this claim.

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

- **How much am I entitled to?**

If you qualify for one of the three Harm Categories, the amount of compensation you receive will depend on the total number of eligible claimants. You may receive up to the following amounts:

Mother Class	
Harm Category 1	up to \$50,000

Harm Category 2A	up to \$40,000
Harm Category 2B	up to \$30,000
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.	
Spouse/Partner/Former Patient Class	
Harm Category 1	up to \$50,000
Harm Category 2A	up to \$40,000
Harm Category 2B	up to \$30,000
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.	
Child Class	
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 basis of the values 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.

Other than as provided above, a Claimant may not recover twice under the Harm Categories. If a Claimant qualifies for more than one Harm Category, the Administrator will assign the Claimant to the Harm Category that provides the Claimant with the highest amount of compensation for which they qualify.

- **How do I prove my claim? / What documents are needed?**

Claims forms will be available in November 2021 and once the Court approves the proposed settlement. In most instances, Class Members will require an Orchid Pro DNA test. Many Class Members already have these tests and in those cases no follow-up is required now.

If a potential Class Member does not yet have an Orchid Pro DNA test, they should consider participating in the DNA database or otherwise following up with Class Counsel to determine if the explanation of why they do not have an Orchid Pro DNA test in support of their application will be sufficient.

Further information on the DNA Database is below.

- **Who is not included as a Class Member?**

The settlement does not include semen donors or individuals who left semen with Dr. Barwin and consented to that semen being used on other patients. Individuals who previously resolved a claim against Dr. Barwin and executed a release in his favour are also not included.

APPROVAL & COUNSEL FEE HEARING

- **When is the Approval & Counsel Fee Hearing?**

The hearing will take place virtually over Zoom on November 1, 2021 at 10:00AM.

- **What is the Approval & Counsel Fee Hearing?**

The hearing is to consider whether the settlement should be approved and, if so, whether class counsel's fees should be approved.

- **How do I attend the hearing?**

You may (but do not need to) attend the Approval Hearing. If you wish to attend the hearing, please contact Class Counsel for details at:

Robyn Beaulne – law clerk

Tel: 613-231-8214

Fax: 613-788-2370

robyn.beaulne@nelliganlaw.ca

- **What do I need to do if I want to make submissions?**

If you want to tell the Court what you think about the proposed settlement or speak to the Court at the Approval Hearing Date, Class Counsel must receive your submissions by email at barwinclassaction@ricepoint.com no later than **October 14, 2021**. The written submissions must state the nature of any comments or objections, and whether you intend to appear at the settlement approval hearing. The written submission of any Class Member must include:

- a) a heading which refers to the Action;
- b) the commenter's full name, telephone number, email address, and address (the commenter's actual residential address);
- c) if represented by counsel, the full name, telephone number, and address of all counsel;
- d) all of the reasons for his or her comments;
- e) whether the commenter intends to appear at the Approval Hearing on his or her own behalf or through counsel;
- f) a statement that the commenter is a Class Member, including the nature of his or her claim and any DNA evidence to prove his or her claim; and
- g) the commenter's signature.

Supporting documents may be attached to the written submission. If any testimony is proposed to be given in support of the comment at the Approval Hearing, the names of all persons who will testify must be provided for in the written submission.

[Opting Out](#)

- **What does opting out mean?**

Opting out means you are choosing to exclude yourself from the Class Action.

- **What happens if I do opt out?**

If you choose to opt out, you will not be eligible to receive any settlement benefits from the class action, but you will have the right to start an action against Dr. Barwin on your own. However, if you do so, you will have full responsibility to take all legal steps to protect any claim(s) you may have, including addressing any relevant limitation periods and all of the defences available to Dr. Barwin, including that children have no legal right to bring any claim against him. If you choose to pursue any legal action on your own, it will be at your own expense, including lawyers' fees and any risk of adverse legal costs against you personally should you not succeed.

- **What happens if I don't opt out?**

You will remain eligible to receive compensation, but you will not be able to pursue your own case against Defendant regarding the claims at issue in this action.

- **What if I don't want to make a claim in the class action or advance my own claim?**

You don't need to do anything at all.

- **When is the deadline for opting out?**

To properly and timely opt out of the action, the Opt Out Form and proper supporting documentation must be postmarked by no later than **October 14, 2021**.

- **What do I need to do to opt out?**

If you choose to exclude yourself from the Class Action, you can opt out by delivering an Opt Out Form to the Claims Administrator along with (1) notarized copy of government issued photo identification and (2) Orchid Pro Legal Chain of Custody DNA test that shows the nature of your claim, and if not possible to obtain, the next best evidence.

Further information is available on the Opt-Out Form available here: <https://nelliganlaw.ca/class-actions/dr-barwin/>. As is noted on the Opt Out Form, if individuals considering Opting Out do not already have the documentation needed, it is highly recommended that they follow-up with Class Counsel no later than September 1, 2021 to coordinate a DNA test free of charge.

You can deliver a completed Opt Out Form with mandatory documentation before the deadline of October 14, 2021 by mail, courier, or personal delivery at:

Mailing Address:
RicePoint Administration Inc.
P.O. Box 4454, Toronto Station A
25 The Esplanade
Toronto, ON M5W 4B1

Courier Address:
RicePoint Administration Inc.
100 University Ave.
8th Floor
Toronto, ON M5J 2Y1

DNA DATABASE

- **What is the DNA Database?**

The primary purpose of the DNA Database will be to provide the Children Class with the opportunity to identify their biological fathers, obtain medical health history, and locate half-siblings. It will also provide individuals who entrusted their semen with Dr. Barwin to determine if he misused the semen to conceive a child with another patient of his.

The DNA Database will run from August 3, 2021 until February 15, 2022. If you participate in the DNA database for the purpose of discovering whether you are eligible claimant in order to opt out from action, you must provide your DNA sample prior to September 15, 2021.

Class Counsel can assist you with the DNA Database process. Please contact:

Robyn Beaulne – law clerk
Tel: 613-231-8214
Fax: 613-788-2370
robyn.beaulne@nelliganlaw.ca

- **How will it operate?**

DNA testing done by OrchidPro creates a DNA profile. The DNA profiles of all class members who wish to participate will be input into the database. The database will compare the profiles to determine any matches. If a match occurs, a technician will then verify the match by reviewing both profiles.

- **Who can participate in the DNA database?**

Any potential class member (someone who fits within the class definitions above) may participate. If a match is found, they will likely have the foundation for a claim.

Anonymous sperm donors may also participate on a voluntary basis in order to help determine if there are any matches but they will not be able to become an eligible claimant or be entitled to any compensation in the class action.

- **What do I need to do to participate in the DNA database?**

If you have already had DNA testing done by OrchidPro, then all you will need to do is sign (1) DNA Database Disclosure and Consent Agreement and (2) Orchid Pro Authorization for ReUse of DNA sample previously provided. In some instances, male participants who have already provided DNA samples to Orchid Pro will need to provide new samples. Class Counsel will be contacting these individuals directly.

If you have not had DNA testing done through OrchidPro then you will need to do so and also will need to sign the DNA Database Disclosure and Consent Agreement. In order to arrange for DNA testing contact:

Robyn Beaulne – law clerk

Tel: 613-231-8214
Fax: 613-788-2370
robyn.beaulne@nelliganlaw.ca

- **When and where can I give a DNA sample?**

You can arrange to give a DNA sample at any time. It is a cheek swab. You can give a sample at any of the OrchidPro labs. To make arrangements to provide a DNA sample contact:

Robyn Beaulne – law clerk
Tel: 613-231-8214
Fax: 613-788-2370
robyn.beaulne@nelliganlaw.ca

- **Why do I have to sign a Disclosure/Consent form?**

Many patients are concerned that if a match occurs, it may give rise to legal rights and obligations. The agreement addresses all of these concerns so that all parties will know and agree to the same terms in the event a match is made.

- **What if I already provided a DNA sample to Orchid Pro?**

As noted above, in most cases all you will need to do is sign the DNA Database Disclosure and Consent Agreement and the Orchid Pro Re-Use Form and provide it to class counsel.

- **Will it cost me anything to participate in the DNA database?**

No.

- **What happens if there is a match or matches?**

The DNA Database Disclosure and Consent provides for what will happen if there is a match: your name and e-mail address will be provided to the individual that you matched with. This could be a paternity match or a half sibling match.

For former patients, it is strongly encouraged that they agree to complete the Medical and Health History Form so that it may be shared in the event of a match and to provide medical history to one or more members of the Child Class.

- **What will happen with my DNA after the Database is complete?**

OrchidPro is required to continue to hold on to the DNA profile of anyone who tested at their labs. The DNA Database will be destroyed once the claim period ends.