

NOTICE OF CERTIFICATION OF A CLASS ACTION

against Dr. Martin Jugenburg

**Were you a patient of Dr. Martin Jugenburg
and/or the Toronto Cosmetic Surgery Institute
between January 1, 2017, and December 13, 2018?**

**PLEASE READ THIS NOTICE CAREFULLY.
YOUR LEGAL RIGHTS WILL BE AFFECTED.**

This notice applies to you if you were a patient who was at the Toronto Cosmetic Surgery Institute, including the Skinjectables Clinic (together, the “Clinic”), any time between January 1, 2017 and December 13, 2018. You are included even if you only had a consultation and did not see Dr. Jugenburg, or if you were a patient who saw a doctor other than Dr. Jugenburg.

A class action is a type of lawsuit that involves a group of people who all have similar legal claims. Instead of each person filing a separate lawsuit, a class action is one lawsuit for the whole group. The group is called a “class” and members of the group are called “class members”.

A class action was certified by the Ontario Superior Court of Justice against Dr. Martin Jugenburg and his business, the Dr. Martin Jugenburg Medicine Professional Corporation. This Class Action is called: *G.C. et al. v. Martin Jugenburg et al.*, and filed under Court File Number CV-19-00631903-00CP. Dr. Martin Jugenburg and Dr. Martin Jugenburg Medicine Professional Corporation are the “Defendants” in the Class Action.

The allegations against the Defendants are, generally, that they failed to protect the privacy of the Class Member patients by placing and operating video recording devices throughout the Clinic. These devices were put in waiting areas, consultations rooms, examination rooms, and operation rooms.

It is alleged in the Class Action that the Defendants collected videos and audio recordings of patients at the Clinic without their permission or consent, and the Class Action is claiming compensation for the patients whose privacy was allegedly breached.

Now that the lawsuit can proceed as a class action, the Plaintiffs will be allowed to prosecute the action for the benefit of the whole class. No finding has been made yet that Dr. Jugenburg or his company did anything wrong. That will be decided at a trial of the common issues, which will not take place for some time. If a court decides that Dr. Jugenburg or his business are liable for the injuries, there may be money paid to the Class Member patients.

Now that the action is certified, there is an important next step that affects you and your rights.

This next step is known as the “opt out period”. In Ontario, if you fit the description of a class member, and you do not wish to be a part of a class action lawsuit, you must “opt out”. If you do not opt out, then you will automatically be a Class Member. As a Class Member you will be unable to sue Dr. Jugenburg and his Clinic on your own with respect to the breach of privacy claim that is the subject of this Class Action. You also cannot challenge any future court orders, which could include the judge’s decision from the common issues trial, or a potential settlement.

If you opt out and exclude yourself from the Class Action, you will not be able to benefit from any outcome of the trial or a settlement. There is no money to be paid currently, and there is no guarantee that there will be in the future. But if you opt out, you will never be entitled to any money paid to the Class Members in this Class Action.

For more information about the class action, please visit: www.dr6ixclassaction.com or <https://www.hshlawyers.com/expertise/mass-tort-class-action-litigation/dr-martin-jugenburg/>.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS CLASS ACTION LAWSUIT	
<p>DO NOTHING (Stay in the class action lawsuit)</p>	<ul style="list-style-type: none"> • If you do nothing, you will automatically be included as a member of the Class. You do not need to take any further action now to stay in the Class Action. • Await the outcome. Your rights will be determined by any judgment on the common issues or any court-approved settlement. • Give up certain rights, such as the right to pursue a lawsuit against Dr. Jugenburg on your own with respect to the privacy breach arising from operation of surveillance cameras in the Clinic . • You will keep your right to share in possible money or other benefits that may come from the trial or a possible settlement. • However, if the judge rules that the allegations have not been proven at the trial, you will lose your right to pursue Dr. Jugenburg on your own for the surveillance camera recordings.
<p>OPT OUT (Remove yourself from the class action lawsuit)</p>	<ul style="list-style-type: none"> • If you choose to opt out of the class action, then you can pursue your own lawsuit in connection with the surveillance camera recordings. • However, this means that you will get no money or benefits if the class action succeeds or a settlement is negotiated. • If you intend to opt out and sue Dr. Jugenburg on your own, you should know that time limits apply to start a lawsuit, and if you are outside of those limits you may not be able to bring an individual lawsuit. • You should consult a lawyer to obtain advice about your rights to bring an individual lawsuit before opting out.

Your rights and options will be explained in this notice.

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BASIC INFORMATION

1. What is a class action?

A class action is a unique type of lawsuit. It allows many people to sue someone who hurt or injured them in a similar way. For example, in this case the patients of Dr. Jugenburg and/or the Clinic were all surveilled allegedly without their consent or permission. As a group, the patients are called the “Class” and each individual patient is a “Class Member”.

Because the number of people in a class can be large, one or more class members act as “Representative Plaintiffs”. These class members chose to bring the action on behalf of everyone who was affected by the Defendants. Here, the Representative Plaintiffs will be pursuing this Class Action for the benefit of everyone in the Class. Their responsibilities include giving evidence about their experience at the Clinic, collecting and producing relevant documents, giving instructions to Class Counsel, being present at court, and other related functions. The lawyers for the Representative Plaintiffs and the Class are called “Class Counsel”.

In a class action, the court will decide the issues about what happened and the legal questions that are common to the whole class. These are called “Common Issues”, and when they are decided at trial, they are decided for everyone in the class.

The main steps in a class action are:

- The Court approves the lawsuit to go ahead as a class action, called “Certification”;
- The Certification Notice (this notice) is sent to potential class members, and class members have a set amount of time to decide if they want to opt out, otherwise they are included in the lawsuit;
- The parties exchange documents, conduct oral examinations of each other, and exchange experts’ reports;
- The class action lawsuit goes to a trial on the “Common Issues”; and
- If the trial is successful there may be “Individual Hearings” to decide any issues that have not been determined on a class-wide basis. Typically this may involve questions about any particular harms that an individual has suffered.

2. Why did I get this notice?

The Court has authorized this notice to let you know about your rights and how your rights may be affected by this Class Action.

You have received this notice because you were a patient at the Clinic between January 1, 2017, and December 13, 2018, when the surveillance cameras were operational. Unless you exclude yourself, you are a member of the Class.

If you fit the description of the Class, then your rights will be determined in the Class Action. Unless you opt out, your right to pursue an individual lawsuit regarding the surveillance cameras will be lost - but you may be entitled to a share of any settlement or judgment.

THE ALLEGATIONS IN THE LAWSUIT

3. What does the lawsuit allege?

The Class Action raises several different allegations against the Defendants. The legal terms for these allegations are: negligence, breach of fiduciary duty, breach of trust, and intrusion upon seclusion (breach of privacy). Broadly speaking, the lawsuit claims that Dr. Jugenburg and his company invaded the privacy of the Clinic patients through inappropriate surveillance systems with inadequate warnings about the surveillance. Also, because this involves the doctor-patient relationship, Dr. Jugenburg held a special position of trust and was obliged to act in the best interests of his patients – which the Class Action alleges he failed to do.

The lawsuit is called *G.C., J.C. and A.C. v. Martin Jugenburg and Dr. Martin Jugenburg Medicine Professional Corporation* and has the court file number CV-19-00631903-00CP. A copy of the Court's Reasons for Decision approving the lawsuit as a class action can be viewed at: <https://canlii.ca/t/jfvs6>. This decision sets out many of the details about the claim and the Representative Plaintiffs.

If you would like to read more, a copy of the Amended Statement of Claim can be viewed here: <https://waddellphillips.ca/wp-content/uploads/2020/03/20.02.21-Amended-Statement-of-Claim-with-stamp.pdf>.

4. How do the Defendants respond to these allegations?

The Defendants have denied that they caused harm to the Class. They deny that they are liable to pay any amount to any Class Member. They are defending the Class Action.

5. Has the Court decided who is right?

No decision has been made about whether the Class or the Defendants is right. This will not happen until the Common Issues trial, which will not take place for quite some time (likely a few years). At the trial, the Representative Plaintiffs will present their evidence about why they say the Defendants are at fault and what losses the Class have suffered collectively. The Defendants will respond to these allegations.

Updates about the status of the case will be posted on Class Counsel's websites:

- www.dr6ixclassaction.com or
- <https://www.hshlawyers.com/expertise/mass-tort-class-action-litigation/dr-martin-jugenburg/>.

As a Class Member, you do not need to participate in the Common Issues trial. Once the Common Issues trial is completed, and if the Representative Plaintiffs are successful, then you may have an opportunity to participate in an Individual Hearing, if this is required. This hearing could establish if you are entitled to compensation beyond what may be awarded at the Common Issues trial. More information on that process will be sent if the Common Issues trial is successful, and Individual Hearings are required.

6. What are the Representative Plaintiffs asking for?

The Representative Plaintiffs are asking that money be paid to the Class Members for the injuries and harm and the breach of privacy that they have allegedly suffered because of the surveillance at the Clinic.

7. What are the Common Issues?

When the Court authorized the lawsuit to go ahead as a Class Action, it also approved some Common Issues. These Common Issues are questions that the trial judge will answer based on the evidence, testimony, and arguments on both sides. The success of the Class will depend on how the Court decides these questions.

The Certification Order of the Court can be viewed here: <https://waddellphillips.ca/wp-content/uploads/2021/06/21.05.25-Cerification-Order-Signed.pdf>. It sets out all the common issues that will be decided at the common issues trial. The common issues are:

Negligence

- 1) Did the defendants, or either of them, owe a duty of care to the Class Members in the collection, retention, use, and/or disclosure of the Class Members' Personal Information?¹
- 2) If the answer to question #1 is yes, what is the applicable standard of care?
- 3) If the answer to question #1 is yes, did the defendants, or either of them, breach the duty of care? If so, how?

Vicarious Liability

- 4) Are the defendants, or either of them, vicariously liable for the wrongful conduct of employees or contractors of Dr. Martin Jugenburg Medicine Professional Corporation or the Toronto Cosmetic Surgery Institute?

Breach of trust and fiduciary duty

- 5) Did the defendants, or either of them, owe a fiduciary duty to the Class Members?
- 6) If the answer to question #5 is yes, did the defendants, or either of them, breach their fiduciary duty? If so, how?
- 7) Were the defendants, or either of them, a trustee of the Class Members with regard to their Personal Information and, if so, did the defendants, or either of them, breach the duty of trust imposed upon him, it, or them with respect to maintaining the confidentiality of the Class Members' Personal Information? If so, how?

Intrusion upon seclusion

- 8) Did the defendants, or either of them, invade, without lawful justification, the private affairs or concerns of the Class Members?
- 9) If the answer to question #8 is yes, did the defendants, or either of them, act intentionally or recklessly?

¹ Personal Information is defined as in s. 2(1) of the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5, to include "information about an identifiable individual".

- 10) If the answer to questions #8 and #9 is yes, would a reasonable person regard the invasion of the Class Members' privacy as highly offensive causing distress, humiliation or anguish?

Damages

- 11) Can an award of aggregate damages be made pursuant to s. 24(1) of the *Class Proceedings Act, 1992*?
- 12) Does the conduct of the defendants, or either of them, justify an award of punitive, exemplary and/or aggravated damages?

8. Is there any money available now?

No. There is no money available now because the Court has not yet decided who is right. There is no guarantee that money or benefits will be awarded; however, if money is awarded, you will be notified about how to ask for a share.

WHO IS INCLUDED IN THE LAWSUIT

9. How do I know if I am part of this class action?

The Class Action includes all patients who attended at the Toronto Cosmetic Surgery Institute, including the Skinjectables clinic, from January 1, 2017, to December 13, 2018. This includes patients who only attended at the Clinic for a consultation, but did not see Dr. Jugenburg or undergo surgery, and patients of surgeons other than Dr. Jugenburg.

10. What do I do if I am not sure if I am included?

If you are still not sure whether you are included in the Class, you may contact Class Counsel at 1-877-771-7006 or reception@waddellphillips.ca with questions. A confidential inquiry can also be made by completing the form at: www.dr6ixclassaction.com.

RIGHTS AND OPTIONS FOR CLASS MEMBERS

11. What happens if I do nothing?

If you do nothing, you are choosing to remain a Class Member. Win or lose at trial, you will have your rights impacted. You will lose the right to sue for the same injuries or harm as those alleged in the Class Action. However, if Dr. Jugenburg or his corporation are required to compensate the Class Members through a win at trial or through a settlement, you will be notified about how to claim your share, or what your options are at that step.

12. What happens if I opt out and exclude myself?

If you opt out, you will not be able to get any money or benefits from the lawsuit if they are awarded through the trial or settlement. However, you will keep your right to sue as an individual. You should know that your ability to sue is limited by time – i.e. you have to start the

lawsuit by a certain date. You should consult a lawyer about your rights, and if they are impacted by time limitations, before deciding to opt out.

13. If I don't opt out and exclude myself, can I sue later?

No. Unless you opt out/exclude yourself by the Opt-Out Deadline, which is **Monday, October 4, 2021**, you give up the right to sue as an individual for the injury or harm suffered caused by the privacy breach involving the surveillance cameras. You must opt out and exclude yourself from the Class Action lawsuit to start your own lawsuit.

14. How do I opt out and exclude myself from the class action?

You must send a message to Class Counsel that is signed by you and says that you are choosing to opt out of the Class Action by the Opt-Out Deadline. You can use the Opt-Out Form at Page 11 of this Notice, or you can simply write, fax or email a message to Class Counsel that includes: your full name and address, your signature, a statement that you fit within the definition of a Class Member, and a statement that you do not want to be a part of this Class Action lawsuit.

If you mail your opt-out request/form, it must be postmarked by no later than **Monday, October 4, 2021**. If you email or fax your opt-out request/form, it must be received by Class Counsel by no later than 5:00 pm ET on **Monday, October 4, 2021**.

Opt-Out Forms are to be sent to:

HOWIE, SACKS & HENRY LLP
 Att'n Dr. Jugenburg Class Action
 20 Queen St. W., Suite 3500
 Toronto, ON M5H 3R3
 Fax: 416-361-0083
 Or email: jugenburgclassaction@hshlawyers.com

**NO OPT-OUT FORMS OR REQUESTS TO OPT OUT WILL BE ACCEPTED
 AFTER 5 P.M. ON October 4, 2021.**

If you have not excluded yourself from the Class Action by the Opt-Out Deadline, you will automatically be included in the Class Action as a Class Member, and cannot opt out or exclude yourself later.

15. Do I have a lawyer?

Waddell Phillips Professional Corporation, Beyond Law LLP, and Howie, Sacks & Henry LLP of Toronto, Ontario, are Class Counsel. Class Counsel are the Representative Plaintiffs' lawyers, and are prosecuting the action for the benefit of the Class as a whole. Class Counsel have broad experience handling similar cases.

More information about Class Counsel, their practices, and their lawyers' experience is available at www.waddellphillips.ca, <https://beyond.law/>, and <https://www.hshlawyers.com/>.

16. How will the lawyers be paid?

Class Counsel has been retained on a “contingency” basis. This means that, unless the lawsuit is successfully decided at trial or settled, they will not be paid any of their fees or expenses. If the lawsuit is successful, Class Counsel will ask the Court to approve payment of their fees and expenses from any amount awarded to the Class. The fee request will not exceed 30% of any award. The Court will decide if Class Counsel’s fees and expenses will be deducted from the award or if Dr. Jugenburg and his Clinic will have to pay them separately.

You will not have to pay any of these fees and expenses directly.

If there are Individual Hearings following the Common Issues trial, then any legal fees payable for that process will be negotiated separately at that time.

THE TRIAL

17. How and when will the Court decide who is right?

If there is no settlement, then the Representative Plaintiffs will have to argue their case at the Common Issues trial. During the trial, a judge will hear all of the evidence against Dr. Jugenburg and his company, as well as the Defendants’ evidence about why they should not be held responsible for the allegations against them. The judge will then decide the Common Issues by answering the “Common Issues” questions.

Both parties will have an automatic right of appeal from any judgment on the Common Issues.

18. Do I have to come to the trial?

No, you do not need to attend the trial. Class Counsel will argue the case for the Representative Plaintiffs and the Class. You are welcome to come and watch any part of the trial. You may also volunteer to participate as a witness, but you don’t have to. If you want to participate at the Common Issues trial, you should contact Class Counsel and they will discuss that option with you.

19. Will I get money after the trial?

If the Representative Plaintiffs succeed at the trial, or if a settlement is approved by the Court, you will be notified about how to ask for a share of the award.

Based on the court-approved Common Issues, it is possible that some Class Members who have suffered harm over and above the general level of harm found for all Class Members will have to prove their entitlement to a larger payment at an Individual Hearing after the common issues are decided.

If you have suffered significant mental injury or distress because of being subjected to the surveillance cameras, you should contact Class Counsel to discuss your situation with them.

GETTING MORE INFORMATION

20. How do I get more information about the lawsuit?

This Notice summarizes the lawsuit. More details are in the Amended Statement of Claim and the Certification Order, which can be viewed at: www.dr6ixclassaction.com.

You may send questions to Class Counsel as follows:

Waddell Phillips PC

Tel: 647-261-4486

Fax: 416-477-1657

reception@waddellphillips.ca

Beyond Law LLP

Tel: 416-287-0199

Fax: 647-243-2852

info@beyond.law

Howie, Sacks & Henry LLP

Tel: 1-877-771-7006

Fax: 416-361-0083

vlord@hshlawyers.com

You may also fill in the confidential inquiry form at: www.dr6ixclassaction.com.

This notice was approved by the Ontario Superior Court of Justice. It is a summary of the certification order. If there is a conflict between what it says in this notice and what it says in the certification order, the certification order applies.

**EXCLUSION REQUEST (OPT-OUT) FORM
ON NEXT PAGE**

Dr. Jugenburg Class Action

OPT-OUT FORM

This is **NOT** a Claim Form.

Class Members who wish to pursue their own action or who do not want to be bound by the outcome of this Action **MUST OPT OUT** of this Action, and may do so by completing this **OPT-OUT FORM**.

TO: HOWIE, SACKS & HENRY LLP
Att'n Dr. Jugenburg Class Action
20 Queen St. W., Suite 3500
Toronto, ON M5H 3R3
Fax: 416-361-0083
Or email: jugenburgclassaction@hshlawyers.com

Please read and confirm your agreement by checking each box:

- I acknowledge that I am opting out and I am confirming that I do not wish to participate in the Dr. Jugenburg privacy Class Action.
- I acknowledge that Class Members who wish to pursue their own actions, or who do not want to be bound by the outcome of this Class Action must opt out.
- I acknowledge that if I wish to pursue my own claims against the Defendants relating to the matters at issue in this Class Action, I should seek independent legal advice, which will be at my own expense.

Name:

Mailing Address:

Telephone:

Email:

Signature: