

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**IN THE MATTER OF a Claim under the  
Class Proceedings Act, 1992, S.O. 1992, c.6**

BETWEEN:

**DOUGLAS JONES**

Plaintiff

and

**ROYAL BOTANICAL GARDENS and  
1242238 ONTARIO INC., OPERATING AS COMPTON & GREENLAND FINE  
FOODS AND CATERING LTD.**

Defendants

**AMENDED  
STATEMENT OF DEFENCE AND CROSSCLAIM  
of the DEFENDANT ROYAL BOTANICAL GARDENS  
TO THE AMENDED STATEMENT OF CLAIM**

1. The Defendant, Royal Botanical Gardens (hereinafter referred to as “the RBG”) admits the allegations contained in paragraphs 3, 5, and 13b of the Statement of Claim.
2. The RBG denies the allegations contained in paragraphs 1, 4, 6, 7, 9, 10, 11, 13a, 14, 15, 16, 17, 18, and 20 of the Statement of Claim and puts the Plaintiffs to the strict proof thereof.
3. The RBG has no knowledge with the respect to the allegations contained in paragraphs 2, 8 12, 19, 21 and 22 of the Statement of Claim.

4. The RBG specifically denies that it was negligent or in anyway responsible for the Plaintiffs' damages and injuries as pleaded, which damages and injuries are not admitted but denied and puts the Plaintiffs to the strict proof thereof.
  
5. In the alternative, the RBG states and the fact is that said damages and injuries, if proven, were caused by reason of the negligence of its co-defendant, 1242238 Ontario Inc., operating as Compton & Greenland Fine Foods and Catering Ltd. (hereinafter referred to as "the Caterer") particulars of which negligence are as follows:
  - (i) It failed to ensure that food served at the Mother's Day Brunch by it was free from bacteria and contamination and safe for human consumption;
  - (ii) It failed to employ competent food-preparation staff in order to ensure that food served at the Mother's Day Brunch was free from bacteria and contamination and safe for human consumption;
  - (iii) It failed to monitor and supervise its employees and/or agents in order to ensure that food served at the Mother's Day Brunch was free from bacteria and contamination and safe for human consumption; and
  - (iv) It was negligent in the handling of food and/or its transportation, storage and preparation, and in failing to ensure that food served at the Mother's Day Brunch was free from bacteria and contamination and safe for human consumption;
  - (v) The RBG states that the Caterer was alone responsible for the providing supervision and training of food preparation and service staff and any failure to deliver the same rests entirely with the Caterer;
  - (vi) The RBG states that the Caterer was entirely and alone responsible for the maintenance of food services, the quality of food served and ensuring no contamination existed and any failure to do so rests entirely with the Caterer; and
  - (vii) The Caterer alone was responsible for ensuring that any food served at the RBG premises was safe for human consumption and any failure to do so rests entirely with the Caterer.

6. The RBG pleads and relies upon the provisions of the Negligence Act, R.S.O. 1990, c.N.1, the Court of Justice Act, R.S.O. 1990 c.43 and the Health Protection and Promotion Act, R.S.O. 1990 c. H.7 and amendments thereto.
7. The RBG denies that the Plaintiffs have suffered the injuries and damages as alleged in the Statement of Claim and pleads that if the Plaintiffs did sustain the said injuries and damages, which is not admitted but specifically denied, then the said injuries and damages are exaggerated, excessive and too remote to be recoverable at law. The RBG further pleads that the Plaintiffs have failed to mitigate their damages as required by law. The Plaintiffs are put to the strict proof of the injuries and damages as claimed.
8. The RBG denies that the injuries and damages alleged by the Plaintiffs were caused by the incident referred to in the Statement of Claim and that if the Plaintiffs did sustain any injuries or damages, which is not admitted but denied, then the said injuries or damages were caused solely or contributed to by injuries, illnesses and/or other medical conditions suffered by the Plaintiffs either before or after the circumstances alleged in the Statement of Claim arose and not as a result thereof.
9. The RBG states that the Caterer is an independent contractor and is not an employee or partner of the RBG. The Caterer had complete responsibility for the providing, preparation and service of any food on the RBG premises.
10. The RBG states that it entered into a contract with the Caterer on January 5, 1999.
11. The RBG pleads and relies on the terms of the contract.
12. The RBG states that the Caterer is an independent contractor and that the Caterer failed to retain complete control of accountability for its personnel and agents.

13. The RBG states that the Caterer failed to comply with the provisions of the contract, including but not limited to a failure to comply with the following provisions:

**Paragraph 3.2 “Quality”**

The food to be served, cleanliness of the facilities and other sanitary standards shall be in accordance with the requirements of the applicable laws governing the operations of food services.

**Paragraph 3.5**

The contractor shall purchase and hold at its own expense, in its own name and in an appropriate manner, the inventory of food, beverages and supplies as maybe necessary and appropriate for the efficient operation of food services. The contractor shall only use foods that are Canada “A” or “1” top quality or the equivalent. All other products used in the food services shall be a first class quality.

**Paragraph 4.1**

The contractor is an independent contractor and the contractor shall retain complete control of accountability for its personnel and agents.

**Paragraph 4.2 Labour Relations**

The contractor shall recruit, hire, train and supervise, evaluate, direct, discipline and if necessary discharge all of its personnel performing services in connection with the food services.

**Paragraph 4.3(a) Provision of Personnel**

The contractor shall ensure the provisions of sufficient qualified and experienced management to efficiently operate the food services at all times according to the standards referred to in Article 3.2.

**Paragraph 4.3(c)**

All staff shall perform their work in accordance with all applicable laws, including those relating to health and safety.

**Paragraph 4.4 Uniforms and Safety Devices**

The contractor shall provide all personnel with clean appropriate uniforms acceptable to the RBG, which shall include at minimum head covering, disposal gloves and aprons.

**Paragraph 5.4 Health Inspection Reports**

The contractor will provide to the RBG forthwith upon receipt, copies of all health certificates, inspection and safety report made by authorized parties and relating to the food services. RBG will make its best efforts to notify the contractor when such authorized parties are present at the facilities. The contractor shall remedy any deficiencies in a timely manner into the satisfaction of the RBG.

**Paragraph 6.5 Cleaning and Sanitation**

The contractor shall establish and implement sanitation procedures consistent with the operation of a first class food service facility. The responsibility of the

parties with respect to the normal and customary cleaning of the food services facilities and the equipment shall be as follows:

- (i) small wares – the contractor shall be responsible for cleaning and storing all small wares including dishware and cutlery;
- (ii) kitchens – the contractor shall be responsible for maintaining all areas of the kitchen, including floors, walls, ceiling, windows (inside only), equipment, grease pits and exhaust hoods serving the facilities in a clean and sanitary condition in accordance with the applicable laws;
- (iii) dining areas – the contractor shall be responsible for cleaning all dining areas in the facilities including floors, walls, ceiling, windows (inside only), tables, chairs and garbage bins. The contractor shall ensure that periodic spills during service hours are cleaned by its personnel on a timely basis;
- (iv) Catering – the contractor shall be responsible for cleaning of food, service items immediately following a catering function.

#### **Paragraph 6.7**

The contractor shall assume maintenance of all equipment in connection with the provisions of Food Services. The contractor shall be responsible for cleaning, service and repairs to all equipment, which is the property of the RBG and the property of the contractor, located on the premises.

#### **Paragraph 9.3 General Terms and Conditions**

The contractor shall perform this agreement in compliance with all applicable Provincial laws and/or Municipal Bylaws and/or RBG policies governing the operations of food services including but not limited to the following:

- (a) all activities undertaken by the contractor shall comply with the requirements of the Ontario Occupational Health and Safety Act.

14. The RBG pleads and relies upon the indemnity provisions of the contract with the Caterer including but not limited to the following:

**Paragraph 9.6 Indemnification**

- (a) The contractor shall indemnify and save harmless RBG and its servants and agents against all claims, demands, losses, damages, costs, expenses, actions and other proceedings, made, sustained, brought, prosecuted, threatened to be brought or prosecuted, in any manner based upon, occasioned by or attributable to the services the contractor has agreed to provide insurance protection under this Agreement.
  - (iii) The contractor agrees that RBG shall not be liable for any wilful or negligent act, omission or delay on the part of the contractor, the contractor's servants or agents in performing the work or as a result of the work.
- (b) The contractor shall indemnify and save harmless RBG, its officers, employees and agents from and against all liabilities, claims, demands, losses, penalties, expenses, legal or other costs, damages, actions, suits or other proceeding by whomsoever made, including any liability for Workplace Safety and Insurance Board Experience Rating assessments, surcharges, or penalties against RBG, sustained, brought or prosecuted in any manner directly or indirectly based upon, occasioned by or attributable to anything done or omitted to be done by the contractor, the subcontractor or their respective

officers, employees, or agents in connection with this Agreement or with the operations performed, purportedly performed or required to be performed by the contractor or any subcontractor of the contractor under this agreement or arising from any act or omission of the contractor whatsoever including but not limited to any breach of any provision contained in this agreement.

- (c) The contractor shall provide to RBG, as of the effective date, and annually thereafter a clearance certificate issued by the Workplace Safety and Insurance Board evidencing the good standing of the contractor's Workplace Safety and Insurance Board firm account, unless waived in writing by RBG.
  - (d) The contractor's liability to indemnify or reimburse RBG under the contract shall not affect or prejudice RBG from exercising any other rights under the law.
  - (e) The contractor shall provide to RBG, as of the effective date, and annually thereafter, a certificate of insurance evidencing the general and automobile liability insurance coverage noted above, including the liability clauses as noted.
15. The RBG states and the fact is that the Caterer is in breach of the contract for failing to ensure that foods served the Mother's Day Brunch was safe for human consumption.
  16. The RBG denies that the circumstances alleged, if proven, were such to give rise to liability for punitive, exemplary, or aggravated damages.
  17. With respect to the Plaintiffs claim for pre-judgment interest, the failure of the Plaintiffs' to give sufficient particulars of the damages claimed and the basis of such claims causing the RBG to be unable to evaluate such claims disentitles the Plaintiffs from claiming prejudgment interest.



18. The RBG pleads that the allegations as set out in the claim are incapable of meeting the requirements of the Class Proceedings Act, S.O. 1992, c.6 as amended and in particular Section 5 thereof, and denies that the claims of the Plaintiffs are such as can be certified under the Act.
19. The RBG therefore requests that this action against it be dismissed with costs.

### **CROSSCLAIM**

20. The RBG claims against the Caterer:
  - (a) contribution and indemnity in relation to the Plaintiffs claim;
  - (b) its costs of this crossclaim;
  - (c) its costs of the main action on a solicitor and client basis;
  - (d) such further and other relief as this Honourable Court may deem just.
21. The RBG repeats the allegations set out in its Statement of Defence and states that by reason of the provisions of the Negligence Act, R.S.O. 1990 c.N.1 as amended as well as the Caterer's breach of contract the RBG is entitled to a declaration for contribution over as against the Caterer, the particulars of which are as follows:
  - (i) It failed to ensure that food served at the Mother's Day Brunch by it was free from bacteria and contamination and safe for human consumption;
  - (ii) It failed to employ competent food-preparation staff in order to ensure that food served at the Mother's Day Brunch was free from bacteria and contamination and safe for human consumption;
  - (iii) It failed to monitor and supervise its employees and/or agents in order to ensure that food served at the Mother's Day Brunch was free from bacteria and contamination and safe for human consumption;
  - (iv) It was negligent in the handling of food and/or its transportation, storage and preparation, and in failing to ensure that food served at the Mother's

Day Brunch was free from bacteria and contamination and safe for human consumption;

- (v) It was negligent in that the food served at the Mother's Day Brunch was in fact contaminated and was not appropriate or safe for human consumption;
- (vi) The RBG states that the Caterer was alone responsible for the providing supervision and training of food preparation and service staff and any failure to deliver the same rests entirely with the Caterer;
- (vii) The RBG states that the Caterer was entirely and alone responsible for the maintenance of food services, the quality of food served and ensuring no contamination existed and any failure to do so rests entirely with the Caterer; and
- (viii) The Caterer alone was responsible for ensuring that any food served at the RBG premises was safe for human consumption and any failure to do so rests entirely with the Caterer.

22. The RBG submits that this crossclaim should be tried with or after the trial of the main action or as this Honourable Court direct.

August 12, 2005

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**DOUGLAS JONES**  
Plaintiff

**and**  
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Defendants

Court File No:05-18369 CP

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SUPERIOR COURT OF JUSTICE**

Proceedings commenced at Hamilton

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