

05-18369 CP

Court File No. CP

**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  
COMPTON & GREENLAND FINE FOODS AND CATERING LTD.**

Defendants

**STATEMENT OF CLAIM**

TO THE DEFENDANT(S)

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. If you wish to defend this proceeding but are unable to pay legal fees, legal aid may be available to you by contacting a local legal aid office.

Date *May 30/05.*

Issued by   
Local Registrar

Address of court office:  
45 Main Street East  
Suite 110  
Hamilton, Ontario  
L8N 2B7

TO **ROYAL BOTANICAL GARDENS**  
680 Plains Road West  
Burlington, Ontario  
L7T 4H4

AND **COMPTON & GREENLAND FINE FOODS AND CATERING LTD.**  
TO 680 Plains Road West  
Burlington, Ontario  
L7T 4H4

## CLAIM

1. The Plaintiff claims on his own behalf and on behalf of all Class Members:
  - (a) Damages for negligence and breach of duty as set out below, in the amount of \$1,000,000.00;
  - (b) Punitive, aggravated and exemplary damages;
  - (c) Prejudgment interest in accordance with section 128 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
  - (d) Post judgment interest in accordance with section 129 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
  - (e) The costs of this proceeding on a substantial indemnity basis, plus applicable goods and services tax; and,
  - (f) Such further and other relief as to this Honourable Court may seem just and appropriate in the circumstances.

## **THE PARTIES**

2. The Plaintiff is an individual residing in the Town of Caledonia, in the Province of Ontario.

3. The Defendant, Royal Botanical Gardens ("RBG"), is a non-share capital corporation incorporated pursuant to laws of the Province of Ontario, with offices of business at 680 Plains Road West, Burlington, Ontario.

4. The Defendant, Compton & Greenland Fine Foods and Catering Ltd. ("Compton & Greenland"), is a corporation incorporated pursuant to the laws of the Province of Ontario and carries on business as a catering company, and is the exclusive caterer to RBG.

## **MOTHER'S DAY BRUNCH**

5. On May 8, 2005, RBG held a Mother's Day Brunch buffet at its premises ("Mother's Day Brunch"), the food catering for which was provided by Compton & Greenland.

6. Approximately 300 people attended the Mother's Day Brunch.

7. Food served to attendees was contaminated with salmonella poisoning and/or other bacteria causing many individuals to fall ill shortly after attending the event and ingesting the contaminated food.

### **SITUATION OF THE REPRESENTATIVE PLAINTIFF**

8. The Plaintiff attended the Mother's Day Brunch at RBG on May 8, 2005.

9. The Plaintiff states that he ingested food that was contaminated as set out above.

10. The Plaintiff fell severely ill shortly after attending the event and ingesting the contaminated food, which illness was directly caused by the contaminated food being consumed.

11. The Plaintiff states that he has suffered damages as a result of the negligence of the Defendants, particulars of which are as set out below.

### **NEGLIGENCE**

12. The Plaintiff and Class Members state that the Defendant had a duty of care to them to ensure that food served at the Mother's Day Brunch was free from bacteria and contamination and safe for human consumption.

13. The Plaintiff and Class Members state that their damages as set out below were caused or contributed to directly by the negligence and breach of duty of one or both of the Defendants, particulars of which are as follows:

a. In the case of the Defendant, RBG:

- i. It was negligent in that food provided to the Plaintiff and Class Members at the Mother's Day Brunch was contaminated with bacteria and not safe for human consumption;
- ii. It failed to employ sufficient and competent catering and/or food-preparation staff 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 food-preparation staff and caterer 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 employing, retaining and/or engaging a caterer and in monitoring the caterer's practices and competence, in order

to ensure that food served at the Mother's Day Brunch was free from bacteria and contamination and safe for human consumption.

b. In the case of the Defendant, Compton & Greenland:

- 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.

## **DAMAGES**

14. The Plaintiff and Class Members state that they have suffered damages as a result of the negligence and breach of duty of the Defendants as described above, specifically, at a minimum, severe diarrhea, vomiting, fever, nausea, chills, headaches and abdominal pain, typically 12 to 36 hours after ingesting the contaminated food. Symptoms typically last four to seven days and can lead to severe dehydration.

15. Some Class Members have developed septicemia which involves the bacteria spreading from the digestive system into the blood.

16. Some Class Members were required to seek and obtain medical assistance including hospitalization in the most severe cases.

17. Some Class Members suffered out-of-pocket losses including loss of income due to lost time from work.

18. The Plaintiff and Class Members state that the conduct of the Defendants is such that it shocks the community in the circumstances, and that such conduct warrants the



condemnation of this Court via an award of punitive, aggravated and exemplary damages.

## **THE CLASS**

19. The Plaintiff proposes that the Class herein be defined as follows:

*Any person having suffered food poisoning as a result of consumption of contaminated food served at the Royal Botanical Gardens' Mother's Day Brunch, May 8, 2005.*

20. The Defendants have disclosed that there are more than 100 such individuals, the identity of whom are all known to RBG.

21. The Plaintiff hereby requests that the Defendants provide the names and contact information with respect to all Class Members identified by them, and indeed with respect to all individuals who were in attendance at the RBG Mother's Day Brunch.

## LEGISLATION

22. The Plaintiff and Class Members plead and rely upon the provisions of the *Class Proceedings Act*, S.O. 1992, c. C.6, the *Courts of Justice Act*, R.S.O. 1990, c. C.43 and the *Negligence Act*, R.S.O. 1990, c. N.1.

**SCARFONE HAWKINS <sup>LLP</sup>**  
Barristers & Solicitors  
One James Street South, 14th Floor  
P.O. Box 926, Depot #1  
Hamilton, Ontario  
L8N 3P9

DAVID THOMPSON (28271N)  
Tel : (905) 523-1333  
Fax: (905) 523-5878  
[thompson@shlaw.ca](mailto:thompson@shlaw.ca)

Solicitors for the Plaintiff

**DOUGLAS JONES v. ROYAL BOTANTICAL GARDENS ET AL.**  
Plaintiff  
Defendant

Court File No. **GP**

05-18369 CP

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
PROCEEDING COMMENCED AT HAMILTON

**STATEMENT OF CLAIM**

**SCARFONE HAWKINS LLP**  
Barristers & Solicitors  
One James Street South, 14th Floor  
P.O. Box 926, Depot #1  
Hamilton, Ontario  
L8N 3P9

**DAVID THOMPSON (28271N)**  
Tel : (905) 523-1333  
Fax: (905) 523-5878  
[thompson@shlaw.ca](mailto:thompson@shlaw.ca)

Solicitors for the Plaintiff