

Press Release: Alberta Business Owners Successful in Certification of Class Action for Illegal Hinshaw “Public Health” Orders

FOR IMMEDIATE RELEASE

October 30, 2024 – Alberta – Rath & Company is pleased to announce today that it has been successful in its application for certification on behalf of Alberta business owners impacted by Covid-19 restrictions and closures imposed through Chief Medical Officer of Health (“CMOH”) Orders.

Justice Feasby of the Court of King's Bench of Alberta released his decision today certifying the class action in *Ingram v Alberta*, 2024 ABKB 631.

This class action, led by Rebecca Ingram and Christopher Scott (the “Proposed Representative Plaintiffs”), sought to certify a class on behalf of affected Alberta business owners who suffered losses due to the CMOH orders, which were found to be *ultra vires*—outside legal authority and therefore unlawful—under Alberta’s Public Health Act (“PHA”) in *Ingram v Alberta (Chief Medical Officer of Health)*, 2023 ABKB 453 (“*Ingram 2023*”).

As a result, the Court Certified multiple claims, including negligence, bad faith and misfeasance in public office. The Court allowed affected businesses to claim compensation for harm and losses incurred due to the illegal CMOH Orders including punitive damages.

Central Allegations of Bad Faith and Call for Punitive Damages

A core component of the case was the allegation that Alberta’s Cabinet acted negligently or in bad faith by issuing orders through the CMOH when Alberta’s Cabinet chose to camouflage their actions as public health orders under the PHA so they could blame the CMOH rather than accept political responsibility.” Specifically, Justice Feasby found:

“The Proposed Representative Plaintiffs plead essentially that Cabinet hid behind the CMOH thereby avoiding democratic accountability. That, in my view, is a collateral purpose that is plausibly bad faith.”

The Court expressly permitted claims for punitive damages to hold Alberta accountable and deter future misconduct. Justice Feasby agreed that this is a reasonable common issue and certified it for consideration. Unlike general damages, which require individual assessments, punitive damages can be addressed as a common issue when the misconduct affects a broad group. Specifically Justice Feasby acknowledged that punitive damages are intended to punish wrongful conduct rather than compensate for losses, and can sometimes be assessed on a class-wide basis.

The Court has certified a class consisting of:

“All individuals who owned, in whole or in part, a business or businesses in Alberta that was subject to full or partial closure, or operational restrictions, mandated by the CMOH Orders between March 17, 2020, and the date of certification. For clarity, “owned” does not include ownership as a shareholder in a corporation or as a member of a cooperative.”

Lead counsel Jeff Rath stated: “This is a huge day for Alberta businesses that were illegally harmed by Jason Kenny and Deena Hinshaw. The Court found that the action can proceed against the government of Alberta on a number of grounds including misfeasance in public office allowing the plaintiffs to seek punitive damages against the Alberta government for wrongdoing.”

Important Notice for Potential Class Members

The application for class action certification seeks to provide a fair and efficient resolution for Alberta business owners who suffered losses due to the CMOH Orders. A class proceeding is the most effective way to address these claims, given the widespread impact on Alberta’s business community. If you believe you are a class member, please retain all relevant records, as this evidence will be essential in the upcoming steps.

For more information and updates on this case, or to complete our intake form if you believe you are a class member, please visit: <https://rathandcompany.com/business-class-action/>