

**COURT OF APPEAL OF ALBERTA**

**Form AP-1**  
[Rules 14.8 and 14.12]

COURT OF APPEAL FILE NUMBER: 2401-0321AC  
TRIAL COURT FILE NUMBER: 2301-12271  
REGISTRY OFFICE: CALGARY  
PLAINTIFFS: REBECCA MARIE INGRAM  
and CHRISTOPHER SCOTT,  
carrying on business as THE  
WHISTLE STOP CAFÉ



STATUS ON APPEAL: RESPONDENTS  
DEFENDANT: HIS MAJESTY THE KING IN RIGHT OF  
THE PROVINCE OF ALBERTA

STATUS ON APPEAL: APPELLANT  
DOCUMENT: **CIVIL NOTICE OF APPEAL**

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File No: LIT-40712

**WARNING**

To the Respondent: If you do not respond to this appeal as provided for in the Alberta Rules of Court, the appeal will be decided in your absence and without your input.

**1. Particulars of Judgment, Order or Decision Appealed From:**

Date pronounced: October 30, 2024

Date entered: N/A

Date served: N/A

Official neutral citation of reasons for decision, if any:

(do not attach copy) *Ingram v Alberta*, 2024 ABKB 631

(Attach a copy of order or judgment: Rule 14.12(3). If a copy is not attached, indicate under item 14 and file a copy as soon as possible: Rule 14.18(2).)

**2. Indicate where the matter originated:**

Court of King's Bench

Judicial Centre: Calgary

Justice: Honourable Justice Colin C.J. Feasby

On appeal from a King's Bench Master or Provincial Court Judge?:  No

**3. Details of Permission to Appeal, if required (Rules 14.5 and 14.12(3)(a)).**

Permission not required.

**4. Portion being appealed (Rule 14.12(2)(c)):**

Whole

**5. Provide a brief description of the issues:**Background

- The Plaintiffs/Respondents brought an application to certify a proposed class proceeding against His Majesty the King in right of Alberta ("HMK") on behalf of all individuals who owned and operated businesses in Alberta that were

fully or partially restricted by the Orders of the Chief Medical Officer of Health during the Covid-19 pandemic (the “CMOH Orders”).

- In *Ingram v. Alberta (Chief Medical Officer of Health)*, 2023 ABKB 453 (the “*Ingram Decision*”), Justice Romaine found that the CMOH Orders were *ultra vires* section 29 of the *Public Health Act*, RSA 2000, c. P-37 (the “*Public Health Act*”).
- The Plaintiffs advanced the following causes of action:
  1. Breach of the property provisions of the Alberta Bill of Rights;
  2. Negligence;
  3. Breach of Fiduciary Duty;
  4. Conversion; and
  5. Expropriation without Compensation.

### The Decision

- The Chambers Justice granted certification, finding the five-part test set out in section 5(1) of the *Class Proceedings Act*, c C-16.5 was met.
- The Chambers Justice found the pleadings disclose a cause of action in respect of a declaration relating to the *Alberta Bill of Rights*, and claims of negligence and misfeasance in public office:
- The Chambers Justice certified a class definition that includes all individuals who owned an unincorporated business that were subject to any restriction by a CMOH Order during the Covid-19 pandemic. The certified class definition is:

*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 a member of a cooperative.*

- The Chambers Justice certified eight common issues relating to Alberta's potential liability pursuant to the certified causes of action for making the CMOH Orders.
- The Chambers Justice found a class proceeding was the preferable procedure.
- The Chambers Justice held that Christopher Scott, one of the two proposed individuals, was an adequate representative plaintiff. Rebecca Ingram was found not to be an adequate representative plaintiff.

#### Grounds of Appeal

- The Chambers Justice erred in finding the Statement of Claim disclosed a cause of action that was not doomed to fail, including the causes of action:
  - for a declaration relating to the *Alberta Bill of Rights*;
  - in negligence; and
  - for misfeasance in public office.
- The Chambers Justice erred in certifying the Class Definition.
- The Chambers Justice erred in finding there was any basis in fact for the common issues.
- The Chambers Justice erred in finding a class proceeding was the preferable procedure, including that individual issues will not predominate over any common issues.
- The Chambers Justice erred in finding Christopher Scott is an adequate representative plaintiff.

**6. Provide a brief description of the relief claimed:**

- That the Court of Appeal deny certification of this action as a class proceeding.

**7. Is this appeal required to be dealt with as a fast track appeal? (Rule 14.14)**

No (Rule 14.14(3)(f))

**8. Does this appeal involve the custody, access, guardianship, parenting time, decision-making responsibility, contact or support of a child? (Rule**

**14.14(2)(b))**

No

**9. Will an application be made to expedite this appeal?**

No

**10. Is Judicial Dispute Resolution with a view to settlement or crystallization of issues appropriate? (Rule 14.60)**

No

**11. Could this matter be decided without oral argument? (Rule 14.32(2))**

No

**12. Are there any restricted access orders or statutory provisions that affect the privacy of this file? (Rules 6.29, 14.12(2)(e), 14.83)**

No

**13. List respondent(s) or counsel for the respondent(s), with contact information:**

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**14. Attachments (check as applicable)**

N/A Order or judgment under appeal if available (not reasons for decision) (Rule 14.12(3))

- The Certification Order will be submitted as soon as it is completed and filed.

*If any document is not available, it should be appended to the factum, or included elsewhere in the appeal record*