

## **NOTICE OF CERTIFICATION OF A CLASS ACTION**

**WERE YOU ARRESTED BY A POLICE FORCE IN ALBERTA AND HELD FOR MORE THAN 24 HOURS PENDING A BAIL HEARING, BETWEEN OCTOBER 2016 AND SEPTEMBER 26, 2022?**

**This class action may affect your rights.  
Please read this notice carefully.**

### **1. Why did I get this notice?**

On September 22, 2022, this lawsuit (the “**Class Action**”) was certified as a class proceeding by the Court of King’s Bench of Alberta (the “**Court**”) against His Majesty the King in Right of the Province of Alberta (the “**Defendant**” or “**Alberta**”). The Class Action is known as *M.S. et al. v Alberta*, court file number 1801-06296.

The Court appointed M.S. as the representative plaintiff. Phillips Barristers Professional Corporation and Ruttan Bates are Class Counsel, the lawyers for the representative plaintiff and the Class Members.

The Alberta Court of King’s Bench authorized the publication of this Notice to explain your legal rights and options now that this lawsuit has been certified as a class proceeding.

### **2. Who is this notice for?**

This notice is for Class Members, whose rights will be affected by the outcome of this class action.

The Class Members are:

All persons arrested in Alberta from the date set out in the Eligibility Chart below based on the location of their arrest, up to the date of certification, who:

- (a) did not receive a bail hearing within 24 hours of their arrest;
- (b) did not consent to an adjournment of their bail hearing within 24 hours of their arrest;
- (c) did not have their bail hearing adjourned by a justice within 24 hours of their arrest;
- (d) were not arrested or charged with an offence listed under s. 469 of the *Criminal Code*;
- (e) were granted bail at a bail hearing, or were released without a bail hearing but not until after 24 hours from the time of their arrest;
- (f) have not received a prison sentence or a sentence based upon time served as a result of charges stemming from their arrest; and
- (g) did not have their bail hearings conducted by the Public Prosecution Service of Canada or any other Federally appointed prosecutor.

<b>Eligibility Chart</b>	
<b>Place of arrest</b>	<b>Eligibility start date</b>
Airdrie	May 24, 2017
Banff	May 24, 2017
Bashaw	June 7, 2017
Bassano	April 12, 2017
Beaumont	March 29, 2017
Beaverlodge	April 26, 2017
Beiseker	May 24, 2017
Blackfalds	June 7, 2017
Blairmore	April 26, 2017
Blood Tribe Nation	April 26, 2017
Bonnyville	June 7, 2017
Bow Island	April 12, 2017
Breton	March 29, 2017
Brooks	April 12, 2017
Calgary	May 1, 2017
Camrose	March 29, 2017
Canmore	May 24, 2017
Cardston	April 26, 2017
Chateh	June 21, 2017
Chestermere	May 24, 2017
Claresholm	April 26, 2017
Cochrane	May 24, 2017
Cold Lake	June 7, 2017
Cold Lake Military Police	June 7, 2017
Consort	June 7, 2017
Coronation	June 7, 2017
Crowsnest Pass	April 26, 2017
Desmarais	April 26, 2017
Devon	March 29, 2017
Didsbury	May 24, 2017
Drayton Valley	March 15, 2017
Drumheller	May 24, 2017
Edmonton	October 25, 2016
Edmonton International Airport	March 29, 2017
Edson	March 15, 2017
Elk Point	June 7, 2017
Fairview	June 21, 2017
Faust	April 26, 2017
Foremost	April 26, 2017

Fort Chipewyan	March 15, 2017
Fort Macleod	April 26, 2017
Fort McMurray	March 15, 2017
Fort Vermilion	June 21, 2017
Fox Creek	April 26, 2017
Gleichen	May 24, 2017
Grande Cache	March 15, 2017
Grande Prairie	April 26, 2017
Grimshaw	June 21, 2017
Hanna	May 24, 2017
High Level	June 21, 2017
High Prairie	April 26, 2017
High River	May 24, 2017
Hinton	March 15, 2017
Innisfail	June 7, 2017
Jasper	March 15, 2017
Kananaskis	May 24, 2017
Killam	March 29, 2017
Kitscoty	June 7, 2017
Lac La Biche	June 7, 2017
Lacombe Police Service	June 7, 2017
Lake Louise	May 24, 2017
Leduc	March 29, 2017
Lethbridge	April 26, 2017
Lloydminster	June 7, 2017
Manning	June 21, 2017
Maskwacis	March 29, 2017
McLennan	June 21, 2017
Medicine Hat	April 12, 2017
Milk River	April 26, 2017
Nanton	April 26, 2017
Okotoks	May 24, 2017
Olds	May 24, 2017
Onion Lake	June 7, 2017
Oyen	May 24, 2017
Peace River	June 21, 2017
Picture Butte	April 26, 2017
Piikani Nation (Brocket)	April 26, 2017
Pincher Creek	April 26, 2017
Ponoka	March 29, 2017
Provost	June 7, 2017
Raymond	April 26, 2017

Red Deer City	June 21, 2017
Red Earth Creek	April 26, 2017
Redcliff	April 12, 2017
Rimbey	March 29, 2017
Rocky Mountain House	June 21, 2017
Slave Lake	April 26, 2017
Spirit River	April 26, 2017
St. Paul/Saddle Lake	June 7, 2017
Stettler	June 21, 2017
Strathmore	May 24, 2017
Sundre	May 24, 2017
Sylvan Lake	June 21, 2017
Taber	April 26, 2017
Thorsby	March 29, 2017
Three Hills	May 24, 2017
Tsuu T'ina Nation Police Service	May 24, 2017
Turner Valley	May 24, 2017
Valleyview	April 26, 2017
Vauxhall	April 26, 2017
Vegreville	January 9, 2017
Vermilion	June 7, 2017
Vulcan	April 26, 2017
Wabasca	April 26, 2017
Wainwright	June 7, 2017
Wainwright Military Police	June 7, 2017
Waterton Park	April 26, 2017
Wetaskiwin	March 29, 2017
Whitcourt	March 15, 2017

No matter where you were arrested, the eligibility period ends on September 26, 2022.

If you meet this description, then you are a Class Member.

The Class **does not** include:

- Detainees who were brought to a bail hearing within 24 hours of arrest;
- Detainees who consented to an adjournment of their bail hearing within 24 hours of their arrest;
- Detainees who had their bail hearing adjourned by a justice within 24 hours of their arrest;
- Detainees who were arrested or charged with an offence listed under s. 469 of the *Criminal Code*;

- Detainees who were not granted bail at the bail hearing when it ultimately proceeded;
- Detainees who received a prison sentence or a sentence based upon time served as a result of charges stemming from their arrest; and
- Detainees whose bail hearings were conducted by the Public Prosecution Service of Canada or any other Federally appointed prosecutor.

If you are not sure whether you are a Class Member, please contact Class Counsel at 1-888-453-7914 (toll-free) or [ABbailclassaction@phillipsbarristers.ca](mailto:ABbailclassaction@phillipsbarristers.ca) with questions. Your inquiries will be kept confidential by Class Counsel.

### **3. What is this class action lawsuit about?**

Canada's *Charter of Rights and Freedoms* enshrines the right of accused persons to receive a timely bail hearing following arrest or detention. Sections 9 and 10(c) of the *Charter* provide that everyone in Canada, upon arrest or detention, has the right to have the validity of a detention determined by way of habeas corpus. In addition, under Section 11(e), an accused person has the right not to be denied reasonable bail without just cause.

Additionally, under Section 7 of the *Charter*, everyone in Canada has the right to his or her liberty and the right not to be deprived thereof except in accordance with principles of fundamental justice.

The *Criminal Code* provides the procedures to be followed by the provinces for the conduct of bail hearings which are necessary to adhere to, and provide for, the rights enshrined in the *Charter*. Section 503(1) of the *Criminal Code*, in particular, provides that an accused individual shall be taken before an available justice without unreasonable delay and, in any event, within 24 hours after arrest for the purposes of having the lawfulness of the arrest or the necessity of a detention determined by an independent and impartial justice. The upper limit of 24 hours is mandatory.

This action alleges that Alberta mismanaged the province's bail system, such that in late 2016 and early 2017 onward, detainees were systemically denied their right to a bail hearing within 24 hours.

The representative plaintiff, M.S., was held more than 24 hours of arrest before appearing before a justice for a bail hearing. M.S. was ultimately granted bail, and acquitted on the charges for which he was arrested.

M.S. (the representative plaintiff) seeks monetary compensation for himself and for all other Class Members for the infringement of their right to a timely bail hearing within 24 hours of arrest.

The Defendant denies that it is liable to the Class Members, and denies that the Class Members are entitled to compensation.

The Court has not decided who is right. This will not happen until the Common Issues Trial, which will occur in a few years. At the Common Issues Trial, the representative plaintiff will present their evidence about why the Defendant is legally liable and what

compensation is owed to the Class Members. The Defendant will respond to this evidence.

Only the following certified Common Issues will be resolved at the Common Issues Trial:

### **DUTY OF CARE**

1. Did Alberta's operation, management, administration, supervision, resourcing and/or control of the judicial interim release process (bail):

(a) cause or materially contribute to systemic delays in Class Members being brought before a justice within 24 hours of arrest (the "systemic delays")?

(b) If the answer to 1(a) is yes, what actions of Alberta caused or materially contributed to the systemic delays, and did such actions result in Class Members not being brought before a justice for a bail hearing within 24 hours of arrest?

2. To the extent that Class Members were held for more than 24 hours after arrest without being brought before a justice, when a justice was otherwise available, did Alberta, or any persons or entities identified in common issue #3 as an agent of Alberta when acting in such capacity, contravene s. 503(1) of the *Criminal Code*, R.S.C. 1985, c. C-46 (the "**Criminal Code**")?

3. Are the municipal police services in Alberta and Crown prosecutors agents of Alberta, for the purposes of s. 5(1) of the *Proceedings Against the Crown Act*, S.A. 2000, c. P-25, in respect of the operation, management, administration, supervision, resourcing, and/or control of the bail hearing regime in Alberta?

4. Did Alberta owe a duty of care to the Class to provide them with bail hearings without unreasonable delay, and in any event, after no longer than 24 hours from arrest, if a justice was available, or as soon as possible thereafter?

5. If the answer to question #4 is yes, did Alberta, or any persons or entities identified in common issue #3 as an agent of Alberta, when acting in such capacity, breach this duty of care by holding the Class Members for more than 24 hours after arrest without a bail hearing?

### **CHARTER BREACHES**

6. Did Alberta, or any persons or entities identified in common issue #3 as an agent of Alberta when acting in such capacity, through the operation, management, administration, supervision, resourcing, and/or control of the bail hearing regime in Alberta, infringe upon the Class Members' rights under ss. 7, 9, 11(d), 11(e), or 12 of the *Canadian Charter of Rights and Freedoms* (the "*Charter*")? If so, how?

7. If the answer to question #6 is yes, were any or all of the infringements demonstrably justified in a free and democratic society in accordance with s. 1 of the *Charter*?

### **DAMAGES**

8. If the answer to question #6 is yes and the answer to question #7 is no, is the Class entitled to claim damages under s. 24(1) of the *Charter*?
9. If the answers to questions #5 or #8 are yes, can the Court make an aggregate assessment of damages?
10. If Alberta committed a breach of any of its legal obligations to the Class, does Alberta's conduct justify an award of punitive damages?
11. If the answer to question #10 is yes, in what amount?

The resolution of the certified Common Issues, whether reached by settlement or otherwise and whether favourable or not, will bind all Class Members who do not opt out of this Class Action.

For more information about the claim, you can review the most recently amended statement of claim and the certification order setting out the common issues for trial at: <https://phillipsbarristers.ca/class-actions/alberta-bail-class-action/>.

#### **4. What does it mean to be a Class Member? / What is certification?**

A class action is a type of lawsuit where one plaintiff (or a small number of plaintiffs) seeks redress on behalf of all people in the same circumstances.

Every potential class action must be approved (“**certified**”) by the Court before it can go ahead as a class action. This lawsuit has now been certified. This means that everyone who falls within the class definition is automatically included in the class action and will be bound by the outcome of the class action, including any settlements or judgment, unless they exclude themselves from the class action by “**opting out**” of the class action.

Class Members may be entitled to share in the amount of any judgment or settlement reached in the class action if it succeeds.

Class Members who do not opt out of this Class Action are not permitted to start or continue with their own lawsuit against Alberta about the same claims that are included in this Class Action.

**If you are a Class Member who wishes to participate in the Class Action, then you do not need to do anything at this stage.**

Class Members do not instruct Class Counsel and do not direct the conduct of the Class Action. Class Members are entitled to receive updates from Class Counsel about the progress of the Class Action.

Certification is not a determination of the merits of the claim, which have not yet been considered by the Court. Certification is simply approval by the Court for the lawsuit to proceed as a class action.

If you are a Class Member, you are encouraged to notify Class Counsel of your current contact information, so that we can ensure that you receive any further communications about the class action directly.

**5. Do I have to pay anything?**

No. There is **NO PAYMENT** required by Class Members to participate in the class action. If you are a Class Member, you will have no obligation to pay any legal fees or costs, directly. Class Counsel will only be paid from the proceeds of any judgment or settlement at the end of the lawsuit, and only if the lawsuit is successful.

Class Counsel have entered into a contingency fee agreement with the representative plaintiff, M.S. The contingency fee agreement provides that Class Counsel will be paid a contingency fee of 30%, along with reimbursement of disbursements (the expenses incurred in prosecuting the class action) and taxes.

The Court has approved the contingency fee agreement. The Court will have to separately approve any legal fees before they are ultimately paid to Class Counsel.

A contingency fee agreement means that, unless the lawsuit is successfully decided at trial or settled, Class Counsel 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.

Class Counsel in this action have not collected, and will never collect, any funds from individual Class Members.

**6. How do I participate in the class action?**

As a Class Member, **you are not required to do anything at this stage, and you are not required to pay any money to Class Counsel.** You are not obliged to participate as a witness in the Common Issues Trial. If the trial is successful or if a settlement is reached, you may be asked, at that time, for information to confirm the date(s) and length(s) of your detention prior to your bail hearing.

Should this class action settle, a further notice will be provided to you outlining your rights to support or object to the settlement, and how to participate in obtaining a payment from the settlement.

**7. If I do not wish to participate in the class action, how do I opt out?**

**If you decide to opt out, you will not be bound by the terms of any judgment or settlement in this class action. This means that you will also not be eligible for any of the benefits of any judgment or settlement if the action is successful. Once you opt-out, you will not be permitted to opt back into this Class Action.**

To opt-out of this class action, you must send a message to Class Counsel that is signed by you and states that you are choosing to opt out of the Class Action. This message must be sent by the Opt-Out Deadline, which is **June 23<sup>rd</sup>, 2026**.

You can use the Opt-Out Form enclosed in this Notice, or you can write, fax or email a message to Class Counsel that includes: your full name, address, a statement that you

fit within the definition of a Class Member, a statement that you do not want to be a part of this Class Action lawsuit, and your signature.

If you mail your opt-out request or Opt-Out Form, it must be postmarked by no later than June 23, 2026. If you email or fax your opt-out request or Opt-Out Form, it must be time-stamped as having been sent on before 5:00 PM PST on June 23, 2026.

**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.**

Opt-Out Forms are to be sent to Class Counsel, using the following contact information:

Phillips Barristers Professional Corporation 630 – 6th Avenue SW, Suite 600 Calgary, AB T2P 0S8 <a href="mailto:ABbailclassaction@phillipsbarristers.ca">ABbailclassaction@phillipsbarristers.ca</a> 1-888-453-7914 (toll-free) Fax: 403-775-4457
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#### **8. What if I do nothing?**

If you do nothing, you are choosing to be a Class Member. The outcome of the Common Issues Trial will determine your own legal rights. If the Defendant is required to compensate the Class Members through a settlement or Court order, you will be notified about how to claim your share, or what your options are at that step.

#### **9. Is there money available now?**

No. There is no money available now because the Court has not yet decided who is right, and there is no settlement agreement with the Defendants. There is no guarantee that money or benefits will be awarded to the Class. However, if money is awarded, you will be notified about how to ask for your share.

#### **10. Do I have a lawyer?**

Class Counsel are Phillips Barristers Professional Corporation and Ruttan Bates. These firms are the lawyers for the representative plaintiff, M.S., and are prosecuting the action for the benefit of the Class Members as a whole. Phillips Barristers Professional Corporation has broad experience prosecuting class actions, and Ruttan Bates has broad experience in criminal law.

More information about Class Counsel and their lawyers' experience is available at <https://phillipsbarristers.ca/class-actions/alberta-bail-class-action/>.

#### **11. What if I have more questions?**

Any questions about this notice should be addressed to Class Counsel at either:

Phillips Barristers Professional Corporation 630 – 6th Avenue SW, Suite 600 Calgary, AB T2P 0S8 <a href="mailto:ABbailclassaction@phillipsbarristers.ca">ABbailclassaction@phillipsbarristers.ca</a> 1-888-453-7914 (toll-free) Fax: 403-775-4457	Ruttan Bates Bradie Building 630 – 6th Avenue SW, Suite 600 Calgary, Alberta T2P 0S8 <a href="mailto:ABbailclassaction@phillipsbarristers.ca">ABbailclassaction@phillipsbarristers.ca</a> 403-237-0025
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This notice is a summary of the terms of the certification order. If there is a conflict between the provisions of this notice and the terms of the certification order, the certification order prevails. The certification order can be viewed at <https://phillipsbarristers.ca/class-actions/alberta-bail-class-action/>.

**This notice was approved by the Court of King’s Bench for Alberta.**