

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

**METRO TAXI LTD., MARC ANDRÉ WAY AND ISKHAK MAIL**

Plaintiffs

- and -

**CITY OF OTTAWA**

Defendant

Proceeding under the *Class Proceedings Act*, 1992

**CLOSING SUBMISSIONS OF THE DEFENDANT, CITY OF OTTAWA**

**COMMON ISSUE 5**

April 28, 2026

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## EXECUTIVE SUMMARY

1. To determine Common Issue 5, this Court must answer a simple question: whether the Plaintiffs have proven that their proposed methodology fairly and reasonably calculates damages in the aggregate. If the Plaintiffs cannot meet this burden, then damages **must** be determined individually.

2. In deciding whether the Plaintiffs' methodology is fair and reasonable, the Court is to be guided by the three factors first articulated by Justice Belobaba in *Ramdath v. George Brown College*: whether the aggregate evidence that the Plaintiffs propose to use is reliable; whether their methodology will overstate the City's liability; and whether declining to award aggregate damages will result in a denial of access to justice.<sup>1</sup>

3. Avoiding overstatement is the most important of these three factors. Reliability follows. In deciding whether to award aggregate damages, fairness to the defendant is paramount.

4. Overstatement of damages is a structural feature of the Plaintiffs' methodology. Their approach to calculating aggregate damages cannot be employed without significantly overstating the City's liability. For this reason alone, damages must be assessed individually.

5. The remaining two factors do not save the Plaintiffs' methodology. It rests on unreliable assumptions and proposes to use equally unreliable evidence. There is no evidence that assessing damages individually under the methodology proposed by the City will deny access to justice. In any event concerns of access to justice cannot cure the fatal flaw of overstatement.

### 1) Failure to disentangle negligence

6. It is uncontroverted that under the Plaintiffs' methodology, the value of taxi plates rises and falls due to a confluence of causal factors working together. It is equally uncontroverted that the City's negligence was but one of several factors leading to a diminution in plate value. The Plaintiffs'

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<sup>1</sup> *Ramdath v. George Brown College*, [2014 ONSC 3066](#) [*Ramdath (Ont Sup Ct)*] a'ffd in part [2015 ONCA 921](#) [*Ramdath (ONCA)*], **Case Center B-1-18703 and B-1-18734**.

methodology fails to disentangle or isolate the impact of the City's negligence from any other factor. Instead, it simply measures the collective impact of all factors on plate value across the loss period, however that period is defined, and attributes all the plate value decline to the City's non-enforcement.

7. It is trite law that damages must be awarded on a "but for" basis: they must, as far as possible, restore the claimant to the position they would have been in but for the defendant's negligence. The Plaintiffs' methodology fails to meet this standard as it assumes that taxi plate values would not have declined had the City enforced its by-law. It would compensate the Plaintiffs for all losses in plate value following the arrival of Uber Ottawa. It would compensate them for losses caused by factors for which the City bears no liability, including the enactment of the 2016 By-law and the general spread of Uber throughout North America.

## **2) Overstatement of damages**

8. Compensating the Plaintiffs for losses beyond the scope of the City's liability would overstate that liability. The City's expert, Dr. Stacey, demonstrates that this overstatement would be far from trivial: holding the City responsible for all losses in plate value during the loss period would potentially overstate the impact of the City's negligence exponentially.

## **3) The Plaintiffs cannot determine damages with certainty**

9. The Plaintiffs' methodology requires information as to the average income and expenses of plateholders to calculate plate value. This methodology is unreliable for two reasons.

10. First, it fails to account for the idiosyncratic factors that determine income and expenses amongst individual plaintiffs. The Ontario Court of Appeal has held that when plaintiffs' damages are inherently idiosyncratic, aggregate damages are inappropriate.<sup>2</sup>

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<sup>2</sup> *Spina v. Shoppers Drug Mart Inc.*, [2024 ONCA 642](#) at para. [210](#) [*Spina* (ONCA)], **Case Center A8155**.

11. Second, the aggregate-level data the Plaintiffs propose to use to determine these averages is itself unreliable. The information used to estimate income fails to account for cash fares, and the information used to estimate expenses fails to account for variable costs. Both Marc André Way and Dr. Boyer agree that the income tax returns required for the City's individualized methodology would contain more accurate information regarding cash fares and expenses.

#### **4) Access to Justice**

12. Access to justice concerns do not outweigh the paramount concerns of reliability and fairness to the defendant. Moreover, access to justice applies to both the Plaintiffs and the City. If the Plaintiffs cannot prove that their methodology fairly and reasonably calculates damages in the aggregate, then access to justice requires individualized assessments.

13. The Court cannot and should not assume that a denial of aggregate damages automatically equates with a denial of access to justice. Access to justice concerns are mitigated where the burden of the individualized process is proportionate to the damages at issue and where the Court can avail itself of a reasonable process for assessing damages individually. The individualized methodology proposed by the City is simple, efficient, reasonable, and proportionate.

14. Finally, concerns of access to justice cannot save a methodology that is unreliable and overstates damages. These are fatal flaws. This Court must reject the Plaintiffs' methodology, even if it is persuaded that to do so would deny access to justice.

## SUMMARY OF THE ACTION TO DATE

### 1) The Parties

15. The City is a municipality incorporated on January 1, 2001, pursuant to the *City of Ottawa Act*, 1999, S.O. 1999, c. 14, Sched. E. The City is the regulator that determines the by-laws and policies governing the taxi and Private Transportation Company (“**PTC**”) industries in the City of Ottawa.<sup>3</sup>

16. The Plaintiff, Metro Taxi Ltd. (“**Metro**”), operates under the business name “Capital Taxi” within the geographic limits of the City of Ottawa.<sup>4</sup> Metro holds a taxi broker license in accordance with the 2016 By-law.<sup>5</sup>

17. The Plaintiff, Marc André Way (“**Mr. Way**”), is the President, Chief Executive Officer and co-owner of Metro.<sup>6</sup> Mr. Way (either personally or through a corporate entity) holds standard and accessible taxi plate holder licenses.<sup>7</sup>

18. The Plaintiff, Iskhak Mail (“**Mr. Mail**”), is a former plate holder in the City of Ottawa.<sup>8</sup>

### 2) The Action

19. Following the enactment of the 2016 By-law, and in response to the City’s actions following the arrival of Uber in Ottawa, the Plaintiffs (Metro and Mr. Way, collectively the “**Plaintiffs**”) initiated a claim on August 12, 2016 for damages against the City under the *Class Proceedings Act* (“**CPA**”). The claim was later amended to include Mr. Mail as a representative plaintiff.<sup>9</sup>

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<sup>3</sup> Statement of Agreed Facts, dated December 28, 2022 at paras. 2, 5 and 31, **Case Center pp. F1 and F6-7** [“**Statement of Agreed Facts**”]; *Metro Taxi Ltd. et. al. v. City of Ottawa*, [2024 ONSC 2725](#) at paras. [23](#) and [33](#) [“**Liability Decision**”], **Case Center B-1-18427 and B-1-18429**.

<sup>4</sup> See Amended Amended Statement of Claim at para. 3, **Case Center p. A248**; see also Marc André Way, Examination in Chief, January 5, 2023, p. 66, lines 21-26, **Case Center p. A3226**.

<sup>5</sup> See Amended Amended Statement of Claim at para. 3, **Case Center p. A248**; see also Marc André Way, Examination in Chief, January 5, 2023, p. 99, lines 3-10, **Case Center p. A3259**.

<sup>6</sup> Marc André Way, Examination in Chief, January 5, 2023, p. 66, lines 30 – 32, **Case Center p. A3226**.

<sup>7</sup> Exhibit 1, Tab 131, Plate Holder Renewal Statistics, **Case Center p. F84**;

<sup>8</sup> Liability Decision, [2024 ONSC 2725](#) at [para. 14\(iii\)](#), **Case Center B-1-18424**.

<sup>9</sup> Amended Amended Statement of Claim, **Case Center pp. A245-61**.

20. On November 23 and 24, 2017, Justice R. Smith of the Ontario Superior Court of Justice heard a motion brought by the Plaintiffs to certify the class proceedings. Upon hearing the parties' arguments, Justice R. Smith certified two classes:

- (a) All persons who were Taxi Plate Holders under the Taxi By-law on September 1, 2014 or who became a Taxi Plate Holder between September 1, 2014 and September 30, 2016 [“the **Plate Holder Class**”]; and
- (b) All persons who were Taxi Brokers under the Taxi By-law on September 1, 2014 or who became a Taxi Broker between September 1, 2014 and September 30, 2016 [the “**Broker Class**”].<sup>10</sup>

21. Justice R. Smith certified the following five (5) common issues to be decided at trial:

- (a) Was the City negligent in enforcing the Taxi By-Law from September 1, 2014 to September 30, 2016? [“**Common Issue 1**”]
- (b) Were the 2016 amendments to the City’s Taxi By-law unlawful? [“**Common Issue 2**”]
- (c) Did the City’s conduct in allegedly negligently enforcing the Taxi By-law or in amending the Taxi By-Law in 2016 infringe on the right of the Taxi Plate Holders under section 15 of the *Charter of Rights and Freedoms* or under section 3 of the *Human Rights Code*? [“**Common Issue 3**”]
- (d) Did the fees collected by the City under its Taxi By-Law constitute an unlawful tax? [“**Common Issue 4**”]
- (e) Are damages assessed in the aggregate an appropriate remedy? [“**Common Issue 5**”]<sup>11</sup>

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<sup>10</sup> *Metro Taxi Ltd. v. City of (Ottawa)*, [2018 ONSC 509](#) at [para. 57](#) [“Certification Decision”], **Case Center B-1-18408**.

<sup>11</sup> Certification Decision, [2018 ONSC 509](#) at [para. 83](#), **Case Center B-1-18416**.

22. Common Issue 2 was dismissed on consent at the commencement of trial, without prejudice to the City's ability to seek costs related to the dismissal.<sup>12</sup>

### **3) Phase 1 of the Trial and the Liability Decision**

23. Between January 4, 2023 and February 16, 2023, Justice Marc Smith of the Ontario Superior Court heard evidence from the parties in relation to Common Issues 1, 3 and 4.<sup>13</sup>

24. On the Plaintiffs' motion, Common Issue 5 was adjourned until a second phase of trial, which was to be heard only if the City was found liable.<sup>14</sup> The City opposed the Plaintiffs' motion.<sup>15</sup>

25. On May 13, 2024, Justice M. Smith issued a decision with respect to Common Issues 1, 3 and 4 (the "**Liability Decision**"), answering them as follows:

- i. Common Issue #1 – the City was negligent in enforcing the 2012 By-law from September 1, 2014 to September 30, 2016;
- ii. Common Issue #3 – the City's conduct in allegedly negligently enforcing the 2012 By-law or in amending the taxi by-law in 2016 did not infringe on the rights of the taxi plate holders under s. 15 of the *Charter* or under s. 3 of the *Code*;
- iii. Common Issue #4 – the fees collected by the City under its taxi by-law do not constitute an unlawful tax.<sup>16</sup>

### **4) Developments in Advance of Phase 2**

26. On February 5, 2025, the parties wrote to the Court to advise as follows:

Each party has advised the other that it does not intend to call its respective expert. The parties will rely on the evidence already tendered at trial. The Plaintiffs will not rely on the expert evidence of Mr. McEvoy.

The Plaintiffs have advised the defendant that the Plaintiffs will not be pursuing the remedy of aggregate damages at it concerns the second certified class, namely the class of brokers. For the members of the Broker Class, the Plaintiffs will seek individualized damages.

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<sup>12</sup> Liability Decision, [2024 ONSC 2725](#) at para. 9, **Case Center B-1-18424**.

<sup>13</sup> See generally Liability Decision, [2024 ONSC 2725](#), **Case Center B-1-18422 to B-1-18517**.

<sup>14</sup> Liability Decision, [2024 ONSC 2725](#) at para. 10, **Case Center B-1-18424**.

<sup>15</sup> Trial Transcript, Motion Submissions from the City, January 23, 2023, p. 47, line 30 – p. 67, line 12, **Case Center pp. A4621-41**.

<sup>16</sup> Liability Decision, [2024 ONSC 2725](#) at para. 461, **Case Center B-1-18516**.

27. In March 2025, the parties exchanged written closing submissions in relation to Common Issue 5. The parties then appeared before Justice M. Smith on April 4, 2025 to deliver oral submissions in relation to same.<sup>17</sup>

28. Upon hearing the submissions of the parties, Justice M. Smith determined that he lacked sufficient evidence to decide Common Issue 5. Justice M. Smith then asked the parties to obtain and tender expert evidence for his consideration in relation to Common Issue 5. In so doing, Justice M. Smith asked the parties to work collaboratively to:

- (a) Set out a timetable for the hearing of Common Issue 5 (reserving 4-5 days for testimony and submissions); and
- (b) Find the earliest date possible for the rehearing of Common Issue 5.<sup>18</sup>

29. Subsequently, the parties communicated with one another and with the Court to find suitable dates for the rehearing of Common Issue 5. Although it was initially contemplated that the trial would resume in late fall 2025 or early 2026, it was ultimately determined that the parties and the Court were only available to resume the trial during the week of March 30, 2026.<sup>19</sup>

30. Therefore, raising concerns about the delay in the proceedings, the Plaintiffs sought and scheduled a Trial Management Conference before Justice M. Smith. In so doing, rather than proceeding with the previously contemplated 4–5-day hearing for Common Issue 5, the Plaintiffs brought forth a new proposal – *i.e.* to schedule a two-week continuation of the trial, during which both Common Issue 5 and the quantification of damages (for both the Plate Holder Class and the Taxi Broker Class) would

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<sup>17</sup> Trial Management Conference Endorsement Order of Justice M. Smith, dated May 27, 2025 at para. 1 [**TMC Endorsement**]. – **Order not available in Case Centre**

<sup>18</sup> TMC Endorsement at para. 2. – **Order not available in Case Centre**

<sup>19</sup> TMC Endorsement at paras. 2-3. – **Order not available in Case Centre**

be determined. In response, the City opposed the Plaintiffs' proposed revision to the trial schedule and structure.<sup>20</sup>

31. On May 22, 2025, the parties appeared before Justice M. Smith for the Trial Management Conference. Upon hearing the parties' respective arguments, Justice M. Smith issued an endorsement Order on May 27, 2025 in which His Honour made the following determination regarding the schedule and structure of the trial moving forward:

[8] In summary, I am of the view that the best process to follow is the one that was established at the commencement of these proceedings. Since 2016, the parties have managed their respective cases in accordance with the structure and framework ordered by Justice R. Smith, and I find that there are no compelling reasons to alter course.

[9] The existing trial structure shall remain, and we shall proceed as previously ordered during the April 4, 2025 hearing.<sup>21</sup>

32. Following the release of Justice M. Smith's endorsement Order, the parties agreed to the following timetable for the exchange of their respective expert reports ahead of the scheduled continuation of the trial during the week of March 30, 2026:

- (a) Service of the Plaintiff's expert report(s) by October 15, 2025;
- (b) Service of the City's expert report(s) by January 9, 2026; and
- (c) Service of the Plaintiff's reply expert report(s) by February 25, 2026.

33. In accordance with the timetable agreed to by the parties, the following were exchanged amongst the parties:

- (a) On October 15, 2025, the Plaintiffs served an expert report titled "Calculating the Loss in Value of Taxi Plates in Ottawa After the Arrival of the Gig Economy: An Introduction to

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<sup>20</sup> TMC Endorsement at paras. 4-5. – **Order not available in Case Centre**

<sup>21</sup> TMC Endorsement at paras. 8-9. – **Order not available in Case Centre**

the Method”, dated October 14, 2025, and prepared by Dr. Martin Boyer and Dr. Christian Dorion (the “**Boyer Report**”);<sup>22</sup>

- (b) On January 9, 2026, the City served the following expert reports: (i) a report titled “Economic Assessment of Loss-Period Damages to Ottawa Taxi Plate Holders”, dated January 8, 2026 and prepared by Dr. Derek Stacey (the “**Stacey Report**”);<sup>23</sup> and (ii) a report titled “City of Ottawa ats. Metro Taxi Ltd., Marc Andre Way and Iskhak Mail – Framework for Individualized Economic Damages Calculations for Taxi Plate License Holders”, dated January 9, 2026 and prepared by Timothy Zimmerman (the “**Zimmerman Report**”);<sup>24</sup>
- (c) On February 25, 2026, the Plaintiffs served a reply report titled “Calculating the Loss in Value of Taxi Plates in Ottawa After the Arrival of the Gig Economy: An Introduction to the Method – Supplemental Report and Rejoinder”, dated February 25, 2026 and prepared by Dr. Martin Boyer (the “**Boyer Reply Report**”).<sup>25</sup>

34. Following the exchange of the parties’ expert reports and prior to the continuation of the trial on March 30, 2026, the City brought a motion to strike the Boyer Report on the basis that the report introduced a cause of action that had not been certified in the proceedings and had not previously been raised by the Plaintiffs (*i.e. de facto* expropriation). The Plaintiffs opposed the motion.

35. By Justice M. Smith’s instruction, the City’s motion was heard on March 25, 2026. Upon hearing the parties’ respective submissions, Justice M. Smith dismissed the City’s motion, finding that “the *de facto* expropriation terminology used in the report serves to describe an economic equivalence rather than forming the basis of Mr. Boyer’s economic theory.”<sup>26</sup>

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<sup>22</sup> See Exhibit Z, **Case Center pp. A8301-A8373**.

<sup>23</sup> See Exhibit EE, **Case Center pp. A8473-A8531**.

<sup>24</sup> See Exhibit HH, **Case Center pp. B-1-19011-B-1-19037**.

<sup>25</sup> See Exhibit AA, **Case Center pp. A8447-A8456**.

<sup>26</sup> Endorsement Order of Justice M. Smith, dated March 27, 2026. – **Order not available in Case Centre**

36. Accordingly, between March 30, 2026 and April 2, 2026, Justice M. Smith proceeded to hear evidence from the parties in relation to Common Issue 5.

**COMMON ISSUE 5: Are damages assessed in the aggregate an appropriate remedy?**

37. As the Plaintiffs are no longer seeking aggregate damages for the Broker Class, these submissions only address Common Issue 5 as it pertains to the Plate Holder Class. There are 768 members of this class, who collectively hold the licenses for the 1,188 taxi plate licenses issued by the City of Ottawa.<sup>27</sup>

**1) Aggregate damages are only available if they can be calculated fairly and reasonably**

**A) The distinction between aggregate and individual damages does not affect the quantum**

38. In the normal course of civil litigation, damages must be proven individually. Section 24(1) of the CPA establishes a discretionary exception to that principle, stating:

**Aggregate assessment of monetary relief**

24 (1) The court **may** determine the aggregate or a part of a defendant's liability to class members and give judgment accordingly where,

(a) monetary relief is claimed on behalf of some or all class members;

(b) no questions of fact or law other than those relating to the assessment of monetary relief remain to be determined in order to establish the amount of the defendant's monetary liability; and

(c) the aggregate or a part of the defendant's liability to some or all class members **can reasonably be determined** without proof by individual class members [*emphasis added*].

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<sup>27</sup> Liability Decision, [2024 ONSC 2725](#) at para. 7, **Case Center B-1-18423**.

39. As Justice Perell explained in *Spina v. Shoppers Drug Mart*, s.24(1) of the CPA “does not create a new type of damages.”<sup>28</sup> It simply empowers (but does not require) the Court, in certain circumstances, to avoid assessing damages on an individualized basis.<sup>29</sup>

40. The distinction between aggregate and individual calculation does not affect the quantum of damages. Damages calculated in the aggregate must be “equal to what the defendant would have to pay if there were individual assessments.”<sup>30</sup> The only difference is in the method by which the quantum is determined. As Chief Justice Winkler wrote in *Fulawka v. Bank of Nova Scotia*, s. 24(1) of the CPA is:

directed at those situations where the monetary liability to some or all of the class is ascertainable on a global basis, and is not contingent on proof from individual class members as to the quantum of monetary relief owed to them. **In other words, it is a figure arrived at through an aggregate assessment of global damages, as opposed to through an aggregation of individual claims requiring proof from individual class members.** I would describe the latter calculation as a “bottom-up” approach whereas the statute envisages that the assessment under s. 24(1) be “top down.” [emphasis added]<sup>31</sup>

**B) The plaintiffs must prove that their methodology is viable, fair and reasonable**

41. In the Plaintiffs’ Memorandum of Law filed at the outset of the Aggregate Damages Phase, the Plaintiffs appear to suggest a distinction between the question of whether damages can be calculated in the aggregate and the methodology for doing so:

Given that the quantification phase of this class proceeding will be held after at a later stage with new factual and expert evidence, **this Court need not decide a methodology for the quantification of damages as part of Common Issue 5.** It need only decide whether or not damages assessed in the aggregate is the appropriate remedy. [emphasis added]<sup>32</sup>

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<sup>28</sup> *Spina v. Shoppers Drug Mart Inc.*, [2023 ONSC 1086](#) at para. [635](#) [*Spina* (Ont Sup Ct)]; affirmed with respect to the determination that aggregate damages were not appropriate, *Spina* (ONCA), [2024 ONCA 642](#) at para. [202](#), **Case Center A8151**.

<sup>29</sup> *Spina* (Ont Sup Ct), [2023 ONSC 1086](#) at para. [635](#); aff’d *Spina* (ONCA), [2024 ONCA 642](#), **Case Center A8075**; *Fulawka v. Bank of Nova Scotia*, [2012 ONCA 443](#) at para. [126](#) [*Fulawka*], **Case Center B1-5139**

<sup>30</sup> *Spina* (Ont Sup Ct), [2023 ONSC 1086](#) at para. [635](#); aff’d *Spina* (ONCA), [2024 ONCA 642](#), **Case Center A8075**; *Fulawka*, [2012 ONCA 443](#) at para. [126](#), **Case Center B1-5139**.

<sup>31</sup> *Fulawka v. Bank of Nova Scotia*, [2012 ONCA 443](#) at para. [126](#) [*Fulawka*], **Case Center B1-5139**.

<sup>32</sup> Plaintiffs’ Memorandum of Law, March 30, 2026, para 10, **Case Center p. A8462**.

42. This distinction does not exist at law. The Courts have repeatedly confirmed that **the question of whether aggregate damages are appropriate is inextricable from the specific methodology put before the Court for doing so**. It is a “merit-based” analysis of the proposed methodology that determines whether damages can be awarded in the aggregate.<sup>33</sup>

43. Methodology is critical even at the certification stage. In *Pro-Sys Consultants Ltd. v. Microsoft Corporation*, the Supreme Court held that for aggregate damages to even be certified as a common issue, the plaintiff must **advance a methodology** that “must offer a realistic prospect of establishing loss on a class-wide basis.”<sup>34</sup>

44. In *Le Feuve v. Enterprise Rent-A-Car Canada Company*, Justice Morgan relied on *Pro-Sys* in holding that even at the certification stage:

...When it comes to certification of an aggregate damages question, the issue is one of methodology: *Heller v. Uber Technologies Inc.*, [2021 ONSC 5518](#), at paras [197-8](#)

[50] **The onus is on the Plaintiff to demonstrate that it has a methodology** for assessing damages that has a “reasonable likelihood” of satisfying the section 24(1)(c) requirement, on the assumption that the Plaintiff would be otherwise successful at the common issues trial [*emphasis added*].<sup>35</sup>

45. Methodology is even more critical at the trial stage. In *Fresco v. Canadian Imperial Bank of Commerce*, Justice Belobaba explained that in contrast to the certification step:

The second step, addressed at the trial or summary adjudication of the certified common issues, requires the court to answer the certified question in the context of all of the evidence – **that is, the court considers the proposed methodology as applied to the defendant-based data**. The court must determine whether aggregate damages should actually be awarded...[*emphasis added*].<sup>36</sup>

46. In *Healey v. Lakeridge Health Corporation*, Justice Perell emphasized the centrality of the plaintiffs’ proposed methodology to the question of whether aggregate damages can be awarded:

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<sup>33</sup> *Fresco* (Ont Sup Ct), [2020 ONSC 4288](#) at paras. [29-31](#) ; aff’d *Fresco* (ONCA), [2022 ONCA 115](#).

<sup>34</sup> *Pro-Sys Consultants Ltd. v. Microsoft Corporation* [2013 SCC 57](#) at para [118](#)

<sup>35</sup> *Le Feuvre v. Enterprise Rent-A-Car Canada Company*, [2022 ONSC 4136](#) at para [50](#).

<sup>36</sup> *Fresco* (Ont Sup Ct), [2020 ONSC 4288](#) at para. [29](#) ; aff’d *Fresco* (ONCA), [2022 ONCA 115](#).

Assuming an aggregate assessment of damages was available in the case at bar, **the court would have to be satisfied that the Plaintiffs had proven a methodology** that would quantify their damages in an aggregate amount that would be equal to or less than the amount of damages that the defendant would pay if there were individual assessments. **In other words, the plaintiff must satisfy the court that he or she has developed a methodology that produces a true determination of the defendant's liability** under the law or at least a methodology that would not overstate the defendant's liability [*emphasis added*].<sup>37</sup>

47. In his later decision in *Spina*, Justice Perell issued similar guidance, holding that the Plaintiffs must prove a “top-down” methodology capable of calculating damages fairly and reasonably without proof by individual class members:

Aggregate damages should be available **if** [*emphasis in original*] all or part of the defendant's monetary liability to class members can be fairly and reasonably determined without proof by individual class members **and if there is a viable methodology**. In the immediate case, the defendant's monetary liability cannot be determined without proof by individual members. **Fairness and reasonability is not possible in the immediate case because the Plaintiffs have not proven a fair and reasonable global top-down methodology** that would be a surrogate or equivalence for what would undoubtedly be a fair and reasonable outcome if a bottom-up methodology were utilized [*emphasis added*].<sup>38</sup>

48. This judicial guidance makes it clear the question of whether aggregate damages should be awarded is not abstract or academic. **It is a question of methodology**. Courts must determine whether the specific methodology proposed by the Plaintiffs fairly and reasonably determines damages in the aggregate.

49. This question must be decided with reference to the three factors articulated by Justice Belobaba in *Ramdath*. These factors remain the governing law with respect to the availability of aggregate damages:<sup>39</sup>

(a) Whether the non-individualized evidence presented by the plaintiff is sufficiently reliable;

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<sup>37</sup> *Healey v. Lakeridge Health Corporation*, [2010 ONSC 725](#) at para [284](#); aff'm [2011 ONCA 55](#)

<sup>38</sup> *Spina* (Ont Sup Ct), [2023 ONSC 1086](#) at para [657](#).

<sup>39</sup> *Spina* (ONCA), [2024 ONCA 642](#) at para. [199](#), **Case Center A8149**.

- (b) Whether the use of this evidence will result in any unfairness or injustice to the defendant, such as overstatement of its liability; and
- (c) Whether the denial of an aggregate approach will result in "a wrong eluding an effective remedy" and a denial of access to justice.<sup>40</sup>

50. Again, it is critical to emphasize that **it is the proposed methodology that is evaluated against the *Ramdath* factors.**

51. By way of example, in *Ramdath* Justice Belobaba awarded damages in the aggregate for five categories of costs where the evidence was "sufficiently reliable to permit a just determination." He refused, however, to award aggregate damages for several other categories of costs because **the methodology** for assessing these categories was "based on unreliable assumptions that would result in an unjust determination" of the defendant's liability.<sup>41</sup> Justice Belobaba's decision is discussed in greater detail in the following section.

52. Similarly in *Spina*, Justice Perell refused to award damages in the aggregate because **the Plaintiffs' methodology** contained errors that precluded the fair and reasonable calculation of damages on a global basis.<sup>42</sup>

53. In short, Common Issue 5 does not ask in the abstract whether damages can be calculated in the abstract. **It asks whether the Plaintiffs have proven that their methodology fairly and reasonably calculates damages in the aggregate.** If the Plaintiffs cannot prove this, then damages **must** be assessed individually.<sup>43</sup>

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<sup>40</sup> *Ramdath* (Ont Sup Ct) at para. [47](#), **Case Center B-1-18718**; affirmed *Ramdath* (ONCA) at para. [76](#), **Case Center B-1-18760**.

<sup>41</sup> *Ramdath* (ONCA) at paras [61-62](#), **Case Center B-1-18755**.

<sup>42</sup> *Spina* (ONCA), [2024 ONCA 642](#) at paras [206-208](#), **Case Center A8153**.

<sup>43</sup> *Ramdath* (Ont Sup Ct), paras [1-3](#), **Case Center B-1-18706**.

### C) Overstatement and/or uncertainty are fatal to an aggregate methodology

54. Of the three *Ramdath* factors, the most critical is the question of whether aggregate damages will result in overstatement of the defendant's liability. Put simply, if calculating damages in the aggregate will overstate the defendant's liability, then the Court must refuse to do so.

55. The Courts have consistently considered the factors of reliability and overstatement together. They have consistently refused to award damages in the aggregate if the methodology or evidence for doing so is unreliable. Unreliability is an even more acute issue if it will lead to overstatement of damages.

56. In *Ramdath*, Justice Belobaba explained that aggregate damages should be “more the norm than the exception”, **but only if** all or part of the defendant's monetary liability can be “**fairly and reasonably determined without proof by individual class members**.” If the defendant's monetary liability cannot be so determined, then individual assessments **must** be undertaken [*emphasis added*].<sup>44</sup> In *Spina*, Justice Perell relied on *Ramdath* while emphasizing the “conditional modality” of Justice Belobaba's statement.<sup>45</sup>

57. In his later decision in *Fresco*, Justice Belobaba emphasized that when determining whether to award aggregate damages, questions about reliability and **overall fairness to the defendant are paramount** [*emphasis added*].<sup>46</sup>

58. The *Ramdath* and *Spina* decisions illustrate the degree to which unreliability and/or overstatement of damages are fatal to a proposed methodology for calculating damages in the aggregate.

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<sup>44</sup> *Ramdath* (Ont Sup Ct) at paras. [1-2](#) [*Ramdath* (Ont Sup Ct) **Case Center B-1-18706**; a'ffd in part *Ramdath* (ONCA) **Case Center B-1-18734**].

<sup>45</sup> *Spina* (Ont Sup Ct) at para [657](#).

<sup>46</sup> *Fresco* (ONSC), *supra* at para [29](#).

59. Justice Belobaba's decision in *Ramdath* followed the common issues trial, at which the defendant George Brown College ("**GBC**") was found liable for negligent misrepresentation and unfair practice under the *Consumer Protection Act*. GBC had falsely claimed that graduates from its International Business Management Program would be awarded certain industry designations upon completion.

60. Justice Belobaba awarded damages in the aggregate for certain categories of costs that could be determined with **certainty**. These were direct, out-of-pocket costs imposed on all class members where the quantum was either not in dispute or was supported by uncontroverted evidence. These costs included: Application, administration and tuition fees; student association and related fees; health and medical insurance fees for foreign students; textbook and supply fees; and air travel costs for foreign students.<sup>47</sup>

61. In contrast, Justice Belobaba declined to award aggregate damages for several indirect damages, that **could not be determined with certainty**. These included damages for foregone income and delayed entry into the workforce. His refusal was based on his finding that proposed methodology for calculating these damages was based on unreliable assumptions and would overstate GBC's liability.<sup>48</sup>

62. In *Spina*, the plaintiff franchisees brought a claim against the defendant franchisor Shoppers Drug Mart ("**Shoppers**"). The franchisees were not paid a salary by Shoppers but rather participated in a complex profit-sharing arrangement. The franchisees claimed, in effect, that Shoppers had unlawfully withheld a portion of the profit sharing to which they ought to have been entitled and had overcharged various fees.<sup>49</sup>

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<sup>47</sup> *Ramdath* (Ont Sup Ct), [2014 ONSC 3066](#) at paras. [56](#), **Case Center B-1-18720**.

<sup>48</sup> *Ibid* at paras [60-66](#), **Case Center B-1-18722**; see also *Ramdath* (ONCA) at para [62](#), **Case Center B-1-18755**.

<sup>49</sup> *Spina* (ONCA), paras [23-24](#), **Case Center A8083**.

63. The plaintiffs advanced a methodology for determining damages in the aggregate under three specific headings: (a) charging of unauthorized Optimum fees; (b) overcharging Shoppers Fees; and (c) failing to remit Professional Allowances.<sup>50</sup> At trial, Justice Perrell ruled against Shoppers on some of the issues and found that aggregate damages were not appropriate.<sup>51</sup>

64. Again, this ruling hinged on the interplay between the unreliability of the plaintiffs' methodology and its impact on overstating damages. Justice Perrell held that the proposed methodology for calculating aggregate damages included several methodological errors that rendered it unreliable.<sup>52</sup> In particular, Justice Perrell found that the methodology's assumption of equal profitability across the plaintiff associate class, without regard for idiosyncratic factors, was likely to overstate the defendant Shoppers' liability.<sup>53</sup>

65. In short, damages cannot be awarded in the aggregate if the Plaintiffs' methodology for calculating those damages would overstate the defendant's liability.

#### **D) Access to Justice concerns do not outweigh fairness to the defendant**

66. Although the third *Ramdath* factor requires a consideration of whether denying aggregate damages will deny access to justice, Justice Belobaba himself emphasized that **overall fairness to the defendant remains paramount.**<sup>54</sup>

67. As Justice Perrell highlighted in *Spina*, access to justice means access to **justice**, for both the Plaintiffs and the defendant. The appeal of aggregate damages in class actions cannot outweigh the fundamental requirement that those damages be fair and reasonable. If those damages cannot be fairly and reasonably determined in the aggregate, then access to justice requires individual calculation:

[654] I do not doubt the sagacity of Justice Belobaba, among other judges, and the judges of the Court of Appeal who have noted the attractiveness of aggregate damages

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<sup>50</sup> *Spina* (Ont Sup Ct) at para [640](#).

<sup>51</sup> *Spina* (Ont Sup Ct) at para. [675](#).

<sup>52</sup> *Spina* (Ont Sup Ct) at paras [639-646](#),

<sup>53</sup> *Spina* (Ont Sup Ct) at paras [644-645](#).

<sup>54</sup> *Fresco* (ONSC), *supra* at para [29](#).

as a means to provide access to justice, behaviour modification, and judicial efficiency, which are the salutary aims of the class proceedings regime in Ontario and across the country. **But as attractive as aggregate damages may be to the social utility of class proceedings, the Class Members must demonstrate a global top-down methodology and the Class Member must demonstrate that prerequisites for an aggregate award have been satisfied and that the evidence supports an aggregate award.**

[655] In the immediate case, there is no reason to change my mind that the Class Members do not have a class-wide claim for aggregate damages. There is no methodology for aggregate damages or for a minimum base-line award of aggregate damages with more damages to follow at individual issues trials. **In the immediate case, given the idiosyncratic nature of the Class Members' claims, the route to access to justice is individual issues trials to assess damages.**<sup>55</sup>

68. Nor can the Court simply assume that declining to award aggregate damages will result in a denial of access to justice. In upholding Justice Perell's decision, the Court of Appeal specifically agreed that there was no evidence that individual damage assessments would jeopardize access to justice.<sup>56</sup>

69. Moreover, the Court of Appeal emphasized that there is a proportionality element to the question of whether denial of aggregate damages will result in denial of access to justice. Where the disputed amounts are "clearly disproportionate to the cost of recovery" (such as damages in the hundreds of dollars for the direct out of pocket costs in *Ramdath*), then access to justice concerns are heightened. In contrast, where amounts at issue are substantial relative to the size of the class and the evidence needed to recover the damages (such as a class of 500-800 plaintiffs each seeking tens of thousands of dollars in damages in *Spina*), the Court will be less concerned that denying aggregate damages will deny access to justice.<sup>57</sup>

70. Finally, access to justice concerns are assuaged where the trial judge can design efficient procedures to assess individual claims under s. 25 of the CPA. This provision gives the Court "wide latitude" to design processes to assess damages in the "the least expensive and most expeditious method of determining the issues that is consistent with justice to class members and the parties."<sup>58</sup>

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<sup>55</sup> *Spina* (Ont Sup Ct) paras [654-655](#).

<sup>56</sup> *Spina* (ONCA) at para [214](#), **Case Center A8156**.

<sup>57</sup> *Spina* (ONCA) at paras [211-212](#), **Case Center A8155**.

<sup>58</sup> *Spina* (ONCA), at paras [230-234](#), **Case Center A8162**; *Class Proceedings Act*, [ss. 25\(1\)-\(7\)](#).

## **2) Only the Plaintiffs must satisfy the *Ramdath* criteria**

71. There are two methodologies before this Court: the Plaintiffs' which seeks to calculate damages in the aggregate, and the City's which proposes to calculate damages individually. However, these methodologies are not competing, per se.

72. To reiterate, the burden is on the Plaintiffs. Common Issue 5 does not involve a weighing of which methodology best satisfies the *Ramdath* criteria (although, as set out in these submissions, the City's best satisfies the criteria). Rather, in determining Common Issue 5, the Court must decide **whether the Plaintiffs' methodology fairly and reasonably calculates damages in the aggregate.**

This analysis is guided by the three *Ramdath* factors. If the Plaintiffs' methodology does not calculate damages fairly and reasonably in the aggregate, then damages **must** be determined individually.<sup>59</sup>

73. Put differently, if the Plaintiffs cannot prove that their methodology fairly and reasonably calculates damages, then individual assessments are the default.

74. The City's methodology is relevant only insofar as: (a) it highlights deficiencies in the Plaintiffs' methodology; and (b) it satisfies the Court that a denial of aggregate damages will not result in a denial of access to justice.

75. This section summarizes each of the Plaintiffs' and the City's methodologies, and highlights area of agreement between their respective experts. Section 3, which follows, evaluates the Plaintiffs' methodology against the *Ramdath* criteria, and contrasts with the City's methodology where appropriate.

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<sup>59</sup> *Ramdath (Ont Sup Ct)* paras [1-3](#), **Case Center B-1-18706**.

## A) The Plaintiffs' methodology

### i) *Dr. Boyer's evidence*

76. The Plaintiffs' expert, Dr Boyer, is a professor of Finance at HEC Montreal.<sup>60</sup> He was qualified as an expert in financial economics.<sup>61</sup>

77. The Plaintiffs' methodology as put forward by Dr. Boyer is premised on the assumption that the proper measure of damages is loss of plate value. He did not advance any alternative methods for calculating damages.<sup>62</sup>

78. In short, Dr. Boyer proposes that damages should be measured based on the delta between the value of taxi plates before the loss period and the value of plates after the loss period, however that period is defined.<sup>63</sup>

79. Dr. Boyer proposes to calculate the fair market value of taxi plates based on a Discounted Cash Flow ("**DCF**") framework, using what he refers to as the "fundamental formula of finance":

$$Value = \sum_{t=1}^{\infty} \frac{E(CF_t)}{(1+r)^t}$$

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80. This formula posits that the value of a taxi plate is a function of the expectations of cash flow across the lifetime of the asset, divided by the discount rate, which reflects risk.<sup>65</sup>

81. For the purposes of valuation, Dr. Boyer proposes two bases upon which to distinguish between different taxi plates:

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<sup>60</sup> Examination in chief of M. Boyer, March 30, 2026, p.12:25-28, **Case Center A8608**.

<sup>61</sup> Examination in chief of M. Boyer, March 30, 2026, p. 26:29 – p.27:4, **Case Center A8622**.

<sup>62</sup> Cross-examination of M. Boyer, March 31, 2026, p.15: 9-19, **Case Center A8753**.

<sup>63</sup> Cross-examination of M. Boyer, March 31, 2026, p.114:23-27, **Case Center A8852**.

<sup>64</sup> Ex. Z, **Case Center A336**.

<sup>65</sup> Cross-examination of M. Boyer, March 31, 2026, p.34:22-26 **Case Center A8772**; p.115:2-5, **Case Center A8853**.

- (a) The first distinction is between “Artisan” plates, which are plates held by a single plate holder (“**SPH**”) and not subject to a collective bargaining agreement (“**CBA**”), and “Industrial,” plates which are held by a multi-plate holder and governed by CBA. Dr. Boyer acknowledges that the distinction between Artisan and Industrial is his own and is not based in the 2012 or 2016 By-laws.<sup>66</sup>
- (b) The second distinction is between standard and accessible plates, which are distinct under the 2012 and 2016 By-laws.

82. It is Dr. Boyer’s evidence that all plates within each given “family” (i.e. Artisan-standard, Artisan-accessible, Industrial-standard and Industrial-accessible) have the same value.<sup>67</sup> While Dr. Boyer proposes “refinements” of his fundamental valuation formula for each “family” of plates, he confirmed that these refinements are all based on his fundamental formula.<sup>68</sup>

83. To calculate value under this methodology, Dr. Boyer requires information for each “family” as to the average annual revenue, average annual costs, fees payable under the by-law, and the discount rate.<sup>69</sup>

84. In his expert report, Dr. Boyer cites a statement from the 2000 report of Hara and Associates to the Taxi Project Team of the Ottawa Transition Board (the “**2000 Hara Report**”) that suddenly expanding the number of licenses to catch up with demand will reduce the value of licenses back to zero, effectively expropriating the license holders”<sup>70</sup> In cross-examination, Dr. Boyer confirmed that he adopts this statement.<sup>71</sup>

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<sup>66</sup> Cross-examination of M. Boyer, March 31, 2026, p.27:4-12, **Case Center A8765**.

<sup>67</sup> Examination in chief of M. Boyer, March 30, 2026, p. 35:16-23, **Case Center A8631**.

<sup>68</sup> Cross-examination of M. Boyer, March 31, 2026, p.114:23-30, **Case Center A8852**.

<sup>69</sup> Examination in chief of M. Boyer, March 30, 2026, p. 111:29-112:10, **Case Center A8707.300**

<sup>70</sup> Exhibit 204, **Case Center A1483**; cited in Boyer Report, Ex. Z, **Case Center A8317**.

<sup>71</sup> Cross-examination of M. Boyer, March 31, 2026, p. 40:15-26, **Case Center A8778**.

85. In his report, Dr. Boyer took the position that this reduction of the value of licenses to zero could be achieved through a variety of mechanisms, including both the City's negligence and the enactment of the 2016 By-law.<sup>72</sup> On cross-examination, Dr. Boyer confirmed this general position, but clarified that he was not suggesting the value of taxi plates went fully to zero, due to the residual rights held by taxi plate holders:

Q. And here I'm looking at the third paragraph. Okay. And then turning over to the next page, you say that from an economic perspective, **a de facto expropriation could be achieved by, and then you list five mechanisms. One of those mechanisms is the city not enforcing the 2012 bylaw between September 2014 and the enactment of the 2016 bylaw.**

A. **That's right.**

Q. **And another mechanism is the City of Ottawa enacting the 2016 bylaw.**

A. **Yes.**

Q. All right. And just as I understand it, it's your evidence that either of those two mechanisms would decrease the value of taxi plates to effectively zero?

A. Yes.

Q. All right.

A. With a little proviso, if I may, there are still some protected markets. So it will not be exactly zero because the, the bylaw still had some limited protection, for, for instance, hailing a cab. Uber cannot do it. It's still the prerogative of taxi users, for instance.

Q. And as I understand it, you – you're not expressing an opinion on sort of the, the proportionate value of that, what you refer to as the limited bundle of rights.

A. No. I - at this time, I don't have - I didn't analyze the numbers, but I'm sure it's not exactly zero.

Q. Is it fair to say though it is - your evidence is that it would reduce the value to zero plus whatever the value of the remaining rights...

A. Yes. [*emphasis added*]<sup>73</sup>

86. These residual rights include exclusive rights not held by Uber drivers, such as: accepting street hails, using taxi stands, accepting cash, and preferential parking at certain venues.<sup>74</sup>

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<sup>72</sup> Ex. Z, **Case Center A8318.**

<sup>73</sup> Cross-examination of M. Boyer, March 31, 2026, p. 41:1-29, **Case Center A8779.**

<sup>74</sup> Examination in chief of M. Boyer, March 30, 2026, p.91:2-23, **Case Center A8687.**

87. Dr. Boyer agrees that the value of a taxi must be assessed as at a given point in time.<sup>75</sup> Since he agrees that the value of plates has not gone to zero, a determination of damages under Dr. Boyer's methodology would require calculating the value of each "family" of taxi plates before the loss period, and then calculating the value at the end of the loss period, however that is defined:

Q. All right. But if we did have a defined loss period, right, we would - with a before date and an after date, then we would calculate loss by saying, what was the market value on the before date, what was the market value on the after date?

A. Yes.

Q. Okay. And both of those would be calculated using the fundamental formula that you set out in your report, and then you have sort of refinements of the formula for each of the four categories that you identify.

A. Yes.

Q. But those are all ultimately reflections of the same fundamental formula.

A. Exactly. And all of those formulas also could have a, a growth in the number of rides that is different. They - they're all a bit different, but, fundamentally, it's the same formula.<sup>76</sup>

88. Dr. Boyer agrees that a methodology put before the Court to determine aggregate damages must be reliable, should not overstate damages or provide the Plaintiffs with a windfall. He agrees that the overstating of damages would be both unfair to the defendant and an indication that the methodology is not reliable.<sup>77</sup>

## **B) The City's Methodology**

### ***i) Dr. Stacey's evidence***

89. The City's expert, Dr. Derek Stacey, is an Associate Professor in the Department of Economics at the University of Waterloo.<sup>78</sup>

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<sup>75</sup> Cross-examination of M. Boyer, March 31, 2026, p. 35:18-22, **Case Center A8773**.

<sup>76</sup> Cross-examination of M. Boyer, March 31, 2026, p. 114:17-p.115:1, **Case Center A8852**.

<sup>77</sup> Cross-examination of M. Boyer, March 31, 2026, p.12:14 – p. 13:19, **Case Center A8750**.

<sup>78</sup> Exhibit EE, Stacey Report, Curriculum Vitae of Derek Stacey, **Case Center A8527**; Examination in chief of D. Stacey, March 31, 2026, p. 136:16 –18, **Case Center A8874**.

90. Dr. Stacey was retained by the City to prepare a report to respond to the Boyer Report and to provide his opinion on whether damages in this case should be assessed individually or in the aggregate.<sup>79</sup>

91. Dr. Stacey was qualified by the Court as an expert in the economics of decentralized markets, asset valuation, and search and matching theory.<sup>80</sup> The Stacey Report, entitled "Economic Assessment of Loss Period Damages to Ottawa Taxi Plate Holders," was marked as Exhibit EE.<sup>81</sup>

92. During his testimony, Dr. Stacey defined his mandate in preparing the Stacey Report as follows:

My mandate was to provide both a response to plaintiff's expert report and to provide my opinion on whether damages in this case can be assessed individually or in the aggregate. And so the mandate involved three things; evaluating whether a change in taxi plate value is a valid and economically sound measure of damages; assessing whether damages can be meaningfully and reliably assessed on an aggregate basis; and the third item was if not, if they can't be assessed on an aggregate basis, to develop an economically sound methodology for calculating individual level damages.<sup>82</sup>

93. The Stacey Report advanced three principal conclusions:

(a) First, a change in the market value of a taxi plate is not a valid measure of damages attributable to a discrete loss period.<sup>83</sup> Even under idealized, frictionless conditions, observed taxi plate prices cannot isolate losses attributable specifically to the City's non-enforcement during the 2014Q4–2016Q3 period; rather, observed price changes incorporate revisions to expectations about the post-2016 regulatory environment and the long-run evolution of the taxi and vehicle-for-hire industries, thereby conflating temporary income shortfalls with changes in long-run expectations.<sup>84</sup>

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<sup>79</sup> Examination in chief of D. Stacey, March 31, 2026, p. 148:3-6, **Case Center A8886**.

<sup>80</sup> Ruling of Justice M. Smith, March 31, 2026, p. 146:26-32, **Case Center A8884**.

<sup>81</sup> See Exhibit EE, **Case Center A8473-A8531**.

<sup>82</sup> Examination in chief of D. Stacey, March 31, 2026, p. 148:3-13, **Case Center A8886**.

<sup>83</sup> Exhibit EE, **Case Center A8478**.

<sup>84</sup> Exhibit EE, **Case Center A8493**.

- (b) Second, the Ottawa taxi plate market is thin, illiquid, heterogeneous, and opaque, making plate price changes unreliable indicators of loss-period damages. In particular, Dr. Stacey documented that, in quarters with two or more recorded plate transactions, within-quarter price ranges<sup>85</sup> frequently exceeded \$100,000 for assets with identical regulatory rights; that over 40% of the 523 completed plate transfers between 2006Q1 and 2018Q3 were recorded at nominal prices (including 201 transfers at \$1); and that the secondary market featured sparse trading, with many quarters showing only one or two transactions that plausibly reflect market-based transfers.<sup>86</sup> Notably, Dr. Boyer accepted this evidence in his cross-examination, agreeing that he had "no reason to dispute" Dr. Stacey's findings regarding price dispersion and market volatility.<sup>87</sup>
- (c) Third, Dr. Stacey documented that the income generated by taxi plates varies substantially across owners, operators, business models, contractual terms, and licence classes.<sup>88</sup> This heterogeneity arises from differences in driver skill, hours worked, shift structure, vehicle quality, dispatch affiliation, fleet assignment, lease arrangements, and whether the plate is standard or accessible.<sup>89</sup> Accordingly, Dr. Stacey opined that any methodology that imposes a uniform plate value within or across categories cannot produce damages consistent with the actual losses experienced by individual plate holders.<sup>90</sup>

94. Based on these conclusions, Dr. Stacey proposed an individual-level, income-based methodology for calculating damages. Namely, Dr. Stacey testified that the correct economic measure

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<sup>85</sup> As noted in the Stacey Report, "[t]he within-quarter price range is the difference between the highest and lowest arm's-length transaction prices in a given quarter. In markets with few trades, the range provides a direct indicator of how much prices can vary across individual bilateral transactions." See Exhibit EE, **Case Center A8495** at FN 4.

<sup>86</sup> Exhibit EE, **Case Center A8497, A8501**.

<sup>87</sup> Cross-examination of M. Boyer, March 31, 2026, p. 30:1, **Case Center A8768**.

<sup>88</sup> Exhibit EE, **Case Center A8505-A8506**.

<sup>89</sup> Exhibit EE, **Case Center A8507**.

<sup>90</sup> Exhibit EE, **Case Center A8515**.

of damages is "the plate-specific loss of net operating income during the period of negligent non-enforcement—not the change in the market value of a taxi plate."<sup>91</sup>

95. In essence, Dr. Stacey's methodology can be broken down into three key steps:

- (a) Construct a pre-period net operating income benchmark for each plate using its own historical earnings;
- (b) Compare this benchmark to the plate's actual net operating income in 2015–2016; and
- (c) Calculate the resulting net operating income shortfalls.<sup>92</sup>

96. In so doing, Dr. Stacey's method is designed to isolate only the losses attributable to non-enforcement, honours the substantial heterogeneity among plate holders, and avoids the conceptual and empirical pitfalls of plate-value-based approaches.<sup>93</sup>

***ii) Mr. Zimmerman's evidence***

97. The City's second expert, Tim Zimmerman, is a partner at ResEcon Canada Corp. and holds the designations of Chartered Business Valuator (CBV), Accredited in Business Valuation (ABV), and Certified Fraud Examiner (CFE).<sup>94</sup> He specializes in loss quantification, business valuation, and forensic accounting, and has been qualified as an expert in those fields by the Ontario Superior Court of Justice on numerous occasions.<sup>95</sup> The Zimmerman Report, entitled "Framework for Individualized Economic Damages Calculations for Taxi Plate License Holders," was prepared at the request of the City and was marked as Exhibit HH.<sup>96</sup>

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<sup>91</sup> Exhibit EE, **Case Center A8480**.

<sup>92</sup> Exhibit EE, **Case Center A8479**.

<sup>93</sup> Exhibit EE, **Case Center A8516-A8517**.

<sup>94</sup> Exhibit FF, **Case Center B-1-19040**.

<sup>95</sup> Exhibit FF, **Case Center B-1-19040**.

<sup>96</sup> See Exhibit HH, **Case Center B-1-19011 – B-1-19037**.

98. Mr. Zimmerman's mandate was to provide a framework for calculating the economic losses sustained by the Taxi Plate Holders on an individualized basis during the Loss Period.<sup>97</sup> Specifically, he was asked to:

- (a) Identify the documents and other information that will need to be requested from each Taxi Plate Holder;
- (b) Provide a methodology for calculating the economic losses sustained by each Taxi Plate Holder on an individualized basis; and
- (c) Consider alternatives for estimating the economic losses sustained by any Taxi Plate Holders who are unable to provide the necessary information.<sup>98</sup>

99. Mr. Zimmerman's framework builds directly on the economic conclusions reached by Dr. Stacey – and, critically, on Dr. Stacey's heterogeneity analysis.

100. Mr. Zimmerman's framework is based on his understanding that the Stacey Report established three foundational conclusions:

- (a) First, that the taxi plate market is thin, illiquid, and dominated by idiosyncratic bilateral trades;
- (b) Second, that a before-and-after price comparison bundles together temporary income losses with revisions in long-term expectations unrelated to negligent non-enforcement; and

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<sup>97</sup> Exhibit HH, **Case Center B-1-19013**.

<sup>98</sup> Exhibit HH, **Case Center B-1-19013**.

- (c) Third, that "the income generated by taxi plates varies substantially across owners, operators, business models, contractual terms and licence classes" and that this "variation is economically meaningful, not statistical noise."<sup>99</sup>

101. Based on these observations, Mr. Zimmerman understood that his mandate was to operationalize Dr. Stacey's income-based methodology – that is, to develop a practical framework for measuring, for each plate individually, the shortfall in operating income during the Loss Period, relative to what would have been earned under full enforcement of the 2012 Taxi By-Law.<sup>100</sup>

102. Translating Dr. Stacey's heterogeneity findings into a workable claims process, Mr. Zimmerman proposed a practical three-step process for managing the individualized claims:

- (a) A questionnaire to categorize claimants;
- (b) An information request to obtain the necessary documents; and
- (c) The loss calculations themselves.<sup>101</sup>

103. The questionnaire – which Mr. Zimmerman noted could be completed online for convenience and simplicity – consists of five straightforward questions addressing:

- (a) Taxi plate ownership status at September 1, 2014;
- (b) Taxi plate purchases during the Loss Period;
- (c) Taxi plate sales during the Loss Period;
- (d) The manner in which the claimant used the plate; and

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<sup>99</sup> Exhibit HH, **Case Center B-1-19013** at para. 6(a); Examination in chief of T. Zimmerman, April 2, 2026, pp. 51:32 – p.52:27, **Case Center A9079**.

<sup>100</sup> Examination in chief of T. Zimmerman, April 2, 2026, p. 53:1–15, **Case Center A9081**.

<sup>101</sup> Exhibit HH, **Case Center B-1-19019**.

(e) Whether the claimant's business is incorporated.<sup>102</sup>

104. Each of these questions is directly responsive to a dimension of heterogeneity documented by Dr. Stacey. As Mr. Zimmerman testified, because "there are many different combinations of taxi plate holders and how their taxi plates are used, the financial impact of the City's inadequate enforcement of the 2012 By-Law during the loss period may vary from one taxi plate holder to another."<sup>103</sup>

105. The questionnaire's categorization function – distinguishing single-plate holder-drivers from multi-plate holders and absentee plate holders and identifying whether claimants drove their own taxis or leased their plates – mirrors the very sources of heterogeneity that Dr. Stacey documented: differences between owner-operators and lessors, between fleet-affiliated and independent plates, and between standard and accessible plates.<sup>104</sup>

106. With respect to the information request, Mr. Zimmerman's methodology relies principally on personal income tax returns (T1 General) and Notices of Assessment for the years 2012 through 2016, supplemented by corporate income tax returns (T2) and details of shareholder remuneration for claimants with incorporated businesses.<sup>105</sup> The relevance and availability of this information was confirmed during Dr. Boyer's cross-examination:

Q. And those tax returns would provide information regarding the plate holder's revenue. Correct?

A. I presume.

Q. And that's the same information that you would require to calculate the value of an artisan plate. You also require information as to revenue?

A. Yes.<sup>106</sup>

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<sup>102</sup> Exhibit HH, **Case Center B-1-19020**.

<sup>103</sup> Exhibit HH, **Case Center B-1-19019**; Examination in chief of T. Zimmerman, April 2, 2026, pp. 55:26 – p. 56:26, **Case Center A9083**.

<sup>104</sup> Examination in chief of T. Zimmerman, April 2, 2026, p. 57:30 – p. 58:23, **Case Center A9085**; see also April 1, 2026, pp. 51:3 – p. 58:12, **Case Center A8942**.

<sup>105</sup> Exhibit HH, **Case Center B-1-19023** at para. 54 and **B-1-19025** at para. 70.

<sup>106</sup> Cross-examination of M. Boyer, March 31, 2026, p. 57:32 – p. 58:6, **Case Center A8795**.

107. Dr. Boyer further agreed that income tax returns would provide more accurate information regarding expenses than the estimation methods he had identified:

Q. And you would also agree that the tax returns would provide information as to the expenses of individual plaintiffs?

A. Probably. Yes. Q. And that information would be more accurate than the methods you've identified for estimating.

A. For that, I would agree.<sup>107</sup>

108. In putting forth the proposed methodology, Mr. Zimmerman addressed the practical concern that some claimants may no longer possess the historical income tax returns needed for the calculations (given the passage of time since the Loss Period). Specifically, he explained that individuals can obtain the required tax information from the Canada Revenue Agency (“CRA”), either by signing into the individual's "My Account" or by calling the CRA. Alternatively, to obtain documents that are not available through the individual's "My Account", individuals can submit an Access to Information (ATIP) request to the CRA at a cost of \$5 per request (which in turn would be reimbursable by the City under the methodology).<sup>108</sup>

109. The loss calculation methodology put forth in the Zimmerman Report consists of a five-step process:

- (a) Identification of the claimant's income reporting periods;
- (b) Determination of actual net business income for the pre-loss periods (2012 and 2013);
- (c) Projection of net business income for the loss periods using CPI-adjusted income from the pre-loss period;
- (d) Determination of actual net business income for the loss periods; and

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<sup>107</sup> Cross-examination of M. Boyer, March 31, 2026, p. 60:9-15, **Case Center A8798**.

<sup>108</sup> Exhibit HH, **Case Center B-1-19024** at para. 66.

- (e) Calculation of lost net business income as the difference between projected and actual income.<sup>109</sup>

110. Using an illustrative example, Mr. Zimmerman demonstrated how this methodology would yield total economic damages of \$27,406 for a hypothetical taxi plate holder whose pre-loss net income averaged approximately \$23,000 per year:<sup>110</sup>

Step in Zimmerman Framework	Application to Hypothetical Example	
<b>Step 1 – Pre-loss income (2012-2013)</b>	The hypothetical claimant reported net business income of \$22,500 in 2012 <sup>111</sup> and \$23,700 in 2013 <sup>112</sup> , drawn from Line 135 of the personal income tax return.	
<b>Step 2 – Projection of net business income for the loss periods</b>	<p>Using the greater of the CPI-indexed 2012 and 2013 incomes, the projected net business income was:</p> <ul style="list-style-type: none"> <li>• \$24,152 for 2014</li> <li>• \$24,424 for 2015; and</li> <li>• \$24,773 for 2016.</li> </ul> <p>The CPI indexing uses average monthly Consumer Price Index data from the Bank of Canada to ensure the but-for income is expressed in the correct nominal units.</p>	
<b>Step 3 – Actual net business income during the loss periods</b>	The hypothetical claimant reported net business income of \$20,100 in 2014 <sup>113</sup> , \$11,100 in 2015 <sup>114</sup> , and \$11,400 in 2016. <sup>115</sup>	
<b>Step 4 – Calculation of lost net business income</b>	<u>Year 2014</u>  Projected \$24,152 - actual \$20,100 = full-year loss of \$4,052 x 100% attributable	<b>\$4,052</b>
	<u>Year 2015</u>	<b>\$13,324</b>

<sup>109</sup> Exhibit HH, **Case Center B-1-19027** at para. 85; Examination in chief of T. Zimmerman, April 2, 2026, pp. 87:7 – p. 92:32, **Case Center A9115**.

<sup>110</sup> Exhibit HH, **Case Center B-1-19031** at para. 107.

<sup>111</sup> Exhibit HH, Appendix A, **Case Center B-1-19033**

<sup>112</sup> Exhibit HH, Appendix B, **Case Center B-1-19034**

<sup>113</sup> Exhibit HH, Appendix C, **Case Center B-1-19035**

<sup>114</sup> Exhibit HH, Appendix D, **Case Center B-1-19036**

<sup>115</sup> Exhibit HH, Appendix E, **Case Center B-1-19037**

	Projected \$24,424 - actual \$11,100 = full-year loss of \$13,324 × 100% attributable	
	<u>Year 2016</u>	<b>\$10,030</b>
	Projected \$24,773 - actual \$11,400 = full-year loss of \$13,373 × 75% <sup>116</sup> attributable	
	<b>Total economic damages =</b>	<b>\$27,406</b>

111. As a final consideration, Mr. Zimmerman also proposed an alternative methodology for claimants who are unable to provide sufficient information for the above-noted calculation. Namely, in these circumstances, Mr. Zimmerman explained that losses for claimants could be estimated using the average or median economic losses sustained by a representative group of similar claimants, such as single-plate owner-drivers or absentee plate owners.<sup>117</sup>

**C) The experts agree that the Plaintiffs do not disentangle the impact of the City’s negligence**

112. This is not a case where the Court is called upon to assess the credibility of competing experts, as that credibility was not meaningfully questioned. There is no suggestion that any of the experts were not qualified, credible, or independent. Except for the Plaintiffs’ unsuccessful challenge of Dr. Stacey’s qualification for expertise in asset valuation, none of the experts’ qualifications were challenged.<sup>118</sup>

113. Moreover, there is a great deal of agreement between the experts with respect to the features of Dr. Boyer’s DCF methodology. They agree on what it **does measure**: the overall change in the value of an asset across the relevant time period. Perhaps more importantly, they agree that the DCF framework **does not measure** the impact of individual causal factors on plate value across that time period.

<sup>116</sup> Reflecting 9 months of the loss Period in 2016. See Exhibit HH, **Case Centre B-1-19031** at fn 28; Examination in chief of T. Zimmerman, April 2, 2026, p. 92:10 – p. 92:16, **Case Centre A9120**.

<sup>117</sup> Exhibit HH, **Case Center B-1-19032** at para. 109; Examination in chief of T. Zimmerman, April 2, 2026, p. 93:15 – p. 96:4, **Case Center A9121**.

<sup>118</sup> Examination in chief of D. Stacey, March 31, 2026, p.145:3 – 146:32, **Case Center A8883**.

114. More specifically, **Dr. Boyer and Dr. Stacey agree with respect to following:**

- (a) Taxi plates do not have inherent value, and a cash flow is not an inherent feature of a taxi plate. It is a feature of how the plate is used.<sup>119</sup>
- (b) The DCF framework is commonly used in finance to calculate the value of assets.<sup>120</sup>
- (c) Under Dr. Boyer's proposed DCF framework, plate values are forward-looking.<sup>121</sup> They are a function of the future expectations of cash flows across the lifetime of the plate, discounted at the appropriate rate. The discount rate reflects risk.<sup>122</sup>
- (d) Under the DCF framework, the input for expectations of future cash flows measures the market's collective subjective beliefs about the future.<sup>123</sup> These expectations are influenced by all causal factors working together.<sup>124</sup>
- (e) Under the DCF framework, the input for discount rate measures the market's collective assessment of risk. This assessment is influenced by all causal factors working together.<sup>125</sup>
- (f) Fluctuations in market value are not attributable to any one single cause. There are caused by a confluence of factors.<sup>126</sup>

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<sup>119</sup> Cross-examination of M. Boyer, March 30, 2026, p.19:2-9, **Case Center A8615**; Cross-examination of D. Stacey, April 1, 2026, p.131:3-17, **Case Center A9022**.

<sup>120</sup> Examination in chief of M. Boyer, March 30, 2026, p.40:20 - p.41:14, **Case Center A8636**; Cross-examination of D. Stacey, April 1, 2026, p. 75:24-29, **Case Center A8966**.

<sup>121</sup> Examination in chief of M. Boyer, March 31, 2026, p. 3: 9-15, **Case Center A8741**.

<sup>122</sup> Cross-examination of M. Boyer, March 31, 2026, p. 34:22-26, **Case Center A8772**; p.110:16- p.111:4, **Case Center A8849**; Examination in chief of D. Stacey, p.16:5-12, **Case Center A8907**.

<sup>123</sup> Examination in chief of M. Boyer, March 31, 2026, p.3: 15-25, **Case Center A8741**.

<sup>124</sup> Cross-examination of M. Boyer, March 31, 2026, p. 111: 31- p. 112:9, **Case Center A8849**; re-examination of M. Boyer, March 31, 2026, p. 131: 11 – p. 132:13, **Case Center A8869**; Examination in chief of D. Stacey, April 1, 2026, p.26:12 -27:23; Cross-examination of D. Stacey, April 1, 2026, p.11:9-26, **Case Center A8902**.

<sup>125</sup> Cross-examination of M. Boyer, March 31, 2026, p. 111:31- p. 112:9, **Case Center A8849**; Examination in chief of D. Stacey, April 1, 2026, p.26:12 -27:23, **Case Center A8917**.

<sup>126</sup> Cross-examination of M. Boyer, March 31, 2026, p.32:29 – p. 33:3, **Case Center A8770**; Examination in chief of D. Stacey, April 1, 2026, p.7:19 – p. 8:9, **Case Center A8898**; Examination in chief of D. Stacey, April 1, 2026, p.26:12 -27:23, **Case Center A8917**.

- (g) The value of taxi plates in Ottawa was influenced by events outside of Ottawa, both prior to and during the negligence period, such as the spread of Uber throughout North America. These extraneous events impacted the Ottawa market's expectations of both future cash flow and risk.<sup>127</sup>
- (h) The value of taxi plates in Ottawa did not go to zero following the arrival of Uber in 2014.<sup>128</sup>
- (i) Since the value of taxi plates did not go to zero, calculating the loss under the DCF framework requires comparing the value of a taxi plate at the beginning of the loss period (however that period is defined) with the value of a taxi plate at the end of the loss period.<sup>129</sup>
- (j) Measuring a loss in plate value over time under the DCF framework does not disentangle the impact of the City's negligence from the impact of any other causal factors in terms of the effects on both expectations of future cash flow and expectations of risk.<sup>130</sup>
- (k) Under the DCF framework, everything occurring beyond the end of the negligence period remains relevant to a calculation of lost plate value.<sup>131</sup>

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<sup>127</sup> Cross-examination of M. Boyer, March 31, 2026, p. 116:23 – p. 117:13, **Case Center A8854**, p. 120:9-17, **Case Center A8858**; p. 120:32 - p.121:5, **Case Center A8858**; cross-examination of D. Stacey, April 1, 2026, p.117:4-8, **Case Center A9008**

<sup>128</sup> Cross-examination of M. Boyer, March 31, 2026, p. 41:1-30, **Case Center A8779**; Examination in chief of D. Stacey, April 1, 2026, p.23:2-7, **Case Center A8914**.

<sup>129</sup> Cross-examination of M. Boyer, March 31, 2026, p.114:23-27, **Case Center A8852**; Examination in chief of D. Stacey, April 1, 2026, p.26:12 -27:23, **Case Center A8917**.

<sup>130</sup> Cross-examination of M. Boyer, p.115:14- p.117:32, **Case Center A8853**; Examination in chief of D. Stacey, April 1, 2026, pp.8:9-3 **Case Center A8899** and 26:12 -27:23, **Case Center A8917**.

<sup>131</sup> Cross-examination of M. Boyer, March 31, 2026, p.45:24-27, **Case Center A8783**; Re-examination of D. Stacey, April 2, 2026, p.37:3-25, **Case Center A9065**.

- (l) Put differently, measuring a loss in plate value under the DCF framework measures the collective impact of all possible causal factors that could influence both expectation of future cash flow and discount rate.<sup>132</sup>

115. In short, the experts agree that the Plaintiffs' methodology does not isolate the impact of the City's negligence on the value of taxi plates from the impact of all other causal factors for which the City has no liability. For the reasons set out below, this is a fatal defect in the Plaintiffs' methodology that renders it incapable of satisfying the *Ramdath* criteria.

**D) The fundamental premise of Dr. Boyer's approach was rejected in the Metellus appeal**

116. The Quebec Superior Court decision in *Metellus c. Procureure générale du Québec* involved a class action brought by all taxi owner license holders across the province of Quebec, against the government of Quebec arising from the events following Province's amendment of the legislative framework governing vehicles for hire. At trial, the Court found the Province's abolishment of taxi owner licenses in 2020 constituted a "disguised expropriation" contrary to article 952 of the *Code Civile du Quebec*.<sup>133</sup> In a decision issued March 25, 2026, the Quebec Court of Appeal overturned the trial decision, holding that the Province was not liable for disguised expropriation.<sup>134</sup>

117. Dr. Boyer testified as an expert on behalf of the plaintiffs at trial in *Metellus*, providing a valuation of their taxi permits using a DCF framework.<sup>135</sup> A summary of the relevant facts from *Metellus* follows:

- (a) In Quebec, the taxi industry is governed by provincial legislation. A permit is required to operate a taxi. Permits have historically been limited in number, tied to a specific geographic division (referred to as an "agglomeration"), and transferable on a secondary

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<sup>132</sup> Cross-examination of M. Boyer, p.115:14- p.117:32, **Case Center A8853**; re-examination of M. Boyer, March 31, 2026, p. 131: 11 – p. 132:13, **Case Center A8861**; Examination in chief of D. Stacey, April 1, 2026, pp.8:9-3 and 26:12 -27:23, **Case Center A8899**.

<sup>133</sup> *Metellus c. Procureur général du Québec*, [2024 QCCS 2388](#) [*Metellus* (QCCS)], **Case Center B-1-19061**.

<sup>134</sup> *Procureur général du Québec c. Metellus*, [2026 QCCA 395](#) [*Metellus* (QCCA)].

<sup>135</sup> *Metellus* QCCS, [2024 QCCS 2388](#) at paras [128-136](#), **Case Center B-1-19083**.

market. Like in Ottawa, taxi owner license permits differ from taxi driver permits, which are unlimited and nontransferable.<sup>136</sup>

- (b) The average value of a taxi owner licenses province-wide between 2006 and 2014 was \$160,861, with value varying depending on agglomeration;<sup>137</sup>
- (c) In 2016, the provincial government adopted a pilot program that allowed Uber drivers to operate under a separate class of license from taxi drivers. There was no limit on the number of Uber driver permits, and the permits were not tied to a specific agglomeration. Taxi owner licenses remained limited in number.<sup>138</sup>
- (d) The Quebec government elected to provide compensation to taxi owner license holders for the loss of the value of their permit, among other things. As of the date of trial, approximately \$873 million had been paid to approximately 7,000 recipients through three rounds of compensation.<sup>139</sup>
- (e) At the conclusion of the pilot program in October 2019, the provincial government banned the transfer of taxi owner licenses, such that these permits were no longer transferable on the secondary market.<sup>140</sup>
- (f) In October, 2020, taxi owner licenses were completely abolished. A new licensing system was implemented that eliminated the former supply management regime.<sup>141</sup>
- (g) The plaintiff taxi owner license holders claimed that the compensation paid by the provincial government to date was insufficient and claimed for the full value of their licenses on the basis that the licenses were subject to a “disguised expropriation.” The

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<sup>136</sup> *Metellus* QCCS at paras [15-31](#), **Case Center B-1-19063**.

<sup>137</sup> *Metellus* QCCS at para [33](#), **Case Center B-1-19066**.

<sup>138</sup> *Metellus* QCCS at paras [43-44](#), **Case Center B-1-19067**.

<sup>139</sup> *Metellus* QCCS, paras [50-54](#) and [60-70](#), **Case Center B-1-19069** and **Case Center B-1-19070**.

<sup>140</sup> *Metellus* QCCS, paras [56-58](#), **Case Center B-1-19069**.

<sup>141</sup> *Metellus* QCCS at paras [56-58](#), **Case Center B-1-19069**.

trial court agreed, finding that the abolition of the taxi permits constituted a disguised expropriation contrary article 952 of the *Code Civile du Quebec*.<sup>142</sup>

118. On appeal, the Quebec Court of Appeal overturned the trial decision. Its decision was based on several key findings:

- (a) The Court of Appeal found that under Quebec law, in order to prove a disguised expropriation of a taxi permit (as opposed real property, for example), the claimant must satisfy the *Annapolis* test: (a) that the public authority removed all reasonable uses of the property; and (b) that the public authority acquired the property or gained an advantage.<sup>143</sup>
- (b) Taxi owner permits did not constitute property capable of being expropriated. As the Court explained:

[91] Si les permis de propriétaire de taxi présentent certes des caractéristiques d'un bien patrimonial – étant encore une fois notamment qualifiés par la *Loi de 2001* de capital affecté à l'exploitation d'une entreprise et dotés d'une valeur économique propre –, la Cour estime qu'ils ne confèrent pas pour autant un droit de propriété susceptible d'une expropriation par l'État en l'espèce. En effet, en vertu de la *Loi de 2001*, ils étaient délivrés pour une durée limitée, soumis à renouvellement aux termes de certaines conditions, incessibles sans autorisation préalable, révocables par la Commission et indissociables d'un véhicule conforme aux exigences réglementaires. Si le droit de propriété peut effectivement faire l'objet de certaines limites légales le degré d'encadrement législatif et réglementaire en l'espèce est si important qu'il empêche de lui reconnaître les attributs classiques du droit **de propriété, soit d'être absolu, exclusif et perpétuel**

[92] **Ce bien en capital s'apparente davantage ici à un droit d'usage ou à un privilège important et particulier conféré par l'État.** Par l'adoption de la *Loi de 2019*, l'État a aboli un privilège commercial important, mais il n'a pas procédé à la « négation absolue » d'un droit de propriété. Ainsi, la juge a erré en concluant que la *Loi de 2019* a privé les titulaires de permis de la jouissance d'un véritable droit de propriété. [*emphasis added*].<sup>144</sup>

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<sup>142</sup> *Metellus* QCCS at para [89](#), **Case Center B-1-19076**.

<sup>143</sup> *Metellus* (QCCA), paras [81](#) and [99](#); citing *Annapolis Group Inc. v. Halifax Regional Municipality* [2022 SCC 36](#), **Case Center B-1-2218**. The Court also relied on *Manitoba Fisheries Ltd. v. The Queen* [1978 CanLII 22](#) (SCC) **Case Center B-1-2344** and *Canadian Pacific Railway Co. v. Vancouver (City)* [2006 SCC 5](#), **Case Center B-1-2314**.

<sup>144</sup> *Metellus* (QCCA), paras [91-92](#).

- (c) Even if the taxi licenses qualified as property that could be expropriated, the Quebec law did not abolish all reasonable uses of the property (even though it abolished the specific type of taxi license). The law maintained the right to operate a taxi business and derive profits from the operation of the vehicle.<sup>145</sup>
- (d) The government of Quebec did not acquire property or gain an advantage through the abolition of taxi permits. As the Court explained, to hold the government liable for disguised expropriation under such circumstances would have a chilling effect on future legislation:

[101] Il ne s'agit donc pas d'un cas d'expropriation déguisé, mais de l'abolition d'un monopole qui conférait un avantage économique à une catégorie de personnes, par l'exercice légitime du pouvoir législatif de l'État d'encadrer différemment le transport rémunéré de personnes afin d'assurer la sécurité du public. L'effet de la mesure législative adoptée par la *Loi de 2019* n'est pas différent de la situation où l'État, sans l'arrivée d'Uber sur le marché, aurait plutôt décidé de déréglementer l'industrie du taxi, d'ouvrir le marché et de permettre à quiconque qui possède une voiture, d'exploiter une entreprise de taxi, mettant fin ainsi *de facto* à l'aspect du système de gestion de l'offre et aux composantes spéculatives du bien en question.

[102] **Raisonner autrement signifierait que le gouvernement ne pourrait pas, dans l'exercice de ses pouvoirs législatifs légitimes, mettre fin, modifier ni même moderniser des régimes législatifs dans l'intérêt public, s'il en résulte une perte économique susceptible d'être considérée comme une expropriation déguisée puisqu'elle abolit ou retire un droit, un avantage ou un privilège préalablement octroyé.** [*emphasis added*]<sup>146</sup>

119. *Metellus* is relevant to the instant case in that Dr. Boyer's methodology is based on the same fundamental premise. It is his evidence that the City's conduct in either negligently enforcing the 2012 By-law and lawfully enacting the 2016 By-law was economically equivalent to a disguised expropriation.<sup>147</sup> This is the basis upon which he argues that the Plaintiffs should be compensated for

<sup>145</sup> *Metellus* (QCCA), paras [93-98](#).

<sup>146</sup> *Metellus* (QCCA), paras [101-102](#).

<sup>147</sup> Cross-examination of M. Boyer, March 31, 2026, p. 40:15-26, **Case Center A8778**.

all losses in plate value occurring after Uber began operating in Ottawa, even beyond the end of the City's negligence.<sup>148</sup>

120. Dr. Boyer is attempting to graft the circumstances of this case onto those of *Metellus*, even though he concedes that in Ottawa, taxi plates remain transferable and are not abolished.<sup>149</sup> Yet, even in the more extreme circumstances of *Metellus*, in which the transfer of taxi plates was banned and then plates were abolished, the Quebec Court of Appeal found that no expropriation occurred, and there is no basis to compensate the Plaintiffs for the loss in market value of their taxi owner licenses.

121. In this case, there is simply no basis to compensate the Plaintiffs for all losses in plate value occurring after the negligence began, as if the City somehow expropriated their plates.

### **3) Applying the Ramdath criteria**

#### **Factor 1: The Plaintiffs' non-individualized evidence is not reliable**

##### ***A) The Plaintiff's Methodology does not account for idiosyncrasies between individual plaintiffs***

##### **i) Aggregate damages are not appropriate where the damage to class members depends on idiosyncratic factors**

122. In *Spina*, the Court of Appeal cautioned that aggregate damages are not appropriate "where the damage incurred by each class member necessarily depends on idiosyncratic factors specific to them that are impossible to generalize or extrapolate in a reliable way across the entire class."<sup>150</sup> In the instant case, the Plaintiffs' proposal to calculate damages based on the loss of value of plates does not sufficiently account for idiosyncratic factors including: differences in business models and cash flow between individual Plaintiffs, and the high degree of variability of the prices at which taxi plates were transferred.

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<sup>148</sup> Cross-examination of M. Boyer, March 31, 2026, p.45:24-27, **Case Center A8783**.

<sup>149</sup> Cross-examination of M. Boyer, March 31, 2026, p. 17:3-14, **Case Center A8755**.

<sup>150</sup> *Spina* (ONCA), [2024 ONCA 642](#) at para. [210](#), **Case Center A8155**.

123. Recall that in *Spina*, the plaintiffs advanced a methodology for calculating damages in the aggregate under three headings: (a) charging of unauthorized Optimum fees; (b) overcharging Shoppers Fees; and (c) failing to remit Professional Allowances.<sup>151</sup> In his trial decision, Justice Perell found that the methodology was flawed, in that it failed to account for a range of individual factors that determined store profits:

[664] The impact, if any, on store profits of the Optimum Fee Claims, the Store Charges Claims and the Professional Allowance Claims is **dependent on a number of factors** including: (a) the store's planned and actual profits for each year; (b) the amount of the Associate Guarantee applicable to the Associate in that year; (c) whether the Associate moved between stores during the year; (d) whether the store was physically relocated; (e) whether a store had more than one Associate in any given year; (f) whether the Associate had any specific earnings arrangements with Shoppers; and (g) whether any additional adjustments were made to Store Profitability and Associate Earnings.

[665] In the case of Professional Allowances, the amount attributable to each store as revenue **would depend on store-specific information** such as: (a) the quantity of generic drugs dispensed at the store during the year; (b) how many prescriptions of generic drugs were paid under the ODB versus non-ODB Plan, and (c) the store-level direct patient care expenses at the store.<sup>152</sup>

124. Given that the assessment of damages was “inherently idiosyncratic,” an award of damages in the aggregate was inappropriate.<sup>153</sup> In particular, Justice Perell found that assuming equal profitability across the plaintiff class without regard for idiosyncrasies was likely to overstate the defendant's liability.<sup>154</sup>

125. In contrast, Justice Perell found that an individual, store-by-store calculation of damages would be consistent with the principle that damages for breach of contract should be calculated on a “but for” basis.<sup>155</sup> The animating principle of these types of damages is to “place the innocent party, so far as money can do it, in the position in which it **would have been had the contract been performed and not a**

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<sup>151</sup> *Spina* (Ont Sup Ct) at para [640](#).

<sup>152</sup> *Spina* (Ont Sup Ct) at paras [662-667](#).

<sup>153</sup> *Spina* (Ont Sup Ct), at paras [653-655](#).

<sup>154</sup> *Spina* (Ont Sup Ct) at paras [644-645](#).

<sup>155</sup> *Spina* (Ont Sup Ct) at para [668](#).

better position but for the breach of contract.”<sup>156</sup> This is the same principle that underpins damages for negligence.<sup>157</sup>

126. On appeal in *Spina*, the Court of Appeal specifically agreed that the “inherently idiosyncratic” assessment of damages meant that the plaintiffs’ proposed model for calculating damages could not satisfy the test set out in s. 24(1) of the *CPA*.<sup>158</sup> The Court relied on *Ramdath* in holding that aggregate damages are generally inappropriate where damages are inherently idiosyncratic.<sup>159</sup>

127. In *Ramdath*, one of the factors that led Justice Belobaba to refuse to award aggregate damages for foregone income and delayed entry was the inherently idiosyncratic nature of these damages. The plaintiffs’ methodology assumed uniformity in terms of both pre-loss period income and impact of the defendant’s tortious conduct that was simply not supported by the evidence.<sup>160</sup>

**ii) Plate value depends on cash flow, and cash flow is idiosyncratic**

128. It is uncontroverted that under the Plaintiffs’ DCF, the value of a plate is the function of the expectation of cash flow across the lifetime of the asset, divided by the discount rate, which reflects risk.<sup>161</sup> Cash flow is an essential term of Dr. Boyer’s “fundamental formula.” If cash flow cannot be accurately determined, then value cannot be accurately determined.

129. Moreover, calculating plate value on an aggregate basis under the DCF methodology assumes that a standard amount of cash flow can be reliably determined. A plate value calculated under the DCF methodology is only reliably representative if the data used to calculate that value is reliably representative. In this case, it uncontroverted that there is no amount of cash flow standard to either

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<sup>156</sup> *Spina* (Ont Sup Ct) at para 478.

<sup>157</sup> *Athey v. Leonati*, [1996 CanLII 183 \(SCC\)](#), at para 32, **Case Center A7774**; *Aylmer Meat Packers Inc. v. Ontario*, [2022 ONCA 579](#) at para 111, **Case Center B-1-1820**.

<sup>158</sup> *Spina* (ONCA), para 210, **Case Center A8155**.

<sup>159</sup> *Spina* (ONCA), paras 209-210, **Case Center A8154**.

<sup>160</sup> *Ramdath* (Ont Sup Ct) paras 60-66, **Case Center B-1-18722**.

<sup>161</sup> Cross-examination of M. Boyer, March 31, 2026, p.34:22-26, **Case Center A8772**; p.115:2-5, **Case Center A8853**; Cross-examination of M. Boyer, March 31, 2026, p.114:23-30, **Case Center A8852**.

artisan or industrial plates, and that there is in fact substantial variation in cash flow as between individual plates and individual plateholders.

130. In cross-examination, Dr. Boyer agreed that in order to generate cash flow, a taxi plate must be used – either by operating the taxi to which the plate is affixed, or renting, leasing, or selling the plate.<sup>162</sup> He further agreed that the choice of how to generate cash flow from a taxi plate is individual – it is not mandated by the City.<sup>163</sup>

131. Dr. Boyer agreed that for those that choose to operate taxis themselves, there is variance as between individual operators in terms of the amount of cash flow they generate:

Q. And I'd like to take you to page 35 of Dr. Stacey's report. It is at, Your Honour, B-1-18986. And I'm looking under the heading "Evidence from the academic literature." And you see there that Dr. Stacey cites several empirical studies using GPS and fare record data from jurisdictions in China that consistently show large variations in income across drivers holding the same type of taxi licence. And

you see that there?

A. Yes.

Q. All right. And were, were you aware of that research in preparing your report?

A. I'm aware of that research. I'm aware of some of the research have done.

Q. Okay. And you have no basis to dispute that research?

A. No.

Q. All right.

A. **I, I, I completely agree with this.**

Q. **Okay. So as a matter of common sense, right, there's, there's variance in individual operators of taxi plates?**

A. **Yes.**<sup>164</sup> [*emphasis added*]

132. Dr. Boyer agreed that the choice of how to use a taxi plate and how to intensively to use it are shaped by individual factors:

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<sup>162</sup> Cross-examination of M. Boyer, March 31, 2026, p.19:2-20, **Case Center A8757.**

<sup>163</sup> Cross-examination of M. Boyer, March 31, 2026, p.19:21 – p.20:8, **Case Center A8757.**

<sup>164</sup> Cross-examination of M. Boyer, March 31, 2026, p.21:22 – p. 22:10, **Case Center A8759.**

Q. And those choices, the choice of how to use the plate, how intensively to exploit it, how many hours to work, those are shaped by individual factors.

A. Yes. Well, and also exogenous factors. Christmas Eve compared to, let's say, October 22nd.

Q. Sure. But, but the, the decision of whether or not to work on Christmas Eve would be an individual choice?

A. Yes.<sup>165</sup>

133. Additionally, Dr. Boyer agreed that there is variance in the cash flow by those that choose to rent or lease their plates, regardless of whether or that rent/lease rate is constrained by a CBA (in the case of Industrial plates), or not (in the case of Artisan plates).<sup>166</sup>

134. In sum, Dr. Boyer agreed that there is **no one amount of cash flow standard to either artisan or industrial plates:**

Q. All right. So you'll agree with me then there's no one amount of cash flow that is standard to artisan plates.

A. That's correct.

...

J. POLOWIN: Q. Okay. And so you'll agree with me, Dr. Boyer, there's no single cash flow that's standard to all industrial plates.

A. Yes. It appears so.<sup>167</sup>

**iii) Observed plate transaction prices demonstrate the idiosyncrasy of plate value**

135. Dr. Boyer's evidence is that the records of plate transfers reported to the City of Ottawa should be taken with "healthy dose of skepticism," but that they are still informative. It is his evidence that reported plate transfer values should approximate the results of his model:

Q. And you have no reason to dispute that?

A. I have no reason to dispute that. Again, as I said in my report, that's why the plate transfer data has to be taken with a - what was I - what did I say? A healthy dose of skepticism?

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<sup>165</sup> Cross-examination of M. Boyer, March 31, 2026, p.21:7-15, **Case Center A8759**.

<sup>166</sup> Cross-examination of M. Boyer, March 31, 2026, p. 22:11-24, **Case Center A8760**; p.23:7-20, **Case Center A8761**; p.26:16-19, **Case Center A8764**.

<sup>167</sup> Cross-examination of M. Boyer, March 31, 2026, p.23:21-24, **Case Center A8761**; p. 26: 24-27, **Case Center A8764**.

Q. Healthy dose of skepticism, and I also heard you say with a grain of salt. All right. But I also heard you say that the, the plate transfer data is still informative.

A. Yes.

Q. **And I also heard you say that the, the plate transfer data should not necessarily exactly, but what it shows should approximate the results of your model.**

A. **Yes.** [*emphasis added*]<sup>168</sup>

136. What those informative plate transfers show is a severe degree of variability in terms of price. This evidence is uncontroverted.

137. As Dr. Stacey demonstrated, there has historically been a “severe degree of price dispersion” in the Ottawa market for plate plates. Between Q1 2006 and Q3 2018, within-quarter price ranges for reported plate transfers frequently exceeded \$100,000.<sup>169</sup>

138. In cross-examination, Dr. Boyer did not dispute this evidence.<sup>170</sup> He agreed that there was a high degree of volatility in the market in terms of the sale price for taxi plates, even before Uber began operating.<sup>171</sup>

139. Dr. Boyer further agreed that the volatility in reported transfers was the result of a confluence of causal factors that was idiosyncratic to each transaction:

Q. And so you would agree that the plates themselves are the same, and so variations in the plates can't explain the market volatility.

A. That's right.

Q. Okay. So the volatility that we're seeing would have been caused by any number of factors working together?

A. Yes.

Q. Right. The individual information, individual cash flow, individual perceptions of risk, those sorts of factors.

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<sup>168</sup> Cross-examination of M. Boyer, March 31, 2026, p. 29:32-12, **Case Center A8767**.

<sup>169</sup> Examination in chief of D. Stacey, April 1, 2026, p.40:1 – p. 41:22, **Case Center A8778**.

<sup>170</sup> Cross-examination of M. Boyer, March 31, 2026, p. 29:27- p. 30:1, **Case Center A8767**.

<sup>171</sup> Cross-examination of M. Boyer, March 31, 2026, p.31:4-7, **Case Center A8769**.

A. Individual's patience, individual's ability to negotiate, individual's risk aversion. And this is also true with respect to a house, a building, or any over the counter transaction of assets.

Q. And all of those factors that I listed – that you just listed, all those would be idiosyncratic to an individual transaction.

A. Yes.<sup>172</sup>

140. Finally, Dr. Boyer agreed that just like price, fluctuations in value are sensitive to idiosyncratic conditions:

Q. And so the value of the asset is sensitive to market conditions and risk conditions, and those vary over time.

A. And idiosyncratic conditions as well.<sup>173</sup>

**iv) The Plaintiffs' methodology is not reliable as it fails to account for idiosyncrasies in cash flow and transaction prices**

141. In order for this Court to accept the Plaintiffs' proposed methodology, this Court must accept the premise that a standard amount of cash flow for each "family" of plates can be reliably determined. This premise is simply not supported by the evidence before the Court. It is uncontroverted that:

- (a) Dr. Boyer agrees that there is no standard amount of cash flow for either artisan or industrial plates;
- (b) There is substantial variability in cash flow generated by individual plateholders, and Dr. Boyer agrees that this variability is the result of individual choices and individual factors;
- (c) Dr. Boyer views the records of plate transfers reported to the City as informative. He agrees that there was a high degree of volatility in reported prices in the years preceding Uber's arrival;

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<sup>172</sup> Cross-examination of M. Boyer, March 31, 2026, p.31:23 – p. 32:8, **Case Center A8769**.

<sup>173</sup> Cross-examination of M. Boyer, March 31, 2026, p.35:1-4, **Case Center A8773**.

- (d) Dr. Boyer agrees that this variability in price is the result of confluences of factors that are idiosyncratic to each transaction; and
- (e) Dr. Boyer agrees that fluctuations in value are similarly a result of idiosyncratic factors.

142. In *Spina*, damages could not be reliably determined in the aggregate because each plaintiffs' damages varied depending on factors idiosyncratic to their specific business. This is precisely the case before this Court.

143. The cash flow generated by each plateholder "necessarily depends on idiosyncratic factors specific to them that are impossible to generalize or extrapolate in a reliable way across the entire class."<sup>174</sup> As such an aggregate damages model that assumes a standard amount of cash flow is not reliable.

144. Moreover, the informative records of plate transfers demonstrate that there has never been a stable market price for plates. That price has been in constant fluctuation, as a result of factors that are just as idiosyncratic as the factors that determine individual cash flow.

***B) The Plaintiffs' methods for overcoming the idiosyncrasies in cash flow are not reliable***

145. As the Plaintiffs cannot dispute the idiosyncrasies in cash flow as between individual plates and plateholders, they advance a methodology that purports to overcome that idiosyncrasy. This methodology relies on the determining average cash flow for each "family" of plate. For each "family," the value is the expectations of average cash flow, divided by risk, across the lifetime of the asset.<sup>175</sup>

146. By way of example, in order to calculate the value of Artisan plates (which comprise approximately 55% of the plates in circulation as of March 2016),<sup>176</sup> Dr. Boyer requires four inputs:

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<sup>174</sup> *Spina* (ONCA), para [210](#), **Case Center A8155**.

<sup>175</sup> Cross-examination of M. Boyer, March 31, 2026, p.34:22-26, **Case Center A8772**; p.115:2-5, **Case Center A8853**; Cross-examination of M. Boyer, March 31, 2026, p.114:23-30, **Case Center A8852**.

<sup>176</sup> Exhibit 42, **Case Center F2978**

- (a) Average annual revenue for Artisan plates;
- (b) Average annual costs for Artisan plates;
- (c) Renewal fee; and
- (d) Discount rate.<sup>177</sup>

147. Discount rate remains unknown at this time, as Dr. Boyer confirmed that he is not opining on the discount rate.<sup>178</sup> There is no dispute that the renewal fee can be determined with reference to the 2012 By-law.

148. This leaves two inputs that must be reliably determined on an aggregate basis, in order to allow the accurate aggregate calculation of plate value: average revenue and average cost. The evidence that the Plaintiffs propose to rely on to determine both inputs is unreliable and as such, the average cash flow cannot be reliably determined.

**i) There is no reliable evidence for determining average revenue**

149. Beginning with the former, Dr. Boyer's proposed methodology for determining average revenue requires two inputs, as he proposes to:

- (a) Determine the average revenue per fare; and
- (b) Multiply that average revenue by the number of fares per month.<sup>179</sup>

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<sup>177</sup> Examination in chief of M. Boyer, March 30, 2026, p. 111:29-112:10, **Case Center A8707**.

<sup>178</sup> Cross-examination of M. Boyer, March 31, 2026, p. 56:13-16, **Case Center A8794**.

<sup>179</sup> Examination in chief of M. Boyer, March 30, 2026, p. 112:14-29, **Case Center A8708**.

150. To determine average revenue per fare, Dr. Boyer proposes to rely on the records of credit card transactions and fares provided by the Plaintiffs. Specifically, he proposes to rely on Exhibit BB, which is a chart showing these transactions on a monthly basis from 2011-2019.<sup>180</sup>

151. These records show the total amount of funds received by Coventry connections in a given month through debit card and credit card transactions, as well as the number of credit and debit card transactions. Dr. Boyer proposes to use this data to determine the average fare price for artisan plateholders.<sup>181</sup>

152. As Dr. Boyer conceded in cross-examination, this assumption rests on the premise that “we need to make an assumption that our credit card transaction is distributed in the same way as cash transactions. ... [*sic*] meaning the average price is no higher and no lower, and this is something that we can discuss again at some other point.”<sup>182</sup>

153. Given the complete lack of evidence regarding: (a) the proportion of cash fares to credit and debit card fares; and (b) potential differences in the average amount of cash fares versus credit or debit card fares, Dr. Boyer’s assumption that Exhibit BB is reliable is problematic.

154. However, even if evidence such as Exhibit BB can be relied upon to provide accurate evidence regarding the average price per fare, Dr. Boyer still requires evidence as to the average number of fares to calculate average revenue for artisan plateholders.<sup>183</sup> The data that he proposes to rely on to determine the number fares is plainly unreliable.

155. In his sample calculation in his expert report, Dr. Boyer initially estimated that artisan plateholders averaged 8,418 rides annually.<sup>184</sup> This was based on an estimate contained in the October

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<sup>180</sup> Examination in chief of M. Boyer, March 30, 2026, p. 117:23-118:2, **Case Center A8713**; Exhibit BB, **Case Center A8472**.

<sup>181</sup> Cross-examination of M. Boyer, March 30, 2026, pp. 55:26 – 56:13, **Case Center A8651**.

<sup>182</sup> Cross-examination of M. Boyer, March 30, 2026, pp. 55:26 – 56:13, **Case Center A8651**.

<sup>183</sup> Examination in chief of M. Boyer, March 30, 2026, p. 112:14-29, **Case Center A8708**.

<sup>184</sup> Exhibit Z, **Case Center A8326**, fn 28.

2015 Mowat Report prepared as part of the VFH Review.<sup>185</sup> Dr. Boyer did not independently verify this figure.<sup>186</sup>

156. On cross-examination, Dr. Boyer was shown the record of monthly fares provided by Coventry Connections.<sup>187</sup> Coventry Connections provides dispatch services for 98% of the taxis in the City of Ottawa.<sup>188</sup> These records showed the following average daily fares for Ottawa:

- (a) September 2013: 6303.2 fares per day
- (b) October 2013: 6633 fares per day
- (c) November 2013: 7343.1 fares per day.<sup>189</sup>

157. Based on these records, Dr. Boyer agreed that the estimate of 27,400 rides per day in the Mowat Report is a significant overestimation, perhaps by a factor of three or four.<sup>190</sup> It is plainly not reliable.

158. Dr. Boyer also assumes that there are reliable records of the number of fares per month, based on his understanding that all rides must be reported to the dispatcher or the broker, including street hails. His evidence on cross-examination was as follows:

Q. No. And just to be completely fair, Dr. Boyer, I'm not asking you about the content of the CBA. I'm just asking when you say - I understood your evidence to be that the methods you have set out for estimating revenue would provide information that is as accurate as the tax returns. Is that - that's a fair characterization of what you said?

A. I think it would be more accurate because you have two parties that have an intention to make sure that these numbers are right.

Q. And when you say that, that is based on your understanding that all rides have to be reported to the dispatcher?

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<sup>185</sup> Exhibit 44, **Case Center F3057**; Cross-examination of M. Boyer, March 31, 2026, p.64:10-22, **Case Center A8802**.

<sup>186</sup> Cross-examination of M. Boyer, March 31, 2026, p.64:10-22, **Case Center A8802**.

<sup>187</sup> Exhibit CC, **Case Center A8471**.

<sup>188</sup> Cross-examination of M.A. Way, January 10, 2023, p.111:23 – 112:7, **Case Center A3880**.

<sup>189</sup> Exhibit CC, **Case Center A8471**.

<sup>190</sup> Cross-examination of M. Boyer, March 31, 2026, p.71:2-9, **Case Center A8809**.

A. On the one hand, and more, more importantly, that all credit card transactions are verified by Visa and Mastercard.<sup>191</sup>

159. However, Dr. Boyer's understanding of the fulsomeness of the records possessed by brokers or dispatchers appears to be at odds with the evidence of Mr. Way, who has indisputably greater experience and expertise in the Ottawa taxi industry. In cross-examination, Mr. Way's evidence was that brokers or dispatchers do not track cash fares or tips, but that this information would be recorded in the income tax records of individual plate holders:

Q. Thank you. Now, let's just turn for a moment as we sort of canvass the structure of the industry and the amounts that are paid. Let's just talk a moment about the brokers. So as I understand it, a taxi broker in the City of Ottawa does not track cash fares, is that correct?

A. Correct.

Q. **All right. So if a driver or a single plate holder receives \$45 in cash to go to the airport from the Civic Hospital area, that's not tracked by the broker?**

A. **No.**

Q. All right. And I also understand that the broker also does not track tips?

A. We do not.

Q. All right. So if I gave a driver a \$10 tip the broker would have no record of that?

A. As — you are correct. They are considered [in]dependent contractors, therefore they're their own little business. They have their own HST number, they have the — they operate as their own entity renting services from Coventry.

Q. **And it would be the requirement of that, as you described them, dependent contractor, to record the cash revenue for income tax purposes?**

A. **That is — yeah. I — that is what — that — you are correct that, that would be the, the right way of doing things.**<sup>192</sup>

160. Given that the records upon which Dr. Boyer intends to rely do not track street hails, they are an unreliable method of determining the average volumes of fares. If average volumes of fares cannot be reliably determined, then average revenue cannot be reliably determined.

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<sup>191</sup> Cross-examination of M. Boyer, March 31, 2026, p.59:7-22, **Case Center A8797**.

<sup>192</sup> Cross-examination of M.A. Way, January 10, 2026, p.30:17 – p.31:9, **Case Center A3799-A8300**.

ii) **There is no reliable evidence for determining average costs**

161. Dr. Boyer's methodology requires an input for average expenses. In his report, Dr. Boyer initially proposed relying on Appendix "A" of the December 31, 2015 KPMG Report, which estimated average annual operating and capital expenses for standard taxicab.<sup>193</sup>

162. The estimate relied on by Dr. Boyer was provided by Coventry Connections, and was not corroborated by KPMG.<sup>194</sup> On cross-examination, Dr. Boyer confirmed that this estimate does not include stand rent, which is an expense paid by Artisan plateholders. He agreed that the exclusion of stand rent from expenses would ultimately lead to an artificial inflation of plate value.<sup>195</sup>

163. Moreover, Dr. Boyer agreed that maintenance costs and fuel costs (which collectively represent 79% of the annual operating costs in the KPMG estimate) are variable as between individual operators and year to year.<sup>196</sup>

164. Dr. Boyer also provides a technical appendix in his report, which purports to estimate the annual cost of operating a taxicab.<sup>197</sup> The assumptions in this appendix are not reliable as:

- (a) The assumptions for fuel and maintenance as based on an annual driving distance of 18,000 km, which is intended to represent the distance driven by an average person, as opposed to a taxi driver. Dr. Boyer agrees that a taxi driver is driving further than 18,000 km annually.<sup>198</sup>

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<sup>193</sup> Exhibit Z, **Case Center A8326**; Examination of M. Boyer, March 30, 2026, p.11: 12-16, **Case Center A8607**.

<sup>194</sup> Exhibit 58, **Case Center F2760**.

<sup>195</sup> Cross-examination of M. Boyer, 2026, p.50:6 – p. 52:5, **Case Center A8788**.

<sup>196</sup> Exhibit 58, **Case Center F2760**; cross-examination of M. Boyer, 2026, p. 49:12 – p. 50:5, **Case Center A8787**.

<sup>197</sup> Exhibit Z, **Case Center A8344**; cross-examination of M. Boyer, March 31, 2026 p. 101:29 – p.102:9, **Case Center A8839**.

<sup>198</sup> Cross-examination of M. Boyer, March 31, 2026, p.103:23 – p. 104:3, **Case Center A8841**.

- (b) There is a significant and unexplained discrepancy between Dr. Boyer's assumption of \$500 annual maintenance cost in the technical appendix, and his reliance on Coventry Connections' estimate of \$4,800 annual maintenance cost in the body of his report.<sup>199</sup>

165. Beyond the Coventry Connections estimate and his own estimates in the technical appendix, Dr. Boyer does not propose any methodology for determining average annual costs in general, and in particular for determining variable costs.

166. The Plaintiffs have therefore not proposed any methodology for reliably determining average costs. If average costs cannot be reliably determined, then average cash flow cannot be reliably determined. If average cash flow cannot be reliably determined, then plate value cannot be reliably determined.

**C) The City's methodology is more reliable**

167. Although the City's methodology is not required to satisfy the *Ramdath* factors, it is nonetheless clear that the City's methodology overcomes the reliability deficiencies of the Plaintiffs' methodology.

168. The City proposes to require five years of income tax returns from the Plaintiffs: 2012 and 2013, during the pre-loss period, and 2014-2016 for the loss period.<sup>200</sup> It is uncontroverted that these income tax returns will contain more accurate information regarding the Plaintiffs' revenue and expenses than the methods proposed by Dr. Boyer.

169. Mr. Way agrees that brokers do not track street hails or cash fares, and the only place this revenue would be shown would be on the Plaintiffs' income tax returns.<sup>201</sup>

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<sup>199</sup> Cross-examination of M. Boyer, March 31, 2026, p.104:4-8, **Case Center A8842**.

<sup>200</sup> Exhibit HH, **Case Centre B-1-19023** at para. 56 and **B-1-19027** at para. 87.

<sup>201</sup> Cross-examination of M.A. Way, January 10, 2026, p.30:17 – p.31:9, **Case Center A3799-A8300**.

170. Dr. Boyer agrees that cash transactions would only be shown on income tax returns, rather than the records available from the dispatcher or broker. He further agrees that the Plaintiffs' income tax returns would provide more accurate information regarding expenses than his methods:

Q. All right. And you'd agree with me the income tax returns would include cash?

A. Yes.

Q. All right. And that would not be included in the records that the dispatch company [*indiscernible*]?

A. From what I've seen this morning, it doesn't seem to be the case.

Q. Okay. And you would also agree that the tax returns would provide information as to the expenses of individual plaintiffs?

A. Probably. Yes.

Q. All right. And that information would be more accurate than the methods you've identified for estimating.

A. For that, I would agree.<sup>202</sup>

171. As Dr. Stacey explained, using individual income-level data also honours the “meaningful economic heterogeneity” of individual plaintiffs. It avoids the pitfalls of attempting to estimate income amongst such a heterogeneous group of Plaintiffs and allows the simple and straightforward determination of income shortfall during the loss period on an individual level.<sup>203</sup>

172. In *Spina*, Justice Perell explicitly contrasted the failings of the Plaintiffs' top-down methodology with the bottom-up methodology proposed by the defendant:+

Aggregate damages should be available if all or part of the defendant's monetary liability to class members can be fairly and reasonably determined without proof by individual class members and if there is a viable methodology. **In the immediate case, the defendant's monetary liability cannot be determined without proof by individual members. Fairness and reasonability is not possible in the immediate case because the Plaintiffs have not proven a fair and reasonable global top-down methodology that would be a surrogate or equivalence for what would undoubtedly be a fair and reasonable outcome if a bottom-up methodology were utilized.** [*emphasis added*]<sup>204</sup>

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<sup>202</sup> Cross-examination of M. Boyer, March 31, 2026, p. 60:2-15, **Case Center A8798**.

<sup>203</sup> Examination in chief of D. Stacey, April 1, 2026, p.59:11 – p.60:5, **Case Center A8950**.

<sup>204</sup> *Spina* (Ont Sup Ct) [2023 ONSC 1086](#) at para. [657](#).

173. As set out above, Justice Perell's found that in circumstances where damages vary as between different plaintiffs based on idiosyncratic factors, individualized damages more reliably calculate the "but for" scenario.

174. The circumstances in this case are the same. Not only does the Plaintiffs' methodology rest on unreliable assumptions and methods for obtaining data regarding revenue and expenses; **their own witnesses** acknowledge that the City's methodology would provide more accurate information to calculate "but for" damages.

## **Factor 2: The Plaintiffs' methodology overstates damages**

### ***A) Damages for negligence must isolate the "but-for" scenario***

175. It is "trite law" that damages for negligence must place the Plaintiffs in the same position they would have been but for the City's negligence.<sup>205</sup>

176. However, as the Supreme Court explained in *Athey v. Leonati*, this principle also requires that the Plaintiffs not be placed in a better position than they would have been in absent the negligence. This analysis requires determining what position the Plaintiffs would have been in had the negligence not occurred:

The essential purpose and most basic principle of tort law is that the plaintiff must be placed in the position he or she would have been in absent the defendant's negligence (the "original position"). However, the plaintiff is not to be placed in a position better [emphasis in original] than his or her original one. **It is therefore necessary not only to determine the plaintiff's position after the tort but also to assess what the "original position" would have been. It is the difference between these positions, the "original position" and the "injured position", which is the plaintiff's loss.** [emphasis added].<sup>206</sup>

177. This concern is particularly acute in the context of a decision as to whether to award damages in the aggregate, where concerns about reliability and fairness to the defendant are paramount.<sup>207</sup>

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<sup>205</sup> *Aylmer Meat Packers*, *supra* at para [111](#), **Case Center B-1-1868**; *Tokarz v. Selwyn (Township)* [2022 ONCA 246](#) at para [43](#).

<sup>206</sup> *Athey v. Leonati*, 1996 CanLII 183 (SCC) at para [32](#), **Case Center A7774**;

<sup>207</sup> *Fresco* (ONSC), *supra* at para [29](#).

***B) The Plaintiffs' methodology overstates liability by failing to disentangle negligence and considering the decrease in value to infinity***

178. Overstatement of damages is a structural and inextricable feature of the Plaintiffs' methodology in two respects:

- (a) It measures the collective impact of all causal factors affecting plate value within a given time period. This fails to isolate the impact of the City's negligence from causal factors for which the City is not liable;
- (b) It measures the changed expectations of cash flow and risk across the lifetime of the asset, thereby attributing liability to the City for events beyond the end of the negligence period.

179. Collectively and individually, each of these flaws mean that the Plaintiffs are not measuring the "but for" scenario. They are instead seeking damages on the basis of a fictional world in which Uber does not exist, or at least never comes to Ottawa.

180. With respect to the first critical flaw, the Plaintiffs' proposed methodology simply measures a "before" plate value and an "after plate value. It considers all causal factors that impact plate value together and is structurally incapable of disentangling the impact of the City's negligence on plate value from the impact of causes for which the City is not liable. As such, it overstates the Plaintiffs' damages.

181. Put differently, the Plaintiffs' methodology does not measure the "but for" scenario.

182. To begin with, Dr. Boyer agrees that calculating damages under his methodology requires comparing the market value of each "family" of plates at the beginning and end of the loss period, however the loss period is defined. Value is to be calculated using his "fundamental formula."<sup>208</sup>

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<sup>208</sup> Cross-examination of M. Boyer, March 31, 2026, p. 114:17 – p. 115:5, **Case Center A8852**.

183. It is Dr. Boyer's evidence that under this approach, three causes (which he refers to as "channels") compound to "lower the market value of taxi plates after the loss period as compared to its value before:"<sup>209</sup>

- (a) The market will have revised its expectations about future cash flows;<sup>210</sup>
- (b) The discount rate associated with taxi plates will increase, reflecting the heightened risk associated with the asset; and <sup>211</sup>
- (c) The personal experiences of the plaintiff class will contribute to the revised expectations of cash flow and discount rate, since individuals assign more weight to outcomes that they have personally experienced and assign less credibility to historical data for periods through which they have not lived.<sup>212</sup>

184. It is Dr. Boyer's evidence **that all three of these channels incorporate all causal factors occurring during the loss period.** Put differently, they completely fail to disentangle the impact of the City's negligence from the impact of any other factor.

185. Beginning with market expectations about future cash flows, it is Dr. Boyer's evidence that these expectations would have been revised as a result of **all information** gained by the market during the loss period. The information includes, in holistic and entangled manner, factors including the City's negligence, the City's enactment of the 2016 By-law, and events outside the City of Ottawa:

Q. Okay. So I'm, I'm going to ask you about each of those three channels. So the first reason that you say plate values will be lower after the loss period than before is that potential taxi buyers will have revised their expectations about future cash flows. Correct?

A. Yes. Of - future cash - future growth of cash flows also could be acceptable, but future cash flows.

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<sup>209</sup> Exhibit Z, **Case Center A8454**; Cross-examination of M. Boyer, March 31, 2026, p.115:6 -12, **Case Center A8853**.

<sup>210</sup> Cross-examination of M. Boyer, March 31, 2026, p.115:13-19, **Case Center A8853**.

<sup>211</sup> Cross-examination of M. Boyer, March 31, 2026, p. 117:17-32, **Case Center A8855**.

<sup>212</sup> Cross-examination of M. Boyer, March 31, 2026, p. 118:1-7, **Case Center A8856**.

Q. Okay. And those revised expectations would have been formed using information that they gained during the loss period?

A. Yes.

Q. And that information would have included both the city's non enforcement and the city's legalization of Uber.

A. My understanding is that legalization came after what you called the period of enforcement, but yes.

Q. Well, as we're, as we're going to look at, there was, there was a whole regulatory review process that preceded the ultimate coming into force of the bylaw. But, but those expectations would have been - maybe I can phrase it differently. **It would have been formed using all of the information that they gained during the loss period.**

A. **Totally.**

Q. **And so that would have included information about the negligence, and it would have included information about the city's enactment of the bylaw. And it also would have included other factors, right, such as the spread of Uber in other cities.**

A. **Exactly** [*emphasis added*].<sup>213</sup>

186. Dr. Boyer specifically identified the spread of Uber throughout other cities as a contributor to the decline in plate values in Ottawa:

Q. And, and so one of the things you've identified, right, is Uber was spreading across North America. It was being legalized in a bunch of cities in North America. Right?

A. **And the challenge against Uber was being lost everywhere.**

Q. Right. And so looking at what was going on in those other cities in North America, the Ottawa taxi market would have been revising its expectations about ultimately how Uber was going to be dealt with in the City of Ottawa.

A. That's my understanding.

Q. Right. And you're....

A. That, that, that - that's my thesis. Sorry.

Q. **And you're suggesting that the experiences in those other cities would have contributed to the Ottawa taxi market's perception that Uber was going to be legalized at some point.**

A. **Yes.**

Q. **And that expectation would have lowered plate values because it would have affected the - because it would have lowered the expectation of future cash flows.**

A. **It would have - yes. It would have lowered the confidence in the city's ability to stem the tide.** [*emphasis added*].<sup>214</sup>

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<sup>213</sup> Cross-examination of M. Boyer, March 31, 2026, p. 115:14 – p. 116:8, **Case Center A8853.**

<sup>214</sup> Cross-examination of M. Boyer, March 31, 2026, p. 116:23 – p.117:13, **Case Center A8854.**

187. Summing up his opinion with respect to factors influencing changing market expectations, Dr. Boyer agreed that the “E” operator in his damages formula is a “catchall,” capturing all changing expectations during the loss period

$$Value = \sum_{t=1}^{\infty} \frac{E(CF_t)}{(1+r)^t}$$

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Q. Okay. So fair to say that the, the E-operator in this equation, it's a catch all. Right? It's capturing all changing expectations during the loss period.

A. Yes.<sup>216</sup>

188. Dr. Boyer also confirmed that the same dynamic is true of the next “channel” of plate value decline – the changing discount rate, which reflects heightened uncertainty. The “r” operator in his equation is a general operator, capturing the holistic change in the discount rate during the loss period. It does not disentangle the impact of negligence from the impact of any other factors:

Q. All right. And the second reason that you say plate values will be lower after the loss period than before is that the discount rate associated with taxi plates will reflect the heightened uncertainty. You see that?

A. Yes.

Q. And again, **that uncertainty would be a function of multiple causal factors.**

A. **Yes.**

Q. All of the things that we just discussed would also influence the Ottawa taxi market's perception of risk.

A. Yes.

Q. Okay. **So again, the, the R-operator here, representing the discount rate, is general. It would capture all changing expectations of risk during the loss period.**

A. **Yes.**<sup>217</sup>

189. Dr. Boyer confirmed that the third “channel” of plate value decline also entangles both the impact of negligence and the impact of the City's enactment of the 2016 By-law:

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<sup>215</sup> Ex. Z, **Case Center A8336.**

<sup>216</sup> Cross-examination of M. Boyer, March 31, 2026, p.117:14-17, **Case Center A8855.**

<sup>217</sup> Cross-examination of M. Boyer, March 31, 2026, p.117:17-32, **Case Center A8855.**

Q. All right. And, Dr. Boyer, the third reason that you say plate values will be lower after the loss period than before is that people assign more weight to outcomes that they have personally experienced and assign less credibility to historical data for periods through which they have not lived. You see that?

A. Yes.

Q. And you will agree with me that those personal experiences of the plaintiff class during the loss period, that would include the experience of the city's negligence. Right?

A. Yes.

Q. **And it would also include the experience of the city conducting its regulatory review and ultimately enacting the 2016 bylaw.**

A. **Yes.**

Q. **Okay. And both experiences would have increased what you refer to as the policy risk?**

A. **Yes.** [*emphasis added*]<sup>218</sup>

190. With respect to the second critical flaw, Dr. Boyer's methodology measures the change in expectations of cash flow and risk across the lifetime of the asset.<sup>219</sup> In other words, it assumes that the factors impacting expectations of cash flow and risk (which, as set out above, include everything during the loss period) have a permanent impact. Dr. Boyer's methodology structurally incorporates the impact of events anticipated to occur after the end of the loss period.

191. Indeed, Dr. Boyer confirmed that under his proposed methodology, events occurring after the City's negligence ended remain relevant in terms of calculating the decline in plate value:

Q. Right. It's your evidence that, that everything that occurred after the end of the city's negligence remains relevant.

A. Yes.<sup>220</sup>

192. In short, the Plaintiffs' methodology does not disentangle the impact of negligence on plate value from the impact of any other causal factor for which the City is not liable. It simply contrasts plate values before Uber began operating in Ottawa with values at indeterminate point after the 2016 By-law comes

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<sup>218</sup> Cross-examination of M. Boyer, March 31, 2026, p.118:1-17, **Case Center A8856.**

<sup>219</sup> Cross-examination of M. Boyer, March 31, 2026, p. 34:22-26, **Case Center A8772**; p.110:16- p.111:4, **Case Center A8848.**

<sup>220</sup> Cross-examination of M. Boyer, March 31, 2026, p.45:24-27, **Case Center A8783.**

into force. As Dr. Boyer admits, this approach measures the collective impact of all events during and after the loss period.

193. This is not a calculation of “but for” damages.

194. The City has no liability arising from the 2016 By-law; events occurring outside the City of Ottawa, or events occurring after the City’s negligence ended.

195. As such, the “but-for” scenario is not one in which Uber does not exist or never comes to Ottawa. It is a scenario in which Uber is spreading throughout North America and the world, attempts to operate in Ottawa, and then is prevented or more effectively hindered from doing so until the 2016 By-law comes into force on September 30, 2016. At that point, it begins operating lawfully in Ottawa.

196. The Plaintiffs’ methodology does not measure this scenario. Their methodology attributes liability to the City for everything occurring after Uber began operating in Ottawa, out to an indeterminate end point. Put differently, the “but for” scenario posited by the Plaintiffs is one in which Uber perhaps does not exist, or at the very least, never operates in Ottawa.

197. Such a scenario is not the measure of damages and in any event is unlikely in the extreme.

198. Dr. Boyer himself recognized the inevitability of Uber operating in Ottawa at some point. In his cross-examination, he stated:

Q. And so that would have included information about the negligence, and it would have included information about the city's enactment of the bylaw. And it also would have included other factors, right, such as the spread of Uber in other cities.

A. Exactly.

Q. Okay.

A. So and that's why you need to look at it. Let's say, suppose after, after quarter eight, the new bylaw did not come through and they just - the city went, no, we're going to go back to the old system. It's hard to stand against the tide. **It would have been - it's hard for me to believe that of all the cities in North America, only Ottawa would have been able to fight the arrival of Uber and the economy. So there would have been a perception in the decrease in the future with another bylaw that would**

**have come in. If it didn't come in, in 2016, it might have come in, in 2020, 2024,**  
something that - a fear that did not exist...

Q. Right.

A. ...in 2010. [*emphasis added*]<sup>221</sup>

199. Dr. Boyer elaborated on this evidence in his re-examination, reaffirming how perceptions about the inevitability of Uber's legalization as a result of events in other cities contributed to a decrease in plate value:

Q. And you had a, a dialogue or a discussion about how expectations influence plate value. In particular, he asked you about the expectations formed during the, I call it the negligence period, 2014 to 2016. And you agreed with my friend that expectations are formed based on a variety of factors, including the city's negligence, the city's regulatory review, and the enactment of the 26th bylaw. Does this make any difference, in your opinion?

A. It makes no difference. **This is – this, this is exactly how those expectations change.** And actually, because during the, the what you call the negligence period, it changes the perception, the distribution of the cash flows(ph) you receive - you believe you will receive. So it changes perhaps the expectation numerator. It changes the, the structure of the numerator. It also changes the, the value of the denominator, the discount rate, both of which can - could go down. It could go up. *A priori*, we don't know. We just know they - they're not necessarily the same. In the case of the negligence here, that public policy risk makes such that - or the, **the greater environment of the economy makes such that Uber has a great product. It's legalized everywhere in the world. We should expect the City of Ottawa, even if it had kept its bylaw like it was in 2014, that at some point, some mayor would have said, no, we cannot be the only city in North America that - where Uber does not play. We'd be the, the laughing stock of all travelers.** They'd arrive at the airport, oh, we're not allowed to use Uber here. What kind of backward country this is? There was no point. **There was no way that anyone would believe that the city would have been able to stem the tide of Uber because there was -there are so few cities in the world that were able, and I believe none in North America.** I may be wrong, but I believe there were none in, in North America that was able to stem the tide of Uber. **So it – those - how those expectations are modified had an impact on the value, and these expectations are modified because of the negligence.** [*emphasis added*]<sup>222</sup>

200. Finally, Dr. Boyer recognized that Uber's impact on license values would be the same, whenever it did begin operating in Ottawa, and regardless of whether it was operating legally:

Q. Maybe I should rephrase. You would agree with me that had Uber not started operating until the 2016 bylaw came into effect, and then so we only see the increase

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<sup>221</sup> Cross-examination of M. Boyer, March 31, 2026, p.116:3-22, **Case Center A8854.**

<sup>222</sup> Re-examination of M. Boyer, March 31, 2026, p.131:11 – p.132:13, **Case Center A8869.**

of vehicles for hire happen after the 2016 bylaw comes into effect, that supply and demand curve is going to look the same as it did as a result of the negligence.

A. Yes.<sup>223</sup>

201. Awarding damages under the model proposed by the Plaintiffs would compensate them for losses in plate value caused by factors for which the City has no liability: (a) the enactment of the 2016 By-law; (b) events in other cities; and (c) events occurring after the end of the negligence period.

**Compensating the Plaintiffs on this basis would not put them in their “original” position but for the City’s negligence.** It would put them in a far, far better financial position. It is trite law that this is not permissible.<sup>224</sup>

202. Put differently, the Plaintiffs’ methodology **cannot be used without overstating liability.** Overstatement is a structural feature of their methodology; it is a certainty.

203. As set out above, at the aggregate damages stages, concerns of fairness to the defendant are paramount, and overstatement of liability is fatal to a proposed method for aggregate damages. By measuring the collective impact of all causal factors, unbounded by time limits, the Plaintiffs’ methodology is structurally incapable of avoiding overcompensation.

204. If loss of plate value cannot be compensated without overstating the defendant’s liability, then it cannot be a basis for damages.

***C) The timeline illustrates the entanglement of events impacting plate value during the loss period***

205. It is uncontroverted that the Plaintiff’s methodology does not attempt to disentangle the impact of the City’s negligence on plate value from the impact of other factors for which it is not liable. However, even if the Plaintiffs attempted to do so, the timeline demonstrates the degree to which events for which the City is not liable overlapped with the period of its negligence.

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<sup>223</sup> Cross-examination of M. Boyer, March 31, 2026, p. 46:2-8, **Case Center A8784.**

<sup>224</sup> *Athey v. Leonati*, 1996 CanLII 183 (SCC) at para [32](#), **Case Center A7774**;

206. The following timeline<sup>225</sup> illustrates events during the loss period for which the City is not liable, but which nonetheless likely impacted the market value of taxi plates, by changing expectations of cash flow and risk:

Date	Event	Notes
2010	The representative plaintiff Mr. Way, becomes concerned about Uber. <sup>226</sup>	
2010-2014	Uber is spreading throughout North America.	It is Dr. Boyer's evidence that the market value of taxi plates in Ottawa was negatively impacted by Uber's spread throughout North America prior to its arrival in Ottawa. <sup>227</sup>
Early 2012	Uber begins operating in Toronto. <sup>228</sup>	It is Dr. Boyer's evidence that Uber's spread throughout other cities and the regulatory response of other cities to Uber negatively impacted plate value in Ottawa. <sup>229</sup>
September 1, 2014	Uber begins operating in Ottawa.	
April, 2015	The Alberta Court of Queen's Bench refuses Edmonton's application for an injunction to prevent Uber from operating. <sup>230</sup>	It is Dr. Boyer's evidence that Uber's spread throughout other cities and the regulatory response of other cities to Uber negatively impacted plate value in Ottawa. <sup>231</sup>
May 1, 2015	Report to Community and Protective Services Committee and Council is submitted.	The report recommends "that Council approve the scope of the comprehensive review of the City of Ottawa's taxi and limousine regulations, <b><u>including potential regulations to recognize the emergence of new hailing technologies and transportation-for-a-fee service models,</u></b> as outlined in this report."

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<sup>225</sup> For a simplified timeline of events, please see Appendix 1 of these submissions.

<sup>226</sup> Liability Decision, paras. [198-199](#), **Case Center B-1-18462 – B-1-18463**

<sup>227</sup> Cross-examination of M. Boyer, March 31, 2026, p. 116:23 – p. 117:13 **Case Center A8854** p. 120:9-17; p. 120:32- p.121:5, **Case Center A8858**.

<sup>228</sup> Liability Decision, para. [200](#), **Case Center B-1-18463**

<sup>229</sup> Cross-examination of M. Boyer, March 31, 2026, p. 116:23 – p.117:13, **Case Center A8854**.

<sup>230</sup> Ex. 59, **Case Center F2873**.

<sup>231</sup> Cross-examination of M. Boyer, March 31, 2026, p. 116:23 – p.117:13, **Case Center A8854**.

Date	Event	Notes
		<p style="text-align: center;"><b>P E R I O D</b></p> <p>This is the first public document evidencing the City's intention to consider new regulations permitting Uber to operate.</p>
May 27, 2015	City Council approves the comprehensive review proposed in the May 1, 2015 Staff Report. <sup>232</sup>	City Council's approval of the May 1, 2015 Staff Report is the genesis of the Vehicle for Hire Regulatory Review (the " <b>VFH Review</b> ").
July, 2015	Uber begins operating in Waterloo <sup>233</sup>	It is Dr. Boyer's evidence that Uber's spread throughout other cities and the regulatory response of other cities to Uber negatively impacted plate value in Ottawa. <sup>234</sup>
July 3, 2015	Justice Dunphy refuses the City of Toronto's application for an injunction against Uber in <i>City of Toronto v. Uber Canada Inc.</i>	<p>Justice Dunphy found that Uber was not a taxi broker within the meaning of Chapter 545 of the <i>Toronto Municipal Code</i>.<sup>235</sup></p> <p>It is Dr. Boyer's evidence that Uber's spread throughout other cities and the regulatory response of other cities to Uber negatively impacted plate value in Ottawa.<sup>236</sup></p>
August, 2015	The Region of Waterloo proposes a by-law that would establish a new licensing category for Uber and similar app-based service models. <sup>237</sup>	<p style="text-align: center;"><b>N E G L I G E N C E</b></p> <p>It is Dr. Boyer's evidence that Uber's spread throughout other cities and the regulatory response of other cities to Uber negatively impacted plate value in Ottawa.<sup>238</sup></p>
August-September 2015	Beginning of the VFH Review.	The City of Ottawa sets up a page on its website dedicated to the VFH Review, which provided an overview of the review mandate and process, a timeline, and links to all documents that were released. The City advertised the VFH Review through its social media channels, including the City's Facebook page and through its Twitter

<sup>232</sup> Exhibit 109, at **Case Center F115**

<sup>233</sup> Exhibit 59, **Case Center F2799**

<sup>234</sup> Cross-examination of M. Boyer, March 31, 2026, p. 116:23 – p.117:13, **Case Center A8854**.

<sup>235</sup> *City of Toronto v. Uber Canada Inc. et al* [2015 ONSC 3572](#) at paras [101-107](#), **Case Center B-1-6004**.

<sup>236</sup> Cross-examination of M. Boyer, March 31, 2026, p. 116:23 – p.117:13, **Case Center A8854**.

<sup>237</sup> Exhibit 59, **Case Center F2799**

<sup>238</sup> Cross-examination of M. Boyer, March 31, 2026, p. 116:23 – p.117:13, **Case Center A8854**.



Date	Event		Notes
February, 2016	The City of Edmonton enacts its Vehicle for Hire By-law, establishing a new licensing category for Uber, with an in-force date of March 1, 2016. <sup>246</sup>	P E R I O D	It is Dr. Boyer's evidence that Uber's spread throughout other cities and the regulatory response of other cities to Uber negatively impacted plate value in Ottawa. <sup>247</sup>
February 22, 2016	Calgary amends its Livery Transport By-law, establishing a new licensing category for Uber, with an in-force date of April 4, 2016. <sup>248</sup>		It is Dr. Boyer's evidence that Uber's spread throughout other cities and the regulatory response of other cities to Uber negatively impacted plate value in Ottawa. <sup>249</sup>
March 31, 2016	Report to Community and Protective Services Committee and Council		The report recommends the approval of the regulations that would ultimately become the 2016 By-law. It also appends KPMG's December 31, 2015 report. <sup>250</sup>  As of this date, it is public knowledge that KPMG and City staff are formally recommending the establishment of a new licensing category for PTCs.
April 7 and 8, 2016	Public meeting of the Community and Protective Services Committee held to consider the March 31, 2016 staff report.	N E G L I G E N C E  P E R I O D	Numerous stakeholders from the taxi industry appear before the Committee, including:  a) Richard Szirtes, President of the plaintiff broker Westway Taxi;  b) Marc Andre Way;  c) Sean McGee, legal counsel for Unifor, Local 1688;  d) Amrik Singh, President of Unifor, Local 1688; and  e) Six speakers described in the Minutes of the meeting as taxi drivers. <sup>251</sup>  At this point, six months before the end of the negligence period, the Plaintiffs are well aware that KPMG and City staff are

<sup>246</sup> Ex. 59, **Case Center F2874**.

<sup>247</sup> Cross-examination of M. Boyer, March 31, 2026, p. 116:23 – p.117:13, **Case Center A8854**.

<sup>248</sup> Ex. 59, **Case Center F2797**.

<sup>249</sup> Cross-examination of M. Boyer, March 31, 2026, p. 116:23 – p.117:13, **Case Center A8854**.

<sup>250</sup> Ex. 59, **Case Center F2765**.

<sup>251</sup> Ex. 61, **Case Center F527-F258**.

Date	Event	Notes
		recommending the establishment of a new licensing category for PTCs.
April 13, 2016	City Council votes to adopt the 2016 By-law, to come into force September 30, 2016. <sup>252</sup>	As of this date, six months before the end of the negligence period, it is certain that the City will establish a new licensing category for PTCs.
August 31, 2016	The 2016 By-law is enacted. <sup>253</sup>	
September 30, 2016	The 2016 By-law comes into force. <sup>254</sup>	
September 31, 2016 and onwards	Plate transfers continue beyond the end of the loss period. <sup>255</sup>	
March, 2020	Covid-19 pandemic begins.	It is Dr. Stacey's evidence that the COVID-19 pandemic would be one of the factors impacting plate value after the negligence period ends. <sup>256</sup>

207. The timeline shows that in terms of market expectations of future cash flow and discount rate (the “E” and “r” operators in Dr. Boyer’s formula) the impact of negligence cannot be disentangled from the impact of events for which the City has no liability.

208. Uber’s geographic spread throughout the course of the negligence period impacted market expectations. So too did the VFH Review, which provided the market with a gradually increasing degree of certainty that Uber would be able to operate legally in Ottawa. As of City Council’s passing the 2016 By-law on April 13, 2016, approximately six months before the end of the negligence period, the market

<sup>252</sup> Liability decision, para 48, **Case Center B-1-18433**

<sup>253</sup> Liability decision, para 49, **Case Center B-1-18433**.

<sup>254</sup> Liability decision, para 49, **Case Center B-1-18433**.

<sup>255</sup> Statement of Agreed Facts at Appendix “A” **Case Center F19-F23**.

<sup>256</sup> Cross-examination of D. Stacey, April 1, 2026, p.124:25- p.125:5, **Case Center A9015**.

had 100% certainty that Uber would be permitted to operate legally as of September 30, 2016. It is Dr. Boyer's evidence that these events impacted plate values.

209. The Plaintiffs' methodology simply measures the cumulative impact of all of the above events on plate value. Awarding damages under this methodology would compensate them for the decline in plate value arising from all of these events. Put differently, the Plaintiffs would this Court hold the City of Ottawa liable for the actions of other municipalities, and for the lawful enactment of the 2016 By-law.

210. This approach would plainly overstate the City's liability and therefore is not permitted under s. 24(1) of the CPA.

***D) The Plaintiffs' failure to disentangle negligence significantly overstates damages***

211. The overstatement of liability produced by the Plaintiffs' failure to disentangle negligence from other causal factors impacting plate value is not trivial. Because a decline in plate value results from a confluence of causal factors working together,<sup>257</sup> attributing all the decline in plate value during a given period to the City's negligence can overstate the actual financial impact of that negligence by several orders of magnitude.

212. Dr. Stacey provided a hypothetical example of this concept in his expert report. In his example, Dr. Stacey assumes that, prior to Uber's arrival, a taxi plate in Ottawa earned a quarterly net operating income of \$4,392, discounted at a quarterly rate of 0.025 (*i.e.* approximately 10% annually). The example further assumes that, during the loss period (which spans approximately eight fiscal quarters), income declines gradually – beginning initially with a 5% reduction in the first quarter and increasing by 10 percentage points each quarter until reaching a 75% reduction in the final quarter. This gradual reduction reflects Uber's growing market penetration. Simultaneously, Dr. Stacey's example also assumes that market participants (*e.g.* taxi plate holders) progressively revise their expectations about

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<sup>257</sup> Cross-examination of M. Boyer, March 31, 2026, p.32:29-33:3, **Case Center A8770**.

the long-run regulatory environment, as the probability of Uber's permanent presence in the Ottawa market increases throughout the loss period.<sup>258</sup>

213. Under these assumptions, a DCF-consistent method of calculating loss period damages – *i.e.* the difference between the actual and but-for plate values – yields approximately \$12,500 per plate. By contrast, a simple before-and-after price comparison over the same window implies a decline of roughly \$100,000. This gap of approximately \$87,500 is not attributable to losses caused by the City's non-enforcement, but to forward-looking changes in expectations about the permanent transition to the post-VFH regime.<sup>259</sup>

214. Therefore, Dr. Stacey's hypothetical example illustrates several key points:

- (a) As shown in the timeline above, the Plaintiffs' loss of income resulting from increased competition with Uber during the negligence period was occurring at the same time as the market's belief updating about the nature of the regulatory regime that would result from the VFH Review;<sup>260</sup>
- (b) As Dr. Boyer and Dr. Stacey agree, plate values under the DCF framework are function of expectations of future cash flow across the lifetime of the asset, discounted at the appropriate rate, which reflects expectations of future risk.<sup>261</sup> As the outcome of the VFH Review becomes more known and certain, the market increasingly expects a permanent reduction of cash flow across the lifetime of the taxi plate, which leads to a reduction in plate value;<sup>262</sup>

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<sup>258</sup> Exhibit EE, **Case Center A8488-90**.

<sup>259</sup> Exhibit EE, **Case Center A8492**.

<sup>260</sup> Exhibit EE, **Case Center A8490-91**; Examination in chief of D. Stacey, April 1, 2026, p.30:29-33:25, **Case Centre A8921**.

<sup>261</sup> Cross-examination of M. Boyer, March 31, 2026, p. 34:22-26, **Case Center A8772**; p.110:16- p.111:4, **Case Center A8848**; Examination in chief of D. Stacey, April 1, 2026, p.16:5-12, **Case Center A8907**.

<sup>262</sup> Exhibit EE, **Case Center A8491**; Examination in chief of D. Stacey, April 1, 2026, p.32:25 – p.33:26, **Case Centre A8923**.

- (c) Even in a hypothetical but-for world where the City is able to fully enforce the 2012 By-law during the negligence period the reduction in plate value resulting from reduced expectations of future cash flow across the lifetime of the taxi plate would still occur as of the enactment of the 2016 By-law; and <sup>263</sup>
- (d) Because plate value is a function of expected cash flow across the lifetime of the asset, the market's expectations of permanently reduced future cash flow as a result of the outcome of the VFH Review **have an outsized impact on plate value far in excess of the actual amount of income lost as a result of the City's negligence during the two-year loss period.**<sup>264</sup>

215. Indeed, in Dr. Stacey's hypothetical example, approximately \$12,500 in lost plate value is attributable to the City's negligence, whereas **\$87,500** in lost plate value is attributable to changed expectations resulting from the VFH Review. <sup>265</sup> Using the parameters in Dr. Stacey's example, the **Plaintiffs' methodology would overstate the City's liability by 700%.**

216. Figure 3 in Dr. Stacey's expert report illustrates this dynamic:

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<sup>263</sup> Cross-examination of D. Stacey, April 1, 2026, p.115:5-116:11, **Case Center A9006**; Examination in chief of D. Stacey, April 1, 2026, p. 34:7 – p. 35:26, **Case Center A8925**.

<sup>264</sup> Exhibit EE, **Case Center A8492-3**; Examination in chief of D. Stacey, April 1, 2026, p.34:7 – p.36:12, **Case Center A8925**.

<sup>265</sup> Exhibit EE, **Case Center A8492-3**; Examination in chief of D. Stacey, April 1, 2026, p.34:7 – p.36:12, **Case Center A8925**.

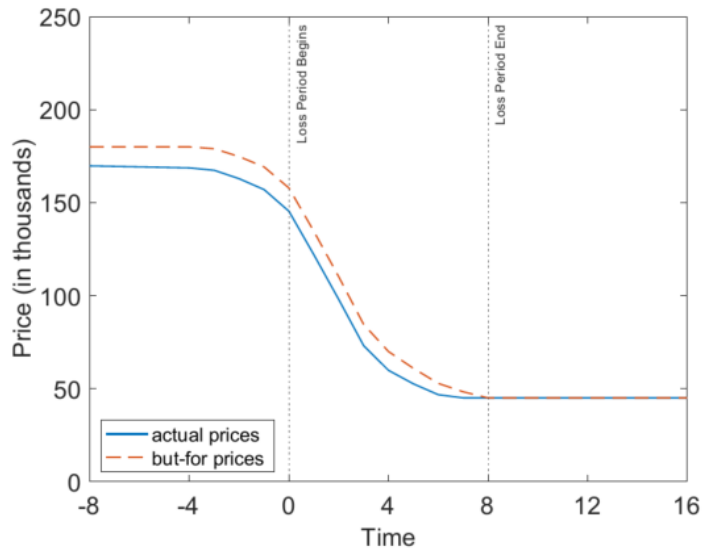


Figure 3: Actual and but-for taxi plate values in the illustrative example.<sup>266</sup>

217. In this graph, the dashed line indicates plate value in the but-for world where the City is able to fully enforce the 2012 By-law during the negligence period. The blue line is plate value in the actual world. The impact of the City’s negligence is the difference between the two lines. The Plaintiffs’ methodology would hold the City liable for the entire vertical drop of the lines between time 0 and time 8.<sup>267</sup>

218. Notably, Dr. Stacey was not challenged on the math underlying his illustrative example, or on the fundamental premise that factoring in the impact of all changing expectations of cash flow and risk overstates liability far beyond the financial impact of the City’s negligence.

219. In cross-examination regarding his illustrative example, Dr. Stacey was merely asked to confirm that his example did not contemplate a scenario in which the Plaintiffs were able to develop technology during the loss period and “adapt its technology prior to the arrival of Uber”:

Q. So your model assumes that there’s two possibilities. Either Uber comes in illegally, gradually, and takes hold of the market by 2016 completely.

<sup>266</sup> Exhibit EE, **Case Center A8493**.

<sup>267</sup> Examination in chief of D. Stacey, April 1, 2026, p.34:7 – p.35:7, **Case Center A8925**.

A. Yeah.

Q. Or it doesn't operate at all and then completely takes hold of the market in 2016. Correct?

A. That's, that's a fair representation of this example. Yes.

Q. Okay.

A. And I...

Q. Oh, can I ask a question?

THE COURT: Well I think he wanted to expand. So let him expand.

A. No. That that's all right. I'm finished.

M. SANDILANDS: Q. **Okay. So what it doesn't contemplate is a scenario in which Uber does not operate at all until 2016, but then does not take hold of the market because the taxi industry has had opportunity to adapt its technology.** Is that correct?

A. **That is correct.** And I mean, we could consider other possibilities but that was the one that I chose for a couple of reasons. And, and one reason is that during this time, during the loss period, Uber is taking hold in other markets. Right? People in other cities are getting the app. People in Ottawa who travel to other cities are getting the app. Uber is taking, Uber is gaining market share globally. And **so I think it would be unrealistic to assume that after a two year period of full enforcement with no Uber, that suddenly it would happen gradually, I think it would happen rather quickly because of what's going on in other cities.** But of course, we could consider, we could consider other alternatives. Again, this is just, this is just one possible example to showcase the difference between a, before after price comparison and an actual versus but for comparison. [*emphasis added*]<sup>268</sup>

220. Dr. Stacey's evidence about the inevitability of Uber coming to operate in Ottawa aligns with that of Dr. Boyer.<sup>269</sup>

221. It is also notable that the decline in the plate value prior to Uber's arrival in Ottawa predicted by Dr. Stacey's model aligns with the actual evidence. The plate transfers reported to the City show that average transaction value was declining in the 12 months prior to Uber's arrival in Ottawa.<sup>270</sup> As Dr. Boyer testified, this decline was likely driven by market apprehensions about Uber's spread throughout North America.<sup>271</sup>

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<sup>268</sup> Cross-examination of D. Stacey, April 1, 2026, p.116:25 – p.117:12, **Case Center A9007.**

<sup>269</sup> Cross-examination of M. Boyer, March 31, 2026, p.116:3-22, **Case Center A8854**; Re-examination of M. Boyer, March 31, 2026, p.131:11 – p.132:13, **Case Center A8869.**

<sup>270</sup> Statement of Agreed Facts, Appendix A, **Case Center F17.**

<sup>271</sup> Cross-examination of M. Boyer, March 31, 2026, p. 120:9-17, **Case Center A8858.**

**E) The City's methodology disentangles the impact of negligence**

222. The methodology proposed by the City for individualized damages solves the two critical flaws present in the Plaintiffs' methodology, being: (a) the failure to disentangle the financial impact of negligence from the impact of other factors; and (b) the failure to temporally isolate the financial impact of negligence.

223. With respect to the issue of disentangling the impact of negligence, the City's methodology is specifically designed to isolate the financial impact of negligence from the impact of other causal factors. As Dr. Stacey explained, an individual income-based approach to damages relies on the construction of a direct counterfactual but-for scenario that allows for a simple and **straightforward isolation of damages actually resulting from the City's negligence:**

So the individual based methodology that I propose involves computing income shortfalls at the individual level. So the, the idea is to look at actual incomes during the loss period and compare those to an estimate of but for incomes. So incomes that would have been earned during the loss period but for the non-enforcement of the by-law. So again, that's a counterfactual. **It's a hypothetical scenario where we try to estimate what income would have been if everything was exactly the same as it was except that, that the what if, except if the, if the by-law 2012 taxi by-law was, was enforced during the loss period. So it's an actual versus but for income comparison, which is that it's direct and it allows us to hone in on exactly the economic returns that were affected by the, the negligent non-enforcement of the 2012 taxi by-law [emphasis added].**<sup>272</sup>

224. In cross-examination, Dr. Stacey further explained how he came to recommend his individual income-based methodology:

Q. How did you come to decide to use that methodology?

A. I came to that methodology to isolate damages. The — I think I, I in my testimony this morning I talked about the challenges associated with trying to isolate or disentangle damages that we attribute to, to the non-enforcement of the by-law in a discrete, in a discrete loss period. I talked about the challenges of doing that and I think I, I pointed, I pointed out the fact that it's, it's, it's tempting to look at the change over time or a change in, in value and price that spans that time period. And to, at first glance it's like well it, it, it aligns time-wise and so maybe that's the measure of damages. **But the key, the key thing to keep in mind is, is that, that decline in, in value corresponds to reflects changes in expectations of things that are still yet to**

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<sup>272</sup> Examination in chief of D. Stacey, April 1, 2026, p. 59:25 – p.60:5, **Case Center A8950.**

**come, things that happened after the, the new regulatory regime that became, that was implemented as part of the 2016 by-law.** So...

Q. Right, I'd like to ask you some questions about your modeling here.

A. Okay. Can I...

Q. Oh, sorry, I apologize.

THE COURT: I don't think he was finished.

M. SANDILANDS: Q. Sorry, please continue.

A. Thanks. So to, to answer your question, **when faced with those challenges I had to come up with a methodology to isolate, to disentangle the damages attributable to the discrete loss period from these other factors.** And so the actual versus but for comparison is what I came up with as the concept, conceptually correct methodology [*emphasis added*].<sup>273</sup>

225. The City solves the second flaw in the Plaintiffs' methodology, being a failure to temporally isolate the financial impact of negligence, by only considering a loss of income during the negligence period. As Dr. Stacey explained in re-examination:

Q. My friend asked you about how your model attributes all loss of net income during the loss period to the City's negligence. What losses does Dr. Boyer attribute to the City's negligence - if I might finish my question. And why is it your opinion that your model better disentangles the effect of the City's negligence?

...

A. **Dr. Boyer's methodology attributes the entire loss in plate value by assumption to, to, to - as damages. And under the discounted cash flow framework, that includes income shortfalls during the loss period and beyond, right, so from, from the beginning of the loss period to infinity, whereas my proposed methodology was only at the income shortfall during the loss period, and therefore, assesses damages that can be attributed to the non-enforcement during that loss period** [*emphasis added*].<sup>274</sup>

226. The Plaintiffs challenged Dr. Stacey on the basis that his methodology fails to disentangle the financial impact of the City's negligence from the impact of other factors potentially affecting income during the loss period, such as whether the plate holder drives themselves, leases or rents; amount of vacation taken; driving patterns, and other elements of heterogeneity.<sup>275</sup>

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<sup>273</sup> Cross-examination of D. Stacey, April 1, 2026, p.111:8 – p. 112:6, **Case Center A9002.**

<sup>274</sup> Re-examination of D. Stacey, April 2, 2026, p. 37:3-25, **Case Center A9065.**

<sup>275</sup> Cross-examination of D. Stacey, April 2, 2026, p.11:7-14, **Case Center A9039.**

227. As a starting point, Dr. Stacey readily conceded that no model based on estimation can provide a perfect, “to the dollar” calculation of damages. “Some errors” and “noise” are inevitable.<sup>276</sup> This does not, however, mean that all estimations, noise, or errors are equal. There are two important aspects to Dr. Stacey’s response to the Plaintiffs’ critique which highlight the ways in which the City’s methodology solves the critical flaws in the Plaintiffs’ proposal.

228. **First**, the elements of heterogeneity identified by the Plaintiffs – variation in driving patterns and vacation taken, variations in type of income stream, etc. – were present before, during and after the loss period. They would have been present in a fictional “but for” world. As Dr. Stacey explained, this is why his methodology uses pre-Uber income as a benchmark – because it is the best predictor of what income would have been during the loss period, incorporating the elements of heterogeneity identified by the Plaintiffs.<sup>277</sup>

229. Dr. Stacey’s evidence that the years immediately prior to the loss period are the best predictor of income during the loss period aligns with Mr. Zimmerman’s evidence. This evidence is uncontroverted:

Q. All right. And you're requesting two years of tax information before the loss period, and why only two years?

A. So the two years before the loss period are the most recent two years prior to the negligent non-enforcement that would reflect the most recent information based on the use from each plate holder. **And generally, it's the most representative of the use that would, would occur during the loss period itself, as it's the most recent.**

Q. If I could just ask you to expand on that, you know, why not one year? Why not five years?

...

A. Certainly. So the reason why, why, why one may not be the best period to look at is because it is simply one year's worth of data point. So if there was, you know, I think that an example that was used earlier was if a taxi plate holder had gone on a vacation during that particular year, their income may be lower than it would be in some of the other prior years. **So, generally, the, the accepted approach in loss theory is to look at the more recent periods and the more recent periods are the most representative.** So I looked at two years, which would then consider if there was a

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<sup>276</sup> Cross-examination of D. Stacey, April 1, 2015, p.15:4-14; p.16:11-13, **Case Center A8906**.

<sup>277</sup> Cross-examination of D. Stacey, April 2, 2026, p.14:9 – p.15:13, **Case Centre A9042**

downturn in one of the two years, you could then pick the higher of the two years. **And the reason why you would not go out to, to five years, for example, is because the further you move away from the start of the loss period, the less relevant the data becomes, because it's not demonstrating the current use of what is trying to be demonstrated. So, like, if you go five years pre, there's other factors that could be influencing it that are not as closely tied to the current use that they're using the taxi plate for.** So the two years is really looking at, you know, a favourable recent period that would be able to account for potential anomalies where the, the income could be lower in one of those two periods. [*emphasis added*]<sup>278</sup>

230. **Second**, as Dr. Stacey explained, the only factor impacting plateholder income that was present during the negligence period, but not before or after, is negligence. Basing damages off the shortfall in projected income during the loss period **specifically isolates the financial impact of negligence**, allowing the Court to assess the “but for” financial impact of that negligence.

Q, But you would agree that it could be a combination of negligence, choices of the plate owner, and market factors. Correct?

A. It could be. That is correct. And I think, I think you're, you're, you're, you're honing in on, on a potential weakness of, of the methodology to misidentify damages. And I think the methodology requires the construction of that "but for" benchmark, which is a forecast. Right. Effectively, it's a, it's a, it's a hypothetical value. And so we can't directly observe it. We need to construct it or estimate it. **And my proposed methodology uses the fact that historical income is the best predictor of future income. And in this case, we're using pre-Uber income as the best predictor of what income would have been if, if the, if the bylaw had been enforced and, and the effect of Uber had not been, had not been credited during the, the loss period.**

Q. But you'd agree with me that this example shows us that the calculation here, it tells us that the City's negligence is really only one factor influencing the plate owner's income during that two year period. Correct?

A. Can you repeat that? Sorry.

Q. Maybe I'll back up to the question I asked before, which is would you agree that that shortfall that we, that we calculated might be a combination of negligence, market factors, and other choices of the plate owner. We really can't tell. Would you agree with that?

A. I agree that, I agree that, that there – that it's, it's, it's an estimation. It's a forecast, and so there, there is going to be some error. There is going to be some error and so, and so that type of, that type of interpretation. **Yeah. The, the interpretation we're relying on is that the historical income provides a good estimation of what income would have been in the absence of, of Uber.** But of course, of course, we

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<sup>278</sup> Examination in chief of T. Zimmerman, April 2, 2026, p.65:1-11, **Case Center A9093**; p.67:27-17, **Case Center A9095**.

can't perfectly predict that. And so there is going to be some, some, some errors in that, in that estimation. [*emphasis added*]<sup>279</sup>

231. The methodology advanced by the City demonstrates that it is in fact simple to both disentangle and temporally isolate the financial impact of negligence on the Plaintiffs. It highlights the degree to which the Plaintiffs' methodology fails to address these critical flaws and thereby overstates damages.

***F) The Plaintiffs' methodology fails to satisfy the second Ramdath Factor***

232. To reiterate, the question before the Court with respect to the second *Ramdath* factor is whether the Plaintiffs' methodology overstates damages. For the reasons set out in this section, it does, in that:

- (a) It is uncontroverted that the Plaintiffs' methodology measures the collective impact of all causal factors on plate value during the loss period, however that period is defined. It simply measures how much the value of taxi plates declined during a given period, as a collective result of both City's negligence and matters for which the City is not liable, such as the VFH Review and events extraneous to the City of Ottawa;
- (b) In so doing, it fails to consider the "but for" scenario and would put the Plaintiffs in a far better position than the "original" position that they would have found themselves in absent the City's negligence; and
- (c) It is uncontroverted that in conflating the impact of negligence with the impact of all other reasons for the decline in plate value, the Plaintiffs' methodology overstates the City's damages. Dr. Stacey's evidence that the overstatement inflates damages by many times was not challenged.

233. The second *Ramdath* factor does not investigate the merits of the defendant's methodology. As set out above, overstatement of damages is fatal to any proposed methodology for awarding aggregate

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<sup>279</sup> Cross-examination of D. Stacey, April 2, 2026, p.14:9 – p.15:13, **Case Center A9042**.

damages. If the Plaintiffs' methodology cannot fairly and reasonably calculate damages in the aggregate, then the Court **must** award individual damages.<sup>280</sup>

234. Nonetheless, the City's methodology should give this Court comfort that it simple and straightforward to calculate on an individual basis in a way that properly considers the "but for" scenario and isolates the financial impact of the City's negligence.

235. In both *Ramdath* and *Spina*, the Court mandated individualized calculations for categories of damages that could not be calculated in the aggregate without overstatement.<sup>281</sup> The same must be true in the instant case.

### **Factor 3: Access to Justice**

#### **A) Individual assessments do not automatically mean a denial of access to justice**

236. The Court must not assume that a denial of aggregate damages will equate with a denial of access to justice.<sup>282</sup> The third and final *Ramdath* factor requires the Court to actively examine this question, to determine whether there is evidence that requiring an individual calculation of damages will result in a "wrong eluding an effective remedy and a denial of access to justice."<sup>283</sup>

237. Concerns about access to justice are assuaged where the burdens imposed by an individual damages assessment are proportionate to the size of the class and the damages sought, and where the Court can design an efficient mechanism for individual damages assessment where the burdens imposed by an individual damages assessment are proportionate to the size of the class and the damages sought.

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<sup>280</sup> *Ramdath v. George Brown College*, [2014 ONSC 3066](#) at paras. 1-2 [*Ramdath* (Ont Sup Ct), **Case Center B-1-18706**; a'ff'd in part [2015 ONCA 921](#) [*Ramdath* (ONCA), **Case Center B-1-18734**].

<sup>281</sup> *Ramdath* (Ont Sup Ct) at paras [60-66](#), **Case Center B-1-18722**; see also *Ramdath* (ONCA) at para [62](#), **Case Center B-1-18755**; *Spina* (Ont Sup Ct) at paras [644-645](#).

<sup>282</sup> *Spina* (ONCA) at para [214](#); [230-234](#), **Case Center A8162**.

<sup>283</sup> *Ramdath* (Ont Sup Ct) at para. [47](#), **Case Center B-1-18718**; affirmed *Ramdath* (ONCA), at para. [76](#), **Case Center B-1-18760**.

## **B) The City's methodology ensures access to justice**

238. An individualized assessment of damages does not require 768 individual trials.

239. The statutory regime prescribed by the CPA provides ample tools for the Court to design an efficient, proportionate and cost-effective individualized damages process. The courts have repeatedly emphasized that individual assessments under section 25 of the CPA do not necessarily require individual trials "if a more procedurally efficient process can be designed under an individual issues protocol."<sup>284</sup> The Ontario Court of Appeal has held that section 25 gives judges "wide latitude to simplify and expedite the individual issues trials such that access to justice issues can be addressed."<sup>285</sup>

240. Further, the Ontario Superior Court of Justice, citing *Hryniak v. Mauldin*, has confirmed that section 25(3) grants courts licence to employ "[c]reativity and the principles of proportionality" when designing the individual issues stage of a class action.<sup>286</sup>

241. While an individual issues protocol must include "procedural and evidentiary terms," the Ontario Court of Appeal has made clear that there is "considerable flexibility available to craft a fair and efficient process" under section 25.<sup>287</sup>

242. The City's proposed methodology provides a ready-made blueprint for a simple, efficient, and fair process under s. 25 of the CPA that ensures an accurate determination of the Plaintiffs' damages.

243. The evidence adduced at trial by the City demonstrates not only that an individualized approach is feasible, but that it closely aligns with methodologies adopted in comparable class proceedings. Indeed, the Zimmerman framework provides a simple, structured and largely administrative process for assessing damages on an individual basis. As explained above, the framework contemplates:

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<sup>284</sup> *Spina v. Shoppers Drug Mart Inc.*, 2024 ONCA 642 at para. [226](#), **Case Center A8160**.

<sup>285</sup> *Spina* (ONCA), 2024 ONCA 642 at para. [194](#), **Case Center A8147**.

<sup>286</sup> *Lundy v. VIA Rail Canada Inc.*, [2015 ONSC 1879](#) at para. [47](#).

<sup>287</sup> *Spina* (ONCA), 2024 ONCA 642 at para. [231](#), **Case Center A8162**, citing *Lundy* (Ont. Sup. Ct.).

- (a) An online questionnaire of only five questions to categorize claimants;
- (b) A targeted information request based on readily available tax documentation; and
- (c) A straightforward loss calculation methodology that compares pre-loss income to actual income during the Loss Period.

244. This framework is designed to be managed by a class administrator and forensic accountant and does not require individual trials or hearings for the majority of claims.<sup>288</sup>

245. Importantly, several features of the Zimmerman framework align closely with the individual assessment protocols that Ontario courts have approved in analogous class proceedings. For example, in *Brazeau v. Canada (Attorney General)*,<sup>289</sup> the Ontario Superior Court of Justice considered whether aggregate damages should be awarded against the federal Crown in two Ontario class actions (*Brazeau* and *Reddock*), which were brought on behalf of mentally ill inmates who were unlawfully confined. At trial, the common issues trial judge determined that damages for specific harm were too idiosyncratic to determine on an aggregate basis, necessitating an individualized protocol for additional compensatory damages.<sup>290</sup> Therefore, the Court established a three-track protocol in which claimants were divided based on the severity of harm alleged:

- (a) **Track 1** (claimants who had been confined for 1-5 days): claimants identified under this track received a share of aggregate damages, releasing the Crown from all other claims without the need for additional hearings or litigation (in other words, a purely administrative resolution;

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<sup>288</sup> Exhibit HH, **Case Center B-1-19027** at para. 81.

<sup>289</sup> *Brazeau v. Canada (Attorney General)*, [2020 ONSC 7229](#) [*Brazeau*].

<sup>290</sup> *Brazeau*, [2020 ONSC 7229](#) at paras. [135-136](#).

- (b) **Track 2** (claimants who had been confined for 6-15 days): claimants identified under this track received a share of aggregate damages, releasing the Crown from some claims, but retaining the right to seek additional damages;
- (c) **Track 3** (claimants who had been confined for more than 15 days): claimants identified under this track would be addressed through half-day summary judgment motions. The Court determined that ten bellwether cases would be selected under this track to serve as precedent, guiding and expediting the resolution of the remaining claims in this track.<sup>291</sup>

246. In another similar case, *Francis v. Ontario*,<sup>292</sup> the Court addressed a class action against the provincial Crown, alleging negligence in the confinement of current and former inmates with specific mental illnesses. Summary judgment was granted on the issue of liability, and the class was awarded aggregate damages, with a right to claim additional damages through a court-approved individualized protocol. Like in *Brazeau*, the Court approved a three-track protocol for claimants (which, in this case, was established by way of a settlement reached amongst the parties):

- (a) **Track 1** was for claimants whose claims were fully compensated through a pro rata shared of the aggregated damage aware;
- (b) **Track 2** was for claimants seeking to claim higher individual damages. Damages awards under this track were to be determined according to a grid through a substantially paper-based process in which claims would be determined by referrers. The Court established that a recurring motion for confirmation would be heard to approve these claims every six months;

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<sup>291</sup> See generally *Brazeau v. Canada (Attorney General)*, [2020 ONSC 7229](#).

<sup>292</sup> *Francis v. Ontario*, [2023 ONSC 5355](#).

- (c) **Track 3** was reserved for claimants seeking uncapped individual damages (including punitive damages). The Court determined that claims under this track would be heard via modified motions for summary judgment.<sup>293</sup>

247. The Court's protocol in *Francis* also contemplated the appointment of an administrator responsible for distributing funds, disseminating notices, and developing a secure database.<sup>294</sup>

248. The Zimmerman framework mirrors these approved protocols in several critical respects:

- (a) First, it divides claimants into categories based on plate ownership and usage – single-plate holder-drivers, multi-plate holders, and retired/absentee plate holders. This parallels the track-based approach seen in both *Brazeau* and *Francis*.<sup>295</sup> Importantly, these categories are not arbitrary administrative groupings; rather, they are grounded in the economic heterogeneity documented by Dr. Stacey, who demonstrated at trial that "the individual circumstances, the individual choices that are made in turning a taxi plate into something that can generate economic returns is very, is inherently individualized" and that "those differences need to be taken into account."<sup>296</sup> The Zimmerman framework thus operationalizes Dr. Stacey's economic analysis by ensuring that claimants are assessed according to the particular manner in which they used their plates to generate income. This is precisely the variable that Dr. Stacey identified as determinative of actual loss.
- (b) Second, the framework's reliance on personal and corporate income tax returns as the primary documentary basis for the claims mirrors the streamlined evidentiary approach contemplated by section 25(3) of the CPA, which empowers the Court to "authorize any

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<sup>293</sup> See generally *Francis v. Ontario*, [2023 ONSC 5355](#).

<sup>294</sup> See generally *Francis v. Ontario*, [2023 ONSC 5355](#).

<sup>295</sup> See e.g. Exhibit HH, **Case Center B-1-19016 – B-1-19017** at para. 24.

<sup>296</sup> Examination in chief of D. Stacey, April 1, 2026, p. 50:21-24 **Case Center A8941** and p. 56:10-13., **Case Center A8947**

special procedural steps, including steps relating to discovery, and any special rules, including rules relating to admission of evidence and means of proof, that it considers appropriate."<sup>297</sup>

- (c) Third, the framework's alternative methodology – which allows losses to be estimated based on the average or median losses of comparable claimants – functions as a built-in safety net ensuring that no class member is denied an effective remedy simply because they cannot furnish the necessary documentation.<sup>298</sup>

249. The complementarity between Dr. Stacey's economic analysis and Mr. Zimmerman's practical framework further reinforces the feasibility of the individualized approach. Dr. Stacey established the economic foundation – namely, that damages must be assessed on a plate-by-plate basis through an income-based methodology because of: (a) the heterogeneity in driver income; and (b) the impossibility of isolating damages caused by negligence under plate value-based model. As Dr. Stacey summarized:

...net operating income varies across drivers, across leasing arrangements and bargaining conditions, and across plate uses and operational modes under materially different contractual environments. These factors are not minor or incidental.<sup>299</sup>

250. Mr. Zimmerman in turn operationalized the analysis into a concrete, workable protocol whose five-question questionnaire, category-based classification system and income-comparison methodology are each designed to honour the heterogeneity that Dr. Stacey documented.

251. The burdens imposed by Mr. Zimmerman's protocol are not heavy. The protocol (which is summarized visually in a flowchart at Appendix 2) merely requires the completion of a questionnaire, and the filing of five years of income tax returns. In *Spina*, the Ontario Court of Appeal found that

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<sup>297</sup> *Class Proceedings Act*, 1992, S.O. 1992, c. 6, [s. 25\(3\)\(b\)](#).

<sup>298</sup> Exhibit HH, **Case Center B-1-19032** at para. 109.

<sup>299</sup> Exhibit EE, **Case Center A8514-A8515**; see also Examination in chief of D. Stacey, April 1, 2026, pp. 55:18 – 26, **Case Center A8946**.

individual damages assessments were proportionate to a class size of 500-800 claimants seeking tens of thousands of dollars each in damages – precisely the scenario in the instant case.<sup>300</sup>

252. Like in *Spina*, this is not a case where the disputed amounts are “clearly disproportionate to the cost of recovery” under Mr. Zimmerman’s protocol.<sup>301</sup> The Plaintiffs have claimed \$215,000,000 in damages in this case, which equates to nearly \$181,000 per taxi plate.<sup>302</sup> The simple and efficient protocol proposed by the City is proportionate to the disputed amounts.

253. The combined evidence of Dr. Stacey and Mr. Zimmerman demonstrates that the individualized approach is not a theoretical abstraction but a practical, cost-effective, and proportionate method for determining the actual losses sustained by each class member.

254. The City’s evidence therefore satisfies the third *Ramdath* factor. The denial of aggregate damages will not result in a “wrong eluding an effective remedy.” To the contrary, an individualized approach – implemented through the Zimmerman framework and guided by Dr. Stacey’s income-based methodology – provides the most accurate, fair, and proportionate means of compensating the Plaintiffs, while fully preserving access to justice through the procedural safeguards available under section 25 of the CPA.

255. To summarize, every category in the Zimmerman framework operationalizes a distinct source of heterogeneity identified by Dr. Stacey:

- (a) The distinction between owner-operators and lessors captures the heterogeneity in hours worked, driver skill, and shift structure;
- (b) The distinction between single-plate and multi-plate holders captures the heterogeneity in fleet assignment, dispatch affiliation, and lease arrangements; and

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<sup>300</sup> *Spina* (ONCA) at para [212](#), **Case Center A8156**.

<sup>301</sup> *Spina* (ONCA) at para [212](#), **Case Center A8156**.

<sup>302</sup> Amended Amended Statement of Claim, para. 1, **Case Center B-1-5676**.

- (c) The distinction between standard and accessible plates captures the heterogeneity in licence class and operating conditions.

256. Since each category corresponds to an economically meaningful dimension of variation in net operating income, the Zimmerman framework ensures that no class member's damages are distorted by the imposition of a uniform measure – and that the individualized process the City proposes is not merely administratively efficient, but economically principled and justifiable.

**C) Access to justice concerns do not override unreliability and overstatement of damages**

257. In the alternative, even if this Court is persuaded that denial of aggregate damages will result in a denial of access to justice, this is not sufficient to cure the defects in the Plaintiffs' methodology.

258. Concerns of reliability and fairness to the defendant are paramount at the aggregate damages phase.<sup>303</sup> As Justice Perell emphasized in *Spina*, even where concerns about access to justice are present, they do not save a methodology that is unreliable and/or overstates damages.<sup>304</sup> Such flaws are fatal to any proposed methodology for aggregate damages.

259. For the reasons set out above under Factors 1 and 2, the Plaintiffs' methodology is not reliable and overstates the City's damages. This Court therefore cannot award aggregate damages, regardless of any concerns regarding access to justice.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 28th day of April, 2026.

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<sup>303</sup> *Fresco* (ONSC), at para [29](#).

<sup>304</sup> *Spina* (Ont Sup Ct) at paras. [654-655](#).

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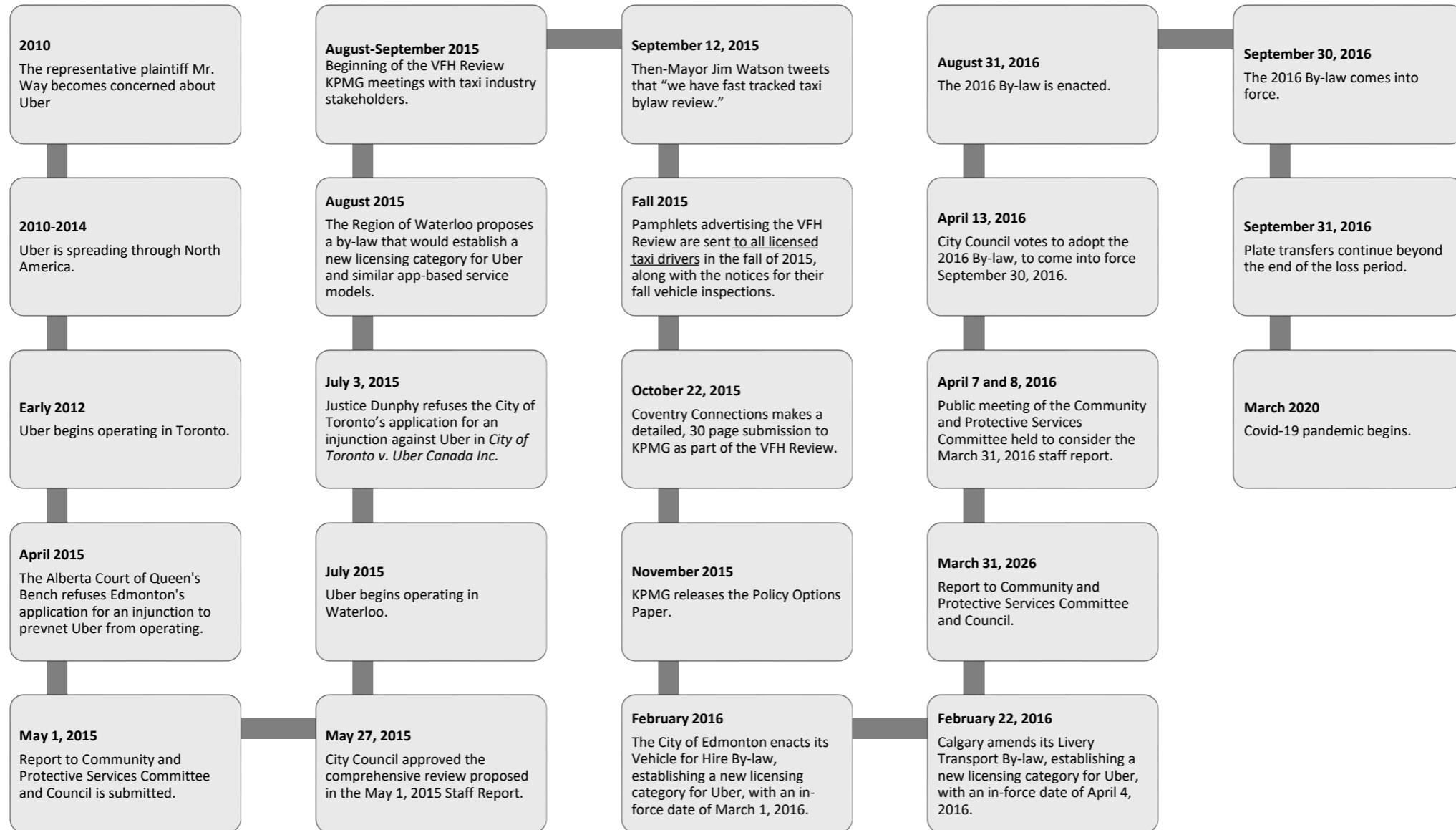
Tel: (613) 786-8688

Lawyers for the Defendant, the City of  
Ottawa

## SCHEDULE “A” – LIST OF AUTHORITIES

1. *Annapolis Group Inc. v. Halifax Regional Municipality* [2022 SCC 36](#)
2. *Athey v. Leonati*, [1996 CanLII 183 \(SCC\)](#)
3. *Aylmer Meat Packers Inc. v. Ontario*, [2022 ONCA 579](#)
4. *Brazeau v. Canada (Attorney General)*, [2020 ONSC 7229](#)
5. *Canadian Pacific Railway Co. v. Vancouver (City)*, [2006 SCC 5 \(CanLII\)](#), [2006] 1 SCR 227
6. *City of Toronto v. Uber Canada Inc. et al* [2015 ONSC 3572](#)
7. *Francis v. Ontario*, [2023 ONSC 5355](#)
8. *Fresco v. Canadian Imperial Bank of Commerce*, [2020 ONSC 4288](#)
9. *Fresco v. Canadian Imperial Bank of Commerce*, [2022 ONCA 115](#)
10. *Fulawka v. Bank of Nova Scotia*, [2012 ONCA 443](#)
11. *Healey v. Lakeridge Health Corporation*, [2010 ONSC 725](#)
12. *Healey v. Lakeridge Health Corporation*, [2011 ONCA 55](#)
13. *Le Feuvre v. Enterprise Rent-A-Car Canada Company*, [2022 ONSC 4136](#)
14. *Lundy v. VIA Rail Canada Inc.*, [2015 ONSC 1879](#)
15. *Manitoba Fisheries Ltd. v. The Queen* [1978 CanLII 22](#) (SCC)
16. *Metellus c. Procureur général du Québec*, [2024 QCCS 2388](#)
17. *Procureur général du Québec c. Metellus*, [2026 QCCA 395](#)
18. *Metro Taxi Ltd. v. City of (Ottawa)*, [2018 ONSC 509](#)
19. *Metro Taxi Ltd. et. al. v. City of Ottawa*, [2024 ONSC 2725](#)
20. *Pro-Sys Consultants Ltd. v. Microsoft Corporation* [2013 SCC 57](#)
21. *Ramdath v. George Brown College*, [2014 ONSC 3066](#)
22. *Ramdath v. George Brown College of Applied Arts and Technology*, [2015 ONCA 921](#)
23. *Spina v. Shoppers Drug Mart Inc.*, [2023 ONSC 1086](#)
24. *Spina v. Shoppers Drug Mart Inc.*, [2024 ONCA 642](#)
25. *Tokarz v. Selwyn (Township)* [2022 ONCA 246](#)

## APPENDIX 1 – HIGH-LEVEL TIMELINE OF EVENTS



# Zimmerman Framework

## Individualized Damages Process Flow

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Metro Taxi Ltd., et al v. City of Ottawa

**1** Questionnaire

**2** Document Collection

**3** Loss Calculation

**4** Secondary Method

# Process Overview

Four-phase framework for calculating individualized economic damages

Phase 1	<b>Questionnaire</b>	Intake and categorization via 5 questions. Verify against City database. Determine individual loss period.
Phase 2	<b>Information Request</b>	Collect tax returns and Notices of Assessment. Additional corporate documents if incorporated. Retrieve from CRA if needed.
Phase 3	<b>Loss Calculation</b>	5-step primary methodology: Identify periods, determine baseline income, project but-for income, calculate loss.
Phase 4	<b>Secondary Methodology</b>	Alternative for exception cases. Match to sub-classification. Use group average/median.

*Claimants who cannot provide tax documents proceed from Phase 2 to Phase 4.*

## FLOWCHART LEGEND



Start / End / Result

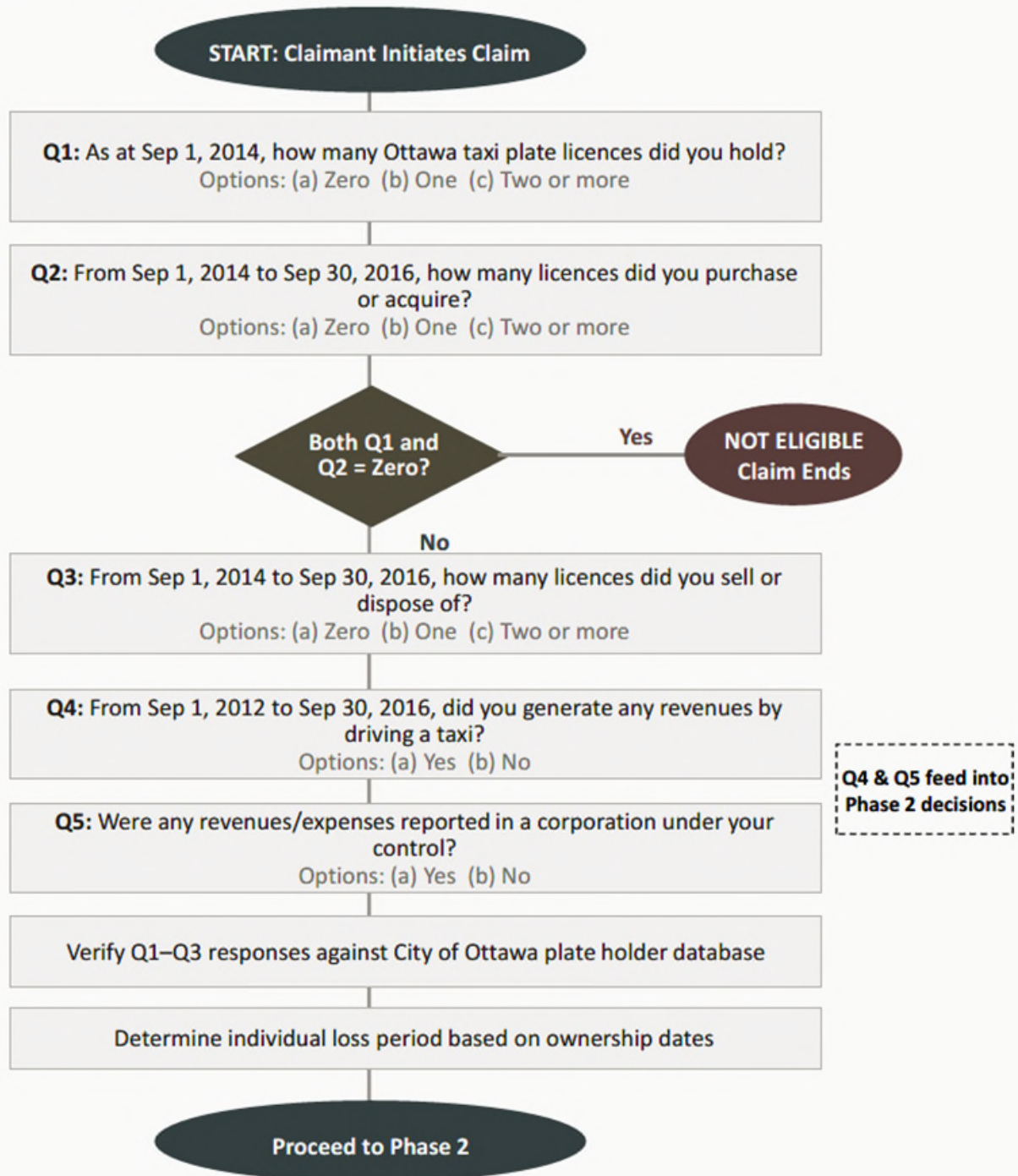


Action / Process Step



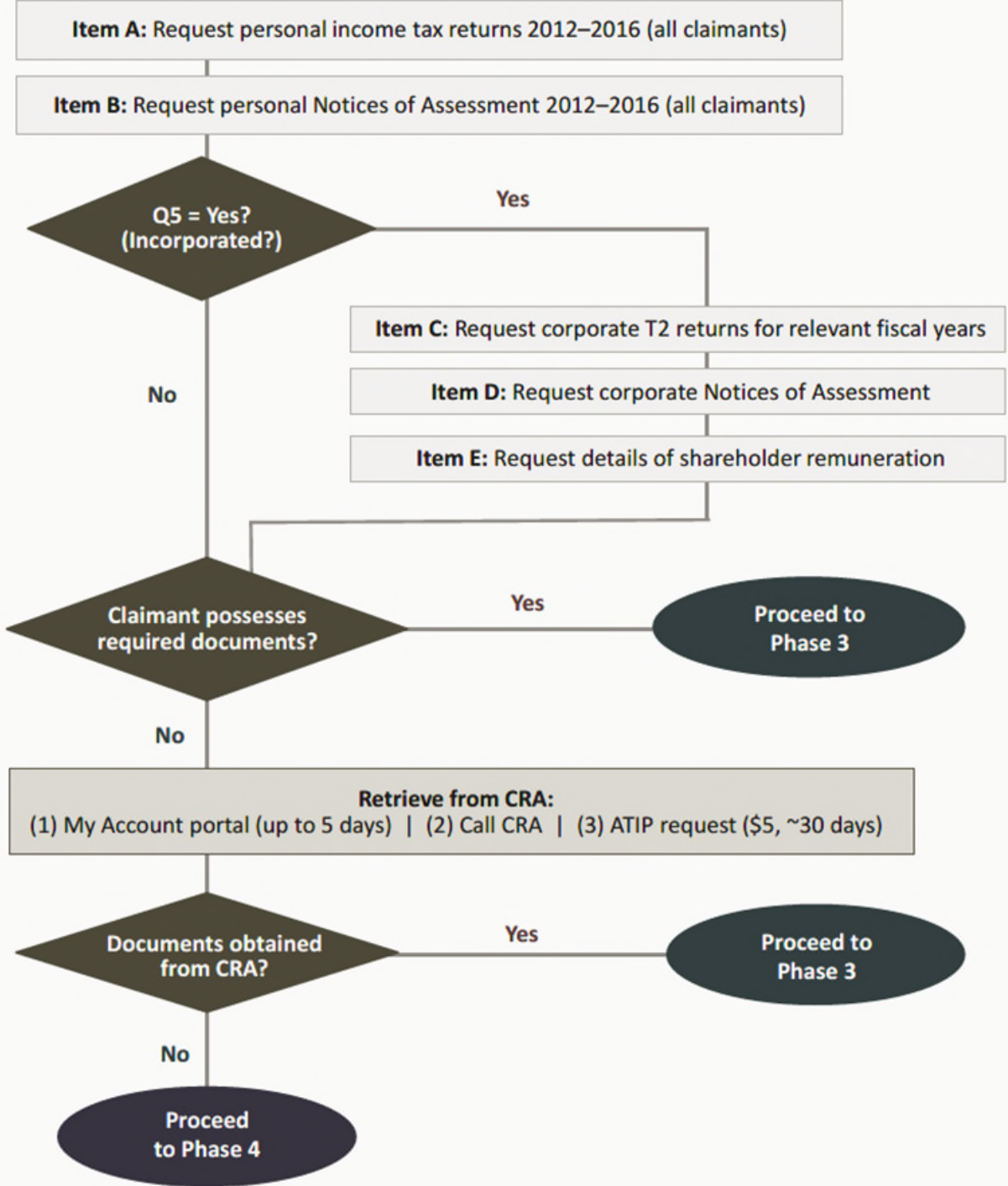
Decision Point

# Phase 1: Questionnaire (Intake & Categorization)

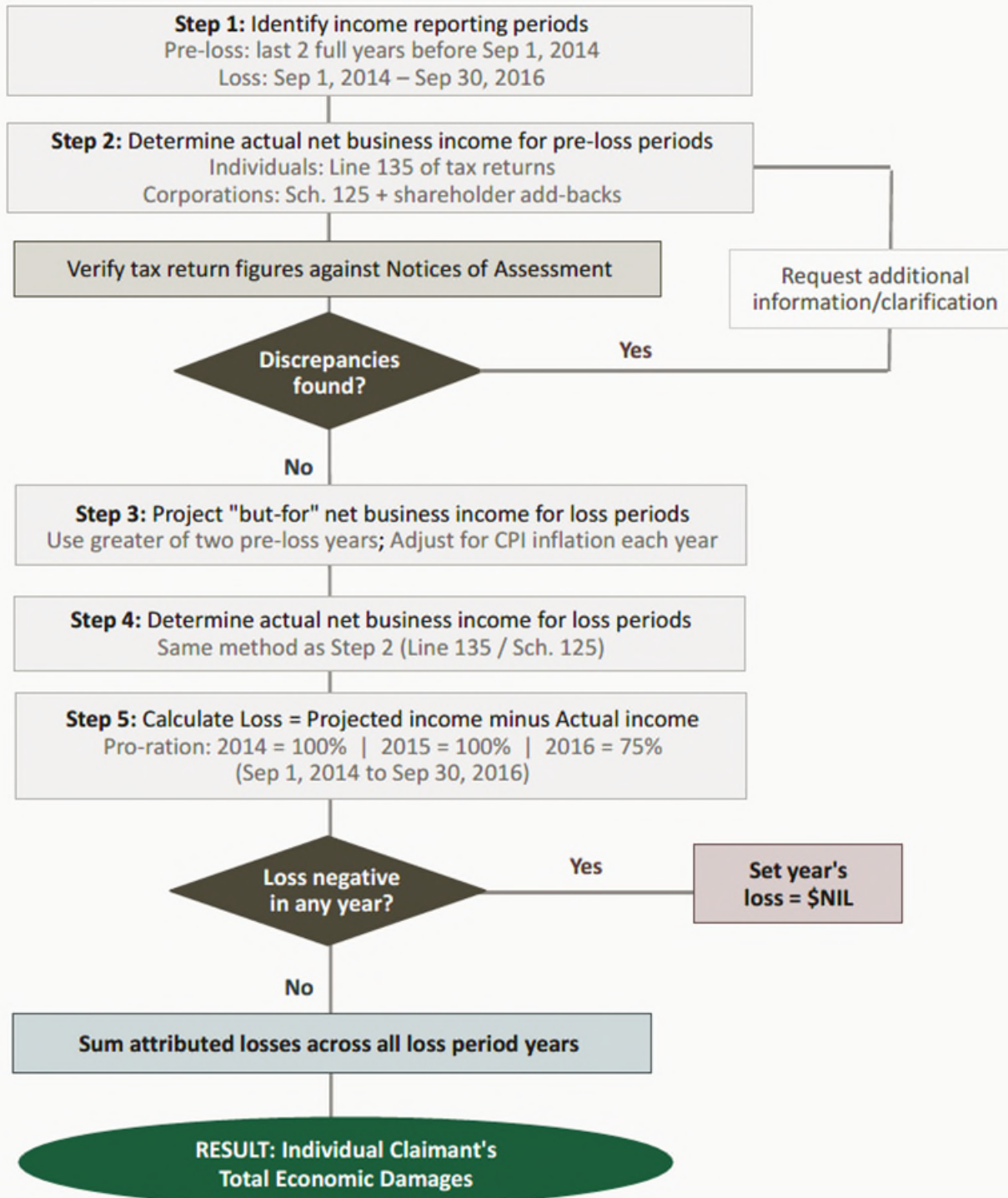


*Phase 1 collects key information to categorize claimants and determine eligibility before document collection begins.*

# Phase 2: Information Request (Document Collection)

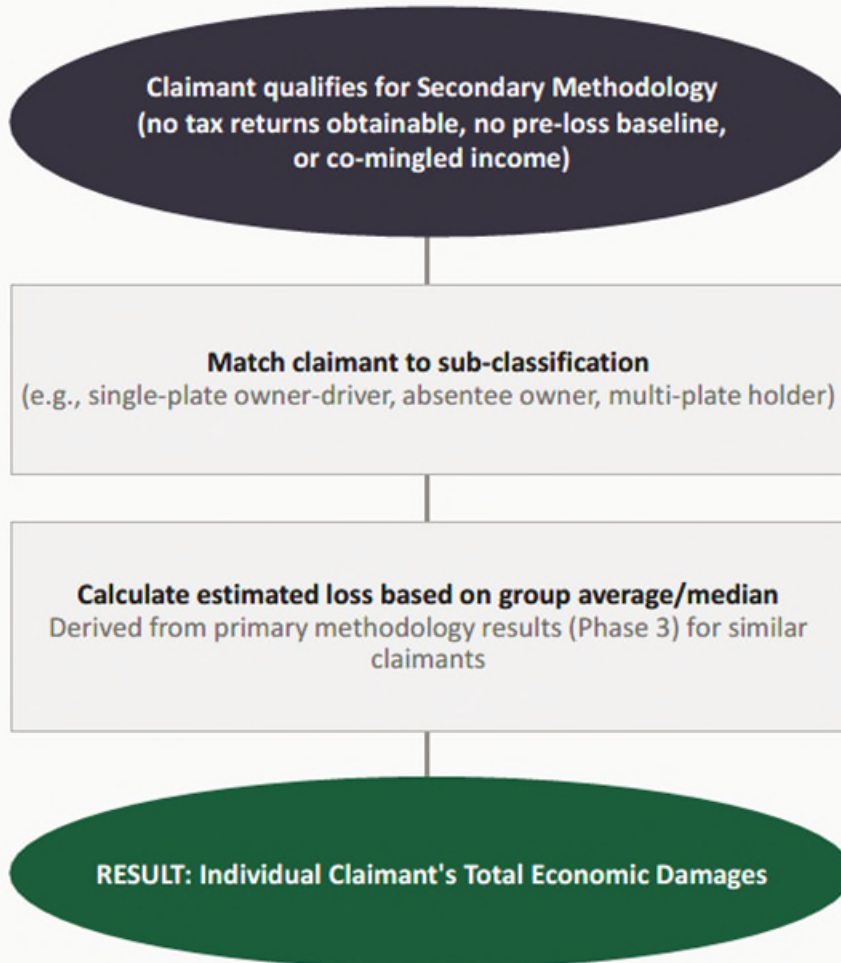


# Phase 3: Loss Calculation – Primary Methodology (5 Steps)



Phase 3 applies the primary methodology. Claimants unable to complete this process are directed to Phase 4 (Secondary Methodology).

# Phase 4: Secondary Methodology (Alternative for Exception Cases)



## When is Phase 4 used?

This secondary methodology applies when a claimant cannot provide the tax documents required for the primary methodology (Phase 3). Common scenarios include: tax returns not available from any source, no pre-loss income baseline exists, or income is co-mingled across multiple businesses making isolation impossible.

*Phase 4 ensures all class members receive a damages calculation, even when individual tax data is unavailable.*