

Court File No. 16-69601

**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*

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**CLOSING WRITTEN SUBMISSIONS OF THE PLAINTIFFS**

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## **PART I - OVERVIEW AND ROADMAP**

1. This Court has found the City of Ottawa liable in negligence for the class members' losses. For the plate owner class, the losses at issue are a permanent loss in value of taxi plates. Taxi plates are financial assets that can be valued using tried-and-true methods. Using these methods, these losses ought to be assessed in the aggregate.

2. The City's non-enforcement was not a one-time event: it occurred continuously over a sustained period of time: this Court held that the City failed to enforce its taxi by-law from September 1, 2014 to September 30, 2016 ("**the breach period**"). This sustained breach of the standard of care caused permanent loss to the value of taxi plates.

3. The issue to be decided at this phase of the trial is Common Issue 5: are damages assessed in the aggregate an appropriate remedy? The answer is yes: aggregate damages are the only means to provide an effective remedy. Quantification of damages will occur after the appeals have been exhausted. Thus, the only question at this phase is at what level these damages should be assessed: whether they should be assessed in the aggregate, or whether they should be assessed on an individualized basis.

4. The choice is stark: the plaintiffs put forward a methodology to assess the permanent loss of plate value at the aggregate level. This methodology also incorporates the plaintiffs' lost income during the 2-year breach period. It requires calculating the loss in value of four types of taxi plates, multiplying by the number of plates to calculate a total (aggregate) value for damages, and distributing this total value among the class based on plate ownership. This methodology is reliable and will put the plaintiffs back to where they would have been but for the City's negligence.

5. By contrast, the City puts forward a theory of damages that excludes lost plate value and focuses solely on lost income during the breach period. At best, this methodology represents a fraction of the plaintiffs' losses and would not make them whole. Nor does this methodology even do what it purports to, namely "isolate" the effects of the City's negligence. It is unwieldy, resource-intensive, and inaccessible: it would effectively deny any meaningful remedy to the plaintiffs.

6. During the breach period, the City and its consultants made a conscious choice to exclude the topic of plate values from their regulatory review and subsequent recommendation to legalize Uber. The City deliberately made this decision while unreasonably refusing to enforce its taxi by-law, allowing Uber to establish itself in Ottawa and absorb a substantial market share from the taxi industry. The City had full knowledge that its negligence was decimating hundreds of millions of dollars in plate value.

7. The lost plate value is not just a number. It represented the livelihoods and retirements of hardworking Canadians and their families. This Court should not lose sight of this salient fact. Ten years after the breach period, the City and its latest round of experts have once again attempted to write plate value outside the scope of this class action proceeding.

8. The City cannot resile from its responsibility for dismantling the taxi industry through its negligence. In order to provide an effective remedy in this class action, the plaintiffs ask this Court to answer Common Issue 5 in the affirmative and find that damages for the Plate Owner Class should be assessed in the aggregate.

9. The remainder of these submissions are organized as follows:

- (a) **Part II** provides an overview of the procedural history and the factual evidence tendered at trial that is relevant to Common Issue 5.
- (b) **Part III** sets out the legal issue to be decided by this Court.
- (c) **Part IV** provides an overview of the legal framework applicable to Common Issue 5 in light of the procedural posture of this proceeding.
- (d) **Part V** provides a summary of the expert evidence tendered by the parties.
- (e) **Part VI** sets out the plaintiffs' legal argument for Common Issue 5. It argues that this Court should determine that aggregate damages are an appropriate remedy.
- (f) **Part VII** sets out the relief requested by the plaintiffs.

## **PART II - PROCEDURAL BACKGROUND AND FACTS**

### **A. Procedural background**

#### **1. The Plate Owner Class seeks damages for lost plate value**

10. There are 768 individuals in the Plate Owner Class.<sup>1</sup> In this phase of the proceeding, the plaintiffs seek aggregate damages in negligence on behalf of the Plate Owner Class for their loss of plate value.

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<sup>1</sup> *Metro Taxi Ltd v City of (Ottawa)*, 2018 ONSC 509 (“**Certification Decision**”) at [para 1](#). The plate owner class is defined as “All persons who on September 1, 2014 held a standard taxicab plate holder license or an accessible taxicab plate holder license pursuant to City of Ottawa By-law 2012-258 (the “**2012 By-law**”), as amended, or who were issued a standard taxicab plate holder license or an accessible taxicab plate holder license pursuant to the 2012 By-law between September 2, 2014 and September 30, 2016” (the “**Plate Owner Class**”).

11. This class action was commenced in 2016. In their statement of claim and subsequent amendments, the plaintiffs alleged that they sustained “damages through a loss in the value of their Plates and a loss in the income earned from their Plates” as a “result of the City’s negligence”.<sup>2</sup>

12. This class action was certified in 2018. Two classes were certified:

(a) All persons who on September 1, 2014 held a standard taxicab plate holder license or an accessible taxicab plate holder license pursuant to City of Ottawa By-law 2012-258 (the “**2012 By-law**”), as amended, or who were issued a standard taxicab plate holder license or an accessible taxicab plate holder license pursuant to the 2012 By-law between September 2, 2014 and September 30, 2016 (the “**Plate Owner Class**”); and

(b) All persons who on September 1, 2014, held a taxicab broker license pursuant to the 2012 By-law or who were issued a taxicab broker license pursuant to the 2012 By-law between September 2, 2014 and September 30, 2016 (the “**Broker Class**”).<sup>3</sup>

13. Five common issues were certified:

**Common Issue 1:** Was the City negligent in enforcing the 2012 By-Law from September 1, 2014 to September 30, 2016?

**Common Issue 2:** Were the 2016 amendments to the 2012 By-law unlawful?

**Common Issue 3:** Did the City’s conduct in allegedly negligently enforcing the 2012 By-law or in amending the 2012 By-Law in 2016 infringe on the right of

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<sup>2</sup> Statement of Claim dated August 12, 2016 at para 34; Amended Amended Statement of Claim dated May 15, 2017 at para 34.

<sup>3</sup> Order of Justice Robert Smith dated April 16, 2018 (“**Certification Order**”), Trial Record at para 2, A291.

the Plate Owner Class under s. 15 of the *Charter of Rights and Freedoms* or under s. 3 of the *Human Rights Code*?

**Common Issue 4:** Did the fees collected by the City under the 2012 By-Law constitute an unlawful tax?

**Common Issue 5:** Are damages assessed in the aggregate an appropriate remedy?<sup>4</sup>

14. In the certification motion, the plaintiffs submitted that damages for lost plate value could be determined in the aggregate. The certification judge described this submission as follows:

[78] The plaintiffs submit that they have all suffered damages that can be determined in the aggregate, because the value of their taxicab licenses have been reduced for every class member as a result of the City's alleged failure to enforce the Taxi By-law and making the amendments to the Taxi By-law in 2016 to regulate and permit Uber to operate in the City. They submit that the aggregate amount of their damages for the loss in value of their taxi licenses can be determined by an expert appraiser.<sup>5</sup>

## 2. The parties agreed to tender no new fact evidence for Common Issue 5

15. Before the commencement of the trial of the common issues in January 2023, the plaintiffs discontinued Common Issue 2 on consent. The trial of Common issues 1, 3 and 4 was held in January and February 2023. During the trial, this Court adjourned Common Issue 5 to a second phase of the trial, following this Court's decision on Common Issues 1, 3 and 4.<sup>6</sup>

16. In May 2024, this Court issued its decision on Common Issues 1, 3 and 4 (the "**Trial Decision**").<sup>7</sup> On Common Issue 1, this Court found that the City was negligent in enforcing the 2012 By-law from September 1, 2014 to September 30, 2016. This Court found that the City owed

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<sup>4</sup> Certification Order at para 5, A291–A293.

<sup>5</sup> Certification Decision at [para 78](#).

<sup>6</sup> Trial Ruling, January 24, 2023, transcript, pp 1:20–9:5, A4727–A4735.

<sup>7</sup> *Metro Taxi Ltd et al v City of Ottawa*, [2024 ONSC 2725](#) ("**Trial Decision**").

a duty of care to the plaintiff classes to enforce the 2012 By-law,<sup>8</sup> and that the City failed to meet the standard of care.<sup>9</sup> This Court further found that the City's negligence caused the plaintiffs' damages.<sup>10</sup>

17. Following the trial decision on the other 3 common issues, the parties agreed in a telephone discussion between counsel on May 27, 2024 that "any appeal" of the Trial Decision "cannot occur" until Common Issue 5 is decided, and that Common Issue 5 "will be heard on the basis of the existing record" and expert evidence (the "**Agreement**"). The Agreement was confirmed in a letter from the City's counsel to the plaintiffs' counsel on May 28, 2024.<sup>11</sup>

18. In a case management conference on June 28, 2024, the parties represented the elements of the Agreement to the Court as follows:

- (a) the trial of Common Issue 5 should be conducted based on the liability findings in the Trial Decision. In other words, the question of whether damages in the aggregate are an appropriate remedy should be answered with regard only to the liability findings on Common Issue 1;
- (b) the trial of Common Issue 5 would proceed based on the existing trial record as well as the evidence of the parties' experts;

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<sup>8</sup> Trial Decision at paras [98–182](#).

<sup>9</sup> Trial Decision at paras [183–233](#).

<sup>10</sup> Trial Decision at paras [234–244](#).

<sup>11</sup> Letter from Todd Burke to Thomas Conway dated May 28, 2024, Exhibit KK, A8532.

- (c) once the Court decides Common Issue 5 and any appeal is finally decided, the plaintiffs' damages can be quantified; and
- (d) the parties agreed that new evidence could be used for the quantification of damages.

19. The continuation of the evidentiary portion of the trial was scheduled to recommence on February 10-14, 2025, with oral argument to be heard on April 4, 2025.

20. Prior to the hearing, both parties advised one another that they did not intend to call any expert evidence. The plaintiffs also advised the City that they will not be pursuing aggregate damages for the second certified class: the Broker Class. As such, damages for the Broker Class will be assessed individually for each broker.

21. On February 5, 2025, counsel for both parties advised the Court that they did not intend to call their respective experts with respect to Common Issue 5, and that they would rely on evidence already tendered at trial to make written and oral submissions.<sup>12</sup> They further advised the Court that the plaintiffs did not intend to seek aggregate damages for the Broker Class.

22. Given this development, the Court vacated the February 2025 trial dates ahead of the April 4, 2025 date for oral closing submissions. Pursuant to an agreed-upon timetable, the parties then exchanged written closing submissions on Common Issue 5. The plaintiffs set out the terms of the Agreement in their written submissions, and the City raised no objection to this at the time.<sup>13</sup>

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<sup>12</sup> Letter from Thomas Conway to Justice Marc Smith dated February 5, 2025.

<sup>13</sup> Written Submissions of the Plaintiffs dated March 7, 2025 at para 13, A7742.

23. On April 4, 2025, this Court advised the parties that it required expert evidence to decide Common Issue 5.<sup>14</sup> As such, the trial was adjourned. Further to the Court's direction, the parties confirmed at the hearing that they would tender expert testimony. The parties did not raise the possibility of tendering additional fact evidence before this Court.

24. On May 22, 2025, this Court convened a trial management conference. During the trial management conference, the plaintiffs requested that this Court exercise its discretion to quantify the damages of the Plate Owner Class at the same time it decided Common Issue 5.

25. On May 27, 2025, this Court issued its endorsement at the trial management conference. This Court decided that Common Issue 5 should not be decided together with the question of quantification of damages.<sup>15</sup>

26. Following the trial management conference, neither party requested that this Court alter or modify the terms of the Agreement. Accordingly, Common Issue 5 was to be heard on the basis of expert evidence only, with no new fact evidence permitted.

**3. The parties were to provide expert evidence but no new fact evidence at this stage of the proceeding**

27. Further to the Court's direction, the parties exchanged expert reports pursuant to an agreed-upon timetable:

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<sup>14</sup> Trial Transcript, April 4, 2025, p 17:1–20.

<sup>15</sup> Trial Management Conference Endorsement dated May 27, 2025.

- (a) the report of Professor Martin Boyer and Professor Christian Dorion, dated October 14, 2025;<sup>16</sup>
- (b) the report of Professor Derek Stacey, dated January 8, 2026;<sup>17</sup>
- (c) the report of Timothy Zimmerman, dated January 9, 2026;<sup>18</sup> and
- (d) the supplemental report and rejoinder of Professor Boyer, dated February 25, 2026.<sup>19</sup>

28. The trial of Common Issue 5 was scheduled to continued beginning on March 31, 2026 for a period of four days.

29. On March 6, 2026, the City served a request to admit the truth of certain facts and the authenticity of certain documents on counsel for the plaintiffs, as well as an *Evidence Act* notice.<sup>20</sup>

30. Two and a half weeks before the commencement of the trial, the City advised the plaintiffs of its intention to bring a motion to strike Professor Boyer’s report at the outset of trial.

31. On March 16, 2026, this Court directed the motion to strike to proceed in advance of trial on March 25, 2026.

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<sup>16</sup> Expert Report of Martin Boyer dated October 14, 2025 (“**Boyer Report**”), Exhibit Z, A8301–A8373.

<sup>17</sup> Expert Report of Derek Stacey dated January 8, 2026, (“**Stacey Report**”), Exhibit EE, A8473–A8531.

<sup>18</sup> Report of Timothy Zimmerman dated January 9, 2026 (“**Zimmerman Report**”), Exhibit HH, B-1-19011–B-1-19037.

<sup>19</sup> Supplemental Report and Rejoinder of Martin Boyer dated February 25, 2026 (“**Boyer Rejoinder Report**”), Exhibit AA, A8447–A8456.

<sup>20</sup> Request to Admit of the City of Ottawa dated March 6, 2026, Exhibit L, B-1-18931–B-1-18948; Evidence Act Notice of the City of Ottawa dated March 6, 2026, B-1-18952–B-1-19010.

32. On March 26, 2026, counsel for the plaintiffs sent counsel for the City their response to the request to admit, denying it in the entirety. In the letter, counsel for the plaintiffs reiterated their understanding that Common Issue 5 will be heard on the basis of the existing factual record in addition to expert evidence, in accordance with the Agreement. Counsel for the plaintiff wrote that the City's attempt to introduce new factual evidence through the request to admit and *Evidence Act* notice constitutes a breach of the Agreement.<sup>21</sup>

33. Counsel for the City did not respond to the March 26, 2026 letter.

34. On March 27, 2026, this Court issued an endorsement wherein it dismissed the motion to strike with costs, with reasons to follow.

35. On March 31, 2026, the trial continuation began. During the examination-in-chief of Professor Boyer, counsel for the plaintiffs brought him to two documents he referred to in his report that were not yet in the trial record:

- (a) **POS Chart, July 2019:** A spreadsheet containing the total number and total sums of credit card and debit transactions for taxis for the period of February 2008 to July 2019, provided by Coventry Connections.<sup>22</sup>
- (b) **Total fares from Courtney, July 31<sup>st</sup>, 2019, corrected for February 2017 figures:** A spreadsheet containing the total amount of fares and temperatures by

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<sup>21</sup> Letter from Thomas Conway to Todd Burke dated March 26, 2026, Exhibit NN, A8591.

<sup>22</sup> POS Chart dated July 2019, Exhibit BB, A8472.

taxi fleet for the period of October 2011 to July 2019, also provided by Coventry Connections.<sup>23</sup>

36. At the time, counsel for the plaintiffs stated that “we will not be seeking to enter any documents into evidence here, as it is our understanding that no new fact evidence is admissible at this time, at the stage of the trial.”<sup>24</sup> Counsel for the City did not dispute this submission or correct the plaintiffs’ understanding in this regard. As such, these documents were both entered as exhibits for identification only.

37. Later in the trial, counsel for the City attempted to tender a Statistics Canada spreadsheet as factual evidence for the truth of its contents through the cross-examination of Professor Boyer.<sup>25</sup> At the time, counsel for the plaintiffs raised the Agreement and the plaintiffs’ reliance on it.<sup>26</sup> This Court ruled that the spreadsheet could be marked as a numbered exhibit.<sup>27</sup>

38. As a result of their reliance on the Agreement, the plaintiffs were prevented from introducing factual evidence as part of their case in chief for Common Issue 5, including the two spreadsheets put to Professor Boyer discussed above. Had new fact evidence been admissible at this stage, the plaintiffs could have called fact witnesses to prove those spreadsheets and other data to be used in Professor Boyer’s methodology for the benefit of the Court.

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<sup>23</sup> Total fares from Courtney dated July 31, 2019, Exhibit CC, A8471.

<sup>24</sup> Boyer Ex, March 30, 2026, pp 114:1–115:30, A8710–A8711.

<sup>25</sup> Statistics Canada data 2011 census 2011 NOC 7513, Exhibit 234, B-1-19133.

<sup>26</sup> Boyer Ex, March 30, 2026, pp 87–92, A8825–AA840; see also Zimmerman Ex, dated April 2, 2026, pp 72:8–74:16, A9100–A9107.

<sup>27</sup> Boyer Ex, March 30, 2026, pp 100:25–101:9, A8838–A8839.

## **B. Facts**

39. This section sets out key findings from the Trial Decision and evidence in the trial record that are relevant to Common Issue 5.

### **1. The City is liable in negligence**

40. On Common Issue 1, this Court held that the City was liable to the plaintiff classes in negligence.<sup>28</sup>

41. With respect to the duty of care, this Court held that the City and the plaintiff classes developed a close relationship established through decades. Namely, this Court held that the parties enjoyed “a rigorous partnership in the context of enforcement”<sup>29</sup> that was akin to a “partnership or a joint venture, created for the purpose of combating unlicensed taxicab operations”.<sup>30</sup> In that regard, this Court made the following findings:

- (a) By 2006, it became abundantly clear to the City that unlicensed taxicab companies “diminished the value of plates”.<sup>31</sup> As such, the City dedicated resources to the enforcement of its taxicab by-laws because a “failure to do so would have decreased the incomes and plate values”<sup>32</sup> of taxi plate owners;
- (b) In 2008, the City required the Chief License Inspector to work with the taxi industry to identify and implement a strategy to “eradicate the use of illegal underground taxi services”<sup>33</sup>;

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<sup>28</sup> Trial Decision at [para 55](#).

<sup>29</sup> Trial Decision at [para 142](#).

<sup>30</sup> Trial Decision at [paras 98, 165](#).

<sup>31</sup> Trial Decision at [para 111](#).

<sup>32</sup> Trial Decision at [para 113](#).

<sup>33</sup> Trial Decision at [para 147](#).

- (c) “Uber was a bandit taxicab company, and the City knew, by experience, that failure to enforce against a bandit company would have a devastating impact on the licensed taxi industry”,<sup>34</sup>
- (d) Upon the arrival of Uber, the taxi industry’s expectations regarding by-law enforcement remained intact, as the City initially asked for its assistance in enforcement,<sup>35</sup> and
- (e) Shortly after the arrival of Uber and by early 2015, the special relationship between the plaintiffs and the City “disintegrated”.<sup>36</sup> To that end, the City refused to accept assistance from Mr. Way regarding Uber’s illegal activities and began working towards ways to legalize Uber.

42. Importantly, this Court found that the City breached the standard of care on an ongoing basis over the course of two years.<sup>37</sup> This Court found that the City breached the standard of care in the following ways:

- (a) The City had no plan to enforce against Uber prior to its arrival in Ottawa;<sup>38</sup>
- (b) The City rejected attempts from the taxi industry to assist in enforcement against the City of Ottawa;<sup>39</sup>

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<sup>34</sup> Trial Decision at [para 114](#).

<sup>35</sup> Trial Decision at [para 162](#).

<sup>36</sup> *Ibid.*

<sup>37</sup> Trial Decision at [paras 194–196](#).

<sup>38</sup> Trial Decision at [paras 197–210](#).

<sup>39</sup> Trial Decision at [para 214](#).

- (c) The City only enforced its by-law against Uber drivers when it knew for years that this was an ineffective strategy from prior experience, because it was “just treating the symptom, not the problem”;<sup>40</sup>
- (d) Despite knowing that its enforcement efforts were ineffective, the City did not proceed to more progressive enforcement options;<sup>41</sup> and
- (e) The City did not take any steps to enforce against Uber.<sup>42</sup>

43. The evidence tendered at trial further established that the plaintiff classes experienced financial losses as a result of the City’s negligence. Various plate owners testified to their lost income and diminished plate value during and following the breach period.<sup>43</sup> They also testified to the fact that they had to postpone their retirement.<sup>44</sup>

44. With respect to causation, this Court held that City caused the plaintiffs’ damages in fact and in law. In particular, this Court held as follows:

[240] Once Uber started to operate illegally in Ottawa, plate owners made the City aware that Uber’s illegal operations were making it difficult for them to provide for their families. Uber was illegally saturating the Ottawa market with discounted or free rides to gain a significant market share, resulting in negatively impacting a strong and viable taxi industry.

[241] The City takes the position that if the Plaintiffs suffered any damages, which it denies, those damages were inevitable from the moment that Uber decided to expand into Ottawa. I disagree. The City failed to enforce the 2012-By-law. The City’s flawed approach of only targeting Uber drivers and deliberately avoiding Uber, the dispatcher, is directly related to the Plaintiffs’

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<sup>40</sup> Trial Decision at paras [153](#), [211](#), [215–216](#).

<sup>41</sup> Trial Decision at [para 217](#).

<sup>42</sup> Trial Decision at [para 218–233](#).

<sup>43</sup> Trial Decision at [para 290](#); Way Ex, January 10, 2023, pp 4–13, A3468–A3477; Dadi Ex, January 23, 2023, pp 106–110, A4680–A4684.

<sup>44</sup> Dadi Ex, January 23, 2023, pp 109–111, A4680–A4682; Mezher Ex, January 18, 2023, pp 20–23, A4204–A4207.

loss. Any loss incurred and proven by the Plaintiffs is directly caused by the City's inaction or ineffective inaction in the enforcement of its taxi by-laws".

.....

[243] Suffice it to say, any reasonable person would foresee that the failure to enforce the taxi regulations against Uber would have a devastating economic impact on the Plaintiffs. This cannot be described as too remote.

[244] I am satisfied that the City caused the Plaintiffs' damages.<sup>45</sup>

## **2. From the 1970's to the illegal arrival of Uber, taxi plates in Ottawa accumulated value**

45. The City's supply management system is the foundation for the market of plates. The system combines the limited supply of plates with the transferability of plates. This combination directly resulted in the creation of plate value.<sup>46</sup>

46. Plate value is a matter of public knowledge. The City requires plate owners to report transaction prices in the form of an agreement of purchase and sale as a condition of transferring a plate.<sup>47</sup> In essence, it is a regulatory obligation to report plate values to the City.

47. The supply management system that created and preserved plate value was a rules-based system. To this end, the City buttressed the plate limits and transferability in the taxi by-law with its own ample enforcement measures against unlicensed taxi drivers and taxi brokers.<sup>48</sup> In reliance on these rules and their historic enforcement, class members invested in this system and counted on the City to enforce it and preserve their investment.<sup>49</sup> In exchange, plate owners and taxi drivers were required to satisfy various language and safety requirements.<sup>50</sup>

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<sup>45</sup> Trial Decision at [paras 240–243](#).

<sup>46</sup> Trial Decision at [para 105](#).

<sup>47</sup> Taxi By-law, s. 92, Exhibit 2, F3935–F3936.

<sup>48</sup> For example, see 2012 By-law ss. 127–128, F3984.

<sup>49</sup> Mezher Ex, January 18, 2023, pp 26:26–27:10, A4210–A4211; Dadi Ex, January 23, 2023, p 105:6-11, A4679.

<sup>50</sup> See, for example, Mezher Ex, January 18, 2023, pp 1:25–2:32, 14:3–32, A4186–A4187, A4198.

48. Four years after introducing plate limits and transferability, the old City of Ottawa was put on notice that taxi plated has accrued value. In 1975, the former City of Ottawa released its first major report on the taxi industry, authored by Jim MacKenzie. Mr. MacKenzie noted that plates were trading for up to \$8,000 and considered the possibility of removing the taxi plate limits. In his report, he recommended not removing plate limits:

“The City charges an initial fee of \$300 for a taxicab license and an annual renewal fee of \$100. The license is transferrable after 3 years and current market price is in the neighbourhood of \$8,000 (The City received 10% of this as a transfer fee). This high artificial value of a license has been established by virtue of the limit on the number of the limit on the number of plates available. Removal of the limit would automatically result in the almost total loss of value.

As a result of its actions in allowing the transfer of licenses, the City has condoned the investment of up to \$8,000 in a commodity that it issues for \$300 and that has no direct value in itself. If it removed the limit or made the license non-transferrable, the City would be directly responsible for causing substantial financial loss. I suggest that the City is now obligated to protect the investment it has encouraged. For this reason I do not recommend removal of the limit.<sup>51</sup>

49. Following Mr. Mackenzie’s recommendation, the City voted to maintain the plate limits.<sup>52</sup>

50. The City reaffirmed its commitment to the supply management system on various other occasions where its regulatory model was reviewed in the next 50 years. On each occasion, the City was aware that the market value for taxi plates were increasing:

- (a) In 1989, the Regional Municipality of Ottawa Carleton (the “**RMOC**”) commissioned a report authored by J. Douglas Cameron which recommended the elimination of plate transfers. The report noted that taxi plates in the Old City of

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<sup>51</sup> City of Ottawa Report – Report on the Taxi Industry dated July 15, 1975, Exhibit 5, F1200–F1201 (emphasis added).

<sup>52</sup> City Council Minutes dated December 15, 1975, Exhibit 151, A1689–A1690.

Ottawa traded for \$50,000 and recommended the industry-funded compensation of Ottawa and Vanier licenses for \$42,000 each.<sup>53</sup>

- (b) In 1990, the RMOC commissioned a report authored by Hickling Corporation. This report noted that Ottawa plates were reportedly being exchanged for \$55,000.<sup>54</sup>
- (c) In 2000, the Ottawa Transition Board contemplated the removal of plate limits upon amalgamation. It commissioned a report from Hara and Associates (Dr. Dan Hara) called “Plate Value Options” (the “**Hara 2000 Report**”) to explore compensation options to plate owners upon amalgamation. After receiving the Hara 2000 Report, the Transition Board released its own report which noted that plates were trading for as high as \$125,000 and that people have paid \$47,000 for the right to lease a plate.<sup>55</sup>
- (d) In 2001, the City retained Brian Bourns of KPMG as a consultant regarding the removal of plate limits. Following amalgamation, each part of the City was divided into “zones” specific to taxi plates of the former municipalities. Mr. Bourns noted that plates in the Old Ottawa zone enjoyed a market value of \$105,000, and that collective agreements influence plate values.<sup>56</sup> He recommended that the City adopt a by-law which adopted a single zone. He calculated the impact of this recommendation on then-current plate values.<sup>57</sup>

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<sup>53</sup> Regional Municipality of Ottawa-Carleton, Licensing Committee, dated June 1989, Exhibit 30, F8456.

<sup>54</sup> Hickling Report dated 1991, Exhibit 6, F2400.

<sup>55</sup> Report to the Ottawa Transition Board dated September 2000, Exhibit 148, p 12, A1448.

<sup>56</sup> Report to EPSC and Council dated June 11, 2001, Exhibit 7, F2266.

<sup>57</sup> Report to EPSC and Council dated June 11, 2001, Exhibit 7, F2271.

- (e) In 2004, Dr. Hara and Mr. Bourns prepared a presentation to the City on the Taxi Cost Index. In the presentation, they noted that plates were being exchanged in the range of \$72,000 to \$111,000, and that high plate values were linked to the success of the uptake of accessible taxis.<sup>58</sup>
- (f) In 2012, the City re-enacted its taxi by-law to allow the transferability of accessible plates after five years.<sup>59</sup> At the time, the City was aware that taxi plates were selling for in excess of \$200,000.<sup>60</sup>

51. The City benefitted financially from high plate values. From 2001 to 2005, it collected 10% of percentage of the reported plate transfer price, up to \$5,800 as a fee to complete a transfer.<sup>61</sup> The \$5,800 figure was based on 10% of the 1993 fair market price of a taxi plate in the old City.<sup>62</sup>

52. Based on the foregoing evidence, this Court made the following findings regarding the market for taxi plates in Ottawa:

- (a) The City’s “supply management plate system has created a market for the taxi plates”;<sup>63</sup>
- (b) The City “was representing to the taxi industry that taxi plates belonged to them, and as such, these were assets that they owned”<sup>64</sup>;

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<sup>58</sup> Replacement for a Taxi Cost Index Presentation to EPSC dated 2004, Exhibit 150, A1516.

<sup>59</sup> City Council Minutes dated April 11, 2012, Exhibit 52, F3757.

<sup>60</sup> Letter from Greg Ward to Jugesh Vig dated July 12, 2012, Exhibit 202, F470.

<sup>61</sup> Report to Community and Protective Services Committee and Council dated December 12, 2001, Exhibit 157, A1838; Hartig Cr Ex, February 3, 2023, pp 81:25–82:8, A5908–A5909.

<sup>62</sup> Collective Agreement – Blueline 1990-1993, Article 24.05, Exhibit 1, F5655; Hartig Cr Ex, February 3, 2023, pp 91:25–95:14, A5918–A5922.

<sup>63</sup> Trial Decision at [para 105](#).

<sup>64</sup> Trial Decision at [para 101](#).

- (c) The City was a “willing participant in the secondary market” for taxi plates;<sup>65</sup> and
- (d) Taxi plates “were and are considered an asset”<sup>66</sup>. In that regard, they were “seen as a retirement fund”<sup>67</sup>; and
- (e) “acquiring a taxi plate was an informed business decision motivated by an ability to generate income and invest in an asset that would accumulate value”;<sup>68</sup>

53. Upon the eve of the entry of Uber and the breach period, the City was aware that high plate values remained entrenched. In this regard, this Court found that prior to Uber entering the market, taxi plates were being sold for “hundreds of thousands of dollars on a regular basis”.<sup>69</sup>

54. Indeed, the City was specifically aware of the approximate aggregate value of taxi plates prior to the entry of Uber. For example, in 2001, Ms. Jones wrote a memo to a City Councillor wherein she confirmed that the aggregate fair market value of taxi plates in Ottawa not under collective agreements was approximately \$71 million.<sup>70</sup> Later, KPMG identified the aggregate plate value prior to the entry of Uber in 2014 as over \$200 million.

55. KPMG promised to not to raise plate owner’s expectations about maintaining this aggregate value in its review of the regulatory regime:

**Plate Values:** There has already been public discussion, including an editorial in the Citizen, suggesting that the City should take responsibility for the value that has been attributed to taxi plates, and compensate holders for the value that might be lost if a new system is implemented. The value of the plates likely

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<sup>65</sup> Trial Decision at [para 181](#).

<sup>66</sup> Trial Decision at [para 104](#).

<sup>67</sup> *Ibid.*

<sup>68</sup> Trial Decision at [para 357](#).

<sup>69</sup> Trial Decision at [para 110](#).

<sup>70</sup> Memo from Susan Jones to Councillor Legendre dated July 4, 2001, (drawing on figures from the 2000 Hara Report), Exhibit 203, A2380.

exceeded \$200m before the ABSMs [i.e., Uber] began their services. There are certainly improvements to the vehicle-for-hire industry that can be achieved, but it is hard to imagine benefits that would warrant that type of expenditure.... It is important that the approach to this review, the discussions during the review, and the solution are careful not to raise expectations.<sup>71</sup>

56. In this testimony, Mr. Bourns admitted that this \$200 million number was calculated by multiplying the likely fair market value of the plates by the number of plates in circulation.<sup>72</sup>

57. Mr. Bourns was aware of the potentially devastating impact of his recommendation to legalize Uber as the City's negligence remained outgoing. Despite this fact, he made a conscious decision to exclude any discussion of plate values from his final report. This omission speaks volumes about the fairness of dismantling the supply management system without any consideration of compensation to plate owners for their plate values.<sup>73</sup>

### **3. The City's negligence caused a permanent loss in plate value**

58. Given the foregoing, the findings in the Trial Decision make clear that (1) the City's negligence permanently altered the plaintiffs' expectations with respect to by-law enforcement, and (2) the City altered these expectations during the breach period.

59. This Court found that, during the breach period, the City reneged on its historic partnership with the taxi industry by declining assistance on enforcement and fast-tracking a regulatory review with the aim of legalizing of Uber.<sup>74</sup> Consequently, Mr. Way specifically testified to the fact that many plate owners did not sell their plates during the breach period.<sup>75</sup> This culminated in a City

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<sup>71</sup> Full Version of KPMG Response to Request to Proposal, Exhibit 147, F1044.

<sup>72</sup> Bourns Ex, January 31, 2023, pp 21:13–22:2, A5403–A5404.

<sup>73</sup> Trial Decision at [para 163](#); see also Bourns Cr Ex, February 2, 2023, pp 61:14–62:1, A5732–A5733.

<sup>74</sup> Trial Decision at [paras 162](#).

<sup>75</sup> Way Ex, January 10, 2023, p 13:2–12, A3477.

Council vote to legalize Uber in April 2016, all while the City's breach of the standard of care remained in progress.<sup>76</sup>

60. At all material times, the City was aware of the magnitude of the aggregate plate value in Ottawa prior to the entry of Uber. In particular, the City was aware of the magnitude of this value while it was simultaneously (1) negligent in its enforcement and (2) working towards paths to legalize Uber. These actions and omissions are inextricably linked. The failure of the City to enforce the by-law allowed Uber to gain a significant market share during the breach period, to the detriment of the taxi industry.<sup>77</sup>

61. The City's negligence caused a permanent alteration in expectations, and, correspondingly, a permanent loss in plate value. The integrity of the rules-based, supply management system of taxi regulation in Ottawa fell apart in the breach period. There is no evidence in the record that the damages caused by the City's negligence were temporally confined to the breach period.

#### **4. Taxi plate value has been quantified in Ottawa and elsewhere**

62. There are various examples in the trial record of taxi plates being valued in large groups or in the aggregate.

63. As a first example, the City cross-examined Marc Andre Way on a report that was obtained from Collins Barrow Ottawa LLP by Metro Taxi Ltd., and marked the report as an exhibit.<sup>78</sup> In this report, Collins Barrow conducted a business valuation of Metro Taxi as at February 22, 2014.<sup>79</sup>

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<sup>76</sup> Trial Decision at [paras 48–49](#); see also City Council Meeting Minutes dated April 13, 2016, Exhibit 123, F3723–F3733.

<sup>77</sup> Trial Decision at [para 240](#); see also Jones Cr Ex, February 9, 2023, pp 150:9–153:14, A6568–A6571.

<sup>78</sup> Metro Taxi Ltd., Calculation Valuation Report as at February 22, 2024, prepared by Collins Barrow Ottawa LLP, Exhibit 35, (“**Collins Barrow Report**”), F3567–F3597.

<sup>79</sup> Collins Barrow Report, Exhibit 35, at para 1, F3570.

In order to conduct the valuation, Collins Barrow had to value the 86 standard and accessible taxi plates that Metro Taxi owned at the time.<sup>80</sup>

64. As a second example, the Hara 2000 report assessed the aggregate value of taxi plates in the various pre-amalgamated municipalities to provide the Transition Board with compensation options.<sup>81</sup> Hara Associates provided three valuations that ranged from a low of \$32,873,839 to a high of \$70,771,410.<sup>82</sup>

65. In addition to these examples from the trial record, taxi plates were valued in the aggregate in *Metellus c. Procureur général du Québec*, a 2024 class action decision of the Superior Court of Québec.<sup>83</sup> In *Metellus*, the Court held that the province of Québec (the regulator of the taxi industry) had unlawfully expropriated taxi plates without full compensation to plate owners as a result of its response to Uber's entry to the market.<sup>84</sup> The Court awarded members of the taxi industry aggregate damages for loss in plate value.<sup>85</sup>

66. In *Metellus*, the Court assessed the loss in plate value in the amount of \$143,873,465, based on the total market value of taxi plates prior to the market entry of Uber in 2016 less the total payments already made to plate owners by the province through a partial compensation scheme.<sup>86</sup>

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<sup>80</sup> Collins Barrow Report, Exhibit 35, at paras 22, 36, F3577, F3581; see also Schedule A, F3585.

<sup>81</sup> Jones Cr Ex, February 10, 2025, pp 36:21–45:22, A6620–A6629.

<sup>82</sup> See Memo from Susan Jones to Councillor Legendre dated July 4, 2001, Exhibit 203, F483; Plate Value Options Paper, prepared for Taxi Project Team of the Ottawa Transition Board by Hara Associates Inc., Exhibit 205, A1475–A1505.

<sup>83</sup> *Metellus c Procureur général du Québec*, [2024 QCCS 2388](#) [*“Metellus”*].

<sup>84</sup> *Metellus* at [para 10](#).

<sup>85</sup> *Metellus* at [para 140](#).

<sup>86</sup> *Metellus* at [para 141](#).

In doing so, the Court relied on the expert methodology of Professor Martin Boyer, who calculated the aggregate market value of taxi plates.<sup>87</sup>

### **PART III - ISSUES**

67. The sole issue at this stage is Common Issue 5: Are damages assessed in the aggregate an appropriate remedy?

68. The plaintiffs submit that, in the case of the Plate Owner Class, the answer is **yes**.

### **PART IV - LEGAL FRAMEWORK**

69. The awarding of aggregate damages is governed by the *Class Proceedings Act, 1992* (the “CPA”). Section 24 of the CPA empowers this Court to “determine the aggregate or part of a defendant’s liability to class members and give judgment accordingly” where:<sup>88</sup>

- (a) monetary relief is claimed on behalf of some or all class members;
- (b) no other 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 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.

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<sup>87</sup> *Metellus* at paras [32–33](#), [127–142](#); In 2026, the trial judgment in *Metellus* was reversed on appeal due to a legal error of the trial judge with respect to disguised expropriation. Professor Boyer’s expert evidence was not challenged or impeached on appeal. See [2026 QCCA 395](#).

<sup>88</sup> *Class Proceedings Act, 1992*, SO 1992, c 6, [s 24](#) (emphasis added) (“CPA”).

70. All three requirements are clearly met. First, the plaintiffs are seeking monetary relief in this action, and the Plate Owner Class is seeking aggregate damages. Second, following the decision from the first phase of the trial, the only remaining issues pertain to the assessment of damages. Third, as will be argued below, the aggregate part of the City’s liability to the Plate Owner class can be reasonably determined without proof by individual class members.

71. To the plaintiffs’ knowledge, there is no reported case under s. 24 of the CPA where a court has decided if aggregate damages is an appropriate remedy without all of the evidence required for quantification of aggregate damages in the record.<sup>89</sup> This is because the plain language of s. 24 of the CPA expressly contemplates that the Court quantify damages: it states that the Court may “determine” the aggregate part of a defendant’s liability “and give judgment accordingly”.

72. Because of the unique procedural circumstances of this case, quantification is not the task of the Court at this stage. This Court ruled that it must determine the appropriateness of aggregate damages as a remedy as a threshold question, separately from the quantification of damages.<sup>90</sup> In accordance with the parties’ agreement and this Court’s procedural ruling, this Court will quantify damages a later stage, with the benefit of new fact evidence to be tendered by both parties. As

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<sup>89</sup> See e.g., *Ramdath v George Brown College*, 2014 ONSC 3066 at paras [24–27](#), [54–59](#), [86–87](#) (although the Court did not specifically quantify the aggregate damages award, it confirmed the methodology based on the evidence in the record and ordered that the plaintiffs could elect between an aggregate award or individual award, with the calculation to be made following the issuance of the decision) [*“Ramdath”*]; 2014 ONSC 4215 at paras [1](#), [7–8](#) (the Court issued an addendum confirming a component of the final calculation to determine the award) [*“Ramdath Additional Reasons”*]; 2015 ONCA 921 at para [116](#) (affirming the award of aggregate damages on two of the classes) [*“Ramdath Appeal”*]; *Spina v Shoppers Drug Mart Inc*, 2023 ONSC 1086 at paras [639–642](#) (the Court rejected a methodology which drew on the evidence in the trial record, holding that it contained methodological errors and that the assessment of damages was inherently idiosyncratic), aff’d [2024 ONCA 642](#); *Trillium Motor World Ltd v General Motors of Canada Limited*, 2015 ONSC 3824 at paras [537–612](#) (determining aggregate damages were appropriate at the same time the Court quantified damages), aff’d [2017 ONCA 544](#).

<sup>90</sup> Trial Management Conference Endorsement dated May 27, 2025.

such, this Court should apply the criteria set out in s. 24 of the CPA in light of the stage of the proceeding and with a view to the future evidence to be tendered.

73. This Court has the discretion to decide whether aggregate damages is an appropriate remedy in advance of the quantification stage. Section 12 of the CPA empowers this Court to make “any order it considers appropriate respecting the conduct of a proceeding....to ensure its fair and expeditious determination”.<sup>91</sup> To that end, the Supreme Court of Canada held in *Endean* that s. 12 grants class action judges broad discretion in making orders to develop procedures as necessary to promote the judicially economical resolution of litigation.<sup>92</sup> This Court has exercised this discretion a number of times already in this proceeding, including in its decision to defer Common Issue 5, and its later decision to determine Common Issue 5 separately from quantification of damages.

74. Damage assessment principles are also relevant to the question of whether aggregate damages is an appropriate remedy. It is well established that a trial judge is obliged to do his or her best to assess the damages suffered by a plaintiff on the available basis even where difficulties in quantification render a precise calculation impossible.<sup>93</sup> The difficulty of assessment is no ground for refusing substantial damages, even if guesswork is required.

75. In this case, the City is responsible as a tortfeasor for the diminution of value in taxi plates and the lost income of taxi plate owners. As such, it is uncontested that loss of income and loss plate value are two different heads of damages sustained by the plaintiffs. This Court therefore has

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<sup>91</sup> CPA, s 12.

<sup>92</sup> *Endean v British Columbia*, 2016 SCC 42 at paras 25–39 [“*Endean*”].

<sup>93</sup> See e.g. *TMS Lighting Ltd v KJS Transport Inc*, 2014 ONCA 1 at para 61, citing *Martin v Goldfarb*, 1998 CanLII 4150 (ON CA).

an obligation to assess both heads of damages (lost income and lost plate value), regardless of whether it determines that aggregate damages is an appropriate remedy.

76. That being said, the plaintiffs are only seeking aggregate damages for lost plate value before this Court. As discussed in further detail below, this is because the plaintiffs' expert, Professor Martin Boyer, opines that the quantum of lost aggregate income is included in the quantum of aggregate lost plate value.<sup>94</sup>

#### **PART V - PLAINTIFFS' EXPERT EVIDENCE – AGGREGATE DAMAGES**

Q. And in the 2010's, did you have conversations about, with City officials about plate values?

A. Yes. We were talking about, we, we were talking about plate values and we were very concerned of the fact that there were a large number of, a significant number of [bandit] taxis operating. One in question, one in particular had actually set up a dispatch system, Quest Services, and we were insisting that by-law services effectively do something about it.

Q. What does plate values have to do with [bandit] cabs?

A. It's that it basically allows someone to enter the market or enter the, the industry without having to follow rules, regulations, or invest in taxi plates.

Q. And what does that have to do with the plate values?

A. It diminishes the plate value.

Way Ex, January 5, 2023, p 130:8-24

\* \* \*

So the comparison I like to make, or the, the analogy I like to make with, with my students with respect to what is a fair market value is to use two brothers.

You have two brothers, and they both own a bicycle. They purchase a bicycle at the same time. And one of the brothers just takes his bicycle. He's, let's say he's a lawyer, and he takes his bicycle just to visit their mother every Friday, travels for three kilometres by bike and then goes to see the mother. The other brother is a delivery guy for Uber, uses the bicycle to make

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<sup>94</sup> Boyer Ex, March 31, 2026, p 16:6–12, A8754.

deliveries. So every day, he uses the bicycle, every day he receives money because he's making deliveries, and on a given Friday, the two of them go see their mother because they go see, every, every Friday, their mother, and the two bicycles are stolen.

We understand. This is the asset. Both of them own that asset, that, that bicycle.

Well, when the insurance company comes and says, "Well, should I — how much should I give the two brothers?" Well, that also asks the question, should the brother who's using this as a simply — to go see the mother on Friday but I'm a lawyer, just as a consumption good compared to the other brother, where it is a production good? Should the insurance company compensate one brother more than the other for the use of the bicycle?

No. The bicycle is an asset. There's one value to the asset. The brother that's making money with the bicycle should receive the same. He's lost the same amount, the bicycle, as compared to the brother who was using it just to show the mother that he can ride a bicycle still. So an asset has a value that is the value of the asset. It doesn't really matter what you do with it. So it's, just saying in a parable, what is the value of an asset in that there's a unique value, and it doesn't matter whether you value it for \$25 when it's, the price is five, or you value it at two when the price is five.

The price is five no matter what you do with it, no matter what you do with the cash flows, no matter how you use the asset, no matter if you use the asset. The fair market value is the fair market value, and there's only one.

Boyer Ex, March 31, 2026, p 56:23-57:25

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77. The following section presents the expert evidence of Professor Boyer. A one-page comparison of the plaintiffs' and City's approaches to damages can be found at **Appendix B** of these submissions.

## A. Martin Boyer

### 1. Credentials

78. Professor Martin Boyer has been a full Professor in the Department of Finance at HEC Montreal since 2006.<sup>95</sup> He has held various academic leadership positions including Power Corporation of Canada Chair, Chair of the Department of Finance, and President of the Faculty Senate.<sup>96</sup> He holds a PhD from Wharton School of Business.<sup>97</sup>

79. He has authored 73 peer-reviewed publications.<sup>98</sup> He is the Editor-in-Chief of the Journal of Risk and Insurance.<sup>99</sup> In 2025, he was awarded the President's Award from the American Risk and Insurance Association, a lifetime achievement award.

80. He has served as an expert witness in several proceedings involving asset valuation. For example, he provided expert opinion in the valuation of assets in a commercial matter and in a family law matter involving the Péladeau family.<sup>100</sup>

81. Professor Boyer has particular expertise in taxi plate valuation. He consulted for the Government of Quebec when it abolished taxi plates.<sup>101</sup> As discussed above, he was qualified as an expert in the *Metellus* class action in Quebec, where he valued the loss in taxi plate value in Quebec in the context of a claim of disguised expropriation.<sup>102</sup>

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<sup>95</sup> Boyer Voir Dire Ex, March 30, 2026, p 18:20–25, A8614; Boyer Report, Exhibit Z, p 47, A8347.

<sup>96</sup> Boyer Voir Dire Ex, March 30, 2026, pp 12:27–13:14, A8608–A8609; Boyer Report, Exhibit Z, p 47, A8347.

<sup>97</sup> Boyer Voir Dire Ex, March 30, 2026, p 18:16–23, A8614; Boyer Report, Exhibit Z, p 47, A8347.

<sup>98</sup> Boyer Voir Dire Ex, March 30, 2026, pp 14:27–17:14, A8610–A8613; Boyer Report, Exhibit Z, pp 49–53, A8349–A8353.

<sup>99</sup> Boyer Voir Dire Ex, March 30, 2026, p 18:30–33, A8614; Boyer Report, Exhibit Z, p 48, A8348.

<sup>100</sup> Boyer Ex, March 30, 2026, pp 21:15–22:16, A8617–A8618; Boyer Report, Exhibit Z, p 48, A8348.

<sup>101</sup> Boyer Ex, March 30, 2026, pp 79:16–80:31, A8675–A8676; Boyer Report, Exhibit Z, p 48, A3848.

<sup>102</sup> Boyer Ex, March 30, 2026, p 23:2–27, A8619; Boyer Report, Exhibit Z, p 48, A8348; see *Metellus*, rev'd *Procureur général du Québec c Metellus*, [2026 QCCA 395](#). In that action, Professor Boyer's methodology was accepted by the Quebec Superior Court. In fact, there was no issue about whether plate value could be calculated in the aggregate:

82. He was qualified in this proceeding as an expert in financial economics.<sup>103</sup>

## 2. Evidence

### a) *Mandate*

83. Professor Boyer's mandate was threefold. He was asked to:

- (a) explain how a loss of taxi plate value would be most appropriately calculated;
- (b) explain whether the loss in plate value can be reasonably assessed in the aggregate;  
and
- (c) explain the methodology for assessing plate value in the aggregate and why the methodology is fair and reasonable.<sup>104</sup>

84. Professor Boyer's answered these questions in his report and testified to them at trial. As described in the report, his opinion can be summarized as follows:

- (a) **Explain how a loss of taxi plate value would be most appropriately calculated:** "The appropriate technique to value taxi plates licenses is through a "discounted cash flow model" where all incremental cash flows due to the taxi plates are identified for all the foreseeable future and discounted to today using an appropriate discount rate."
- (b) **Explain whether the loss in plate value can be reasonably assessed in the aggregate:** "The loss in plate value must be assessed in the aggregate. The reason is that all financial assets that give the same right to some cash flows must have the same value. It follows that all licenses that have the same feature should have the same value, irrespective of who owns them and the prices they sold for. A contrario, taxi license plates that have different rights should have different values."

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both the plaintiff and defendant accepted that the plates could be valuated as an asset; the only issue was over the quantum (see QCCS decision at [paras 127–139](#)). As discussed above, while the Court of Appeal overturned the trial judge's liability findings, the methodology of Prof. Boyer was not impugned.

<sup>103</sup> Boyer Ex, March 30, 2026, pp 26:29–27:4, A8622–A8623.

<sup>104</sup> Boyer Ex, March 30, 2026, p 31:5–26, A8627; Boyer Report, Exhibit Z, p 4, A8304.

- (a) **Explain the methodology for assessing plate value in the aggregate and why the methodology is fair and reasonable.** “The loss in value for all taxi plates for single plate holder-drivers, whom we shall call the ‘Artisans’, should be estimated separately from ‘Industrial’ plates. Industrial taxi plates will be worth slightly less than Artisan plates to reflect the difference in the rights that come with both types of plates. The same can be said of accessible plates that are worth less than standard plates. The methodology is fair and reasonable; what is important is not how one uses the license, but what the price would be if such licenses were actively traded on the open market.”<sup>105</sup>

85. Overall, Professor Boyer concludes that damages sustained by taxi plate owners because of the City of Ottawa’s negligence **should be assessed in the aggregate.**<sup>106</sup>

*b) Scope of review*

86. Professor Boyer’s factual assumptions and documents relied upon were clearly set out in his testimony. Professor Boyer relied upon a number of documents provided by counsel: *inter alia*, the Trial Decision,<sup>107</sup> the Statement of Agreed Facts,<sup>108</sup> a number of exhibits from the trial record,<sup>109</sup> three additional documents provided by counsel,<sup>110</sup> and a list of factual assumptions.<sup>111</sup> Beyond the documents provided by counsel, Professor Boyer relied upon his own research and expertise on taxi plate values in other jurisdictions including in Quebec.<sup>112</sup> The documentary basis of his opinion was not contested.

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<sup>105</sup> Boyer Ex, March 30, 2026, p 36:3–26, A8632; Boyer Report, Exhibit Z, p 7, A8307.

<sup>106</sup> Boyer Ex, March 30, 2026, p 34:13–19, A8630; Boyer Report, Exhibit Z, p 6, A8306.

<sup>107</sup> Boyer Cr Ex, March 31, 2026, p 43:12–21, A8781; Boyer Report, Exhibit Z, p 40, A8340.

<sup>108</sup> Boyer Ex, March 30, 2026, pp 33:11–34:5, A8629–A8630; Boyer Report, Exhibit Z, p 40, A8340.

<sup>109</sup> Boyer Ex, March 30, 2026, pp 74:24–75:7, 127:7–30, A8670–A8671, A8723; Boyer Report, Exhibit Z, p 40, A8340.

<sup>110</sup> Boyer Ex, March 30, 2026, p 32:12–15, A8628; Boyer Report, Exhibit Z, Appendix 12 – Letter to counsel, dated September 25, 2025, A8361; POS Chart dated July 2019, Exhibit BB, A8472; Total fares from Courtney dated July 31, 2019, Exhibit CC, A8471.

<sup>111</sup> Boyer Ex, March 30, 2026, pp 127:25–30, 130:21–132:17, A8723, A8726–A8728; Boyer Report, Exhibit Z, p 40, A8340.

<sup>112</sup> Boyer Ex, March 30, 2026, p 33:2–10, A8629–A8629; Boyer Report, Exhibit Z, pp 40–43, A8340–A8343.

*c) Opinion*

87. Professor Boyer's expert opinion can be summarized in four simple propositions:
- (a) Financial assets can be valued using the discounted cash flow method.
  - (b) Taxi plates are financial assets.
  - (c) The permanent loss in taxi plate value in Ottawa can be modelled based on supply and demand.
  - (d) The permanent loss in taxi plate value in Ottawa can be calculated using the discounted cash flow method based on a value for each of 4 families of plates.
  - (e) The permanent loss in taxi plate value in Ottawa can be assessed in the aggregate.
  - (f) Even if the proper measure of damages is income, it can also be assessed in the aggregate.
88. These will be set out in turn.

**i. Financial assets can be valued using the discounted cash flow method**

89. At the outset, Professor Boyer set out a very basic concept of finance: a financial asset is a set of rights to future income.<sup>113</sup> For example, a share of common stock is a right to the future dividends from that stock.<sup>114</sup> Financial assets derive their value from their ability to generate future revenues.<sup>115</sup>

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<sup>113</sup> Boyer Ex, March 30, 2026, p 37:14–30, A8633; Boyer Report, Exhibit Z, p 12, A8312.

<sup>114</sup> Boyer Ex, March 30, 2026, p 37:21–23, A8633; Boyer Report, Exhibit Z, p 12, A8312.

<sup>115</sup> Boyer Ex, March 30, 2026, p 37:14–30, A8633; Boyer Report, Exhibit Z, p 12, A8312.

90. The basic methodology for valuing an asset emerges from this concept. More specifically, the value of a financial asset is equal to the sum of all the future income that it can generate. Because a dollar today is worth more than a dollar tomorrow, this total future income must be reduced by the discount rate. Expressed another way, the present value of a financial asset is equal to the discounted sum of all future income that it can generate. This is what Professor Boyer called the “fundamental formula for finance.” In its simplest form, is expressed as follows:<sup>116</sup>

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

where  $E(CF_t)$  are the expected marginal (or incremental) cash flows that will occur in  $t$  periods or years, and  $r$  is the rate at which these future cash flows are discounted. This is the first (and most important) formula that students learn in finance. We can see this as the ***Fundamental Formula for Finance***.

91. Professor Boyer testified that “every asset as a financial economist is valued using this equation”.<sup>117</sup> A related model based on this formula is the capital asset pricing model, which has been in use for 80 years.<sup>118</sup>

92. The left-hand side of the equation is the asset’s value. The right-hand side is the discounted cash flow formula. In lay terms, this formula provides a way to calculate the discounted future value of all future cash flows from the asset.<sup>119</sup> While the formula can be made more complicated to account for nuances particular to a financial asset (i.e., by adding “bells and whistles”), its fundamental basis always remains the same.<sup>120</sup>

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<sup>116</sup> Boyer Ex, March 30, 2026, pp 40:14–46:19, A8635–A8642; Boyer Report, Exhibit Z, p 13, A8313.

<sup>117</sup> Boyer Ex, March 30, 2026, p 40:23, A8636.

<sup>118</sup> Boyer Cr Ex, March 31, 2026, p 109:20–23, A8847.

<sup>119</sup> Boyer Ex, March 30, 2026, pp 40:21–41:14, A8636–A8637; Boyer Report, Exhibit Z, p 13, A8313.

<sup>120</sup> Boyer Ex, March 30, 2026, pp 39:21–41:15, A8635–A8637; Boyer Report, Exhibit Z, pp 13–14, A8313–A8314.

93. An asset’s “fair market value” is the price that an asset would attract on a theoretical open, centralized, anonymous, liquid, and atomistic market.<sup>121</sup> In this theoretical world, the asset’s “fair market value” is equal to its present value (i.e. discounted future cash flow). Put another way, in the idealized market, the transaction price of the asset is equal to the asset’s fair market value, which would be equal to the discounted future cash flows.<sup>122</sup> For example, this type of market is observed in stock prices in an openly-traded stock market: the stock price is the stock’s fair market value.<sup>123</sup> An asset has only one “fair market value”.<sup>124</sup>

94. However, where a market is not perfectly open, centralized, thick, anonymous, or atomistic, the transaction prices of the asset are not necessarily equal to the asset’s value (i.e. discounted future cash flow value).<sup>125</sup> In such markets, the transaction prices are more reflective of personal circumstances, information asymmetry, and other factors. This leads to what Professor Stacey calls “price dispersion”:<sup>126</sup> a set of transaction prices that are spread out. In this kind of market, it is difficult to determine from the transaction data what the fair market value might be.<sup>127</sup> However, the true value of the asset can still be derived from the discounted cash flow calculation.

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<sup>121</sup> For definitions of centralized, anonymous, liquid and atomistic, and other terms relevant to these submissions, please see **Appendix A - Glossary of Terms**.

<sup>122</sup> Boyer Ex, March 30, 2026, pp 46:5–16, 47:20–49:19, A8642–A8645; Boyer Report, Exhibit Z, p 15, A8315.

<sup>123</sup> Boyer Ex, March 30, 2026, p 36:13–17, A8632.

<sup>124</sup> Boyer Ex, March 30, 2026, p 57:24–25, A8653.

<sup>125</sup> Boyer Ex, March 30, 2026, pp 49:20–51:25, A8645–A8647.

<sup>126</sup> Stacey Ex, March 31, 2026, p 39:19–32, A8931; Stacey Report, Exhibit EE, p 23, A8495.

<sup>127</sup> Boyer Ex, March 30, 2026, pp 49:20–51:25, A8645–A8647.

95. Professor Boyer opined that the value of an asset does not depend on how a given asset owner actually uses their asset.<sup>128</sup> This is a basic principle: any asset that has the same rights will have the same value. This is because value is based on potential future income.

96. To illustrate this concept, Professor Boyer used a common sense example of two bicycles owned by two brothers. One brother uses the bicycle to visit his mother, and the other brother uses it to generate income from a business. If both bicycles are stolen, the replacement value of the bicycle will be the same, regardless of the fact that one brother earned more income from his bicycle than the other.<sup>129</sup>

97. This concept equally applies to the case of taxi plates in Ottawa: each family of taxi plates has the same value. As discussed below, when the City acts as the “bicycle thief” in negligently enforcing the by-law, the loss in plate value will be the same for each family of taxi plates.

## **ii. Taxi plates are financial assets**

98. According to both Professor Boyer and Professor Stacey, taxi plates are financial assets.<sup>130</sup> This is because taxi plates confer a right to cash flows generated by the operation of the taxi plate.<sup>131</sup> This opinion is not controversial: both Professor Stacey and Mr. Zimmerman agreed that taxi plates are financial assets.<sup>132</sup> It is also consistent with the findings in the Trial Decision.<sup>133</sup>

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<sup>128</sup> Boyer Ex, March 30, 2026, pp 38:1–18, 138:15–16, A8634, A8734.

<sup>129</sup> Boyer Ex, March 30, 2026, pp 56:27–57:17, A8652–A8653.

<sup>130</sup> Stacey Cr Ex, April 1, 2026, p 76:4–8, A8967; Boyer Ex, March 30, 2026, p 34:13–15, A8630; Boyer Report, Exhibit Z, p 6, A8306.

<sup>131</sup> Boyer Ex, March 30, 2026, pp 37:14–30, 58:2–22, A8633–A8654; Boyer Report, Exhibit Z, p 12, A8312; Stacey Cr Ex, April 1, 2026, p 76:10–13, A8967; Stacey Report, Exhibit EE, p 8, A8480.

<sup>132</sup> Stacey Cr Ex, April 1, 2026, p 76:4–8, A8967; Stacey Report, Exhibit EE, p 8, A8480; Zimmerman Cr Ex, April 2, 2026, p 110:27–31.

<sup>133</sup> Trial Decision at [para 104](#).

99. Further, Professor Boyer opined that all taxi plates that have the same rights have the same value, because they confer the same right to future income.<sup>134</sup> For any given class of taxi plate (discussed below), their value does not depend on how the plate owner actually uses the plate.<sup>135</sup>

100. In short, the asset valuation concepts in finance, including the Fundamental Formula for Finance, apply to taxi plates.<sup>136</sup>

101. In his study of taxi plate values in other North American cities, Professor Boyer observed a common trend: in cities with supply-managed taxi plates like Ottawa, the value of the plates declined sharply starting in 2014, which coincides with the arrival of Uber in most of these cities.<sup>137</sup> Professor Stacey observed and modelled this same trend in his own academic study of taxi plate value in Toronto, also using the discounted cash flow method:<sup>138</sup> taxi plate prices dropped starting in 2014, when Uber began operating illegally in Toronto.<sup>139</sup> Professor Boyer opined that the only jurisdictions he observed where this trend did not occur were those that did not have limited numbers of taxi licenses or in depopulated areas where licenses were already worth very little prior to the arrival of Uber.<sup>140</sup>

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<sup>134</sup> Boyer Ex, March 30, 2026, pp 60:23–61:30, 73:4–27, A8656–A8657, A8669; Boyer Report, Exhibit Z, p 6, A8306.

<sup>135</sup> Boyer Ex, March 30, 2026, p 57:22–25, A8615; Boyer Rejoinder Report, p 5–6, A8451–A8452.

<sup>136</sup> Boyer Ex, March 30, 2026, p 62:1–11, A8658.

<sup>137</sup> Boyer Ex, March 30, 2026, pp 62:15–63:15, A8658–A8659; Boyer Report, Exhibit Z, pp 28–35, A8328–A8335.

<sup>138</sup> Stacey Cr Ex, April 2, 2026, p 28:10–13, A9056; “Fighting for Fares: Uber and the Declining Market Prices of Licensed Taxicabs” (2022), Exhibit JJ, p 1, A8538.

<sup>139</sup> Stacey Cr Ex, April 2, 2026, pp 26:21–27:3, A9054–A9055; “Fighting for Fares: Uber and the Declining Market Prices of Licensed Taxicabs” (2022), Exhibit JJ, p 1, A8536.

<sup>140</sup> Boyer Ex, March 30, 2026, p 70:13–24, A8666.

**iii. The permanent loss in taxi plate value in Ottawa can be modelled based on supply and demand**

102. Professor Boyer models the price of taxi plates based on the supply and demand for taxi plates. Under supply management (limited numbers of plates), taxi plates have a fixed supply. According to basic supply and demand theory, when the supply of an asset suddenly and permanently increases, the price of the asset falls. As a result, a new market equilibrium is achieved at a lower price point.

103. According to Professor Boyer, up until 2014, taxi plates in Ottawa conferred a monopoly right, namely the exclusive right to convey a person in a vehicle (with the exception of regulated limousine service).<sup>141</sup> In 2014, that monopoly right was lost, as the market was flooded with a new supply of vehicles-for-hire: illegal Uber rides.<sup>142</sup>

104. When Ottawa transformed from a supply-managed market to an open market, this led to a permanent decrease in the value of taxi plates.<sup>143</sup> This change is modelled in the graph below:<sup>144</sup>

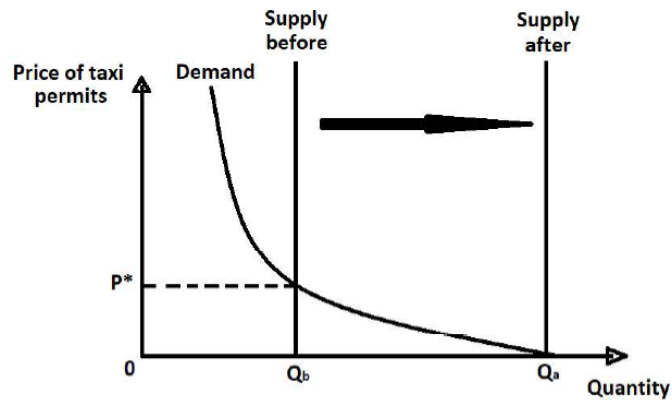
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<sup>141</sup> Boyer Ex, March 30, 2026, pp 83:15–84:9, A8679–A8680; Boyer Report, Exhibit Z, p 16, A8316.

<sup>142</sup> Boyer Ex, March 30, 2026, pp 83:21–84:30, A8679–A8680; see also in this regard Trial Decision at [para 184](#).

<sup>143</sup> Boyer Ex, March 30, 2026, pp 83:13–84:30, A8679–8680 (re change from supply-managed market to open market); Boyer Ex, March 31, 2026, pp. 4:26–5:10, 7:18–27, A8742–A8743, A8745; Boyer Ex, March 30, 2026, p 83:1–5, A8679 (readjustment to the value of plates); Boyer Report, Exhibit Z, p 17, A8317; Boyer Rejoinder Report, Exhibit AA, p 6–10, A8452–A8452.

<sup>144</sup> Boyer Report, Exhibit Z, p 18, A8318.



- The demand for taxi permits is downward sloping (as in every classical demand model).
- The supply of taxi permits is a vertical line because it is chosen by the regulator.
- When the supply of permits is set to  $Q_b$  ('b' for before) then the equilibrium market price of taxi permits is  $P^*$ .
- With a sudden increase in the supply of permits – whatever the reason – from  $Q_b$  to  $Q_a$  ('a' for after) the equilibrium price of permits falls to zero.

105. For Professor Boyer, the same economic effect from a loss of the taxi plate monopoly can arise from several possible causes. These include: abolishing taxi plates (as was done in Quebec), not enforcing the rights of taxi plate holders (as occurred in Ottawa from 2014-2016), or allowing the legal entry of new vehicles-for-hire without requiring taxi plates.<sup>145</sup> As he states in the report, “[w]hatever the mechanism used to shift the supply of taxi permits, the value of said permits would decrease”.<sup>146</sup>

106. In Professor Boyer’s opinion, his model is consistent with the opinion expressed in the Hara 2000 report about the effect of suddenly expanding the number of plates, namely that “On a

<sup>145</sup> Boyer Ex, March 30, 2026, p 93:6–14, A8689; Boyer Report, Exhibit Z, p 18, A8318.

<sup>146</sup> Boyer Ex, March 30, 2026, p 89:90–14; Boyer Report, Exhibit Z, p 18, A8318.

pragmatic level, 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>147</sup>

107. However, Professor Boyer was not of the opinion that value of taxi plates went all the way to zero in Ottawa following the illegal entry of Uber and the subsequent change in the by-law. From his review of the 2016 by-law, Professor Boyer noted that there are still some rights exclusively reserved for taxis: for example, the right to have a banner, pick up street hails, and preferential access at the train station.<sup>148</sup> Because Ottawa taxi plates do carry some exclusive rights, he expects them to retain some residual value.<sup>149</sup>

108. Overall, Professor Boyer expects that the permanent change to the taxi plate market in Ottawa after 2014 is similar to the other North American cities that Professor Boyer studied.<sup>150</sup> It is also similar to what Professor Stacey observed and modelled for Toronto.<sup>151</sup>

**iv. The permanent loss in taxi plate value in Ottawa can be calculated using the discounted cash flow method based on a value for each of 4 families of plates**

109. According to Professor Boyer, the loss in value of taxi plates in Ottawa can be determined by applying the discounted cash flow method.<sup>152</sup>

110. From his study of the Ottawa context, Professor Boyer was of the view that Ottawa was similar to other markets he had studied, in that the limits on plate numbers had led to a steady

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<sup>147</sup> Boyer Ex, March 30, 2026, pp 92:25–93:14, A8688–A8689; Boyer Report, Exhibit Z, p 17, A8317; Hara Report, pp 1–7, A1483.

<sup>148</sup> Boyer Ex, March 30, 2026, pp 90:30–91:23, A8686–A8687; Boyer Cr Ex, March 31, 2026, pp 41:16–20, A8779.

<sup>149</sup> Boyer Cr Ex, March 31 2026, p 41:11–29, A8779.

<sup>150</sup> Boyer Ex, March 31, 2026, pp 4:26–5:10, 7:18–27, A8742–A8743, A8745; Boyer Ex, March 30, 2026, p 83:1–5, A8679.

<sup>151</sup> Stacey Cr Ex, April 2, 2026, p 26:22–25, A9054.

<sup>152</sup> Boyer Ex, March 30, 2026, p 34:13–17, A8630; Boyer Report, Exhibit Z, p 13, A8313.

increase in plate value.<sup>153</sup> However, he noticed two particular things about the Ottawa taxi plate market:<sup>154</sup>

- (a) First, taxi plate licenses are **annually renewable** (as opposed to conferring rights indefinitely). This feature did not ultimately make any difference in his modelling of taxi plate value.<sup>155</sup>
- (b) Second, taxi drivers in Ottawa are **unionized**. The collective agreements include clauses setting plate rent. In his opinion, this feature creates two special types of taxi plate, which he termed “**Artisan**” (plates not subject to the collective agreement) and “**Industrial**” (plates subject to the collective agreement).<sup>156</sup>

111. Professor Boyer testified about another instance where taxi plate value was assessed in Ottawa. As discussed above, the Hara 2000 report valued taxi plates in the former municipalities of Ottawa to provide the Ottawa Transition Board information about the feasibility of compensating plate owners upon amalgamation.<sup>157</sup> Professor Boyer observed that one of the equations used by Hara and Associates is the same used in his report, namely, an equation based on the discounted cash flow model.<sup>158</sup>

112. **Artisan and Industrial plates:** Because the collective agreements essentially fix the revenue rights for certain plates that are subject to those agreements, Professor Boyer opines that

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<sup>153</sup> Boyer Ex, March 30, 2026, p 24:9–26, A8620.

<sup>154</sup> Boyer Ex, March 30, 2026, p 82:2–28, A8678; Boyer Report, Exhibit Z, pp 9–10, A8309–A8310.

<sup>155</sup> Boyer Ex, March 30, 2026, pp 93:22–24, 94:11–21, A8689–A8690; Boyer Report, Exhibit Z, p 10, A8310.

<sup>156</sup> Boyer Ex, March 30, 2026, pp 95:1–96:11, A8691–A8692; Boyer Report, Exhibit Z, pp 20–21, A8320–A8321.

<sup>157</sup> Boyer Ex, March 30, 2026, p 75:10–18, A8671.

<sup>158</sup> Boyer Ex, March 30, 2026, pp 75:21–77:12, A8671–A8673; Boyer Report, Exhibit Z, p 14, A8313; Hara Report, Exhibit 204, pp 3–4, A1496–A1497.

there are two categories of plates. The “Artisan” plates are either owner-operated or leased. They are free of the collective agreement. By contrast, the income from “Industrial” plates is determined by the collective agreement. While the discounted cash flow formula can be used to calculate plate value of both types of plates, the data inputs are different. Professor Boyer set out the variations in the discounted cash flow formula for each type of plate.<sup>159</sup> For a one-page summary of these equations, see **Appendix C** of these submissions.

113. Professor Boyer’s categories of “Artisan” and “Industrial” plates align with the categories of Ottawa plates used in the Hara 2000 report. Dr. Hara called these plates “governed by the collective agreement” and “free of the collective agreement”, respectively.<sup>160</sup> Like Dr. Hara, Professor Boyer would expect higher values for the Artisan class compared to the Industrial class.<sup>161</sup>

114. **Accessible and standard plates:** Because accessible plates provide different rights and carry different operating costs than standard plates, Professor Boyer identified “accessible” and “standard” as two categories of plates. He modelled their value, again based off the discounted cash flow model.<sup>162</sup> Because accessible plates carry higher operating costs, he expects the value of accessible plates to be lower than that of standard plates.<sup>163</sup>

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<sup>159</sup> Boyer Ex, March 30, 2026, pp 101:14–108:4, A8697–A8704; Boyer Report, Exhibit Z, pp 20–23, A8320–A8323.

<sup>160</sup> Boyer Ex, March 30, 2026, pp 97:31–98:3, A8694–A8695; Boyer Report, Exhibit Z, p 23, A8323; Hara Report, Exhibit 204, p 2–3, A1849.

<sup>161</sup> Boyer Ex, March 30, 2026, pp 108:27–109:31; Boyer Report, Exhibit Z, pp 23–24, A8323–A8324; Hara Report, Exhibit 204, p 2–5, A1491–A1496.

<sup>162</sup> Boyer Ex, March 30, 2026, p 101:21–26, A8697; Boyer Report, Exhibit Z, pp 22–23, A8322–A8323.

<sup>163</sup> Boyer Ex, March 30, 2026, pp 100:15–101:12, A8696–A8697; Boyer Report, Exhibit Z, p 22, A8322.

115. Thus, Professor Boyer opined that there are four families of plates: Artisan standard, Artisan accessible, Industrial standard, and Industrial accessible. The value of each type of plate can be calculated based on the projected revenue, costs, renewal fee, and discount rate.<sup>164</sup> Among the four families of plates, the Artisan standard plates would be worth the most, and Industrial accessible plates would be worth the least.<sup>165</sup> For a one-page summary of the equations used to calculate the lost value each type of plate, see **Appendix C** of these submissions.

116. **Data needed:** Professor Boyer outlined the data he would require to calculate lost plate value. For each type of plate, he would need data on the projected revenue, cost, renewal fee, and discount rate:

- (a) **Revenues:** For the Industrial plates, Professor Boyer opined that the income (from leasing) is fixed in the collective agreements.<sup>166</sup> For the Artisan plates, the revenues are currently unknown. Professor Boyer opined that these could be estimated based on sample data on the average revenue per ride and the total number of rides per day.<sup>167</sup> He was provided some spreadsheets containing this data and opined that they were “promising” in terms of estimating the average revenue per ride and the total rides per day.<sup>168</sup>

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<sup>164</sup> Boyer Ex, March 30, 2026, pp 101:14–113:10, A8697–A8709; Boyer Report, Exhibit Z, pp 18–24, A8318–A8324.

<sup>165</sup> Boyer Ex, March 30, 2026, pp 97:14–15, 101:3–5, A8693, A8697; Boyer Report, p 39, A8339.

<sup>166</sup> Boyer Ex, March 30, 2026, pp 96:29–97:1, A8692–A8693; Boyer Report, Exhibit Z, pp. 10 and 23, A8310 and A8323.

<sup>167</sup> Boyer Ex, March 30, 2026, pp 114–119, A8710–A8715; Boyer Report, Exhibit Z, p 26, footnote 30, A8326.

<sup>168</sup> *Ibid*; POS Chart dated July 2019, Exhibit BB, A8472; Total fares from Courtney dated July 31, 2019, Exhibit CC, A8471.

- (b) **Costs (fixed and capital):** Costs for all types of plates can be estimated from figures provided by the taxi industry as listed in a 2016 KPMG report.<sup>169</sup> Capital costs are higher for accessible compared to standard plates.
- (c) **Renewal fee:** The renewal fees for standard and accessible plates are known from the Statement of Agreed Facts.<sup>170</sup>
- (d) **Discount rate:** This discount rate remains to be determined. Professor Boyer opined that it could be determined by various methods, including the Capital Asset Pricing Model.<sup>171</sup>

117. Keeping in mind that he was not instructed to quantify the loss in plate value at this stage, Professor Boyer did not attempt to do so.

118. However, he did present a “fictional example using parameter values that are sensible for the case of taxi permits in the City of Ottawa”, stressing that they were “not real numbers”.<sup>172</sup> The purpose of this example was to show how incremental losses in income (cash flow) lead to losses in plate value. The example shows that if there is an average net revenue per trip of \$14, a permanent loss of three-and-a-half trips per day would result in an annual income loss of \$15,200, which, assuming a discount rate of 8%, would lead to a loss of plate value of \$190,000.<sup>173</sup>

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<sup>169</sup> Boyer Ex, March 30, 2026, p 111:12–16, A8707; Boyer Report, Exhibit Z, p 26–27 and footnote 27, A8326-A8327; Taxi and Limousine Regulation and Service Review dated December 31, 2015, Exhibit 58, F2760.

<sup>170</sup> Boyer Report, Exhibit Z, p 26, A8326; Statement of Agreed Facts at para 47(b), F9.

<sup>171</sup> Boyer Ex, March 30, 2026, p 111:16–128, A8707; Boyer Cr Ex, March 31, 2026, p 109:8–29, A8847; Boyer Report, Exhibit Z, p 26, A8326.

<sup>172</sup> Boyer Ex, March 30, 2026, pp 122:2–124:2, A8718–A8720; Boyer Report, Exhibit Z, p 36, A8336.

<sup>173</sup> Boyer Ex, March 30, 2026, p 123:3–15, A8719; Boyer Report, Exhibit Z, pp. 36–37, Table 6.3, A8336–A8337.

119. In Professor Boyer’s view, the **transaction price data** for Ottawa plates is not helpful in determining either the value of the plates or the lost value of the plates. Professor Boyer reviewed the City’s plate transfer data for 2006 to 2018.<sup>174</sup> He was instructed to assume that there has been underreporting in the transaction prices.<sup>175</sup> From his study of the data, he decided not to use the data in his proposed methodology.

120. Two reasons underpin this decision. First, the number of transactions per quarter is not very high. Second, it is not clear what a given transaction includes, nor whether the parties are affiliated.<sup>176</sup> Because the Ottawa plate market is not centralized, not atomistic, not anonymous, and transactions are infrequent, the transaction prices of plates are not indicative of fair market value.<sup>177</sup> He concluded that the plate transaction data was “informative”, but needs to be taken with a “healthy dose of honest skepticism”.<sup>178</sup> Professor Stacey agreed with this assessment.<sup>179</sup> For this reason, Professor Boyer’s proposed plate valuation methodology does not rely on this transfer data.

**v. The permanent loss in taxi plate value in Ottawa can be assessed in the aggregate**

121. Professor Boyer’s method for calculating lost plate value in the aggregate is simple: he would calculate the lost value of each of the 4 types of plate (listed above), then multiply by the number of plates of each type, to calculate the total lost plate value. This amounts to the aggregate

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<sup>174</sup> Boyer Ex, March 30, 2026, p 127:22–30, A8723; Boyer Report, Exhibit Z, Annex – List of documents, p 3, A8362.

<sup>175</sup> Boyer Ex, March 30, 2026, p 127:17–30, A8723; Boyer Report, Exhibit Z, p 8, A8303.

<sup>176</sup> Boyer Ex, March 30, 2026, pp 128:11–129:6, A8724–A8725; Boyer Report, Exhibit Z, p 15, A8315.

<sup>177</sup> Boyer Ex, March 30, 2026, p 129:7–21, A8725; Boyer Report, Exhibit Z, p 15, A8315.

<sup>178</sup> Boyer Ex, March 30, 2026, pp 27:31–30:15, A8623–A8626; Boyer Cr Ex, March 31, 2026, pp 29:32–30:12, A8767–A8768; Boyer Report, Exhibit Z, p 15, A8315.

<sup>179</sup> Stacey Cr Ex, April 1, 2026, pp 80:31– 81:4, A8971–A8972.

lost plate value.<sup>180</sup> As a result, Professor Boyer had no difficulty concluding that damages should be assessed in the aggregate.

122. Although he was not asked to quantify damages, he ran illustrative calculations. These were to demonstrate how the calculation would work with real numbers, when the time came.

123. Professor Boyer noted that once the aggregate amount of damages is calculated, some individualized adjustments might still be required when distributing the damages among the class. He stated that the proper way to proceed is to aggregate the total fair market value of all plates at the beginning of the breach period, then, as a “secondary matter”, determine how to divide that amount among the class.<sup>181</sup> For example, an individualized adjustment may be required when a class member bought or sold a plate during the 2014-2016 period, in order to appropriately distribute damages as between the buyer and seller of that plate.<sup>182</sup> These adjustments, he opined, do not affect the ability to calculate damages in the aggregate.<sup>183</sup>

**vi. Even if the only head of damages is income, it can also be assessed in the aggregate.**

124. Professor Boyer was instructed to assume that the proper measure of damages is the loss in plate value.<sup>184</sup> However, he also opined that damages for lost income could still be assessed in the aggregate.<sup>185</sup> This is because the quantum of loss of plate value incorporates the quantum of lost income.<sup>186</sup> Accordingly, the difference in methodologies between lost plate value or lost

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<sup>180</sup> Boyer Ex, March 30, 2026, pp 73:27–74:16, A8669–A8670.

<sup>181</sup> Boyer Cr Ex, March 31, 2026, p 36:18–29, A8774.

<sup>182</sup> Boyer Cr Ex, March 31, 2026, pp 36:18–38:23, A8774–A8775.

<sup>183</sup> Boyer Cr Ex, March 31, 2026, p 38:13–23, A8775.

<sup>184</sup> Boyer Report, Exhibit Z, Annex – Letter to counsel, p 2, A8361.

<sup>185</sup> Boyer Ex, March 31, 2026, p 7:10–31, A8745; Boyer Rejoinder Report, Exhibit AA, p 6, A8452.

<sup>186</sup> Boyer Cr Ex, March 31, 2026, p 16:6–12, A8754.

income is whether the lost income is calculated for the first 8 quarters (i.e. the breach period) or to infinity (a permanent loss in plate value). This is explained in the following exchange during cross-examination:<sup>187</sup>

Q. Okay. And so would you agree with me that if loss of plate value is not the proper measure of damages, then the methodology that you set out would not assist the court?

A. I disagree. Plate value is the present value of all revenues generated by the plate for an - a Sigma driver, a Sigma owner. **You can still use the same methodology, present value, even if you don't go all the way to infinity. So if it's loss of revenues, it's not loss of revenues for each individual driver. It's loss of revenues for the class as a whole.** It would just say that instead of taking the sum from T equals one to infinity, you take the sum from T equals one to eight.

[...]

Q. All right. And so in, in that scenario, we would not be calculating the loss based on the loss of the plate value. It would be based on the loss of the revenue.

A. **The loss of revenues is part of the loss in plate value, and it's not the revenues that each individual member makes. It's the revenues that a Sigma owner is expected to make during those four - those eight quarters.**

125. However, Professor Boyer also opined that even if this Court awards damages for loss income (rather than loss in plate value), “we must evaluate what impact the behaviour of the City of Ottawa had on the perception of the cash flows past quarter 8”.<sup>188</sup> In any event, this assessment should be done in the aggregate.<sup>189</sup>

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<sup>187</sup> Boyer Cr Ex, March 31, 2026, pp 15–16, A8753–A8754 (emphasis added).

<sup>188</sup> Boyer Ex, March 31, 2026, p 7:10–26, A8745; Boyer Rejoinder Report, Exhibit AA, p 7, A8453.

<sup>189</sup> Boyer Ex, March 31, 2026, pp 7:28–8:4, A8745–A8746; Boyer Rejoinder Report, Exhibit AA, p 9, A8455.

**PART VI - DEFENDANT'S EXPERT EVIDENCE-AGGREGATE DAMAGES**

“Limitations

This document does not address the subject of plate values which is a secondary market, neither established by nor under the control of the City. The taxi industry indicated frequently through the review process that the value of taxi plates has been impacted by Uber's operation and may be impacted further if TNCs are allowed to continue operations. Taxi industry leaders, representatives and members also spoke to the broader economic impact of the Uber entry into the Ottawa market. The consideration of such issues was outside the scope of this engagement.”

Brian Bourns, KPMG report, December 31, 2015 (Exhibit 58)

\* \* \*

“Understanding the municipality's governance role is important to the new regulatory framework being proposed. While there are very good public policy reasons to restrict the number of plates issued by the municipality under its Municipal Act, 2001 authority, these regulations have led to a secondary market in taxi plates, "neither established by nor under the control of the City". How and why this occurs in Ottawa and other municipalities is described in detail in the "Taxi Economics - Old and New" paper by Hara Associates. The issue of plate value was out of scope for the comprehensive review and, staff believes, out of scope for the City as the regulator.”

Leslie Donnelly, Staff Report, March 31, 2016 (Exhibit 59)

\* \* \*

Q. And I remember you said yesterday you've never valued an asset for a third party and not in a court proceeding. Correct?

A. I've never valued?

Q. Valued an asset for a third party? That, that was your evidence yesterday.

A. That's like, it...

Q. You've done it in your academic work...

A. That's right. Yeah.

Q. ...but you've never done it for, like, a third party for a real life...

A. That's right.

Q. ...situation. Okay. And you've obviously never done it in a court proceeding. Correct?

A. Correct.

Q. And you don't actually do evaluation in your opinion here. Correct?

A. That's right. I proposed a methodology.

Q. Okay. And you're — it's not — the methodology that you're proposing is not a valuation of plates. Correct?

A. That's right.

Q. It's not an attempt to find the loss in plate value during the loss, during the negligence period, correct?

A. Correct. It is not.

Derek Stacey Cr Ex, April 1, 2026, p 129:8-32

\* \* \*

Q. You wrote in your report that [you] were asked to provide a framework to calculate economic losses sustained by the taxi plate owner class during the relevant loss period.

A. That's correct.

Q. Yes. I asked you if your mandate was to provide a framework to calculate economic losses generally.

A. It was to provide a calculation of the economic losses generally in the context of the taxi plate holders.

Q. Yes. But you would agree with me that a decline in taxi plate value is an economic loss?

A. Sorry. Say that one more time.

Q. A decline in taxi plate value, that is an economic loss. Correct?

A. A decline in plate value can be an economic loss. Yes.

Q. Yes. So your mandate was to calculate economic losses generally, but you did not include taxi plate value decline as one of those economic losses.

A. So when you say generally, if you're referring to, like, on an aggregate basis versus an individualized basis, no. I prepared mine on an individualized basis.

Q. But you didn't do an individualized calculation or provide a framework for an individualized calculation of a decline in taxi plate value. Correct?

A. No. I did not.

Q. Okay. So really, your mandate was to provide a framework to calculate lost income specifically.

A. That's correct.

Timothy Zimmerman Cr Ex, April 2, 2026, 102:27-103:25.

\* \* \*

126. The following section sets out the expert evidence of Professor Stacey and Timothy Zimmerman.

## **B. Derek Stacey**

### **1. Credentials**

127. Derek Stacey is an Associate Professor in the Department of Economics at the University of Waterloo. Since obtaining his PhD 14 years ago, he has published five peer-reviewed papers and four working papers.<sup>190</sup> One of those working papers models the declining market prices of taxi plates in Toronto following the illegal entry of Uber in Toronto in 2014.<sup>191</sup>

128. Despite never having carried out an asset valuation for any third party or in any proceeding including this one,<sup>192</sup> Professor Derek Stacey was qualified in this proceeding as an expert in the economics of decentralized markets, asset valuation, search and matching theory.<sup>193</sup>

### **2. Evidence**

#### ***a) Mandate***

129. Professor Stacey's mandate was different from Professor Boyer's. His mandate was:

- (a) "Evaluating whether a change in taxi plate market value can measure the losses attributable to negligent non-enforcement during the discrete loss period";
- (b) "Assessing whether damages can be meaningfully or reliably determined on an aggregate basis"; and

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<sup>190</sup> Stacey Report, Exhibit EE, Appendix p 1–2, A8527–A8528.

<sup>191</sup> "Fighting for Fares: Uber and the Declining Market Price of Licensed Taxicabs," (April 2022), Exhibit JJ, A8533–A8590; Stacey Report, Exhibit EE, Appendix p 2, A8528.

<sup>192</sup> Stacey Voir Dire Cr Ex, March 31, 2026, p 144:18–32, A8882.

<sup>193</sup> Oral Ruling, March 31, 2026, p 146:25–32, A8884.

(c) “If not, developing an economically sound methodology for calculating individual-level damages attributable to negligent non-enforcement.”<sup>194</sup>

130. He understood his mandate to be about “isolating the impact of the City’s negligence” during the breach period rather than modelling the permanent impact of the City’s negligence on plate values.<sup>195</sup>

*b) Scope of review*

131. Professor Stacey’s scope of review was unclear. In his report, he listed some documents that he reviewed and relied upon.<sup>196</sup> However, on cross-examination, he stated that he had reviewed other documents, although he struggled to remember which ones.<sup>197</sup> For example, the Trial Decision is not listed in his documents relied-upon, yet he stated that he had read parts of it.<sup>198</sup> It remains uncertain whether he in fact relied upon it.<sup>199</sup>

*c) Opinion*

132. Fully consistent with the City’s submissions to this Court in April 2025,<sup>200</sup> Professor Stacey concludes that the individualized losses in plate owner income during the 2-year breach period is the appropriate measure of damages. Although his report and testimony in chief stated that this was an assessment of damages “that measures losses at the plate level and is fully

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<sup>194</sup> Stacey Report, Exhibit EE, p 5, A8449.

<sup>195</sup> Stacey Voir Dire Ex, March 31, 2026, p 138:21–25; Stacey Cr Ex, April 1, 2026, p 129:8–32; Stacey Report, Exhibit EE, p 5, A8477.

<sup>196</sup> Stacey Report, Exhibit EE, pp 4–5, A8449–A8450.

<sup>197</sup> Stacey Cr Ex, April 1, 2026, p 67:10–26, A8958.

<sup>198</sup> Stacey Cr Ex, April 1, 2026, p 68:1–2, A8959.

<sup>199</sup> See e.g. Stacey Cr Ex., April 1, 2026, pp 67:29–68:30, A8958–A8959.

<sup>200</sup> Stacey Cr Ex, April 1, 2026, pp 126:26–127:30; City Closing Submissions dated March 28, 2025 at para 98, B-1-17341.

consistent with discounted cash-flow (DCF) principles,” it is not a method of plate valuation at all. Rather, it is simply a method of evaluating individual income losses in a 2-year period.

133. Professor Stacey agreed with Professor Boyer on several fundamental propositions:

- (a) Taxi plates are financial assets.<sup>201</sup>
- (b) Taxi plates can be valued using the discounted cash flow model.<sup>202</sup>
- (c) Ottawa’s taxi-plate market is thin, illiquid, heterogenous, and opaque.<sup>203</sup>
- (d) Ottawa plate transaction data is not a reliable measure of plate value.<sup>204</sup>
- (e) Plate values respond not only to current income, but to expectations about many years of future income.<sup>205</sup>

134. Professor Stacey disagrees with Professor Boyer on two issues:

- (a) **Whether heterogeneity in plate income streams matters:** Professor Stacey opined that heterogeneous circumstances determine each plate owner’s economic loss.<sup>206</sup> He implies that the value of the asset depends on how it is used. On the

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<sup>201</sup> Stacey Cr Ex, April 1, 2026, p 76:4–8, A8967.

<sup>202</sup> Boyer Ex, March 31, 2025, p 133:12–134:1; Boyer Rejoinder Report, Exhibit AA, p 3, A8449; Stacey Cr Ex, April 1, 2026, pp 75:23–76:13, 84:31–85:6, A8966–A8967, A8975–A8976.

<sup>203</sup> Boyer Ex, March 30, 2026, pp 27:31–30:15, A8623–A8626; Boyer Report, Exhibit Z, p 15, A8315; Boyer Cr Ex, March 31, 2026, pp 29:32–30:12, A8767–A8768; Stacey Ex, April 1, 2026, p 28–30, A8900; Stacey Cr Ex, April 1, 2026, p 80:5–16, A8971; Stacey Report, p 5, A8479.

<sup>204</sup> Stacey Cr Ex, April 1, 2026, pp 79:24–82:8, A8970–A8973; Stacey Report, Exhibit EE, p 5, A8477; Boyer Ex, March 30, 2026, pp 128:11–129:8, A8724–A8725; Boyer Report, Exhibit Z, p 15, A8315.

<sup>205</sup> Stacey Ex, April 1, 2016, p 13:12–23, A8904; Boyer Ex, March 31, 2026, p 3:10–15, A8741; Stacey Report, Exhibit EE, p 10, A8482.

<sup>206</sup> Stacey Report, Exhibit EE, p 6, A8478.

other hand, Professor Boyer testified repeatedly that the fair market value of an asset is the same no matter how it is used.

- (b) **Whether any losses after the 2-year breach period matter:** Despite acknowledging that “plate values respond not only to current income, but to expectations about many years of future income”,<sup>207</sup> Professor Stacey was instructed only to consider losses incurred within the 2-year breach period.<sup>208</sup> In his rejoinder report, Professor Boyer disagreed with this approach. He explained why the City’s negligence “had repercussions past the second year of the arrival of Uber and the change in the bylaw”.<sup>209</sup> In Professor Boyer’s opinion, the City’s behaviour during the breach period permanently modified peoples’ perceptions of the future income that could be earned from plates.<sup>210</sup> As Professor Boyer put it, “we’re not going back to what it was before”.<sup>211</sup> In other words, a permanent change in perceptions therefore led to a permanent change in plate values.

135. As argued below, where Professor Boyer and Professor Stacey differ in opinion, this Court should prefer Professor Boyer’s opinion evidence.

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<sup>207</sup> Stacey Report, Exhibit EE, p 10, A8482.

<sup>208</sup> Stacey Cr Ex, April 1, 2026, p 73:15–17, A8967; Stacey Report, Exhibit EE, p 5, A8477.

<sup>209</sup> Boyer Rejoinder Report, Exhibit AA, p 4, A8450.

<sup>210</sup> Boyer Ex, March 31, 2026, pp 2:18–6:21, A8740–8744; Boyer Ex, March 30, 2026, pp 122:11–123:13, A8718–A8719; Boyer Rejoinder Report, Exhibit AA, pp 8–10, A8454–A8456.

<sup>211</sup> Boyer Ex, March 31, 2026, p 4:15–16, A8742.

## C. Timothy Zimmerman

### 1. Credentials

136. Timothy Zimmerman is a certified fraud examiner and business valuator at Resolution Economics Canada.<sup>212</sup> He was qualified in this proceeding to provide opinion evidence on loss quantification, business valuation, and forensic accounting.<sup>213</sup> While Mr. Zimmerman testified in cross-examination that he had “notable experience in taxi plate loss quantification”, he did not describe this purported experience in any way, shape, or form before the Court.<sup>214</sup>

### 2. Evidence

#### a) *Mandate*

137. Mr. Zimmerman’s mandate was limited. He was instructed to “operationalize” Dr. Stacey’s methodology to assess loss income during the breach period.<sup>215</sup> Accordingly, he assumed that Dr. Stacey’s conclusions were true and did not challenge them.<sup>216</sup> Likewise, he did not challenge the appropriateness of using the breach period as the temporal boundary of the plate owners’ losses.<sup>217</sup>

138. On cross-examination, Mr. Zimmerman admitted that a decline in plate value can be a loss and that it is possible to quantify both lost profit and lost value.<sup>218</sup> Contrary to Dr. Stacey and following Professor Boyer, he further admitted that a taxi plate has value because of the access to income that it provides a plate owner.<sup>219</sup> However, due to his narrow mandate, Mr. Zimmerman

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<sup>212</sup> Zimmerman Ex, April 2, 2026, p 39, A9067.

<sup>213</sup> Zimmerman Ex, April 2, 2026, p 46, A9074.

<sup>214</sup> Zimmerman Cr Ex, April 2, 2026, p 100:4-5, A9128.

<sup>215</sup> Zimmerman Ex, April 2, 2026, pp 106:20-107:23, A9134-A9135.

<sup>216</sup> Zimmerman Cr Ex, April 2, 2026, p 104:7-13, A9132.

<sup>217</sup> Zimmerman Cr Ex, April 2, 2026, pp 104:28-107:22, A9132-A9135.

<sup>218</sup> Zimmerman Cr Ex, April 2, 2026, pp 99:15-20, 103:4-11, A9127, A9131.

<sup>219</sup> Zimmerman Cr Ex, April 2, 2026, p 111:6-16, A9139.

did not provide a methodology to assess individualized damages for lost plate value for the benefit of the Court.<sup>220</sup>

***b) Scope of review***

139. Mr. Zimmerman's scope of review was equally constrained. He did not speak to any Ottawa taxi plate owner to familiarize himself with their business models, industry conditions, or record-keeping practices during the material times.<sup>221</sup> Although he spoke with Professor Stacey, he did not disclose these discussions in his report.<sup>222</sup>

***c) Opinion***

140. Mr. Zimmerman testified that his framework to assess lost income during the breach period can be completed in seven steps:

- (a) **Step 1: Complete questionnaire.** The 768 Plate Owner Class members will complete a questionnaire to determine their eligibility as a class member, their period of plate ownership, and their use of taxi plates. This step is mostly unnecessary, as the City already has all relevant information regarding class members and their plate ownership in its possession.<sup>223</sup>
- (b) **Step 2: Request information.** Forensic accountants will request certain information from taxi plate owners regarding their income from 2012 to 2016, including tax returns and notices of assessment from taxi plate owners. The type of

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<sup>220</sup> Zimmerman Cr Ex, April 2, 2026, p 103:8–24, A9131.

<sup>221</sup> Zimmerman Cr Ex, April 2, 2026, p 136:1–4, A9164.

<sup>222</sup> Zimmerman Cr Ex, April 2, 2026, p 104:20–27, A9132.

<sup>223</sup> See Appendix A to Statement of Agreed Facts at F1–F23. It is not disputed that the City maintains records of the names of taxi plate owners, their relevant plate numbers, plate sale dates, and plate sale amounts.

information required will depend on the circumstances of each case. Given the passage of time, it is likely that historical tax information will only be available to plate owners through an Access to Information (“**ATIP**”) Request.<sup>224</sup>

- (c) **Step 3: Determine reporting periods.** Forensic accountants will identify the last two income reporting years prior to the commencement of the breach period.<sup>225</sup> For sole proprietorships, this will be the calendar years of 2012 and 2013. Corporations may have different reporting periods, and correspondingly, different period of lost income.
- (d) **Step 4: Determine pre-breach income.** Income for the two reporting years prior to the breach period will be determined on the basis of the historical tax information.
- (e) **Step 5: Project net income into breach period.** The higher reported income of the two reporting periods prior to September 1, 2014 will be projected into the breach period with an adjustment for inflation.
- (f) **Step 6: Determine actual income in breach period.** Income for the breach period will also be determined on the basis of the historical tax information.

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<sup>224</sup> Zimmerman Ex, April 2, 2026, p 69:22–26, A9097; Mr. Zimmerman testified that if a plate owner does not possess historical tax information beyond ten years, this can be accessed through an ATIP request. In September 2026, 10 years will have elapsed since the end of breach period. The quantification stage will likely occur years after September 2026.

<sup>225</sup> Mr. Zimmerman did not explain why he selected the last two reporting years for the purpose of his framework in his report.

- (g) **Step 7: Calculate lost income.** The actual income will be deducted from the projected income, with adjustments to account for the duration of the breach period.<sup>226</sup>

141. Mr. Zimmerman's report stated that that the City's forensic accountant would be quantifying plate owner damages and imposing timelines on plate owners to submit information.<sup>227</sup> On cross-examination, Mr. Zimmerman resiled from these statements and claimed they were errors.<sup>228</sup> He asserted that he did not mean that the City would determine the damages. Instead, he stated that an unknown accounting firm would be retained to quantify damages in relation to the proceeding. He did not specify who would retain this accounting firm.

142. Mr. Zimmerman's proposed framework is strikingly similar to the one proposed by the City in its closing submissions in April 2025.<sup>229</sup> Both Mr. Zimmerman and the City proposed an assessment of lost income during the breach period on the basis of tax return information.

143. Mr. Zimmerman acknowledged that there are situations where it could be "impractical or impossible" to apply his framework.<sup>230</sup> For example, a plate owner may not have completed a full year of operations prior to September 1, 2014, may have not reported their income information to the CRA, or may have co-mingled two different business activities on their tax reporting to the

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<sup>226</sup> Zimmerman Ex, April 2, 2026, p 91:2–11, A9119.

<sup>227</sup> Zimmerman Report, Exhibit HH at paras 43–46, 48, 81–82, B-1-19021, B-1-19027.

<sup>228</sup> Zimmerman Cr Ex, April 2, 2026, pp 132:32–133:20, A9160–A9161.

<sup>229</sup> City closing submissions dated March 28, 2025 at para 121, B-1-17350; Zimmer Cr Ex, April 2, 2026, p 110:18–21, A9138.

<sup>230</sup> Zimmerman Ex, April 2, 2026, p 93:25–27, A9121.

CRA. In this regard, Mr. Zimmerman admitted that if co-mingling occurred, a forensic accountant would require additional information.<sup>231</sup>

144. In such “impossible” situations, Mr. Zimmerman proposes that a plate owner’s losses be assessed based on the average loss for a representative group of similar claimants. However, Mr. Zimmerman does not know what those representative groups are, or what percentage of taxi plate owners co-mingled their income information.<sup>232</sup>

## **PART VII - ARGUMENT**

### **A. Aggregate damages enhance access to justice and should be “the norm” in class actions**

145. Class actions are a special creature in the realm of court proceedings because they allow many individuals to seek redress together and at the same time. The analysis of whether aggregate damages are an appropriate remedy must (1) begin with first principles that animate class action proceedings, and (2) consider how aggregate damages advance these principles. The Supreme Court has held that the main objective of the class actions regime is to increase access to justice and ensure judicial economy.<sup>233</sup>

146. Aggregate damages are critical to the class actions regime and are designed to enhance access to justice. In *Ramdath v George Brown College of Applied Arts and Technology*, the late Justice Belobaba, whose decision was upheld by the Court of Appeal on this point,<sup>234</sup> emphasized the importance of aggregate damages for the viability of class action proceedings and the need to ensure they are the norm when awarding damages in class actions:

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<sup>231</sup> Zimmerman Cr Ex, April 2, 2026, p 134:16–32, A9162.

<sup>232</sup> Zimmerman Cr Ex, April 2, 2026, p 118:18–20, A9146.

<sup>233</sup> *Endean* at [para 30](#).

<sup>234</sup> *Ramdath Appeal* at [para 4](#).

[1] Aggregate damages are essential to the continuing viability of the class action. 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, then class action judges should do so routinely and without hesitation. Aggregate damage awards should be more the norm, than the exception. Otherwise, the potential of the class for enhancing access to justice will not be realized.<sup>235</sup>

147. Justice Belobaba's prescient words apply with equal force to this proceeding. There are 768 individuals in the Plate Owner Class who are seeking damages in relation to the loss in value of their taxi plates. For Professor Boyer, part of the quantum of this loss also comprises their lost income. The record is clear that taxi plates are financial assets, and that the City and plate owners have been aware of their market value for over 50 years. Given this history, requiring plate owners to prove their damages individually and confining such damages to lost income only would be inefficient and unjust.

**B. This Court should apply the *Ramdath* factors with reference to the unique procedural circumstances of this class action**

148. Justice Belobaba's decision in *Ramdath* was the first award of aggregate damages made in a trial in Ontario. On appeal, the Court of Appeal addressed the criteria for awarding aggregate damages. The Court of Appeal endorsed Justice Belobaba's three criteria for assessing whether aggregate damages should be awarded under s. 24 of the CPA:

- (a) whether the plaintiffs' non-individualized evidence is sufficiently reliable;
- (b) whether the use of that evidence results in unfairness or injustice to the defendant, such as an overstatement of its liability; and

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<sup>235</sup> *Ramdath* at [para 1](#) (emphasis added).

(c) whether the denial of the aggregate approach would result in a “wrong eluding an effective remedy” and a denial of access to justice.<sup>236</sup>

149. The Court of Appeal further emphasized that s. 24 of the CPA requires that the defendant’s aggregate liability be “reasonably” determined without proof by individual class members. The jurisprudence is clear that the “same degree of accuracy in an ordinary action is not required” under this reasonableness standard.<sup>237</sup> An aggregate damages methodology will be reasonable if some members of the class are over-compensated and some are under-compensated, as long as the defendant’s total liability is not over-stated.<sup>238</sup>

150. As discussed above, this case is unique among class action decisions. In *Ramdath*—and indeed all other reported decisions in Ontario—the question of whether aggregate damages were an appropriate remedy was decided when all of the factual evidence required for quantification was in the trial record.<sup>239</sup> Where a plaintiff was successful in establishing the appropriateness of aggregate damages, the Court made an award at the same time. This is because s. 24 of the CPA contemplates that the Court expressly “determine” liability and “give” judgment.

151. By contrast, in this case, quantification will occur later with new evidence to be tendered in accordance with the parties’ agreement and this Court’s ruling. As such, the full factual basis for the quantification of damages is not yet before the Court.

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<sup>236</sup> *Ramdath Appeal* at [para 76](#).

<sup>237</sup> *Ramdath Appeal* at [para 51](#).

<sup>238</sup> *Ibid.*

<sup>239</sup> See, *supra*, footnote 89.

152. The plaintiffs submit that this Court has the discretion to decide whether aggregate damages is an appropriate remedy under s. 12 of the CPA prior to the quantification stage. In doing so, this Court should be guided by the *Ramdath* factors with an eye to the current procedural posture of this proceeding. In particular, this Court should keep in mind when assessing the reliability of non-individualized evidence that further factual evidence regarding quantification will be tendered at a later stage.

153. The plaintiffs respectfully submit that they have satisfied the *Ramdath* factors. The methodology of Professor Boyer, viewed in the context of the evidence tendered in the first phase of the trial, is reliable and provides an effective remedy to reasonably determine aggregate damages. Further, there is no evidence that it would overstate the City's liability. Each *Ramdath* factor is addressed with reference to the parties' expert evidence below.

**C. The *Ramdath* factors are satisfied**

**1. Professor Boyer's proposed methodology is reliable**

154. Professor Boyer's methodology provides a method to reasonably determine damages in the aggregate without proof by individual class members.

155. Professor Boyer's opinion and methodology are credible, reliable, and simple. His uncontested opinion is that damages for lost plate value must be assessed in the aggregate because of a basic principle: all financial assets that give the same right to cash flows have the same value irrespective of their use. Further, the "discounted cash flow" methodology he proposes to calculate lost plate value is a reliable, proven, and workable methodology. Not only did Professor Boyer use this methodology to quantify aggregate damages for lost plate value in Quebec, but the City's own

economist, Dr. Dan Hara, proposed the methodology as a tool to compensate plate owners at amalgamation for their investment value.<sup>240</sup>

156. On cross-examination, most questions directed at Professor Boyer related to the data he would need to quantify damages,<sup>241</sup> the fictional numbers chosen for his illustrative calculations,<sup>242</sup> and the data underlying his study of other North American cities.<sup>243</sup> These questions did not target the reliability of the methodology itself, but rather that of the hypothetical inputs he used for the illustrative calculations.

157. In any event, the data to be used by Professor Boyer to assess aggregate damages is reliable. For all plate owners, costs can be estimated based on uncontested figures currently in the trial record.<sup>244</sup> With respect to revenues of Industrial plate owners, Professor Boyer opined that they can be drawn from the rates prescribed in the applicable collective agreements.<sup>245</sup>

158. Other non-individualized data may be required to assess damages for Artisan plate owners. Professor Boyer identified this data in his testimony.<sup>246</sup> In the case of revenues, he opined that the average fare per revenue can be determined from credit and debit card transactions. This data is highly reliable as it all verified by third parties such as banks and credit card companies.<sup>247</sup> To that end, Professor Boyer examined documents showing that the total amount of credit and debit

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<sup>240</sup> Plate Value Options, Hara & Associates, Exhibit 204, A1496. However, Dr. Hara valued the plates on the basis of reported transaction prices; Boyer Ex, March 31, 2026, pp 76:5–77:15.

<sup>241</sup> Boyer Cr Ex, March 31, 2026, pp 46:18–60:32, A8784–A8798.

<sup>242</sup> Boyer Cr Ex, March 31, 2026, pp 61:1–109:15, A8798–A8847.

<sup>243</sup> Boyer Cr Ex, March 31, 2026, pp 124:3–128:25, A8862–A8866.

<sup>244</sup> “Taxi and Limousine Regulation Service Review”, KPMG, December 31, 2015, Exhibit 58, F2760.

<sup>245</sup> Boyer Ex, March 30, 2026, pp 110:13–111:32, A8706–A8707; Boyer Report, Exhibit Z, p 27, A8327.

<sup>246</sup> Boyer Ex, March 30, 2026, pp 111:30–118:26, A8707–A8714; Boyer Cr Ex, March 31, 2026, p 58:11–18, A8796.

<sup>247</sup> Boyer Ex, March 30, 2026, pp 23:20–24:6, A8712–A8713; Boyer Cr Ex, March 31, 2026, pp 59:9–60:1, A8797–A8789.

card transactions processed by plate owners by month are available from February 2008 to July 2019, as well as the total amount of daily reported fares from October 2011 to July 2019. Professor Boyer views this data as promising.<sup>248</sup> This evidence can be tendered and tested at the quantification stage.

159. In sum, the foundations of Professor Boyer’s opinion and methodology remain unshaken. He freely admitted that the reported transfer prices had wide variation,<sup>249</sup> that transfer prices were based on a variety of factors (individual and exogenous),<sup>250</sup> that year-to-year plate owner income depends on a variety of factors,<sup>251</sup> and that the market is illiquid and has frictions.<sup>252</sup> These features were already taken into account in his methodology. None of these factors affected his opinion that the loss of plate value can be valued in the aggregate using the discounted cash flow model.

## **2. Professor Boyer’s methodology provides the only effective remedy**

160. In a negligence action, the task of this Court is to measure the full extent of the plaintiff’s damages and thereby return the plaintiff to the position he or she would have been in had the negligence not occurred.<sup>253</sup>

161. In this case, the plaintiffs sustained losses in plate value. Accordingly, any methodology that does not take into account lost plate value is inconsistent with negligence principles. Professor

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<sup>248</sup> Boyer Ex, March 30, 2026, pp 114:15–28, 116:11–118:20, A8710–8714; Boyer Report, Exhibit Z, p 26, footnote 30, A8326.

<sup>249</sup> Boyer Cr Ex, March 31, 2026, p 28:20–27, A8766.

<sup>250</sup> Boyer Cr Ex, March 31, 2026, p 32:5–8, A8770.

<sup>251</sup> Boyer Cr Ex, March 31, 2026, p 21:10–12, A8759.

<sup>252</sup> Boyer Cr Ex, March 31, 2026, p 39:26–30, A8777.

<sup>253</sup> *Athey v Leonati*, 1996 CanLII 183 (SCC) at [para 12](#) [*“Athey”*].

Boyer's proposed methodology to calculate the loss of plate value in the aggregate provides the only effective remedy to make the Plate Owner Class whole for their losses.

162. Professor Boyer's opinion is that taxi plate owners experienced a permanent loss in plate value as a result of the City's negligence. This opinion is consistent with the evidence tendered at trial and the findings of the Trial Decision.

163. Indeed, the evidence at trial established that when the City allowed Uber to operate illegally in Ottawa, plate values began to fall.<sup>254</sup> Likewise, this Court found that the City's special relationship with the taxi industry and their expectations regarding by-law enforcement "disintegrated" shortly after Uber arrived and solidified its presence in an opened-up market.<sup>255</sup> The plate owners' expectations referred to in this finding necessarily include expectations regarding future revenues earnable into the future beyond September 2016 from their taxi plates. This change in expectation occurred well before the end of the breach period: the City voted to legalize Uber in April 2016.<sup>256</sup>

164. Importantly, the City's negligence also uniformly harmed each family of taxi plate owner. According to Professor Boyer, each taxi plate would diminish in value in the same way because each family of taxi plates provides a plate owner with the same access to cash flows. Conversely, factors that determine a plate owner's income such as their age, health status, or family circumstances are irrelevant to the loss in plate value. The discounted cash flow method reflects the reality that harm was uniform upon all plate owners.

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<sup>254</sup> Trial Decision at [para 290](#).

<sup>255</sup> Trial Decision at [para 162](#).

<sup>256</sup> City Council Meeting Minutes dated April 13, 2016, Exhibit 123, F3723-F3733.

165. A methodology that (1) ignores the fact that the City’s negligence is relevant to expectations of future income beyond September 2016; (2) fails to recognize that the particular use of a capital asset is not relevant to its fair market value; and (3) disregards that the Plate Owner Class sustained a loss in plate value as a result of the City’s negligence does not make the Plate Owner Class whole for the true extent of its losses. To hold otherwise would be to contort the purpose of a damages assessment.

**3. Derek Stacey’s proposed methodology is less reliable**

166. Where the opinion of Professor Stacey differs from that of Professor Boyer, the opinion of Professor Boyer should be preferred as he presents a more reliable methodology. This is for three reasons, as set out below:

***a) Professor Boyer has far deeper expertise than Professor Stacey***

167. Professor Boyer’s expertise in asset valuation is manifestly deeper than that of Professor Stacey. While Professor Stacey is an Associate Professor with 14 years of experience post-PhD, Professor Boyer is a Full Professor with 28 years of experience post-PhD.

168. The table below summarizes the stark differences in credentials and expertise between the two experts.

	<b>Professor Boyer</b>	<b>Professor Stacey</b>
Years of experience (post-PhD)	28	14
Rank	Full Professor	Associate Professor
Faculty leadership positions held	<ul style="list-style-type: none"><li>• President, HEC Faculty Senate</li><li>• Chair, Department of Finance</li></ul>	None

	<ul style="list-style-type: none"> <li>• CEFA Professor of Finance and Power Corporation Canada Chair</li> </ul>	
Peer-reviewed publications	73	5
Experience valuing assets for third parties	<ul style="list-style-type: none"> <li>• Professional consulting experience valuing brands and assets</li> </ul>	None <sup>257</sup>
Expert witness for asset valuation	<ul style="list-style-type: none"> <li>• Multiple retainers as expert witness in asset valuation cases including taxi plate valuation</li> </ul>	None <sup>258</sup>

169. These disparities in expertise are not minor—they are material and impact the reliability of their methodologies. Professor Boyer’s expertise in valuation is broader and deeper. Unlike Professor Stacey, Professor Boyer has valued many assets in real life situations, including taxi plates. This means that Professor Boyer has applied the discounted cash flow model in a variety of different real-life situations in addition to the academic context. By contrast, Professor Stacey’s more limited experience is confined to the academic research context.

***b) Professor Stacey’s opinion is based on unclear foundations***

170. The second reason to prefer Professor Boyer’s opinion is that the foundations and assumptions of Professor Stacey’s opinion are not clear.

171. Alarming, Professor Stacey could not precisely identify the factual basis of his opinion at trial. On cross-examination, Professor Stacey could not clearly state whether or not he had read

<sup>257</sup> Stacey Voir Dire Cr Ex, March 31, 2026, p 144:18–21, A8882.

<sup>258</sup> Stacey Voir Dire Cr Ex, March 31, 2026, p 144:22–29, A8882.

the Trial Decision, including which parts of the Trial Decision he had actually read or relied on.<sup>259</sup> What is more, despite the fact that his opinion purports to “isolate” the effect of the City’s negligence, he could not directly say whether or not he was familiar with the findings of fact that underpinned this Court’s finding of negligence.<sup>260</sup>

172. In a similar vein, Professor Stacey could not distinguish the premises of his opinion from his conclusions. When asked about the statement in his report that “The legal question in this matter concerns the impact of negligent non-enforcement during 2014Q4-2016Q3 on the net income that plate holders actually earned (or would have earned) during that period”,<sup>261</sup> Professor Stacey could not confirm whether this was a premise or a conclusion of his analysis.<sup>262</sup> Likewise, when pressed about the concept of “discrete loss period”, he could not clearly recall if it was an instruction or a conclusion.<sup>263</sup>

173. These are not mere lapses in memory: they indicate circular reasoning and suggest a result-driven approach on very fundamental points in Professor Stacey’s opinion. Much of his opinion relies on the notions of “isolating” the effect of the City’s negligence and measuring damages confined to a “discrete loss period”, yet his reasoning on these points is circular.

***c) Professor Stacey’s method cannot “isolate” the negligence as it purports to do***

174. More critically, Professor Stacey’s method does not actually “isolate” the City’s negligence as it purports to do. In his report and during his examination in chief, Professor Stacey baldly

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<sup>259</sup> Stacey Cr Ex, April 1, 2026, pp 87:6–89:10, A8978–A8980.

<sup>260</sup> Stacey Cr Ex, April 1, 2026, p 73:5–8, A8964.

<sup>261</sup> Stacey Report, Exhibit EE, p 44, A8516.

<sup>262</sup> Stacey Cr Ex, April 1, 2026, pp 118:10–122:26, A9009–A90131; see especially p 120:2–4, A9011.

<sup>263</sup> Stacey Cr Ex, April 1, 2026, pp 73:12–75:1, 123:2–9, A8964–A8966, A9014.

claimed that his proposed 2-year income-based approach “isolates only the losses attributable to non-enforcement”.<sup>264</sup> However, this assertion did not survive cross-examination.

175. When confronted with a hypothetical example on cross-examination, Professor Stacey’s freely admitted that the individualized “loss” calculated under his method actually captures a combination of factors: negligence, choices of the plate owner, and market factors such as the rise of Uber and the implementation of the 2016 VFH By-law.<sup>265</sup> While he agreed that the City’s negligence contributed to the income changes during the breach period, he conceded that his method cannot identify what factors influenced a plate owner’s income in any given year.<sup>266</sup> He further admitted that “there is going to be some error” in his model, without explaining the potential margin of such error.<sup>267</sup>

176. These admissions establish that it was unreasonable for Professor Stacey to exclude plate values from his methodology. Indeed, Professor Stacey wrote that he excluded plate value as a head of damage in negligence because, in his view, changes “in observed prices over a fixed window do not identify the impact of any specific cause. They reflect the combined effect of all forces shaping expectations” about the taxi industry during the breach period.<sup>268</sup> Yet his admissions show that the very same rationale applies to his methodology to assess lost income: it is impossible to isolate the negligence from other factors. Therefore, Professor Stacey contradicts himself on a central point in his opinion.

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<sup>264</sup> Stacey Ex, April 1, 2026, pp 8:10–32, 58:22–30, A8921, A8949; Stacey Cr Ex, April 2, 2026, pp 10:30–11:6, A9038–A9039; Stacey Report, Exhibit EE, p 7, A8479.

<sup>265</sup> Stacey Cr Ex, April 2, 2026, p 14:5–12, A9042.

<sup>266</sup> Stacey Cr Ex, April 2, 2026, p 15:15–19, A9043; Stacey Ex, April 2, 2026, p 8, A8899.

<sup>267</sup> Stacey Cr Ex, April 2, 2026, p 15:1–15, A9043.

<sup>268</sup> Stacey Ex, April 1, 2026, p 27, A8918; Stacey Report, Exhibit EE, p 28, A8500.

177. In short, Professor Stacey’s method does not actually “isolate” the effect of the City’s negligence as it claims to do. Nor is it based on any particular facts about the City’s negligence.<sup>269</sup> It does not attempt to measure any losses beyond income, nor any losses incurred after the breach period. Rather, it is simply calibrated to set up a fiction about income losses incurred during the breach period in order to sweep away the spectre of plate value.

**4. Professor Stacey’s methodology does not make the plaintiffs whole for their losses**

178. Contrary to Professor Boyer, Professor Stacey’s methodology does not make the plaintiffs whole for their losses. As discussed above, this is principally because his methodology completely excludes plate value as a head of damage. Further, Professor Stacey’s attempt to isolate the effects of non-enforcement on plate owners during the breach period is also inconsistent with (1) negligence law principles and (2) the findings in the Trial Decision.

179. It is well-established that a defendant is liable for any injuries caused or contributed to by its negligence. In *Athey*, the Supreme Court reaffirmed the long-standing principle that if a defendant’s conduct is found to be “a cause of the injury, the presence of other non-tortious contributing causes does not reduce the extent of the defendant’s liability”.<sup>270</sup> In doing so, the Supreme Court rejected attempts by a tortfeasor to apportion losses between tortious and non-tortious causes.

180. By instructing their expert to “isolate” the losses caused by the City’s negligence during the breach period, the City has disregarded this fundamental principle of law. Indeed, Professor

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<sup>269</sup> Stacey Cr Ex, April 1, 2026, pp 87:25–89:10, A8978–A8980.

<sup>270</sup> *Athey* at [para 12](#) (emphasis added).

Stacey seeks to apportion the plaintiffs' losses between tortious and non-tortious causes. This is exactly the danger that *Athey* cautions against. As such, his opinion is unhelpful to this Court. In any event, even if isolating the negligence was indeed possible, this would only serve to undercompensate the plaintiffs for their damages.

181. Professor Stacey's methodology also does not align with this Court's findings on factual causation. In the Trial Decision, this Court held that "Any loss incurred and proven by the Plaintiffs is directly caused by the City's inaction or ineffective action in the enforcement of its taxi by-laws."<sup>271</sup>

182. On cross-examination, Professor Stacey clarified that his analysis was not premised on this proposition.<sup>272</sup> Then, when asked to start from this premise, Professor Stacey unequivocally stated that his conclusions would have been different:

Q. What if you were to assume that any loss incurred is directly caused by The City's negligence? No loss period. Any loss incurred. If you were to start from that premise, would your analysis be any different?

A. Any loss from?

Q. Any loss following The City's negligence.

A. Any loss from September 2014 onward?

Q. Yes.

A. **Then my conclusions would be different.**

Q. Can you elaborate?

A. Yes. If, if the mandate was to measure, if the, if the mandate was to, to measure economic losses from the introduction of Uber onward, then my proposed methodology

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<sup>271</sup> Trial Decision at [para 241](#).

<sup>272</sup> Stacey Cr Ex, April 1, 2026, pp 122:28–123:1, A9013–A9014.

would not, would not involve isolating the damages that are attributable to the loss period. **And instead, you, you would effectively change the loss period from ending at September 2016 to, to never ending.**

Q. Right. **So would it be closer to something that Professor Boyer does?**

A. **Yes. Yes, it would.**

Q. You could value the plates and the loss of plate value?

A. I, I suppose. [...] <sup>273</sup>

183. In essence, had Professor Stacey's instructions and premises been aligned with negligence law and this Court's findings, his methodology and conclusions would have been similar to those of Professor Boyer.

184. This point is cogently illustrated by the differences between Professor Stacey's opinion at trial and his previous academic research.

185. At trial, Professor Stacey opined that the realities of the Ottawa market "impede" the application of the discounted cash flow approach to valuing plates.<sup>274</sup> In particular, he opined that the Ottawa taxi plate market lacks the features required for a discounted cash flow model, namely "a well-functioning and competitive market, frequent trading, transparent and reliable price information, homogeneous assets with comparable income streams, and relatively common beliefs about future regulatory and economic conditions."<sup>275</sup>

186. Professor Stacey did not describe his academic research on Toronto taxi plate values in his examination-in-chief in much detail. He was confronted with it in cross-examination. At that time,

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<sup>273</sup> Stacey Cr Ex, April 1, 2026, pp 123:15–124:5, A9014–A9015 (emphasis added).

<sup>274</sup> Stacey Cr Ex, April 2, 2026, p 96:25–30, A8987.

<sup>275</sup> Stacey Report, Exhibit EE, p 22, A8494.

he admitted that Toronto and Ottawa share a similar market structure.<sup>276</sup> He acknowledged that Toronto was a decentralized market, with frictions, price dispersions, and heterogeneous income streams from plates.<sup>277</sup>

187. These admissions show that Toronto and Ottawa share all the features that Professor Stacey claimed are not amenable to a discounted cash flow approach. Yet in his paper, Professor Stacey modelled a permanent decrease in plate prices using the discounted cash flow method starting in 2014, when Uber illegally entered the Toronto market.<sup>278</sup> In other words, Professor Stacey was able to do for Toronto the exact thing he says cannot be done in Ottawa.

188. The divergence between Professor Stacey's opinion at trial (that the discounted cash flow approach cannot be used to model loss in plate value in Ottawa) and his academic work (i.e. using the discounted cash flow approach to model loss in plate value in Toronto) can only be explained by one simple fact: his instructions and premises for this opinion were different.<sup>279</sup>

189. If this Court accepts Professor Stacey's methodology, it will endorse a wrong eluding an effective remedy. The outcome of Professor Stacey's method completely ignores the devastating and permanent impact of the City's negligence on plate value—something that the City's instructions once again deliberately wrote out of the script. Further, it attempts to exclude losses for which the City is responsible at law. This is simply not a tenable damages framework.

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<sup>276</sup> Stacey Cr Ex, April 2, 2026, p 104:3–30, A8995.

<sup>277</sup> Stacey Cr Ex, April 2, 2026, pp 27:31–28:14, A9055–A9056.

<sup>278</sup> Stacey Cr Ex, April 2, 2026, pp 26:31–27:20, A9054–A9055.

<sup>279</sup> Stacey Cr Ex, April 2, 2026, pp 28:28–29:1, A9056–A9057.

**5. Mr. Zimmerman's framework is unreliable**

190. Mr. Zimmerman's limited role in this proceeding is to "operationalize" Professor Stacey's methodology. In other words, Mr. Zimmerman is the handmaiden of Professor Stacey. As such, the reliability and justice concerns identified with respect Professor Stacey's opinion also pertain to Mr. Zimmerman's opinion. The plaintiffs submit that Mr. Zimmerman's method is fundamentally flawed for at least three additional reasons.

191. **First**, like Professor Stacey, Mr. Zimmerman's framework does not accomplish what it sets out to do: assess lost income in the breach period but-for the non-enforcement of the by-law. Mr. Zimmerman agreed in cross-examination that many factors influence a plate owners' income, including demand, enforcement against unlicensed taxi companies, hours worked, amount of vacation time, health status, lease periods, and lease rates.<sup>280</sup> As such, he plainly admitted that it is impossible to isolate the effect of these factors on income from an income tax return, including the effect of non-enforcement.<sup>281</sup>

192. **Second**, Mr. Zimmerman's framework is based on two unfounded assumptions: (1) that plate owners can be neatly categorized from the use of their plates from 2012-2016; and (2) that the use of their plates from 2012-2013 would be representative of their use during the breach period.<sup>282</sup> There is no factual evidence in the record to support these assumptions. Mr. Zimmerman

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<sup>280</sup> Zimmerman Cr Ex, April 2, 2026, pp 112:7-116:18, A9140-A9144.

<sup>281</sup> Zimmerman Cr Ex, April 2, 2026, pp 116:23-117:5, A9144-A9145.

<sup>282</sup> Zimmerman Ex, April 2, 2026, pp 62:1-63:4, 65:1-10, A9090-A9091, A9093; Zimmerman Cr Ex, pp 122:8-123:19, A9150-A9151.

has no idea how many hours the average taxi plate owner works, whether their use of their plates changed from year-to-year, or the frequency of that change of use during the breach period.<sup>283</sup>

193. **Third**, Mr. Zimmerman failed to consider industry or economic data from the 2012-2016 period at all, let alone how such data would impact loss quantification outcomes. In that regard, Mr. Zimmerman's knowledge of factors that impact industry conditions and plate owner incomes is cursory. For example, he testified to his limited understanding of the supply management regime and that he was not aware of the fact that seasonality affects plate owner incomes.<sup>284</sup>

194. Mr. Zimmerman's framework for an individualized assessment of damages is based on unfounded factual assumptions and a superficial understanding of the taxi industry in Ottawa. Accordingly, it should be given no weight.

#### **6. Mr. Zimmerman's methodology will undermine access to justice**

195. More importantly, Mr. Zimmerman's framework also poses three major risks to access to justice:

- (a) it has the potential for unfair quantification outcomes on lost income;
- (b) its current processing time and cost are unknown; and
- (c) it poses the risk of smaller damages awards for lost income that are a fraction of lost plate value.

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<sup>283</sup> See *ibid*; Zimmerman Cr Ex, April 2, 2026, pp 112:28–30, A9140.

<sup>284</sup> Zimmerman Cr Ex, April 2, 2026, pp 114:21–32, A9142.

196. The first threat that Mr. Zimmerman’s opinion poses to access to justice is quantification outcomes which are unfair to plate owners. In this regard, the framework does not take into account the possibility of variations in industry conditions and personal circumstances that are specific to only the 2012-2012 period. For example, if a plate owners’ income was unusually different in only the 2012-2013 period due to novel extraneous factors outside his control, the magnitude of his loss in the breach period could be smaller than if more representative figures were considered. This could result under-compensation if further adjustments are not made to Mr. Zimmerman’s calculation.<sup>285</sup>

197. The second risk arises from the fact that Mr. Zimmerman failed to consider access to justice concerns whatsoever, such as processing time or costs. He has no idea how long it will take to “operationalize” his framework or how many forensic accountants would be required.<sup>286</sup> In this regard, he acknowledged that he cannot estimate how long it will take to assess damages for the 768 plate owners because he admittedly is not an expert in access to information or timelines for processing loss quantification.<sup>287</sup> Likewise, he simply does not know how many plate owners it would be “impractical or impossible” to assess losses for with his primary methodology. Given

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<sup>285</sup> Zimmerman Cr Ex, April 2, 2026, pp 128:19–132, A9156–A9160. Mr. Zimmerman initially admitted that if demand for taxi rides was unusually high only in the 2012-2013 period, it might change the magnitude of a plate owner’s loss in the breach period because of a higher projected net income, and industry statistics would be relevant. When asked to apply the converse hypothetical, he evaded the question and continued to apply the original assumption in his opinion that the same industry trends continued into the breach period. This assumption was not stated in his report.

<sup>286</sup> Zimmerman Cr Ex, April 2, 2026, p 138:6–9, A9166.

<sup>287</sup> Zimmerman Cr Ex, April 2, 2026, pp 125:12, 139:21–140:13, A9153, A9167–A9168. Mr. Zimmerman’s assumption that most ATIP requests can be completed in 30 days is not reliable or supported by any cogent evidence of current processing times. See, in this regard, *Access to Information Act*, RSC 1985, c A-1, [s 9](#) (providing that the government institution may extend the 30-day statutory deadline provided for in [s 7](#) of the Act to provide the information requested).

the fact that this action is now reaching its 10<sup>th</sup> anniversary, his failure to give due consideration these factors is troubling.

198. Mr. Zimmerman's framework further poses the risk of 768 individual damages awards for lost income in the two-year breach period that are orders of magnitude smaller than reported tax plate values prior to start of the breach period, which amounted to hundreds of thousands of dollars.<sup>288</sup> On its face, this outcome would be tantamount to a denial of justice to the Plate Owner Class and the heirs of any deceased class members, who sustained permanent losses in plate value.

199. In sum, Mr. Zimmerman's proposed framework is inefficient and divorced from the reality that plate owners lost their livelihood and retirement because of the City's negligence. Considering the vast volume of incomes and historical tax information (or lack thereof) to be gathered and assessed, Mr. Zimmerman's framework is riddled with unknowns and uncertainties that could prolong this class action into yet another decade. There are no safeguards in the framework to ensure that it does not turn into an endless cycle of information requests from a team of forensic accountants to the detriment of the Plate Owner Class.

#### **7. No evidence of overstatement of liability**

200. As discussed above, the quantification of damages has been postponed to a later stage of the proceeding. As such, this factor has little weight as it is premature at this juncture. At the quantification stage, the City will have ample opportunity to challenge the non-individualized data or present the Court with its own quantification that, in its submission, does not overstate its liability. In any event, there is no evidence that the non-individualized data considered by

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<sup>288</sup> See, in this regard, *Markson v MBNA Canada Bank*, 2007 ONCA 334 at [para 42](#).

Professor Boyer (such as cost figures, lease rates, and credit card transaction data) would result in any material overstatement of the City's liability.

**D. The aggregate damages award can be allocated among the plaintiff class**

201. If this Court finds that damages can be assessed in the aggregate, this does not mean that every class member will be entitled to identical damages. According to Professor Boyer's method, the total lost plate value for the class would be assessed by assessing the plate value of the four "families" of plates, multiplying by the number of plate in each of those families, and thereby producing a total (i.e. aggregate) amount of damages. This aggregate amount would then be distributed to class members based on factors including:

- a. the number and type of plates they owned during the breach period;
- b. whether they bought or sold a plate during the breach period; and
- c. if so, when their plate was sold and for how much.

202. This method of distributing an aggregate damage amongst individual class members is plainly contemplated under the CPA. Section 24 of the CPA further empowers the Court to order an average of proportional sharing of the award as well as to determine and specify procedures for individual claims to divide an aggregate award if necessary.<sup>289</sup>

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<sup>289</sup> *CPA, s 24(2)-(5)*.

**PART VIII - ORDER SOUGHT**

203. The plaintiffs ask that this Court answer the question for Common Issue 5 in the affirmative.

204. In relation to the pre-trial motion decision, the plaintiffs also ask that the Court direct the parties to provide written submissions on the issue of costs.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 28<sup>th</sup> day of April, 2026.

		
Thomas G. Conway	Marion Sandilands	Joseph Rucci

Lawyers for the Plaintiffs

## PART IX - APPENDICES

### Appendix A: Glossary of Terms

**Anonymous market (antonym: non-anonymous market):** A market where the buyer and seller do not know each other. The Ottawa taxi plate market is a non-anonymous market.

**Atomistic market (antonym: non-atomistic market):** A market where there are enough buyers and sellers such that no single buyer or seller can influence the market price.

**Centralized market (antonym: decentralized market):** A market in which the transactions are carried out centrally (through a central broker), rather than done directly between the buyer and seller. The Ottawa taxi plate market is a decentralized market.

**Discounted cash flow model:** A method of valuing an asset based on calculating the discounted future cash flows expected from the asset.

**Fair market value:** “Normally the highest price expressed in dollars that property would bring in an open and unrestricted market between a willing buyer and a willing seller who are both knowledgeable, informed, and prudent, and who are acting independently of each other.”<sup>290</sup>

**Fundamental Formula for Finance:** The equation that states that the value of an asset is equal to the discounted sum of all future cash flows. In its simplest form, is expressed as follows:<sup>291</sup>

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

where  $E(CF_t)$  are the expected marginal (or incremental) cash flows that will occur in  $t$  periods or years, and  $r$  is the rate at which these future cash flows are discounted. This is the first (and most important) formula that students learn in finance. We can see this as the *Fundamental Formula for Finance*.

**Heterogeneity:** Describes differences in the way an asset-owner actually uses their asset and/or the differences in actual income between different asset-owners.

**Liquid market (antonym: thin market):** A market in which there are a high number of market transactions. The Ottawa taxi plate market is a thin market.

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<sup>290</sup> CRA definition, accepted by Professor Stacey: see Stacey Cr Ex, April 2, 2026, p 2:11–32, A9030.

<sup>291</sup> Boyer Report, Exhibit Z, p 14, A8314.

**Price dispersion:** A phenomenon of some markets where prices for the same asset are different. This phenomenon typically arises in decentralized, frictional, and opaque markets.<sup>292</sup> The greater the price dispersion, the harder it is to derive the asset's value based on the transaction prices.

**Search frictions:** This refers to the costs, delays or barriers experienced by buyers and sellers in a market.

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<sup>292</sup> See Stacey Ex, April 1, 2026, 39:15–32.

**Appendix B: Comparison of Methods**

	<b>Plaintiffs</b>	<b>Defendants</b>
Theory of damages	Permanent loss in value of taxi plates	Losses in plate-owner income during the breach period
Aggregate or individualized?	Aggregate	Individualized
Method of assessing damages	<ol style="list-style-type: none"> <li>1. Calculate loss in value for each of 4 types of plates</li> <li>2. Multiply loss in value by the number of each type of plate</li> </ol> <p>Arrive at aggregate damages amount.</p> <ol style="list-style-type: none"> <li>3. Distribute damages to plate owners based on type of plate, number of plates owned, and length of time during 2014-2016 plate was owned.</li> </ol>	<ol style="list-style-type: none"> <li>1. 768 plate owners fill our questionnaire.</li> <li>2. 768 plate owners submit historical income tax returns for 2012-2016, if they exist.</li> <li>3. Likely needed: 768 plate owners submit ATIP requests to CRA for historical tax return documents.</li> <li>4. Forensic accountant assesses historical income tax return information for 768 plate owners</li> <li>5. Forensic accountant asks additional questions if needed</li> <li>6. 768 individualized claims are assessed</li> </ol>
Data needed	<p>Non-individualized.</p> <p>For each type of plate:</p> <ul style="list-style-type: none"> <li>• Average revenues</li> <li>• Average costs (capital, operating, and renewal fee)</li> <li>• Discount rate</li> </ul>	<p>Individualized</p> <ul style="list-style-type: none"> <li>• Historical income tax data for 2012-2016 for all 768 plate owners</li> </ul>
Timeliness & cost	<ul style="list-style-type: none"> <li>• Can be assessed by one individual (valuation expert).</li> <li>• Requires non-individualized sample data and 4 equations.</li> <li>• Timeframe: months</li> </ul>	<ul style="list-style-type: none"> <li>• Will require a staff of an unknown number of forensic accountants.</li> <li>• Will require correspondence with 768 plate owners.</li> <li>• May require correspondence and/or ATIP's with CRA</li> <li>• Timeframe: unknown</li> </ul>

**Appendix C: Boyer equations for each type of plate**

The following are the four detailed equations Professor Boyer developed for each of the four “families” of plates. They are all variations of the basic Fundamental Formula for Finance.

For all of the equations below:<sup>293</sup>

- *Revenues* are “all revenues that are generated in expectation by transporting individuals by taxicab”
- *Costs<sub>(t)</sub>* are “all the expected costs of operating a taxicab”
- *E(CF<sub>t</sub>)* are the “expected cash flows from operations”
- *R* is the plate renewal fee (a cost)

For accessible plates:<sup>294</sup>

- *X<sub>t</sub>* is the additional cost of operating an accessible plate

For industrial plates:<sup>295</sup>

- *Lease<sub>t</sub>* is the fixed lease rate (income to the plate owner)
- *Fixed<sub>t</sub>* are the fixed costs to the plate owner of a leased plate

<b>Artisan standard</b>	$Value_A = \sum_{t=1}^{\infty} \frac{Revenues_t - Costs_t}{(1+r)^t} - \sum_{t=2}^{\infty} \frac{R}{(1+r)^t}$
<b>Artisan accessible</b>	$Value_{A'} = \sum_{t=1}^{\infty} \frac{Revenues_t - Costs_t - X_t}{(1+r)^t} - \sum_{t=2}^{\infty} \frac{R}{(1+r)^t}$
<b>Industrial standard</b>	$Value_I = \sum_{t=1}^{\infty} \frac{Lease_t - fixed_t}{(1+r)^t} - \sum_{t=2}^{\infty} \frac{R}{(1+r)^t}$
<b>Industrial accessible</b>	$Value_{I'} = \sum_{t=1}^{\infty} \frac{Lease_t - fixed_t - X_t}{(1+r)^t} - \sum_{t=2}^{\infty} \frac{R}{(1+r)^t}$

<sup>293</sup> See Boyer Report, Exhibit Z, p 21, A8321.

<sup>294</sup> See Boyer Report, Exhibit Z, p 22, A8322.

<sup>295</sup> See Boyer Report, Exhibit Z, p 23, A8323.

**SCHEDULE “A”-LIST OF AUTHORITIES**

1. *Athey v Leonati*, [1996] 3 SCR 458, [1996 CanLII 183 \(SCC\)](#)
2. *Endean v British Columbia*, [2016 SCC 42](#)
3. *Markson v MBNA Canada Bank*, [2007 ONCA 334](#)
4. *Martin v Goldfarb*, [1988 CanLII 4150](#) (ON CA)
5. *Metellus c Procureur général du Québec*, [2024 QCCS 2388](#), rev'd [2026 QCCA 395](#).
6. *Metro Taxi Ltd v City of (Ottawa)*, [2018 ONSC 509](#)
7. *Metro Taxi Ltd et al v City of Ottawa*, [2024 ONSC 2725](#)
8. *Ramdath v George Brown College*, [2014 ONSC 3066](#), additional reasons, [2014 ONSC 4215](#), aff'd in part [2015 ONCA 921](#)
9. *Spina v Shoppers Drug Mart Inc*, [2023 ONSC 1086](#), aff'd [2024 ONCA 642](#)
10. *Trillium Motor World Ltd v General Motors of Canada Limited*, [2015 ONSC 3824](#), aff'd [2017 ONCA 544](#)
11. *TMS Lighting v KJS Transport Inc*, [2014 ONCA 1](#)

I certify that I am satisfied as to the authenticity of every authority.

*Note: Under the Rules of Civil Procedure, an authority or other document or record that is published on a government website or otherwise by a government printer, in a scholarly journal or by a commercial publisher of research on the subject of the report is presumed to be authentic, absent evidence to the contrary (rule 4.06.1(2.2)).*

Date April 28, 2026

A handwritten signature in black ink, appearing to read "Joseph Smith", written above a horizontal line.

*Signature*

## SCHEDULE “B”- TEXT OF STATUTES, REGULATIONS & BY - LAWS

### *Access to Information Act, [RSC 1985, c A-1](#)*

#### **Extension of time limits**

**9 (1)** The head of a government institution may extend the time limit set out in section 7 or subsection 8(1) in respect of a request under this Part for a reasonable period of time, having regard to the circumstances, if

- (a) the request is for a large number of records or necessitates a search through a large number of records and meeting the original time limit would unreasonably interfere with the operations of the government institution,
- (b) consultations are necessary to comply with the request that cannot reasonably be completed within the original time limit, or
- (c) notice of the request is given pursuant to subsection 27(1)

by giving notice of the extension and, in the circumstances set out in paragraph (a) or (b), the length of the extension, to the person who made the request within thirty days after the request is received, which notice shall contain a statement that the person has a right to make a complaint to the Information Commissioner about the extension.

### *Class Proceedings Act, 1992, [SO 1992, c 6](#)*

#### **Court may determine conduct of proceeding**

**12** The court, on its own initiative or on the motion of a party or class member, may make any order it considers appropriate respecting the conduct of a proceeding under this Act to ensure its fair and expeditious determination and, for the purpose, may impose such terms on the parties as it considers appropriate. 2020, c. 11, Sched. 4, s. 14.

[...]

#### **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. 1992, c. 6, s. 24 (1).

**Average or proportional application**

(2) The court may order that all or a part of an award under subsection (1) be applied so that some or all individual class members share in the award on an average or proportional basis. 1992, c. 6, s. 24 (2).

**Idem**

(3) In deciding whether to make an order under subsection (2), the court shall consider whether it would be impractical or inefficient to identify the class members entitled to share in the award or to determine the exact shares that should be allocated to individual class members. 1992, c. 6, s. 24 (3).

**Court to determine whether individual claims need to be made**

(4) When the court orders that all or a part of an award under subsection (1) be divided among individual class members, the court shall determine whether individual claims need to be made to give effect to the order. 1992, c. 6, s. 24 (4).

**Procedures for determining claims**

(5) Where the court determines under subsection (4) that individual claims need to be made, the court shall specify procedures for determining the claims. 1992, c. 6, s. 24 (5).

**Idem**

(6) In specifying procedures under subsection (5), the court shall minimize the burden on class members and, for the purpose, the court may authorize,

- (a) the use of standardized proof of claim forms;
- (b) the receipt of affidavit or other documentary evidence; and
- (c) the auditing of claims on a sampling or other basis. 1992, c. 6, s. 24 (6).

**Time limits for making claims**

(7) When specifying procedures under subsection (5), the court shall set a reasonable time within which individual class members may make claims under this section. 1992, c. 6, s. 24 (7).

**Idem**

(8) A class member who fails to make a claim within the time set under subsection (7) may not later make a claim under this section except with leave of the court. 1992, c. 6, s. 24 (8).

**Extension of time**

(9) The court may give leave under subsection (8) if it is satisfied that,

- (a) there are apparent grounds for relief;
- (b) the delay was not caused by any fault of the person seeking the relief; and
- (c) the defendant would not suffer substantial prejudice if leave were given. 1992, c. 6, s. 24 (9).

**Court may amend subs. (1) judgment**

(10) The court may amend a judgment given under subsection (1) to give effect to a claim made with leave under subsection (8) if the court considers it appropriate to do so. 1992, c. 6, s. 24 (10).

METRO TAXI LTD. et al. and CITY OF OTTAWA  
Plaintiffs Defendant

Court File No. 16-69601

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

Proceeding commenced at OTTAWA

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