

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

BETWEEN:

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

Plaintiffs

- and -

**CITY OF OTTAWA**

Defendant

Proceeding under the *Class Proceedings Act*, 1992

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

**COMMON ISSUE 5**

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## Table of Contents

<b>EXECUTIVE SUMMARY</b>	<b>1</b>
<b>REPLY TO THE PLAINTIFFS' SUBMISSIONS</b>	<b>4</b>
<b>1) Overstatement of liability is a fatal structural flaw in the Plaintiffs' methodology</b>	<b>4</b>
A) The Plaintiffs misapprehend the law with respect to aggregate damages	6
i) Overstatement of damages is the critical Ramdath factor	6
ii) Aggregate damages cannot be awarded without determining overstatement	7
iii) Individual damages are the default if aggregate damages will overstate liability	9
B) The Plaintiffs ignore non-tortious intervening causes	10
i) Damages may not be awarded for non-tortious intervening causes	10
ii) It is uncontroverted that non-tortious intervening events caused the majority of the Plaintiffs' losses	15
C) The Plaintiffs' examples demonstrate that their methodology does not factor out non-tortious causes	20
<b>2) The Plaintiffs' methodology is not reliable</b>	<b>24</b>
A) The non-individualized evidence is not reliable	24
B) Dr. Boyer's sample calculation demonstrates the unreliability of his assumptions	26
C) The Plaintiffs' position on the relevance of a plate's use is inconsistent	29
<b>3) Individual damages assessments will not undermine access to justice</b>	<b>31</b>
A) It is uncontroverted that the value of a taxi plate is in its access to income	32
B) Loss of income is a reasonable proxy for the proportion of loss of plate value caused by the City's negligence	34
C) The Plaintiffs do not consider proportionality	36
<b>4) The Plaintiffs mischaracterize the reliability of the City's methodology and evidence</b>	<b>38</b>
A) The City's methodology correctly isolates the "but for" analysis	39
B) Income during the two-year pre-loss period is representative of income during the loss period	40
C) The Plaintiffs' credibility attacks are irrelevant and unfounded	42
i) The Plaintiffs mischaracterize Dr. Stacey's mandate	42
ii) The Plaintiffs mischaracterize Dr. Stacey's Toronto paper	44
iii) The City's April 2025 submissions	45
<b>5) Evidentiary issues</b>	<b>46</b>
A) Exhibit 234 has already been admitted for the truth of its contents	46
B) The Plaintiffs overstate the relevance of the Hara 2000 Report	47
<b>6) Conclusion</b>	<b>48</b>
<b>SCHEDULE "A" – LIST OF AUTHORITIES</b>	<b>51</b>
<b>SCHEDULE "B" – TEXT OF STATUES, REGULATIONS &amp; BY-LAWS</b>	<b>52</b>

## EXECUTIVE SUMMARY

1. The Plaintiffs' proposed methodology suffers from a fatal structural flaw: it is uncontroverted that it attributes liability to the City for the decrease in plate value caused by non-tortious intervening events for which the City bears no responsibility. This flaw alone is dispositive. The Plaintiffs' arguments with respect to reliability and access to justice are not supported by law or evidence and do not overcome this fatal structural flaw.

### **1) The Plaintiffs overstate the City's liability**

2. The law governing aggregate damages is not in dispute, and that law is clear: if a proposed methodology supporting aggregate damages overstates the defendant's liability – as the Plaintiffs' unquestionably does – damages must be assessed individually.

3. It is uncontroverted that non-tortious intervening events – including the spread of Uber throughout North America, the VFH Review, and the enactment of the 2016 By-law – were primarily responsible for the preponderance of the decline in plate values.<sup>1</sup> The Plaintiffs' methodology is structurally incapable of distinguishing between these causes, and therefore structurally overstates the City's liability. It cannot be the basis for an award of aggregate damages, and moreover violates the basic principles of damages in tort.

4. The Plaintiffs advance three categories of flawed arguments in an effort to overcome the structural flaw in their methodology:

- (a) They misapprehend the law with respect to aggregate damages, arguing that overstatement of liability has “little weight” at this stage, that the Court should defer the overstatement analysis to the quantification phase, and that aggregate damages should be the norm. Each of these propositions is contrary to the governing jurisprudence;

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<sup>1</sup> Capitalized terms in this Reply are the same as defined in the City's April 28, 2026 Closing Submissions.

- (b) They misapprehend the law with respect to non-tortious intervening causes, erroneously conflating causation and damages. They argue that because this Court has found the City liable in negligence, it follows that the City must be responsible for all damages suffered by the Plaintiffs regardless of the cause. This error has been consistently and expressly rejected by the Supreme Court and Courts of Appeal.
- (c) Their examples of plates being valued in the aggregate highlight the fundamental flaw in the premise the Plaintiffs' damages methodology. The Plaintiffs urge this Court to assess damages based on a simple before-and-after picture of plate value that measures the collective impact of all causal factors – both tortious and non-tortious. Such an approach is not consistent with the law of aggregate damages or basic tort law principles.

## **2) The Plaintiffs' methodology is not reliable**

5. The Plaintiffs' methodology is not reliable. Dr. Boyer's methodology requires evidence to determine average annual revenue and costs. The evidence for these inputs as they pertain to Artisan plateholders, which represent approximately 55% of the plates in circulation, is not reliable. The proposed non-individualized evidence for revenue and average fare volume does not account for cash fares and street hails. The proposed non-individualized evidence for expenses is a single unproven estimate from Coventry Connections that does not account for stand rent or variable costs. The Plaintiffs' witnesses agree that individual tax returns would provide more accurate information regarding revenue and expenses. Dr. Boyer's sample calculation, which he describes as "sensible for Ottawa," vastly overstates every parameter it relies on relative to the actual evidence in the trial record.

## **3) Individual assessments will not deny access to justice**

6. Even if this Court were persuaded by the Plaintiffs' access to justice concerns, those concerns cannot overcome the fatal, structural flaw in their methodology. This Court should not be persuaded.

7. Awarding damages on the basis of lost income during the negligence period is consistent with the understanding of taxi plate value articulated by both Dr. Boyer and Dr. Stacey – that a taxi plate has no inherent value, that its value is the income stream it provides access to. It is consistent with the recent decision of the Quebec Court of Appeal in *Metellus* that a taxi plate is not property capable of being expropriated. Moreover, the loss of income during the negligence period is a reasonable proxy for the proportion of plate value loss actually caused by the City’s negligence. The City’s proposed individualized methodology is simple, efficient, and proportionate. It upholds access to justice principles in the circumstances.

#### **4) The City’s methodology and witnesses are reliable**

8. The Plaintiffs’ attacks on the reliability of the City’s methodology and witnesses do not bear scrutiny. The Plaintiffs’ methodology attacks merely highlight the degree to which they fundamentally misunderstand the “but for” analysis and damages in tort. The Plaintiffs’ credibility attacks are irrelevant given the substantial agreement between the experts and are unfounded on their merits.

9. For these reasons, the Plaintiffs have failed to meet their burden of proving that their proposed methodology fairly and reasonably calculates damages in the aggregate. Damages must be assessed individually.

## REPLY TO THE PLAINTIFFS' SUBMISSIONS

10. This reply is organized as follows:

- (a) Section 1 addresses the second *Ramdath* factor, which asks whether the Plaintiffs' methodology will overstate the City's damages;
- (b) Section 2 addresses the first *Ramdath* factor, which asks whether the Plaintiffs methodology and the non-individualized evidence on which they propose to rely are reliable;
- (c) Section 3 addresses the third *Ramdath* factor, which asks whether an assessment of damages individually will deny access to justice;
- (d) Section 4 replies to the Plaintiffs' attacks on the reliability and credibility of the City's methodology and witnesses;
- (e) Section 5 addresses two distinct evidentiary issues raised by the Plaintiffs' submissions; and
- (f) Section 6 sets out a summary form of conclusion.

### **1) Overstatement of liability is a fatal structural flaw in the Plaintiffs' methodology**

11. The law governing an award of aggregate damages is not in dispute.

12. The parties agree that the framework set out by Justice Belobaba in *Ramdath*, which was affirmed by the Court of Appeal,<sup>2</sup> governs whether damages may be calculated in the aggregate.<sup>3</sup> In that decision, Justice Belobaba held:

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<sup>2</sup> *Ramdath v. George Brown College*, [2014 ONSC 3066](#) [*Ramdath* (ONSC)]; affirmed *Ramdath v. George Brown College of Applied Arts and Technology*, [2015 ONCA 921](#) [*Ramdath* (ONCA)] at para [62](#), **Case Center B-1-18755**;

<sup>3</sup> Plaintiffs' Closing Submissions, April 28, 2026 [**Plaintiffs Closing**], paras 148-149, **Case Center A9234**

- (a) The question of whether the plaintiffs' methodology will overstate the defendant's liability is one of three factors that determine whether aggregate damages should be awarded;<sup>4</sup> and
- (b) If the proposed methodology does not fairly and reasonably calculate the defendant's liability without overstatement, then damages **must** be assessed individually.<sup>5</sup>

13. Notwithstanding that the Plaintiffs agree that this Court is bound by *Ramdath*, they fail to address fundamental shortcomings in their own methodology: it is uncontroverted that their proposed methodology attributes liability to the City for declines in plate value caused by factors for which the City is not liable.

14. Instead, the Plaintiffs advance three flawed arguments with respect to the issue of overstatement of damages:

- (a) They misapprehend the law with respect to aggregate damages, and in particular with respect to the centrality of the issue of overstatement to the Court's analysis;
- (b) They misapprehend the law with respect to the role of non-tortious intervening causes in apportioning liability and urge this Court to hold the City responsible for all declines in plate value after September 2014, regardless of their cause. In so doing, they ignore the trite principles that a defendant may not be held liable for non-tortious intervening causes of damages, and that a plaintiff may not be put in a better position than they would have been in absent the defendant's negligence; and
- (c) They suggest that the mere fact that plate **value** can be calculated in the aggregate under a DCF framework is sufficient for this Court to determine that **damages** should be calculated in the aggregate based on loss of value. The examples advanced by the

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<sup>4</sup> *Ramdath* (ONSC) at para 47.

<sup>5</sup> *Ibid* at paras 2-3.

Plaintiffs in support of this proposition instead demonstrate why, in this case, a DCF framework is incapable of calculating damages without overstating the City's liability.

15. This section addresses each of these arguments in turn.

**A) The Plaintiffs misapprehend the law with respect to aggregate damages**

16. The Plaintiffs misapprehend the law with respect to the centrality of the overstatement of damages in three respects:

- (a) They argue that the issue of the overstatement of damages has little weight at this juncture, when the jurisprudence is clear that overstatement of damages is **the** critical factor in the *Ramdath* analysis;
- (b) They suggest that the issue of whether their methodology overstates the City's liability should be decided later, when the jurisprudence is clear that the *Ramdath* factors must be evaluated **now**, when the Court is deciding whether to award aggregate damages; and
- (c) They suggest that aggregate damages should be the norm, while ignoring the Courts' consistent rulings that individual damages must be the default if calculating damages in the aggregate will overstate liability.

***i) Overstatement of damages is the critical Ramdath factor***

17. The Plaintiffs argue under the heading "No evidence of overstatement of liability" that "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."<sup>6</sup> This is a fundamental misapprehension of the law regarding aggregate damages.

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<sup>6</sup> Plaintiffs Closing Submissions, para 200, **Case Center A9251**.

18. As set out at length in the City's Closing Submissions, the question of whether the Plaintiffs' methodology will overstate the City's liability is **the most critical** of the three *Ramdath* factors.<sup>7</sup> When determining whether to award aggregate damages, questions about reliability and **overall fairness to the defendant are paramount**.<sup>8</sup>

19. The importance of the *Ramdath* and *Spina* decisions to the instant case is not in dispute, as both parties rely on these decisions.<sup>9</sup>

20. In both cases, the trial judge refused to award aggregate damages specifically because of their finding that doing so would overstate the defendants' liability.<sup>10</sup> Both cases were affirmed by the Court of Appeal. Indeed, the Plaintiffs agree that *Ramdath* stands for the proposition that the defendant's liability cannot be overstated.<sup>11</sup>

21. In *Spina*, Justice Perell specifically cautioned that the attractiveness of aggregate damages as a remedy cannot outweigh the fundamental requirement that those damages not overstate liability.<sup>12</sup> There is simply no basis for the Plaintiffs' claim that the question of overstatement bears little weight at this phase.

***ii) Aggregate damages cannot be awarded without determining overstatement***

22. The Plaintiffs suggest that as a result of the procedural circumstances of this case:

- (a) the question of whether their methodology overstates the City's liability can be determined at the quantification stage; and

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<sup>7</sup> City's Closing Submissions, April 28, 2026 [**City Closing**], paras 54-65, **Case Center B-1-18358**.

<sup>8</sup> *Fresco v. Canadian Imperial Bank of Commerce*, [2020 ONSC 4288](#) [*Fresco* (ONSC)] at para. [29](#); affirmed *Fresco v. Canadian Imperial Bank of Commerce*, 2022 ONCA 115 [*Fresco* (ONCA)].

<sup>9</sup> *Ramdath* is relied on extensively throughout the Plaintiffs' Closing. Both *Ramdath* and *Spina* are specifically cited at para 71 and note 89, **Case Center A9201 and Case Center A9208**.

<sup>10</sup> *Ramdath* (ONSC) at paras. [60-66](#), **Case Center B-1-18722**; see also *Ramdath* (ONCA) at para [62](#), **Case Center B-1-18755**; *Spina v. Shoppers Drug Mart Inc.*, [2023 ONSC 1086](#) at paras. [644-645](#). [*Spina* (ONSC)]; affirmed with respect to the determination that aggregate damages were not appropriate, *Spina* (ONCA), [2024 ONCA 642](#) at para. [202](#), **Case Center A8151**.

<sup>11</sup> Plaintiffs Closing, para 149, **Case Center A9235**.

<sup>12</sup> *Spina* (ONSC) at paras [654-655](#).

- (b) that this Court should award aggregate damages without having determined whether the Plaintiffs' methodology overstates the City's liability, since the City will have the ability to challenge quantification at a later stage.<sup>13</sup>

23. These arguments fundamentally misapprehend the Court's required analysis at this stage. It is uncontroverted that:

- (a) It is the Plaintiffs' methodology that must satisfy the *Ramdath* factors at this stage;<sup>14</sup> and
- (b) One of the three *Ramdath* factors asks whether the "use" of non-individualized evidence (i.e. the methodology) will overstate the defendant's liability.<sup>15</sup>

24. The City agrees that this case is procedurally unique in that the appropriateness of aggregate damages is typically decided at the same time as quantification. However, this does not alter the Plaintiffs' burden. The Plaintiffs must prove that their methodology will not overstate damages, and they must do so **now**.

25. In asking the Court to award aggregate damages while reserving the determination of overstatement of liability to a later phase, the Plaintiffs are inviting this Court to make the fundamental error of determining aggregate damages without having properly applied the *Ramdath* test. This question cannot be left to a future date, when this Court will be without a remedy to reverse course.

26. As set out in the City's Closing Submissions and below the evidence shows that the **Plaintiffs' methodology itself structurally overstates damages.**<sup>16</sup>

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<sup>13</sup> Plaintiffs Closing, paras 151-153 and 200, **Case Center A9235 and A9251**.

<sup>14</sup> *Healey v. Lakeridge Health Corporation*, [2010 ONSC 725](#) at para [284](#); aff'm [2011 ONCA 55](#); *Spina* (ONSC) at para [657](#); *Spina* (ONCA), [2024 ONCA 642](#) at paras [206-208](#), **Case Center A8153**.

<sup>15</sup> *Ramdath* (ONSC) at para. [47](#), **Case Center B-1-18718**; affirmed *Ramdath* (ONCA) at para. [76](#), **Case Center B-1-18760**.

<sup>16</sup> City Closing, paras 178-235, **Case Center B-1-18398**.

**iii) Individual damages are the default if aggregate damages will overstate liability**

27. At paragraph 146 of their submissions, the Plaintiffs claim that Justice Belobaba “emphasized the need to ensure [aggregate damages] are the norm when awarding damages in class actions.”<sup>17</sup> In support of this argument, they include a misleadingly selective excerpt from Justice Belobaba’s decision in *Ramdath*:

Plaintiffs’ Submissions	Full Relevant Text
<p>[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. <u>Aggregate damage awards should be more the norm, than the exception. Otherwise, the potential of the class action for enhancing access to justice will not be realized.</u> [<i>emphasis added by Plaintiffs</i>]</p>	<p>[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 action for enhancing access to justice will not be realized.</p> <p>[2] <b><u>If, however, all or part of the defendant’s monetary liability cannot be fairly and reasonably determined without proof by individual class members, then individual assessments must be undertaken.</u></b></p> <p>[3] <b><u>This case stands for both propositions.</u></b> [<i>emphasis added</i>].<sup>18</sup></p>

28. This selectiveness is emblematic of a broader approach from the Plaintiffs in which they characterize the law and evidence before this Court in ways that are, at best, incomplete.

29. There is in fact no dispute that calculating damages in the aggregate should only be the norm in class actions **if** doing so would not overstate damages. If calculating damages will overstate the defendant’s liability, then the Court **must** undertake individual assessments. The importance of Justice Belobaba’s use of mandatory language cannot be overstated.

<sup>17</sup> Plaintiff Closing, para 146 **Case Center A9233**.

<sup>18</sup> *Ramdath* (ONSC) at paras [1-3](#).

## B) The Plaintiffs ignore non-tortious intervening causes

### i) *Damages may not be awarded for non-tortious intervening causes*

30. A second example of the Plaintiffs' inaccurately selective framing of the law is found in their characterization of the Supreme Court's decision in *Athey*. At paragraphs 179 - 180, the Plaintiffs argue that:

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". In doing so, the Supreme Court rejected attempts by a tortfeasor to apportion losses between tortious and non-tortious causes.

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 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.<sup>19</sup>

31. Once again, this characterization of *Athey* is incomplete at best. The passage referenced by the Plaintiffs discusses **causation**. In the same decision, the Supreme Court explained the role of non-tortious intervening events in reducing liability when it comes to the determination of **damages**:

The respondents also sought to draw an analogy **with cases where an unrelated event, such as a disease or non-tortious accident, occurs after the plaintiff is injured**. One such case was *Jobling v. Associated Dairies Ltd.*, [1981] 2 All E.R. 752 (H.L.), in which the defendant negligently caused the plaintiff to suffer a back injury. Before the trial took place, it was discovered that the plaintiff had a condition, completely unrelated to the accident, which would have proved totally disabling in a few years. Damages were reduced accordingly. In *Penner v. Mitchell* (1978), [1978 ALTASCAD 201 \(CanLII\)](#), 89 D.L.R. (3d) 343 (Alta. C.A.), damages for loss of income for 13 months were reduced because the plaintiff had a heart condition, unrelated to the accident, which would have caused her to miss three months of work in any event.

To understand these cases, and to see why they are not applicable to the present situation, one need only consider first principles. **The essential purpose and most basic principle of tort law is that the plaintiff must be placed in the position he or she would have been in absent the defendant's negligence (the "original position"). However, the plaintiff is not to be placed in a position better than his or her original one. It is therefore necessary not only to determine the plaintiff's position after the tort but also to assess what the "original position" would have been.** It is the difference between these positions, the "original position" and the "injured position", which is the plaintiff's loss. **In the cases referred to above, the**

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<sup>19</sup> Plaintiffs Closing, paras 179-180, citing *Athey v Leonati*, [1996 CanLII 183](#) (SCC) [*Athey*], at para [12](#), **Case Center A9244**.

**intervening event was unrelated to the tort and therefore affected the plaintiff's "original position". The net loss was therefore not as great as it might have otherwise seemed, so damages were reduced to reflect this.**<sup>20</sup>

32. The Supreme Court reaffirmed the distinction between causation and damages in *Blackwater v. Plint*. Writing for a unanimous court and relying on *Athey*, Chief Justice McLachlin held that:

It is important to distinguish between causation as the source of the loss and the rules of damage assessment in tort. The rules of causation consider generally whether 'but for' the defendant's acts, the plaintiff's damages would have been incurred on a balance of probabilities. Even though there may be several tortious and non-tortious causes of injury, so long as the defendant's act is a cause of the plaintiff's damage, the defendant is fully liable for that damage. **The rules of damages then consider what the original position of the plaintiff would have been. The governing principle is that the defendant need not put the plaintiff in a better position than his original position and should not compensate the plaintiff for any damages he would have suffered anyway.** [*emphasis added*]<sup>21</sup>

33. In short, the Plaintiffs erroneously conflate causation and damages. While the presence of non-tortious intervening causes does not shield the City from a finding that it **caused** the Plaintiffs' damages, it does impact the liability attributed to the City. Failing to apportion **damages** between the City's negligence and the non-tortious intervening causes is an error of law and a breach of the fundamental principle that a plaintiff must not be put in a position better than their original position.

34. Indeed, the Plaintiffs' position that the presence of non-tortious causes should not reduce the extent of the City's liability was expressly rejected in *Blackwater*.

35. This case involved the challenge of untangling multiple sources of trauma (pre-existing harm, time-barred claims, and the actionable sexual assaults) to isolate only the damages flowing from the defendant's tort.<sup>22</sup> The appellant advanced the same argument as the Plaintiffs: that once a tortious act is found to be a material cause of injury, the defendant becomes liable for all losses, regardless of the presence of non-tortious causes. Chief Justice McLachlin expressly rejected this argument on the grounds that it "amount[ed] to the contention that once a tortious act has been found to be a material

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<sup>20</sup> *Athey* at paras [31-32](#).

<sup>21</sup> *Blackwater v. Plint*, [2005 SCC 58](#) [*Blackwater*], at para. [78](#). See also *Resurfice Corp. v. Hanke*, [2007 SCC 7](#), at para. [22](#), citing both *Athey* and *Blackwater* with approval.

<sup>22</sup> *Blackwater* at paras [2-4](#).

cause of injury, the defendant becomes liable for all damages complained of after, **whether or not the defendant was responsible for those damages.**<sup>23</sup>

36. The Chief Justice explained the error as follows:

**The amount of damages is limited by loss caused by the actionable torts**, in this case sexual assault. Not awarding damages for loss caused by other factors does not “reduce” damages. **On the contrary, to award damages for such loss would be to “increase” them beyond what the law allows.** [emphasis added]<sup>24</sup>

37. The British Columbia (BC) Court of Appeal articulated an even more unambiguous rejection of the Plaintiffs’ position in *T.W.N.A. v. Canada*, as it identified an error in the trial judgment on all fours with the Plaintiffs’ inaccurate characterization of *Athey*. The trial judge awarded non-pecuniary damages against the defendants for claims of physical and sexual abuse brought by survivors of residential schools, notwithstanding the evidence of other non-tortious factors.<sup>25</sup> The trial judge’s ruling used wording strikingly similar to the Plaintiffs’ submissions:

<b><i>T.W.N.A. et al v. Clarke et al</i></b>	<b>Plaintiffs’ Submissions</b>
<p>[296] In <i>Athey v Leonati</i>, [1996] 3 S.C.R. 458 (S.C.C.), the court held that a defendant is liable for any injuries caused or contributed to by his or her negligence and that <b><u>the presence of other non-tortious contributing causes does not reduce the extent of the liability.</u></b></p> <p>[300] An example of the application of these principles in a sexual assault case where non-tortious factors were present is <i>M. (M.) v. F. (R)</i> (1997), 52 B.C.L.R. (3d) 127 (B.C. C.A.), a case involving the sexual assault of a female child by her step-brother. In that decision, Donald J.A., who wrote the minority judgment, considered <i>Athey</i>. He set out the fundamental rule that the plaintiff is entitled to be placed in the position in which she would have been had the tort not occurred. He went on to hold (Esson and Cumming JJA. agreed with Donald J.A. on this point) that even if there had been non-tortious causes that contributed to the plaintiff’s condition, the plaintiff <b><u>would be entitled to full recovery</u></b></p>	<p>In <i>Athey</i>, the Supreme Court reaffirmed the long-standing principle that if a defendant’s conduct is found to be “a cause of the injury, <b><u>the presence of other non-tortious contributing causes does not reduce the extent of the defendant’s liability</u></b>”.</p>

<sup>23</sup> *Blackwater*, at para. 78

<sup>24</sup> *Ibid* at para 84.

<sup>25</sup> The style of cause for the trial decision is *T.W.N.A. et al v. Clarke et al*, [2001 BCSC 1177](#)

from the defendant so long as the tort was a "material contribution" to the plaintiff's injury [emphasis added].<sup>26</sup>

38. The Court of Appeal overturned the award of non-pecuniary damages, identifying the following error in the trial decision:

First, he failed to recognize the fundamental inconsistency in the propositions (¶ 300) that the purpose of an award of damages is to return a plaintiff to his or her original position, on the one hand, and that the plaintiff is entitled to full recovery despite non-tortious contributing causes of the injury so long as the tort was a "material contribution," on the other. **The latter proposition ignores the plaintiff's original position by putting him in a position that assumes no pre-existing contributing conditions and no independent intervening causal events, that is, in a better position than his or her original position...**<sup>27</sup>

39. The framework set out in *Athey* and *Blackwater* remains the governing law. In its decision in *Murphy v. Morgan* issued on April 16, 2026, the BC Court of Appeal relied on *Athey* and *Blackwater* in emphasizing the distinction between liability and damages, holding:

It is not necessary for the plaintiff to prove that the defendant was the sole cause of an injury to establish liability. The defendant will be fully liable for an injury where the plaintiff proves on a balance of probabilities that the defendant's negligence caused or contributed to the injury, even if the injury is unexpectedly severe. **Nevertheless, the defendant need not compensate the plaintiff for any debilitating effects of pre-existing conditions or intervening events that the plaintiff would have experienced anyway.** Although untangling the different sources of injury and loss and confining damages to those arising from a particular tort may be challenging, it is necessary because **the effects of pre-existing conditions and intervening events are part of the plaintiff's original position.**<sup>28</sup>

40. Similarly, in *Meldazy v. Nassar*, Justice Merritt relied on *Athey* in emphasizing the distinction between liability and damages, holding that: "Separation [of damages] is also permitted **where some of the injuries have tortious causes and some of the injuries have non-tortious causes**, because the defendant is not liable for injuries which were not caused by his or her negligence" [emphasis added].<sup>29</sup>

<sup>26</sup> *Ibid* at paras 296 and 300.

<sup>27</sup> *T.W.N.A. v. Canada (Ministry of Indian Affairs)*, 2003 BCCA 670 at para 47.

<sup>28</sup> *Murphy v. Morgan* 2026 BCCA 152 at para 70.

<sup>29</sup> *Meldazy v. Nassar* 2024 ONSC 1903 at para 18; aff'm 2025 ONCA 590.

41. In short, a material contribution to the Plaintiffs' losses makes the City liable in negligence from a **causation** perspective. It does not relieve the Plaintiffs of the burden of proving that the City caused the damages they seek. Moreover, it does not make the City liable for losses that were not caused by its negligence.

42. In conflating a finding of liability with the determination of damages, the Plaintiffs invite this Court to make precisely the error that was expressly rejected by the Supreme Court and BC Court of Appeal. This Court should decline to do so.

43. As set out in the following section, it is uncontroverted that:

- (a) Non-tortious intervening events, including the VFH Review and the 2016 By-law, as well as the spread of Uber throughout North America, contributed to the decline in plate value during the loss period; and
- (b) These non-tortious intervening events would have caused a decline in plate value regardless of the City's negligence; and
- (c) These non-tortious intervening events are responsible for the vast majority of the decline in plate value.

44. These non-tortious intervening events are akin to the heart condition described above by the Supreme Court in *Athey*.<sup>30</sup> The Plaintiffs would have this Court hold the City liable for their heart condition, when to do so is a clear error of law.

45. The Plaintiffs' proposed methodology is structurally incapable of apportioning liability as between the City's negligence and non-tortious intervening causes. It structurally overstates damages. It cannot be the basis for an award of aggregate damages, or indeed for a lawful award of tort damages of any kind.

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<sup>30</sup> *Athey* at para [32](#).

**ii) *It is uncontroverted that non-tortious intervening events caused the majority of the Plaintiffs' losses***

46. The Plaintiffs urge this Court to prefer the evidence of Dr. Boyer over that of Dr. Stacey to the extent of any inconsistencies.<sup>31</sup> No such determination is necessary. Evidence sufficient to determine that the Plaintiffs' methodology structurally overstates the City's liability is uncontroverted – the experts agree. To reiterate, **Dr. Boyer and Dr. Stacey agree that:**

- (a) Under the Plaintiffs' methodology, plate value declines because of diminished expectations of income and/or increase expectations of risk across the lifetime of the taxi plate;<sup>32</sup>
- (b) The Plaintiffs' methodology measures the collective impact of all causal factors on expectations of income and risk during the loss period. It does not distinguish between a decline in plate value caused by negligence and a decline in plate value caused by any other factor;<sup>33</sup>
- (c) The spread of Uber throughout North America and the regulatory response of other cities to Uber likely caused a decline in plate value even before the loss period;<sup>34</sup>
- (d) The spread of Uber throughout North America and the regulatory response of other cities to Uber contributed to a decline in plate value during the loss period; and<sup>35</sup>

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<sup>31</sup> Plaintiffs Closing, para 135, **Case Center A9228**.

<sup>32</sup> Cross-examination of M. Boyer, p. 34:22-26, **Case Center A8772**; p.110:16- p.111:4, **Case Center A8849**; p.115:14- p.117:32, **Case Center A8853**; Examination in Chief of D. Stacey, p.16:5-12, **Case Center A8907**.

<sup>33</sup> Cross-examination of M. Boyer, March 31, 2026, p. 115:14 – p. 116:8, **Case Center A8853**; p.117:17-32, **Case Center A8855**; p.118:1-17, **Case Center A8856**; Examination in Chief of D. Stacey, April 1, 2026, p.7:19 – p. 8:9, **Case Center A8898**; p.26:12 -27:23; **Case Center A8917-8**; Cross-examination of D. Stacey, April 1, 2026, p.11:9-26, **Case Center A8902**.

<sup>34</sup> Cross-examination of M. Boyer, March 31, 2026, p. 116:23 – p. 117:13 **Case Center A8854** p. 120:9-17; p. 120:32- p.121:5, **Case Center A8858**; Cross-examination of D. Stacey, April 1, 2026, p.117:4-8, **Case Center A9008**

<sup>35</sup> Cross-examination of M. Boyer, March 31, 2026, p. 116:23 – p.117:13, **Case Center A8854**; Cross-examination of D. Stacey, April 1, 2026, p.117:4-8, **Case Center A9008**

- (e) The VFH Review and the City's enactment of the 2016 By-law contributed to a decline in plate value during the loss period.<sup>36</sup>

47. Moreover, it is Dr. Boyer's evidence that **Uber's arrival in Ottawa and the associated decline in plate values was inevitable.** It is his evidence that **it is unreasonable to suggest otherwise.**<sup>37</sup>

48. To reiterate, in re-examination Dr. Boyer testified that "Uber has a great product," and that "there is **no way that anyone would believe that [Ottawa] would be able to stem the tide of Uber** because there was – there are so few cities in the world that were able and I believe none in North America."<sup>38</sup> In cross-examination, he agreed that Uber was always going to cause a drastic reduction in plate values whenever it began operating in Ottawa.<sup>39</sup>

49. The Plaintiffs would have this Court ignore the evidence of the two experts, including their own, based on a misapprehension of the scope of this Court's findings in the Liability Decision. They suggest that this Court's preliminary findings with respect to causation in the Liability Decision mean that the City must be held responsible for the full decline in plate value following the negligence period, regardless of the actual cause of that decline.<sup>40</sup> In the City's respectful view, this is a mischaracterization of the Court's earlier findings. This Court's decision was clear that the Plaintiffs need to prove their damages, and it is self-evident that they must do so in accordance with well-established tort law principles.

50. The Plaintiffs' position is flawed in three respects:

51. **First**, as set out in the preceding section, this position erroneously conflates the determination of liability with the calculation of damages.

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<sup>36</sup> Cross-examination of M. Boyer, March 31, 2026, p. 115:14 – p. 116:8, **Case Center A8853**; p.117:17-32, **Case Center A8855**; p.118:1-17, **Case Center A8856**.

<sup>37</sup> Cross-examination of M. Boyer, March 31, 2026, p.116:3-22, **Case Center A8854**; Re-examination of M. Boyer, March 31, 2026, p.131:11 – p.132:13, **Case Center A8869**.

<sup>38</sup> Re-examination of M. Boyer, March 31, 2026, p.131:11 – p.132:13, **Case Center A8869-70**.

<sup>39</sup> Cross-examination of M. Boyer, March 31, 2026, p. 46:2-8, **Case Center A8784**.

<sup>40</sup> Plaintiffs Closing, paras 44 and 181, citing Liability Decision at paras [240-241](#), **Case Center A9191 and A9245**.

52. **Second**, this is a further example of the Plaintiffs' selective characterization of the relevant law. The Liability Decision explicitly drew a distinction between the determination of causation as it pertains to the question of the City's liability in negligence, and the calculation of damages:

Even if the determination of damages has been postponed to a later stage of these proceedings **and that the Plaintiffs must prove their damages**, I must nonetheless, within the context of the negligence analysis, determine if the City's conduct caused the Plaintiffs' loss. [*emphasis added*]<sup>41</sup>

53. This Court's finding that the Plaintiffs proved the causation element of the negligence inquiry does not relieve the Plaintiffs from the burden of proving their losses, and it does not make the City liable for losses it did not cause. The evidence called after the issuance of the Liability Decision proves that most of the decline in plate value was caused by events independent of the City's negligence.

54. **Third**, the Plaintiffs' position defies common sense. The trial did not conclude with the issuance of the Liability Decision – the aggregate damages phase was a continuation of the original trial.<sup>42</sup> In its ruling deferring the hearing of common issue 5, this Court held that the Liability Decision is part of a trial that is not complete, and that no appeal is available until after this Court determines common issue 5:

The City argues that by separating liability and damages issues, I am creating a multiplicity of proceedings and inviting the parties to two appellate reviews; one for liability, and one for damages. I disagree. **Upon further reflection, I am of the view that an appeal of my decision is only available to the parties once the trial is complete. In my opinion, the trial will be completed once I have determined common issue number 5.** [*emphasis added*]<sup>43</sup>

55. When a trial is structured in phases, common sense would dictate that the trial judge is permitted to consider the totality of the evidence, regardless of the phase of trial in which that evidence is called.

56. Indeed, both parties rely on evidence called during the Liability Phase in their submissions with respect to common issue 5. The reverse must be true. This Court must be permitted to expand upon or clarify its findings in the Liability Decision in light of the evidence called during the trial continuation.

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<sup>41</sup> Liability Decision, para [234](#).

<sup>42</sup> Liability Decision, para [462](#).

<sup>43</sup> Oral ruling of Justice M. Smith, January 24, 2023, p.5:6-11, **Case Center A4731**.

57. In this case, the evidence called during the trial continuation establishes that the spread of Uber throughout North America and the process of enacting the 2016 By-law are non-tortious intervening events. They are inevitable events unrelated to the City's negligence that nonetheless contributed to a decline in plate value. They are events existing in both the "actual" and the "but for" worlds.

58. Moreover, the evidence called during the trial continuation establishes that these non-tortious intervening events caused the bulk of the decline in plate value. As Dr. Stacey explained, because plate value is a function of expected cash flow across the lifetime of the asset, the market's expectations of permanently reduced future cash flow as a result of the outcome of the VFH Review have an outsized impact on plate value far in excess of the actual amount of income lost as a result of the City's negligence during the two-year loss period.<sup>44</sup>

59. Indeed, the Plaintiffs concede the centrality of the VFH Review and the enactment of the 2016 By-law to the decline in plate values. They state that their expectations of diminished future revenue crystalized before the end of the loss period, because of the enactment of the 2016 By-law:

Indeed, the evidence at trial established that when the City allowed Uber to operate illegally in Ottawa, plate values began to fall. 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. **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 [emphasis added].**<sup>45</sup>

60. This statement aligns with the evidence of Dr. Boyer that the "policy risk," which is one of the causes of plate value decline, crystalized with the enactment of the 2016 By-law:

Q. Okay. And you referred to a policy risk with my friend Ms. Sandilands as the risk of the law changing.

A. Yes.

Q. Right? And, and the law did change. Correct?

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<sup>44</sup> Exhibit EE, **Case Center A8492-3**; Examination in Chief of D. Stacey, April 1, 2026, p.34:7 – p.36:12, **Case Center A8925**.

<sup>45</sup> Plaintiffs Closing, para 163, **Case Center A9239**.

A. It did change.

Q. The 2016 bylaw was...

A. Mm-hmm.

Q. ...enacted...<sup>46</sup>

61. Dr. Stacey's evidence that these non-tortious intervening events account for the vast majority of the decline in plate value remains uncontroverted. In his sample calculation, 87.5% of the decline in plate value was attributable to changed expectations resulting from the VFH Review and enactment of the 2016 By-law, while just 12.5% of the decline was attributable to the City's negligence.<sup>47</sup> Dr. Stacey was not challenged on the math underlying this sample calculation.

62. It is uncontroverted that the Plaintiffs' methodology is structurally incapable of distinguishing the impact of these non-tortious intervening events from the impact of the City's negligence. Put differently, **it is a structural feature of the Plaintiffs' methodology to overstate City's liability** and to put the Plaintiffs in a far better position than they would have been in absent the City's negligence.

63. This evidence is sufficient on its own for this Court to find that:

- (a) The Plaintiffs' proposed methodology overstates liability and cannot be the basis for calculating damages; and
- (b) The Plaintiffs' proposed methodology violates tort law's basic prohibition against putting the plaintiff in a better position than they would have been in but for the tortfeasor's negligence.

64. Contrary to the Plaintiffs' submissions, this Court need not and indeed must not wait until the quantification stage to determine that the Plaintiffs' methodology overstates liability.<sup>48</sup> When

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<sup>46</sup> Cross-examination of M. Boyer, March 31, 2026, p. 118:22-29, **Case Center A8856**.

<sup>47</sup> Exhibit EE, **Case Center A8492-3**; Examination in Chief of D. Stacey, April 1, 2026, p.34:7 – p.36:12, **Case Center A8925**.

<sup>48</sup> Plaintiffs Closing, para 200, **Case Center A9251**.

overstatement of liability is a structural feature of a proposed damages methodology, it cannot be the basis for calculating damages in the aggregate.

65. By way of example, in *Ramdath*, Justice Belobaba refused to award damages in the aggregate for lost income as a result of delayed entry into the workforce without delving into the precise proposed quantification of these damages. Rather, it was sufficient for him to find that the proposed methodology itself was structurally flawed in a manner that would overstate the defendant's liability.<sup>49</sup>

**C) The Plaintiffs' examples demonstrate that their methodology does not factor out non-tortious causes**

66. The Plaintiffs highlight various examples in the trial record of taxi plates being valued in large groups or the aggregate.<sup>50</sup> The City does not dispute these examples, but they are of no assistance to the Plaintiffs' case.

67. The question before this Court is **not** whether taxi plates can be valued in the aggregate. The question is whether damages can be calculated based on an aggregate decline in plate value **reliably and without overstating the City's liability**. They cannot.

68. None of the examples cited by the Plaintiffs even attempt to disentangle the impact of various causes of declines and plate value. Indeed, those examples highlight the structural defects in the Plaintiffs' proposed methodology.

69. **First**, the Plaintiffs point to the Collins Barrow Report and the 2000 Hara Report.<sup>51</sup> Neither example is relevant to the question of whether the Plaintiffs' DCF methodology overstates the City's liability.

70. Both reports simply provided a mass valuation of taxi plates as at specific point in time. Neither attempted to quantify a loss in plate value, nor did they opine on the cause of that loss. The authors of

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<sup>49</sup> *Ramdath* (ONSC) at paras [64-66](#).

<sup>50</sup> Plaintiffs Closing, paras 62-66, **Case Center A9198**.

<sup>51</sup> Plaintiffs Closing, paras 63 and 64, **Case Center A9198**, citing Exhibit 35, **Case Center F3567** and Exhibit 203, **Case Center F483**.

the reports were not called as witnesses, the valuation methodologies were not tested, and the valuations themselves were not accepted for the truth of their contents. The mere act of marking these reports as numbered exhibits does not mean that their valuations are accepted as truthful or reliable.<sup>52</sup>

71. **Second**, the Plaintiffs rely on the trial court's acceptance of Dr. Boyer's quantification of the loss of taxi plate values in Quebec in *Metellus*.<sup>53</sup> Once again, this example serves to highlight the fundamental defect in the Plaintiffs' methodology. The City's Closing submissions address at length the trial and appeal decisions in *Metellus* and their implications for the instant case,<sup>54</sup> but in brief:

- (a) Dr. Boyer's valuation in *Metellus* was based on the premise that government of Quebec conducted a disguised expropriation of the plaintiffs' taxi plates. A core premise of this claim is that the Quebec government was responsible for the loss of the full value of the plaintiffs' plates. The claim did not consider whether different factors contributed to that loss in value.<sup>55</sup>
- (b) In this case, Dr. Boyer is attempting to graft the Plaintiffs' claim onto the circumstances of *Metellus*, notwithstanding that the decision was based on a fundamentally different claim under different circumstances. Dr. Boyer's methodology is based on the premise that the City's conduct in either negligently enforcing the 2012 By-law and/or lawfully enacting the 2016 By-law was economically equivalent to a disguised expropriation.<sup>56</sup> This is the basis upon which Dr. Boyer argues that the Plaintiffs should be compensated for all losses in plate value occurring after Uber began operating in Ottawa, including losses beyond the end of the City's negligence.<sup>57</sup>

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<sup>52</sup> 1162740 *Ontario Limited v. Pingue*, [2017 ONCA 52](#) at paras [24-26](#).

<sup>53</sup> Plaintiffs Closing, paras 65-66 **Case Center A9199**, citing *Metellus c. Procureur général du Québec*, [2024 QCCS 2388](#) [*Metellus* (QCCS)], **Case Center B-1-19061**.

<sup>54</sup> City Closing, paras 116-121, **Case Center B-1-18378**.

<sup>55</sup> *Metellus* (QCCS) at para [89](#), **Case Center B-1-19076**.

<sup>56</sup> Cross-examination of M. Boyer, March 31, 2026, p. 40:15-26, **Case Center A8778**.

<sup>57</sup> Cross-examination of M. Boyer, March 31, 2026, p.45:24-27, **Case Center A8783**.

- (c) Notably, the trial decision in *Metellus* was overturned by the Quebec Court of Appeal, in part based on the Court's finding that **taxi plates are not property capable of being expropriated.**<sup>58</sup>

72. The Plaintiffs' reliance on *Metellus* merely highlights the fundamental defect in their methodology. By attributing all decline in plate value to the City, regardless of the cause of that decline, as if the plates had been expropriated, the Plaintiffs' methodology violates the basic tenets of tort law and structurally overstates the City's liability.

73. **Third**, the Plaintiffs point to the trend of the widespread decline in the value of supply-managed taxi plates in different cities coinciding with the arrival of Uber.<sup>59</sup> Again, this example highlights the critical flaw in the Plaintiffs' methodology: it asks this Court to mistake correlation for causation, and to assume that because plate values declined during the negligence period, the entire decline must be the City's fault.

74. In so doing, the Plaintiffs ask this Court to take simplistic and willfully blind view of causation, and to ignore the evidence of their own expert that the decline in plate value was caused by factors beyond the City's negligence.

75. The willful blindness inherent in the Plaintiffs' methodology is best summarized by the following exchange with Dr. Boyer, concerning his evidence of the decline in taxi plate value in other cities that coincided with the arrival of Uber:

Q. Okay. Perhaps we could do it this way, Dr. Boyer. Will you agree with me that looking at the tables, frankly, looking at Section 5 and then Section 6 of your report, those sections, they don't identify how Uber is regulated in each of the cities that you talk about?

A. That's correct.

Q. And you don't identify the current legal status of Uber in any of the cities you talk about?

A. That's correct.

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<sup>58</sup> *Procureur général du Québec c. Metellus*, [2026 QCCA 395](#) at paras [91-92](#).

<sup>59</sup> Plaintiffs Closing, para 101, **Case Center A9212**.

Q. And you don't identify whether Uber operated illegally in any of the cities prior to it being legalized?

A. That's correct.

Q. Okay. And you don't identify for how long Uber may have operated illegally in each city?

A. That's correct.

Q. And you don't identify the enforcement efforts that may have occurred in each city?

A. That's correct.

Q. And this table - these sections of your report don't distinguish between illegal activities by Uber and legalization of Uber in terms of their respective effects on the value of taxi plates.

A. That is correct.

**Q. It simply presents a before picture and an after picture.**

**A. That's correct.**

**Q. And that before picture and after picture is not capable of isolating individual causes of the decline in plate value.**

**A. No. Yeah. That's correct.**

**Q. It lumps all of those....**

**A. It lumps everything... [emphasis added].**<sup>60</sup>

76. The Plaintiffs state that the City's proposed methodology for individualized damages would award damages that are "orders of magnitude smaller than reported taxi plate values prior to the start of the breach period."<sup>61</sup> This reflects their desire for this Court to adopt a simple before and after methodology of the type embodied by Dr. Boyer's evidence above. They ask this Court to lump all causes of decline in plate value together, and to hold the City liable for all of it.

77. This approach structurally overstates the City's liability. It cannot be the basis for a calculation of damages in the aggregate. The Court must assess damages individually.<sup>62</sup>

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<sup>60</sup> Cross-examination of M. Boyer, March 31, 2026, p. 127:22 – p.128:21, **Case Center A8865-6.**

<sup>61</sup> Plaintiffs Closing, para 198, **Case Center A9251.**

<sup>62</sup> *Ramdath* (ONSC) at paras [1-3](#).

## **2) The Plaintiffs' methodology is not reliable**

78. The Plaintiffs' argument with respect to the reliability of their proposed methodology is materially deficient in two respects:

- (a) They significantly overstate the reliability of the proposed non-individualized evidence by ignoring the reliability concerns raised by the City and agreed to by Dr. Boyer; and
- (b) They suggest that Dr. Boyer's sample calculation of a decline in plate value demonstrates his methodology's reliability. In fact, it demonstrates the unreliability of Dr. Boyer's assumptions.

79. This section addresses each of these flaws in turn.

### **A) The non-individualized evidence is not reliable**

80. A methodology for calculating damages in the aggregate is not reliable within the meaning of the *Ramdath* factors if either the assumptions or non-individualized evidence upon which it is based are not reliable.<sup>63</sup> It is not reliable if its "margin of error" is sufficient such that the defendant's liability cannot be accurately calculated.<sup>64</sup>

81. In the instant case, neither Dr. Boyer's assumptions nor his inputs are reliable. We have addressed the lack of reliability of Dr. Boyer's assumption that all losses in plate value are attributable to the City in the paragraphs above. With respect to the latter, the Plaintiffs characterize the non-individualized evidence upon which Dr. Boyer proposes to rely on to determine average revenue and costs for Artisan plateholders as reliable. It is not.

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<sup>63</sup> *Ibid* at paras [60-66](#).

<sup>64</sup> *Spina* (ONCA) at para [208](#).

82. By way of example, the Plaintiffs claim that “[f]or all plate owners, costs can be estimated based on **uncontested** figures currently in the trial record [*emphasis added*].” The allegedly uncontested cost figures are cited to the December 31, 2015 KPMG Report.<sup>65</sup>

83. The cost figures in the KPMG Report are not uncontested, as:

- (a) The cost figures referred to are found in Appendix “A” of the KPMG which estimated average annual operating and capital expenses for standard taxicabs.<sup>66</sup> This estimate is sourced to Coventry Connections and was not corroborated by KPMG.<sup>67</sup> This cost estimate has never been proven or corroborated;
- (b) Dr. Boyer agreed that this cost estimate does not include stand rent, which is a cost paid by Artisan plateholders;<sup>68</sup>
- (c) Dr. Boyer agreed that 79% of the annual operating costs in this estimate are variable.<sup>69</sup>
- (d) Dr. Boyer’s own estimate of the annual maintenance costs for taxis, set out as a “Technical Appendix” in his report, varies considerably from the Coventry Connections estimate contained in the KPMG Report.<sup>70</sup>

84. Beyond reliance on Coventry Connections’ estimate of annual costs or his own estimations, Dr. Boyer did not present any methodology for accurately determining average annual operating costs. Average costs are one of four inputs required by Dr. Boyer to accurately determine plate value.<sup>71</sup> Dr.

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<sup>65</sup> Plaintiffs Closing, para 157 and note 244, **Case Center A9237**.

<sup>66</sup> Exhibit Z, **Case Center A8326**; Examination of M. Boyer, March 30, 2026, p.11: 12-16, **Case Center A8607**.

<sup>67</sup> Exhibit 58, **Case Center F2760**.

<sup>68</sup> Cross-examination of M. Boyer, 2026, p.50:6 – p. 52:5, **Case Center A8788**.

<sup>69</sup> Exhibit 58, **Case Center F2760**; cross-examination of M. Boyer, 2026, p. 49:12 – p. 50:5, **Case Center A8787**.

<sup>70</sup> Exhibit Z, **Case Center A8344**; cross-examination of M. Boyer, March 31, 2026 p. 101:29 – p.102:9, **Case Center A8839**; p.104:4-8, **Case Center A8842**.

<sup>71</sup> Examination in Chief of M. Boyer, March 30, 2026, p. 111:29-112:10, **Case Center A8707**.

Boyer agrees that the Plaintiffs' tax returns would more accurately capture their expenses than these records.<sup>72</sup>

85. In addition, the Plaintiffs refer to the records of credit and debit card transactions as "highly reliable" in terms of determining the average fare per ride.<sup>73</sup> This characterization is premised on the assumption that the quantum of the average cash fare is identical to the quantum of the average credit or debit card fare – i.e. that cash fares do not tend to be higher or lower than credit or debit card fares.<sup>74</sup> Dr. Boyer presented no evidence for this assumption or method of testing it.

86. Finally, the Plaintiffs refer to the records of daily reported fares as "promising" in terms of determining average fare volume.<sup>75</sup> However, these records do not include street hails or cash fares.<sup>76</sup> As such, they are not reliable. It is the evidence of Mr. Way that the Plaintiffs' tax returns would accurately track cash fares.<sup>77</sup>

87. The Court does not need to wait until the quantification stage to test the reliability of the non-individualized evidence. The record is sufficient for the Court to determine that the non-individualized evidence will not accurately approximate the City's liability.

#### **B) Dr. Boyer's sample calculation demonstrates the unreliability of his assumptions**

88. The Plaintiffs highlight Dr. Boyer's sample calculation, which demonstrates, based on parameters selected by Dr. Boyer, that a loss of three and a half trips per day would justify a plate value loss of \$190,000. In emphasizing this evidence, the Plaintiffs attempt to have it both ways, simultaneously stressing that the parameters values inputted into the calculation are "not real numbers,"

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<sup>72</sup> Cross-examination of M. Boyer, March 31, 2026, p. 60:2-15, **Case Center A8798**.

<sup>73</sup> Plaintiffs Closing, para 158, **Case Center A9237**.

<sup>74</sup> Cross-examination of M. Boyer, March 30, 2026, pp. 55:26 – 56:13, **Case Center A8651**.

<sup>75</sup> Plaintiffs Closing, para 116(a), **Case Center A9218**.

<sup>76</sup> Cross-examination of M.A. Way, January 10, 2026, p.30:17 – p.31:9, **Case Center A3799-A8300**.

<sup>77</sup> *Ibid*.

but that they are “sensible for the case of taxi permits in the City of Ottawa.”<sup>78</sup> In cross-examination, Dr. Boyer confirmed that these estimates are “sensible for Ottawa” and “based on educated information.”<sup>79</sup>

89. Notwithstanding that Dr. Boyer’s sample calculation is fictional, the Plaintiffs appear to wish to leave this Court with the impression that a loss of value of \$190,000 per plate is an appropriate estimate, even if it is not precise. The estimate is not appropriate for two reasons:

90. **First**, it is critical to emphasize that Dr. Boyer’s calculation is backward-looking. In constructing this example, Dr. Boyer first selected a plate loss of \$190,000, then worked backwards to determine the inputs necessary to justify that loss in value:

Q. Okay. And so as I understand it, the, the \$190,000 is an arbitrary number.

A. Yes.

Q. Correct? It's not found in any of the records.

A. It's a nice number.

Q. Okay. And then you work backwards to determine the assumptions that would result in that plate having \$190,000 value.

A. I'm not sure there'd be assumptions.

Q. Sorry. To determine the input.

A. Determine the input. Because, if I may suggest, what you have here is an equation with five parametres. If I give you four, the fifth one comes out directly. So....<sup>80</sup>

91. While it is Dr. Boyer’s evidence that he selected \$190,000 because it is a “nice number,” it is strikingly similar to the average loss of approximately \$181,000 per plate that the Plaintiffs have claimed in the Amended Amended Statement of Claim.<sup>81</sup>

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<sup>78</sup> Plaintiffs Closing, para 118, **Case Center A9219**.

<sup>79</sup> Cross-examination of M. Boyer, March 31, 2026, p.62:23-29, **Case Center A8800**.

<sup>80</sup> Cross-examination of M. Boyer, March 31, 2026, p.62:6-18.

<sup>81</sup> Amended Amended Statement of Claim, para. 1, **Case Center B-1-5676**. The Plaintiffs have claimed for \$215,000,000 in damages, which equates to \$180,976.43 per plate for each of the 1,188 taxi plates in the City of Ottawa.

92. **Second**, as set out in the following table, the parameter values selected by Dr. Boyer to justify a loss of \$190,000 per plate are not sensible for Ottawa. Rather, they are completely divorced from the factual reality in the record:

Parameter	Sample Calculation	Evidence in the trial record	Degree of overestimation
Licensed Cab trips per day:	27,400 <sup>82</sup>	September 2013: 6,303 <sup>83</sup> October 2013: 6,633 <sup>84</sup> November 2013: 7,343 <sup>85</sup>	373.1% - 434.7%
Annual revenue	\$159,942 <sup>86</sup>	Iskhak Mail, 2013: \$47,244 <sup>87</sup>	338.5%
Annual income (revenue - expenses):	\$117,842	Iskhak Mail, 2013: \$10,139 <sup>88</sup>	1,162.2%
		StatsCan NOC Code 7513 (Taxi and Limousine Drivers and Chauffers), in Ottawa-Gatineau, 2011: \$27,230 <sup>89</sup>	432.8%
Return on investment (income as a percentage of expenses)	73.6%	Iskhak Mail, 2011: 21.5%	342.3%

93. Dr. Boyer's sample calculation demonstrates the degree to which his assumptions are not reliable. Dr. Boyer assumes that the parameters inputted into his model are "sensible for Ottawa," yet every parameter overstates the actual evidence by a factor of at least three to four times. It demonstrates

<sup>82</sup> Cross-examination of M. Boyer, March 31, 2026, p.63:32 – p. 64:4, **Case Center A8801-2**.

<sup>83</sup> Exhibit DD, September 2013, **Case Center A8471**; Cross-examination of M. Boyer, March 31, 2026, p.69:24 – p.70:3, **Case Center A8807-8**.

<sup>84</sup> Exhibit DD, September 2013, **Case Center A8471**; Cross-examination of M. Boyer, March 31, 2026, p.69:24 – p.70:17-25, **Case Center A8808**.

<sup>85</sup> Exhibit DD, September 2013, **Case Center A8471**; Cross-examination of M. Boyer, March 31, 2026, p.70:27-32, **Case Center A8808**.

<sup>86</sup> Cross-examination of M. Boyer, p.77:7-10, **Case Center A8815**.

<sup>87</sup> Exhibit 76, **Case Center F687**; Cross-examination of M. Boyer, p.81:4-17, **Case Center A8819**.

<sup>88</sup> Exhibit 76, **Case Center F689**; Cross-examination of M. Boyer, p.82:27-83:8, **Case Center A8820-21**.

<sup>89</sup> Exhibit 234, **Case Center B-1-19133**; Cross-examination of M. Boyer, p. 85:11 – 86:9, **Case Center A8823-24**.

that the magnitude of lost value assumed by the Plaintiffs is completely out of line with the actual parameters that would be required to justify such a loss in value.

94. Dr. Boyer's claim that his sample calculation is "sensible for Ottawa" should raise serious concerns that his unreliable assumptions are likely to overstate the City's liability. This concern was one of the bases for the Court's rejection of the plaintiffs' proposed aggregate damages methodologies in both *Spina* and *Ramdath*.<sup>90</sup>

### **C) The Plaintiffs' position on the relevance of a plate's use is inconsistent**

95. The Plaintiffs argue that "[*Dr. Stacey*] implies that the value of the asset depends on how it is used. On the other hand, Professor Boyer testified repeatedly that the fair market value of an asset is the same no matter how it is used."<sup>91</sup> It is revealing that the Plaintiffs do not cite any testimony in support of this claim, as it is not reflective of the evidence at trial.

96. Indeed, Professor Boyer agreed that his methodology makes distinctions in valuation based on use. Dr. Boyer agreed that he distinguishes between Artisan and Industrial plates because they have different cash flow, and that this distinction is based on use.

Q. Exactly. And the change between artisan and industrial or between industrial and artisan would impact the potential cash flow generated by the plate?

A. Yes.

Q. All right. And so you'll agree with me the distinction between artisan and industrial is based on how the plate is used?

A. Yes.<sup>92</sup>

97. This admission demonstrates the unreliability and inconsistency of Dr. Boyer's assumptions. His methodology proposes to factor in some distinctions based on use while ignoring others, notwithstanding that he agrees that other distinctions based on a plate's use impact its cash flow:

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<sup>90</sup> *Ramdath* (ONSC) at paras [60-66](#); *Spina* (ONSC) at paras [643-648](#); *Spina* (ONCA) at para [206-208](#).

<sup>91</sup> Plaintiffs Closing para 134(a), **Case Center A9227**.

<sup>92</sup> Cross-examination of M. Boyer, March 31, 2026, p. 27:25-32, **Case Center A8765**.

Q. **And would you agree with me, Dr. Boyer, there are other factors in terms of how a plate is used that affect the cash flow derived from a plate?** So, for example, whether or not it is operated by the owner.

A. **Oh, yes.**

Q. All right. And as we discussed, if so, how many hours they work, how much vacation they take, that sort of thing.

A. Yes.

Q. **All right. And again, those distinctions would be based on how the plate is used.**

A. **Yes.**

Q. All right. Other distinctions would be whether or not they choose to rent the plate to second or third drivers, whether or not the plate is leased, if so, whether it's bound by the collective bargaining agreement, et cetera.

A. Et cetera.

Q. All right. And all of those are distinctions based on use?

A. Yes.<sup>93</sup>

98. Dr. Stacey's evidence aligns with that of Dr. Boyer:

Q. And what's the importance of those differing revenues on the, on, on the issue of cash flow?

A. Well the, the cash flows are the — what, what we, we — we use the term cash flow to refer to the, the income, the net income that's generated from the use of the taxi plate. And so when there's heterogeneity, when there are differences in how the plate is used that generate differences in the income stream that accrues to the plate holder, then a calculation of damages, a valid assessment of, of damages should take into account those economic differences.<sup>94</sup>

99. The distinction between the two methodologies is in the consistency with which they approach these differing factors impacting cash flow. Dr. Boyer's methodology would arbitrarily consider certain distinctions based on use, while ignoring others. The City's methodology factors in the various factors giving rise to heterogeneity in cash flow by measuring damages through loss of income.

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<sup>93</sup> Cross-examination of M. Boyer, March 31, 2026, p.28:1-20, **Case Center A8766.**

<sup>94</sup> Examination in Chief of D. Stacey, April 1, 2026, p.11:3-12, **Case Center A8902.**

### 3) **Individual damages assessments will not undermine access to justice**

100. The Plaintiffs claim that the City's proposed methodology for individual damages will undermine access to justice in that: (a) compensating the plaintiffs based on loss of income will be a "wrong eluding an effective remedy" and (b) that the City's proposed methodology is overly burdensome.<sup>95</sup>

101. This claim is flawed in three respects:

- (a) It is premised on the claim that the Plaintiffs' taxi plates have been effectively expropriated by the City. The experts agree that taxi plates have no inherent value – their value is only that they provide access to a potential income stream. This aligns with the recent finding of the Quebec Court of Appeal in *Metellus* that taxi plates are licenses, not speculative financial assets, and that they are not property capable of being expropriated;
- (b) In any event, it is the uncontroverted evidence of Dr. Stacey that income lost during the negligence period is a reasonable proxy for the proportion of lost plate value attributable to the City's negligence; and
- (c) The Plaintiffs' claims that the City's methodology is overly burdensome are not supported by credible evidence and do not consider proportionality. The City's proposed methodology sets out an approach that will result in appropriate compensation determined in an efficient and proportionate manner.

102. This section addresses each of these flaws in turn.

103. However, it is important at the outset to contextualize the access to justice issue, in that issues of fairness to the defendant and reliability remain paramount.<sup>96</sup> As Justice Perell explained in *Spina*, **access to justice concerns do not relieve the plaintiffs of their burden.** They cannot save a methodology that is unreliable and/or overstates damages:

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<sup>95</sup> Plaintiffs Closing paras 189 and 197-199, **Case Center A9247 and A9250.**

<sup>96</sup> *Fresco* (ONSC), at para [29](#).

I do not doubt the sagacity of Justice Belobaba, among other judges, and the judges of the Court of Appeal who have noted the attractiveness of aggregate damages as a means to provide access to justice, behaviour modification, and judicial efficiency, which are the salutary aims of the class proceedings regime in Ontario and across the country. **But as attractive as aggregate damages may be to the social utility of class proceedings, the Class Members must demonstrate a global top-down methodology and the Class Member must demonstrate that prerequisites for an aggregate award have been satisfied and that the evidence supports an aggregate award.**<sup>97</sup>

104. Simply put, compensation based on lost plate value cannot be the basis for aggregate damages if it will overstate the City's liability, regardless of access to justice concerns.

**A) It is uncontroverted that the value of a taxi plate is in its access to income**

105. The entire premise of the Plaintiffs' methodology, and indeed their access to justice argument, is that each family of plates has a universal market value, and this value has been effectively expropriated by the City.<sup>98</sup>

106. This premise is at odds with the uncontroverted evidence of the experts that taxi plates have no inherent value, and that their value is only in the income stream that they provide access to. It is further at odds with the recent decision of the Quebec Court of Appeal in *Metellus*.<sup>99</sup>

107. In terms of the evidence, the experts agree that a taxi plate has no inherent value. Its value is that it provided its owner with access to a stream of cash flow, which requires active participation by the owner. As Dr. Boyer stated in cross-examination:

Q. Okay. And so I heard you say yesterday that the taxi plates, **they don't have a value on their own**. Their value is that they allow the owner to receive the proceeds of an economic activity. Is that fair?

A. **That's correct.**

Q. And so in order to generate cash flow, I have to do something with that plate. Correct?

A. Yes.<sup>100</sup>

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<sup>97</sup> *Spina* (ONSC) at para 654.

<sup>98</sup> Cross-examination of M. Boyer, March 31, 2026, p. 40:15-26, **Case Center A8778**.

<sup>99</sup> *Metellus* (QCCA), paras 85 and 91-92.

<sup>100</sup> Cross-examination of M. Boyer, March 30, 2026, p.19:2-9, **Case Center A8615**.

108. Dr. Stacey provided strikingly similar evidence in cross-examination, testifying that:

In this context, a taxi plate, which we're, which we're viewing as a financial asset but the difference is that the cash flows are not a feature of the plate itself. They're a feature of how the plate is used by the individual that owns it.<sup>101</sup>

109. This evidence aligns with the recent ruling of the Quebec Court of Appeal in *Metellus*, which emphasizes that a taxi plate is first and foremost a license existing in the context of a legislative scheme aimed at the public good that allows its holder to earn income from the operation of a taxi business. It is a **distortion of the true nature of the license** to characterize it as a speculative financial tool for the generation of revenue:

Le permis est d'abord et avant tout ce qu'il est : **un permis, une autorisation administrative créée et délivrée par l'État, permettant à son titulaire d'exploiter une entreprise de taxi et d'en tirer des revenus. C'est de dénaturer ou de travestir la nature véritable du permis en cause que de le réduire et le restreindre à un outil financier spéculatif**, dont la fonction principale est de générer des revenus, alors même qu'il n'existe et n'a de sens que dans le cadre d'un régime législatif visant à encadrer le transport rémunéré par taxi au bénéfice de ses usagers. Voyons plus précisément ce qu'il en est [*emphasis added*].<sup>102</sup>

110. On this basis, the Court found that a **taxi plate does not constitute property capable of being expropriated**. Instead, it is more akin to specific right of usage conferred by the Crown:

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

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

<sup>101</sup> Cross-examination of D. Stacey, April 1, 2026, p.131:10-14, **Case Center A9022**.

<sup>102</sup> *Metellus* (QCCA), para [85](#).

*de 2019* a privé les titulaires de permis de la jouissance d'un véritable droit de propriété.  
[emphasis added].<sup>103</sup>

111. The Plaintiffs claim that the loss of income and loss of plate value are two different heads of damages, both of which must be assessed by this Court.<sup>104</sup> This claim is simply not reflective of the evidence or the law. Both the law and evidence make it clear that income generated from a plate **is its value**. Value capable of diminution by a tortfeasor does not exist separately from the capacity of the plate to generate income.

**B) Loss of income is a reasonable proxy for the proportion of loss of plate value caused by the City's negligence**

112. It is uncontroverted that under Dr. Boyer's methodology, income is a component of plate value. The value of a plate is a function of the future expectations of cash flows across the lifetime of the plate, discounted to reflect risk.<sup>105</sup>

113. Because plate value responds to expectations of future income, measuring losses in this manner conflates the impact of all potential causes for reduced income across the lifetime of the asset. It is uncontroverted that, as Dr. Stacey showed, most of the loss in plate value is attributable to changes in expectations arising from the VFH Review and enactment of the 2016 By-law.<sup>106</sup> The City is not liable for these losses.

114. Dr. Stacey's hypothetical example, which remains fundamentally uncontroverted, also works in the opposite direction. It demonstrates that even if damages are measured in lost plate value, the loss of income during the negligence period is a reasonable proxy for the amount of plate value loss attributable to the City's negligence. The hypothetical example contains several components. The figures in these components are hypothetical.

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<sup>103</sup> *Metellus* (QCCA), paras [91-92](#).

<sup>104</sup> Plaintiffs Closing, para 75, **Case Center A9202**.

<sup>105</sup> Cross-examination of M. Boyer, March 31, 2026, p. 34:22-26, **Case Center A8772**; p.110:16- p.111:4, **Case Center A8849**; Examination in Chief of D. Stacey, p.16:5-12, **Case Center A8907**.

<sup>106</sup> Exhibit EE, **Case Center A8492-3**; Examination in Chief of D. Stacey, April 1, 2026, p.34:7 – p.36:12, **Case Center A8925**.

- (a) In the “but for” world, in which the City is able to effectively prevent even a single Uber driver from operating in the City during the loss period,<sup>107</sup> income remains steady at \$4,392 per quarter for the eight quarters of the loss period.<sup>108</sup> The total income earned during the loss period in the “but for” world is \$35,136.
- (b) In the “actual” world, income decline steadily across the eight quarters of the loss period, reflecting Uber’s increasing market penetration. The total income earned during the loss period in the “actual” world is \$21,081.
- (c) The delta between income earned in the “but for” world and the “actual” world is \$14,055.
- (d) Plate value declines steadily during the loss period because of the market’s changing expectations of future cash flow. The changing expectations are due to both (1) temporary income shortfalls caused by non-enforcement; and (2) increasing certainty about the post-2016 regulatory regime.<sup>109</sup>
- (e) Plate value declines by \$100,000 overall across the two-year loss period. Of that \$100,000 overall decline, approximately \$12,500 is attributable to the City’s negligence, whereas \$87,500 is attributable to forward-looking changes in expectations about the permanent transition to the post-VFH regime.<sup>110</sup>

115. The slight discrepancy between lost income during the negligence period and the proportion of lost plate value attributable to the City’s negligence is because in this example, losses grow over time and the largest income shortfalls occur in the later quarters of the loss window. When these later, larger shortfalls are discounted back to present value (as the DCF framework requires), they are worth less in

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<sup>107</sup> Dr. Stacey agrees that assuming 100% effectiveness of enforcement is a “questionable assumption” – Cross-examination of D. Stacey, April 1, 2026, p.115:5-9, **Case Center A9006**.

<sup>108</sup> Exhibit EE, **Case Center A8492-3**; Examination in Chief of D. Stacey, April 1, 2026, p.30:29 – p.32:14 **Case Center A8921-23**.

<sup>109</sup> Exhibit EE, **Case Center A8492-3**; Examination in Chief of D. Stacey, April 1, 2026, p.32:15 – 34:3, **Case Center A8923-25**.

<sup>110</sup> Exhibit EE, **Case Center A8492**; examination in Chief of D. Stacey, April 1, 2026, p. 35:30 – p.36:13, **Case Center A8926-27**.

present-value terms than their face amounts. Simply summing the raw shortfalls without discounting therefore overstates the economically correct damages figure.<sup>111</sup>

116. The model demonstrates that expectations about the post-loss period regulatory regime evolve identically in both the “but for” and “actual” worlds, since in both worlds, the new regulatory regime embodied in the 2016 By-law is in place at the end of the loss period.<sup>112</sup> This is consistent with Dr. Boyer’s evidence that expectations related to policy risk “crystalized” with the enactment of the 2016 By-law.<sup>113</sup>

117. Since expectations of income and risk are identical at the end of the loss period in both the “actual” and “but for” scenarios, the only remaining difference between the actual and but-for plate values is the discounted sum of income shortfalls during the loss window itself.<sup>114</sup> This is why, in Dr. Stacey’s example, the proportion of plate value loss attributable to negligence (\$12,493) equals the discounted present value of the income shortfalls during the loss window.<sup>115</sup>

118. In other words, the model demonstrates that the proportion of plate value decline caused by negligence is equal to the proportion of income lost to competition with Uber during the two-year loss period. The amount of income lost during the loss period is a reasonable proxy for the proportion of plate value decline caused by the City’s negligence.

### **C) The Plaintiffs do not consider proportionality**

119. The Plaintiffs also oppose the City’s proposed individualized methodology on the grounds that, in short, it is overly burdensome and/or inefficient.<sup>116</sup> Such claims are not tenable.

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<sup>111</sup> Exhibit EE, **Case Centre A8489 – A8492**.

<sup>112</sup> Exhibit EE, **Case Centre A8489 – A8492**. Examination in Chief of D. Stacey, April 1, 2026, p.32:25 – p. 34:3, **Case Center A8923-25**.

<sup>113</sup> Exhibit EE, **Case Centre A8489 – A8492**; Cross-examination of M. Boyer, March 31, 2026, p. 118:22-29, **Case Center A8856**.

<sup>114</sup> Exhibit EE, **Case Centre A8489 – A8492**; Examination in Chief of D. Stacey, April 1, 2026, p. 34:7 – p. 36:12, **Case Center A8925-27**.

<sup>115</sup> Exhibit EE, **Case Centre A8491 – A8492**.

<sup>116</sup> Plaintiffs Closing, paras 197 and 199, **Case Center A9250**.

120. To begin with, Mr. Zimmerman's evidence that his proposed methodology is efficient, reasonable, and reflective of accepted loss theory is effectively uncontradicted. The Plaintiffs called no countervailing evidence to challenge Mr. Zimmerman's. The Court must not assume that individualized assessments will deny access to justice; it requires evidence to make such a finding.<sup>117</sup>

121. In claiming that the City's proposed methodology is overly burdensome, the Plaintiffs do not consider the issue of proportionality. To reiterate, in *Spina*, the Court of Appeal confirmed that an individualized assessment of damages is not denial of access to justice where the size of the class and the disputed amounts are proportionate to the cost of recovery. In the instant case, both the size of the class and the disputed amounts are similar to those in *Spina*.<sup>118</sup>

122. The decision of the Ontario Court of Appeal in *Markson v MBNA Canada Bank*, which the Plaintiffs rely on, provides a further illustration of this concept.<sup>119</sup> In *Markson*, the Court of Appeal overturned the decisions of the Motion Judge and Divisional Court and granted certification of a class action brought against the defendant alleging that its flat transaction fees (of \$7.50) and interest charged against cash advances on credit cards were unlawful.<sup>120</sup> The Court of Appeal specifically raised proportionality concerns tied to the disputed amounts and the size of the class:

As I have said, because of the way the defendant has structured its affairs it is practically impossible to determine the extent of its breach of s. 347. Once the common issues are resolved, it would be possible to review the statements of each individual cardholder and calculate the cardholder's damages. **The vast number of accounts to be reviewed and the small potential award in each case are such that it is impractical and inefficient to do so.** Sections 23 and 24 provide a means of avoiding the potentially unconscionable result of a wrong eluding an effective remedy [*emphasis added*].<sup>121</sup>

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<sup>117</sup> *Ramdath* (ONSC) at para. [47](#), **Case Center B-1-18718**; affirmed *Ramdath* (ONCA), at para. [76](#), **Case Center B-1-18760**.

<sup>118</sup> *Spina* (ONCA) at paras [211-212](#), **Case Center A8155**.

<sup>119</sup> Plaintiffs Closing, para 198 and fn 288, **Case Center A9251**, citing *Markson v MBNA Canada Bank*, [2007 ONCA 334](#).

<sup>120</sup> *Markson* at paras [6-8](#).

<sup>121</sup> *Ibid* at para [42](#).

123. In this case, the Plaintiffs have claimed for damages that would amount to approximately \$181,000 per plate – an amount exceeding the maximum jurisdiction of the Small Claims Court.<sup>122</sup> Approximately 45% of the plates are held by multi-plate holders, meaning these individuals are seeking damages potentially many times greater than \$181,000.<sup>123</sup> The circumstances are clearly more akin to those in *Spina* than in *Markson*. There is no credible evidence that the City’s proposed individualized methodology is disproportionate to the size of the class or the disputed amounts.

**4) The Plaintiffs mischaracterize the reliability of the City’s methodology and evidence**

124. In an attempt to rehabilitate the reliability concerns of their own methodology, the Plaintiffs attack the reliability of the City’s methodology and witnesses. These attacks are without merit for the following reasons:

- (a) The Plaintiffs’ argument that the City’s methodology fails to isolate damages from negligence is based on a fundamental misunderstanding of the “but for” analysis that the Court must undertake;
- (b) The Plaintiffs’ claim that pre-loss period income is not representative of likely income during the loss period is at odds with the evidence and their own expert’s assumptions; and
- (c) The Plaintiffs’ attacks on the credibility of the City’s witnesses are irrelevant and unfounded.

125. This section outlines each of these elements in turn.

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<sup>122</sup> Amended Amended Statement of Claim, para. 1, **Case Center B-1-5676**. The Plaintiffs have claimed for \$215,000,000 in damages, which equates to \$180,976.43 per plate for each of the 1,188 taxi plates in the City of Ottawa.

<sup>123</sup> Exhibit 42, **Case Centre F2978**; Cross-Examination of M.A. Way, January 12, 2023, p. 26:31 – p.27:2, **Case Centre A3795-96**.

**A) The City’s methodology correctly isolates the “but for” analysis**

126. The Plaintiffs seek to rehabilitate their own methodology’s inability to disentangle the impact of non-tortious factors from the influence of negligence by incorrectly claiming that the City’s methodology suffers from the same flaw. They claim that the City’s methodology is not reliable because it fails to “isolate” losses attributable to the City’s negligence from losses caused by any other conceivable factor, such as “demand, enforcement against unlicensed taxi companies, hours worked, amount of vacation time, health status, lease periods, and lease rates.”<sup>124</sup>

127. This argument fundamentally misunderstands the nature of the “but for” analysis that must be undertaken in an assessment of damages caused by negligence.

128. As the Supreme Court explained in *Athey*, damages in this case should restore the Plaintiffs to the original position that they would have been in “but for” the City’s negligence.<sup>125</sup> In other words, the Court must award damages on the basis of a hypothetical world in which all other factors are identical, except for the fact that the City meets the standard of care in its enforcement of the 2012 By-law.

129. The parties agree that the calculation of damages:

- (a) need not be “precise,” and must best approximate the “but for” world; and <sup>126</sup>
- (b) must not overstate the City’s overall liability.<sup>127</sup>

130. It is also uncontroverted 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>128</sup> Indeed, the experts agree that these idiosyncratic factors are an

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<sup>124</sup> Plaintiffs Closing paras 174-177 and 191, **Case Center A9242 and A9248**.

<sup>125</sup> *Athey* at paras [31-32](#).

<sup>126</sup> Plaintiffs Closing, para 74, **Case Center A9202**.

<sup>127</sup> *Ibid*, para 149, **Case Center A9235**.

<sup>128</sup> *Ibid*, para 191, **Case Center A9248**; Cross-examination of M. Boyer, March 31, 2026, p.28:1-17, **Case Center A766**.

inherent feature of the taxi of the taxi industry, causing variance in income between individual plateholders.<sup>129</sup>

131. That these factors are an **inherent feature** of the taxi industry means that they were present before the loss period. They were present during the loss period. They were present after the loss period. **They would have been present in a “but for” world** in which the City met the standard of care in its enforcement.

132. The fact that the City’s methodology does not factor out these inherent features is not an indicator of unreliability. On the contrary, it means that the City’s methodology estimates a world in which **all other factors are the same except for the City’s negligence**. This is the precise legal standard that must be met when assessing damages for negligence.

133. As Dr. Stacey explained, the City’s methodology constructs:

a hypothetical scenario where we try to estimate what income would have been **if everything was exactly the same as it was except that, that the what if, except if the, if the by-law 2012 taxi by-law was, was enforced during the loss period.** So it’s an actual versus but for income comparison, which is that it’s direct and it allows us to **hone in on exactly the economic returns that were affected by the, the negligent non-enforcement of the 2012 taxi by-law** [*emphasis added*].<sup>130</sup>

134. In short, this line of argument from the Plaintiffs merely underlines the reliability of the City’s proposed methodology and emphasizes their fundamental misapprehension of the required standard for tort damages.

**B) Income during the two-year pre-loss period is representative of income during the loss period**

135. The Plaintiffs baldly claim that Mr. Zimmerman’s assumption that plateholders “use of their plates from 2012-2013 would be representative of their use during the breach period” is “unfounded” and that

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<sup>129</sup> Cross-examination of M. Boyer, March 31, 2026, p.20:32- p. 22:10, **Case Center A8758-60**; Cross-examination of D. Stacey, April 2, 2026, p. 11:7-14, **Case Center A9039**.

<sup>130</sup> Examination in Chief of D. Stacey, April 1, 2026, p. 59:29 – p.60:5, **Case Center A8950-51**.

there is no “factual evidence in the record to support these assumptions”.<sup>131</sup> These claims are baseless for three reasons.

136. **First**, Mr. Zimmerman was qualified as an expert in business valuation, forensic accounting, and **loss quantification**. The Plaintiffs consented.<sup>132</sup> It is Mr. Zimmerman’s evidence that:

- (a) The accepted approach in loss theory is that income patterns immediately prior to a loss period are most representative of projected income patterns during a loss period;
- (b) The further the pre-loss extends from the start of the loss period, the less relevant the data becomes; and
- (c) Two years is an appropriately representative pre-loss sample.<sup>133</sup>

137. Mr. Zimmerman’s evidence is uncontroverted and is the only qualified evidence on loss theory before this Court. The Court should accept this evidence.

138. **Second**, the Plaintiffs’ methodology relies on precisely the same assumption as Mr. Zimmerman. Dr. Boyer requires average income for each “family” of plates to calculate plate value. The calculation of the pre-loss plate value would necessarily rely on average income figures derived from the period immediately preceding the loss period.<sup>134</sup> Income earned during this period is either appropriately representative of the pre-loss, “but for” world, or is it is not. The Plaintiffs cannot have it both ways.

139. **Third**, the Plaintiffs’ argument that Mr. Zimmerman’s evidence regarding the representativeness of pre-loss period income should not be accepted because it is “unsupported by factual evidence in the record” is inconsistent with the Plaintiffs’ position elsewhere in their submissions regarding the sequencing of evidence. The Plaintiffs understand that evidence of income prior to and during the loss

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<sup>131</sup> Plaintiffs Closing, para 192, **Case Center A9248**.

<sup>132</sup> Examination in Chief of T. Zimmerman, April 2, 2026, p.46:27-32, **Case Center A9074**.

<sup>133</sup> Examination in Chief of T. Zimmerman, April 2, 2026, p.65:1-11, **Case Center A9093**; p.67:27-17, **Case Center A9095**.

<sup>134</sup> Examination in Chief of M. Boyer, March 30, 2026, p. 111:29-112:10, **Case Center A8707**.

period has not been tendered yet, because it will be called at the quantification stage. The absence of this evidence in the record is not a basis for critiquing Mr. Zimmerman. The evidence is not in the record because the parties have yet to call this type of evidence.

140. The parties agree that common issue 5 is being determined based on a record that does not include specific evidence of plateholder income during the loss period, and that this evidence will be tendered at the quantification stage. In advocating for Dr. Boyer's methodology, the Plaintiffs state that evidence of this type – in Dr. Boyer's case, records of credit and debit card transactions and total daily reported fares – “can be tendered and tested at the quantification stage.”<sup>135</sup> This position cannot co-exist with an attack of Mr. Zimmerman based on the lack of evidence currently in the record regarding plateholder income.

**C) The Plaintiffs' credibility attacks are irrelevant and unfounded**

141. The Plaintiffs' credibility attacks on the City's witnesses are both irrelevant and unfounded.

142. With respect to relevancy, as set out in the City's original submissions, there is substantial agreement between the experts, and in particular between Dr. Stacey and Dr. Boyer. The evidence on which the experts agree is sufficient for this Court to find that the Plaintiffs' methodology structurally overstates the City's liability and cannot be a basis for the calculation of damages in the aggregate.<sup>136</sup>

143. Moreover, the Plaintiffs' attacks are simply unfounded. More specifically:

***i) The Plaintiffs mischaracterize Dr. Stacey's mandate***

144. The Plaintiffs claim that Dr. Stacey was “instructed only to consider losses incurred within the 2-year breach period.”<sup>137</sup> This claim, and the evidence cited in support of it, are an incomplete characterization of Dr. Stacey's evidence regarding his understanding of his mandate. A more accurate picture of the evidence follows:

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<sup>135</sup> Plaintiffs Closing, para 158, **Case Center A9237**.

<sup>136</sup> City Closing, paras 114-115, **Case Center B-1-18376**.

<sup>137</sup> Plaintiffs Closing, para 134(b) and fn 208, **Case Center A9227**.

Q. And I want to talk about the discrete loss period term. So this this is part of your instructions?

A. Yes.

Q. So you were instructed to think about a two year discrete loss period?

A. I was instructed to — yeah. The, the, the loss period is defined by that, the span of time between the launch of Uber in 2014 and the enactment of the 2016 vehicle for a higher by-law.

Q. Right, and you've been instructed to consider that as a discrete loss period. Correct? That's what your instructions say. So that idea of the discrete loss period, you just said you don't you didn't do an you didn't interpret the trial judge findings on negligence. Correct?

A. **I interpreted them for the purposes of my economic analysis.**

...

Q. So you were not instructed to consider the possibility of a permanent loss in plate value resulting from a permanent change in the nature of the market. Is that correct?

A. If, if that, if that's how I — like that, that, that's certainly possible. **Right? If, if, if my mandate was to assess damages attributable to negligence during the discrete loss period, and my analysis led me to the conclusion that it's the entire loss that we can attribute to negligence during the loss period, then that, that's how my analysis would have proceeded.** Does that answer your question?

Q. Yes. I think so... [*emphasis added*].<sup>138</sup>

145. This evidence aligns with the actual articulation of Dr. Stacey's mandate set out in his expert report:

My mandate includes:

- evaluating whether a change in taxi plate market value can measure the losses attributable to negligent non-enforcement during the discrete loss period;
- assessing whether damages can be meaningfully or reliably determined on an aggregate basis; and
- if not, developing an economically sound methodology for calculating individual-level damages attributable to negligent non-enforcement.<sup>139</sup>

146. Dr. Stacey's evidence is that calculation of damages based on lost income during the loss period is an economically sound methodology. It is not his evidence that he was limited to this approach from the outset.

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<sup>138</sup> Cross-examination of D. Stacey, April 1, 2026, p.73:13-27; **Case Center A8964**; p.75:2-12, **Case Center A8966**.

<sup>139</sup> Exhibit EE, p. 5, **Case Center A8477**.

**ii) The Plaintiffs mischaracterize Dr. Stacey's Toronto paper**

147. The Plaintiffs claim that in his Toronto paper, Dr. Stacey “modelled a permanent decrease in plate prices using the discounted cash flow method” following Uber’s entry into the Toronto market. They claim that this shows that he was “able to do for Toronto the exact thing he says cannot be done in Ottawa.”<sup>140</sup> These claims rely on a fundamental misunderstanding of Dr. Stacey’s Toronto paper.

148. **First**, as Dr. Stacey explained in cross-examination, he did not construct a model to calculate plate value, as Dr. Boyer does in this case. Instead, he simply relied on the records of plate transfers reported to the City of Toronto to determine the decline in the average price of a taxicab license.<sup>141</sup> In this case, it is uncontroverted: (a) that the record of plate transfers reported to the City is not reliable; and (b) that there is a distinction between price and value.<sup>142</sup>

149. **Second**, the Plaintiffs’ characterization of Dr. Stacey’s Toronto paper is a further example of their fundamental misunderstanding of the question before the Court. As Dr. Stacey explained:

In, in [*the Toronto*] paper, we were interested in the full and permanent impact of Uber on the value of a Toronto taxi license, **whereas the work that went into my report for this case was focused on isolating the, the impact of, of damages** from - during a discrete loss period [*emphasis added*].<sup>143</sup>

150. The Toronto paper is yet a further example of the DCF framework being used to calculate a holistic decline in asset value over time, rather than being used to disentangle the impact of various causal factors. The DCF framework is suited to the first task; it is structurally incapable of the second.

151. **Third**, the Toronto paper incorporated individual-level data into its methodology. The model in that paper was based on data including records of individual leases, which were reported to the City of Toronto prior to 2016.<sup>144</sup> In this case, the Plaintiffs propose to only use aggregate-level data.<sup>145</sup>

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<sup>140</sup> Plaintiffs Closing, para 187, **Case Center A9247**.

<sup>141</sup> Cross-examination of D. Stacey, April 2, 2026, p.18:17-24, **Case Center A9046**.

<sup>142</sup> Examination in Chief of M. Boyer, March 30, 2026, p.127:11 – 129:22, **Case Center A8723-25**; Examination in Chief of D. Stacey, April 1, 2026, p.19:17-20, **Case Center A8910**.

<sup>143</sup> Examination in Chief of D. Stacey, March 31, 2026, p.138:21-25, **Case Center A8876**.

<sup>144</sup> Exhibit JJ, “Fighting for Fares,” June 2022, **Case Center A8538**.

<sup>145</sup> Cross-examination of D. Stacey, April 2, 2026, p.22:25 p. 23:1, **Case Center A9050-51**.

152. In short, the Plaintiffs' characterization of Dr. Stacey's academic work as somehow inconsistent with his evidence in this case does not bear scrutiny.

**iii) The City's April 2025 submissions**

153. The Plaintiffs draw this Court's attention to the similarities between the methodology proposed by its witnesses and the framework proposed in the City's April 2025 submissions.<sup>146</sup> In doing so, the Plaintiffs omit the evidence of both the City's witnesses that this document in no way affected their mandate or evidence.

154. The paragraph in question states:

Loss of income could be easily and efficiently determined by measuring the average income earned by the Plaintiffs from the taxi plate before the Loss Period and comparing it to the average income earned during the Loss Period (factoring in any mitigation efforts on the part of the individual plate holder). This approach is discussed in greater detail below.<sup>147</sup>

155. Dr. Stacey's evidence as to the relevance of this paragraph to his opinion follows:

Q. I also understood your evidence to be that you're not sure whether you've seen this before. Yeah. That's why I went to another question because I understood that already to have been answered. So the loss, it says here "loss of income can be determined by measuring the average income earned by the plaintiff before the loss period and comparing it to the average income during the loss period". Is that what you do in your opinion, in your expert report here?

A. Yes. Yeah. Broadly speaking.

Q. Were these your instructions?

A. **Absolutely not.** No. I, I came to that individual income based methodology based on my own analysis. [*emphasis added*]<sup>148</sup>

156. Mr. Zimmerman's evidence was similarly that he did not rely on the City's April 2025 submission in developing his opinion:

Q. And you would agree that both you and the City, the City then and you now are proposing a calculation of damages based on income loss through a review of income tax returns?

A. In, in my opinion, income tax returns are the Foundation of how all of these types of calculations are done. Whether it be in the context of calculating a loss of income for a plate owner. Whether it's done in the context of business interruption or personal injury or other loss

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<sup>146</sup> Plaintiffs Closing, paras 132 and 142, **Case Center A9226 and A9232**, citing paragraph 98 of the City's April 2025 Submissions, **Case Centre B-1-17341**.

<sup>147</sup> City's April 2025 Submissions, para. 98, **Case Centre B-1-17341**.

<sup>148</sup> Cross-examination of D. Stacey, April 1, 2026, p.127:20 – p. 128:1

quantification matters. They are the most reliable source for that way, so it doesn't surprise me that they're saying that that can be done through tax returns and financial statements. They're normally the fundamental document that we ask for when we're doing out exercises.

Q. Did I ask you if it was a fundamental document?

A. No.

Q. No, I asked you if it was similar.

A. If?

Q. So was it similar?

A. I'm not sure I fully understand the question.

Q. Your proposal and their proposal, reviewing income tax returns. You'd agree with me that that's similar. Correct?

A. Yes.

Q. Okay. That was the question. And did you read this before you developed your report? This paragraph right here.

A. Like, I didn't rely on this document in that way, but I did read the submission

157. The independence and credibility of the City's experts is not at issue in this proceeding.

## 5) Evidentiary issues

### A) **Exhibit 234 has already been admitted for the truth of its contents**

158. The Plaintiffs continue to argue about the admissibility of the 2011 Census earnings data for National Occupation Classification (NOC) code 7513 (Taxi and limousine drivers and chauffeurs), notwithstanding that this Court has already admitted this evidence. It is unclear whether the Plaintiffs ask this Court to retroactively rule this evidence inadmissible, but several brief points are warranted in response:

159. **First**, context is critical. It is important to emphasize that the Agreement between counsel with respect to evidence to be used in the trial of common issue 5 was reached at a time when the parties contemplated calling different experts – Greg McEvoy for the Plaintiffs and Dr. Prentice for the City. Both parties elected not to call those experts. The Agreement did not address nor was it intended to limit the scope of cross-examination.

160. **Second**, Dr. Boyer testified that he is familiar with the NOC System and accepted the reliability of the evidence.<sup>149</sup> It was properly admitted as part of the cross-examination process.

161. **Third**, as a public document, this evidence is presumptively admissible for the truth of its contents under both legislation and common law.<sup>150</sup>

162. **Fourth**, the Plaintiffs have not identified any actual prejudice. The Plaintiffs claim that as a result of their reliance on the Agreement, they were precluded from putting two spreadsheets into evidence (one showing credit and debit card fares and one showing total daily fares) that Professor Boyer intends to rely on in his methodology for aggregate damages.<sup>151</sup> This was the precise purpose of the Agreement – to limit the scope of examination in chief, as opposed to cross-examination.

163. Moreover, the Plaintiffs have not identified any actual prejudice as:

- (a) It is uncontroverted that these spreadsheets exist, and that Professor Boyer intends to rely on them; and

As the Plaintiffs themselves state, the veracity and reliability of these documents will be addressed at the quantification stage.<sup>152</sup>

### **B) The Plaintiffs overstate the relevance of the Hara 2000 Report**

164. The Plaintiffs place undue weight on the Hara 2000 Report,<sup>153</sup> relying on it throughout their submissions and referring to Mr. Hara as the “City’s own economist.”<sup>154</sup> They overstate its relevance and the weight it ought to be accorded by this Court.

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<sup>149</sup> Cross-examination of M. Boyer, March 31, 2026, p.84:29 – p.85:10, **Case Center A8822-23**.

<sup>150</sup> *Evidence Act*, RSO 1990, c. E.23, s. 25; *Levac v. James*, [2016 ONSC 7727](#) at paras. [112-113](#), rev'd on other grounds, [2017 ONCA 842](#); *2287913 Ontario Inc. v. ERSP International Enterprises Ltd.*, [2021 ONSC 3080](#) (CanLII), at para. [11](#); *A.P. v. L.K.*, [2021 ONSC 150](#) (CanLII), at paras. [152-153](#)

<sup>151</sup> Plaintiffs Closing, para 38, **Case Center A9188**.

<sup>152</sup> *Ibid*, para 151, **Case Center A9235**.

<sup>153</sup> Exhibit 204, **Case Center A1496**.

<sup>154</sup> See, e.g., Plaintiffs Closing, paras 64, 106, 111, 113 and 155, **Case Center A9199, A9216, A9217 and A9236**.

165. **First**, the Hara 2000 Report is of limited relevance to the issues before this Court. The Hara 2000 Report was commissioned by the Taxi Project Team of the Ottawa Transition Board. The Transition Board is not a predecessor municipality of the City, and the purpose of the Taxi Project Team was to “advise the Board on the amalgamation of taxi regulation.”<sup>155</sup>

166. The Hara 2000 Report is a discussion paper. It explicitly describes its purpose as being to “provide background information on the issue of taxi plate values and to **discuss** the feasibility of **possible** compensation options paid to current plate holders.”<sup>156</sup> All of its numbers are marked as “provisional.” Its recommendations for compensation were not adopted.

167. **Second**, none of the report’s methodology, conclusions, or calculations have been proven. Mr. Hara was not called as a witness, much less as an expert witness. The Hara 2000 Report was converted from a lettered exhibit to a numbered exhibit during the cross-examination of Susan Jones, who was not asked about and is not capable of testifying to the reliability of the Report’s methods, conclusions, or calculations.<sup>157</sup>

168. The mere act of converting a lettered exhibit to a numbered exhibit imparts no weight beyond an indication that the document is relevant to a fact in issue in the proceeding and has a “sufficient measure of authenticity.”<sup>158</sup> In this case, nothing has been proven<sup>158</sup> regarding the Hara 2000 Report beyond the fact of its existence, and this Court should weigh it accordingly.

## 6) **Conclusion**

169. In light of the foregoing and the City’s April 28 submissions, the City submits that its liability, in whole or in part, cannot “reasonably be determined without proof by individual class members” within the meaning of s. 24(1)(c) of the CPA.<sup>159</sup> As such, the damages must be assessed individually.

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<sup>155</sup> Exhibit 204, **Case Center A1477**.

<sup>156</sup> *Ibid*, **Case Center A1457 and A1477**.

<sup>157</sup> Cross-examination of S. Jones, February 10, 2023, p.46:10-21, **Case Center A6630**

<sup>158</sup> *1162740 Ontario Limited v. Pingue*, [2017 ONCA 52](#) at paras [24-26](#).

<sup>159</sup> *Class Proceedings Act*, 1992, SO 1992, c.6, s. 24(1).

170. With specific reference to the *Ramdath* factors, the evidence is as follows:

	<b><i>Ramdath</i> factor</b>	<b>City response</b>
1.	Whether the non-individualized evidence presented by the plaintiff is sufficiently reliable.	The non-individualized evidence presented by the Plaintiffs with respect to revenue does not account for cash fares or street hails. The non-individualized evidence presented by the Plaintiffs with respect to expenses is not reliable and does not account for variability in expenses. The use of non-individualized evidence does not account for the inherent variability of revenue and expenses that characterizes the taxi industry.
2.	Whether the use of this evidence will result in any unfairness or injustice to the defendant, such as overstatement of its liability.	The Plaintiffs' methodology structurally overstates the City's liability. It fails to distinguish between negligence and non-tortious intervening causes. This flaw is fatal and means that damages <b>must</b> be assessed individually.
3.	Whether the denial of an aggregate approach will result in "a wrong eluding an effective remedy" and a denial of access to justice.	Assessing damages individually will not deny access to justice. An individual assessment of damages based on loss of income is supported by the evidence and the recent decision of the Quebec Court of Appeal in <i>Metellus</i> . The City's proposed methodology is simple, efficient and proportionate.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 6th day of May, 2026.

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## SCHEDULE “A” – LIST OF AUTHORITIES

1. *1162740 Ontario Limited v. Pingue*, [2017 ONCA 52](#).
2. *2287913 Ontario Inc. v. ERSP International Enterprises Ltd.*, [2021 ONSC 3080](#).
3. *A.P. v. L.K.*, [2021 ONSC 150](#).
4. *Athey v Leonati*, [1996 CanLII 183](#) (SCC).
5. *Blackwater v. Plint*, [2005 SCC 58](#).
6. *Fresco v. Canadian Imperial Bank of Commerce*, [2020 ONSC 4288](#).
7. *Fresco v. Canadian Imperial Bank of Commerce*, [2022 ONCA 115](#).
8. *Healey v. Lakeridge Health Corporation*, [2010 ONSC 725](#).
9. *Healey v. Lakeridge Health Corporation*, [2011 ONCA 55](#).
10. *Levac v. James*, [2016 ONSC 7727](#).
11. *Levac v. James*, [2017 ONCA 842](#).
12. *Markson v MBNA Canada Bank*, [2007 ONCA 334](#).
13. *Meldazy v. Nassar*, [2024 ONSC 1903](#).
14. *Meldazy v. Nassar*, [2025 ONCA 590](#).
15. *Metellus c. Procureur général du Québec*, [2024 QCCS 2388](#).
16. *Metro Taxi Ltd. et. al. v. City of Ottawa*, [2024 ONSC 2725](#).
17. *Murphy v. Morgan*, [2026 BCCA 152](#).
18. *Procureur général du Québec c. Metellus*, [2026 QCCA 395](#).
19. *Ramdath v. George Brown College*, [2014 ONSC 3066](#).
20. *Ramdath v. George Brown College of Applied Arts and Technology*, [2015 ONCA 921](#).
21. *Resurfice Corp. v. Hanke*, [2007 SCC 7](#).
22. *Spina v. Shoppers Drug Mart Inc.*, [2023 ONSC 1086](#).
23. *Spina v. Shoppers Drug Mart Inc.*, [2024 ONCA 642](#).
24. *T.W.N.A. et al v. Clarke et al*, [2001 BCSC 1177](#).

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

### Class Proceedings Act, 1992

S.O. 1992, Chapter 6

Consolidation period: From June 3, 2021 to the [e-Laws currency date](#).

Last amendment: [2021, c. 25, Sched.1](#).

#### 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).

### Evidence Act

R.S.O. 1990, CHAPTER E.23

Consolidation Period: From March 6, 2024 to the [e-Laws currency date](#).

Last amendment: [2024, c. 2](#), Sched. 19, s. 6.

#### Copies of statutes, etc.

**25** Copies of statutes, official gazettes, ordinances, regulations, proclamations, journals, orders, appointments to office, notices thereof and other public documents purporting to be published by or under the authority of the Parliament of the United Kingdom, or of the Imperial Government or by or under the authority of the government or of any legislative body of any dominion, commonwealth, state, province, colony, territory or possession within His Majesty’s dominions, shall be admitted in evidence to prove the contents thereof. R.S.O. 1990, c. E.23, s. 25; [2020, c. 34](#), Sched. 13, s. 3 (1); [2024, c. 2](#), Sched. 19, s. 6 (1).

**METRO TAXI et. al.**  
Plaintiffs (Responding Parties)

- and -

**CITY OF OTTAWA**  
Defendant (Moving Party)

Court File No.:16-69601

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

PROCEEDING COMMENCED AT  
OTTAWA

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

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