

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

METRO TAXI LTD., MARC ANDRÉ WAY and ISKHAK MAIL

Plaintiffs

and

CITY OF OTTAWA

Defendant

Proceeding under the *Class Proceedings Act, 1992*

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**REPLY CLOSING WRITTEN SUBMISSIONS OF THE PLAINTIFFS**

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## PART I - DAMAGES: BASIC PRINCIPLES

1. Throughout its submissions, the City ignores the governing principles regarding causation and damages in negligence law.<sup>1</sup> As set out in the three sections below, the City asks this Court to (1) apportion the plaintiffs' damages for an indivisible injury; (2) temporally limit the plaintiffs' damages; and (3) eliminate one of the plaintiffs' heads of damages completely. All three of these outcomes would undermine the purpose of tort law and deny the plaintiffs meaningful recovery.

### A. The City is liable for all damages caused by its negligence

2. At paragraph 17, the City relies on *Athey* for a trite principle: in a negligence action, the task of the trial judge is to place a plaintiff in the position he or she would have been in absent the defendant's negligence.<sup>2</sup> Therefore, a plaintiff's damages are measured by the difference between its "original position" and its "injured position". In other words, a damages award should not place a plaintiff in a "better" position than he or she was before the injury.

3. As far as it goes, this is a correct statement of the law. However, the City omits that *Athey* set forth a related legal principle which is equally relevant to this case. Namely, a defendant is liable in negligence for a plaintiffs' entire injury, even when there are multiple causes of that injury. This principle is set out in the following key paragraphs:

**"[12].....It has long been established that a defendant is liable for any injuries caused or contributed to by his or her negligence. If the defendant's conduct is found to be a cause of the injury, the presence of other non-tortious contributing causes does not reduce the extent of the defendant's liability".**<sup>3</sup>

**"[17] It is not now necessary, nor has it ever been, for the plaintiff to establish that the defendant's negligence was the sole cause of the injury. There will frequently be a myriad of other background events which were necessary**

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<sup>1</sup> Defined terms and short forms in these reply submissions are the same as in the Plaintiffs' Written Closing Submissions of April 28, 2026, unless otherwise specified herein.

<sup>2</sup> *Athey v Leonati*, 1996 CanLII 183 (SCC), [1996] 3 SCR 458 at [para 32](#) [*"Athey"*].

<sup>3</sup> *Athey* at [para 12](#) (emphasis added).

**preconditions to the injury occurring. As long as a defendant is part of the cause of an injury, the defendant is liable, even though his act alone was not enough to create the injury.** There is no basis for a reduction of liability because of the existence of other preconditions: defendants remain liable for all injuries caused or contributed to by their negligence”.<sup>4</sup>

“[19] The law does not excuse a defendant from liability merely because other causal factors for which he is not responsible also helped produce the harm... **It is sufficient if the defendant’s negligence was a cause of the harm**”.<sup>5</sup>

“[20] This position is entrenched in our law and there is no reason at present to depart from it. If the law permitted apportionment between tortious causes and non-tortious causes, a plaintiff could recover 100 percent of his or her loss only when the defendant’s negligence was the sole cause of the injuries. **Since most events are the result of a complex set of causes, there will frequently be non-tortious causes contributing to the injury. Defendants could frequently and easily identify non-tortious contributing causes, so plaintiffs would rarely receive full compensation even after proving that the defendant caused the injury. This would be contrary to established principles and the essential purpose of tort law, which is to restore the plaintiff to the position he or she would have enjoyed but for the negligence of the defendant**”.<sup>6</sup>

“[23] In the present case, the suggested apportionment is between tortious and non-tortious causes. **Apportionment between tortious and non-tortious causes is contrary to the principles of tort law, because the defendant would escape full liability even though he or she caused or contributed to the plaintiff’s entire injuries.** The plaintiff would not be adequately compensated, since the plaintiff would not be placed in the position he or she would have been in absent the defendant’s negligence.”<sup>7</sup>

4. In short, *Athey* makes abundantly clear that as long as a defendant’s negligence was a necessary condition for a plaintiff’s losses, the presence of other contributing causes (whether tortious or not) does not reduce the extent of its liability. A defendant remains “fully liable” for a

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<sup>4</sup> *Athey* at [para 17](#) (The following emphasis in original: “It is not now necessary, nor has it ever been, for the plaintiff to establish that the defendant’s negligence was the sole cause of the injury.... As long as a defendant is part of the cause of an injury, the defendant is liable, even though his act alone was not enough to create the injury.)

<sup>5</sup> *Athey* at [para 19](#) (The following emphasis in original: “It is sufficient if the defendant’s negligence was a cause of the harm”).

<sup>6</sup> *Athey* at [para 20](#) (emphasis added).

<sup>7</sup> *Athey* at [para 23](#) (emphasis added).

plaintiff's damages even if his or her negligence "played a minor" role in the injury.<sup>8</sup> Therefore, courts must assess the difference between a plaintiff's "original position" and his or her "injured position" in the context of any multiple causes that contribute to the injury.

5. A trial judge may not apportion damages between multiple causes unless the plaintiffs' injuries are "divisible".<sup>9</sup> Divisible injuries are unrelated and capable of being separated out, such as injuries to different body parts or assets.<sup>10</sup>

6. By contrast, damages for an "indivisible" injury should not be apportioned.<sup>11</sup> Indivisible injuries are those that cannot be separated to attribute liability to different constituent causes, whether such causes are concurrent or consecutive in time.<sup>12</sup>

7. In this case, only a damages award for a permanent loss in plate value will put the plaintiffs in the position they would be in but for the City's negligence. As argued below, the plaintiffs sustained an indivisible injury for which damages cannot be apportioned.

8. At paragraph 194, the City's submits that it has "no liability" arising from other causes that it says contributed to the plaintiffs' damages, including its own legalization of Uber. Given the foregoing principles enunciated in *Athey*, these submissions are unfounded for two reasons.

9. **First**, the City's negligence was a necessary condition for the plaintiffs' permanent loss in plate value. To that end, this Court has already held that the City's negligence caused the plaintiffs'

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<sup>8</sup> *Athey* at [para 41\(2\)](#) (emphasis added).

<sup>9</sup> *Athey* at [para 24](#).

<sup>10</sup> *Ibid.*

<sup>11</sup> *Athey* at [para 25](#); see also *Bradley v Groves*, 2010 BCCA 361 at [para 37](#).

<sup>12</sup> See *Athey* at paras [25](#), [41](#), [43](#), [49-50](#). The plaintiff in *Athey* had a pre-existing condition and sustained disc herniation as a result of two consecutive motor vehicle accidents occurring at different times. The Supreme Court of Canada declined to apportion damages for consecutive multiple causes, holding that the disc herniation was an indivisible injury.

damages in fact and in law.<sup>13</sup> The City’s legalization of Uber does not erase the impact of its negligence on plate value whatsoever: both causes contributed to the plaintiffs’ losses. Both Professor Stacey and Professor Boyer agree on this salient fact.<sup>14</sup>

10. **Second**, the permanent loss in plate value is a single, indivisible injury that cannot be apportioned at law. This is not a case where the City harmed different capital assets of the plaintiffs in different ways: the claim is for one type of harm to one type of capital asset, namely plate value. The City’s failure to enforce the by-law enabled Uber to gain a substantial market share.<sup>15</sup> Simultaneously, the City fast-tracked the legalization of Uber. In the end result, both actions merged together to diminish plate value.

11. In sum, the impact of the City’s negligent enforcement of the by-law and its legalization of Uber cannot be neatly separated or assessed in silos. The City knew that its negligence would cause or contribute to a “devastating” economic blow on the plaintiff class.<sup>16</sup> Despite this knowledge, the City did nothing to enforce its taxi by-law against Uber, all while pushing forward with its legalization and ignoring plate values as a relevant consideration. Therefore, the impact of the City’s negligence cannot be “disentangled” from the impact of its entire course of conduct vis-a-vis the plate owner class. As such, the permanent loss in plate value is an indivisible injury.<sup>17</sup> In the circumstances, apportionment is neither possible nor appropriate.

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<sup>13</sup> *Metro Taxi Ltd et al v City of Ottawa*, 2024 ONSC 2725 at [paras 234–244](#) [“**Trial Decision**”].

<sup>14</sup> Stacey Cr Ex, April 2, 2026, p 15:16–19, A9043; Boyer Cr Ex, March 31, 2026, p 43:7–11, A8781; Boyer Cr Ex, March 31, 2026, pp 115:13–16–8, A8853–A9954.

<sup>15</sup> Trial Decision at [para 240](#).

<sup>16</sup> Trial Decision at [para 243](#).

<sup>17</sup> Boyer Ex, March 31, 2026, pp 2:18–6:21, A8740–8744; Boyer Ex, March 30, 2026, pp 122:11–123:13, A8718–A8719; Boyer Rejoinder Report, Exhibit AA, pp 8–10, A8454–A8456.

12. At paragraph 206, the City attaches a timeline citing a list of events in North America that it says caused a decline in plate value in Ottawa.<sup>18</sup> The City claims it should not be liable for any of these events.

13. This timeline is a red herring. It is a prime example of a strategy the Supreme Court categorically rejected in *Athey*: a defendant who “frequently and easily” identifies non-tortious contributing causes in an attempt to prevent a plaintiff from fully recovering his or her losses.<sup>19</sup> This tactic is untenable at law and should not be endorsed by this Court.

14. What the timeline does demonstrate is that the City’s actions in legalizing Uber are inseparable from its breach of the standard of care. To that end, the City admits at paragraph 205 that other multiple causes “overlapped” with its failure to enforce the by-law during the breach period. In essence, the City concedes that its own actions (both tortious and non-tortious) during the breach period caused an indivisible injury: a decline in plate value.

15. At paragraphs 222–223, the City claims that Professor Boyer’s methodology is critically flawed because it does not “disentangle” the financial impact of the negligence on plate values. Again, any attempt to “disentangle” the negligence is contrary to *Athey* in that it purports to apportion the plaintiffs’ losses between contributing causes. Put simply, the City’s use of “disentangle” is a proxy for “apportion”.

16. Nevertheless, Professor Stacey admitted on cross-examination that his proposed methodology also fails to isolate the financial impact of the negligence on plate owner’s incomes during the breach period.<sup>20</sup> Indeed, his methodology captures all relevant causal factors. As such,

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<sup>18</sup> Notably, the timeline omits any instance where a regulator prevented Uber from operating in Canada.

<sup>19</sup> *Athey* at [para 20](#).

<sup>20</sup> Stacey Cr Ex, April 2, 2026, pp 14:1–15:8, A9042–A9043.

the City’s so-called “critical flaw” also applies to its own expert’s methodology—and illustrates the reason why the *Athey* principle governs in cases of indivisible injuries. Because it is impossible to isolate the financial impact of negligence on either incomes or plate values, the City’s criticism of Professor Boyer’s methodology falls apart.

**B. The plaintiffs’ losses are not confined to the breach period**

17. At paragraphs 222 and 225, the City claims that Professor Boyer’s methodology is also flawed because it fails to “temporally isolate” the financial impact of the negligence. The City repeatedly submits that the task of this Court will be to assess damages incurred during a “loss period”. These arguments should be rejected.

18. A plaintiff is not temporally restricted from recovering damages caused by a defendant’s negligence. It is trite that injuries can give rise to long-term or permanent damage. To this end, courts routinely assess damages for future losses arising from a past injury.<sup>21</sup>

19. The task of this Court is to make the plaintiffs whole for damages caused by the City’s negligence, regardless of how long such damages accrued after the breach of the standard of care ended. The relevant link between the breach of standard care and damages is not temporal, it is causal: the relevant question is not *when did the damages occur*, but rather *were the damages caused by the breach?*

20. In this case, it is not disputed that the City breached the standard of care by failing to enforce its taxi by-law from September 1, 2014 to September 30, 2016. The uncontested evidence at trial also established that plate owners continued to sustain damages after September 30, 2016,

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<sup>21</sup> See, for example, *Athey* at [paras 9, 26-27, 53](#). The Court awarded a global amount for past and future damages.

including lost plate value.<sup>22</sup> These damages were caused by the City's negligence. As Professor Boyer opined, the City's negligence during the breach period permanently modified people's perceptions of future income that could be earned from plates, resulting in a permanent loss of plate value.<sup>23</sup> This is because the economic effect of legalizing Uber and the City's negligence are the same: when the supply of vehicles for hire increases, plate value diminishes.<sup>24</sup>

21. This effect is illustrated by the facts of this case. When the City failed to enforce the by-law, it opened up the vehicle-for-hire market, dismantled the supply management system of taxi regulation in Ottawa, and demolished plate values.<sup>25</sup> From an economic and factual perspective, nothing magically changed in the taxi plate market from the end of the breach period on September 30, 2016 to October 1, 2016. Damages caused by the City's negligence continued to accrue.

22. The City asks this Court to conflate the time period where it breached the standard of care (two years) with the nature of the damages sustained by the plaintiffs (permanent). These two concepts should not be conflated. A two year "loss period" is arbitrary, not supported by the law or the evidence in the record, and does not make the plaintiffs truly whole for their damages.

### **C. Plate value is a head of damage that this Court is obliged to assess**

23. At paras 211–212, the City contends that damages for plate value should not be awarded because Professor Boyer's methodology does not apportion the loss from the City's negligence from other causal factors affecting plate value. As discussed above, this argument is both

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<sup>22</sup> Trial Decision at [para 290](#); Way Ex, January 10, 2023, pp 4–13, A3468–A3477; Dadi Ex, January 23, 2023, pp 106–110, A4680–A4684; Dadi Ex, January 23, 2023, pp 109–111, A4680–A4682; Mezher Ex, January 18, 2023, pp 20–23, A4204–A4207.

<sup>23</sup> Boyer Ex, March 31, 2026, p 4:13–5:10, A8742–A8743.

<sup>24</sup> Boyer Ex, March 30, 2026, pp 83:13–84:30, A8679–8680; Boyer Ex, March 30, 2026, p 89:17–21, A8685; Boyer Report, Exhibit Z, p 17–18, A8317–A8318.

<sup>25</sup> *Ibid*; see also Boyer Ex, March 30, 2026, pp 90:19–93:14, A8686–A8689.

inconsistent with the Supreme Court’s holding in *Athey* and the City’s very own damages methodology. Yet in doing so, the City also attempts to completely exclude plate value as a head of damage from this class action.

24. The law distinguishes between a “head” of damages and the quantification or “measure” of damages.<sup>26</sup> The jurisprudence is clear: once a plaintiff proves that it has sustained damage caused by a defendant, the court has an obligation to do “the best it can” to quantify the loss.<sup>27</sup>

25. This Court is obliged to assess both lost income and lost plate value, whether on an aggregate or individualized basis. Since 2016, the Plate Owner Class has claimed lost plate value and lost income as two heads of damages.<sup>28</sup> The evidence at trial established that the Plate Owner Class sustained both heads of damages.<sup>29</sup> In this regard, Professor Boyer opines that the quantum of aggregate lost income forms part of the quantum of aggregate lost plate value.<sup>30</sup>

26. The obligation to assess both heads of damages cannot be seriously disputed. The City’s own expert, Mr. Zimmerman, acknowledged that it is possible to assess both lost profits (which includes lost income) and lost plate value.<sup>31</sup>

27. The City’s persistent effort to exclude plate value from both (1) its decision-making during the breach period and (2) this class action suggests that it wishes to minimize its financial exposure to the plaintiff class. However, a defendant’s concerns about the quantum of damages are not a

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<sup>26</sup> See, for example, *Somers v Fournier*, 2002 CanLII 45001 (ON CA) at [para 51](#).

<sup>27</sup> *TMS Lighting Ltd v KJS Transport Inc*, 2014 ONCA 1 at [para 61](#).

<sup>28</sup> Plaintiff’s Statement of Claim filed August 12, 2016 at para 34; Amended Amended Statement of Claim dated May 15, 2017 at para 34.

<sup>29</sup> Trial Decision at para 290; Way Ex, January 10, 2023, pp 4–13, A3468–A3477; Dadi Ex, January 23, 2023, pp 106–110, A4680–A4684; Dadi Ex, January 23, 2023, pp 109–111, A4680–A4682; Mezher Ex, January 18, 2023, pp 20–23, A4204–A4207.

<sup>30</sup> Boyer Ex, March 31, 2026, p 16:6–12, A8754.

<sup>31</sup> Zimmerman Cr Ex, April 2, 2026, p 99:15–23, A9127.

legal justification to eliminate a head of damage from judicial consideration. Plate value is not “outside the scope” of this class action: it is central to it.<sup>32</sup> Yet unlike the plaintiffs, the City has not offered any methodology—whether aggregate or individualized—to assist this Court in assessing this head of damage.

## **PART II - AGGREGATE DAMAGES**

### **A. The *Ramdath* factors have no hierarchy**

28. At paragraphs 3, 57, 66, 204 and 258, the City argues that “avoiding overstatement” of its liability is the most important of the three *Ramdath* factors. However, nothing in *Ramdath* establishes a hierarchy of factors. This Court should consider the three *Ramdath* factors as a whole and weigh them appropriately in the circumstances of this case.

29. To reiterate, section 24(1) of the *Class Proceedings Act* sets out the statutory criteria for an aggregate damages award. It states that the Court “may determine” a defendant’s aggregate liability and “and give judgment” 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

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<sup>32</sup> Taxi and Limousine Regulation and Service Review dated December 31, 2015, Exhibit 58, F2760; Staff Report, March 31, 2016, Exhibit 59, F2793.

- (c) the aggregate or part of the defendant’s liability to some or all class members can reasonably be determined without proof by individual class members.<sup>33</sup>

30. In *Ramdath*, the Court of Appeal affirmed that the standard to award aggregate damages was a “reasonableness” standard.<sup>34</sup> Whether it is reasonable to award aggregate damages is a discretionary inquiry. To that end, the Court of Appeal adopted Justice Belobaba’s three factors which courts should consider in determining reasonableness under s. 21(1)(c):

- (a) whether the plaintiffs’ non-individualized evidence is sufficiently reliable;
- (b) whether the use of that evidence results in unfairness to the defendant, such as an overstatement of liability; and
- (c) whether the denial of an aggregate approach would result in a “wrong eluding an effective remedy” and a denial of access to justice.<sup>35</sup>

31. Importantly, the Court of Appeal did not establish a hierarchy of *Ramdath* factors. Nor does s. 24(1) itself prescribe any weighting of factors. As such, none of the *Ramdath* factors have primacy. All three *Ramdath* factors serve to guide a trial judge’s discretion in answering the overarching question: whether the aggregate of the defendant’s liability can be reasonably determined without individualized proof.<sup>36</sup> This is a contextual analysis on the facts of each case.

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<sup>33</sup> *Class Proceedings Act, 1992*, SO 1992, c 6, [s 24](#) (emphasis added).

<sup>34</sup> *Ramdath v George Brown College*, 2015 ONCA 921 at [para 76](#) [“*Ramdath Appeal*”].

<sup>35</sup> *Ramdath Appeal* at [para 76](#).

<sup>36</sup> *Ramdath v George Brown College*, 2014 ONSC 3066 at [paras 46–47](#) [“*Ramdath*”].

32. At paragraphs 3, 12, and 57, the City quotes Justice Belobaba’s statement in *Fresco* that “questions about reliability and overall fairness are paramount” to submit that access to justice is the least important *Ramdath* factor.<sup>37</sup>

33. Justice Belobaba’s words in *Fresco* must be read in their full context. *Fresco* was a certification decision. In *Fresco*, Justice Belobaba addressed the question of whether aggregate damages should be certified as a common issue. In doing so, he distinguished the standard to certify aggregate damages as a common issue from the standard to award aggregate damages. Access to justice was not raised in *Fresco* in any detail.

34. At the certification stage, the question is whether there is a “reasonable possibility” that a plaintiff’s expert can determine damages in the aggregate.<sup>38</sup> By contrast, Belobaba J. emphasized that “questions about reliability and overall fairness” are more important considerations at the quantification stage. It is clear that Belobaba J.’s comments in *Fresco* were made to simply illustrate a point that is already established law: that the plaintiff’s burden at the certification stage is a lower threshold than at the quantification stage. *Fresco* did not diminish the import of access to justice as a factor in the s. 24(1)(c) analysis in any way, and did not recant Belobaba J.’s own emphasis on this principle throughout his reasons in *Ramdath*.<sup>39</sup>

#### **B. Absolute precision and certainty are not required**

35. At paragraphs 60–61, the City goes on to boldly claim that Belobaba J. only awarded aggregate damages in *Ramdath* that could be determined with “certainty”. The City further argues

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<sup>37</sup> *Fresco v Canadian Imperial Bank of Commerce*, 2020 ONSC 4288 at [para 29](#) [“*Fresco*”].

<sup>38</sup> *Fresco* at [paras 27–28](#).

<sup>39</sup> See in this regard *Ramdath* at paras [1](#), [42–47](#).

that its own methodology is preferable because it is “more accurate” than the “estimation methods” employed by Professor Boyer.<sup>40</sup>

36. Contrary to the City’s submissions, there are no certainty requirements for aggregate damages award under s. 24(1)(c) of the CPA. Quite the contrary.

37. The same degree of accuracy as in a normal action is explicitly not required for an aggregate damages award in a class action. Nor does the word “certainty” appear in *Ramdath*. Belobaba J. recognized that in enacting s. 24 of the CPA, the legislature explicitly rejected an “accuracy” standard in favour of a “reasonableness” standard to promote access to justice:

[43] It is important to remember that the legislature **rejected** the more rigorous standard that had been recommended by the OLRC (can the damages be assessed without proof by members of the class with the *same degree of accuracy* as in an ordinary action?) and instead imposed a “less stringent test” (can the damages be *reasonably determined* without proof by individual class members?).

[44] **The key to understanding aggregate damages is in understanding that the measurement criterion is not what’s accurate but what’s reasonable.** In striking a balance between accuracy (or as the OLRC put it, “the risk of imposing liability upon the defendants for an amount that exceeds the injury actually inflicted”) and access to justice (“the possibility of denying recovery to persons who have been injured”) **the legislature intentionally tilted the balance in favour of access to justice.** Hence the focus in s. 24(1) on whether all or part of the defendant’s monetary liability can *reasonably* be determined without proof by individual class members.

[45] The key issue, said the OLRC, is “the type of evidence that should be required before a court makes an aggregate assessment”. And the answer is “not whether evidence is put forward in common or individual form, but rather whether the proof submitted is *sufficiently reliable* to permit a *just determination* of the defendant’s liability.”<sup>41</sup>

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<sup>40</sup> Defendant’s Closing Written Submissions, April 28, 2026 at paras 11, 107, 168, 174.

<sup>41</sup> *Ramdath* at [paras 43–45](#) (emphasis in italics in original, other emphasis added, internal citations omitted).

38. The Court of Appeal further held in *Markson* that, under the reasonableness standard, the possibility that some class members who did not actually suffer damages will receive a portion of an award does not preclude an aggregate remedy.<sup>42</sup>

39. A review of the aggregate damages award in *Ramdath* itself illustrates how this reasonableness standard works in practice.

40. To recall, Belobaba J. found that George Brown College falsely stated that students who completed its International Business Management Program would receive industry designations. Consequently, he held that George Brown College was liable in negligent misrepresentation and under the *Consumer Protection Act* to students who enrolled in that program.

41. Belobaba J. was presented with an aggregate damages formula by the parties: Direct Costs (the students' reasonably foreseeable out-of-pocket expenses) plus Indirect Costs (lost forgone income and lost income from delayed entry into the marketplace) minus Residual Value (the market value of the program to the students without the industry designations).<sup>43</sup> Belobaba J. excluded the Indirect Costs from the formula because he determined that the data used by the plaintiffs' expert was undermined by "compelling contrary evidence".<sup>44</sup>

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<sup>42</sup> *Markson v MBNA Canada Bank*, 2007 ONCA 334 at [para 49](#).

<sup>43</sup> *Ramdath* at [paras 24–27](#).

<sup>44</sup> *Ramdath* at [paras 60–66](#). Belobaba J. excluded forgone income and delayed entry income from the formula. He did so on the basis that the plaintiffs' expert evidence was undermined by conflicting evidence. For example, the plaintiffs' expert concluded that the average student who applied to the program held a Canadian-recognized bachelor degree. In reality, only a third did. Further, the plaintiffs' expert's calculation of average income for domestic students prior to the program was higher than reported incomes of graduates of such programs in Ontario during the relevant time period.

42. Belobaba J. was satisfied that there were reasonable methods to determine three categories of Direct Costs and the Residual Value.<sup>45</sup> As summarized in the table below, Belobaba J. relied on the following evidence to determine the figures for Direct Costs and Residual Value in the aggregate damages formula:

**Table 1: Evidence relied upon by Belobaba J. to determine aggregate damages award**

Component of aggregate damages formula	Type of evidence relied upon
<b>Direct Costs</b>	
Application, administration, and tuition fees	The defendant’s student guidebook <sup>46</sup>
Student Association and CFS fees	The defendant’s student guidebook <sup>47</sup>
Textbook and supplies	The representative plaintiffs’ evidence of \$500 for new books was used as a “reasonable indicator” for all students, and discounted to \$400 because “some of the students may have purchased used books” <sup>48</sup>
Air travel costs for foreign students	The average amount of round-trip air fares sampled from Expedia and Tripadvisor <sup>49</sup>
<b>Residual Value</b>	
Fair market value of diploma	A “best estimate” on the trial evidence that it was 15% of Direct Costs <sup>50</sup>

<sup>45</sup> *Ramdath* at [para 58](#). Belobaba J. excluded certain heads of Direct Costs from the aggregate damages formula that (1) were not supported by any direct evidence; (2) not recoverable at law; or (3) not actually claimed by the plaintiff class at trial.

<sup>46</sup> *Ramdath* at [para 55](#).

<sup>47</sup> *Ramdath* at [para 55](#).

<sup>48</sup> *Ramdath* at [para 56](#).

<sup>49</sup> *Ramdath* at [para 56](#).

<sup>50</sup> *Ramdath* at [footnote 45](#); see also *Ramdath v George Brown College*, 2014 ONSC 4215 at [paras 7–8](#) (holding in additional reasons that the market value of the program “is not something that can be measured with arithmetical certainty” and is a “best estimate that completely depends on the evidence adduced at trial”.)

43. The above table demonstrates that Belobaba J. himself expressly relied on “reasonable indicators”, “average[s]”, and “best estimates” in rendering his aggregate damages award in *Ramdath*.<sup>51</sup> He did so even without relying on the parties’ own expert evidence. These techniques bear the same hallmarks of the “estimation methods” the City criticizes Professor Boyer for using in his methodology.<sup>52</sup> The Court of Appeal upheld Belobaba J.’s aggregate damages award and methods to arrive at the figures.<sup>53</sup>

44. *Ramdath* makes clear that trial judges can and should use “estimation methods” in rendering aggregate damage awards. This is compatible with well-established law. Even in an ordinary action, a trial judge has an obligation to assess damages on the available evidence, “even to the point of resorting to guess work”.<sup>54</sup> Accordingly, to require precise mathematical accuracy and absolute certainty for any damages award would be inconsistent with this principle. This is particularly the case in the context of a class proceeding, where the legislature deliberately chose a lower “reasonableness” threshold for aggregate damages awards, rather than an “accuracy” standard.<sup>55</sup> The mere possibility that an individualized assessment may be “more accurate” is not a ground to refuse to award aggregate damages.

45. Nonetheless, the evidence in this case demonstrates that the City’s proposed individualized methodology is not more accurate than the plaintiffs’ proposed aggregate methodology. It is simply more time-consuming, less accessible to the Plate Owner Class, and avoids the central head of damages in this class action.

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<sup>51</sup> *Ramdath* at [para 56](#).

<sup>52</sup> Defendant’s Closing Written Submissions, April 28, 2026 at para 107.

<sup>53</sup> *Ramdath Appeal* at [paras 99–107](#).

<sup>54</sup> *TMS Lighting Ltd v KJS Transport Inc*, 2014 ONCA 1 at [para 61](#).

<sup>55</sup> *Ramdath* at [paras 43–45](#).

### C. Lost plate value is uniform harm

46. At paragraph 122, the City cites *Spina* for the proposition that aggregate damages are inappropriate where the damage incurred by each class member depends on idiosyncratic factors.<sup>56</sup> The City goes on to argue that an aggregate damages award for lost plate value would not account for such factors particular to each plaintiff in the Plate Owner Class.

47. To be clear, there are **no** “idiosyncratic factors” that determine lost plate value. The fair market value of a taxi plate does not depend on the actual income of a plate owner, but rather, on the access to income that it provides a prospective buyer.<sup>57</sup> This is a basic principle of finance and valuation, and it accords with common sense. Accordingly, each taxi plate that provides the same rights to cash flows has the same fair market value.

48. Despite the City’s submissions, the City’s witnesses do not genuinely dispute this basic principle. On cross-examination, Mr. Zimmerman confirmed that taxi plates have value because they provide a “right **to be able** to generate income”.<sup>58</sup> In a similar vein, Professor Stacey admitted that an economist’s definition of fair market value **does not** consider the personal characteristics of the seller or the buyer, nor the actual income earned by the asset:

Q. ....I wanted to run a hypothetical with you about fair market value. So I'm going to read you a definition of fair market value, and I'm going to ask you some questions about it. Okay?

[As Read] Fair market value is normally the highest price expressed in dollars that property would bring in an open and unrestricted market between a willing buyer and a willing seller who are both knowledgeable, informed, and prudent, and who are acting independently of each other.

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<sup>56</sup> *Spina v Shoppers Drug Mart Inc.*, 2024 ONCA 642 at [para 210](#).

<sup>57</sup> Boyer Ex, March 30, 2026, pp 72:31–73:19, A8668–A8669; Boyer Ex, March 30, 2026, pp 56:10–57:25, A8652–A8653; Boyer Report, Exhibit Z, p 7, A8306.

<sup>58</sup> Zimmerman Cr Ex, April 2, 2026, p 111:6–12, A9139.

Does that definition ring a bell to you? Does it sound appropriate as a definition of fair market value?

**A. It does sound appropriate to me. Yes.**

Q. Okay. And if I told you that that's - that definition comes from the CRA website about valuing fair market value, would you be surprised?

A. No. I would not be surprised.

Q. Okay. As an economist, do you understand this to be the definition of fair market value?

A. That, that, that fits with, with, with what I would consider to be economist's definition of fair market value. Yeah.

Q. And I noticed that this definition doesn't take into account the personal characteristics of the buyer or seller. Is that correct?

**A. That's correct.**

Q. And it doesn't reference the, the actual income gained from the particular asset. Is that correct?

**A. That's correct.**<sup>59</sup>

49. Given the foregoing, all expert witnesses in this proceeding agree that the so-called “idiosyncrasies” between plate owners are irrelevant to the concept of fair market value.

50. At paras 128–134, the City claims that plate value cannot be determined in the aggregate because there is no “standard” actual cash flow for each family of plates.

51. This argument overlooks the uncontroversial principle that fair market value is based on the potential access to cash flow to a third-party purchaser, not the actual cash flow of a plate owner who sells the plate.<sup>60</sup> The discounted cash flow framework provides this Court with a reliable methodology to determine plate value.

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<sup>59</sup> Stacey Cr Ex, April 2, 2026, pp 2:7–3:7, A9030–A9031.

<sup>60</sup> Stacey Cr Ex, April 2, 2026, pp 2:7–3:7, A9030–A9031; Zimmerman Cr Ex, April 2, 2026, p 111:6–12, A9139; Boyer Ex, March 30, 2026, pp 56:10–57:25, A8652–A8653; Boyer Report, Exhibit Z, p 6, A8306.

**D. To the extent it is in the record at this stage of the proceeding, the plaintiffs' non-individualized data is reliable**

**1. Revenue data**

52. At paragraphs 149–159, the City submits that the plaintiffs' non-individualized data to determine average revenues is non-reliable. Specifically, the City cites two spreadsheets provided to Professor Boyer which have not yet been admitted into evidence. These spreadsheets provide (1) the total amount of credit card and debit transactions from February 2008 and (2) the total amount of taxi fares for October 2011 to July 2019.<sup>61</sup> According to Professor Boyer, this type of data could be used to produce a “very good estimate” of revenue for the purpose of calculating the total annual revenue of Artisan plate owners.<sup>62</sup>

53. Before responding to these criticisms, it bears repeating that Professor Boyer did not purport to quantify damages at this stage. Thus, the data used or relied upon is solely for illustrative purposes at this stage: it has not been used to calculate a quantum of damages. Professor Boyer's opinion is that the data was “promising” for the quantification of the average revenue per fare.<sup>63</sup>

54. In any event, the City has not raised any genuine concerns about the reliability of the data in these spreadsheets:

- (a) With respect to revenues, the City does not challenge the accuracy of the plaintiffs' data itself. The City only states that there is no evidence to support an assumption that the average price of credit and debit card transactions are higher or lower than cash fares.<sup>64</sup> However, there is no evidence to the contrary.

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<sup>61</sup> POS Chart, dated July 2019, Exhibit BB A8472; Total fares July 31, 2019, Exhibit CC, A8471.

<sup>62</sup> Boyer Ex, March 31, 2026, pp 116:17–117:13, A8712–A8713; Boyer Report, Exhibit Z, p 26, footnote 30, A8326.

<sup>63</sup> Boyer Ex, p 116:11–117:30; Boyer Report, Exhibit Z, p 26, footnote 30, A8326.

<sup>64</sup> Defendant's Closing Written Submissions, April 28, 2026 at paras 152–153.

- (b) With respect to the amount of fares (rides), the City again raises no concerns with integrity of the data. Instead, the City claims that Professor Boyer mistakenly assumes that the data includes street hails because of his view that “all rides must be reported to the dispatcher”.<sup>65</sup> This is plainly a mischaracterization of Professor Boyer’s evidence: he was clear in his report and testimony that total annual revenues “remain unknown at this point”, but include revenues both “declared and undeclared”.<sup>66</sup> He was also clear that cash amounts are “not necessarily reported to the dispatcher”<sup>67</sup> and that “Unreported cash fares remain unreported”.<sup>68</sup> This evidence is entirely consistent with the evidence of Mr. Way.<sup>69</sup> Professor Boyer’s proposal is to estimate the average revenue per fare on the basis of reported fares and credit card transactions, with full knowledge that some fares remain unreported. This is a reasonable and reliable method.

55. At paragraphs 155–157, the City criticizes the data Professor Boyer uses in his sample calculation. These submissions have no relevance: Professor Boyer could not have been clearer that his sample calculation was illustrative only and did not purport to rely on actual numbers.<sup>70</sup> Thus, the data or figures used in that calculation have no bearing on the reliability of Professor Boyer’s method.

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<sup>65</sup> Defendant’s Closing Written Submissions, April 28, 2026 at para 158.

<sup>66</sup> Boyer Report, Exhibit Z, p 26, A8326.

<sup>67</sup> Boyer Ex, p 116:20-25-117:14, A8712.

<sup>68</sup> Boyer Report, Exhibit Z, p 26, footnote 30, A8326.

<sup>69</sup> Way Cr Ex, January 10, 2026, pp 30:17–31:9, A3799–A8300.

<sup>70</sup> Boyer Report, Exhibit Z, p 36, A8336.

## 2. Costs data

56. At paragraphs 161–163, the City argues that there is no reliable evidence for determining average costs on the existing record. In doing so, the City suggests that the cost estimates in the KPMG report are unreliable solely because they came from Coventry Connections. The City also objects to the fact that the cost estimates in the KPMG report do not include stand rent.

57. It is contradictory for the City to suggest that the KPMG report is unreliable after it defended the merits of the KPMG report so vigorously in the first phase of this trial. More importantly, there is no evidence that the costs estimates in the KPMG report are unreliable. KPMG clearly relied on the estimates reported by Coventry Connections to calculate the accessible service levy for the benefit of the City.<sup>71</sup> To the extent that stand rent figures are missing from the KPMG report, monthly stand rent figures can be readily found in the collective agreements in the trial record.<sup>72</sup>

58. Moreover, it does not lie in the City’s mouth to argue that there is no reliable evidence to determine average costs when the City itself has “tracked the cost of operating a taxi...since 2003” for the purposes of the Taxi Cost Index.<sup>73</sup> To recall, the Taxi Cost Index provides a formula in the by-law to determine meter rate increases that is based on stand rent, license dues, fuel, maintenance, vehicle costs, and earnings of drivers.<sup>74</sup> If the City can estimate costs on annual basis

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<sup>71</sup> Taxi and Limousine Regulation and Service Review dated December 31, 2015, Exhibit 58, F2760.

<sup>72</sup> See, for example, Capital Taxi Collective Agreement, effective December 21, 2010 to October 31, 2014, Exhibit 1, F5284; DJ’s Taxi Collective Agreement, effective July 6, 2011 to July 5, 2014, Exhibit 1, F5388; Blue Line Collective Agreement, effective August 14, 2015 to August 13, 2016, Exhibit 1, F5210.

<sup>73</sup> Ottawa Taxi Cost Index 2011 Update, Hara Associates, Exhibit 169, F3411; see also Hartig Cross, February 6, 2023, pp 66:12-72:3, A6061-A6067.

<sup>74</sup> *Ibid.* See, for example, 2012 By-law, s.82, Schedule “E”, Taxi Cost Index, F3931, F3955; 2016 By-law, s. 89(5), Schedule “D”, Taxi Cost Index, F3998, F4037.

for the purposes of regulating taxi fares (and by extension, plate owner incomes), it is only eminently fair and reasonable for this Court to do so in assessing the plaintiffs' damages.

59. At paragraphs 164–165, the City criticizes the technical appendix of Professor Boyer's report. These submissions have no relevance. The technical appendix presents an alternative method for estimating costs.<sup>75</sup> It illustrates a method that could be used to estimate costs when the time comes. Professor Boyer does not use these figures in any of his calculations.

### 3. Additional data to be tendered

60. As a whole, the City's criticisms of the plaintiffs' data at paragraphs 149–166 fail to recognize the unique procedural posture of this proceeding.

61. In Ontario, the question of whether aggregate damages is an appropriate remedy is normally answered at the same time all the evidence required for quantification is in the record. Usually, the plaintiffs' expert evidence will quantify the evidence for the benefit of the trial judge when a determination is made under s. 24(1)(c). As the City notes at paragraph 45 of its submissions, this is explained by Belobaba J. in *Fresco*:

“The second step, addressed at the trial or summary adjudication of the certified common issues, **requires the court to answer the certified question in the context of all of the evidence – that is, the court considers the proposed methodology as applied to the defendant-based data. The court must determine whether aggregate damages should actually be awarded and, if so, in what amount.** This is a merit-based analysis that asks whether, on balance, aggregate damages can be fairly and reasonably **determined** without proof by individual members.”<sup>76</sup>

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<sup>75</sup> Boyer Report, Exhibit Z, p 26, footnote 29: “An alternative is to use our own estimation of the cost per ride as shown in the Technical Appendix (Section 9)”, A8326.

<sup>76</sup> *Fresco* at [para 29](#) (emphasis added).

62. In this case, both parties will be entitled to tender and test additional fact evidence at the quantification stage, in accordance with the terms of the Agreement and this Court's ruling.<sup>77</sup> Accordingly, at this stage, this court must assess Common Issue 5 with a view to the fact that both parties will have an opportunity to tender further data to support quantification. The focus at this stage should be the method, not the data.

**E. No overstatement of liability**

63. At paras 175–204, the City submits that an aggregate damages award for loss in plate value would overstate its liability. The City claims that the entire head of damage of plate value fails to “disentangle” the financial effect of its negligence from other causes of plate value decline.

64. Once again, this argument is entirely premised on the City's flawed damages theory. To reiterate, the City seeks to apportion damages for an indivisible injury caused or contributed to by its own negligence. As discussed above, the Supreme Court unequivocally rejected this approach in *Athey*.

65. What is more, the City's argument is not actually a criticism of aggregate damages. It does not actually address overstatement of liability in the context of the question to be determined on Common Issue 5: whether it is appropriate to award aggregate damages or individualized damages. Rather, the City seeks to apportion damages regardless of whether this Court assesses the value of just 1 taxi plate or over 1,000 taxi plates. The City raises the concept of disentanglement to exclude plate value entirely from this class action.

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<sup>77</sup> Trial Management Conference Endorsement dated May 27, 2025.

66. In *Aylmer*, the Court of Appeal held that Ontario (a public authority and regulator) was liable in negligence to a licensee for damages in the lost fair market value of its business.<sup>78</sup> In this case, to accept the City's theory of damages would be to erase the possibility that any plaintiff could claim damages for fair market value in a negligence action, on the sole basis that fair market value as a head of damage is inherently informed by other causal factors.<sup>79</sup> This is not a tenable legal position.

**F. The Zimmerman method does not advance access to justice**

67. At paragraph 242, the City asserts that the Zimmerman method of calculating individual damages ensures access to justice. This is patently not the case. Any damages framework that does not provide a method for quantifying lost plate value undermines access to justice, as it fails to provide a remedy to the Plate Owner Class.

68. At paragraphs 251–252, the City argues that the Zimmerman framework is “proportionate to the costs of recovery” and therefore does not undermine access to justice. The City makes this assertion based on the fact the plaintiffs’ claimed damages of \$215,000,000 amounts to \$181,000 per taxi plate. This argument paints a disingenuous portrait of proportionality. The City cannot measure the proportionality of the Zimmerman framework by the claimed damages for lost plate value, because Mr. Zimmerman was instructed to consider only lost income.<sup>80</sup>

69. Nevertheless, the Zimmerman framework is disproportionate to the time, burden, and costs of recovery of lost income for at least four reasons:

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<sup>78</sup> *Aylmer Meat Packers Inc. v Ontario*, 2022 ONCA 579 at [paras 113-116](#).

<sup>79</sup> For example, see Boyer Report, Exhibit Z, p 12, A8312.

<sup>80</sup> Zimmerman Cr Ex, April 2, 2026, pp 102:27–103:25, A9130–A9131. Mr. Zimmerman has also never valued a taxi plate: see Zimmerman Cr Ex, April 2, 2026 p 99:24–29, A9127.

- (a) **The recovery will be lower.** The difference in plate owner incomes during the breach period is many magnitudes smaller than the permanent loss of fair market value of a taxi plate.
  
- (b) **The burden on class members is heavier.** Mr. Zimmerman would require historical tax information for all 768 plate owners. He testified that forensic accountants may require “additional information” on a case-by-case basis.<sup>81</sup> As such, there is a potential for endless information requests.
  
- (c) **It is unclear when damages can be assessed.** Mr. Zimmerman admitted that his primary methodology may be “impractical or impossible” for various plate owners, although he does not know for how many.<sup>82</sup> As an alternative, he opined that plate owner losses can be estimated with reference to the average or median losses sustained by representative groups.<sup>83</sup> Yet because average income information is necessarily required for such cases, it is possible that individualized damages for the “impractical or impossible” group cannot be assessed until a substantial majority of other class members provide forensic accountants information for their own individualized damages assessment.

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<sup>81</sup> Zimmerman Ex, p 85:5–30, A9113; Zimmerman Cr Ex, p 118:9–10, A9146; Zimmerman Report at para 81, B-1-19027.

<sup>82</sup> Zimmerman Ex, April 2, 2026, p 95:23–28, A9123; Zimmerman Report at para 108, B-1-19031.

<sup>83</sup> Zimmerman Ex, April 2, 2026, pp 94:2–95:28, A9122–A9123; Zimmerman Cr Ex, April 2, 2026, p 135:19–31, A9163.

- (d) **There is no timeline.** It is currently unknown how long the Zimmerman framework would take to implement.<sup>84</sup>

70. At paragraphs 245–247, the City claims that the Zimmerman framework is analogous to the individualized damages protocols used by the Ontario Superior Court in *Brazeau*, *Reddock*, and *Francis* (the “**Charter Class Actions**”).

71. The *Charter* Class Actions are all distinguishable. There, the plaintiff classes were inmates who sought non-pecuniary damages against the Crown for breach of their *Charter* rights as a result of unlawful confinement.<sup>85</sup> In each case, the Ontario Superior Court awarded class members a base level aggregate award.

72. In *Brazeau* and *Reddock*, the Court awarded certain class members who were confined for longer periods the right to claim additional individual damages, namely: (1) a higher *pro rata* share of the aggregate award or (2) a higher damages claim through a motion for summary judgment.<sup>86</sup>

73. By contrast, the Court in *Francis* allowed class members who were not fully compensated by a *pro rata* share of the aggregate award to claim individualized damages through either (1) an administrative process with ranges of prescribed damage awards depending on the gravity of the harm sustained or (2) a motion for summary judgment.<sup>87</sup>

74. In each of the three *Charter* Class Actions, timelines were prescribed for each step of the individualized claims process.<sup>88</sup>

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<sup>84</sup> Zimmerman Cr Ex, April 2, 2026, p 138:6–9, A9166.

<sup>85</sup> *Brazeau v Canada (AG)*, 2020 ONSC 3272 at paras [11](#), [14](#), and [32](#) [“*Brazeau*”].

<sup>86</sup> *Brazeau* at paras [140](#) and [151–152](#).

<sup>87</sup> *Francis v Ontario*, [2023 ONSC 5355](#) at Schedule A.

<sup>88</sup> *Brazeau* at [paras 151–152](#); *Francis v Ontario*, [2023 ONSC 5355](#) at Schedule A.

75. The *Charter* Class Actions addressed non-pecuniary damages for breaches of ss. 7 and 12 of the *Charter*. In those cases, the individualized claims processes were limited to claimants who were not fully compensated by an aggregate damages award. Access to justice was ensured by the combination of aggregate and individualized damages. However, the nature of the liability, head of damages, and procedural contexts were completely different. Thus, the individual protocols in *Charter* Class Actions are of limited relevance to the question this Court must decide for Common Issue 5: whether lost plate value, a pecuniary damage to a capital asset, can be assessed in the aggregate.

76. The Zimmerman framework is not similar to the individualized claims processes advanced in the *Charter* Class Actions. Mr. Zimmerman does not depend on a *pro rata* sharing of an aggregate award. He does not provide an administrative claims process with pre-determined damage award ranges. Nor does he contemplate a summary judgment procedure for a limited subset of the class. As discussed above, he does not even provide a comprehensive framework to assess the plaintiffs' damages. Rather, his method only targets one head of pecuniary damages: lost income.

77. Unlike the *Charter* Class Actions, Mr. Zimmerman's framework also installs no guardrails with respect to the volume and nature of information requests each forensic accountant may request of a plate owner to quantify his loss. Again, there are no timelines or limits prescribed in the Zimmerman framework.

78. Public confidence in the class action regime is at stake in this case. To allow a municipality to (1) demolish the livelihoods of 768 plaintiffs; (2) limit their recovery to 2 years' lost income; and (3) impose a claims process with no timelines over a decade later will impair the legislative

objective of access to justice. There is no end date to this class proceeding under the City's proposal.

### **PART III - MISCELLANEA**

#### **A. This Court should approach the City's description of the expert evidence with caution**

79. This Court should approach the City's articulation of the facts with caution. For example, the City mischaracterizes the evidence of Professor Boyer on at least two occasions:

- (a) At paragraph 114(a), the City claims that Professor Boyer agrees that "taxi plates do not have inherent value, and cash flow is not an inherent feature of a taxi plate. It is a feature of how the plate is used". This is false. On cross-examination, Professor Boyer agreed that taxi plates have value because "they allow the owner to receive the proceeds of an economic activity".<sup>89</sup> He did not agree that the value of a plate is a feature of how it is used. Professor Boyer's testimony in this regard is completely consistent with the basic principle of fair market value canvassed above.
- (b) At paragraph 114(i), the City states that Professor Boyer agrees that "calculating the loss under the DCF framework requires comparing the value of a taxi plate at the beginning of the loss period (however that period is defined) with the value of a taxi plate at the end of the loss period". This is also false. He agreed that if a "defined loss period" "with a before date and an after date" applied, then such an

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<sup>89</sup> Boyer Cr Ex, March 31, 2026, p 19:2-6, A8910 (emphasis added). For this proposition, the City cites to Boyer Cr Ex, March 30, 2026, p 19:2-9 (see City's submissions, footnote 119), but this is likely an error in the date (it is a citation to Boyer Examination in Chief). The relevant citation is likely Boyer Cr Ex, March 31, 2026, p 19:2-9.

approach would be appropriate.<sup>90</sup> However, Professor Boyer did not accept that the concept of a “defined loss period” applies to this case.<sup>91</sup>

80. The City has also omitted key facts from its submissions. In this regard, in its 85 pages of closing submissions, the City has only cited three substantive factual findings from the Trial Decision.<sup>92</sup> They are as follows:

- (a) Marc Andre Way became concerned about Uber in 2010;<sup>93</sup>
- (b) Uber began operating in Toronto in 2012;<sup>94</sup> and
- (c) The City voted to adopt the 2016 By-law in April 2016.<sup>95</sup>

81. Of these three findings, only the last one is of relevance to Common Issue 5. It is striking that the City has omitted citing to any substantive findings from the Trial Decision on the City’s breach of the standard of care, causation, or the damages sustained by the plaintiffs.

82. This omission diverts the reader from the trial findings, which provide particulars of the City’s negligence and conduct towards the plaintiff classes. It also suggests that City’s individualized damages methodology is not grounded in the findings of this Court on negligence

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<sup>90</sup> Boyer Cr Ex, March 31, 2026, p 114:18–22, A8852. The City cites to Boyer Cr Ex, March 31, 2026, p 114:23–27 (see City’s submissions, footnote 129). The relevant citation is likely Boyer Cr Ex, March 31, 2026, p 114:18–22.

<sup>91</sup> See Boyer Ex, March 31, 2026, pp 2:18–6:21, A8740–8744; Boyer Ex, March 30, 2026, pp 122:11–123:13, A8718–A8719; Boyer Rejoinder Report, Exhibit AA, pp 8–10, A8454–A8456.

<sup>92</sup> The City also relies on the Trial Decision at paras 1, 18, 22-23, 25, 37 and footnotes 253-254 for (1) procedural history; (2) facts that were agreed upon by the parties in advance; and (3) dates the 2016 By-law were enacted or in force. These are not substantive findings of fact.

<sup>93</sup> Defendant’s Closing Written Submissions, April 28, 2026 at para 206, p 63.

<sup>94</sup> Defendant’s Closing Written Submissions, April 28, 2026 at para 20, p 63.

<sup>95</sup> Defendant’s Closing Written Submissions, April 28, 2026 at para 206, p 67.

or the evidence tendered at trial. This record must inform the assessment of damages for Common Issue 5.

**B. The *Metellus* appeal is irrelevant**

83. At paragraphs 116–121, the City argues that (1) Professor Boyer’s discounted cash flow methodology is premised on a disguised expropriation approach; and (2) the Quebec Court of Appeal rejected the premise of Professor Boyer’s methodology in *Metellus*.

84. In essence, this is the same expropriation argument that the City unsuccessfully raised in its pre-trial motion to strike. Like the pre-trial motion, it can quickly be put to rest.

85. The *Metellus* appeal was decided on a question of Quebec civil law: the Court held that the plaintiffs failed to establish disguised expropriation.<sup>96</sup> The appeal was not decided on Professor Boyer’s expert evidence.

86. Professor Boyer’s role in *Metellus* was to provide an opinion on the aggregate value of tax plates in Quebec as of October 2014.<sup>97</sup> He used the discounted cash flow methodology to calculate their value as of that date. The methodology was uncontested and remained so on appeal.

87. In this case, Professor Boyer’s discounted cash flow methodology is perfectly consistent with negligence law principles. Namely, it assesses their permanent loss in plate value. By doing so, it puts the plaintiffs back in the position they would be in but for the City’s negligence.

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<sup>96</sup> *Procureur général du Québec c Metellus*, 2026 QCCA 395 at paras [83-104](#).

<sup>97</sup> *Metellus c. Procureur général du Québec*, 2024 QCCS 2388 at paras [34](#), [108](#), [139](#), [151-155](#).

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

  
Thomas G. Conway

  
Marion Sandilands

  
Joseph Rucci

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Lawyers for the Plaintiffs

**SCHEDULE “A”-LIST OF AUTHORITIES**

1. *Athey v Leonati*, [1996 CanLII 183](#) (SCC), [1996] 3 SCR 458
2. *Aylmer Meat Packers Inc. v Ontario*, [2022 ONCA 579](#)
3. *Bradley v. Groves*, [2010 BCCA 361](#)
4. *Brazeau v Canada (AG)*, [2020 ONSC 3272](#)
5. *Francis v Ontario*, [2023 ONSC 5355](#)
6. *Fresco v Canadian Imperial Bank of Commerce*, [2020 ONSC 4288](#)
7. *Markson v MBNA Canada Bank*, [2007 ONCA 334](#)
8. *Metellus c Procureur général du Québec*, [2024 QCCS 2388](#), rev'd [2026 QCCA 395](#).
9. *Metro Taxi Ltd et al v City of Ottawa*, [2024 ONSC 2725](#)
10. *Ramdath v George Brown College*, [2014 ONSC 3066](#), additional reasons, [2014 ONSC 4215](#), aff'd in part [2015 ONCA 921](#)
11. *Spina v Shoppers Drug Mart Inc.*, [2024 ONCA 642](#)
12. *Somers v Fournier*, [2002 CanLII 45001](#) (ON CA)
13. *TMS Lighting Ltd v KJS Transport Inc*, [2014 ONCA 1](#)

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

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

Date May 6, 2026

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Signature

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

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

**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).

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

Court File No. 16-69601

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

Proceeding commenced at OTTAWA

**REPLY CLOSING WRITTEN SUBMISSIONS**  
**OF THE PLAINTIFFS**

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