CITATION: *Metro Taxi Ltd. et al. v. City of Ottawa*, 2026 ONSC 6030
COURT FILE NO.: 16-69601
DATE: 2026/10/26

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ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:	
METRO TAXI LTD., MARC ANDRÉ WAY AND ISKHAK MAIL Plaintiffs	Thomas G. Conway, Marion Sandilands, and Joseph Rucci, for the Plaintiffs
– and –	
CITY OF OTTAWA Defendant	Todd J. Burke, Jacob A. Polowin, Wudassie Tamrat, and Briana Donnelly for the Defendant
	HEARD: January 3-6, 9-13, 17-20, 23-27, 30-31, February 1-3, 6, 10, 13-16, November 28-29, 2023, April 4, 2025, March 30, 31, April 1, 2, May 11, 2026

PROCEEDINGS UNDER THE *CLASS PROCEEDINGS ACT, 1992*

REASONS FOR JUDGMENT

M. SMITH J.

OVERVIEW

[1] This class action was commenced in August 2016 by stakeholders in the Ottawa taxi industry against the City of Ottawa ("City").

[2] In January 2018, R. Smith J. certified this class action (*Metro Taxi Ltd. v. City of (Ottawa)*, 2018 ONSC 509, 71 M.P.L.R. (5th) 311) and concluded that the following five Common Issues would be approved:

> (1) Was the City negligent in enforcing the [2012] Taxi By-Law from September 1, 2014, to September 30, 2016?
>
> (2) Were the 2016 amendments to the City's Taxi By-law unlawful?
>
> (3) Did the City's conduct in allegedly negligently enforcing the [2012] Taxi By-law or in amending the Taxi By-Law in 2016 infringe on the right of the Taxi Plate Holders under s. 15 of the *Charter of Rights and Freedoms* or under s. 3 of the *Human Rights Code*?
>
> (4) Did the fees collected by the City under its Taxi By-Law constitute an unlawful tax?
>
> (5) Are damages assessed in the aggregate an appropriate remedy?

[3] The trial commenced on January 3, 2023, and concluded on February 16, 2023. At the outset of the trial, the parties agreed to dismiss Common Issue No. 2. During the trial, the Plaintiffs brought a motion to defer Common Issue No. 5, which I granted. As a result, the trial proceeded on three liability common issues, with Common Issue No. 5 to be addressed only if liability was established.

[4] On May 13, 2024, I delivered my decision on Common Issues Nos. 1, 3 and 4 (*Metro Taxi Ltd. v. Ottawa (City)*, 2024 ONSC 2725, 49 M.P.L.R. (6th) 171), in which I held that the City was negligent in enforcing the 2012 Taxi By-Law during the period from September 1, 2014, to September 30, 2016. However, I rejected the *Charter* and unlawful tax claims.

[5] The trial for Common Issue No. 5 proceeded between March 30 and April 2, 2026. The parties made their final submissions on May 11, 2026.

PRELIMINARY MOTION

[6] Prior to the commencement of the trial for Common Issue No. 5, the City brought a motion under rule 25.11 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, seeking an order striking

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out the Plaintiffs' expert report authored by Martin Boyer and Christian Dorion dated October 14, 2025 ("Boyer/Dorion Report"), without leave to amend, on the ground that it advanced a cause of action not pled by the Plaintiffs. Alternatively, the City sought an order striking those portions of the Boyer/Dorion Report identified in the Notice of Motion.

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[7] Following the hearing of the motion on March 25, 2026, I delivered the following Endorsement on March 27, 2026:

> For reasons to follow, the Defendant's motion to strike the expert report authored by M. Martin Boyer and Christian Dorion is dismissed with costs. Mr. Boyer's expert report does not raise a new cause of action. In my view, the *de facto* expropriation terminology used in the report serves to describe an economic equivalence rather than forming the basis of Mr. Boyer's economic theory. I agree with the Plaintiffs' submission that Mr. Boyer does not need to use the *de facto* expropriation language to express his expert opinion.

[8] I turn now to the reasons for my decision.

City's Position

[9] The City frames its motion around three issues: (a) whether the Court should strike the Boyer/Dorion Report, in whole or in part, under r. 25.11; (b) whether the Court should amend the common issues to allow the Plaintiffs to claim constructive taking or *de facto* expropriation; and (c) whether the Boyer/Dorion Report should be struck in its entirety. The City's position is that the Boyer/Dorion Report introduces for the first time in this 9-year litigation a new and unpleaded cause of action that is outside the scope of the certified common issues.

Should the Court strike the Boyer/Dorion Report?

[10] The City submits that constructive taking or *de facto* expropriation is a distinct cause of action rather than a methodology for quantifying damages. In support of that proposition, it relies on the Supreme Court of Canada's decision in *Annapolis Group Inc. v. Halifax Regional Municipality*, 2022 SCC 36, [2022] 2 S.C.R. 772. Constructive taking requires proof of a two-part test: first, that the public authority acquired a beneficial interest in the property or flowing from it; and second, that the state action removed all reasonable uses of the property: at para. 25.

[11] It is argued by the City that, since 2016, the Plaintiffs have consistently characterized their damages claim as one arising from the loss of the market value of the taxi plate licences. At no time until the delivery of the Boyer/Dorion Report has the concept of constructive taking or *de facto* expropriation been referenced by the Plaintiffs. The City says that it has been prejudiced because it never had the opportunity to develop a litigation strategy or lead evidence directed at the elements of constructive taking.

[12] Furthermore, they argue that the Boyer/Dorion Report should be struck because its expert evidence is not relevant to the issues at hand. Determining whether there has been a constructive taking is not relevant to Common Issue No. 5, as it does not concern whether aggregate damages is an appropriate remedy.

[13] The City cites the Ontario Court of Appeal decision in *Rodaro v. Royal Bank of Canada*, 59 O.R. (3d) 74 (C.A.), for the proposition that it is fundamental to the litigation process that lawsuits be decided within the boundaries of the pleadings. The City should not succeed on a new cause of action that was never pleaded because doing so deprives the City from calling evidence or establishing a trial strategy to respond to the issue of constructive taking.

Should the Court amend the common issues to allow the Plaintiffs to claim a new cause of action?

[14] The City acknowledges that under s. 12 of the *Class Proceedings Act, 1992*, S.O. 1992, c. 6 (the "*CPA*") the Court has broad discretion to make orders respecting the conduct of a class proceeding, including adding common issues after certification. However, the City argues that any newly proposed common issue must satisfy the certification requirements under s. 5(1) of the *CPA*.

[15] The City says that it is plain and obvious that the proposed constructive taking claim cannot succeed. The evidence demonstrates that taxi plates continued to have value on the secondary market after September 30, 2016, and that plate owners continued to generate income from them.

[16] The City further submits that the factors governing the exercise of discretion under s. 12 of the *CPA* weigh heavily against amendment. The concept of constructive taking was discoverable long before certification and no new facts or law have emerged to justify adding the

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claim now. Further, there is no explanation as to why the Plaintiffs waited more than nine years to introduce a new cause of action.

Should the Boyer/Dorion Report be struck in its entirety?

[17] The City's final position is that the constructive taking theory is not merely incidental to the Boyer/Dorion Report but is central to its methodology. The report proceeds from the premise that the City's alleged failure to enforce the 2012 By-law and its enactment of the 2016 By-law led to an influx of Uber drivers that was "economically equivalent to abolishing" taxi permits. The Boyer/Dorion Report characterizes that economic effect as a *de facto* expropriation.

[18] The City says that the Boyer/Dorion Report explicitly links that *de facto* expropriation theory to its valuation methodology. In its section entitled "estimating taxi permit loss in Ottawa," Dr. Boyer asks how one should quantify the value of taxi licences where "suddenly expanding the number of licenses to catch up with demand will reduce the value of licenses back to zero, effectively expropriating the license holders." He concludes that plate values were reduced to effectively zero.

[19] The City argues that this reasoning forms the basis of the model's calculations and damages analysis. The constructive taking theory is therefore not capable of being neatly excised from the Boyer/Dorion Report. In the City's view, removing the offending portions would fundamentally undermine Dr. Boyer's methodology as a whole.

Plaintiff's Position

[20] The Plaintiffs submit that the motion should be dismissed because the Boyer/Dorion Report cannot and does not introduce a new cause of action, any admissibility objections are properly addressed at trial, and Dr. Boyer's proposed evidence is admissible.

The Boyer/Dorion Report does not introduce a new cause of action

[21] The Plaintiffs submit that Dr. Boyer's proposed evidence concerns whether damages in lost plate value can be reasonably assessed in the aggregate. His methodology is based on the

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proposition that taxi plates are a financial asset, and that lost plate value can be calculated based on projected future cash flows.

[22] The Plaintiffs agree with the City's general proposition that findings of liability cannot be based upon issues that have not been pleaded. It is noted that the liability issues have already been determined. The Plaintiffs emphasize that they "have never made an expropriation or constructive taking claim in this class action" and that they do not seek to amend their claim.

[23] The Plaintiffs submit that Dr. Boyer does not raise a new cause of action. Rather, his report proposes a methodology to assess the Plaintiffs' lost plate value in the aggregate based upon the liability findings already made by the Court. His comments concerning *de facto* expropriation were expressly made "from an economic perspective." In any event, the term *de facto* expropriation should not come as a surprise to the City because it was drawn directly from the City's former economist, Dr. Dan Hara.

Admissibility issues should be addressed during the trial

[24] The Plaintiffs' second argument is that the City's motion misapprehends the governing principles regarding expert evidence. Relying upon the Ontario Court of Appeal decision in *1162740 Ontario Limited v. Pingue,* 2017 ONCA 52, 135 O.R. (3d) 792, at para. 19 and *Moore v. Getahun,* 2015 ONCA 55, 124 O.R. (3d) 321 at para. 86, it is submitted that expert evidence at trial is ordinarily the expert's *viva voce* testimony, not the expert report itself.

[25] The Plaintiffs argue that a preliminary motion to strike the Boyer/Dorion Report before trial is improper and contrary to the Ontario Court of Appeal's guidance. They submit that it is not open to the Court to make adverse findings against Dr. Boyer based solely upon a report that is not yet in evidence, particularly where he has not yet been cross-examined and has not had the opportunity to explain or clarify his comments.

Dr. Boyer's proposed evidence is admissible

[26] The Plaintiffs submit that even if the Court chooses to address admissibility at this stage, Dr. Boyer's proposed evidence clearly satisfies the criteria for expert evidence set out in the

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Supreme Court of Canada decision in *White Burgess Langille Inman v. Abbott and Haliburton Co.*, 2015 SCC 23, [2015] 2 S.C.R. 182, at para. 23.

[27] First, Dr. Boyer is highly qualified. Second, his evidence is directly relevant to Common Issue No. 5 because he opines on the reasonableness of assessing damages for lost plate value in the aggregate and provides a reliable methodology. Third, it is necessary pursuant to the ruling of the Court on April 4, 2025. Fourth, there are no applicable exclusionary rules. Lastly, the probative value and relevance of Dr. Boyer's proposed evidence cannot be more manifest. It does not prejudice the trial process but rather, it will aid the Court in determining Common Issue No. 5.

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Discussion

[28] In my view, the City is mischaracterizing the Boyer/Dorion Report. The use of the term "*de facto* expropriation" does not introduce a new cause of action. In arriving at this conclusion, it is necessary to carefully examine what the authors are saying in the report, and when the relevant passages of the Boyer/Dorion Report are read into context, it is apparent that *de facto* expropriation or constructive taking is not the foundation of the opinion being expressed by the authors of the report.

[29] Since the commencement of this action in 2016, the Plaintiffs have pleaded that they suffered damages because of the City's negligent conduct through a loss in the value of their taxi plates.

[30] The Plaintiffs' experts were retained to offer an opinion on whether "the damages sustained by the taxi plate owner class as a result of the City of Ottawa's negligence [can] be assessed in the aggregate." The experts were asked to assume "that the proper measure of damages for the plate owner class will be loss in plate value" and that, because "the proper measure of damages is a legal issue," there was no need for them to opine on it. Their mandate was therefore limited to addressing the methodology for assessing loss in plate value and whether that loss could reasonably be assessed in the aggregate.

[31] The Boyer/Dorion Report repeatedly states that taxi plates are financial assets whose value derives from future cash flows. This asset allows its "owner to receive the proceeds from an economic activity." According to these experts, the appropriate methodology is the discounted incremental cash flow approach.

[32] At section 4 of the Boyer/Dorion Report, entitled *"*The Conceptual Problem with Valuing Taxi Plates in Ottawa," and, more particularly, section 4.1 "An Overview of the Situation in Ottawa," the authors review the historical regulation of the Ottawa taxi industry, including the City's longstanding practice of limiting the supply of taxicabs, a practice dating back to the 1930s. In discussing that regulatory framework as well as the economic consequences of restricting entry into the market and its effect on taxi plate values, the authors review the prior economic analysis of economist Dr. Hara. At page 17 of the Boyer/Dorion Report, the authors quote Dr. Hara's

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statement that "suddenly expanding the number of licenses to catch up with demand will reduce the value of licenses back to zero, effectively expropriating the license holders." They then explain, economically speaking, why permitting Uber and other ride-hailing services to operate had an economic effect similar to increasing the supply of taxi licences. These authors are describing the economic effect of flooding the market with supply and the corresponding value of taxi plates, not advancing a new legal theory.

[33] The City submits that the authors of the Boyer/Dorion Report conclude that, when the monopoly on the provision of vehicle-for-hire services was ended, the incremental cash flows associated with taxi plates "disappeared", thereby reducing the value of taxi plates to effectively zero. They say that this premise makes a claim for constructive taking central to the authors' valuation methodology. I disagree. The language relied upon by the City is not the language of the Boyer/Dorion Report. The authors do not state that the incremental cash flows "disappeared," nor do they conclude that Ottawa taxi plates had a value of zero at any material time. Rather, they state that the City's failure to enforce its by-law resulted in a "sudden increase in the supply of vehicles-for-hire," which presumably led to "a decrease in the value of the right to earn monopoly rents." They further express the opinion that increases in supply would decrease the value of taxi permits. The authors expressly propose a methodology for valuing taxi plates and do not undertake the quantification of any loss. That exercise remains for the quantification stage of the proceeding.

[34] I agree with the Plaintiffs' submissions that the comments made in the Boyer/Dorion Report were expressed from an economic perspective. The proposition that plate values decline when supply increases and overwhelms demand is a basic economic observation. The opinions expressed by the authors of the Boyer/Dorion Report can be conveyed without resort to terms such as *de facto* expropriation or constructive taking. They are expressing the opinion that the City's non-enforcement increased the supply of vehicles-for-hire, reduced the value of the monopoly rights associated with the taxi plates, and thereby diminished the fair market value of those plates.

[35] Given my conclusion that the Boyer/Dorion Report does not advance a new cause of action, I also agree with the Plaintiffs' submissions that any admissibility issues should be addressed at trial. The Boyer/Dorion Report will be provided to the Court only as an *aide mémoire* and the *viva voce* evidence of Dr. Boyer will constitute the evidence tendered at trial. Any concerns the City

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may have regarding the admissibility of Dr. Boyer's proposed evidence can be properly addressed in the course of his testimony and, if necessary, in closing submissions.

[36] The City's motion is therefore dismissed.

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

INTRODUCTION

[37] The Plaintiffs argue that aggregate damages are the only means by which an effective remedy can be provided. They do not seek aggregate damages for the broker class. The matter therefore concerns only the plate holder class, comprising 768 members who collectively hold the licences for the 1,188 taxi plates issued by the City.

[38] Although the burden remains with the Plaintiffs, the City has proposed a methodology for the individual assessment of damages. The City argues that their approach is simple, efficient, reasonable, and proportionate.

[39] The sole issue to be determined is whether the Plaintiffs have demonstrated that their proposed methodology provides a fair and reasonable means of calculating damages in the aggregate. If they fail to do so, damages must be determined individually.

[40] For the reasons that follow, I find that the Plaintiffs have met their burden. Their methodology for calculating aggregate damages is sufficiently reliable to permit a just determination of the City's liability, and it does not overstate damages.

LEGAL PRINCIPLES

[41] Section 24 of the *CPA* provides that the Court may determine all or 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;

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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.

[42] In determining whether the Plaintiffs' methodology is fair and reasonable, the Court is guided by the three factors articulated by Belobaba J. in *Ramdath v. George Brown College,* 2014 ONSC 3066, 375 D.L.R. (4th) 488, at para. 47, aff'd in part in 2015 ONCA 921, 341 O.A.C. 338:

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

b) Whether the use of this evidence will result in any unfairness or injustice to the defendant (for example, by overstating the defendant's liability); and

c) Whether the denial of an aggregate approach will result in "a wrong eluding an effective remedy" and thus a denial of access to justice.

[43] An aggregate damages methodology is reasonable even if some class members are overcompensated while others are undercompensated, as long as the defendant's liability has not been overstated: *Ramdath,* at para. 49.

[44] Assessing whether aggregate damages can be fairly and reasonably determined without proof by individual members is a merit-based analysis. Questions about reliability and overall fairness to the defendant are paramount: *Fresco v. Canadian Imperial Bank of Commerce,* 2020 ONSC 4288, 66 C.C.E.L. (4th) 244, at para. 29.

ANALYSIS

[45] The Plaintiffs retained Dr. Martin Boyer and Dr. Christian Dorion. They prepared an expert report titled "Calculating the Loss in Value of Taxi Plates in Ottawa After the Arrival of the Gig Economy: An Introduction to the Method."

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[46] The City retained two experts, Dr. Derek Stacey and Timothy Zimmerman, who prepared expert reports entitled "Economic Assessment of Loss-Period Damages to Ottawa Taxi Plate Holders" and "Framework for Individualized Economic Damages Calculations for Taxi Plate License Holders," respectively.

[47] Dr. Boyer, Dr. Stacey and Mr. Zimmerman testified at trial. Although issues were raised regarding the scope of certain proposed expert qualifications, all three witnesses were qualified to provide their expert opinion.

Trial Findings

[48] In the trial decision of May 13, 2024, I made the following relevant findings:

a) Taxi plates were and are considered an asset. Taxi plates were seen as a retirement fund.

b) The City's supply management plate system has created a market for the taxi plates.

c) The City was not only fully aware that a secondary market existed with respect to the sales of the taxi plates, but it was also a willing participant.

d) The City knew that the taxi plates were being treated as assets for decades. By allowing the secondary market to thrive and prosper and by not amending the regulation, it knew that changing the regulation to unlimited plate issuances would have led to substantial elimination of the market value of the taxi plates.

e) The City was aware that the taxi plates had value and that the value had been increasing over time.

f) Prior to Uber entering the market, the City observed that taxi plates were being sold for hundreds of thousands of dollars on a regular basis.

g) There was a close collaboration between the parties, which I qualified as a partnership or joint venture, and it was created for the purpose of combating unlicensed taxicab operators.

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h) Unlicensed taxicab companies diminished the value of taxi plates.

i) Uber was a bandit taxi company, and the City knew, by experience, that failure to enforce against a bandit company would have a devastating impact on the licensed taxi industry.

j) The City knew or ought to have known that failure to enforce the 2012 By-law against Uber resulted in reasonably foreseeable harm to the Plaintiffs.

k) The City had no plan to enforce against Uber prior to its arrival in Ottawa.

l) The City rejected attempts from the taxi industry to assist in the enforcement against the City.

m) The City's enforcement strategies were limited to charging Uber drivers when it knew or should have known that these strategies were inadequate and ineffective.

n) Despite knowing that its enforcement strategy was ineffective, the City did not take any more progressive enforcement options.

o) The City failed to enforce its 2012 By-law against Uber.

p) Uber was illegally saturating the Ottawa market with discounted or free rides to gain a significant market share, resulting in a negative impact upon an otherwise strong and viable taxi industry.

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

r) Any reasonable person would foresee that the failure to enforce the taxi regulations against Uber would have a devastating economic impact on the Plaintiffs.

Evidence of Dr. Boyer

[49] Dr. Boyer's mandate was threefold: (a) explain how a loss of taxi plate value would be most appropriately calculated; (b) explain whether the loss in plate value can be reasonably

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assessed in the aggregate; and (c) explain the methodology for assessing plate value in the aggregate and why the methodology is fair and reasonable.

[50] Dr. Boyer's expert opinion can be summarized in six propositions:

a) Financial assets can be valued using the discounted cash flow method;

b) Taxi plates are financial assets;

c) The permanent loss in taxi plate value in Ottawa can be modelled based on supply and demand;

d) The permanent loss in taxi plate value in Ottawa can be calculated using the discounted cash flow method based on a value for each of the four families of plates;

e) The permanent loss in taxi plate value in Ottawa can be assessed in the aggregate; and

f) Even if the proper measure of damages is income, it can also be assessed in the aggregate.

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Financial assets can be valued using the discounted cash flow method

[51] Dr. Boyer explained that a financial asset is a set of rights to future income and derives its value from its ability to generate future revenues. The value of a financial asset is the discounted sum of all future income it can generate, which he described as the "fundamental formula for finance" and a method by which "every asset…is valued…"

[52] In an idealized open market, an asset's fair market value is equal to its present value, being the discounted future cash flows. Even where a market is not perfectly open, centralized, liquid, anonymous or atomistic, and transaction prices are affected by personal circumstances, information asymmetry, and other factors, the true value of the asset can still be derived through the discounted cash flow calculation.

[53] Dr. Boyer further opined that the value of an asset does not depend on how a particular owner uses it. Any asset that has the same rights has the same value because value is based on potential future income. He explained it by using the analogy of two brothers owning identical bicycles. To summarize his point, one brother uses his bicycle to see his mother, and the other uses his bicycle to make deliveries for Uber. If their bicycles are stolen, the insurance company will not compensate one brother more than the other. Despite each brother's different use, the bicycles remain the same asset with a singular value. The brother who worked for Uber thus lost the same amount as the other brother as a result of the theft.

[54] Applying the same principle to Ottawa taxi plates, Dr. Boyer concluded that each family of taxi plates has the same value and that the loss in plate value will be the same for each family of taxi plates.

Taxi plates are financial assets

[55] Taxi plates are financial assets because they confer a right to cash flow generated by the operation of the taxi plate.

[56] The taxi plates that have the same rights have the same value because they confer the same right to future income. It does not depend on how the plate owner uses the plate.

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

[57] Dr. Boyer testified that the Ottawa taxi market functioned as a supply and demand model. The basic supply and demand theory provides that when the supply of an asset suddenly and permanently increases, the price of the asset falls, and a new market equilibrium is achieved at a lower price point.

[58] Prior to 2014, taxi plates conveyed a monopoly right to provide taxi services. With the arrival of Uber, that right was lost because the market was flooded with a new supply of vehicle for hire rides. It became an open market which led to the permanent decrease in the value of taxi plates.

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[59] Dr. Boyer opined that, after the arrival of Uber, the value of taxi plates did not permanently reduce to zero because the taxi plate holders retained certain protected markets and exclusive rights, such as the right to display a taxi banner, accept street hails, and use designated taxi stands. In his opinion, those remaining rights continued to give taxi plates some value.

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

[60] Dr. Boyer defined the four families of plates as follows: (a) Artisan Standard; (b) Artisan Accessible; (c) Industrial Standard; and (d) Industrial Accessible. He said that the value of each family of plates can be calculated using projected revenues, costs, renewal fees, and a discount rate. He believes that the Artisan Standard plates would be worth the most, while the Industrial Accessible plates would be worth the least. The revenues of the Industrial plates could be determined from the lease rates fixed in the collective agreement, and the revenues of the Artisan plates could be estimated using data concerning average fare revenue and total rides.

[61] To illustrate his methodology, Dr. Boyer provided a fictional example using a hypothetical taxi plate value of $190,000. Assuming an 8% discount rate, annual operating and capital costs of approximately $42,100, and an average of 23 rides per day, he testified that annual net cash flows of $15,200 would be required to justify a taxi plate value of $190,000.

[62] Dr. Boyer testified that the City's taxi plate transfer data was not necessary to value the taxi plates because in his view, the Ottawa market was not centralized, atomistic, anonymous, or sufficiently active, making it an unreliable measure of value.

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

[63] Dr. Boyer testified that the loss in taxi plate value "must be assessed in the aggregate." He explained that taxi plates are financial assets, and that plates within the same category or family, confer the same rights. As an example, he said that there is "no difference between taxi plate number 6 and taxi plate number 9" because they are interchangeable, just as one share of BCE is identical to another share of BCE.

[64] He opined that taxi plates within the same family are economically interchangeable and therefore should have the same fair market value. The proper approach is to determine the fair market value loss of a representative plate within a particular family and then aggregate the loss across the number of plates in that family.

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[65] Dr. Boyer acknowledged that once the aggregate loss has been determined, some individual adjustments may be required to allocate damages fairly among the class members. He described this as a "secondary matter" and said that this allocation issue would not, in his opinion, affect the ability to calculate the total loss on an aggregate basis.

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Even if the proper measure of damages is income, it can also be assessed in the aggregate

[66] Dr. Boyer's opinion is that even if the proper measure of damages is income, it can also be assessed in the aggregate because the "loss of revenues is part of the loss in plate value, and it's not the revenues that each individual makes".

[67] He testified that the difference in methodologies between the loss of plate value and the loss of income is that the latter measures only the income loss during the first eight quarters (September 2014 to September 2016) while the former is not confined to the breach period: "You can still use the same methodology, present value, even if you don't go all the way to infinity. So, if it's loss of revenues, it's not loss of revenues for each individual driver. It's loss of revenues for the class as a whole."

[68] Dr. Boyer stated that even if the court was to conclude that the proper measure of damages is loss of revenue rather than loss of plate value, it would still be necessary to consider the effect of the City's action on future expectations: "The expectation that you had eight quarters ago about what will happen in quarters nine to infinity and the expectation you have in quarter nine of everything that will go on from quarter nine to infinity."

Evidence of Dr. Stacey

[69] Dr. Stacey was retained to respond to Dr. Boyer's report and to provide his opinion as to whether damages in this case could be assessed individually or in the aggregate.

[70] Dr. Stacey concluded that the correct measure of damages is the shortfalls seen in plate specific income during the period of negligent non-enforcement. His methodology establishes a pre-period net operating income benchmark, compares that benchmark to the actual income earned during the loss period, and calculates the resulting income shortfall.

[71] Dr. Stacey's analysis led him to three conclusions:

a) A change in taxi plate value is not a valid measure of damages attributable to the discrete loss period;

b) Ottawa taxi plate prices are unreliable indicators for the loss period damages; and

c) Material heterogeneity amongst plate owners prevents the use of a uniform plate value.

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A change in taxi plate value is not a valid measure of damages attributable to the discrete loss period

[72] Dr. Stacey testified that the discrete eight-quarter loss period (negligent non-enforcement between September 2014 to September 2016) was central to his analysis. He does not agree with using a change in taxi plate value as a measure because it reflects all future expected cash flows and not merely income earned during the negligent non-enforcement period. He explained that the plate values incorporate not only cash flows during the loss period but also includes other economic factors such as the rise of Uber and the subsequent implementation of the new vehicle-for-hire by-law.

[73] Dr. Stacey testified that a change in taxi plate value is not a valid measure of damages because it captures not only the effect of the City's negligent non-enforcement during the discrete loss period, but also what he described as the "the full and permanent impact of Uber" and the post-September 2016 regulatory regime.

[74] Dr. Stacey distinguished between a "before and after price comparison" and an "actual versus but for comparison." He testified that a before and after comparison captures all changes in value occurring during the period, including changes caused by revised expectations about the future. By contrast, an "actual versus but for" comparison attempts to isolate the effects attributable solely to the City's conduct during the discrete loss period. He referenced it as "a hypothetical world that we think of as being exactly the same as the actual world, but for the non-enforcement of the City by-law."

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Ottawa taxi plate prices are unreliable indicators for the loss period damages

[75] Dr. Stacey opined that the Ottawa taxi plate market is a thin, illiquid, decentralized, and opaque market. He explained that transactions occur infrequently, and prices are driven by individual circumstances of the buyer and seller, rather than a common market value. As such, the transactions prices are idiosyncratic, and it is difficult to interpret them as reflecting the fair market value or the underlying economic value.

[76] He testified that these characteristics affected his entire analysis because the thin, illiquid, decentralized, and opaque market influences how a discounted cash flow framework can be applied. In other words, transaction prices are not reliable indicators of market value because they reflect the individual circumstances of buyers and sellers, making individual circumstances important in determining the actual economic losses suffered by plate holders.

[77] Dr. Stacey stated that it would be difficult to operationalize a value-based approach because the recorded plate transfer data can differ by more than $100,000 within the same quarter. He explained that some transactions are not arm's length transactions but rather nominal-price transfers, probate-related transfers, or intrafamily transfers. Because those transactions are intermingled with what are presumed to be arm's length market transactions, he said it is difficult to glean information about the underlying value from the plate transfer data.

Material heterogeneity amongst plate owners prevents the use of a uniform plate value

[78] Dr. Stacey opined that material heterogeneity exists amongst plate holders because taxi plates are used in different ways to generate economic returns. He identified differences in driver skill, route knowledge, hours worked, operating costs, private leasing arrangements, collectively bargained rental arrangements, and other factors. In his view, these differences are economically significant because they affect the level and fluctuations of income generated by a taxi plate, with the result that individual plate holders may experience different economic losses.

[79] Dr. Stacey believes that the aggregate approach does not take into account the economic realities faced by the individual plate holders and as such, it would only produce a hypothetical measure of damages. The economic differences between plate holders affect how they use their

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plates to generate income which must therefore be considered when comparing their actual financial positions with the positions they would have occupied but for the alleged wrongdoing.

[80] In summary, Dr. Stacey's proposed method would isolate the losses attributable to negligent non-enforcement, take into account the plate holders' heterogeneity, and avoid the conceptual and empirical flaws that he has identified in plate value-based approaches.

Evidence of Mr. Zimmerman

[81] Mr. Zimmerman's mandate was to provide a framework for calculating the economic losses sustained by taxi plate holders on an individualized basis during the discrete loss period. He was asked to identify the documents and information required from each Taxi Plate Holder, develop a methodology for calculating each holder's individual economic losses, and consider alternative methods for estimating losses where the necessary information could not be obtained.

[82] Mr. Zimmerman developed a framework for calculating losses on an individualized rather than on an aggregate basis and builds directly on Dr. Stacey's economic conclusions, particularly his finding that meaningful heterogeneity exists amongst taxi plate holders.

[83] Mr. Zimmerman testified that his framework is a practical three-step process for managing individual claims. First, a questionnaire would be completed by each claimant consisting of five questions: (a) taxi plate ownership as of September 1, 2014; (b) taxi plate purchases during the discrete loss period; (c) taxi plate sales during the discrete loss period; (d) the manner in which the plate was used; and (e) whether the claimant's business was incorporated. Second, information would be required from the claimants, including personal income taxes and Notices of Assessments for the years 2012 through to 2016. Third, with the information gathered, a loss calculation methodology would be implemented which would determine the pre-loss period (2012-2013), project the net business income during the discrete loss period and calculate the loss of net business income as the difference between the projected and actual income.

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DISCUSSION

Introduction

[84] The only question that needs to be answered at this stage of the proceedings is whether it is an appropriate remedy to assess damages in the aggregate.

[85] During the closing submissions, the parties devoted considerable attention to the principles discussed in *Athey v. Leonati,* [1996] 3 S.C.R. 458, and *Blackwater v. Plint,* 2005 SCC 58, [2005] 3 S.C.R. 3. The parties addressed a number of related issues, including the characterization of the alleged diminution in taxi plate value as a divisible or indivisible loss, the effect of multiple contributing causes, the permissibility of apportionment between tortious and non-tortious causes, the distinction between causation and damage assessment, the Plaintiffs' "original position" and the proper "but for" world, and whether damages should be limited to losses caused by the City's negligence.

[86] Some of these issues bear directly on the question of whether damages are capable of being assessed in the aggregate and must therefore be considered at this stage of the proceeding. Others concern the ultimate quantification of damages, which will be dealt with at a later time.

[87] Before turning to those issues, however, I must determine whether Dr. Boyer's proposed methodology is fair, reasonable, and capable of supporting an aggregate assessment of damages. In doing so, I will apply the factors set out in *Ramdath*.

Ramdath factors

[88] Belobaba J. starts the *Ramdath* trial decision with the following strong endorsement of aggregate damages at paragraph 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.

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[89] But, as Perell J. accurately points out in *Spina v. Shoppers Drug Mart Inc.*, 2023 ONSC 1086, at para. 657, "the statement's conditional modality needs to be kept in mind." In other words, aggregate damages should be available where it can be fairly and reasonably determined without proof by the individual class members and where there is a viable methodology supporting such a determination.

[90] With that caution in mind, the three *Ramdath* factors remain the governing law for determining whether aggregate damages are an available remedy.

Factor #1 - Is the non-individualized evidence sufficiently reliable?

[91] I agree with the Plaintiffs' position and conclude that the non-individualized evidence is sufficiently reliable.

The City's position

[92] The City's position that the Plaintiffs have not established the first *Ramdath* factor can be summarized as follows:

a) An aggregate damages assessment cannot be used where damages depend on idiosyncratic factors. The Plaintiffs' proposed methodology to calculate damages based on the loss of value of the plates fails to account for differences in business models and cashflow between individual plaintiffs, and the high degree of variability of the prices at which taxi plates were transferred.

b) Plate value depends upon expected future cash flows and that cash flow varied significantly amongst the plate owners. Cash flow is individualized because plate owners generate different revenues, incur different expenses, and operate under different business models.

c) The evidence is uncontroverted when it comes to the transfer of plates: it shows a severe degree of variability in terms of price. Each transfer is affected by individualized circumstances.

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d) The Plaintiffs' methodology is unreliable because it does not consider idiosyncrasies in cash flow and the transaction prices. Dr. Boyer's model assumes homogeneity when the evidence demonstrates variation, which is unreliable.

e) Dr. Boyer's model relies upon determining the average cash flow for each family. However, to calculate the values for each family, he requires the average annual revenues and costs for that family. Average annual revenues and costs cannot reliably be established, as they are unsupported by the evidence.

f) The City's proposed methodology overcomes the reliability deficiencies of Dr. Boyer's methodology. Using individualized income data honours the "meaningful economic heterogeneity" and avoids assumptions required by Dr. Boyer's approach.

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Asset value v. lost income

[93] In the trial decision, I made several findings that are relevant to the issue of whether the Plaintiffs' damages should be measured by the decline in plate value rather than being restricted to individualized income losses during the discrete loss period.

[94] I found that taxi plates are assets and that, for decades, the City understood that these plates were being treated as assets. These assets were exchanged on a secondary market in which the City participated, and the City was aware that the taxi plates had increased in value. I further found that the City knew that unlicensed taxi operators diminished the value of taxi plates and that changing the regulatory regime to permit unlimited plate issuance would substantially eliminate the market value of the taxi plates.

[95] I also found that it was foreseeable that the City's inaction or ineffective action in the enforcement of its taxi by-laws would have a devastating economic impact on the Plaintiffs.

[96] Dr. Boyer and Dr. Stacey agree that the discounted cash flow framework is an accepted methodology for valuing taxi plates. Their disagreement lay in the application of the methodology.

[97] Dr. Boyer's opinion is that taxi plates are financial assets whose value is derived from the future income they are expected to generate. Because plates within the same family confer identical rights to future cash flows, they are economically interchangeable. On this basis, he concludes that the loss caused by the City's negligent non-enforcement is reflected in the decline in taxi plate values and should be assessed in the aggregate.

[98] Dr. Stacey agrees that discounted cash flow principles can be used to value taxi plates. However, he maintains that damages should be limited to the income loss attributable to the City's negligent non-enforcement during the discrete loss period. He would compare the plate's actual value with the value it would have had if all other conditions remained the same and the City had fully enforced its taxi by-law during the discrete loss period. He believes that any decline in plate values must be separated from the broader market impact of Uber's entry.

[99] In my view, Dr. Boyer's approach is consistent with my findings at trial and with the economic nature of taxi plates as financial assets. It should not be limited to a discrete loss period. The value of a taxi plate is derived from the future stream of income it is expected to generate. Any reduction in those expected future cash flows necessarily reduces the value of the asset itself. Where plates within the same category confer identical rights and are economically interchangeable, a diminution in those rights will be reflected in the market value of the plates themselves. The resulting loss is therefore properly measured by the decline in plate value.

[100] I therefore find that Dr. Boyer's methodology provides the more appropriate measure of the Plaintiffs' loss.

Discussion regarding non-individualized evidence

[101] Having determined that the proper measure of damages is the loss in the taxi plate value, I turn now to the reasons supporting the conclusion that the non-individualized evidence is sufficiently reliable to establish that loss on an aggregate basis.

[102] I agree with Dr. Boyer's proposition that an "asset's value is an asset's value." Using his example of the two brothers and their bicycles, what an owner does with an asset, how income is generated from it, and how effectively or inefficiently it is utilized are irrelevant to the market

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value of the asset itself. One may earn money with the bicycle while the other uses it occasionally for pleasure. Whether the bicycle generates substantial income or no income at all does not affect its market value.

[103] The same reasoning applies to taxi plates. Whether a plate owner personally drives the cab, leases the plate to another driver, works long hours, works part-time, incurs higher or lower operating expenses, or operates it more efficiently than others does not alter the market value of the taxi plate. These idiosyncrasies relate to how the taxi plates were used and may explain variations in earnings amongst the different plate owners. They do not, however, determine the fair market value of the plate itself.

[104] Dr. Boyer's methodology requires four inputs: revenues, costs, renewal fees and a discount rate. I am satisfied that, for Industrial plates, lease revenues and renewal fees are readily ascertainable because they are governed by the collective agreement. I also find that the fixed costs can be reasonably estimated, using for example the average cost of operating a taxicab in Ottawa as reported by KPMG.

[105] With respect to Artisan plates, I agree with Dr. Boyer that revenues are less readily ascertainable than for Industrial plates, however, they are nonetheless capable of a reasonable estimation. He explained that revenues can be calculated using common data, including the number of rides and the average revenue per fare. Based on the point-of-sale transaction data and ride count data, he expressed the view that he could estimate the total revenues generated by an average taxicab. I find this evidence persuasive. Assuming that credit and debit transactions are representative of all transactions, including cash transactions, these data points provide a very good estimate of the average gross revenue per fare for the taxi industry as a whole. I am likewise satisfied that both fixed and variable costs can be estimated using available industry information, again relying on the KPMG report as a source of average annual operating costs.

[106] Dr. Boyer acknowledged that the principal challenge in the discounted cash flow analysis is determining the appropriate discount rate. He explained that, under the Capital Asset Pricing Model which was also used by Dr. Hara, "the required discount rate should be equal to the rate of return on a government bond plus some penalty for the riskiness." In his view, the key issue is

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identifying and measuring that risk. He explained that the discount rate is fundamentally concerned with "how does the return co-vary with the market". While the precise discount rate remains a matter for the quantification stage of these proceedings, I am satisfied that its determination can be undertaken.

[107] I am also satisfied that individual income tax returns are not required for the valuation. The relevant inquiry is the fair market value of the taxi plate as a financial asset, not the earnings of a particular owner. As noted earlier, some individual adjustments may be required to allocate damages fairly amongst the class members, but this would not affect the ability to calculate the total loss on an aggregate basis.

[108] Dr. Boyer further testified that transaction price data is of limited assistance in determining either the value of taxi plates or the loss in their value. In his opinion, transaction prices are not indicative of fair market value because of the limited number of transactions, the absence of available data regarding the individual transactions, and the fact that the Ottawa taxi plate market is not centralized, atomistic, anonymous, nor characterized by frequent transactions. As a result, I am satisfied that his methodology does not depend on transaction price data.

[109] Dr. Boyer provided a worked example illustrating how his methodology may be applied using common inputs. I found that example persuasive. It demonstrated that the methodology can be applied using non-individualized evidence common to the class and can be used to assess the alleged loss on an aggregate basis. While the City identified certain limitations in the available data, I am of the view that those concerns do not call into question the viability and reliability of Dr. Boyer's methodology.

Factor #2 – Does the Plaintiffs' methodology overstate damages?

[110] The Court of Appeal of Ontario has emphasized that "…aggregate damages methodology will be reasonable if some members of the class are over-compensated and some are under-compensated, as long as the defendant's total liability is not over-stated": *Ramdath v. George Brown College of Applied Arts and Technology*, 2015 ONCA 921, 341 O.A.C. 338, at para. 51.

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[111] The City contends that Dr. Boyer's methodology overstates liability because it attributes the entire decline in plate value to the City's negligent non-enforcement, even though the plate value was affected by non-tortious acts, including the spread of Uber to the North American market, and the introduction of the new regulatory regime in 2016. The City argues that tort law permits recovery only for losses that have occurred but for the negligence of the City, and that the Plaintiffs improperly conflate causation and damages by treating all subsequent lost value as recoverable.

[112] The Plaintiffs submit that Dr. Boyer's methodology does not overstate the City's liability. They argue that the decline in taxi plate value constitutes a single, indivisible injury caused by the City's negligent non-enforcement together with related market developments, and that once the City's negligence is found to be a cause of that injury, the City is liable for the entire loss.

[113] Both parties rely on the *Athey v. Leonati*, albeit for different propositions. The Plaintiffs submit that the permanent diminution in plate value constitutes a single indivisible injury and that, once the City's negligence is found to have caused or contributed to that injury, the presence of other non-tortious contributing causes cannot reduce the City's liability. The City submits that while causation has been established for the purpose of liability, the assessment of damages remains governed by the principle that a plaintiff should be restored to, but not placed in a better position than, that which would have existed absent the tort. In the City's submission, this requires the Court to distinguish losses attributable to the City's negligence from those attributable to non-tortious intervening events. A review of the principles articulated in *Athey* and other decisions is necessary before determining whether Dr. Boyle's methodology overstates the City's liability.

Legal principles

[114] In *Athey*, the appellant, who had a history of back problems, was injured in two successive motor vehicle accidents, and subsequently suffered a disc herniation while performing a mild stretching exercise. The issue before the Supreme Court of Canada was whether damages should be apportioned between tortious and non-tortious causes where both were necessary for the resulting injury to have occurred.

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[115] The Supreme Court of Canada held that the disc herniation and its consequences constituted a single, indivisible injury, and thus an apportionment was neither possible nor appropriate. Accordingly, any defendant found to have negligently caused or contributed to the injury will be fully liable for it.

[116] The general principles set out in *Athey* are that the plaintiff must be placed in the position that he or she would have been in the absence of the defendant's negligence. Causation is established where the plaintiff proves, on a balance of probabilities, that the defendant caused or contributed to the injury. The usual test is the "but for" test, although causation need not be determined with scientific precision and may be inferred from the evidence in appropriate circumstances. Furthermore, the defendant's negligence does not need to be the sole cause of the injury; it is sufficient that it materially contributed to the loss. Where the defendant's conduct is a cause of the injury, the presence of other contributing factors, including non-tortious causes, does not reduce the extent of the defendant's liability. Apportionment between tortious and non-tortious causes is contrary to the principles of tort law.

[117] In *Blackwater v. Plint*, at para. 78, the Supreme Court of Canada later reaffirmed the distinction between causation and damages:

> 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.

[118] Where a plaintiff's injuries arise from multiple causes, the court must determine whether those injuries are divisible or indivisible. The British Columbian Court of Appeal, relying on the principles articulated in *Athey*, explained the distinction as follows: "…Divisible injuries are those capable of being separated out and having their damages assessed independently. Indivisible

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injuries are those that cannot be separated or have liability attributed to the constituent causes": *Bradley v. Groves*, 2010 BCCA 361, 326 D.L.R. (4th) 732, at para. 20.

Discussion regarding overstatement

[119] I agree with the City's position that the Plaintiffs have erroneously conflated the determination of causation and liability with the calculation of damages.

[120] As noted by Chief Justice McLachlin in *Blackwater*, there is a distinction between causation, which addresses the source of the loss, and the assessment of damages, which concerns the quantification of damages. This distinction is important when determining if Dr. Boyer's methodology overstates damages.

[121] In *Blackwater*, the court reaffirmed that where the defendant's conduct is the cause of the plaintiff's damage, liability follows. However, the assessment of damages requires consideration of the plaintiff's original position. A defendant is not required to place a plaintiff in a better position than the plaintiff would have occupied absent the tort, nor is the defendant required to compensate losses the plaintiff would have suffered in any event.

[122] In *Bradley*, the court was concerned with causation and liability. It held that once the defendant's negligence is established as a cause of an injury found to be indivisible, the defendant is liable for the entire injury. The existence of other contributing causes does not provide a basis to apportion liability. Where multiple tortfeasors are involved, they are jointly liable to the plaintiff.

[123] Causation has been established. In the trial decision, I found that the City knew or ought to have known that its failure to enforce the 2012 By-law would likely cause harm to the taxi industry. I further found that the City's ineffective enforcement efforts contributed to Uber's successful entry into the Ottawa market, that Uber's illegal market saturation negatively affected the taxi industry and taxi plate owners, and that any loss incurred and proven by the Plaintiffs was directly caused by the City's inaction or ineffective enforcement of its taxi by-laws. Therefore, the injury, namely the loss of taxi plate value, was originally caused by the City's negligence.

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[124] I find that for the purposes of liability, the loss of taxi plate value is properly characterized as a single, indivisible injury. The case at bar is unlike a typical divisible personal injury case, where separate incidents give rise to distinct and identifiable injuries, such as a shoulder injury in one accident and an ankle injury in another. Here, the Plaintiffs' loss is incapable of being divided into distinct components attributable to different causes.

[125] Given my conclusion that the injury is indivisible, *Bradley* holds that the City is liable for the entirety of the Plaintiffs' injury. Where two or more tortfeasors cause or contribute to the same injury, liability to the plaintiff is joint and several. In such cases, the plaintiff may recover the full damages from any of the defendants, who may then seek contribution and indemnity from others. The present case does not involve multiple tortfeasors. Accordingly, the principles of joint and several liability have no application.

[126] However, in assessing damages, the principles articulated in *Blackwater* require that the Plaintiffs be returned to their original position, but for the City's negligence, and not in a better position. Accordingly, the assessment of damages must take into account losses that would have occurred in any event, independent of the City's negligence. For example, there are non-tortious events that may have contributed to the decline in plate values, including the enactment of the 2016 vehicle-for-hire by-law.

[127] These non-tortious events are relevant in the assessment of damages. Having concluded that the Plaintiffs' economic loss is indivisible, those events do not diminish the City's liability for the injury caused by its negligence. They may, however, bear on whether some portion of the Plaintiffs' loss would have occurred regardless of that negligence. If the evidence establishes a measurable risk that the Plaintiffs would have sustained a diminution in the value of their taxi plates because of subsequent non-tortious factors, then damages should be adjusted to reflect that contingency.

[128] The City's concern with Dr. Boyer's methodology is that it does not distinguish between losses attributable to the City's negligence and losses attributable to non-tortious factors, including the enactment of the 2016 vehicle-for-hire bylaw. The City submits that if damages were awarded

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on this basis, the Plaintiffs would be compensated more than its "original position" but for the City's negligence.

[129] I do not accept the City's contention that Dr. Boyer's methodology fails to distinguish between the losses caused by the City's negligence and losses resulting from other factors. His methodology incorporates all factors that affect future cash flows associated with plate ownership, which I believe ensures that it does not overstate the damages. Dr. Boyer recognizes that the events occurring after the City's negligent non-enforcement period affect the market value of taxi plates because potential taxi buyers will revise their expectations regarding future cash flow and risk. In my view, Dr. Boyer's methodology provides a sound basis for calculating the loss of taxi plate value. I am not persuaded that the methodology overstates damages, as it expressly accounts for non-tortious events that may affect plate values.

[130] That said, it bears emphasizing that Dr. Boyer has not quantified the Plaintiffs' damages. Rather, he has only proposed a method for doing so. The quantification of damages has been deferred to a later stage of these proceedings, at which time the parties will have the opportunity to challenge and test additional evidence being tendered to calculate the damages.

[131] As mentioned previously, Dr. Boyer's proposed methodology for calculating the Plaintiffs' loss of taxi plate value contemplates the assessment of the four families of taxi plates: Artisan Standard, Artisan Accessible, Standard Brokerage, and Accessible Brokerage plates. The methodology relies on non-individualized data, including revenue information, operating costs, lease rates, and credit card transaction data. The evidence relied upon by Dr. Boyer will be fully canvassed during the quantification of damages phase.

[132] The issue to be determined at the quantification of damages stage will not be whether Dr. Boyer's methodology is appropriate, but whether its application properly accounts for the impact of those non-tortious events, including the enactment of the 2016 vehicle-for-hire by-law. In applying Dr. Boyer's methodology during the quantification stage, the Court will satisfy itself that the compensatory principles articulated in *Blackwater* are adhered to and that the Plaintiffs are not put in a better position than their original position. This will ensure that any aggregate damages award does not result in an overstatement of damages.

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Factor #3 – Does the denial of the aggregate approach result in a denial of access to justice?

[133] There are 768 members who collectively hold the licences for the 1,188 taxi plates issued by the City. However, the assessment of individual damages does not need to consist of 768 individual trials. The third factor of *Ramdath* requires the Court to consider whether the denial of an aggregate approach will result in "a wrong eluding an effective remedy," thereby resulting in a denial of access to justice. The *CPA* provides the Court with broad powers to design a fair and efficient procedure for the determination of individual claims.

[134] The City has proposed a methodology to assess individual claims, which it says provides a ready-made blueprint for a simple, efficient and fair process that ensures an accurate determination of the Plaintiffs' damages.

[135] Having found that the appropriate methodology is Dr. Boyer's (which assesses the loss of plate value), I am of the view that the City's proposed method to assess individual claims is not appropriate. The City's methodology ignores plate value and is confined to the discrete loss period. The proper assessment of damages must consider the loss in plate value, an asset whose value the City knew could be adversely affected by its ineffective enforcement against unlicensed operators. The City's individualized approach does not consider the loss of plate value, resulting in an improper manner to compensate the Plaintiffs. In those circumstances, requiring the class to pursue individual assessments would endorse a wrong eluding effective remedy, amounting to a denial of justice.

[136] Even if I found that the City's proposed methodology was theoretically capable of assessing individual damages under Mr. Zimmerman's proposed framework, its implementation would require each of the 768 plate owners to reconstruct business records dating back to 2012, complete detailed questionnaires, and participate in individualized assessments. Given the passage of time and the number of claimants, the cost and effort associated with that process would be significant. I believe that in many cases, it is possible that the relevant records may no longer be available or reasonably obtainable. The result would be a substantial risk that class members either could not establish their losses or would recover only after incurring disproportionate expense. In

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those circumstances, the denial of aggregate damages would create a real risk that the wrong would not be effectively remedied, contrary to the access to justice objectives of the *CPA.*

[137] In addition, the City's proposed framework may produce unreliable results because it relies on a limited comparison period and does not adequately account for variations in industry conditions or individual circumstances affecting plate owners prior to September 2014. For example, a plate owner's income during the 2012-2014 period may have been unusually high or unusually low due to extraneous factors. If such atypical figures are used as the baseline against which losses are measured, the resulting damages assessment may not accurately reflect the taxi plate owner's actual loss. In some cases, the loss sustained during the negligent non-enforcement period could be understated or overstated depending on the particular circumstances affecting that owner during the comparison period.

[138] Taking these considerations into account, I conclude that the denial of aggregate damages would result in a denial of access to justice. Given my earlier findings regarding the nature of the Plaintiffs' loss, an individualized damages assessment is not an efficient mechanism for compensating the class.

FINAL DISPOSITION

[139] For the foregoing reasons, Common Issue #5 is answered in the affirmative. Damages assessed in the aggregate is the appropriate remedy.

[140] Once the parties have had an opportunity to review these Reasons for Judgment and confer with one another, if required, they shall contact the trial coordinator's office to schedule an appearance before me to address any outstanding issues remaining in the proceeding.

M. Smith J

Released: October 26, 2026

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CITATION: *Metro Taxi Ltd. et al. v. City of Ottawa*, 2026 ONSC 6030
COURT FILE NO.: 16-69601
DATE: 2026/10/26

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SUPERIOR COURT OF JUSTICE

BETWEEN:

METRO TAXI LTD., MARC ANDRÉ WAY AND ISKHAK MAIL

Plaintiffs

– and –

CITY OF OTTAWA

Defendant

REASONS FOR JUDGMENT

M. Smith J.

Released: **October 26, 2026**