

**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*

**PLAINTIFFS' WRITTEN SUBMISSIONS
(COMMON ISSUE 5: AGGREGATE DAMAGES)**

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PART I - OVERVIEW

1. In this class proceeding, this Court has found that the City of Ottawa was negligent in the enforcement of its taxi By-law, and that this negligence caused the class members' damages. Given this finding, the question before this Court at this phase of the trial is whether the damages of the plate owners should be determined in the aggregate. The answer is **yes**.

2. Considering the applicable law and evidence before this Court, the determination of the plate owners' damages in the aggregate is obvious and intuitive. The law is well-established: determining damages in the aggregate should be the norm in class action proceedings. This norm advances the two main objectives of class action legislation: ensuring access to justice and judicial economy. In this case, the assessment of damages in the aggregate is the clear path to achieving these objectives.

3. There is no good reason to deviate from this norm. Given the liability findings from the first phase of the trial, the plate owners' damages should be calculated by measuring the loss in plate value that occurred because of the City's negligence. This approach to measuring damages is amenable to being determined in the aggregate because it focuses on the loss of value in the capital asset. Further, the City's negligence impacted all plate owners equally and made no distinction between or among them. The Court did not find that the City's liability was different for individual or groups of plate owners. It follows that damages can reasonably be determined for all plate owners at the same time by examining evidence of the market for taxi plates and by assessing the negative impact on taxi plate values during the relevant time.

4. The parties have agreed that new evidence can be tendered at the quantification stage of this proceeding, which will occur once any appeal is decided. When the proceeding reaches that

stage, the representative plaintiffs will obtain an expert report on the plate owners' damages. There is no evidence to suggest that such an expert opinion cannot be obtained or that it will not be based on sufficiently reliable data. Indeed, the trial record shows that it is both reasonable and straightforward to value large numbers of taxi plates. This evidence includes valuations done by the Ottawa Transition Board itself as part of the amalgamation process.

5. By contrast to aggregate damages, the assessment of individualized damages would be lengthy and unfair. There are 768 individual plate owners. The Court should have significant concerns about requiring each of those individuals to prove their damages separately. Doing so would require 768 hearings. Put simply, these hearings would consume significantly more judicial resources and court time than would an assessment of damages in the aggregate.

6. Further, there is a risk that some plate owners may self-represent and struggle through the process of proving their damages. If that materializes, the Court will have to expend additional resources to guide them through the process. There is also a risk that some individual plate owners may find the process so cumbersome and expensive that they will not participate in an individualized inquiries process. Further, conducting separate hearings gives rise to the risk that different plate owners who own the same type of plate will receive different compensation for the exact same asset. This result would be unfair and should be avoided.

7. Conducting individualized hearings for the 768 class members is not just unsupported by the law on aggregate damages, it is also unnecessary and unreasonable. The representative plaintiffs and class counsel, who have taken carriage of the matter for the past nine years, are ready, willing, and able to tender the required evidence to prove the plate owners' damages in the aggregate. This process will involve one hearing in which experts will testify about their opinions

on damages and, if necessary, fact witnesses will testify about facts underlying the experts' reports. The process will be more efficient. It will preserve judicial economy. It will ensure equitable access to justice because all plate owners will receive an appropriate remedy. This approach most effectively serves the ends of justice and the aim of the Rules of Civil Procedure, which is "to secure the just, most expeditious and least expensive determination of every civil proceeding on its merits."¹

8. In the circumstances of this case, this Court should uphold the norm of determining the plate owners' damages in the aggregate.

PART II - PROCEDURAL BACKGROUND AND TRIAL FINDINGS

A. Procedural background

9. This class action was commenced in 2016 and certified in 2018. Two classes were certified:

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

¹ See [Rule 1.04 \(1\)](#), *Rules of Civil Procedure*, RRO 1990, Reg 194.

By-law between September 2, 2014 and September 30, 2016 (the “**Broker Class**”).²

10. Five common issues were certified:

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

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

Common Issue 3: Did the City’s conduct in allegedly negligently enforcing the 2012 By-law or in amending the 2012 By-Law in 2016 infringe on the right of the Plate Owner Class under s. 15 of the *Charter of Rights and Freedoms* or under s. 3 of the *Human Rights Code*?

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

Common Issue 5: Are damages assessed in the aggregate an appropriate remedy?³

11. Before the commencement of the trial of the common issues in January 2023, the plaintiffs discontinued Common Issue 2 on consent. The trial of common issues 1, 3 and 4 was held in January and February 2023. During the trial, this Court adjourned Common Issue 5 (“Are damages assessed in the aggregate an appropriate remedy?”) on the plaintiffs’ motion to a second phase of the trial, following this Court’s decision on Common Issues 1, 3 and 4.⁴ These submissions pertain to this second phase of the trial.

12. In May 2024, this Court issued its decision on Common Issues 1, 3 and 4.⁵ On Common Issue 1, this Court found that the City was negligent in enforcing the 2012 By-law from September

² Order of Justice Robert Smith, dated April 16, 2018 (“**Certification Order**”), Trial Record at para 2, Caselines Master **A291**.

³ Certification Order at para 5, Caselines Master **A291-A293**.

⁴ Trial Ruling, January 24, 2023, transcript, 1:20 to 9:5, Caselines Master **A4727-A4735**.

⁵ *Metro Taxi Ltd. et al. v. City of Ottawa*, [2024 ONSC 2725](#) (“**Trial Decision**”).

1, 2014 to September 30, 2016. This Court found that the City owed a duty of care to the plaintiff class to enforce the 2012 By-law,⁶ and that the City failed to meet the standard of care.⁷ This Court further found that the City's negligence caused the plaintiffs' damages.⁸

13. Following the trial decision on these three common issues, the parties agreed and represented to the Court⁹ as follows:

- (a) The trial of Common Issue 5 should be conducted based on the liability findings in the trial judgment. In other words, the question of whether damages in the aggregate are an appropriate remedy should be answered with regard only to the liability findings on Common Issue 1.
- (b) The trial of Common Issue 5 would proceed based on the existing trial record as well as the evidence of the two experts, Mr. McEvoy and Dr. Prentice, should the parties choose to call them.
- (c) Once the Court decides Common Issue 5 and any appeal is finally decided, the plaintiffs' damages can be quantified. The parties agreed that new evidence could be used for the quantification of damages.

14. For this phase of the trial, the City elected not to call its expert. Subsequently, the plaintiffs elected not to call their expert. The parties advised the Court that they would be making arguments on Common Issue 5 based on the evidence already in the trial record.

⁶ Trial Decision at paras [98-182](#).

⁷ Trial Decision at paras [183-233](#).

⁸ Trial Decision at paras [234-244](#).

⁹ The elements of this agreement were relayed to the Court at a case management conference on June 28, 2024.

15. The plaintiffs have also advised the defendant and the Court that they will not be pursuing aggregate damages for the second certified class: the Broker Class.¹⁰ Damages for the Broker Class will thus be assessed individually for each broker. Thus, the scope of the current phase of the proceeding is narrow and focuses only on whether damages for the Plate Owner Class can reasonably be assessed in the aggregate.

PART III - ISSUE

16. The sole issue before this court is to answer the following question: Are damages in the aggregate the appropriate remedy for the Plate Owner Class? The answer is **yes**.

17. The Court's task at this stage is simple: it is to decide whether aggregate damages are the appropriate remedy. If aggregate damages are not the appropriate remedy, then a process for individualized assessment of the damages of each plate owner will be the remedy.

PART IV - LAW AND ARGUMENT

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

18. The analysis of whether damages should be determined in the aggregate must begin with first principles that animate class action proceedings and how aggregate damages advance these principles. Class actions are a special creature in the realm of court proceedings because they allow many individuals to seek redress together and at the same time. The uniqueness of class actions in this respect is not a product of happenstance. The main objective of the class actions regime is to increase access to justice and ensure judicial economy.¹¹ As the Supreme Court has held, "class

¹⁰ Letter from Thomas Conway to Justice Marc Smith, dated February 5, 2025.

¹¹ *Cassano v. The Toronto-Dominion Bank*, 2007 ONCA 781 at [para 49](#).

actions are intended to improve access to justice through the efficient and judicially economical disposition of litigation.”¹²

19. Aggregate damages are critical to the class actions regime and are designed to enhance access to justice. In *Ramdath v George Brown College of Applied Arts and Technology*, the late Justice Belobaba, whose decision was upheld by the Court of Appeal,¹³ emphasized the importance of aggregate damages for the viability of class action proceedings and the need to ensure they are the norm when awarding damages in class actions:

[1] Aggregate damages are essential to the continuing viability of the class action. If all or part of the defendant’s monetary liability to class members can be fairly and reasonably determined without proof by individual class members, then class action judges should do so routinely and without hesitation. Aggregate damage awards should be more the norm, than the exception. Otherwise, the potential of the class for enhancing access to justice will not be realized.¹⁴

20. There are 768 individuals in the Plate Owner Class.¹⁵ They are asking this Court to have their damages determined in the aggregate. Since the beginning of this class action, the Plate Owner Class has relied on the access to justice goal of class proceedings to seek redress. To date, the goal has been achieved. This Court should not lose sight of this goal at this stage. Indeed, the size of the Plate Owner Class combined with (1) the overarching objectives of ensuring access to justice and judicial economy and (2) the need to normalize the determination of damages in the aggregate in class action proceedings makes it obvious and intuitive that damages in this case should be determined in the aggregate.

¹² *Endean v British Columbia*, 2016 SCC 42 at [para 30](#).

¹³ *Ramdath v George Brown College*, [2015 ONCA 921](#) [*“Ramdath ONCA”*].

¹⁴ *Ramdath v George Brown College*, 2014 ONSC 3066 at [para 1](#) [*“Ramdath ONSC”*].

¹⁵ *Metro Taxi Ltd. v. City of (Ottawa)*, 2018 ONSC 509 (*“Certification Decision”*) at [para 1](#).

B. The requirements of s. 24 of the *Class Proceedings Act* are met

21. Aggregate damages are governed by s. 24 of the *Class Proceedings Act, 1992*.¹⁶ Section 24(1) states that aggregate damages can be awarded when: (1) monetary relief is claimed; (2) no other issues remain other than those relating to the assessment of damages; and (3) damages can reasonably be determined in the aggregate without individualized proof by individual class members.

1. The plaintiffs are claiming damages and damages are the only issue to be determined

22. The first two requirements are clearly met. The plaintiffs are seeking monetary relief in this action, and the Plate Owner Class is seeking aggregate damages. Following the decision from the first phase of the trial, the only remaining issues pertain to the assessment of damages. As such, the principal question for this Court is whether damages can reasonably be assessed in the aggregate.

2. Damages can reasonably be determined in the aggregate without individualized proof

23. In *Bernstein v Peoples Trust Company*, Justice Perrell summarized the applicable principles to the determination of whether damages can reasonably be determined in the aggregate:

[299] In *Ramdath*, the Court of Appeal noted in that it is desirable to award aggregate damages where the criteria under s. 24(1) are met in order to make the class action an effective instrument to provide access to justice and the the [sic] standard to meet in determining whether an aggregate assessment will be ordered is reasonableness. The Court of Appeal also noted that provided that Defendant's total liability is not over-stated, an aggregate damages methodology will be reasonable if some members of the class are over-compensated and some are under-compensated.

[300] In *Ramdath*, the Court of Appeal endorsed Justice Belobaba's approach to the quantification of agreement [sic] damages. Justice Belobaba held that provided that the liability of the defendant was not overstated, the standard of

¹⁶ *Class Proceedings Act, 1992*, [S.O. 1992, c. 6](#).

proof of aggregate damages did not have to achieve the same degree of accuracy as in an ordinary action and instead the standard was whether the damages could be reasonably determined without proof by individual class members.

[301] Thus, the court may award aggregate damages under s. 24(1)(c) of the *Class Proceedings Act, 2002* if the evidence put forward by class counsel is sufficiently reliable to permit a just determination of all or part of the defendant's monetary liability without proof by individual class members. In deciding whether aggregate damages should be awarded, the court should consider: (a) the reliability of the non-individualized evidence that is being presented; 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 whether the denial of an aggregate approach will result in a wrong eluding an effective remedy and thus a denial of access to justice.¹⁷

24. In this case, damages for the plate owner class can reasonably be determined in the aggregate. This is for four reasons: (1) the appropriate measure of damages is amenable to being calculated in the aggregate; (2) The City's negligence was the same for all plate owners and, therefore, determining damages in the aggregate is reasonable; (3) the data is sufficiently reliable to determine reasonably and fairly damages in the aggregate; and (4) determining damages in the aggregate is the only fair and workable method of calculating damages.

25. Each of these reasons is discussed in more detail below.

(i) *The appropriate measure of damages is amenable to being calculated in the aggregate*

26. A damages award for the Plate Owner Class must put class members in the position they would have been in but for the City's negligence in enforcing the 2012 By-law.¹⁸ The main damage that the Plate Owner Class has suffered as a result of the City's negligence is that the values of their plates were destroyed. Therefore, the appropriate measure of their damages is the loss in the

¹⁷ *Bernstein v Peoples Trust Company*, 2019 ONSC 2867 at [para 301](#), citing *Ramdath* ONCA at paras at [47-52](#) (References omitted and emphasis added).

¹⁸ *Athey v Leonati*, [1996] 3 SCR 458, 1996 CanLII 183 (SCC) at [para 32](#).

fair market value of their taxi plates. This loss is eminently amenable to determination in the aggregate.

27. This approach to measuring damages is not just consistent with the general principle of assessing tort damages; it is also consistent with: (1) this Court's findings from the first phase of the trial, namely that taxi plates are an asset that has value and that the City's negligence caused a decrease in the value of the plates; and (2) how courts, including the Court of Appeal, have approached the assessment of damages when tortious conduct, including negligence, leads to the diminution of an asset's value.

28. Specifically, in its decision after the first phase of trial, the Court made the following findings:

- (a) Taxi plates have historically been recognized as an asset with significant market value;¹⁹
- (b) The City's supply management system has created a market for taxi plates and, until the City's negligence, plate values were increasing;²⁰
- (c) Prior to Uber entering the market, taxi plates were being sold for hundreds of thousands of dollars;²¹
- (d) The City could have reasonably foreseen that failing to enforce the 2012 By-law against Uber would cause a devastating economic impact on the plaintiffs;²² and

¹⁹ Trial Decision at paras [100](#), [103](#), [104](#).

²⁰ Trial Decision at paras [105](#), [107](#), [108](#), [110](#).

²¹ Trial Decision at para [110](#).

²² Trial Decision at para [243](#).

- (e) The City's negligence in enforcing the 2012 By-law caused the plaintiffs' damages.²³

29. These findings clearly support an approach to measuring damages that is based on the diminution of plate value that was caused by the City's negligence.

30. Further, assessing the loss in plate value is consistent with how courts, including the Court of Appeal, have assessed tort damages that arise from the diminution of an asset's value.²⁴ For example, the Court of Appeal has held that shareholders are able to recover damages for the loss of share value against directors who engage in misrepresentations: "when a corporate director is responsible for misrepresentations that induce the acquisition of shares, the shareholders may have a statutory and common law cause of action to sue the director for loss of share value due to the misrepresentations".²⁵

31. This approach to assessing damages is not just limited to directors causing a diminution in the value of shares; it also applies to independent third parties whose wrongs cause loss to a shareholder's shares to lose value:

[47] The second proposition in *Johnson* was partly derived from an earlier case, *George Fischer (Great Britain) Ltd v. Multi Construction Ltd.* (1994), [1995] B.C.C. 310 (C.A.), in which the facts bore a relevant similarity to those present here. In *George Fischer*, a holding company of several subsidiary companies entered into a contract for the defendant to build a warehouse for one of the subsidiary companies. The warehouse would also be used by the other subsidiaries for business operations. The defendant's negligence in constructing the warehouse caused the subsidiaries, which were not parties to the contract, loss in revenue. The holding company succeeded in its personal claim for the diminution in value of its shares in the subsidiaries because the contract was

²³ Trial Decision at paras [238](#), [241](#), [243](#), [244](#).

²⁴ *Tran v Bloorston Farms Ltd.*, 2020 ONCA 440 and, in particular, paras [38](#), [47](#), [63](#), and [65](#), and the cases cited therein.

²⁵ *Ibid.* at [para 38](#).

between the holding company and the defendant and not between the subsidiaries and the defendant

32. The same rationale applies here. This Court has found that the City's negligence caused damage to the Plate Owner Class's asset, namely taxi plates. Therefore, the City, as a tortfeasor, is responsible for the diminution in the value of taxi plates.

33. In short, both this Court's findings and how damages to an asset are typically measured support an approach to calculating damages in this case that is based on the loss of plate value.

34. The approach of measuring damages based on loss of plate value is clearly amenable to being determined in the aggregate because it can be universally applied to the entire Plate Owner Class. It can be universally applied to the entire class because it focuses on the value of the taxi plate asset, and not the individual class members.

35. Further, the loss in plate value approach can respond to considerations that apply to specific types of plates while still determining damages in the aggregate. For example, the loss in value approach can be applied to standard and accessible plates separately, which will ensure that the lower value of accessible taxi plates compared to standard taxi plates is taken into consideration in the quantification of damages. In other words, the loss in value approach has both universality and flexibility to allow the Court to quantify damages fairly. The experts who will quantify the plaintiffs' damages after any appeal is decided can easily assess the loss in plate value for different categories of plates, if doing so is warranted in their professional opinion.

36. Importantly, the Court already has examples in the record or judicial precedent that demonstrate that it is possible to value plates on a large scale.

37. There are at least two examples in the trial record of large groups of plates being valued. As a first example, the City cross-examined Marc Andre Way on a report that was obtained from

Collins Barrow Ottawa LLP by Metro Taxi Ltd., and marked the report as an exhibit.²⁶ In this report, Collins Barrow conducted a business valuation of Metro Taxi as at February 22, 2014.²⁷ In order to conduct the valuation, Collins Barrow had to value the 86 standard and accessible taxi plates that Metro Taxi owned at the time.²⁸

38. As a second example, the Taxi Project Team of the Ottawa Transition Board retained Hara Associates to conduct a valuation of the plates that were operating in the taxi industry prior to amalgamation in 2000. The Transition Board conducted this valuation because it was considering compensating plate owners for the values of their plates as part of the amalgamation process.²⁹ Hara Associates provided three valuations that ranged from a low of \$32,873,839 to a high of \$70,771,410.³⁰

39. The above two examples demonstrate that calculating damages in the aggregate based on loss of plate value is feasible. Both accounting firms and the City's experts were conducting these valuations at a large scale long before the commencement of this proceeding. There is no reason this kind analysis could not be used in this proceeding for the purpose of determining damages in the aggregate.

40. In addition to these examples from the trial record, there is precedent for plate values being assessed in the aggregate. This case is similar to *Métellus v The Attorney General of Quebec*, a 2024 class action decision of the Superior Court of Québec.³¹ In *Métellus*, the Court held that the

²⁶ Metro Taxi Ltd., Calculation Valuation Report as at February 22, 20214, prepared by Collins Barrow Ottawa LLP, Exhibit 35, ("**Collins Barrow Report**") Caselines Master **F3567-F3597**.

²⁷ Collins Barrow Report at para 1, Caselines Master **F3570**.

²⁸ Collins Barrow Reports at paras 22 and 36, Caselines Master **F3577, F3581**. Also see Schedule A, Caselines Master **F3585**.

²⁹ Jones Cross-Ex., February 10, 2025, pp. 36:21-45:22, Caselines Master **A6620-A6629**.

³⁰ See Memo from Susan Jones to Councillor Legendre, dated July 4, 2001, Exhibit 203, Master **F483**; Plate Value Options Paper, prepared for Taxi Project Team of the Ottawa Transition Board by Hara Associates Inc., Exhibit 205, Caselines Master **A1475-A1505**.

³¹ *Metellus v. Procureur général du Québec*, [2024 QCCS 2388](#) ("*Metellus*").

province of Québec (the regulator of the taxi industry) had unlawfully expropriated taxi plates without full compensation to plate owners as a result of its response to Uber's entry to the market.³²

The Court awarded members of the taxi industry aggregate damages for loss in plate value.³³

41. Aggregate damages in Québec are governed by art. 595 of the *Code of Civil Procedure*, which provides for a test similar to s. 24(1) of the *Class Proceedings Act*.³⁴ In this regard, the Court in *Métellus* held that aggregate damages is the preferred remedy in the class action context, since it favours full compensation for the injury suffered. This holding accords with the long-standing Ontario jurisprudence discussed above, which established that aggregate damages should be the norm in class action proceedings.

42. In *Métellus*, the Court assessed the loss in plate value in the amount of \$143,873,465, based on the total market value of taxi plates prior to the market entry of Uber in 2016 less the total payments already made to plate owners by the province through a partial compensation scheme.³⁵ In doing so, the Court relied on expert evidence which calculated the market value of taxi plates and their average values based on plate transfer transactions reported to the provincial government.³⁶

43. Just like the Québec Superior Court was able to determine damages in the aggregate in *Métellus*, this Court can reasonably determine damages in the aggregate in this case. *Métellus* provides a real and practical illustration of the determination of damages in the aggregate in a case

³² *Metellus* at [para 10](#).

³³ *Metellus* at [para 141](#).

³⁴ See [Art. 595](#), *Code of Civil Procedure*, c-25.01. Article 595 provides that a court may award an aggregate damage award if the evidence allows a sufficiently precise determination of the total claimed damages.

³⁵ *Metellus* at [para 141](#).

³⁶ *Metellus* at paras [32-33](#), [127-142](#).

that is like this one: a class action dealing with damages suffered by the taxi industry as a result of governmental wrongs committed in response to Uber's entry into a supply managed market.

(ii) The City's negligence was the same for all plate owners

44. Damages in this case can also reasonably be determined in the aggregate in this case because the City's conduct vis-à-vis the plate owners was the same. The City did not distinguish between plate owners when it negligently enforced the 2012 By-law. Further, this Court did not differentiate between plate owners in terms of its liability findings on the negligence issue. Given the conduct that gave rise to liability is the same conduct that affected the entire Plate Owner Class, it follows that it is reasonable to determine damages in the aggregate.

(iii) The data is sufficiently reliable to determine damages reasonably and fairly in the aggregate

45. The data which may be used for the calculation of damages is sufficiently reliable to award aggregate damages. To the extent that the quantification experts wish to rely on previous sale data to determine the loss in fair market value of plates, the 2012 and current By-law require the plate owners to report the value of plate transfer transactions to the City.³⁷ Further to this obligation, the City maintains a dataset that contains all plate transfers as well as the reported consideration paid by plate owners. The dataset that contains plate sales between July 2012 and October 2018 was admitted into evidence.³⁸

46. Importantly, the City did not lead evidence at trial that it ever expressed concerns to members of the taxi industry regarding the accuracy of the values reported to the City. Instead, the evidence at trial demonstrates that the City viewed the reported sale prices in its dataset as accurate

³⁷ See Taxi By-law No. 2012-258 at s. 91, Caselines Master, **F3935**; Vehicle For Hire (By-law No. 2016-272) at s. 97, Exhibit 2, Caselines Master, **F4002**.

³⁸ Statement of Agreed Facts, dated December 28, 2022, Appendix A, Caselines Master **F17-F23**.

for the purposes of generating revenue. Specifically, from 2002 to 2005, the City charged a transfer fee of 10% of the true consideration in the sale agreements for plates.³⁹ Surely, if the City were of the view that the reported prices were too unreliable, it would not have depended on them to generate revenue.

47. While the evidence led at trial demonstrated that there was some under-reporting of plate value transactions to the City, any such under-reporting does not affect the reasonableness and fairness of determining damages in the aggregate.⁴⁰

48. First, there is no evidence that the under-reporting of sale amounts was widespread or involved significant amounts. As such, any attempt to determine the possible effects of under-reporting would be speculative. Most certainly, there is no evidence that the City will experience any unfairness from the under-reporting or that the damages to be awarded against it will be overstated because of any under-reporting.

49. Second, any under-reporting that may have occurred before Uber commenced its operations would benefit the City. To the extent that the experts rely on this data, it would reduce the City's overall liability because the under-reporting would lower the average plate transaction value before the City's negligence commenced. To the extent that under-reporting continued after Uber entered the Ottawa market, there is no evidence in the record that such under-reporting was more frequent or involved larger sums compared to any under-reporting pre-Uber. As such, it is more likely than not that the under-reporting pre-Uber would neutralize any effect of under-reporting post-Uber.

³⁹ Statement of Agreed Facts, dated December 28, 2022 at para 47(c), Caselines Master **F11-F12**.

⁴⁰ Way Ex., January 10, 2023, p. 25:27-26:3, Caselines Master **A3489-A3450**; Way Cross-Ex., January 12, 2023, p. 83:9-84:9, Caselines Master **A3619**; Mezher Ex., January 18, 2023, p.7:7-8:4, Caselines Master **A4191-A4192**.

50. Third, Marc Andre Way testified that he has always accurately reported sale transactions that involve him or his holding company accurately.⁴¹ As such, it would be open to the experts retained to quantify damages to use sales involving Mr. Way as benchmarks to assess the fair market value of plates.

(iv) *Determining damages in the aggregate is the only fair and workable method of calculating damages*

51. Calculating damages in the aggregate is the only fair, just and workable way forward. As mentioned above, there are 768 individuals in the Plate Owner Class.⁴² Requiring them to prove their damages individually would be inefficient and unjust.

52. Dealing with inefficiency first, if each class member is required to prove their damages individually, the Court will be faced with 768 claims. Assessing 768 separate claims would, in the best of circumstances, take years to complete. Realistically, there is always a risk that some class members may not retain counsel and self-represent instead. These individuals will inevitably face difficulty navigating the court process and knowing what requirements they must meet to prove their damages. Just dealing with these issues will consume significant judicial resources. This kind of process and outcome would directly defeat a key objective of the *Class Proceedings Act*: ensuring judicial economy.

53. In terms of fairness, the Court should be concerned about three potential risks that are associated with individualized inquiries. First, to the extent that some class members self-represent, they would face a significant imbalance of power. They would be litigating against a sophisticated defendant that is represented by a national firm. This is fundamentally unfair when

⁴¹ Way Cross-Ex., January 12, 2023 p. 86:21-32, Caselines Master **A3855**.

⁴² Certification Decision at [para 1](#).

considering that the class members' interests and claims have always been advanced through a class proceeding under the carriage of representative plaintiffs and class counsel who are ready, willing, and able to continue representing the class in a process that determines damages for all class members. Forcing individualized inquiries creates a real risk that the Plate Owner Class will be removed from a position where there is a balance of power towards a position in which they are vulnerable.

54. Second, there is a risk that some class members may find the individualized claims process to be so cumbersome that they will not proceed with it. Those individuals will suffer the situation that Justice Belobaba held must be avoided, namely "a wrong eluding an effective remedy and thus a denial of access to justice."⁴³ Such an outcome will also undermine the access to justice objective of the *Class Proceedings Act*.

55. Third, determining the Plate Owner Class's damages individually gives rise to a significant risk of awarding a different quantum of damages for the same category of plates. It would be inherently unfair for the Court to condone a process that will lead to different damage awards for the same asset that has diminished in value by the same conduct.

56. By contrast to the individualized inquiries process, determining damages in the aggregate will ensure efficiency and fairness.

57. In terms of efficiency, the Court will not have to conduct 768 hearings. Instead, it will hold one. All parties will be represented by counsel who have a strong grasp of the case because they have led carriage of the matter for years and marshalled it through a two-month trial. Keeping

⁴³ *Ramdath* ONSC at [para 47](#).

experienced counsel in this proceeding will ensure that the process will unfold as smoothly as possible.

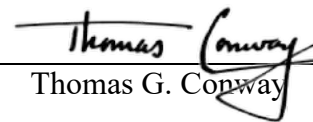
58. Determining damages in the aggregate will also be fair for all parties. The parties will have the right to retain and call quantification experts and to call any necessary witnesses to prove the facts underlying the expert reports. The individual class members will not have to face the dilemma of either self-representing or retaining counsel. And those class members who are vulnerable or otherwise cannot proceed with an individualized inquiry will still receive redress. The Court will determine damages at the same level for all plate owners or categories based on what type of plate they owned.

59. In short, the law and facts in this case support determining damages in the aggregate. This Court should not depart from the procedure that should be the norm in class actions.

PART V - ORDER SOUGHT

60. The plaintiffs request that the plate owners' damages be determined in the aggregate.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 7th day of March 2025.


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SCHEDULE “A”- LIST OF AUTHORITIES

a) *Statutes, By-laws, and Regulations*

1. *City of Ottawa Taxi By-law No. 2012-258.*
2. *City of Ottawa Vehicle for Hire By-Law No. 2016-272.*
3. *Class Proceedings Act, 1992, [S.O. 1992, c. 6](#).*
4. *Rules of Civil Procedure, [RRO 1990, Reg 194](#).*

b) *Case Law*

1. *Athey v. Leonati*, [1996] 3 SCR 458, [1996 CanLII 183](#) (SCC).
2. *Bernstein v. Peoples Trust Company*, [2019 ONSC 2867](#).
3. *Cassano v. The Toronto-Dominion Bank*, [2007 ONCA 781](#).
4. *Endean v. British Columbia*, [2016 SCC 42](#).
5. *Metellus v. Procureur général du Québec*, [2024 QCCS 2388](#).
6. *Metro Taxi Ltd. v. City of (Ottawa)*, [2018 ONSC 509](#).
7. *Metro Taxi Ltd. et al. v. City of Ottawa*, [2024 ONSC 2725](#).
8. *Ramdath v George Brown College*, [2014 ONSC 3066](#).
9. *Ramdath v. George Brown College*, [2015 ONCA 921](#).
10. *Tran v. Bloorston Farms Ltd.*, [2020 ONCA 440](#).

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at OTTAWA

PLAINTIFFS' WRITTEN SUBMISSIONS

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