

ACCESS TO JUSTICE
ONTARIO SMALL CLAIMS COURT
Exploratory Quantitative and Qualitative Research

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FINAL REPORT

1. OVERVIEW

In 2017, Osgoode Hall Law School received a small grant from The Law Foundation of Ontario to look at how people access justice at the Ontario Small Claims Court. At the time, the Small Claims Court had the jurisdiction to deal with private civil law matters at or under \$25,000.

A significant portion of the Ontario population accesses the Small Claims Court for their private civil law matters - as opposed to taking their matter to the Ontario Superior Court, the Court of Appeal, the Federal Courts or the Supreme Court of Canada. In this respect, the Small Claims Court is the face of formal justice experienced by most Ontarians. It is assumed that the Small Claims Court is less complicated and less expensive for litigants than their possible experience in other levels of court.

As we began our research, we found that there was very little empirical research regarding the Small Claims Court. For example, there is little written about how many cases and what types of case come before the Small Claims Court, the key stages / junctures in the system, what facilitators and/or challenges were faced by litigants at each stage / juncture, how long a case takes within the system, and where the disputes between litigants are resolved along the process.

This exploratory research – on a small scale – aimed to do three things.

First, the research sought to identify key stages or junctures within the Small Claims Court process. The study found that there were four main stages:

- Stage 1: Filing Claims
- Stage 2: Settlement Conference
- Stage 3: Trial and
- Stage 4: Collection of Quantum

Second, using quantitative data from the Ontario Ministry of the Attorney General, the study attempted to identify the number and types of cases coming before the court, the dollar figure/quantum of cases, if litigants were represented/self represented, and how long it took to resolve a case.

Third, the study used qualitative data to look at any facilitators or challenges that might be experienced by litigants at each of the four Stages of the process. Given the time allocated to the study, funding and privacy reasons, this study did not survey litigants directly – although their input and insight would have been extremely valuable. It is recommended that future methodologies incorporate the experiences of litigants both retrospectively and prospectively. The research instead tapped into the insights of court staff and lawyers with extensive knowledge of the Small Claims Court. The study asked

these two parties what facilitators and challenges they felt litigants experienced. These two parties not only provided valuable insights into potential facilitators and challenges, but they also gave important and thoughtful ideas on how to positively facilitate the litigants' experience with the Small Claims Court. Such insights – while understandably not representative of all court staff and lawyers with extensive knowledge of the Small Claims Court – will hopefully serve to inform future study methodologies and shape the questions that maybe asked of litigants – the actual users of the system.

2. METHODOLOGY

This study utilized two forms of information – quantitative and qualitative data.

a. Quantitative Data

The quantitative data source utilized the Ontario Ministry of the Attorney General (MAG) court database entitled FRANK. MAG manages the FRANK database on behalf of the Office of the Chief Justice of the Ontario Superior Court (OCJSCJ). Negotiations and a formal request were made to MAG to access data for the years 2014, 2015 and 2016 for designated fields of the database. A MAG Business Plan and Agreement were completed at the request of MAG. The data request and Business Plan and Agreement were reviewed by MAG. MAG then forwarded the documents to the OCJSCJ. The OCJSCJ reviewed the data request and granted access permission. The request was then sent to MAG's technical staff who reviewed the request. Discussions took place with MAG's technical staff regarding the data fields. Discussions also took place between York University's Statistical Consulting Services (SCS) regarding the service in kind that the SCS could provide to the study. Discussion also took place regarding the transfer of the requested FRANK data from MAG to SCS. It was determined the data transfer would happen via CD disc. The CD was transported from MAG, the data reviewed by SCS and analysis undertaken by SCS. It needs to be noted that cases that have been inactive for two years are administratively purged from the system and noted as inactive. In this respect, cases from 2014 should be further analyzed and cross referenced for reasons of inactivity due to administrative purge.

Activity relative to Stage

The data requested for this study indicated the start of activity at Stage 1: Filing Claims. It would be helpful for future data analysis to indicate at which Stage of the Small Claims Court process a case was no longer active i.e. Stage 1: filing; Stage 2: settlement conference, Stage 3: trial; Stage 4: collection of quantum; or Other.

Coding Claim Quantum

There were FRANK coding challenges with respect to the quantum of the case at Stage 1: Filing Claim relative to the court's jurisdiction of \$25,000. Specifically, there were cases over the quantum amount of \$25,000 and at or under \$1.00. These appeared to be coding errors.

It would be helpful in future research to analyze if the quantum at Stage 1: Filing Claim was revised based on Stage 2: settlement conference, Stage 3: trial, or Stage 4: collection of quantum.

Coding and Matching of Counterclaims

The case data fields requested for this study were not matched to a counter claim to a main action. This may have been a result of the field requested by the study. It may also be a result of all Defence Claims being coded as Plaintiff Claims. A Plaintiff's Claim and defendant's counter claim (known as a Defendant's Claim) appear to be both coded in FRANK as a Plaintiff's Claim. A main action and a counter claim are heard together. Why is this important? First, the quantum of a total case file includes not only the quantum of the Plaintiff's Claim but also – if it exists – the quantum of the Defendant's Claim. In this respect, the quantum per total case file may be greater than the Court's jurisdiction of \$25,000.

Second, if the coding of a Defendant's Claim as a Plaintiff's Claim took place, the number of Plaintiffs' Claims reporting legal representation may have also included Defendants' Claims reporting legal representation. As such, the Defence may have had greater legal representation than that coming forth in the analysis.

Ongoing Legal Representation throughout the Small Claims Court Stages

One of the areas of interest in the study was whether or not the parties to the action were self represented or if they had legal representation. The data requested for this study only gave information if a party was represented at Stage 1: Filing Claim and not if that representation continued after Stage 1. Also, if there was more than one plaintiff or defendant, it was not clear if the representation was for all parties or just one or more but not all parties to a claim.

Terms

Note that the language "Time in the Court System", "Time in Court", and "Completion of Cases" refers to the time between Stage 1: Filing Claim and the Date of last activity as recorded. It is important to note that "Time in Court" does not refer to time at Stage 3: Trial in the courtroom but the time between Stage 1: Filing Claim and the administrative determination of Date of last activity.

Date of last activity could be due to a number of reasons – including a case being Noted in Default, an Assessment Hearing, resolution by the parties, abandonment or administrative purge. The data requested for this study did not specify the reason for the date of last activity within the four Stages of the Small Claim Court process. This would be helpful information for future analysis.

b. Qualitative Data

Purpose and Sample

The original purpose of collecting Qualitative Data was to better interpret the Quantitative Data of what facilitators and challenges litigants might be experiencing at each stage / juncture. Small Claims Court staff and lawyers with extensive knowledge of the Small Claims Court were asked for their insight about what facilitators and/challenges litigants were experiencing. A written questionnaire of seven questions was provided to five (5) court staff and five (5) lawyers with extensive knowledge of the Small Claims Court. Although it is recognized that the sample for this questionnaire was not large or representative, the survey responses were helpful in understanding some of the facilitators and challenges that were thought to be experienced by litigants. It was the hope that the issues identified could be further researched at a later date.

Litigants

Originally, the research planned to survey thirty (30) litigants. However, given the challenges experienced with the quantitative and qualitative data approvals and analysis, the research design, funding limitations and privacy approval required to seek out and enrol litigants, the survey of litigants was determined not to be conducted as part of this study. This was approved by the LFO. The experiences and insights of litigants are very important and it is hoped that future research may be conducted with this group.

Survey Instrument and Approvals

The Survey Instrument (see Appendix B) was developed by the study researcher and reviewed by the Osgoode Hall Law School Associate Dean of Research. The Survey Instrument asked seven questions. Forms were completed and submitted to York University's Research Ethics Board for review. The forms included: information about the study, an Informed Consent Form and the Survey Instrument's seven questions. After review and approval by the York University Research Ethics Board, the Osgoode Associate Dean of Research was informed, and the Survey Instrument was then sent to MAG for review and approval. MAG approved the Survey Instrument for its court staff and selected the subjects and disseminated the survey. The completed surveys were sent by email directly to the study researcher by court staff. The court staff responses to the survey are outlined below.

The Office of the Chief Justice, Ontario Superior Court of Justice was aware that the survey was being sent to lawyers with extensive knowledge of the Small Claims Court. Five subjects based on regional representation were selected by the study researcher. The consent was obtained from these subjects who completed the survey in writing and returned it to the study researcher.

Limitations to the Qualitative Data

The survey – while intended to be a proxy of litigant experiences – was not direct litigant feedback but rather the perceptions of court staff and lawyers with extensive knowledge of the Small Claims Court regarding litigants.

The sample size of 10 was very small and cannot be generalized to all court staff and lawyers with extensive knowledge of the Small Claims Court.

The survey was also not specific to the years of 2014, 2015, and 2016 as analyzed in the quantitative data set.

In terms of methodology, the survey of court staff was sent out by MAG to individuals identified by MAG as opposed to the methodology used with the lawyers, whereby the consent form and survey were sent directly to the subjects by the study researcher.

3. RESULTS

a. Stages

The four key Stages or junctures within the Small Claims Court were found to be:

1. Stage 1: Filing Claims by the Plaintiff and Defendant
2. Stage 2: Mandatory Settlement Conference
3. Stage 3: Trial
4. Stage 4: Collection of Quantum.

b. Quantitative Data Summary (see Appendix A for details)

Representation

The research results (Table 12) found the following breakdown with respect to litigants being represented by a legal resource at Stage 1: Filing Claim:

Plaintiff represented + Defendant unrepresented	= 47.6%
Both unrepresented: Plaintiff unrepresented + Defendant unrepresented	= 49.2%

Defendant represented + Plaintiff unrepresented = 1.5%

Both represented:

Plaintiff represented + Defendant represented = 1.8%

From these results it can be seen that 96.8% (47.6% + 49.2%) defendants - the vast majority of defendants - were not represented at Stage 1: Filing Claim. Plaintiffs were represented when the defendant was not represented 47.6% of the time. In 1.5% of the cases the plaintiff was not represented when the defendant was represented at the time of filing. Half the time (49.2%) both the plaintiff and the defendant were not represented. In only 1.8% of the cases were both parties represented. So, in approximately half (½) the cases, at Stage 1: Filing Claims, both the plaintiff and the defendant are not represented and approximately half (½) the time the plaintiff is represented while the defendant was not.

Case Frequencies

Of the 209,422 cases filed in Ontario during the three-year period 2014-2016, the most cases were heard in Toronto (47,141), followed by Brampton (26,736), Ottawa (14,639), and Richmond Hill (12,565). Of note, there was one case in Oakville and one case in Burk's Falls. Also of note were 11 cases from an unknown courthouse.

Quantum at Time of Filing

In Ontario, the average claim for this study period during Stage 1 was \$9,697.60, while the median was \$5,400, indicating a skewed distribution with outlier values.

Of note is the case quantum breakdown at the time of Toronto Stage 1 (Table 5). The cases were as follow:

Less than \$2,500	25.6%
\$2,501-\$5,000	16.9%
\$5,001-\$10,000	21.4%
\$10,001-\$15,000	11.9%
\$15,001-\$20,000	7.4%
\$20,001-\$25,000	16.8%

In this respect, 63.9% (25.6%+16.9%+21.4%) of the Stage 1 filed cases in Toronto were at or under \$10,000. Cases between \$10,001 and \$25,000 (11.9%+7.4%+16.8%) represented 36.1% of the cases.

From these data, approximately two thirds (2/3) of the Toronto Small Claims Court claims at the time of Stage 1 Filing are at or under \$10,000. In future research, it would be helpful to know:

- the legal issues that comprised these cases;
- if the claim quantum subsequently changed after Stage 1 filing;
- if the plaintiff's claim was subject to a counter claim and thus the total quantum per file; and
- the date or Stage of resolution and/or last administratively recorded activity.

Amount of Time Case was within the System

The time a case stays active within the Small Claims Court system could be seen as an indicator of system efficiency. However, this indicator of efficiency has limitations based on the available data. For example, the FRANK data requested for this study reported on the time a case spent as active within the Small Claims Court system. These results need to be viewed with caution for the following reasons: more than half of the data for Ontario was not available. Of 209,422 Ontario cases, the end date of 108,350 cases was not available. Of the 47,141 Toronto cases, the end date was not available 62% of the time (29,122). It is also important to note that for the data variables requested for this study, the 'time in court' variable based on last active date of the case does not indicate if the case was resolved. If resolved, the data variables requested did not indicate at what Stage in the process the case was resolved, abandoned, noted in default or administratively purged from the system following two years of case inactivity. Based on these limitations, the amount of time a case was within the Small Claims Court system needs to be interpreted with caution. However, it is important to note that the data did – with the limitations noted above – indicate a decrease in the time Toronto cases over \$2,500 were in the system from Stage 1: Filing Claim to the date when the case was not longer active.

c. Qualitative Data: Survey Themes

As discussed earlier, two groups – court staff and lawyers with extensive knowledge of the Small Claims Court – submitted the same seven-question written survey that asked them to identify the facilitators and challenges they thought litigants may experience while accessing the Small Claims Court. Listed below are themes court staff and lawyers with extensive knowledge of the Small Claims Court identified:

i) Court Staff

Court staff provided valuable comments, insights and recommendations regarding the challenges and facilitators they felt were experienced by litigants. This section outlines the emerging themes reported by court staff.

QUESTION #1 – What is your role with respect to the Small Claims Court?

THEMES

A variety of court staff positions responded to the survey questionnaire. The positions included:

- a Client Services Representative - on the trial desk, the information counter, processing of all court forms, handling payment;
- a Trial Coordinator – Deputy Judges scheduling, scheduling of all events, updating files, answering any questions from Deputy Judge / Court Staff / Representatives;
- a Court and Client Representative;
- a Client Service Representative and Trial Coordinator; and
- a Court Registrar / Reporter.

QUESTION #2 – Stage 1: Filing Claims

THEMES

While Efiling was good for some litigants, the majority of litigants file in person at the Court. There was consensus that litigants – especially Self Represented Litigants – do not know the Small Claims Court process and are seeking process and legal advice from court staff: i.e., how to start a claim, whom to sue, what is the role of the court and services offered by the court, filling out the forms, filing attachments, amendments, service, jurisdiction, costs for filing and methods of payment, timelines, and defaults. Challenges were also reported regarding language and compliance with the Rules. The online information about the Small Claims Court does not appear to be utilized by litigants at Stage 1: Filing Claims.

While it was clear that court staff try to be helpful within the limits of their role, the litigants are regularly requesting information and assistance that is outside of staff's role.

Feedback on Stage 1: Filing Claims indicated there may be a different payment process for litigants to file their claims (Stage 1) in order to begin the Small Claims Court process. Defendants, in some cases, appear to be required to pay for their court filing fees via a registered/certified cheque and not by credit card. Plaintiffs/applicants have a choice whether they file their case using a credit card or cheque. Both plaintiffs/applicants were not able to use cash to file their materials.

The filing payment difference specific to defendants was an unexpected finding. The validation, the criteria, pervasiveness and duration of the non-acceptance of defendants' credit cards and requirement of a certified/registered cheque to file their claims was not explored in this study.

QUESTION #3 – Stage 2: Mandatory Settlement Conferences

THEMES

Litigants may not aware of the purpose of the Mandatory Settlement Conferences, the timelines for the exchange of documents and witness lists or what takes place at a Settlement Conferences. Litigants are challenged regarding the process to obtain an adjournments if the scheduled date does not work for them or if an adjournment is not agreed to by the opposing party. As well, litigants may not know the next steps if settlement is no reached.

Litigants may or may not feel Settlement Conferences are beneficial. Teleconferences were considered good in terms of lower costs for the litigants.

QUESTION #4 – Stage 4: Trials

THEMES

While the Deputy Judges are the key contact at the trial stage, court staff deal with the litigants in order to book trials, fill out a trial request form, and pay for a trial. At this stage, litigants may be frazzled, not know the system or Rules, not know what they should/shouldn't do at trial and what they need to bring for the trial. Litigants also do not know how to present/defend their case and how to prove their case. Litigants are challenged if an Interpreter – other than French interpretation - is needed for the trial.

QUESTION #5 – Stage 4: Collection of Quantum

THEMES

This stage appears to be difficult for litigants. After trial, self-represented litigants are expecting payment at the counter and do not understand the collection process and their responsibility to enforce the judgment. Litigants are not familiar with remedies, i.e., writs, garnishment. Enforcement Orders are also coming from the Landlord and Tenant Board. There are challenges with calculating pre- and post-judgment interest. This fourth stage - the Collection of Quantum - is time consuming for staff.

QUESTION #6 – Do you have any recommendations regarding the Challenges and/or Facilitators?

THEMES

Recommendations included:

Litigants are very frustrated with the Small Claims Court process. It was recommended that there be Legal Aid and interpretation services for Small Claims Court to assist litigants with guidance, forms, affidavits, enforcement, and substantive legal issues outside the scope of staff.

A Self-Help Line could be made available to litigants to assist them with understanding the process, their responsibilities for their case, the role of the court staff, assistance filling out forms, dealing with language barriers and disability issues.

In terms of enforcement processes originating in other courts and/tribunals, it was suggested that it would be helpful for litigants to have a desk assigned to enforcement orders and a “linking person” to provide continuity between the judgment of a tribunal and the role of the Small Claims Court.

While the Small Claims Court Guides are available to litigants, the idea of a short “Checklist” for litigants was proposed. Such a checklist would outline the process, the documents needed, the requirements of services, and the associated costs.

It was also recommended that a Flow Chart of the Small Claims Court system with its steps and stages be made available.

A questionnaire outlining the costs involved of a Small Claims Court action would be helpful to litigants.

It was also suggested that paid, court appointed interpreters with a list of languages be made available rather than requiring the litigants to arrange and pay for interpreters.

A memorandum giving direction how to prepare for trial could be sent out with trial notice – this is already done in one court area.

It was also recommended that an automatic teller machine be set up at the Small Claims Court.

QUESTION #7 – Do you have any additional comments?

THEMES

A less complex, more understandable system is needed.

ii) Lawyers with Extensive knowledge of the Small Claims Court

QUESTION #1 – What is your Role with respect to the Small Claims Court

The following responses identified with having the role as a “Lawyer with extensive knowledge of the Small Claims Court”. The respondents were asked to comment on challenges and facilitators that they felt were experienced by litigants in the Small Claims Court.

QUESTION #2 – Stage 1: Filing Claims

While the respondents were not involved in Stage 1: Filing Claims, they did see the filing documents prior to or during the Settlement Conference.

THEMES

Some responses found the Ministry of the Attorney General self-help booklets explaining the process to be excellent and the Small Claims Court website was helpful.

Other responses indicated that Forms were difficult for Self-Represented Litigants in terms of language, font size, terminology, density, and what should be included. The Forms completed by litigants were disorganized, did not necessarily define or respond to the legal issue before the court, did not plead sufficient particulars or quantum breakdown, lacked information, were cluttered, and difficult to understand.

There was a recommendation that claims over \$5,000 be required to complete a more detailed particularized Form.

Concerns were also expressed regarding the capacity of licensed paralegals, long counter lines, and online claim printing and filing.

QUESTION #3 – Stage 2: Mandatory Settlement Conferences

THEMES

Settlement Conferences are considered to be very important for their ability to define and/or narrow the issues, have the parties interact face to face, identify key documents and witnesses, to lead to possible settlement and to avoid trial. Settlement Conferences also provided some guidance on the trial process, should the matter proceed.

A number of challenges included: insufficient time allotted to a Settlement Conference, poorly prepared litigants and poor compliance and enforcement of the Rules, as well as the need to clarifying litigant and Deputy Judge roles.

QUESTION #4 – Stage 3: Trials

THEMES

Concern was expressed on the issues of: providing assisting versus advocacy to self-represented litigants, the capacity of Self-Represented Litigants to prepare for and conduct a trial, cost rules for Self-Represented Litigants versus represented litigants, the need for an interpreter at trial which was not identified at the Settlement Conference, and time-consuming adjournments.

Concern was also expressed regarding the capacity of paralegals, i.e., production of documents, evidence, hearsay rules.

QUESTION #5 – Stage 4: Collection of Quantum

While the respondents were not involved in Stage 4: Collection of Quantum, they did hear questions from the parties at the end of trial or through other court processes.

THEMES

The issue of collection of quantum appears to be “nothing but challenges” - the process is onerous, costly, frustrating, often pointless as debtors may not show up at examination and the financial penalty is low for not doing so.

QUESTION #6 – Do you have any recommendations regarding the Challenges and/or Facilitators?

THEMES

Stage 1: Filing Claims

Claim Forms

The Statement of Defence and Counterclaim could be put into one document; modernize the filing process; less paper; judges should have access to computers; MAG may consider revamping and updating their information booklets they have online.

Stage 2: Mandatory Settlement Conferences

Should be longer and fewer per day, information should be particularized to structure the parties' preparation for trial.

Stage 3: Trials

Practice directions should be given regarding assessing costs at trial.

QUESTION #7 – Do you have any additional comments?

THEMES

Use technology.

Cases at Small Claims Court are becoming increasingly complex with continuing trials and reserved judgments.

4. NOTE: UNEXPECTED FINDINGS

Feedback on Stage 1: Filing Claims indicated there may be a different payment process for litigants to file their claims (Stage 1) in order to begin the Small Claims Court process. Defendants, in some cases, appear to be required to pay for their court filing fees via a registered/certified cheque and not by credit card. Plaintiffs/applicants have a choice whether they file their case using a credit card or cheque. Both plaintiffs/applicants were not able to use cash to file their materials.

The filing payment difference specific to defendants was an unexpected finding. The validation, the criteria, pervasiveness and duration of the non-acceptance of defendants' credit cards and requirement of a certified/registered cheque to file their claims was not explored in this study. It is recommended that this finding be validated.

If this finding was correct as of 2018 and assuming filing fee waivers were excluded – this filing payment difference for defendants versus plaintiffs/applicants raises a number of Access to Justice issues.

First, plaintiffs/applicants and defendants may be treated administratively/procedurally differently at Stage 1: Filing Claims. It is unclear what Rule, policy or guideline underlies this differential.

Second, it is unclear if defendants know in advance of filing that they may be unable pay for their Stage 1: Claim Filing by credit card and/or why this payment criterion was being imposed.

Third, it is unknown if defendants did not file a defense due to the filing payment difference, i.e., the defendant was unable or unwilling to provide a registered/certified cheque.

Fourth, it is unclear if the court's administrative filing payment difference had detrimental substantive legal effects on vulnerable defendants. For example, a defendant who initially borrowed \$400 from a payday loan company at 59.9% interest and is now being sued by that payday loan company may not be in a position to provide a certified/registered cheque in order to file the defense. If unable to file a defense due to the filing payment requirement of a certified/registered cheque, the defendant may be Noted in Default, determined to be liable, proceed to an Assessment Hearing and potentially have assets garnished by the plaintiff/applicant. In this respect, the differential administrative payment process may have negative substantive legal consequences for financially vulnerable defendants, while creating a positive substantive legal outcome for plaintiffs/applicants.

As discussed, the filing payment difference specific to defendants was an unexpected finding with potential Access to Justice implications. It is recommended that this finding be validated and further explored.

5. CONCLUSION

In all large systems, there are facilitators and challenges. The Small Claims Court is no exception. This study found a tremendous interest and commitment by court staff and lawyers with extensive knowledge of the Small Claims Court to ensure litigants could access justice via the Small Claims Court. Court staff and lawyers with extensive knowledge of the Small Claims Court are an invaluable source of information, insights and recommendations and should be accessed wherever possible.

The research found that the court had four main Stages / junctures. These included Stage 1: Filing Claim, Stage 2: Settlement Conferences, Stage 3: Trials and Stage 4: the Collection of Quantum.

The quantitative data found that the majority of defendants (96.7%) are unrepresented at Stage 1: Filing Claim. Plaintiffs were represented while defendants were not 47.6% of the time. Both plaintiffs and defendants were not represented 49.2% of the time, while both were represented 1.8% of the time.

At Stage 1, the data indicated of the almost 210,000 Ontario cases from 2014-2016, the highest number of cases was in Toronto (47,141) followed by Brampton (26,736), Ottawa (14,639), and then Richmond Hill (12,565).

The data indicated that at Stage 1- Filing a Claim almost three quarters (73.9%) of Toronto cases were at or under a quantum of \$10,000 at the time of filing while 26.1% of Toronto cases were between \$10,000 and \$25,000.

The quantitative data analysis on the time a case was within the Small Claims Court system - a potential indicator of system efficiency – needed to be viewed with extreme caution given the coding and data set request for this study.

The qualitative research found that it was perceived that litigants using the Small Claims Court system were often confused by the process and unclear what was required at each of the Stage of the Small Claims Court process, e.g. filing claims, claim preparation, documentation and the identification of the legal issue in the litigants' arguments, attending settlement conferences and participation in trials and in the collection of quantum. There was also feedback on the on-going challenge of assisting Self Represented Litigants involved in the Small Claims Court process yet not providing so much support as to disadvantage the opposing litigant. The issue of the capacity of paralegals also arose in the survey responses.

6. NEXT STEPS

It is recommended that further research be conducted on the Ontario Small Claims Court as an important Access to Justice vehicle.

This research would include the validation and exploration of any filing payment differences specific to defendants.

Ideally, a Steering Committee should be formed comprised of key stakeholders in MAG, the OCJSCJ, administrative judges, deputy judges, lawyers and court staff.

The Steering Committee should:

- Report Findings: review this report's quantitative and qualitative findings and recommendations;
- Stages: further research the four Stages of the Small Claims Court process relative to the goal of Access to Justice is recommended;
- In order to better understand how people utilize the Small Claims Court to resolve the conflicts, research into the four Stages should be undertaken to establish where cases are resolved/ withdrawn/ inactive/ administratively purged, the reasons for each, the quantum of resolution and if and how the quantum is collected;
- Establish a breakdown of the legal type of cases and number of such cases coming before the Small Claims Court and completing each of the four Stages, i.e., payday loans, credit card debt, residential/commercial construction, libel and slander, employment/dismissals, etc.;
- Develop an ongoing independent mechanism to report on the retrospective and prospective perspectives challenges and facilitators at each of the four Stages experienced by litigants, court staff and lawyers with extensive knowledge of the Small Claims Court;
- Analyse the FRANK database coding criteria at each of the four Stages relative to system monitoring, evaluating and the goal of Access to Justice; and
- Review the Rules of the Small Claims Court to assess and address any challenges in the Small Claims Court process.

7. APPENDIX

- a. Quantitative Data
 - i. Variables Requested, Received and Added
 - ii. Basic Characteristics of Original Excel data file
 - iii. Analysis of “Amount Claimed” at the beginning of a Case
 - iv. Total Time in the System
 - v. The Question of Representation

- b. Qualitative Data
 - i. Research Ethics Board, York University – Required Consent Form
 - ii. Survey Instrument

APPENDIX A

Quantitative Research

An Exploratory Analysis of the Small Claims Data, Ontario, 2014-2016ⁱ

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York University

In this Appendix we examine the basic characteristics of the Small Claims data as received via an Excel data file of order 210,151 cases by 31 variables: for the list of variables, see Table 1, which includes variables added for analytical purposes.

Table 1: Variables received in Small Claims data base (*plus added variables*)

1. *Unique_ID*
2. Case Opened Date
3. Amount Claimed (\$)
4. Originating Court (67 courts listed alphabetically)
5. Plaintiff 1 Postal Code
6. Plaintiff 2 Postal Code
7. Plaintiff 3 Postal Code
8. Defendant 1 Postal Code
9. Defendant 2 Postal Code
10. Defendant 3 Postal Code
11. Plaintiff 1 Represented@Filing
12. Plaintiff 2 Represented@Filing
13. Plaintiff 3 Represented@Filing
14. Defendant 1 Represented@Filing
15. Defendant 2 Represented@Filing
16. Defendant 3 Represented@Filing
17. Plaintiff 1 Business
18. Plaintiff 2 Business
19. Plaintiff 3 Business
20. Defendant 1 Business

21. Defendant 2 Business
 22. Defendant 2 Business_A
 23. Case Disposed Date
 24. Plaintiff 1 Representative Postal Code
 25. Plaintiff 2 Representative Postal Code
 26. Plaintiff 3 Representative Postal Code
 27. Defendant 1 Representative Postal Code
 28. Defendant 2 Representative Postal Code
 29. Defendant 3 Representative Postal Code
 30. Defendant 1 Defence Document Date
 31. Defendant 2 Defence Document Date
 32. Defendant 3 Defence Document Date
 33. *Time_in_court* (computed from variables 2 and 23)
 34. *Year* (2014=1; 2015 = 2; 2016=3: for analytical purposes)
 35. *Time_in_court_revised* (excluding errors from original coding)
 36. *plaintiff* (recorded / not)
 37. *defendant* (recorded / not)
 38. *P_rep* (plaintiff represented / not)
 39. *claim_group* (categorization of amount claimed into five groups)
 40. *log_time* (created for analysis purposes)
-

1. Basic characteristics of the original Excel data file

As noted above, there were 210,151 cases in the original data file from the Small Claims Court. The desired data base was for coverage of the years 2014 to 2016. An initial examination revealed 9 cases pre-2014 and 8 cases post-2016, so these 17 cases were excluded: the total number of cases now = 210,134. An exploratory analysis of the ‘Amount Claimed’ (variable 3 in Table 1) revealed one case (no.169603) with a claim of \$9,999,999,999.99, i.e., one penny short of 10 billion dollars! It was excluded and an initial analysis of the distributional properties of the remaining data for ‘Amount Claimed’ resulted in Table 2.

Table 2: Distributional properties of ‘Amount Claimed’: Original data set (n = 210,133)

		Statistic	Standard Error
Amount Claimed	Mean	\$9,697.60	\$278.02

95% Confidence Interval for Mean	Lower Bound	\$9,152.70	
	Upper Bound	\$10,242.51	
5% Trimmed Mean		\$7,891.87	
Median		\$5,400.00	
Variance		16241786090.0	
Std. Deviation		\$127,443.27	
Minimum		-\$1,001.21	
Maximum		\$24,647,022.00	
Range		\$24,648,023.21	
Interquartile Range		\$10,671.33	
Skewness		149.41	.005
Kurtosis		25119.62	.011

From a statistical point of view there are several aspects of the distribution of the variable 'Amount Claimed' that are of concern:

- the mean (\$9,697.60) is greater than the median (\$5,400.00) indicating a skewed distribution, as the mean is affected strongly by outlier values;
- the strong effect of high values is shown by the maximum (\$24,647,022.00), i.e. about 25 million dollars, in a court system where the maximum claim is stated as \$25,000.00 (i.e., about one-thousandth of the maximum in this data set);
- there is clearly a problem with the minimum value of -\$1,001.21 (i.e., a claim is made by the plaintiff that, if successful, would result in him or her paying the defendant over \$1,000);
- the values for the skewness and kurtosis statistics indicate that these data would be very problematic to be used in any analysis (i.e., strong departures from a normal distribution).

This analysis was repeated for one other variable worth investigating overall – the time spent in the system. Note that the definition of the beginning and ending dates in the data set is questionable: the beginning point appears to be well established – variable 2 (Case Opened Date), but the ending date (variable 23: Case Disposed Date) is less clear. It is possible that the case could still be in the system but has been allowed to elapse without official notice. For the purposes of looking at the time cases spend in the system, we will accept the definition of the ending date as specified in these data as valid. From the exploratory analysis, with a much reduced sample size because of the nature of the data, similar issues arise for analytical purposes, but they are much less severe.

We will then use arguments primarily about the size of the claim to substantiate the sample used in further analysis. Many (if not most) of the other variables in the original data set were considered to be insufficient with respect to the large number of missing values.

From a data base construction point of view, there are clearly some problems with data entry, likely coding errors, errors of transcription, etc., which should be addressed in the future.

From an analytical point of view, several decisions have to be made in order to obtain some meaningful inferences from the data:

(i) cases with ‘Amount Claimed’ greater than the statutory \$25,000.00 should be excluded: by year, there were in 2014 = 263; 2015 = 227; and 2016 = 222 such cases; for a total = 712 cases. This reduces the effective sample size: $210,134 - 712 = 209,422$. By year, the number of cases then is: 2014 = 71,962; 2015 = 69,990; and for 2016 = 67,470.

(ii) cases with values of zero, as well as the noted case of -\$1,001.21, are also problematic in some analyses, hence they were all recoded to the value of \$1.00.

(iii) the geographic distribution of cases is also problematic: see Table 3.

Table 3: Cases by Year and by Courthouse

Originating Court * Year Crosstabulation

Count

		Year			Total
		2014	2015	2016	
Originating Court	Alexandria	93	85	80	258
	Barrie	2242	2021	1990	6253
	Belleville	724	767	696	2187
	Bracebridge	409	355	387	1151
	Brampton	9598	8748	8389	26735
	Brantford	738	730	754	2222
	Brockville	527	491	511	1529
	Burk's Falls	0	1	0	1
	Burlington	1452	1323	1420	4195
	Cambridge	5	0	0	5
	Cayuga	211	153	149	513
	Chatham	466	457	461	1384
	Cobourg	377	371	368	1116
	Cochrane	78	92	98	268
	Cornwall	446	409	387	1242
	Dryden	171	147	131	449
	Durham	3353	3082	2948	9383
	Elliot Lake	82	77	83	242
	Fort Frances	97	82	66	245
Geraldton	35	28	15	78	

Goderich	199	171	182	552
Gore Bay	28	50	56	134
Guelph	897	853	830	2580
Haileybury	98	117	109	324
Hamilton	2805	2660	2634	8099
Kapuskasing	94	81	82	257
Kenora	100	131	114	345
Kingston	674	680	731	2085
Kirkland Lake	126	90	81	297
Kitchener	2489	2266	2249	7004
L Orignal	395	281	314	990
Lindsay	464	468	415	1347
London	2212	2215	2022	6449
Milton	615	689	697	2001
Morrisburg	47	44	55	146
N/A	2	1	8	11
Napanee	176	182	194	552
Newmarket	1144	1198	1087	3429
Nipigon	47	54	45	146
North Bay	478	468	414	1360
Oakville	0	0	1	1
Orangeville	277	242	284	803
Orillia	371	334	358	1063

Ottawa	4715	5047	4877	14639
Owen Sound	470	528	460	1458
Parry Sound	276	265	224	765
Pembroke	307	306	306	919
Perth	384	412	382	1178
Peterborough	652	586	644	1882
Picton	112	107	78	297
Red Lake	26	29	28	83
Renfrew	165	132	117	414
Richmond Hill	4532	4137	3896	12565
Sarnia	594	585	530	1709
Sault Ste. Marie	534	635	572	1741
Simcoe	262	298	259	819
St. Catharines	1005	945	948	2898
St. Thomas	367	338	348	1053
Stratford	299	259	234	792
Sudbury	1131	1065	1042	3238
Thunder Bay	1004	929	919	2852
Timmins	413	352	313	1078
Toronto	15742	16339	15060	47141
Walkerton	255	233	272	760
Welland	1240	1256	1240	3736
Windsor	2098	1935	2247	6280

	Woodstock	537	578	579	1694
Total		71962	69990	67470	209422

There are 67 courthouses in this system. They range in terms of the number of cases from Burk’s Falls and Oakville, each with only one case, to Toronto with 47,141 cases. There is a clear coding error: courthouse “N/A” reported 11 cases. Potentially these courthouses could be aggregated into larger geographical units but this was not a component of this project. Even a brief glance at the data, however, shows a preponderance of cases in the Toronto area. Hence an initial decision was made to concentrate the analysis on Toronto: for this courthouse, there were 15,742 cases in 2014; 2015 = 16,339; and 2016 = 15,060.

(iv) an analysis was carried out to corroborate the decision to concentrate on Toronto: a new variable (not in the above list) was constructed to represent cases in the Toronto courthouse compared to those in the rest of the province. The mean for the ‘Amount Claimed’ in the Toronto cases for the years 2014 - 2016 was \$10,240.00, compared to the mean value for the rest of the province of \$9,540.00. The difference between these mean values is not significant ($t = 1.05$; $df = 210,131$; $prob. = 0.293$). Hence, from the perspective of further analysis, we can regard the inferences made with respect to Toronto to be broadly applicable to the rest of the province.

(v) a final decision concerning the size of the ‘Amount Claimed’ was necessary because of the preponderance of small values, with unknown errors. A lower claim value arbitrary cut-off point was made at equal to or greater than \$2,500.00. For the final analytical sample, then, we have 35,255 cases greater than or equal to \$2,500.00, which were claimed in the Toronto courthouse over the years 2014 to 2016, with a breakdown of 2014 = 11,783; 2015 = 12,349; and 2016 = 11,123 cases. Unless otherwise noted, this sample will be used in all further analyses.

2. Analysis of ‘Amount Claimed’ at the beginning of the case

We have noted above that the ‘Amount Claimed’ showed some severe data entry problems in the file originally received (e.g., 712 cases greater than the maximum of \$25,000.00), as well as many entries of ‘\$0’, i.e., zero dollars. The latter cases (as well as the negative case) were recoded to a small positive amount (\$1.00).

In the analysis that follows, we restrict the sample to cases with claims equal to or greater than \$2,500.00 and for the Toronto court only (n = 35,255). Note that the sample size will be fairly large because the analysis is based on ‘not-completed cases’ (the amount claimed at the outset). Basic descriptive statistics are as follows (Table 4):

Table 4: Descriptive statistics: ‘Amount Claimed’ (≥\$2,500), Toronto, 2014-2016

\$ Amount Claimed	Year		
	2014	2015	2016
Mean	11,983.31	12,087.83	12,228.86
Standard deviation	7,805.34	7,741.64	7,842.33
Median	9,750.88	9,885.00	9,995.05
Skewness	0.56	0.55	0.52
Kurtosis	-1.14	-1.14	-1.20
TOTAL (n)	11,783	12,349	11,123

In general, there appears to be some similarity between the three years: slightly increasing means and medians, as might be expected (the data are not corrected for GNP change, i.e., not constant dollars), but the variability is about the same in this period. The distributional statistics also appear to indicate relatively normal distributions, but in fact the distributions themselves have a very noticeable feature at the limit of claims for these cases, i.e., the upper limit is \$25,000.00, hence the ‘lumping’ at \$25,000.00 might well be expected.

The distributions (for each year) are shown in the next three histograms (Figures 1 – 3)

Figure 1: Empirical frequency distribution for ‘Amount Claimed’, Toronto, 2014.

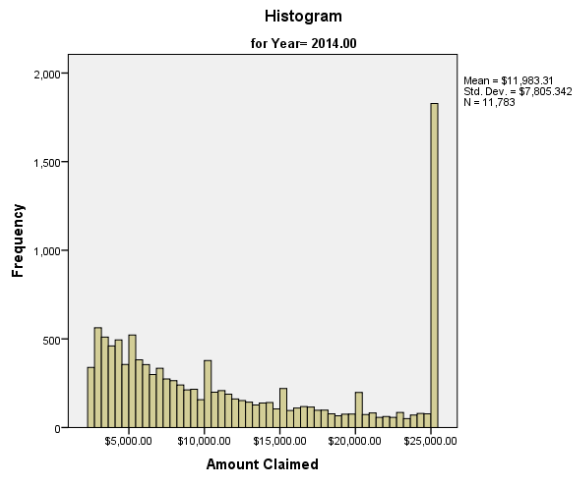


Figure 2: Empirical frequency distribution for ‘Amount Claimed’, Toronto, 2015.

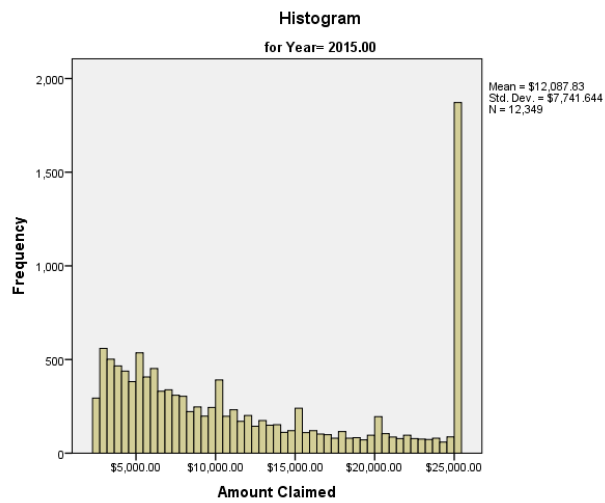
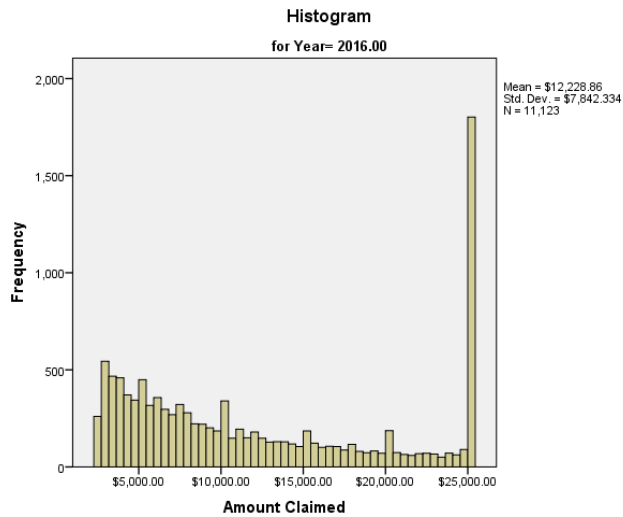
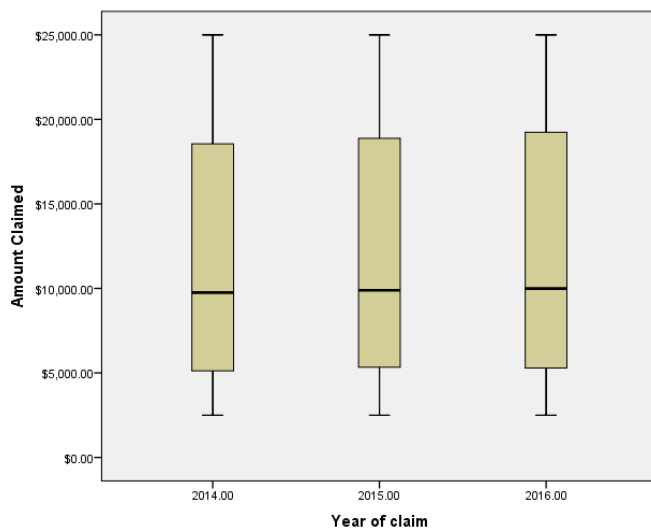


Figure 3: Empirical frequency distribution for ‘Amount Claimed’, Toronto, 2016.



Clearly, these annual distributions have very similar distributions. The relative normality of these data is shown clearly by their box plots (Figure 4).

Figure 4: Box-plots for ‘Amount Claimed’, Toronto, 2014 - 2016.



2.1. Analysis of ‘Amount Claimed’ (at the outset) using Claim Groups

In this section, we analyse the ‘Amount Claimed’ by means of classifying the data into relevant groups: we ask the question whether the distributional characteristics of the cases change when one considers, at the extremes, a “small claim” group versus a “large claim” group. NOTE that

for this analysis we INCLUDE the 12,087 cases that are less than or equal to \$2,500.00. The overall hypothesis is that as the amount of the claim increased, the number of days that the claim was in the system increased (on an annual basis) but also decreased over time, i.e., that claim group was significant only in a marginal sense.

First, the categorization for small and other sized groups was carried out as follows (see Table 5).

Table 5: Descriptive Statistics for a Six-group Categorization of ‘Amount Claimed’ in the Toronto Courthouse, 2014 – 2016

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Less than \$2,500	12,087	25.6	25.6	25.6
	\$2,501 - \$5,000	7,966	16.9	16.9	42.5
	\$5,001 - \$10,000	10,095	21.4	21.4	63.9
	\$10,001 - \$15,000	5,594	11.9	11.9	75.8
	\$15,001 - \$20,000	3,490	7.4	7.4	83.2
	\$20,001 - \$25,000	7,909	16.8	16.8	100.0
Total		47,141	100.0		

NOTE: (1) Full count for the Toronto Courthouse only; (2) for the previous analyses using cases only greater than \$2,500.00, this means that slightly more than one-quarter of all Toronto cases are excluded.

2.2: ‘Time in the Court System’ for the ‘Small Claim Group’ (claims less than or equal to \$2,500.00; n = 12,087)

The descriptive statistics for this group for the ‘Time in the Court System’ variable (days) are presented in Table 6.

Table 6: Descriptive Statistics for ‘Time in the Court System’ for Small Claim Group.

Days	YEAR		
	2014	2015	2016
Mean	167.17	127.56	104.90
Standard deviation	147.23	107.73	68.22
Median	168.00	91.00	86.00
Skewness	3.62	2.30	1.50
Kurtosis	17.45	6.33	2.62
TOTAL (n)	2,243	1,373	1,083

As expected, the average time in court for this ‘Small Claim’ group decreased (as in general: see below) over this time period, but for this group it also looks as if there is a significant decrease given the reduction in the overall variability in the days in court (s.d. 2014 = 147, compared to s.d. 2016 = 68). In fact, analysis of the means reveals that this is significantly the case (ANOVA: $F(2, 4,696) = 107.47, p < 0.0001$). Although the total number of cases declined over these years, the distribution became more normal over time (reduced values of skewness and kurtosis). Note, however, that the number of cases for which there is a full record, also declined (as expected, given the time series nature of the data): only 38.9% of the cases originally entered into the system (i.e., in 2014) are recorded as completed by the end of the records (i.e., by 2016). Given the higher proportion of cases completed for the large size group (see below), it could be hypothesized that many of these Small Claims cases were abandoned.

The histograms for the three years (Figures 5 – 7) show these characteristics well.

Figure 5: Empirical frequency distribution of ‘Time in Court’ for the “Small Claim” group, Toronto, 2014.

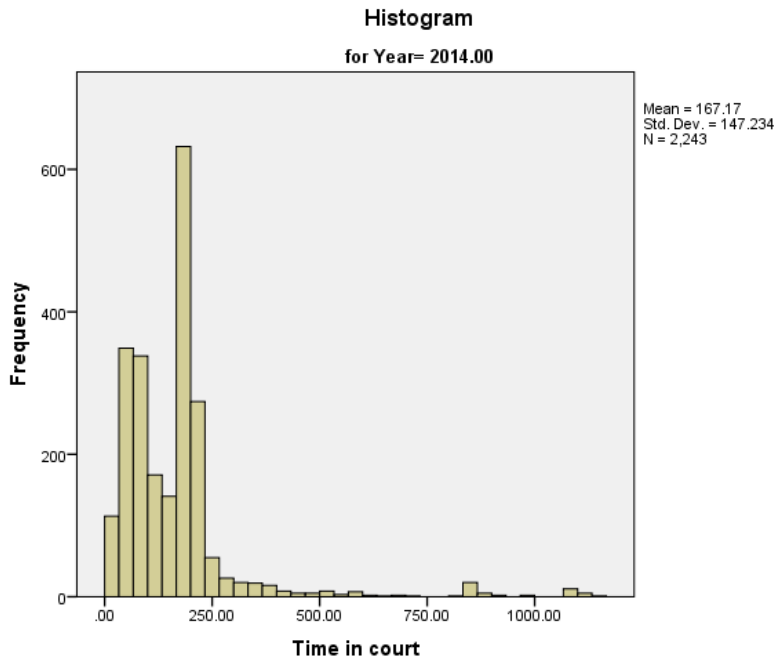


Figure 6: Empirical frequency distribution of ‘Time in Court’ for the “Small Claim” group, Toronto, 2015.

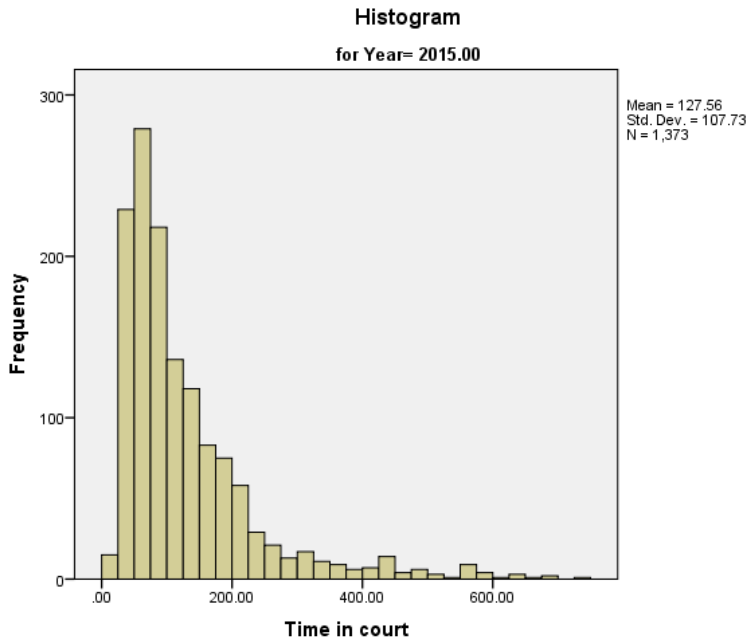
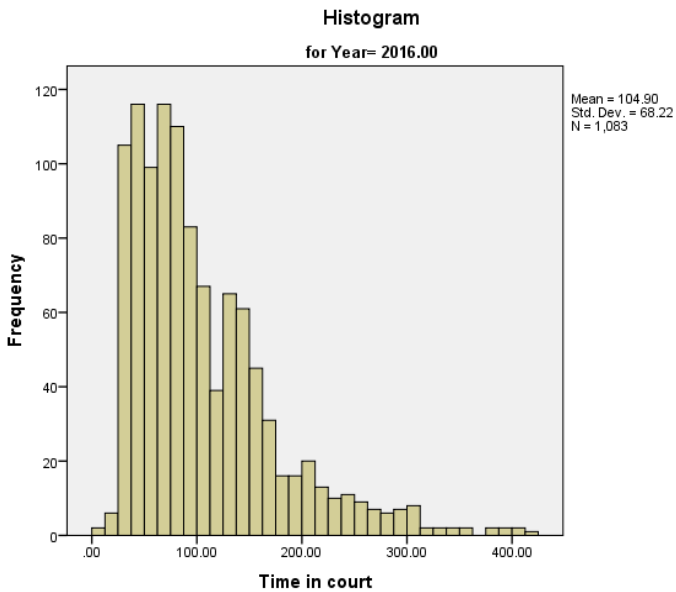


Figure 7: Empirical frequency distribution of ‘Time in Court’ for the “Small Claim” group, Toronto, 2016.



2.3: ‘Time in the Court System’ for the ‘Large Claim Group’ (claims greater than \$20,000.00, maximum = \$25,000.00; n = 4,385)

The descriptive statistics for days in court for this ‘Large’ claims group are presented in Table 7.

Table 7: Descriptive Statistics for ‘Time in the Court System’ for the Large Claim Group.

Days	YEAR		
	2014	2015	2016
Mean	245.97	225.37	153.71
Standard deviation	189.07	162.72	94.77
Median	195.00	183.00	133.00
Skewness	1.63	1.08	1.01
Kurtosis	2.96	0.71	0.59
TOTAL (n)	1,849	1,533	1,003

Note that, as in the ‘Small Claim Group’, the total number of cases is reduced: here, from 7,909 (Table 5) to 4,385; but this means that as many as 55% of these higher claim cases were registered as completed by 2016 [a higher proportion than in the ‘Small Claims’ group, at 39%] There does appear to be a similar pattern to that seen in the ‘Small Claims’ group, however: quite a rapid decrease in mean values, as well as in variance but perhaps a little less in terms of the median values, except most recently over these three years. Again, the distributional statistics indicate an increasingly normal distribution. As with the ‘small’ claims group, however, the analytical results for differences in the means are significant: (ANOVA: $F(2, 4832) = 107.54, p < 0.0001$).

Similarities between the (previous) small and (current) large groups are shown in the following histograms (Figures 8 – 10).

Figure 8: Empirical frequency distribution of ‘Time in Court’ for the “Large Claim” group, Toronto, 2014.

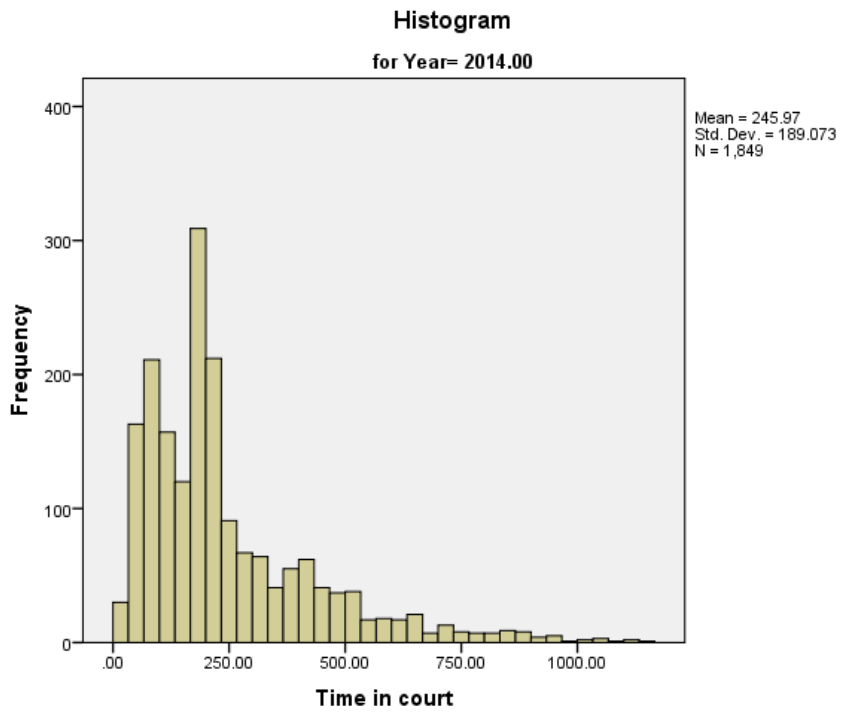


Figure 9: Empirical frequency distribution of ‘Time in Court’ for the “Large Claim” group, Toronto, 2015.

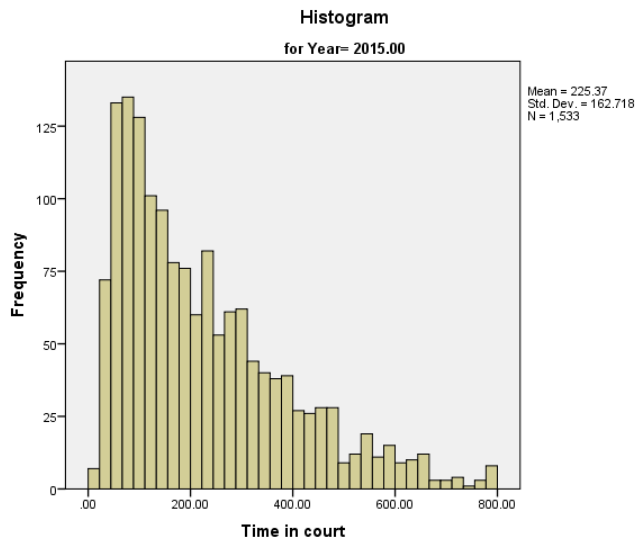
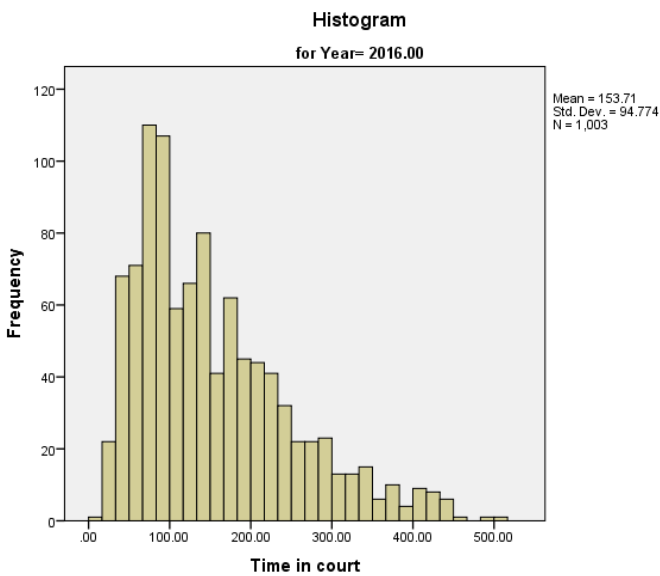
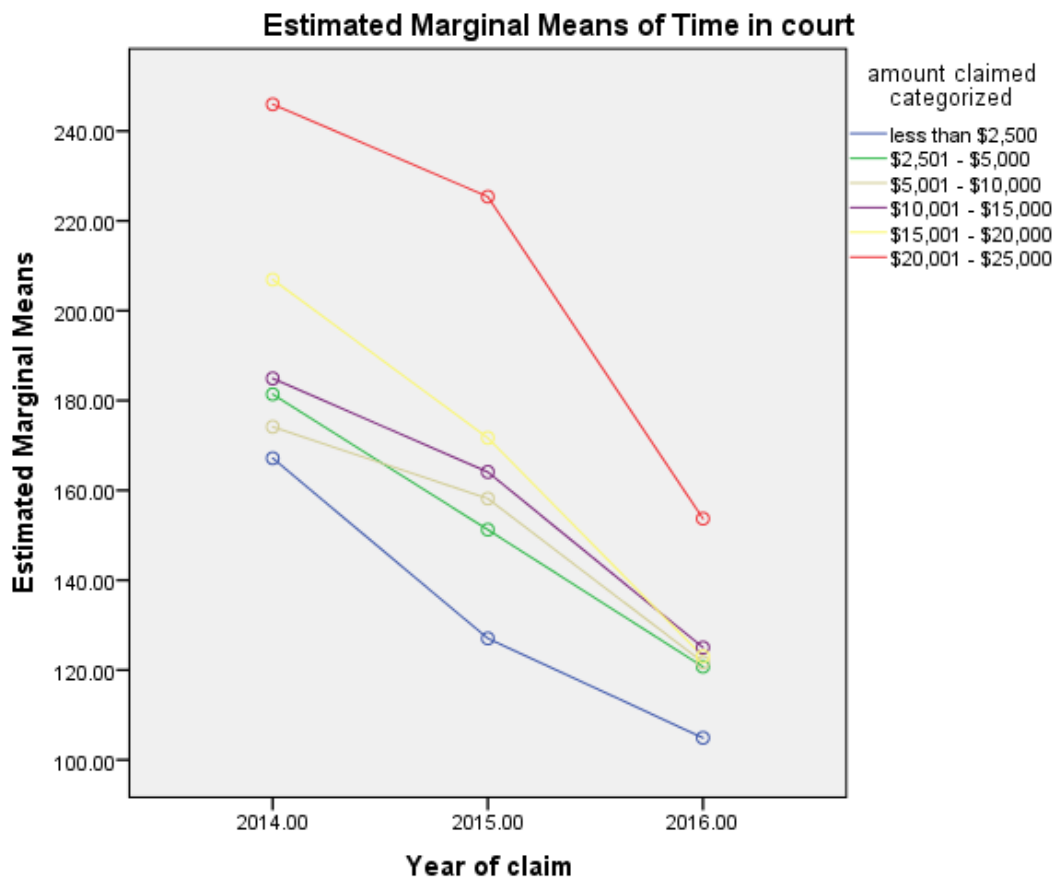


Figure 10: Empirical frequency distribution of ‘Time in Court’ for the “Large Claim” group, Toronto, 2016.



Although they are not presented here (but available) the results for all the groups are basically the same. They are more closely similar for adjacent income groups, as expected. The overall pattern, presented by year, is as follows (Figure 11):

Figure 11: Claim Group Mean values of 'Time in Court', Toronto, 2014 - 2016



From this diagram (NB: 'Days' on the Y-axis) we may infer the following:

- the smallest claim group (<\$2,500.00) registered a mean time in court of 167 days in 2014, and that this was reduced to 105 days by 2016: it should be emphasized that only 38.9% of the 12,087 cases were reported as completed over the three years under consideration;
- the largest claim group (\$20,000.00 – 25,000.00) registered a mean time in court of 246 days in 2014, and this was reduced to 154 days by 2016: it should be added that these statistics are for some 55% of the cases initiated in 2014, and there could well be error due to the truncation of the data series;
- all income groups exhibit a similar negative trend over time;
- differences between adjacent groups can be quite marginal, compared to the differences between the smallest and largest claims groups; and

-- inferences are limited by the nature of the data (especially the 2016 year differences between 'date filed' and 'date of last activity').

The differences between these income groups, overall, and the differences between their average times in court, overall, are ALL significant, however.

In most general terms, it seems that the larger the initial claim in court at Day 1, the higher the probability that it will take a longer time to complete the case. Conversely, the lower the initial claim, the more readily (time-wise) should it be resolved. BUT there is a large amount of variance in the system, such that some Small Claims go on forever, and some large claims are resolved quickly. All of this tells us that there are a LOT of other factors (mediating or moderating factors) that enter into the resolution of these cases, and that such factors are not able to be measured by the variables currently collected in the system of case accounts.

3. Total Time in the System (Date filed - Date last activity)

The previous analysis has included the 'time in the system' as an associative variable and it has appeared to be important: as such it should be examined in greater depth.

It must be noted that the sample is reduced considerably because of the lack of a 'last activity' date: the 'revised sample' for Ontario = 101,072 (i.e., there are 108,350 missing values: i.e. no end date). Additionally, we note that for these cases 24 had a value of '0' which does not seem possible: therefore, it was changed to '1', i.e., one day.

The 'time in the system' overall and by year for Ontario in total is shown in Table 8.

Table 8: Descriptive Statistics for 'Time in Court' (days) for Ontario

Year	N	Mean	Std. Deviation
2014	43,634	171.95	163.27
2015	32,318	152.66	151.62
2016	25,120	105.08	80.01

Total	101,072	149.17	145.49
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We note that all of these distributions are skewed to the right, i.e., the mean is greater than the median. In addition, note that these numbers are for DAYS, i.e, the average time for a case in 2014 was 172 days (over 5 and three quarters months), compared to 2016 when it was just over 2 and a half months. Such data pose several problems: one must be careful as the cases that started in 2016 could still be finished in 2017 at about the same length of time as previously (i.e., those cases in 2016 which do not have a finish date – to be expected since they are more recent). Basically, the problem with such time series data is one of truncation: the probability, in this case, of an entry being completed when it starts in 2014 is not equal to that of a case being completed when it starts in 2016.

The situation for the more restricted sample of ‘Time in court’ (days) AND which refer to completed cases, for Toronto is represented in Table 9.

Table 9: Basic Descriptive Statistics for ‘Time in Court’ (days) for Toronto

Year	N	Mean	Standard deviation
2014	10,325	190.70	158.24
2015	7,103	167.64	136.89
2016	5,208	124.79	84.45
2014 – 2016	22,636	168.30	140.02

For other descriptive statistics of value for this sample, see Table 10.

Table 10: Other Descriptive Statistics for ‘Time in Court’ (days) for Toronto

Year	Median	Skewness	Kurtosis
2014	188	2.50	8.46
2015	122	1.57	2.48
2016	99	1.28	1.47

2014 – 2016	135	2.36	8.34
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These tables reveal the following:

-- the average time in the system of cases has declined over these three years, from 191 days (c. six and one third months) to 125 days (c. four and one fifth months). Since all the distributions are non-normal (see values for Skewness and Kurtosis: if these are greater than +1.00 or -1.00, then the distribution can be regarded as non-normal), then the median is likely a better indicator of central tendency for this variable;

-- this (median) statistic shows a reduction, as expected*, from 188 days (6.3 months) to 99 days (3.3 months) over the period 2014 – 2016; and

-- the reduced values for the standard deviation indicate that the variability of the amount of time in the court system has also declined over these years.

* Note: one problem with these types of data is that the beginning and end points in time are moving targets: one might have confidence in the earlier (i.e., 2014) data because they may demonstrate higher rates of ‘completion’ than more recent cases, so that there could be many that started in 2016 but they had not finished by the end of that year. Those that started and finished in that year are therefore shorter in length. Beyond this truncation issue, however, we have already noted that the larger claims at the outset have in fact been resolved to a proportionately higher extent than the smaller claims (pages 10, 12 above).

These descriptive statistics tell us that the amount of time that cases are dealt with in the system has been systematically reduced over these years, and that the variability in such cases with respect to time in the system has also been reduced. Basically, if time in the system is regarded as an indicator of system efficiency, then this system, with respect to Toronto and claims greater than \$2,500.00, has improved over time. It is, however, a rather large “if”, given the nature of the data.

The distributions of these data, by year, are indicated in the next three histograms (Figures 12 – 14. N.B.: these axes are scaled differently: this caution applies also to all histograms in this report).

Figure 12: Empirical frequency distribution for 'Time in court', Toronto, 2014

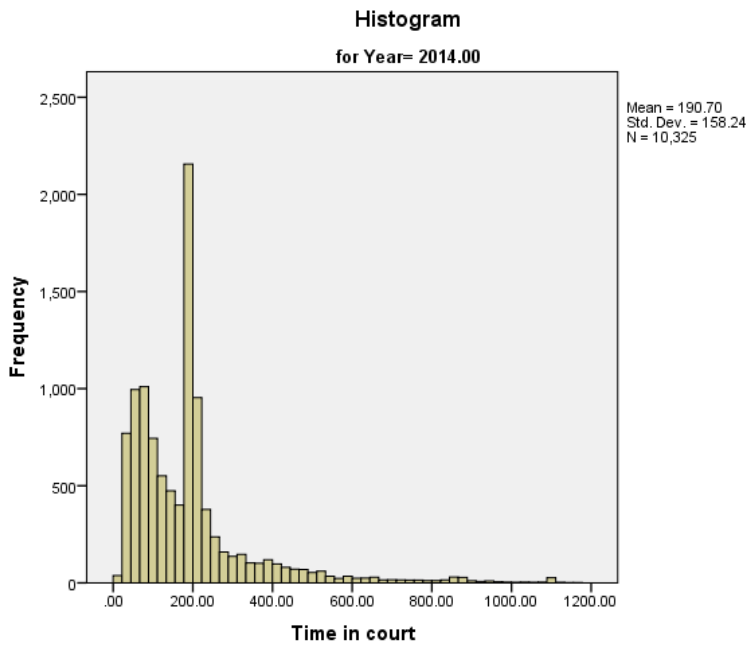


Figure 13: Empirical frequency distribution for 'Time in court', Toronto, 2015

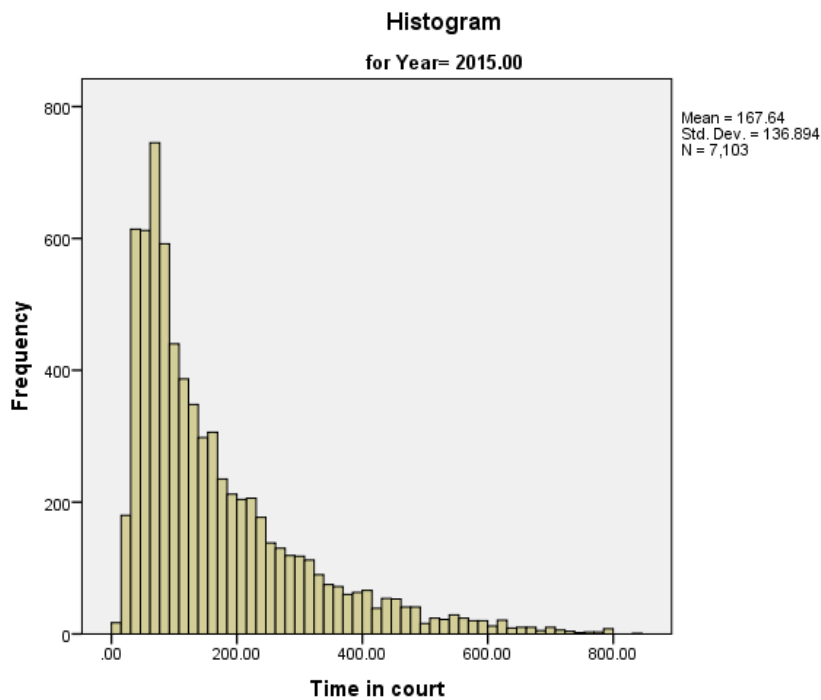
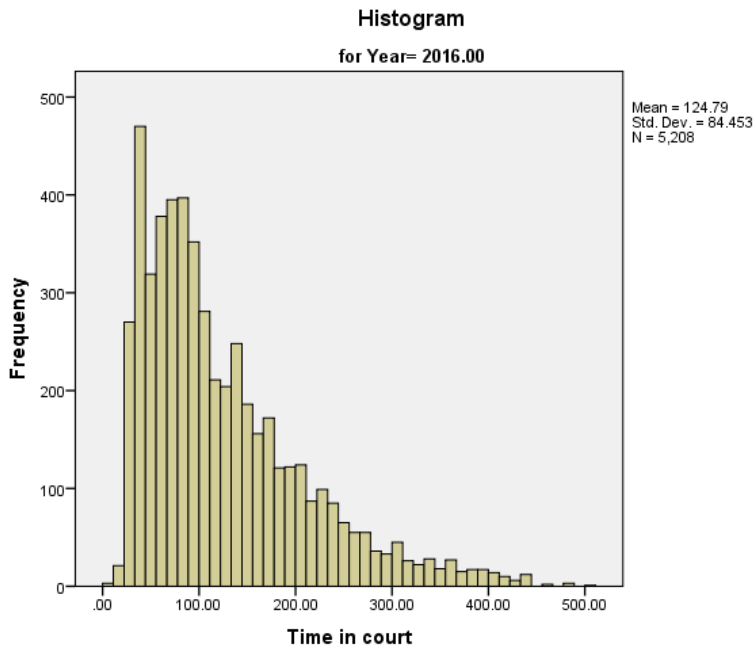
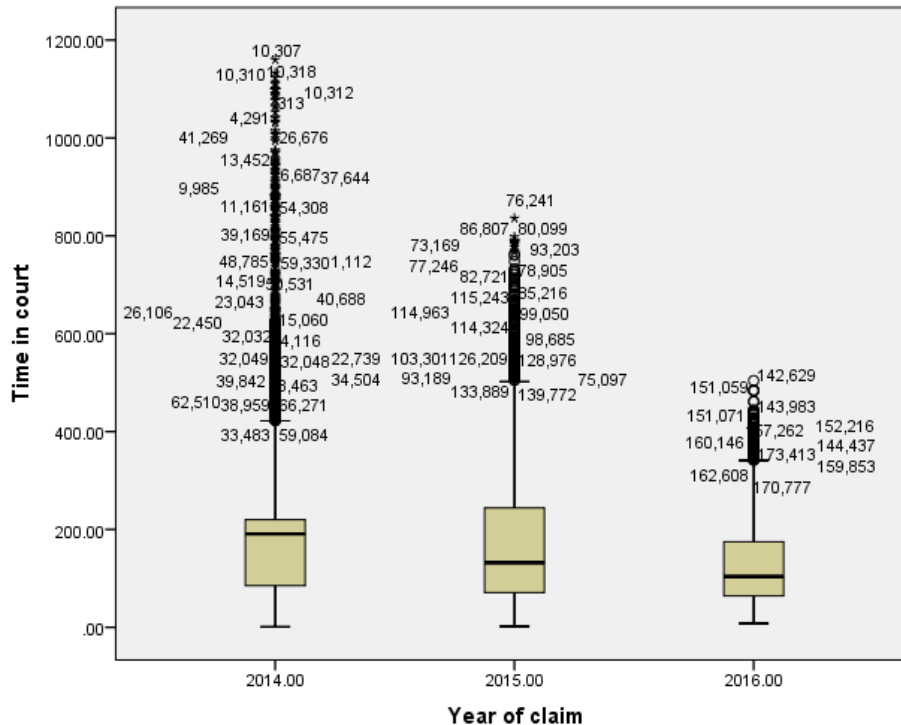


Figure 14: Empirical frequency distribution for 'Time in court', Toronto, 2016



The following box plot (Figure 15) for these three years demonstrates the very strong outliers (a large number of days in court that was greater than expected, if the days had a normal distribution).

Figure 15: Box plot for 'Time in court' for Toronto, 2014 – 2016



The difference between the mean number of days in court for the three years is significant (Analysis of Variance with three factors: Table 11).

Table 11: Differences between Mean ‘Time in court’ for Toronto, 2014-2016

ANOVA

Time in court

	Sum of Squares	df	Mean Square	F	Sig.
Between Groups	15042873.57	2	7521436.78	397.05	.000
Within Groups	428743353.6	22633	18943.284		
Total	443786227.2	22635			

And this is clearly shown in the following Figure 16.

Figure 16: Mean ‘Time in court’ for Toronto, 2014 – 2016

It should be kept in mind that these data are for Toronto only and for cases with amounts claimed equal to or greater than \$2,500.00 only, and that the sample sizes also refer to cases that were completed. This is not important if the probability of completion of cases was the ‘same’ over the three years, but it is not possible to determine that from the data base available – although this is unlikely: see previous sections on claim groups.

4. The question of representation

One final issue that may be broached in this exploratory quantitative study is the degree of representation demonstrated (by these data) for the cases under review. Examining the representation by persons other than the plaintiff or defendant themselves, the data demonstrate that most cases do not have representation: see Table 12.

Table 12: Cross-tabulation: Defendant vs. Plaintiff Representation for Ontario, 2014-2016

			Plaintiff		
			No	Yes	Total
Defendant	No	Count	102563	99231	201794
		Expected Count	102169	99624.7	201794
		% of Total	49.2%	47.6%	96.7%
	Yes	Count	3073	3774	6847
		Expected Count	3466.7	3380.3	6847.0
		% of Total	1.5%	1.8%	3.3%
Total		Count	105636	103005	208641
		Expected Count	105636	103005	208641
		% of Total	50.6%	49.4%	100.0%

From this cross-tabulation we learn that while about 50% of plaintiffs have some form of representation, a large majority (96.7%) of defendants do not. It is not known whether such a major differential plays any part in the resolution of Small Claims in the Ontario court system, at least as measured by the number of claims and time in the system, as measured in this Appendix.

APPENDIX B

QUALITATIVE DATA

York Research Ethics Board required Informed Consent Form

Date: January 23, 2018

Study Name:

Access to Justice: Small Claims Court

Researchers:

Dean: Professor Lorne Sossin, Osgoode Hall Law School;

Visiting Scholar: Dr. Lydia Stewart Ferreira, Osgoode Hall Law School

Director, Statistical Consulting Service, York University: Professor Les Jacobs

Purpose of the Research:

Identifying Small Claims Court Challenges and Facilitators experienced by Litigants

What You Will Be Asked to Do in the Research:

The participants will be asked to complete two tasks

- (1) Complete a questionnaire of 7 questions and
- (2) optionally discuss the answers to the questions with a study interviewer.

The Questionnaire:

Question 1

Participants' role with respect to the Small Claims Court (Court Staff / Deputy Judge)

Question 2 to 5

Participants will be asked to identify Small Claims Court challenges and facilitators they estimate the litigants experience at each of the following stages:

Stage 1 - Initiating +/-Responding to a Claim

Stage 2 - Mandatory Settlement Conference(s)

Stage 3 – Trial

Stage 4 - Collection of Quantum

Question 6:

Participants will be asked if they have any recommendations regarding the challenges and facilitators

Question 7:

Participants will be asked if they have any additional comments

Timing:

The time to complete the questionnaire is estimated to be less than 10 minutes.

The time to discuss the questions with the interviewer, if the participant wishes to do so, is estimated to be less than 10 minutes.

The total time is estimated to be 20mins of less.

No inducements will be provided.

Risks and Discomforts:

We do not foresee any risks or discomfort from your participation in the research.

Benefits of the Research and Benefits to You:

The research will help identify challenges and facilitators that litigants experience accessing justice through the Small Claims Court. The questionnaire and optional discussion provide court staff and deputy judges with a means to tap into their expertise and experience.

Voluntary Participation and Withdrawal:

Your participation in the study is completely voluntary and you may choose to stop participating at any time. Your decision not to volunteer, to stop participating, or to refuse to answer particular questions will not influence the nature of the ongoing relationship you may have with the researchers or study staff, or the nature of your relationship with York University either now, or in the future. In the event you withdraw from the study, all associated data collected will be immediately destroyed wherever possible.

Confidentiality:

The questionnaire and optional interview of the participant will not be associated with identifying information. All information you supply during the research will be held in confidence and unless you specifically indicate your consent, your name will not appear in any report or publication of the research. The data will be collected via a written questionnaire of seven questions and an optional interview where the interviewer will record your responses via handwritten notes. Your data will be safely stored in a locked facility and only research team members will have access to this information. The data will be stored until December 31, 2018 and it will be destroyed after the study. Confidentiality will be provided to the fullest extent possible by law.

Questions About the Research? If you have questions about the research in general or about your role in the study, please feel free to contact Dr. Lydia Stewart Ferreira either by telephone at (416) 694-5094 or by e-mail (Lydia_Stewart_Ferreira@yahoo.ca). This research has received ethics review and approval by the Human Participants Review Sub-Committee, York University's Ethics Review Board and conforms to the standards of the Canadian Tri-Council Research Ethics guidelines. If you have any questions about this process, or about your rights as a participant in the study, please contact the Sr. Manager & Policy Advisor for the Office of Research Ethics, 5th Floor, Kaneff Tower, York University (telephone 416-736-5914 or e-mail ore@yorku.ca).

Legal Rights and Signatures:

I _____, consent to participate in the Access to Justice: Small Claims Court conducted by Dr. Lydia Stewart Ferreira. I have understood the nature of this project and wish to participate. I am not waiving any of my legal rights by signing this form. My signature below indicates my consent.

Signature _____

Date _____

Participant

Signature _____

Date _____

Investigator

APPENDIX B (cont.)

QUALITATIVE DATA

Survey Instrument

Purpose of the Research: To Identify Small Claims Court Challenges and Facilitators experienced by Litigants

What You Will Be Asked to Do: The participants will be asked to complete two tasks: (1) Complete the following 7 questions and (2) optionally, discuss the answers to the questions with a study interviewer.

Survey Questions:

1. What is your role with respect to the Small Claims Court (Court Staff / Lawyer with knowledge of Small Claims Court)?

Please identify Small Claims Court challenges and facilitators you feel litigants experience at each of the following stages:

2. Initiating +/-Responding to a Claim
3. Mandatory Settlement Conference(s)
4. Trial
5. Collection of Quantum
6. Do you have any recommendations regarding the challenges and/or facilitators?
7. Do you have any additional comments?