FROM CONJECTURE TO HYPOTHESIS: UNDERTAKING AN EMPIRICAL STUDY OF DISPUTES AND DISPUTANTS IN THE PEOPLE'S COURT

By

Shelley McGill*

I. Introduction

Traditional legal research involves doctrinal analysis – the assessment of new interpretations of the law in comparison with existing or long held principles; it usually builds to logical conjecture about how this new expression of the law may impact future developments and behavior.[1] But are these projections about future impact anything more than educated guesses? Traditional legal researchers do not typically use empirical evidence to support such conjecture and this limits persuasiveness no matter how logical, obvious or well-reasoned it may seem.[2]

As a doctrinal researcher, I have become increasingly uneasy with my own conjecture in the areas of civil access to justice and small claims dispute resolution. For example, in the context of consumer arbitration, I have often opined that some disputes are too small for consumers to bother processing individually and therefore access to collective redress in the form of class actions must be preserved as the only realistically viable forum for dispute resolution.[3] Without class actions consumers will be denied access to civil justice. In the context of small claims court, I have often opined that raising the monetary limits will attract lawyers and increase formality.[4] As a result litigants will be discouraged by formal procedures and high cost awards, thereby amounting to another denial of access to civil justice. I made all of this conjecture without empirical data on litigant behavior.

In an effort to ease my discomfort and test the soundness of these arguments I decided to cross over from doctrinal research to empirical data collection. In so doing, I have taken my conjectures on small claims dispute resolution and some long held stereotypes about small claims court and framed them as hypotheses which may be tested against data collected from small claims court files. Important information on the type and value of claims, the type and frequency of legal representation, the type of disputants, the range of outcomes, and the size of cost awards lies in these files. In sum, great insight about litigant behavior could be gained from an empirical study. Unfortunately, the old discomfort about conjecture was almost immediately replaced with new discomfort arising from my insecurity with the unfamiliar world of empirical research.

The growing list of concerns surrounding the empirical project included resources, access, skills and time. First, empirical data collection is typically labor intensive, slow, tedious work that requires research assistants and funding. Second, unlike case law, some of the data is not be publicly available so access and permissions must be obtained. Third, statistical integrity in data collection and interpretation are important to the strength of the conclusions and this requires skills beyond those taught in my master of laws. Finally, the study requires a substantive issue with lasting importance (and a patient dean) as the time necessary to develop, implement, complete and promote the project and its findings will take years. This paper shares the journey of my first empirical study as it moves from development to implementation in the hope that others may gain insight from my progress and missteps along the way. Although I will share the substantive details of the project, it is hoped that the procedural lessons learned will be applicable beyond my substantive area of work and inform other doctrinal researchers with different areas of legal interest.

II. Substantive Legal Issue: Access to Civil Justice for Monetarily Small Disputes

Making a strong case for the long term and wide spread importance of the empirical study is necessary in order to obtain the research time, the financial funding, research assistant interest and ultimate publication of the results. In this section I outline the legal context that frames my topic, justifying the need for the study based upon on the relevance of the legal issue, the current void in empirical data and the potential usefulness of the results. The argument is developed from the literature review undertaken for the original doctrinal research and is needed for the sabbatical and grant applications submitted to solicit the time and funding for the project. More will be said about the nature of these applications later, here I contextualize the substantive legal issue underlying the project: Access to Civil Justice.

i. Relevant Legal Issue: Access to Civil Justice

Access to justice transcends legal and non-legal realms.[5] Although originally defined as the "vindication of state determined legal rights through the adjudicative institution that administers and enforces them",[6] the modern view of access to justice is no longer restricted to access to the courts.[7] It now takes an interdisciplinary perspective involving judicial,

* Associate Professor, Wilfrid Laurier University, Waterloo, Ontario, Canada.

legislative and societal initiatives not exclusively confined to the courts.[8] Access to the courts remains relevant as one initiative within a multi-dimensional strategy to promote the universal availability of fair dispute resolution processes.[9]

The core tenets, "access" and "justice," are separate but interdependent, and sometimes conflicting, components.[10] Access focuses on the reduction or elimination of barriers to use, while justice targets the fairness of the process and the substantive correctness of the outcome. Decision making processes are generally perceived as fair if they are consistent, neutral, accurate, and transparent and have mechanisms to correct errors (appeals).[11] Courts offer neutral public adjudication with appeal rights to correct errors but perceived barriers to use include high costs and slow formal processes.[12] Small claims court is an access to justice initiative that is expected to reduce these barriers to use through a quick, easy, informal, and inexpensive process.[13] However reducing the formality of the process usually involves eliminating justice features typically associated with other courts, such as lawyers, pre-trial proceedings, and strict evidentiary rules; small claims court offers a form of proportional justice where the "amount of justice" available for dispute resolution is relative to the value of the dispute. [14]

Critics often lament that Small Claims Court fails to meet its access to justice objectives and has become a collection agency for business where lawyers abound and judgments go unsatisfied.[15] The proposed study will provide the necessary data to assess these criticisms. Small Claims court success in balancing the demands of access and justice can be evaluated by tracking specific characteristics of disputes and disputants. For example, identifying the type of plaintiff and defendant entity[16] and the subject matter of the claim[17] will reveal whether it is truly The People's Court.[18] Information about the formality of the process can be obtained by tracking whether the parties are represented at the start of the proceedings or retain representation during the process and whether judgments are reserved or multiple pre-trial motions are made. Inexpensiveness of the system cannot be determined by fees paid alone, but also by fee waivers sought and by the size of cost awards. Whether judgments are for full or only partial amounts of the claim[19] and whether they are collected or appealed all contribute to a determination of whether litigants feel there has been a fair resolution. The data gathered in this study will improve our understanding of the access to justice contribution of small claims court.

ii. Void of Empirical Data

Academic commentary suggesting that Small Claims Court does not meet its access to justice objectives[20] often lacks current empirical foundation to support its criticism. Governments collect and release only limited statistical information on small claims court[21] leaving many unanswered questions. For example data from the Ontario Ministry of the Attorney General shows a 15% drop in claims issued over five years (2006 to 2010) with a corresponding increase in time spent on events heard[22] – it is taking more time to process fewer claims. Further data is needed before conclusions can be drawn about complexity of claims filed or formality of the process.

Most existing empirical studies of Canadian small claims courts are outdated and therefore of limited value in assessing the access to justice contribution of today's courts. Most studies of the Ontario courts were completed in the 1970's and 80's when monetary limits did not reach $1000 (approximately $4000 in today's inflation adjusted dollars), fees were a fraction of current levels, representation cost awards were non-existent and small claims courts were franchised businesses.[23] The oft-cited 1996 empirical study of the Montreal small claims court specifically examined access to the court for the poor – comparing income, gender and ethnic characteristics of the disputants against the general Montreal population.[24] Although informative, the study has limited application to other Canadian jurisdictions, as the Quebec court has historically low limits ($1,000 at the time of study and only $7,000 now), prohibits the use of lawyers, and restricts business access to the court. Its findings do not speak to the key issues of today – high monetary limits, use of legal representatives and business dominance. Most existing data on usership comes from the United States, where courts also often prohibit lawyers and function at well below Canadian limits.[25]

Canadian empirical work completed in the last decade is heavily opinion survey based with little attention to archival data on usage. A study of the Nova Scotia small claims court conducted for the Nova Scotia Law Reform Commission investigated attitudes about lawyers, limits and process.[26] It was based upon a small number of interviews with court staff and judges and surveys mailed to disputants. Civil Justice Reviews initiated by the Ontario Government in 1996 and 2007 gave minimal attention to small claims court and were again focused on a small sample of interviewed stakeholders, as well as interest group submissions.[27] Finally, the recent study of Middle Income Access to Justice, completed in 2010 for the Law Foundation of Ontario, did not isolate small claims court when respondents from the general public (earning less than $75,000) were questioned about their attitude towards the courts.[28] The proposed study will focus exclusively on small claims court, work from a large sample of existing archival data from the highest volume location in the jurisdiction where businesses and lawyers are allowed access to the court. Therefore it will provide a broad range of current relevant data.

iii. Usefulness and Urgency of the results

The design features of North American small claims court systems vary widely, yet every system professes to advance the court's "access to justice" mandate.[29] Criticism of the court often focuses on three key issues: businesses dominance as plaintiffs, the use of legal representation, and the monetary limit set for eligible disputes. Possibly in response to perceived failings of small claims court, alternative forums for small dispute resolution have developed: consumer arbitration and

consumer class actions. The proposed study will gather data and inform on the prime areas of concern: business use, lawyers and monetary limit, and on the perceptions underlying the use of consumer arbitration and class actions.

Across Canada, the provincial monetary limits range from $5,000 to $35,000, more than half of the jurisdictional limits are set at $20,000 or higher.[30] Now is the time to focus on access to Small Claims Court as jurisdictions across Canada (and other parts of the world) move quickly to increase their monetary limits. Ontario moved from $6000 to $10,000 in 2001 and to $25,000 in 2010.[31] In 2002 Alberta was the first province to move to $25,000 and there is growing pressure to consider $50,000.[32] The Northwest Territories set a new high in 2011 when its small claims court limit was increased from $10,000 to $35,000.[33] As limits rise to new heights, valuable lessons should be learned from past increases.[34] Never has the need for empirical data been stronger or more pressing.

In sharp contrast to Canada, almost all monetary limits in the United States remain below $10,000, with the median state level at $4,250.[35] In the United Kingdom monetary limit is only one factor that determines track; in April 2013 the government departed from its previous approach to monetary jurisdiction and raised the limit from 5000£ to 10,000£ for some types of claims.[36] Despite this wide range in limit strategy, every jurisdiction justifies its limit with an access to justice rationale and U.S. courts are resisting pressure to raise their limits. Do higher limits attract lawyers and thereby increase the formality of the process or do the increased limits offer the existing informal processes to more disputes? Ontario's recent monetary limit increase to $25,000 presents an ideal opportunity to collect some "before and after" data that will help inform future policy decisions on monetary limit increases and system design.[37]

As noted above, Quebec and several U.S. jurisdictions prohibit the appearance of lawyers in small claims court. The theoretic justification for such a ban is to maintain the character of the peoples' court; suggesting that lawyers will intimidate the unrepresented litigant and create a snowball effect in representation. In addition, it is thought that lawyers will bring an adversarial formality to the courtroom, slow the process and increase the costs. Still, in the age of high monetary jurisdiction, is it a denial of justice to prohibit litigants from retaining lawyers when the stakes are so high? This study will examine these underlying assumptions by gathering data on cost awards, number of pre-trial attendances, motions and costs.

The first Canadian incarnation of small claims court had a business debt collection focus[38] and this business purpose remains relevant today. Without such a forum available to business, the cost of bad debts will be passed on to the general public through higher costs for goods and services. British Columbia's pilot program for a separate track for business debt collection recognizes the need for efficient debt collection and typifies the struggle to balance system design features.[39] The data on business use of and success in the court, generated by the study, will help system designers determine the need for customized design features or tracks.

Alternate dispute resolution mechanisms particularly relevant to the small claims court access to justice debate are consumer arbitration and class actions. Class actions have access to justice as a core goal – providing a mechanism for aggregation of monetarily minor disputes considered too small to process individually.[40] By definition this presumes that there are disputes for which even small claims court is too expensive.[41] Current data on small claims court dispute value would inform the policy debates on class actions, graduated small claims court fees and the "loser pays" rule.

Recent popularity of pre-dispute contractual consumer arbitration clauses is arguably a business reaction to the punishing effects of class actions[42] and the issue of their enforceability has been taken to the Supreme Court of Canada 3 times in the last 4 years. [43]Although the Supreme Court has taken a purely doctrinal approach to the question, the surrounding policy debate focuses on the denial of access to the courts and the fairness of the one-sided business dominated forum. In November 2012, the United States Supreme Court again granted certiorari on a case considering the question of class arbitration despite its decision in *Concepcion* just a year ago.[44] U.S. data suggests that virtually all consumer arbitrations are initiated by business and are almost always successful.[45] Concern over the one-sidedness of the forum caused the major U.S. arbitration providers[46] to withdraw their consumer arbitration services in 2009 and sparked legislative prohibitions in Ontario and Quebec.[47] Advocates now suggest that the one-sided business dominated environment of consumer arbitration is no different than that experienced in small claims court.[48] This study will assess the validity of this assertion.

Although the call for more empirical work in support of Canadian legal doctrinal research was first made in 1983, little empirical research has developed, especially in the area of civil justice.[49] Without empirical data, "the conclusions that can be drawn about public perceptions [of justice] are both modest and tentative".[50] Therefore, the urgent objective of this study is to produce a current databank of characteristics of Ontario small claims court disputes and disputants to inform access to justice commentary and to evaluate government policy on the structure and features of small claims court process design and alternative forums. It will build a much needed empirical bridge between the professed access to justice objectives of the small claims court and the system features that purport to advance these objectives, ultimately working towards the construct of an optimal process model.

III. Hypotheses

Hypotheses are predictions about events and they are used in empirical research to test the validity of a theory or theories.[51] The predictions are operationalized by identifying what real world circumstances constitute an event and then tracking the identified circumstances.[52] The hypotheses formulated for this study are derived from the presumptions and

criticisms about the access to justice contribution of the small claims court described above. The following summary identifies the predictions and describes how they will be operationalized:

Hypothesis #1: Business Dominance

i) The majority of plaintiffs issuing claims in small claims court are businesses.[53]

To operationalize this hypothesis the study defines "business entities" as individuals or organizations carrying on a business activity with a view to profit. Sole proprietorships, partnerships, and corporations will be tracked separately in order to provide a more detailed picture by entity type. The court files will not reveal size of the business organization however financial businesses defined as banks, insurance companies and credit card companies will be categorized separately, as will government. The study will separately track defended and undefended actions. It is further hypothesized that business plaintiffs make up 75% of undefended claims. Status of the entity will be identified first from the face of the pleading document and then confirmed in the body of the pleadings.[54]

ii) The majority of claims issued by business entities are for unpaid contractual debts.[55]

To operationalize this hypothesis the study will track the subject matter of all claims issued according to 20 different types[56] one of which will be "Breach of Contract for Non-payment" referring to contracts where the purchasing party fails to pay for the goods or service. Subject matter of the claims will be determined from the claim document first and then the defense if any. The separately tracked plaintiff entity will allow sorting of type of claim by type of entity.

Hypothesis #2: Business Success

i) The majority of business entity plaintiffs issuing claims in small claims court are successful.[57]

Operationalizing this hypothesis involves tracking the actual dollar value of the claims when issued and the actual dollar value of any judgment awarded. Success will be assessed relative to the claim. Full judgment is defined as receiving everything requested in the claim. Partial success is something less than what was requested in the claim and will include receiving a lower pre or post judgment interest rate than was requested. Achieving less than 50% of what was requested in the claim will not be considered success for the purposes of the study – it will be limited success. Again the study will track defended and undefended actions separately. It is expected that more than 75% of undefended actions are awarded full judgment.[58] Amounts will be determined from the judgments, endorsement records and terms of settlement documents.

Hypothesis # 3 Representation

i) The majority of parties participating in a claim are self-represented or assisted by family and not represented by professional or legal representation (agents, collection agencies, paralegals, or lawyers).[59]

To operationalize this hypothesis, plaintiff and defendant representation will be tracked under categories including self, family, friends, agents, collection agencies, paralegals and lawyers.[60] Articling students working within a law firm will be tracked separately. Subsequent collation of subcategories will identify professional representation generally and then separate types. The nature of representation will be determined by notations on the face of the pleadings and endorsement records. Representation will be tracked at five different points during the proceedings: at the issue of 1st pleading, at the settlement conference, at the trial, during collection and at any other event.

ii.) Businesses are more likely to use professional representation than are individuals.[61]

To operationalize this hypothesis the above described data on representation will be sorted into the above described categories of business entity.

iii) Cost awards are higher when professional representation is employed.[62]

Ontario is a loser pays jurisdiction and counsel fees may be awarded to represented litigants.[63] The cost data that will be collected to operationalize this hypothesis includes the total dollar value of the award, a separate recording of a representation fee and an indication of whether the presumptive maximum of 15% of claimed amount is exceeded.[64]

iv) Claims follow a more complicated resolution process when one or both of the parties have professional representation.[65]

Operationalizing this hypothesis involved defining complicated. For the purposes of this study complicated was defined as taking multiple steps, filing extra documents (beyond those required) and setting multiple trial days. This definition resulted in tracking a variety of data categories – the issuing of a defendants' claim, the total number of process events held, the number of motions filed, the scheduling of multiple settlement conference hearings, the filing of briefs, the number of trials lasting more than one day.

Hypothesis # 4 Impact of Limit Increase[66]

i. More litigants employed professional representation (lawyers, paralegals, agents and collection agencies) after the limit increase than did before.

ii. Legal representation cost awards are higher after the limit increase.

To operationalize these two hypothesis the above described data on types of representation and size of cost awards from 2008 and 2009 files will be aggregated and then compared with the aggregation of the same type of data retrieved from files for the 2010 and 2011 years.

iii. The higher the claim value the more likely a litigant is to employ professional representation and specifically the more likely to use a lawyer.

To operationalize this hypothesis the data on representation will be sorted by claim value and the monetary jurisdiction will be divided into 4 categories to determine if files parties claiming 75% of the maximum jurisdiction are more likely to hire representation than those claiming less than 50%. The 2008/2009 results will then be compared to the 2010/2011 results to determine if higher monetary jurisdictional limits affect representation tendencies.

IV. Overview and Timeline of the Study

To test the forgoing hypothesis 3060 files[67] issued in the Toronto Small Claims Court will be reviewed during the summer of 2013 with the aid of two research assistants.

Data on the characteristics of the disputes and disputants from these files will be coded and record on excel spreadsheets. The 3060 files will be selected using a randomized sampling approach, 765 files from each of the years 2008, 2009, 2010 and 2011. This will yield 2 years of data from before and two years of data from after the monetary limit increase to $25,000 implemented on Jan. 1, 2010.[68]

The timeline for the study is broken down into 5 phases: study design, administrative logistics, data collection, data analysis and dissemination of results. The tasks in each phase are more fully described below and, as I am now mid-study (completing Phase 3); the descriptions of the early phases reflect actual events while the later phases remain as projections.

Phase 1: Between January 2011 and August 2012 the project was designed and funding was sourced. I began by reviewing and updating my existing doctrinal research to build a literature review and to frame the above described hypotheses as parameters for the study. Potential sources of relevant data were identified from the literature review, as well as relevant dispute characteristics as tracked or omitted in previous studies.[69] The two primary data sources used by previous researchers are stakeholders and court files, with the majority of researchers relying on stakeholder interviews.[70] More will be said about the pros and cons of each source later but suffice it to say that my pre-existing familiarity with small claims court files[71] and the wealth of information contained in them made the court files a natural choice for my study.

With the study parameters developed, potential sources of funding were identified and grant and sabbatical applications submitted. Sabbatical approval was not a difficult thing to obtain given that I had never requested one before. Obtaining funding turned out to be a much more difficult process than expected and the unsuccessful first grant application lengthened phase 1 of the project and delayed data collection from the projected time period of the summer of 2012 to the summer of 2013. As will be described below, it also presented a "Chicken and Egg" dilemma where certain permissions and access agreements could not be obtained without the assurance of funding and funders needed assurances that I had permission to access the data before awarding funds. The criteria for grant adjudication also re-shaped some components of the study and added some much needed specificity to the project description. By August 2012 funding and access were in place and preparation for data collection could begin.

Phase 2: Between September 2012 and February 2013 the physical and administrative logistics of the proposed study were arranged. This involved collaboration: meetings with the Ministry of the Attorney General on file retrieval and work space, site visits to the Toronto court location, statistical and technological consultation on the design of excel spreadsheets and career services support for recruitment & training of student research assistants**.** It was a six month time period of building partnerships and alliances with my colleagues across many disciplines and universities**.** Recruitment of student

research assistants even had to be timed and coordinated to comply with Law Society of Upper Canada (LSUC) student recruitment regulations.[72]

Phase 3: Data Collection at the Toronto Small Claims Court began on May 1, 2013 and should be completed by September 2013. The sample size is large by past study standards. The average number of claims issued in Toronto over the last 4 years is 15,697[73] – 765 files represent a 5% statistically significant sample.[74] This aggressive target is worth attempting because previous studies have been small.[75] It is the maximum manageable volume given 2 assistants, the 30 minute/file time estimate and the length of the data collection window. The estimated data collection time per file of 30 minutes was determined from personal experience in reviewing paper files and reading claims and defenses. File density varies but reviewing can take as long as 20 minutes (plus recording time). I expected students to be slower. No one document will contain all information – multiple documents including claims, defenses, motions, orders and judgments will need to be read to extract the information. Man hours for completion of the task should fit within the 4 month summer hiatus for students.

Phase 4: Data recorded on the excel spreadsheet will be collated and analyzed between October 2013 to April 2014. It will provide a compressive picture of small claims court usage in recent years. Data will be divided into 2 sample periods (2008 & 2009 and 2010 & 201) and used to undertake a differences analysis of the effect of the change in monetary limits implemented on January 1, 2010 on disputant behavior. Examining the effect of monetary limits on legal representation will be done first with a straightforward comparison of characteristics before and after the change. Subsequently I intend to formalize the analysis by estimating a simple model of multiple linear regression, controlling for other case characteristics. This will allow me to be more confident that any changes found in legal representation over this period are a result of the change in monetary limit rather than a result of other changes in case mix that could be unrelated to the monetary limits. This is a straightforward analysis that can be undertaken without sophisticated statistical software however, my own skills are limited in this area so, as will be described in more detail below, I will be soliciting the assistance of experts in this field.

Phase 5: The results of the statistical analysis of data collected and the conclusions drawn will be disseminated through a variety of outlets over the following year(s). The findings will be shared with relevant stakeholders including Ontario Ministry of the Attorney General, Ontario Deputy Judges Council and Civil Rules Committee, as well as with access justice and business law scholars, legal clinic educators and stakeholder associations through conference presentations and working papers. It is expected that publication in academic access to justice and law journals will occur in the years following completion of the study. The proposed study will be the first in a series of studies. Subsequent projects will sample other Ontario regions to confirm findings. Thereafter, I intend a national study with partners from other universities identified during dissemination of the findings of the Toronto project.

V. Challenges and Lessons Learned

As I work my way through the phases of this study I face ongoing challenges involving funding, access, methodology and researcher recruitment which are teaching me valuable lessons in collaboration. I usually work alone – my rare collaborative efforts have been with extraordinary people who have been very patient with my isolationist approach to research.[76] It is not my natural tendency to seek out help – I tend to learn by personal trial and error. My move to empirical data collection has forced me out of my controlled cocoon to seek help and my colleagues have shown extraordinary generosity in lending their time and expertise to my project. The primary lesson learned is that you can "get by with a little help from [your] friends".[77]

i. Funding Sources – Grant Applications

Prior to this project, I had never written or submitted a grant application.[78] My familiarity with the grant awards process was confined to the bulk list serve email notices circulated generally within my department.[79] The process proved daunting and my inexperience cost me a year in the life of the study.

In Canada the primary funders of academic research are SSHRC[80] and NSERC.[81] Competition is fierce and I have watched my economics and finance colleagues sweat out this process. Getting one of these grants is usually worth at least one course release and is necessary before you will ever be considered for full professor. Only highly respected scholars sit on the review committees and being on a review committee is an acknowledgement of standing. These applications take months to complete, are submitted once per year and must be vetted by three levels of internal scrutiny before submission. To say I was intimidated by the process is a serious understatement of my insecurity so I made my first mistake. I ruled out SSHRC on this intimidation basis alone and searched for more narrowly law focused funding sources incorrectly believing that my legal colleagues would be more attracted to my project than the interdisciplinary scholars on the SSHRC review committee.

The initial failed grant application was submitted to the Law Foundation of Ontario during the winter of 2011 and rejected by May. No specific reason was given for its rejection but what I know now leads me to identify several likely candidates. I found the LFO source from the footnotes of one of the studies in my literature review. Sourcing funds this way seemed like a good way of identifying organizations that were interested in this topic, however, it now occurs to me that such an organization may believe they have already funded this topic and do not want to do it again too soon. The 2009 Nova Scotia study was funded by the NS Law Reform Commission in partnership with their Law Foundation; alas Ontario's Law Reform

Commission had been dormant for some time but the Law Foundation of Ontario retained its funding support for research and legal projects so this seemed perfect. I did not occur to me that such a specialized source of funds meant competition would be intense for a relatively small amount of money. Nor did I read the obvious sign that practical projects would be most attractive to an organization funded by lawyers in practice. Even the support for "legal projects" did not trigger my understanding that the application should stress the practical value of the study. Over the past few years along the tenure track I have made a considerable effort to raise the academic level of my work and avoid the characterization of practice publications. So my application did not describe my topic in its very practical context as I did above, instead I tried to make it sound deep and intellectual so as to impress academic scholars. This was a major mistake and would have been fatal to even the SSHRC grant had I repeated it there.

The next big mistake I made was going it alone. I am the only law professor in the Business School (not to mention the entire university); this was not a granting process with which my school had any experience, not that I sought advice. I filled out the forms on my own and sent them in – I asked no one and showed no one. I guesstimated the budget and asked for the maximum $75,000. I did not realize that sending out a grant application required the sign off of the research department as trustee of the funds and skipping this step was a breach of university policy. Lucky I didn't get it. Had I shown the application to someone, I am sure they would have pointed out the obvious errors in it and improved my chances but this was not to be.

Smarting from the LFO rejection, I decided to attend the next SSHRC information session in the summer of 2011 as a form of grant applications "101". I never intended to apply for a SSHRC, just learn something about grants. It was here I discovered to my horror that my area chair, my dean and the research office were all supposed to sign off on any grant application that left the area. Now I was on the research office watch list and sent to grant writing boot camp where I was taught that every application needed 4 simple parts: the "What", "Why", "How" and "How Much" of the project. I was assigned a research grant advisor, Barry Ries, and I reluctantly gave him a copy of the LFO grant to read. He was kind, honest and encouraging despite marking up every line. He deleted all my jargon and intellectual posturing and schooled me in the need for a reality based practical story that focused less on "What" and more on "Why". From him I learned the benefit of interdisciplinary review committees of SSHRC where not just legal scholars reviewed the applications. They might be more interested in my project as something they did not see every day. As well I learned that there was a separate category of grant awards for "new scholars" – those that had not held a SSHRC before and had less than 8 years in their tenure track position. As long as I could keep my budget below $75,000 I could still qualify in this category. The playing field was beginning to level.

Barry worked through many drafts – striving to reduce my rhetoric into SSHRC's tight character limits and styles.[82] Past successful applicants shared their proposals with me and I benefited from their experience. Great emphasis needed to be placed on the practical use of the study and dissemination of results beyond the academic community. This seemed to be at odds with the elitist attitude scholars typically take towards high ranking academic journal publications and the relative low appeal of industry practice publications. In hindsight, my LFO application looked woefully inadequate.

In addition to Barry's substantive work on the "What" and "Why", the finance and payroll departments had to vet the "How Much" – there would be no rounding or guestimates in this budget, each line required a corresponding budget justification. Research assistant salary, union membership and benefits needed to be carefully costed out. Too low a budget was just as bad as too high a budget. Again reality based pricing needed to be demonstrated in everything from ink cartridges and parking rates to airline tickets and hotel rooms. I needed 2 law students to get the data collected in one summer but I would be competing with law firm salaries. Clearly most of my budget would go to research assistant payroll. SSHRC welcomed the use of students but not just as a source of labor, as a means of training future researchers so my study now needed to include opportunities for student development and growth.

In addition to realistic valuations and student development, SSHRC wanted to see funding partners not just to ease the cost but to demonstrate third party confidence in the project. Although LFO had requested information about other sources of funds as well – I had misinterpreted this as a reason not to grant the award and had therefore argued that LFO was the only funding source available. Now with the message that alternate funds were a good thing, I was in search of funding partners. I was perplexed – I needed to have funding in order to get funding?! The solution lay with internal university funding and in kind support. My university offers not only research grants per se but also travel funds on an annual basis – as long as a paper is presented, you are guaranteed a minimum of $1500 per conference, (usually) 2 per year. This could be described in the application as partner support for dissemination of results. In support of data collection, the use of space at the court house and the reduced file retrieval fee (both of which will be described below) were assigned a value and described as in kind funding by the Ministry of the Attorney General. Now I had two funding partners to collaborate with SSHRC.

Finally, the "How" segment of the application needed sound methodology and statistical integrity. It was clear that my LFO grant screamed my insecurity in this area by over compensating with jargon laced rhetoric that lacked substance. My economics colleague, Dr. Christine Neill came to my rescue with patient tutoring in this area that strengthened both the grant application and the methodology for the study itself.

ii. Methodology - Type and Sources of Data

The first lesson I learned about methodology was that both the type and source of data must be justified or credentialed based upon past research and recognized methodology. I needed to refer to earlier work to justify the approach being taken in my study. Another chicken and egg situation was building: why undertake the study again if it has already been done and if it has not been done in depth why follow its methodology. Clarity improved when I more precisely isolated what I wanted to know in light of existing research: whether previous findings were still applicable in the current climate of rising monetary limits. The focus of the study shifted from the creation of a general databank on small claims court characteristics to an investigation of changes in representation tendencies after the limit increase. I did not abandon the component of general data collection be refined the description of the study in a way that was consistent with past research and methodology and yet still advanced the discipline.

Pre-existing empirical studies[83] were also the starting point for the identification of relevant dispute/disputant characteristics; thereafter the list was expanded to incorporate issues discussed in recent access to justice commentary.[84] Identified disputant characteristics include plaintiff and defendant entity, relationship between parties, representation of plaintiff and defendant, and fees paid or waived. [85] Dispute characteristics include value, subject matter of dispute, single or multi claim, defended or undefended, outcome, interest awarded, costs awarded, and enforcement steps taken.[86] Consistent categories, detailed definitions without overlap and always an "other" category were invaluable lessons Professor Neill taught me about data classification. Dividing general categories for more precise identification (such as corporations to public or private corporation) required an eye to past classifications so that categories could be combined to compare with prior study's findings. Narrow categories and precise definitions could never anticipate all possibilities and so a catch all category for others was imperative. More will be said about classification of data under the Data Collection section below but suffice it to say that no one can predict and prepare for all scenarios and the principal must remain involved and available throughout collection to revise and advise on category coding.

The study's initial methodology question involved source of data: stakeholder survey/interview or court documents. I learned this was not an easy either/or question – each had pros and cons and no one source should be relied upon to definitively resolve a research question[87]. The decision to proceed from court file data was made for very practical reasons involving my skills and comfort level as well as practical availability. I knew little about either methodology but did have extensive familiarity with available information recorded in the public court file. The files are in paper form and data retrieval involves reading multiple documents to extract information. No human subjects would be involved in the study and no personal information about litigant's names, addresses, gender or other identifying information would be recorded. This would mean no ethics board approvals[88] or oversight and few privacy concerns. For the type of information being gathered it seemed preferable to rely on court documents rather than relying on the memories of interviewed parties.[89] Many past studies had relied upon surveys and interviews so turning to court files seemed to fill a void in existing research. Surveys and interviews often suffer from low response rate[90] and present challenges in time management. Surveying also presented many daunting challenges such as question design,[91] use of litigant contact information and training of researchers to classify responses. In contrast, court files presented a stable and consistently available source of data that could produce a large sample size. Still there are limits to what the documents will tell us. They are only as good as the information the parties enter on them. Incomplete or inaccurate forms as well as changes in government forms themselves during the survey period would all be limitations to the study.

Toronto was selected for the jurisdiction; it controlled for some variables[92] and made data collection easy. Ontario is the most active Canadian small claims jurisdiction issuing approximately 60,000 claims annually. It allows legal representation and business/corporate plaintiffs; its $25,000 limit is the second highest limit in the country.[93] Toronto is the highest volume region within Ontario, issuing over 15,000 claims per year,[94] (25% of total Ontario claims) in a diverse urban setting. It operates from a single location (47 Sheppard Ave.) which facilitates easy file access and reduces the number of administrative approvals necessary– other regions in Ontario operate as many as 9 court locations to manage the same volume of files. Still one location is a limitation of statistical integrity for the eventual conclusions so future projects will have to sample other regions to confirm external validity.

Randomness of individual file selection controls for any seasonal trends during the year. Any court clerk will tell you that December is slow and January is busy. Files are assigned numbers in chronological order based on date of issue for each calendar year and files can be randomly selected using court file numbers and a simple computer program, at least for Professor Neill,[95] who created the randomized list of file numbers for me.

Much of my education on randomness of file selection, statistically significant sample size, controlling for variables, and testing for external validity came from of the University of Waterloo[96] Statistical Consulting Service. I took my methodology plan and preliminary excel spreadsheet for a consultation during Phase 2 of the study to ensure that it would generate the data needed in Phase 4. The service will actually complete the data analysis for me during Phase 4 at a faculty rate. The availability U of W's statistical support shored up my weakest skill and, after my initial consultation, filled me with confidence about the viability of the project. However, the practical logistics of obtaining file access threatened to de-rail the project before it began.

iii. Obtaining Access to Files

Obtaining file access presented a number of challenges involving fees, volume and retrieval. Civil court files are open for viewing by the public unless a court orders otherwise. The Ontario Ministry of the Attorney General usually charges a $10/file fee for viewing; at this rate a 3060 file study would generate a cost prohibitive $30,600 expense and take my entire project budget over the $75,000 grant cap for the new scholar SSHRC category. However, regulations contemplate a reduction of the fee to $1/file for bulk access and so the Ministry was approached for approval of bulk access fee long before the grant application submission date. Even though no firm answer was received by February 1, 2012, I had received positive reactions along the way so the SSHRC grant application was submitted with a budget line of $3,060 to cover bulk file access.[97]

I had been working on file access permission since before the LFO grant application with little progress. My judicial contacts at the Toronto Small Claims Court had put in contact with the Court Manager who responded positively to the proposed study and promised to advance my request up through the necessary administrative levels of government. This bottom up approach was another major mistake with devastating consequences and after little progress over 8 months I was put in touch with in-house counsel for the court services division of the ministry. She explained the three levels of approval needed: the Superior Court of Justice, Court Services Division and Ministry of the Attorney General and then provided me with a formal application to initiate the approvals process. I had wasted the better part of a year but was now confident that the right channels were being used, I submitted the approval application.

In June 2012, I experienced "the thrill of victory and the agony of defeat":[98] the SSHRC grant was approved and I was awarded my full budget but the bulk file access fee request was denied by the Ministry. I was in a panic, now I had some money but not enough to do the study. How had I let myself get into such a "Catch 22" situation?[99] This made for a tense July and August while I worked to reverse the government's decision. Many colleagues came to my aid both inside and outside the government and I revised my request to remove any contact with the government computer system and agreed to share results first with the Ministry. I also offered to reduce my sample size and work from warehouse space, anything to reopen the dialogue on file access. In the end the fact that I already had federal funding may have been the factor that changed the Ministry's position and on September 14 I was granted access to the files for the following summer. Logistics of how and where were to be worked out with the on-site management.

Active files and those issued in the previous 2 years are stored at the court premises. Storage of earlier files is contracted out to an independent storage provider so my offer to work from warehouse space and avoid the need to transport 2008 and 2009 files to the court was immediately dismissed as unworkable for the independent contractor. The files would be brought to me at the court. However, the task of bringing the files would be labor intensive. Stored files were grouped chronologically in boxes of 20 so sampling random boxes rather than individual files would cut down retrieval time and cost. Although my statistical advisors suggested that this would not be fatal to the study, it certainly was less than ideal and I am grateful that the new managers at the court agreed to accommodate my need for individual files.[100] This turned out to be a crucial accommodation – once data collection began it became immediately clear that many plaintiffs clustered their files and issued large batches at a time. Sampling by the box would have certainly distorted the data.

By December 2012, the individual file access was arranged, chronological file numbers obtained, boardroom space designated at the court and the randomized list of files for each year was created. Now it was time to again turn to my colleagues for help, this time with recruiting student research assistants.

iv. Research Assistants

Although classification of some data is clerical in nature, other data requires the qualitative assessment skills of a law student – coding the subject matter of claims and defenses is one example. Categorizing the cause of action or defense into legal disciplines is central to determining how the court is used. Students without a background in law would be unable to quickly and accurately make these assessments. Similarly, identification of documents in the court files requires a law student's basic familiarity with civil procedure. Therefore, research assistants had to be law students who had completed first year contracts and torts courses. My university is a primarily undergraduate school without a law school so there was no built in source of students. I needed to hire students from other universities. This created both internal and external challenges.

My colleagues in schools with law schools were approached and asked how or if I could post my research assistant jobs through their school's career services. Luckily for me (and unfortunately to today's law students) there are so few summer research or law firm jobs available for 1st and 2nd year students that every school that was approached agreed to post my positions.[101] Internal Laurier permission was also necessary before hiring external students or advertising at other schools. Payroll and Human Resource vetting of the job description for co-ordination with union contracts was also necessary. Finally, the Law Society of Upper Canada (LSUC) had to be contacted to determine the dates for student recruitment and offers.[102] Adding to the complication, these dates differed for first and second year students. All of these steps took time and collaboration before recruitment could begin.

The LSUC dates for recruitment of second year students expired in Fall 2012, but to comply with the LSUC dates for first year students, interviews could not be conducted before February 19, 2013 and offers could not expire before the 22nd. This timeline made me slightly uneasy as it left recruitment until quite late in the year. It also meant that the pool of 2nd year applicants should be smaller but such applicants would be freer to accept an offer, while first year applicants could possibly

be juggling multiple prospects at the same time and may not want to accept a research offer until all law firms had been heard from. Although the salary being offered was competitive with salaries of law firms, the Canadian call to the bar process requires a law firm internship so a connection with a law firm is a priority even in first year.

Applications were submitted electronically with transcripts and resumes. The response was overwhelming with over 100 applicants. A wise person would have opened a new or separate email account to avoid overwhelming the current account with volume that exceeded the size of my inbox and froze the account. As well, a standardized re-line would have allowed for easy separation of applicants from standard correspondence, hindsight is 20/20.

Fifteen Skype[103] interviews were conducted with a combination of 1st and 2nd year students from all across the province. The criteria set for evaluation of applicants included not only specific skills that were best for the job but also which applicant might be likely to enjoy the work and not quit for a better offer 3 days before the study starts. This favored 1st year students over 2nd years. Most 2nd year law students were trying to get a job in a law firm for the summer and my job would only be their back up. Fewer law firm positions were available to 1st year students. Final selection of the two research assistants required balancing the needs of the study with those of the students. SSHRC frowned upon students being used solely as a source of cheap labor. There needed to be an element of growth and development that would benefit the student in their future career or train them as future researchers. A plan for student development was mapped out in the grant application. Of course, the study would benefit from a student with strong technical, computer and statistical skills in addition to two years of legal training. However, students from first year law rather than second year would benefit more from the education in civil procedure generally and small claims court practice specifically. They could take their training back to the legal clinics and be a helpful resource in second year. Students who had already worked on a data collection project had less to gain in the research area than those with less experience. A weighted ranking system developed prior to interviews would have made the final selection easier. By the end of February, I had hired two first year student research assistants both with undergraduate business degrees including statistics, computer and business law courses in it. Although both had data analysis work experience in their coop jobs neither had been part of a research study before and both expressed willingness to work in their law school's legal clinic.[104]

Each student signed a confidentiality agreement regarding the personal details of litigants and the findings of the study. This was necessary to respect the undertakings given to the Ministry of the Attorney General in order to obtain access to the files. As noted I had undertaken not to collect personal details of litigants and to share findings with the Ministry first. Finally, in preparation for training, I sent each student links to four articles to read on small claims court access to justice.

vi. Data Collection

On May 1, 2013, data collection began with training in civil procedure, data classification and spreadsheet design. File review targets, retrieval processes and data saving procedures were adopted. By day three the focus turned to actual data collection. Consistency and accuracy are essential to quality data collection and reliable conclusions. Inaccuracies arising from inadvertent entry errors were expected and prepared for with the use of drop down menus and omission flags. The cells on the spreadsheet display the category codes and researchers select from the list. Typographical errors are reduced. Overlapping or duplicate columns can be inserted and flags alert research assistants when inconsistent entries are made.

Proper data coding – the classifying of data into identified defined categories, involves the exercise of some discretion. A comprehensive set of categories with articulated definitions or parameters assist researchers in the consistent exercise of discretion in the interpretation and classification of data. The collective set of categories with corresponding definitions is known as the code book.[105] Despite days, if not weeks, of fine tuning my code book before the start of data collection, the first week was consumed with re-defining and revising it. I am not sure that this can be avoided[106] but I was unprepared and a little unsettled by the extent of the revisions required. I was alarmed at the number of grey areas that materialized in the early days – expected in things such as subject matter of the claim but more surprising in areas of claim type and process event. My code book is attached at Appendix B, color coded to match the applicable (similarly colored) spreadsheet column for ease of reference by researchers. The importance of continued involvement of the primary researcher cannot be overstated. I had planned to be on site 1 day every week. This was quickly expanded. I remained on sight full time for the first two weeks and then no less than 2 days every week for the balance of the time. To assist with my absences we used of a comment column to track difficult files that I would re-visit upon my return. I also completed random sampling as means of quality control.

The use of an "other" code is necessary in each category to house unanticipated or irregular events. However, as data collection got underway it became clear that some unanticipated events occurred very often. There are two ways to handle this – add a defined category for this event (of course this requires revisiting all prior files to re-distribute the "other" entries). Alternatively, one can build a protocol for this event using multiple columns that combine existing categories to signal a certain type of event. For example a specific protocol was built for City of Toronto Provincial Offences Fine Defaults . First, in my defense, the magnitude of this type of claim was unanticipated because it is a purely administrative file – it never sees a courtroom or judge and it involves only collection proceedings if anything at all. Sometimes these files are one page. I wanted to be able to flag them because they are virtually always proceeding by default – obviously the judgment debtor has defaulted once already in the initiating Provincial Offences forum so it is no surprise that they would similarly fail to respond to the small claims court proceedings. This may exaggerate the impression of default proceedings in small claims court

initiated actions. Also these files validated my previous concern about clustering of files as it became clear that the City of Toronto collected these files and then issued them in bulk sometimes 100's at one time. Rather than add a category to the definitions, I choose alternative number two and designed a multiple column protocol that would combine to flag these files – it involved 5 columns including plaintiff type (government), # of pre-judgment events (0) with an outcome $ value was still entered. This will signal a collection matter transferred from another forum; default proceedings within small claims court would require some kind of process event to generate an outcome – assessment hearing, motion for judgment etc., so a process event of zero combined with a government plaintiff and outcome amount will flag this type of file.

One example of a classification that was added during data collection is "contribution" under the "subject matter" category. It quickly became clear that most defendant's claims did not articulate a factual subject matter but rather simply claimed contribution and indemnity from co-defendants. It was easy to add the category because the oversight was spotted early and defendant's claims were tracked separately so identifying past files that needed review was easy. Still after a full week of data collection, I made the decision to stop adding new categories and instead design protocols that could flag the desired circumstance. After the tinkering with the spreadsheet stopped, data collection proceeded smoothly and quite quickly

My final data collection concern was about time management and the ability to move through the 3060 files at a pace that would complete the task in 4 months. This fear was allayed after only 5 days. The students quickly became comfortable with the spreadsheet and the file documents and reached the target of at least 35 files per day by the end of the second week. Three phases complete and two to go.

VI. Conclusion – Cross Disciplinary Partnering and Collaboration

As August comes to a close I stand at the edge of the most important part of the study: Phase 3 "Data Collection" is almost complete, file review is ahead of schedule and analysis of data can begin. It has already been a long journey yet it is far from over. This would only be the starting point for my typical doctrinal research. Still, I feel satisfied and exhilarated by the progress I have made some missteps and lessons I have learned along the way. The challenges faced so far have been overcome with cross disciplinary partnerships and collaboration. My advice to those considering a shift to empirical research is to find a mentor and involve multiple partners in administration, grant writing, and statistics. Do not be tempted to proceed alone, invite others to critique your project and follow their advice when given. As I embark on the most important part of the research – the data analysis – I look forward to ongoing support from my colleagues and hope to continue to "get by with a little help from my friends".[107]

Appendix A: Canadian Small Claims Court Monetary Limits

Province	Current Limit	Year of Increase	Former Limit
Alberta	$25,000	2002	$7,500
B.C.	$25,000	2005	$10,000
Manitoba	$10,000	2007	$7,500
N.B[108]	$12,500	2013	*$30,000*
NFLD & LAB	$25,000	2010	$5,000
N.W.T	$35,000[109]	2011	$10,000
Nova Scotia	$25,000	2006	$15,000
Nunavut[110]	*$20,000*	2006	
Ontario	$25,000	2010	$10,000
P.E.I.	$8,000	2008	$5,000
Quebec	$7,000	2002	$3,000
Saskatchewan	$20,000	2007	$15,000
Yukon	$25,000	2005	$5,000

Appendix B: Dispute and Disputant Characteristic Categories (Code Book)

CATEGORY 1: CLAIM (from initiating document) - how and why it comes to court

Claim Type	Remedy Sought	Fee Paid
Pl's Claim	Money damages	Regular
Pl & Def's Claim	Money plus other	Fee Waiver
Tribunal Order	Money plus Prop.	Frequent User
Other	Property alone	
	Other	

Definitions:

Claim Type	This refers to the type of proceeding that initiates the file - Claim
Pl's Claim	New file opened to collect money or property
Pl & Def's Claim	Defendant in existing action issues a claim against pl, co-def or new party – usually opened within same file just adding "D1" to the number - scroll across to column BJ to enter data on the def claim
Tribunal Order	Enforcement of existing Order from Tribunal – most often Landlord Tenant Board – will include court as well Employment Standards Board…
Other	Anything not in above categories – includes filings that stand as judgments or equivalents – Provincial Offences Fine Default, Certificates of Judgments from SCC in other jurisdictions, Repair and Storage Lien's Act applications

Remedy	Page 2 of Claim
Money damages	$ arising from physical or economic loss
Money plus other	$ arising from physical or economic loss plus some $ for mental suffering, punishment, harassment etc or other equitable remedies described in other below
Money plus Property	Both even if in the alternative
Property alone	Return of property - includes animals, vehicles, household goods not money
Other	Anything else including apology, reinstatement, eviction. It does not matter if SCC has jurisdiction to give it. Equitable remedies

Fee Paid	Register Stamp on Claim/Def / See fee waiver application in file
Regular	$75 – to issue claim, or fee to file a certificate of Judgment of Fine default is $25
Fee Waiver	0 (Application for exemption filed)
Frequent User	$145

CATEGORY 2: PARTIES

Parties are Pl/Def for Pl Claim and Pl by DC or Def by DC for Def Claim

Parties			
# of Pl/Def	**Pl. Entity**	**Def Entity**	**Relationship**
1	Individual	Individual	Eee/Eer
2	Business	Business	Eer/Eee
3	Business SP	Business SP	Ten/Lor
4	Business Part	Business Part	Lor/Ten
>4	Business Corp	Business Corp	Bus/Cons
	Business Finan	Business Finan	Cons/Bus
			Bus/Bus

	Government Not for Profit Condo Other	Government Not for Profit Condo Other		Family Friends Ind/Ind Other	

Definitions:

Entity	Style of Cause on claim and defense plus first 2 paras of pleadings
Individual	Personal name for personal purpose
Business	Business style (no ltd, corp or inc),for business activity
Business SP	Personal name of individual in business or cob for business activity
Business Part	multiple individual name for business activity or partnership name such as LLP, LP
Business Corp	Any name with Corp., Ltd., Limited or Corporation, include professional Corporation
Business Finan	Bank, credit card company, insurance company, finance company, payday loan, car leasing company
Government	Municipality, Province or Canada
Not for Profit	Association, co-operative housing or daycare, public educational institution (not private)
Condo	says "geography" condominium corporation #
Other	Anything you cannot figure out

Max of 3 on form – if there is more than that group them to show the broadest range of entities

Relationship	**Is there an existing connection between the parties**
Eee/Eer	Plaintiff is employee and Def is employer (likely a wrongful dismissal)
Eer/Eee	Plaintiff is employer and Def is employee (likely breach of confidentiality…
Ten/Lor	Either Residential or Commercial tenancy where Tenant is plaintiff (often return of deposit or property)
Lor/Ten	Either Residential or Commercial tenancy where Landlord is plaintiff (often arrears of rent or damage to premises)
Bus/Cons	Business is plaintiff suing a consumer (end user of product – retail/Indiv) customer
Cons/Bus	Consumer is plaintiff suing business (likely defective product or service) return of deposit…
Bus/Bus	Two businesses in a dispute
Family	Family members – husband, wife, children, cousins, brothers & sisters (Often money lending) – living together as common law
Friends	Social acquaintances – boyfriend/girlfriend dating only
Ind/Ind	2 consumers in a dispute, previous and current tenants, used car sales private…
Other	Anything else

CATEGORY 3: REPRESENTATION

Plaintiff / Def Rep.	**Point in Proceedings (For Claim and Def Claim)**
Self	Issue (when main claim issued or defense filed) see face of document) If Def had to get def set aside first – still counts
Friend/Fam	Issue of Def/Claim (or def to def claim) Column BI) see face of document filed

Agent	Settlement Conference – see endorsement record for S/C or witness list or settlement conference brief
Paralegal	
Lawyer	
Lawyer AS	
Collection A	Trial – see endorsement record at trial, or exhibit book
Coll. Ag. Para	
Employee	Collection Proceedings (any of them) endorsement record for appearances or filing for garnishments or executions
Other	

Definitions:

Representation	Page 1 Claim or Defense
Self	Party in action – this is includes a lawyer suing for his fees and representing himself
Friend/Fam	Unprofessional representation that can include spouse, child, parent, neighbor or other personal relationship
Agent	Professional representation of undisclosed nature - if you cannot tell if the rep is a lawyer or paralegal. Look not only at the name but the filing document for names addresses and status
Paralegal	LSUC licensed paralegal – there will be a P in the LSUC box
Lawyer	LSUC license, includes in-house legal departments
Lawyer AS	Law firm on the record – Articling Student handling the matter
Collection A	Collection Agency
Coll. Ag. Para	The employee of a collection agency that also identifies as a paralegal
Employee	Corporation or business party sends an employee currently working at business and their name is in the rep box
Other	Anything else such as child represented by a litigation guardian, trustee of an estate

CATEGORY 4: DISPUTE – Substance of the parties positions

Dispute Value	**Subject**	**Def Filed**	**Defense**
$$	Real Estate Deal Lor/Ten - rent Lor/Ten - dam Credit Card debt Chattel Lease debt Tort-personal Inj Tort- property dam	Yes No Default S/A Yes&DefClaim S/A&DefClaim	Liability/ pl breach Liability/wrong party Liability/paid Liability/perform Liability/other Damage/quant

	Tort-Defam Contract-Br/paymen Contract-Br/defect Personal Relationship Contract Loan Guarantee Trespass Nuisance Wrongful D Unpaid Wages M.V. Accident Other Contribution		Damage/any Damage/Int Inability to Pay Setoff Both L & D Other

Definitions: There will be overlap so Use most specifically applicable

Subject	**Means what claim is about – found in body of claim doc**
Real Estate Deal	Include failure to close, defect/damage discovered after closing, unpaid commission (does not matter if they claim under contract or tort (misrepresentation), return of deposit
Lor/Ten - rent	Landlord suing for arrears of rent or tenant suing for return of deposit – may be either commercial or residential
Lor/Ten - dam	Landlord suing for damage to unit or tenant suing for failure to maintain premises
Credit Card debt	Credit card company suing for outstanding balance on card
Chattel Lease debt	Arrears owing under Car lease, hot water heater lease etc
Tort-personal Inj	Any tort that leads to physical harm. This can be negligence, assault – should include physical or economic loss – Negligent Misrepresentation can go here if loss of investment
Tort- property dam	Any tort leads to property damage – that causes damage to property that is not more clearly listed – negligent misrepresentation can go here if car is hurt, house falls down…
Tort-Defam	Defamation – damages to reputation arising from false statements about the plaintiff
Contract-Br/pay	Failure to pay as promised in contract
Contract-Br/defect	Item purchased is defective or some other defect in the performance of the contract (falls short of promise)
Personal Relationship	This is a common law/dating relationship – dividing property or returning gifts…
Contract Loan	Money lending (secured or unsecured – not credit card) – if straight loan between family members put it here and note relationship in column on parties
Guarantee	Not primary debtor – look to leases and promissory notes – if suing primary debtor as well – put in contract loan
Trespass	Property disputes – damage to property
Nuisance	Activity on own property that negatively affects neighbor
Wrongful D	Wrongful dismissal of employee
Unpaid Wages	Unpaid wages of employee or independent contractor i.e. truck driver
M.V. Accident	Damages from motor vehicle accident (uninsured, property only – include private deals here
Other	Anything else you cannot find a place for
Contribution	Really for Def Claim when claims over against co defendant

Defense	**Means substance of defense (read body of defense)**

Liability/ pl breach	No it was the plaintiff who breached (first) and that is why I did not pay
Liability/wrong party	I am not liable someone else is (often in the concept of an incorporated business where pl sues the manager/Ind)
Liability/paid	Nothing is owing – I paid already or he accepted partial
Liability/perform	I did so properly perform
Liability/other	Anything else on liability
Damage/quant	Damages claimed did are too high – partial admissions go here
Damage/any	Plaintiff did not incur any damages at all (i.e. re-rented right away)
Damage/Int	Interest rate is too high or calculated improperly
Inability to Pay	I have no money and can't pay
Setoff	Yes I owe him but he owes me for some other bill or work
Both L & D	I deny any liability and the damages are wrong
Other	Anything else e.g. Res Judicata, Admission of Full admit with proposal for payments go here

Defense filed	**Did defendant file a statement of defense within time period**
Yes	Yes filed a defense within time period
No	No did not file a defense ever
Default S/A	Filed a defense only after default was set aside (either judgment or pleadings noted closed)
Yes&DefClaim	Filed a defense and also a defendant's Claim (fill in details at ColumnBI) within correct time periods
S/A&DefClaim	Filed a defense and also a defendant's Claim after default was set aside (Fill in Details at Column BI)

CATEGORY 5: PROCESS – steps taken to resolve dispute in SCC system

Process # Events/Adj	**S/C**	**Briefs**	**Motions**	**Completion**
# (total with motions & adj) Trial Adj Pleadings Amended	yes/trial Yes/settle No Multiple/S Other	Pl /Def Doc Settlement Legal Other Multiple	#	Trial Trial - Default Ass. Hearing Motion Jug Clerk Order Sign Consent J Terms Other Ongoing Abandoned

Definitions:

S/C	**Process details about settlement conferences**
yes/trial	One S/C held and matter was ordered to proceed to trial (even if settled after

Yes/settle	One Settlement conference held and matter settled during conference (this will be noted on the endorsement record)
No	No settlement conference held (this happens when it settles before the conference, the matter is not defended or the claim is abandoned and dismissed)
Multiple/S	Multiple conferences held (adj a few times) and matter settled at the final conference
Multiple/T	Multiple conferences held and matter ordered to trial
Other	Anything else – When one of parties (either pl/def) fails to appear at S/C and judge dismisses the claim or strikes the defense (put Completion Other and Outcome as dismissed) or even conditional striking claim/def (for failing to disclose a c of a or defense) usually time given to amend failing which it is struck.

Pl/Def Briefs	**Looked for bound doc's or factums – with a front cover that says who filed it**
Doc	Document Brief (exhibits) either before or during trial – book with tabs
Settlement	Includes pleadings, tabbed exhibits and argument (cases) & witness list
Legal	Book of copied cases or statutes – motion, trial, before or during
Multiple	More than one of the above types
Other	Anything else (medical or business records include in exhibits) put transcripts here

Completion	**Look to the document that disposes of the action**
Abandoned	Plaintiff stops pursuing matter – clerk dismisses claims as abandoned - Notice of pending dismissal
Trial	Contested Trial lasting one day or less
Trial 2	Contested Trial lasting more than one day but less than 3 This will include a one day trial where judgment is reserved to another day
Trial M	Contested Trial lasting more than 2 full days
Trial - Default	Trial scheduled for both parties but one failed to appear so it is dealt with in their absence
Ass. Hearing	Scheduled for a hearing for plaintiff to prove damages without defendant filing a defense
Motion Judg exparte	Successful motion for judgment without attending a trial or either party attending exparte - "Motion in writing for assessment of damages" Usually no one appears
Motion Judg on notice	Plaintiff one party or both attend (notice given) The notice of motion 1st page should tell you this or the lack of affidavit of service will show you (can be by plaintiff or a defendant seeking dismissal or non-suit)
Clerk Order Sign	Clerk may sign a judgment under Rule when undefended and liquidated damage (not scheduled for trial and not put before a judge)
Consent J	Parties agree/settle and a consent to judgment is signed and filed – this could be done by a clerk or a judge. Includes a consent dismissal or payments – Word Consent signals a settlement (if combined with S/C Trial means settlement between S/C and Trial). This can also include a default judgment issued by the clerk when the parties have settled on terms of payments and agreed that if payments stop the pl can have judgment. The pl will file an affidavit and ask for judgment – technically the def consented to this as part of the settlement.
Terms	This stands for Terms of Payment hearing – look at the defense and you will see a place where def can admit and propose payment plan – Plaintiff can accept or ask for a hearing just about that ability to pay part – if there is an order it is a voluntary payment order not a judgment
Other	Anything else
Ongoing	Matter not concluded yet – this even includes a file which looks dormant – nothing has happened for months or years but there is not notice of abandonment etc with in the file
Withdrawn	Files a notice of discontinuance, or otherwise requests withdrawal of the claim – usually part of a settlement. If the parties have settled by signing the standard form terms of settlement then the para at top of page 2 says the claim is withdrawn.

CATEGORY 6: OUTCOME & INTEREST- What happened in the end

Outcome **Result Cl/Def Claim**	**Pre-jud int**	**Rate**	**Post-j int**	**Rate**
Abandoned Settled After Set Down Dismissed Partial J Full J Varied on Appeal Set Aside Stayed - Bankrupt Settled S/C Ongoing Other	no Court Rate Contract Discretion Other	%	no Court Rate Contract Discretion Other	%

Result	**Substantive Outcome found in various court documents**
Abandoned	Claims where the plaintiff just stops and writes a letter treat as abandoned if in active for 6 months – No values get typed in - If
Settled After Set Down	Check for plaintiff filing request for trial and paying fee with a subsequent settlement document or any time after S/C
Dismissed	Either on motion or after trial – pl claim dismissed in its entirety – also includes a clerks order dismissing claim as abandoned (in that case abandoned should be selected in completion box)
Partial J	Plaintiff gets judgment for some but not all of its claim or against some but not all of the defendants
Full J	Plaintiff gets judgment for all of the claim against all defs– interest could be tricky here – depending upon whether included in size of claim or calculated separately
Varied on Appeal	Any kind of judgment with a subsequent appeal – this will only show up if there has been a change (dismissed appeals never show in SCC files)
Set Aside	New trial ordered either after appeal or on motion for new trial – often default – and has not happened yet (more specific than ongoing)
Stayed - Bankrupt	Stayed when party makes an assignment in bankruptcy – prior to trial – if they get a judgment that is subsequently stayed during collection – enter trial result here and we will put "other" in collections
Settled S/C	Settled at or **before** settlement conference
Ongoing	Still not concluded – nothing may be happening but not order of dismissal so still underway
Other	Anything else not listed above

Interest	**What interest is ordered as part of the final disposition**
no	None – this will always be the case on a dismissal
Court Rate	Courts of Justice Act rate (you may not be able to tell this if they just insert a value – compare to claim doc
Contract	Contractual rate – will always be claimed as part of the claim document so compare expressed value with claim
Discretion	Something else – may be in stated in reasons that the judge is choosing to depart from either courts of justice or contract and stating something else
Other	a rate that is just a number with no explanation

CATEGORY 7: OUTCOME & COSTS – Application of Loser pays rule

Costs	R. 14	Repr - Lawyer	Rep-Para	Self	Total	S. 29
None Disb only pl Disb only def Rep fee pl Rep Fee def Both fixed Inconv fee Other	no offer increased doubled no impact denied unknown	$$	$$	$$	$$	below above equal

None	No costs are awarded
Disb only pl	Only the disbursements paid – if the endorsement reads "costs to the pl" that means disbursements only
Disb only def	
Rep fee pl	If there is a counsel fee awarded to a represented pl
Rep Fee def	
Both fixed	Any lump sum set for total costs that exceeds $175 will have to include some sort of rep or preparation fee so pick "both fixed"
Inconv fee	An unrepresented party is entitled to some costs above disbursements
Other	If you cannot figure it out put it here

no offer	No offer made - we will consider blanks as no offer made
increased	The endorsement says amount was increased somehow for a settlement offer but does not amount to full double
doubled	Offer made and referred to in endorsement as reason for doubling costs that would otherwise be awarded
no impact	There was an offer but it was too low to change the award
denied	The offer should have impacted the costs because better than judgment but the judge declined to exercise discretion
unknown	Can't figure it out from information you have

CATEGORY 7: POST JUDGMENT COLLECTION

Collection # Proc.	Proceeding	Success	Amount
Steps that were taken to collect the money in the Judgment			
#	JD Exam Land writ Garn/wages Garn/bank Garn/other Garnishee Trial Seizure/Land	none full partial unknown stayed	$$

	Seizure/auto Seizure/other Arrangement Contempt H Warrant Serve Time Other		

Definitions:

Collection Proceedings	**Post Judgment Collection Efforts Taken by Creditor (each will have a form filed – either a notice of appointment or order**
JD Exam	One or more Judgment Debtor Examination appointments taken out
Land writ	Writ of Seizure of land filed but not executed
Garn/wages	Garnishment issued against employment wages
Garn/bank	Garnishment issued against a bank account
Garn/other	Garnishment issued against some other account receivable
Garnishee Trial	Garnishee hearing is when garnishee does not remit and creditor wants to know why – or debtor may seek to vary or lift garnishment for hardship reasons.
Seizure/Land	Writ of Seizure of Land – executed and sale completed
Seizure/auto	Writ of Seizure of Vehicle – executed and sale completed
Seizure/other	Writ of Seizure of some other chattel executed and sale completed
Arrangement	Entered into a voluntary arrangement to pay
Contempt H	Missed a JD exam and a contempt hearing was ordered and held
Warrant	Missed a Contempt hearing and an arrest warrant was issued
Serve Time	Warrant executed and debtor spent time in jail
Other	Anything else – stayed for bankruptcy

Success	**How much was collected**
None	zero
Full	All of it
Partial	Some of it (this will include an arrangement to pay less voluntarily) sometimes this happens when a creditor stops or forgoes interest ordered in judgment
unknown	No information in file – this will be quite common
stayed	Proceedings Halted for Bankruptcy

CATEGORY 8: DEFENDANT'S CLAIM

There will be a separate set of pleadings for this – it is essentially a counterclaim or a Third Party claim – usually the Def Claim is against the plaintiff or one of the co-defendants but it could bring in an entirely new party – they will be tried together but often get out of sync for S/C because issued later.

Def Claim Value	**Rep at Issue**	**Def filed**	**Remedy Sought**	**Def Claim Subject**	**Def Relation**	**Def Entity**	**Def by DC Rep at Issue**

$$	Def Now Pl by DC	Was a defense filed by def in DC	Same	Same	To Def. by DC	Def by DC – We will have Pl	At time of filing defense to DC

[1] Terry Hutchinson & Nigel Duncan, *Defining and Describing What We Do: Doctrinal Legal Research*, 17 DEAKIN L. REV. 83, 84 (2012).
[2] Austin Sarat & Jonathan Simon, *Beyond Legal Realism: Cultural Analysis, Cultural Studies and the Situation of Legal Scholarship*, 13 YALE J.L. & HUMAN. 3, 13 (2001); John Baldwin, *Monitoring the Rise of The Small Claims Limit: Litigants' Experiences of Different Forms of Adjudication*, at 96 (Lord Chancellor's Dep't Research Series NO. 1, 1997). *See also* John Baldwin & Gwynn Davies, *Empirical Research in Law*, in THE OXFORD HANDBOOK OF LEGAL STUDIES 880, 893 (Peter Cane & Mark Tushnet, ed. 2003) (describing how law schools and legal clinics are combining to enhance empirical research opportunities). The first Annual Conference on Empirical Legal Studies was held in 2006 at the University of Texas School of Law, http://www.utexas.edu/law/news/2005/112805_black.html .
[3] Shelley McGill, *Consumer Arbitration Clause Enforcement: A Balanced Legislative Response*, 47(3) AM. BUS. L.J. 363, 369-75 (2010); Shelley McGill, *The Conflict Between Consumer Class Actions and Contractual Arbitration Clauses*, 43(3) CAN. BUS. L.J. 359, 366 (2006); Shelley McGill, *Consumer Arbitration After Seidel v. TELUS*, 51(2) CAN. BUS. L.J. 187 (2011). *See also* Carnegie v. Household Int'l, Inc., 376 F.3d 656, 661 (7th Cir., 2004) (Postner, J. expressing a similar view)
[4] Shelley McGill, *Small Claims Court Identity Crisis: A Review of Recent Reform Measures*, 49(2) CAN. BUS. L.J. 213, 227 (2010).
[5] William E. Conklin, *Wither Justice? The Common Problematic of Five Models of "Access to Justice"*, 19 WINDSOR Y.B. ACCESS JUST. 297, 313-316 (2001).
[6] Seana C. McGuire & Roderick A. Macdonald, *Small Claims Court Cant*, 34 OSGOODE HALL L.J. 509, 511 (1996).
[7] Roderick A. Macdonald, *Access to Justice in Canada Today: Scope, Scale and Ambitions*, in ACCESS TO JUSTICE FOR A NEW CENTURY: THE WAY FORWARD, 68-69, (Julia Bass, William A. Bogart & Frederick Zemans, eds. 2005).
[8] Faisal Bhabha, *Institutionalizing Access-to-Justice: Judicial, Legislative and Grassroots Dimensions*, 33 QUEEN'S L.J. 139, 145 (2007) (describing access to justice initiatives as having three sources – judicial, legislative and societal).
[9] Id., at 145.
[10] Janice Gross & Adam Cook, *Speaking the Language of Justice: A New Legal Vernacular*, in ACCESS TO JUSTICE FOR A NEW CENTURY – THE WAY FORWARD, 164 (Julia Bass, William A. Bogart & Frederick Zemans, eds. 2005).
[11] Marc Patry, Marc, Veronica Stinson & Steven Smith, *An Evaluation of the Nova Scotia Small Claims Court, Final Report to the Nova Scotia Law Reform Commission*, 15 (Halifax, St, Mary's University, 2009) available at http://www.lawreform.ns.ca/Downloads/SmallClaimsFinaReportFINAL.pdf , CANADIAN BAR ASSOCIATION, REPORT OF THE CANADIAN BAR ASSOCIATION TASK FORCE ON SYSTEMS OF CIVIL JUSTICE, 1996 available at www.cba.org/cba/pubs/pdf/systemscivil_tfreport.pdf .
[12] Deborah Rhode, *Whatever Happened to Access to Justice?* 42 LOY. L. A. L. REV. 869 (2009).
[13] Heather Smith, *Ontario's Overview of Two Approaches to Keeping Litigation Costs in Check*, paper presented at *Into the Future: The Agenda for Civil Justice Reform*, Conference of the Canadian Forum on Civil Justice, (2006), Robert Goldschmid, *The Civil Justice Reform Context Behind British Columbia's Expedited Litigation Rule and the Small Claims Court Jurisdictional Limit Increase*, British Columbia Ministry of the Attorney General, 2005, available at http://www.ag.gov.bc.ca/justice-reform-initiatives/publications/pdf/Goldschmid.pdf , McGuire & Macdonald, *supra* note 6, at 511, McGill, 2010, *supra* note 4, at 217-18, Baldwin (1997), *supra* note 2, at 5.
[14] O. Reg. 258/98, Rule 1.03 (Ont.); Baldwin (1997), *supra* note 2, at 1-2.
[15] Baldwin (1997), *supra* note 2, at 95, n 16. *See also* John Baldwin, *Is There is a Limit to the Expansion of Small Claims*? 56 Current Legal Probs. 313 (2003).
[16] Business, government, non-profit or individual.
[17] Credit card dispute, breach of contract for goods or services, real estate transaction, tort – personal injury.
[18] Baldwin (1997), *supra* note 2, at 94-95.
[19] Neil Vidmar, *The Small Claims Courts: A Reconceptualization of disputes and an Empirical Investigation*, 18 L. & SOC. REV. 515, 519 (1984).
[20] Jacob Ziegel, *Canadian Consumer Law Policies 40 Years Later: A Mixed Report Card*, 50 CAN. BUS. L. J. 259, 291 (2010).
[21] Baldwin (1997), *supra* note 2, at 89; Patry, *supra* note 11, at 94-95; Ziegel, *supra* note 20, at 291-292.
[22] ONTARIO MINISTRY OF THE ATTORNEY GENERAL – COURT SERVICES DIVISION, ANNUAL REPORT 2009/2010, Appendix B1 Court Statistics,

http://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/courts_annual_09/Court_Services_Annual_Report_FULL_EN.pdf .

[23] *See e.g*. Larry Moldaver & Jerry Herlihy, *Consumer Litigation in the Small Claims Courts of Metropolitan Toronto: An Empirical Analysis* (Toronto, Osgoode Hall Law School, 1974), Pamela Sigurdson, Pamela & Larry Roine, CONSUMER REDRESS MECHANISMS (Toronto, Consumer Research Council Canada, 1977); Kai Hildebrandt, Brian McNeely & Peter Mercer, *The Windsor Small Claims Court: An Empirical Study of Plaintiffs and their Attitudes*, 2 WINDSOR Y.B. ACCESS JUST. 87 (1982); Vidmar, *supra* note 19. Patry, *supra* note 11, at 15-20.

[24] McGuire & Macdonald (1996), *supra* note 6.

[25] *See e.g*. Suzanne Elwell, Suzanne & Christopher Carlson, *The Iowa Small Claims Court: An Empirical Analysis*, 75 IOWA L. REV. 433(1990); Jennifer Long, *Compliance in Small Claims Court: Exploring Factors Associated with Defendants' Level of Compliance with Mediated and Adjudicated Outcomes*, 21 CONFLICT RES. Q. 139 (2003); Bruce Zucker & Monica Herr, *The People's Court Examined: A Legal and Empirical Analysis of the Small Claims Court System*, 37 U.S. F.L. REV. 315 (2003).

[26] Patry, *supra* note 11, at 102-103.

[27] ONTARIO MINISTRY OF THE ATTORNEY GENERAL, CIVIL JUSTICE REVIEW , FIRST REPORT, SUPPLEMENTAL AND FINAL REPORTS, (Ontario Civil Justice Review Committee, 1995),available at http://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/cjr/ ; COULTOR OSBORNE, CIVIL JUSTICE REFORM PROJECT REPORT (Ontario Ministry of the Attorney General 2007) available at http://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/cjrp/Default.asp .

[28] ONTARIO CIVIL LEGAL NEEDS PROJECT STEERING COMMITTEE, *Listening to Ontarians: Report of the Ontario Civil Legal Needs Project*, (Toronto, 2010) available at http://www.lsuc.on.ca/media/may3110_oclnreport_final.pdf (hereinafter referred to as OCLN).

[29] McGill 2010, *supra* note 4, at 215-222.

[30] *Infra* Appendix A; New Brunswick moved down from $30,000 to 12,500: *infra* note 107.

[31] McGill (2010), *supra* note 4, at 225, n. 73.

[32] Provincial Court Act, R.S.A. 2000, c. P-3(1)(i), A. Reg. 329/1989 as amend., s. 1.1 (Alta.). *See* Alberta Chamber of Commerce 2010 -2012 Policy Book, Justice, available at http://www.abchamber.ca/policy-positions/accs-policies/ (last visited Feb. 4, 2013).

[33] Territorial Court Act, R.S.N.W.T. 1988, c. T-2, s. 16, as amen. S.N.W.T. 2011, c.31,s.2. (NWT.).

[34] Baldwin (2003), *supra* note 15, at 338-340. John Baldwin, *Lay and Judicial Perspectives on the Expansion of the Small Claims Regime*, at 10-11(Lord Chancellor's Dep't Research Series No. 8, 2002).

[35] Shelley McGill, *Is It Worth the Paper It's Written On?: Examining Small Claims Court Judgment Enforcement in Canada and the United States*, 17 J. LEGAL STUD. BUS. 1, 9 (2012).

[36] Lower limits apply to personal injury, housing repairs and low value motor vehicle personal injury. Library House of Commons, Standard Note 4141 (U.K.), available at www.parliament.uk/briefing-papers/sn04141.pdf .
English small claims courts do not award costs and judges take a far more interventionist approach than do Canadian judges. *See* Baldwin (1997) *supra* note 2, at 14-20.

[37] Baldwin (1997), *supra* note 2, at 90.

[38] Peter Russell, THE JUDICIARY IN CANADA: THE THIRD BRANCH OF GOVERNMENT, 237-51 (Toronto, McGraw Hill, 1987); George W. Adams, *The Small Claims Court and the Adversary Process: More Problems of Function and Form*, 51 CAN. BAR REV. 583, 605, 611 (1973).

[39] B.C. Reg. 360/07, UK).

[40] Jasminka Kalajdzic, *Consumer (In) justice: Reflections on Canadian Consumer Class Actions*, 50 CAN. BUS. L.J. 356, 356-57 (2010); CRAIG JONES, THE THEORY OF CLASS ACTIONS, 114-16 (2004); RACHAEL MULHERON, THE CLASS ACTION IN COMMON LAW LEGAL SYSTEMS A COMPARATIVE PERSPECTIVE, 47-66 (Oxford, 2004).

[41] Carnegie v. Household Int'l, Inc., 376 F.3d 656, 661 (7th Cir., 2004) (Postner, J. expressing a similar view); Scott v. Cingular Wireless, 161 P.3d 1000 (Wash. 2007); Szetela v. Discover Bank, 118 Cal. Rptr. 2d 862, 867 (Ct. App. 2002).

[42] Myriam Gilles, *Opting Out of Liability: The Forthcoming Near Total Demise of the Modern Class Action*, 104 MICH. L. REV. 373 (2005*). See also* McGill, *supra* note 3.

[43] Dell Computer Corp. v. Union des consummateurs, [2007] 2 S.C.R. 801, 2007 SCC 34 (Can.). Rogers Wireless Inc. v. Muroff, [2007] 2 S.C.R. 921, 2007 SCC 35 (Can.). Seidel v. TELUS, [2011] 1 S.C.R. 531 (Can.).

[44] AT&T Mobility LLC v. Concepcion, 131 S. Ct. 1740; American Express Company, et al. v. Italian Colors Restaurant), et al., 667 F.3d 204 (2d Cir. 2012, cert. granted 81 U.S.L.W. 3070 (U.S. Nov 9, 2012) (No. 12-133).

[45] PUBLIC CITIZEN, THE ARBITRATION TRAP: HOW CREDIT CARD COMPANIES ENSNARE CONSUMERS, 15 (2007) available at http://www.citizen.org/documents/ArbitrationTrap.pdf .

[46] Press Release, American Arbitration Association, AAA Announces Moratorium on Consumer Debt Collection Arbitration Cases, (July 27, 2009), http://www.adr.org/sp.asp?id=36432 ; Press Release, National Arbitration Forum, National

Arbitration Forum to Cease Administering All Consumer Arbitrations in Response to Mounting Legal and Legislative Challenges, (July 9, 2009), http://www.adrforum.com/newsroom.aspx?itemID=1528 .

[47] Consumer Protection Act, S.O. 2002 , ch. 30, Sch. 1, §§. 7, 8 (Ont.); Consumer Protection Act, R.S.Q., ch. P-40.1, §11.1 (Que.). Some examples of U.S. legislation restricting the use of consumer arbitration include 15 U.S.C. 1226(a)(2) (motor vehicle franchise contracts), Truth in Lending Act, 15 U.S. C.§129(e) (1) (residential mortgage loan contracts).

[48] Christopher R. Drahozal & Samantha Zyontz, *Creditor Claims in Arbitration and in Court*, 7 HASTINGS BUS. L. J. 77, 82 (2011).

[49] Constance Backhouse, *Revisiting the Arthurs Report Twenty Years Later*, 18 CAN. J. L. & SOC. 33 (1993); Michael Lines, *Empirical Study of Civil Justice Systems: A Look at the Literature*, 42 ALTA. L. Rev. 887 (2005).

[50] Lines, *supra* note 49, at para 37.

[51] EARL R. BABBIE, SURVEY RESEARCH METHODS, 6 (Wadsworth, California, 1972).

[52] *Id.* at 6.

[53] *See e.g.* Drahozal & Zyontz, *supra* note 48, at 88 (out of a random sample of 500 files 419 cases were businesses seeking to collect outstanding debts from consumers); Bruce Zuker & Monica Herr, *The People's Court Examined: A Legal and Empirical Analysis of the Small Claims Court System*, 37 U.S. F. L. REV. 315, 341 (2003) (finding that 56% of plaintiffs were businesses or corporations).

[54] When there is conflicting entity information, the initiating pleading will dominate. For example the plaintiff may describe the defendant as a sole proprietorship and the defense may indicate that the business is incorporated and the plaintiff has sued the wrong party. Unless there is subsequent amendment to the pleadings - this will show as business – SP.

[55] Drahozal & Zyontz, supra *note* 48, at 88 (out of a random sample of 500 files involving debts of $10,000 or less the researchers excluded the non-debt collection cases and were left with 421 files (419 with plaintiff businesses and 3 with consumer plaintiffs); the Oklahoma & Virginia Small Claims Limit are $6,000 and under this limit there were 336 files (6 with consumer plaintiffs)); Elwell & Carlson, *supra* note 25, at 488 (finding that 84% of all debt collection cases were filed by businesses).

[56] *Infra* Appendix B Category 4.

[57] *See e.g*. Drahozal & Zyontz, *supra note* 48, at 91-94; Zucker & Herr, *supra* note 53, at 342 (finding that plaintiff's won 87% of the time).

[58] Drahozal & Zyontz, *supra* note 48, at 91-92 (the win rate in default cases was 100% and in contested cases over 80%).

[59] See Elwell & Carlson, *supra* note 25, at 490 (finding that in 56% of cases neither party consulted a lawyer). This is the common stereo type of small claims court and some jurisdictions actually prohibit lawyers. *See e.g.* Baldwin (1997), *supra* note 2, at 22 -29 (reporting negative litigant responses to lawyers and formal courtrooms), at 57 (reporting no rise in legal representation generally after a limit increase but some rise in representation at hearings and a distinct rise in files where both parties are represented).

[60] *Infra* Appendix B, Category 3.

[61] *See e.g*. Elwell & Carlson, supra note 25, at 491 (finding that large businesses were the most likely to consult an attorney (56% of the time) with the general rate being 44%); Drahozal & Zyontz, *supra* note 48, at 88 (the majority of business creditor claims were brought by someone other than the original creditor).

[62] *See e.g.* Baldwin (1997), *supra* note 2, at 22 -29 (reporting negative litigant responses to lawyers and formal courtrooms), at 57 (reporting no rise in legal representation generally after a limit increase but some rise in representation at hearings and a distinct rise in files where both parties are represented).

[63] Ontario is a loser pays regime – however the representation cost award is not to exceed 15% of the amount claimed (not awarded). Courts of Justice Act, R.S.O. ch. C. 43 § 29 (Ont.). *See* Baldwin (1997), *supra* note 2, at 29 (discussing the suspension of the usual loser pays rule in the small claims context).

[64] The presumptive maximum representation cost award of 15% of amount claimed may be exceeded if there has been unreasonable behavior. Costs may be doubled if the losing party rejected a more advantageous settlement offer. Courts of Justice Act, R.S.O 1990, ch. C.43, §. 29 (Ont.); O. Reg. 258/98, R. 14 (Ont.).

[65] *See e.g.* Baldwin (1997), *supra* note 2, at 22-29 (reporting negative litigant reaction to lawyers and court process).

[66] *See* Baldwin (2003) *supra* note 15, at 338 (expressing caution about unrestricted limit increases and its impact on the need for legal representation).

[67] 3060 files represents a 5% sample from each of the four years of the study. The Toronto Small Claims Court issues approximately 15,500 files each year. ONTARIO MINISTRY OF THE ATTORNEY GENERAL – COURT SERVICES DIVISION, ANNUAL REPORT 2009/2010, Appendix B1 Court Statistics, http://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/courts_annual_09/Court_Services_Annual_Report_FULL_EN.pdf .

[68] O. Reg.439/08 (Ont.).

[69] For example, Elwell et al., *supra* note 25, at 484-94; Vidmar, *supra* note 19, at 526-527; Arthur Best, Deborah Zalesne et al, *Peace, Wealth, Happiness and Small Claims Courts: A Case Study*, 21 FORDHAM URB. L. J. 343, 361 (1994); Zuker & Herr, *supra* note 53, at 335 -346 (all of these studies were used to compile the list of categories).

[70] Patry, *supra* note 11, at 27-28, 64-65 (17 employees, 254 litigants); Baldwin (1997), *supra* note 2, at 46-49, 73.
[71] My own 20 years as a small claims court judge.
[72] Law Society of Upper Canada – Recruitment Procedures, http://www.lsuc.on.ca/ArticlingRecruitment/ .
[73] Ontario Ministry of the Attorney General, *supra* note 67, at Appendix B1.
[74] Zucker & Herr, *supra* note 69, at 335 (adopting a 5% sample size being 253 out of 5063 files issued in Ventura County); Babbie, *supra* note 51, at 308 – 309 (discussing statistical significance).
[75] Kai Hildebrandt, Brian McNeely & Peter Mercer, *The Windsor Small Claims Court: An Empirical Study of Plaintiffs and their Attitudes*, 2 WINDSOR Y.B. ACCESS JUST. 87 (1982) (having one of the largest samples at 260/8000 files). *See* Patry, *supra* note 11, at 64-65 (receiving 254 responses from 3000 mailed surveys).
[76] Many thanks to Ann Marie Tracey, Scott Carson and Mark Baetz.
[77] THE BEATLES, *With a little help from my friends* on SGT. PEPPER'S LONELY HEARTS CLUB BAND (Capital Records,1967). This song was written by John Lennon and Paul McCartney.
[78] Once I was brought on to a grant funded project but only after funding was already in place (Carson/Baetz), another time I received research assistance funding for a textbook but no application was required (Smyth).
[79] Law and Policy Area of the School of Business and Economics at Wilfrid Laurier University, http://www.wlu.ca/homepage.php?grp_id=31 .
[80] Social Sciences and Humanities Research Council of Canada, http://www.sshrc-crsh.gc.ca/home-accueil-eng.aspx.
[81] Natural Sciences and Engineering Research Council of Canada, http://www.nserc-crsng.gc.ca/index_eng.asp (not a fit for my legal research).
[82] Character limits included spaces and referencing style was "in text" referencing – no footnotes.
[83] E.g. Vidmar, *supra* note 19, at 526-527; Elwell & Carlson, *supra* note 25, at 484-94; OLCN, *supra* note 28, at 43; Baldwin , *supra* note 2, at 94.
[84] OCLN, *supra* note 28, at 24 -27, 34;McGill (2010), *supra* note 4, at 223-238.
[85] See e.g. Vidmar, supra note 19, at 526-27; Elwell et al., *supra* note 25, at 484-94; Zuker & Herr, *supra* note 69, at 335-46.
[86] *Infra* Appendix B (containing the full list and relevant categories or classification).
[87] Babbie, *supra* note 51, at 45-49.
[88] Internal university oversight required by external government granting organizations.
[89] Baldwin (1997), *supra* note 2, at 95.
[90] Babbie, *supra* note 51, at 159-180; *See e.g*. John Baldwin, *Lay and Judicial Perspectives on the Expansion of the Small Claims Regime*, (Lord Chancellor's Dep't Research Series No. 1, 2002) (relying upon 135 litigant interviews and 35 district court judges).
[91] Babbie, *supra* note 51, at 131 – 153.
[92] Variable control is key when attempting to draw conclusions – Babbie, *supra* note 51, at 32 – 36.
[93] *Supra* note 33, (in 2013 The Northwest Territories raised its limit to 35,000).
[94] Ontario Ministry of the Attorney General – Court Services Division, Annual Report 2009/2010, Appendix B1, http://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/courts_annual_09/Court_Services_Annual_Report_FULL_EN.pdf .
[95] Christine Neill, Associate Professor of Economics, Wilfrid Laurier University, http://www.wlu.ca/homepage.php?grp_id=1418&ct_id=1246&f_id=31 .
[96] University of Waterloo Statistical Consulting Service, http://sas.uwaterloo.ca/stats_navigation/Consulting/StatConsulting.shtml .
[97] O. Reg. 432/93, Sch. 1(setting a $1/file bulk access fee).
[98] Stanley Ralph Ross. This phrase was part of the opening of ABC's Wide World of Sports. IMDb – ABC's Wide World of Sports, http://www.imdb.com/title/tt0190895/ .
[99] JOSEPH HELLER, CATCH 22 (1961) – The title of this book has come to stand for a situation where inherently conflicting conditions make the desired outcome impossible.
[100] To add to the drama – the court manager changed 3 times during the course of the study – the last time just 2 weeks before data collection began.
[101] University of Toronto Faculty of Law, Osgoode Hall Law School, Windsor, University of Western Ontario Faculty of Law and the University of Ottawa Faculty of Law. I was concerned that other schools would be territorial about their students; trying to reserve them for their own research products.
[102] In order to assist students in job search, the LSUC regulates the major markets such as Toronto and Ottawa so that offers will be systematically made and students can weigh options.
[103] Skype is a free online video chat platform, http://www.skype.com/en/ .
[104] One offer was made to and rejected by a second year student.
[105] The creation of a detailed code book is key to maintaining consistency when exercising data classification discretion: Babbie, *supra* note 51, at 194.

[106] *Id.*
[107] THE BEATLES, *supra* note 77.
[108] New Brunswick abolished its Small Claims Court in 2010 in favor of a simplified procedure for claims up to $30,000. This seeming denial of access to justice generated much complaint and became an election issue in 2012. The new conservative government followed through on the election promise and restored Small Claims Court for 2013 at a new limit of 12,500 (more than double the 6000 limit that was in place before abolition in 2010). Small Claims Court Act, S.N.B. 2012, c. 15; N.B. Reg. 103/2012, s. 3.
[109] *Supra* note 33 (referred to as the Territorial Court, there is no simplified procedure in the Supreme Court which operates only 2 locations – although the rules mirror that of Ontario – this may not be a true small claims court).
[110]In Nunavut there is no separate small claims court – instead there is a modified procedure within the Court of Justice. Rules are passed under Judicature Act, SNWT 1998, c. 34, s. 1.