Evaluation of the Nova Scotia Small Claims Court

Final Report to the Nova Scotia Law Reform Commission

March, 2009

Marc W. Patry, Veronica Stinson, & Steven M. Smith
Department of Psychology

Halifax, Nova Scotia, Canada

Acknowledgements

This work was completed with valuable assistance from Jonny White, Kyle Crawshaw, Amy MacNeil, Brad Cormier, Kate Langille, Amanda Creelman, and Martin Boucher

We gratefully acknowledge Mary Stratton at the Canadian Forum on Civil Justice for valuable feedback on the Phase II survey, and Yetta Withrow at the Nova Scotia Department of Justice for providing official data on the Nova Scotia Small Claims Courts. Our collaborators at the Nova Scotia Law Reform Commission have been invaluable, especially John Briggs, William Laurence, and William Charles.

This research was supported by the Nova Scotia Law Reform Commission and Saint Mary's University Faculty of Graduate Studies and Research.

For questions or comments, contact Marc Patry: marc.patry@smu.ca ; (902) 491-8605

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I. Overview

This is a final report on a research program focusing on the Nova Scotia Small Claims Court. The purpose of the present study was to examine the effectiveness of the Nova Scotia Small Claims Court at meeting its basic objective of providing quick, informal, and affordable access to justice. This research was conducted by a Saint Mary's University research team working in collaboration with the Law Reform Commission of Nova Scotia. The intended audience for this report is the Nova Scotia Law Reform Commission, though we understand that others may be interested in the report and we have attempted to write for as broad an audience as possible.

Phase I of the research consisted of interviews with key stakeholders from within the Nova Scotia Small Claims Court. Between August and November, 2006, we interviewed a total of 17 individuals who work in some capacity in the Nova Scotia Small Claims Court: six experienced Nova Scotia Small Claims Court adjudicators, five clerks, and six lawyers who have represented clients in Nova Scotia Small Claims Court cases.

Phase II of the research was a survey of litigants in the Nova Scotia Small Claims Court. Approximately 2,500 surveys were mailed to individuals who had been involved in a small claims matter between 2005 and 2007. Responses were received from 254 litigants, yielding a response rate of about 10%. The report includes both quantitative and qualitative data from the survey respondents.

The data illustrate the strengths and weaknesses of the Nova Scotia Small Claims Court. The court is performing remarkably well at achieving its legislative objectives. Enforcement of judgments emerges as a clear area of concern, both among interviewees and litigants. We make

several recommendations for possible reform. We recommend careful planning and reform of data collection in the Nova Scotia Small Claims Court, with an eye toward future research.

II. Introduction

Why Study the Small Claims Court?

While small claims courts represent the bottom rung of the civil justice system, they are the form of civil justice most likely to be accessed by the general public (Civil Justice Review, 1995; Pagter, McCloskey, & Reinis, 1964). In a sense, small claims may be considered to be 'large' because they account for a large proportion of legal disputes (Economides, 1980). In a report on the Ontario civil justice system, the Ministry of the Attorney General wrote "[I]n terms of the numbers of disputes, the Small Claims Court deals with a very high proportion of cases in the Province, and there can be no doubting the far-reaching implications for a society of a satisfactory vehicle for the resolution of these types of differences between its members," (Ontario Civil Justice Review, 1996, section 6.1). Small claims courts have not always garnered a high level of attention from the justice system at large.

> Are small claims the most important item on the agenda of the legal system because they are so frequent and so widespread among the citizenry? Or are they a low priority nuisance item because so little is thought to be at stake?...Small claims have fascinated and preoccupied legal reformers during many eras, notably mid-nineteenth century. At other times they have all but been ignored. (Steele, 1981, p. 358).

As the form of justice most likely to be encountered by the general public, small claims courts serve a special role in terms of formulating public trust and confidence in the legal system at large. "[M]any writers argue that since this is the court most often encountered by the ordinary person, it is an important symbol for the legitimacy of the justice system," (Ramsay, 1996, p. 491). Goerdt (1992) similarly argued that small claims courts are of critical importance in terms of basic public trust and confidence in the legal system:

> Public trust and confidence in the legal system are fundamental goals of the courts and democratic government in general. Thus, judges, court administrators, and even state legislatures and community leaders should be concerned with the nature and quality of their small claims courts…Small claims courts are worthy of attention not only because of their volume, but because of their importance to both businesses and individuals…small claims courts provide a very important social function. They are the primary formal mechanism for resolving a substantial proportion of conflicts over contracts and personal injuries. (p. xi).

In a general sense, viewed through the access to justice lens, there is a clear and pressing need for empirical research on legal institutions.

> For decades lawyers, judges, legal academics, and policy-makers have genuinely puzzled about access to justice; but they have done so without much statistically sound evidence about the nature, the causes and the extent of this lack of access. A quarter-century ago various broad-based empirical studies were completed. Since then, and until quite recently very little systematic follow-up research has been undertaken, despite the fact that every report on 'access to justice' for the past fifteen years has concluded with a call for more research and information. (Macdonald, 2005, p. 102).

In a similar vein, Ramsay (1996) argued the specific need for empirical research on small claims courts in Canada:

> Policymaking in relation to small claims courts must be based on a solid empirical understanding of the role of the court. In Canada, there is a small but growing academic literature on the court which has enhanced our understanding of the possibilities and limits of the court as a mechanism for providing access to justice. If there is to be intelligent policymaking by governments, then it is necessary that these studies be supplemented by the collection of meaningful statistics on the operation of the court. (p. 534)

In addition to gathering data on the inner working of small claims courts, caseloads, and their legislative foundations, it is of critical importance to carefully consider the end users' perspectives about small claims courts. "[R]eformers and researchers who concentrate exclusively on the reform of legal services will often adopt such a narrow perspective that they will never even question the implicit assumption that people wish to use the system but are

prevented from doing so by barriers of cost, inexperience or fear…there are other perspectives to social life than one which places the legal system, its personnel and its values at the centre of the social world." (Foster, 1975). Comprehensive investigation of small claims courts must therefore include perspectives of the system's end users, small claims litigants and those who may at some point be interested in availing themselves of the small claims system.

Background and History of Small Claims Courts

Small claims courts have often been dubbed informally as the 'people's courts' (see, e.g., Currie, 1953; McGuire & Macdonald, 1996; Zucker & Her, 2003). The first small claims court in North America was established in 1913 in Cleveland, Ohio (Yngvesson & Hennesey, 1975)[1]. The objective of the court was "a simplified, streamlined version of due process, with a view to self-representation by the litigants" (Yngvesson & Hennesey, 1975, p. 222). The role of the adjudicator, who was to be constrained by very few technical rules, was to represent both sides in the dispute and to ensure fairness in terms of process and outcomes (Moulton, 1969).

Small claims courts caught on during the next two decades, but those early attempts at cost-effective and efficient access to justice were often flawed. According to Yngvesson and Hennesey (1975), the small claims courts that flourished in the 1920's were ill-designed and sloppy mechanisms of justice.

In many ways, contemporary small claims courts are modern efforts to meet those same objectives of being cost effective and efficient. In other ways, it seems clear that small claims courts in North America have evolved into a more comprehensive system of justice which

[1] British North America did have a legal mechanism for summary judgment on claims known as Commissioners' Courts, dating back to the early 19th Century. In Nova Scotia, a Commissioners' Court was established in 1817 (Statutes Nova Scotia, 1817, c.11) with a jurisdiction of up to £10 and in some circumstances no more than £5. There is every indication that these Commissioners' Courts had similar objectives to modern-day small claims courts. The legislative objectives included language on legal resolution "with little expense" (Statutes Nova Scotia, 1817, c.11) and "with the least possible delay" (Statutes Nova Scotia, 1824, c.36) (W. Laurence, personal communication, 2007).

attempts to settle a broader spectrum of disputes than those for which they were originally developed. In other words, there are some significant differences between contemporary small claims courts and their original predecessors, most notably the magnitude of allowable disputes.

A comprehensive report on a national study of small claims courts in the United States identified the following list of goals for small claims courts: "Accessibility, Speed, Low cost, Simplicity, Self-Representation, Fairness, Effectiveness," (Ruhnka, Weller, & Martin, 1978, pp. 2-3). Similarly, Steele (1981) identified eight basic features shared generally by emerging North American small claims court systems: "The structure of the composite small claims court that emerged had eight main features: simplified procedures; cost reductions; elimination or discouragement of attorneys; limitations on appeals; expansion of clerk's role to aid litigants; grant of procedural discretion to judges; full qualification, salary, and supervision of judges; and attempt at conciliation," (p. 330). Most of these features can be clearly observed in the operation of the Nova Scotia Small Claims Court today.

In general, individuals are far less likely to be users of small claims courts than businesses (see, e.g., Ramsay, 1996; Zucker & Her, 2003). "Both Canadian and American studies have found that small claims courts are clearly dominated by businesses and professional users of high socio-economic status," (Hildebrandt, McNeely, & Mercer, 1982). Indeed, a very common function of small claims courts is to serve as a simple debt collection mechanism similar to a collection agency (Bocci & Simmonds, 1988; Ison, 1972; Fox, 1971; Steele, 1981). "The greatest continuity in the role of small claims courts in Canada has…been its role as a low-cost cog in the process of debt collection by business against individuals," (Ramsay, 1996, p. 492). One study of the small claims court in Fredericton, New Brunswick found that 75% of claims were initiated by businesses (Bocci & Simmonds, 1988); a study in Windsor, Ontario

similarly found that more than three quarters of small claims users identified themselves in the business/professional category, and that almost three quarters of claims (72%) were business-oriented (Hildebrandt et al., 1982). Also, the evidence shows that in small claims cases, the plaintiffs are generally far more likely to win. Some research indicates that this is because defendants are more likely to be inexperienced, and to be facing plaintiffs who have far more experience with legal matters in general -- and small claims procedures specifically. In addition, the available data suggest that defendants, who are likely to be unrepresented, are likely to face plaintiffs who have legal representation (Yngvesson & Hennesey, 1975).

In recent years, small claims courts in Canada have been increasing the monetary limits on the claims that can be pursued in small claims courts; British Columbia, Nova Scotia, and the Yukon have the highest limits at $25,000 (see Table 1 for a breakdown of caps on small claims by province), and Ontario may soon follow suit (Aron, 2008). The legislative motives for these increases are purported to be in the interest of improving access to justice. However, increasing the limits to small claims may also function as a means of lessening pressure at higher levels of the civil justice system. “It would perhaps be overly cynical to argue that the primary interest of policy makers in small claims procedures has been as a useful mechanism for diverting cases from the higher courts. Increases in the jurisdiction of these courts, while couched in the language of access to justice, are often attempts to reduce caseloads in the higher courts.” (Ramsay, 1998, p. 442). While changes to the jurisdiction of small claims courts are of obvious relevance to those who work in and are served by small claims courts, it is also important to consider the impact of such legislative changes upon the broader context of the civil justice system.

Table 1. Caps on small claims by province / territory.

Province / Territory	*Cap on small claims*
Alberta	$7,500
British Columbia	$25,000
Manitoba	$7,500 (including up to $1,500 in general damages)
New Brunswick	$6,000
Newfoundland and Labrador	$3,000
Northwest Territories	$5,000
Nova Scotia	$25,000 (including up to $2,500 in general damages)
Ontario	$10,000
Prince Edward Island	$8,000
Quebec	$3,000
Saskatchewan	$5,000
Yukon	$25,000

Note. There is no small claims court in Nunavut; all civil matters are handled by the Supreme Court (source: CanLaw http://www.canlaw.com/scc/scctable.htm).

Theoretical Backdrop

Access to Justice

Small claims courts certainly have a place in the access to justice movement, and have traditionally been viewed as a way of facilitating access to justice (see, e.g., McGuire & Macdonald, 1996).

> Small claims courts are among the most innovative institutions meant to enhance access to justice. Their rationale rests in the belief that justice consists of the vindication of state-determined legal rights through an adjudicative institution that administers and enforces them. Hence the need for a cheap, expeditious judicial tribunal for handling modest monetary claims in an atmosphere of informality, self-representation and an engaged adjudicator. (Macdonald, 2005, p. 58)

However, there has been speculation about the degree to which small claims courts provide laypeople access to justice (Ramsay, 1998). One argument is that the evidence does not show that small claims courts actually facilitate laypersons' access to justice, and that reform is necessary in order to eliminate impediments along these lines. "There is no empirical support for the idea that small-claims courts act as a mechanism through which the poor might redress their grievance…[n]or does the small claims hearing seem to bring closure to the party's dispute." (Ramsay, 1998, p. 439). One general question that is worth remembering is this: "What kind of access (and from what segment of the population) is one seeking to achieve with institutions like small claims courts?" (Macdonald, 2005, p. 62).

> Access to justice is a complex, multidimensional challenge.
>
> Perhaps the most important lesson of past initiatives is that a lack of access to justice is a multifaceted phenomenon. Not all citizens are similarly situated; their legal needs can be quite different. More than this, the lack of access problem does not only relate to courts and judicial remedies; it cannot be solved with a broad-brush one-size-fits-all approach…It has become clear that the problems of access to justice in Canada are vastly different depending on what part of the country one is talking about. Urban centres have different problems from small towns; small towns have different problems from

> genuinely remote areas; and all have different problems from remote areas of the north (Macdonald, 2005, p.24)

Macdonald (2005) further elaborated on the challenge of access to justice as something different from justice in the strictest legal sense, as a more generalized concept of social justice. In order to enhance access to justice, the adjudication process must deliver something more than justice in the strict legal sense: "[T]he real issue is neither access, nor law: it is not justice according to law, but social justice in the broader sense that citizens seek," (p. 102). There is a clear linkage between access to justice and overall public trust in the legal system: "An access to justice strategy must…generate greater confidence in official law and legal institutions," (Macdonald, 2005, pp. 24-25).

It is important to understand that not only the answers, but also the questions are a matter for careful thought.

> It is far from clear that collecting raw material about the volume of legislation, regulations and litigation is very helpful…Merely gathering raw statistics is not enough. One also needs to have a theory of what the statistics are meant to show and how they should be interpreted…What seems to be missing is concerted action around a comprehensive overall understanding of what kinds of data should be collected and what vehicles are best for achieving that aggregation…a well-constructed theory of what access to justice comprises (the kind of data it is important to collect); and effective coordination among various organizations so as to marshal this data into a comprehensive, integrated database," (Macdonald, 2005, pp. 102-104).

Since the objective of small claims courts is to offer fast, efficient access to justice, these courts are generally not very formal in terms of procedural rules. While the absence of many procedural rules in small claims courts is meant to facilitate access to justice, it is possible that the lack of formality actually interferes with fairness. One perspective is that the absence of clear procedural rules in small claims court functions to inhibit access to justice because of inconsistencies in the administration process. "The trouble with the small claims courts is that

although they use a procedure that is simpler than in the higher courts, they still operate on basically the same principles," (Ison, 1972, p. 27). Economides (1980) juxtaposed efficiency and cost-effectiveness with potential problems stemming from lack of procedural rules in small claims courts: "Where safeguards derived from legal formality are absent, the weaker party may feel inclined to compromise or settle for something less than he would receive were he to rely on the full enforcement of his legal rights." (p. 118).

Baldwin (2000) lauded the informal procedures in small claims courts, but cautioned against ever-expanding jurisdictional scope and increasing the formality of small claims proceedings:

> [B]ased on interviews with several hundred litigants, it appears that most lay litigants favor informal hearings over formal court processes and rules…small claims procedures are not infinitely elastic, and their use should not be hastily expanded in place of formal court proceedings…Calls from legal purists for an unrealistic level of legal refinement should be ignored, as they will restrict access to the courts to the wealthy. For most lay litigants, the alternative to cut-price solutions is not Rolls Royce justice: it is no access to justice at all" (pp. 2-3).

It seems there is a fine balance between small claims courts' objectives of rapid, informal access to justice, and inequities that may arise from their inherent procedural flexibility.

Small Claims and Organizational Justice

There is a large and growing area of research in the social sciences about various conceptions of organizational justice (see, e.g., Colquitt, 2001; Folger & Konovsky, 1989; Greenberg, 1994; McFarlin & Sweeney, 1992; Moorman, 1991; Tyler, 1989). While the concept of organizational justice was originally rooted in the legal system, much of the empirical research on organizational justice relates to business transactions (e.g., customer service). Nevertheless, the organizational justice literature has much to offer the legal system.

Specifically, researchers have defined several different conceptual forms of organizational justice. These include *distributive justice*, which has to do with participants' satisfaction with decision outcomes, *procedural justice*, having to do with procedural fairness, and *interactional justice*, which is about the degree to which participants feel they have been treated with respect (Colquitt, 2001). Perceptions of procedural fairness are influenced by whether the procedure tends to maximize the accuracy and the quality of decisions. Leventhal's (1980) model proposes that people perceive the process used to arrive at decisions to be fair when the procedure contains the following elements: 1) decisions are consistent across decision-makers and across settings, 2) decisions are unbiased, 3) decisions are accurate, so all relevant information is considered before making a decision, 4) there are mechanisms in place to correct errors (and the mechanisms work), 5) procedure considers the interests of everyone who is affected, and 6) transparency of the process. The findings and measures developed in the organizational justice literature can help to shed light on small claims litigants' experiences within the system. In Phase II, we utilized some measures developed in the organizational justice literature in order to help frame litigants' views and place them in the broader context of organizational justice theories.

Prior Research on Small Claims Courts

Axworthy (1977) made a number of arguments in advance of the creation of the Nova Scotia Small Claims Court, which he summarized as follows:

> It is submitted that when the Nova Scotia Legislature acts on the question of small claims courts it must 1) exclude lawyers from appearing; 2) specifically provide for a more crusading and inquisitorial role for the judges at, and prior to, the hearing; and 3) establish a conciliation procedure as a prerequisite to a hearing before such courts. (p. 339).

The Nova Scotia Legislature clearly had some different ideas as none of these three specific recommendations were adopted in the original Nova Scotia Small Claims Court Act. Axworthy's arguments, however, were based on a body of research on small claims proceedings that it is worthwhile to review as it provides an empirical context for the present study.

Mediation of Small Claims

Often times, small claims courts involve voluntary or mandatory mediation prior to trial, and researchers have explored mediation in the context of small claims (see, e.g., Ison, 1972, McEwen & Maiman, 1984; Vidmar, 1984; 1985; Wissler, 1995). Mediation may be a very promising option compared to adjudication. Research indicates that small claims litigants who reach settlement through mediation are more satisfied with process and outcomes than those whose cases were adjudicated (see, e.g., Wissler, 1995). Goerdt conducted a study of a number of urban small claims courts in the US and concluded that "[L]itigants (especially plaintiffs) who went to mediation were more likely to be satisfied with the outcome of the case than litigants who went to trial," (1992, p. xii).

There is also some evidence that mediated outcomes lead to higher rates of compliance than adjudicated outcomes (Long, 2003; McEwan & Maiman, 1984). In one study on the small claims courts in Maine, researchers found that disputes resolved through mediation were far more likely to result in compliance than decisions made by adjudicators: "The likelihood that mediation defendants would live up to the terms of their agreements was almost twice the likelihood that adjudication defendants would fully meet the obligations imposed upon them by the court." (McEwan & Maiman, 1984, p.11). That same study also showed an inverse relationship between compliance with an award, either from mediation or through adjudication, and the cost of compliance: compliance was lower when the cost of compliance was higher.

Another study showed that mediated settlements were more likely in cases in which the defendant admitted some degree of responsibility; adjudicated outcomes were more likely in instances where there was a complete absence of admitted liability by the defendant (Vidmar, 1985). However, Wissler (1995) found that admitted liability did not play a critical role in explaining differences between parties who settled in mediation versus those whose cases were adjudicated.

However favourable the research on mediation may appear as an alternative to small claims adjudication, it is not altogether clear that mediation is a worthwhile avenue for small claims cases. Ison (1972) argued against mediation in small claims proceedings:

> "A suggestion sometimes made is that small claims should be resolved by conciliation rather than adjudication. While conciliation has obvious merit in some areas, particularly labour relations, it would be pernicious in the area of small claims…It would penalize people with more agreeable attitudes, or who were more easily intimidated, and would give an advantage to the party with the most experience of litigation. If the conciliation failed, there would still be a need for adjudication and hence a wasteful duplication of effort. The party with the most urgent need for disposition of the case would be at a disadvantage…Finally, conciliation can easily amount to a denial of the right to adjudication." (Ison, 1972, p. 30).

In summary, though the research on mediation of small claims shows many positive outcomes that may be associated with mediation, there is by no means a clear-cut consensus that mediation is necessarily desirable or worthwhile in small claims cases. Perhaps not surprisingly, research shows that litigants who hire a lawyer are far more likely to have their cases adjudicated, as opposed to other pre-trial dispute resolution options, compared to those who are unrepresented (Sarat, 1976).

Lawyers in Small Claims Court

The question of whether lawyers should be allowed in small claims courts has been the subject of much debate. "One of the most enduring issues in small claims courts is whether

attorneys should be allowed to represent litigants at trial," (Goerdt, 1992, p. xiv). Ison argued against allowing legal representation in small claims:

> "Whether lawyers should be allowed as advocates or representatives is a sensitive question. My feeling is that we should not be allowed to appear. Some of the objections to lawyers are fairly obvious – increasing the cost, increasing formality and giving an advantage to business litigants, thereby discouraging others from appearing. But another reason is even more compelling…Because lawyers are accustomed to the adversary system in other courts and because of the prestige of their presence in a small claims court, they would be a powerful influence promoting the adoption of adversary procedures in the small claims courts." (1972, p. 82).

Indeed, there is some evidence that the presence of lawyers in small claims proceedings may interfere with litigants' sense of procedural fairness. "Those litigants who were interviewed indicated that they expressed general satisfaction with the hearings and were strongly in favour of presenting their own case rather than being legally represented." (Ramsay, 1998, p. 441). However, a rigorous national study from the US cited in the Ontario Civil Justice Review found that "there is no bias in favour of plaintiffs who are represented and that being represented by a lawyer was not determinative of the outcome of a case," (1996, section 6.1, discussing Ruhnka, Weller, & Martin, 1978).

On the other hand, lawyers may enhance litigants' ability to manage and present their cases (Whitford, 1984). Regarding their finding that many small claims litigants' narratives lacked information that was essential to a legal decision maker, O'Barr and Conley (1985) speculated as follows:

> "Our suspicion in some of these cases is that the fatal flaw in the narrative is the party's failure to develop a theory of responsibility and present it in the deductive, hypothesis-testing form that is most familiar to legal decision makers. In a formal court trial, the lawyer performs this function, and it is left to the judge or jury simply to test the hypothesis against the evidence…the small claims court magistrate must not only perform this evaluative function but must also develop the hypothesis to be evaluated, all in the course of a brief hearing, aided only by a one- or two-sentence complaint." (p. 697).

Furthermore, at least one study suggests that small claims litigants with legal representation are more likely to win their cases (Steadman & Rosenstein, 1973; but see Ruhnka, Weller, & Martin, 1978).

Allowing lawyers in small claims court can also change the tone of the proceedings:

> The presence of lawyers in the small claims court may also raise the level of formality within the court, undermining the idea of informality and also the ability of individuals to 'tell their story' without framing it in legal language. It may also allow the court to appear similar to the higher courts, maintaining the adversary system and the relatively passive role of the judge. (Ramsay, 1996, p. 508).

Indeed, the legislative foundations of some Canadian small claims courts, including Nova Scotia, "do not explicitly exclude legal representation by lawyers, although they usually discourage it…by severely limiting the costs that can be awarded (or collected) in the event of success," (Macdonald, 2005, pp. 60-61). Axworthy argued that the presence of lawyers should be disallowed at the creation of the Nova Scotia Small Claims Courts.

> One of the main reasons for setting up this type of court is to provide an inexpensive procedure for the settlement of claims which would not otherwise be enforced. If the costs are too high, and perhaps "too high" means higher than there is an absolute necessity to be, this avenue will be a *cul-de-sac*. Lawyers increase the costs involved in proceeding with a claim; therefore, *prima facie* there is good reason to exclude them from the small claims court. (1977 p. 319).

Enforcement of Small Claims Judgments

The logical conclusion of a successful small claim is enforcement of the adjudicator's judgment, despite the fact that enforcement may not fall within the direct authority of the court: "A claim is not resolved until the judgment resolving the dispute has been enforced…however, collection is the part of the small claims process that courts are least interested in. Many judges believed that the job of the court ended once they had pronounced their judgment," (Ruhnka, Weller, & Martin, 1978, p. 161). Collection on small claims judgments is a widely recognized

problem (see, e.g., Baldwin, 2000; Hildebrandt, McNeely, & Mercer, 1982; Ruhnka, Weller, & Martin, 1978). Writing about the English small claims courts, Baldwin indicated that "[o]nly about one-third of successful small claims plaintiffs received the payment ordered by the court on time. Most had to take further action (and incur additional expense) to secure payment. One-third received nothing at all," (2000, p. 3). Similarly, a report on the National Audit Office survey in England indicated that among successful small claims litigants, "36 per cent recovered nothing" (Handling Small Claims in the County Courts, 1996, p. 38). A study of the Windsor, Ontario small claims court found that more than 30% of successful plaintiffs had not collected on their judgment after one year (Hildebrandt et al., 1982). Writing about small claims courts in Canada, Macdonald (2005) stated that:

> Most successful small claims court plaintiffs do not know how to enforce their judgement. To palliate this difficulty some jurisdictions used to provide for a public judgement-collection process, but it does not appear that any Canadian jurisdiction today offers such a service. Where garnishment is likely to be the most effective mechanism of enforcement, some provinces appoint an official who becomes the assignee of the right to enforce the judgement claims. (p. 61).

In Nova Scotia, that official is the sheriff.

Improving enforcement of small claims judgments seems to be an elusive goal. When the Small Claims Court of British Columbia was overhauled in 1991, legislators created payment hearings – a forum for discovering the ability of defendants to pay what they owed – and allowed for payment schedules, with the objective of increasing compliance with judgments. An evaluation of the new Small Claims Court rules and procedures, however, indicated that there had been minimal improvement as a result of these changes and concluded, "[I]t is doubtful that there is better compliance with Small Claim Judgments as a result of payment hearings and payment schedules," (Adams, Getz, Valley, & Jani, 2002, p. vi).

The Nova Scotia Small Claims Court

History of the Nova Scotia Small Claims Court

The Nova Scotia Small Claims Court was established in 1980. The Nova Scotia Law Reform Advisory Commission had created draft legislation that was circulated in the 1970s (Axworthy, 1977) and which likely influenced the actual legislation that created the Nova Scotia Small Claims Court. The original idea of the court was to aid self-represented litigants. "The objective was and is to create a court that would satisfy the following criteria: (1) accessibility; (2) low costs; (3) informality; (4) simplicity; (5) quick and efficient disposal of cases; and (6) fairness." (Report of the Nova Scotia Court Structure Task Force, 1991, p.198). The Nova Scotia Small Claims Court has never required mediation. There was at some point in time a Small Claims Mediation Pilot Project, available on a voluntary basis, which was run by an organization called ADR Atlantic (undated informational packet), but the project is now defunct.

The original cap on claims in the Nova Scotia Small Claims Court was set at $2,000 (Statutes Nova Scotia, 1980, c.16, s.9), then it was increased to $3,000 in 1986 (Statutes Nova Scotia, 1986, c.64, s.2), to $5,000 in 1992 (Statutes Nova Scotia, 1992, c.16, s.117), to $10,000 in 1999 (Statutes Nova Scotia, 1999, 2nd Session, c.18, s.16), to $15,000 effective April 1, 2004 (Statutes Nova Scotia, 2002, c.10, s.38; Nova Scotia Regulations 39/2004), and most recently to $25,000 as of April 1, 2006 (Statutes Nova Scotia, 2005, c.58, s.1; Nova Scotia Orders in Council, 2006, #2006-77). It is worth noting that it took 19 years for the cap to go from $2,000 to $10,000, but only 7 years for it to move from $10,000 to $25,000 (W. Laurence, personal communication, 2007).

According to the Bank of Canada's inflation calculator (www.bank-banque-Canada.ca), the average annual inflation rate between 1980 and 2006 was 3.32%. Controlling for inflation,

then, the dollar amount jurisdiction for claims in the Nova Scotia Small Claims Court has increased more than five times since its original inception in 1980 (W. Laurence, personal communication, 2007).

The Nova Scotia Small Claims Court handles thousands of cases each year, see Table 2 for a summary of claims and a breakdown by amount sought.

Table 2. Nova Scotia Small Claims Court claims data.

Amount	Fiscal year (April 1-March 31)				
	02-03	***03-04***	***04-05***	***05-06***	***06-07***
Under $5,000	2609	2620	2382	2050	1623
$5,000-$10,000	773	1042	744	623	528
$10,000-$15,000	n/a	n/a	496	459	244
$15,000-$25,000	n/a	n/a	n/a	3	301
Claims without a monetary amount selected	245	150	134	2	116
Total	3627	3812	3756	3137	2812
Total # of Notices to Appeal from Small Claims Court	*n/a	*n/a	62	88	43

Note. * The number of appeals from Small Claims was not tracked separately from other appeals in the Supreme Court in 02-03 and 03-04.

Current Operation of the Nova Scotia Small Claims Court

There are 11 individual Small Claims Courts serving Nova Scotia. A number of courts serve two counties. Adjudicators, who are appointed, must be members in good standing of the Nova Scotia Barristers' Society. In almost all cases, hearings are held on weekday evenings, with special allowances for daytime hearings upon request. Table 2a lists the Small Claims Court locations in Nova Scotia.

Table 2a. Nova Scotia Small Claims Court locations and contact information.

The Courts of Nova Scotia, Small Claims Court

Courthouse Locations

Annapolis County
377 St. George Street, Courthouse
P. O. Box 129
Annapolis Royal, Nova Scotia
BOS 1A0
Phone: 532-5462
Fax: 532-7225

Digby County
119 Queen Street, Courthouse
P. O. Box 1089
Digby, Nova Scotia
B0V 1A0
Phone: 245-4567
Fax: 245-6722

Antigonish and Guysborough Counties
11 James Street
Antigonish, Nova Scotia
B2G 1R6
Phone: 863-7300
Fax: 863-7479

Cape Breton and Victoria Counties
136 Charlotte Street
Suites 1 and 2,Harbour Place
Sydney, Nova Scotia
B1P 1C3
Phone: 563-3590
Fax: 563-2224

Inverness and Richmond Counties
Provincial Building
15 Kennedy Street
Suite 201
Port Hawkesbury, Nova Scotia
B9A 2Y1
Phone: (902) 625-2605
Fax: (902) 625-4084

Colchester County and Hants East
1 Church Street
Truro, Nova Scotia
B2N 3Z5
Phone: 893-3953
Fax: 893-6114

Cumberland County
3rd Floor 16 Church Street
Amherst, Nova Scotia
B4H 3A6
Phone: 667-2256
Fax 667-1108

Halifax Regional Municipality
5250 Spring Garden Road
Halifax, Nova Scotia
B3J 1E7
Phone: 424-8722
Fax 424-0551

Kings County and Hants West
The Law Courts
87 Cornwallis Street
Kentville, Nova Scotia
B4N 2E5
Phone: 679-5540
Fax 679-6178

Lunenburg and Queens Counties
80 Pleasant Street
Bridgewater, Nova Scotia
B4V 2W9
Phone: 543-4679
Fax 543-0678

Pictou County
69 Water Street
P. O. Box 1750
Pictou, Nova Scotia
BOK 1H0
Phone: 485-6373
Fax 485-6737

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In April of 2006, the cap on claims in the Nova Scotia Small Claims Court was increased to $25,000 (Statutes Nova Scotia, 2005, c.58, s.1; Nova Scotia Orders in Council, 2006, #2006-77). More recently, the provision for general damages in Nova Scotia Small Claims proceedings was increased from $100 to $2,500 (Statutes Nova Scotia, 2007, c.53, s.1). There are allowances for reimbursement for some costs such as filing fees, reasonable travel expenses and witness fees, but the provisions explicitly prohibit reimbursement for legal representation (Small Claims Court Forms and Procedures Regulations, N.S. Reg. 17/93, s.15). There are no provisions for pretrial discovery or disclosure of documents. The proceedings are not recorded, so the factual record on appeal (to the Nova Scotia Supreme Court) is based on the documentary evidence and the adjudicator's memory of the proceedings.

The fees for filing a notice of claim in the Nova Scotia Small Claims Court are $87.06 for claims of less than $5,000 or for recovery of personal property only (no dollar amount listed), and $174.13 for claims between $5,000 and $25,000. Claimants have 10 days to serve the notice of claim, though the clerk may allow additional time. Notices of claim must be served in person, and must be accompanied by a defense/counterclaim form. To file a counterclaim, the fee is $57.68, and the defendant has 20 days from when they were served to file a defense or counterclaim with the Court, which must be served on the claimant within the 20 days. Defenses and counterclaims can be served by registered mail or similar service. Failure to file a defense can result in summary judgment in favour of the claimant, provided the claimant submits an Application for Quick Judgment. Witnesses can be subpoenaed by the clerk. Execution and Recovery Orders are actionable on the adjudicator's judgment so that the claimant can recover what is owed. An Execution Order, for recovery of monetary losses and/or property, costs $87.06 payable to the Sheriff, who may also be entitled to a commission or hourly fee if selling or

appraising goods is required. The Sheriff is empowered to seize money and garnish wages, among a host of other potential recovery powers. A Recovery Order, for repossession of property, can also be lodged with the Sheriff. The Sheriff's fees for Recovery Orders are subject to a rather complex fee structure (Fees and Allowances for Registrar of Deeds, Sheriffs, and Courts, N.S. Reg. 132/90, Schedule "B"), but the fee is not to exceed $174.13 (Small Claims Court Forms and Procedures Regulations, N.S. Reg. 17/93).

In addition to standard civil suits, the Nova Scotia Small Claims Court also handles appeals from decisions issued by the Director of Residential Tenancies at Access Nova Scotia. These residential tenancy appeals are handled as hearings *de novo*, meaning that both sides are allowed to present their evidence and arguments to the adjudicator. The Nova Scotia Small Claims Court also handles taxation cases, which are instances in which lawyers' costs are at issue: a lawyer may bring a taxation suit against an allegedly delinquent client, or a client may bring suit against a lawyer to dispute issues related to costs. There is no cap for taxation cases (or for Residential Tenancies appeals), and interviewees anecdotally noted that these claims are sometimes in excess of $100,000.

Adjudicators have a good deal of latitude in how they run the proceedings. Thus, there is a tendency toward relaxed procedural and evidentiary rules. For example, a number of interviewees from Phase I presented below noted a somewhat relaxed stance that adjudicators sometimes adopt with regard to admissibility of hearsay evidence. The procedural informality and flexibility afforded to adjudicators was emphasized recently when the following section was inserted in the *Nova Scotia Small Claims Court Act* under section 28 on Evidence: "(1A) For greater certainty, an adjudicator is not bound by the rules of evidence applicable in a judicial proceeding," (Statutes Nova Scotia, 2007, c.53, s.3).

The present study was an evaluation of the effectiveness of the Nova Scotia Small Claims Court at meeting its basic objective of providing quick, informal, and affordable access to justice. There were no specific hypotheses or theories that were being tested, although the evaluation was designed to illuminate any emergent areas of concern for possible legislative reform. During our original planning meetings in collaboration with the Nova Scotia Law Reform Commission in late 2005, legislation had recently passed that would bring the new limit to claims in the Nova Scotia Small Claims Court from $15,000 to $25,000 effective April 1, 2006 (Statutes Nova Scotia, 2005, c.58, s.1; Nova Scotia Orders in Council, 2006, #2006-77). Clearly, we were interested in gathering some data about the impact of that change. There were two phases to the research study that were designed to present a comprehensive picture of the workings of the Court both from within, and from a users' perspective (i.e., litigants). Phase I was a series of interviews with adjudicators, clerks, and lawyers who had represented litigants in the Nova Scotia Small Claims Court. Phase II was a survey of recent litigants in the Nova Scotia Small Claims Court.

III. Phase I: Interviews with Key Stakeholders

Phase I Method

Between August and November, 2006, we interviewed a total of seventeen individuals who work in some capacity in the Nova Scotia Small Claims Court: six experienced adjudicators, five clerks, and six lawyers who have represented clients in Nova Scotia Small Claims cases. These participants were drawn from different areas around the province in an attempt to gather viewpoints that would be representative of a variety of different regions.

Most interviews were conducted in person at convenient locations (e.g., participants' offices and the offices of the Nova Scotia Law Reform Commission), though six interviews were

conducted via telephone (two adjudicators and four clerks). All participants were recruited through personal connections and word-of-mouth referrals. Participation was entirely voluntary, and participants were told that their identities would be kept in confidence. Interviews were tape recorded to ensure accuracy of the interview content. The interviews were conducted by Mr. Jonny White, an MSc candidate in Industrial/Organizational Psychology at Saint Mary's University (currently a PhD student at Fielding Graduate University).

We used a semi-structured interview format. Interviewees were asked a number of standard questions, and the interviewer probed and asked for follow-up where appropriate. Table 3 presents a list of the standard questions in the semi-structured interview protocol.

Table 3. Standard interview questions.

- Please describe your role within the Nova Scotia Small Claims Court system, specifically how long have you been involved and in what capacity?
- What do you feel are the strengths of the Nova Scotia Small Claims Court system?
- What do you feel are the weaknesses of the Nova Scotia Small Claims Court system?
- What are your thoughts about the recent change to a $25,000 ceiling on Small Claims in Nova Scotia?
- Do you think the Nova Scotia Small Claims Court provides quick, informal, and cost-effective access to justice?
- Do you think, on the whole, that people are treated fairly within the Nova Scotia Small Claims Court system?
- Do you think the staff people at the Nova Scotia Small Claims Court are helpful, friendly, and professional with the public?
- Do you think the Nova Scotia Small Claims Court forms are user-friendly?
- Do you think the Nova Scotia Small Claims Court website is user-friendly?
- Do you think that having a lawyer is necessary to ensure a fair outcome in the Nova Scotia Small Claims Court?
- Do you think having a lawyer available to advise users of the court system on their cases for free would be an improvement to the system worth its cost?
- Who do you think the Nova Scotia Small Claims Court should serve, and who do you think it does serve?
- [As an adjudicator, do you/ Do adjudicators] treat it as the defendant and claimant's responsibilities to present all relevant information and materials or do [you / they] probe to get to the 'story behind the case' if it is not clearly presented?
- Do you have any additional comments on the Nova Scotia Small Claims Court you would like to share?
- As a(n) [adjudicator/clerk/lawyer], do you ever conclude that a claim for which there was legal representation should not have been brought to a hearing?

Phase I Results

Participants

On the whole, participants had a great deal of experience in the Nova Scotia Small Claims Court. Adjudicators ranged in experience from around three years to more than seventeen years. Clerks ranged in experience from two years to more than twenty-one years. Lawyers' experience with Nova Scotia Small Claims ranged from about two and half years to more than ten years.

Interviewee Comments

The interviews shed a great deal of light on the inner working of the Nova Scotia Small Claims Court system. With the exception of the possibility of free legal advice for Nova Scotia small claims litigants, we did not specifically ask participants about any potential changes to the Nova Scotia Small Claims Court. We did, however, ask participants about the strengths and weaknesses of the system. In Table 4 we provide a summary of recommendations from the interviews. Below are excerpts from interviews broken out by some key topics.

Of course, there is a degree of overlap among interviewees' comments. The recent change to a $25,000 ceiling on small claims, for example, appears in comments about related topics, such as pretrial document disclosure and recording small claims proceedings. Another central theme, the possibility of having a two-tier small claims system in the future, also appears in comments about other topics.

Table 4. Summary of key interviewee recommendations for reform in the Nova Scotia Small Claims Court.

General recommendations
1. Record at least some of the proceedings
2. Develop (revisit) a mechanism for reimbursement of at least some legal costs
3. Allow for pre-hearing document discovery for at least some cases
4. Develop a mediation alternative
5. Allow some cases to be heard during business hours if all parties agree
6. Limit lawyer representation in cases worth less than $10,000
7. In close-knit rural communities, require adjudicators from another county
8. Explore the possibility of a legal aid / advice program for small claims litigants
Specific procedural recommendations
1. Eliminate the requirement that documents be personally served for some cases
2. Develop a process for requesting an adjournment in advance of the hearing date
3. Clarify small claims forms, specifically with regard to the requirements for defendants
4. Develop a penalty payment structure for parties who violate procedural rules

Moving to $25,000 Limit to Small Claims

On the whole, participants were mixed-to-positive about the April, 2006 change to $25,000 for claims in Nova Scotia Small Claims Court, see Table 5. One adjudicator commented "[T]he reality is that you can't do much of the $25,000 cases in the Supreme Court of Nova Scotia… if someone were to say tomorrow we are going to increase it to $50,000, I would endorse that too." However, many participants expressed reservations about the move to $25,000. One adjudicator commented about the potential inaccessibility of the system with regards to the small claims that the system was originally charged with serving:

> Adjudicator: "Well we've been at it now for six months and I haven't noticed any change. It does not seem to have impacted my work in the courtroom, at least not yet… I think ironically the complaints I have heard are that there really isn't much room in the system for the $100 claim or the $300 dollar claim that fees may be a bit high and operate as a deterrent to that… It may be that nobody cares, and I haven't seen real statistics, but I very seldom see a claim for less that $500."

A clerk made a similar comment: "we've lost all of those claims, they are not in small claims anymore. I think if you look at the claims now you'd be lucky to see $1,000."

A number of participants speculated about possible strain on the small claims system resulting from an increase in the number and complexity of cases filed since the change to a $25,000 ceiling, as well as an increase in the number of lawyers appearing in the Nova Scotia Small Claims Court following the change:

> Adjudicator: "My reaction initially and still is, is that $25,000 is not a small claim, and it's a medium claim. Even though $25,000 isn't what it used to be, it's still $25,000 and it becomes significant to a small businessman, or whoever. $25,000 is a lot of money. So I felt the increase to $25,000 we're likely to see more lawyers in small claims court, which is not the initial idea. I can't really say that I've noticed that yet, because it's only been since April. But that's my view, is that it will become more lawyers on each side and more contentious and they won't have to address issues of admissibility of evidence and it will take longer… I'm not saying it's a bad thing, but we will need more time. 2 lawyers litigating $25,000 will take a lot longer than 2 civilians dealing with $5,000."

Table 5. Summary of interviewee reactions to the recent change to $25,000 for cases in Nova Scotia Small Claims Court.

	Positive	Neutral/non-committal	Negative
Adjudicators (n = 6)	67% (n = 4)	33% (n = 2)	0% (n = 0)
Lawyers (n = 6)	33% (n = 2)	50% (n = 3)	17% (n = 1)
Clerks (n = 5)	0% (n = 0)	100% (n = 5)	0% (n = 0)
Overall (N = 17)	35% (n = 6)	59% (n = 10)	6% (n = 1)

Note. Percentages that do not add to 100% are the result of rounding error.

> Lawyer: "There's probably a lot of stress put on the small claims court. I don't know if they've seen an increase in the number of claims, but I think it is probably going to happen… I don't think that just because the dollar value is up, I don't think the matters are getting more complex. I think they are generally the same no matter if it's a $5,000 claim or a $100,000 claim. I think if the adjudicators are qualified to do a $5,000 /$10,000 /$15,000 claim, why not a $25,000 claim? I don't have any concerns about that, other than the fact that the adjudicators may have more on their plate than they can handle in terms of the amount of cases they are seeing. Maybe the number of adjudicators across the board, particularly in Halifax, may have to be increased."
>
> Clerk: "I'm certainly seeing an increase in the amount of lawyers. I think every time they increase the small claims amount you're seeing a lot more work administratively. The staff are there for more adjournments, we're doing a lot more sittings, there's a lot more correspondence with lawyers, it's getting a lot more like Supreme Court -- a lot more…I still think the court runs well, it's not a bad thing, and it's just an increase in workload without an increase in staff. So that's how it could be viewed as a negative thing. The [staff persons] on the counter with these larger claims, they are being asked for a lot more legal advice. People are expecting the staff to be lawyers, really. They don't want to pay for a lawyer, in some cases so they think they can come here and get the legal advice for it with regards to their case. So with the higher, the bigger amount, the more they want to know before they go to court. We always recommend to speak to a lawyer, get some legal advice. We can't give legal advice. I just find that there's more and more legal advice requested from the staff…The cases are getting more complex, the cases are longer. It's

not unusual now for a case to be two or three nights, as opposed to two to three hours. It's not unusual now to have lengthy matters…In our area our sittings are usually once a week, on Monday evenings. Now this week it's three nights. So we've gone from one night regular sitting, to one night plus two specials. So we're sitting a lot more in this area."

Clerk: "I don't think it has changed how we do business; the only thing that has changed is more lawyers. And every time we've gone up, we've gotten more lawyers. When you got into the $10,000 and above we got more lawyers and $15,000 brought more lawyers and $25,000 has definitely brought more lawyers."

Several participants expressed reservations about the change to $25,000 as harkening back to the days of the Nova Scotia County Court, which was eliminated in 1993:

Clerk: "I think we seem to be going back to, although we don't call it that, we're going back to the old County Court…I guess this is what happens when you increase the fee, you get more cases that are more involved. Lawyers will want to start giving briefs to the adjudicators. Possibly, it involves so much detail that we should be looking to recording some of these hearings. All these pose a problem, whereas that's a lot behind small claims court where it was supposed to be an informal and inexpensive court. Seems to be kind of going out of the way, you know what I mean? We're getting more solicitors involved to a greater extent to what we have now. The original philosophy was that it was supposed to be lay people doing this, putting their case forward. That limit, that increase to $25,000 expands that, we get lawyers involved to a greater extent. And now other things come into play like briefs and recordings and things like that. With regards to recording some of our Supreme Court justices have made comments with regards to that with the appeal hearings that small claims court should be recorded as well."

Clerk: "When I first heard of it I thought, 'oh my goodness'. That's a lot of money… I originally felt that it was moving into a County Court stage that we used to have. County Court was abolished in 1993 and then we simply had a bit of a lull there because actions were up to $10,000 and more than that people had to go to Supreme Court. So when they did increase to $25,000 it felt that they were really moving toward a jurisdiction that the county court had years ago. I'll tell you from a staff point of view; it has increased the number of lawyers that we see in the small claims court system. That's a large sum of money and quite often, we've experienced a number of actions where counsel was involved on both sides. And there is just no possible way to have actions when you have counsel on both sides dealt with on a regular scheduled docket through the evening, the cases are just taking so much longer. We have a huge number of special sittings now throughout the month. So that has certainly increased our statistics that we have a lot more sittings now because there are more lawyers involved and the cases are a lot more complex. It's not unusual for us to have anywhere from 2-5 special sittings a month. Usually special sittings are held during the daytime hours, as opposed to an evening session. It could be just one particular case that could last all day long. So that's what we've experienced…We're trying to manage our scheduling as best we can. I think the

biggest issue is that you have a number of cases that you have scheduled and you have 15-20 matters on particular evening, and then you could have 4-5 contested matters and usually a contested matter you'll be dealing with at best an hour or more. So you'll have a number of cases scheduled on an evening and there is no possible way the adjudicator can hear them all…. So it's like a two-headed animal, on the one side everything turns out well and other times you have a number of cases that get adjourned and the parties involved get frustrated because they've arranged witnesses to come. So I think probably be able to control the scheduling of the matters. Maybe that's an area that needs to be reviewed to see if there's a better method in which to have matters scheduled or to have better case management with that."

Clerk: "The only concern or caution I have with it is that it will probably bring into the fold more represented parties and it brings in an inequity...It's up to a person if they choose to be represented or not, but the reality is that a lot of people cannot afford to be represented and will come to court unrepresented…there's that inequity within the court but also inequity of having someone who knows what they're doing and litigating versus someone who knows the facts of the case, and is litigating the best that they can. I don't know if the government is looking at maybe a two-tier system where you're looking at higher end actions with represented parties going down one road versus lower end actions with lay people going down the other road. It kind of re invents the old County Court system in some respects."

In a similar vein, a number of participants commented on the need for more procedural rules and structure in the Nova Scotia Small Claims courts in order to manage the changes stemming from the increase to $25,000:

Lawyer: "Well I think it's too much. It's too much because there is no structure right now. When you're dealing with a $25,000 claim, you need structure. Like I've said, I've noticed a real increase in the use of experts in small claims. Before, no one brought an expert to small claims because why would you hire someone to help you with a $5,000 claim, it just doesn't make sense. So when you're dealing with a $25,000 claim, you are going to hire an expert to come help you. If you're dealing with a property claim and you're saying that the structure of your home isn't up to building code, you're going to bring in an expert on what the building code is and how your house doesn't match it. Right now I can get down there defending a claim not knowing this expert is being put on the stand and all of a sudden having to deal with it. I'm not an expert on the building code, so I don't know how to properly deal with those types of things without having my own expert to tell me what this person is talking about. A number of times I've run into a situation where I get to court and there's some expert testifying on how to lay ceramic tiles, well I have no idea how to lay ceramic tiles, and all of a sudden you're faced with that at 6 o'clock at night it's very problematic… It's too much for small claims court, as long as there is some sort of structure built in our legislation and how small claims court is going to operate. I think it's great if we're giving people a chance to get in front of an adjudicator for a matter under $25,000. I don't want to sound like I'm saying, 'no, I think

it should be only ever be $10,000' but I do think that we need more structure. Although some things could be relatively straightforward with a $25,000 claim, you are getting into some pretty complex areas when you up the amount to $25,000."

Lawyer: "I guess another weakness is the limit is up to $25,000 in Nova Scotia, and that's a significant amount of money for a lot of people. With those monetary limits, normally with Supreme Court there is discovery and disclosure, things like that. I think given the upper limit there should be some sort of perhaps documentary disclosure at least. Because $25,000 is a lot of money to lose if you walk in and not being prepared for what the case is… So I guess some sort of provision for documentary disclosure would be great."

Lawyer: "I think it's, the way it is, I think there has to be some sort of documentary disclosure. Going into a hearing blind and not knowing what you're up against and losing $25,000 is a big blow to anyone."

Lawyer: "A lot of the time, just because the matter involves an amount less that $25,000 doesn't mean that it's not complex. It's very difficult to go in and not handing in documents beforehand, without even having exchange of expert reports. The way that small claims court stands now you can get in there on the night of your hearing and be given an expert report that you have to address, and a lot of the time, you don't have someone there that is properly qualified to address that expert report. So there is a real problem in the lack of pretrial procedures that small claims court has available right now."

Adjudicator: "It's such a large amount of money that there has to be a lot more thought put into this fact that the small claims court is dealing with these amounts and that's why they're asking for recorded evidence… that's my concern about the $25,000. It will encourage [the] legislature to put in place a number of rules similar to the civil procedure rules in the Supreme Court, and that will be a barrier to justice… I think that too many rules in small claims court would be regressive. I think that the $25,000 limit will push rules on the small claims court, such as discovery."

Pretrial Document Disclosure

A number of participants volunteered that pretrial document disclosure would be an asset in at least some Nova Scotia Small Claims cases, see Table 6. More than 40% of participants were in favor of document disclosure, about half were neutral or offered no comments on that issue, and only one participant was opposed to the idea.

Adjudicator: "Disclosure is important… That doesn't mean you have to go through a long period of discovery before hand, discovering documents, and discovering witnesses and discovering… ok. You can deal with it in the courtroom and if necessary, the person

can have time to go through those documents. I don't think any adjudicator sitting up there is going to see someone sandbagged."

Lawyer: "I think given the recent increase of the jurisdiction of the court there should be occasions where the parties can have access to better pre hearing discovery and pre hearing disclosure of documents… perhaps a specific monetary value or where the adjudicator was satisfied the parties could go to some sort of pre trial discovery before they went in… the default position should be no pre trial discovery no pre trial disclosure of documents, but some access to that in the event that it is necessary."

Lawyer: " Ideally, it's great to have disclosure. It's great to know what evidence will be presented when you get in there. In terms of some claims, I know some claims are very small, if it's a $2,000 claim, it might be a lot of time and effort for people to put together lists of documents or exhibit books and everything. I don't think it would be ideal for everything, I don't think it's practical for a $2,000-$3,000 claim for there to be a production of a number of documents. Perhaps after a certain threshold, maybe $10,000-$15,000 might be appropriate. In Supreme Court where you have documentary disclosure and then you have oral discoveries and things like that, I don't think oral discoveries are appropriate in small claims court…A lot of the time now, from the time you file to the time you get a court date would be a month to 2 months, I don't see that stretching it out perhaps another month would really hurt anyone, it would probably benefit them. I don't want it to be a situation where it would take a year to do a small claims matter. If they set the hearings for a month later, and when the hearing was initially scheduled, have that as the date where documentary disclosure takes place, and have a month to go over things before the actual hearing."

Lawyer: "There should be a disclosure process of some sort in advance of the hearing. I find that you show up prepared for the hearing and the other side will say that they needed whatever documentation or they had not seen what documentation you have. And naturally adjournments are readily given, which I do not have a problem with…but it increases cost to those who hire lawyers and those costs are not covered in the system. So I think there should be a disclosure requirement in advance of the hearing to avoid unnecessary adjournment…. Just document disclosure similar to the list of documents [in] the Supreme Court. I do not even know if it has to be formal in the sense that it has to go through the small claims office maybe just between parties and they confirm it to the adjudicator at the hearing that they did exchange documents and these are the documents that were exchanged. I think it should be something that whatever documents are going to be relied on in the hearing should be disclosed X number of days before the hearing and you cannot rely on anything else. With no disclosure, you cannot rely on anything and therefore you avoid that adjournment possibility. I do not think we should go as far as discoveries or anything much more formal than that. Just simply the documents they will rely on. Each party should have their documents lined up before the hearing anyway, it only makes sense that they exchange them, it would cut down on a lot of cost and avoid the adjournments that we have way too many of."

Table 6. Summary of interviewee opinions about whether at least some Nova Scotia Small Claims cases should allow for pretrial document disclosure.

	Positive	Neutral/non-committal/no comment	Negative
Adjudicators (n = 6)	33% (n = 2)	50% (n = 3)	17% (n = 1)
Lawyers (n = 6)	67% (n = 4)	33% (n = 2)	0% (n = 0)
Clerks (n = 5)	20% (n = 1)	80% (n = 4)	0% (n = 0)
Overall (N = 17)	41% (n = 7)	53% (n = 9)	6% (n = 1)

Note. Percentages that do not add to 100% are the result of rounding error.

Recording Small Claims Proceedings

Participants were generally in favor of recording at least some proceedings in the Nova Scotia Small Claims Court, see Table 7. It is noteworthy that this topic came up in the majority of interviews, although we did not specifically ask participants to comment on whether small claims proceedings should be recorded. Almost 60% of interviewees had positive views about recording, about 35% were neutral or made no comment on the issue, and 1 participant was opposed to recording Nova Scotia Small Claims cases.

Table 7. Summary of interviewee opinions about whether at least some Nova Scotia Small Claims cases should be recorded.

	Positive	Neutral/non-committal/no comment	Negative
Adjudicators (n = 6)	50% (n = 3)	33% (n = 2)	17% (n = 1)
Lawyers (n = 6)	67% (n = 4)	33% (n = 2)	0% (n = 0)
Clerks (n = 5)	60% (n = 3)	40% (n = 2)	0% (n = 0)
Overall (N = 17)	59% (n = 10)	35% (n = 6)	6% (n = 1)

Note. Percentages that do not add to 100% are the result of rounding error.

> Adjudicator:" I think it's going to come in anyway because Supreme Court is insisting on it. Here's the problem, one percent of the court decisions of adjudicators are appealed...If we start recording it's going to be more work for adjudicators, for appeal court, for lawyers…My suggested reform would be if we had matters of $15,000 or $20,000 have them recorded."

> Adjudicator: "the court calls itself a court of record, which means legally that a reviewing court in the case of an appeal looks at what the adjudicator has done in a small claims court and renders a decision on that, as opposed to creating a whole new process and a whole new hearing and listening to evidence again... The court should be a proper court of record in which there is a transcription available or a tape available at the hearing so when the matter goes on appeal the reviewing judge is not left to wonder about who said what, in what context in what way and with what effect… [it is] almost to the point of nonsensical that it doesn't exist in these small claims courts…even the best adjudicator who is the most astute note taker and can assimilate as much information as quickly as possible will not be able to get it all… [for Supreme Court judges] if there is a hole in their notes because they were daydreaming or they couldn't keep up or what have you, they can go back and fill those notes in and then have a complete account of the evidence when they go to make their decision. Small claims court adjudicators cannot do that, so if I have a hole in my notes that's it, I have a hole in my notes."

Lawyer: "I think there should be a default position on the transcription of the appearance before the taping of the appearance before the adjudicator. That possibility should be available if people have good reason to want it to be transcribed. That cash amount approaching $25,000 is a good reason…I would like to see somebody would look to putting in place that opportunity…to ask for a transcription."

Lawyer: "Well I think that everything should be recorded if you're dealing with an amount above $10k I think it should be recorded… it gives the party an option if they feel there was a mistake made on the actual factual findings on the adjudicator's decision; it gives them a chance to challenge those. Whereas right now there is no chance. What the adjudicators says are the facts, those are the facts the appeal court will rely on and I find that problematic."

Lawyer; "I have a problem with the appeal function. Often times something goes wrong at small claims, or something is missed in the decision, or your client's not comfortable with the decision and you want to appeal it. It's very difficult to appeal a small claims court matter since small claims court hearings are not recorded. Basically, what the adjudicator says is his or her decision is going to govern the appeal, and sometimes there are some errors made that you just can't correct."

Clerk: "I think one of the down sides right now, right off the top of my head, claimants appealing not having their cases recorded. I think that's becoming an increasing problem. When they appeal to the Supreme Court, the only thing the Supreme Court has to rely on is the adjudicator's statement of facts. There is nothing recorded to provide to the Supreme Court. I think that's one of the down sides right now."

Clerk: "One of the other weaknesses of small claims is the recording aspect of it. So I guess going back to my initial point about the two tier system is if you're going to have higher end claims litigated and represented by legal counsel I guess to have any substance to litigation in the instance of appeal there would need to be some recording mechanism as well."

Clerk: "It comes back to the recording issue. I'm often in Supreme Court as well in the appeal end of things and I see what the judges have to deal with in rendering an issue at the appeal level from small claims. By in large I would say that their hands are really tied because the information they're rendering their [decision] on is solely from the adjudicator's notes or best recollection, the counsel's best recollection of what was said or how it was interpreted. It really makes it difficult for the appeal judge in the Supreme Court…to truly render any kind of decision that would have any meaning because it would be dealing with hearsay for the most part."

Lawyer: "There are larger amounts involved now, and the primary weakness is that there is no recording system in the court…I understand why there isn't one but that's something that should be looked at when getting into these larger claims, $25,000, a $5,000 claim won't accept an appeal, but a $25,000 claim is a different story…If there is a recording system then use it, and then you have that transcript of evidence."

> Lawyer: "I think they just have to record the process…it doesn't seem that difficult to me given that 21st century technology allows us to record volumes of information on a very small machine. It's just a safe guard and should be there."

Lawyers in Small Claims

We asked participants about whether or not they believed that having a lawyer was necessary in order to ensure a fair outcome in the Nova Scotia Small Claims Court. Uniformly, participants did not believe that the presence of a lawyer was necessary in order to ensure a fair outcome. Most participants commented on the benefits and drawbacks of having a lawyer, and almost all interviewees were either neutral or ambivalent about the presence of lawyers in Nova Scotia Small Claims Court (see Table 8).

Many participants commented that lawyers helped to make the process more efficient, especially in complex cases. For example, one adjudicator said, "I think having a lawyer is likely to produce a better and more efficient outcome, but having a lawyer is not required to produce a fair outcome." Other participants commented on the benefits of having a lawyer if the litigants were uncomfortable representing themselves. On the other hand, some participants commented that lawyers can detract from the accessibility of the small claims courts. For example, one lawyer commented: "It's great to leave lawyers out when possible a lot of times. Some cases where I've been involved where there are two lawyers involved, the issues might get overly complicated, where they don't have to be. Not that I'm knocking my profession or anything, but it does happen."

Table 8. Summary of interviewee opinions about the presence of lawyers in Nova Scotia Small Claims Court.

	Positive	Neutral/non-committal/no comment	Negative
Adjudicators (n = 6)	17% (n = 1)	83% (n = 5)	0% (n = 0)
Lawyers (n = 6)	0% (n = 0)	100% (n = 6)	0% (n = 0)
Clerks (n = 5)	0% (n = 0)	100% (n =5)	0% (n = 0)
Overall (N = 17)	6% (n = 1)	94% (n = 16)	0% (n = 0)

Note. Percentages that do not add to 100% are the result of rounding error.

Below are some additional comments from participants regarding lawyers in the Nova Scotia Small Claims Court:

> Adjudicator: "I have a lot of respect for lawyers who come to court. They are usually well prepared and in most cases have an arguable point…I've always felt that the lawyers have brought something which is in need of it and get a resolution out of it. Not often complicated but they'll file cases and do the legal thing, and it could go one way or another depending on the evidence. I don't have any trouble with lawyers coming to court."

> Adjudicator: "I'd say [lawyers in Nova Scotia Small Claims] are completely unnecessary… I don't find that in the run of the mill cases that lawyers are really any help at all. Particularly if they start getting technical with me, I have a short fuse about that stuff, I don't express it but I don't want to hear that kind of stuff. A lot of people coming in saying, 'we need to do that and we need to do that', I don't like that."

> Lawyer: "I'd like to see more lawyers. Sometimes it's very difficult to deal with self represented litigants and God bless them, God bless them, I don't want to say anything disparaging about them, but it could be problematic."
>
> Lawyer: "I would not mind seeing some cases where lawyers were excluded, as long as it was done fairly and all around it didn't do substantial violence because ideally you want people to have reasonable access to just results."
>
> Lawyer: "When you're dealing with a complex matter that's going to involve a number of lay witnesses or a number of lay witnesses and an expert witness, I would suggest at least seeking some sort of legal advice. I have people who come in and I guide them through everything and then send them on their way to appear in small claims court by themselves… It's often enough to prepare with a lawyer or speak with a lawyer and go on your way. And obviously, you don't always need that but it can be helpful."

Of course, the related issue of costs arose in the context of our discussions about lawyers in small claims cases. Because there are currently no provisions for reimbursement of legal costs, many of the participants commented that hiring a lawyer was somewhat of a luxury, one that would most likely not be worthwhile for cases in which smaller dollar amounts (e.g., under $10,000) were in dispute.

> Lawyer: "I might make the argument that likewise there should be more consideration given to availability of costs, but that, my pitch would that would have to be very carefully considered. On the one hand we're looking at a 25K claim and we're looking at the time of preparation and care that lawyers would want to take, one would like to think there would be something available to a litigant to get a little bit more of [their] costs… I would like to see some folks thinking about the implications of making the costs to a successful litigant a little more available."
>
> Lawyer: "Some amount, anything really, but I'm not saying it's for us; it's just for the client if they have to hire a lawyer. Originally you don't have to hire a lawyer, jurisdiction of the small claims started off at 5k and for that much it isn't worth it to hire a lawyer for that much, and therefore there is no rule for solicitor's fees. Now we're up to 25k limit or a 25k claim, maybe someone isn't as comfortable, or maybe there is a company that says that a 24k invoice doesn't want their collections person…to go into court and fight over that much maybe they want to hire a lawyer whose job is to fight over these things. At the end of the day it would be nice for these people, when they win, to have the option to award that…if it were there to allow the adjudicator to do so I think it would be a good thing."

> Lawyer: "I know that lawyer cost is an ongoing topic now especially at 25k. I personally do not believe there should be a cost reward for a successful party when they bring a lawyer or not. I think that starts to intrude on the ability of people to come to court on their own, which would always be a potential for small claims court especially when you start bringing in lawyer costs component, it kind of defeats the intended purposes of the Act."

Free Legal Advice for Small Claims Litigants

Interviewees were generally in favor of the idea of having a lawyer available to advise small claims litigants in Nova Scotia, though their views were polarized: almost 60% favored the notion, almost 30% opposed the idea, and two participants were neutral or offered no comments on the issue (see Table 9).

Table 9. Summary of interviewee opinions about whether there should be some form of free or discounted legal services available to litigants in Nova Scotia Small Claims Court.

	Positive	Neutral/non-committal/no comment	Negative
Adjudicators (n = 6)	50% (n = 3)	17% (n = 1)	33% (n = 2)
Lawyers (n = 6)	50% (n = 3)	17% (n = 1)	33% (n = 2)
Clerks (n = 5)	80% (n = 4)	0% (n = 0)	20% (n = 1)
Overall (N = 17)	59% (n = 10)	11% (n = 2)	29% (n = 5)

Note. Percentages that do not add to 100% are the result of rounding error.

Here are some excerpts from interviewees who had generally favourable views toward free legal advice to small claims litigants:

> Adjudicator: "Here's what I'd like to see, I'd like to see a course set up at Dalhousie where…people would have access to students that are taking law in their third year and be able to go out and speak to those people, or have them come in the courtroom and speak to them. That might be the $10,000 and under range people… I think that would be helpful and not costly to the government, and a benefit to the students… My recommendation would be a course set up at Dalhousie that is a credited course, a credit course set up around the procedure of small claims court and the law, just because there are a number of cases coming out every day in small claims court."
>
> Lawyer: "Well, organization would be great. A lot of people come in very unorganized and it takes a lot longer than it should. Helping them organize their case and giving them basic legal advice. I know if there is a lawyer on hand, there will be kind of conflict issues once over time one lawyer helps people resolve a conflict there would have to be a whole system available, but I think it would be a good idea. Do you understand what I mean by problems? If you had one lawyer available and you had parties coming in - some people litigate on regular basis, or it's not the first time they've been in court - they could be one side of an issue in one case, but on the other side in another case. And perhaps they got advice from the staff lawyer in one hearing, but in the next hearing they're involved in the other side is getting advice from that same lawyer. So there could be some conflict issues there. And I guess if there is only one lawyer there and there is two self represented sides, who does the lawyer advise? You can't give advice to one side and the other… In terms of organizational issues, maybe. As long as it was made clear that the lawyer was there to represent the court, they're there to help organize cases and make things flow faster. Make it very clear that they are there to represent the court, not to represent either side. I guess in that case they can't give them legal advice because they would be favoring one side or the other. But if they were there for strictly organizational point of view, that would be great. There's a lot of problems inherent in that system, but generally, it would be a good idea."
>
> Clerk: "Oh I think that would be incredible. That would be awesome to have. You know a lawyer that they could telephone and get some legal advice. We often refer them to the legal information society…and I know people have complained to us that they've called that line and they can't get through, it's busy. We try to explain to them that there's one line for the province, toll free and just to be patient. But if they had contact with a lawyer that they could call, be it free or $20 just to talk and get legal advice, I think it would be very beneficial…If you had someone they could call, the lawyer could tell them, 'look, small claims is not the way to go, you should be going to another court.' Or what have you. I still think it would be cost effective, I think it would be great."
>
> Clerk: "I think that would be wonderful, so it would be like having duty counsel. I really think that would be a wonderful resource for people. I'm expecting that the legal education society could probably dictate that as well that they are getting a lot of phone

> calls from people involved with small claims court matters…That would be an interesting trial. I really think it would be interesting to do a little test with that just to see. I'm not sure what the expense or the cost would be, as far as the department is concerned but it would be interesting to see if that resource was available if the parties involved would use that...I'm thinking it would be something that would be well utilized. I know that legal aid won't get involved with a small claim or a civil matter that I know of. I'm really thinking that it's something that would be utilized."
>
> Clerk: "I'm not sure if you would need such a high caliber person, you know what I mean? Whereas in family division it's a little different where we're dealing with claims of access and property and that sort of stuff, that's a little different. I really don't think the administrative people really have the background to give that sort of stuff. In small claims court it's pretty straight forward as to what the act says as to what you can do and what you can't do. You know what I mean?...I've already made comments before with regards to our in house legal representative, our duty counsel. It's an excellent program, it works well, thank God it's federally funded. I'm not quite sure if you would need the same thing in small claims court, at this point in time."

So, a number of participants were supportive of the idea of free legal advice to small claims litigants, especially if that service was oriented toward organization and efficiency as opposed to outright advocacy.

On the other hand, some participants were opposed to the idea. One adjudicator commented, "I don't think you would save us a lot. I think they generally bring what they are supposed to bring." Here is what some other participants had to say on the issue:

> Lawyer: "I thing it's problematic if we're going to make a lawyer available to speak with people who want to go to small claims court for free, but then we're not going to make a lawyer available for free to speak with someone who has to go to Supreme Court. I think a bigger question would be, 'should Canada have some type of better legal aid in that people can go see a lawyer for anything, not just a criminal matter?' Right now, [the] legal aid system only provides legal advice or legal representation for a select group of people involved in select areas of law. If we're going to open up the availability of lawyers for small claims court for everyone, then you're kind of going down a slippery slope of where do you end it? How can you justify giving legal advice to someone who has a claim under $25,000, and you're not providing legal advice to someone who has a claims over $25,000?…The other thing is, right now if I have a claim worth $100,000 I can still go to small claims court, I just know that all I'm going to get is $25,000, and I can forego $75,000 in order to get $25,000 from whoever. You can always go to small claims court, how would you deal with that, if you're going to provide free legal advice to someone who wants to go to small claims court. Anyone could go get the free legal

advice and then say; maybe I'll bring it in Supreme Court… I'm just wondering that if there was some type of service available in small claims, that it would be abused."

Clerk: "I just think that there would be people who would try to take advantage of the situation to the extent that it would almost backlog. I don't know the parameters that would be put around it…I know I wouldn't want to be one of those lawyers who are offering that service. And then you get into the old notion of people who can afford a lawyer and choose to hire a lawyer to represent them and arguing, 'Why does this person get free service when I have to go out and pay for mine?' type scenario. I think I guess to be fair about it is if lawyer referral could maybe broaden the scope a bit to offer assistance in small claims realm as well. And that kind of puts the onus of choice in the lap of the person in terms of, 'well I like what this person had to say, I could hire a lawyer, maybe him or her,' or 'I guess I could do this on my own.' Then at least you know the person is going in with a clear conscience and making decisions based on the best information at their disposal…People come in here daily and look for…free advice. And our standard line is, 'we're not lawyers and we're here to procedurally make sure the courts run the way they should be' and of course that goes over their head and they're just right into, 'what if I do this? Would you advise I do this' and on and on it goes. I can only imagine if you actually had a lawyer there how bogged down they would become so very quickly, it wouldn't take long at all I wouldn't think."

Lawyer: "Sure, it would be of assistance, it wouldn't hurt. It becomes another one of those things that are a case by case, how much help is the individual looking for, what are the parameters the lawyers are allowed to give advice in. In terms of formatting and preparing I think that would be beneficial to a lot of lay people as it becomes a cuff, a line of where you draw of how much advice you are giving them and what type of questions are you there to answer. You could end up preparing someone's entire case for them as opposed to helping them grasping the claim. It varies, the bottom line I think it's a good idea."

Other participants raised concerns about the costs and benefits of having free legal advice available to small claims litigants:

Lawyer: "I think that makes sense. Is it cost effective? I don't know. Are people going to use it? Maybe not. I've had cases where we've had clients come in to see me about a small claims matter and go through the whole deal and document review it tell him what I think and how much it's worth and their chances and at the end of the day, I've done this on a few occasions, basically say I want you to pay me to carry this thing through…My clients and I have done the same idea where they just spend a few bucks to speak with me about a game plan essentially, and they go on by themselves in the actual hearing and whatever happens, happens. I think it seemed to help them in the end."

Lawyer: "I think that many people who are not involved in the front lines of giving day-to-day legal advice or have day to day contact with people would be surprised at the amount of free advice or spontaneous advice we give to people. I get phone calls and I

think there are many lawyers like us where someone calls from people who are adverse or old people who say, 'How do I file a defense?', or someone might call and say, 'Somebody defamed me, can I do this in small claims court?'. You get a lot, many lawyers give advice and respond to that so one of the casualties may be of having some sort of a duty counsel system… I think a lot of that when lawyers became conscious of the existence of the public legal education society. A lot of lawyers would use this society as a way to [deal with] people who had questions…rather than just saying no I won't respond or I won't spend the time, they'd say here, call these guys. I think there [might be] a drop in the amount of pro bono advice and casual advice that lawyers [are] giving. There might be a bit of a price to pay in this. Having said that, I do not think it would hurt; I think you need to be careful."

Lawyer: "If every unrepresented litigant knew that they could call a lawyer for free and run their case by them and get opinions and suggestions on procedure, content, remedy…I think it would be a definite benefit for them, but I think it would be used an awful lot. I would do it, if I was an unrepresented litigant and someone said here's a phone number and you can call him and run your case by him for free, I would do it in a minute. It would certainly be beneficial, but I think it would be cost prohibitive. Because it seems to me that the court is fairly busy, and I don't see a lot of lawyers. My expectation is that each unrepresented litigant would call that number… So I'd be wary of that. It would be good for the litigants but I don't know if it would be cost effective, or if it wouldn't end up causing more problems that, it caused. It might be nice if someone actually screened these, instead of just stamping them and giving them out. If someone was there to look at the claims as they come in to make sure they meet certain standards, that there is a cause of action statement, that there is adequate time for that trial to be heard…so if someone screened all these I guess, that had a legal background and could say, and maybe contact these people to ensure the dockets are manageable and that people do understand. And have variation on, would you have counsel available, well yeah you would, but not to you. Counsel would be available because they are looking through your application and they're going to call you and ask you how many witnesses do you have, what is it that you're alleging…. Maybe that's where legal counsel comes in as a screening system before the claims are really docketed, we'll let you know, we'll contact you and let you know… That may be where legal counsel would be better suited. Monitoring system prior to trial."

Adjudication and the Small Claims Process

Participants were generally positive about the adjudication style of Nova Scotia Small Claims proceedings. Overall, Nova Scotia Small Claims proceedings were seen as a blend of inquisitorial and adversarial justice. Adjudicators were characterized as allowing both parties to present their cases, probing where appropriate and especially with unrepresented parties:

Adjudicator: "When there's no lawyers you turn from an adversarial position, when there's lawyers where you do not get involved in the conflict between lawyers, but when there is a lawyer on one side you turn into an inquisitorial role. If have someone before me who is not represented by a lawyer, I will ask questions… I turn to an inquisitorial role versus an adversarial adjudicator."

Adjudicator: "Inevitably you have to probe, I think. The adjudicators are lawyers and if we are well trained and do our jobs properly then we should have a good nose for what the issues are and you can't expect laypeople to know what the issues are in a legal context and there will be information that will not occur to them that is relevant to a legal issue that you know that exists. So, you have to, I think, probe into what the evidence may be relating to that legal point the people may not be aware of. So, I think certainly there is an element of a more inquisitorial model of justice that would be certainly if lawyers are there, you got lawyers on either side…you just sit there and let them go. If you have a question you'll certainly ask it, but by and large you pass the responsibility for the presentation of the witnesses and the evidence to the lawyers, but I don't think you can do that sitting by yourself as an adjudicator, I think you have a responsibility to make some inquiries on legal issues."

Adjudicator: "Sometimes we have a lawyer on one side, and unrepresented on the other side. I think the lawyers understand the difficulties with that, and the adjudicators understand the difficulties with that and between us we would make sure that the unrepresented party would have a fair defense or claim… Yes, 'Do you have anything else you want to show me?' I fatefully ask that question. Like I said before, I always tell them I want them to show me everything they want me to see, so I'll say, 'is there anything else that you want to show me?' and then they'll totally pick up. That's what the lawyer and the adjudicator would do, in my experience. And if they want to raise an issue which is either irrelevant or inadmissible and there is very little that is inadmissible and the lawyer objects then we'll deal with the issue and say 'Mr. Something you can't do this for the following reason', and make them understand. As long as we level the playing field and nobody tries to put something over on someone because they are unrepresented. That doesn't happen, in my experience."

Lawyer: "My observation has been that adjudicators do not consider themselves as a sort of passive ministers of justice. They do probe people and they have developed a body of experience that allows them to know that in the main, people who appear before them, their recollection or to understand the relevancy by the people that appear before them needs to be pushed in order to get that evidence out. By its nature, it is going to vary depending on the shoe size of the person who is hearing the case. It would be a false paradise to think that everybody will receive the same exact justice measured in micrometers...The adjudicators have been pushing people to get at additional relevant information. That is a pretty clear impression I have had based on the observations I have made while sitting there or watching them trying to sort cases out."

Lawyer: "I've been in front of most of the adjudicators in that Halifax area and I think they bend over backwards to help out self represented people. In cases where there are

two lawyers involved, perhaps some of them enforce the rules of evidence a little stricter. In terms of when there is a self-represented claimant or defendant the adjudicators do a great job making it very accessible explaining the procedures to them."

Lawyer: "Adjudicators are pretty consistent for the most part and the rules are pretty loose in small claims for evidence and things like that, but in the main part, adjudicators are fairly consistent with those rules."

Lawyer: "In my experience for the most part where I'm there as a lawyer and usually there is a lawyer on the other side; the adjudicator will let the lawyers get the evidence out…For the most part they will leave it alone in my experience when there is two lawyers involved because I think the adjudicator when there is two lawyers involved is not as informal process as it generally is and they know it is our job to make sure all the stuff is before them."

Lawyer: "I find the adjudicators probe. They're like every other judge, if you haven't covered the bases and they have a query in their mind, they'll bring it up and I have no problem with that. And you always have the chance after that if anything arises out of their questions to ask further questions to fill in those blanks. Yeah I'm perfectly ok with a judge that may think that maybe an issue or an aspect didn't get covered to ask questions. I have no problem with that."

Lawyer: "I find adjudicators generally persist to the point that they recognize cross examination isn't something that a lay person is going to know so the adjudicator makes sure that is covered off. I feel they are very fair when they do it, especially when the first party is represented and the other is not. I do think it makes it comfortable for people who represent themselves. I think it is very fair in the overall process."

Lawyer: "If there are two lawyers, there the adjudicators will let the lawyers do their job. And I think if the lawyers miss something I think it's a judgment call on the adjudicator to probe as they so choose. And I think there is nothing wrong with that I think there are adjudicators who do that. With unrepresented parties the vast majorities [sic] of adjudicators do probe, I think it's fair to probe, I don't have a problem with it, I can't speak for other people, but I think it's fair to get all the cards on the table, so to speak … generally speaking, I think adjudicators do probe, whether there is a lawyer there or not. I'm kind of divided on the issue of whether they should be probing if there are 2 lawyers or 3 lawyers or all parties represented by lawyers, I think adjudicators should more often or not just sit back and let the lawyers decide the process of the matters. Similar to the real Supreme Court judges, if the adjudicator has a question that comes to mind that they think is relevant they have every right to ask and to probe."

Several lawyers commented about drawbacks and risks associated with adjudicator discretion about how the Nova Scotia Small Claims proceedings are run:

> Lawyer: "I think that another one of the hiccups with the system is that a lot of the time an adjudicator is faced with the situation where there is a lawyer on one side and a self-represented litigant on the other side. That adjudicator has to take a very proactive role, and like I said before, that's well warranted… I have no problem with and adjudicator takes a very proactive role and making sure that the self-represented litigant is properly given whatever he or she needs. But I think because they are often forced to take a proactive role in that situation that they have a tendency to take a proactive role in all situations. So I think an adjudicator should approach a situation where there are two lawyers for both sides, very differently, from how they approach a situation where there are not two lawyers for both sides. I think sometimes they go too far in what they're asking witnesses on the stand or how they are interpreting the case that's presented… I find some times they tend to be more proactive than I think they should be. I do think it's because it's the fact that in some cases, they do have to take a very proactive role and that's fine when you're dealing with self-represented litigants who need that type of guidance."
>
> Lawyer: "When people represent themselves it can become a free for all and the judge will rein it in, and I hate to see it go to that extreme. An unrepresented litigant sometimes draws more information from the judge or more assistance from the judge than they should actually get."

One lawyer expressed concern about adjudicators' qualifications:

> Lawyer: "I am not sure all the adjudicators have enough litigation experience to adjudicate… I have no idea what the screening process is for adjudicators, I am not even sure what the process is to applying, if there is an application is or whatever. I do sometimes wonder how much actual civil commercial litigation the adjudicators have. Especially now that the 25k certainly is going to increase the number of claims that come before the court, the number of defendants and the number of contested claims, and probably bring more issues that weren't before the court before and it becomes a question that if they increase the amount, they should be sure that the people adjudicating have the ability to adjudicate any potential claim that comes before them."

Possibility of a Two-tier Small Claims Process in the Future

One central theme in the interviews, one which we did not specifically ask participants about but which came up in many of the interviews, was the possibility of moving to a two-tier system in the Nova Scotia Small Claims Court based on the amount of the claim. Here are a few comments that specifically addressed this topic:

> Adjudicator: "I think what is going to happen here is that there will be 2 levels of justice, based on dollar amounts of the claim… Because of the increase of the dollar amount, we're in a situation where we have a 2 tier justice system of small claims court so

someone has to look at it with a global perspective… We don't need all the bells and whistles for a $3,000 claim as a $10,000 claim."

Adjudicator: "[Consider] a restructure for lower claims. The claims under $1k have very low cost to it, and using registered mail, or certified mail. I hardly ever see any small claims anymore, under the $1,000 area… It might be beneficial to keep lawyers out of the courtroom for claims $10,000 or less."

Lawyer: "now we're dealing with $25,000, I think there could be kind of a two-stage small claims court, and we could leave matters under $10,000 as it stands right now. If you have something, like you're dealing with an outstanding invoice, it doesn't matter, but as long as it's under $10,000, it still gives those people who want to go a quick efficient route a chance to get in front of an adjudicator quickly and get their matter dealt with, as long as it's under $10,000. I think maybe if we had a second step, where you're still in small claims court but the matter is between $10,000 and $25,000 so there is going to be some type of pretrial disclosure. I do not know specifically what that could be; maybe if you have an expert report you have to deliver it to the other side 7 days before a hearing and documents have to be disclosed 2 days before the hearing. Something like that and the hearing is recorded. If we can divided it up into two systems depending on the money amount that some of these problems would be alleviated."

Clerk: "So I guess in a two tier system I'm not referring to it in a way as a better versus a not so better but trying to hang on to some extent the flavor of what small claims court was intended to be, versus what it seems to be manifesting to. Which is another level of county court or another court where lawyers can come in and litigate substantial sums of money in a very cost effective way."

Clerk: "So it comes back to that I don't know where the province is planning to go with the small claims court, but I keep coming back to a two tier system in terms of whether it's set at a dollar value or whatever the case may be, but looking at recording in some instances. And yet to keep the same flavor of what the essence of what small claims court is supposed to be, an informal, cost effective way for Nova Scotians to come in and resolve disputes. I don't think we should lose that either, but obviously more substantial claims are going to be brought and if that's the case I think there must be more restrictions and recordings and better rules and regulations, to make sure that when we are before the small claims court we are all playing by the same rules so there isn't necessarily those inequities between represented and unrepresented parties. In one court, yet in another keeping it informal cost effective and timely way of resolving these disputes." "I guess if I needed to draw a line I guess I would be looking at under 10k. Being at the sort of lower end, informal dispute resolution, and above 10k would be held to a higher standard. I'm not saying would require representation, but maybe looking at recording, different standards in terms of procedure and what needs to be before the court, what information needs to be brought before the court. If we're talking about lawyers at that time, I guess there is going to be certain amounts of filings and what sort of standard the information should be held to and that kind of information. And that kind

of takes us to a pseudo supreme court again, but further to be down that road I guess that's what we're going to have to get a look at entertaining."

Possibility of Daytime Small Claims Hearings

Several participants commented about the fact that Nova Scotia Small Claims Court is generally held in the evening:

> Adjudicator: "Maybe $25,000 is not the end of the road. There ought to be, I think, that the mind set within the justice system, and I'm talking about the administration, the court administration, has to change. If there is a court room available on a Wednesday or a Friday and if there is an adjudicator who will come during the day and the parties want to come during the day, why can't they? It doesn't have to be an evening thing. But it seems to be, and I don't know, I can't speak for the --- the adjudicators here have a lot more logistical difficulties but it seems to me that the attitude towards the small claims court is it's kind of a adjunct, it's kind of a side. But it isn't that anymore. It might have been in the beginning when the adjudicators were practicing lawyers by day and all of sudden at 5 o'clock became an adjudicator and who ever felt like it went to court to be a clerk or whatever. I think it's becoming more a part of the mainstream of the judicial system and it should be treated as such and I'm not sure that it is being… It's not part of the main stream and it should be. If I'm sitting on a regular session and I have people before me want to have a trial and it may take 3 hours, I should be able to say, 'ok, I'm available these days can you find us a court room?' it shouldn't be, 'I can't find a clerk' the provincial court wouldn't be, 'we can't find a clerk' the provincial court would be, 'we have to find a clerk to do this' so it's not the tail wagging the dog, which is happening a little bit here. You can't have court because you can't find a clerk, that's not the right attitude. That's my biggest beef about it."
>
> Adjudicator: "I'm available to sit through the day, but they won't do that because that's not their philosophy. If the adjudicator and the parties are available, then why not?"
>
> Lawyer: "I would be interested to see if there is a way to make small claims court available during the daytime for some cases. To some extent, I think informally that is going to happen, for example, for taxation of lawyers' accounts… I would like to see a little bit of flexibility there."
>
> Lawyer: "I don't understand why small claims court is at night. I know that it is geared towards all citizens in Nova Scotia and presumably they work during the day and it gives them a chance to go during the night. But it's very problematic for not just lawyers, but other people as well to take time out of their busy schedules to attend a hearing at night. These hearings can last; I mean I've been in small claims court at 1:30am. That's silly. I do think that we should think about moving small claims court during the day. If someone wants to bring their claim badly enough, they should be able to take a day off work in order to do so. I have no idea what the reasoning is having small claims court starting at 6:00 at night. The only think I figure is that it's geared toward citizens who

likely have day jobs, therefore it gives them a chance to bring their claim in the evening and not having to worry about work getting involved, or being a problem. Work is a problem and it's not just lawyers that don't like the 6pm time, it's everyone that doesn't like the 6pm time. My clients hate the fact that they have to go to court at night, people I'm asking to come testify on behalf of my client hate the fact that I'm telling them they have to give up an evening to go to court. And not only give up an evening, they may be there until midnight. So, I don't really understand why we have a night system, and I think that should change… not everyone has a day job so a lot of the time you're dealing with people who still have to take time off work to be there from six to whenever. And the other issue with the evening is that you could be there very late. People don't like the idea of sitting in a courtroom until midnight. And I assume no one would want to be there on the weekend."

Enforcement

Some participants commented about enforcement-related issues:

Adjudicator: "Scope of the adjudicator's ability to make orders. It has no inherent jurisdiction, unlike the Supreme Court. So we are restricted on the type of orders we can make. We can't make a declaratory order, or make an order to stop somebody from doing something, or to do something. We simply have to make an order as to a monetary amount that's paid for breach [of] contract or for tort. So those would be things that could be improved upon, maybe expanding the courts ability to make orders."

Lawyer: "Securing on a judgment is very very difficult… There has to be a greater way for people to execute on those judgments. You stake your money to get a lawyer to go to court to win to get an order that is almost unexecutable. You take it to a sheriff; sheriffs don't do anything nowadays unless you tell them exactly what you're looking for and exactly where it is so, they can go and get it. It's like bank account unless they know what branch and what account number, you don't have that information, you don't get that information from people on the witness stand. It's irrelevant at that point… you can get an order that is either unexecutable or is going to cost you a tremendous amount of money to deal with it. The orders of the court have to be protected… The court should always be concerned if their judgments are being executed as they were expected, ... It would be nice if the small claims court had a clear legislative ability to deal with that. Don't make me get an order for examination [in aid of] the execution, just make me an application to drag that person back into court to read to him the order and tell him or her exactly how the order is being executed. And require them under oath to provide bank information, asset information - not only assets that they have, but assets that they have had in their control of possession. Make sure that people can't hide from these orders. Protect the winner."

Clerk: "The process from getting from point A to the end, as the judgment execution order becomes a bit of a rope for them. Once they get to the point of the order, they wonder how they get their money. Well there is a process but it doesn't always work. So

there is a weakness there in collecting the money and how the public understands it. Just because you win doesn't mean you get to collect."

Day-to-Day Operations

Many participants commented about specific aspects of day-to-day operations of the Nova Scotia Small Claims Court, often times with specific ideas for improvements. Below, comments are broken out by topic.

Serving Documents

One clerk commented on the requirement that documents be personally served: "Well I guess there are weaknesses in the way the procedures with regards to serving documents. I think that over the years we kind of evolved from registered mail to priority post to personal service or whatever." An adjudicator expressed similar concerns about the costs associated with making a claim:

> Adjudicator: "that some of the procedure required to start a claim are expensive for people, such as having to personally serve documents on the defendant, rather than registered mail, which it used to be… I think that if you had for levels of monetary amounts for say $5,000 or $10,000 or less, registered mail would be sufficient. It's too expensive for people and in my view not necessary. If the adjudicator is concerned that the person is not served that way, then they can deal with it by having personal service ordered on the person, but in most cases, you get a registered signature of the person accepting the mail, that's it. Or you can send by courier or certified mail or something like that, but going through personal service is very expensive."

Scheduling & Adjournments

Several participants commented about potential benefits that would arise from additional protocol regarding processes for scheduling cases and allowing for adjournments.

> Lawyer: "Since the speed is so quick in small claims court you might get a file and it may be going to court in 2 or 3 weeks time. A lot of the time that's not enough time to do your investigations, prepping of witnesses, speaking to people, things like that. Unless the other counsel or the other parties consent to it, you have to attend the court to get an adjournment. Which if it's in Kentville, or Sydney it means me traveling down there and speaking for 5 minutes and generally getting an adjournment, because it's the first adjournment. So I'd like there to be a process where, at least for adjournments, perhaps

some written submissions or a letter to the clerk of the court and the clerk have the power to grant an adjournment. It would save a lot of time and effort…In terms of first adjournments, I'm dealing with a situation right now where I have a hearing scheduled for Tuesday. I just got the file and I'm looking for adjournment and the lawyer on the other side is at this point not willing to grant it to me because his clients say that they will only be available on that date. Generally in Nova Scotia you'll get your first adjournment. Now this hearing is being held in Sydney so I'm forced with going to Sydney, or hiring counsel in Sydney having them attend court, argue for adjournment and hopefully, or most likely get it. It costs a lot of time and money involved and it might cost $700 or $800 and plus 4 or 5 hours getting there and doing this. It's a lot of money. So I think that if the clerks in small claims court had some sort of power in which to ask for some representations to be written or a letter from each lawyer so they could rule on it, that would be great."

Clerk: "Probably the case management and the scheduling is probably something that we need to maybe review and see if there's a better process to alleviate those issues. We recently did have a decision from Justice Warner, who incidentally is our Supreme Court justice here, in which a decision that came down from the Supreme Court on an appeal that defenses now should be afforded a 20 day period to file, rather than 10 days. So in practice across the province we have started doing that, using the 20 days to file a defense as opposed to the 10 days. Those sorts of things, the act itself hasn't been amended to reflect the decision of the Supreme Court. That practice has been adopted right across the province because of that decision. So just little things like that, there are always little hurdles that staff have to be aware of and to insure that practice is being followed."

Defenses and Other Comments About Forms

Many participants commented about common problems related to the necessity that respondents file a defense with the court. Participants noted that some of these problems may stem from issues with the forms themselves (see also the following section), but other comments were more general.

Lawyer: "I know a lot of the times in my own cases when I'm sitting there waiting to be heard you get some self represented people coming in on the date of their hearing saying, "I'm here for my defense" and the adjudicator tells them that they didn't file a defense, and they thought that this was their defense, they thought they had to come there to do it. It's very clear; it's written on the notice of claim form what to do. A lot of time, some of the self represented people, particularly the uneducated, and people who aren't used to dealing with legal matters…they don't know the processing and make mistakes but the adjudicators are fairly understanding. So as a lawyer, I think the forms are fairly easy; I deal with them all the time. I can't really speak as to what self-represented people think of the matter."

Lawyer: "The annoying part about it is that they will bend over backwards to let them have their day in court regardless whether or not there was a real reason why they were late, or regardless of whether or not there is a real defense, sometimes it appears there isn't a real defense…The adjudicator has the jurisdiction to make the quick judgment but I wish they would be consistent with it across the board."

Clerk: "The part that is not as user friendly…is the middle part that is the information for the defendant. So often, people are not reading that information block that explains to them if they are filing a defense or they are contesting the matter you must file a defense and counter claim. Still we are having people who are seeing the court date and are just showing up without completion of that part that they are contesting the matter. "

Lawyer: "Costs. No defense, seek an adjournment. $250 or $300. That's what it will cost. And state this clearly on the form, 'if you do not file a defense to this claim there will be costs issued against you, by the discretion of the court in the amount of…' in big black letters. It would be fine for an adjournment, but it can't be at the expense of my client. Or anybody that's standing there saying, well I'm ready for trial. No defense filed, inherently the court could say, 'well you lose'. I appreciate why they don't want to do that, but it's another thing to say we'll adjourn it and too bad for everybody. Or I can adjourn it and it will cost you $300, do you want me to adjourn it."

Adjudicator: "The form is too cumbersome for the information trying to convey it's the wrong size so it's too hard to file, it's made of the wrong type of paper so it's difficult to write on, the explanation of the claim space is too short, so people cannot elaborate on the basis for their claim. It was fine when the claim for $2,000 when Mr. Smith owed Mr. Jones $2,000 but it is not fine for $25,000. It also fails to draw to the attention to the defendant that they have a positive obligation to file a statement of defense… in claims for liquidated damages a lot of defendants show up in court at the appointed time only to find out the judgment has already been rendered against them."

Adjudicator: "maybe a layperson in there dealing with forms with smaller claims. The way I look at something and the way a layperson looks at something are different. For example, an unusual number of defenses are never filed, and it says right there on the form that if you don't file a defense within 10 days you will have a quick judgment filed against you. Why is that they don't file it and they show up to court and they want to defend it? The answer is that it's not because they're stupid, it's because there is a problem with the form."

Lawyer: "I think the forms are straight forward, and easy to follow. I do think that better explanation needs to be given to self-represented litigants in terms of what they should be putting into the pleading boxes. Right now, the form has three lines that says, 'Tell me what your claim is'. It's the same with the defense, if you're served with a defense, so if you're served with a defense you're given two or three lines. I think with a self-represented litigant they look at those three lines and they think that as long as I can fill those three lines that's all I need to provide. There is this little statement at the end that says that if you need extra space to attach a sheet. But I think that the fact that only three

lines are given and the statement says if you need extra space, they think if they fill those three lines, they're good. Most of the times the pleadings are very deficient in small claims court because people aren't putting enough information in them. Often times a claimant will put, 'I want this much money because they didn't pay their bill'. It would be nice to know what bill they are talking about, what timeframe they're talking about. I think either if they had a better description of what should go in the claim or more space where people would then feel that they should put more information."

Adjudicator: "I think the forms could be modified a little bit to make it more clearly to them that you MUST file a defense or what you must do…If it says on the form 'to the defendant: you have been served notice of this claim, you have the following course of action 1. Do nothing, which case judgment will be entered, 2. File a defense, that which you must do within a certain time.' Then it's even more clear to them that they know what do I do? I have this piece of paper what do I do now? And it says up front you can do this or this or this. That might help."

Staff-related issues

Participants were generally very complimentary of the Nova Scotia Small Claims Court staff. It seems clear that the staff is very highly regarded and that their work is greatly appreciated. Positive comments were too numerous to include all of them here.

Adjudicator: "They give good advice, helpful advice, they give great guidance to people who are not sure about the process they are helpful to the adjudicators who go into those jurisdictions and deal with those cases on an ad hoc basis of maybe certain people or certain lays of the land. They add quite significantly in my view to the development of the small claims court in that they can sense development problems and make recommendations to avoid those problems."

Adjudicator: "Unbelievable, unbelievable the talent that is out there servicing the public. Every jurisdiction that I've been in…all over Nova Scotia I've just noticed unbelievable professionalism. They are very conscious of their role not to give out legal advice but to give good direction. Just amazing, just amazes me how good they are, every place I've been in."

There were also some critical comments and suggestions about staff:

Adjudicator: "The weaknesses I have found personally are within the support system, the court administration…She called me last week on Monday and asked me to sit on Wednesday night, no problem for me…we are starting to get backed up now in [one jurisdiction], so I posed the question to the clerk who normally sits with me, 'can we have some extra sittings?' and said she can't, and the other girl is off sick. These are her words, 'none of the other JO2's are interested in doing it'. Now if you're a JO2, that's your classification, part of your job description is small claims court. There seems to be

this attitude, at least in [one jurisdiction], that small claims court is not really a part of the system, it's something we do on the side as a favor to people. And so I'm available to sit, and probably the courtroom is available, but we can't get clerks to come. So things are backing up. I think that's sad… Those JO2's are going to have to be told. Small claims court is a part of your responsibility. You don't have the right to say I'm not interested; I don't want to do it. I know it's an evening job, and I don't know what the compensation is for them; I think they get time off in June or something. But it has to be taken more seriously I think is the point… And I think the increase in jurisdiction to $25,000 we'll have more and more cases. Some of which will involve lawyers much more than they have in the past, and they will be much longer. You can't get 2 lawyers in court and deal with the whole thing in an hour; it's not the nature of the beast. They'll take longer to litigate something, so we will need more time. And if we need more time we will need the support staff to be there, so we have to educate them that this is a responsibility they have and this has got to be done."

Clerk: "One of the things I have noted when I walked into the position here is that staff is not always prepared… it really extends to a training issue I guess. Often times people are simply put into positions without a whole lot of insider background training and left to kind of fend for themselves the best they can. I guess what I do sense or see on occasion, is frustration perhaps on the part of staff. Not so much on what they're dealing with or who they're dealing with but they just don't have the answers or the information to answer what comes across them on a daily basis and that can certainly come across as uncourteous or unprofessional or however somebody may describe that behavior."

Other comments

There were a number of additional areas of interest in participant interviews, including general comments about the system, as well as suggestions for future improvements:

Adjudicator: "[The Nova Scotia Small Claims Court system] is in danger of collapsing under its own weight because of the demand[s]of which are being placed on the court, they are becoming more complex they're becoming longer, they often times have lawyers where historically it was unaware [sic] that the small claims court had a lawyer. The inclusion of factors such as the residential tenancy appeals means somebody's residence is hanging in the balance sometimes. The inclusion of taxation, means the adjudicators who [are] sitting part time are only being paid for the time they are spending in court can be called upon to decide matters that are worth hundreds of thousands of dollars… I'm concerned that unless we create processes which are consistent to the increase in our monetary limit to $25,000 what's going to happen is the system is no longer going to work and the adjudicators who are supposed to be independent will appear less independent, and the people who really have to rely on the small claims system because their case is small or they can't afford a lawyer or they want to do it themselves, won't have that option anymore. So that's why I say the system is at risk of collapsing under its own weight."

Adjudicator: "with the increase of the dollar amount and the addition of residential tenancy appeals has moved away from what it was originally set up to do, which is quick and dirty justice on low end claims, because when small claims court initially started out, the dollar amount was only three thousand dollars, now we are up to [$25,000]…. The structural and procedural supports are not in place to provide the appropriate level of process for claims in the range we are hearing or starting to hear. The rules of disclosure are not precisely set out enough for [more complicated] types of claims... I was in a 2.5-3 day hearing last year and if you're sitting taking notes for 3 days on a civil matter you don't have court reporter to handle the exhibits, over 20, and you don't have recorded proceedings, it's kind of difficult to actually sit down and review the evidence and your notes to figure out what happened. So, those are just examples of the lack of procedural and structural support as a result of the increase in the dollar amount so we have a system meant to deal with a go kart and what we are dealing with is a Corolla."

Adjudicator: "I always thought it might be interesting to have that exposure on [cable television] or something like that where you have people [able] to actually see a court proceeding. I know there would be problems with it because there would be people who did not want their faces shown on TV. They would have to agree to it all, but it would be informative, that's for sure. People would see how it's done, it would be a great access to justice. There would be a lot of people who would say sure lets go with it. I wonder how that one will fly with everyone if they ever hear about it."

Clerk: "I think they should have a video on that, I think there should be something the public, not to go to court, but maybe online they should sort of have something that someone could watch. A case in action even if it was fake that might be helpful. I think if the court had something like that, you could download and view. That should be something that should be looked at. But I don't know about the costs…. They should show a case with an adjudicator and they should have a self-litigant presenting their case and a defendant and a claimant, and they should show one with a lawyer involved…. I think if it were online, it would be more accessible to the public. Just like the interactive forms, but this time just a video "

Appeals-related

Adjudicator: "that we have an appeal division of the small claims court that would allow matters to be heard by people familiar with the small claims court system and not to have the concern go on the Supreme Court when they're concerned about recordings and things like that."

Adjudicator: "General damages are limited to $100. I think those damages could be increased…for the court to award and that would resolve a number of areas which are problematic such as motor vehicle accidents and so on, for people… I think general damages are too low for small claims court."

Adjudicator: "Some of the decisions of the Supreme Court, and I do not want to get into all of them today, but some of them seem to cause uncertainty on what they are expecting

the court to do. They want to have recorded evidence or recorded records but right now, there are no tapes or discs being produced and that is kind of a Supreme Court problem, and it is also a problem from them sending back decisions to the small claims court. Quite often, they will just fill out a form that says, 'return this for a new hearing', or 'appeal dismissed'. No real reason given."

Adjudicator: "There is no process where I get back a copy of the decision of the justice of the Supreme Court. And that would be a very valuable tool for me… There were in the law news last month two small claims court decisions cited that I couldn't get. I had to call the barristers library and she was able to guide me to get one, but I still haven't been able to get the other one. So maybe the small claims court website would have those on, I don't know."

Various/assorted

Lawyer: "Another thing, a couple of years ago, I had no involvement in it, but there was a mediation pilot project being started by the small claims court here. I'm not sure if it was a mandatory thing or not and I don't think it really got off the ground. But I think some type of mediation before the actual hearing would be good, a lot of cases would be settled. Especially with self represented claimants and defendants. A lot of times if they could just sit down with the adjudicator beforehand and talk it out and get to know the strengths and weaknesses towards their cases. Perhaps it could be very beneficial towards settlement before actually going to a hearing… An adjudicator could do it, or as with mediations with Supreme Court case, there are mediators around the city here that do mediations that you hire privately. Perhaps somebody appointed by the court, maybe another adjudicator could do it. Younger lawyers, or midlevel lawyers who are looking to get involved in the mediation process it would be an excellent starting point for them to be able to get calls from the small claims court and hone their skills and help out the self represented people as well… It could be mandatory mediation, or something claimants or defendants could choose. I'm not 100% sure but I think that Prince Edward Island small claims court has a mandatory mediation process and I think it's been fairly successful for them."

Adjudicator: "It needs better publication of what the rules are, it needs a better website, it has to replace trained people from within the administrative hierarchy to attrition or retirement or being lost. It's got to pay the adjudicators more money. It's got to provide a system so that the hearings could be taped or digitally stored so that the information can be retrieved, and it's got to provide a system of access so you can go and obtain a copy of the tape or disc or at least listen to the evidence and to the arguments that were made. It also has to provide a system of enforcement, because there is a question now about what happens when adjudicators make an order, that they can force the order or whether somebody has small claims court order seeking enforcement provisions has to go through the Supreme Court of Nova Scotia and effectively start all over again."

Adjudicator: "One of the things that have been problematic in the past is that an adjudicator has been appointed for the area in which they practice law. In small towns, to

me, that is problematic, particularly in small towns. Because they are dealing with their colleagues on a daily basis and people realize that. Then they are coming in and if a lawyer, representing one side or another, and they are not being represented by a counsel, they feel they are at a disadvantage, or there is at least a smell of bias there. That is problematic in my view… My recommendation would be to appoint an adjudicator that is not from the area… In a small town like Yarmouth, you know everyone very well and the parties know that."

Adjudicator: "Another problem is that from an adjudicator's perspective, there are no resources made available. You have to pay for things on your own, your Quick Law, your research has to be paid for on your own. There is no adjustment for expenses that you incurred. If you write decisions up there is no allowance for those things in terms of monetary allowance. It becomes problematic particularly when I would say, four hours of reading versus one hour of court. If you are not being paid, there is sloppy work in some of the decisions, frankly… My recommendation would be that the Department of Justice ensures that all adjudicators have access to QuickLaw, to make it easy…Whatever it takes to give adjudicators access to research material if necessary."

Adjudicator: "The legislation I think is another barrier and I think it has to be reformed and cleaned up. We are now dealing with a statutory court, but they're now dealing with landlord tenancy appeals and taxation matters. So you're sort of throwing everything into one sort of act, and I think some assistance might be, I think it might be a problem. In this sense, people aren't sure what the jurisdictional issue was with respect to taxation. It's clear to some that the taxation that monetary jurisdiction was unlimited but not clear to others, or adjudicators and counsel too, so that's a problem. There is a fair amount thrown on the backs of the adjudicators."

Lawyer: "I think people had an opportunity to get used to at least some idea of the increase to $25,000 and I think the system has worked well enough, at least in my perception that people have grown into confidence with it. A couple of reservations about it; if there's a lot of monetary jurisdiction of $25,000 that means we're starting to get into some depth of consideration of legal issues, some need for quality of consideration for legal issues in contract and commercial matters and stuff like that. And it means we're going to get into some responsibility you know; I mean for an individual litigant, including me, $25,000 is a pretty big hunk of change. If that's so, if we have that degree of confidence in small claims court, as I think it is, it seems to being worn out, it leads me to 2 more conclusions; one, we should place faith in adjudicators to be able to award general damages above 100 dollars; and two, I think it's a situation where the government itself should be making it subject to adjudication in small claims court. If we're going to say we're going to trust an adjudicator to award up to $25,000 of damages in a breach of contract case, then there is no reason not to make an award of up to $25,000 in a personal injury case where the processes are the same. In contract you're applying principles to damages to individual litigants to circumstances where there's been a breach to be made whole. There's no reason why, in my opinion, you shouldn't be able to trust an adjudicator to award up to $25,000 in the case of general damages to personal injury. There is a real risk, you'd see a lot more claims in small claims court, but

by making those damages available, you'd see insurers in personal injury cases more responsive generally to smaller claims and the countervailing protection to insurers right now in terms of what can be claimed for by way of general damages and personal injury cases with respect to government. It's the only litigant who has carved out protection for itself in small claims court and there are certain cases because of government negligence people have suffered losses and are stuck in a Supreme Court process and all of the burden that comes with that, and I think it bears consideration that the province should be subject to small claims jurisdiction as well. If people suffer in the most common area we see, injury, that might be a candidate for small claims court…could be a case of government negligence to personal injury. But I could see it coming in more complicated areas, such as areas of so-called regulatory negligence where the government policy wasn't carried out and people suffered loss. You need to think about that carefully before you put that in play, but if small claims' primary function is to give people access to justice, the more access the better."

Adjudicator: "Also what's happening now is that collection agencies are coming to small claims court and sometimes they can be difficult to deal with because they present their claims in a quasi-legal fashion as agent or client. And they're coming in and I usually give them a hard time. They have this approach that, "I'm the collection agent, and you should just stamp it and give it to me"… I make them pave every aspect of their case, because I know they're in there for their own commission and sometimes they think that small claims court is a kind of tool they have to bang somebody over the head but they don't always have their i's dotted and their t's crossed. They don't have their claim put together properly."

Lawyer: "I don't know what the perception of the litigants in the small claims court process is, but the closer you allow the process to come to approximate ideal justice the better it is for everyone, it's certainly better for public perception of administrative justice. So if in the right circumstances people feel that as a result of access to pretrial information, if they've had reasonable access to it, then I think the ultimate outcome in terms of confidence in the system will outweigh the cost."

Clerk: "One of the weaknesses I guess from my own observations and experiences with it is minor discrepancies or inconsistencies I guess in how it is actually administered from one jurisdiction to another…The only other weakness that I can find is, I guess its our own fault, but the lack of consistency in terms of how the parties are dealt with. Some times people are given more benefit of the doubt. It's so subjective from one adjudicator to another but how people might be dealt with in one respect, for example a quick claim application one adjudicator might allow a defendant somewhere down the line to have his case heard despite having a quick claim filed against them. In another jurisdiction, he would not. So maybe some consistencies that way and I guess some guidance for adjudicators or maybe us as administrators in terms of how to deal with that."

Lawyer: "And informal I guess you know you're always concerned about that in law, how you do these things informally. That's one of my main concerns is that it doesn't become too informal. Because it's meant to get to the truth and there are rules that drive

us to the truth. If you circumvent those rules, you might not be getting to the truth. So informal is a concern."

Adjudicator: "I don't think in a final analysis that it's something that's complicated and my big concern is that if you leave it to the judges and the lawyers they can screw this up and that's what I worry about…. [if there were] a host of rules that we have to abide by, then the black arts of the legal profession become more and more important in small claims court and the ability for laypeople to come in and contend with this stuff is greatly reduced. And you know you can destroy the process by making it so legalistic and so encumbered procedurally that it's no longer a small claims court."

IV. Phase II: Survey of Small Claims Litigants

Below is a report about the survey data from Nova Scotia Small Claims Court users. The report focuses on quantitative data, as well as a qualitative analysis of the open-ended response items. Refer to the survey instrument (Appendix A) for open-ended response fields (e.g., any place where the survey allowed for an 'other' response option included open-ended fields for explanation).

Phase II Method

Participants

Based on records that were received from the Nova Scotia Department of Justice regarding litigants in the Nova Scotia Small Claims Court, mailings were made to approximately 2,500 individuals beginning in early November, 2007. The mail-out was phased gradually over a period of several weeks. Approximately 500 surveys were returned as undeliverable. Returned surveys were recycled and mailed out to new potential participants. In sum, approximately 3,000 surveys were mailed, with 2,500 having apparently reached the intended recipients. Potential participants were mostly individuals who had been involved in a small claims matter during the 2006-2007 fiscal year, and some potential participants were identified from the latter part of

2005-2006 fiscal year when the 2006-2007 list had been exhausted. Responses were received from 254 individuals, yielding a response rate of about 10%.

Survey and Cover Letter

Potential participants were informed of the nature of the study, a collaborative research partnership between the Nova Scotia Law Reform Commission and Saint Mary's University, in an information letter. The letter was accompanied by a 3-page (double-sided) survey instrument (see Appendix A), a pre-paid return envelope, and a small incentive to participate in the survey: a 'thank you' refrigerator magnet with Saint Mary's University and Nova Scotia Law Reform Commission logos.

Phase II Results

Participants

Table 10 summarizes participant demographics. Participants were 61.9% male (n = 133) and 38.1% female (n = 82) (39 participants chose not to report their gender). There was a wide distribution of age represented in the sample. Of participants who chose to report their exact age (n = 182), the mean age was 52 years (SD = 13.3). The sample included participants from a variety of income levels, with more than half of the sample reporting an annual household income between $35,000 and $99,999; the modal annual household income was between $50,000 and $99,999 (34%, n = 71). Table 11 illustrates the representation of participants broken out by county/jurisdiction. A little more than half of the litigants were from Halifax County, with the remaining participants spread fairly evenly across the rest of the province.

Table 10. Summary of participant demographics.

	Valid Percentage	(n)	Missing (not reported)
Sex			39
Male	61.9%	(133)	
Female	38.1%	(82)	
Age Range			38
Under 25	.5%	(1)	
25 – 30	5.1%	(11)	
30 - 35	6.5%	(14)	
35 – 40	6.9%	(15)	
40 – 45	16.2%	(35)	
45 – 50	12.5%	(27)	
50 – 55	15.3%	(33)	
55 – 60	10.6%	(23)	
60- 65	10.2%	(22)	
65 and above	16.2%	(35)	
Ethnicity			54
Aboriginal Canadian	5%	(10)	
Caucasian	89.5%	(179)	
Black	1.5%	(3)	
Other	4.0%	(8)	
Annual Household Income			45
under $12,000	3.8%	(8)	
$12,001 - $24,999	8.1%	(17)	
$25,000 - $34,999	11.0%	(23)	
$35,000 - $49,999	20.6%	(43)	
$50,000 - $99,999	34.0%	(71)	
$100,000 - $149,999	12.9%	(27)	
$150,000 or more	9.6%	(20)	
Number of People in Household			
1	16.3%	(29)	
2	46.6%	(83)	
3	14.0%	(25)	
4	14.6%	(26)	
5	5.1%	(9)	
6 or more	3.4%	(6)	

Table 11. Participant representation broken out by County/jurisdiction.

County/Jurisdiction	% of Participants (n)
Annapolis County	2.7% (7)
Digby County	2.0% (5)
Antigonish & Guysborough Counties	1.2% (3)
Cape Breton & Victoria Counties	7.5% (19)
Inverness & Richmond Counties	0.8% (2)
Colchester County & Hants East	2.0% (5)
Cumberland County	2.7% (7)
Halifax Regional Municipality	51.4% (131)
Kings County & Hants West	8.6% (22)
Lunenberg & Queens Counties	3.9% (16)
Pictou County	6.3% (16)
Yarmouth & Shelburne Counties	4.7% (12)

Note. County/jurisdiction data were missing from 6.3% of participants (n = 16).

About three quarters of the participants were claimants, n = 198 (20.8% were defendants, n = 53). More than 90% of participants attempted to settle their claim before going to the Small Claims Court, and claimants were more likely than defendants to make an attempt to settle before going to the Small Claims Court, see Table 12. The amount of the reported claim ranged from $160 to $43,000, with a mean of $5,487 (SD = $6,499) and a median of $3,000. The most common means of learning about the Nova Scotia Small Claims Court was from a lawyer or through friends or family, see Table 13. Almost three quarters of participants filed their claim or defense in person, see Table 14. Table 15 presents participants' arrangements in order to get their claim or defense filed. On a seven-point bipolar scale ranging from "Not at all Convenient' (1) to "Very Convenient" (7), the mean rating of convenience to file a claim or defense was 4.9 (SD = 1.8). Of participants identifying themselves as defendants, 88.7% (n = 47) indicated that they felt they had enough time to prepare their defense. More than half of respondents who filed in person (n = 190) reported that it took less than half an hour to file their claim or defense at the courthouse (53.2%, n = 101), see Table 16.

Table 12. Attempts to settle claim before going to the Small Claims Court.

Attempts to Settle	*Yes (checked)*	*No (not checked)*
Overall (attempted at least one method)	90.2% (n = 230)	9.0% (n = 23)
Claimants	94.9% (n = 188)	5.1% (n = 10)
Defendants	75.5% (n = 40)	24.5% (n = 13)
Ways of Attempting to Settle		
Wrote to the person/company involved	42.7% (n = 108)	57.3% (n = 145)
Talked to the person/company involved	77.1% (n = 195)	22.9% (n = 58)
Other	19.8% (n = 50)	80.2% (n = 203)

Note. Percentages that do not add up to 100% are explained by missing data, and percentages that add up to greater than 100% (ways of settling) result from multiple responses. Claimants were significantly more likely to try and settle the claim before going to the Small Claims Court, χ^2 (1) = 19.05, $p < .001$.

Table 13. Ways that participants learned about the Nova Scotia Small Claims Court.

Way of learning about Small Claims	*% of Participants (n)*
Legal Information Pamphlet	12.9% (n = 32)
Legal Aid	1.2% (n = 3)
Small Claims Court Website	16.9% (n = 42)
Courthouse staff	15.7% (n = 39)
Family or friends	31.9% (n = 79)
Lawyer	35.6% (n = 88)
Other	27.8% (n = 69)

Note. Percentages add up to greater than 100% because participants were able to check multiple responses.

Table 14. Ways that participants filed their claim or defense.

Way of filing	*% of Participants (n)*
In person	74.5% (n = 190)
Online via the internet	1.2% (n = 3)
Through a lawyer	15.7% (n = 40)
Other	6.7% (n = 17)

Note. Percentages do not add up to 100% due to missing data.

Table 15. Participant arrangements in order to get their claim or defense filed.

Item	*% of Participants (n)*
Took time off from work	34.4% (n = 85)
Went after work	16.3% (n = 40)
Went during lunch break	8.5% (n = 21)
Went during holiday or day off	10.2% (n = 25)
Had to arrange child care while I went to court	6.9% (n = 17)
Other	33.7% (n = 83)

Note. Percentages add up to greater than 100% because participants were able to check multiple responses.

Table 16. Time at the courthouse to file claim or defense (for those filing in person, n = 190).

Amount of time at the Courthouse	*% of Participants (n)*
Less than half hour	53.2% (n = 101)
Less than one hour	34.7% (n = 66)
More than one hour	7.9% (n = 15)
Other	2.2% (n = 4)

Note. Percentages do not add up to 100% due to missing data.

We asked participants to place a dollar amount on the cost to handle their claim or defence, aside from fees. Participant responses on this item ranged from $1 to $12,000, with a median response of $100, and a mean of $553 (SD = $1,503). More than half of participants

reported having gone to someone more knowledgeable to help with their case: 56.1% (n = 143), see Table 17 for a breakdown.

Table 17. Participant case consultations with more knowledgeable others among participants reporting they had sought assistance (56.1%, n = 143), and among all participants.

Response Category	*% of Participants Who Sought Assistance (n)*	*% of All Participants*
My lawyer filed the claim or defence	29.4% (n = 42)	17.6%
My lawyer represented me at the hearing.	18.9% (n = 27)	11.8%
My lawyer told me how to handle the matter myself	31.5% (n = 45)	18.0%
My lawyer was a Legal Aid employee	1.4% (n = 2)	0.8%
A paralegal helped me	2.8% (n = 4)	1.6%
Court staff advised me on how to handle the matter	28.7% (n = 41)	26.1%
An experienced friend gave me information on how to handle the matter	25.9% (n = 37)	16.1%
Other	9.8% (n = 14)	8.6%

Note. Percentages add up to greater than 100% because participants were able to check multiple responses.

Participants made several ratings about the involvement of lawyers in Small Claims on seven-point bipolar scales ranging from “Do not at all agree” (1) to “Completely agree” (7), see Table 18. The consensus seems to have been that lawyers helped to make the process easier, though ratings on the cost/value of lawyers were modest.

Table 18. Participant ratings about lawyer involvement in the proceedings (responses ranged from 1 = 'Do not at all agree' to 7 = 'Completely agree').

Survey Question	*Mean*	*SD*	*n*
The lawyer(s) made the process easier.	5.4	2.1	88
The lawyer(s) slowed down the process.	3.1	2.0	78
Having a lawyer was worth the cost. (if applicable)	4.7	2.4	69

The modal amount of time between when a dispute started until a claim was filed was more than 3 months, and almost three quarters of claims were settled or decided in less than 3 months after filing, see Table 19.

Table 19. Time-to-filing from the start of the dispute and time-to-settlement or decision following filing.

	Time-to-filing from start of dispute	*Time-to-settlement or decision after filing*
Less than 2 weeks	5.1% (n = 13)	5.1% (n = 13)
Between 2 weeks and a month	12.5% (n = 32)	16.1% (n = 41)
Between 1 and 2 months	16.9% (n = 43)	25.5% (n = 65)
Between 2 and 3 months	19.2% (n = 49)	21.6 % (n = 55)
More than 3 months	32.5% (n = 83)	25.5% (n = 65)

Note. Percentages do not add up to 100% due to missing data (and "don't know/don't remember" responses).

Most participants reported that their cases went to a hearing (78.4%, n = 200), see Tables 20 and 21. Less than twenty percent of participants reported waiting about two hours or more for their hearing. About two thirds of participants' hearings were reported to have lasted an hour or less; about a third of participants' hearings were reported to have lasted more than an hour, see Table 22. The vast majority of hearings were in the evening (88.5%, n = 23), while a little more than ten percent of cases were held during business hours (11.5%, n = 23). A fraction of participants whose hearings were in the evening reported that it would have been more convenient to attend during business hours (10.7%, n = 19), while the vast majority said that business hours hearing would not have been more convenient (86.4%, n = 153). Overall

convenience ratings for attending hearings on a seven-point scale were high, M = 4.9, SD = 1.9 (1 = 'Not at all convenient' to 7 = 'Very convenient').

Table 20. Participant arrangements in order to attend a Small Claims Court hearing (among the 200 participants who reported that their case went to a hearing).

Item	*% of Participants (n)*
Took time off from work	38.0% (n = 38)
Went after work	54.5% (n = 108)
Went during lunch break	0.5% (n = 1)
Went during holiday or day off	3.0% (n = 6)
Had to arrange child care while I went to court	10.0% (n = 20)
Other	23.5% (n = 47)

Note. Percentages add up to greater than 100% because participants were able to check multiple responses.

Table 21. Waiting time on the scheduled day of the hearing (among the 200 participants who reported that their case went to a hearing).

	Percentage of participants (n)
Less than half an hour	28.0% (n = 56)
Less than one hour	23.5% (n = 47)
About one hour	28.0% (n = 56)
About 2 hours	11.5% (n = 23)
More than 2 hours	5.5% (n = 11)

Note. Percentages do not add up to 100% due to missing data.

Table 22. Length of the hearing (among the 200 participants who reported that their case went to a hearing).

	Percentage of participants (n)
Less than five minutes	4.0% (n = 8)
Less than 15 minutes	15.0% (n = 30)
Less than half an hour	13.5% (n = 27)
½ hour to an hour	34.5% (n = 69)
More than an hour	31.0% (n = 62)

Note. Percentages do not add up to 100% due to missing data.

Thirty eight percent of those whose case went to a hearing had at least one adjournment (n = 76), with 32 participants reporting more than one adjournment. See Table 23 for reasons for adjournment. Of the 215 participants who responded about the outcome of the case, 72.6% indicated they had won (n = 156). The average amount of money that claimants indicated having won was $4,139 (SD = 5,555), the median amount was $2,000, and the modal amount was $1,000 (n = 119). Table 24 presents additional details about case outcomes.

Table 23. Reasons for adjournment (among the 76 participants who reported that their case went to a hearing and was adjourned at least once).

Reason for Adjournment	*% of Participants (n)*
Lawyer(s) schedule(s)	17.1% (n = 13)
Adjudicator's schedule	15.8% (n = 12)
A party was not present	36.8% (n = 28)
Jurisdiction issue	1.3% (n = 1)
Insufficient time	10.5% (n = 8)
Witness availability	13.2% (n = 10)
Staff schedule(s)	3.9% (n = 3)
Availability of documents	15.8% (n = 12)
Complexity	6.6% (n = 5)
Other	25.0% (n = 19)

Note. Percentages add up to greater than 100% because participants were able to check multiple responses.

Table 24. Participant responses pertaining to the outcome of the claim or defense.

	% of Participants (n)
After I made the claim, the other party offered to settle, and I accepted.	9.8% (n = 25)
I won the case because the other party didn't show up in court.	21.3% (n = 34)
I dropped the case on my own	3.1% (n = 8)
The other party had the matter moved to a higher court	1.6% (n = 4)
I had the matter moved to a higher court	1.6% (n = 4)
The matter was handled in another court because the Small Claims Court did not have jurisdiction	0.8% (n = 2)
Other	24.7% (n = 63)

Note. Percentages add up to greater than 100% because participants were able to check multiple responses.

Of participants who had their claim or defense heard by an adjudicator (n = 200), 42% reported that the adjudicator announced the decision immediately (n = 84); 56% (n = 112) reported that the adjudicator mailed them a written decision (21 of participants indicated 'other' in this series of questions regarding the adjudicator's announcement of the decision). Table 25 presents data on participants' perceptions about the adjudicator's decision. Table 26 presents overall participant ratings of the Nova Scotia Small Claims Court, and Table 27 presents participant ratings of the Nova Scotia Small Claims Court in terms of organizational justice principles.

Table 25. Participant ratings about adjudicator decisions (responses ranged from 1 = 'Not at all' to 7 = 'Completely').

Survey Question	*Mean*	*SD*	*n*
I could easily understand the adjudicator's decision.	5.6	2.1	181
I could easily understand the reasons for his/her decision.	5.3	2.2	181
The adjudicator's decision was fair.	4.9	2.4	181
I felt the adjudicator understood my position.	5.3	2.2	178
I was satisfied with the adjudicator's decision.	4.7	2.5	183
I thought the adjudicator's decision was reasonable.	4.9	2.4	183

Table 26. Participant ratings of the Nova Scotia Small Claims Court (responses ranged from 1 = 'Do not agree at all' to 7 = 'Completely agree').

Survey Question	*Mean*	*SD*	*n*
The Nova Scotia Small Claims Court provides an easy way to access justice.	4.9	2.0	238
The Nova Scotia Small Claims Court provides an informal way to access justice.	5.1	1.8	234
The Nova Scotia Small Claims Court provides a quick way to access justice.	4.6	1.9	235
The Nova Scotia Small Claims Court provides an affordable way to access justice.	4.9	1.9	237
On the whole, I was treated fairly by the Nova Scotia Small Claims Court.	5.3	2.1	236
The staff at the Nova Scotia Small Claims Court were polite to me.	6.0	1.5	235
The staff at the Nova Scotia Small Claims Court were professional with me.	6.0	1.6	234
The Nova Scotia Small Claims Court forms were easy to use.	5.5	1.5	228
Having a lawyer is necessary in order to ensure a fair outcome in the Nova Scotia Small Claims Court.	3.6	2.4	231

Note. Emphasis in original survey questions.

Table 27. Participant ratings of the Nova Scotia Small Claims Court in terms of organizational justice principles (responses ranged from 1 = 'To a small extent' to 7 = 'To a large extent').

Survey Questions about procedure	*Mean*	*SD*	*n*
Have you been able to express your views and feelings during those procedures?	3.6	1.4	228
Have you had influence over the outcome arrived at by those procedures?	3.2	1.4	222
Have those procedures been applied consistently?	3.4	1.3	213
Have those procedures been free of bias?	3.6	1.5	214
Have you been able to appeal the outcome arrived at by those procedures?	1.7	2.8	151
Survey Questions about outcome			
Does your outcome reflect the effort you have put into preparing your claim or defence?	3.3	1.7	224
Is your outcome appropriate for the work you have completed regarding the claim?	3.2	1.7	221
Is your outcome justified, given your performance?	3.4	1.7	222
Survey Questions about the adjudicator (when relevant)			
Has he/she treated you in a polite manner?	4.3	1.1	194
Has he/she treated you with dignity?	4.3	1.1	192
Has he/she treated you with respect?	4.3	1.1	192
Has he/she refrained from improper remarks or comments?	4.3	1.2	189
Has he/she been candid in his/her communication with you?	4.2	1.1	188
Has he/she explained the procedures thoroughly?	4.2	1.1	188
Were his/her explanations regarding the procedures reasonable?	4.0	1.2	190
Has he/she communicated details in a timely manner?	4.0	1.2	186
Has he/she seemed to tailor his/her communications to individuals' specific needs?	4.0	1.3	181

Among participants who won their case and were owed money (n = 133), 63.2% (n = 84) reported that they had had trouble collecting the money. Table 28 presents participant data pertaining to collection efforts. Among participants who had used a sheriff in their collection attempts (n = 38), 23.7% (n = 9) indicated that it was worth hiring a sheriff, while 39.5% (n = 15) indicated it was not worth hiring a sheriff (14 participants did not respond to that question).

Of the 58 participants responding to a question about having lost a claim, 65.5% (n = 38) indicated that they felt obligated to make payment, 34.5% (n = 20) indicated that they did not feel obligated to pay. On a question about whether they had considered not making payment, five participants indicated that they had not yet paid because they did not have the money, four delayed payment for other reasons, and two participants reported that they had considered not paying, but had paid.

Table 28. Collection efforts (among the 84 participants who reported having won their claim, were owed money, and had trouble collecting what was owed).

What did you do about making the other party pay?	*% of Participants (n)*
The other party paid me with no problem.	1.2% (n = 1)
The sheriff tried or is trying to collect the money for me.	45.2% (n = 38)
A lawyer tried or is trying to collect the money for me.	11.9% (n = 10)
I tried or am trying to collect the money myself.	29.8% (n = 25)
The other party disappeared.	14.3% (n = 12)
I don't know what to do to collect the money.	29.8% (n = 25)
Other	34.5% (n = 29)
If you had to pursue the other party for payment, which of the following options did you use?	
Certificate of judgment filed in Land Registration Office	47.6% (n = 40
Court order registered in the Personal Property Registry	34.5% (n = 29)
Execution order filed with Sheriff's Office to garnish wages or seize money from the debtor	47.6% (n = 40)
Execution order filed with Sheriff's Office to sell personal property from the debtor	13.1% (n = 11)
Recovery order filed with Sheriff's Office to seize goods ordered returned by the adjudicator	8.3% (n = 7)
Other	22.6% (n = 19)
Don't know / don't remember	3.6% (n = 3)
If you employed a sheriff to collect for you, please check all that apply. (among the 38 participants who used a sheriff)	
The sheriff collected the money without a problem	21.1% (n = 8)
The sheriff required additional information regarding the other parties' employment or finances	39.5% (n = 15)
The sheriff required additional information regarding the other parties' personal property	21.1% (n = 8)
I had to request that the court obtain additional details about the other parties' employment or finances (Examination in Aid of Execution)	5.3% (n = 2)
Other	31.6% (n = 12)

Note. Percentages add up to greater than 100% because participants were able to check multiple responses.

In terms of costs associated with small claims, 121 participants responded and reported court fees ranging from $25 to $500, with a mean of $123 (SD = $83), with a median and mode of $80. Forty participants indicated lawyer fees, ranging from $25 to $12,000, with a mean of $1,553 (SD = $2,155), a median of $900, and a mode of $2,000. Wages lost from missing work were reported by 30 participants, ranging from $10 to $5,000 with a mean of $462 (SD = $659), median of $250, and modal response of $300. Other costs were reported by 54 participants, ranging from $10 to $5,000, with a mean of $259 (SD = $718), a median of $78, and a mode of $50. Of 184 participants who responded to a question about recovering costs in court, 43.5% (n = 80) said 'yes', and of the 49 participants who responded to the 'how much' question re: recovering costs in court, responses ranged from $40 to $5,500, with a mean of $531 (SD = $1,096), a median of $160, and a mode of $80).

Of the 228 participants who responded to the question as to whether they would go to Small Claims Court again, 57% (n = 130) said yes, 18.4% (n = 42) said no, and 24.6% (n = 56) said maybe.

Summary of Qualitative Data

The open-ended responses were subjected to a content analysis. Mostly, these comments were made in response to the last item on the survey which asked about any additional comments. Occasionally, people offered substantive comments in response to one of the open-ended qualifier fields earlier in the survey; we also included those substantive comments about the Nova Scotia Small Claims Court that appeared elsewhere in the survey. We developed content themes with an eye toward balance: wherever a negative theme appeared, we also coded for positive comments about that issue. Two independent raters completed a content analysis of these qualitative items. Raters coded each response for presence or absence of a series of content

themes. These decisions were not mutually exclusive: a single comment could contain multiple themes. Cohen's Kappa was used to evaluate intercoder agreement; the average Kappa for all of the content themes was .73[2]. For the purpose of summarizing these data, when there was disagreement between coders, responses were considered to be in the affirmative. See Table 29 for the results of the content analysis.

By far the most common theme from the comments were negative statements regarding enforcement (35%, n = 54) and concerns about adjudicators other than bias (21%, n = 32). Other common themes that were voluntarily offered by more than 10 litigants included positive reactions to the Small Claims Court process, difficulties with paperwork, reimbursement of expenses, comments about the advantages of having a lawyer, and wait times.

[2] Cohen's Kappa ranges from 0 to 1. The closer the score is to 1, the better the inter-rater agreement. There are differences of opinion about acceptable Kappa scores, but a score above .65 or .70 is generally considered to be quite strong.

Table 29: Content analysis of open-ended survey comments regarding the Nova Scotia Small Claims Court (N = 153).

Themes within litigants' comments	*% (n)*
Enforcement - negative: payments should be enforced; time-frame for payments; penalties for non-payment; greater support from sheriffs.	35.3 (54)
Adjudicator Concerns – Other: rushed hearing, inattentive, too lenient, etc.	20.9 (32)
Process positive: positive comments about small claims court generally (aside from staff, adjudicators, information – all of which have their own themes).	11.8 (18)
Paperwork: difficulty, abundance, etc; more assistance in completing paperwork.	10.5 (16)
Reimbursement of expenses: should be reimbursed for travel, lawyer expenses, time missed work, etc.	9.8 (15)
Lawyers positive: greater advantage to those using a lawyer	9.2 (14)
Wait Times - hearings: wait times are too long; hearings should begin at scheduled times.	9.2 (14)
Judgments - negative: there should be quicker judgements (e.g., adjudicator took too long to issue a judgment), decisions should be final.	7.8 (12)
Information – negative: negative comments about small claims court	6.5 (10)
Staff comments - Negative: complaints about staff, lack of helpfulness, knowledge, etc. – including lack of bilingual services	6.5 (10)
Fees: fees are too high.	5.9 (9)
Process negative: negative comments about small claims court generally.	5.9 (9)
Staff comments - Positive: satisfaction with staff, helpfulness, knowledge, etc. - any positive comments about staff	5.2 (8)
Serving Summons: Summons should be served by courts not claimants.	5.2 (8)
Adjudicator – positive: positive comments about the adjudicator	4.6 (7)
Travel: comments about travelling to Small Claims court.	3.9 (6)
Legal Advice: legal help/advice should be provided.	3.3 (5)
Bankruptcy: complaints of people/businesses avoiding payment by filing for bankruptcy.	3.3 (5)
Pre-Screening: Claims should be pre-screened to avoid unnecessary hearings.	3.3 (5)
Adjudicator Bias in Favour of Lawyers: biased in favour of those represented by lawyers	2.6 (4)
Appeals – negative: there should be fewer appeals, not enough	2.6 (4)
Adjudicator Bias in Favour of Defendant: biased in favour of defendant	2.0 (3)
Recorded: Hearings should be recorded.	2.0 (3)
Adjudicator Bias in Favour of Claimant: biased in favour of claimant	1.3 (2)
$25,000: $25,000 too high for Small Claims.	1.3 (2)
Appeals – positive: e.g., plans to appeal, happiness with option to appeal	1.3 (2)
Businesses Negative: Individuals have an advantage over businesses.	1.3 (2)
Businesses Positive: Businesses have an advantage over individuals.	1.3 (2)
Information – positive: positive comments about information relating to small claims court, e.g., website	0.7 (1)
Lawyers negative: disadvantage to those using a lawyer	0.7 (1)
Judgments – positive: e.g., satisfaction with the judgment.	0.0 (0)
Enforcement – positive: positive comments about enforcement	0.0 (0)

Note. Content analysis was conducted by two independent raters. Intercoder disagreements were counted in the affirmative for the purposes of computing percentage of participants' responses for each characterization category. Percentage counts amount to larger than 100% because some responses contained multiple characterizations.

V. Discussion

This report describes a program of research on the Nova Scotia Small Claims Court; Phase I included seventeen interviews with stakeholders who work within the system, and Phase II was a survey of 254 recent users of the Nova Scotia Small Claims Court. The data give rise to a number of conclusions about the strengths and weaknesses of the Nova Scotia Small Claims Court. Below, we make several recommendations for reform. Some of these recommendations would involve added costs on the part of the Department of Justice. Additional costs are likely unavoidable in order to maintain good working order in the Nova Scotia Small Claims Court in light of recent changes to that system.

Limitations

A note of caution is in order regarding the limitations of the present study, particularly Phase II. While every attempt was made to gather a large and representative sample of recent users of the Nova Scotia Small Claims Court, it is possible that bias entered into the sampling process. For example, it is possible that users who had an especially positive experience with the Nova Scotia Small Claims Court would have been more likely to complete the survey. It is also worth noting that the sample for the current survey consisted disproportionately of claimants. Despite these limitations, we believe this survey accurately represents the viewpoints of Nova Scotia Small Claims Court users, and we are hopeful that this report will be useful to policy makers and legal professionals in Nova Scotia.

Strengths of the Nova Scotia Small Claims Court

One very basic, clear trend arose during both phases of the research: there is consensus that the Nova Scotia Small Claims Court is working quite well. Stakeholders and users overwhelmingly endorsed the Nova Scotia Small Claims Court as meeting its objective of

providing speedy, low cost, and informal access to justice. It is our conclusion that, perhaps in spite of its evolving scope of responsibility, the Nova Scotia Small Claims Court is performing remarkably well at its basic objectives. There are several specific areas of strength in the Nova Scotia Small Claims Court that are worth noting.

Adjudicators

Both stakeholders and litigants had very favorable views of adjudicators in the Nova Scotia Small Claims Court. Litigants' ratings of adjudicators were high on all measures. Adjudicators were seen as being polite, and treating parties with dignity and respect. Adjudicators have a great deal of leeway in how they handle hearings, and by all accounts they are perceived as being unbiased. Adjudicators calibrate their hearings to the circumstances at hand. When both parties are represented by legal counsel, they allow an adversarial hearing to unfold, and they adopt a more inquisitorial style to reach justice when lay litigants represent themselves. Adjudicators' decisions are delivered quickly; their judgments are understood by litigants and overwhelmingly endorsed as fair and well-reasoned. Adjudicators provide a valuable public service in the form of rapid, accessible, affordable justice to the people of Nova Scotia.

Clerks

Overwhelmingly, participants from both phases of the research praised the work of the Nova Scotia Small Claims Court clerks. Litigants reported favorable responses to the Nova Scotia Small Claims Court clerks, with very high ratings of staff politeness and professionalism. Clerks have an enormously important role in the Nova Scotia Small Claims Court. With foresight, Axworthy noted "If a clerk is appointed to the court, he or she carries much, if not all, of the pre-hearing duties," (1977, p.331). As it currently stands, the front line clerks end up being

the only formal support mechanism publicly available to litigants. Despite the fact that clerks in the Nova Scotia Small Claims Court are not charged with giving legal advice, it seems that many litigants rely on clerks' input. More than 25% of the surveyed litigants reported having been advised by Nova Scotia Small Claims court staff. Ruhnka and colleagues (1978) reported a similar finding in their study of U.S. small claims courts: "[A] sizeable percentage of plaintiffs reported that the small claims clerk was helpful, even in those courts where the clerks themselves told us that they actually gave very little advice," (p. 72). It is worth mentioning that a number of the interviewees noted that the training and experience of the clerks in the Nova Scotia Small Claims Court is highly varied, and therefore the consistency and quality of advice may be an area for future study and/or reform. Clerks are a critical strength of the Nova Scotia Small Claims Court, and care should be afforded to ensure that these positions are fully staffed, that they have the infrastructure and administrative support that they need, and that their training is thorough.

Evening Hearings

Evening hearings seem to be very well-received by users of the Nova Scotia Small Claims Court. It is typical for small claims courts in other jurisdictions to hold hearings during normal daytime business hours (see, e.g., Ruhnka, Weller, & Martin, 1978). Weekday hours are often viewed as a limitation by users, and potential users, and as a major impediment to access (see, e.g., Hildebrandt et al., 1982). The evening hearings in the Nova Scotia Small Claims Court are an innovation that clearly improves access to justice. Furthermore, the Court's flexibility on this issue allows for occasional daytime hearings when all parties indicate their preference for that, and it appears that the current provisions for holding hearings during regular business hours are adequately serving the needs of the public (though a small proportion of those who attended evening hearings indicated a preference for business hour hearings). It is interesting to note,

however, that the stakeholders interviewed in Phase I had some negative things to say about the evening hearings. On the whole, it seems that evening hearings are very well received by users of the Nova Scotia Small Claims Court.

Recommendations for Reform

There are, of course, several areas for possible reform that are evident from this study. We make four recommendations, outlined in Table 30 and described in more detail below.

Table 30. Recommendations for reform of the Nova Scotia Small Claims Court.

1) Enforcement of judgments should be reformed
2) Evaluate and revise forms, especially where defenses to small claims are concerned
3) Record some of the more complex hearings
4) Develop a better database on the Nova Scotia Small Claims Court

Below, we explain our rationale for each of our recommendations, beginning with what we consider to be the most salient issue: enforcement.

Enforcement of Judgments

We recommend that policy makers consider carefully the rules and procedures relating to enforcing the judgments of Nova Scotia Small Claims Court adjudicators, most specifically regarding collection of money judgments. Overwhelmingly, users and stakeholders noted frustration with the collection mechanisms for adjudicated cases. The existing system is complex and expensive. Litigants are confused about how to collect: almost a third of successful

claimants who were owed money and had trouble collecting reported that they did not know what to do in order to collect what was owed to them. Success at collecting money owed was limited. Many claimants who were owed money used Sheriffs' services to try and collect, and almost 40% of those litigants indicated that the Sheriff required additional information regarding the defendant's employment or finances. Adding a procedure whereby Nova Scotia Small Claims defendants would be required to provide financial details prior to the hearing might be an effective mechanism to facilitate collection.

Authors of a comprehensive study of the U.S. small claims courts recommended greater court involvement to improve enforcement of judgments: "On the collection of judgments…we believe more court involvement in collection and increased post-trial assistance to judgment creditors can increase the number of small claims judgments which are collected to perhaps 90 percent of contested judgments and 60 percent of default judgments," (Ruhnka, Weller, & Martin, 1978, p. 191). They went on to make specific recommendations:

> [T]hat judgment payment plans be established immediately after trial, that the defendant be examined as to his assets while still under oath, and that attachment writs be provisionally entered at that point in case the judgment debtor does not subsequently pay…in addition, we strongly recommend that all small claims judgments be required to be paid into court, including installment payments, to avoid potentially serious problems that can result if payments are not accurately indicated on the judgment records. (Ruhnka, Weller, & Martin, 1978, p. 195).

Similarly, Macdonald (2005) examined enforcement of civil judgements in Canada as an access to justice issue, and made some specific recommendations toward improvements:

> A number of provinces have recently sought to address the costs and complexity of judgement enforcement as an issue of access to justice…A standard technique for enhancing efficient enforcement of civil judgements is to create a range of pre-judgement remedies that will facilitate execution of a judgement once rendered. These include procedures to freeze a debtor's assets prior to trial and the appointment of a receiver to ensure the maintenance and productivity of contested assets pending a judgement…these mechanisms are intended to enhance access to justice by ensuring that the outcome of the

> litigation process is not frustrated in advance…The two main uncertainties involved in current processes for executing civil judgements in Canada that add to the cost of obtaining justice are, first, the cost of tracking down the judgement debtor and second, the cost of actually generating revenues from the seizure of the debtor's assets sufficient to pay the judgement debt…To begin, where a debtor's principal assets are salary or other claims owing, provinces have long had simplified garnishment procedures which (especially in the case of employment income) cast the administrative cost of the garnishment upon the employer. In some provinces, the process of civil judgement enforcement has been largely privatized so that it is no longer necessary to hire a public official (a bailiff or the sheriff) to seize a debtor's property and bring it to sale. There is some evidence that these systems do reduce the costs of judgement enforcement and increase the amount received from the sale of a debtor's property (pp. 68-69).

Enforcement of judgments can be viewed as an access to justice issue (Macdonald, 2005). The current operation of the Nova Scotia Small Claims court places the burden on the successful plaintiff to collect what is owed to them. While this is a traditional approach for common law civil disputes, failure to collect can be viewed as a barrier to fair outcomes, to justice. Enactment of some basic measures to enhance the likelihood of successful judgment would potentially improve access to justice.

It seems that a few basic changes might improve enforcement efforts, and litigants' access to justice, following judgments in the Nova Scotia Small Claims Court. First of all, it is noteworthy that the existing collection mechanisms are complicated and expensive. Perhaps the legislation relating to Sheriffs' services, and the related costs, could be simplified. More importantly, we urge lawmakers to consider requiring some form of pre-judgment financial disclosure for defendants. In the event of judgments in favour of claimants and subsequent collection efforts by Sheriffs, this information would clearly facilitate collection of monies.

The present study did not include Sheriffs as participants, and therefore the information we have gathered about collection mechanisms was often second-hand. Given that evidence-based policy decisions have the most potential for success, further research on the issue of

enforcement of Nova Scotia Small Claims Court judgments may be warranted. Perhaps interviews with Sheriffs would offer further insight as to what changes would be most likely to improve their efforts to enforce small claims judgments.

Evaluate and Revise Forms, Especially Where Defenses to Small Claims are Concerned

The Phase I interviews point to some problems with the small claims forms. We recommend that the forms be reviewed and revised, particularly with regard to the requirement to file a defense. A number of adjudicators and clerks commented on the frequency with which problems can arise in this regard. Another possibility would be to eliminate the requirement for an affirmative filing of a defense; one perspective is that there should be no default judgments in small claims courts, and defenses to small claims should not require specific action by the defendant (Ison, 1972). Other comments about the forms included concerns about the lack of specificity and the small amount of space allowed for stating a claim or defense, which may imply to litigants that they do not need to be very elaborate or specific (despite a notation that additional information may be attached). We recommend careful evaluation of the Nova Scotia Small Claims Court forms, with a particular eye toward improving clarity and transparency of the requirements and procedures for defendants.

Record Some Hearings

With the increasing stakes in Nova Scotia Small Claims, policy makers should consider recording at least some proceedings in the Nova Scotia Small Claims Court. Interviewees were generally in favor of recording Nova Scotia Small Claims hearings, and several litigants commented about this issue as well. Hearings for those cases could be recorded, as they are done in Nova Scotia Supreme Court, and transcribed by parties only when necessary. Given the increasing stakes for Nova Scotia Small Claims cases, it seems very likely that there will be an

increase in the complexity of cases, and the number of appeals from Nova Scotia Small Claims Court rulings. On appeal, lawyers and Supreme Court judges will be well-served by having an objective record of the proceedings in the Nova Scotia Small Claims Court. There is already some evidence that the Nova Scotia Supreme Court is demanding more rigorous records of Small Claims cases on appeal. Recording higher-stakes small claims hearings would undoubtedly involve costs for the Department of Justice, but those costs can be minimized by requiring recording for only a subset of small claims trials, and by putting related transcription costs in the hands of litigants.

Develop a Better Database on the Nova Scotia Small Claims Court

The Department of Justice tracks some data about the Nova Scotia Small Claims Court, including the number and type of cases, and the amount of the claims. We were able to create mailing lists for the Phase II survey from the existing archive of available data. There are, however, gaping holes in the available data. For example, the Department of Justice does not track categories of litigants (e.g., businesses versus individuals), legal representation by parties, adjudicated decisions, or compliance with judgments made in the Nova Scotia Small Claims Court.

Policy decisions are arguably only as effective as the data upon which they are based. Given the recent legislative changes to the jurisdiction of the Nova Scotia Small Claims Court, there is a pressing need for well-crafted empirical information about the Court. Ramsay (1996) commented about shortcomings in the available data from the Ontario small claims court system:

> Data on the small claims courts are no exception to these criticisms [made in a previous report about the absence of data on the Ontario civil justice system as a whole]. The current statistics on the operation of the small claims courts do not provide meaningful information on many important aspects of the work of the court. Given the current method of data collection it is not possible to provide accurate data on such issues as processing time for contested and uncontested cases or the percentage of cases filed

> which result in default judgments or go to trial. There are no data on the nature of court users (p. 537).

The same criticisms can be made of the available data on the Nova Scotia Small Claims Court system. Data collection efforts must be carefully planned in order to be meaningful; the empirical questions that are asked are as important as the answers (Macdonald, 2005). We strongly recommend an evaluation and revision of the existing data collection mechanisms, with a plan for future research on the Nova Scotia Small Claims Court.

Areas for Future Consideration

Our research on the Nova Scotia Small Claims Court suggests some areas that are worthy of future consideration. The available data are limited, and therefore in many cases it would be premature to make policy recommendations. There is a clear need for additional research on the Nova Scotia Small Claims Court. Below, we describe some potential directions for future research and related policy considerations that are suggested by the current study.

Allowable Claims up to $25,000

Our research suggests that the progressively increasing limits to allowable claims in the Nova Scotia Small Claims Court should be monitored carefully. Interviews and surveys provided some mixed reactions to the recent change to a $25,000 ceiling to claims in the Nova Scotia Small Claims Court; some interviewees applauded the change and would support even higher limits to the claim amounts, but a number of interviewees expressed grave concerns about the implications of increasing caps for allowable claims. This research was conducted too soon after the change to a $25,000 limit to claims to draw clear conclusions about the full impact of this change. We recommend caution and additional research on the impact of expanding the scope of claims allowable in the Nova Scotia Small Claims Court. Similarly, policymakers should

evaluate the impact of the recent change to allowing general damages in the amount of $2,500 in the Nova Scotia Small Claims Court. The trends in cases filed in the Nova Scotia Small Claims Court, as well as the data from the Phase I interviews suggests that the jurisdictional increase could be having a chilling effect on lower-end claims, as has also been observed in other provinces. "An increase in jurisdiction to $10,000 or $15,000 raises fundamental questions about the objectives of small claims courts…Statistical data suggests that there is a decrease in claims under $1000 and $500 when there is an increase in jurisdiction," (Ramsay, 1996, pp. 538-539).

Nova Scotia now has one of the highest caps on allowable small claims in all of North America. Increasing the cap to $25,000 was a very big step, and the recent increase to allowable claims for general damages in the amount of $2,500 is another significant change. We believe the full impact of these changes may take several years to manifest, and that procedural changes and allocation of new resources will likely be necessary in order for the Nova Scotia Small Claims Court to continue to serve the public within the framework of the current legislation. Simply put, it seems that the recent increases to allowable claims in the Nova Scotia Small Claims Court will put substantial strain on the system. We recommend careful evaluation of these recent changes before any further jurisdictional increases are considered.

Lawyers in the Nova Scotia Small Claims Court

The presence of lawyers in the Nova Scotia Small Claims Court seemed to be generally acceptable to users of the system. Though the cost-to-value evaluation of litigants who employed lawyers was modest, it appears that lawyers were seen as having facilitated the claims process. Furthermore, it seems clear that it is somewhat common for lawyers to help Nova Scotia Small Claims users without representing them at a hearing, i.e., in terms of assisting with filing and giving pre-hearing advice for handling claims or defenses. There were some mixed reactions to

lawyers in the Nova Scotia Small Claims Court from interviewees, but many cited their helpfulness, especially where more complex cases were concerned.

We do not recommend changing the rules that allow lawyers in the Nova Scotia Small Claims Court. However, the presence of lawyers in small claims courts has been a very contentious issue in the literature. Quebec is the only Canadian small claims system that prohibits legal representation at small claims hearings (McGuire & Macdonald, 1996). It is important to recognize that, due to the increasing caps to allowable claims, there will very likely be a corresponding increase in the number of litigants with legal representation in the Nova Scotia Small Claims Court. This could have the effect of interfering with the informal, speedy, cost-effective basis of the court. "Accompanying the more frequent appearance of lawyers technically trained in a technical profession, the proceedings have a natural tendency to become more technical. This tendency should be carefully avoided," (Currie, 1956, p. 33). Obviously, this is a complex issue and many different views have been expressed on this topic. We recommend caution and careful evaluation of the impact of potentially increasing numbers of lawyers appearing in the Nova Scotia Small Claims Court.

Requiring Pretrial Document Disclosure in Some Cases

Many of the participants pointed to the need for pretrial discovery of critical documents in order to make more efficient the small claims system. Document discovery may be most critical for cases involving higher sums of money, and which are therefore likely to be complex (e.g., likely to involve expert testimony). The addition of this procedural change might be viewed as a barrier to the basic objective of informal, speedy, inexpensive justice. However, interviewee perspectives on document disclosure were generally favorable, and a number of them noted that

the absence of disclosure presents problems, especially in more complex cases that involve expert evidence.

Allowing for Recovery of Legal Costs in Some Cases

A number of litigants and interviewees noted that the absence of provisions for legal costs is a weakness in the Nova Scotia Small Claims Court system. On the other hand, many interviewees were skeptical about allowing legal costs in small claims, as this may push access to justice further from the reach of the average layman. Allowing for recovery of legal costs may be viewed as a slippery slope that will increase the number of represented litigants. Our evaluation, based on the interviews and survey data, suggests that this is already a trend in the Nova Scotia Small Claims Court, and one that is likely to continue given the recent increases to allowable claims. Several interviewees noted that it would be almost foolhardy for a litigant to proceed with self-representation in cases when evidence is complex and the stakes are approaching $25,000. We agree, and we expect that legal representation will be the norm for those cases on the higher end of the allowable claims range. Without the possibility of recovery of legal costs, this situation could put individuals at a disadvantage as compared to businesses.

> It is clear that the main beneficiaries of the right to counsel in small claims courts are those interested in the litigation from a commercial point of view…Private individuals will not normally have the luxury of a choice. If they wish to enforce a claim or defend an action brought against them they will have to do so without legal help or not at all. (Axworthy, 1977, p. 316).

Recovery of some legal costs at the discretion of the adjudicator may help to redress a potential imbalance between businesses and individuals in Nova Scotia Small Claims Court.

Consider an Appeal Process Within the Nova Scotia Small Claims Court

Users and stakeholders expressed concern about procedural informality and the absence of clear appeals mechanisms for Nova Scotia Small Claims matters. While the current system

does allow for appeals to the Nova Scotia Supreme Court, it does not seem that this mechanism is well-known to users, nor is that appeal mechanism consistent with the objective of informal, low-cost, speedy justice. It seems likely that there will be increasing interest in appeals stemming from the recent change to a $25,000 ceiling for allowable claims in the Nova Scotia Small Claims Court. Depending on emerging trends following recent increases to the jurisdiction of the Nova Scotia Small Claims Court, it may make sense for policy makers to consider a formal appeals process within the Nova Scotia Small Claims Court, or an improvement to information provided to users about appealing to the Nova Scotia Supreme Court.

Explore Possibilities for Free or Discounted Legal Advice re: Small Claims

One area worth considering for possible future study is the public availability of some form of legal assistance to small claims litigants. With the cap on claims in the Nova Scotia Small Claims Court at $25,000, it seems increasingly important that litigants have good legal advice and that in at least some cases it would be unwise for litigants to proceed without having some formal legal advice, if not full representation. "However informal they might be, small claims hearings are still legal proceedings…litigants need preliminary advice, provided at reasonable cost, about whether their case is likely to stand up in court," (Baldwin, 2000, p. 2). If a litigant is unable to access legal advice on how to handle a small claims matter, that is likely to place them at a disadvantage. "[I]ndividuals who do not have access to networks of knowledge (e.g. friends who are lawyers) may either simply 'lump it' or commence an action in court which might not have been necessary, had they been properly advised," (Ramsay, 1996, p. 538). Those without legal representation in small claims hearings can face challenges. "The small claims process…does seem to work to a disadvantage of unrepresented defendants, in that potential defenses may not be raised…courts must actively reach out to defendants to provide them with

assistance in trial preparation, since an imbalance exists in the present system in this area." (Ruhnka, Weller, & Martin, 1978, p.72)

Many litigants were in favour of the idea of discounted or free legal advice to small claims litigants. However, interviewees were divided on this issue, and those who were opposed to the notion had some good reasons for their opinions. Perhaps some form of legal advice, advice of an organizational rather than adversarial nature, would increase the efficiency of the Nova Scotia Small Claims Court system. If a legal assistance program for small claims is to be developed, careful attention must be paid to the possibility of abuse of such a service; a number of interviewees worried that free legal advice would be a contentious and expensive resource that would be vulnerable to misuse. Perhaps in the future a pilot project could be established and monitored carefully to determine if this is a cost-effective and generally worthwhile future direction for the Nova Scotia Small Claims Court. Axworthy (1977) suggested that "a number of full and/or part-time lawyers be appointed and attached to the court, to be paid out of public funds, to act on behalf of the litigants in cases in which the small claims court judge certified that representation would be desirable," (p. 322). A number of interviewees during Phase I made similar suggestions, including one idea for a small claims law clinic run by advanced law students under the auspices of a course at Dalhousie Law School.

Small Claims and the Broader Civil Justice System

It is worthwhile to consider the role of small claims in the broader context of the civil justice system. The basic purpose of the Nova Scotia Small Claims court is to provide speedy, informal, inexpensive access to justice. Will this objective remain intact with the cap on small claims now set at $25,000, and the new provision for general damages up to $2,500? Ramsay (1996) argued that small claims courts should be placed carefully within the broader framework

of civil justice, and that theoretical objectives should remain in focus as the small claims courts evolve.

> While much writing on small claims courts has been atheoretical in failing to locate them within the broader view of the role of law in society, the literature is often premised on certain assumptions. One view has been to analyze small claims courts as part of a scheme of distributive justice. This has two aspects: ordinary individuals should have equal access to similar facilities available to large organizations exercising their rights, and access to an institution which would allow individuals effective redress against more powerful social access…The distributive perspective raises important questions in relation to small claims courts. How significant is the court in relation to addressing social injustice? (pp. 498-499).

Is the Nova Scotia Small Claims Court meeting the needs of our society in terms of providing equitable, accessible justice for all? The present study sheds some light on this issue, but it is important to note that non-litigants from the general public were not surveyed. The extent to which this system of civil justice seems accessible to the Nova Scotian public at large is not clear.

The recent changes to the Nova Scotia Small Claims Court must be carefully evaluated, not only in terms of their impact on the workings of the court and those litigants involved in small claims matters, but also in terms of the perceptions of the public at large. There is some risk, with increasing caps on allowable claims in the Nova Scotia Small Claims Court, that there will be an erosion of public perceptions of the accessibility of civil justice. Again, the present study did not examine this issue, but it is an important question for law makers to consider: is there an impact of the recent changes upon public trust and confidence in the Nova Scotian civil justice system? "The avoidance of disillusionment of a large section of society with the judicial system is a prime impetus to improve access to the legal structure," (Axworthy, 1977, p. 330).

Pound (1913) emphasized the importance of small claims resolution as a critical touchstone in an orderly society:

> [T]o make adequate provision for petty litigation, to provide for disposing quickly, inexpensively, and justly of the litigation of the poor, for the collection of debts in a shifting population, and for the great volume of small controversies…It is here that the administration of justice touches immediately the greatest number of people…[who] might be made to feel that the law is a living force for securing their individual rights as well as their collective interests…[if] the means of protection are too cumbrous and expensive to be available for one of his means against an aggressive opponent who has the means or the inclination to resist, there is an injury to society at large. (p. 315).

In the context of social justice, generally speaking, small claims courts play an important role in terms of public trust and confidence in law and government.

> [T]he problems of access to justice arise not just at the point of seeking legal advice to pursue a judicial remedy. Disempowerment and disenchantment with official law permeate society and influence citizen perceptions of almost all legal institutions – from legislatures, to courts, to administrative agencies, to the legal profession. Finding ways to re-engage citizens with law (conceived broadly), with its values and institutions, and with its processes and outcomes, means taking seriously this disenchantment. (Macdonald, 2005, p. 101).

Small claims courts are the form of justice most likely to be directly engaged by the public, and so the small claims courts serve in an ambassadorial role by representing civil justice systems to the public. Nova Scotians' trust in the law may be influenced to a large degree by the functioning of the Nova Scotia Small Claims Courts.

VI. Summary and Conclusion

In closing, we would like to reiterate the generally positive feedback this study provides about the Nova Scotia Small Claims Court. The system is working quite well at meeting its legislative objective of providing rapid, informal, inexpensive access to justice. The data suggest a number of areas for future consideration and possible reform. There does seem to be one clear weakness in the current operation of the Nova Scotia Small Claims Court: enforcement of judgments. We recommend that lawmakers consider 1) careful evaluation and policy change toward improving enforcement of Nova Scotia Small Claims judgments, 2) careful evaluation

and revision of the Nova Scotia Small Claims Court forms, 3) recording some of the more complex hearings, and 4) developing and implementing a comprehensive data collection plan regarding the Nova Scotia Small Claims Court.

Future research should evaluate the impact of recent legislative changes, particularly the shift to a $25,000 ceiling on allowable claims and the increase in allowable claims for general damages from $100 to $2,500. The Nova Scotia Supreme Court is in a state of transition and these changes must be carefully monitored. There is a distinct risk that these changes will strain the system to the point that rapid access to justice is no longer feasible. The Nova Scotia Small Claims Court now has one of the highest caps on small claims in all of North America. We urge caution, and careful empirical evaluation of the system as the full impact of these changes unfolds.

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Please take the time to answer the following questions about the Nova Scotia Small Claims Court. Your feedback is valuable and your responses will help to shape the future direction of the court. If you have been involved in more than one Nova Scotia Small Claims Court matter, please complete this survey based on your most recent experience.

Please check here if you have been involved in more than one Nova Scotia Small Claims Court matter ___ and indicate how many matters ___ .

County/Jurisdiction (check one).

__ Annapolis County
__ Digby County
__ Antigonish & Guysborough Counties
__ Cape Breton & Victoria Counties
__ Inverness & Richmond Counties
__ Colchester County & Hants East
__ Cumberland County
__ Halifax Regional Municipality
__ Kings County & Hants West
__ Lunenberg & Queens Counties
__ Pictou County
__ Yarmouth & Shelburne Counties

1) Did you file a claim against someone else (claimant) or did they file a claim against you (defendant)?

__ Claimant (Plaintiff) __ Defendant

2) What was your small claims case about? (explain briefly)

3) Did you try and settle the claim before going to the small claims court? (please check all that apply)

__Wrote to the person/company involved.
__Talked to the person/company involved
__Other (please explain) _____
__Did not try to settle

4) How much was claim for? $_____

5) How did you learn about the Nova Scotia Small Claims Court? (please check all that apply)

__Legal Information Pamphlet __Courthouse staff
__Legal Aid __Family or friends
__Small Claims Court Website __Lawyer
__Other (please explain)

6) How did you file your claim or defence?

__ In person
__ Online via the internet
__ Through a lawyer
__ Other (please explain) _____

Which of the following did you do in order to get your claim or defence filed?

__Took time off from work
__Went after work
__Went during lunch break
__Went during holiday or day off
__ Had to arrange child care while I went to court.
__Other (Please explain) _____

If you went to the courthouse, how long did it take you to file your claim or defence?

__Less than half hour
__Less than one hour
__More than one hour (please state how long _____)
__Other

If you were a defendant, did you feel you had enough time to prepare your defence?

__Yes
__No (please explain) _____

How convenient was it to file your claim or defence? (please circle your response)

Not at all convenient Very convenient
1 2 3 4 5 6 7

Can you place a dollar amount on the cost to file your claim or defence (aside from the fees)? ____

7) Did you go to someone more knowledgeable for help with your case? __ Yes
__ No

If yes, check all that apply.
__My lawyer filed the claim or defence
__My lawyer represented me at the hearing.
__My lawyer told me how to handle the matter myself
__My lawyer was a Legal Aid employee
__A paralegal helped me
__Court staff advised me on how to handle the matter
__An experienced friend gave me information on how to handle the matter
__Other (Please explain) _____

8) If there were any lawyers involved in the matter, please answer the following questions about lawyers. Circle one response from 1 = 'Do not at all agree' to 7 = 'Completely agree'.

The lawyer(s) made the process easier.	1	2	3	4	5	6	7
The lawyer(s) slowed down the process.	1	2	3	4	5	6	7
Having a lawyer was worth the cost. (if applicable)	1	2	3	4	5	6	7

9) How long from the time when the dispute started did it take until a claim was filed?
__ less than 2 weeks
__ between 2 weeks and a month
__ between 1 and 2 months
__ between 2 and 3 months
__ more than 3 months (please specify _____)
__ don't know / don't remember

10) How long from the time the claim was filed did it take until the claim was settled or decided?
__ less than 2 weeks
__ between 2 weeks and a month
__ between 1 and 2 months
__ between 2 and 3 months
__ more than 3 months (please specify _____)

11) A hearing is held in a courtroom before an adjudicator (acting as a judge). Did the claim go to a hearing?
__ Yes __ No

Please check all that apply to your appearing at the hearing:
__Took time off from work
__Went after work
__Went during lunch break
__Went during holiday or day off
__ Had to arrange child care while I went to court.
__Other (Please explain) _____

How long were you waiting for your hearing to come up on the date it was scheduled to be heard?
__Less than half hour
__Less than one hour
__About one hour
__About two hours
__More than two hours

How long did the hearing take?
__Less than five minutes
__Less than 15 minutes
__Less than half hour
__1/2 hour to an hour
__More than an hour (Please say how long it took)

Was your hearing in the evening or during business hours?
__Evening
__Business hours

If your hearing was in the evening, would it have been more convenient for you to attend during business hours?
__ Yes
__ No

How convenient was it to attend your hearing? (please circle your response)

Not at all convenient						Very convenient
1	2	3	4	5	6	7

12) Was your hearing ever adjourned (rescheduled)? __Yes __No

If yes, how many times? _____

If yes, please check all reasons that apply:

__Lawyer(s) schedule(s)
__Adjudicator's schedule
__A party was not present
__Jurisdiction issue
__Insufficient time
__Witness availability
__Staff schedule(s)
__Availability of documents
__Complexity
__Other (please explain) _____

Did you win? Yes __ No __ Please list $ amount if claimant _____

Please check all that apply

__After I made the claim, the other party offered to settle, and I accepted.
__I won the case because the other party didn't show up in court.
__I dropped the case on my own (Please explain) _____
__The other party had the matter moved to a higher court
__ I had the matter moved to a higher court
__The matter was handled in another court because the Small Claims Court did not have jurisdiction
__Other(Explain)

If an adjudicator (the judge) made the final decision in your case, how did you learn of that decision?

__Adjudicator immediately announced the decision
__Adjudicator mailed me a written decision (please indicate how long you waited _____)
__Other (please explain)

If an adjudicator (the judge) made the decision in your case, please answer the following questions about the ruling. Circle one response from 1 = 'Not at all' to 7 = 'Completely'.

I could easily understand the adjudicator's decision.	1	2	3	4	5	6	7
I could easily understand the reasons for his/her decision.	1	2	3	4	5	6	7
The adjudicator's decision was fair.	1	2	3	4	5	6	7
I felt the adjudicator understood my position.	1	2	3	4	5	6	7
I was satisfied with the adjudicator's decision.	1	2	3	4	5	6	7
I thought the adjudicator's decision was reasonable.	1	2	3	4	5	6	7

13) The following items are measured on a 7-point scale. Circle one response from 1 = 'Do not agree at all' to 7 = 'Completely agree'.

The Nova Scotia Small Claims Court provides an easy way to access justice.	1	2	3	4	5	6	7
The Nova Scotia Small Claims Court provides an informal way to access justice.	1	2	3	4	5	6	7
The Nova Scotia Small Claims Court provides a quick way to access justice.	1	2	3	4	5	6	7
The Nova Scotia Small Claims Court provides an affordable way to access justice.	1	2	3	4	5	6	7
On the whole, I was treated fairly by the Nova Scotia Small Claims Court.	1	2	3	4	5	6	7
The staff at the Nova Scotia Small Claims Court were polite to me.	1	2	3	4	5	6	7
The staff at the Nova Scotia Small Claims Court were professional with me.	1	2	3	4	5	6	7
The Nova Scotia Small Claims Court forms were easy to use.	1	2	3	4	5	6	7
Having a lawyer is necessary in order to ensure a fair outcome in the Nova Scotia Small Claims Court.	1	2	3	4	5	6	7

14) The following items are measured on a 5-point scale. Circle one response from 1 = 'To a small extent' to 5 = 'To a large extent'.

The following items refer to the procedure used to arrive at the outcome of the claim. To what extent:

Have you been able to express your views and feelings during those procedures?	1	2	3	4	5
Have you had influence over the outcome arrived at by those procedures?	1	2	3	4	5
Have those procedures been applied consistently?	1	2	3	4	5
Have those procedures been free of bias?	1	2	3	4	5
Have you been able to appeal the outcome arrived at by those procedures?	1	2	3	4	5

The following items refer to the outcome of the claim. To what extent:

Does your outcome reflect the effort you have put into preparing your claim or defence?	1	2	3	4	5
Is your outcome appropriate for the work you have completed regarding the claim?	1	2	3	4	5
Is your outcome justified, given your performance?	1	2	3	4	5

The following items refer to the adjudicator (skip these items if your claim did not go to a hearing). To what extent:

Has he/she treated you in a polite manner?	1	2	3	4	5
Has he/she treated you with dignity?	1	2	3	4	5
Has he/she treated you with respect?	1	2	3	4	5
Has he/she refrained from improper remarks or comments?	1	2	3	4	5
Has he/she been candid in his/her communication with you?	1	2	3	4	5
Has he/she explained the procedures thoroughly?	1	2	3	4	5
Were his/her explanations regarding the procedures reasonable?	1	2	3	4	5
Has he/she communicated details in a timely manner?	1	2	3	4	5
Has he/she seemed to tailor his/her communications to individuals' specific needs?	1	2	3	4	5

15) If you won your case, and money was owed you, did you have any trouble collecting your money?
__Yes __No (if no, skip to question # 16 below)

What did you do about making the other party pay? Check as many as apply.
__The other party paid me with no problem.
__The sheriff tried or is trying to collect the money for me.
__A lawyer tried or is trying to collect the money for me.
__I tried or am trying to collect the money myself.
__The other party disappeared.
__I don't know what to do to collect the money.
__Other (Please explain) _____

If you had to pursue the other party for payment, which of the following options did you use?
__Certificate of judgment filed in Land Registration Office
__Court order registered in the Personal Property Registry
__Execution order filed with Sheriff's Office to garnish wages or seize money from the debtor
__Execution order filed with Sheriff's Office to sell personal property from the debtor
__Recovery order filed with Sheriff's Office to seize goods ordered returned by the adjudicator
__Other (Please explain) _____
__Don't know / don't remember

If you employed a sheriff to collect for you, please check all that apply.

__The sheriff collected the money without a problem
__The sheriff required additional information regarding the other parties' employment or finances
__The sheriff required additional information regarding the other parties' personal property
__I had to request that the court obtain additional details about the other parties' employment or finances (Examination in Aid of Execution)
__Other (Please explain) _____

If you employed a sheriff to collect for you, was it worth hiring a sheriff? __ Yes __ No

16) If you lost a defence to a claim do you feel obligated to make payment?

__ Yes
__ No

Did you consider not making payment?

__ Yes, I have not yet paid because I don't have the money
__ Yes, I delayed payment because _____ (fill in the blank)
__ Yes, I intentionally delayed payment
__ Yes, but I paid (Please explain) _____

17) Please list how much it cost you to sue:

__Court fee $_____
__Lawyer's fee $_____
__Wages lost if you missed work $_____
__Other (babysitter, etc. explain) $_____

18) Did you win back any costs in court?

__Yes
__No

If yes, how much? _____

19) Please provide additional details about the outcome of the case:

20) Would you go to small claims court again?

__Yes
__No
__Maybe

Please explain why:

21) Please remember that your survey responses are anonymous. Not even the members of the research team will know your identity. It is important to fully understand who most needs and uses the Nova Scotia Small Claims Court and to determine what services are right for different groups of people.

Please provide some additional information about yourself:

Age
__ under 25
__ 25 - 30
__ 30 - 35
__ 35 – 40
__ 40 – 45
__ 45 – 50
__ 50 – 55
__ 55 – 60
__ 60- 65
__ 65 and above

Please list your exact age ___

Sex
__ Female
__ Male

Annual household income
__ under $12,000
__ $12,001 - $24,999
__ $25,000 - $34,999
__ $35,000 - $49,999
__$50,000 - $99,999
__ $100,000 - $149,999
__ $150,000 or more

How many people are in your household? ____

Ethnicity
__ Aboriginal Canadian
__ Caucasian
__ Black
__ Hispanic
__ Other (please identify)

22) Finally, we are interested in any additional comments you would like to make about your experience in the Nova Scotia Small Claims Courts. If you could change the small claims court in any way, what changes would you make?

Thank you for your participation!