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# How Small are Contemporary Small Claims?
# An Evaluation of the Nova Scotia Small Claims Court

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## Summary

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. Nova Scotia recently increased the dollar amount allowable in the Small Claims Court to $25,000, placing it among the highest-capped jurisdictions in North America. This paper presents a two-phase evaluation of the Nova Scotia Small Claims Court. Phase I consisted of interviews with key stakeholders. Phase II was a survey of 254 litigants in the Nova Scotia Small Claims Court. The data illustrate the strengths and weaknesses of the Nova Scotia Small Claims Court. Results are discussed in the context of the broader civil justice system. Future research should test whether raising caps on allowable small claims will inhibit citizens` access to justice.

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## Introduction

This paper is an evaluation of 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. Phase I of the research consisted of interviews with key stakeholders from within the Nova Scotia Small Claims Court. Between August and November, 2006, I 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 per cent. 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. I make several recommendations for possible reform. I recommend careful planning and reform of data collection in the Nova Scotia Small Claims Court, with an eye toward future research.

## 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 1920s 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 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:

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[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).

> “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 per cent 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 per cent) 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.

# 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, Iutilized 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.

## Previous 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 (http://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.

## 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.

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, Iwere 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.

## Phase I: Interviews with Key Stakeholders

### Phase I Method

Between August and November, 2006, Iinterviewed 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 a masters-level graduate student in psychology.

I 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.

### 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,   did not specifically ask participants about any potential changes to the Nova Scotia Small Claims Court. I did, however, ask participants about the strengths and weaknesses of the system. In Table 4 I provide a summary of recommendations from the interviews.

Of course, there was 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.

**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 I am 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:

> <u>Adjudicator:</u> "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. 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.

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.

**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 per cent 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.

**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 I did not specifically ask participants to comment on whether small claims

proceedings should be recorded. Almost 60 per cent of interviewees had positive views about recording, about 35 per cent were neutral or made no comment on the issue, and 1 participant was opposed to recording Nova Scotia Small Claims cases.

**Lawyers in Small Claims**

I 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."

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.

**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 per cent favored the notion, almost 30 per cent opposed the idea, and two participants were neutral or offered no comments on the issue (see Table 9). 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." Other participants raised concerns about the costs and benefits of having free legal advice available to small claims litigants.

**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.

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

**Possibility of a Two-tier Small Claims Process in the Future**
One central theme in the interviews, one which I 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.

**Possibility of Daytime Small Claims Hearings**
Several participants commented about the fact that Nova Scotia Small Claims Court is generally held in the evening.

**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 I 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.

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

**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.

**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 numerous. There were also some critical comments and suggestions about staff.

## 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 per cent.

### 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 per cent male (n = 133) and 38.1 per cent 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 per cent, 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.

About three quarters of the participants were claimants, n = 198 (20.8 per cent were defendants, n = 53). More than 90 per cent 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 per cent (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 per cent, n = 101), see Table 16.

I 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 per cent (n = 143), see Table 17 for a breakdown.

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.

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.

Most participants reported that their cases went to a hearing (78.4 per cent, 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 per cent, n = 23), while a little more than ten percent of cases were held during business hours (11.5 per cent, 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 per cent, n = 19), while the vast majority said that business hours hearing would not have been more convenient (86.4 per cent, 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').

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.

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.

Among participants who won their case and were owed money (n = 133), 63.2 per cent (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 per cent (n = 9) indicated that it was worth hiring a sheriff, while 39.5 per cent (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 per cent (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.

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 per cent (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 per cent (n = 130) said yes, 18.4 per cent (n = 42) said no, and 24.6 per cent (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; I also included those substantive comments about the Nova Scotia Small Claims Court that appeared elsewhere in the survey. I developed content themes with an eye toward balance: wherever a negative theme appeared, I 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. 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 per cent, n = 54) and concerns about adjudicators other than bias (21 per cent, 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.

### 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, I 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, I believe this survey accurately represents the viewpoints of Nova Scotia Small Claims Court users, and I am 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 per cent 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. I make four recommendations, outlined in Table 30 and described in more detail below.

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

## Enforcement of Judgments

I 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, I 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 I 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. I 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). I 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. I was 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). I 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

My 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, I describe some potential directions for future research and related policy considerations that are suggested by the current study.

### Allowable Claims up to $25,000

My 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. I 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. I 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. I 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.

I 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. I 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. My 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. I agree, and I 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.

## Summary and Conclusion

In closing, I 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. I 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. I urge caution, and careful empirical evaluation of the system as the full impact of these changes unfolds.

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## Tables

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).

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.

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?

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

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*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

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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.

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.

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.

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.

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.

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).

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, $\chi^2$ (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.

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.

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 |

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).

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.

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.

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 | 4.9 | 2.0 | 238 |

| | | | |
|---|---|---|---|
| way to access justice. | | | |
| 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 |

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 | 5.3% (n = 2) |

| | |
|---|---|
| Execution) | |
| Other | 31.6% (n = 12) |

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

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.

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