

SMALL CLAIMS COURTS CANT[®]

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Small claims courts have traditionally been seen as a valuable institutional innovation for facilitating access to justice. In Quebec, the small claims court is particularly prized because most corporate plaintiffs may not be plaintiffs, because parties may not be represented by lawyers and because judges are to play an activist role in managing the litigation process. This article reports the findings of an empirical study of the plaintiff population of the Small Claims Court of downtown Montreal during 1992. It presents information on the socio-demographic characteristics of plaintiffs, the nature of claims brought, the dispute process followed, and the outcome of the cases. The article concludes that the use of the court is often correlated with those socio-demographic variables associated with social power and that structural modifications to processes of civil litigation designed to enhance access to justice do not significantly alter the character of any court's plaintiff pool. Whatever may be the benefits of creating systems of small claims courts, the empirical evidence suggests that greater accessibility of official institutions of dispute resolution is not one of them.

Les cours des petites créances ont traditionnellement été considérées comme des innovations institutionnelles facilitant l'accès à la justice. Au Québec, cette institution est particulièrement respectée, car, la majorité des entreprises ne peuvent être requérantes, les parties ne peuvent être représentées par avocats, et parce qu'il s'agit d'un tribunal de type inquisitoire. Cet article présente les conclusions d'une étude empirique au sujet des requérants de la Cour des petites créances du centre-ville de Montréal durant l'année 1992. Les informations présentées concernent les caractéristiques socio-démographiques des requérants, la nature des litiges, les procès et les résultats obtenus. L'article conclut que le recours à ce tribunal est directement lié aux variables socio-démographiques, telles que le pouvoir social, et que des modifications structurelles au processus visant l'accès à la justice a un impact négligeable sur l'origine des requérants. Quels que soit les avantages d'un tel tribunal, les données empiriques suggèrent que ces avantages ne comprennent pas l'amélioration de l'accès à de telles institutions.

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I. INTRODUCTION: ACCESS TO JUSTICE IN SMALL CLAIMS COURTS

What is access to justice and how ought we to worry about it? For many scholars, justice consists principally of the vindication of state-determined legal rights through an adjudicative institution that administers and enforces them.¹ The opportunity for judicial determination of a claim is thus held to be an integral element of access to justice.² Small claims courts emerged across North America in the

¹ See, for example, M. Cappalletti & B. Garth, “Access to Justice: The Newest Wave in the Worldwide Movement to Make Rights Effective” (1978) 27 *Buff. L. Rev.* 181; W.A. Bogart & N. Vidmar, “Problems and Experience With the Ontario Civil Justice System” in A. Hutchinson, ed., *Access to Civil Justice* (Toronto: Carswell, 1990) 1; *Rapport du Groupe de Travail sur l’accessibilité à la Justice: Jalons pour une plus grande accessibilité à la justice* (Québec, Ministère de la justice, June 1991) [hereinafter *Rapport sur L’accessibilité*]; and P. Adams *et al.*, *Evaluation of the Small Claims Court Program* vol. 1 (Victoria: Ministry of the Attorney General, 1992).

² The point is, of course, both trite and problematic. For a powerful restatement of the public virtue of official adjudication, see O.M. Fiss, “Against Settlement” (1984) 93 *Yale L.J.* 1073. But compare, I. Morrison & J. Mosher, “Barriers to Access to Civil Justice for Disadvantaged Groups” in *Rethinking Civil Justice: Research Studies for the Civil Justice Review* vol. 2 (Toronto: Ontario Law Reform Commission, 1996) 637 [hereinafter *Rethinking Civil Justice*], who present a detailed

late 1960s and the early 1970s as a means of enhancing access to justice in this particular sense.³ These “people’s courts” were designed as fora characterized by speed, low cost, informality, self-representation, and an activist adjudicator,⁴ in order that the benefits of official law could be visited upon all citizens regardless of their socio-economic status. Such, at least, is today’s small claims court cant.⁵

In Quebec, the *Cour des petites créances* was re-established in 1971.⁶ Its stated ambition was to provide an inexpensive, expeditious,

critique of the conflation of the notions of “access to justice” and “access to courts.”

³ Rich historical accounts of the ebbs and flows of this institution are provided in E.H. Steele, “The Historical Context of Small Claims Courts” [1981] *Am. B. Found. Res. J.* 295; and C.J. Whelan, “Small Claims Courts: Heritage and Adjustments” in C.J. Whelan, ed., *Small Claims Courts: A Comparative Study* (Oxford: Clarendon, 1990) 207. On the relationship between goals of access to justice, legal informality, and small claims courts, see P. Finkle & D. Cohen, “Consumer Redress Through Alternative Dispute Resolution and Small Claims Court: Theory and Practice” (1993) 13 *Windsor Y.B. Access Just.* 81; R.A. Macdonald, “Accessibilité pour qui? Selon quelles conceptions de la justice?” (1992) 33 *C. de D.* 457; J.M. Conley & W.M. O’Barr, “Fundamentals of Jurisprudence: An Ethnography of Judicial Decision Making in Informal Courts” (1987) 66 *N.C. L. Rev.* 467; J.M. Conley & W.M. O’Barr, “Litigant Satisfaction Versus Legal Adequacy in Small Claims Court Narratives” (1985) 19 *L. & Soc’y Rev.* 661; and K. Hildebrandt, B. McNeeley & P.P. Mercer, “The Windsor Small Claims Court: An Empirical Study of Plaintiffs and Their Attitudes” (1982) 2 *Windsor Y.B. Access Just.* 87 [hereinafter “Windsor Small Claims Court”]. On legislative intentions generally in instituting Small Claims Courts, see C.S. Axworthy, “Controlling the Abuse of Small Claims Courts” (1976) 22 *McGill L.J.* 480; and G. Applebey, “Small Claims” in C. Samson & J. McBride, eds., *Solutions de rechange au règlement des conflits* (Ste. Foy, Que: Presses de l’Université Laval, 1993) 43.

There is, of course, a substantial empirical literature on various aspects of small claims court processes. See C.A. McEwan & R.J. Maiman, “Mediation in Small Claims Court: Achieving Compliance Through Consent” (1984) 18 *L. & Soc’y Rev.* 11; and N. Vidmar, “An Assessment of Mediation in a Small Claims Court” (1985) 41 *J. of Social Issues* 127, on the effectiveness of small claims court mediation. On the relative significance of case characteristics and disputing forum, see C.A. McEwan & R.J. Maiman, “The Relative Significance of Disputing Forum and Dispute Characteristics For Outcome and Compliance” (1986) 20 *L. & Soc’y Rev.* 439; N. Vidmar, “Assessing the Effects of Case Characteristics and Settlement Forum on Dispute Outcomes and Compliance” (1987) 21 *L. & Soc’y Rev.* 155; and R.L. Wissler, “Mediation and Adjudication in the Small Claims Court: the Effects of Process and Case Characteristics” (1995) 29 *L. & Soc’y Rev.* 323. For an excellent summary of this literature, see I.D.C. Ramsay, “Small Claims Courts: A Review” in *Rethinking Civil Justice* *supra* note 2, 489 at 491 [hereinafter “Small Claims Review”].

⁴ This list is taken from J.C. Ruhnka, S. Weller & J.A. Martin, *Small Claims Courts: A National Examination* (Williamsburg, Va.: National Center for State Courts, 1978); see also M. Cappaletti & B. Garth, *Access to Justice: A World Survey* (Milan: Éditions Guiffre, 1978) vol. 1 at 72 and 83.

⁵ Two recent evaluations of the performance of Small Claims Court as measured against this cant are P.-C. Lafond, “L’exemple québécois de la Cour des petites créances: «cour du peuple» ou tribunal de recouvrement?” (1996) 37 *C. de D.* 63; and “Small Claims Review,” *supra* note 3.

⁶ The predecessor to the current Small Claims Court of Quebec was the “Cour des commissaires,” a court created in 1843 ostensibly so that lay people could bring their small claims to a judge and have them resolved inexpensively, simply, and promptly. See R. Cliche, “Les petites créances” (1973) 14 *C. de D.* 291. This court was abolished in 1965, allegedly because of corruption and abuse within the system. See G. Laroche, *Guide des Petites Créances* (Outremont, Que.:

and non-bureaucratic tribunal for the recovery of small debts.⁷ The explicit assumptions lying behind this legislative initiative were, of course, that less costly and more informal procedures—*i.e.*, reducing objective barriers to access to justice⁸—would facilitate the metamorphosis of conflicts from the “oppressive” private realm to the public realm where impartial state agencies would fairly resolve them.⁹ The only impediments to equal access would then be those relating to sociopsychological factors affecting the propensity of individual citizens to resolve conflict through litigation.¹⁰

In the more than twenty-five year interval since the modern-day small claims court was instituted, there has been much debate about, and many studies testing, whether these assumptions about the role and

Modulo Éditeur, 1983) c. 1 at 1-2. The current Small Claims Court of Quebec was created in 1972 by *An Act to promote access to justice*, S.Q. 1971, c. 86, which amended the *Code of Civil Procedure of Quebec*, R.S.Q. 1977 c. C-25 [hereinafter *CCP*]. See generally D. Ferland, “Du Recouvrement des Petites Créances” in D. Ferland & B. Emery, eds., *Précis de procédure civile du Québec*, vol. 2, 2e ed. (Cowansville, Que.: Yvon Blais, 1994) at 613.

⁷ See Quebec, National Assembly, Standing Committee on Justice, *Journal des débats; commissions parlementaires* 29th Leg. (22 January 1971) at B-185. On the basic features of this court that reflect the model for such institutions traced in the “access to justice” literature, see Lafond, *supra* note 5; S.C. McGuire & R.A. Macdonald, “Judicial Scripts in the Dramaturgy of the Small Claims Court” (1996) 11 *Can. J. L. & Soc’y* 63 [hereinafter “Judicial Scripts”]; A. Desjardins, “Le recouvrement des petites créances au Québec” (1985) 9 *Prov. Judges J.* 18; and A. Prujiner, “L’ambiguïté des «small claims courts» et ses effets sur leur adaptation québécoise” (1971) 12 *C. de D.* 175.

⁸ On objective barriers to access and the “pseudo-distinction” between objective and subjective barriers, see R.A. Macdonald, “Access to Justice and Law Reform” (1990) 10 *Windsor Y.B. Access Just.* 287 [hereinafter “Justice and Law Reform”].

⁹ For a representative expression of this view from Quebec, see N. L’Heureux, “Les solutions de rechange au règlement des petits litiges” in C. Samson and J. McBride, eds., *supra* note 3, 245. The idea that the power of the state must be deployed to relieve individuals from the oppressiveness of informal means of conflict resolution has long been a dominant theme in access to justice literature. See, for example, L. Nader, “Disputing Without the Force of Law” (1979) 88 *Yale L.J.* 998; R.L. Abel, “The Contradictions of Informal Justice” in R.L. Abel, ed., *The Politics of Informal Justice*, vol. 1 (New York: Academic, 1982) 267; T. Grillo, “The Mediation Alternative: Process Dangers for Women” (1991) 100 *Yale L.J.* 1545; and G. Lafree & C. Rack, “The Effects of Participants’ Ethnicity and Gender on Monetary Outcomes in Mediated and Adjudicated Civil Cases” (1996) 30 *L. & Soc’y Rev.* 767.

¹⁰ This assumption, and the *Rapport du Groupe de travail sur l’accessibilité à la justice* *supra* note 1, which evaluated the Quebec Small Claims Court system on the basis that it was true, is critiqued in R.A. Macdonald, “Theses on Access to Justice” (1992) 7 *Can. J. L. & Soc’y* 35. For a study of the influence of personality on the propensity of tenants to seek redress before the Quebec Rental Board, see J. Paquin, “Psychological Dimensions of Access to Justice: An Empirical Study and Typology of Disputing Styles,” LL.M. Thesis, McGill University, 1997 [unpublished].

effect of the court can be sustained.¹¹ This article is a contribution to that literature. It is part of a larger empirical study of the Small Claims Court of Montreal that seeks to understand if (and if so, how) such courts function in enhancing access to justice.¹² The article tests some of these assumptions about the accessibility of small claims courts by examining the character of everyday non-corporate civil disputing in multicultural environments. It investigates patterns of use and non-use of the downtown Montreal court, plotting the socio-demographic characteristics of plaintiffs against those of the population in the geographic catchment of the court.

A number of distinctive features of this particular court and its catchment make it an ideal institution for a such an empirical study. First, in its *Code of Civil Procedure*, Quebec excludes almost all corporations and partnerships from using the court as plaintiffs.¹³ Second, except in very limited circumstances, Quebec also excludes lawyers from representing clients before the court, whether acting for

¹¹ For a listing of the more important of these studies, see *supra* note 3 and *infra* note 17. As for critical evaluations of the relationship between access to justice and small claims courts, see D.M. Trubek, "Critical Moments in Access to Justice Theory: The Quest for the Empowered Self" in Hutchinson, *supra* note 1; I.D.C. Ramsay, "Consumer Law and the Search for Empowerment" (1991) 19 Can. Bus. L.J. 397; and I.D.C. Ramsay "Small Claims Courts in Canada: A Socio-Legal Appraisal" in Whelan, ed., *supra* note 3 at 25. In Quebec, most recently, see Lafond, *supra* note 5.

¹² Though we do not present the results of three other studies, a few words about their substance will situate this paper in the context of the larger enterprise. First, in addition to quantitative data about court plaintiffs set out here, we accumulated detailed subjective reports from users about their small claims court experience: S.C. McGuire & R.A. Macdonald, "Tales of Wows and Woes from the Masters and the Muddled" [forthcoming 1997] [hereinafter "Masters and the Muddled"]. Second, through personal interviews with judges and court mediators, we attempted to ascertain how officials perceive their roles, how they understand the expectations of those they serve, and how they deal with the often conflicting cultural understandings of court users: "Judicial Scripts," *supra* note 7. Third, we interviewed self-identified members of cultural communities and socially disadvantaged groups to learn more about their felt injustices, their methods of dealing with conflict, and their perceptions of the small claims court as a dispute settlement institution: S.C. McGuire & R.A. Macdonald, "For Whom the Court Toils" [forthcoming 1997] [hereinafter "For Whom the Court Toils"].

¹³ Until recently all corporations were excluded from the court. Nonetheless, unregistered or nominal partnerships and unincorporated businesses could bring proceedings in the court. Since 1993, corporations may be plaintiffs where "at all times during the 12-month period preceding the application, not more than five persons bound to it by contract of employment were under its direction or control": *CCP*, *supra* note 6, art. 953(3). Finally, corporations and partnerships may also be plaintiffs in cases where the debtor intends to contest an action brought in the Court of Quebec—Civil Division and requests that it be transferred to the small claims court for adjudication: *CCP*, art. 983.

plaintiffs or defendants.¹⁴ Third, the procedures of the court are judge-led and simplified, and clients who so desire are provided with free assistance by court technicians in preparing their cases.¹⁵ Finally, the population of downtown Montreal comprises a rich linguistic, ethnic, religious, and economic *mélange*.¹⁶ Together, these features serve to make the downtown Montreal Small Claims Court the most unmediated civil disputing institution in Canada. They further serve to eliminate many distortions to the pool of plaintiffs that arise from collateral factors such as the presence of corporations and lawyers, and the formality of judicial procedures.

II. FOR WHOM THE COURT TOILS

For many years, small claims courts have been a privileged site of empirical research into civil disputing. Usually, studies have concentrated on one of three themes: the outcomes of small claims court litigation; the legal nature of the claims brought to the court for decision; and the organizational and economic attributes of plaintiffs (user characteristics).¹⁷ Most have concluded that small claims courts

¹⁴ *CCP*, *supra* note 6, art. 955. In circumstances in which (1) counsel is retained as a salaried employee of a business, or (2) a complex question of law exists, legal representation is permitted: *CCP*, arts. 956 and 977.1. On the desirability of this exclusion, compare G.W. Adams, "The Small Claims Court and the Adversary Process: More Problems of Function and Form" (1973) 51 *Can. Bar Rev.* 583 at 613-15; and C.S. Axworthy, "A Small Claims Court for Nova Scotia: Role of the Lawyer and the Judge" (1977) 4 *Dalhousie L.J.* 311.

¹⁵ Small claims court judges are regular, full-time judges of the Court of Quebec—Civil Division who, in Montreal, hear cases in the small claims court one day every other week. These judges are expected to proceed more informally than they otherwise would when sitting in their other judicial capacities. They are, nonetheless, bound by rules of substantive law and evidence and are not authorized to decide on the basis of "equity or good conscience." Nonetheless, judges are mandated to dispense "justice" to ordinary citizens and are authorized to "proceed according to the procedure which seems best" They are required "whenever possible ... [to] attempt a reconciliation of the parties." The court may sit on non-judicial days, at any hour determined by the judge, who may convene the hearing outside the courthouse. Finally, there is, in principle, no appeal from any decision of the small claims court, and the costs of executing a judgment rendered are borne by the State. On these points and how judges perceive their role in the court, see "Judicial Scripts," *supra* note 7 at 68-71.

¹⁶ The catchment of the downtown Montreal Small Claims Court is the most demographically cosmopolitan area of Quebec. See Statistics Canada, *Profile of Census Divisions and Subdivisions in Quebec*, Part A, Cat. No. 95-325 (Ottawa: Supply and Services Canada, 1992) at 201 and 307 [hereinafter *Quebec Census Profil*].

¹⁷ The following are helpful studies of user characteristics: C.R. Pagter, R. McCloskey & M. Reinis, "The California Small Claims Court" (1964) 52 *Cal. L. Rev.* 876; A. Moulton, "The Persecution and Intimidation of the Low-Income Litigant as Performed by the Small Claims Court

are largely populated with business plaintiffs who repeatedly use the court for debt collection purposes.¹⁸ The present study probes further into socio-demographic factors so as to ascertain such features as the age, gender, religion, income, level of education, birthplace, language, occupation, social class, and cultural identification of court users. Only secondarily does it seek to correlate the nature of the claims (for example, as consumer claims or as debt collection actions) brought to the court, the ways in which they were handled within the court process, and the ultimate outcome of the litigation with socio-demographic characteristics of plaintiffs.¹⁹

The foundational hypothesis tested here can be stated succinctly: there are important correlations between socio-demographic characteristics and the likelihood that one will employ (as a plaintiff) the small claims court as a strategy for civil disputing.²⁰ We begin with a strong background assumption: namely, that non-criminal conflict of the type cognizable by the small claims court is randomly distributed across any given population. *Ceteris paribus* therefore, in an idealized universe of potential plaintiffs, the socio-demographic profile of those bringing

in California" (1969) 21 Stan. L. Rev. 1657; J.W. Samuels, *Small Claims Procedure in Alberta: a report to the Institute of Law Research and Reform of Alberta* (Edmonton: The Institute, 1969); J. Gerbrandt *et al.*, "Preliminary Study of the Small Claims Court Procedure in Manitoba" (Winnipeg: University of Manitoba, 1972) [unpublished]; "Windsor Small Claims Court," *supra* note 3; N. Vidmar, "The Small Claims Court: A Reconceptualization of Disputes and an Empirical Investigation" (1984) 18 L. & Soc'y Rev. 515; and "Small Claims Review," *supra* note 3.

¹⁸ The studies mentioned in the previous note report the following findings: in Pagter *et al.*, 60 per cent of plaintiffs were businesses or government, about 30 per cent were private individuals; in Moulton, 84 per cent of plaintiffs were businesses or government, 16 per cent were private individuals; in Samuels, 45 per cent of plaintiffs were small businesses, 25 per cent were large businesses, 25 per cent were private individuals; in Gerbrandt, 69 per cent of plaintiffs were businesses, 31 per cent were private individuals; in Hildebrandt, private individuals using the court tended to be highly educated, relatively well-off, and familiar with the court from prior experience; in Vidmar, 33 per cent of claims related to a "consumer issue"; and in "Small Claims Review," 40 per cent of plaintiffs were local businesses, 20 per cent were large businesses, 37 per cent were individuals.

¹⁹ This is an important point to signal. At least one earlier study suggests that the role of the small claims court as an instrument of debt collection is overstated because studies have tended to focus only on plaintiffs, thus ignoring those consumer cases in which the consumer defends a collection action by raising a matter that could have been pursued directly on a warranty or for negligent performance of a service: Vidmar, *supra* note 17. We acknowledge the force of Vidmar's claim, but note that the purpose of the present study is to test whether persons of diverse socio-cultural backgrounds see the court as a forum in which they can achieve satisfaction. For a careful analysis of the differences between the Vidmar study and the present study see "Small Claims Review," *supra* note 3 at 504-07 and 520-21.

²⁰ We take the point that litigation is just one strategy among many which persons in conflict deploy to resolve the conflict in a manner they find satisfactory: S.E. Merry, *Getting Justice and Getting Even* (Chicago: University of Chicago Press, 1990).

claims for adjudication by the court should be more or less identical to the socio-demographic profile of the population at large within the catchment of the court.²¹ As a corollary in this same universe, it would follow that the outcomes of claims brought to court would depend on the nature and strength of the claims advanced, and would bear little relation to the socio-demographic characteristics of court users.²² These claims, furthermore, would relate to the entire panoply of problems that are of significance to people in the court's catchment, and not just to some particular sub-set of such problems.²³ Accepting the above assumption about the distribution of non-criminal conflict as a heuristic, this study tests the identified foundational hypothesis.

A. Methodology

The study, of which the present article is a partial report, involved two principal investigations, accompanied by two follow-up mail-out surveys. Each of these samplings generated a separate data set. While the four data sets are broadly comparable, slight differences in sampling methodology and in the analysis intervals mean that they cannot be statistically cross-tabulated. They do, nonetheless, provide data that, at least inferentially, tends to be mutually reinforcing.

²¹ Of course, we acknowledge several reasons why this assumption may not be valid. Should there be non-random distribution of plaintiffs on the basis of socio-demographic characteristics, at least the following explanations are possible: legally cognizable conflict may not be randomly distributed; the perception of conflict may not be randomly distributed; and the desire to use courts to resolve conflict may not be randomly distributed. See W. Felstiner, R.L. Abel & A. Sarat, "The Emergence and Transformation of Disputes: Naming, Blaming and Claiming..." (1981) *L. & Soc'y Rev.* 631. Another study in this project investigates the latter two of the above possibilities: see McGuire & Macdonald, "For Whom the Court Toils," *supra* note 12.

²² In other words, success or failure in litigation should not depend on factors such as language, age, sex, ethnicity, class, religion, marital status, occupation or education of plaintiff or defendant. Nor should it depend on whether a plaintiff or defendant is a first-time or repeat user, or whether the claim was mediated successfully or unsuccessfully prior to trial. See *infra* Part II(D)(2).

²³ In a follow-up study to the present investigation the authors seek to determine how citizens come to recognize conflict as legally cognizable, and the factors that then induce them to seek redress in the official court system. This project, also funded by the SSHRC, is entitled "Conflict and Civil Disputing in Côte des Neiges."

1. Sampling procedures and profiles

In the first investigation (Sample I), a questionnaire was personally administered to 296 persons appearing at the clerk's office of the Montreal Small Claims Court to file claims during the summer of 1992. The questionnaire was a second-generation research instrument, having been refined from a pilot questionnaire administered under similar conditions to approximately fifty intending plaintiffs at the court in August 1991. The questionnaire was made available in both French and English. The first part of the questionnaire was completed by the respondent in private. The second part was administered by the researcher. The survey pool consisted of persons who had appointments at the court clerk's office with legal technicians employed by the court to assist plaintiffs in preparing the documentation necessary to file a claim. They were interviewed either just before they met with a court technician or immediately afterwards. An attempt was made to interview all plaintiffs having appointments in the eight full weeks of July and August 1992; approximately 70 per cent of those who appeared for their appointments during this period completed the survey instrument. The questionnaire solicited such information as the plaintiff's demographic characteristics, the nature of the claim being made, and the plaintiff's awareness of the mediation services offered by the court.

The second primary investigation (Sample II) was documentary and consisted of a search of 2,293 of the approximately 9,000 small claims court files opened during 1992. Files opened on approximately every fourth working day in 1992 were searched. While the archives of the small claims court contain cases where judgments rendered by a number of different tribunals—the small claims court, the municipal tax court, the rental board—are filed for execution, the sample was limited to those originating within the jurisdiction of the small claims court.²⁴ Researchers completed a form for each file, noting the name and address, apparent gender, claim type, claim amount, and outcome for each file.

These primary samples were complemented by two follow-up surveys. In the first (Sample III), a questionnaire was mailed to all sixty of the 296 claimants previously interviewed (Sample I) who had reported a willingness to be contacted for a future study. The questionnaires were written in either French or English, according to the language of the first

²⁴ The court archives contain these other files because judgment creditors from the rental board and municipal tax court can file judgments with the small claims court and therefore take advantage of the public (and free) executions process that issues from the court.

interview. Thirty-one responses were received, and a dozen questionnaires were returned by the Post Office. The survey instrument consisted of open-ended questions (the results of which are not reported here) relating to matters such as overall satisfaction, comfort in using the processes, reasons for deploying the court, and more general perceptions of and attitudes towards the court. These results could be cross-referenced for individual claimants with the data obtained in Sample I.

The other follow-up study (Sample IV) comprised a detailed questionnaire mailed to 571 claimants randomly selected from among the 2,293 court files previously examined (Sample II). The questionnaire was written in both French and English and was sent to the plaintiff's address as recorded in the court files. Although no previous contact had been established with any of these plaintiffs, 157 of the 571 questionnaires were completed, with approximately 100 others returned by the Post Office. The questionnaire sought to generate both quantitative and qualitative data. Its first, quantitative, part solicited information about the claimant's demographic characteristics and the nature of the claim in such a way as to replicate, for Sample II informants, the full set of data generated by the personal interviews comprising Sample I. The second, qualitative, component of this questionnaire was identical to that of the first follow-up study (Sample III).

Of the four data sets, Sample IV provides the richest information for three reasons. By contrast with the data sets of Sample I and Sample III, it was drawn from the universe of court users over an entire year and not just those who filed claims over the summer months; in addition, it was sent to plaintiffs who may not have consulted with a court technician to commence their lawsuit. Second, by contrast with the data set of Sample I, it also reports the attitudes of plaintiffs after the hearing was completed and the litigation outcome was known. Finally, by contrast with the data set of Sample II, it is a large, random sample that gives detailed socio-demographic information about court users.

2. Data analysis

The four samples have been stored in separate databases. Three (Samples I, II, and IV) contain information that can be statistically analyzed. The fourth (Sample III) contains only narrative reports by small claims court users. It, along with the qualitative data resulting from Sample IV, is not discussed further here. The data collected in

Samples I, II, and the first part of the questionnaire in Sample IV is the basis for the descriptive and inferential analysis reported in this essay.²⁵

Descriptively, frequency distributions were generated for each variable—age, education, income level, type of legal claim, and so on. These frequency distributions permit the data about the socio-demographic make-up of the samples to be compared with 1991 census data for the postal codes correlating with the geographic catchment of the downtown Montreal Small Claims Court. Socio-demographic characteristics, the over- or under-representation of which in the small claims court plaintiff pool cannot be accounted for as matters of mere chance, were isolated using the “t-test” method.²⁶

In comparing the survey samples and census data, a certain statistical slippage inevitably occurs. The court studied principally serves downtown Montreal and surrounding neighbourhoods. Disputes involving parties in the north or far west regions of Montreal would normally be taken to the small claims court located in these areas. Both regions have a significantly different demographic make-up from Montreal’s downtown core (for instance, there is a large Italian community in the north-east end and a large anglophone community in the west end of greater Montreal). Nevertheless, nothing prevents a person living in one of these other catchments from bringing a claim in the downtown court.²⁷ Because the survey instruments also recorded the address of plaintiffs, however, it was generally possible to control for data bias resulting from the inclusion of extra-catchment plaintiffs.

Inferentially, the significance of the relationship between two variables was tested using the *chi*-squared test rather than regression analysis because the survey data was categorical rather than continuous.²⁸ Each demographic characteristic was tested against all other demographic variables. A similar process of correlation was

²⁵ The qualitative data from Sample III and Sample IV are reported in “Masters and the Muddled,” *supra* note 12.

²⁶ Statistically significant variance between our samples of court users and the general population exists where “t” is less than or equal to 5 per cent ($t < \text{or} = .05$).

²⁷ This would typically occur when a plaintiff from one of these areas works in downtown Montreal, or is suing a defendant with a place of business in downtown Montreal. These plaintiffs would normally not be recorded in the 1991 census as living within the geographic catchment of the Montreal court.

²⁸ The *chi*-squared test indicates that a significant relationship exists between two variables where the probability of a random relationship is 5 per cent or less (*i.e.*, $p < \text{or} = .05$). Of course, the reliability of the *chi*-squared test diminishes where fewer than ten responses fall within a bivariate category (for example, very few respondents reported being ages forty-five to fifty-four and students).

undertaken for each demographic variable and the type of claim brought, and the outcome of the case.

The inferential analysis was completed by testing the strength and importance of relations found to be significant from the *chi*-squared test using a correlation matrix.²⁹ Only the strength of relations existing among socio-demographic variables for the most representative data-set (Sample IV) were measured. Then, logistic regression analysis for socio-demographic variables in Sample IV was used to determine which socio-demographic variables are most predictive of who is apt to use the court again.³⁰

B. *First Encounters—Plaintiffs Seeking Help (Sample I)*

This section describes the demographic characteristics of the 296 persons interviewed during the summer of 1992 while they were at the court to file a claim or, in a minority of cases, simply to seek information about the small claims process. It then outlines how these plaintiffs came to use the court by describing the types of problems they brought, their sources of information about the court, and the means by which they sought to resolve the dispute—by mediation or adjudication.

1. Socio-demographic data: descriptive analysis

In a first stage of analysis, the population of this sample was sorted by reference to socio-demographic factors such as gender, age, language, ethnicity, cultural identification, level of education, employment status, income, knowledge of the court, claim type, and use of the court's mediation services.

²⁹ The correlation matrix tests whether the relationship existing between two variables previously shown to be significantly related is strong, moderately strong or not very strong. Where .5 is equal to or less than "x" and "x" is equal to or less than 1, a strong relation exists between the variables. Where "x" is in the range of .3 to .5, a moderate relation exists between them. Where "x" is less than .3, a weak correlation is present.

³⁰ This technique controls the effects that other variables may have on the relations between two significant variables. Multivariate analysis allows one to pinpoint a particular set of relations from which generalizations can be made about future patterns of behaviour. For example, it can lend support to the hypothesis that persons who have used the court repeatedly in the past are apt to use it again in the future.

Gender: Males outnumbered females by almost a ratio of two to one, although the ratio of men to women in the Montreal region is roughly 1:1, there actually being slightly more women than men.³¹

Age: The plaintiffs in this sample were also younger than average. Sixty-three per cent were younger than forty-five years old with 26 per cent being between the ages of thirty-five and forty-four. The census reports that 54 per cent of the adult population of Montreal is younger than forty-five years with 19 per cent being between thirty-five and forty-four years of age. People over age sixty-five were the least represented—only 7 per cent of those surveyed as against 18 per cent of the adult population of Montreal.³²

Language: French was the first language of 61 per cent of the plaintiffs, English was that of 17 per cent, and another language that of 22 per cent of the sample. Census data indicate that French is the mother tongue of 58 per cent of residents, English is that of 20 per cent, and another language that of 22 per cent of the population.³³

Ethnicity: The birthplace and sense of ethnic identity of those surveyed reveals interesting configurations of court usage. Seventy-two per cent of users were born in Canada; 28 per cent were immigrants. Census data reveal that 76 per cent of the population of downtown Montreal was born in Canada; 24 per cent of residents were born abroad.³⁴ Almost one-half of all first-generation immigrants surveyed

³¹ *Quebec Census Profile supra* note 16 at 201. The census data report socio-demographic characteristics for a random sample of 20 per cent of the population in 1991, according to region: T=.0001. Information about the plaintiff's sex was missing in six of 296 cases.

³² *Ibid.* We assumed the "adult population of Montreal" consisted of all persons at least twenty years old enumerated in the census data: T=.1553. The overall variation between the ages of respondents and the age distribution of the population of Montreal was not statistically significant. Information about age was missing in thirty-two of 296 cases.

³³ In Quebec, three expressions are conventionally used to describe mother tongue: francophone means French as a mother tongue; anglophone means English as a mother tongue; and allophone means neither French nor English as a mother tongue. These usages are followed in this article.

Although this may appear to indicate a slight over-representation of francophones, the differences are not statistically significant: T=.5847. The difference between this sample and that of the census population is not significant. Information about first language was missing in eighteen of 296 cases. It is also probable that anglophones use the small claims court located in Pointe Claire in the western third of the island of Montreal. The percentage of anglophones living in this area is significantly greater than that residing in the downtown core. In Pointe Claire, English is the mother tongue of 63 per cent of the population, French that of 24 per cent, and another language that of 13 per cent: *supra* note 16 at 212.

³⁴ *Supra* note 16 at 307. We could not determine whether these differences between our sample and that of the census population were statistically significant as the categories we used differed from those deployed in the census. The t-test could only be undertaken where our sample

did not identify themselves as members of an ethnic group (in official Quebec jargon, a cultural community).³⁵ On the other hand, of the 32 per cent who did identify themselves as being members of an ethnic group, 47 per cent were born within Canada.

Cultural Identification: Very few claimants reported a cultural identification. Only 29 per cent stated that they belonged to a particular community. Cultural identifications were diverse and did not align with those provided in the census, precluding comparisons from being made in all but a few cases.³⁶ Four identified themselves as Italian, another four as Greek, yet another four stated they are Arabic. Two others said they belonged to the Vietnamese community, another two subscribed to an Iranian identity, a further two said they were Germans. There was a single respondent who identified with each of the following ethnicities: Chinese, Irish, Hispanic, Eastern European, and Western European. Community identification was strongest for French, Jewish, and “Black”³⁷ populations: these claimants representing respectively 10 per cent, 15 per cent, and 14 per cent of those reporting themselves to be a member of a cultural community. Neither Jews nor Blacks appeared to be over or under-represented in the court. Plaintiffs reporting membership in these communities represent respectively only 4 per cent and 4 per cent of those surveyed while census data indicates percentages of 5 per cent and 2 per cent respectively.³⁸

When asked whether they identify with a cultural community, rather than whether they belong to an ethnic community, persons of French and British origins significantly under-reported their status. No one claimed to have a British identity although, according to ethnic background, such persons comprise 7 per cent of the population of Montreal. Two identified themselves as Scottish. Whether this

categories and the census categories were identical.

³⁵ Forty-seven per cent of immigrants did not identify themselves as members of a cultural community: $P=.0001$.

³⁶ The census provides information of ethnic origin, not of cultural identification. The ethnic origins there enumerated are French, British, Italian, Jewish, Aboriginal, Greek, Black origin, Other, and Multiple Origins: *supra* note 16 at 307.

³⁷ Under the label of the “Black” community, we include seven persons who identified themselves as Haitian, three who stated that they were Caribbean, one who identified himself as Black, and another who said he was a member of the African community. Obviously, persons of such diverse backgrounds should not be lumped together under this homogeneous label, although we have done so in order to allow for comparisons with the census data, which use “Black” as an ethnic category.

³⁸ *Supra* note 16 at 307. A t-test could not be used because of the small number of respondents who reported an identification with a cultural community and because of minor differences in the categories used in the census and in our questionnaire.

under-reporting results because members of dominant cultures tend not to think that they have an ethnicity or because, in the case of persons with British roots, they perceive that it is not politically advantageous to so identify themselves in Quebec, could not be determined. Regardless, personal observation suggests that persons of French and British extraction are not under-represented as plaintiffs in the small claims court.³⁹

Education: Level of education also correlated with court usage. Those with the least formal education were the least represented in our sample: 11 per cent of plaintiffs had only some secondary school instruction compared with 32 per cent of the general population in this category. The obvious corollary was also borne out: 33 per cent of plaintiffs had completed post-secondary studies compared with only 21 per cent of the general population. In addition, 23 per cent of claimants reported that their highest level of educational achievement was the completion of secondary school as compared with 15 per cent of Montrealers generally.⁴⁰

Employment Status: Employment is another factor positively correlating to usage. Seventy-eight per cent of claimants reported that they were employed compared to 64 per cent for the Greater Montreal region.⁴¹ Some 32 per cent of claimants reported that they were self-employed—an outstanding figure of more than four times that of workers who reported being self-employed in the national census for the

³⁹ We were unable to run a meaningful t-test to evaluate this hypothesis since 210 of 296 respondents did not report a cultural identification. Of course, this does not mean that 210 of the 296 respondents do not belong to cultural communities. It merely indicates that those who identified with a cultural community tended more often than not to be cultural minorities. For this reason, we could not compare our sample of self-identified members of cultural communities with the census population.

⁴⁰ *Supra* note 16 at 309. In calculating the percentages of people who fall within each category of scholastic achievement from the census data, we considered the sample population of persons aged fifteen or more in Montreal to be 1,626,025, this figure being the sum of persons within all categories of educational achievement, rather than the census population of 1,467,215. The difference is presumably the result of minors whose inclusion in the census skews the comparison being made with our sample: $T=.0001$. Information about education was missing in nineteen of 296 cases.

⁴¹ *Supra* note 16 at 309: $T=.0001$. Information about employment status was missing in twenty-eight of 296 cases.

region of Montreal.⁴² When professionals are added, 36 per cent of claimants fell into this category.

Income: Although those surveyed appeared to be, on the average, active participants in the economy, they were not particularly wealthy. As many fell within the lowest income bracket of less than \$15,000 as did within the highest income bracket of more than \$60,000—19 per cent being within each of these categories. Relative to the census data for the Montreal region, neither of these figures is statistically significant.⁴³ Most plaintiffs reported family incomes of between \$25,000 and \$34,999. The mode income bracket of respondents is thus beneath the average household income of approximately \$40,000 but it embraces the median household income of approximately \$31,000.

Knowledge of the Court: When asked how they came to learn of the small claims court, a significant number of those surveyed reported that the court was a matter of common knowledge.⁴⁴ Almost one-quarter of users reported that they knew of the court from past experience: they were repeat users. Yet few of these could be characterized as seasoned experts since 84 per cent of these repeat users had been to court on only one other occasion.

Claim Type: The lawsuits filed by these claimants were of various sorts: only 25 per cent related to debt collection; 14 per cent of claims related to a claim for damage to person or property; a further 14 per cent related to a consumer complaint; and a final 22 per cent involved a complaint about a service rendered.

Use of Mediation Services: At the time these users were interviewed, they were at the point of filing a claim. Most did not intend to attempt a resolution of their dispute by using the court-annexed mediation service. The principal reason for this choice appears to be that the majority—52 per cent—were not yet aware of this mediation service. Forty-nine per cent of those who reported that they did not

⁴² *Supra* note 16 at 311. Although common sense suggests that there is a significant variance between the number of self-employed persons in our sample as compared to the population, we could not run a t-test to verify this intuition as the census categories did not permit comparison with those of our sample.

⁴³ *Supra* note 16 at 315. Census data relating to levels of income could not generally be used to make comparisons as the income brackets of the census differed from those in our study. Only data relating to family and household income of more than \$60,000 could be used for comparative purposes. Thus, we were not able to determine whether the income differentials between our sample and the population were statistically significant.

⁴⁴ Thirty-three per cent of respondents reported that their source of information about the court was a source apart from those listed in our questionnaire; the majority of those within the “other” category reported knowledge of the court to be simply a fact of life.

intend to ask for mediation stated that it was because they did not know about this procedure. By contrast, of those who knew of the mediation service, 71 per cent intended to proceed by this route.

Table I
Selected Socio-Demographic Characteristics of Plaintiffs Seeking
Assistance From Small Claims Court Technicians
(N = 296)

GENDER	MALE	FEMALE		
Sample	65%	33%		
Census	49%	51%		
AGE	20-35	35-45	45-65	65+
Sample	37%	26%	30%	7%
Census	35%	19%	38%	18%
LANGUAGE	FRENCH	ENGLISH	OTHER	
Sample	61%	17%	22%	
Census	58%	20%	22%	
BIRTHPLACE	CANADA	ELSEWHERE		
Sample	72%	28%		
Census	76%	24%		
EDUCATION	SOME HIGH SCHOOL	HIGH SCHOOL DIPLOMA	BACHELOR'S OR MORE	
Sample	11%	23%	33%	
Census	32%	15%	21%	
OCCUPATION	EMPLOYEES	SELF-EMPLOYED	PROFESSION	OTHER
Sample	42%	32%	4%	22%
Census	54%	8%	2%	36%

2. Correlations: inferential analysis

The above data reveal certain patterns of court use but do not indicate whether relations exist between the variables characterizing court users. In a second stage of analysis, these different variables were cross-tabulated and the strength of the relations between them were tested for statistical significance. From this analysis, inferences can be drawn as to the most significant determinants of court use.

While women as a group were grossly under-represented among court plaintiffs, there was a particular paucity of allophone and

immigrant women.⁴⁵ Of all allophones using the court, the ratio was 4:1 in favour of men.⁴⁶ Of all immigrants using the court, 77 per cent were male and 23 per cent were female.⁴⁷

Allophones and immigrant plaintiffs also tended to be married whereas francophones, anglophones and persons born within the province of Quebec typically were single.⁴⁸ The female plaintiffs in this sample were largely single or separated/divorced, while the men were married and unmarried in equal proportions.⁴⁹ It might be inferred from this data that, where a problem arose that had some bearing on a married couple, particularly within immigrant and allophone households, the husband commonly brought the problem to court. Female plaintiffs characteristically had lower household incomes than their male counterparts.⁵⁰ Given the typical kinds of claims filed in the small claims court, it might be inferred that the relative economic disadvantage of women offers them fewer occasions to use the court as sellers of goods and services.

Somewhat similar patterns of under-representation were evidenced with elderly persons whose first language was neither French nor English and whose birthplace was outside of Canada. Only 5 per cent of users aged sixty-five or more were allophones;⁵¹ only 5 per cent

⁴⁵ The relationship between the respondent's first language and the respondent's birthplace was significant. $P=.0001$. Eighty-six per cent of respondents whose first language was neither French nor English were immigrants.

⁴⁶ $P=.0455$.

⁴⁷ $P=.0448$.

⁴⁸ Sixty-two per cent of allophones in our study were married whereas only 37 per cent of francophones and 40 per cent of anglophones had spouses: $P=.0084$. Fifty-seven per cent of immigrants were married whereas fewer than 40 per cent of those born within Quebec were wed.: $P=.0455$.

⁴⁹ Forty-two per cent of women were single compared to 34 per cent of men. Twenty-one per cent of women were separated or divorced compared to 12 per cent of men. A full 50 per cent of all men were married compared to 29 per cent of all women: $P=.0041$.

⁵⁰ Of respondents with a household income of \$60,000 or more, 75 per cent of them were male; 25 per cent were female. Of respondents with a household income of \$25,000—\$34,999, 58 per cent were male; 41 per cent were female: $P=.05237$. Though the relationship is not technically significant, it is close enough to suggest that there was a relation between the gender of the claimant and family income.

⁵¹ $P=.0449$.

of senior citizens were immigrants.⁵² Allophones using the court tended to be middle-aged.⁵³

Significant correlations could not be detected between first language and levels of education, income, or employment. It did appear, however, that proportionally more anglophone and allophone claimants were professionals or self-employed than were francophone users.⁵⁴ Furthermore, over one-half of all first-generation immigrants using the court in this sample reported that they were professionals or self-employed.⁵⁵ This high proportion of first-generation immigrants with professional status might be partially explained by the fact that professionals and business people are more apt to be accepted as immigrants to Canada than are other classes of people. It also might reflect that within immigrant communities, and certainly within allophone communities, it is professionals and self-employed business people who have the occasion, the information, and the confidence to use the court. To the extent that the latter inference is true, it suggests that, in our sample, a greater number of the non-professional francophones were comfortable using the small claims court relative to non-professional allophones and immigrants.

A linear relation existed between level of education and family income as claimants with higher levels of education enjoyed higher family incomes. Almost 60 per cent of those earning \$60,000 or more held a bachelor's degree or had attained a further level of scholastic achievement. Over half of those whose household income was between \$15,000-\$24,999 had acquired no more than a high school diploma.⁵⁶ Level of education was also directly related to employment. Eighty-four per cent of those with a bachelor's degree were employed, as were 90 per cent of those with a master's degree and all of those with doctoral degrees. These figures compare favourably to those of claimants with lesser scholastic achievements: 62 per cent had some secondary

⁵² P=.1664. Note that the relationship between age and birthplace was not statistically significant.

⁵³ Of allophones using the court, 28 per cent were between the ages of twenty-five and thirty-four, 26 per cent were between thirty-five and forty-four, 29 per cent were between forty-five and fifty-four. This is somewhat comparable to the age distribution of francophone users: P=.0449.

⁵⁴ Still, more than half of all professionals reported that their first language was French. Fifty-three per cent of anglophone users reported being self-employed or professional, as did 41 per cent of allophone users and 36 per cent of francophone claimants: P=.0121.

⁵⁵ Fifty-two per cent of persons born outside of Canada reported that they were professionals or self-employed: P=.0124.

⁵⁶ P=.0086.

schooling or less, and 75 per cent of those with a high school diploma were employed.⁵⁷ Well-educated claimants frequently were professionals or self-employed: 47 per cent of professional or self-employed plaintiffs reported that they had attained a bachelor's degree or a higher level of education.⁵⁸

Education bore a significant relation to how users came to learn of the small claims court. A significant proportion (36 per cent) of those who had learned of the court through past experience had attained only a secondary school diploma. However, a high percentage (53 per cent) of those whom one would expect to be repeat users—persons who had some university education—reported that their source of information about the court was common knowledge.⁵⁹ Furthermore, a relatively low proportion (29 per cent) of professionals or self-employed claimants reported being repeat users. This disparity is understandable given that we did not expect to find true experts in manipulating the court system in this particular plaintiff pool.⁶⁰ If they had such expertise, presumably they would not have required the assistance of a technician to file a claim.

Predictably, the majority of claims for debts owing were brought by professionals, while the vast bulk of claims relating to consumer complaints were brought by claimants who were neither professionals nor self-employed.⁶¹ Given the high proportion of immigrant users who were professionals or self-employed, it is also not surprising that a higher proportion of immigrants brought claims for a debt owing than did claimants born within Canada.⁶² Overall, a somewhat higher proportion of anglophones brought claims for debt than did allophones.⁶³ This

⁵⁷ $P=.0617$. Although this relation is technically not significant, it is close enough to be noteworthy.

⁵⁸ $P=.0432$.

⁵⁹ By contrast only 19 per cent of respondents who had completed a bachelor's degree reported that they were repeat users. Most of these reported that their primary source of information was "other," specifying that the small claims court was a matter of common knowledge: $P=.0012$.

⁶⁰ See *infra* notes 123-26 and accompanying text.

⁶¹ Fifty-eight per cent of all claims for debt were brought by professionals; 95 per cent of all consumer complaints were brought by persons who were not professionals or self-employed.

⁶² Thirty-two per cent of immigrants brought claims relating to debt collection as did 24 per cent of respondents born within the region of Montreal and 22 per cent of respondents born elsewhere in Quebec. The significance of the relationship between birthplace and the nature of the claim could not be determined.

⁶³ $P=.0001$.

suggests that even despite the significant representation of professional and self-employed allophones in the court, this sample of allophones may have experienced a broader array of problems than did anglophone plaintiffs.⁶⁴

It is also noteworthy that allophone users were somewhat less confident about their knowledge of the law: 58 per cent of allophones reported that they could not identify the category of their legal dispute.⁶⁵ On the other hand, neither birthplace⁶⁶ nor cultural community identification⁶⁷ was significantly related to reported ability to categorize the legal nature of the claim. Those reporting themselves most able to categorize their legal claims were professionals and self-employed persons.⁶⁸

Awareness of the availability of mediation services was not significantly related to any socio-demographic characteristics of claimants. Their knowledge of such services depended on whether they had already spoken to a court technician at the time that they were interviewed.⁶⁹ Furthermore, there was no discernible relationship between the demographic characteristics of users and their intention to use mediation services, although users who were not employed appeared to be more willing to deploy mediation services than those who were working.⁷⁰

⁶⁴ For instance, 19 per cent of allophones brought a claim relating to a complaint with services rendered by travel agencies, garages, and the like. Only 4 per cent of the claims of anglophones related to complaints of this nature.

⁶⁵ This compares unfavourably to the 45 per cent of francophones and the 32 per cent of anglophones who stated that they could not identify the legal category of their dispute. $P=.0235$.

⁶⁶ $P=.1391$. Though the relation is not significant, it is still interesting to note that 55 per cent of immigrants stated that they could not legally categorize their claim, while only 42 per cent of those born within the region of Montreal stated that they were incapable of such categorization.

⁶⁷ Respondents who identified with a cultural community were even more confident than those who did not report such an identification. Sixty-three per cent of respondents who identified with a cultural community reported that they could identify the nature of their legal claim; only 51 per cent of those who did not identify reported that they were capable of such legal categorization. $P=.0711$.

⁶⁸ Sixty-two per cent of professionals and self-employed respondents reported that they could categorize their legal claim; only 50 per cent of other respondents reported that they had this ability: $P=.056$.

⁶⁹ Of those who had received assistance from a technician, about 70 per cent of them were aware of mediation services. This contrasts with 32 per cent of respondents who reported that they had been aware of mediation services before meeting with a technician.

⁷⁰ Eighty-nine per cent of users who were not working stated that they would be willing to use mediation services, but only 69 per cent of employed respondents reported that they intended to request mediation services: $P=.0846$.

C. *A Year in Review—What Happened (Sample II)*

This section describes information revealed by the 2,293 randomized court files opened during 1991 (Sample II). Unfortunately, of the previously noted socio-demographic characteristics analyzed in Sample I, only the sex of the user could be discerned from these files. The bulk of the information available related to the nature of the claims brought to the court, the disputing processes pursued, and the outcomes of the disputes.

1. Socio-demographic data: descriptive analysis

This investigation of court files confirmed the findings drawn from the study of intending plaintiffs who consulted a court technician—women are markedly under-represented in the court. The ratio of men to women was again about 2:1, with 64 per cent of plaintiffs being male and 29 per cent of plaintiffs being female.⁷¹

Unlike the great variety in the nature of claims being brought to the court for adjudication in Sample I, this sampling of court files revealed that the majority (59 per cent) of claims filed related to the collection of a debt. By subdividing the category of debt collection according to the occupation of the plaintiff, it appeared that almost half of these claims, or approximately 26 per cent of all lawsuits, related to the collection of *professional fees*. More than a quarter of all claims for debt collection, or 16 per cent of the entire sample, were brought by lawyers or notaries for *legal fees* owing by their clients. One might hypothesize an even greater debt collection role for the court were not a significant percentage of debt collection—rental payments owed by tenants—statutorily excluded from the court and assigned to the rental board. So too with commercial claims brought by corporations, which are also excluded.

The second most common claim related to customer dissatisfaction with a service rendered. Fifteen per cent of all claims dealt with service complaints—typically with insurance companies, travel

⁷¹ Four per cent of the claims were brought by couples, 1 per cent of claims were brought by multiple plaintiffs, 1 per cent of claims were brought by companies and 1 per cent of claims were brought by tutors (persons appointed for the purpose of managing the legal affairs—including litigation—of minors) claiming on behalf of children. We disregarded these cases in order to test the degree of variance between the sample and the population and found a statistically significant relationship: $T=.0001$. Information about the plaintiff's sex was missing in fifty-one of 2293 cases, excluding instances in which plaintiffs were companies, tutors, couples, and groups.

agents, and garage mechanics, but only 1 per cent of cases were brought by lay-persons against professionals. A further 7 per cent of claims related to a consumer problem with a product purchased. Approximately 84 per cent of all claims were founded in contract law.⁷² It can be surmised that the relations at issue in these cases were principally market relations, or at least they were presented as such in the courtroom. Only 13 per cent of claims were delictual, and concerned actions for damage caused to persons or property.

These statistics suggest that, notwithstanding the intention of the Quebec legislature to give the small claims court a specialized vocation as a people's court, the claims that can in fact be brought to the court limit the typologies of plaintiffs who can make use of this service. The jurisdiction of the small claims court is restricted to contractual and delictual matters by article 953(b) of the *CCP*. Perhaps not surprisingly, sellers and service providers more often used the court to collect moneys owing from buyers and clients than did buyers and clients to pursue consumer problems. Even though most corporations and partnerships are prohibited from suing in the small claims court, the court was still heavily populated with professionals and self-employed businesspersons using the court for the purpose of debt collection. The above data about court users is a reminder that jurisdictional definitions inevitably limit the types of people who can invoke the coercive apparatus of the state to assist in resolving their problems. The limited range of processes of dispute resolution and remedies available within the small claims court also appears to restrict the appeal of this institution for certain categories of plaintiff. These various procedures—party-negotiated settlement, settlement through a mediation proceeding, formal adjudication, and discontinuance—and their outcomes were tracked in order to determine how claims were ultimately resolved.

About 56 per cent of all files opened were brought to judgment, 35 per cent were positively settled through the mediation process, 14 per cent were resolved through a party-negotiated settlement, and in a final 14 per cent the claim was not pursued.⁷³ On average, those who

⁷² This includes claims for debt collection, complaints with services rendered, disputes involving the purchase of a product, and even landlord/tenant/sub-tenant arrangements that were not within the jurisdiction of the Rental Board.

⁷³ When all paths of dispute resolution are added together, they total 119 per cent. This reflects that the paths of resolution are not mutually exclusive. For instance, a settlement may be reached in mediation then reneged upon, with the result that a judgment may then be obtained. Alternatively, a default judgment may be rendered without knowledge that the defendant had previously declared bankruptcy and, as the judgment would then be suspended, the claim might be discontinued.

resolved their dispute through a party-negotiated settlement received about 86 per cent of the total amount of their claims. Where mediation was successful, plaintiffs recovered an average of 56 per cent of the amount of their claim, reflecting that the parties often agreed to split the difference. In an adjudicated outcome plaintiffs recovered on average 69 per cent of the amount claimed, reflecting the all-or-nothing nature of adjudication in which more plaintiffs win than lose their lawsuits.

Mediation was requested by 56 per cent of plaintiffs. Of these files, we found that mediation was accepted by 35 per cent of defendants. In 45 per cent of the files, it was impossible to trace whether the parties agreed to proceed by way of mediation or not. Mediation was unsuccessful in 21 per cent of cases; in 46 per cent of the files, there was insufficient documentation to determine whether mediation had led to a settlement.

Where judgments were rendered, only 19 per cent of these cases were default judgments—the vast majority of the default judgments having been rendered due to the absence of the defendant rather than the absence of the plaintiff. The plaintiff's suit was entirely rejected in 19 per cent of these default judgments. Twenty-two per cent of judgments were rendered by a registrar without the necessity of an adjudicative hearing in those cases where the plaintiffs had provided ample documentary proof of a debt owing.

Of the 14 per cent of claims that were discontinued, the files disclosed that 6 per cent of claims were withdrawn voluntarily, 7 per cent of claims did not proceed to court because the defendant could not be found, and in 1 per cent of the cases, proceedings were suspended due to the defendant's bankruptcy.

2. Inferential analysis

Gender proved to be significantly correlated both to the nature of claims brought to the court, and to the means of resolution. Women initiated a slightly higher proportion of suits for all types of claim other than debt collection. Sixty-eight per cent of the claims brought by men were for debt compared to 56 per cent of claims brought by women.⁷⁴ This may indicate either that women experience slightly more grievances as consumers of goods and services, or that they are somewhat less likely to be creditors of monetary debts, or that they are less inclined to use the court to collect moneys owing, or some combination of these reasons.

⁷⁴ P=.0001.

Unfortunately, the information collected could not be analyzed to test the validity of any of these hypotheses.

A higher proportion of women requested mediation services than did men. Sixty-one per cent of women asked the defendant to resolve the problem through a mediated settlement, while 52 per cent of men made a similar request.⁷⁵ Yet men requesting mediation were more apt to gain the agreement of the defendant than were women. The defendant refused to agree to mediation in 30 per cent of the instances in which it was sought by a woman plaintiff, whereas men received such refusals in only 16 per cent of cases.⁷⁶ Where the dispute was taken to a mediator, women were more apt than men to agree to the settlement proposed: 38 per cent of women settled their conflict in mediation while only 28 per cent of men did likewise.

D. A Detailed Profile of Users (Sample IV)

In order to find out more about the socio-demographic profile of the plaintiffs identified through the sample of 2,293 court files (Sample II), a detailed questionnaire was mailed to a randomly selected one-quarter (571) of them (Sample IV).⁷⁷ This section presents data provided by the 157 plaintiffs who completed and returned this questionnaire.⁷⁸ It begins with a description of the socio-demographic characteristics of these plaintiffs, the nature of their claims, and the outcomes of their lawsuits. It then reports significant correlations

⁷⁵ $P = .0001$.

⁷⁶ This differential might be somewhat mitigated by the fact that, in 41 per cent of cases where female plaintiffs requested mediation and in 49 per cent of files where male plaintiffs requested mediation, we could not ascertain whether the defendant accepted the offer to mediate. Moreover, the significance of the relation between gender and the defendant's acceptance of mediation could not be ascertained.

⁷⁷ Since Sample IV was a further randomization of Sample II (itself randomized), we were able to test the relative randomness of the samples against each other. Two categories permitted direct cross-tabulation between Sample II and Sample IV: gender and claim type. As for gender, Sample II reported 64 per cent male and 29 per cent female, while Sample IV reported 65 per cent male and 35 per cent female. As for claim type, Sample II reported 59 per cent debt collection, while Sample IV reported 52 per cent. The seemingly small variance between the results in Sample II and Sample IV suggests that other data generated in Sample IV could be projected backwards onto Sample II.

⁷⁸ As noted, this sample was the richest data set. This sample is not limited by its seasonal nature, nor is it limited by the fact that the persons surveyed actually filed their claim in person at the court house. Personal filing is not typically employed by more experienced users, who most often prepare their own documentation and deliver it to the court via a courier or a court runner.

between demographic variables, and between demographic variables and claim type, process type and outcome. It concludes with an analysis of the strength of these correlations and of which socio-demographic characteristics are the best indicators of who is apt to use the small claims court.

1. Socio-demographic data: descriptive analysis

As in Sample I, in a first stage the population of this sample was analyzed by reference to socio-demographic factors such as gender, age, language, ethnicity, cultural identification, level of education, employment status, income, knowledge of the court, claim type, and use of the court's mediation services.

Gender: The sex distribution in this sample is virtually identical to that in Sample I and Sample II. Of those who indicated their sex, there was a disproportionate number of male plaintiffs, in a ratio of roughly 2:1: 65 per cent of plaintiffs were male; 35 per cent were female.⁷⁹

Age: As in Sample I, claimants tended to be relatively young. Sixty-two per cent of respondents were younger than forty-five years of age. Those within the age range of thirty-five to forty-four were again the most over-represented, with 31 per cent of claimants falling within this category. Persons aged sixty-five or more were once again sparsely represented, comprising only 8 per cent of those surveyed.⁸⁰

Language: In this sample as well, allophones were found to be significantly under-represented.⁸¹ A non-official language (neither French nor English) is the mother tongue of 22 per cent of the population of the Greater Montreal region, French is the mother tongue of 58 per cent of the population and English is the mother tongue of 20 per cent. Here, we found 72 per cent of plaintiffs reporting their first language to be French and 18 per cent reporting their first language to be English. Though allophones constituted 22 per cent of plaintiffs

⁷⁹ The over-representation of male plaintiffs is significant statistically. $T=.0001$. Information about sex was missing in fifteen of 157 cases. Compare *supra* text accompanying notes 31 and 71.

⁸⁰ $T=.0001$. Note that, unlike the results in Sample I, the age differentials between respondents in Sample IV and the population actually are statistically significant. Information about age was missing in four of 157 cases. See *supra* text accompanying note 32.

⁸¹ The under-representation of allophones might be partially explained by the fact that only those allophones who could both read and write in either French or English would be able to participate in our study.

seeking the aid of a clerk, they represented only 10 per cent of those identified in the random sample of court users.⁸²

Ethnicity: Although allophones were under-represented as plaintiffs, immigrants were not. Twenty-three per cent of claimants in this sample were born outside of Canada, and 74 per cent were born within the province of Quebec.⁸³ Those immigrants represented in this sample tended not to be allophones: only 33 per cent were allophones, while the remaining 67 per cent comprised francophones and anglophones in roughly equal percentages.⁸⁴

Cultural Identification: Minority cultural identification was highest for claimants reporting a Jewish identity (16 per cent), and second highest for persons reporting an Italian identity (12 per cent).⁸⁵ Members of the Jewish community represented 5 per cent of the total number of those surveyed and comprise 5 per cent of the population according to the census, while Italians represented 4 per cent compared with a census report of 9 per cent.⁸⁶ Without additional information it is impossible to determine whether these are statistically significant differences or whether they might simply reflect differences in the degree of community identification between Italian and Jewish populations.

⁸² $T=.0001$. Information was missing in three of 157 cases. Unlike in Sample I, the differential between this sample and that of the population is statistically significant. See *supra* text accompanying note 33.

⁸³ This is comparable to census data providing that 24 per cent of residents in the region of Greater Montreal are immigrants. These slight differences were not found to be statistically significant. See *supra* text accompanying note 34.

⁸⁴ $P=.0001$. Though most immigrants were not allophones, 75 per cent of allophones were immigrants.

⁸⁵ The census indicates that 5 per cent of the population of Montreal is Jewish; the number of Jews among courts users appears to be proportionate to that of the population. See *supra* text accompanying notes 36-38. Once again, it was impossible to determine whether these differences are statistically significant, given that the categories in our sample differ from those of the census. Our sample enumerated a broader array of cultural/ethnic communities than those listed in the census.

⁸⁶ Given that the Italian community of Montreal is geographically concentrated in the north and north-east sectors of the city, it may be that members of these neighbourhoods use the court in Laval. For instance, according to the census, in Montréal Nord, 16 per cent of the population is ethnically Italian; in St. Léonard, 43 per cent of the population is of Italian origin. See *supra* note 16 at 317 and 326.

Some other cultural identities were enumerated by claimants, although none in any great number.⁸⁷ It is noteworthy that 46 per cent of immigrants did not identify themselves as members of a cultural community at all. Whether this indicates that they feel themselves to be members of the cultural mainstream or whether it reflects a wish not to be associated with a minority culture could not be determined from the responses given. It is also possible that certain minority cultural groups are less inclined to use the court as plaintiffs.⁸⁸

Education: Claimants in this sample were, on the whole, quite well educated. Forty-five per cent reported having completed at least a university bachelor's degree, as compared with a census report of only 21 per cent.⁸⁹ By contrast with the distribution in Sample I, only 8 per cent of those surveyed reported that their highest level of scholastic achievement was the completion of a high school diploma, and 14 per cent of claimants reported not having completed high school.⁹⁰

Employment Status: Surprisingly, 90 per cent of claimants reported that they were employed in some capacity; this compares with a workforce participation rate among the adult population in Montreal of only 64 per cent.⁹¹ More striking still, some 57 per cent of all plaintiffs reported being professionals or self-employed in business. Since only 8 per cent of the working population of Montreal reported themselves to be self-employed in the 1991 census, and since it is unfathomable that 49 per cent of the workforce in Montreal would be professionals, this suggests a significant over-representation of professionals and business people in the court.⁹²

⁸⁷ Two said they were "Haitian," three characterized themselves as "Arabic," and another three called themselves "Hispanic." Only one respondent identified with the "Greek" culture. Otherwise, the "First Nations," the "East Indian," and the Iranian communities were the only other ones for which a single respondent identified. There were no respondents reporting a Chinese, a Cambodian, a Vietnamese, an African, a Japanese, a Laotian, an Oceanic or a Pakistani identity.

⁸⁸ The relationship between cultural identity and court usage is complex. For a first assessment in a neighbourhood falling within the catchment of the downtown Montreal Small Claims Court, see S. Rich & M. Antaki, "Final Report on the Summer 1996 Côte des Neiges Disputing Project" (August 1996).

⁸⁹ $T=.0001$. Information about educational status was missing in two of 157 cases. See *supra* text accompanying note 40.

⁹⁰ According to census data, 32 per cent of the adult population of Montreal have not completed high school. See *supra* note 16 at 309.

⁹¹ $T=.0001$. Compare *supra* text accompanying note 41.

⁹² It was impossible to determine whether the differential between our sample and the population was statistically significant as the census data breaks down occupation according to field, and self-employed status according to gender and/or incorporated status. We did not use similar

Income: Claimants in this sample were also wealthier than those in Sample I—those users awaiting the aid of a clerk.⁹³ Thirty-three per cent reported that their family incomes totalled \$60,000 or more, and this was also the modal category. According to the census data, 27 per cent of families earn \$60,000 or more, and 19 per cent of all households fall within this range.

Knowledge of the Court: A relatively high percentage (43 per cent) of plaintiffs in this sample were repeat users. As expected, these claimants proved to be, on the whole, more experienced than those interviewed while awaiting help in the office of the court clerk. Moreover, among these repeat users, the frequency of prior use was greater than with claimants in Sample I. Seventy-three per cent had previously used the court more than once, while 84 per cent of repeat users in Sample I reported having been to court only once before. The claimants in Sample IV also were more likely to have been steered to the court by lawyers or the police. Over one-half (52 per cent) learned of the court through some direct connection with the legal system.

Claim Type: By contrast with Sample I but like Sample II, the most common type of claim (52 per cent) was for the collection of moneys owing. A slightly higher proportion of the claims in this study related to consumer complaints than did those claims in our extensive search of court files. Here, 20 per cent of claims concerned a problem with a service rendered, including 3 per cent brought against professionals. Furthermore, 13 per cent of claims involved a problem with a product purchased by a consumer. In all, 88 per cent of claims could be characterized as contractual in nature.

Use of Mediation Services: Not only was the small claims court process most frequently used to resolve contractual problems relating to debts owing, plaintiffs invariably chose (or threatened) adjudication as the means of dispute settlement. Although two-thirds reported that they were aware of the availability of mediation services, only about one half of them, or 35 per cent of all claimants, asked the defendant to agree to mediation. Twenty-eight per cent of all claimants reported that they actually used the mediation process to attempt to resolve their dispute, but only 43 per cent of these (14 per cent of all claimants), successfully resolved their conflict in mediation.

The other 86 per cent of claimants obtained a judgment or negotiated a settlement under the threat of adjudication. Of these, 15 per cent lost their claims in an adjudicative hearing, 4 per cent reported

categories in our sample. Compare *supra* text accompanying note 42.

⁹³ See *supra* text accompanying note 43. Once again, because of differences in the categories used, we could not compare our sample to the population.

a partial victory, 8 per cent explained that they were unable either to settle or adjudicate, and 72 per cent reported that they won their case in its entirety either before a judge or through a privately negotiated settlement.

Table II
Selected Socio-Demographic Characteristics of All
Small Claims Court Plaintiffs
(N = 157)

GENDER	MALE	FEMALE		
Sample	65%	35%		
Census	49%	51%		
AGE	20-35	35-45	45-65	65+
Sample	31%	31%	30%	8%
Census	35%	19%	38%	18%
LANGUAGE	FRENCH	ENGLISH	OTHER	
Sample	72%	18%	10%	
Census	58%	20%	22%	
BIRTHPLACE	CANADA	ELSEWHERE		
Sample	74%	26%		
Census	75%	24%		
EDUCATION	SOME HIGH SCHOOL	HIGH SCHOOL DIPLOMA	BACHELOR'S OR MORE	
Sample	14%	8%	45%	
Census	22%	15%	21%	
OCCUPATION	EMPLOYEES	SELF-EMPLOYED	PROFESSION	OTHER
Sample	33%	23%	34%	10%
Census	54%	8%	2%	36%

2. Correlations: inferential analysis

To flesh out this portrait of small claims court plaintiffs, various correlations between the demographic characteristics of users, as well as between user characteristics and claim type and outcome were tested. These correlations revealed a number of unsuspected features of the profile of court users.

First, the relationship between sex and first language was again skewed, though the relation between these two variables is not strong.

Of allophone users, 92 per cent were male. This contrasts to the sex distributions among francophones and anglophones of roughly 2:1 in favour of males.⁹⁴ No significant relation existed between sex and place of birth.⁹⁵ Of immigrant plaintiffs, 73 per cent were male. These figures are not significantly different from the distribution of plaintiffs born within Quebec outside of Montreal, although female representation was highest among those plaintiffs born in Montreal.⁹⁶

Professional and/or self-employed status among female claimants was not significantly related to whether they resorted to court. The 2:1 ratio of males to females remained constant, both among respondents reporting themselves to be professionals and/or self-employed and those who did not.⁹⁷ This may reflect that there are still proportionately fewer women engaged in commercial ventures as sellers of goods, services, and expertise in the economic sphere. It might also reflect that women are simply less inclined, across the board, to litigate conflict.

By contrast with Sample I, no significant relationship was found between age and first language, and there was a relatively greater representation of elderly allophone users: allophones comprised 17 per cent of those aged sixty-five or more.⁹⁸ The relationship between age and sex did, however, reveal an under-representation of older women: only 14 per cent of senior citizen users were female, compared with 57 per cent of those aged twenty-four or less.⁹⁹

No significant correlations were found between first language, level of education, and employment. The relationship between language and income, however, proved to be both statistically significant and

⁹⁴ $P = .0933$. This relation is not strictly significant. Compare *supra* text accompanying notes 45-47. When the strength of this relation was tested using a correlation matrix, the relationship between language and sex proved to be weak: $x = .15$. Though allophone women were more under-represented than other women, the significance of this difference is not that great.

⁹⁵ $P = .3553$. Not surprisingly, the strength of the relation was also weak: $x = .189$.

⁹⁶ 67 per cent of respondents born in Quebec outside of Montreal were male; 33 per cent were female. 61 per cent of respondents born within Montreal were male; 39 per cent were female.

⁹⁷ The *chi*-squared test indicated $P = .7203$. The correlation matrix test provided that $x = .147$.

⁹⁸ $P = .5602$; $x = .058$. See *supra* text accompanying notes 51-53.

⁹⁹ $P = .1499$. The proportion of women decreases steadily with each age bracket. Of respondents between twenty-five to thirty-four years of age, 45 per cent were female. Of respondents aged thirty-five to forty-four, 37 per cent were female. Of respondents within the age bracket of forty-five to fifty-four years, women constituted 29 per cent. Of respondents between fifty-five to sixty-four years, 13 per cent were women. The strength of this relationship is still rather weak: $x = .25$.

moderately strong.¹⁰⁰ Francophone users tended either to have relatively low or relatively high incomes,¹⁰¹ whereas allophone plaintiffs tended to have middle incomes,¹⁰² and anglophone claimants tended to have relatively high incomes.¹⁰³ Whether the virtual absence of poorer allophone and anglophone claimants results from there being relatively few impoverished allophones and anglophones in Montreal, or from the fact that language disproportionately inhibits anglophones and allophones from using the court cannot be determined without further investigation and without census data that enable cross-tabulation of these variables.

As with Sample I, a somewhat greater proportion of anglophone (68 per cent) and allophone (64 per cent), as compared with francophone (52 per cent), claimants reported being professionals or self-employed persons.¹⁰⁴ But, unlike the case of those plaintiffs seeking the aid of a court clerk, this correlation was neither statistically significant nor strongly correlated.¹⁰⁵ This seems to indicate that the plaintiff population of the court comprised professional or self-employed persons of many different first languages. It may be that the major distinction among professionals and businesspersons differentiated along linguistic lines is that allophones are somewhat more likely to seek the aid of a court technician in initiating a claim.

Although the relation between first language and occupational category was neither significant nor correlated, that between birthplace and occupational status was significant, though not strongly correlated. Sixty-nine per cent of immigrant respondents were either professional or self-employed businesspersons while only 59 per cent of respondents

¹⁰⁰ The significance of the relation was tested using the *chi*-squared test: $P=.0572$. The strength of the relationship was tested using a correlation matrix: $x=.302$.

¹⁰¹ Twelve per cent of francophone users reported earning incomes of less than \$15,000. An additional 12 per cent reported incomes between \$15,000 and \$24,999. Only 6 per cent of allophones and 4 per cent of anglophones reported earning incomes of less than \$15,000 and not a single allophone or allophone reported earning incomes between \$15,000 and \$24,999.

¹⁰² Thirty-eight per cent of allophones reported earning between \$25,000 and \$34,999 whereas only 18 per cent of francophones and 24 per cent of anglophones reported earning incomes within this bracket.

¹⁰³ Nineteen per cent of francophones reported earning incomes between \$45,000 and \$59,999, as did 12 per cent of anglophones and 6 per cent of allophones. Forty-four per cent of anglophones reported earning incomes in excess of \$60,000, as did 31 per cent of francophones and 25 per cent of allophones.

¹⁰⁴ See *supra* text accompanying notes 54-56.

¹⁰⁵ The *chi*-squared test was used to test the significance of the relation: $P=.2734$. The correlation matrix was used to test its strength: $x=.234$.

born in Montreal and 36 per cent of respondents born elsewhere in Quebec reported a similar status.¹⁰⁶ While the majority of such claimants (72 per cent) were born within Canada, this suggests that immigrants who actually used the court tended not to be disadvantaged, a hypothesis supported by the income levels reported by immigrant users of the court. Thirty-one per cent of claimants born outside Canada had family incomes of \$60,000 or more, a figure comparable with that (38 per cent) reported by those born in Montreal.¹⁰⁷

Level of education also bore a direct and relatively strong relation to family income among court users.¹⁰⁸ Seventy-six per cent of respondents with family incomes of \$60,000 or more had completed at least one university degree. On the other hand, 55 per cent of respondents whose family incomes were between \$15,000 and \$24,999 had completed a high school diploma or had achieved a lesser level of education.¹⁰⁹ Yet, level of education had little relation to the respondent's employment status: of those who reported that they were not working, 19 per cent had not completed a high school diploma but 19 per cent had also attained a master's degree.¹¹⁰ Nor did it correlate to the occupational status of the claimant, though those with a university education tended to be professionals.¹¹¹ Claimants who were either well-educated or engaged in commercial activity were well represented, although users were not necessarily both. The significant commonality of educated and professional users was income: 71 per cent of those earning \$60,000 or more reported themselves as being professional or self-employed as compared with 36 per cent of those earning \$15,000 or less.¹¹²

¹⁰⁶ $P=.0419$; $x=.018$.

¹⁰⁷ $P=.0102$. Those who were born in Canada outside of Quebec had the lowest incomes. Not a single Canadian in this category earned an income in excess of \$45,000. The relationship between place of birth and income is not strong: $x=.117$.

¹⁰⁸ Compare *supra* text accompanying notes 56-58.

¹⁰⁹ The significance of this relation is indicated by the *chi*-squared test: $P=.0138$; the strength is indicated by the correlation matrix: $x=.294$. It should be noted that 53 per cent of those with annual family incomes of less than \$15,000 reported having at least some university education.

¹¹⁰ $P=.0891$; $x=.146$. A fair proportion of these well-educated, unemployed claimants were students and retirees.

¹¹¹ Sixty-seven per cent of respondents with a bachelor's degree reported being self-employed or professional, as did 78 per cent of respondents with a doctoral degree. Yet only 50 per cent of respondents with a master's degree reported themselves to have such a status: $P=.2565$; $x=.192$.

¹¹² $P=.046$. The correlation between income and professional or business status was moderately strong: $x=.307$.

Education and income were also significantly related to the nature of the claims brought by plaintiffs. In very general terms, those with higher levels of education, and those with higher family incomes, tended to bring claims for debts owing: 67 per cent of respondents with a university education brought claims for the collection of debt as compared to 24 per cent of respondents who had not completed a high school diploma.¹¹³ The claims brought by less educated respondents often related to a consumer complaint.¹¹⁴ As for family income, those bringing claims for debt tended to be comfortably middle class: 65 per cent of claimants with family incomes of \$60,000 were suing on a debt, as were 50 per cent of those earning incomes between \$45,000 and \$59,999, and 73 per cent of respondents reporting family incomes in the range of \$35,000 to \$44,999.¹¹⁵ The income of those suing for debt tended to be in the middle to upper-middle range.¹¹⁶ Plaintiffs with lower to mid-range family incomes (\$25,000-\$34,999) brought more claims relating to consumer problems.¹¹⁷

More significant is that the relationship between the occupational status of the claimant and the claim brought answers the questions, “who uses the court?” and “for what purposes?” Seventy-one per cent of all claims brought by professionals or self-employed persons related to the collection of debt as compared with only 29 per cent of claims brought by other types of plaintiff.¹¹⁸ Claimants who were

¹¹³ P=.0109. An interesting anomaly to this trend is that 70 per cent of respondents who had some college education without receiving a diploma also brought claims for debts owing.

¹¹⁴ For instance, of respondents whose highest scholastic achievement was receipt of a high school diploma, 27 per cent of their claims related to a problem with a product purchased. A further 36 per cent of their lawsuits related to a problem with a service rendered, with 9 per cent of these claims being brought against professionals.

¹¹⁵ P=.0263. Another interesting anomaly is that of respondents whose family incomes were less than \$15,000, 53 per cent sued for monies owing.

¹¹⁶ Of all respondents suing for debt, 71 per cent reported incomes in excess of \$35,000 with 41 per cent earning incomes in excess of \$60,000.

¹¹⁷ Of respondents reporting family incomes of \$25,000-\$34,999, 38 per cent of their claims related to a problem with a service rendered, while a further 24 per cent related to a complaint with a product purchased.

¹¹⁸ P=.0001. Another way of expressing this relationship is that of all respondents who made a claim for debts owing, 75 per cent reported being self-employed or professional, whereas 25 per cent did not report that they held such status.

neither professional nor self-employed brought more consumer cases to court.¹¹⁹

First language was the most telling characteristic correlating to awareness of the court's mediation services: only 46 per cent of anglophones, but 63 per cent of allophones and fully 73 per cent of francophones reported that they knew about the mediation procedure.¹²⁰ When claimants were asked why they did not use the mediation service, 41 per cent of anglophones and 40 per cent of allophones reported ignorance of this service, as contrasted with only 18 per cent of francophones so reporting.¹²¹ One may infer that claimants whose first language is not French did not fully understand the explanations provided by those clerks who dealt with potential plaintiffs in French but not in English.

The information from this sample suggests that the court's best clientele are professionals and business people—and that these claimants will likely remain their most faithful clientele in the future.¹²² Two-thirds of the repeat users in this study were either professionals or self-employed business people.¹²³ Among respondents who had not previously used the court, there was roughly an even split between those who were professionals or self-employed and those who were not. The obvious explanation for the proclivity of repeat users to be professionals or self-employed business people is that their more numerous everyday transactions give rise to more occasions where they have need of the court's services—to collect debts owing.

It is also noteworthy that the only factor which appeared to influence success in the small claims court was prior experience using the court. Eighty per cent of those who were repeat users won their cases, either through the adjudicative process or through a negotiated settlement; only 10 per cent reported losing. On the other hand, 66 per

¹¹⁹ Ten per cent of claims brought by professionals or self-employed persons related to a problem with a service rendered whereas 32 per cent of claims brought by other respondents related to this issue. Eight per cent of claims brought by professionals or self-employed persons related to a complaint with a product purchased, while 20 per cent of the complaints brought by other respondents concerned a similar problem.

¹²⁰ $P = .0612$. Though not strictly significant, it is close to being so.

¹²¹ $P = .151$. Here, the reasons given by respondents for not using mediation services were not significantly related to first language.

¹²² We tested variables that are strongly related to repeated use of the court using a logistic regression analysis test. This test can be used to predict who will likely use the court most frequently in the future. Status as a professional or self-employed business person was the only variable that proved to be significant.

¹²³ $P = .0348$.

cent of those who had no prior experience using the court reported that they had won their case and 20 per cent reported that they had lost.¹²⁴ Once users establish a procedural precedent for debt collection—the documentation required, the appropriate mode for presenting evidence and argument, the knowledge of when a claim is likely to be successful and when a non-judicial resolution should be pursued—they are able to use the court to greatest strategic advantage. Consequently, repeated use of the court is probably the primary factor influencing the likelihood of success, status as a professional or self-employed person typically being the condition that furnishes opportunities for acquiring this expertise.¹²⁵

One might also speculate that, because they know the small claims court process well, repeat users would also be less inclined to mediate disputes than others. Indeed, the raw data suggest exactly such a disinclination. Only 39 per cent of repeat users reported using mediation whereas 56 per cent of claimants without prior exposure to the court attempted to deploy these services.¹²⁶

III. CONCLUSION: THE “DID NOT COMPETE” ARE MORE IMPORTANT THAN THE “WINNERS AND THE LOSERS”

These three samples of plaintiffs in the small claims court of downtown Montreal permit a number of conclusions to be drawn about the character of the court as a vehicle for enhancing access to justice. Some of these are troubling, although in view of the outcomes of studies of other small claims courts,¹²⁷ they are not entirely unexpected.

¹²⁴ $P = .2262$. There were a few plaintiffs who had not reported either having won or lost, but instead stated that they were partially successful. There were others who provided an explanation as to why they could not say they had either won or lost. These various cases that did not fit neatly into categories of win or lose were omitted and therefore skew the *chi*-squared evaluation of statistical significance.

¹²⁵ The *locus classicus* is M. Galanter, “Why the ‘Haves’ Come Out Ahead: Speculations on the Limits of Legal Change” (1974) 9 L. & Soc’y Rev. 95. See also M. Galanter, “Afterword: Explaining Litigation” (1975) 9 L. & Soc’y Rev. 347; P. Nejelski, “The Small Claims Court and Access to Justice—Dispute Resolution: Trends and Issues” (1982) 20 Alta. L. Rev. 314; and R. Thomas, “Alternative Dispute Resolution—Consumer Disputes” (1988) 7 Civ. Just. Q. 206.

¹²⁶ $P = .1214$. Though not statistically significant, it is noteworthy. Repeat users gave a wide range of reasons to explain why they did not use mediation services. 19 per cent of repeat users reported they were not interested. Only 9 per cent of other claimants explained that they did not use mediation out of a lack of interest. $P = .1011$.

¹²⁷ See, for example, the studies cited *supra* notes 3 and 17.

Given the ostensible purposes of the court, and the particular efforts of the Quebec legislature to structure the institution to serve ordinary people and to be particularly user friendly,¹²⁸ one might anticipate that the court would be confronted with cases that reflect the diversity of conflict situations experienced by ordinary citizens, and with this, that its judges would be relatively more responsive to differing conceptions of justice that non-expert litigants bring for adjudication. One might also anticipate that if the court in a multicultural urban milieu were truly accessible to all socio-demographic segments of society, that it would be a focal point of inter-cultural mediation, and that its judges would adjust their application of the law in response to the heterogeneous needs and expectations of this diverse population. An earlier study in this project reveals that judges generally do not see their small claims court role to be any different than that which they play as ordinary Quebec Court judges.¹²⁹

The data collected in this study speak to the socio-demographic characteristics of the court's clientele and the kinds of claims brought to court. Analysis suggests that, whatever the intention of the legislature in creating the court, in general the small claims court process in Quebec today caters primarily to those whose disputes involve economic exchanges. Even though art. 953 *CCP* excludes a broad range of conflict from the jurisdiction of the court—family matters, successions, real estate, automobile personal injury claims, most landlord-tenant claims—there remains a number of non-market matters cognizable by the court. Yet actions in delict as between neighbours, or even as between strangers, rarely wind up in the small claims court; nor do a wide range of restitutionary claims. Contract actions are the principal claims that are filed. What is more, the types of contract claim being litigated are relatively circumscribed. Actions (regardless of which party is claiming money) in debt under art. 953, para. 1 *CCP* far outnumber actions (whether by merchants or consumers) for specific performance of a contract or resolution of a contract under art. 953, para. 2 *CCP*.

The types of disputes brought to the small claims court also give an indication of the kinds of persons likely to be claimants: those who

¹²⁸ As examples of these procedural and institutional features one could note, in addition to regular features of other small claims courts, the absence of corporate plaintiffs, the prohibition on lawyers acting in a representative capacity, the fact that technicians are available to help people fill out their claim forms, the provision of court-sanctioned free professional mediation (now no longer available), and the free execution of judgments obtained. See *supra* text accompanying notes 13-15.

¹²⁹ See the report about how judges perceive their roles, how they understand the expectations of those they serve, and how they deal with the often conflicting cultural understandings of court users in "Judicial Scripts," *supra* note 7.

are most likely to be involved in economic exchanges as creditors of a monetary obligation are most likely to be plaintiffs. It is, consequently, no surprise that the bulk of the court's clientele are men as opposed to women, the middle-aged as opposed to the elderly or the young, the francophone (and to a lesser degree, anglophone) as opposed to the allophone, the well-educated as opposed to the less-educated, the wealthy as opposed to the poor, and professionals and business people claiming for the unpaid price of goods sold or services rendered as opposed to consumers claiming for the return of a deposit or instalments paid in respect of defective products or services poorly rendered.

Nonetheless, there are significant divergences between the plaintiff population in the court generally (Sample IV) and the population of plaintiffs who seek the assistance of court technicians (Sample I). These divergences suggest that this feature of the institution in Quebec does operate to broaden accessibility at least to certain sectors of the court's catchment. For example, the percentage of allophones who seek the assistance of a technician is more than twice as high as the overall percentage of allophone plaintiffs.¹³⁰ Again, the number of plaintiffs identifying themselves as members of an ethnic minority or cultural community among those seeking the help of a technician was substantially higher than with the overall plaintiff pool.¹³¹ Furthermore, those seeking the assistance of a technician tended to have less formal education and lower average incomes than those of the general pool.¹³² Less than 25 per cent of those seeking the help of a technician were repeat users (and 84 per cent of these had used the court only once before), whereas almost 50 per cent of the general population were repeat users (and 73 per cent of these had used the court on more than one previous occasion). Finally, it is not surprising that debt collection claims outnumbered consumer claims by a percentage of 52 per cent to 33 per cent among the general population, but that consumer conflicts outnumbered debt collection claims by 36 per cent to 25 per cent among those consulting a court technician. One can conclude that the approximately 20 per cent of the total plaintiff pool of the small claims court that makes use of the services of a technician is socio-demographically more diverse and less well-off financially than the approximately 80 per cent who file their claims

¹³⁰ See *supra* text accompanying notes 33 and 83.

¹³¹ See *supra* text accompanying notes 36-37 and 86-88.

¹³² See, on education, text accompanying notes 40 and 90 *supra*; and on income, see *supra* text accompanying notes 43 and 93.

without seeking such assistance. This population pool also brings a much greater diversity of claims to the court, and is also much more likely to attempt to mediate the claim.

Table III
Significant Differences Between the Small Claims Court Population
Using Technicians (20 per cent of Plaintiffs) and the Overall
Small Claims Court Population

	USING TECHNICIANS	OVERALL COURT POPULATION
LANGUAGE		
Allophones	22%	10%
Francophones	61%	72%
EDUCATION		
University Degree Holders	22%	10%
High School Diploma	61%	72%
OCCUPATION		
Employees	22%	10%
Self-employed	61%	72%
Professionals	4%	34%
Other	22%	10%
REPEAT USERS		
All Repeat Users	25%	43%
More Than One Prior Use	16%	73%
CLAIM TYPE		
Debt	25%	52%
Damages	14%	10%
Consumer Product	14%	13%
Consumer Service	22%	20%
Other/Unknown	25%	7%
MEDIATION		
Unaware of Mediation	52%	33%
Would Use if Known	55%	35%
Knew and Did Use	71%	50%

Analysis of the three data sets does, however, leave undetermined one of the principal hypotheses sought to be investigated in the larger project of which this study is a part. Do case characteristics

of the claims brought determine the socio-demographic composition of the court's plaintiff pool, or do the socio-demographic characteristics of the court's plaintiff pool determine the case characteristics of claims brought? Most studies assume that the former is the case. They presume that the decision to litigate is driven primarily by the desire to obtain financial satisfaction, and seek therefore to track the extent to which small claims courts really do serve as "people's courts" rather than as debt-collection tribunals.¹³³ The present study reveals, however, that in order to unpack causality between "case-characteristic" and "socio-demographic status" at least two other empirical inquiries are necessary. To begin, it is necessary to determine the socio-demographic profile of plaintiffs bringing actions in other Quebec civil courts for matters of the same nature as those cognizable by the small claims court.¹³⁴ Should there be significant commonalities in the plaintiff pool, one could conclude that the particular procedures of the small claims court provide little by way of additional incentive for citizens to seek redress of grievances through litigation. Secondly, it is necessary to investigate the attitudes and behaviours of those who do not even take the step of filing a claim that would be cognizable in the court. Should there be a significant correlation between the socio-demographic profile of potential plaintiffs who do not take an initiating step and the socio-demographic profile of those who are under-represented as claimants, then the distributive effects of ordinary civil litigation on access to justice in state disputing institutions can be made out definitively.

As yet statistically unanalyzed samplings of potential plaintiffs in connection with both questions suggest that there is little difference in socio-demographic profile (even in relation to factors such as income) between the small claims court and the regular civil courts. They also suggest important correlations between under-represented socio-demographic groups in the pool of small claims court plaintiffs and socio-demographic groups that generally choose not to take disputes

¹³³ See, for example, Lafond, *supra* note 5; and the studies reported in "Small Claims Review" *supra* note 3. But compare S.E. Merry, *Getting Justice and Getting Even: Legal Consciousness among Working-Class Americans* (Chicago: University of Chicago Press, 1990), who argues that litigation is just one strategy among many which persons in conflict deploy to resolve the conflict in a manner they find satisfactory. See also "Judicial Scripts," *supra* note 7 at 89-91, where the negative attitude of small claims court judges toward plaintiffs who do not litigate for financial reasons is reported and discussed.

¹³⁴ For an example, although not directed to socio-demography *per se* of the type of study required, see J. Twohig, *et al.*, "Empirical Analysis of Civil Cases Commenced and Cases Tried in Toronto 1973-1994" in *Rethinking Civil Justice* *supra* note 2, vol. 1, 77.

cognizable by that court to litigation.¹³⁵ In other words, there is at least some evidence that sociodemography influences (and is not merely influenced by) case-characteristics and outcomes.¹³⁶ If the court does serve as a debt-collection court, it does so in part because the socio-demographic profile of its plaintiff clientele tends to generate this type of claim. Were the court a higher priority as a conflict-resolution strategy for currently under-represented segments of society, the profile of claims litigated would likely change.

Faced with such conclusions, and faced with an imperative of ensuring equal access to justice for all citizens, one might be inclined to attempt yet another reform of the small claims court system. Is there any compelling reason to pursue this course of action? Lawyers are now excluded from representing clients in the Small Claims Court of Quebec—ostensibly to balance the scales between those who can afford and those who cannot afford counsel. Of plaintiffs in the court today, however, one-sixth are lawyers suing their clients. Most corporations and partnerships are excluded from using the Small Claims Court of Quebec—ostensibly so that it will not be used as a debt collection agency. Nonetheless, this prohibition serves only to change the class of business plaintiffs from larger corporations to small unincorporated entrepreneurs and professionals.

The previous adjustments to the procedures of the small claims court in Quebec appear to illustrate what has been characterized as the “meta-phenomenon”: treating symptoms inevitably engages the law reformer in treating the side effects of previously prescribed remedies.¹³⁷ Changing the rules of access to the small claims court while ignoring the social, economic, and political structures of a society, as well as the

¹³⁵ In another of the three studies which complement the present investigation, self-identified members of cultural communities and socially disadvantaged groups were interviewed to learn more about their felt injustices, their methods of dealing with conflict and their perceptions of the small claims court as a dispute settlement institution: see “For Whom the Court Toils,” *supra* note 12. In addition, another of these studies evaluates detailed subjective reports from users about their small claims court experience: see “Masters and the Muddled,” *supra* note 12.

In a separate but related project, the authors seek to determine how citizens come to recognize conflict as legally cognizable, and the factors that then induce them to seek redress in the official court system. This project, “Conflict and Civil Disputing in Côte des Neiges,” *supra* note 23, is also funded by SSHRC. For a first assessment in a neighbourhood falling within the catchment of the downtown Montreal Small Claims Court, see Rich & Antaki, *supra* note 88.

¹³⁶ A helpful theoretical overview of the problem of under-representation of certain socio-demographic groups is presented in Morrison & Mosher, *supra* note 2 at 639.

¹³⁷ R.A. Samek, *The Meta Phenomenon* (New York: The Philosophical Library, 1981).

internal logic of an adjudicative institution, serves largely to create an illusion of improvement.¹³⁸

This is, however, no cause for despair. Is it tragic that certain groups of the population identifiable according to socio-demographic criteria are under-represented as plaintiffs in the small claims court? Are these “missing plaintiffs” being denied access to justice because they do not resort to small claims courts to remedy grievances? The answer cannot be found simply by reporting statistics about court use. What is most needed is a better understanding of why women, the elderly and the young, cultural minorities, immigrants, the less educated, the unemployed, the poorer, consumers, and non-professionals are less inclined to invoke state institutions such as courts in resolving their problems.¹³⁹ Indeed, data from other studies in the project comprising this study suggest that the disinclination of the above groups to use the court emanates from either of two central reasons: (i) they do not recognize their most pressing problems as being legal problems; or (ii) their most pressing problems are not recognized as legal problems by the court. In addition, the evidence suggests that the group members’ conceptions of justice and of appropriate remedies for achieving justice differ considerably from those of most judges and lawyers.¹⁴⁰

These further studies adopt both a non-instrumentalist and a legal pluralist intellectual framework. In the first place, they do not presume that increased recourse to state law in order to control and change “everyday life” is a necessary good. Moreover, by contrast with most traditional pluralist scholarship,¹⁴¹ they do not presume that the

¹³⁸ Subject, of course, to the caveat that the regime under which court technicians may be called in aid of plaintiffs seeking to file a claim seems to produce a plaintiff population somewhat more representative of the overall demography of the catchment of the court. On the limits of instrumental law reform designed to enhance access to justice, see “Justice and Law Reform,” *supra* note 8.

¹³⁹ In many respects, therefore, enhanced access to justice is fundamentally a factor of a positive public perception of state institutions for civil disputing. For a recent study of this question see S. Wain, “Public Perceptions of the Civil Justice System” in *Rethinking Civil Justice* *supra* note 2, vol. 1, 39.

¹⁴⁰ See the studies cited *supra* note 12.

¹⁴¹ See, as representative examples of traditional pluralist scholarship: M. Galanter, “Justice in Many Rooms: Courts, Private Ordering, and Indigenous Law” (1981) 19 J. Legal Pluralism 1; S. Henry, “Community Justice, Capitalist Society, and Human Agency: The Dialectics of Collective Law in the Cooperative” (1985) 19 L. & Soc’y Rev. 303; P. Fitzpatrick, “Law and Societies” (1984) 22 Osgoode Hall L. J. 115; J. Griffiths, “What Is Legal Pluralism?” (1986) 24 J. Legal Pluralism 1; and S.E. Merry, “Legal Pluralism” (1988) 22 L. & Soc’y Rev. 869. Compare the critique of this version of legal pluralism by B.Z. Tamanaha, “The Folly of the ‘Social Scientific’ Concept of Legal Pluralism” (1993) 20. J. L. & Soc’y 192.

plurality of legal orders is a factual claim.¹⁴² Rather, the concern is epistemological: what are the ways in which people conceive of that which is, and of that which ought to be, law?¹⁴³ Because law ought not be regarded as an exclusively official invention, the challenge is to construct a conception of law in which persons are invited to grasp and to recreate normative narratives about the intendments and consequences of their membership in multiple communities.¹⁴⁴

Therefore, the access to justice challenge in the design of small claims courts is not to monopolize civil disputing within all socio-demographic sectors of society; it is to facilitate the diversity of ways by which people live, negotiate, manipulate, and debate the parameters of their normative relations with each other. On the basis of the data reported in this study, it is far from clear that, in multi-ethnic societies, institutions such as the small claims court in its current form are of great moment in securing *justice* in this wider sense, notwithstanding contemporary small claims court cant.¹⁴⁵

¹⁴² This concept of a non-'Social Scientific' legal pluralism is developed in S.C. McGuire & R.A. Macdonald, "Critical Legal Pluralism" (Paper presented to the Conference "Théories et émergence du droit" 21 October 1995) [unpublished].

¹⁴³ In this sense we follow the lead of Lon Fuller, Sally Falk Moore, and Clifford Geertz. See L.L. Fuller, "Human Interaction and the Law" (1969) 14 Am. J. Juris. 1; S.F. Moore, *Social Facts and Fabrications: 'Customary' Law on Kilimanjaro, 1880-1980* (Cambridge: Cambridge University Press, 1986) at 310-19; and C. Geertz, "Local Knowledge: Fact and Law in Comparative Perspective" in C. Geertz, ed., *Local Knowledge: further essays in interpretive anthropology* (New York: Basic Books, 1983) 167. See also W.O. Weyrauch & M.A. Bell, "Autonomous Lawmaking: The Case of the 'Gypsies'" (1993) 103 Yale L.J. 323; J. Vanderlinden, "Return to Legal Pluralism: Twenty Years Later" (1989) 28 J. Legal Pluralism 149; and J. Vanderlinden, "Vers une nouvelle conception du pluralisme juridique" [1993] R. de la recherche juridique 573.

¹⁴⁴ On these points see R.A. Macdonald, "Pour la reconnaissance d'une normativité implicite et inférentielle" (1985) 18 Sociologie et Sociétés 47; R.A. Macdonald, "Les vieilles gardes" in J.-G. Belley, ed., *Le droit soluble* (Paris: L.G.D.J., 1993) 233; and R.A. Macdonald, "Multiple Selves and Legal Pluralism: Justice in Multi-Ethnic Neighbourhoods" (Paper presented to the Annual Meeting of the Law and Society Association, Glasgow, July 1996) [unpublished].

¹⁴⁵ On the ideology of access to justice through official institutions generally, see R.A. Macdonald, *Prospects for Civil Justice* (Toronto: Ontario Law Reform Commission, 1995); and Morrison & Mosher, *supra* note 2 at 639. For an assessment of the possibilities for re-imagining and reconfiguring small claims court to enhance access to justice see "Small Claims Review," *supra* note 3.