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## Civil Non-Family Cases Filed in the Supreme Court of BC: Research Results and Lessons Learned

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**Civil Non-Family Cases  
Filed in the Supreme Court of BC**  
Research Results and Lessons  
Learned



# Civil Non-Family Cases Filed in the Supreme Court of BC

## Research Results and Lessons Learned

September 2015, Victoria, BC



Prepared by Focus Consultants  
for the Canadian Forum on Civil Justice  
as part of the Cost of Justice project.

### **The Cost of Justice Project:**

The Cost of Justice project (2011-2016) examines the social and economic costs of Canada's justice system. It is guided by two questions: What is the cost of delivering access to justice? And, what is the cost of not delivering access to justice? Comprised of leading access to justice researchers investigating various dimensions of cost across the country, the Cost of Justice project is producing empirical data that will inform the future of access to justice in Canada and abroad. The lead research team includes: Trevor C.W. Farrow (Principal Investigator), Nicole Aylwin, Les Jacobs and Diana Lowe.

The Cost of Justice project is funded by a \$1 million grant from the Social Sciences and Humanities Research Council of Canada. For more details please visit [www.cfcj-fcjc.org/cost-of-justice](http://www.cfcj-fcjc.org/cost-of-justice).



Social Sciences and Humanities  
Research Council of Canada

Conseil de recherches en  
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Canada

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**Jerry McHale:** Lam Chair in Law and Public Policy, University of Victoria School of Law and School of Public Administration

**Lisa Moore:** Project Coordinator, Canadian Forum on Civil Justice

## Executive Summary

### Overview

This report presents the findings and lessons learned from the implementation of a research project that was intended to study the trajectory, characteristics and outcomes of BC Supreme Court civil non-family cases that appeared to lack resolution through court processes. The study also planned to assess the level of satisfaction of claimants in these cases and the ancillary costs or other impacts that are experienced by claimants for whom access to timely civil legal processes has been a problem.

The study was funded and coordinated by the Canadian Forum on Civil Justice (CFCJ) as part of the Cost of Justice project, and took place in 2014 and 2015 in the Supreme Court of British Columbia. The research was conducted by Focus Consultants of Victoria, BC.

The study experienced multiple and diverse challenges related to the definition and extraction of an appropriate sample of cases, limitations related to the currency and completeness of court records, an inability to contact claimants to discuss their court experiences, a lack of understanding by claimants of the civil legal processes they were involved in and an inability to engage civil lawyers in the research.

To address these constraints, changes were made to the methodologies used in the research; however, these did not produce results robust enough from which to draw conclusions that can be reliably generalized to other civil non-family cases in BC. Even with a more robust study sample, the findings could not readily be generalized to other Canadian jurisdictions because of the differences between public and private insurance regimes, and the degree to which tort versus no-fault injury insurance is emphasized. However, despite the lack of generalizable findings, the research identifies significant themes that are important to pursue in future research related to civil non-family court processes and the experiences of claimants. This is particularly important given the emphasis that both the national Action Committee for Access to Justice in Civil and Family Matters and the Canadian Bar Association have recently placed on the need for more empirical research to better inform the justice system's efforts to enhance access to justice.

This research is based on the premise that an understanding of claimant experiences – a public-first approach - is vital to fully understanding the impact of court processes on access to justice. Because this research was unable to fully address this topic, we have included a detailed discussion of the research challenges that were encountered, their impacts and the attempts that were made to address them. Many of the challenges faced in this research are likely to be relevant to other researchers and institutions that are attempting to conduct civil justice research involving court records or claimant perspectives. For this reason, we have also included recommendations to improve the planning and implementation of research of this type.

## Research Questions and Methodologies

The research was originally intended to address the following questions:

1. What proportion of cases appear to drop out of or be unresolved within the BC Supreme Court Civil non-family system or are subject to such long delays that the claimant's access to justice is affected?
2. What are the reasons that claimants' cases do not continue within the court system and what factors contribute to these decisions?
3. Are cases resolved after leaving the court system and if so, how are they resolved, to what degree and in what time frame?
4. To what degree are claimants satisfied with the outcomes of their cases if they are resolved in court or during an out of court process?
5. What are the short and longer-term impacts (e.g. financial, personal, family, social and health) that may have emerged as result of a lack of access to justice?

The research used the following methodologies:

1. A review and analysis of court records from Victoria and Vancouver of cases that had been initiated in 2012 and had had no activity past September 2013 to determine case and court trajectory data and claimant contact information. Two types of cases were selected for inclusion in the study: Motor Vehicle Act (MVA) and General Civil Cases. 495 hard copy case records were reviewed.
2. A telephone survey of claimants involved in these cases to determine their experiences in the court system, whether their case had been settled, and satisfaction with the process. Twenty claimant interviews were ultimately completed.

A final methodology was added to partially compensate for the inability to identify and contact claimants through court records. This involved telephone interviews with lawyers who were counsel for the claimants in the original sample. Because of confidentiality concerns, the interviews were not about the individual claimant cases, but about the lawyers' general perception of the outcome of civil non-family cases that do not appear to achieve resolution within the Supreme Court system. Twenty lawyer interviews were completed.

## Research Challenges and Lessons Learned

The research was affected by challenges and decisions that impacted both the planning and implementation of the research and limited the accuracy and generalizability of the results. These were:

- *Issues related to the focus of the research and identification of case type.*



- *A lack of available prior information about the comprehensiveness, currency and meaning of the data fields in court records during the planning phase of the research.*
- *A lack of current and comprehensive case records in the hard copy files, making it impossible to clearly identify the full history or current status of cases in the civil court system.*
- *A lack of information on court records that would enable researchers to initiate contact with claimants to explore potential involvement in the research.*
- *A lack of a systematic research consent process to facilitate the involvement of court users in the research.*
- *An insufficient number of cases to allow for an adequate exploration of small business cases and the experiences of self-represented litigants.*
- *A lack of understanding by claimants of litigation and settlement process.*
- *Difficulties engaging civil lawyers in the research, which severely limited the number of interviews completed.*

## **Key Research Findings**

The percentage of cases with no recorded final event in the Supreme Court electronic record for the two case types (MVA and general civil) was 35%. Due to difficulties defining the sample of cases with no final event, this data should be considered with caution.

## **Case File Review Results Based on Court Records in Victoria and Vancouver**

- 76% of files were personal injury cases, 24% "general civil" cases. The vast majority of personal injury cases (96%) were MVA. Individuals comprised 87% of the claimant types; corporations comprised 9%.
- Even though the claims were made in 2012, the vast majority (83%) of the incidents on which the claims were based were from 2010 or earlier.
- There was a lack of documentation in the case files. For 62% of claims, the only document on file was the Notice of Civil Claim and, sometimes, peripheral documents, but no Response to Civil Claim; in 32% of cases there was a Notice of Civil Claim and Response to Civil Claim only.

## **Results of Claimant Interviews**

- In 6 of the 20 claimant interviews, all involving MVA cases, the claimant was unaware a Notice of Civil Claim had been filed by their lawyer.
- The primary reasons that the case did not continue in court was that the lawyer initiated an out-of-court settlement before substantive court actions occurred, that the legal process in court was extremely slow, and that the claimant was feeling overwhelmed by the process.
- Of 17 cases where out-of-court actions were taken to pursue settlement, 12 (71%) settled. All of these involved assistance by a lawyer.

- 10 respondents estimated the costs associated with pursuing their case, most of which were incurred outside of court. The total costs ranged from \$200 to \$105,000, with a mean of \$20,936 and median of \$7,200.
- 45% of claimants were “quite” or “very satisfied” with the outcome of their case, 20% neutral, and 35% “quite” or “very” dissatisfied.

### **Telephone Survey of Lawyers**

All results reported below are based on the lawyer respondents' subjective estimates.

- 90% of the respondents estimated that 75% - 100% of their civil cases achieve settlement outside of court.
- MVA cases tended to be resolved almost exclusively through direct negotiation between counsel (mediation processes appeared to be very rare).
- A large majority of the respondents said that financial factors play a large role in settlement, as clients balance their own risk tolerance with the costs associated with a return to court. A minority of respondents stated that since MVA personal injury cases are usually on a contingency basis, the circumstances of the client are less at play.
- MVA cases were described by a majority of counsel as having high out-of-court settlement rates. Most lawyers stated that clients preferred out-of-court settlements because they are less stressful and costly than the courts.

### **Recommendations Arising From the Planning and Implementation of the Research**

#### **Improving the Accuracy, Comprehensiveness and Currency of Court Records in Order to Facilitate Research**

1. From an access to justice research perspective, there is a need for the Ministry of Justice Court Services Branch to ensure that Court Records are current, accurate and reflect the processes used to resolve the case. More oversight should take place on the completion and inclusion of court documents. More consistent filing of Notices of Discontinuance, combined with a simple pick-list of reasons for discontinuance would contribute significantly to more effective sample selection and research on the trajectory and outcomes of cases.
2. There is no information collected on court records related to the use of non-court or court adjunct resolution mechanisms. Along with the Notice of Discontinuance, forms could capture data on resolution processes such as mediation.
3. Lawyers involved in the research stated that the Insurance Corporation of BC (ICBC) is no longer routinely using mediation as an option for resolving disputes and that this has limited claimant choices. Collecting this data would provide a more accurate picture of these changes.

4. Efforts should be undertaken by the Registry to break down the types of cases included in the “general civil” category, in order, for example, to differentiate between represented and unrepresented, as well as between individual, small business and corporate parties.
5. Again, given the imperative need to support research activity, the Ministry should consider revising the Notice of Civil Claim form to include contact data used by the lawyer (phone or cell number or email) to contact his/her client. A process might be undertaken to inform lawyers of the reasons why this field is essential to the implementation of justice research.

### **Capacity to Plan Effective Research**

6. It is critical for researchers to have accurate information on the general comprehensiveness and content of court records prior to planning research and undertaking a Research Access Agreement with any court service agency. This could be done through the development of a public access site that provides information about data fields, preparation of anonymized “mock data” that more accurately reflects the fields and assistance in discussing the actual contents, comprehensiveness and reliability of data in the fields.

### **Systematic Collection of Client Consent**

7. Although the inclusion of claimant (and respondent) contact information on a Notice of Civil Claim is the single easiest and most useful way of facilitating research access, the development of processes to gather research consent forms on a routine basis from court users could also be implemented. This would require buy-in and support from the Ministry, civil lawyers, judges and court records personnel, as well as a systematic process and point of service delivery for distributing and collecting consent forms – all as part of a robust and accessible open court process.

### **Law Society Reporting of Case Resolution**

8. Law societies could make a significant contribution to our understanding of case resolution in the private sphere by requiring barristers to file an annual report that quantifies client cases in aggregate by various metrics such as case type, outcome, the forum of resolution (e.g. court level, tribunal, direct negotiation, etc.). To serve a broader public purpose, such reports would need to be aggregated by the Society and made available - with appropriate procedures and safeguards - to researchers in the public sphere. This process should be seen both as increasing access to justice opportunities and as part of obligations faced by all self-regulating law societies across the country.

## **Meeting Public and Government Needs for Reliable Research Data**

9. There are increasing pressures on governments to produce data that measure the effectiveness, timeliness and cost efficiencies associated with publicly funded justice services. However, without the ability to implement meaningful and accurate research, it will be difficult to meet these demands. It is recommended that the CFCJ in partnership with the UVic Law Access to Justice Centre for Excellence initiate a discussion among court services staff and external researchers and institutions to review the recommendations put forward in this document and to develop a list of priorities that could support more effective research initiatives of this type in the future.

## 1.0 Introduction and Description of this Document

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This report presents the findings of a research project that was designed to study the trajectory, characteristics and outcomes of BC Supreme Court civil non-family cases that appear to be unresolved in court, and to assess the level of satisfaction of claimants in these cases.

The study was funded and coordinated by the Canadian Forum on Civil Justice (CFCJ) as part of the Cost of Justice project<sup>1</sup> and took place in 2014 and 2015. The CFCJ is a national non-profit organization that has been dedicated to advancing civil justice reform through research and advocacy since 1998. It is focused on making the justice system more accessible, timely, sustainable and effective in order to meet the civil justice needs of Canadians. A Research Advisory Committee, also made up of members of the CFCJ, was involved in providing direction and input to the project.

A major focus of the research was to examine the outcomes of Motor Vehicle Act accident (MVA) and General Civil non-family cases in BC for which there was no court document indicating conclusion of the claim within two years of its initiation. The study intended to examine whether any resolution of the claim had taken place, the type of resolution, why these cases appear to drop out of the formal court system and the degree to which claimants are satisfied with the outcomes and timeliness of the process.

The study experienced multiple and diverse challenges related to the planning and implementation of the research. These included the definition and extraction of an appropriate sample and types of cases, limitations related to the currency and completeness of court records, an inability to contact claimants to discuss their court experiences, a lack of understanding by claimants of the civil legal processes they were involved in and a lack of ability to engage civil lawyers in the research.

Because this research was unable to fully address these questions, the report includes a detailed discussion of the research challenges that were encountered, their impacts and the strategies that were undertaken to address them. Other researchers and institutions in BC and other jurisdictions that are attempting to conduct research based on court records or claimant perspectives may commonly experience many of the challenges faced in this research. This document also includes recommendations to improve the planning and implementation of

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<sup>1</sup> The Cost of Justice project is a 5-year study funded by the Social Sciences and Humanities Research Council of Canada that examines the social and economic costs of Canada's justice system. It is guided by two questions: What is the cost of delivering access to justice? And, what is the cost of not delivering access to justice? For more details see: [www.cfcj-fcjc.org/cost-of-justice](http://www.cfcj-fcjc.org/cost-of-justice).

research related to access to civil justice. Although limited in their applicability, the results of the research are presented.

Although the research findings are too limited to be generalized to other civil cases in BC or to other jurisdictions, they are mainly presented because of their value in identifying broad themes and issues for future access to justice thinking, research and reform.

Section 2.0 of the report describes the original research questions and methods. Section 3.0 describes the challenges encountered in the research, implications for the findings and lessons learned. Sections 4.0 - 6.0 present the research findings and Section 7.0 presents key conclusions and recommendations.

## **2.0 Research Questions and Methodologies**

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### **2.1 Research Questions**

The broad objective of this study was to address issues in the civil non-family Supreme Court that appear to affect access to justice by either not being effectively resolved or not resolved in a timely way.

The research was intended to answer the following questions:

1. What proportion of cases appear to drop out of the BC Supreme Court Civil non-family system, appear to be unresolved or are subject to such long delays that the claimant's access to justice is affected?
2. What are the reasons that claimants' cases do not continue within the court system, and what factors contribute to these decisions?
3. Are cases resolved after leaving the court system and if so, how are they resolved, to what degree and in what time frame?
4. To what degree are claimants satisfied with the outcomes of their cases if they are resolved in court or during an out of court process?
5. What are the short and longer-term impacts associated with case attrition from the court system? Impacts examined in the research included financial, personal, family, social and health impacts, or secondary impacts involving related issues or problems that may have emerged (e.g. the need for claimants or lawyers to involve other services to resolve the matters in dispute).

Because an assessment of civil cases that drop out of the BC Supreme Court System had not been previously carried out, the research plan combined both a feasibility and implementation phase. The feasibility phase involved the review and assessment of a sample of Supreme Court civil cases from the Victoria and Vancouver courts to determine the contents of files, types of cases and information that would assist in contacting claimants for the telephone survey.

The project required an extensive Application for Access to Court Record Information to BC Court Services that took place over a period of months in order to access case file records and the submission of an ethics approval application for the conduct of research involving human participants at York University (the home institution of the CFCJ). As will be noted elsewhere in this document, the application for data access is based on theoretical expectations of some of the data available in court file records without prior access to these data sources. However, in the case of this research the information ultimately found in the hard copy case files was determined to be lacking data that was fundamental to the research plan.

## **2.2 Methodologies**

The project initially included the following methodologies:

1. The extraction of data from the BC Court Services Civil Electronic Information System (CEIS) to determine the proportion of Supreme Court civil cases in Victoria and Vancouver that leave the court system without any record of their being resolved.
2. The identification of a sample of cases from these court records of cases initiated in 2012 that had had no activity in the last year preceding the data run (September 2014).
3. A review and analysis of these court records from Victoria and Vancouver to determine basic case data and claimant contact information (see file review form, Appendix A).
4. A telephone survey of claimants (see questionnaire in Appendix B) to determine their experiences in the court system, whether their case had been settled, and satisfaction with the process.

These methodologies were expanded to include interviews with lawyers to explore their general perception of the outcomes of cases that do not appear to achieve resolution in the civil court system (see questionnaire in Appendix C). This methodology was added in order to address some of the limitations of the research resulting from the restricted ability to contact claimants directly. Each of the methodologies is described in more detail below.

## **2.3 Sampling Parameters for the Study**

Two categories of civil non-family cases initiated in the Vancouver and Victoria courts from January 1 to December 31, 2012 were selected as the case types on which to base the sample: Motor Vehicle cases and "civil general" cases.

Motor vehicle cases comprised 27% of all new Supreme Court cases in Vancouver in 2012 (7,663/27,968), and 23% in Victoria (1,296/5,701). "Civil General" cases comprised 33% (9,189/27,968) of new cases in Vancouver and 19% (1,076/5,701) in Victoria.<sup>2</sup> The "civil general" category includes all civil cases except Civil Adoption, Bankruptcy, Caveat, Family, Foreclosure,

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<sup>2</sup> Data source: COGNOS TRENDS, November 6, 2014.

Motor Vehicle, Probate and Civil Statute, and represents the largest volume of all Supreme Court civil case types.<sup>3</sup>

These two categories of cases – motor vehicle and “civil general” – were then divided into two sub-groups: cases that had reached a final case event recorded in the electronic file and cases that had not reached a recorded final case event but where there had been no activity recorded in the file in the 12 months prior to the date of the CEIS data extraction (September 2014). “No activity” cases were defined as cases that included all of the following conditions:

- No document filings or orders between September 1, 2013 and the date of data extraction.
- No scheduled appearances after September 1, 2013.
- Any last recorded event/activity which took place before September 1, 2013.
- No final case event described as including any of the following orders or documents: Order, Consent Order, Order Made After Application, Default Judgment, Notice of Discontinuance, Notice of Withdrawal, Withdrawal of Notice of Dispute, Garnishing Order After Judgment, Warrant to Arrest (Ship), Consent.
- The issue was dismissed at the last appearance.

Table 1 provides data on the breakdown of these two case categories (“final event” and “no activity”) for 2012. The data indicates that, on average, about two-thirds of the cases recorded a final event within the time parameters of the study, while about one-third did not.<sup>4</sup> Final court events were recorded most frequently in Supreme Court General cases in Victoria and least frequently among MVA cases in Victoria.

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<sup>3</sup> Supreme Court Civil Family new cases comprised 14% of all new cases in Vancouver Supreme Court (3,855/27,968) and 17% (976/5,701) in Victoria. However, this category was not included in the study because family cases have unique dynamics which, from a research perspective, have been treated in such contexts as self-representation, high conflict families and the inclusion of children in the proceedings (e.g. in the work of Julie Macfarlane, Nicholas Bala and Rachel Birnbaum, and in various sub-studies under the federal Supporting Families Experiencing Separation and Divorce Initiative). As such, a decision was made to focus on this important but comparatively less studied set of case types.

<sup>4</sup> An unpublished report by Focus Consultants for the then BC Ministry of Attorney General in 2009 undertook a similar study of cases that were without a recorded final court event in the small claims division of the Vancouver and Richmond Provincial courts 12-17 months after filing of the Notice of Claim. In that study the percentage of claims without a final event was 36-38%.



**Table 1: Case Record Outcomes of MVA and Supreme Court General Cases that were Initiated in 2012**

Court Location	Court Class	Total Case Count - 2012	Number and Percentage of Cases that Record a Final Case Event	Number and Percentage of Cases with No Recorded Final Event
Vancouver Law Courts	Motor Vehicle	7,663	5,147 (67%)	2,516 (33%)
Victoria Law Courts	Motor Vehicle	1,296	623 (48%)	673 (52%)
Vancouver Law Courts	Supreme Court General	9,189	5,803(63%)	3,386 (37%)
Victoria Law Courts	Supreme Court General	1,076	884 (82%)	192 (18%)
	<b>TOTAL</b>	<b>19,224</b>	12457 (65%)	<b>6,767 (35%)</b>

Results describing cases with no resolution should be considered with caution for the following reasons:

- There is no single field that reliably captures case termination.
- The relaxation of expectations regarding the filing of documents meant that Notices of Discontinuation were no longer included regularly on the case files. In general, there was a paucity of documents in the case files making it impossible to accurately predict the trajectory of the cases. Some of these cases had, in fact, been resolved, but this was not recorded.
- There were some differences between Victoria and Vancouver in recording practices.
- The nature of the civil court process means that cases may appear to be inactive but simply take a long time to resolve.

The 6,767 motor vehicle and “civil general” cases with no recorded final event in the two court locations thus represent the population from which the study sample was drawn, as described in Section 3.3.

## **2.4 Selection of the Claimant Cases for File Review and Telephone Survey**

A sample of 500 MVA and general civil cases from the Victoria and Vancouver courts was selected from the cases that met the definition of having no final case event on file for one year prior to the date of extraction. Although the individual cases were selected randomly from each court there was an over-representation of the cases from Victoria (45%). Table 2 describes the final sample for the telephone interviews. As well as this sample, providing an overview of

case trajectories, it was also expected to be the baseline population from which to select the claimants for the follow-up telephone survey.

**Table 2: Sample Selected from Victoria and Vancouver**

Type of Case	Vancouver Law Courts	Victoria Law Courts
MVA	125	123
General	150	102
TOTAL	275	225

The initial data fields selected from the CEIS electronic data included:

- case file number
- name of the claimant
- case initiation date
- last date of case activity recorded in the Civil Electronic Information System (CEIS)
- court location (registry)
- case type
- contact information related to client (not available)
- lawyer or firm name

After the generation of the court file numbers, all files were reviewed on site to determine more details about the case, to verify the last document on file and to determine claimant names and contact information – this was not included in the electronic file review.

A major challenge encountered in the research was that there was no client phone numbers included on the hard copy case files. While there were addresses in some cases, attempts to use these addresses to send out questionnaires for self-completion were largely unsuccessful, suggesting that many of these addresses were out-of-date. Ultimately, the review of 500 case files resulted in information that led to only twenty completed claimant interviews.

**2.5 Interviews with Lawyers Undertaking Civil Non-Family Cases**

In order to compensate for the limited number of claimant interviews, a new research component was added which involved qualitative interviews with lawyers to discuss their perceptions of typical case trajectories and outcomes of civil cases. This component involved identifying a sample of 200 lawyers from both Victoria and Vancouver and sending them a minimum of two emails explaining the research and asking for their participation in a brief telephone interview.

Out of the 200 contacts made, only twenty interviews were completed. In previous research, lawyers have been responsive to studies where they have a direct role (e.g. a pilot court process, pro bono programs, delivery of government-based programs) or where they are affiliated with a legal organization, (e.g. Law Society). Feedback from some litigators who did respond suggested the lack of response was due to most litigators believing that the current system of out-of- court settlements was working well and was beneficial to claimants and the courts.

### 3.0 Research Challenges and Lessons Learned

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The study experienced multiple and diverse challenges related to the definition of an appropriate and reliable sample of cases, limitations of court records and an inability to engage claimants and litigators in the research.

The planning and implementation challenges that were encountered in the study included the following:

#### **Issues related to the focus of the research and identification of case type**

A decision was made at the beginning of the project to focus on non-family civil rather than family cases, primarily because that, up to now, Canadian legal research has had a comparatively greater focus on family justice issues.<sup>5</sup> However, this decision was made prior to having an access to court records agreement in place which would have allowed us to take into account the lack of case or claimant data in these records. It is not known whether it would have been more feasible to contact those undergoing family court processes given that there is no formal system for gathering research consents. However, our previous experience in family law research suggests that parents may be more conversant with the court processes in which they have been involved.

Key stakeholders indicated that Motor Vehicle Act accident (MVA) cases and General Civil cases would be the best choice of cases because they represented a significant group of cases in the BC Supreme Court and were more likely to portray access to justice issues in comparison to cases like probate and bankruptcy. We also felt that the inclusion of General Civil cases would provide a diverse range of cases, including claims involving small business. It is not clear whether the choice of other case types would have yielded better results in relation to the case file review or contact with claimants.

One major limitation of our decision was that the Court Services electronic data system has no breakdown of case types within the General Civil category. This meant that it was impossible to ascertain the types of cases in this category in advance. When the hard copy case files were reviewed, a majority were personal injury cases involving the Insurance Corporation of BC (ICBC) and only a small number related to business cases. This meant that the study lacked a significant range of case types.

MVA cases are also subject to clearly defined time requirements in terms of submission of the NOTICE OF CIVIL CLAIM and are based on contingency fees meaning that, to the claimants

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<sup>5</sup> See e.g. MacFarlane, J. The National Self- Represented Litigants Project: Identifying and Meeting the Needs of Self-Represented Litigants. Final Report, May 2013; Bala, N., Fidler, B., Goldberg, D., and Houston, C. Alienated Children and Parental Separation: Legal Responses in Canada's Family Courts, Fall, 2007, 33 *Queen's L.J.* 79; Birbaum, R., & Bala, N. 2014; A survey of Canadian judges about their meetings with children: Becoming more common but still contentious. *Canadian Bar Review*, 91, 637-655; (Focus Consultants) Dept of Justice Canada, Supporting Families Experiencing Separation and Divorce Initiative: Evaluation. Final Report, March 2014, Evaluation Division, Office of Strategic Planning and Performance Management, at <http://www.justice.gc.ca/eng/rp-pr/cp-pm/eval/2014.html>.

who were interviewed, costs of undertaking the case were not perceived as personally onerous, even though there were concerns expressed about the size of the settlements.

### **A lack of prior information about the comprehensiveness, currency and meaning of the data fields in court records during the planning phase of the research**

Prior to the development and signing of the Access Agreement to enable researcher access to court records, there is no system available to researchers to ascertain the extent of client contact information in the hard copy files, nor to assess the quality, comprehensiveness and reliability of other case information that might be available. Not having access to preliminary or “mock data” made it difficult to plan the research with confidence. With no way of contacting claimants the research could not proceed as planned.

Some other large datasets commonly used by researchers in BC, such as Population Data BC, (which includes multiple types of health-related datasets) provide public access to information about the electronic data fields that are available and are prepared to provide information on the reliability and comprehensiveness of the data in these fields prior to an actual research access request being submitted. Given the growing demands on provincial governments to produce meaningful data on the use, cost, efficiency and impacts of court services, further support to researchers in the planning phase needs to be considered a priority.

### **A lack of current and comprehensive case records in the hard copy files, making it impossible to clearly identify the status of cases in the civil court system**

There was a lack of documentation in the case files and almost no files contained documents indicating whether, when or how a case had been resolved. This raised concerns about the accuracy of the sample based on definitions of cases without any recent activity and the selection of these cases for claimant interviews.

The majority of files contained only a Notice of Civil Claim and, in some cases, a Response to Civil Claim. However, these documents were submitted to meet the time sensitive filing requirements and were somewhat pro forma. In most cases there was little other information in the case files indicating case progress or activities.

We were informally advised that the completion of court forms had been relaxed in the past few years in some cases due to budgetary and time concerns. However, in order for data collection and research to be effective, more oversight needs to take place on the completion and filing of key court documents. For example, more consistent filing of Notices of Discontinuance, combined with a simple pick-list of reasons for discontinuance would contribute significantly to more effective sample selection and research on the trajectory and outcomes of cases.

### **A lack of information on court records that would enable researchers to initiate contact with claimants to explore potential involvement in the research**

A review of the 500 cases selected for the research sample found that there was no record of claimant telephone numbers entered on the case records. In 50% of the cases there was a specific address recorded. However, in many of these cases this address was at least two years old, which meant that, in many cases, the information was unreliable. Using the potential addresses we found in the case files, we undertook a research strategy, using Canada 411, Google and Facebook trying to match up the address on the court records, where these were available, with the name of the claimants (and potentially a phone number). Although we found approximately twenty “matches” in this way, they yielded only four direct contacts.

We also attempted to contact a significant sample of the lawyers associated with the claimants' cases in the Victoria registry to see if they would be willing to act as intermediaries with their clients to determine the latter's willingness to participate in a claimant survey. A large majority of lawyers did not return the email and/or telephone contacts, and those that did were usually unwilling to contact their clients. A final strategy was to send out personal letters to 258 claimants in Victoria and Vancouver for whom we had some address information, even though we were unable to confirm the accuracy of this information. In order to protect the claimant's privacy, these letters did not refer to any confidential case information. This strategy was challenging because it was necessarily reliant on the claimant's willingness to respond by contacting the research team, a method that had limited success.

All of these strategies resulted in only twenty completed interviews out of an original sample of 495 cases. The major contributor to this poor outcome was the lack of access to current and reliable claimant phone numbers. It is worth underscoring that the perspectives of claimants who have undertaken civil actions are essential to understanding the court experience and process. However, client perspectives cannot be gathered without access to current client contact information. This is exacerbated by the lack of fixed line phone numbers that are more stable and can be accessed through public sources of information.

### **The lack of a systematic research consent process at the point of filing to facilitate the involvement of court users in research**

Many of the claimants who were contacted did not fully recall their contact with the civil justice system and were confused about the processes that had taken place. If possible, completing a written client consent process in place at the point of filing would likely increase participation rates, provide a familiar reference point for claimants, and stimulate claimants' awareness that their feedback about the process could assist in improving access to justice.

### **An insufficient number of cases to allow for the exploration of the small business cases and the experiences of self-represented litigants**

General civil cases are not defined by case type in court records, making it impossible to identify a set of cases related to small business. When the sample was drawn of these cases,

the majority involved personal injury ICBC cases, even though the research was intended to consider the issues associated with small businesses.

In addition, due to the lack of documentation in the case files, it was impossible to identify whether the case had been pursued without representation, although limited results from claimant and lawyer interviews suggested that some level of self-representation was common in these cases.

### **A lack of understanding by claimants of the justice and settlement Process**

It was evident, from the small number of claimant interviews conducted, that most did not understand the steps that had been undertaken by counsel to reach an agreement or how an agreement had been reached. Most had no idea of what an “out-of-court” settlement meant. Some claimants were reluctant to discuss the costs associated with their claim because lawyers’ fees are based on contingency. It was also difficult to estimate the actual satisfaction of claimants because some felt they had no choice in accepting the settlement that had been offered to them.

### **Difficulties engaging lawyers in the research, and the limitations of these results**

Two hundred lawyer names were selected from the sample of lawyers who provided assistance to claimants in the sample. Even though two email reminders were sent, only twenty lawyers responded to requests for the telephone survey. This lack of response was in contrast to other studies conducted by Focus Consultants where the engagement of lawyers has been high. Some feedback from civil lawyers participating in this study suggested that since litigators feel that out-of-court settlements are beneficial to claimants and the courts, they do not feel that a significant access to justice problem exists in these cases.

Notwithstanding all of these research challenges, some useful data and research findings were collected. That data and those findings are discussed in the following four sections.

## **4.0 Research Findings: Court Record Review**

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### **4.1 Court and Claimant Location**

495 case files were reviewed from the 500 chosen for the sample. 55% of these cases were from Vancouver and 45% were from Victoria. Six cases involved duplicate case numbers and were excluded.

The claimant’s community, but not necessarily the address, was noted on the case files in 76% of the cases. This was the community in which the claimant was located at the time of the Notice of Civil Claim.

**Table 3: Community of Claimant**

Community of Claimant	Number and Percentage
Greater Vancouver area (excluding Surrey)	107 (22%)
Victoria and Saanich	124 (25%)
Other communities in BC	107 (22%)
Surrey	30 (6%)
Outside of province	6 (2%)
No reliable data /not recorded	121 (24%)
<b>TOTAL</b>	<b>495 (100%)</b>

Note: Percentages do not necessarily total 100% due to rounding.

## 4.2 Types of Cases

Two broad types of cases were included in this study: MVA and Supreme Court Civil (Civil General). The latter is a broad category that comprises civil issues including property disputes, debt collection, and insurance claims. 374 of the cases in the sample (76%) were comprised of personal injury cases: 119 (24%) were comprised of general civil cases.

Of the 374 personal injury cases, 358 (96%) were MVA cases. The types of cases are presented in Table 4. In retrospect, the selection of MVA cases may not have provided enough diversity of cases within the sample because these cases have a set time frame for the Notice of Civil Claim and all are taken on contingency. As noted later in the report, it is likely that a substantial number of these cases are routinely settled out of court.

**Table 4: Types of Personal Injury Cases**

Type of Case	Number and Percentage
Motor Vehicle Cases	358 (96%)
Personal Injury/Negligence	8 (2%)
Other personal injury	6 (2%)
Medical Malpractice	1 (0%)
Removal of child	1 (0%)
<b>TOTAL</b>	<b>374 (100%)</b>

As shown in Table 5, the 119 cases in the "Civil General" category included a range of case types. The primary categories were breach of contract, real property disputes and debt collection, which together made up almost half of the cases.

**Table 5: Types of Cases Categorized as Civil General (N =119)**

<b>Types of Cases</b>	<b>Number and Percentage</b>
Debt Collection	24 (20%)
Breach of Contract	17 (14%)
Real Property Disputes	14 (12%)
Employment Relationships	11 (9%)
Other Tort Claims (e.g. defamation and nuisance)	9 (8%)
Insurance Claims	9 (8%)
Wills and Probate	8 (7%)
Construction Defects	5 (4%)
Corporate Law Disputes	5 (4%)
General Commercial Matters	5 (4%)
Provision of Services	4 (3%)
Physical Assault Damages	3 (3%)
Aboriginal Law Disputes	1 (1%)
Negligence/Trespassing	1 (1%)
Environmental Law	1 (1%)
Fraud	1 (1%)
Other (variable)	1 (1%)
<b>TOTAL</b>	<b>119 (100%)</b>

Note: Percentages do not necessarily total 100% due to rounding.



As shown in Table 6, most (87%) of the cases involved individual claimants; this was the case with almost all of the MVA cases, which dominated the sample; only 9% were corporate clients.

**Table 6: Type of claimant**

Type of Claimant	Number and Percentage
Individual	432 (87%)
Corporation	43 (9%)
Small Business	12 (2%)
Government	5(1%)
First Nations	1 (0%)
Class Actions on the part of individuals	2(0%)
<b>TOTAL</b>	<b>495 (100%)</b>

Note: Percentages do not necessarily total 100% due to rounding.

**4.3 Case Time Parameters**

**4.3.1 Date of Incident**

All the cases in the sample were initiated in the Victoria and Vancouver courts between January 1 and December 31, 2012, when the first documents were added to the file (in most cases a Notice of Civil Claim). Extraction of case descriptive material indicated that in the majority of cases the incident leading to the case occurred two years earlier, in 2010, which falls within the time requirements for initiating a claim. In this analysis 15% of the incidents occurred prior to 2010.

An analysis of incident records is presented in Table 7. Only Vancouver records were used for this analysis, as original incident data was not systematically collected in Victoria.

**Table 7: Date of Original Incident**

Date of Original Incident	Number and Percentage
2012	7 (3%)
2011	32 (14%)
2010	159 (68%)
2009	11 (5%)
2008	14 (6%)
2007	4 (2%)
2006 or earlier	6 (3%)
<b>TOTAL</b>	<b>233 (100%)</b>

Note: Percentages do not necessarily total 100% due to rounding.

### 4.3.2 Time from Case Initiation to Last Activity Noted in Court File Record

In almost three-quarters of the sample cases, the last activity or event recorded in the case files was within three months of the case being initiated in the courts. Table 8 reports on the time from case initiation to the last recorded activity for all cases.

**Table 8: Time of Case Initiation to Last Activity**

<b>Time Period from Case Initiation to Last Activity</b>	<b>Number and Percentage</b>
Under 3 months	351 (71%)
From 3 months to under 6 months	42(9%)
From 6 months to under 9 months	44(9%)
From 9 months to under 12 months	28(6%)
12 months and over	29(6%)
<b>TOTAL</b>	<b>494 (100%) (NR=1)</b>

Note: Percentages do not necessarily total 100% due to rounding.

A related data issue was for how long – at the time of data extraction in September 2014 – there had been no case activity. As noted in Section 2.3, one of the criteria for case selection was that there had been no recorded activity on file for the 12 months prior to data extraction. However, Table 9 shows that in 73% of the cases there had been no activity recorded for two or more years, so overall, the “dormant” period was much longer than 12 months.

**Table 9: Time Since Last Activity in the Court File**

<b>Time Since Last Activity</b>	<b>Number and Percentage</b>
12 months to under 15 months	21(4%)
15 months to under 18 months	27 (5%)
18 months to under 21 months	22(4%)
21 months to under 24 months	62 (13%)
24 months or over	263 (73%)
<b>TOTAL</b>	<b>495 (100%)</b>

Note: Percentages do not necessarily total 100% due to rounding.

### 4.3.3 Stage of Claim when Cases Leave the Court System, as Indicated in Case Records

In most cases the court files contained only a few documents, chief of which was the Notice of Civil Claim. A Notice of Civil Claim must be submitted to the courts within two years of the case event if the claimant wishes to retain the possibility of making a claim.

Table 10 provides an indication of the stage at which cases ceased to be active in the courts, as measured by the presence of file documents. However, as noted in the lawyer interviews, the lack of documents in the court file may not indicate with certainty that the case has exited

the courts. Rather, in some cases, electronic filing may not have resulted in paper copies being placed in the hard copy file.

However, with this caveat considered, Table 10 shows that approximately 62% of cases appear to have left the court system after the filing of the Notice of Civil Claim and before a filed response.<sup>6</sup>

Our understanding is that a Notice of Discontinuance is no longer required in the case file records.

**Table 10: Stage at Which the Claimant Appears to have Left the Court System, as Indicated by Last Documents in Court Files**

Last Document in Case File	Number and Percentage
NOCC only, no response	266 (54%)
NOCC, no response, some peripheral documents filed	38 (8%)
NOCC and Response to Civil Claim (RCC)	158 (32%)
NOCC and RCC, schedule appearance but not held and no further documents filed	23 (5%)
Appearance held, no result	1 (0%)
Settled by consent	5 (1%)
Notice of discontinuance	2 (0%)
<b>TOTAL</b>	<b>493 (100%) (NR=2)</b>

Note: Percentages may not total 100% due to rounding.

**4.3.4 Claim Information**

Only 10% (49/494) of the case files had information on the size of the claim. This information was restricted to some of the small business or corporate cases and did not include MVA or claims against ICBC, which comprised the majority of the sample. Claims ranged from \$2,060 to over \$1 million. Table 11 provides further detail on the amount of claims for which data was available.

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<sup>6</sup> In the small claims study in Vancouver and Richmond provincial courts as described in n. 4, 61% of the cases did not have a subsequent event recorded in court after filing of the initial claim and before filing of a response.

**Table 11: Claim Amounts Listed in Case Files**

<b>Claim Amounts</b>	<b>Number and Percentage</b>
Under 10,000	4 (8%)
From 10,000 to under 50,000	14 (29%)
From 50,000 to under 100,000	14 (29%)
From 100,000 to under 500,000	12 (25%)
Over 500,000	4 (8%)
<b>TOTAL</b>	<b>48 (100%)</b>

Note: Percentages do not necessarily total 100% due to rounding.

## 5.0 Research Findings: Results from the Claimant Survey

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This section presents the findings from the 20 claimant interviews that were completed pursuant to the sampling process outlined in Section 2.4, and the limitations described in Section 3.0; seventeen of the interviews were completed by telephone, and three in person.

The small size of this sample means that these results cannot be considered to be applicable to civil justice claimants in BC or to those in other jurisdictions. However, the results are useful in identifying questions and themes that would provide a useful basis for further research.

### 5.1 Case Characteristics

Table 12 presents key characteristics of the cases for which interviews were conducted. Although the sample of cases is far too small to be considered representative of the population from which it is drawn, it closely reflects the types of claim (cf Section 4.2, Table 4), and reasonably reflects the type of claimant (cf Section 4.2, Table 6). There are disproportionately more interviews from Victoria (cf Section 4.1, Table 3) and more claims that exit the court system immediately after the Notice of Civil Claim without a response (cf Section 4.3.3, Table 10).

**Table 12: Case Characteristics**

Characteristic	Categories	Number and Percentage (N=20)
1. Court location	Vancouver Victoria	8 (40%) 12 (60%)
2. Type of Claim	Personal Injury General	15 (75%) 5 (25%)
3. Type of Claimant	Individual Corporation	19 (95%) 1 (5%)
4. Stage in Claim of Last Activity	<ul style="list-style-type: none"> <li>▪ NOCC only, no response</li> <li>▪ NOCC, no response, subsequent docs filed, but no held appearance</li> <li>▪ NOCC, response (including counterclaims), no scheduled appearance</li> <li>▪ NOCC, response, scheduled appearance held &amp;/or no further docs filed</li> </ul>	13 (65%) 3 (15%) 4 (20%) 0 (0%)
5. Time from case initiation to last recorded case activity	Under 3 months 3 months to under 6 months 6 months to under 9 months 9 months or over	18 (90%) 1 (5%) 1 (5%) 0 (0%)
6. Representation of claimant	Claimant represented self throughout process Claimant represented self at some points and had lawyer at others Claimant was always represented	1 (5%) 4 (20%) 15 (75%)
7. Representation of defendant	Defendant represented throughout process No information	16 (80%) 4 (20%)

## 5.2 Reasons for Case Not Being Settled in Court

Claimants were asked if one or more of 17 factors contributed to their case not being settled inside the court (see question 4 in Appendix B). The number of responses to this question was significantly reduced for two reasons:

- **The case was still in court.**

Two of the cases were in fact still proceeding through the courts, but at a very slow pace. Two others had not shown court events for two years at the time of the interview, but were possibly going to be scheduled for trial. This fact underscores the difficulty of developing reliable parameters for the selection of a sample, as described in Section 2.3. Since these four claimants (20% of all interviews) should not technically have been included in the target sample, it suggests that the percentage of cases with no final event in court may be less than shown in Table 1 (section 2.3). However, because of the extremely small number of interviews, this cannot be stated with confidence.

- **Claimants were unaware a claim had been filed.**

In six motor vehicle personal injury cases, the claimant was unaware that a claim had been filed in court by their lawyer. They had simply gone to a lawyer to help them achieve a settlement with ICBC, and the lawyer filed the claim on their client's behalf to ensure they could meet the limitation periods if court action was required. Thus in combination, only 10 or 11 claimants (depending on the question) could respond to the question. Among these claimants, three reasons for not continuing the process in court were identified by more than two respondents:

- The lawyer initiated an out of court settlement before substantive court action was required (identified by seven respondents, all in personal injury cases).
- The slowness of the legal process (identified by five respondents, two in personal injury cases, and three in civil general cases).
- The claimant felt intimidated, threatened or over-whelmed by the court process (three respondents, two in personal injury cases, one in civil general).

Factors identified by only two claimants included an inability to represent themselves because the process and forms were too complex, the feeling that they would not win the case so it was not worth continuing, and a recommendation by their lawyer to drop the case.

### 5.3 Actions Taken Outside of Court to Achieve Settlement

Since two claimants had not in fact definitively left the court process, only 18 described what, if any, action they had taken outside of court to achieve a settlement. Seventeen claimants had taken at least one action; only one claimant had not pursued further action outside of court (nor had the intention of doing so).

Table 13 shows the actions taken by the claimants outside of court, and the results of those actions. Note that in several cases the claimant took more than one type of action.

**Table 13: Actions Taken Outside of Court, and Results**

Type of Action	Number & Percentage who took this action N=17, more than 1 answer possible	Results
Lawyer negotiated with the defendant or defendant's counsel	14 (82%)	12 cases settled 2 cases still ongoing outside of court, but may return to court
Claimant negotiated directly with defendant	2 (12%)	1 case settled (included lawyer assistance) 1 case still ongoing outside of court (no lawyer assistance)

Type of Action	Number & Percentage who took this action N=17, more than 1 answer possible	Results
Claimant negotiated directly with defendant's insurer	2 (12%)	Both cases settled, (both also had lawyer representation)
Undertook a mediation or conciliation process	1 (6%)	Case was settled (lawyer assisted)
Pursued law reform objectives outside of court, not to obtain settlement, but to further access to justice for similar claimants	1 (6%)	NIA (no lawyer assistance, but received advice from lawyer, a friend who had pursued a similar case, not to continue in court)
Matter taken out of claimant's hands by bankruptcy trustee	1 (6%)	Case still ongoing outside of court (no lawyer assistance)

Of these 17 cases, 12 (71%) settled.<sup>7</sup> All of these 12 cases required lawyer assistance, even if the claimant undertook other steps. Of the five remaining cases, two are still being pursued outside of court but may return to court, one is being pursued through a self-directed law reform approach, and a final case is being handled by a bankruptcy trustee. On the one hand, this indicates that a high percentage of cases pursued outside of court achieve settlement. On the other hand, settlement appears possible only with the assistance of a lawyer. Only one case was being actively pursued outside of court without lawyer assistance.

#### 5.4 Estimated Case Costs and Impacts

Ten respondents were able to estimate direct and indirect costs for processes related to their case both in and out of court.

Two paid fees to lawyers related to in-court processes prior to continuing out of court, one for \$10,000 and the other for \$12,500.

Ten described out-of-court costs, consisting primarily of lawyer fees and lost income during court processes prior to pursuing their case outside of court. The lawyer fees of eight claimants ranged from \$800 to \$35,000, with a mean of \$9,288 and a median of \$5,000. Four claimants identified lost income due to court processes and forgone opportunities of \$160, \$4,500, \$30,000 and \$100,000.

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<sup>7</sup> In the small claims study in Vancouver and Richmond provincial courts described in n. 4 and n. 6, 60% of the cases that did not have a subsequent event in the court after filing of the initial claim were determined to have settled out of court. The source of this information was interviews with the claimants or their lawyers.

The resulting total costs for ten claimants ranged from \$200 to \$105,000, with a mean of \$20,936 and a median of \$7,200. All costs were estimates only, calculated considerably after the fact and without documentation.

Claimants were asked how financially difficult it had been to undertake the case (on a scale of 1 to 7 where 1="not difficult" and 7="very difficult"). Responses were slightly polarized, with 6 rating the difficulty at "1," two at "4" (the mid-point) and nine rating either at "5," "6" or "7." The mean response was 4.0. Interestingly, the pattern was similar for cases where a lawyer was involved (in fact the mean for cases where lawyers were involved was 3.5, i.e. involving slightly lesser financial difficulty).

## 5.5 Other Impacts

As shown in Table 14, the primary negative impact of the claimant's involvement with their legal matter related to their emotional or mental health. The table also suggests that people are affected differentially – although the majority rated the types of negative impacts as moderate to low, for each type of impact there was a significant minority who appear to have been affected more profoundly.

**Table 14: Other Impacts of Involvement in the Case**

Question: On a scale of 1 to 7, where 1="not at all" and 7="a great deal," to what degree has involvement in this case negatively affected ...	Mean Response	Frequency of Ratings on 7-point Scale in Following Ranges		
		1 – 3	4	5 – 7
1. Your physical health (N=20)	2.5	15 (75%)	2 (10%)	3 (15%)
2. Your emotional or mental health (N=20)	4.8	6 (30%)	2 (10%)	12 (60%)
3. Your family's emotional or mental health (N=18; NR=2)	4.1	8 (44%)	2 (11%)	8 (44%)
4. Your family relationships (N=18; NR=2)	3.2	10 (56%)	2 (11%)	6 (33%)
5. Your ability to work (N=20)	3.2	11 (55%)	3 (15%)	6 (30%)
6. Your education (N=3; NR=17)	1.0	3 (100%)	0 (0%)	0 (0%)

Note: Percentages do not necessarily total 100% due to rounding.

## 5.6 Satisfaction

Claimants were asked two questions pertaining to their satisfaction with the case. The first was about their experience in court. Because they either did not know a claim had been filed on their behalf or because their experience in court was too limited, 14 of the 20 respondents could not address the question. Of the six who could respond, five were either "quite dissatisfied" or "very dissatisfied." Two of these felt the process was too slow and communication between lawyers was poor. One mentioned prohibitive costs, and another disagreed with the process



the judge established for addressing the matter. One respondent was “quite satisfied” because he felt the case would help him establish the truth of his claim (still in process).

A second question pertained to claimants' satisfaction with the outcome of their case as of the time of the research interview. Results were polarized: 45% (9/20) were “quite” or “very satisfied,” 20% (4/20) “neither satisfied nor dissatisfied” and 35% (7/20) “quite” or “very dissatisfied.” The overall tenor of supplementary comments – even for those that were satisfied with their outcome – was negative, either critical of ICBC (the insurer in motor vehicle cases) for not negotiating in good faith until a lawyer was involved, and/or the time and expense of the whole process.

## 6.0 Research Findings: Lawyer Survey

This section presents the findings from 20 telephone interviews with lawyers who were contacted as a supplementary methodology, the reason for which was described in Section 2.5. It should be emphasized that all responses were subjective estimates based on the lawyers' experiences, and not in reference to specific files. The small size of the sample means that the findings cannot be generalized to civil lawyers in general. However, the findings shed light on preliminary questions and themes that could be explored in future research.

### 6.1 Description of Lawyers' Practices

Sixteen of the 20 lawyers (80%) were based in Vancouver, four in Victoria. This division reflects the proportion of MVA and General Civil cases in the respective communities for 2012, as shown in Table 1 (Section 2.3), where 87% (5,902/6,767) of the cases with no recorded final event took place in Vancouver.

Table 15 shows the proportion of lawyers with personal injury practices is 50% in the survey sample. This proportion closely reflects the data in Table 1 on the proportion of motor vehicle personal injury cases for overall cases with no recorded final event (47% or 3,189/6,767).

**Table 15: Practice Characteristics of Lawyers**

Characteristic	Category	Frequency	Percentage
1. Primary areas of practice (N=20)	Personal Injury	10	50%
	General Civil	7	35%
	Both	3	15%
2. Approximate # of Supreme Court civil cases filed annually (N=19; NR=1)	12 – 25	5	26%
	26 – 100	8	42%
	101 +	6	32%

### 6.2 Estimates of Degree of Out-of-Court Settlement

Ninety percent of the lawyer respondents (18/20) estimated that 75% to 100% of their civil cases achieve settlement outside of court. One respondent felt unable to make an estimate, and

one estimated that many – but not a majority – achieve settlement. A respondent with a practice that included medical malpractice and class actions provided this latter estimate.

This overall estimate accords well with the results of the claimant survey in Section 5.3, in which 12 of 17 cases (71%) settled. All of those 12 cases involved lawyer assistance. The achievement of out-of-court settlement may well be lower in the absence of a lawyer.

### **6.3 How Settlement Occurs**

Three patterns of settlement were described:

- *Negotiation between counsel in 90-100% of cases, with little or no direct negotiation between parties or in non-court dispute resolution forums.*

This pattern was most frequently described by personal injury (especially motor vehicle) practitioners.

- *Negotiation between counsel in 45-80% of cases, combined with 10-50% of cases resolved in formal (non-court) dispute resolution forums, and little or no direct negotiation between parties.*

This pattern was most frequently described by general civil practitioners or by practitioners with a combined personal injury and general civil litigation practice. Three respondents with insurance or strata title practices mentioned the highest involvement of dispute resolution forums (35-50%), plus occasional settlement by parties through direct negotiation (10%).

- *Negotiation by counsel in approximately 80% of cases, with 20% settled by direct negotiation between parties, with little or no usage of non-court dispute resolution forums.*

This pattern was identified by only one respondent with a practice in administrative, employment and environmental law. The latter two categories might be considered conducive to direct negotiation between parties.

### **6.4 Direct Negotiation by Claimant**

Despite the fact that direct negotiation between parties was not a significant settlement pattern identified by any of the respondents, five lawyers said they fairly frequently advise clients to negotiate directly with the other party after filing a claim, and eight said they “sometimes” do so.

The circumstances in which they most frequently make this suggestion is if the parties have a reasonable or “decent” relationship, or if the amount at issue is relatively small. Other less frequent situations are if the parties are equally sophisticated, if the other party's lawyer is perceived to be a problem or if the other party is a self-represented litigant.

It should also be noted that in some cases clients have already attempted to settle or manage their case on their own prior to retaining a lawyer. Of 17 lawyer respondents who attempted to estimate the frequency of this occurrence, only one said this never happens (a medical

malpractice lawyer) simply because of the complexity of the cases. The 16 other respondents varied widely in their assessments of the frequency (from 5% to 100%). Those who estimated at the high end usually had a general civil rather than personal injury practice, but this was not a consistent pattern.

The most frequent problem identified by the respondents was their clients' reported inability to get any traction with the ICBC adjuster. The high frequency of this response is of course in part due to the number of respondents whose practice is based on MVA cases. The other primary problem for claimants attempting to resolve problems on their own is the sheer complexity of the systems with which they have to deal and the number of issues that require resolution. These problems result in the claimant feeling overwhelmed and under too much stress to further pursue the case without legal assistance.

### **6.5 When Settlement Occurs**

The vast majority of respondents stated that the timing of settlement was too variable to categorize. As respondents observed, this variability is heightened by the fact that the filing of a Notice of Civil Claim is frequently undertaken to ensure the limitation date is not exceeded. The only other observations were that settlement frequently occurs after discovery, as soon as injuries are resolved (in personal injury cases) or in longer cases, a few months before the trial date.

### **6.6 Notices of Discontinuance; Extended Lack of Activity**

Although a Notice of Discontinuance was considered by a majority (12/20) of the respondents to indicate that a resolution has usually been achieved, several other interpretations were noted by a minority of respondents:

- If the client decides not to go ahead.
- If multiple parties involved initially, one or more may be dropped and a Notice of Discontinuance filed.
- It is sometimes cheaper to start again than to amend a claim, so a Notice of Discontinuance may be filed.

Respondents were also asked to assess the significance of cases that show an extended lack of activity in the court records (e.g. for a year or longer). Most respondents stated that it either signified a settlement had been reached or, alternatively, that civil court processes can take an inordinately long time for a variety of reasons, including litigation tactics, the need for client injuries to be resolved, and negotiations or ongoing exchange of documents.

### **6.7 Personal and Case Factors in Settlement**

A large majority of the respondents said that financial factors play a large role in settlement, as clients balance their own risk tolerance with the costs associated with a return to court. A minority of respondents stated that since MVA personal injury cases are usually pursued on a contingency basis, financial circumstances of the client are less at play.

Thirteen respondents had enough experience dealing with opposing parties who were self-represented litigants (SRLs) to assess their impact on out-of-court resolution. All but one felt that SRLs usually do not understand court procedures, significantly slow down the process, and are less likely to settle. One respondent felt that as long as the SRL is “reasonable,” the chances of settlement are not adversely affected.

In terms of case characteristics, MVA cases were described as having high out-of-court settlement rates by a majority of respondents. Other factors favouring settlement mentioned by one or two respondents each were if the case was straightforward or the amount of the claim was small, if the litigants were “sophisticated,” or if a dollar amount rather than a personally-felt principle was at stake.

## **6.8 Clients’ Perception of Out-of-Court Settlements**

A large majority (16/19; NR=1) of lawyer respondents stated that in general clients preferred out-of-court settlements, because they are less stressful and costly than the courts. A minority indicated more variability in their clients' preferences. Those that have reservations about out-of-court settlement processes sometimes feel they are being “sold out” or will have to settle for less.

There was a consensus among the lawyer respondents that clients understand the process of out-of-court settlement. This observation conflicts to a certain degree with the finding from the client survey that many claimants in Motor Vehicle cases did not understand that their lawyer had filed a claim on their behalf to preserve the limitation period.

## **7.0 Research Conclusions and Recommendations**

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Two types of findings or conclusions emerged from this study. The first relates to the findings from the surveys with claimants and civil lawyers. Because of the diverse methodological challenges encountered in the research, these findings cannot be considered generalizable to other civil non-family cases in the Supreme Court of BC.

Even had the study sample been more robust, it may have been difficult to generalize the findings to all other Canadian jurisdictions because of the differences between public and private insurance regimes, and the degree to which tort versus no-fault injury insurance is emphasized. No-fault injury benefits are provided regardless of fault or collision circumstances, so in a full-scale no fault system there are fewer situations in which an injured person can sue, and motor vehicle cases likely comprise a smaller percentage of overall cases in the superior courts. It is less clear whether such systems might also result in a higher proportion of out-of-court settlements for cases that have been initiated in the courts, or affect lawyers' willingness to take cases on a contingency basis.

Significant conclusions arose from the planning and implementation of the research, which are important to consider in future research initiatives of this type.

## **7.1 Case Outcomes and Process**

### **1. Settlement.**

The two methodologies involve very small numbers of respondents and therefore cannot be considered representative of their populations, but both point tentatively to the conclusion that a majority of MVA and General Civil cases that exit the formal court system are successfully settled. Furthermore, the claimant survey indicates that the majority of such settlements occur with the assistance of a lawyer. By definition, those cases described in the lawyer survey are also usually settled with legal assistance.

### **2. Personal Injury Cases and Contingency Arrangements.**

Lawyers in this study stated that Motor Vehicle personal injury cases in BC are almost always handled on a contingency basis. There is thus considerable motivation on the part both of the lawyer and claimant to achieve settlement, and also a high likelihood of the case being pursued out of court. On one hand, the inclusion of these cases in the study reflected the fact (see Section 3.0 and 4.2) that they comprise a significant portion of civil non-family cases in Supreme Court. On the other hand, their inclusion and high representation (72%) in the sample has likely over-emphasized the degree of settlement that is achieved among civil non-family cases that do not continue in the courts. It may also have generated a sample with fewer SRLs. The trajectory of motor vehicle accident cases is often that they start as a direct negotiation process between an individual and the insurance company, and only when the individual becomes frustrated with the process does he/she engage a lawyer.

### **3. Satisfaction with Outcome.**

Claimant responses were somewhat polarized in terms of satisfaction with the outcome of their case. Much of this reaction was associated with the frustration and length of time to get to a conclusion, in part because many had tried to resolve matters on their own, but could not get traction, with an insurance company, for example, until they hired a lawyer.

### **4. Preference for Out-of-Court Process.**

Lawyers unanimously were of the opinion that most claimants prefer an out-of-court process. In personal injury cases some lawyers recognize that claimants are often frustrated and disappointed at the settlements they receive while, at the same time, recognizing that this system is less stressful and costly. We have no reason to question this point of view. Most wish to settle because they have already been frustrated in their attempts to handle the case, and realize they will face additional costs with no guarantee of any compensation. Although going to court is an option for claimants, in the face of a concrete settlement offer, this is not the option that is usually chosen.

Most lawyers involved in personal injury cases felt they were contributing to access to justice for their clients, especially because cases were being undertaken on a contingency basis. They felt that going to trial is a negative option for most of their clients

and would result in more delays, particularly considering the lack of judges and courtroom space.

## **5. *Understanding of Process.***

Although the lawyer respondents assert that claimants fully understand the process of out-of-court settlement, the claimant interviews reflect less understanding of its symbiotic relationship with court processes. Lawyers frequently file a Notice of Civil Claim to ensure that they will meet the limitation date if court proceedings prove necessary, but clients are frequently unaware of this decision. They are primarily interested in financial compensation for their loss and most are willing to use whatever process achieves that end with the least cost. If it is a MVA case, the claimants willingly defer to their lawyer's handling of the case because in many instances they have tried initially to handle the claim themselves but are unable to deal with the adjuster and find the process overwhelming. If the lawyer advises them to make an out of court settlement and talks about the benefits in terms of costs the client usually agrees, trusting this is the most expedient way to handle things.

## **6. *Length of Time to Reach a Conclusion.***

The length of time to reach a conclusion is often raised as a criticism of in-court processes. However, in many instances this concern also applies to processes that lead to out-of-court settlements of civil matters. There was often considerable elapsed time (e.g. 2-4 years) after the incident before significant activities occurred. Although the lawyers suggest much more activity may be occurring outside of court than is reflected in the case files (e.g. determination of injuries, exchange and examination of documents), it is unfortunate that we could not more systematically explore what these time delays mean for claimants.

Data from the client survey indicates preliminarily that a slight majority of claimants experienced both financial and emotional difficulties in the overall process of bringing their legal matter to a conclusion. This finding is consistent with other studies looking at the costs of civil and family justice.<sup>8</sup>

## **7.2 Research Planning and Implementation**

To understand the factors that impede or facilitate access to justice, it is essential for researchers to be able to engage with users of the justice system. For this engagement to occur, it is also necessary for government, the courts and justice organizations to appreciate the factors that facilitate or impede researchers' access to users and/or information about the user experience.

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<sup>8</sup> See e.g. <http://www.cfcj-fcj.org/cost-of-justice>.

Comments in this section build on the challenges experienced in the current study, but do not constitute a formal analysis of policy in this field. It should also be emphasized that they are not intended as a critique of the two court registries in BC, which together with the BC Court Services Branch were very helpful in facilitating the research. Rather they are suggestions about approaches that will help chart the way forward to greater research success in the future.

### **1. Lack of identification of case type in general civil cases.**

General civil cases comprise a large and diverse number of civil non-family cases in the BC Supreme Court. This category of cases is not defined further by case type in the electronic or hard copy case files. This limits the ability of researchers to identify a specific type of case (e.g. small business) for inclusion in research. Documents tend to be more extensive in these cases, so they could be useful for more detailed case studies, even if direct contact with the client is not possible.

A simple typology of claimant type (e.g. individual, small business, corporation) in the Notice of Civil Claim would not be an onerous requirement for filers, nor for staff doing data entry, but could be a valuable aid for sample selection, and/or for analysis of case trajectories and outcomes for different claimant types.

### **2. Inability of researchers to clearly define the accuracy, currency and comprehensiveness of records in the planning phase of the research.**

Currently, researchers do not have access to mock data in the research planning process, which would allow them to make a realistic assessment of what data exists in the hard copy files. In the case of this research there was the expectation that the case files would contain more information about the case process and current claimant contact information. A more thorough review of data potential should take place prior to undertaking the process for accessing the data. This would save time, money and effort on the part of researchers and Court Services staff.

### **3. A lack of current and comprehensive case records in hard copy files, making it impossible to clearly identify the status of cases in the civil court system.**

Exclusive reliance on either the hard copy court files or the electronic records as the basis of research can be problematic. It is clear that many documents are not in hard copy files, and there is no requirement to file them. We understand that due to resource constraints there has been a lifting of requirements to complete certain court forms. This can bring into question the reliability of the sample that is selected and any subsequent analysis of the case files.

The inconsistent filing of Notices of Discontinuance was one of several barriers to reliable sample selection in this study. While this may not be essential to the court process, consistent filing, combined with a simple pick-list of reasons for discontinuance would contribute significantly to sample selection for this type of study, and also to an understanding of the trajectory and outcomes of cases.

**4. A lack of information in court records that would enable researchers to initiate contact with claimants to explore potential involvement in the research.**

While court records are primarily intended to serve the efficient operation of court processes, not to aid research, if governments are serious about access to justice, particularly as part of an open court system, they need to maintain court records that provide sufficient information that justice researchers can make contact with court users.

Virtually none of the electronic records contained claimant contact information, and only about 50% of the hard copy files contained such information. Routine inclusion of contact information in court electronic records would significantly improve the capacity to develop representative samples for research purposes, and would be a negligible burden for court staff. Researchers would still need to face attrition of samples because of changes of address or expired cell phone numbers, but these are more routine research challenges.

Inclusion of contact information in electronic and hard copy files would not provide carte blanche for unauthorized contact with claimants, as the application protocol for Access to Court Record Information specifically identifies the purposes for which court record information would be used, and requires submission of any questionnaires that would be used in contacting claimants and respondents.

**5. An insufficient number of cases to allow for the exploration of SRLs in the civil justice system.**

Although both claimants and lawyers indicated that it was likely that most clients had attempted to represent themselves at some stage in their civil justice process, the small size of the sample made it impossible to explore this issue in depth. Tentative results suggest that the claimants employ a diverse range of methods to settle their cases.

**6. Significant information not included in court records.**

There is currently no information in court files on subsequent use of non-court or court-adjunct dispute resolution mechanisms to resolve cases, yet this is information that is critical to a research understanding of claimants' trajectories, and could be useful to the courts in terms of the development of referral protocols. As noted above, if filing of a Notice of Discontinuance were mandatory and included reasons for discontinuance, a pick-list with choices such as "resolved at tribunal" or "resolved through dispute resolution process" could be included.

In this study, several lawyers noted that ICBC is not using ADR as an option and that this has limited claimants' choices. This subject was not explored further in this research, but inclusion of a field in a Notice of Discontinuance could enhance understanding of how other options are or are not pursued after an initial filing of a court claim.



## **7. Lack of a systematic research consent process which would facilitate key respondent participation in the research.**

Although the inclusion of claimant (and respondent) contact information on a Notice of Civil Claim is the single easiest and most useful way to facilitate research access to court users, the development of mechanisms to gather consents for time-limited studies is also an option. A research consent process also provides a useful frame of reference for the respondent and supports engagement in the research.

### **7.3 Recommendations Related to Research Planning and Implementation**

#### **Improving the Accuracy, Comprehensiveness and Currency of Court Records**

1. There is a need for Court Services to ensure that Court Records are current, accurate and reflect the processes used to resolve the case. More oversight should be placed on the completion and inclusion of court documents. More consistent filing of Notices of Discontinuance, combined with a simple pick-list of reasons for discontinuance would contribute significantly to more effective sample selection and research on the trajectory and outcome of cases.
2. There is no information collected on court records related to the use of non-court or court adjunct resolution mechanisms. Along with the Notice of Discontinuance, forms could capture data on resolution processes such as mediation.
3. Lawyers involved in the research stated that ICBC is no longer routinely using ADR as an option for resolving disputes and that this has limited claimant choices. Collecting this data would provide an accurate picture of these changes.
4. Efforts should be undertaken to break down the types of cases included in the "General Civil" category, in order, for example, to differentiate the type of cases (individual, small business, corporation).
5. The Notice of Civil Claim form should be revised to include contact data used by the lawyer (phone or cell number or email) to contact his/her client. A process should be undertaken to inform lawyers of the reasons why this field is essential to the implementation of justice research.

#### **Capacity to Plan Effective Research**

6. It is critical for researchers to have accurate information on the general comprehensiveness and content of court records prior to planning research and undertaking a Research Access Agreement. This could be done through the preparation of anonymized "mock data" that more accurately reflects file contents. Meetings with

key court services staff to discuss specific data availability and research objectives would also be helpful.

## Systematic Collection of Client Consents

7. Since a significant percentage of people with justice issues pass through the courts, it is important to find ways to collect research consent forms when people use court services or justice programs. A signed client consent form is critical for researchers when they make contact with the potential research participant, because in most cases clients will remember having received the original explanation by court staff or the program deliverer and having signed the consent form. They are therefore more comfortable about participating in the research than if they are approached “cold” by the researcher, even if letters of introduction are sent out in advance.

It is not sufficient to place a pile of research consent forms on a counter outside of a court-based program. It takes time and effort on the part of staff to communicate with court or program users so that they can discuss the purpose and the limitations of consent forms with clients. When court rule reforms were being evaluated in the UK, some court jurisdictions collected client consent forms at rotating courts but only for a few months at a time.<sup>9</sup> This reduced the workload on court staff in any one location, but still provided a solid basis upon which to evaluate the reforms.

Stable justice services that are widely delivered are also a good place to collect research consent forms from clients on a routine basis. Some legal service agencies in Canada (e.g. both the Legal Services Society of BC and the Law Foundation of BC) collect research consent forms from their clients on an ongoing basis or in advance of particular studies, which greatly facilitates implementation of outcomes based research.

Recently, the federal government used a widely-delivered justice program to collect research consents to facilitate national research on separated parents.<sup>10</sup> From 2000 – 2005 Justice Canada, in cooperation with BC’s Family Justice Services Division, funded a 4.5 year longitudinal study on the impacts of family mediation on participants in Family Justice Centre mediation processes. Family justice counsellors were trained in procedures for the consent-gathering process, and enrolled over 300 participants in the study.<sup>11</sup>

Another alternative involving longitudinal studies is to follow people with problems on their journey from the moment their legal problem is defined. This allows the research

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<sup>9</sup> Gosling, R. (2006). *Survey of litigants’ experiences and satisfaction with the small claims process*. U.K. Department for Constitutional Affairs: DCA Research Series 9/06.

<sup>10</sup> From 2010-2013, approximately 6000 consent forms were gathered from parents who had participated in family justice programs (primarily parent education programs), collected by the jurisdictions involved and forwarded to Justice Canada. Samples were drawn from these consents to form the base of a sub-study as part of Justice Canada’s overall evaluation of the Supporting Families Experiencing Separation and Divorce Initiative. The evaluation report is at <http://www.justice.gc.ca/eng/rp-pr/cp-pm/eval/rep-rap/14/sfesd-sfvsd/toc-tdm.html>.

<sup>11</sup> See <http://www.ag.gov.bc.ca/justice-services/publications/fisd/dispute-resolution/LongitudinalFinalReport.pdf>

team to obtain consent and releases at the outset, build partnerships with the relevant civil justice system players, and contact the participants directly for follow-up. One such study began in May 2015 and is following people with legal problems (housing, family, or employment discrimination), focusing on the uses of legal information. 750 people are involved over a 28 month period in Ontario and British Columbia.<sup>12</sup>

The health field also provides an innovative example of a consent-gathering process that creates a repository of potential participants for a variety of research initiatives. Patients in local Health Authorities are asked for their permission to have trained personnel within a Research and Capacity Building Program access their health record to 1) determine if they are candidates for a particular research study, and 2) contact them about the study. Program team members then help connect researchers with the potential study participants.<sup>13</sup> Although the question of access to records would require careful scrutiny, the concept of a repository of participants that could be drawn on for different types of study is applicable to the justice field.

## **Law Society Reporting of Case Resolution**

8. Law societies could make a significant contribution to our understanding of case resolution in the private sphere by requiring barristers to file an annual report that quantifies client cases in aggregate by various metrics such as case type, outcome, the forum of resolution (e.g. court level, tribunal, direct negotiation, etc.). To serve a broader public purpose, as part of an access to justice agenda, such reports would need to be aggregated by the Society and made available – with appropriate procedures and safeguards – to researchers in the public sphere.

## **Meeting Public and Government Demands for More Data**

9. There are increasing pressures on government to produce data that measure the effectiveness, timeliness and cost efficiencies associated with publically funded justice services. However, without the ability to implement meaningful and accurate research, it will be difficult to meet these demands. It is recommended that the CFCJ in partnership with the UVic Law Access to Justice Centre for Excellence initiate a discussion among court services staff and external researchers and institutions to review the recommendations put forward in this document and to determine a list of priorities that could support research initiatives of this type in the future.

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<sup>12</sup> Lesley Jacobs, Julie Matthews, & Joann Birenbaum, *Evolving Legal Services Research Project* (Community Legal Services Ontario, 2015)

<sup>13</sup> See <http://www.viha.ca/rnd/ptc.htm>.

## Appendix A: Court File Recording Form

# Court File Recording Form

### Part A. Data from Court Services Excel Database

1. Court File #: \_\_\_\_\_

#### 2. Claimant #1

a. Name: \_\_\_\_\_  
First / Last

b. Telephone: (\_\_\_\_\_) \_\_\_\_\_ ' c. Email: \_\_\_\_\_ @  
\_\_\_\_\_

d. Address \_\_\_\_\_

e. Occupation \_\_\_\_\_

f. Primary or last lawyer's name (if no claimant contact available):

\_\_\_\_\_  
First / Last

g. Firm name: \_\_\_\_\_

h. Lawyer or firm telephone: (\_\_\_\_\_) \_\_\_\_\_

i. Firm address \_\_\_\_\_

#### 3. Claimant #2

a. Name: \_\_\_\_\_  
First / Last

b. Telephone: (\_\_\_\_\_) \_\_\_\_\_ ' c. Email: \_\_\_\_\_ @  
\_\_\_\_\_

d. Address \_\_\_\_\_

e. Occupation \_\_\_\_\_

f. Primary or last lawyer's name (if no claimant contact available):

\_\_\_\_\_  
First / Last

g. Firm name: \_\_\_\_\_

h. Lawyer or firm telephone: (\_\_\_\_\_) \_\_\_\_\_

i. Firm address \_\_\_\_\_



8. Type of claimant:
1. Individual(s)
  2. Corporation
  3. Small business
  4. Other (specify): \_\_\_\_\_

9. Date of first notice of claim: \_\_\_\_\_  
Day / Month / Year

10. Date of last activity on file: \_\_\_\_\_  
Day / Month / Year

11. Description of type of last activity: \_\_\_\_\_

12. Stage in claim of last activity: (note: pick list will likely be developed after discussion with Court Services)
1. NOCC only, no response
  2. NOCC, no response, subsequent docs filed, but no held appearance
  3. NOCC, response (including counterclaims), no scheduled appearance
  4. NOCC, response, scheduled appearance, but no appearance held and/or no further docs filed

13. Time from case initiation to last activity:
1. Under 3 months
  2. 3 months to under 6 months
  3. 6 months to under 9 months
  4. 9 months to under 12 months
  5. 12 months or over

14. Time since last activity:
1. 12 months to under 15 months
  2. 15 months to under 18 months
  3. 18 months to under 21 months
  4. 21 months to under 24 months
  5. 24 months or over

15. Is size of claim stated?
1. Yes
  2. No

16. If yes, \$ value of claim: \$ \_\_\_\_\_

## Appendix B: Claimant Interview Questionnaire

### I. Introduction

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(Confirm that you are talking to the intended person.)

My name is \_\_\_\_\_. As part of a study for the Canadian Forum for Civil Justice, I am conducting interviews with individuals who started a civil action in BC Supreme Court, but for whom court records show that the action was not continued in court. The purpose of the study is to learn whether the matter was resolved outside of the court, whether the claimant was satisfied with the outcome, and to explore the costs involved in achieving or not achieving a resolution. The Principal Investigator for this research project is Dr. Trevor Farrow of York University, which is where the Canadian Forum for Civil Justice is located.

The overall purpose of the study is to learn whether cases that drop out of courts are a problem, i.e. that claimants lack effective access to justice, or whether they quickly get resolved after leaving the court.

Court records show that you filed a claim on \_\_\_\_\_ but that after \_\_\_\_\_ no further action occurred in the court. I would like to ask you 7-8 questions about what happened after your case left the courts.

**(Note: If claimant says he/she did resolve the matter in court, or still intends to continue in court, explain that the study does not apply to them, thank them for their time, and do not conduct the interview. Record the response as a reason for not completing an interview on the tracking sheet.)**

The interview would take approximately 15 minutes. We would very much value your participation in the study, because this issue is of fundamental importance to making improvements to the justice system.

However, participation is completely voluntary, so you can decline to take part in the study. In addition, at any point in the interview you can refuse to answer particular questions, or you can simply decide to withdraw. Refusal to participate or to answer a question, or a decision to stop the interview will not affect your relationship either with me as a researcher, with York University or the Canadian Forum for Civil Justice, or the BC Supreme Court. If you choose to withdraw from the study, we will immediately delete the interview and any data that has been collected in relation to it.

Your name will not be recorded on the questionnaire, nor appear anywhere in the report. No one will know that you have done this interview except me and the immediate director of this study. Your name and contact information is kept on a separate contact list. Your interview data will be entered directly onto the questionnaire and then data-entered separately from the contact list. The questionnaire will be kept in a locked cabinet in a locked research office; electronic data is kept in single user, password protected computers of the researchers who are working on this project. The electronic or paper client contact lists will be deleted from computers within twelve months after project completion. Paper questionnaires will also be

shredded within twelve months of study completion. Your confidentiality will be ensured to the fullest extent possible by law.

Would you be willing to participate in the study, or can I answer any questions that might help you make that decision?

### **Answers to possible questions:**

#### **What is the Canadian Forum for Civil Justice?**

It is a national non-profit organization that has been dedicated to advancing civil justice reform through research and advocacy since 1998. It is centred in York University in Toronto, but has representation from lawyers, legal aid services, judges and academics from across the country. The Principal Investigator for this research project is also Chair of the Board of the Canadian Forum and is directly involved in the planning and conduct of this study.

#### **Who can I speak to if I want to know more about this research study?**

If you wish to speak to the directors of Focus Consultants, who are the primary researchers for this study, you can call collect to 250-479-2962 and ask to speak to either Tim Roberts or Janet Currie.

If you have questions about more general research of the Cost of Justice Project or about your role in this study, please feel free to contact the Principal Investigator Dr. Trevor Farrow either by e-mail at [tfarrow@osgoode.yorku.ca](mailto:tfarrow@osgoode.yorku.ca). or by telephone at 416-736-5420. You may also contact Nicole Aylwin at the Canadian Forum on Civil Justice – 3015 Osgoode Hall Law School, York University, 4700 Keele Street, collect at 855-999-5828 or by email at [naylwin@cfcj-fcjc.org](mailto:naylwin@cfcj-fcjc.org). This research has been reviewed and approved by the Human Participants Review Sub-Committee, York University's Ethics Review Board and conforms to the standards of the Canadian Tri-Council Research Ethics guidelines. If you have any questions about this process or about your rights as a participant in the study, please contact the Sr. Manager & Policy Advisor for the Office of Research Ethics, 5<sup>th</sup> Floor, York Research Tower, York University (telephone: 416-736-5914, or e-mail: [acollins@yorku.ca](mailto:acollins@yorku.ca) ).

#### **Are you employed by the Forum?**

I am an interviewer for Focus Consultants, a Victoria-based firm that has conducted research in the justice field for over 25 years. Focus Consultants has been hired by the Forum to undertake this research. If you wish to speak to the directors of the firm, who are the primary researchers for this study, you can call collect to 250-479-2962 and ask to speak to either Tim Roberts or Janet Currie.

#### **Will the report be made public?**

The final report will be available online on the CFCJ website likely in mid- 2015. CFCJ will also likely be mentioning the study in its monthly online newsletter on the same site, and in other related CFCJ materials



## How were you able to access my court records?

Court files can be accessed by the public, by lawyers, or by research firms for legitimate research purposes. In our case, we searched files to identify cases that did not get resolved in court, the type of claimant, amount of claim (if stated) and contact information so we could develop a sample of cases for the study.

## II. Baseline Case Data

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1a Survey No. \_\_\_\_\_ Date of Interview: \_\_\_\_\_  
D / M / Y

1b. Court File No: \_\_\_\_\_

2. Claimant's summary description of case (what was the issue/problem and what did you hope to achieve)?  
\_\_\_\_\_

3. Was the claimant aware that a claim had been filed in court? Yes  No

## III. Reasons for Case/Claim Not Being Settled in Court

---

4. Using a scale of 1 – 3 where:  
1 = significant factor  
2 = moderate factor  
3 = not a factor  
4= not applicable – client was not aware that a claim had been filed in court

To what degree did the following factors contribute to your case/claim not being settled inside the court?

### Legal Factors

- |   |                          |                          |
|---|--------------------------|--------------------------|
| a. Slowness of legal process  | <input type="checkbox"/> |                          |
| b. Couldn't locate defendant  | <input type="checkbox"/> |                          |
| c. Couldn't provide necessary documents                                     | <input type="checkbox"/> |                          |
| d. Counsel non-responsive, not listening or explaining                      |                          | <input type="checkbox"/> |
| e. Couldn't afford legal representation                                     | <input type="checkbox"/> |                          |
| f. Wasn't able to represent myself; processes, forms too complex            |                          | <input type="checkbox"/> |
| g. I felt I would not win the case; no sense continuing                     |                          | <input type="checkbox"/> |
| h. My lawyer or others advised me to drop the case                          |                          | <input type="checkbox"/> |
| i. My lawyer (or I) thought we had better chance of settlement out of court | <input type="checkbox"/> |                          |
| j. I felt a non-court process would be cheaper, more affordable             |                          | <input type="checkbox"/> |
| k. Courthouse too far away  | <input type="checkbox"/> |                          |

- l. Lawyer initiated out of court settlement before substantive court action required

Personal Issues Affected by Court Process

- a. I felt intimidated / threatened/overwhelmed by the court system

- b. My health was suffering

- c. My family was suffering

- d. Case involved too much time off of work

- e. Language barriers

- f. Not applicable – didn't know claim was filed in court

5. Factors not listed above and ratings:

a. \_\_\_\_\_

b. \_\_\_\_\_

6. Did any aspect of your case get settled in court?

1. No            2. Yes (Specify \_\_\_\_\_) 3. NA

**IV. Case Status After Court**

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7. Since your case/claim was not fully settled in court, have you taken any further action on it outside of court to arrive at a settlement?

1. Yes, I have taken further action → go to Question 8,9 and then 10

2. No, have not taken further action, but intend to pursue it further out of court → go to Question 10

3. No, have not taken further action and do not intend to → go to Question 10

**V. Description of Further Action(s) Outside of Court to Attempt Settlement**

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8. What further action(s) have you taken on your case/claim outside of court to attempt settlement? (more than one answer possible)

1. Negotiated with the defendant myself

2. Lawyer assisted in negotiations with the defendant

3. Went to a non-court collection process

4. Conciliation/mediation process

5. Used non-lawyer assistance to attempt settlement (trusted intermediary, friend)

6. A settlement was proposed by defendant's lawyer

7. Other (describe): \_\_\_\_\_

—

8. Other (describe): \_\_\_\_\_

—

**VI. Case Outcomes**

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9. What was the outcome of the action(s) you took outside of court?

- Case was settled
- Case was partly settled; won't continue
- Case still ongoing
- Case not settled

Date: \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_  
Month / Year

**VII. Estimated Case Costs and Impacts**

10. Concerns have been expressed by the public about the costs that sometimes occur when people take a case to court. Would you be willing to discuss some of the costs that have been involved in your case?

YES  NO  (Proceed to following question)

Type of Cost	Approximate costs for processes inside court	Approximate costs for processes outside of court
<b>Approximate costs of processes used</b>		
Lawyer fees (estimates only )	\$ _____	\$ _____
Court or other costs you paid separately (e.g. fees for experts, translators, bailiff, notaries, compensation of witnesses), if known	\$ _____	\$ _____
Mediation fees (this could be by a lawyer)	\$ _____	\$ _____
<b>Indirect personal costs</b>		
Time you took off work	No. of days _____	No. of days _____
Estimated lost income (# of days X approximate income)	\$ _____	\$ _____
Travel costs to court, accommodations, childcare	\$ _____	\$ _____
<b>TOTAL COSTS</b>	<b>\$ _____</b>	<b>\$ _____</b>

11. Without discussing direct costs, would you be able to describe whether undertaking this case has been financially difficult for you? Please use a scale of 1-7 where 1= not difficult and 7=very difficult X=no answer provided

Rating

## VIII. Other Impacts of Case

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12. On a scale of 1 to 7, where 1 = "not at all", and 7 = "a great deal", to what degree has involvement in this case negatively affected:

1. Your physical health?
2. Your emotional or mental health?
3. Your family's emotional or mental health
4. Your family relationships?
5. Your ability to work?
6. Your education (if applicable)?

13. Please describe (and rate using the same scale) other related types of impacts not listed above:

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14. (For respondents who gave a rating of "3" or above to any of the impacts identified in #12 and #13). Did any of the emotional, health, family or work impacts that occurred as a result of the case lead to additional costs for you and/or family (e.g. costs for health, or mental health treatment)? Can you describe what was needed and estimate the amount of these costs?

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## IX. Self-Represented Litigant Status

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15. At any point while this case was in court did you represent yourself without the help of a lawyer?

- a. Yes, throughout the court process
- b. I represented myself at some points and was represented by a lawyer at others
- c. No, I always had legal representation

16. Did the other party (defendant) have the help of a lawyer while the case was in court?

- a. Yes, throughout the court process
- b. The defendant represented him/herself at some points and was represented by a lawyer at others
- c. No, he/she has not had legal representation at any hearings
- d. Not certain

## X. Satisfaction with Court Process

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17. Overall, how satisfied were you with your experience in the court system in relation to this case?

1. Very satisfied
2. Quite satisfied
3. Neither satisfied or dissatisfied

4. Quite dissatisfied
5. Very dissatisfied
6. NA – experience too limited or didn't know the case was in court

18. What is the reason for your answer? (If applicable, probe in relation to not having of a lawyer or because resolution of some matters in court made it easier to achieve resolution outside of court)

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19. Overall, how satisfied are you with the outcome of your case to this point?

17. Very satisfied
20. Quite satisfied
21. Neither satisfied or dissatisfied
22. Quite dissatisfied
23. Very dissatisfied

20. Do you have any other comments you would like to make about your experience with this case in the justice system?

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**Thank you very much for this interview. It has been very helpful. Do you have any questions?**

## Appendix C: Lawyer Interview Guide

### 1. Practice Background

1a) approximate # of Supreme Court Civil (motor vehicle or general civil) cases handled annually

1b) primary practice areas within the civil litigation area

### 2. Overview

In our review of Supreme Court Civil case files (MVA and General) we have found that cases have little documentation showing what has taken place after a NOCC or RCC has been filed. Can we safely assume that many of these cases end up settling out of court? Can you estimate the percentage that might be settled in this way?

### 3. Patterns of settling out of court.

3a) When do these cases tend to settle out of court? (e.g. immediately after NOCC, or after response, or just prior to trial etc.) Can you indicate the rough percentages at various points?

3b) Do certain types of cases more frequently get settled out of court? Are the personal attitudes or financial circumstances of the client a factor in this process? If the other party is an SRL, does this have an impact?

3c) If a notice of discontinuance is filed, does this usually mean that a resolution has been reached, or that the claimant has decided not to, or is unable to, proceed?

### 4. Clients' perception of out of court settlements

4a) In general, what is the client reaction, if any, to settling cases out of court? Do they understand this process? What is their level of satisfaction with the process?

4b) Does the fact that resolution is pursued outside the court system appear to affect clients' perceptions of the civil justice system itself, and/or their inclination to bring future problems to that system?

### 5. Attempts by clients to manage problem partially or wholly on their own

5a) In what percentage of cases do clients come to you after having already attempted to manage their legal matter on their own? What kinds of problems have they faced?

5b) Do you ever advise clients to negotiate directly with the other party after filing a claim? Under what circumstances might this approach be used?

### 6. Outcomes of civil cases that settle out of court

6a) When cases show no activity (as shown by court records) for over a year after the filing of the most recent document what does this usually indicate?

6b) If cases are settled, in what (approximate) percentage of cases is this by negotiation directly between the parties (including facilitated by counsel)? by negotiation between you and the other party's counsel? by formal dispute resolution in a non-Court forum?

6c) Do you feel that the high proportion of out of court settlements in these types of cases indicates problems with the justice or court system in terms of access or timeliness or in any other way? OR is this process effective and contributing to the resolution of civil disputes?