

PART IV: CHARACTERISTICS OF CASES SURVEYED IN CASE SPECIFIC QUESTIONNAIRES

In order to properly compare the results of the case specific questionnaire across court locations with respect to the discovery process, it was important to understand how cases from each location compared in other respects. Respondents were therefore asked to provide information about a variety of case characteristics.

1. DESCRIPTION OF CASES

Case Management

In Ottawa, more than 80% of cases and in Toronto 28% of cases were case managed under rule 77. In Thunder Bay and London, no cases were case managed.

Type of Case³⁰²

Case types accounting for the largest proportion of responses overall were: “other” i.e.non-specified (18%), personal injury (18%), contract/commercial (14%) and negligence (12%).³⁰³

Number of Parties³⁰⁴

Responses from all locations were similar with respect to the number of parties. Approximately 63% of all cases surveyed had 2 parties, 22% had 3 parties, 7% had 4 parties, 5% had 5 parties and 3% had 6 or more parties.

Type of Representation

For all locations, approximately 94% of responses were for cases in which all parties were represented. Approximately 3% of responses were for cases in which all of the plaintiffs, but none of the defendants, were represented. Less than 1% of responses were for cases in which none of the plaintiffs, but all of the defendants were represented.³⁰⁵

³⁰² For a detailed breakdown, see Chart 1 - “Case Type” at Appendix K.

³⁰³ There were some differences among court locations in the mix of case types. Medical malpractice cases comprised a larger percentage of responses in Ottawa and Toronto than in London and Thunder Bay. Toronto had the largest proportion of “other professional malpractice” cases. Thunder Bay and London had a larger proportion of personal injury cases than Ottawa and Toronto. London had the largest proportion of responses involving motor vehicle cases.

³⁰⁴ For a detailed breakdown, see Chart 2 - “Number of Parties” at Appendix K.

³⁰⁵ The fact that unrepresented parties were less likely to complete a survey than counsel likely accounts for the low numbers of responses from unrepresented parties.

2. PROGRESS OF CASES

Rate of Disposition³⁰⁶

As noted earlier, cases defended in 1999³⁰⁷ were selected to allow sufficient time – in a substantial majority of cases – for all steps in the litigation process to have been completed, in order to provide a context for examining the discovery process. Disposition rates varied in each court location. Most cases in Ottawa (86%) and Toronto (74%) had been disposed. Only 59% of Thunder Bay cases had been disposed, largely because defended cases from both 1999 and 2000 were sampled to obtain sufficient numbers of cases. London’s 64% disposition rate was due to the fact that cases commenced (as opposed to defended) in 1999 were sampled.

In Ottawa, Toronto and London, certain case types had a disposition rate that was significantly lower (at least 18% lower) than the overall rate for each court location:

- Ottawa: estates, trust and fiduciary duty, other professional malpractice, and “other” (i.e. non-specified) case types;
- Toronto: medical malpractice, other professional malpractice and class actions; and
- London: motor vehicle, trust and fiduciary duty cases.

Type of Disposition³⁰⁸

In all four locations, less than 5% of disposed cases were disposed by judgment at trial. Settlement was the most common type of disposition reported (in between 80% and 85% of responses).

Time to Disposition³⁰⁹

Ottawa disposed of cases faster than the other courts. The typical time to disposition was 14 months in Ottawa, compared with 19 in Toronto, 20 months in Thunder Bay and 22 months in London. At least 75% of cases in Ottawa were disposed within 21 months, compared with 28 months in Toronto, 26 months in Thunder Bay and 34 months in London.

Next Scheduled Event³¹⁰

Respondents were asked to indicate the next scheduled event in cases that had not been disposed. In Ottawa, 7% of responses indicated that no future events were scheduled, in contrast with Toronto (26%), London (32%) and Thunder Bay (35%). Examination for discovery was the next scheduled event for 46% of Ottawa responses, 23% of Toronto responses, 14% of Thunder Bay responses and 11% of London responses.

³⁰⁶ For a detailed breakdown, see Chart 3 - “Disposition Status of Case” at Appendix K.

³⁰⁷ Since the date of defence was not available for London cases, date of **commencement** was used there.

³⁰⁸ For a detailed breakdown, see Chart 4 - “Type of Disposition” at Appendix K.

³⁰⁹ For a detailed breakdown, see Chart 5 - “Time from Commencement to Disposition (months)” at Appendix K.

³¹⁰ For a detailed breakdown, see Chart 6 - “Next Scheduled Event (if case not disposed)” at Appendix K.

3. AMOUNT OF CLAIMS AND AWARDS

Amount of Claim³¹¹

In all locations combined, approximately 18% of responses were for claims of \$50,000 or less. Another 18% were for claims between \$50,001 and \$100,000. About 40% of responses were for claims in the \$100,001 to \$500,000 range. Approximately 14% of responses were for claims between \$501,000 and \$1,000,000, and 12% were over \$1,000,000.

Amount of Award³¹²

For all locations, 60% of respondents indicated judgments or settlements of \$50,000 or less, 18% indicated judgments or settlements between \$50,001 and \$100,000, and 18% indicated judgments or settlements in the range of \$100,001 to \$500,000. Only 2% of responses were from cases with judgments or settlements between \$501,000 and \$1,000,000, and 1% were over \$1,000,000.

4. DISCOVERY ACTIVITY

Discovery was commenced and/or completed in approximately 64% of cases.³¹³ Surprisingly, the analysis indicated that the likelihood of discovery occurring was higher in undisposed cases (76%) than in disposed cases (60%). The likelihood of discovery occurring varied with the manner in which cases were disposed, with similar patterns in all four courts.³¹⁴ Cases disposed by judgment at trial were most likely to have completed discovery, followed by cases that settled. Cases disposed by default judgment, summary judgment or discontinued by plaintiff (without a settlement) had the lowest likelihood of discovery being commenced. There was also significant variation in the likelihood of discoveries occurring, based on case type.³¹⁵ The likelihood of discoveries occurring was relatively low for collection cases and construction lien cases and relatively high for motor vehicle and personal injury cases.

Respondents were asked to indicate which specific discovery activity or activities they had undertaken.³¹⁶ Of the 64% of respondents who had discovery activity, 100% indicated that documentary discovery had occurred, 72% indicated that oral discovery had occurred and 1% indicated that written discovery had occurred. Approximately 36% indicated they had produced expert or medical reports and close to 18% indicated there had been medical examinations.

³¹¹ For a detailed breakdown, see Chart 7 - "Amount of Claim" at Appendix K.

³¹² For a detailed breakdown, see Chart 8 - "Amount of Judgment or Settlement (excluding costs)", Chart 9 - "Comparison of Cumulative Amount Claimed and Awarded" and Chart 10 - "Comparison of Amounts Claimed and Awarded (disposed cases)" at Appendix K.

³¹³ This analysis was conducted by examining whether respondents indicated that any of a list of discovery activities set out in Part E of the questionnaire had taken place. Respondents' answers to Question 8B, Part E were used to determine whether or not discovery was complete. To the extent that respondents failed to fill out any discovery related questions, the statistics would underestimate the occurrence of discovery activities. For a detailed breakdown see Chart 11 - "Discovery Process" at Appendix K.

³¹⁴ For a detailed breakdown, see Chart 12 - "Discovery Process by Disposition Type" at Appendix K.

³¹⁵ This figure includes both disposed and undisposed cases.

³¹⁶ For a detailed breakdown, see Chart 13 - "Occurrence of Different Types of Discovery Activity" at Appendix K.