

**UNINTENDED CONSEQUENCES:
THE REGRESSIVE EFFECTS OF INCREASED ACCESS TO COURTS**

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Abstract

Small claims courts enable parties to resolve their disputes relatively quickly and cheaply. The court's limiting feature, by design, is that the alleged damages must be small, in accordance with the jurisdictional limit at that time. One might expect that a large increase in the upper limit of claim size would increase the court's accessibility to a larger and potentially more diverse pool of litigants.

We examine this proposition by studying the effect of an increase in the jurisdictional limit of the Ontario Small Claims Court. Prior to January 2010, claims up to \$10,000 could be litigated in the small claims court. After January 2010, this jurisdiction expanded greatly to include all claims up to \$25,000. We study patterns in nearly 625,000 disputes over the period 2006-2013.

Interestingly, the number of claims filed by plaintiffs does not increase significantly. We ask why. We find that the composition of plaintiffs using the small claims court changes markedly. We observe a large drop in the number of claims filed by plaintiffs from poorer neighborhoods. The drop is most pronounced for plaintiffs from the poorest 10% of the population. We observe more claims from plaintiffs living in richer neighborhoods. We explore reasons for this regressive effect including crowding out, congestion, and behavioral influences. Our findings suggest that legislative attempts to make the courts more accessible may have unintended regressive consequences.

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1. Introduction

Conventional wisdom suggests that access to justice can be improved by reducing the costs for litigants using the formal court system. We investigate this by examining the effects of a clean policy shock that made it dramatically cheaper for plaintiffs in certain civil disputes to access courts in Ontario, Canada.

In January 2010, the jurisdiction of the Ontario Small Claims Court (OSCC) increased dramatically. The small claims court resolves civil disputes where the amount of controversy is relatively small. Prior to 2010, plaintiffs could only bring claims if the amount claimed was \$10,000 or less. If a plaintiff wished to claim more than \$10,000 in damages, she would need to use the more expensive, more formal Superior Court. In 2010, this jurisdictional limit increased greatly, taking all claims up to \$25,000.

It was argued – in line with the conventional wisdom – that raising the jurisdictional limit of the small claims court in Ontario would increase access to justice (Ontario Civil Justice Review 1996, 2007).² Civil claims for damages between \$10,000 and \$25,000 can now be filed with the small claims court at a fraction of the cost of filing with the Superior Court. Before January 2010, litigants with claims in this range may have found the cost of filing suit prohibitive and not bothered to file suit, or they may have reduced their alleged damages to \$10,000, in order to fall within the jurisdiction of the small claims court.

One would therefore naturally expect that this dramatic increase in the jurisdiction of the small claims court would result in a large increase in the number of claims filed by plaintiffs with the small claims court.

We analyze data on litigant behavior from the four-year period before and the four-year period after the January 2010 change. Our dataset includes information on nearly 625,000 claims filed with the Ontario Small Claims Court.

We present a highly counter-intuitive finding. The number of claims made by plaintiffs does *not* increase significantly. Indeed, the number of claims remains relatively stable. We find

² Similar arguments for raising the cap for small claims courts generally can be found in the academic literature. See, *e.g.*, Finney and Yanovich 2006.

only a very mild increase in the number of claims filed in the small claims court.

This finding presents a curious puzzle. Why would the number of claims not increase significantly when the ceiling on claims increases by 150%? We offer an insight by examining the *composition* of the plaintiffs with the small claims court. We examine the socio-economic backgrounds of plaintiffs using the court and we find significant differences comparing before and after the jurisdictional change.

Following the January 2010 change, we find that plaintiffs using the small claims court are, on average, from richer neighborhoods. We also find that proportion of plaintiffs from poorer neighborhoods drops dramatically. The drop-off is most acute for the poorest socioeconomic decile.

We seek to unpack reasons for this regressive impact. We investigate whether this finding is the result of *crowding out* of poorer plaintiffs under the new jurisdictional limit. The hypothesized crowding out here is due to increased congestion within the court system. While the number of claims does not increase following the jurisdictional change, it is highly likely that the claims for higher damages are associated with more complex legal claims. These more complex claims take longer to resolve. Even if the claims are not more complex, we observe that plaintiffs are more likely to use legal representation following the change.

As a result of this increased complexity and legal representations, the length of time to resolve small claims increases. We hypothesize that this increased indirect cost of litigation disproportionately affects potential plaintiffs from poorer neighborhoods who, on average, seek smaller damages.

The evidence in support of the crowding out story is mixed. We offer other explanations, such as behavioral stories of anchoring, although providing empirical support for these behavioral explanations is difficult.

Our examination of the plaintiff pool suggests that legislative attempts to increase access to the courts may lead to unintended regressive consequences. More broadly, our findings give support to the idea that equal access to public goods – such as education, museums, national parks, cultural activities, and the formal court system – can *generally* be regressive.³

³ See, e.g., Ben-Shahar (2013).

Our empirical question, on its face, may appear narrow. But there is a far more important question underlying this analysis: What structure of the court system to best facilitates access to justice? While economists and legal scholars have looked at the optimal structure of courts from the perspective of appeals, error correction, and *ex ante* rule setting,⁴ few have looked at the question of the optimal structure of courts from the perspective of *ex post* dispute resolution for the purposes of access to justice.

The format of this paper is as follows: Part 2 provides background to the jurisdictional change and a literature review. We introduce our dataset in Part 3. Our main results are set out in Part 4. In Part 5, we seek to provide possible explanations for our findings on the regressive nature of the change and discuss our crowding out hypothesis and other possible explanations. Part 6 concludes.

2. Literature review

We are interested in studying the effect of raising the jurisdictional limit on prospective litigant behavior. We include the word *prospective* because we are interested not simply in those litigants who file, but whether individuals involved in a dispute decide to file a claim in the first place.

Three branches of literature are relevant to our study. The first branch looks at the specific relationship between socio-economic status and access to justice (*e.g.*, Felstiner et al 1981; Albiston 1999; Macdonald 2005; Trebilcock 2008; McGill 2012). Galanter (1974), for example, examines the ability of potential litigants from socio-economic pools to enter the formal legal system, while Mnookin and Kornhauser (1979) explore how parties bargain in the shadow of the law when legal disputes arise. Rankin (2012) argues that the inability to access justice and obtain legal representation may create burdens on courts and judges that may undermine the independence of the formal legal system. In the context of raising the jurisdictional limit of small claims courts, Baldwin (1998) argues that raising the limit is generally welcome, but recognizes potential problems if lay litigants do not have access to adequate legal

⁴ See, *e.g.*, Shavell (1995, 2006, 2010).

advice. These studies, however, are largely descriptive, even when they employ some statistical methodology.

A second branch looks specifically at the evolution of small claims courts.⁵ Some of these studies explore the differences between the actual activities of the court and their supposed mission (see, *e.g.*, Ramsey 1996; Moulton 1968; Modlaver and Herlihy 1974; Graham and Snortum 1976; Neilson 1982) or they seek to understand the role of the court in the broader judicial system (see, *e.g.*, McGuire and Macdonald 1996; Whelan 1990). A number of studies have sought to examine litigant satisfaction in small claims courts (O'Barr and Conley 1985; Elwell and Carlson 1989; Clark 1991; Ong et al 2000; Patry et al 2009). These studies rely heavily on survey data, which can be problematic for a number of reasons including selection problems and time lag between respondent experience and time of survey. Our study seeks to better understand the effects of the jurisdictional change by comparing disputes before and after the change using a large-scale empirical study of *all* small claims court disputes.

The closest paper to ours is McGill (2015). Related to both the first and second strand of literatures, McGill explores the effect of expanding the jurisdiction of the OSCC in depth, taking a random sample of claims filed by plaintiffs to examine the effect of the change on filing behavior and legal representation. The paper provides a number of interesting insights into plaintiff behavior at the small claims court level, but does not examine the composition of plaintiffs by socio-economic background.

The third branch of literature uses a law and economics lens to study the decision of litigants to bring suit and whether to settle the dispute. The seminal works of Posner (1972) and

⁵ Yngvesson & Hennesey (1975) provide an early review of the small claims court literature. Ellis (1974) provides an early discussion of the role of the small claims court in British Columbia. There are a number of studies that analyze the establishment and performance of particular small claims courts in the United States: Pagter et. al. (1964) (California); Stewart and Abrahams (1936) (Pennsylvania); Steadman and Rosenstein (1973) (Pennsylvania); Purdum (1982) (Florida); Eovaldi and Meyers (1978) (Cook County, Illinois); Hollingsworth et. al. (1973) (Ohio); Myers (1953) (District of Columbia); and Zucker and Her (2003) (Ventura County, California). See also, Economides (1980) (analyzing British small claims), Baldwin (1997) (looking at England and Wales), Kramer (2011) (European Small Claims Procedure), and Ferraz (2011) (Brazil).

Gould (1973) examined the decision to litigate from an economic standpoint.⁶ Empirical approaches to analyzing the decision to settle or litigate were employed in Fournier and Zeuhlke (1989), Revesz (2000), and Crampes and Langinier (2002). Eisenberg and Miller (2002) explore the role of lawyers and attorney fees in influencing the decision to settle class action disputes. Most of the empirical analyses in this branch of literature have analyzed litigant behavior using a dataset that tracks claims filed in the federal court system in the United States. While insightful, these data are unlikely to have the same attributes as data relating to the vast majority of litigants who use the small claims court. These data are highly unrepresentative of litigants at the lower end of the socio-economic scale. Consequently, issues of access to justice cannot be answered by generalizing the results of these studies to the small claims court context.

Here, we focus on plaintiff filing behavior. This decision is both practical, due to the data limitations, and conceptual, as we are interested in the threshold question of how procedural rules affect prospective litigants' willingness to use the court system.

3. Our data

We investigate claims before and after a January 1, 2010 rule change that raised the jurisdictional limit in Ontario Small Claims Court from \$10,000 to \$25,000. Jurisdictional limits apply to all small claims courts in the province, meaning that there is no variation across courts either before or after the rule change. In an ideal world, we could look at neighboring regions from different provinces and compare claim behavior pre- and post-rule change (*i.e.*, a difference-in-difference), but our data are limited to Ontario.⁷

⁶ More detailed theoretical efforts to model settlement were introduced by Shavell (1982a, 1982b), Png (1983), Bebchuk (1984), and Nalebuff (1987). Chung (1996) analyzes the incentives to settle under specific procedural rules in the United States.

⁷ Ontario does provide, however, considerable variation within the province, both with respect to geography and socio-economics. Small claims courts are found in large cities (*e.g.*, Toronto, population 2.5 million) and small towns (*e.g.*, Dryden, population 7,500), which also vary in density and socio-economic composition. As with all litigation, small claims court are

We use claim-level data. The data from this project were generously provided by the OSCC and the Minister for the Attorney General in Ontario. The OSCC, a branch of Ontario's Superior Court of Justice, specializes in civil disputes where the amount of controversy is relatively small. We have data on all 624,457 claims filed with an Ontario Small Claims Court between January 1, 2006 and December 31, 2013.

The data is rich in some dimensions while limited in others. For each claim, the OSCC provided the following information:

- Date claim filed
- Amount of damages alleged
- Court claim filed (e.g., Toronto)
- Postal code of plaintiff
- Postal code of defendant
- Whether the parties had legal representation at time of filing
- Date case resolved (if applicable)

A considerable amount of information relevant to the claim and the litigation process is missing, in large part because the OSCC does not systematically record it. For example, the court does not record how the case resolved (*e.g.*, dropped, settled, or trial), the nature of the dispute (*e.g.*, employment, landlord-tenant, contract), or the amount - if any - that the plaintiff ultimately received. Other information was redacted for privacy reasons.

We use the postal code data to generate information about the background of the plaintiffs. We use Census data from StatsCan to generate proxies of the socio-economic background of the plaintiffs in a procedure we detail below.

4. Empirical findings

4.1. The number of claims filed by plaintiffs does not increase significantly

bound to the jurisdiction where the purported harm occurred, limiting opportunities for forum shopping. Accordingly, in future versions of this research, we will examine whether the rule's effect is widespread or varies across individual courts.

We begin discussion of our findings with an observation: we observe *no significant increase in the number of claims filed by plaintiffs comparing the pre-change period (2006-2009) to the post-change period (2010-2013)*.

Theory would suggest that expanding the jurisdictional range by 150% should generate a significant increase in the number of claims made. We do not observe a significant increase after January 2010. **Table 1** captures the year-by-year breakdown of claims made.

Year	Number of claims made
2006	79,835
2007	74,669
2008	75,899
2009	76,384
2010	82,905
2011	78,375
2012	79,205
2013	77,185
Total	624,457

Table 1: Number of claims filed with the Ontario Small Claims Court each year from 2006-2013.

For the *pre-period* - January 1, 2006 through December 31, 2009 - plaintiffs filed 306,787 claims (49.13% of the total number of claims over the total period). Plaintiffs filed 317,670 claims during the post-period of January 1, 2010 through December 31, 2013 (50.87% of the total). There is a small increase in the post-period compared to the pre-period of 3.55%. But, this is largely attributable to a small spike in the first half of the 2010 calendar year.

The small spike in the 2010 calendar year can potentially be explained in different ways. First, one might attribute the spike to inter-temporal substitutability. That is, plaintiffs who anticipated the change in the jurisdiction, waited until January 2010 in order to file in order to increase the magnitude of their claim. Evidence of this effect is not particularly strong, given that the number of claims did not fall in 2009. Nonetheless, to allay this concern, we compare the period 2006-2008 with the

period 2011-2013.⁸ This corrects for any problems of inter-temporal substitutability from the year before to the year after the jurisdictional change. There were 230,403 claims in the truncated pre-period and 234,765 in the truncated post-period. This increase is a mere 1.89%; not the significant increase one might expect from a 150% increase in the jurisdictional limit.

A second explanation for the small spike in early 2010 is that there was, initially, an increase in the demand for small claims court litigation, but this increased demand resulted in congestion of the court system. This congestion may have discouraged some potential litigants from bringing suit after this initial spike. We explore this explanation in greater detail in Part 5 below.

Figure 1 graphically illustrates the changes, month-by-month during this period. The lighter bars represent the pre-change period; the darker bars represent the post-change period. The monthly average of claims made is 6,505.

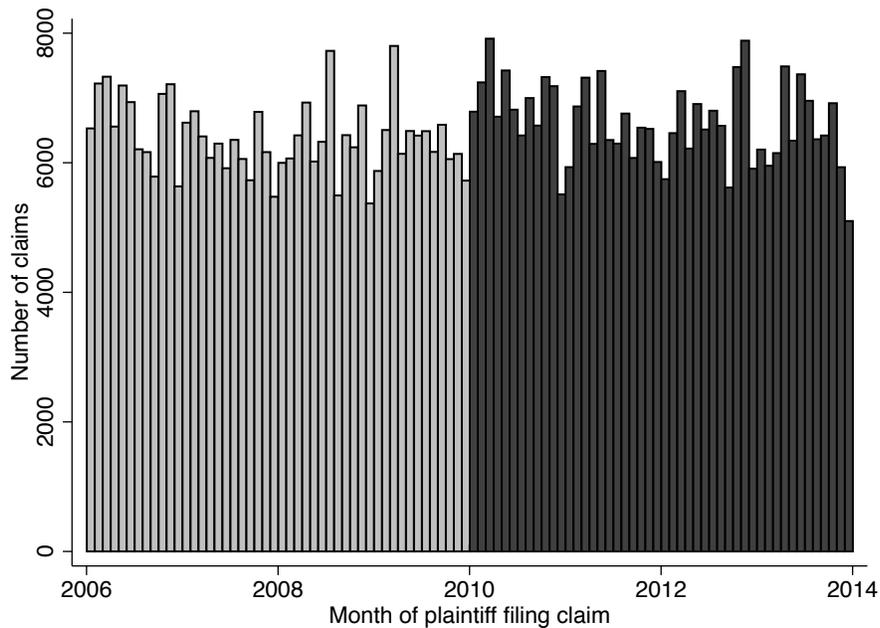


Figure 1: Number of claims filed by month, before (light) and after (dark) the change in jurisdiction.

We unpack these aggregate figures a bit more by looking just at claims that are \$10,000 or lower. The intuition here is

⁸ McGill (2015) provides a similar exercise in examining plaintiff behavior.

that if plaintiffs are sincere in their purported damages, then the numbers should remain largely the same. As **Figure 2** shows, however, that there is a sharp drop off in claims of or below \$10,000 following the jurisdictional change.

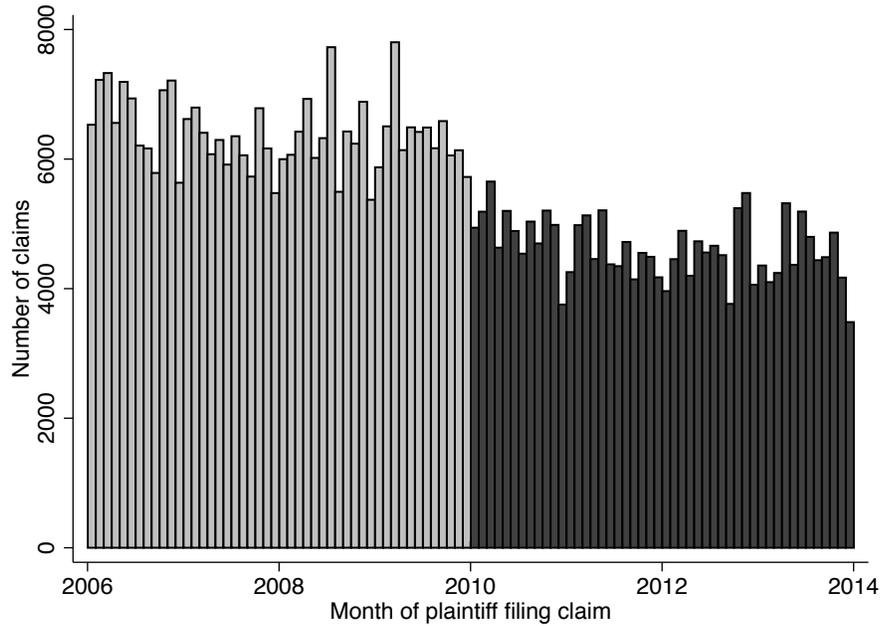


Figure 2: Number of claims made for \$10,000 or less per month, before (light) and after (dark) the change in jurisdiction.

The number of claims for \$10,000 and less drops by approximately 20% in 2010, and continues to gradually decrease in subsequent years. Given the limitations in the scope of our data, it is impossible to determine whether the drop in this price range reflects drops in certain types of claims, or that plaintiffs for whatever reason are increasing the amount of alleged damages.

4.2. Changes in plaintiff composition suggest that the effect is regressive

We construct proxies of the socio-economic background of the plaintiffs in our dataset. As discussed in Part 3, we have some limited information about the plaintiffs who bring the claims. While we do not have employment or wage data for the litigants, the OSCC does record their postal codes, which

provide credible proxies for the socio-economic status of plaintiffs.⁹

A brief description of how we construct our socio-economic proxies: Canadian postal codes are a six-character code representing geographic regions across Canada. In the province of Ontario (Canada's largest province by population), there are 275,412 different postal codes for a population of around 13.6 million people, meaning that each postal code on average represents fewer than 50 people.

For each postal code, we introduce census-tract level data provided by Statistics Canada (StatsCan). Census-tract level data is a more aggregated than postal code data. A census tract is defined by StatsCan as "small, relatively stable geographic areas that usually have a population between 2,500 and 8,000 persons [that] are located in census metropolitan areas and in census agglomerations that had a core population of 50,000 or more." In Ontario, StatsCan breaks down its data into 2,236 census tracts, with an average population of 5,124 in each census tract. The census tracts have a relatively low standard deviation of 2,409 persons.

Using census tract data from Ontario is attractive because they are small, relatively stable areas. For researchers, they compare favorably to the use of zip codes in the United States, which are heterogeneous and can be difficult to compare. The average population per zip code in the United States is 9,434, with a high standard deviation of 13,754 persons.

Unfortunately for our purposes, not every litigant in our data provided their postal code to the small claims court.¹⁰ Of our 624,457 claims, we have postal codes for 326,938 plaintiffs, slightly more than half (52.36%) of all claims.

⁹ The use of postcodes as a proxy for income and socio-economic status is very common in the social science and medical science literature (see, e.g., Benabou 1996; Colvin et. al. 2012; Philipson et. al. 2010; Brinig 2010; Jolly et. al. 2010; Ward 2008; Gellis et. al. 2005; Blackledge et. al. 2003; Lerner et. al. 2001; and Merkin et. al. 2002). There are, however, some obvious limitations. Krieger et. al. 2002, for example, notes that the proxy value may not be particularly accurate in the United States. Postcodes and census tracts in Canada are, however, a much stronger proxy than zip codes in the United States, because in Canada, they are shared by fewer people and they are less heterogeneous within the tract (see Danesh et. al. 1999, making a similar point about British postcodes).

¹⁰ In our preliminary investigation for why this omission occurs, we learned that litigants may leave it blank if they are represented by legal counsel, to whom the court corresponds.

To further complicate matters, Ontario residents who live in rural areas are not captured in the StatsCan data available to us. For this reason, we are unable to link socioeconomic information for roughly 12% of the plaintiffs for whom we have postal code information. We end up with socio-economic proxies for 281,422 plaintiffs in our dataset. We do not believe that these data are biasing our results in favor of a finding a regressive impact of the change for reasons discussed in detail in Part 5.3.

We look at the mean average and median household before-tax income (in constant 2005 dollars) of each plaintiff's census tract.¹¹ **Figure 3** shows the change in the distribution of plaintiffs' income, using postal code as a proxy. Most notably, the change in jurisdictional limit resulted in a considerable drop in lower-income plaintiffs, particularly those from areas where the average household income is less than \$50,000. Further, we observe an increase in higher-income plaintiffs, from areas where the average household income is approximately \$80,000 and above.

¹¹ We have examined other measures such as median family income or after-tax income using 2006 dollars and examined census tract data from the 2001 (as well as other measures of socio-economic status listed below.) For each of our measures, the results are consistent.

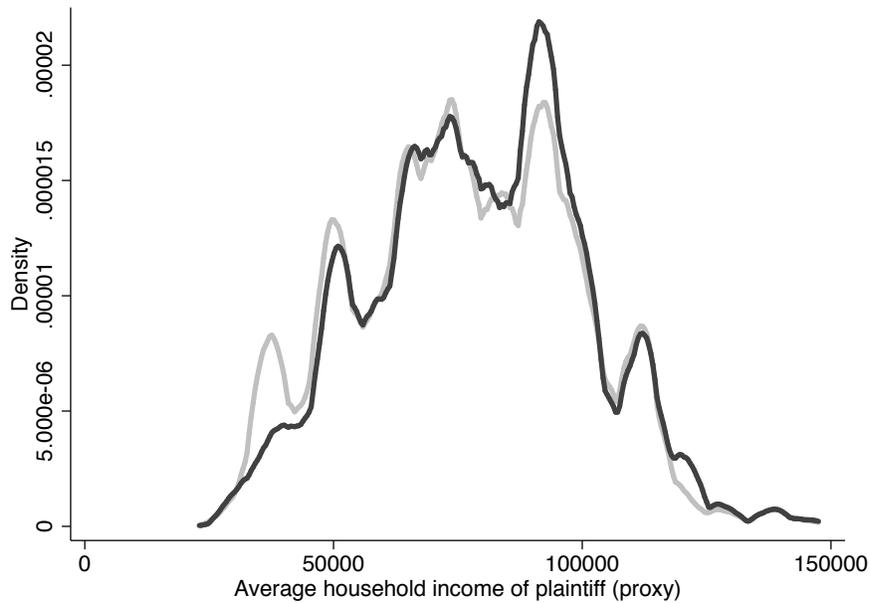


Figure 3: Distribution of plaintiffs’ average household income, before (light) and after (dark) the jurisdictional change. Average household income of the plaintiff’s census tract as a proxy. Note: truncated distribution to \$150,000.

Compare the “average” plaintiff before and after the change: our proxy for the average household income of plaintiffs was \$80,052 before the jurisdictional change. This proxy increases to \$82,868 after the jurisdictional change. A basic *t*-test shows that this increase in average household income is statistically significant ($t = 14.07$). The change in median household income – \$64,659 to \$66,598 – reflects a similar percentage increase of approximately 3%. This increase is also statistically significant ($t = 13.61$). Both increases are statistically significant at the $p < 0.001$ level.

One possible explanation for the increase in average household income of plaintiffs is that the new jurisdictional limit has simply encouraged richer plaintiffs on average to file in the small claims court. If true, this by itself would not be regressive. We show, however, that plaintiffs from poorer areas are filing fewer claims – in *absolute numbers* – after the jurisdictional change.

Table 3 shows the number of claims by plaintiffs in different income percentile groups in Ontario. For example: 0-1 = residents of postal codes where the postal code has average income that is within the poorest 1% of household income in Ontario; 1-5 – those who fall between the first and fifth

percentile; 5-10 – those who fall between fifth and tenth percentile, and so on. 99-100 represents those plaintiffs from the richest 1% of postal codes.

Percentile	Before	After	% change
0-1	2,161	1,733	-19.8%
1-5	8,552	4,391	-48.7%
5-10	6,938	4,615	-33.5%
10-25	17,576	16,572	-5.7%
25-50	34,890	31,926	-8.5%
50-75	47,059	47,649	+1.2%
75-90	18,064	16,752	-7.2%
90-95	5,497	6,659	+21.1%
95-99	4,610	4,533	-1.7%
99-100	605	640	+5.7%
Total	145,952	135,470	

Table 2: Number of plaintiff’s claims by income percentile, based on average household income of plaintiff’s census tract.

The data in **Table 2** are instructive. The number of claims made by plaintiffs in the bottom half of the distribution overall declined nearly 16%. The lowest 1% of postal codes experienced a decline of 20% after the jurisdictional change. For the group between the first and fifth percentile, the decline was even steeper (falling 49%). The third lowest category (between the fifth and tenth percentile) experienced a 34% drop in the number of claims. By contrast, claims from the plaintiffs from the 95% and 100% percentiles saw significant increases in the number of claims.

Figure 4 shows the month-by-month breakdown of this reduction. We show the effect on plaintiffs from the poorest 10% of neighborhoods. It is notable is that the poorest litigants responded immediately to the increase in jurisdictional limit. The drop off in number of claims from these groups is precipitous at the time of the jurisdictional change. Plaintiffs comprising the lowest 10th percentile were much less likely to make claims in 2010, the first year the jurisdictional limit increased to \$25,000.

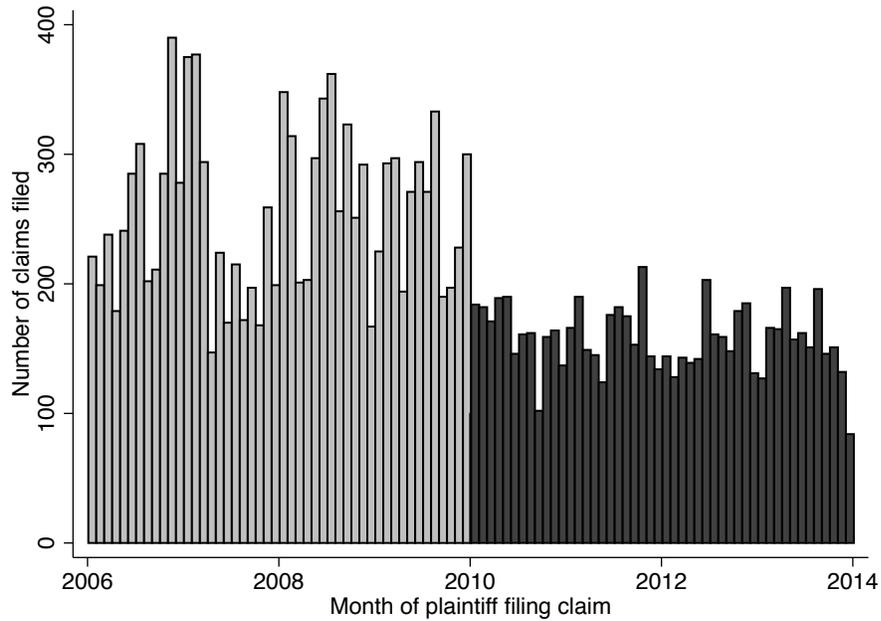


Figure 4: Number of claims made per month by plaintiffs from the poorest 10% of postal codes by average household income, before (light) and after (dark) the jurisdictional change.

The claims from plaintiffs from poor neighborhoods are displaced in the system by plaintiffs from richer neighborhoods. **Figure 5** shows the number of claims from plaintiffs from the richest 10% of the neighborhoods. A sizeable increase is evident following the jurisdictional change.

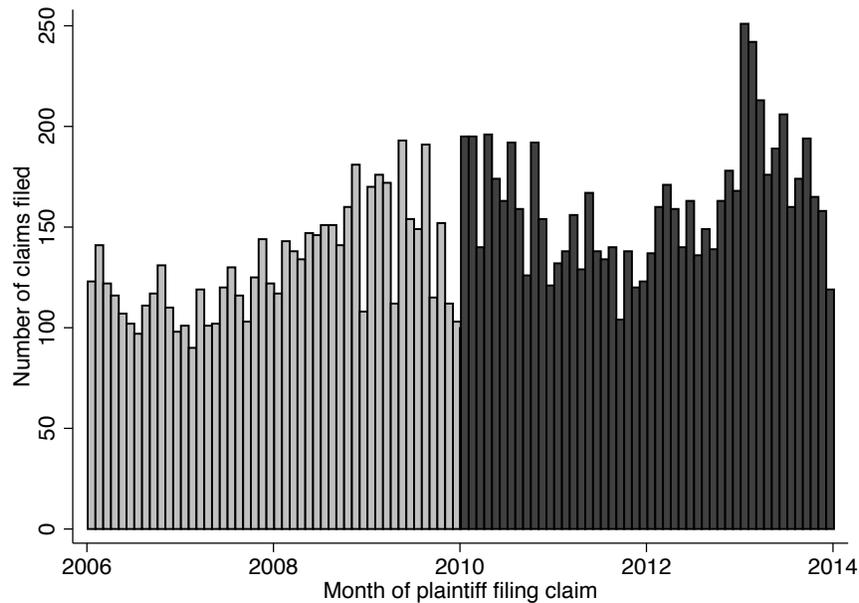


Figure 5: Number of claims made per month by plaintiffs from the richest 10% of postal codes by average household income, before (light) and after (dark) the jurisdictional change.

Readers may be concerned that our findings are a function of using average household income proxies. To explore the robustness of our findings, we examine the effect of the change using other data:

- other measures of average incomes (for individuals and families);
- median income (for individuals, families, households);
- unemployment rate;
- education level; and
- percentage of visible minorities.

We do not report the empirical findings here, but the effects are consistent across the board: fewer plaintiffs from backgrounds with low incomes, high unemployment, low education levels, and high proportion of visible minorities are using the small claims court system. In all cases, the drop off is precipitous in early 2010. The findings of this robustness check are not particularly surprising, given the strong correlation between each of these variables with average and median household income.

5. Explaining the displacement of poor plaintiffs by richer plaintiffs

Why are plaintiffs from poorer communities less likely to file claims with the small claims court following an *increase* in the jurisdictional range? What can explain our finding that poorer plaintiffs are being crowded out of the formal legal system?

Let us first reject an obvious possible candidate: *there was no increase in the direct costs of filing a claim*. The drop in demand for use of the legal system is not a result of any increase in the direct costs of making a claim. The fees and direct costs have stayed constant from 2006 to 2013. After factoring in inflation, the real cost of making a claim in the small claims court in Ontario has actually decreased.

We examine whether the crowding out occurs due to increased congestion in the court system. How can there be increased congestion, however, if we know that the number of claims does not increase significantly? We examine the proposition that relaxing the jurisdictional constraint led to an increase in the complexity of legal claims being brought before small claims court. We also note that the jurisdictional change was accompanied by an increase in the use of legal representation by both plaintiffs and defendants.

We marshal evidence that suggests these changes have increased the time taken to resolve a dispute. This, in turn, increased indirect costs of bringing a claim. Disproportionately, this increase in costs hurts plaintiffs bringing very small claims. These plaintiffs are more likely to be from poorer backgrounds. As we show, however, the evidence for this hypothesis is not strong. As such, we explore other possible explanations.

5.1. Congestion in the small claims court

Imagine an express checkout line at a supermarket. The express checkout line permits customers with 10 items or fewer to use the checkout line. The purpose behind the checkout line is that it enables customers purchasing only a few items to quickly use the supermarket; their purchases can be quickly

processed without the customer being held up at the checkout line by shoppers buying over one hundred items.

We analogize the small claims court to the express lane at a supermarket. Imagine that the supermarket increases the maximum number of items in the express lane to 25 items. This would have an effect on the number of people who use the supermarket to buy just one or two items. These shoppers would be less likely to shop at the supermarket because the time wasted – waiting in line behind shoppers buying up to 25 items – is simply no longer worth it.

We examine whether something similar happened when the OSCC raised its jurisdictional limit. We have sought to find evidence that plaintiffs from poorer backgrounds will be discouraged from filing after receiving information about this increased congestion. However, while we provide some evidence for the congestion story, it is certainly not conclusive.

5.1.1. Fewer “very small” claims

In our supermarket example, we would expect fewer customers with one or two items once the supermarket increases the number of items allowed in the number of items. Similarly, we would expect fewer “very small” claims.

As an intuitive matter, one would expect that increasing the jurisdictional limit of a court should be linked with an increase the average amount that plaintiffs seek. The impetus can come either from previously excluded plaintiffs – those whose alleged damages exceeded the prior jurisdictional limit; or from existing included plaintiffs – those whose alleged damages fell within the jurisdictional limit, but who now seek higher amounts. **Table 3** reports the average claim amount by year.

Year	Mean average amount claimed
2006	\$3174
2007	\$3385
2008	\$3647
2009	\$3593
2010	\$6704
2011	\$6852
2012	\$7055
2013	\$7011

Table 3: Mean average damages claimed by year.

As **Table 3**, shows that the change is dramatic. It also shows that the first year of the change – 2010 – captures most of this increase. The average amount claimed continues to rise each year. The rise year over year after the discontinuous jump is similar to the rise before the jump.

In **Figure 6**, we show the distribution of claims before and after the jurisdictional limit change. For both the pre- and post-period, the distribution is bi-modal: claims for low amounts, and a steep spike representing claims at the jurisdictional limit. High-end shows a censoring – and potential anchoring – with a spike of claims at \$10,000 maximum under the old rule and \$25,000 maximum under the new rule. While the two distributions follow a similar shape, they differ slightly in that the distribution after the change (*i.e.*, the dark line, or line that extends to \$25,000) has a lower density of claims for smaller dollar values.

The increase in damages claimed arguably led to more complex cases. A case where \$25,000 is claimed is, on average, more complex than a case where \$10,000 is claimed. This is consistent with discussions we have had with key stakeholders at the court. The increased complexity generates backlog at the court. Claims take longer to be resolved. Cases are heard first-come, first-served, with no preference for expediting “very small” claims. Our preliminary explorations of the data suggest that claims are taking longer to be resolved.

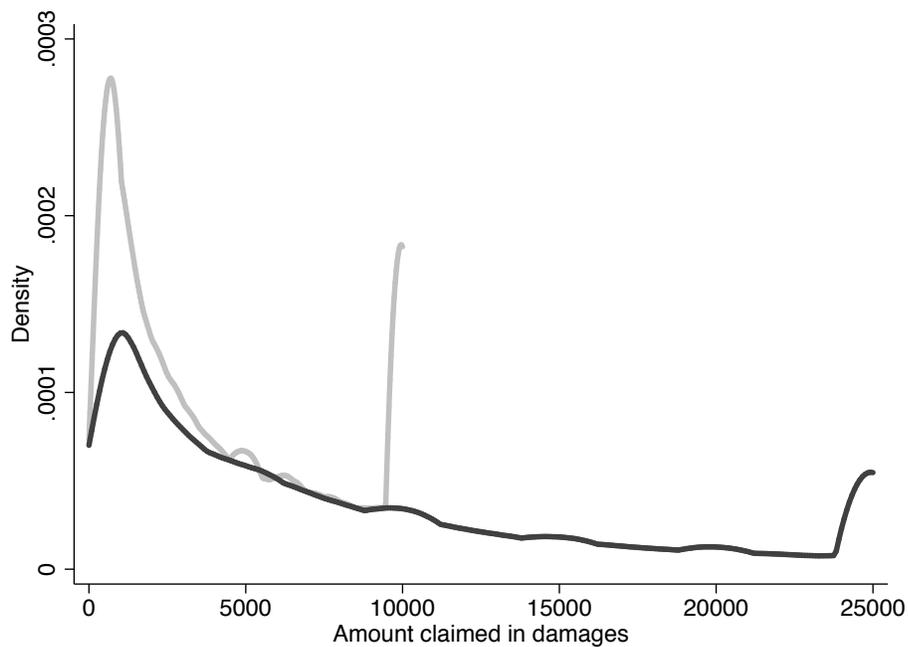


Figure 6: Density of damages claimed, before (light) and after (dark) the jurisdictional change.

The number of “very small” claims does indeed fall in absolute numbers after the jurisdictional change. **Figure 7** shows the number of claims, month-by-month, that are for less than \$1000. The figure shows a reduction in this number; but what is noticeable is that the drop is not discontinuous at the time of the jurisdictional change. Put simply, the number of claims under \$1000 was dropping *before* the jurisdictional change.

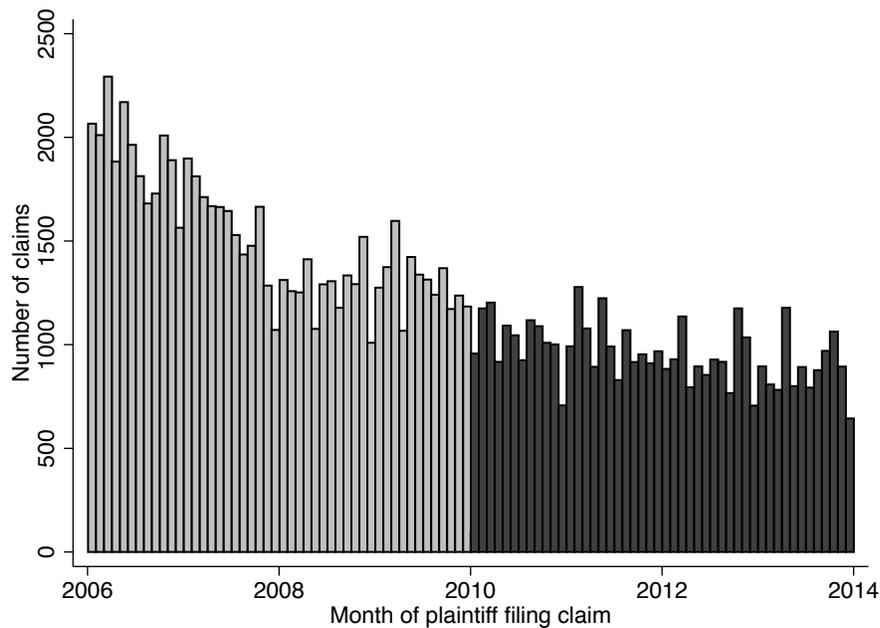


Figure 7: Number of claims made for \$10,000 or less per month, before (light) and after (dark) the change in jurisdiction.

5.1.2. Increased use of legal representation by plaintiffs

Other than simply factoring in direct costs and indirect congestion costs, there may be other costs that poorer plaintiffs are factoring in when making the decision not to file. One is the increased use of legal representation at the court following the legislative change. The increased use of legal representation may further contribute to congestion costs.

Before the jurisdictional change, 33.66% of plaintiffs had legal representation. This number has increased to 42.63% following the change. This increase in legal representation is not solely a function of the increased amount being claimed.¹² Our data suggest that there are other explanations for this increase in legal representation that we do not observe. To demonstrate this, we regress plaintiff representation (0 or 1) on the amount being claimed by the plaintiff and on the dummy variable *change*, which takes the value 0 if the claim was made 2006-2009 and takes the value 1 if the claim was made 2010-

¹² See also McGill (2015) who examines legal representation over this period using a different statistical methodology.

2013. We run a simple *probit* regression. Marginal effects are reported in **Table 4**.

	<i>Plaintiff represented by a lawyer</i>
Amount claimed (\$1,000s)	0.0045*** (0.0001)
Post-2010 jurisdictional change	0.0736*** (0.0012)
Observations	624,457
Pseudo R ²	0.0085

Table 4: Plaintiff representation regressed on amount claimed by the plaintiff and whether or not the jurisdictional change was in effect. (***) significance at 1% level.) Probit regression. Marginal effects reported.

Table 4 provides suggestive evidence that there are factors other than the increased damages sought that led to an increase in legal representation after the jurisdictional change. The analysis suggests that *holding constant the amount being claimed by plaintiffs*, plaintiffs are still more likely to use legal representation following the jurisdictional increase. After the change, plaintiffs are 7.36% more likely to have legal representation even after controlling for the increase in the damages claimed.

We also note that most of the plaintiffs who were represented did not provide a postal code (since any legal correspondence would be send to the attorney’s firm address). Where we do have data on legal representation and plaintiff postal code, we note that legal representation is highly correlated with income: plaintiffs who live in richer areas are more likely to have legal representation. The difference in mean income is modest - average household income of \$82,971 for represented plaintiffs compared with \$81,216 for unrepresented plaintiffs - but nevertheless statistically significant ($p < 0.001$).

This phenomenon of plaintiffs gravitating toward legal representation after the jurisdictional change *may* help explain the drop in poorer plaintiffs filing with the small claim courts following the jurisdictional change. What is more difficult, however, is explaining that phenomenon. Why would plaintiffs

believe a claim for \$5,000 required a lawyer after the change, but not before? Why would plaintiffs be less likely bring claims for \$3,000 after the jurisdictional change?

The congestion story has intuitive appeal in theory. And while we have evidence that suggests there are fewer very small claims and legal representation is increasing, the evidence is mixed. We remain unconvinced that the congestion story is solely responsible for our finding that the jurisdictional change has regressive effects.

First, looking back at **Figure 4**, one would not expect such a precipitous drop in claims from plaintiffs from poorer neighborhoods in January 2010 if the story were one of congestion. It would take time for the queue to build and congestion to mount. Second, looking at **Figure 7**, the number of very small claims was falling before the jurisdictional change. The congestion story is unlikely to be a stronger driver of this trend. Third, having talked with stakeholders in the small claims court system (such as clerks, judges, and pro bono lawyers), we are not convinced that plaintiffs from poorer neighborhoods are discouraged from filing because of the increased waiting time. There is little information given about the increase in congestion to plaintiffs before they decide to file.

5.2. Anchoring or framing effects

While the evidence on how congestion has affected the decision of poorer plaintiffs to bring smaller claims is mixed, behavioral explanations may provide an explanation for the regressive impact. A large literature on anchoring and framing has developed, exploring how humans are disproportionately influenced by how the problem is framed and the influenced by information given to agents before they respond (see Kahneman and Tversky 2000; Mussweiler 2004). We may be observing a similar effect here: If plaintiffs with a \$3,000 claim see that the maximum amount that can be claimed is \$25,000, then they may be less likely to instigate a legal dispute than if the maximum amount allowed is \$10,000. The upper bound, here, may act as an anchor with which to compare the value of the claim.

This anchoring behavior suggests that plaintiffs from poorer backgrounds bringing smaller claims do not consider

their claim to belong in a court with a much higher jurisdictional even though the amount claimed falls within the accepted range both before and after the jurisdictional change. As noted above, the amount that plaintiffs seek in damages is positively correlated with income, whereby affluent litigants seek higher damages on average than poorer litigants. When the jurisdictional limit increased from \$10,000 to \$25,000, poorer litigants were more inclined to feel like small claims court was not for them. The higher the upper bound, the less appropriate a very small claim may seem.

We draw an analogy here with the recommended age range on toys such as Lego sets. Take, for example, a parent seeking to purchase a Lego set for her four-year-old child. The parent may be more inclined to buy a Lego set if the recommended age range of the Lego set is ages “4 to 6 years old”, compared to a recommended age range of “4 to 12 years old”. Both Lego sets are formally designed with four year olds in mind, but the one with the wider age range may appear less appropriate for a four year old. The upper bound of the recommended age range (12 years old, compared to six years old) acts as an anchor. The Lego set with the wider age range may lead the parent to suggest that the Lego set is too complex for a four year old, even though the producers suggest that the toy is appropriate for children of that age.

The framing and anchoring story may help fill the gap. But providing empirical evidence for this story is difficult, especially given the limited data we have.

5.3. Missing data on postal codes

Readers might conjecture that missing data on postal codes may be the reason for our results. Given that we only have data from approximately half of the postal code data, one might suggest that the presence of postal code data is biased in favor of finding a regressive change. Proportionally, there are more missing data points *after* the jurisdictional change (50.61% of such observations do not include postal code information) than there are *before* the jurisdictional change (44.58% of observations.) This, one might argue, is driving the result that the poorest 10% of the population is less likely to use the small claims court.

We suggest that the missing data is not driving our main finding. Indeed, we suggest that the missing data biases *against* a finding that the jurisdictional change was regressive. First, even with the smaller number of observations without missing data, note that the *raw* number of claims filed by plaintiffs from the richest 10% of the population that we observe has increased.

Second, the missing data is likely correlated with richer plaintiffs. We have two pieces of evidence to support this claim. The missing data are correlated with: (1) higher damages amounts claimed; and (2) the use of legal representation. Both higher damages and legal representation are correlated with plaintiffs from richer backgrounds.

Comparing the data before the jurisdictional change, the average damages amount claimed is slightly higher where the postal code data is missing (\$3,527) compared to where we have the data (\$3,381). But after the jurisdictional change, the average damages amount claimed is much higher where we have no postal code data (\$7,449) compared to those observations where do have the postal code information (\$6,342). As we noted above, where we have data on both, higher damages is correlated with plaintiffs from richer background.

The missing data is also highly correlated with the use of legal representation. Where we have postal code data, litigants have legal representation in just 12.14% of observations. Where the postal code data of the plaintiff is missing, the plaintiff has legal representation in 67.23% of observations. This is consistent with information that was relayed to us about how the data is entered into the case tracking software. Clerks are less likely to enter the plaintiff's full address including postal code where the plaintiff has legal representation and the information from the court is sent directly to the lawyer. Again, as we described above, where we have data on both postal codes and legal representation, the use of legal representation is highly correlated with plaintiffs coming from richer backgrounds.

We take this evidence to suggest that the missing data are likely to be plaintiffs from richer backgrounds on average than the plaintiffs for whom we have postal code data. Given that there are more missing data points after the change, we argue

that it is highly unlikely that our finding that the jurisdictional change is regressive can be explained by the missing data.

6. Conclusion

What effect does a jurisdictional increase in the small claims court system have on litigant behavior? Our results show when the Ontario Small Claims Court raised their jurisdictional limit from \$10,000 to \$25,000, the number of claims filed by plaintiffs did not grow significantly. Importantly, the aggregate figures mask a significant distributional shift where richer plaintiffs file more claims, and poorer plaintiffs file fewer claims.

Our findings suggest that by raising the maximum amount that can be claimed in the small claims court, the poorest segments of the population appear to be less inclined to use the formal legal system, while small claims plaintiffs increasingly come from more affluent areas. Finding an explanation for this regressive effect is difficult. The precise causal reason for this regressive effect remains a puzzle. While we can dismiss some explanations (supply side stories or explanations based on missing data), evidence suggesting that congestion may be driving these regressive effects is mixed. Other behavioral stories, such as framing and anchoring, provide intuitive explanations, but are difficult to test.

Still, our key finding remains. By not filing in a small claims court, poorer plaintiffs are therefore no longer using the small claims court as a means of settling their disputes. Contrary to the putative goal of the change - increasing access to justice - the jurisdictional change has resulted in fewer plaintiffs from poorer areas accessing the formal legal system.

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