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PLAINTIFFS AND THE PROCESS OF LITIGATION

Tania Matruglio

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PLAINTIFFS AND THE PROCESS OF LITIGATION:

An Analysis of the Perceptions of Plaintiffs Following their Experience of Litigation

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Charter of the Civil Justice Research Centre

The Civil Justice Research Centre was established by the Law Foundation of New South Wales in 1989.

The principal purpose of the Civil Justice Research Centre is to help make the processes for resolving civil disputes in New South Wales more efficient, more cost effective, and more accessible to the public.

The Centre examines the policies that shape the civil justice system, the behaviour of the people who participate in it, the operation of its institutions, and its effects on the community's social and economic systems.

The Centre adopts an interdisciplinary approach to the study of public policy issues; widely disseminates the results of its work to Government officials, legislators and judges; the unions; the business, consumer affairs, legal and research communities; and to the general public.

Methodology

Two sources of information were combined to produce this report: Supreme Court case files and responses obtained directly from plaintiffs via a self-administered questionnaire.

The CJRC reviewed 1188 files from the Common Law Division of the Supreme Court. The cases reviewed were those included in the 1992 Special Sittings. Included in the sittings were the oldest cases next in line for hearing on the General List. Most were personal injury compensation claims. The case files provided information about plaintiff and defendant characteristics, claim information (claim type, nature of injury, date of accident), case history (date of commencement, number of court appearances, date of finalisation) and lawsuit information (amount of compensation received, the cost of litigation).

Following the file based data collection, a questionnaire was designed and mailed to 1105 of the 1188 plaintiffs. For various reasons, the possible sample of plaintiffs was reduced to 800. From these plaintiffs, the CJRC received a 55% response rate.

Results of the Research

The questionnaire included both fixed choice and free response questions. It addressed six aspects of the litigation process: case duration, the method used to resolve the claim, compensation received, lawyers' fees and other charges, information provided by their lawyer and the plaintiff's experience with the Supreme Court. The final section was more general and asked questions about how satisfied the plaintiffs were with the operation of the legal system and provided space to add any further comments.

Plaintiff Satisfaction

It was found that plaintiffs did have expectations about how long their case was going to take, how it was going to be resolved and how much compensation they would receive. Another finding was that these expectations were not always met. For example, most plaintiffs reported that their case took longer than they had expected and that they received less compensation than expected. Further, it was found that plaintiff expectations were generally based on information provided by their solicitor.

Plaintiffs were asked how satisfied they were with case duration, outcome and cost, with the method of case resolution and the operation of the legal system. High proportions of plaintiffs reported being dissatisfied with each of these measures. Case outcome received the highest proportion of satisfaction (65%) and case

Executive Summary

Background and Research Objectives

This research examines how satisfied plaintiffs were following their litigation experience in the Supreme Court of New South Wales, and the factors which were related to their satisfaction. It forms part of the series of studies the CJRC has conducted on the 1992 Supreme Court Special Sittings.

Three research questions are addressed in the report:

- ***How satisfied are plaintiffs following their experience of litigation?***

  Five measures of satisfaction are included: satisfaction with case duration, satisfaction with the method used to resolve their case, satisfaction with the amount of compensation received, satisfaction with the cost of litigation and satisfaction with the operation of the legal system.

- ***What factors of the litigation process are related to plaintiff satisfaction?***

  The report seeks to ascertain the influence of the three most frequently proposed reasons for plaintiff satisfaction, or rather, plaintiff dissatisfaction: case outcome, case cost and case duration. Following this, it examines some other, less recognised, reasons: the expectations the plaintiff held about case outcome and case cost, the plaintiff's perception of how much they were able to participate during the settlement negotiations, how much control they had over the outcome of their case, and how fair they perceived the process to have been. Also examined is the role information plays in plaintiff satisfaction. Some plaintiff and case characteristics are also examined.

- ***What do the plaintiffs have to say about their experience?***

  The research includes a discussion of written comments provided by the plaintiffs. These comments highlight the issues which the plaintiffs saw as problematic and the reasons why. This provides valuable insight into the experience of the litigation process from the perspective of the plaintiff.

duration the lowest (19%). Just under one-third of the plaintiffs reported being satisfied with the operation of the legal system (32%). Satisfaction with the method used to resolve their case and with the cost of litigation was reported by almost half the plaintiffs, 43% and 46% respectively.

Factors Related to Plaintiff Satisfaction

The analysis of factors which were related to satisfaction yielded some interesting results. It was found that case outcome, duration and cost were not as important to plaintiff satisfaction as were some other factors. This result runs counter to popular belief about what factors affect plaintiff satisfaction, but is consistent with findings from other research. It was found that expectations held by plaintiffs, and their perceptions regarding control over case outcome, their ability to participate in the legal process and their perception of how fair the process was, were more influential when it came to reported satisfaction. Being provided with information about case progress was found to be related to both plaintiff satisfaction and favourable plaintiff perceptions of control, participation and fairness.

Case and plaintiff characteristics were also examined for their relationship to plaintiff satisfaction. The case characteristics examined were: stage of disposal, claim type, body part injured and the type of injury. None were found to be related to satisfaction. The plaintiff characteristics examined were: gender, age, income, education, occupation and whether the plaintiff had previous litigation experience. The only characteristics found to be related to plaintiff satisfaction were income (satisfaction with resolution method and case outcome) and education (satisfaction with duration).

Plaintiffs' Additional Comments

It was not surprising that the plaintiffs who reported being dissatisfied were more likely to be those who provided written comment. The issues raised by the plaintiffs in their comments served as evidence in support of the statistical findings about the factors related to plaintiff satisfaction.

The responses volunteered by the plaintiffs were categorised into separate areas of concern. Overall, eight areas were identified. Each of these are described below. In some cases, the most commonly referred to issue in each of the themes is provided. Each theme is discussed in considerable detail in the body of the report.

Service Delivery

This theme included comments which referred to the information the plaintiff was provided with by their legal representatives while their case was in progress and comments about the lawyer-client relationship. With regard to information, the

comments provided indicated that plaintiffs had a need for information about various aspects of their case, but that this need was left wanting. Comments made about the lawyer-client relationship indicated concern about the way their legal representative/s conducted their case.

Other Professional Relationships

This theme included comments made by the plaintiffs which referred to their encounters with other professionals during the process of litigation, such as the defendant and medical practitioners.

The Process of Case Resolution and the Amount of Compensation Received

Included in this theme were comments which referred to the method used to resolve their case and the amount of compensation they received. All plaintiffs who chose to comment on the resolution of their case were those whose case had settled out-of-court. The main concern expressed was that they were excluded from the negotiations which ultimately resolved their case.

Time

Any comments which referred to an excessive amount of time lapsing between events was included in this theme. Most commonly, plaintiffs referred to the period of time between the commencement of their case and its finalisation as being excessive.

Personal Impact

A number of plaintiffs wrote about the impact the process of litigation had on them personally. Comments about the stress and trauma associated with litigation were most frequently provided.

The Cost of Litigation

Any comments which referred to the cost of litigation were included in this theme. Most often, plaintiffs wrote about the fees charged by their legal representative/s as being excessive.

The Legal System

Comments included in this theme represent judgements made by plaintiffs about the law and its operation. The responses were divided into three sections: judgements about the fairness of the legal system, judgements about legal processes and judgements about legal costs and deductions from compensation.

How the Court Could Provide a Better Service

The plaintiffs were asked if they had any comments about how the Supreme Court could provide a better service to people. There were a number of ways in which the plaintiffs thought that this could be achieved. Becoming more "user friendly" ranked most highly.

Conclusions

The report provides information which aids in understanding the litigation process from the viewpoint of the consumer. It examines how satisfied plaintiffs were with various aspects of the litigation process, as well as identifying areas of the process which were of particular concern to them. Some of the areas identified have previously been recognised as being problematic, others are new.

Plaintiff satisfaction following their experience of litigation was found to have less to do with the actual outcome of their case and its duration than with how their experience compared with their expectation. That is, plaintiffs whose expectations were matched by reality were more likely to be satisfied than were plaintiffs whose expectations were not matched. The expectations held by the plaintiffs about case outcome and duration were typically found to be the result of information provided to them by their solicitor.

Plaintiff perceptions about how much control they had, how much they were able to participate and how fair the process was were also important to their satisfaction, as was being provided with information while their case was being conducted.

The results of the research have important implications for the delivery of legal and judicial services. Typically, procedural reforms are aimed at reducing litigation costs and delays. The results of this research indicate that such reforms may not be counted on to enhance plaintiff satisfaction simply by virtue of the success of the reforms. Instead, it would appear that plaintiff satisfaction may be increased by changing the litigation environment in other ways.

Foreword

Are people satisfied following their experience of litigation? Are there particular aspects of the litigation process which are important to satisfaction? What can be done to increase consumer satisfaction? These questions are frequently asked in discussions about how the legal system might be improved. However, rarely are such questions asked of the consumers of the legal services themselves.

This research was conducted to do just this. As part of the CJRC's research program on the Supreme Court Special Sittings, a questionnaire was designed and mailed to over 1000 plaintiffs who had a case resolved in the Common Law Division of the Supreme Court. The questionnaire asked plaintiffs how satisfied they were with various aspects of the litigation process and also provided space for them to write further comments they had about their experience.

The research provides an interesting and perhaps surprising account of what it is that makes a plaintiff feel satisfied or dissatisfied following their litigation experience. The research found that high proportions of plaintiffs were dissatisfied with case outcome, duration and cost, with the method used to resolve their case and with the operation of the legal system. What was more important, was the finding that those who reported being dissatisfied shared common experiences of litigation. That is, there appear to be factors which were related to satisfaction following an experience with the litigation process.

It was found that the three most frequently used explanations for plaintiff dissatisfaction – the amount of compensation received, case duration and the cost of litigation – were not as important in determining plaintiff satisfaction as were other factors. In particular, it was found that plaintiff perceptions of control, participation and fairness of procedure were central to satisfaction. As was being kept informed about case progress.

The written comments provided a wealth of information about the litigation process from the viewpoint of plaintiffs. They described what it was about the process they found to be problematic, and many plaintiffs provided suggestions about ways the system could be improved to provide a better service.

Important lessons can be learned from what people have to say about their experience. For the Court and the legal professionals, as repeat players, it is perhaps a little too easy to take the legal system and its operation for granted – but for those whose litigation experience is a one-off event it is a completely different story.

Gillian McAllister
Executive Director
Civil Justice Research Centre

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1

Introduction

1.1 Background

Personal injury litigation makes up a substantial proportion of the civil cases filed in both the Supreme Court and the District Court of New South Wales.[1] The courts provide an important means by which people within the community may enforce civil rights and claims under the law. However, little is known about the viewpoint of consumers on the services provided by the courts and by the legal advocates who represent their cases in the courts.

In his discussion at The Second Annual Oration in Judicial Administration, Professor Church provided some valuable imagery describing the different perspective of the legal professionals and the legal consumers.[2] He talks about the "law of the mansion" and the "law of the gatehouse". The law of the mansion exists in the courtrooms, in judges' chambers and in legal libraries where legal rights and duties are spelled out in no uncertain terms. On the other hand, the law of the gatehouse exists in the corridors of the courts and in the "backrooms" of lawyers' offices. The view from the mansion, he posits, is seldom the same as that from the gatehouse. The way in which the legal system and its advocates are seen is strongly affected by the perspective from which they are viewed.

Church goes on to assert that there is diminished public confidence in the legal system. He cites figures from a national survey conducted in America which found that public confidence in the American courts was remarkably low. Research conducted in New South Wales indicates that the operation of the legal system is viewed as being less than satisfactory by much of the public.[3] Three reasons are most frequently posited to explain such dissatisfaction: the *delay* often associated with litigation, the *cost* associated with litigation and the *outcome* of the litigation.[4] To this list, Church adds one further reason: "an *attitude toward lay persons* which is frequently insensitive, if not cavalier".[5]

There can be no doubt that whether a plaintiff wins or loses and the amount they win or lose will affect their satisfaction. However, there is evidence which suggests that other factors are also important to satisfaction. In particular, the expectations held about case outcome duration and cost, and the perceptions formed about the litigation process. Research conducted by the Institute for Civil Justice (ICJ)[6] in the United States indicates that the following factors play an important role in

determining how *satisfied* a plaintiff will be following litigation and how *fair* they will perceive the process to have been:[7]

- the level of participation during the proceedings;
- the level of control over case outcome;
- how comfortable they felt;
- how much was understood; and
- their expectations.

Rosenthal also addresses the role of the plaintiff during the process of litigation.[8] He contrasts two models of lawyer-client interaction, traditional and participatory. He suggests that a participatory model, which emphasises active client participation in dealing with their problems and the sharing of control and decision responsibility with the professional, is central to client satisfaction.

If there is public dissatisfaction with the legal system, it is important to ask "Why?" and "What, if anything, can be done about it?". There is little empirical data about why this is the case,[9] and research findings which serve to enlighten this issue will have important policy implications. The results of such research could be used to broaden the objectives of future reforms aimed at improving the civil justice system.

Most of the reforms made to the civil justice system to date have been introduced to reduce the cost and delay associated with litigation.[10] However, if, as research findings have shown, cost and duration are only part of what accounts for plaintiff satisfaction, then regardless of how successfully reforms aimed at time and cost reduction meet their objectives, plaintiff evaluations of the civil justice system may not improve.

In response to the growing concern about litigant satisfaction, the Supreme Court of New South Wales asked the CJRC to conduct a survey of the litigants who were involved in the 1992 Special Sittings. The aim was to find out what they thought of their litigation experience. Responses were analysed to ascertain the extent of plaintiff satisfaction, the factors related to satisfaction and the issues of importance and/or concern to plaintiffs.

1.2 The Special Sittings

The Special Sittings was a case management program introduced by the Supreme Court Delay Reduction Committee. The aim of the program was to reduce the backlog of cases in the Common Law Division.[11] The Sittings provided a unique opportunity for the CJRC to survey a large and homogeneous group of litigants whose cases were being dealt with by the Court.

The Special Sittings were held over a period of two weeks commencing 20 July 1992. Five teams of seven judges, drawn from the Court of Appeal and all Divisions sat in the Common Law Division. The cases included in the Special Sittings were conducted on a running list basis. Practice Note 72 was applicable to the Sittings. It specified the steps the parties were required to take in order to secure readiness for the Sittings and the proper exploration of pre-trial settlement.

Cases were selected for inclusion in the Special Sittings program in November 1991. Case selection was not random. The program included only the oldest cases, which were next in line for hearing on the General List. The majority of those included were claims for compensation for personal injury.

1.3 Research Objectives

This research was undertaken to discover how plaintiffs viewed their experience of litigation. Specifically, empirical information was sought which would assist in answering the following questions:

- ***How satisfied are plaintiffs following their experience of litigation?***

  Five measures of plaintiff satisfaction were considered: case duration, case outcome, case cost, the method used to resolve their case and the operation of the legal system.

- ***What factors of the litigation process are related to plaintiff satisfaction?***

  The importance of factors which have been previously associated with plaintiff satisfaction is examined. These are: actual case outcome, duration and cost; plaintiff expectations about case outcome and duration; their perceptions of aspects of the litigation process; and the provision of information about case progress. Case and plaintiff characteristics are also considered.

- ***What do the plaintiffs have to say about their experience?***

  The report presents what the plaintiffs had to say about their own experience when asked if they had any concerns. Plaintiffs' comments provided the basis of an analysis which established issues and aspects of the litigation process which were of particular importance to them.

1.4 Research Sample

The information for this research was collected from two sources, Supreme Court case files and responses to a self-administered questionnaire.[12]

The CJRC reviewed 1188 files from the Common Law Division of the Supreme Court. As noted above, the cases reviewed were those included in the 1992 Supreme Court Special Sittings. This was a program designed to reduce case backlog by expediting resolution of the oldest cases pending before the court.

Following the file based data collection, a questionnaire was designed and mailed to 1105 of the 1188 plaintiffs who were involved in the Special Sittings cases. There were 83 plaintiffs who were not sent a questionnaire. The focus of the research was on how individuals viewed their experience with the litigation process. On this basis, the 21 cases in which plaintiffs were representatives of a business, company or government agency were not included. In 48 cases, the address of the plaintiff was not available on file. In 14, the plaintiff had two cases running in the Special Sittings and was sent one questionnaire only.

Table 1 provides details about the sample attrition and questionnaire completion rates. Although 1105 questionnaires were initially mailed out, the size of the final possible sample of plaintiffs, the "net sample", was reduced to 800. This was the result of 298 plaintiffs no longer living at the address recorded from the court file and seven plaintiffs having since died. A total of 437 plaintiffs returned their questionnaire to the CJRC, 55% of the net sample.[13] Seven of the returned questionnaires could not be included in the study due to being incomplete.

Table 1. Questionnaire mail-out and completion rates

Variable	n
Full sample	1105
not located	298
deceased	7
Net sample	800
Non response	345
Refusal	19
Questionnaires returned	437
could not be used	7
Analytic sample	430

Source: CJRC plaintiff survey.

1.5 Data Collection

Two methods of data collection were used to gather the information for this report. The first method involved collecting information from Supreme Court case files. The second, a survey of the plaintiffs who had been involved in the Supreme Court cases from which the file based information had been collected. Appendices 1 and 2 contain copies of the data sets each method produced and the data collection instruments.

1.5.1 File Based Data Collection

The information recorded from the court files included details about the law firms, legal counsel, and the defendants. Details about the plaintiffs were also recorded. Included was their gender, age, education, occupation and income. The case information recorded included the following: detail about the nature of the claim, the nature of the injury, case duration, the amount of compensation received and the legal costs involved as well as details about the court events which took place throughout the case.

1.5.2 The Questionnaire

The questionnaire addressed six specific aspects of the litigation process: case duration, the method used to resolve the claim, compensation received, lawyers' fees and other charges, information provided by their lawyer and the plaintiff's experience with the Supreme Court. The final section was more general, asking questions about the operation of the legal system and provided space to add any further comments. Each section of the questionnaire intended to measure plaintiff satisfaction with a particular aspect of the litigation process:

- satisfaction with case outcome;
- satisfaction with case duration;
- satisfaction with case cost;
- satisfaction with method of case resolution; and
- satisfaction with the operation of the legal system.

The questionnaire included both fixed choice and free response questions. The fixed choice question format was a multiple response item scale, some with three points, some with four. The free response questions asked plaintiffs to provide comment on a number of issues. These were included to provide the plaintiffs with the opportunity to illustrate features of the litigation process which were of concern to them.

1.5.3 Question Development

The questionnaire format and content were developed from a survey conducted by the Institute for Civil Justice in the United States.[14] Further question development was conducted in consultation with a number of sources, including the Legal Aid Commission of New South Wales, the Law Society of New South Wales and the Supreme Court of New South Wales.

All questions were included on the basis of previous research which had looked at the issue of plaintiff satisfaction, except those in the section headed "Your lawyers' fees and other charges".[15] These questions were included largely at the request of the Law Society of New South Wales. The interest of the Society was in the charging practices of plaintiff solicitors.

1.6 Questionnaire Mail-out

The questionnaire mail-out involved a four-stage process. The first was conducted on 14 July 1993. This comprised a letter explaining the study and requesting that the plaintiff participate, a questionnaire and a reply paid envelope. One week after this, the first follow-up correspondence was sent. This took the form of a postcard with a brief reminder on the back. The third mail-out comprised a further explanatory letter, a replacement questionnaire and a reply paid envelope. This was sent three weeks after the initial mail-out. Four weeks after the initial mail-out, a second reminder card was sent to the plaintiffs. People who had not responded following the fourth mail-out were coded as non respondents, and no further contact was attempted.

1.7 Cautionary Notes

"All research designs impose limitations on the interpretation of the research results."[16] In this study, four cautions are advised. First, the questionnaire asked plaintiffs to report their beliefs about and interpretations of the litigation process. As such, this report provides information about their personal *perceptions*, not objective measures of the performance of the litigation process.

The second caution relates to the Special Sittings case load. The cases included were those which had not settled at an earlier stage of the proceedings. Therefore, many could be considered to have been the intractable cases which had been in the system for a longer than usual period. Further, most cases included were claims made for personal injury. Finally, the Sittings, under Practice Note 72, employed

unique methods and procedures aimed at inducing case settlement. All these factors may have had an impact on the plaintiffs' experience of the litigation process, their subsequent perceptions and the way they responded to the questionnaire. Given this, it would be valuable for further research to include a more representative sample of plaintiffs with resolved personal injury cases, and plaintiffs with other types of cases. This would allow research results to be more generalisable.

The third caution concerns the free response questions. Most asked plaintiffs to write in any concerns they had about these aspects of their case. They did not ask for comments generally. The result of this is that typically only those plaintiffs who had such concerns provided comment. Further, when discussing free-response questions, it is important to remember that not all people will write in a response. More plaintiffs responded affirmatively to the fixed choice question which asked whether they had concerns or comments than those who actually expressed them.

A final comment is that this research was designed to collect information about plaintiffs' perceptions of the litigation process and their subsequent satisfaction. It does not include any discussion of the perceptions or satisfaction of others involved in the litigation process, such as the defendants or legal representatives.[17] The inclusion of these parties was beyond the scope of this research. It would be a valuable exercise for further research to examine how these parties perceive the process of litigation and how satisfied they are with it.

1.8 Organisation of this Report

Section 2 of the report provides a description of the plaintiffs who responded to the questionnaire and their claims. They are described in terms of the following variables: gender, age, education, occupation and income, claim type, duration, stage of disposal, type of injury and the body part which was affected.

In Section 3, the responses made to the fixed choice questions are provided. Each section of the questionnaire is addressed in turn and a general picture of how the plaintiffs felt about their experience of the litigation process becomes evident.

Section 4 aims to answer the question "What factors are related to plaintiff satisfaction?". It considers the role of case outcome, duration and cost, the roles of plaintiff expectations and perceptions and the role of information provision. Three factors external to the litigation process are also examined: case characteristics, plaintiff characteristics and whether the plaintiff had previous litigation experience.

Section 5 discusses the free-response questions. It provides an account of the issues which the plaintiffs saw as problematic and the reasons why. In doing so, it provides valuable insight into the experience of the litigation process from the perspective of the plaintiff.

A discussion of the overall findings of the research is presented in Section 6. This section considers the information which has been presented in each of the preceding sections. It provides a description of the issues which this research has found to be important in determining a plaintiff's satisfaction following their experience with the litigation process.

1 The Supreme Court of New South Wales, 1989, *Annual Review.*
The District Court of New South Wales, 1993, Unpublished Statistics.

2 Church, PW, 1990, "A Consumer's Perspective on the Courts", *The Second Annual Oration in Judicial Administration*, Australian Institute of Judicial Administration, Victoria.

3 The Roy Morgan Research Centre, 1990, *The General Public's Perception of the Standing of Solicitors in New South Wales*, REF: 165/1534.

Tomasic, R, 1978, *Lawyers and the Community*, Law Foundation of New South Wales & George Allen & Unwin, Sydney.

4 Lind, EA, MacCoun, R, Ebener, P, Felstiner, W, Hensler, D, Resnik, J, & Tyler, T, 1989, *The Perception of Justice: Tort Litigants' Views of Trial, Court-Annexed Arbitration, and Judicial Settlement Conferences*, The Institute for Civil Justice, The RAND Corporation, Santa Monica, R-3708-ICJ.

5 Church, op. cit., p.5.

6 The Institute for Civil Justice (ICJ), a subsidiary of the RAND Corporation, has 14 years experience conducting independent, objective, and policy relevant research on the civil justice system's operation, performance, and consequences.

7 Lind et. al., op. cit.

8 Rosenthal, D, 1977, *Lawyer and Client: Who's in Charge?*, Transaction Books, New Jersey.

9 Church, op. cit.

10 Some examples of such reforms implemented in the Supreme Court are the Special Sittings programs which were undertaken in 1992 and 1993. Also, the current program operating in the Common Law Division, Differential Case Management.

11 Refer to a previous CJRC publication for a fuller description of the Special Sittings and the Special Sittings cases, Matruglio, T, 1993, *So Who Does Use the Court?*, Civil Justice Research Centre/Law Foundation of New South Wales, Sydney.

12 See Appendix 1 for copies of the data sets and Appendix 2 for copies of the data collection sheet and the questionnaire.

13 The issue of response bias is addressed in Section 2.5.

14 Lind, et. al., op. cit.

15 No analysis of the responses to these questions is included in this report. The majority of plaintiffs did not distinguish between the payment of legal fees and the payment of disbursements. Such a distinction was necessary for valid data analysis to be undertaken.

16 Lind et. al., op. cit., p.38.

17 See Rasink, E, 1994, "Supreme Court Special Sittings: The Practitioner's Perspective", *Civil Issues* (Number 4), Civil Justice Research Centre/Law Foundation of New South Wales, Sydney, for information about the legal representatives' perceptions of the Special Sittings.

2

Characteristics of the Plaintiffs and their Claims

This section provides a description of the plaintiffs who responded to the questionnaire and their claims. The plaintiffs are described in terms of the following variables: gender, age, education, occupation and income. The following information is provided about their claims: claim type, case duration, stage of disposal, type of injury sustained and the body part which was affected.

The information which is reported in this section is supplemented by Tables and Figures in another publication *Plaintiffs and the Process of Litigation: Technical Appendices.*[18]

2.1 The Plaintiffs

The respondent sample, comprising 430 plaintiffs, included 71% men and 29% women. The average age of the plaintiffs at the time of the accident or event which preceded the claim was 37 years. Almost all (90%) of the plaintiffs were aged between 14 and 54 years. This is to be expected as the majority of claims were the result of work related injuries. Only 3% of plaintiffs were under 14 years and 7% over 54 years.

The majority of plaintiffs (57%) had a secondary level of education. The remaining education categories were proportioned as follows: 16% of plaintiffs had a trade/apprenticeship qualification, 9% had a certificate or diploma, 14% had some "other" form of education (includes still at school) and 4% had a Bachelors degree or higher.

The majority of the plaintiffs were employed at the time of the accident or event which preceded the claim. Again, this is consistent with most claims being for injuries which were the result of a workplace accident. Five percent were employed in the capacity of a manager or administrator, 3% as professionals, 4% as para-professionals, 19% as tradespersons, 8% as clerks, 5% as sales or personal service workers, 17% as plant or machine operators, 35% as labourers, 3% were not in the workforce and 1% were unemployed.

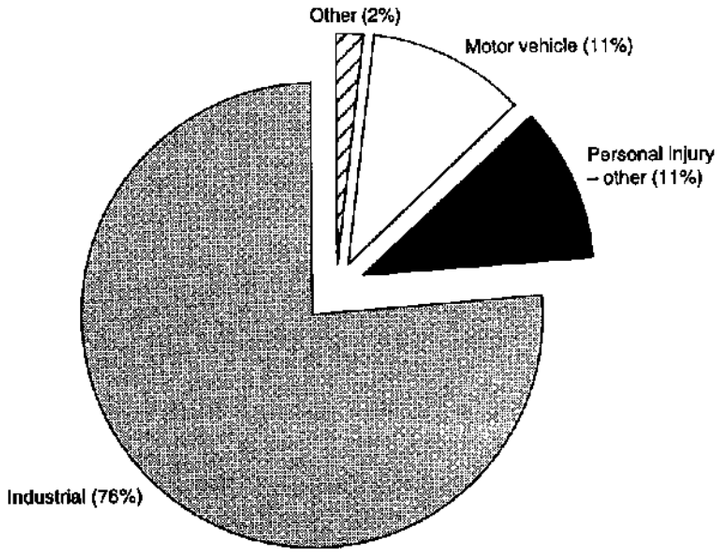
The weekly income was available on file in 316 of the 430 cases. One percent of the respondents had an annual income of $10,000 or less, 15% had an income between $10,001 and $20,000, 43% had an income between $20,001 and $30,000, 23% between $30,001 and $40,000, 8% between $40,001 and $50,000 and 10% had an annual income of over $50,000.[19]

Previous litigation experience was considered to have the potential to influence reported satisfaction as it may create a precedent against which plaintiffs judge any subsequent litigation experience. Fifty-five plaintiffs (13%) reported that they did have prior litigation experience. The majority of the previous cases were for personal injury (37). Fifteen plaintiffs reported being involved in a family law matter, five a criminal matter and 13 did not provide sufficient detail to enable categorisation of their case.

2.2 Case Characteristics

Almost all cases in the respondent sample were claims for personal injury (98%). Most of the injuries were the result of a workplace accident (76%), 11% were for injuries sustained in a motor vehicle accident and 11% were for injuries resulting from some other type of accident (Figure 1). The remaining 2% were claims for other events.[20]

Figure 1. The distribution of cases by claim type



Source: CJRC sample.

The two largest injury categories were sprains and strains (53%) and fractures and dislocations (18%). The remaining injury categories had relatively few cases.[21] Consistent with most of the claims being for sprains and strains, the body parts most commonly affected were the neck, back and shoulder regions (54%). Non-physical injuries comprised only 4%.[22]

2.3 Case Outcome

Details about the amount of compensation plaintiffs received was available in 369 cases. Compensation amounts ranged from $2456 to $2,229,714. The median amount was $45,000, the average, $91,473.[23] Ten plaintiffs "lost" their case and did not receive any compensation.

2.4 Case Duration

Using information from the court files, it was possible to calculate the time between the date of the accident and the filing of a Statement of Claim. This indicates how long it took following the accident or event for the case to become active in the court system. It was also possible to calculate the period between the filing of the claim and the finalisation of the case. This period indicates how long the case was active in the court system.

Accident dates ranged from 1960 to 1988. The median duration between the date of accident and the filing of the Statement of Claim was two years. The median duration between the filing of the Statement of Claim and the finalisation of the case was five years. It took a median of seven years from the date of accident for the plaintiffs to receive compensation for the injuries they sustained.[24]

2.5 Case Resolution

Information about the status of the plaintiff's case at the end of the Special Sittings period was available for 425 cases. A verdict or judgement was handed down in only 8% of cases (2% of these were appealed). In 82% of cases, settlement was achieved on an out-of-court basis, with almost half the cases settling at or after the Special Sittings Issues and Listing Conference (ILC). In the remaining 10% it was not possible to collect information about case resolution. See Table 2 for case status information.

Table 2. Case status at the conclusion of the Special Sittings

Status	n	%
Settled before Special Sittings callover	31	7
Settled at/after callover	27	6
Settled at/after ILC	193	46
Settled on or during day of hearing	99	23
Verdict/judgement	33	8
Removed from Special Sittings	37	9
Other[25]	5	1
Total	425	100

Source: CJRC Supreme Court file survey. Based on 425 cases where information was available about case status at the conclusion of the Special Sittings.

2.6 Testing for Response Bias

As a response was received from 55% of the net sample (see Table 1), it was necessary to determine if these people differed in a systematic way from those who did not, or could not, respond. A comparison was made between the 437 responding and the 668 non-responding plaintiffs. The following variables were examined: gender, age, education, income, occupation, claim type, type of injury, body part injured and stage of disposal. The two sets of plaintiffs were found to have similar characteristics with respect to all variables except age. However, research undertaken into survey response rates indicates that age is typically related to variation in the rate of response.[26]

These results preclude any systematic bias in the responses as a result of case or plaintiff characteristics. However, as is typical of questionnaire data, it does not preclude the possibility that systematic bias may exist in the perceptions of the respondents who answered the questionnaire compared to those who did not. Nevertheless, this comparison indicates that those who responded to the survey are representative of the total Special Sittings case load with regard to plaintiff and case characteristics.

18 Matruglio, T, 1994, *Plaintiffs and the Process of Litigation: Technical Appendices*, Civil Justice Research Centre/Law Foundation of New South Wales, Sydney.

19 To construct a financial profile of plaintiffs, their income at the time of the accident or event that preceded the claim was recorded. The dates of these incidents varied considerably, and due to inflation the incomes of the plaintiffs were not directly comparable. To rectify this, the data was manipulated using Award Rates of Pay Indexes, Australia and linking factors to convert all incomes to the 1985-base series value. See Matruglio, 1993, op. cit., p.23 for a description of how this was accomplished.

20 The "other" claim category includes all claims which were not for personal injury such as contractual disputes and defamation.

21 The injury classifications used were as follows: fractures & dislocations, sprains & strains, intracranial injuries, internal chest/abdomen injuries, open wounds, superficial injury, contusions & crushings, burns & scalds, poisoning, exposure, multiple injuries, shock & psychological injuries, unspecified injuries, no bodily injury and death.

22 The body part classifications used were: head, neck, back or shoulders, trunk, upper limbs, lower limbs, multiple locations, systemic locations, non-physical locations, and unspecified locations.

23 The median is considered to be a more reliable measure than the mean due to the presence of extreme values in the sample.

24 The median is a measure of the centre of a collection of scores. It is calculated by taking the middle value in an ordered list of scores. Therefore, half the scores in the collection will be greater than the median with half the scores less than the median. It is preferable to use than the mean (or average) as it remains unchanged by extreme scores in the collection.

25 Four cases were transferred out of the Supreme Court and in one case the proceedings were discontinued.

26 Groves, R, 1989, *Survey Errors and Survey Costs*, John Wiley & Sons, New York.

3

Plaintiff Satisfaction

3.1 Plaintiffs' Responses to the Questionnaire

This section describes the responses made by the plaintiffs to the fixed choice questions. Each section of the questionnaire is addressed in turn. It is in this section that the question "How satisfied are plaintiffs following their experience of litigation?" is answered.

The plaintiffs' responses are presented as percentages. For example, it may be reported that 55% of plaintiffs were satisfied with some aspect of their claim. Although not mentioned, this result indicates that 45% of plaintiffs were dissatisfied with the same aspect of their claim.

3.1.1 How Long Your Case Took

Plaintiffs were asked how long their lawyer said it would take to get compensation for their case. The duration reported by plaintiffs ranged from one to 12 years. The median expected duration was four years. The actual median duration between the filing of the Statement of Claim and case disposal was five years. A total of 71 plaintiffs (17%) reported that their lawyer had not told them how long their case might take to be resolved.

There were 264 (61%) plaintiffs who said that their lawyer had provided them with an explanation as to why their case might take this long to be resolved. Of these, 214 (81%) said that their solicitor had attributed case duration to the court. The reason most often given was that there was a backlog in the court lists. Less often, solicitors told their clients that their case would take this long because judicial resources were not adequate or that delay was simply endemic to the legal system. Some plaintiffs reported that their solicitor had said that delay could be expected due to the need for the plaintiff to attend medical assessments. Others, that delay was due to the nature of their injury or claim, their case being a jury trial, or to the way the defendant conducted proceedings.

Plaintiffs were asked if their case had taken more, the same or a lesser amount of time than they had expected. Most plaintiffs (80%) reported that it had taken more time. Eighteen percent said their case took about as much time as they had expected and 3% said it had taken less time. When asked whether they were satisfied with how long it took to resolve all aspects of their case, the majority of plaintiffs (81%) reported that they were not.

It was of interest to determine whether there was a difference in reported satisfaction for plaintiffs who were and those who were not provided with an explanation as to why their case would take so long to be resolved. No such difference was found.

3.1.2 Resolving Your Case

Plaintiffs were asked if, when they first saw their lawyer, they had expected that their case would be decided by a judge. Most plaintiffs reported that they had expected this to be the case (78%). This figure is in sharp contrast to the actual percentage of plaintiffs whose cases were determined (8%). As noted in Section 2.4, 82% of the cases settled on an out-of-court basis.

Plaintiffs were then asked how strongly they agreed or disagreed with a number of statements about the method which was used to resolve their claim. Table 3 summarises their response.

Table 3. Summary of response to statements about the method of case resolution

Statements	Agree n	Agree %	Disagree n	Disagree %
I was comfortable with the way my lawyer conducted the settlement negotiations:	227	55	185	45
I was able to participate during the settlement negotiations:	220	54	188	46
The negotiation process was fair:	145	36	262	64
I felt I had control over the outcome of my case:	136	33	276	67
I would have liked to participate more during the settlement negotiations:	324	80	82	20

Source: CJRC plaintiff survey.

Just over half the plaintiffs (55%) agreed that they were comfortable with the way their lawyer conducted the settlement negotiations. Similarly, 54% agreed that they were able to participate during the settlement negotiations. The majority of plaintiffs disagreed, however, with the statements that the negotiation process was fair, (64%) and that they had control over the outcome of their case, (67%). An overwhelming proportion of plaintiffs (80%), agreed that they would have liked to participate more during the settlement negotiations.

Plaintiffs were then asked about how satisfied they were with the method used to resolve their claim. Just under half the plaintiffs, 43%, reported that they were satisfied. When asked if they had any concerns about the method which was used to resolve their claim, 51% of plaintiffs indicated that they had such concerns.

3.1.3 Money Received

Plaintiffs were asked if, before seeing their lawyer, they had any idea about how much money they might receive as compensation. Only 17% reported that they did have some idea. They were then asked if, when they first saw their lawyer, they had been told how much they might get. Fifty percent of plaintiffs reported that they had.

The majority of plaintiffs (71%) reported that the amount of money they received was less than the amount their lawyer had said they might receive. Twenty-three percent said that they received about the same amount as their lawyer had said, and 6% said they received more. Two thirds of plaintiffs (65%) were satisfied with the amount of money they received and 68% were satisfied with the amount they received after their lawyer's fees were deducted from the award.

3.1.4 Lawyer's Fees and Other Charges

To ascertain how satisfied plaintiffs were with the cost of litigation, they were asked whether they were satisfied that they had got their money's worth from their lawyer. Just under half (46%) of the plaintiffs said that they were satisfied.

3.1.5 Your Lawyer

Plaintiffs were asked how well informed their lawyer had kept them about the progress of their case. Just over half the plaintiffs (54%) indicated that they had been kept well informed. Almost two thirds (63%) indicated that their lawyer had explained things in a way that they could understand.

3.1.6 The Supreme Court

Almost half the plaintiffs (48%) indicated that they had understood what was going on while their case was being conducted.

Fifty-one percent of plaintiffs reported that they thought that they should have been given more information about the Supreme Court and its procedures. The figures indicate that these were the same plaintiffs who reported that they did not understand what was going on while their case was being conducted.

Most plaintiffs who thought they should have been given more information saw this as the role of their solicitor. A number of plaintiffs saw it as the role of their barrister, and others, as the role of the court.

3.1.7 General Questions

Only one third of plaintiffs (32%) indicated that they were satisfied with the way the legal system operated for their case. When asked if they had any further comments about the resolution of their case, 52% reported that they did.

3.2 Discussion

From the information presented in this section we can begin to construct a picture of the expectations plaintiffs had about, and their satisfaction with, various aspects of the litigation process.

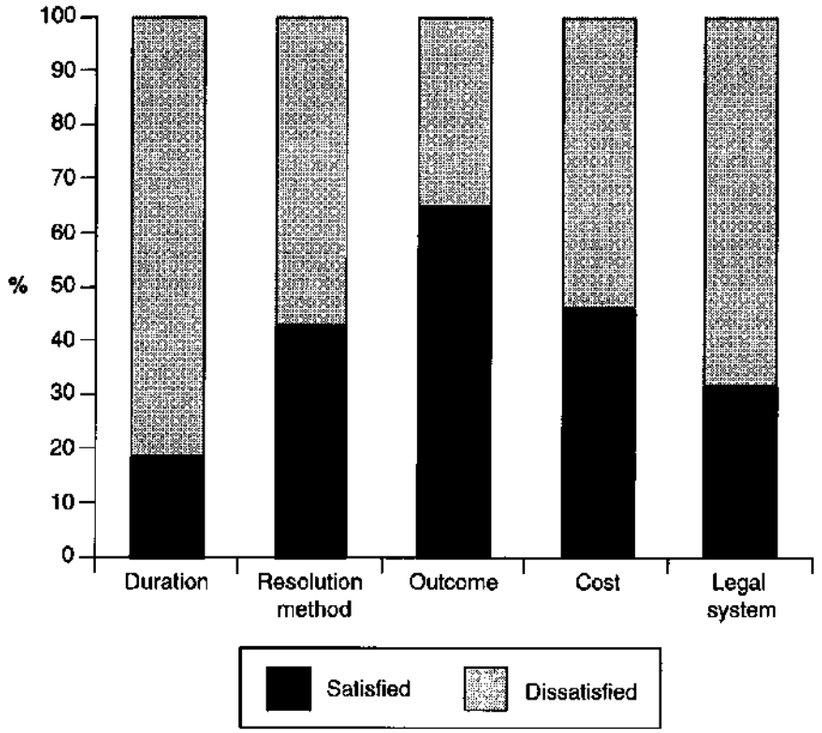
It was found that the plaintiffs had expectations about how long their case was going to take, how it was going to be resolved and how much compensation they were going to receive. Another finding was that these expectations were not always met. For example, most plaintiffs reported that their case took longer than they had expected, and most that they received less money than expected. Further, only 8% of plaintiffs' cases received a verdict when 78% had expected this to be the way their case would be resolved. It was also found that the expectations plaintiffs held about case outcome and duration were generally based on information provided to them by their solicitor.

Just over half of the plaintiffs (54%) agreed that they were able to participate during the settlement negotiations. However, the majority of plaintiffs disagreed that the negotiation process was fair (64%) and that they had control over the outcome of their case (67%).

Figure 2 illustrates the proportion of plaintiffs who were and who were not satisfied as measured by the five satisfaction variables. Case outcome received the highest proportion of satisfaction (65%) and case duration the lowest (19%). Just under one third of the plaintiffs reported being satisfied with the operation of the legal system (32%). Satisfaction with the method used to resolve their case and with the cost of litigation was reported by almost half the plaintiffs, 43% and 46% respectively.

The remainder of this report will address the issue of what, in terms of their experience with the litigation process, distinguished plaintiffs who reported being satisfied from those who reported being dissatisfied.

Figure 2. The proportion of plaintiffs who were and who were not satisfied on each of the satisfaction variables



Source: CJRC plaintiff survey.

4

Factors Related to Plaintiff Satisfaction

This section aims to answer the questions "What factors are related to plaintiff satisfaction?" and "How are these factors related?". To answer these questions, this section looks at the role played by actual case outcome, cost and duration, the three most frequently proposed explanations of plaintiff dissatisfaction. Examined also is the role played by plaintiff expectations, perceptions, and case and plaintiff characteristics. Section 4.2.5 looks at the role played by the provision of information. Plaintiff satisfaction with each of the following is examined: case outcome, case cost, case duration, method of case resolution and the operation of the legal system.

4.1 The Research Questions

4.1.1 Case Outcome, Duration and Cost

It is often suggested that the amount of money a plaintiff receives as compensation will affect how satisfied they are following their experience of litigation. It is also suggested that satisfaction will be affected by the amount of time it has taken to achieve the outcome as well as the cost associated with obtaining it. On the basis of this, it is generally assumed that satisfaction is related to high compensation payments, short case duration and low costs.

The results presented in Section 3 indicated that these issues are of importance to plaintiffs. Only 65% of plaintiffs reported that they were satisfied with the amount of money they received, 19% with the duration of their case and 46% with how much the litigation cost them. By matching information from the questionnaire with information recorded from the court files, the following questions were addressed:

- Is there a relationship between plaintiff satisfaction and case outcome, duration and cost?
- Are more plaintiffs who received high compensation payments, whose case duration is short and/or whose costs are low, satisfied?

4.1.2 The Role of Expectation

Social psychological research conducted on peoples' satisfaction following an event has indicated that the absolute result of the event matters relatively little. Instead, it is where the result falls in relation to a person's expectation that is important in determining whether the result will be considered satisfactory.[27] According to this theory, a particularly long case duration, or even loss, could leave a plaintiff satisfied if this is what they were expecting.

In Section 3 it was established that plaintiffs do have expectations about how much they are going to receive in compensation, and about how long their case is going to take. On this basis, the following questions were addressed:

- Is there a relationship between the expectations held by plaintiffs and plaintiff satisfaction?
- Are more plaintiffs whose expectations are met, or improved on, satisfied than plaintiffs whose expectations are not met?

4.1.3 The Role of Plaintiff Perceptions

Just as plaintiff expectations have been implicated as being important to plaintiff satisfaction, the perceptions plaintiffs hold about various aspects of the litigation process have also been considered influential.[28] Three perceptions were measured by the questionnaire:

Control

Perceived control is considered to play an important role in satisfaction following an event. Previous research has indicated that perceived control leads to greater satisfaction.[29] It has long been believed that procedures which allow people to craft their own resolution to a dispute are more likely to produce satisfaction than are procedures that vest control over outcomes.[30] On this basis, it is hypothesised that more plaintiffs who perceived they had control over the outcome of their case will be satisfied following the litigation. This is regardless of whether perceived control had any real effect on case outcome.

Participation

A concept closely related to perceived control is perceived participation. Participation during litigation is distinct from control in that it involves the opportunity to take part in the legal process even when it is not felt that one has had the opportunity to affect the process. It operates on the assumption that feeling as though one has been allowed to assume an important role in the proceedings can lead to favourable reactions to procedures.[31] As Tyler has observed, giving people an opportunity to have their say leads them to feel as though they have been more fairly treated even when what they say has little or no effect on the final decision.[32]

Fairness

In a discussion of plaintiffs' perceptions of the litigation process, it is important to include the issue of how fair the plaintiffs perceived the process to be. In short, to ask them to decide for themselves whether they believe that justice was served. The ICJ cites a number of research undertakings which have shown that people are concerned about the issue of "fairness" and that they have firm ideas about what constitutes a fair procedure. Also, that fairness is important in determining a person's attitude towards legal institutions and outcomes.[33]

On the basis of these theories, the following research questions were addressed:

- Is there a relationship between plaintiff satisfaction and their perceptions of control, participation and fairness?
- Are more plaintiffs who perceive they had control over case outcome, were able to participate in the settlement negotiations and/or that the settlement negotiations were fair, satisfied?

4.1.4 The Role of Case and Plaintiff Characteristics

Although not previously found to be related to plaintiff satisfaction,[34] no examination of the factors associated with satisfaction would be complete without examining the role of case and plaintiff characteristics. For if case or plaintiff characteristics are found to be systematically related to satisfaction, then general statements about satisfaction would be inappropriate.

This section of the research will determine whether factors external to the litigation process are related to plaintiff satisfaction. To do this, the following questions were addressed:

- Is there a relationship between case characteristics and plaintiff satisfaction?
- Is there a relationship between plaintiff characteristics and plaintiff satisfaction?
- What is the nature of the relationships?

4.1.5 The Role of Information on Plaintiff Perceptions

A factor which has the potential to impact on both plaintiff expectations and perceptions is the information which is provided to the plaintiff by their lawyer.[35] It was previously established (Section 3) that the expectations the plaintiffs held about the likely outcome and duration of their case were typically based on information which was provided to them by their solicitor.

The solicitor is the first and last point of contact the plaintiff has with the legal system. It is through the plaintiff's solicitor that their case is constructed,

conducted and finalised. Central to the solicitor-client relationship is the provision of information. As stated in *Lawyers*, the role of the lawyer is to "... inform and advise their clients and to obey their client's instructions".[36]

The impact of the information provided to the plaintiff will be assessed by looking at the following question:

- Do more plaintiffs who reported being kept well informed about the progress of their case have more favourable perceptions of control, participation and fairness than plaintiffs who did not report being kept well informed?

4.1.6 Statistical Examination of the Relationships

Looking for a relationship between two variables is the first and fundamental step in data analysis. Such relationships will be examined using chi-square tests. Following this, logistic regression analysis will be used to quantify the impact of the variables which are found to be related to plaintiff satisfaction, and to explain the relative odds of satisfaction. The results of the analyses discussed in this section of the report are provided in Appendix 3.

4.2 Results of the Two-way Analyses

The two-way chi-squared test is used to determine whether two variables are related. Two variables are considered to be related when the distribution of values on one variable differs for different values of the other. If we know that two variables are related, this can help to make predictions on the basis of limited information.

4.2.1 The Role of Actual Case Outcome, Duration and Cost

Actual Case Outcome

No relationship was found between the amount of compensation received and plaintiff satisfaction following their court experience.

The ICJ did find however that simply having won or lost a case had an impact on litigants' reactions, quite apart from the amount of money which was involved.[37] On this basis, it was hypothesised that litigants would view winning their court case as a vindication of their actions in the incident that led to the legal action and/or of their actions in litigating the case. This hypothesis was tested in our sample by examining the relationship between satisfaction of the plaintiffs who had "won" with those who had "lost". Unlike the ICJ study, no difference was found in their reported level of satisfaction. Note however that caution is suggested when interpreting these results as only 10 plaintiffs did not receive any compensation.

Actual Case Duration

Case duration was measured by calculating the amount of time from the date the Statement of Claim was filed to the date the case was resolved. The median duration of the cases was five years. A comparison of the median duration of the cases with previously reported case duration figures indicates that these plaintiffs experienced somewhat longer delay than is usual.[38]

No relationship was found to exist between case duration or "delay" and the plaintiff's reported satisfaction with the amount of time their case took.

Actual Case Cost

Information about the amount of money allocated in the award for legal costs was available in only 25 of the cases. The following results should therefore be treated with caution. The median amount of costs awarded to the plaintiffs was $4380. This represents party-party costs which, according to figures in the CJRC report, *The Costs of Civil Litigation*, are typically 65% of the total costs paid by litigants.[39]

No relationship was found between the actual cost of the litigation and the plaintiff's reported satisfaction with the cost of litigation.

4.2.2 The Role of Expectation

The Amount of Compensation Received

A relationship was found between expected case outcome and satisfaction with case outcome. The majority of plaintiffs whose compensation was the same, or more, than they had expected were satisfied with the outcome of their case. Almost all the plaintiffs whose outcome was less than they had expected were dissatisfied.

Case Duration

Two measures of plaintiff expectation were available to examine the above question in relation to case duration. The first was the amount of time the plaintiff's lawyer had told them their case would take. The second was the plaintiff's own evaluation of whether their case had taken more, less or the same amount of time as they had expected. Both measures of expectation were found to be related to satisfaction with case duration. That is more plaintiffs were satisfied when case duration was the same, or less than, they had been expecting.

4.2.3 The Role of Plaintiff Perceptions

It was hypothesised that perceived control over case outcome, perceived participation during and perceived fairness of settlement negotiations would be related to plaintiff satisfaction.

The hypotheses were supported. More plaintiffs who reported that they had control over the outcome of the case, were able to participate during the settlement negotiations and/or perceived the negotiations as having been fair, were satisfied with the various aspects of their case. Each of the perceptions can therefore be considered as being important to plaintiff satisfaction.

This result raises the question "How are plaintiffs' perceptions formed?". Section 4.2.5 will look at the importance of the information provided to the plaintiff over the course of their case.

4.2.4 The Impact of Case and Plaintiff Characteristics

Case Characteristics

Four case characteristics were tested for their relationship to each of the measures of satisfaction. These were stage of disposal, claim type, body part injured and the type of injury. No relationships were found to exist between these and any of the measures of plaintiff satisfaction.

Plaintiff Characteristics

Five plaintiff characteristics were tested for their relationship to plaintiff satisfaction: gender; age; income; education; occupation; and previous litigation experience. Of these, income and education exhibited some relationship to satisfaction.

Satisfaction with the method used to resolve the case and satisfaction with case outcome were found to be related to plaintiff income. More plaintiffs with an income of $50,000+ per annum were satisfied with both the method used to resolve their case and with its outcome than the people in the other income categories. Fewer plaintiffs in the $40,000–$50,000 income bracket were found to be satisfied with the outcome of their case than were plaintiffs in the other income categories.

Satisfaction with case duration was found to be related to plaintiff education. More plaintiffs with a trade/apprenticeship qualification were dissatisfied. More plaintiffs with an "other" education level were satisfied with the duration of their case.[40]

4.2.5 The Role of Information on Plaintiff Perceptions

In sections 4.2.2 and 4.2.3 it was found that plaintiff expectations and perceptions play an important role in plaintiff satisfaction. This section considers a factor which has the potential to impact on both expectations and perceptions: the information which is provided to the plaintiff by their solicitor.

Relationships were found to exist between the provision of information and favourable perceptions. Considerably more plaintiffs who reported that their solicitor had kept them well informed about the progress of their case had favourable perceptions about control, participation and fairness.

The implication of this result is that a plaintiff who does not receive information is not in a position to be able to instruct their solicitor. The result of this is that they may not be able to participate in its progress or to have control over its outcome. In this instance, it would also be unlikely that they would consider the process to have been fair.

4.2.6 Discussion

Contrary to popular belief about what forms the basis of plaintiff satisfaction, actual case outcome, duration and cost were not found to be related to plaintiff satisfaction. Nevertheless, given the high proportion of plaintiffs who reported being dissatisfied with case outcome, duration and cost, the importance of these aspects of litigation to plaintiff satisfaction should not be underestimated.

The results of the analyses also indicated that other factors were important to plaintiff satisfaction. In particular, expectations and perceptions.

The expectations plaintiffs held about the amount of compensation they were to receive and the duration of their case impacted on their satisfaction with these aspects of their case. The perceptions plaintiffs held about the amount of control they had over the outcome of their case, how much they were able to participate during the settlement negotiations and the fairness of the negotiations were related to their satisfaction with each of the measures of satisfaction.

Case characteristics were not found to be related to satisfaction, and of all the plaintiff characteristics, only education and income were important. A further finding was that the information provided to plaintiffs by their solicitor was related to their perceptions of control, participation and fairness.

Table 4 provides a summary of the chi-squared analyses, showing which factors were related to plaintiff satisfaction. However, while the two-way test will determine whether two factors are related, it does not explain the total variation in the odds of satisfaction. The next step is to conduct a logistic regression analysis. The logit model seeks to explain or predict the variation in the odds of satisfaction using a set of explanatory factors.

Table 4. Summary of the bi-variate relationships between plaintiff satisfaction and various factors

Satisfaction with:	Case outcome	Case duration	Case cost	Method used to resolve the case	Operation of the legal system
Actual outcome	–	•	•	•	•
Actual duration	•	–	•	•	•
Actual cost	•	•	–	•	•
Expected outcome	***	•	•	•	•
Expected duration	•	***	•	•	•
Perceived control	***	•	***	***	***
Perceived participation	***	•	***	***	***
Perceived fairness	***	•	***	***	***
Claim type	–	–	–	–	–
Body part injured	–	–	–	–	–
Type of injury	–	–	–	–	–
Stage of disposal	–	–	–	–	–
Gender	–	–	–	–	–
Age	–	–	–	–	–
Income	**	–	–	***	–
Education	–	**	–	–	–
Occupation	–	–	–	–	–
Previous litigation	–	–	–	–	–

** p<.01 – no relationship
*** p<.001[41] • not applicable

4.3 Results of the Logistic Regression Analyses

Logistic regression allows for the examination of the relative influence of a number of possible factors simultaneously.[42] It also allows for the examination of categorical data, and the relative influence of each category within each factor. The aim of logistic regression is to identify the factors which are the best predictors of plaintiff satisfaction. A separate logistic regression analysis was conducted for each of the five measures of satisfaction.

4.3.1 Methodology

One of the assumptions of logistic regression is that the factors included in the model are independent of one another. In order to meet this assumption, the following factors were excluded from the analysis: whether the case actually took more, the same or less time than the solicitor had predicted; plaintiff age, gender and occupation; perceived control and participation; body part affected and injury sustained; claim type and stage of disposal.

Plaintiff age, gender, and occupation were all related to plaintiff income. As the bi-variate analyses indicated income as important to satisfaction, income was selected for inclusion. The three perception variables were related. Fairness was chosen for inclusion on the basis that if a plaintiff perceives that they had control and were able to participate, then it is probable that they would perceive the process as having been fair. Previous research had indeed found this to be the case.[43] Finally, the case characteristics of claim type and stage of disposal were related to case outcome and case duration. As case outcome and duration were important to the research questions, they were included. Body part and injury type were related to case outcome. Both were excluded on this basis.

Factors were also excluded if information was available for less than 60% of the cases. On this basis, plaintiff education and cost were excluded.[44] Following the process outlined above, seven variables were included in, what will be referred to for the purposes of this report as, the "full model".

Once a logistic regression analysis has been conducted, it is necessary to examine the "goodness of fit" of the full model.[45] If the model is considered to be a good fit to the data, the next step is to identify which subset of the factors serve as the best predictors of plaintiff satisfaction. This involves a process of model reduction, the aim of which is to produce a model which includes fewer factors. This will be achieved through conducting backwards step-wise selection.[46] The sub-set of factors which remain following this process is referred to as the "reduced model".[47]

Only those factors which were found to be significantly related[48] to plaintiff satisfaction are discussed in this section. The results of the logistic regression analyses are summarised in Table 5.

4.3.2 Satisfaction with Case Outcome

The first analysis was conducted to ascertain the factors which were most strongly related to plaintiff satisfaction with case outcome. The fit of the full model was considered to be good.[49] On this basis, a backwards step-wise selection was conducted. The reduced model which this produced included four factors: case outcome, expected outcome, perceived fairness, and plaintiff income. Three of these were significantly related to satisfaction with case outcome: actual case outcome, expected case outcome, and perceived fairness.

Actual Case Outcome

Plaintiffs who received between $100,000 and $199,999 were more likely to be satisfied with the outcome of their case than were plaintiffs in the other two outcome categories. The odds of satisfaction for plaintiffs who received between $100,000 and $199,999 were six times those for plaintiffs who received less than $100,000, and increased 14-fold relative to those who received $200,000+.

Expected Outcome

Plaintiffs who received the same amount of compensation as expected were more likely to be satisfied with the outcome of their case. The odds of satisfaction for these plaintiffs were 14 times those for plaintiffs who received less compensation than expected, and three times those for plaintiffs who received more compensation than expected.

Perceived Fairness

Plaintiffs who perceived the settlement negotiations as being fair were more likely to be satisfied with the outcome of their case. The odds of them being satisfied were 23 times those for plaintiffs who did not perceive the settlement negotiations as being fair.

Summary

In terms of the amount of variation explained, expected outcome and perceived fairness had greater impact on plaintiff satisfaction with outcome than did actual case outcome.[50]

With regard to expected outcome, the odds of being satisfied were greatest for the plaintiffs who received the same amount of compensation as expected. On this basis, it appears that it is the matching of expectation which is important to outcome satisfaction. This, coupled with the fact that expected outcome was more important to satisfaction than actual outcome, supports the theory that the absolute result of an event matters less than where the result falls in relation to expectation.

4.3.3 Satisfaction with Case Cost

The second analysis was conducted to identify the factors which were related to plaintiff satisfaction with case cost. The fit of the full model was considered to be good,[51] and a backwards step-wise selection was conducted. The reduced model included four factors: case outcome, expected outcome, expected duration and perceived fairness. Three of them were significant: actual case outcome, expected outcome, and perceived fairness.

Actual Case Outcome

Plaintiffs who received $0–99,999 were more likely to be dissatisfied with the cost of their case than plaintiffs in the other outcome categories. The odds of dissatisfaction for these plaintiffs were four times those for plaintiffs who received $100,000–199,999, and three times those for plaintiffs who received $200,000+.

Expected Outcome

Plaintiffs who received the same amount of compensation as expected were more likely to be satisfied with case cost. The odds of these plaintiffs being satisfied were five times those for plaintiffs who received more compensation than they expected. There was however relatively no difference in the odds of satisfaction with case cost for those who received the same or less compensation than expected.

Perceived Fairness

Plaintiffs who perceived the settlement negotiations to be fair were more likely to be satisfied with case cost. The odds of them being satisfied were six times those for plaintiffs who did not perceive the negotiations were fair.

Summary

In terms of the amount of variation explained, expected outcome and perceived fairness were the strongest predictors of satisfaction with case cost, more so than actual case outcome.[52] This results reflects those of the previous analysis.

The significance of case outcome on satisfaction with case cost may be explained by the results of previous CJRC research, the results of which are provided in *The Costs of Civil Litigation*. This research demonstrated that the ratio of cost to outcome increases as the outcome decreases.[53] Therefore it can be assumed that plaintiffs who received lower award amounts would have paid a greater proportion of their award in costs. This would explain why it was the plaintiffs whose award fell into the lowest category who were the most likely to be dissatisfied with the cost of their case.

4.3.4 Satisfaction with Case Duration

The third analysis was conducted to determine the factors which were related to plaintiff satisfaction with case duration. The fit of the full model was considered to be good,[54] and a backwards step-wise selection was conducted. The reduced model included three factors: expected duration, perceived fairness and plaintiff income. All were significantly related to satisfaction with case outcome.

Expected Duration

Plaintiffs whose case took more time to be resolved than expected were more likely to be dissatisfied with case duration. The odds of them being dissatisfied with case duration were 14 times those for plaintiffs whose case took the same amount of time as expected and increased to 32 times for plaintiffs whose case took less time to be resolved than expected.

Perceived Fairness

Plaintiffs who perceived the settlement negotiations as being fair were more likely to be satisfied with case duration. The odds of them being satisfied were 14 times those for plaintiffs who did not perceive the negotiations as having been fair.

Plaintiff Income

Plaintiffs whose income was between $40,001–50,000 were more likely to be satisfied with case duration. The odds of these plaintiffs being satisfied were 24 times those for plaintiffs whose income was $0–20,000, 12 times those for plaintiffs whose income was $20,001–30,000, 14 times those for plaintiffs whose income was $30,001–40,000 and five times those for plaintiffs whose income was $50,000+.

Summary

The best predictors of satisfaction with case duration were expected duration, perceived fairness and plaintiff income. In terms of the amount of variation each explained, expected duration and perceived fairness had a greater impact than did plaintiff income.[55]

Perhaps the most important finding was that expected duration and not actual duration was a significant predictor of plaintiff satisfaction with case duration. Also important was the finding that the odds of satisfaction were greatest when a case took the same amount of time as expected compared with when it took less time. Again, the indication is that it is the matching of expectation which is most important to plaintiff satisfaction.

One possible explanation for the importance of plaintiff income to duration satisfaction may be the cost of financing a claim over a period of years. The results indicated that the odds of satisfaction with case duration were lowest for plaintiffs in the lower income brackets.

4.3.5 Satisfaction with Method of Case Resolution

The fourth analysis was conducted to ascertain the factors which were related to plaintiff satisfaction with the method used to resolve their case. The fit of the full model was considered to be good,[56] and a backwards step-wise selection was conducted. The reduced model which this produced included four factors: expected outcome, expected duration, perceived fairness, and plaintiff income. Of these, three were significantly related to satisfaction with the method of case resolution: expected outcome, perceived fairness and plaintiff income.

Expected Outcome

Plaintiffs whose case outcome was the same as expected were more likely to be satisfied with the method used to resolve their case. The odds of satisfaction for these plaintiffs were five times those for plaintiffs who received a greater amount of compensation than expected and four times those for plaintiffs who received less than expected.

Perceived Fairness

Plaintiffs who perceived the settlement negotiations as having been fair were more likely to be satisfied with the method of case resolution. The odds of them being satisfied were 12 times those for plaintiffs who did not perceive the settlement negotiations as having been fair.

Plaintiff Income

Plaintiffs whose income was in the $20,001–30,000 range were more likely to be dissatisfied with the method used to resolve their case.

The odds of them being dissatisfied with the method of case resolution were two times those for plaintiffs in the $0–20,000 income range, four times those for plaintiffs in the $30,001–40,000 income range, two times those for plaintiffs in the $40,001–50,000 income range and 20 times those for plaintiffs whose income was $50,001+.

Summary

Expected outcome, perceived fairness and plaintiff income were important to plaintiff satisfaction with the method of case resolution. In view of the amount of variation each factor explained, perceived fairness and plaintiff income had the greatest impact on satisfaction with the method used.[57]

With regard to expected outcome, again it was found that it is the matching of expectation which is important. Perhaps this is because if expectation is not matched, whether the result is better or worse than expected, there is some degree of uncertainty in the mind of the plaintiff surrounding the method of resolution used.

4.3.6 Satisfaction with the Operation of the Legal System

The fifth analysis was conducted to determine which factors were related to plaintiff satisfaction with the operation of the legal system. The fit of the full model was considered to be good,[58] and a backwards step-wise selection was conducted. The reduced model included five factors: case outcome, expected duration, perceived fairness and plaintiff income. Of these, three were significantly related to plaintiff satisfaction. These were expected outcome, expected duration and perceived fairness.

Expected Outcome

Plaintiffs who received less compensation than expected were more likely to be dissatisfied with the operation of the legal system. The odds of them being dissatisfied were four times those for plaintiffs who received the same as expected. The dissatisfaction odds of these plaintiffs was increased by ten relative to the plaintiffs who received more compensation than expected.

Expected Duration

Plaintiffs whose case took more time than expected were more likely to be dissatisfied with the operation of the legal system, while those whose case took less time than expected were more likely to be satisfied.

The odds of dissatisfaction for plaintiffs whose case took more time than expected were 37 times those for plaintiffs whose case took less time than expected, and were four times those for plaintiffs whose case took the same amount of time as expected. The odds of plaintiffs whose case took less time than expected being satisfied were ten times those for plaintiffs whose case took the same amount of time as expected.

Perceived Fairness

Plaintiffs who perceived the settlement negotiations to have been fair were more likely to be satisfied with the operation of the legal system. The odds of these plaintiffs being satisfied were 24 times those for plaintiffs who did not perceive the negotiations as having been fair.

Summary

Important to satisfaction with the operation of the legal system were the expectations plaintiffs held about case outcome and duration and their perception of how fair the negotiation process was. Thus, system satisfaction is *not* dependent on the consequences of litigation – that is, with actual case outcome or how long the case took. Instead, it was dependent on whether the plaintiff's expectations were matched and whether the litigation process was perceived as having been fair.

In terms of the amount of variation each factor explained, perceived fairness had the greatest impact on system satisfaction. There was little difference in the impact of expected duration and expected outcome.[59]

Table 5. Summary of the multi-variate relationships between plaintiff satisfaction and various factors

Satisfaction with:	Case outcome	Case cost	Case duration	Method of case resolution	Operation of the legal system
Actual outcome	*	*	–	–	–
Expected outcome	***	***	–	*	**
Expected duration	–	–	***	–	**
Perceived fairness	***	***	***	***	***
Case duration	–	–	–	–	–
Income	–	–	*	**	–
Previous litigation	–	–	–	–	–

* p<.05 – no relationship
** p<.01
*** p<.001

4.4 Discussion of the Two-way and Logistic Regression Analyses

Case Outcome, Duration and Cost

The chi-squared analyses did not find a relationship between case outcome and outcome satisfaction, case duration and duration satisfaction or between case cost and cost satisfaction.

The logit model indicated that case outcome served to explain the odds of satisfaction with both case outcome and case cost. It was not however found to explain the satisfaction odds for case duration, method of resolution or the operation of the legal system. Case duration was not found to explain the odds of satisfaction for any of the measures, and there was not enough data available to conduct an examination of the effect actual cost had on plaintiff satisfaction.

The relationship between actual outcome and satisfaction with outcome is not an unexpected result. Common sense suggests that how much is received in compensation will affect how satisfied a plaintiff will be with case outcome. An important finding however was that actual case outcome was not as important to plaintiff satisfaction as was expected outcome.

Plaintiff Expectation

The chi-squared analysis found that the expectations the plaintiff held about the amount of compensation they might receive were significantly related to their satisfaction with the outcome of their case. The expectations held about case duration were also found to significantly impact upon satisfaction with case duration.

The logit model reiterated these findings, as well as providing further information about the role of expectation in plaintiff satisfaction. It was found that expected outcome not only impacted upon satisfaction with case outcome, but that it also explained the odds of satisfaction with case cost, method of case resolution and with the operation of the legal system. Expected duration was found to explain the odds of satisfaction with case duration and the operation of the legal system.

Plaintiff Perceptions

The chi-squared analysis indicated that other important factors related to plaintiff satisfaction on all measures were plaintiff perceptions of control, participation and fairness. It was also found that the perceptions plaintiffs held about control, participation and fairness were related to being provided with information about case progress. Plaintiffs who felt they were kept well informed about the progress of their case were more likely to have favourable perceptions than those who felt they were not kept well informed.

Perceived fairness was the only perception included in the logit model. Due to its relationship with the other two perceptions, it was considered to adequately represent all three. The results of the analysis demonstrated the importance of plaintiff perceptions to each of the aspects of plaintiff satisfaction.

Case and Plaintiff Characteristics

No case characteristics were found to be important to satisfaction in either of the analyses. The chi-squared analysis did however indicate that plaintiff income was related to satisfaction with outcome and the method of case resolution. Plaintiff education was found to be important to satisfaction with case duration and method of resolution.

The logit model indicated that plaintiff income was important to satisfaction with case duration and method of case resolution. It did not include plaintiff education.

As there was a general trend for the odds of satisfaction with case duration to decrease as plaintiff income decreased, this result may be due to the cost of financing the litigation.

4.5 Conclusion

It is generally assumed that plaintiff satisfaction is related to high compensation payments, short case duration and low case costs. That is, with the consequences of litigation. This section examined the role played by these, and other factors, on five measures of plaintiff satisfaction.

The results of the analyses indicate that high compensation payments, low case costs and short case duration are not the most important determinants of plaintiff satisfaction. Instead, it was found that plaintiff satisfaction may be tempered by addressing the process of litigation rather than attending to its consequences.

It was hypothesised that actual case outcome and duration would not be as important to satisfaction as the expected outcome and duration. This hypothesis was supported. In addition, it was found that satisfaction with case outcome, case cost and resolution method was most likely when expected outcome was matched rather than when it was exceeded. Satisfaction with case duration was most likely when expected duration was matched by actual duration rather than when it was reduced. That is, it is the matching of expectation which was important to plaintiff satisfaction. Further, the results indicated that the expectations held by plaintiffs are largely based on information provided to them by their solicitors.

It was also hypothesised that plaintiffs who perceived they had control over their case, were able to participate in the settlement negotiations and perceived that these negotiations were fair, were more likely to be satisfied than were plaintiffs who did not hold such perceptions. Again this hypothesis was supported. The impact of plaintiff perception on satisfaction was also found to be greater than that of actual case outcome or duration. It was found that plaintiffs were more likely to perceive that they had control, were able to participate and that the settlement negotiations were fair, when their solicitors provided them with information about the progress of their case.

The results have important implications. For example, case delay and costs are two areas typically targeted for reform. Implicit in these reforms is a belief that a reduction in cost and delay will increase plaintiff satisfaction. The findings of this research however suggest that procedural innovations which reduce costs and delay may not be counted on to enhance plaintiff satisfaction simply by virtue of such reductions being achieved. Instead, they indicate that reforms aimed at increasing plaintiff satisfaction require that attention be given to the role played by the plaintiff during the process of litigation.

Further, it was found that information played a central role in the expectations and perceptions the plaintiffs held: that is, in two factors found to be important to plaintiff satisfaction. The implication of these results is that the provision of accurate information about what to expect and about case progress may increase the likelihood of satisfaction.

This section has provided a statistical account of the factors which were related to plaintiff satisfaction. The following section provides an account of what the plaintiffs had to say about their own experience.

27 Thibaut, J, & Kelley, H, 1959, *The Social Psychology of Groups*, Wiley, New York.

28 For example, see:

Lind, E, & Tyler, T, 1988, *The Social Psychology of Procedural Justice*, Plenum Press, New York.

Thibaut, J, & Walker, L, 1975, *Procedural Justice: A Psychological Analysis*, John Wiley & Sons, New York.

Tyler, T, 1987, "Conditions Leading to Value-Expressive Effects in Judgements of Procedural Justice: A Test of Four Models", *Journal of Personality and Social Psychology*, Vol. 52, No. 2, pp.333-344.

29 Houlden, P, LaTour, S, Walker, L, & Thibaut, J, 1978, "Preferences for Modes of Dispute Resolution as a Function of Process and Decision Control", *Journal of Experimental Social Psychology*, Vol. 14, pp.13-30.

30 For example, see Gulliver, PH, 1974, *Disputes and Negotiations: A Cross-Cultural Perspective*, Academic Press, New York.

31 Musante, L, Gilbert, MA, & Thibaut, J, 1983, "The Effects of Control on Perceived Fairness of Procedures and Outcomes", *Journal of Experimental Social Psychology*, Vol. 19, pp.223-238.

32 Tyler, op. cit.

33 Lind et. al. op. cit.

34 Lind et. al op. cit.

35 For example, see Rosenthal, op. cit. for discussion of the importance of providing information to the litigant.

36 Disney, J, Redmond, P, Basten, J, & Ross, S, 1986, *Lawyers*, second edition, The Law Book Company, Sydney.

37 Lind et. al. op. cit.

38 For example, see Coopers & Lybrand WD Scott, 1989, *Report on a Review of the New South Wales Court System*, May, unpublished.

39 Worthington, D, & Baker, J, 1993, *The Costs of Civil Litigation: Current Charging Practices New South Wales and Victoria*, Civil Justice Research Centre/ Law Foundation, Sydney.

40 "Other" education included responses such as "did not attend school" or "attended primary school only".

41 An empirical finding is generally said to be statistically significant at .01 or .001 when the probability that such a finding would result from chance variations is less than: 1 in 100 (less than .01) or 1 in 1000 (less than .001).

42 Logistic Regression Analysis is used to identify variables useful in making a prediction about whether an event will or will not occur. In this case, for predicting whether a plaintiff will or will not be satisfied following their experience of litigation based on the variables tested.

43 Lind et. al. op. cit.

44 Plaintiff education had only 48% of information available, and case cost had only 6%.

45 That is, to examine how well the model explains the observed data. This is achieved through examining how "likely" the results actually are, given the parameter estimates. The probability of the observed results is known as the *likelihood*. A model is a good fit if the log likelihood for the model is not too large.

46 This process checks the "importance" of variables, and includes or excludes them on the basis of predictive value. The "importance" of a variable is defined in terms of a measure of the statistical significance of its coefficient. Significance is tested via the log likelihood ratio chi-square test.

See Hosmer, DW, & Lemeshow, S, 1989, *Applied Logistic Regression*, John Wiley & Sons, New York for a description of logistic regression analysis and log likelihood ratio testing.

See Norusis, MJ, 1993, *SPSS for Windows Manual, Advanced Statistics*, Chicago, for a description of the process in the statistical package used.

47 Results analysis will focus on two key features. The first is whether the beta coefficient is significantly different from zero, or, in this case, whether it indicates the factor is systematically related to plaintiff satisfaction. The second feature is to examine the "odds ratio", or likelihood, of satisfaction for each category within the significant factors. This approximates the relative odds of satisfaction for plaintiffs in a given category within a given factor, compared with plaintiffs in each other category in the factor. The odds ratio of satisfaction is derived from the Exp(B) coefficient. The tables presenting the results are provided in Appendix 3.

48 Note that when the term "significantly related" is used in this report it is referring to statistical significance. Information about the statistical significance of each factor is presented in the relevant table in Appendix 3.

49 Full model: log likelihood = 93.273

50 expected outcome: p<.000
actual outcome: p<.035
perceived fairness: p<.000

51 Full model: log likelihood = 147.551

52 actual outcome: p<.031
expected outcome: p<.001
perceived fairness: p<.000

53 Worthington, D, & Baker, J, op. cit.

54 Full model: log likelihood = 86.177

55 expected duration: p<.000
perceived fairness: p<.000
plaintiff income: p<.0.34

56 Full model: log likelihood = 136.936

57 expected outcome: p<.036
perceived fairness: p<.000
plaintiff income: p<.003

58 Full model: log likelihood = 110.226

59 expected outcome: p<.010
expected duration: p<.008
perceived fairness: p<.000

5

Plaintiffs' Additional Comments

This section describes the responses made by the plaintiffs to the free response questions which allowed them to raise their own concerns. These questions were included to give the plaintiffs an opportunity to comment on issues which were of concern or importance to them. Seventy-nine percent of plaintiffs elected to provide written information on one or more of the following questions.

- *Do you have any concerns about the method used to resolve your case that you would like to tell us about?*
- *Do you have any concerns about your lawyers' fees or any other charges that you would like to tell us about?*
- *Do you have any comments about how the Supreme Court could provide a better service to people?*
- *Do you have any further comments about the resolution of your personal injury case?*

5.1 Analysis of the Responses

All of the written responses were pooled and the themes which emerged from them are discussed generally. It became apparent in the early stages of the analysis that some plaintiffs responded in more general terms rather than answering the specific questions which were asked of them. This helped rather than hindered the analysis, as it provided more information about the issues which were important to them during their litigation experience. However, because the responses were pooled, it was not possible to quantify responses to individual questions. A complete list of the plaintiffs' written responses is provided in *Plaintiffs and the Process of Litigation: Technical Appendix.*[60]

Content analysis was used to analyse the written responses. This is a procedure whereby written information is condensed and made systematically comparable through the production of an objective response coding scheme.[61] The first step involved in the content analysis was to identify the *themes*[62] which were important to the plaintiffs. Each theme was then given a numerical code. Each theme had a number of sub-themes.

The second step was to analyse the content of each written response for its theme and to give the response the appropriate numerical code. In cases where a response contained more than one theme, each theme was recorded and included in the analysis. Issues which were mentioned by only one plaintiff and for which there was very little data, have been excluded from the analysis.

The validity of the content analysis was achieved through corroborative coding. Staff of the CJRC worked in consultation analysing the responses and giving them the appropriate numerical code. This consultation process was undertaken until a high degree of reliability was achieved.

When responses made by plaintiffs are quoted in the body of this report, they serve to illustrate the tone of responses only. Comments are quoted verbatim, thus ensuring that the true expressions of the plaintiffs are being reported and not an interpretation of them.[63]

5.2 Which Plaintiffs Provided Written Responses?

Which plaintiffs provided further comments about their litigation experience? Did plaintiffs who were and were not satisfied have common concerns about their litigation experience? The answer to this question is no. Generally, plaintiffs who reported having concerns and who then provided written comment, were those who were dissatisfied. In Section 3 it was established that a high proportion of plaintiffs reported being dissatisfied with various aspects of their litigation experience.

5.3 The Themes

Eight themes were identified from the written responses. Each of these and the sub-themes which emerged are listed and then described below:

- service delivery;
- other professional relationships;
- the process of case resolution and the amount of compensation received;
- time;
- personal impact;
- the cost of litigation;
- the legal system; and
- how the court could provide a better service.

5.3.1 Service Delivery

This theme covers two aspects of the plaintiffs' interactions with their legal representatives: the provision of information and the lawyer-client relationship. Plaintiffs were asked to comment about the information their lawyer provided to them during their case. No question specifically asked plaintiffs to provide information about their relationship with their legal representatives. That so many plaintiffs made reference to this issue indicates the importance of it to them.

Information

Comments which were provided clearly indicated that the plaintiffs had a need for information about various aspects of their case, but that this need was left wanting.

Most plaintiffs indicated that the amount of information they were provided with generally was inadequate. The issues about which they would have liked to have had more information were the progress of their case, legal procedures and the likely dollar value of their case. The following comments exemplify this:

> *My lawyer did not keep me up to date with what was going on with my case.* (#395)
>
> *The mysteries of the legal process never properly explained by my lawyer.* (#148)
>
> *Always underestimating the value of my case. Never gave me a true estimate value of my case when asked.* (#498)

Also commonly noted, and often in conjunction with comments about inadequate information provision, was that the plaintiff had to pursue their solicitor to get information about their case. For example:

> *For certain periods we had to actively push the solicitors to find out what was going on – this only involved a phone call every year or so.* (#604)
>
> *Most enquires were made by me as the case went years and years and I sometimes wondered what was happening.* (#661)

Inconsistency of information over time was an issue of concern for a number of plaintiffs. Typically, they referred to the prospects of their case, which started out as being positive and then became negative. This was noted as occurring across different solicitors as well as with the same solicitor over time. For example, two plaintiffs wrote:

> *As previously stated, all information leading to final day suddenly did a back-flip as soon as they knew they would be getting paid.* (#1072)
>
> *Talked to 3 different lawyers at different times and got different answers each time.* (#1075)

Another issue which was raised was that the information which was provided was too complex for the plaintiff to be able to understand. For example:

> *... They spoke above my head and when we asked the lawyer the answer I could not understand what he was talking about.* (#140)

> *Terminology was not simplified in order for me to understand. I was totally in the mercy of the lawyers.* (#785)

> *He spoke too much legal language that was a little difficult to understand.* (#797)

Some plaintiffs wrote that the information their lawyer gave them about their case prospects was negative, others that the information provided was not reliable.

The Lawyer-Client Relationship

Many plaintiffs commented on this aspect of their litigation experience. It was obviously an issue of considerable importance to them. The main area of concern was the way their legal representatives conducted the case. Most concerns referred to their solicitor, a few referred to counsel who represented their case. This is not surprising as the solicitor is the plaintiff's main point of contact while pursuing their claim. The following quotes serve to illustrate such concerns:

> *I am not convinced that my lawyer and Barrister knew what they were going to do with the case, and unnecessarily prolonged the duration... for their clear financial gains.* (#3)

> *I felt the barrister took over any control myself or my lawyer previously had prior to final negotiations.* (#137)

> *In a word! I could have presented my case far better.* (#245)

> *My lawyer was very sloppy. He didn't make any investigation until the last few weeks... I had to get all the relevant information. The QC was not properly informed and I had pointed out the vital mistakes he made during the hearing.* (#407)

> *Not enough preparation on the part of solicitor/QC/barrister.* (#1013)

Comments were also made about the way plaintiffs were treated by their legal representatives. Some wrote that they were not included while their case was being conducted. These people were concerned that they were not offered an interactive role, let alone one which afforded them some degree of control:

> *Could have been settled earlier and cheaper if all parties could get together earlier in the piece and discuss. As it is the claimant is treated as an imbecile and who's opinion is considered not relevant.* (#71)

> *I just didn't have any say in my case, what I needed in life, because things change.* (#750)

Others wrote that changes were made to the solicitor who was representing their case without their consent or knowledge. Related to this were comments made about changes to counsel at what seemed like the last minute. This may well have been the result of the Special Sittings running lists. Barristers were finding they had concurrent cases running and may have had to pass a case brief to another barrister shortly before the case went to hearing:

> *I felt the first solicitor should have handled the whole of my case. There were too many changes with solicitors handling my case. I would have liked to have been more involved. Lawyer was not very helpful in this respect.* (#664)

Some plaintiffs questioned the dedication of their legal representatives, believing that their lawyer's concern lay with themselves and not with the well-being of their client. Others wrote comments which indicated that they simply did not trust their solicitor:

> *Very poor attempt, and advocates did not seem to put in their best effort for their client, it seemed that they were all in a hurry to go to lunch etc.* (#591)

The need for different tiers of the legal profession and the need for "refresher" visits underwent questioning. Some plaintiffs believed that such practices provided nothing further to their case, the only result of which was increased legal costs:

> *There was no point in arranging consultation with a QC within the last 4 or 5 days of the case to repeat to me what the Barrister told me several times before and to pay a bill of $7000–$10,000 of the money probably I could have got in my hand which would have satisfied me.* (#3)

> *At one stage I had to see a barrister. I was there for a very short time and was charged the earth. Everything he told me which wasn't a great deal I had already been told previously by my solicitor. Therefore I was charged twice to be told the same thing.* (#30)

One plaintiff nicely summed up the issues of the need for information and inclusion:

> *If I was more informed and had my say in the outcome of my case I would not be so negative in my answer to this questionnaire.* (#140)

A small number of plaintiffs did however see fit to praise their solicitor and/or the way they conducted their case. It is important to remember that the questions asked plaintiffs who had concerns to respond in writing. In the light of this, the small number of plaintiffs who provided positive comments about their solicitor is to be expected:

> *Could not be more helpful.* (#770)

> *The lawyer told me things in words that I could understand and comprehend fully.* (#1106)

5.3.2 Other Professional Relationships

This theme includes comments made by plaintiffs which referred to their encounters with other professionals during the process of litigation. It includes comments about the defendant and medical practitioners. That this theme was found in the responses of a number of plaintiffs is in itself significant, as there was no question which specifically related to this issue. Plaintiffs' dealings with professionals during litigation therefore has a considerable impact on them.

The Defendant

Considerably fewer plaintiffs commented about the defendant than they did about their own legal representatives. Most often, plaintiffs wrote about the way the defending side conducted the case, believing that it was due to slowness of case preparation that the case went on for as long as it did. Some questioned the relationship between a hearing date and settlement offers from the defendant. This "hearing date certainty" phenomenon has been previously reported:[64]

> *Insurance companies taking too long to prepare the cases.* (#375)
>
> *I feel the way insurance companies make little effort to settle until your court date is appalling.* (#154)
>
> *This case took 7 years to resolve both lawyer and insurance company had no incentive to settle claim until court date was set.* (#406)

The comments of some plaintiffs indicated that they perceived that they were poorly treated by the defending side. A general mistrust of the defending side was expressed by one plaintiff, while others wrote about the defendant's negotiating tactics and the lack of information the defendant provided:

> *... I did not like [insurance company named] action toward me.* (#1098)

Medical Practitioners

A number of plaintiffs wrote about their experience with medical practitioners during litigation. Comments were made about the number of appointments they had to attend and some about the inconvenience of such attendances:

> *I do not believe it necessary to be examined as many times as 4 by a number of medical officers in the city when it was established early that I had an incapacitating disability.* (#1195)
>
> *Needless amount of time I had to take off work to see insurance doctors and the hours spent in surgeries when doctors appointments are running late. This continually happened.* (#1137)
>
> *The amount of doctors and specialists was sent to, and the distances involved for example: Sydney and Penrith.* (#726)

Other comments referred to what doctors wrote in their reports. Plaintiffs wrote about the conflicting reports of doctors, both in relation to the doctors engaged by the opposing side, and engaged by the plaintiff's solicitor:

> *So much bias with specialists on opposing sides therefore conflicting reports make it hard to negotiate fairly.* (#207)

Most commonly, plaintiffs wrote about being concerned with the way they were treated by medical practitioners when they attended appointments. Some wrote about the rudeness of doctors and/or that they were treated in a less than professional manner. Others cast doubt upon the professionalism of some doctors they had been appointed to see:

> *... I found quite a few doctors were very rude and some you could not talk to. I was treated at times as a degraded person...* (#1117)
>
> *It was very stressful... Most doctors treat you like a criminal, a liar.* (#321)
>
> *It seemed to me that the medical practitioners were less than professional about the formation of their opinions.* (#408)

5.3.3 The Process of Case Resolution and the Amount of Compensation Received

Plaintiffs were asked to comment on the method used to resolve their case. This is the point in time where all events of preceding years culminate in a solution, an end, to their claim. It represents the final step in the process of litigation. All plaintiffs who chose to comment on the resolution of their case were those whose case had settled out-of-court.

The issue most commonly referred to was that they had been excluded from the negotiations which ultimately resolved their case. Such concern is illustrated in the following quotes:

> *I would have liked to be involved more in the negotiations instead of being left isolated as if it didn't concern me, until the settlement was agreed. That's how I experienced it all.* (#498)
>
> *The negotiations were conducted with great secrecy. I was alone in a separate room and was isolated at all times. Given progress reports occasionally.* (#245)

Following this were comments which indicated that the plaintiff felt pressured into accepting the amount which was offered to them by the defending side. Some plaintiffs wrote that they were told that, due to their race/ethnicity, it would be best for them not to go to court. Others wrote that they were told that their prospects of winning would be reduced if the case went to court. Some plaintiffs

reported that their solicitor warned them to accept the offer due to the costs a hearing would impose:

> *We were told that because of my Indonesian nationality the jury wouldn't be fair in deciding the amount of compensation, also because of the recession we wouldn't do well in court.* (#541)

> *From day one and leading right up to day of settlement I was told that I had a good case, no worries on day of settlement. All that turned around suddenly I had a poor case and should grab what was on offer.* (#1072)

> *Everything was ready for court – solicitor told me that if I didn't accept offer, it might take 10 days in court and I might lose everything – he said a barrister could cost $2000 a day and doctor $1000. He scared me – I wanted to go to court. He said it was better to take the offer than to lose...* (#934)

Some of the plaintiffs who had accepted an out-of-court settlement wrote that they would have preferred it if their case had gone to court. Others mentioned concerns they had about the settlement tactics used during the out-of-court settlement:

> *I feel the solicitor in my case didn't conduct himself in my best interest as I am left with a permanent disability I feel the case should have been taken to court.* (#12)

> *I feel settling things over a phone by three men most unsatisfactory – I felt totally helpless.* (#342)

Another issue raised, a result of being excluded from negotiations, was the belief that a deal had been struck between their solicitor and the solicitor from the defending side:

> *I think the lawyers made a deal between themselves, or why was I not allowed to take part in the negotiations?* (#366)

All plaintiffs who provided comments about the amount of compensation received wrote that they should have received more than they did. These comments are akin to being "dissatisfied" with the amount of money awarded – an issue which was addressed in the quantitative section of the questionnaire:

> *With the result of what my injury has done to me, I think my claim could have been more.* (#422)

or, as another plaintiff simply put:

> *Wasn't worth all the trouble.* (#1051)

5.3.4 Time

Plaintiffs commented that an excessive amount of time lapsed between events. Most commonly, reference was made to the time between the commencement of their case and its finalisation. Some plaintiffs associated what they considered to be excessive case duration with increased legal costs:

> *I think it is appalling that my case began in May 1980 and was resolved and I awarded in July 1993.* (#749)

> *It shouldn't take 7 years to resolve a case, its enough to cope with the injury.* (#971)

> *Final cost amounted to over double the original verbal estimate. Maybe this was not my legal firms fault but was because of rising costs etc over the very long period from start to finish.* (#71)

> *My solicitor I feel purposely let this case go for a period of 10 years since the accident to ensure a high cost in solicitors fees that I would be responsible for...* (#54)

Six plaintiffs wrote about the amount of time it took between finalisation of their case and the receipt of their compensation:

> *Part of the money awarded was held by the lawyer for deductions but vocally he said what was left will be forwarded to myself twelve months after case was completed. I've still yet to hear from him.* (#702)

> *... I had to wait over one year for my monies due after costs were deducted. Received $^1/_4$ less of the total monies than I was told were due to me after costs.* (#566)

5.3.5 Personal Impact

Some plaintiffs wrote about the impact the process of litigation had on them personally. The volunteering of such comments is important, as the questionnaire did not ask plaintiffs about this issue.

Information about the stress and personal trauma litigation produced was most commonly referred to when plaintiffs wrote about the personal impact of litigation. Some plaintiffs noted the effect litigation had on their family as well. Other plaintiffs wrote that the money they received could never compensate them for the injury or loss they had suffered:

> *The stress caused to me by the case was very damaging...* (#382)

> *I though all the time I had to wait for the case to come up I would owe so much money I would have to mortgage the house to pay it. Very stressful the whole of the 6 years I waited.* (#503)

I was satisfied the way the case was finalised but I still feel pain in my back. (#430)

Money is important, but it's not all. It can't buy me back my health, my job and the way I used to be... (#238)

Other plaintiffs wrote about the financial difficulties litigation produced:

If we had nothing (Assets etc) to lose we could have gone till its conclusion. As it was, we could not risk losing what we had, so we settled, much against legal advice. (#495)

Because it took so long from the first visit to the lawyer till the case settled (10 years), my chances of getting back into the work force are very slim. (#806)

5.3.6 The Cost of Litigation

Most commonly, plaintiffs wrote about the fees charged by their solicitor as simply being excessive. Some plaintiffs considered that the proportion of fees to the amount they received was too high, others considered that the fees were too expensive for the amount of work which their solicitor performed:

Lawyers and barristers fees far too high... (#797)

Fees were charged for services any other professional would not have charged for. For the work done by my lawyer the fees charged were excessive. Definitely not value for money. Lawyers receive too large a proportion of the settlement amount. (#41)

I thought the solicitors fees were too high for the amount of work done. (#408)

Some plaintiffs wrote specifically about the amount of fees charged by counsel who represented their case. All plaintiffs who had previously questioned the need of involving different tiers of the legal profession (Section 7.2.1) noted a relationship between having the different tiers of the profession work on the case and the costs to the plaintiff which result.

Concerns about the charging practices of their solicitor were raised by some plaintiffs. A major area of concern was that they were not given an account by their solicitor which detailed what they were being charged for:

I didn't know how much his fees were and I still don't know and I think that's very unfair. (#113)

I think an itemised account would be a very good idea, so a client would know exactly how much it had cost him or her. (#167)

Following this were concerns raised about having agreed on a settlement amount, under the impression that this was the amount which would be received as

compensation, only to find that their solicitor had not indicated to them that their legal costs and/or other expenses were yet to be deducted. The result of this was that the plaintiffs ended up receiving less money than they had been led to believe they would receive:

I was told that the final amount would be free and clear of all expenses, and then found out I had to pay solicitors fees and late doctors bills and medical reports. (#994)

When court case resolved I was told I would receive $115,000 after expenses. 2 to 3 weeks after resumption of case I was then told by letter from solicitor I would have to pay legal fees of $15,000 in which I wasn't told at court case or prior. (#535)

Some plaintiffs wrote that their solicitor had not discussed the issue of case costs early in the process, while others wrote that although the issue of costs had been discussed, the amount they were charged was considerably higher than the original verbal estimate their lawyer had given. For example, some plaintiffs wrote:

The lawyer said it would cost nothing until the case was over and no estimate was given or the cost involved. (#728)

The lawyers and barristers should have an agreed fee before they take on a case and should tell the client approx. how much. (#722)

I was told all up cost could go up to $15,000 when the case is over. I was charged $25,000... (#966)

The amount of money which was charged for specific items was also raised as an issue of concern. The amount charged by solicitors for disbursements was quite high on the agenda of a considerable number of plaintiffs. They questioned the amount of money they were charged for items such as telephone calls, photocopying, administrative tasks – that is, the solicitor's litigation operating costs:

Yes, he sure knows how to charge for the smallest of things, like pencils, photocopies etc. (#1194)

... Photocopying fees excessive ($600 in one month). We could have done it ourselves. (#604)

The high cost of medical assessments was an issue which received considerable attention, and some plaintiffs mentioned the cost of witness fees and the fees of other professionals whose input was required to build their case.

A handful of plaintiffs judged some charges as being inappropriate. Two plaintiffs wrote that, following a complaint to the Law Society, their lawyer's fees underwent a reduction. Four plaintiffs wrote that two solicitors and/or barristers had to be briefed about their case prior to it going to court just in case one or other could not attend. In the end, they were charged for the services of both professionals.

5.3.7 The Legal System

Comments included in this theme represent value judgements made by plaintiffs about the law and its operation. The responses are divided into three sections: judgements about the fairness of the legal system, judgements about legal processes and judgements about legal costs and deductions from compensation.

Fairness of the Legal System

Statements were made which indicated that some plaintiffs did not believe that, in their case, justice had been served. Some believed that justice was available only to those who could afford it, that it was biased toward the insurance company, that it was basically unpredictable, or that it simply did not treat all people on an equal basis:

> *I would have liked my case to go to court but the solicitor and barrister said I could lose all having nothing behind me I couldn't afford to stand up for my rights.* (#285)

> *Seems to be all for the insurance companies and not for the little person.* (#789)

> *The out of court settlement process was 'a take or risk getting a lot less if you take it further' approach. If a person had a legitimate injury claim she should not feel as though compensation is a lottery.* (#680)

Closely related to the idea of an unjust legal system were the feelings expressed by the plaintiffs about the way they felt they were treated as users of the system. The comments indicated that plaintiffs felt as though they were treated too impersonally by the system. Comments such as "treated like a number", "treated like a criminal" and "humiliating" clearly demonstrate this. For example, one plaintiff wrote:

> *People who are injured should not be placed in one basket, and treated that they are the criminal and treated like they are just another piece of meat. They should have better rights and treated as a person with respect like the lawyers are treated.* (#941)

Judgements About Legal Process

A number of plaintiffs passed judgement on the law and its operation. A few plaintiffs were concerned about their case being included in the Special Sittings program. Issues raised were the pooling of judges from other divisions and the fast-tracking of the cases. Others commented on the uncertainty of when their case would go to hearing, which was the result of the running lists which were adopted for the sittings. Some plaintiffs commented on the environment produced by the Special Sittings. For example:

> *It took seven years to finalise. In the end what seemed like a panic...* (#720)

> *I feel that the matter was heard by a judge not skilled in this particular area of law and that due to the urgency to clear the incredible number of cases. I believe that genuine cases suffered because of this haste to clear the backlog.* (#63)

> *I was told the courts were trying to clear the backlog in two weeks for dozens of cases. I felt like I was pushed along to settle between my barrister and the other side. I felt I was conned.* (#1136)

Some plaintiffs had concerns about the operation of the law itself. Reliance on precedent instead of individual case merit was noted, contributory negligence was seen as being unfair, as was the exclusion of overseas evidence in court.

A few plaintiffs wrote about concerns they had with judge and jury verdicts. One asked how ... *ordinary everyday people like myself know how much a person's future or past pain and suffering is worth* (#722). Another plaintiff was concerned about judicial decisions, that their "destiny" was in one person's hands.

Judgements About Legal Costs and Deductions from Compensation

The payment of legal fees and deductions which were made from the compensation amount received considerable attention. Some plaintiffs questioned the very existence of solicitor-client costs. They believed that because they had won their claim, all costs incurred would and should have been paid by the defendant. One plaintiff thought all costs would have been covered by legal aid. The tone of the responses which were made in this vein is present in the following quote:

> *If you won a case, the fees in general should be paid by the losing party.* (#591)

Others wrote that they considered costs should only be incurred if a case is heard in court.

The deduction of money from the compensation amount was another contentious issue for some plaintiffs. The refund of compensation payments, reimbursements made by government departments, a deduction made by the defendant to cover a missed doctor's appointment, and the fact that some expenses simply could not be reimbursed were also mentioned.

5.3.8 How the Court Could Provide a Better Service

Plaintiffs were asked if they had any comments about how the Supreme Court could provide a better service to people.

Becoming more "user friendly" ranked most highly as being the way the court could provide a better service. Suggestions were also provided as to how this could be achieved. Most often, plaintiffs wrote that the court could provide written information about court procedures. One plaintiff suggested that information could be

provided by video. Following this was a call for simplification of legal language and legal procedure. A number of plaintiffs suggested that the court should provide an orientation service by means of a guided tour of the court, including sitting in on other cases as a way to prepare people for the process they may find themselves a part of. Some examples of such suggestions follow:

> *A booklet telling people their rights.* (#40)
>
> *A complete document on the procedures that will be followed and the number of stages to go through plus a time frame would be very helpful.* (#63)
>
> *It is felt that the legal profession like to preserve a slight air of unknown to the client. More brochures.* (#542)
>
> *Don't keep everything so secretive – humanise the system...* (#342)
>
> *Precise details in layman's language.* (#367)

A number of plaintiffs suggested the court should provide an advisory service to plaintiffs, enabling them to discuss their case with an impartial, third party. More involvement on a case by case basis, more individual case management and individual case information were also suggested as ways to provide a better service.

> *Provide explanations of the system, provide advice/counselling services on this type of case, provide independent resource advice on the action of the legal profession.* (#913)
>
> *A pamphlet on procedures. Maybe an info-line phone service: An independent objective view point for litigants.* (#910)

Delay reduction was the second most frequently cited way for the court to provide a better service. This issue is obviously of considerable importance to plaintiffs. Some made suggestions about the way this could be achieved. A number suggested increasing judicial resources and/or increasing court sitting time. A further suggestion was to get cases out of the court system. Some one-off suggestions on how to reduce delay were also made. One plaintiff suggested bringing in full-time Special Sittings, another, to have no adjournments and not to stand cases over.

Related to the belief that there is a need for the court to be more involved in individual cases, were calls for more court directed management of the way both plaintiff and defendant lawyers conduct litigation. The belief was that the legal representatives are not accountable to anyone and this was seen as being problematic. As one plaintiff wrote:

> *Seems there is no control over what the lawyers do...* (#971)

A handful of plaintiffs wrote about other things the court could do to provide a better service. Included were the provision of better interpreting facilities and more attention to the physical comfort of plaintiffs. A few plaintiffs wrote that they thought people should be able to represent themselves in court.

The Type of Information the Plaintiffs Required

The type of information plaintiffs thought they should have been given was also collected. Six different themes were identified from the responses.

Most commonly, plaintiffs wrote that they would have liked to have been more informed about the general procedures of the court. Following this, they wrote that they would have liked more information about their role in the procedure or to be informed about their rights and their legal obligations. For example:

> *How the system works and what is expected from you, most people are very nervous in matters like these.* (#167)

More information about the court lists featured as the third highest information need. Plaintiffs wanted to know where their case stood on the list, why their case was taking as long as it was and to be given some indication of the time frame to expect.

Far less frequently, plaintiffs wrote that they would have liked to have been given specific information about their case by the Court, information about how the amount they were awarded was reached, and how the negotiation process was conducted.

5.4 Discussion

The following provides a summary of the issues which were raised by this analysis of the comments made by plaintiffs. The comments made echoed some of the issues which were addressed in Section 4. This serves to provide confirmation of some of the conclusions which were drawn.

What has become evident from the analysis of the plaintiffs' comments is that many of their concerns were born of common litigation experiences. This signifies that there were particular aspects of the litigation process which, for these plaintiffs, were not operating optimally. Perhaps what is even more important a finding is that a number of the concerns which were raised are not peculiar to this group of plaintiffs: they have been discussed in previous research and literature. For example, the results of this analysis bear a remarkable resemblance to the results of consumer research undertaken in 1990 by the Roy Morgan Research Centre.[65] The report concluded that in order to improve service delivery, people thought that solicitors should address the following: reduce fees, improve value, be more honest, be more aware of clients' needs, provide a better service, do things more quickly and give more information.

A number of issues were raised by the plaintiffs which were of concern to them. Perhaps the strongest issues which ran through the responses and were evident at various stages of the litigation process were of being poorly informed and poorly

treated as a legal client, as a plaintiff, and as a user of the legal system. The many calls for more information and a more user-friendly system stand as testimony to this.

The lawyer-client relationship is an area which has received considerable attention, and the issues which were raised by the plaintiffs also echo previous research findings. For example, in a survey conducted by the Law Foundation of New South Wales in 1978, it was found that people felt their lawyer had not kept them informed about the progress of their case.[66] A number of plaintiffs also raised the issue of information complexity. The delivery of complex legal language is considered to reflect an imbalance in the distribution of power in the lawyer-client relationship.[67]

Also highlighted by the comments was that plaintiffs, due to not being adequately informed, were effectively alienated from their case. This appears to have been the case for a number of plaintiffs in this sample, and clearly reflects Rosenthal's "traditional" model of lawyer-client interaction.[68]

The traditional lawyer-client model stresses respect for professional knowledge, competence and integrity. It operates on the premise that the professional and client are best served by the professional assuming broad control over solutions to the problems brought by the client. However, as Fitzgerald noted in 1975, forcing a client to accept the lawyer's definition of the situation as an accurate and appropriate one may be therapeutic in the short term but long-term results might cause unhappiness and frustration following contact with the legal system.[69] This appears to have been the case for many of the plaintiffs who responded to the questionnaire.

The cost of litigation and the impact it has on plaintiffs was an issue which received considerable attention. As stated in the recent *Access to Justice* report,[70] most individuals use lawyers only infrequently and have little or no information about legal services, their likely cost, or the ways in which costs might be calculated.

The costs issues which were raised by the plaintiffs reflect this and are consistent with research findings from a survey conducted for the Law Institute of Victoria. In the Victorian study it was found that members of the public often did not understand what they were paying for, that fees were generally perceived as being high and difficult to relate to the advantage gained by the client.[71] Tomasic also found that 50% of people agreed that "Most solicitors charge more than their services are worth".[72] The concerns raised by the plaintiffs about their legal costs were also similar to the findings of a survey conducted in 1985.[73] It was reported that many solicitors' bills were not itemised and contained little information about specific items of work done, the charges allocated to them, or when they took place.

It has been suggested that concern over the costs of litigation often stems from the plaintiff not being given an adequate explanation of them.[74] An article which

appeared in the New South Wales Law Society Journal in 1981 discussed the common complaints the Society received from people about their solicitors.[75] Costs were one of the more common areas of complaint. The article stated that the difference between solicitor-client and party-party costs is not explained in terms intelligible to a layman. A decade later, the journal reported that the principal reason for complaints from clients was due to a breakdown in the communication between solicitor and client.[76] Little appears to have changed over time.

Nevertheless, recognition of this issue has resulted in the recent Legal Profession Reform Act 1993 (NSW). The aim of this Act is to spell out what people should expect as consumers of legal services, including being informed about the amount of legal costs which will be involved in their case.

The stress and trauma that a number of plaintiffs referred to indicates that the emotional state of the plaintiff needs to be considered during litigation. The emotional strain comes not just from the shock of the accident itself, but from the disorder and feelings of helplessness it creates.[77] These feelings appear to be aggravated by the process and duration of litigation. As a result, they may have a considerable impact on the plaintiff. Therefore, it is important also to consider the emotional impact the accident or event which preceded the claim may have on overall satisfaction with the litigation experience. For example, although a lawyer may succeed in getting some compensation for their client, the problem brought to the lawyer in the first place remains insoluble in the sense that the plaintiff may still be suffering from the injury.

Much of the emotional strain experienced by the plaintiffs seemed to be re-experienced with their filling out of the questionnaire. The indications are that many plaintiffs had a need for the emotional aspects of their litigation experience to be recognised and attended to. This need could perhaps be met by the establishment of a professional network through which plaintiff solicitors could refer their clients to appropriate professionals. Such a referral service may be helpful in reducing the effects of both the event and the litigation which has resulted.

Finally, many plaintiffs indicated that the court could provide a better service by becoming more involved with the cases going through the court system. Various issues were described under this theme. In short, plaintiffs saw a need for the Court to become a more "user friendly" institution. As Church[78] points out, it is not so much that Courts are intentionally impersonal or arrogant in their dealing with the public, rather they have simply inherited a mindset that had its origins in a judiciary of a different day.

Information provided in the *Access to Justice*[79] report indicates that there has been recognition of the need for the legal system generally to become more user-friendly. In the report it is stated that developments in the administration of the courts have adopted a more "consumer oriented approach". Further, it is stated

that this new approach reflects a principle that the legal system, including the courts, should become more responsive to the needs and expectations of people who come in contact with the system.

As Professor Sallmann states, there is much need for change as the emphasis of the courts on deciding cases "... has traditionally meant that little attention has been given to the development of a consumer orientation to the courts to benefit people who come in contact with the courts in various ways".[80]

5.5 Conclusion

This section has provided an account of the issues which the plaintiff saw as being important or of concern and the reasons as to why. The main themes to emerge from the written responses were feelings of being excluded from their case and feelings of being improperly treated as a legal client, a plaintiff and as a user of the legal system. Central to such feelings was the need to be informed about their case and the legal process. This reflects the findings reported in Section 4.

By providing plaintiffs with such information, the plaintiff is given the feeling that they are a part of the process.[81] They are empowered, as being provided with information allows the plaintiff to have a more participatory role during the process of their case, and a role in deciding its outcome.

Perhaps the overall feeling of the plaintiffs who were dissatisfied with their litigation experience is best summed up in the following quotation which was the conclusion of research which was conducted in the United Kingdom:

"Far from feeling that the law is backing him in what he sees as his moral rights, the accident victim involved in a legal claim seems frequently to feel confused, anxious, and buffeted by the system".[82]

60 Matruglio, T, 1994, op. cit.

61 Berg, BL, 1989, *Qualitative Research Methods*, Allyn and Bacon, Massachusetts.

62 A theme is a simple sentence, a string of words which has a subject and a predicate. Berg, ibid.

63 Following each quote is the number which appeared on the questionnaire respondents were sent. This number was used for both administrative and matching purposes.

64 Rasink, op. cit.

65 The Roy Morgan Research Centre, op. cit.

66 Tomasic, op. cit.

67 Tomasic, op. cit.

68 Rosenthal, op. cit.

69 Fitzgerald, JM, 1975, "The Contract Buyers League and the Courts: A Case Study of Poverty in Litigation", *Law and Society Review*, 9(2), pp.165-195.

70 Access to Justice Advisory Committee, 1994, *Access to Justice: An Action Plan*, Commonwealth of Australia.

71 Senate Standing Committee on Legal and Constitutional Affairs, 1991, *Costs of Legal Services and Litigation: Discussion Paper No. 3 Contingency Fees*, Commonwealth of Australia.

72 Tomasic, op. cit.

73 Legal Access Marketing Group, 1985, *Legal Access: A Marketing Report and Plan to Improve Citizen Access to the Law*, Legal Access, Marketing Group of Sydney Technical College.

74 Disney, et. al, op. cit.

75 Carney, W, 1981, "On Communicating with Clients", *Law Society Journal* (NSW), 501.

76 Smith, F, 1991, "Professional Conduct Department 1990-1991", *Law Society Journal* (NSW), Vol. 29, August, pp.48-49.

77 Rosenthal, op. cit., p.72.

78 Church, op. cit., p.7.

79 Access to Justice Advisory Committee, op. cit.

80 Sallmann, PA, 1993, "Towards a More Consumer-Oriented Court System", *Journal of Judicial Administration*, 3.

81 Rosenthal, op. cit.

82 Lloyd-Bostock, S, 1984, "Fault and Liability for Accidents: The Accident Victim Perspective", in *Compensation and Support for Illness and Injury*, Clarendon Press, Oxford, p.160.

6

Summary and Conclusion

The CJRC conducted a survey of people who had recently had a case resolved in the Common Law Division of the Supreme Court. Specifically, empirical information was sought which would assist in answering the following questions:

- How satisfied are plaintiffs following their experience of litigation?
- What factors of the litigation process are related to plaintiff satisfaction?
- What do the plaintiffs themselves have to say about their experience?

The following provides a summary of the answers this research was able to provide to these questions.

6.1 Summary

The examination of the fixed choice questions (Section 3) provided a general picture of how the plaintiffs felt about their litigation experience. It was found that plaintiffs do have expectations about how long their case is going to take and how much compensation they might receive. Further, that these expectations are generally based on information provided to them by their solicitor. Plaintiffs were asked how satisfied they were with case duration, outcome and cost, with the method of case resolution and the operation of the legal system. High proportions of plaintiffs reported being dissatisfied with each of these measures.

Section 4 provided an analysis of factors which were related to plaintiff satisfaction. The findings indicated that case outcome, duration and cost were not as important to plaintiff satisfaction as were some other factors. This result runs counter to a popular belief about what factors are related to plaintiff satisfaction. It was found that expectations held by plaintiffs, and their perceptions regarding control over case outcome, their ability to participate in the legal process and their perception of how fair the process had been were more influential when it came to reported satisfaction.

In Section 4, the relationship of factors external to the litigation process to satisfaction were also examined. Case characteristics were examined and were

found not to be related to plaintiff satisfaction. Plaintiff characteristics were also examined. The only characteristics found to be related to plaintiff satisfaction were income (satisfaction with resolution method and case outcome) and education (satisfaction with duration).

Section 5 examined the comments provided by the plaintiffs. Many of the issues raised by the plaintiffs echoed those which were discussed in Section 4. In particular, the need for more information, the need to participate and the need for "fairer" treatment became evident.

6.2 Conclusion

This research has provided valuable insight into the experience of litigation from the perspective of the plaintiff. It has identified aspects of the litigation process which are important to plaintiff satisfaction, as well as identifying areas of the process which were of particular concern to them. Some of the areas identified have previously been recognised as being problematic, others are new.

Plaintiff satisfaction following their experience of litigation was found to have less to do with the actual duration of their case and its outcome than with how their experience compared with their expectation. That is, more plaintiffs whose expectations were matched by reality were satisfied than were plaintiffs whose expectations were not matched. The expectations held about duration and outcome were typically found to have been the result of information provided to them by their solicitor.

Plaintiff perceptions about how much control they had, how much they were able to participate and how fair the process was were also important to their satisfaction, as was being provided with information about the progress of their case.

These results have important policy implications for the delivery of legal and judicial services. Typically, procedural reforms are aimed at reducing litigation costs and delays. The results of this research indicate that such reforms may not be counted on to enhance plaintiff satisfaction simply by virtue of the success of the innovations. Instead, it would appear that plaintiff satisfaction may be increased by changing the litigation environment in other ways.

Upon reading the results of this research, rather than dwell on the proportion of plaintiffs who reported being dissatisfied following their litigation experience, it is important to consider strategies which could be employed to enhance plaintiff satisfaction. Perhaps this sentiment can be best summed up by saying that it is important **not** to say *"Too many plaintiffs were dissatisfied"* but *"What can be done about their dissatisfaction?"*. By identifying the aspects of the litigation process which plaintiffs find unsatisfactory it becomes possible to evolve strategies for improvement.

APPENDIX 1
Data Sets

1. File Based Data Collection

Characteristics of plaintiffs

- Age
- Gender
- Level of education
- Occupation at time of accident
- Weekly income at time of accident
- Place of residence
- Name of firm of solicitors representing the plaintiff
- Name of counsel representing the plaintiff

Characteristics of defendants

- Type of defendant (individual, company, public agency)
- Whether there were multiple defendants
- Name of solicitors representing the defendant
- Name of counsel representing the defendant

Claim information

- Claim type
- Nature of injury
- Date of accident

Case history

- Date proceedings were commenced in the Supreme Court
- Total number of court appearances and the dates of these
- The date of finalisation

Lawsuit information

- The number of reports served by the plaintiff and defendant
- Whether an Issues and Listing Conference was requested
- Whether a jury trial was requested (or dispensed with)
- Number of witnesses proposed to be called
- Estimate of settlement prospects
- Solicitor's estimates of damages and future economic loss
- Estimated length of hearing
- Actual length of hearing
- Amount of compensation received
- Litigation costs incurred

2. Questionnaire

Section 1: How long your case took

- Lawyer's estimate of case duration
- Lawyer's reason for case duration
- Case duration in relation to plaintiffs' expectations
- Satisfaction with case duration

Section 2: Resolving your case

- Method of case resolution expected by plaintiff
- Plaintiff ratings of:
  - comfort with settlement negotiations
  - participation during settlement negotiations
  - fairness of settlement negotiations
  - control over case outcome
  - satisfaction with method of case resolution
- Written concerns about method of case resolution

Section 3: Money you received

- Basis of plaintiff compensation expectation
- Lawyer's estimate in relation to their expectation
- Amount received in relation to lawyer's estimate
- Satisfaction with compensation amount
- Satisfaction with compensation following deduction of lawyer's fees

Section 4: Your lawyers fees and other charges

- Payment of lawyers and other fees/bills prior to case resolution
- Satisfaction with the cost of litigation
- Written comments about lawyers' fees or other charges

Section 5: Your lawyer

- Extent of information provided by their lawyer
- Comprehensibility of information provided by their lawyer
- Written comments about the information provided by their lawyer

Section 6: The Supreme Court

- Plaintiff's level of understanding during case conduct
- Whether more information was required and who by
- Written comments about how the Supreme Court could provide a better service

Section 7: General questions

- Satisfaction with the operation of the legal system
- Written comments about the resolution of their claim
- Previous litigation experience

APPENDIX 2

Data Collection Instruments

1. File Based Data Collection Sheet

Checked: _____

CJRC STUDY OF THE SUPREME COURT SPECIAL SITTINGS

DATA COLLECTION INFORMATION

1	Coder initials	Initials	☐☐
2	Todays date	(dd-mm-yy)	☐☐☐☐☐☐

FILE INFORMATION

3	Registrar Group	Use code	☐
4	File/court number		S☐☐☐☐☐ of 19☐☐

SOLICITOR DETAILS: from 1992 form

5	Plaintiff solicitor	Use code	☐☐☐
6	Defendant solicitor	Use code	☐☐☐

ACCIDENT DETAILS: from Statement of Claim

7	Statement of Claim	(dd-mm-yy)	☐☐☐☐☐☐
8	Date of accident	(dd-mm-yy)	☐☐☐☐☐☐
9	Claim type	Use code	☐ other:_____
10	Nature of the injury	Use code	☐☐☐
11	Body part	Use code	☐

PLAINTIFF DETAILS: from chronology, medical reports; Statement of Claim

12	Name	Family name	_____
		name/initials	_____
13	Address	No & Street	_____
		Suburb/Town	_____
		Postcode	☐☐☐☐
14	Gender	1=male 2=female	☐
15	Date of birth	(dd-mm-yy)	☐☐☐☐☐☐
16	Education	Use code	☐☐
17	Occupation	Use code	☐☐☐☐
18	Income at time of accident	Weekly amount	$☐☐☐☐☐☐ 1=net 2=gross ☐

DEFENDANT DETAILS

19	Type of defendant	Circle all relevant	1 2 3 4 5

ANNEXURE A/Special Sittings Certificate

	PLAINTIFF SOLICITOR		
20	Counsel	Family name(s)	
		Name/initials	
21	How many reports have been served	Medical & expert	
22	How many reports are pending		
23	ILC requested	1 = yes 2 = no	
	DEFENDANT SOLICITOR		
24	Counsel	Family name(s)	
		Name/initials	
25	How many reports have been served	Medical & expert	
26	How many reports are pending		
27	ILC requested	1 = yes 2 = no	

COURT APPEARANCES: from dates on the cover of the file

28	Record dates of all court appearances	(dd-mm-yy) 1)	
		(dd-mm-yy) 2)	
		(dd-mm-yy) 3)	
		(dd-mm-yy) 4)	
		(dd-mm-yy) 5)	
		(dd-mm-yy) 6)	
		(dd-mm-yy) 7)	
		(dd-mm-yy) 8)	
		(dd-mm-yy) 9)	
		(dd-mm-yy) 10)	
		(dd-mm-yy) 11)	
		(dd-mm-yy) 12)	
		(dd-mm-yy) 13)	
		(dd-mm-yy) 14)	
		(dd-mm-yy) 15)	
		(dd-mm-yy) 16)	
		(dd-mm-yy) 17)	

SPECIAL SITTINGS ISSUES AND LISTINGS CONFERENCE: 1992

29	Issues and listings conference	(dd-mm-yy)	

QUANTUM - HEADS OF DAMAGES (must be amounts provided during 1992)

30	**PLAINTIFF**	a) General damages *(include interest)*	$
		b) Future economic loss *(include interest)*	$
31	**DEFENDANT**	a) General damages *(include interest)*	$
		b) Future economic loss *(include interest)*	$

WORKERS COMPENSATION CLAIMS

31 c)	Total amount paid out already by insurer	$

TERMS OF SETTLEMENT/AWARD

32	Final award amount	a) General damages *(include interest)*	$
		b) Future economic loss *(include interest)*	$
		c) Costs	$
		d) Total award	$ costs 1 = inc 2 = not incl
	Workers compensation payments *(amount indicated in 31a)*	1 = inclusive 2 = not inclusive	
	Contributary negligence deduction	%	%

JURY/NON-JURY TRIALS

33	Prior to 1992 was this to be a jury trial?	1 = yes 2 = no	
34	Requested by:	1 = plaintiff solicitor 2 = defendant solicitor	
35	During the Special Sittings was the jury to be dispensed with?	1 = yes 2 = no	

SUIT INFORMATION: from Callover or Issues and Listing Conference sheets

37	Estimated length	Days	☐☐
38	Number of expert witnesses		medical / other / total
		Plaintiff	☐ ☐ ☐
		Defendant	☐ ☐ ☐
39	Number of lay witnesses		lay
		Plaintiff	☐
		Defendant	☐
40	Settlement prospects	1 = good 2 = average 3 = poor	☐

DISPOSAL: SETTLEMENT OR HEARING

41	Stage of disposal	Use code	☐☐
42	Date settled	(dd-mm-yy)	☐☐☐☐☐☐
43	Date hearing commenced	(dd-mm-yy)	☐☐☐☐☐☐
44	Number of days court attended	Days	☐☐
45	Actual length of hearing	a) Hours	☐☐
		b) Minutes	☐☐
46	Judicial Officer	Use code	☐☐☐
47	Counsel at hearing (from Associates transcripts)		
	PLAINTIFF	Family name(s)	_____
		Name/initials	_____
	DEFENDANT	Family name(s)	_____
		Name/initials	_____

THANK YOU FOR CODING THIS FILE

2. Questionnaire

CJRC
CIVIL JUSTICE RESEARCH CENTRE
A PROJECT OF THE LAW FOUNDATION OF NEW SOUTH WALES

SUPREME COURT QUESTIONNAIRE

Confidentiality

This is an anonymous questionnaire about your experience with the Supreme Court.

Please ***do not*** write your name or the name of your lawyer on the questionnaire.

If you have any questions

If you have any questions, please call the Project Manager, Tania Matruglio, on (02) 290 3520. Reverse the charges if you are calling long distance.

When you are finished

When you have finished, please return the questionnaire in the enclosed postage paid envelope.

Thank you for taking part in this study

Mezzanine Level 75 King Street Sydney
GPO Box 4264 Sydney NSW 2001 Australia
Telephone (02) 290 3520 Facsimile (02) 262 1660

How long your case took

1 When you first saw your lawyer, about how long did he/she say it would take to get compensation for your personal injury case?

2 Did your lawyer explain why it would take this amount of time?
No ☐ Go to 3
Yes ☐ Give details of the explanation(s)

3 Did your case take more or less time to be resolved than you expected?
More time than expected ☐
Less time than expected ☐
About as much time as expected ☐

4 Overall, how satisfied were you with the amount of time it took to resolve all aspects of your case?
Very satisfied ☐
Satisfied ☐
Dissatisfied ☐
Very dissatisfied ☐

Resolving your case

5 When you first saw your lawyer, did you expect that your case would be decided by a judge?
Yes ☐ Go to 6
No ☐ How did you expect your case would be resolved?

6 How strongly do you agree with each of the following statements?

I was comfortable with the way my lawyer conducted the settlement negotiations
Strongly agree ☐
Agree ☐
Disagreee ☐
Strongly disagree ☐

I was able to participate during the settlement negotiations
Strongly agree ☐
Agree ☐
Disagreee ☐
Strongly disagree ☐

The negotiation process was fair
Strongly agree ☐
Agree ☐
Disagreee ☐
Strongly disagree ☐

I felt I had control over the outcome of my case
Strongly agree ☐
Agree ☐
Disagreee ☐
Strongly disagree ☐

I would have liked to participate more during the settlement negotiations
Strongly agree ☐
Agree ☐
Disagreee ☐
Strongly disagree ☐

7 Overall, how satisfied were you with the method used to resolve your case?
Very satisfied ☐
Satisfied ☐
Dissatisfied ☐
Very dissatisfied ☐

8 Do you have any concerns about the method used to resolve your case that you would like to tell us about?
No ☐ Go to 9
Yes ☐ Give details of your concerns

Money you received

9 ***Before*** you saw your lawyer, did you have any idea how much money you might get?
No ☐ Go to 10
Yes ☐ On what did you base this expectation?
The advice of relatives or friends ☐
The advice of a doctor ☐
The advice of a union ☐
The advice of police ☐
The advice of an insurance company ☐
Your own feelings ☐
Previous court experience ☐
Other ☐ Write details below

10 When you saw your lawyer, did he/she tell you how much you might get?
No ☐ Go to 12
Yes ☐ Was it what you expected?
More than expected? ☐
About the same as expected? ☐
Less than expected? ☐

11 ***In the end***, did you get more or less money than your lawyer said you might get?
More than your lawyer said ☐
About the same as your lawyer said ☐
Less than your lawyer said ☐

12 How satisfied were you with the amount of money you were ***awarded***?
Very satisfied ☐
Satisfied ☐
Dissatisfied ☐
Very dissatisfied ☐

13 How satisfied were you with the amount of money you received ***after your lawyers fees had been deducted***?
Very satisfied ☐
Satisfied ☐
Dissatisfied ☐
Very dissatisfied ☐

Your lawyers fees and other charges

14 Did you have to pay any ***lawyers fees or bills before*** your case was resolved?
No ☐ Go to 15
Yes ☐ At what stage of the case did you have to make these payments? *Tick all those that are relevant.*
At the start of the claim ☐
In regular installments ☐
As bills were received ☐
Other ☐ Write details below

15 Did you have to pay any ***other fees or bills before*** your case was resolved?
No ☐ Go to 16
Yes ☐ What were they for?
Doctor/medical fees ☐
Other ☐ Write details below

16 Did your lawyer tell you that you would have to pay any of the above fees or bills ***before*** your case was resolved?
No ☐
Yes ☐

17 In the end, how satisfied were you that you got your money's worth from your lawyer?
Very satisfied ☐
Satisfied ☐
Dissatisfied ☐
Very dissatisfied ☐

18 Do you have any concerns about your lawyers fees or any other charges that you would like to tell us about?
No ☐ Go to 19
Yes ☐ What are they?

Your lawyer

19 How well informed did your lawyer keep you about the progress of your case?

Very well ☐
Well ☐
Not very well ☐
Poorly ☐

20 How well did your lawyer explain things in a way that you could understand?

Very well ☐
Well ☐
Not very well ☐
Poorly ☐

21 Do you have any further comments about the information your lawyer provided to you during your case?

No ☐ Go to 22
Yes ☐ What are they?

The Supreme Court

22 How well did you feel you understood what was going on while your case was being conducted?

Very well ☐
Well ☐
Not very well ☐
Poorly ☐

23 Do you think you should have been given more information about the Supreme Court and its procedures?

No ☐ Go to 25
Yes ☐ What about?

24 Who do you think should have provided this information?

The Supreme Court ☐
Your lawyer ☐
Your barrister ☐
Other ☐ Write details below

25 Do you have any comments about how the Supreme Court could provide a better service to people?

No ☐ Go to 26
Yes ☐ What could they have done?

General questions

26 Overall, how satisfied were you with the way the legal system operated for your case?

Very satisfied ☐
Satisfied ☐
Dissatisfied ☐
Very dissatisfied ☐

27 Do you have any further comments about the resolution of your personal injury case?

No ☐ Go to 28
Yes ☐ What are they?

28 Have you ever been involved in another legal action?

No ☐ Go to 29
Yes ☐ What was it for?

29 Would you like us to send you a copy of the results of this questionnaire?

No ☐
Yes ☐

APPENDIX 3
Summary of the Two-way Tests

Chi-square tests were used for the statistical analyses undertaken for this research. This is a test of the independence of two categorical variables, the basic unit of measure used is frequency. The following information presents the results of the chi-square tests which were undertaken for the report. Those marked with an asterisk (*) indicates a statistically significant relationship.

Section 2: Characteristics of the Plaintiffs and their Claims

2.6 Testing for Response Bias

Gender	$\chi^2_1 = 3.46$	p = .06	n = 1096
Age	$\chi^2_6 = 16.42$	p = .01*	n = 881
Education	$\chi^2_5 = 7.90$	p = .16	n = 514
Occupation	$\chi^2_{10} = 3.3$	p = .97	n = 1055
Claim type	$\chi^2_3 = 0.56$	p = .90	n = 1095
Type of injury	$\chi^2_7 = 12.23$	p = .09	n = 1080
Body part injured	$\chi^2_8 = 13.87$	p = .09	n = 1074
Stage of disposal	$\chi^2_{13} = 19.79$	p = .10	n = 1077

Section 3: Plaintiff Satisfaction

3.1.1 How long your case took

Was reported satisfaction different for those who had and who had not been given an explanation?

Explanation and satisfaction	$\chi^2_1 = .65$	p = .42	n = 400

3.1.6 The Supreme Court

Were those who said they should be given more information those who did not receive:

Case progress information	$\chi^2_2 = 36.31$	p = .000*	n = 391
Understandable information	$\chi^2_2 = 33.33$	p = .000*	n = 390

4 Factors Related to Plaintiff Satisfaction

4.2.1 The Role of Actual Case Outcome, Duration and Cost

Case outcome & outcome satisfaction	χ^2_7 = 10.64	p = .16	n = 359
Case duration & duration satisfaction	χ^2_2 = 4.05	p = .13	n = 246
Case cost & cost satisfaction	χ^2_2 = 2.01	p = .37	n = 23

4.2.2 The Role of Expectation

Expected outcome & satisfaction	χ^2_2 = 80.62	p = .000*	n = 292
Expected duration & satisfaction (plaintiff measure)	χ^2_2 = 7.23	p = .027*	n = 272
Expected duration & satisfaction (objective measure)	χ^2_2 = 92.63	p = .000*	n = 421

4.2.3 The Role of Plaintiff Perceptions

Control and satisfaction with:			
Compensation	χ^2_1 = 65.83	p = .000*	n = 402
Cost	χ^2_1 = 64.81	p = .000*	n = 399
Duration	χ^2_1 = 32.27	p = .000*	n = 410
Method of resolution	χ^2_1 = 99.29	p = .000*	n = 411
Operation of the legal system	χ^2_1 = 77.93	p = .000*	n = 400
Participation and satisfaction with:			
Compensation	χ^2_1 = 49.76	p = .000*	n = 398
Cost	χ^2_1 = 75.73	p = .000*	n = 395
Duration	χ^2_1 = 30.22	p = .000*	n = 406
Method of resolution	χ^2_1 = 54.35	p = .000*	n = 407
Operation of the legal system	χ^2_1 = 65.17	p = .000*	n = 397
Fairness and satisfaction with:			
Compensation	χ^2_1 = 111.76	p = .000*	n = 397
Cost	χ^2_1 = 112.55	p = .000*	n = 394
Duration	χ^2_1 = 68.82	p = .000*	n = 405
Method of resolution	χ^2_1 = 148.35	p = .000*	n = 407
Operation of the legal system	χ^2_1 = 142.64	p = .000*	n = 398

4.2.4 The Impact of Case and Plaintiff Characteristics

Claim type and satisfaction with:			
Compensation	χ^2_3 = 7.10	p = .07	n = 406
Cost	χ^2_3 = 2.18	p = .54	n = 407
Method of resolution	χ^2_3 = 1.8	p = .61	n = 416
Operation of the legal system	χ^2_3 = 1.67	p = .64	n = 414
Case duration	χ^2_3 = 2.88	p = .41	n = 425
Body part injured and satisfaction with:			
Compensation	χ^2_7 = 9.84	p = .21	n = 399
Cost	χ^2_7 = 13.90	p = .05*	n = 399
Method of resolution	χ^2_7 = 10.69	p = .15	n = 408
Operation of the legal system	χ^2_7 = 8.82	p = .27	n = 405
Case duration	χ^2_7 = 8.25	p = .31	n = 416
Type of injury and satisfaction with:			
Compensation	χ^2_2 = 2.21	p = .33	n = 399
Cost	χ^2_2 = 3.93	p = .14	n = 400
Method of resolution	χ^2_2 = 0.86	p = .65	n = 409
Operation of the legal system	χ^2_2 = 1.29	p = .53	n = 406
Case duration	χ^2_2 = 0.09	p = .96	n = 417
Stage of disposal and satisfaction with:			
Compensation	χ^2_7 = 7.52	p = .38	n = 401
Cost	χ^2_7 = 14.34	p = .05*	n = 402
Method of resolution	χ^2_7 = 11.45	p = .12	n = 411
Operation of the legal system	χ^2_7 = 11.82	p = .11	n = 409
Case duration	χ^2_7 = 5.81	p = .56	n = 340
Gender and satisfaction with:			
Compensation	χ^2_1 = 0.23	p = .63	n = 406
Cost	χ^2_1 = 0.39	p = .53	n = 407
Method of resolution	χ^2_1 = 2.02	p = .16	n = 416
Operation of the legal system	χ^2_1 = 0.19	p = .66	n = 414
Case duration	χ^2_1 = 0.42	p = .52	n = 421

Age and satisfaction with:			
Compensation	χ^2_4 = 2.79	p = .59	n = 330
Cost	χ^2_4 = 4.91	p = .31	n = 332
Method of resolution	χ^2_4 = 4.77	p = .31	n = 338
Operation of the legal system	χ^2_4 = 2.94	p = .57	n = 333
Case duration	χ^2_4 = 4.30	p = .37	n = 341
Income and satisfaction with:			
Compensation	χ^2_4 = 14.55	p = .01*	n = 306
Cost	χ^2_4 = 4.54	p = .34	n = 304
Method of resolution	χ^2_4 = 21.94	p = .001*	n = 310
Operation of the legal system	χ^2_4 = 9.25	p = .06	n = 305
Case duration	χ^2_4 = 2.58	p = .63	n = 314
Education and satisfaction with:			
Compensation	χ^2_5 = 10.26	p = .07	n = 198
Cost	χ^2_5 = 10.24	p = .07	n = 199
Method of resolution	χ^2_5 = 5.65	p = .34	n = 204
Operation of the legal system	χ^2_5 = 9.95	p = .08	n = 201
Case duration	χ^2_5 = 15.25	p = .01*	n = 206
Occupation and satisfaction with:			
Compensation	χ^2_{10} = 9.91	p = .45	n = 392
Cost	χ^2_{10} = 6.83	p = .74	n = 392
Method of resolution	χ^2_{10} = 12.57	p = .25	n = 401
Operation of the legal system	χ^2_{10} = 10.11	p = .43	n = 399
Case duration	χ^2_{10} = 7.25	p = .70	n = 408
Previous litigation experience and satisfaction with:			
Compensation	χ^2_1 = 1.62	p = .20	n = 402
Cost	χ^2_1 = 1.11	p = .30	n = 403
Method of resolution	χ^2_1 = 1.36	p = .24	n = 412
Operation of the legal system	χ^2_1 = 0.32	p = .57	n = 411
Case duration	χ^2_1 = 0.42	p = .52	n = 421

4.2.5 The Role of Information on Plaintiff Perceptions

Being kept informed about case progress and satisfaction with:			
Compensation	χ^2_1 = 32.17	p = .000*	n = 404
Cost	χ^2_1 = 116.14	p = .000*	n = 405
Method of resolution	χ^2_1 = 74.71	p = .000*	n = 414
Operation of the legal system	χ^2_1 = 66.48	p = .000*	n = 412
Case duration	χ^2_1 = 27.52	p = .000*	n = 423
Being kept informed about case progress and perceptions of:			
Control	χ^2_1 = 65.21	p = .000*	n = 410
Participation	χ^2_1 = 75.15	p = .000*	n = 406
Fairness	χ^2_1 = 62.25	p = .000*	n = 405

5. Plaintiffs' Additional Comments

5.2 Which plaintiffs provided written responses?

Concerns about and satisfaction with:			
Method of resolution	χ^2_1 = 99.91	p = .000*	n = 414
Costs	χ^2_1 = 70.10	p = .000*	n = 405
Comments about and how well lawyer:			
Informed of case progress	χ^2_2 = 47.97	p = .000*	n = 427
Understandable	χ^2_2 = 54.41	p = .000*	n = 426

APPENDIX 4

Summary of the Logistic Regression Tests

Table A1. Satisfaction with case outcome: logistic regression analysis of the factors

Factors	Full Model			Reduced Model		
	B coef	Sig	Exp(B)	B coef	Sig	Exp(B)
Objective measures						
Outcome:		.033*			.035*	
$0–99,999	.4058	.379	1.5004	.3366	.440	1.4001
$100,000–199,999	−1.6102	.012	.1999	−1.4874	.013	.2260
$200,000+	1.2044	n/a	3.3348	1.1508	n/a	3.1607
Expectations						
Outcome:		.000***			.000***	
received more	−1.4158	.051	.2427	−1.5441	.024	.2135
received the same	−.7560	.136	.4695	−.5507	.231	.5765
received less	2.1718	n/a	8.7741	2.0948	n/a	8.1238
Duration:		.366				
more time	.1800	.831	1.1972			
less time	.5999	.706	1.8220			
same time	−.7799	n/a	.4585			
Perceptions						
Fairness of settlement negotiations:						
was fair	−1.6148	.000***	.1989	−1.5746	.000***	.2071
was not fair	1.6148	n/a	5.0269	1.5746	n/a	4.8288
Case Characteristics						
Duration:		.192				
1–4 years	.5309	.204	1.7005			
5 years	.3153	.430	1.3707			
6+ years	−.8462	n/a	.4290			
Plaintiff Characteristics						
Income:		.090			.098	
$1–20,000	1.2255	.094	3.4060	1.0313	.138	2.8047
$20,001–30,000	.4282	.401	1.5345	.3970	.421	1.4874
$30,001–40,000	−.4343	.384	.6477	−.5251	.273	.5915
$40,001–50,000	.2461	.798	1.2790	.5236	.583	1.6881
$50,000+	−1.4655	.090	.2310	−1.4278	n/a	.2401
Prior litigation experience:						
yes	−.2951	.443	.7445			
no	.2951	n/a	1.3433			
n		164				
(−2) log likelihood:		93.273			97.961	
Goodness of fit:		297.511			214.264	
Chi square:		101.366			96.678	
Degrees of freedom:		14			9	
Significance level:		.000***			.000***	

Source: CJRC Supreme Court and Plaintiff surveys.
* p<.05; ** p<.01; *** p<.001
An empirical finding is said to be statistically significant at .05, .01 or .001 when the probability of such a finding results from chance variations is less than: 1 in 20 (less than .05), 1 in 100 (less than .01) of 1 in 1000 (less than .001).

Table A2. Satisfaction with case cost: logistic regression analysis of the factors

Factors	Full Model			Reduced Model		
	B coef	Sig	Exp(B)	B coef	Sig	Exp(B)
Objective measures						
Outcome:		.032*			.031*	
$0–99,999	.8787	.010	2.4078	.8133	.011	2.2553
$100,000–199,999	–.4483	.283	.6387	–.4927	.219	.6110
$200,000+	–.4304	n/a	.6502	–.03206	n/a	.7257
Expectations						
Outcome:		.001***			.001***	
received more	.4861	.446	1.6260	.3970	.522	1.4873
received the same	–1.3224	.007	.2665	–1.2866	.006	.2762
received less	.8363	n/a	2.3078	.8896	n/a	2.434
Duration:		.077			.060	
more time	.6010	.252	1.8239	.5656	.262	1.7606
less time	–.0182	.985	.9820	.0377	.968	1.0384
same time	–.5828	n/a	.5583	–0.6033	n/a	.5470
Perceptions						
Fairness of settlement negotiations:						
was fair	–.9324	.000***	.3936	–.9136	.000***	.4011
was not fair	.9324	n/a	2.5406	.9136	n/a	2.4933
Case Characteristics						
Duration:		.993				
1–4 years	–.0144	.962	.9857			
5 years	.0359	.906	1.0365			
6+ years	–.0215	n/a	.9787			
Plaintiff Characteristics						
Income:		.721				
$1–20,000	.0401	.937	1.0409			
$20,001–30,000	.2326	.524	1.2619			
$30,001–40,000	.2812	.483	1.3247			
$40,00150,000	.1849	.769	1.2031			
$50,000+	–.7388	n/a	.4777			
Prior litigation experience:						
yes	–.0589	.846	.9428			
no	.0589	n/a	1.0607			
n		160				
(–2) log likelihood:		147.551			149.639	
Goodness of fit:		152.956			151.076	
Chi square:		67.813			65.725	
Degrees of freedom:		14			7	
Significance level:		.000***			.000***	

Source: CJRC Supreme Court and Plaintiff surveys.
* p<.05; ** p<.01; *** p<.001
An empirical finding is said to be statistically significant at .05, .01 or .001 when the probability of such a finding results from chance variations is less than: 1 in 20 (less than .05), 1 in 100 (less than .01) of 1 in 1000 (less than .001).

Table A3. Satisfaction with case duration: logistic regression analysis of the factors

Factors	Full Model			Reduced Model		
	B coef	Sig	Exp(B)	B coef	Sig	Exp(B)
Objective measures						
Outcome:		.137				
$0–99,999	–1.1886	.106	.3047			
$100,000–199,999	.3998	.631	1.4916			
$200,000+	.7888	n/a	2.2008			
Expectations						
Outcome:		.183				
received more	–.1573	.877	.8545			
received the same	–.5730	.374	.5639			
received less	.7303	n/a	2.0757			
Duration:		.000***			.000***	
more time	2.3322	.000	10.3001	2.0419	.000	7.7053
less time	–1.3543	.157	.2581	–1.4339	.092	.2384
same time	–.9779	n/a	.3761	–.6080	n/a	.5444
Perceptions						
Fairness of settlement negotiations:						
was fair	–1.2848	.000***	.2767	–1.3020	.000***	.2720
was not fair	1.2848	n/a	3.6139	1.3020	n/a	3.6766
Case Characteristics						
Duration:		.169				
1–4 years	–.0083	.984	.9917			
5 years	.8380	.068	2.3118			
6+ years	–.8297	n/a	.4362			
Plaintiff Characteristics						
Income:		.017*			.037*	
$1–20,000	1.5790	.040	4.8499	1.1816	.070	3.2597
$20,001–30,000	.6196	.221	1.8583	.4980	.246	1.6455
$30,001–40,000	.6896	.237	1.9929	.6306	.243	1.8788
$40,001–50,000	–2.7108	.001	.0665	–1.9818	.004	.1378
$50,000+	–.1774	n/a	.8374	–.3284	n/a	.7201
Prior litigation experience:						
yes	–.5800	.133	.5599			
no	.5800	n/a	1.7860			
n		163				
(–2) log likelihood:		86.177			98.849	
Goodness of fit:		165.686			134.098	
Chi square:		75.276			62.605	
Degrees of freedom:		14			7	
Significance level:		.000***			.000***	

Source: CJRC Supreme Court and Plaintiff surveys.
* p<.05; ** p<.01; *** p<.001
An empirical finding is said to be statistically significant at .05, .01 or .001 when the probability of such a finding results from chance variations is less than: 1 in 20 (less than .05), 1 in 100 (less than .01) of 1 in 1000 (less than .001).

Table A4. Satisfaction with case resolution method: logistic regression analysis of the factors

Factors	Full Model			Reduced Model		
	B coef	Sig	Exp(B)	B coef	Sig	Exp(B)
Objective measures						
Outcome:		.708				
$0–99,999	.1623	.661	1.1762			
$100,000–199,999	–.3341	.465	.7160			
$200,000+	.1781	n/a	1.1874			
Expectations						
Outcome:		.057			.036*	
received more	.5667	.435	1.7624	.6518	.349	1.9190
received the same	–.9628	.058	.3818	–1.0344	.034	.3554
received less	.3961	n/a	1.4860	.3826	n/a	1.4661
Duration:		.067			.062	
more time	1.1229	.028	3.0738	1.0817	.026	2.9496
less time	–1.2518	.164	.2860	–1.2250	.1583	.2938
same time	.1289	n/a	1.1376	.1433	n/a	1.1541
Perceptions						
Fairness of settlement negotiations:						
was fair	–1.2293	.000***	.2925	–1.2177	.000***	.2959
was not fair	1.2293	n/a	3.4188	1.2177	n/a	3.3794
Case Characteristics						
Duration:		.752				
1–4 years	–.1972	.525	.8210			
5 years	.1948	.546	1.2151			
6+ years	2.4^{-03}	n/a	1.0024			
Plaintiff Characteristics						
Income:		.004**			.003**	
$1–20,000	.5909	.266	1.8056	.5878	.247	1.8001
$20,001–30,000	1.0711	.010	2.9186	1.1374	.005	3.1185
$30,001–40,000	–.1759	.663	.8387	–.1887	.625	.8280
$40,001–50,000	.4295	.513	1.5365	.3323	.604	1.3941
$50,000+	–1.9156	n/a	.1473	–1.8688	n/a	.1543
Prior litigation experience:						
yes	–.0138	.966	.9863			
no	.0138	n/a	1.0139			
n		164				
(–2) log likelihood:		136.936			138.172	
Goodness of fit:		160.714			157.095	
Chi square:		80.561			79.325	
Degrees of freedom:		14			9	
Significance level:		.000***			.000***	

Source: CJRC Supreme Court and Plaintiff surveys.
* p<.05; ** p<.01; *** p<.001
An empirical finding is said to be statistically significant at .05, .01 or .001 when the probability of such a finding results from chance variations is less than: 1 in 20 (less than .05), 1 in 100 (less than .01) of 1 in 1000 (less than .001).

Table A5. Satisfaction with the operation of the legal system: logistic regression analysis of the factors

Factors	Full Model			Reduced Model		
	B coef	Sig	Exp(B)	B coef	Sig	Exp(B)
Objective measures						
Outcome:		.212				
$0–99,999	.7306	.083	2.0763			
$100,000–199,999	–.1986	.695	.8199			
$200,000+	–.5320	n/a	.5874			
Expectations						
Outcome:		.030*			.010**	
received more	–.8569	.244	.4245	–1.1059	.085	.3309
received the same	–.2612	.638	.7701	–.1294	.796	.8786
received less	1.1181	n/a	3.0590	1.2353	n/a	3.4394
Duration:		.007**			.008**	
more time	1.7458	.002	5.7307	1.6344	.003	5.1262
less time	–2.1814	.028	.1129	–1.9885	.040	.1369
same time	.4356	n/a	1.5459	.3541	n/a	1.4249
Perceptions						
Fairness of settlement negotiations:						
was fair	–1.6581	.000***	.1905	–1.5879	.000***	.2043
was not fair	1.6581	n/a	5.2493	1.5879	n/a	4.8935
Case Characteristics						
Duration:		.108			.072	
1–4 years	.6643	.093	1.9430	.7053	.067	2.0244
5 years	–.6644	.070	.5146	–.7101	.046	.4916
6+ years	.0001	n/a	1.0001	4.8^{-3}	n/a	1.0048
Plaintiff Characteristics						
Income:		.143			.117	
$1–20,000	–.4431	.424	.6420	–.3196	.544	.7264
$20,001–30,000	.9488	.035	2.5826	.9331	.030	2.5423
$30,001–40,000	.7611	.132	2.1407	.7036	.155	2.0210
$40,001–50,000	–.8200	.213	.4404	–.9938	.117	.3702
$50,000+	–.4468	n/a	.6397	–.3233	n/a	.7238
Prior litigation experience:						
yes	–.1040	.770	.9012			
no	.1040	n/a	1.1096			
n		161				
(–2) log likelihood:		110.226			113.380	
Goodness of fit:		200.892			186.158	
Chi square:		89.268			86.114	
Degrees of freedom:		14			11	
Significance level:		.000***			.000***	

Source: CJRC Supreme Court and Plaintiff surveys.
* p<.05; ** p<.01; *** p<.001
An empirical finding is said to be statistically significant at .05, .01 or .001 when the probability of such a finding results from chance variations is less than: 1 in 20 (less than .05), 1 in 100 (less than .01) of 1 in 1000 (less than .001).

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