



Canadian Forum on Civil Justice 
Forum canadien sur la justice civile

The Economics of Justice & Injustice

Nicole Aylwin, Osgoode Hall Law School
Trevor Farrow, Osgoode Hall Law School
M. Jerry McHale, University of Victoria

Building A2JSJ: An Interdisciplinary Conversation about Problems & Solutions
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Cost of Justice Project





Canadian Forum on Civil Justice The “Cost of Justice” Project

The Research

- SSHRC CURA Grant
- 5 Year Empirical Study
- Two main questions:
 - i. What is the cost of delivering an effective justice system?
 - ii. What is the cost of not delivering an effective justice system?

“This research ... by the Canadian Forum on Civil Justice will be essential in helping us understand the true extent of the problem of cost and how it impacts on the justice system. I believe that it will prove to be of great assistance to ... identifying ... concrete solutions to the problem of access to justice.”

- Rt. Hon. Beverley McLachlin, P.C.



Everyday Legal Problems & the Cost of Justice in Canada

- CFCJ has just completed first legal needs study in Canada since 2008.
 - Telephone survey of 3,051 adult (excludes territories and cell phones)
 - Asked people if they experienced any problems from a list of 84 problem types (e.g. family, housing, employment, consumer problems etc.)
 - Also asked them to report on the costs – both monetary and intangible – they incurred as a direct result of experiencing these problems
- 1st Canadian study of its kind to measure multi-dimensional costs of unresolved everyday legal problems.



Features of Legal Needs Studies

- Our understanding of civil justice should be placed within a broader context (Pleasance)
- **“Justiciable” or “everyday legal problems”**
 - Problems experienced by people as part of everyday life
 - Engages a non-trivial, real and substantial, rights-based issue
 - Capable of being decided by a court or tribunal
- A matter which raised legal issues, *whether or not*:
 - Recognized by respondent as being “legal” or
 - Justice system was involved when taking action
- Legal needs surveys shift us towards a problem based approach to studying access to justice. (As opposed to a systems based approach)

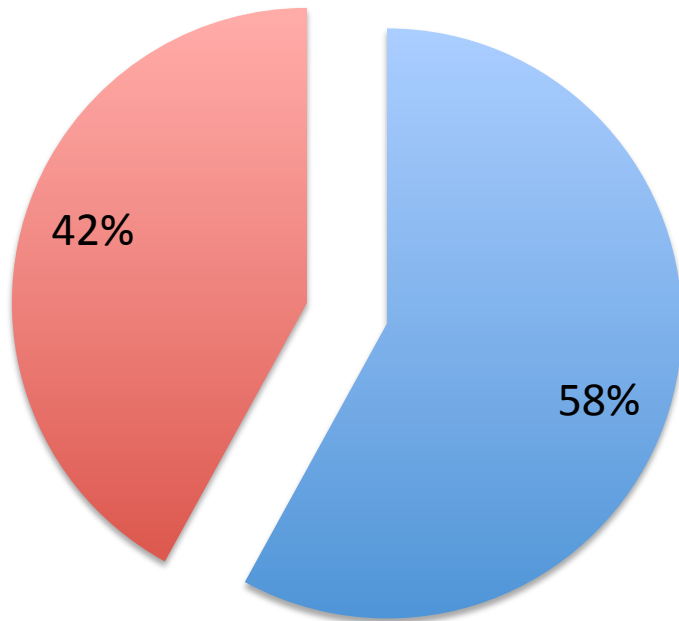


Legal Problems of Everyday Life

- Approximately 50% of adult Canadians will experience a legal problem over any given 3-year period
- This amounts to over 11 million people (per 3 year period)
- Essentially all of us over the course of a lifetime



How many problems do people experience?



- 58% of people who reported experiencing problems reported experiencing **two or more problems**
- The more problems someone has, the more likely they are to suffer further problems.

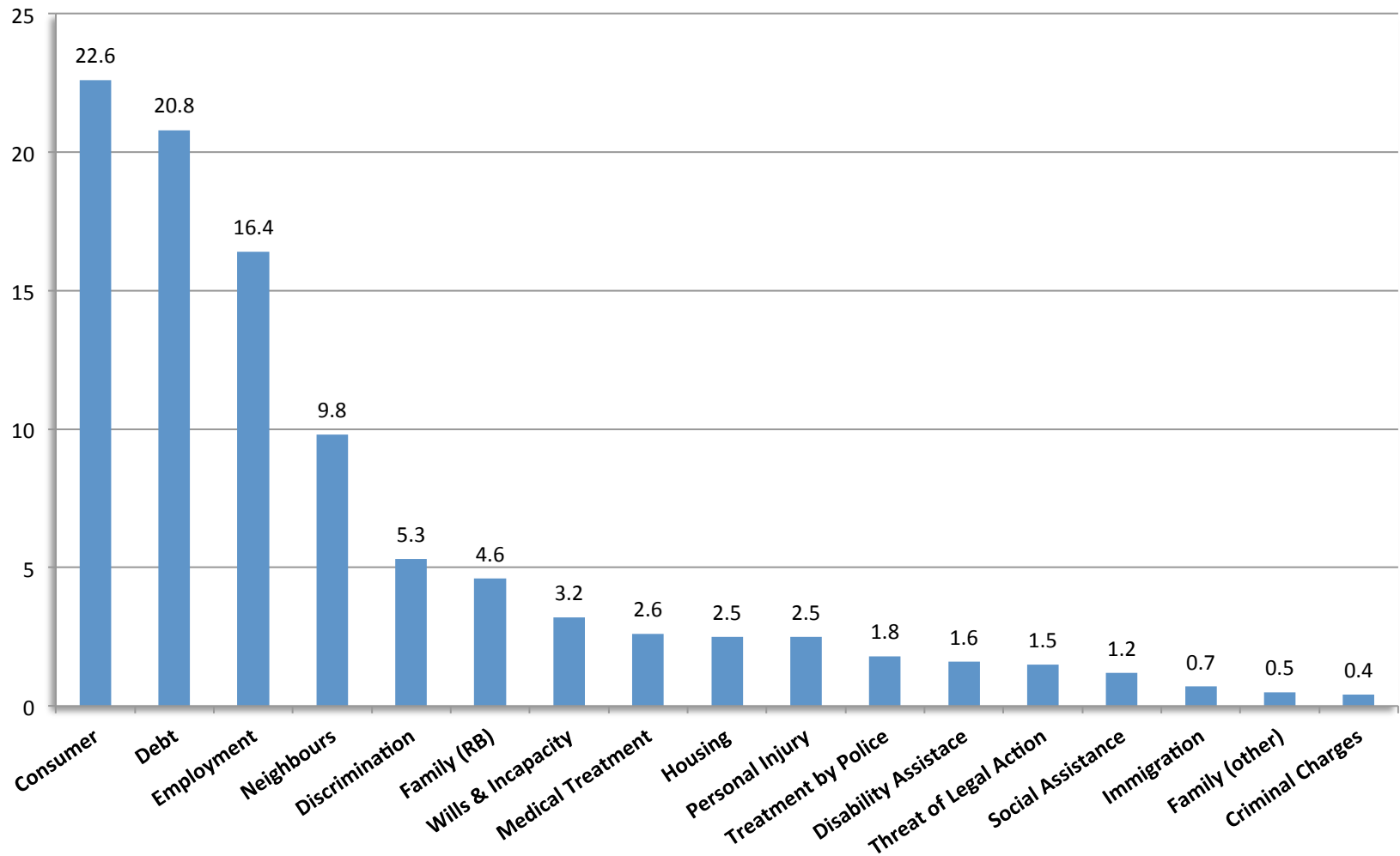


What Kinds of Problems Do People Experience?

- Problems span typical areas of modern-day life (consumer, employment, money, debt, injury, health, housing and family relationships)
 - The most common problems experienced by Canadians:
 - **Consumer Problems**
 - **Debt Problems**
 - **Employment Problems**
- These are followed closely by **neighbour, discrimination and family problems**



Percent with One or More Problems



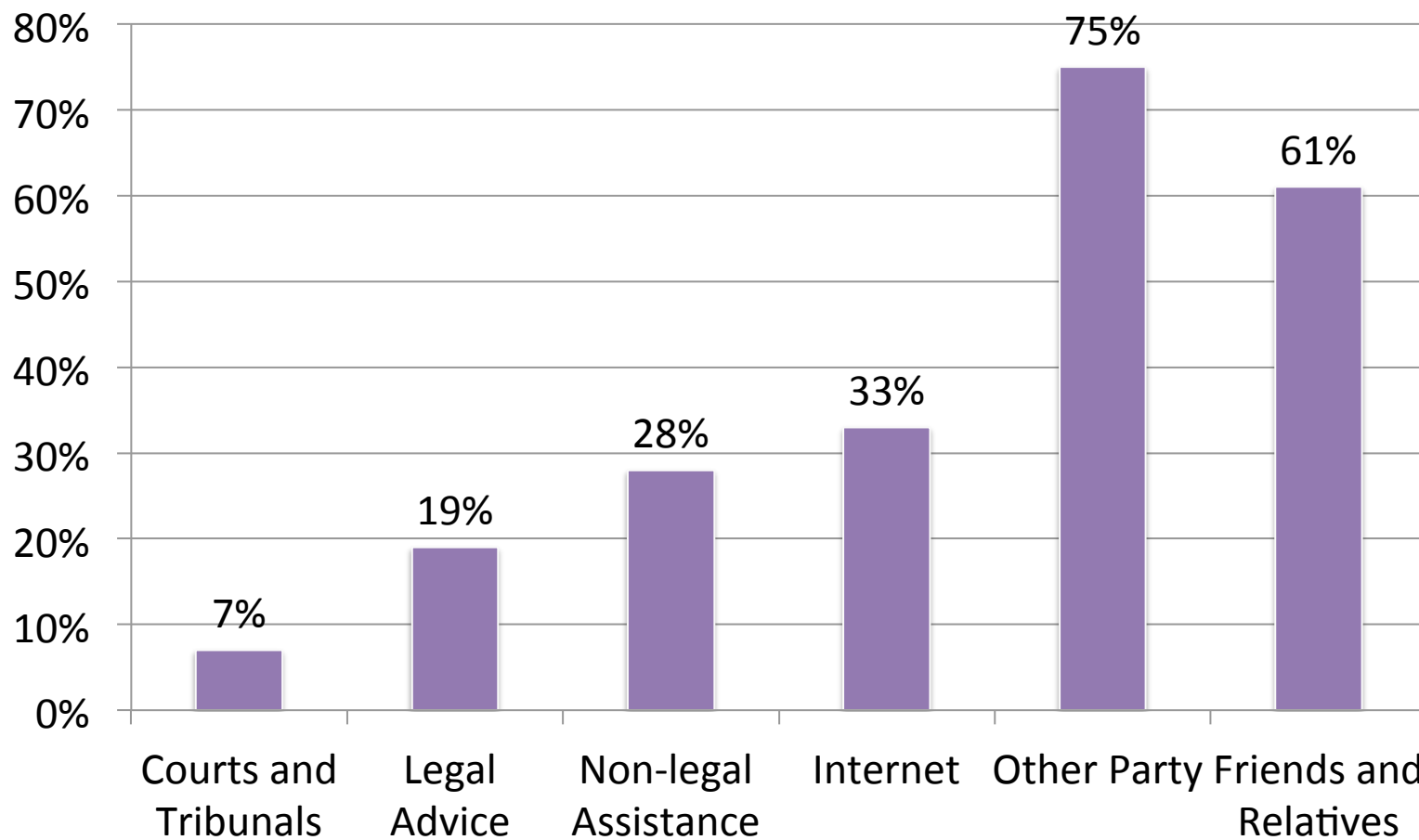
Who Has These Problems?

Justiciable problems are not evenly distributed

- **Low income** groups suffer more legal problems + less likely to do anything about them
- Additive effect: **vulnerability increases** with number of problems
- The kinds of problems people experience vary by demographics
- Variables that predict kinds of justiciable problems people likely to experience:
 - Age, disability, number of children strongest predictors
 - Education, employment status, gender, income, social assistance, ethnicity, minority status



How Do People Address Their Problems?



How Do People Address Their Problems?

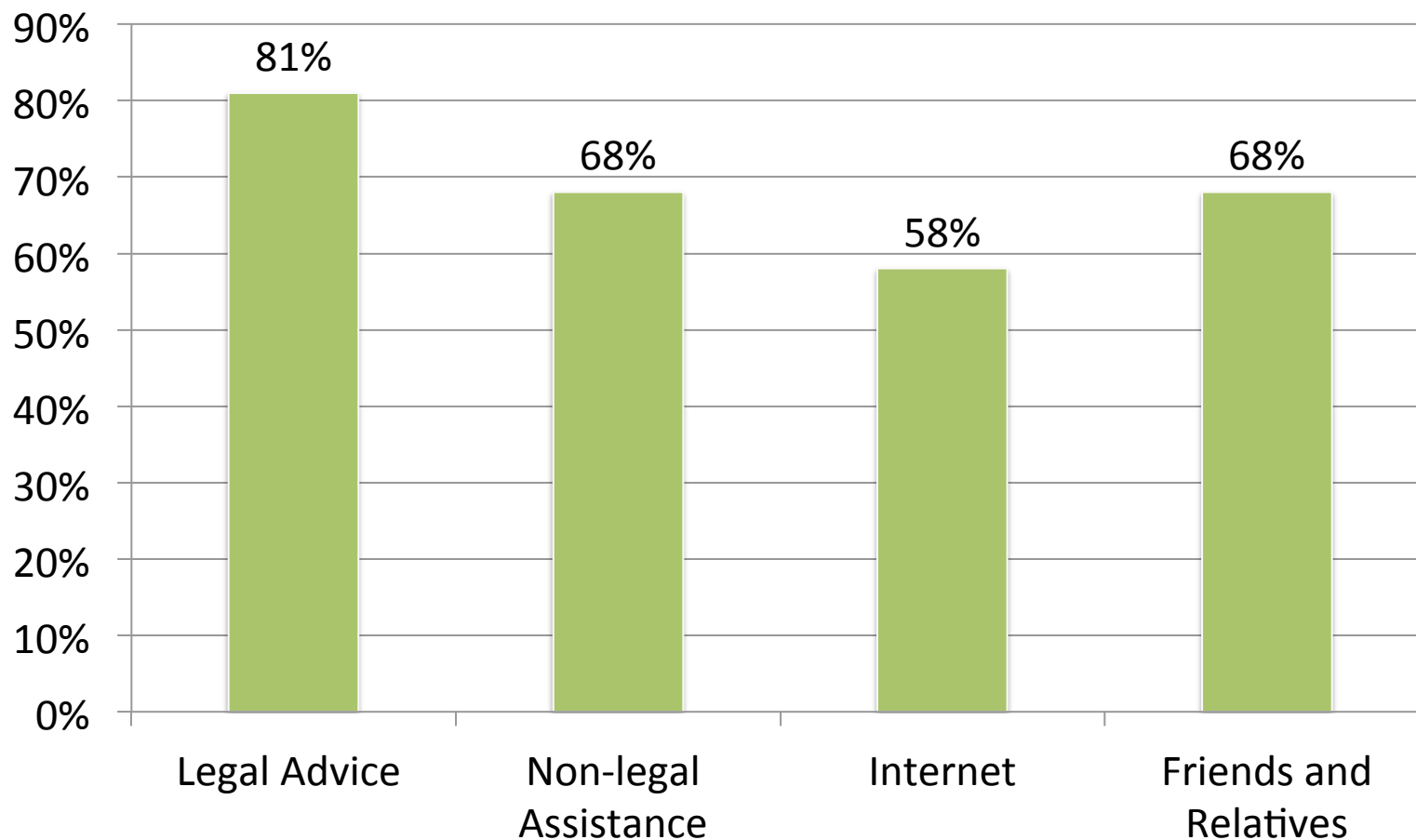
There is no “rush to law”

Among the 95% who made some attempt to resolve the problem, almost 80% took more than one action

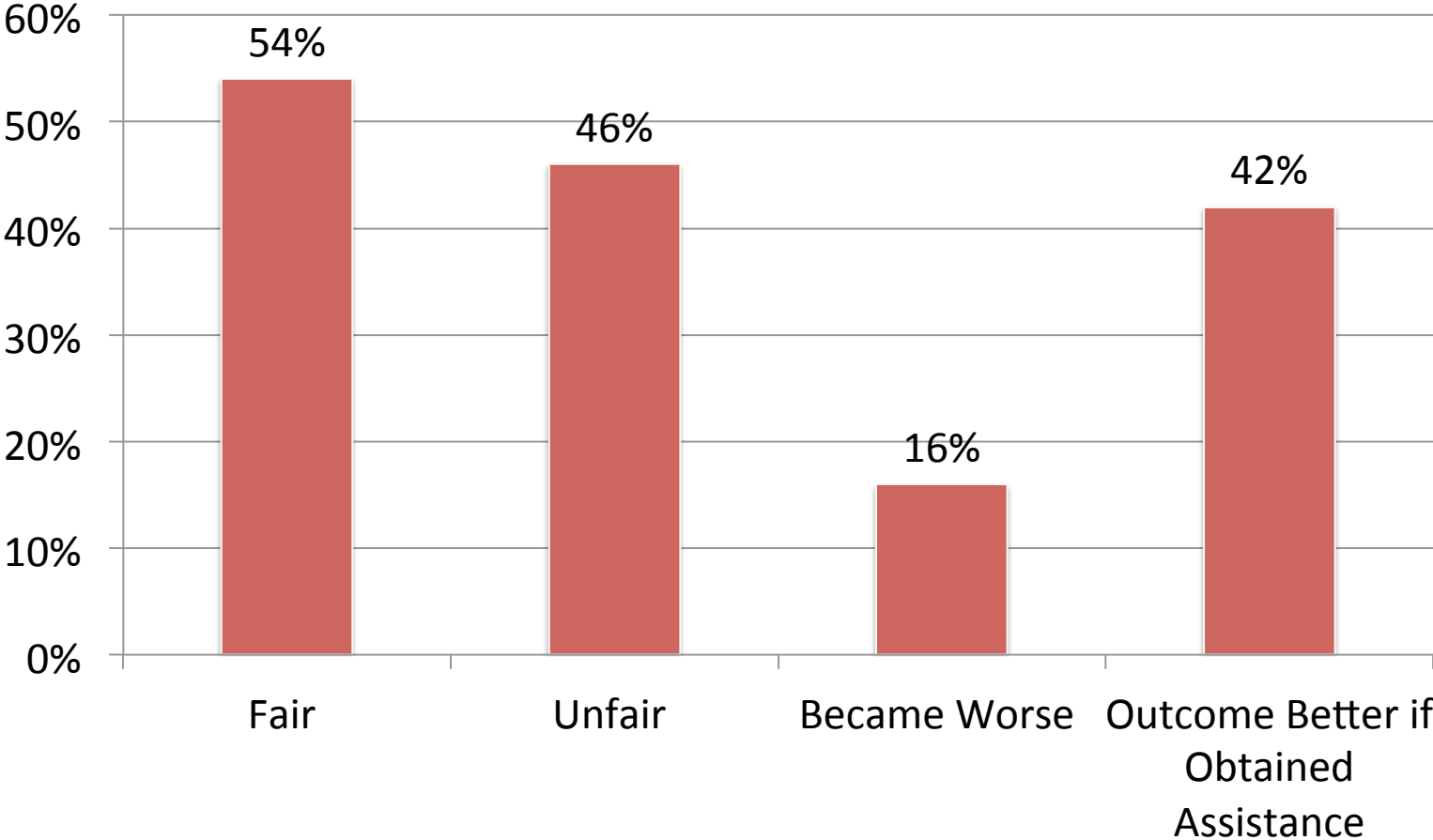
- What drives people to seek legal advice?
 - Type of problem
 - Affordability (i.e. cost is second)



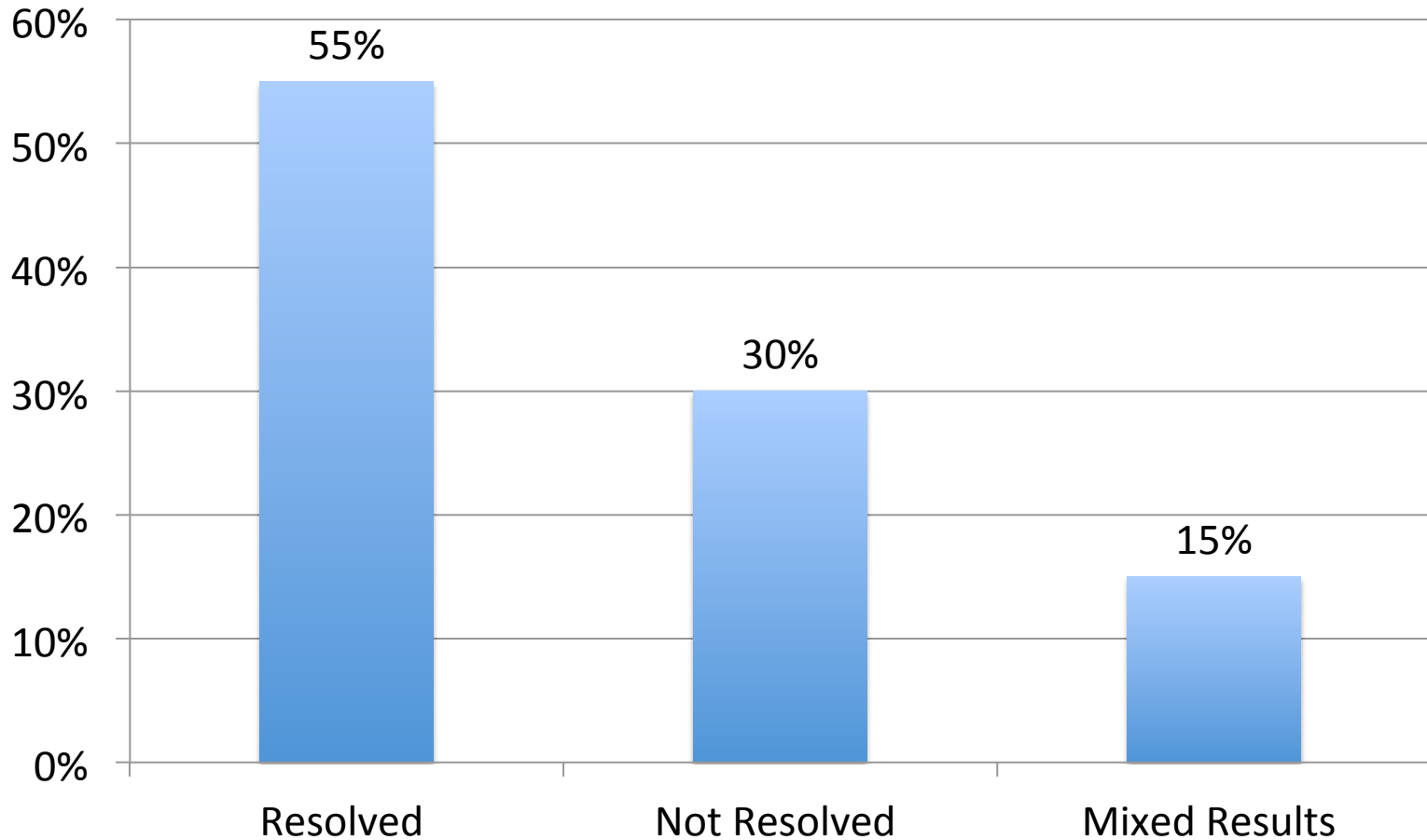
How Helpful Are the Various Service Options?



What Kinds of Outcomes Do People Report?

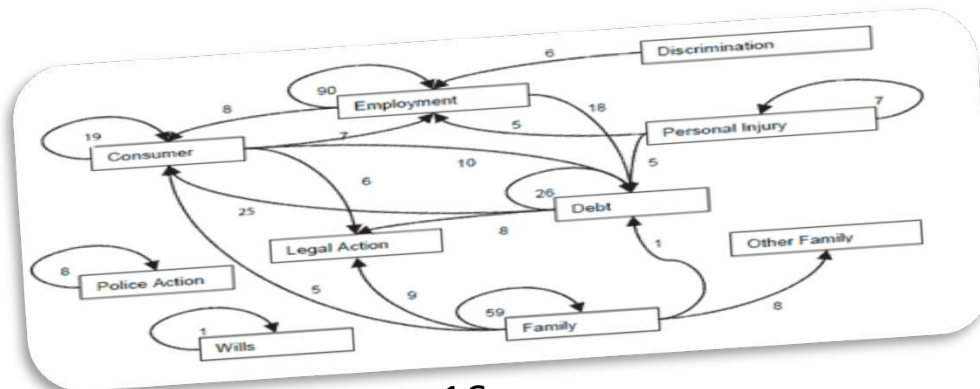


How Many People Resolve Their Problems?



Unresolved Legal Problems Trigger Additional Problems

- **Cascade effect:** with each justiciable problem experienced, additional problems become more likely
- **Momentum:** Risk of experiencing problems is cumulative - likelihood of related non-legal problems increases with number of problems experienced.
- **Cluster** Groups of legal and social problems in distinct patterns. Triggering and clustering causally linked to lack of effective, timely resolution



Cost of Legal Problems to the Individual



Measuring The Costs of Justice

- Access to justice was typically framed as access to the formal court system.
- Ex: accessing lawyers, legal aid, etc. (i.e. the direct costs of accessing the formal justice system).



Measuring the Costs of Justice



- Need to use a more expansive framework for measuring cost of accessing justice.
- One that includes:
 - **Private costs** (i.e. out of pocket expenses)
 - **Time** (i.e. “searching costs”, consultation etc., travelling)
 - **Costs of Delay** (e.g. uncertainty around future of relationships, etc.)
 - **Emotional Costs** (stress, fear, etc.)



What do we know about Costs in Canada?

- **Private Costs**

- Most frequent types of private costs reported are: **lawyers fees, transportation, purchase of materials** (CFCJ 2016).
- Average hourly fees for lawyer with 10 years experience \$325; 5 yrs. Experience \$264; 1 yr or less \$204 (Semple, 2015)

- **Time**

- Problems can remain **unresolved over several years** and remain part of a person's life for a long time.
 - CFCJ – 30% of problems had not been resolved
 - Ontario Civil Legal Needs Survey (2009) – In family disputes (in Ontario) 27% took more than 1yr. to resolve; 44% had not resolved at time of survey
- Seeking justice can **consume hours** from peoples lives.
 - Time spent finding information (i.e. “Searching costs”)
 - Filling out forms, documents, travelling time

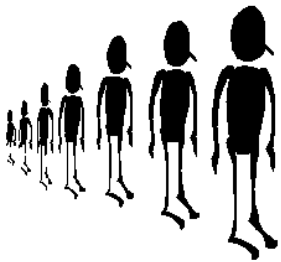


What do we know about Costs in Canada?

- **Time costs are particularly large for self-represented litigants:**



- “She spent eight months at 40 hours a week preparing for a two day discovery... She read and researched” ~ Female family court litigant, Alberta
- “Another challenge is the distance from her house to the registry – one hour to Vancouver and half an hour to Chilliwack. She has to drive to the court each time” - Female civil court litigant, British Columbia.
- “Has spent more than 100 hours on this but is committed” - Male small claims court litigant, Toronto.



What do we know about Costs in Canada?

- **Cost of Delay/Opportunity Costs**

- Inability to resolve problems can result in missed opportunities, income loss, etc.

- E.g., people use-up their vacation days, or take “non-paid” vacation to pursue justice.

- On average, Canadians **spent just over \$6000 to resolve their problem.**

- **Emotional Costs**

- **Stress, fear, lack of confidence, damage to relationships;** more difficult to put a monetary value on.

- Ontario survey– **46% reported stress related or mental health issues** as result legal problem; **46% reported lack of confidence; 28% experienced relationship breakdown.**

- National level – **51% reported increased stress or emotional problems;** this amounts to 5.7 million Canadians (CFCJ, 2016)

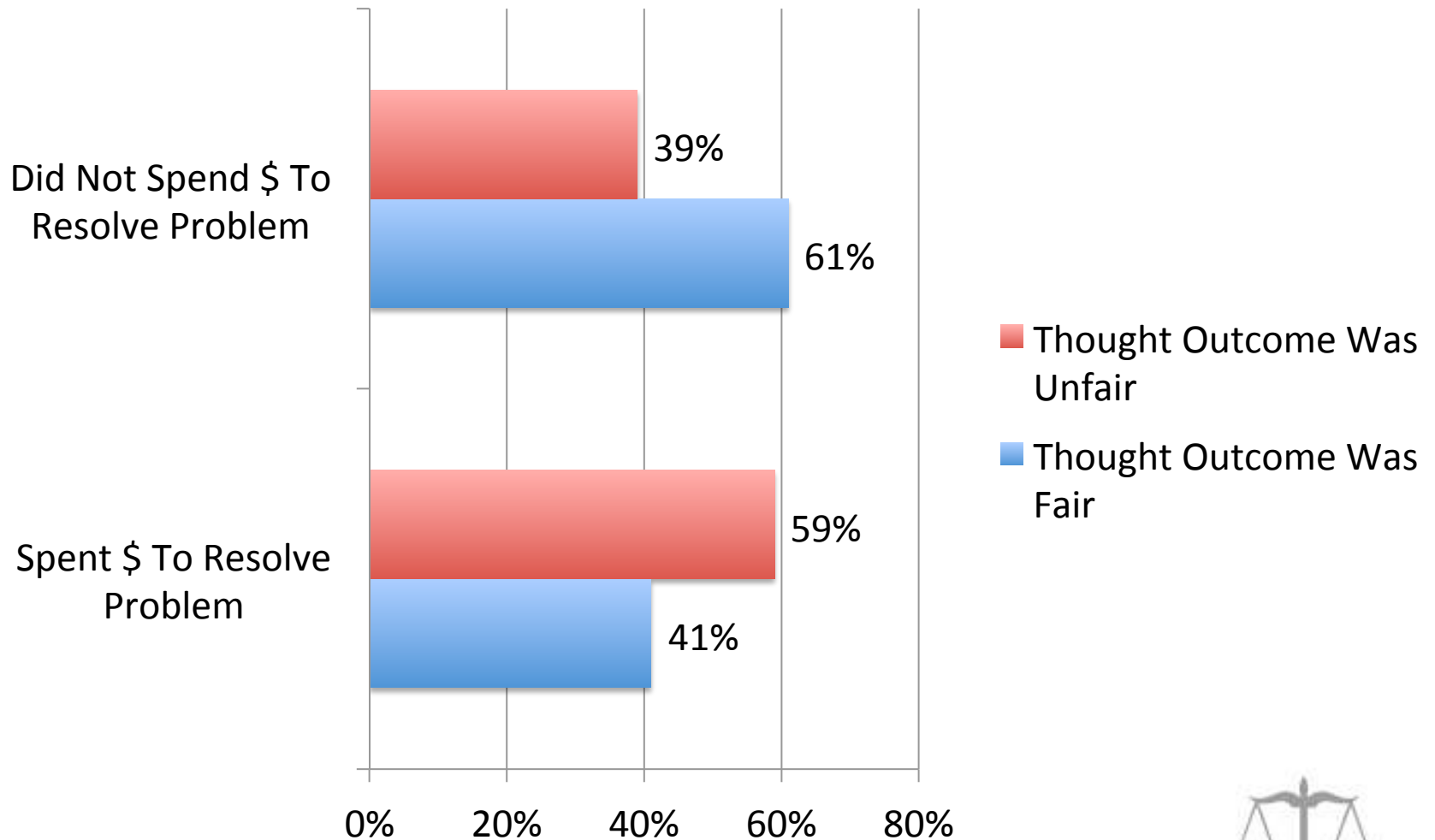


What do we know about Costs in Canada

- We often assume that:
 - Spending money results in better outcomes
 - The more money spent the better the outcome.
- CFCJ study shows something different.
 - No correlation between \$ spent and perceived “fairness” of outcome.
 - Those that **did not** spend \$ perceived the outcome as more “fair”



Cost & Fairness



Cost of Legal Problems to the State



**An inaccessible
system is a costly
system –
individually and
collectively
(economic, social,
health, etc.)**



State-incurred Costs as a Consequence of Legal Problems

- Social Assistance costs estimated at **\$248 million annually**
- Employment Insurance costs estimated at **\$450 million annually**
- Health Care costs estimated at **\$101 million annually**



A Case for the Value of Law and A2J

Justice funding: ever-smaller piece of an ever-smaller pie

- The access crisis and justice credibility
- Political perspective = less product at higher cost
- Fewer lawyers in cabinet
- No public outcry
- Law as a public good - not self evident



How can we understand and articulate a persuasive case for the value of law and access?

- **To understand...**
 - want of empirical research
 - limited tradition of empirical research
 - academy's relative disinterest in procedural law
 - 'anecdotal' vs. information-based decision making
 - lawyers and judges making policy and rules for lawyers and judges

- **To articulate...**
 - legal-style arguments fall on deaf ears
 - no more reports!
 - justice competing with research-savvy sectors
 - public policy and bean counting



Linking legal problems to health and social costs

- Policy impact of legal needs research
- “Given the high prevalence of everyday legal problems among the Canadian public, it can be assumed that the numbers of people experiencing health problems as a consequence of their legal problems will also be high. This can lead to substantial costs to the publicly funded health care system.” CFCJ 2016
- “Establishing the connections between justiciable problems and problems experienced by people in domains such as health care is important because it extends the potential value to society of providing assistance with justiciable problems beyond achieving strictly legal objectives or outcomes.” Curry



Funding and Policy Implications



Policy and program implications

1. Make justice more accessible

- There needs to be adequate legal services infrastructure for effective resolution
- Justice Mandate: civil order, public safety, rule of law
- Down-stream costs of unresolved legal problems
- Social exclusion and the particular case of the vulnerable

2. Client-centred vs. system-centred approaches

- Problems from point of view of people experiencing them
- Accounting for diverse legal needs and legal capabilities
- Public legal information and education



Policy and program implications

3. Build legal capability

- Legal empowerment,
- Unnecessary helplessness
- Client agency, engagement and responsibility

4. Prevention + early, point-of-entry intervention

- Unresolved justiciable problems may contribute to or maintain the conditions underlying health and disability problems
- Assistance with the justiciable problem may interrupt the dynamics of triggering and clustering
- = Reduced individual and state costs



Policy and program implications

5. Integrated, coordinated, cross-disciplinary approaches

- Needs research shows that legal issues arise within complex layers of social, interpersonal, economic, health issues
- Folly of isolating and “fixing” the legal issues
- Re-contextualizing “legal” problems
- “Joining up” services
- (not easy)



6. Justice system redesign / rebalance funding

- Now most resources spent on expensive, back-end litigation
- Reallocate resources toward front-end (triage, programs, services, ADR) and away from adversarial, court-centric processes



Policy and program implications



7. Access to which justice?

- More focus on justice, less on access;
- More than access to lawyers, courtrooms and procedures
- Legal interventions most effective when attacking systemic causes of ill health

8. Changing legal culture

- Only facts going to legal issues are relevant
- Every new case is a potential trial
- Truth is best guaranteed by contest
- Parties to disagreement are opponents
- Vested interest, legal needs and the legal monopoly





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Thank You. Questions?

www.cfcj-fcjc.org
3015 Osgoode Hall Law School
communications@cfcj-fcjc.org

