



Canadian Forum on Civil Justice 
Forum canadien sur la justice civile

The Cost of Civil Justice in Canada: What Do We Know What Don't We Know What Should We Know

Roundtable Discussion
Law & Society Association, Annual Meeting
Mexico City, Mexico, 22 June 2017



Roundtable Roadmap

1. Cost of Justice Project Overview
2. Impact & Innovation: Legal Services Strategies.
3. Impact & Innovation: Access to Justice Narratives





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Cost of Justice Project Overview

Trevor C.W. Farrow, Ph.D.

Professor, Osgoode Hall Law School
Chair, Canadian Forum on Civil Justice

Law & Society Association, Annual Meeting
Mexico City, Mexico, 22 June 2017





Canadian Forum on Civil Justice “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

<http://cfcj-fcjc.org/a2jblog/everyday-legal-problems-and-the-cost-of-justice-in-canada-0>

- **First legal needs study in Canada since 2008**
 - Telephone survey of 3,051 adults (excludes territories; separate cell survey)
 - Asked if people experienced any problems from a list of 84 problem types (e.g. family, housing, employment, consumer problems, etc.)
 - Also asked people to report on costs – both monetary and intangible – incurred as a direct result of experiencing a problem
- **First Canadian study of its kind to measure multi-dimensional costs of unresolved legal problems**



Legal Problems of Everyday Life



- Approximately **50% of adult Canadians** will experience a legal problem over any given 3-year period
- Approximately **11 million** people (per 3-year period)
- Essentially **all of us** over the course of a lifetime
- Within any given 3-year period, adult Canadians experience approximately **35,745,000** separate everyday legal problems



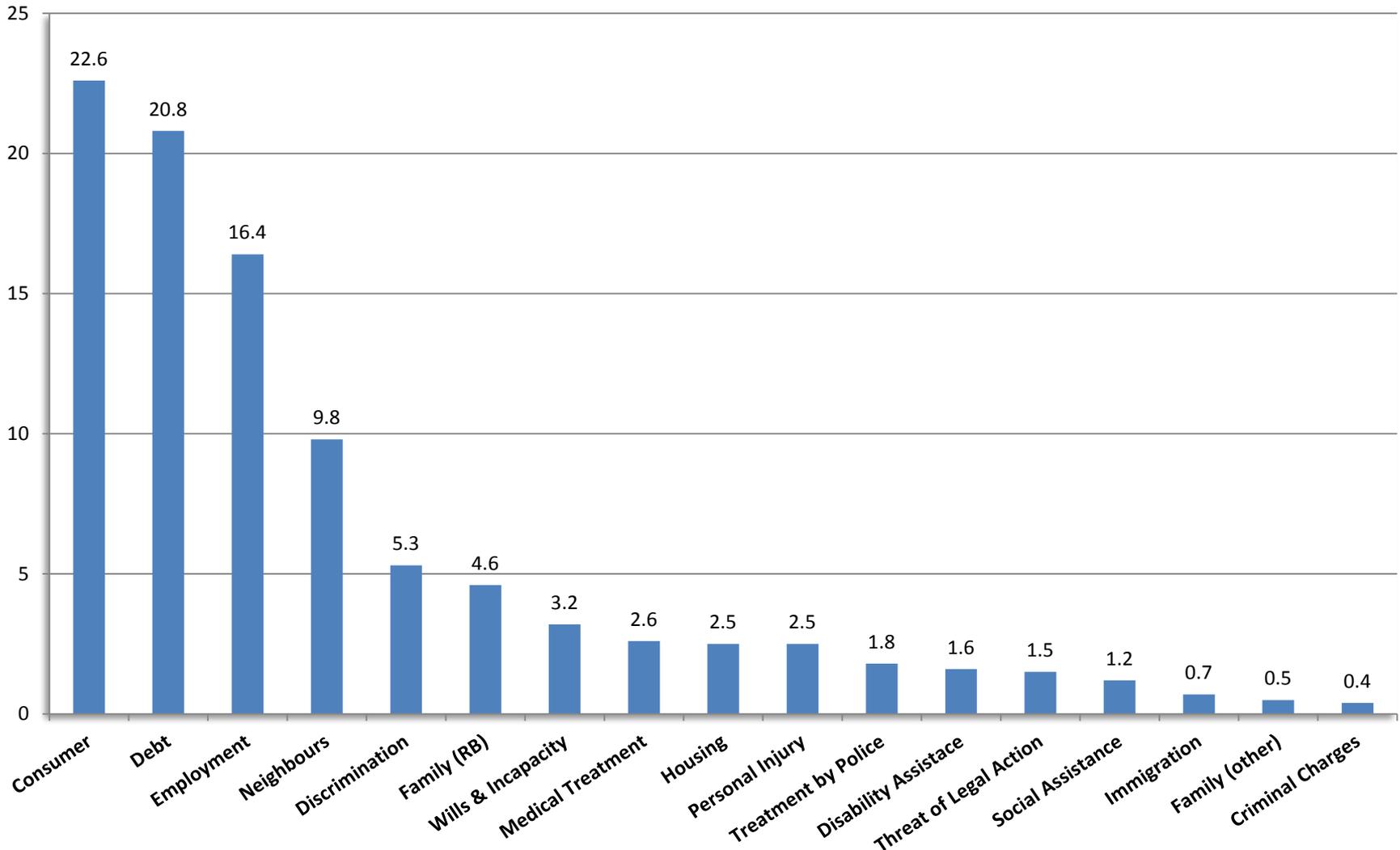
Understanding Justiciable Problems

- **Number:** 58% of people experiencing one problem reported experiencing two or more problems
- **Cascade:** The more problems, the more likely people are to suffer further problems
- **Predictive variables:** age, disability, number of children, education, employment, gender, income, etc.
- **Unequal distribution:** low income, vulnerable, marginalized experience more problems

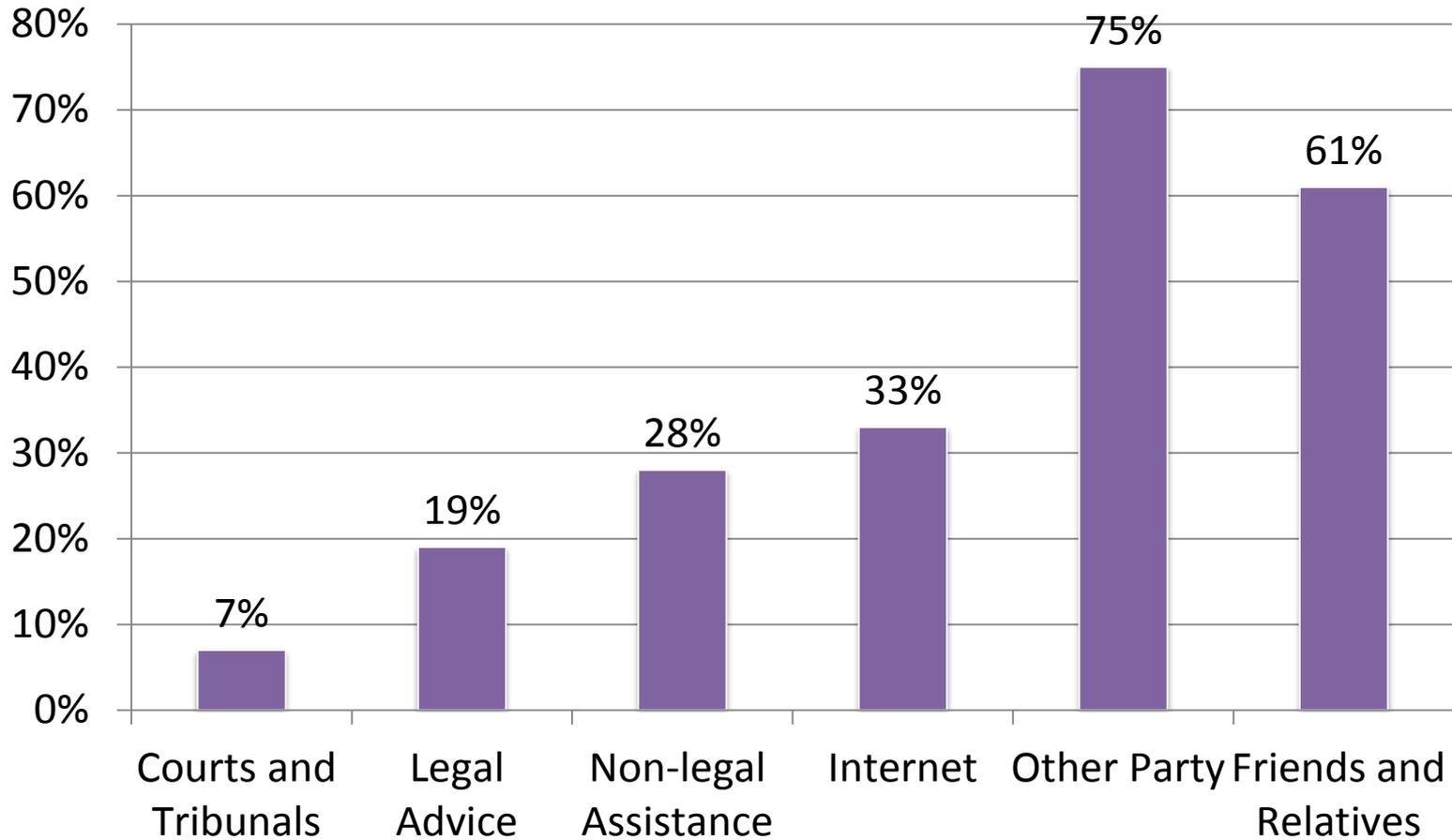


Most Common Problems: Consumer, Debt, Employment...

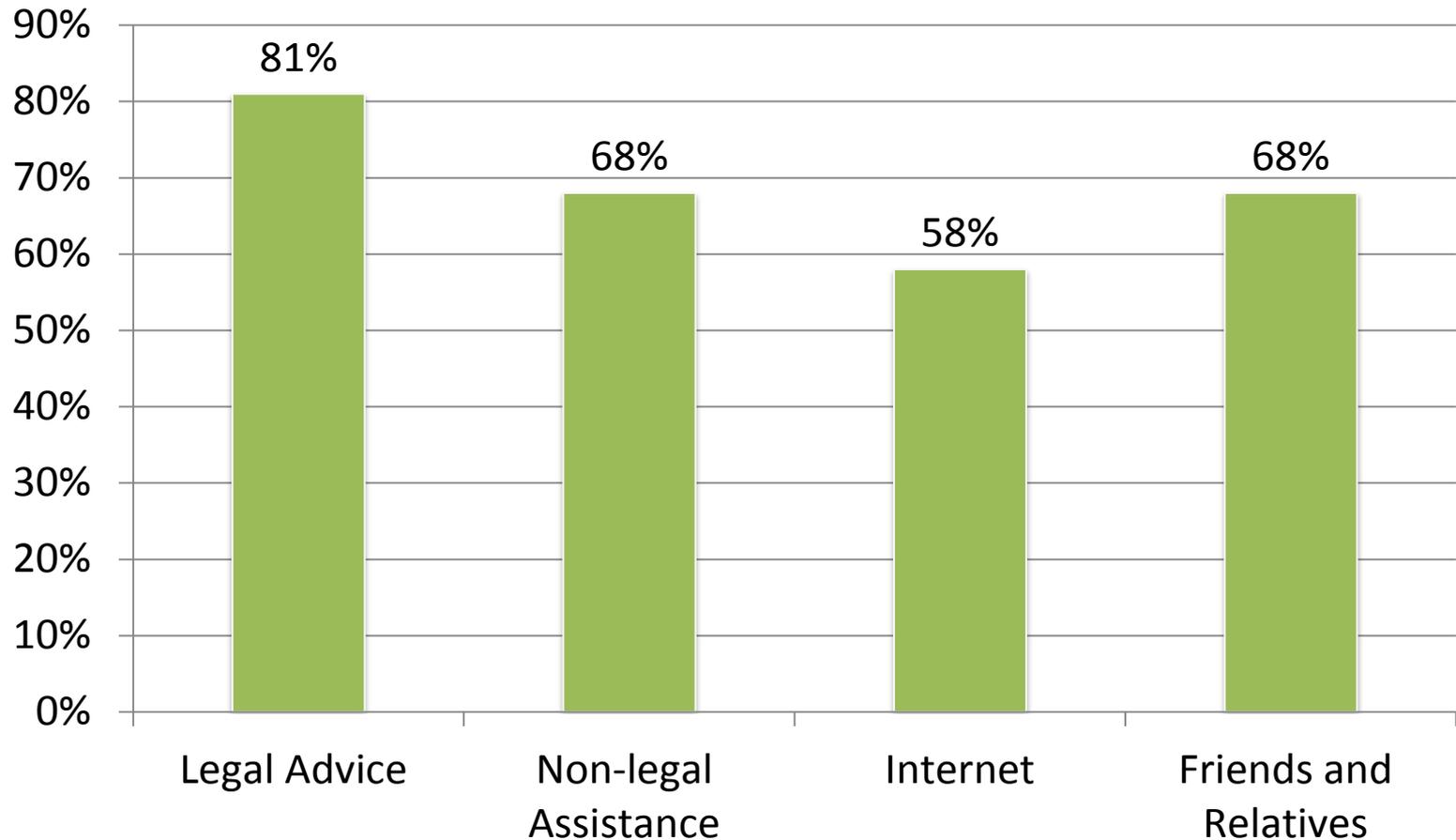
Percent with One or More Problems



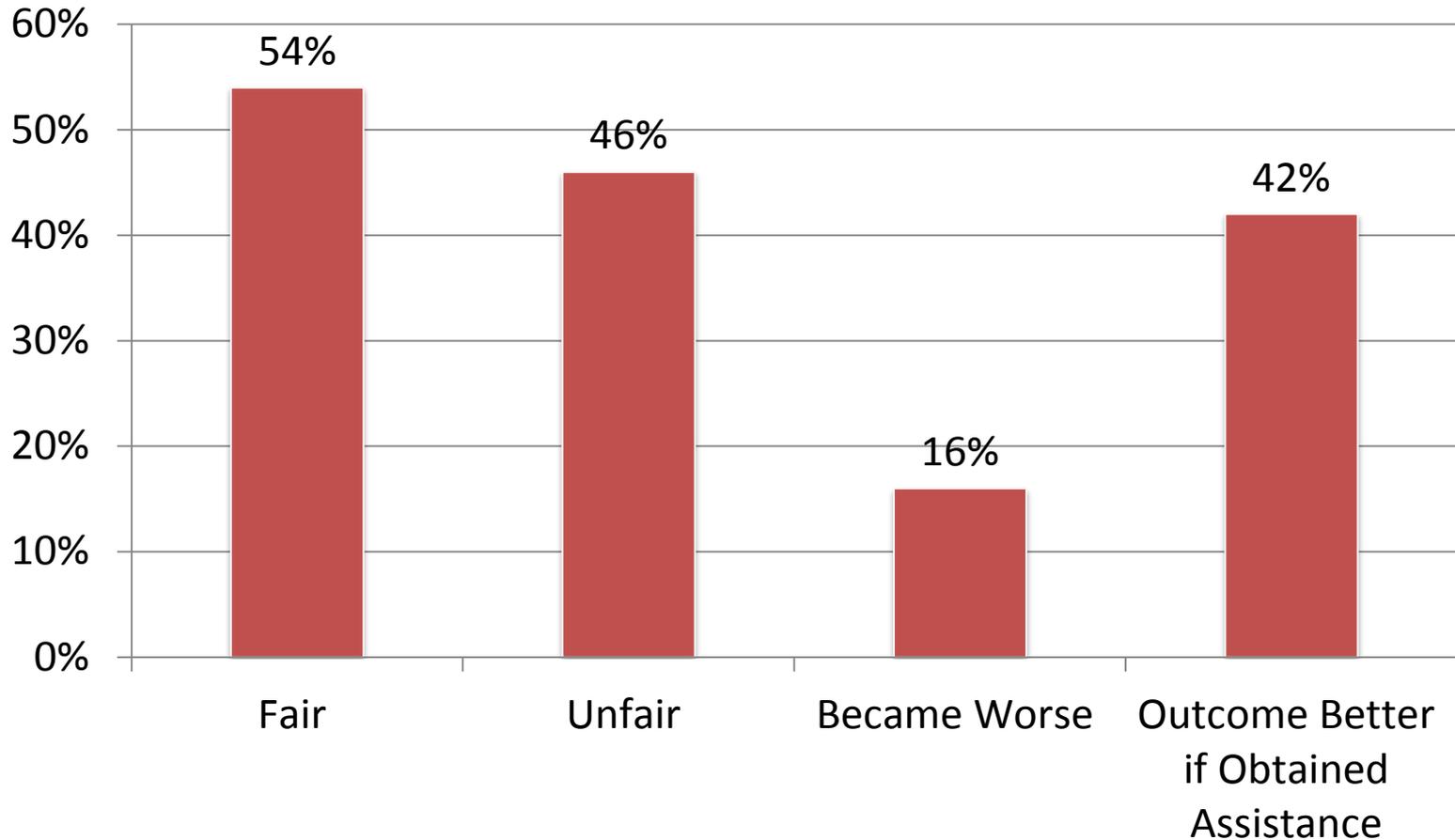
How Do People Address Their Problems?



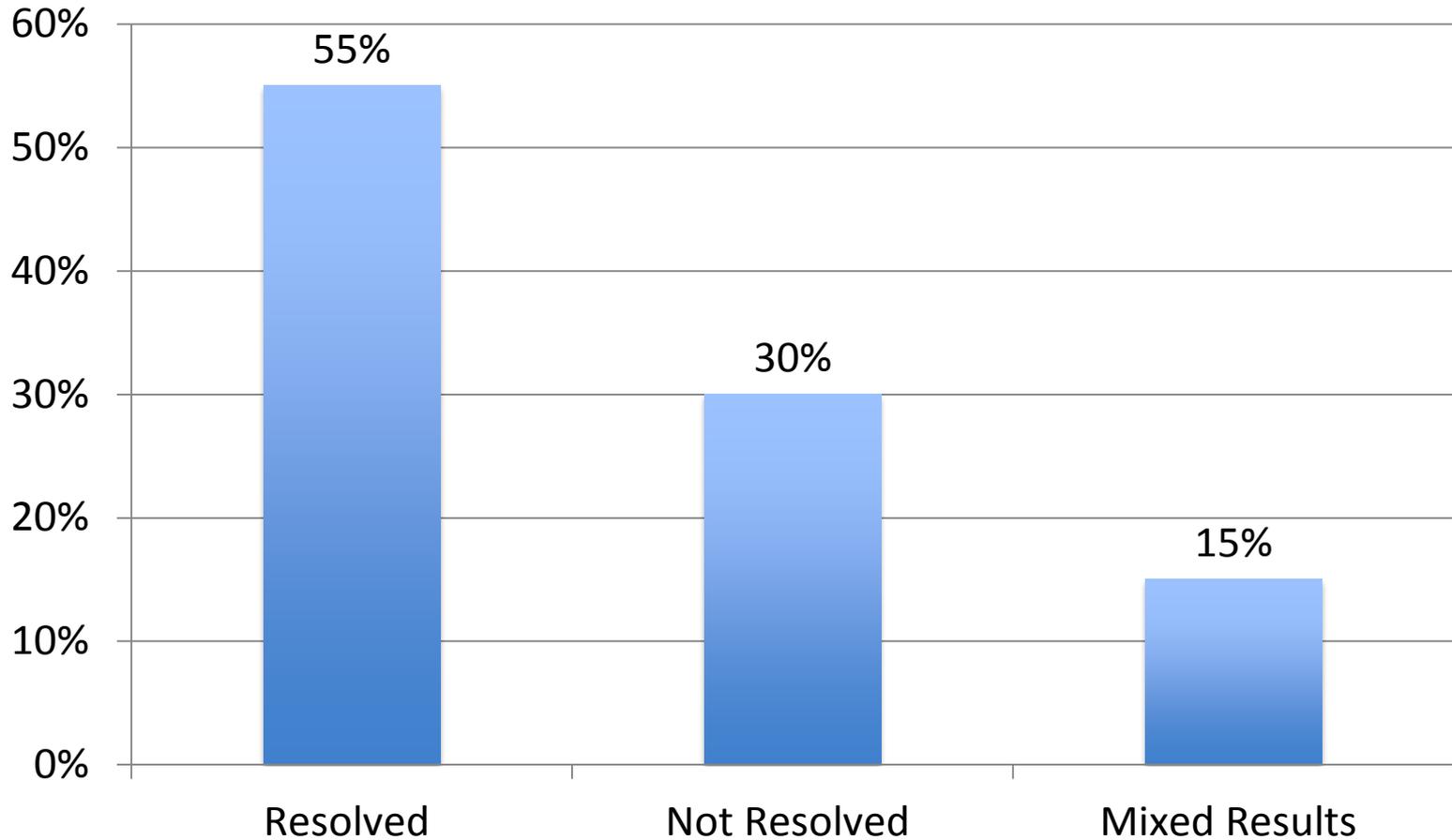
How Helpful Are the Various Service Options?



What Kinds of Outcomes Do People Report?



How Many People Resolve Their Problems?



What do we know about Costs in Canada?

- **Private Costs – most frequently reported (CFCJ 2016)**
 - Lawyers fees
 - Transportation
 - Purchase of materials, court fees, other advisors and mediators
 - Telephone, child care, etc.
- **Average hourly lawyer fees (Semple 2015)**
 - 10 years of experience: \$325
 - 5 years of experience: \$264
 - 1 year (or less) of experience: \$204
- **Time (CFCJ 2016)**
 - Problems can remain **unresolved** over several years
 - 30% of problems had not been resolved
 - Seeking justice can **consume hours** from peoples lives
 - “Searching” costs (time finding information)
 - Filling out forms, documents, travelling time



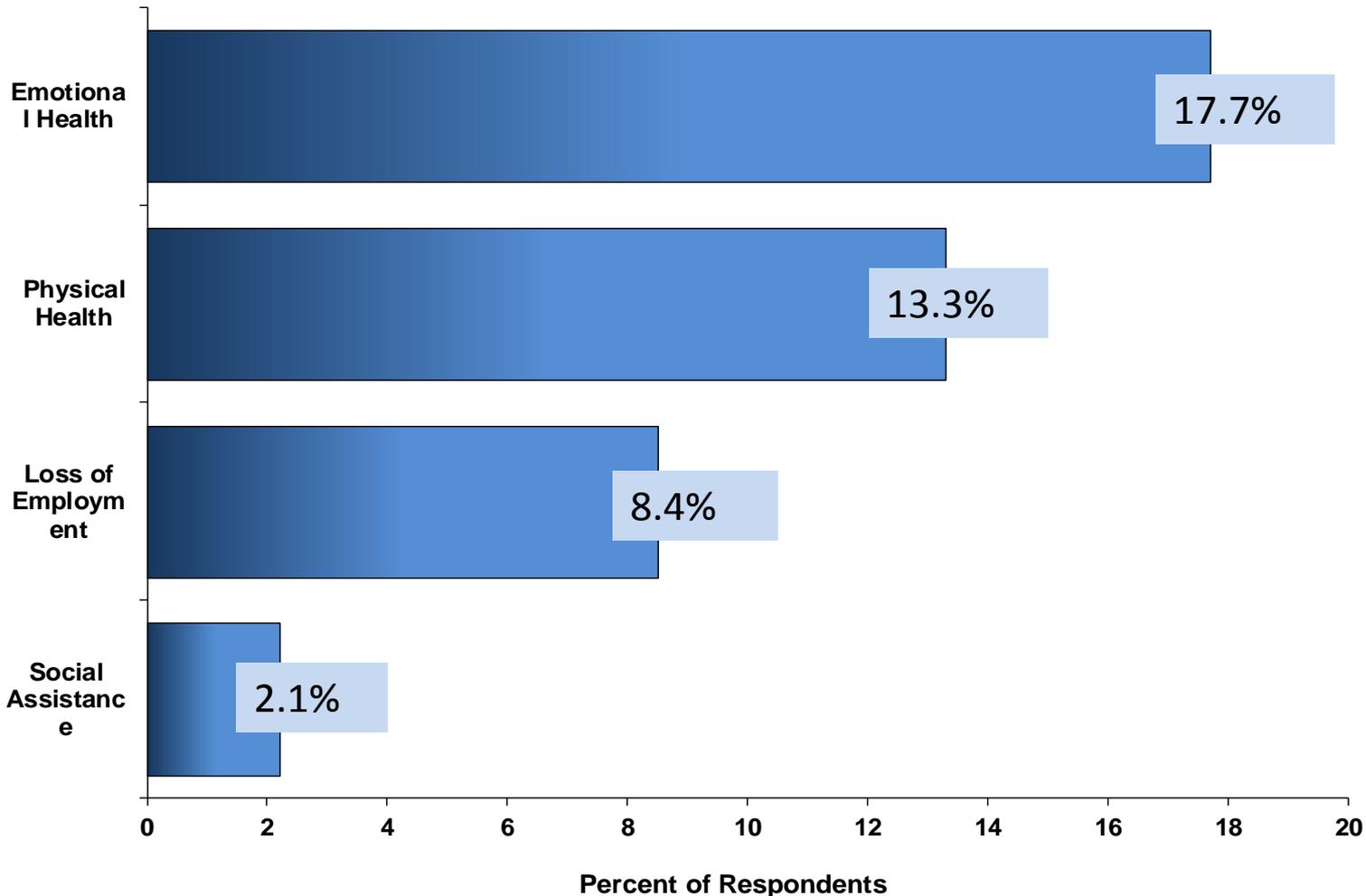
Cost of Delay/Opportunity Costs

- Canadians spend on average **\$6,100** to resolve their **legal problem**
 - Almost as much as Canadian households spend on average annually on **food** (\$7,739) (2012)
 - Almost half as much as Canadians spend on average annually on **shelter** (\$15,811) (2012)
- Individual Canadians spend just over **\$7.7 billion** annually to deal with everyday legal problems (and likely much more)
- Inability to resolve problems can result in **missed opportunities, income loss** (e.g. vacation days, “non-paid” days), etc.



Justiciable Problems Trigger Health and Social Problems

- 51% (5.7 million people) report increased stress or emotional problems as a direct result of a legal problem



Annual State-incurred Costs as a Consequence of Legal Problems ...

- Social Assistance: **\$248 million**
 - 79,367 people annually
- Employment Insurance: **\$450 million**
 - 310,805 people annually
- Health Care: **\$101 million**
 - 1,744,194 more health care visits annually
- Housing
 - 2.7% (100,839) of Canadians lose housing every year
 - 3.6% of those (6,836 people) rely on emergency shelters

... And all likely much higher



“What is Access to Justice?” Study (2014)



Views on Justice

- *“Depends on what lawyer you can afford.”*
- *“The higher class have more access to justice.”*
- *“People with money have access to more justice.”*
- *“If I don’t have a good suit, the judge isn’t going to hear my case.”*
- *“I think immigrants are much more susceptible.”*
- *“It depends on class, race, ... money, socio-economic standing, everything.”*
- *“Language”, “Education”, “Culture”, “Age”, “Sexual orientation”, “Poverty”, “Homless[ness]”, “Geography”.*



Procedural justice

- *“Access to justice is ... access to lawyers.”*
- *“Law enforcement.”*
- *“Right to a fair trial.”*
- *“Fair penalty ... just desserts.”*
- *“Everyone’s ability to be heard.”*
- *“You do the crime, you do the time.”*



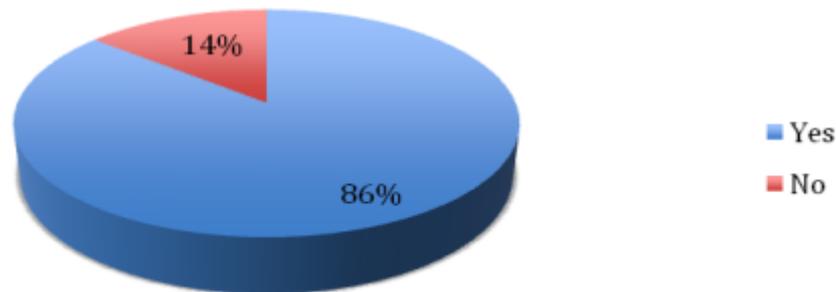
Substantive justice

- *“Justice in the moral sense is another story....”*
- *“I’d define [justice] as access to society.”*
- *“Fighting for women’s rights, native rights....”*
- *“Being able ... to be ... an active participant in society.”*
- *“I guess justice to me has to do with fairness and it’s more than a legal issue – it’s a moral issue and it has to do with equality and inequality....”*
- *“We’re not even talking access to justice ... we’re talking access to food, to shelter, to security, to opportunities for ourselves and our kids and until we deal with that, the other stuff doesn’t make sense.”*

“Do you think that justice is of fundamental importance to Canadians?”

- *“Yes. Extremely.”*
- *“[S]hould be a number one right.”*
- *“I’m glad you’re asking these questions.”*
- *“It should be equally important as our health care system.”*

**Do you think justice is of
fundamental importance to
Canadians?**



Impact & Innovation: Legal Services

How have legal service delivery strategies been influenced by findings from the Cost of Justice project and other similar projects?

Put differently, is making visible the wide range of "costs" that result from the current inefficiencies in the civil justice system influencing how legal services are delivered?



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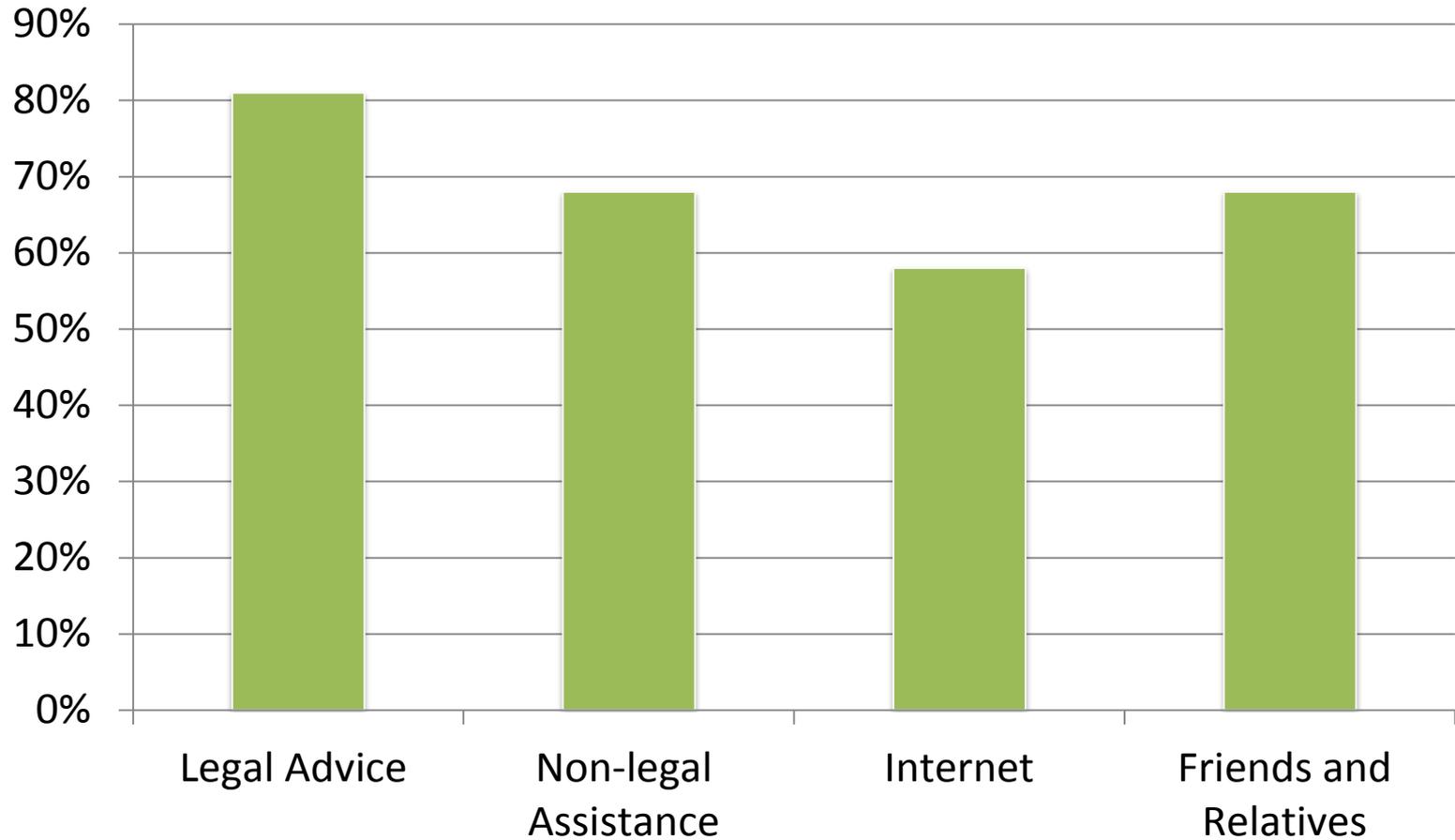
Diversification of Legal Services & Next-Generation Tribunals

Noel Semple, J.D., Ph.d
Assistant Professor,
U. Windsor Faculty of Law

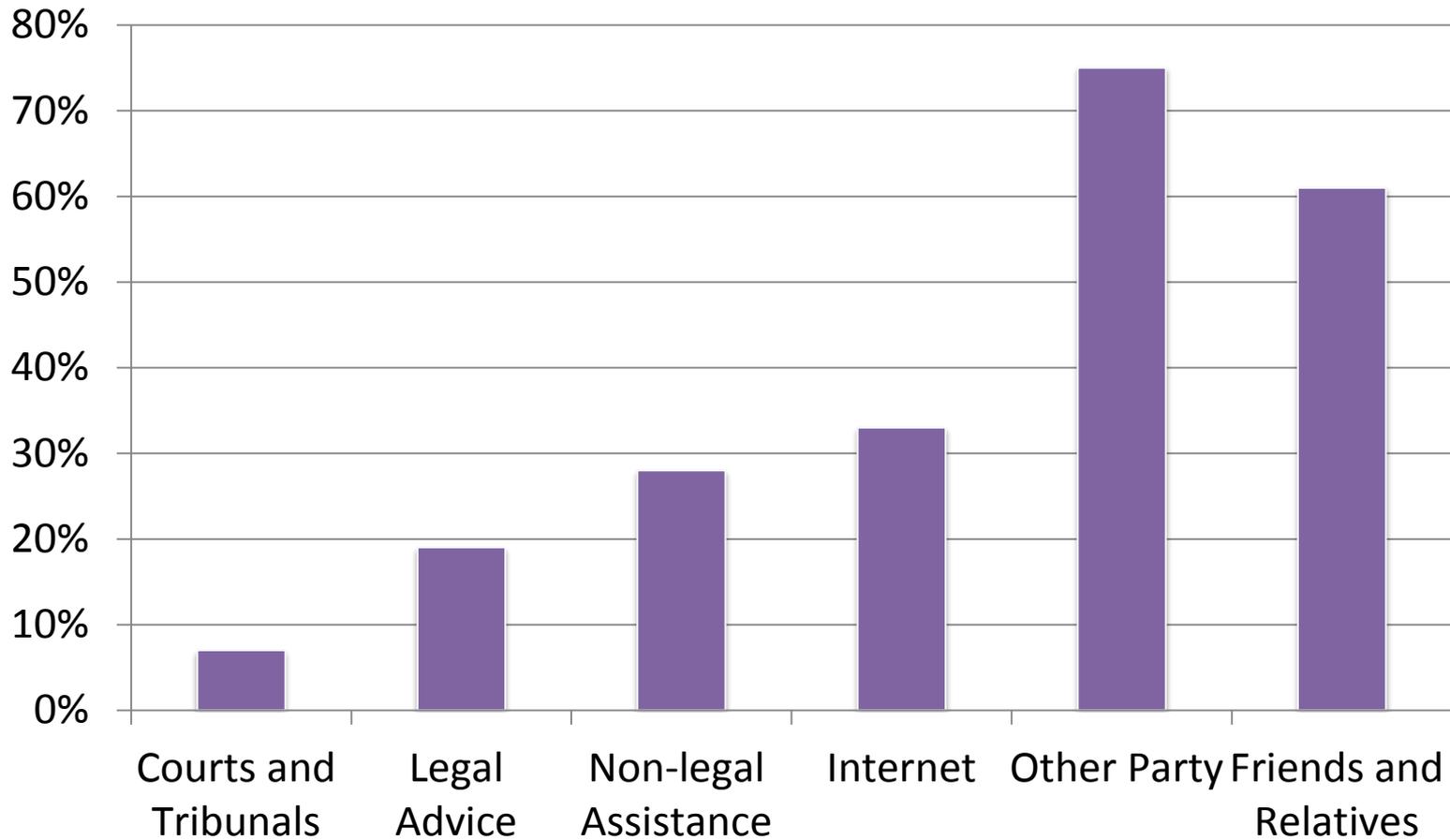
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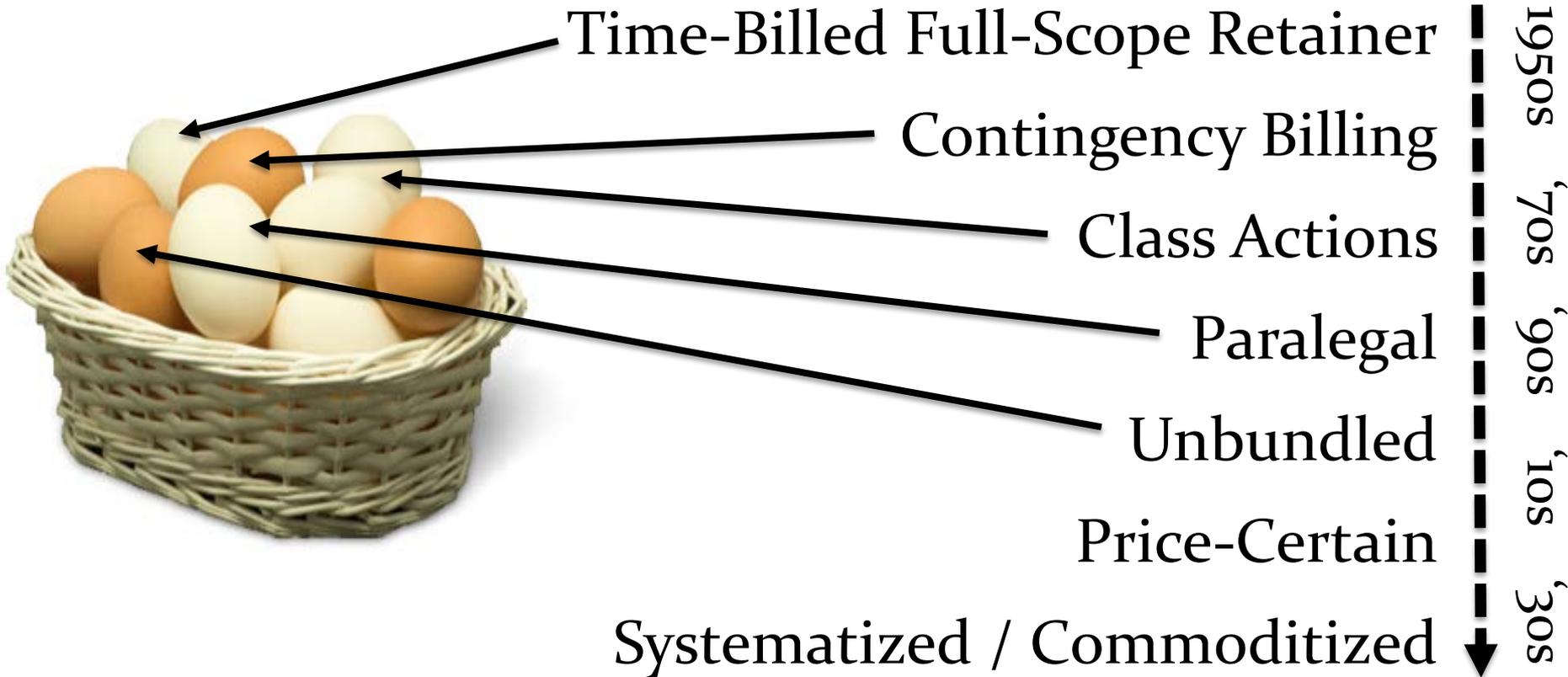
How Helpful Are the Various Service Options?



How Do People Address Their Problems?



Personal Plight Legal Services: Modest Diversification



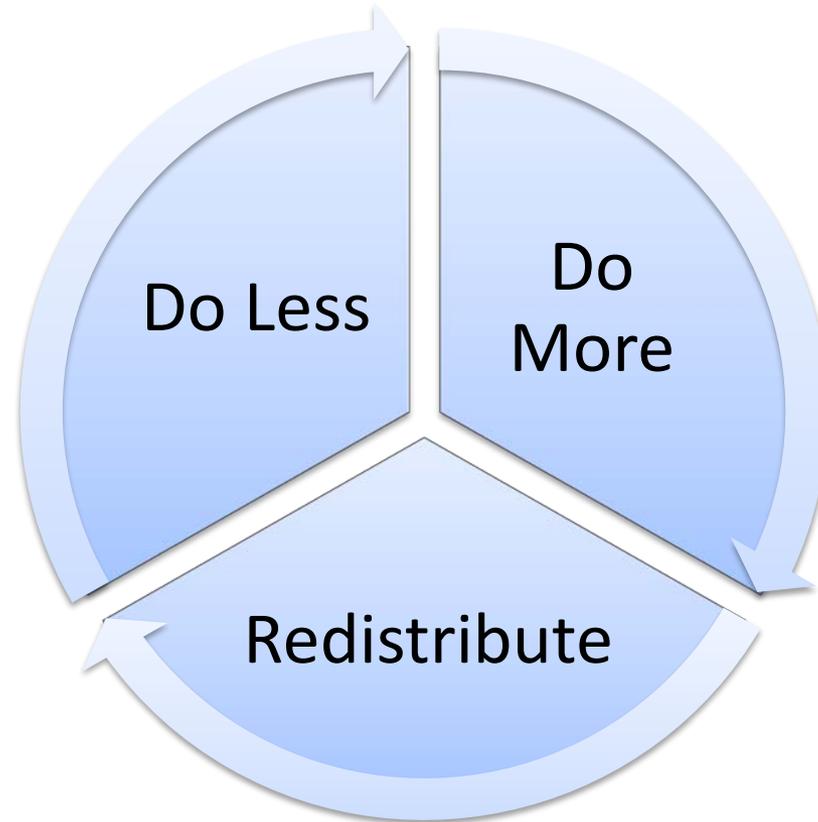
Regulatory Reform to Increase Access to Legal Services



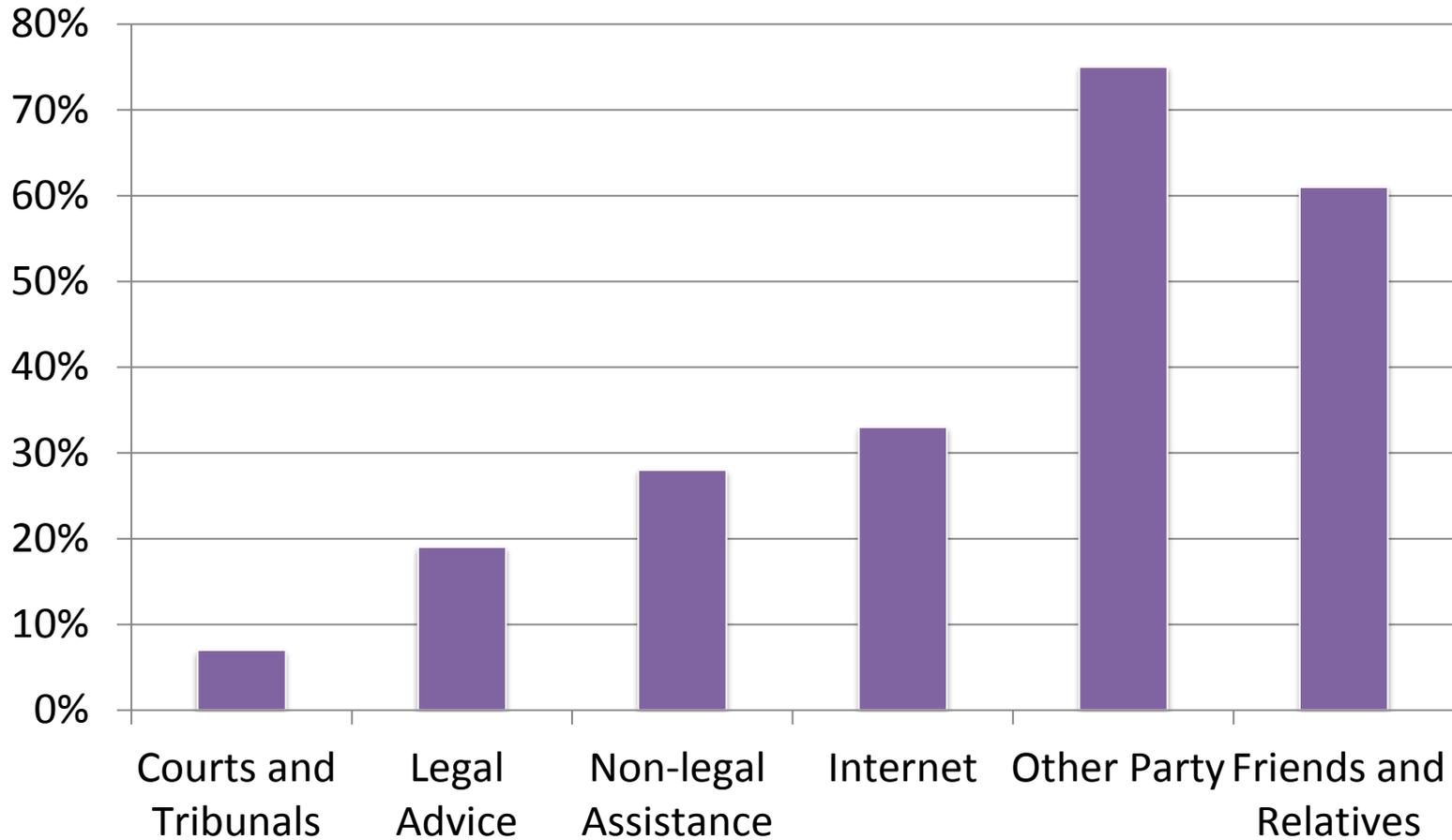
Regulatory Reform to Increase Access to Legal Services



Regulatory Reform to Increase Access to Legal Services



How Do People Address Their Problems?



Search...



USE THE SOLUTION EXPLORER:

STRATA

SMALL CLAIMS



Civil Resolution Tribunal

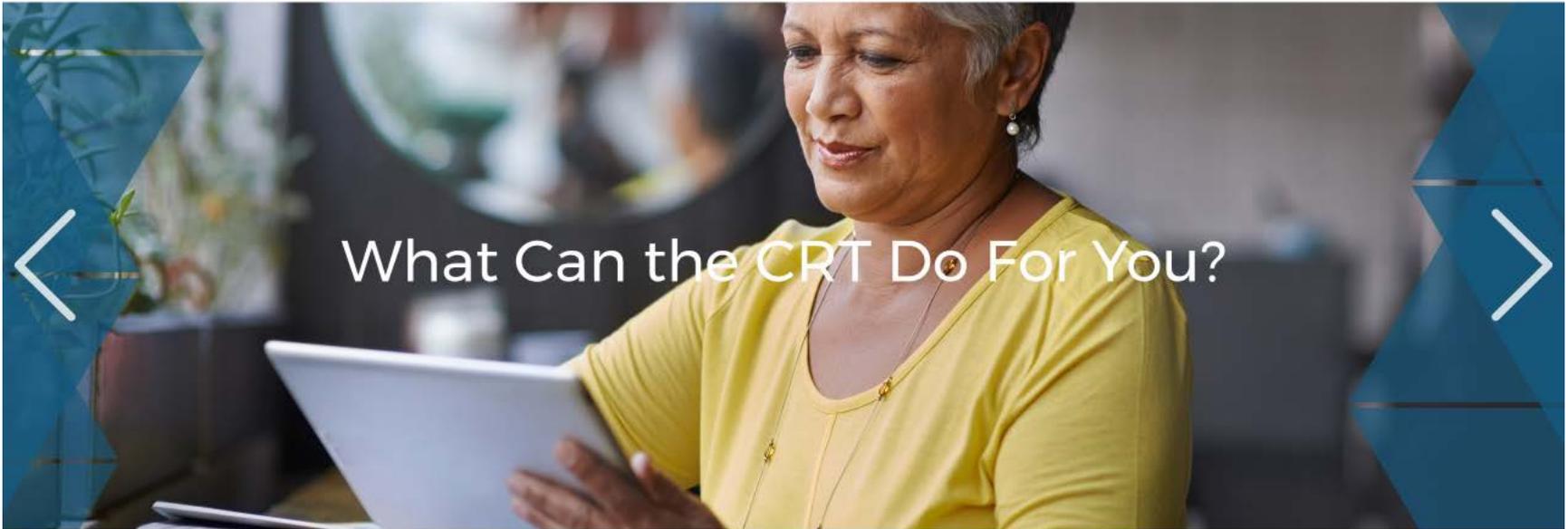
HOW THE CRT WORKS ▾

ABOUT THE CRT ▾

RESOURCES ▾

CONTACT US

WHAT'S NEW



What Can the CRT Do For You?

Welcome to the Civil Resolution Tribunal



Tribunal

Responsive to
Policy

Designable

Less Costly

Court

Independence
from State

Breadth of
Remedies

Breadth of
Competence



**Civil
Resolution
Tribunal**

Court

Responsive to
Policy

Designable

Less Costly

Independence
from State

Breadth of
Remedies

Breadth of
Competence



**Civil
Resolution
Tribunal**

Court

Online

Responsive to
Policy

Designable

Less Costly

Independence
from State

Breadth of
Remedies

Breadth of
Competence



**Civil
Resolution
Tribunal**

Court

Online

Responsive to
Policy

**Co-Designed
w/ Public**

Less Costly

Independence
from State

Breadth of
Remedies

Breadth of
Competence



**Civil
Resolution
Tribunal**

Court

Online

Responsive to
Policy **& Data**

**Co-Designed
w/ Public**

Less Costly

Independence
from State

Breadth of
Remedies

Breadth of
Competence



Civil Disputes

Goods or Services - Buyers

Quit

Save and exit

Your Exploration Information

 37%

Access code: **KNkvDVWEJ**  Email  Print

Information You Provided

1. I bought goods or services for personal, family or household use
2. The seller was in the business of selling that good or service

Additional External Resources

- > [Supplementary Resolution Options for Buyers](#) 
- > [Limitation Periods](#) 
- > [How Can I Make my Claim with the CRT?](#) 

What did you buy?



Some types of purchases are covered under special legislation and offer different resolution options. Choose the answer that best fits your purchase. You can always back up and explore another answer, or try a new exploration.

- Travel services
- Funeral services and products

- Prepaid purchase cards

This includes prepaid cards, gift cards, store cards preloaded with a certain amount of money, and gift certificates and vouchers. But it doesn't include purchases made by a prepaid credit card.

- Something else

Not finding an option you were expecting? Help us improve our site and [tell us what's missing](#).

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Two Innovations that Cost a Lot But Not Money

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Law & Society Association, Annual Meeting
Mexico City, Mexico, 22 June 2017



Two Innovative Projects in Legal Aid

- 1) Legal Health Check-Up
- 2) Secondary Legal Consultation



Innovation in Legal Aid

- Projects carried out in several community legal clinics in Ontario, Canada
- Non-family civil legal aid
- Objective: To increase the number of people served by legal aid by developing forms of outreach
- Low **additional** monetary cost



Legal Health Check-Up Project

- Two main components: Partnerships with community organizations and services (trusted intermediaries) + a legal health check questionnaire
- Phase 2 pilot carried out with 12 community legal clinics in Ontario
- In 6 months established 175 partner organizations; identified over 2000 individuals with unmet needs through the formal partnerships; received 265 check-up forms on-line from other sources
- Monetary Cost: 10 clinics – approximately \$3000 for printing etc.; 2 clinics - \$25,000 to replace staff
- Bulk of the costs in the existing resources of intermediary organizations
- Extending the reach of legal aid beyond its own capacity



Secondary Legal Consultation

- The clients are service providers in community organizations and agencies
- Request advice from legal aid in dealing with their own clients
- 3 community legal clinics in Ontario
- In 6 months;
 - clinic 1 – 170 sc's from 38 organizations
 - Clinic 2 – 74 sc's from 38 organizations
 - Clinic 3 – 134 sc's from 48 organizations
- Monetary Cost: all three clinics have absorbed the cost into existing resources



The big cost to the clinics is in community development

- Not really low cost
- Substantial investment in building partnerships with community organizations
- Large sustained effort building a presence and trust in the community
- Making legal aid part of the fabric of community



Impact & Innovation: Access to Justice Narratives

Part of the goal of the Cost of Justice Project has been to collect data that will impact a public policy conversation on Access to Justice. In what ways has the Costs project been successful in this endeavor and what have we learned?



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Cost of Justice: Impact and Engagement

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Examples of Impact on A2J Initiatives



National Initiatives

ACCESS TO CIVIL & FAMILY JUSTICE A Roadmap for Change

October 2013

 Action Committee on
Access to Justice in
Civil and Family Matters

reaching equal justice report: an invitation to envision and act.

equaljustice

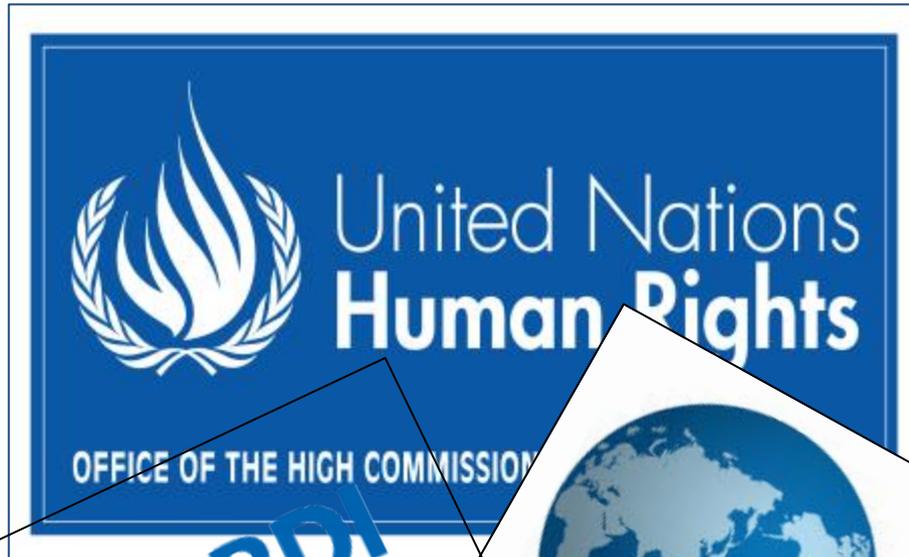
balancing the scales

 THE CANADIAN
BAR ASSOCIATION
L'ASSOCIATION DU
BARRISTE CANADIEN
INFLUENCE. LEADERSHIP. PROTECTION.

Local Initiatives



International Initiatives



Justice Development Goals and Engagement: Current Action Committee Initiatives





Canadian Access to Justice Initiatives: Justice Development Goals



CANADIAN ACCESS TO JUSTICE INITIATIVES:

Justice Development Goals Status Report

March 2017



Action Committee on
Access to Justice in
Civil and Family Matters



Public Engagement Campaign: Making A2J Matter to People

Step One

Connecting the issue to people's lives through social media and communications outreach

Awareness

Catch attention with Justice for all posts

**Justice
for all**

Know the law before you need it.

Step Two

Changing the conversation through media, research, and engagement

Education

Link to quiz about legal health

*Legal
Health Quiz*

Step Three

Public understanding and priority of this issue (funding, elections, etc.)

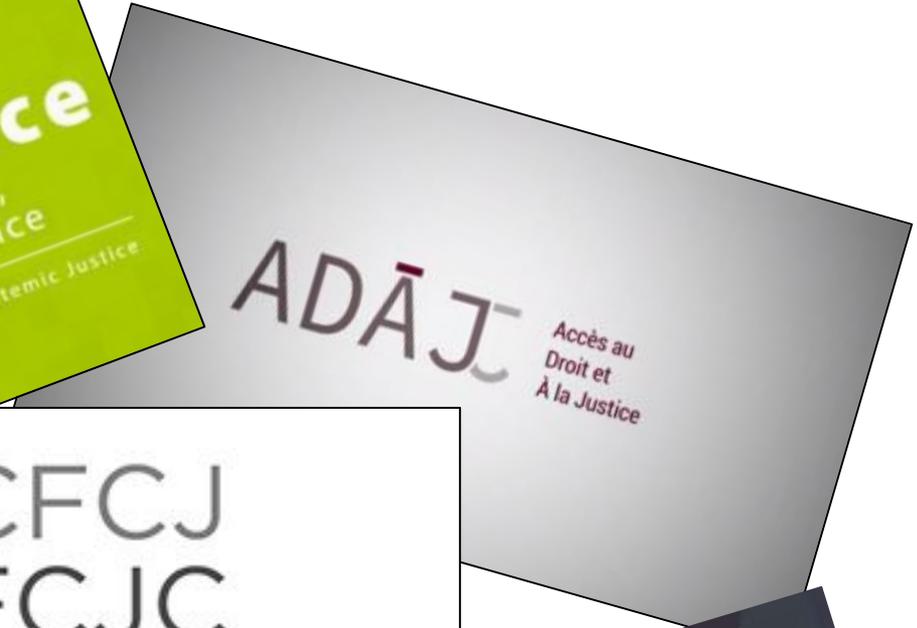
Action

Public interest in A2J

Connect to provincial PLE providers, Canada's Justice Development goals and the A2J



Coordinated National Research Agenda





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The Cost of Everyday Legal Problems & Expanding Access to Justice

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Individual and Public Costs of Everyday Legal Problems

- Would the “knock-on” cost of experiencing everyday legal problems to publicly funded services support an argument for expanded access to justice services?
- First: what is the magnitude of costs?
- Costs that were directly attributable to experiencing a problem that are passed on to three services:
 - health care
 - social assistance
 - employment insurance



Additional Costs to Three Publicly Funded Services

- **Health Care: \$100 million annually**
- **Social Services: \$248 million annually**
- **Employment Insurance: \$450 million annually**
- **Total = about \$800 million annually**



Additional Costs as a Proportion of Total Program Costs (circa 2013)

- **Health Care:** Total annual cost of physician services = \$31.4 billion annually; \$100 million = 0.0032 (0.32%) (Total Health Care Costs = \$128.5 b)
- **Social Services:** Total cost of “last resort” social assistance = \$14.6 billion annually; \$248 million = 0.017 (1.7%)
- **Employment Insurance:** Total cost of EI payouts = \$18.8 billion annually; \$450 million = 0.024 (2.4%)



Costs to Individuals

- **We asked: How much did it cost you to deal with this problem? (Asked for first two problems experienced)**
- **\$7.8 billion (a conservative estimate)**
- **From millions to billions**
- **Does not appear in other consumer expenditure data.**



Costs to Individuals

- **The estimate has to be revisited**
- **Need to learn more about exactly what people spend money on**
- **The prospect: further research on costs to individuals might support the argument for expanded access to justice**





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Meaningful Access to Justice for Everyday Legal Problems: New Research on Consumer Problems Among Canadians

Les Jacobs, PhD

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Director, Institute for Social Research

Senior Research Fellow, Canadian Forum on Civil Justice, Osgoode Hall LS

York University



Rod Macdonald (2012) :“good empirical scholarship on access to justice needs a theory of what the statistics are meant to tell, how they can be interpreted, and where to find “the dogs that are not barking” (p. 571)

The theoretical framework of meaningful access to civil justice can be understood in terms of impacts or outcomes for people with legal problems. Access to civil justice including in family matters is meaningful because either it helps someone resolve or address their problem, it can provide compensation or some other sort of remedy, or it has the potential to have an impact or an effect in terms of legislation, policy, or social change (Jacobs, 2014, 2015)



Six Pillars of Meaningful Access to Justice

- Person-centred (as opposed to service or system-centred)
- Justiciable Problem-Focused
- Few of these problems are resolved in the formal justice system.
- The emphasis should be on trying to get upstream on these problems and in effect be proactive and take preventative measures
- How ordinary people understand and make sense of law and legality—their legal consciousness—is of fundamental importance to if and how they address their legal problems
- Within a problem-centred approach to access to justice, what matters for fair outcomes and fair processes are the paths to justice or legal journeys people take, and not so much the opportunities for legal advice available to them



Key Observations about Consumer Problems

- Access to civil justice is meaningful because either it helps the person resolve or address their problem and different paths for justice can be assessed by asking whether or not the path helps to resolve or address their complaint or problem.
- Consumer Protection providing paths outside the formal justice system.
- Resolution rate in the data for consumer problems was 70%, compared to 55% overall.
- In the data, there are surprisingly few differences among who has consumer problems and only some slight differences between the paths they took.
- People with consumer problems were even more less likely to use lawyers.
- What does this suggest about how meaningful Canadian paths for justice are for consumer problems?





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Thank You. Questions?

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