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## Nudging the Paradigm Shift, Everyday Legal Problems in Canada

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# NUDGING THE PARADIGM SHIFT, EVERYDAY LEGAL PROBLEMS IN CANADA

Ab Currie, Ph.D.  
Senior Research Fellow  
Canadian Forum on Civil Justice

THE COST  
OF JUSTICE



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Canadian Forum on Civil Justice  Forum canadien sur la justice civile

*“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 ... identify concrete solutions to the problem of access to justice.”*

– The Right Honourable Beverley McLachlin, P.C., Chief Justice of Canada (2011)

The Canadian Forum on Civil Justice is a national not-for-profit organization dedicated to civil justice reform and access to justice research and advocacy. Established by the Canadian Bar Association and affiliated with Osgoode Hall Law School, the CFCJ envisions an accessible, sustainable and effective justice system for all Canadians.

**Overview of the Cost of Justice project.** The Cost of Justice project (2011-2017) examines the social and economic costs of Canada’s justice system. It is guided by two questions: What is the cost of delivering access to justice? And what is the cost of not delivering access to justice? Comprised of leading researchers investigating various dimensions of access to justice and cost across the country, the Cost of Justice project is producing empirical data that will inform the future of access to justice in Canada and abroad. The lead research team includes: Trevor C.W. Farrow (Principal Investigator), Nicole Aylwin, Les Jacobs, Lisa Moore, and Diana Lowe.

The Cost of Justice project is funded by a \$1 million grant from the Social Sciences and Humanities Research Council of Canada. For more details please visit Canadian Forum on Civil Justice, “Cost of Justice”, online: CFCJ <[www.cfcj-fcjc.org/cost-of-justice](http://www.cfcj-fcjc.org/cost-of-justice)>.



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# Nudging the Paradigm Shift, Everyday Legal Problems in Canada

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Senior Research Fellow  
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*In matters of truth and justice there is no difference between large and small problems for issues concerning the treatment of people are all the same*  
- Albert Einstein

## INTRODUCTION

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The subject of this paper is the everyday legal problems experienced by the public in Canada. This area of study is best understood by distinguishing it from the legal problems that are adjudicated in the courts or resolved by lawyers. The term everyday legal problem<sup>1</sup> derives from Hazel Genn's term, justiciable events.<sup>2</sup> A justiciable event is a problem or issue that occurs in the normal life of an individual: for example buying and selling, entering into a contract, gaining and losing employment, forming or dissolving domestic relationships that involve some measure of dependency, managing the medical or financial affairs of another person, providing or obtaining services. In short, justiciable events occur in all the normal transactions and transitions of everyday life. A defining feature of this area of research is that it views legal problems from the point of view of the people experiencing them. From this point of view a legal problem does not begin when a statement of claim is filed, when a court appearance occurs or when a lawyer provides some professional service. A legal problem has a natural history in people's lives as they encounter problems navigating life's normal activities. Since we live in what may be described as a legally dense world<sup>3</sup> in which there is a legal framework related to nearly everything, there are legal aspects to many of the ordinary things people do. The extent to which these become legal problems, what people do about them and what happens as a result of experiencing everyday legal problems are the basic questions addressed by this and other studies in the contemporary body of legal problems research.

In her pioneering work, Genn defined a justiciable event as "a matter experienced by a respondent which raised legal issues, whether or not it was recognized by the respondent as being legal and whether or not any action taken by the respondent to deal with the event involved the use of any part of the civil justice system."<sup>4</sup> This closely follows earlier research carried out by the American Bar Association in which respondents were asked about "situations, problems or needs for information or advice... whether or not

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<sup>1</sup> A. Currie, *The Legal Problems of Everyday Life*, in Rebecca L. Sandefur (ed.), *The Sociology of Law Crime and Deviance: Vol. 12, Access to Justice*, Emerald, 2009, pp 1 – 42

<sup>2</sup> Hazel Genn, *Paths to Justice: What people do and think about going to law*, Oxford, 1999.

<sup>3</sup> Gillian Hadfield, *Higher Demand, Lower Supply: A Comparative Assessment of the Legal Landscape for Ordinary Americans*, Annual Law and Economics Association Meeting, San Diego, 2009

<sup>4</sup> c.f, footnote 2., p. 12

they dealt with a lawyer or any part of the legal system.”<sup>5</sup> Because of the barriers limiting the accessibility of the formal justice system this approach is generally accepted as the most coherent and complete approach to understanding the legal problems experienced by the public. The problems that are resolved in the formal justice system are a subset of that larger domain. The everyday legal problems approach avoids the somewhat tautological position that a problem is defined as “legal” because it is subject to action by the formal legal system.<sup>6</sup> Alternatively, any problem may be legal if it has a legal aspect and a potential legal solution, even though people may resolve it without recourse to the formal justice system.

What constitutes legal need is another matter. A legal need may be thought of as a legal problem about which there is some consensus that something ought to be done. Empirical evidence about the consequences of experiencing legal problems is important in determining legal need but what constitutes a need and, especially, what ought to be done about it is also matter for public policy. Like the spokes of a wheel, empirical research is only one, albeit an important component of the policy process.

This paper presents an overview of the results of the 2014 Canadian Forum on Civil Justice national survey of everyday legal problems and the cost of justice in Canada. The analysis will not be a detailed examination of every aspect of the data. Since the publication of Genn’s influential research, there have been a large number of similar studies producing a remarkably consistent body of results<sup>7</sup> and the main findings are by now very well known. Rather, the results presented here are intended to support a discussion about future directions in addressing the legal problems experienced by the public.

## DATA SOURCE & METHODOLOGY

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The data for this analysis is drawn from the 2014 Canadian Forum on Civil Justice Everyday Legal Problems and the Cost of Justice in Canada National Survey. The survey was carried out by The Institute for Social Research at York University, Toronto between September 2013 and May 2014. The 3,051 main study interviews were completed with randomly selected adults from randomly selected households over landline telephones in the 10 provinces. An additional set of 212 cell phone interviews were also conducted. For the purposes of the Overview Report, the results are based on landline calls only and exclude the additional 212 cell phone respondents. This report, however, involves some analysis that includes cell phone interviews, for a total of 3263 respondents. Any slight discrepancies between the data reported in the Overview Report or other related outputs versus the data reported in this paper can be attributed to these additional respondents. Finally, in terms of the nature of the interviews, they averaged just over 21 minutes in length, with the response rate being 42% and the margin of error for statistics reported for the entire sample being +/- 1.8%.

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<sup>5</sup> Report on the Legal Needs of the Moderate Income Public, Findings of the Comprehensive Legal Needs Study, American Bar Association, Chicago, 1994, p. 10. See also Report on the Legal Needs of the Low-Income Public, Findings of the Comprehensive Legal Needs Study, Chicago, American Bar Association, Chicago, 1994; Legal Needs and Civil Justice: A Survey of Americans, Major Findings of the Comprehensive Legal Needs Study, Consortium on Legal Needs and the Public, American Bar Association, Chicago, 1994; Albert H. Cantril, Agenda for Access: The American People and Civil Justice, Final Report on the Implications of the Comprehensive Legal Needs Study, Consortium on Legal Services and the Public, American Bar Association, Chicago, 1996.

<sup>6</sup> Alan Paterson, Lawyers and the Public Good: Democracy in Action?, Hamlyn Lectures, Cambridge University Press, 2012

<sup>7</sup> Pascoe Pleasence, Nigel J. Balmer and Rebecca L. Sandefur, Paths to Justice: A past, present and future roadmap, UCL Centre for Empirical Legal Studies, London, 2013

Respondents were asked if they had experienced problems from a list of 84 specific problem scenarios<sup>8</sup>, each one carefully worded to ensure the issue had legal content. Threshold language in the questions encouraged respondents to report only problems they considered to be or to have been serious and difficult to resolve. Respondents were asked about problems that they had been experiencing within three years of the interview date although the problems may have first started before then. Subsequent parts of the survey asked about actions taken in response to problems, consequences of experiencing problems, the types and adequacy of assistance received, connections between problems and the costs related to experiencing everyday legal problems. In order to limit the time required to administer the telephone survey, the detailed questions about respondents' experiences dealing with problems were asked only about the first and second problems experienced.

**The Prevalence of Everyday Legal Problems**

The results of the 2014 CFCJ survey indicate that 48.4% of adult Canadians will experience one or more everyday legal problems they consider to be serious and difficult to resolve within a three-year period.<sup>9</sup> The basic results of the survey are similar to previous national legal problems surveys carried out in Canada.<sup>10</sup>

Table I: Results of National Legal Problems Surveys in Canada

Percent of the Population 18 Years of Age and Over With One or More Problems				
	2004; n = 4501	2006; n = 6665	2008; n = 7002	2014; n = 3263
<b>Fifteen Problem Categories<sup>11</sup></b>	47.7% (47.0% - 48.4%)	44.6% (44.0% - 45.2%)	49.9% (49.3% - 50.5%)	44.7% (43.0% - 46.4%)
<b>Sixteen Problem Categories, Neighbourhood Problems Added</b>		--	54.6% (54.0% - 55.2%)	
<b>Seventeen Problem Categories, Neighbourhood and Crime Problems Added</b>				48.4% (47.4% - 50.8%)

<sup>8</sup> The results are reported for 17 problem types in order to make the presentation of data manageable.

<sup>9</sup> Weighted to the population.

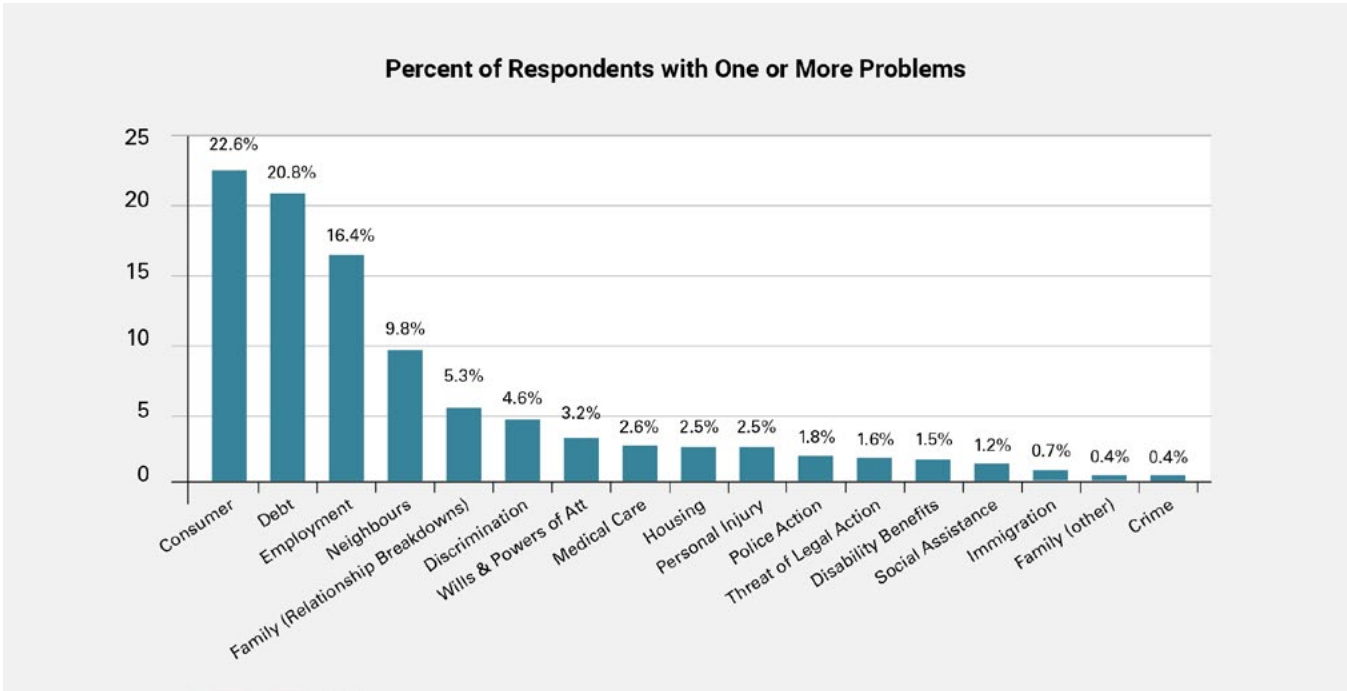
<sup>10</sup> A. Currie, A National Survey of the Civil Justice Problems of Low and Moderate Income Canadians: Incidence and Patterns, *International Journal of the Legal Professions*, Vol. 13, No. 3, 2006 presents the results of a 2004 Canadian survey of legal problems; A. Currie, *The Legal Problems of Everyday Life*, in Rebecca L. Sandefur (ed.), *The Sociology of Law Crime and Deviance: Vol. 12, Access to Justice*, Emerald, 2009, pp 1 – 42 presents the results of a 2006 Canadian survey of legal problems and A. Currie, *Lives of Trouble: Criminal Offending and the Problems of Everyday Life*, paper presented at the International Legal Aid Group Conference, Wellington New Zealand, 2009 presents the results of the 2008 Canadian legal problems survey.

<sup>11</sup> Consumer, debt, employment social assistance, disability benefits, housing, immigration, immigration, police action, family: relationship breakdown, family: other, wills and powers of attorney, personal injury, medical care, threat of legal action

The table shows the percentages of adult Canadians experiencing one or more problems in four national surveys. The percentages in brackets are the confidence intervals for the estimates.<sup>12</sup> The 2004 questionnaire included 79 separate problems organized into 15 categories. The 2006 studies had 84 questions, again in the same 15 categories as used in 2004. The 2008 survey contained 82 questions in 16 categories, including neighbour problems. Finally, the questionnaire for the 2014 CFCJ survey included 84 specific problems in 17 categories, including neighbour problems and crime. The reference period of three years was used consistently for all four surveys. All surveys were conducted in the 10 provinces only. Broadly speaking, the basic methodology was the same for all four surveys. The results from all four surveys indicate that about 45-50% of adult Canadians will experience one or more legal problems within a three-year period that can be characterized as serious and difficult to resolve. Although the number of problems can be counted and expressed quantitatively, the data are self-reported problems, which have an underlying character that is essentially qualitative.

Results from the CFCJ survey indicate that respondents with one or more legal problems experienced an average of 3.13 problems per individual. Weighted to the population, an estimated 11.4 million people experienced one or more legal problems within the three-year reference period. These people experienced a total of approximately 35.7 million problems within the three-year reference period. On an annual basis about 3.8 million Canadians experience approximately 11.9 million everyday legal problems. The percentages of respondents experiencing one or more problems within each problem type are shown in Figure I.

Figure I: Percent Experiencing One or More Legal Problems within Problem Types



<sup>12</sup> Confidence intervals represent the range within which the estimates could vary.

As with all other studies following the same methodology, this research reports an extraordinarily large number of people experiencing self-identified legal problems. As noted above, the defining feature of the research is that it looks at problems from the point of view of the people experiencing them and not from the perspective of the traditional formal justice system. One of the methodological difficulties with survey research on legal problems is that it is not possible to carry out a clinical assessment of the legal complexity or seriousness of the problems people identify. However, it is possible, and important, to characterize the seriousness of the problems from the point of the view of the people involved. Respondents were asked how important it was to resolve the problem and how difficult daily life became as a result of the problem. The results are expressed below in Table II.

Table II: The Seriousness of Everyday Legal Problems<sup>13</sup>

	Important to Resolve	Made Daily Life Difficult
	Percent	Percent
<b>Extremely</b>	36.4%	10.9%
<b>Very</b>	30.5%	14.1%
<b>Somewhat</b>	20.8%	29.3%
<b>Not Very</b>	6.1%	19.2%
<b>Not at All</b>	4.8%	25.0%
<b>DK (Does this mean “Don’t Know”?) and Refused</b>	1.4%	1.5%

The vast majority of respondents experiencing a problem, 87.7%, said it was important in some degree to resolve the problem, with 36.4% and 30.5%, respectively, saying it was extremely and very important. More than half of all respondents, 54.3% said that experiencing the problem made their day-to-day life difficult. One quarter of respondents said the problem made life extremely or very difficult. Through the use of threshold language in the interview, respondents were encouraged to identify only problems they considered serious and difficult to resolve.

**LEGAL PROBLEMS DEALT WITH IN THE FORMAL JUSTICE SYSTEM**

One of the main propositions underlying this approach is that the nature and extent of the legal problems experienced by the public cannot be examined simply by looking at the problems dealt with by the formal justice system. The 2014 CFCJ survey indicates that only 6.7% of people experiencing a legal problem make use of the formal justice system to resolve it. Additionally, only about 19% of people obtain legal advice from any source. The only methodological alternative for obtaining a comprehensive picture of the landscape of legal problems is the use of representative surveys of self-reported problems. The challenge with this approach to legal problems research, however, is that it consistently produces what might be considered to be very high estimates of the prevalence of legal problems. This departure from the orthodoxy of relating legal problems to matters that are dealt with by lawyers or resolved in the courts and tribunals calls for some clarification.

<sup>13</sup> The percentages are averages of what respondents said about problems one and two. The separate figures were very similar.



## THE MONETARY VALUE OF SELECTED EVERYDAY LEGAL PROBLEMS

Examining the value respondents placed on the problems they reported puts the nature of everyday legal problems into a more concrete perspective. In the 2014 CFCJ survey, respondents were asked to report on the monetary value of three problem types that are relatively easy to quantify: consumer, debt and employment problems. These three problem categories represent a very large proportion of all problems reported. Table III shows the ranges of monetary values for these three problem types arranged in quartiles of respondents. The table also shows the percentages of respondents valuing the problem they experienced at \$10,000 or more, at \$25,000 or more, and at \$100,000 or more, as well as the average amount at which problems were valued.

Table III: The Monetary Value of Consumer, Employment and Debt Problems

Quartile Ranges	Consumer Problems	Employment Problems	Debt Problems
<b>% of Respondents</b>	Range of Monetary Values for the Quartile		
<b>Up to 25%</b>	Up to \$400	Up to \$25	Up to \$400
<b>25 to 49%</b>	\$400 to \$1500	\$25 to \$600	\$400 to \$2000
<b>50 to 74%</b>	\$1501 to \$7000	\$601 to \$5000	\$2001 to \$12,000
<b>75 to 100%</b>	More than \$7000	More than \$5000	More than \$12,000
<b>Average Value of the Problem</b>	\$20,875	\$21,986	\$29,128
	Percent of Respondents		
<b>Problem valued at \$10,000 or more</b>	20.0%	15.3%	27.0%
<b>Problem valued at \$25,000 or more</b>	10.0%	8.6%	18.0%
<b>Problem valued at \$100,000 or more</b>	2.5%	3.2%	4.4%

Many of the problems reported by respondents could be characterized as having a low monetary value. Looking at legal problems from the perspective of those experiencing them, the research uncovers some very revealing results. It shows that people experience a large number of legal problems that they consider to be difficult to resolve, and that they take some action to resolve these problems even where the monetary value is low. The very large number of legal problems defined more broadly, as compared to the specific legal problems typically dealt with by the formal justice system, places the issue of defining a *legal* problem into perspective. One might more or less arbitrarily eliminate some problems that do not fit within some external criteria that represent serious legal problems. Alternatively, one may accept them as valid and reconsider what this might mean in terms of defining what constitutes a *legal* problem. These data are part of a body of knowledge that has been accumulating over many legal problems studies. They represent a body of propositions, assumptions, definitions, and empirical facts that, at the level of research, Robert Merton

refers to as a paradigm.<sup>14</sup> It is well understood by researchers that the paradigm shapes the questions pursued in future research and that is essentially how a body of knowledge accumulates and a new paradigm becomes more firmly established. The results of this research invite a consideration of how we define a legal problem, what is meant by justice and access to justice and what ought to be encompassed within the concept of a justice system.

### Multiple Problems

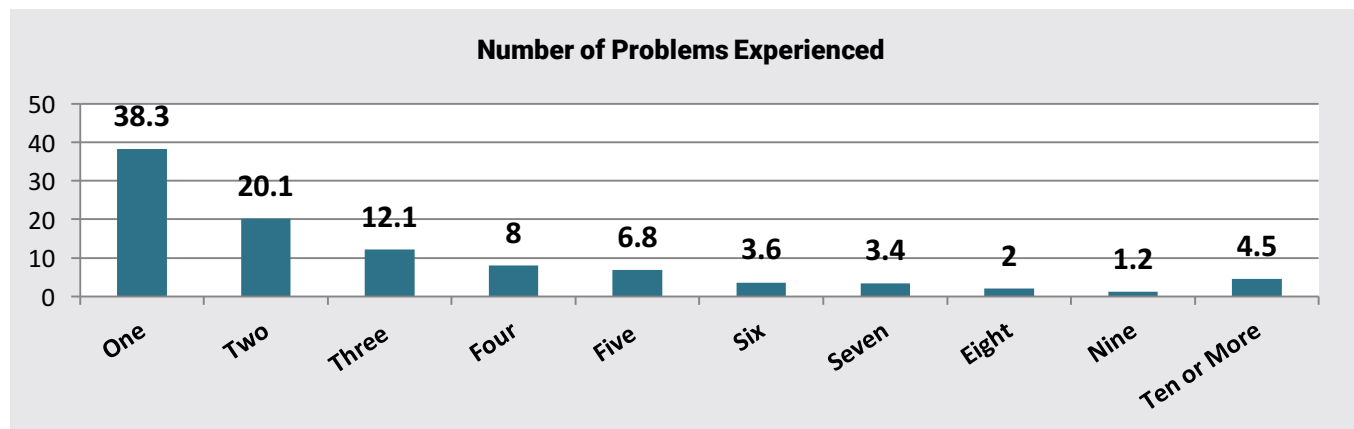
Legal problems frequently do not occur in isolation. In this sample 14.2% of respondents reported more than 3 problems within the three-year period.

#### IV: Multiple Problems

Number of Problems	Percent
None	51.6%
One	18.6%
Two	9.7%
Three	5.9%
Four	3.9%
Five	3.3%
Six or More	7%

Calculated on the basis of respondents experiencing at least one problem, almost 42% of people who experienced at least one problem reported having three or more.

Figure II: Number of Problems Experienced for Respondents With at Least One Problem



<sup>14</sup> Robert K. Merton, *Social Theory and Social Structure*, The Free Press, New York, 1968, pp. 69 – 72

## Multiple Problems and Social Disadvantage

Similar to earlier findings by Currie<sup>15</sup>, there is some evidence that experiencing multiple problems is related to aspects of social disadvantage. In terms of employment and source of income, respondents who were unemployed and looking for work were more likely to experience multiple problems: 37.1% experiencing just one problem as compared to 52.4% experiencing three or more. Similarly, among respondents whose main source of income was a disability pension, 30.2% experienced one problem while 58.1% experienced three or more.<sup>16</sup> There was a similar relationship among respondents reporting they were receiving social assistance benefits, 36.9% had one problem and 42.3% experienced three or more.<sup>17</sup>

There were three marital or domestic status categories in which respondents were more likely to experience multiple problems. Respondents who said they were divorced were more likely to experience multiple problems with just 3.3% experiencing one problem and 66.7% experiencing three or more. Similarly, 30.8% of respondents who were separated experienced one problem while 69.2% experienced three or more problems. Finally, 21.4% of respondents who were living with a partner but not married experienced one problem while 51.4% experienced three or more.<sup>18</sup>

Younger respondents experienced more everyday legal problems.<sup>19</sup> In terms of income, respondents with higher incomes and higher levels of education were more likely to experience multiple problems.<sup>20</sup> One way to explain this trend is that higher levels of consumption among persons with higher incomes gives rise to an increased number of consumer and debt problems.

## Long-standing Disadvantage

Rather than point-in-time measurements, another way to look at social disadvantage is through the presence of long-standing problems that have affected people's security throughout their lives. In the 2014 CFCJ survey, respondents were asked if they had experienced long term debt, housing and employment problems. A small percentage of respondents, approximately 3.5%, said they had frequently experienced long-standing employment problems, about 4.4% said debt had frequently been a problem and approximately 3.0% said finding good affordable housing had been a long-standing problem in their lives. Disadvantage, measured in terms of long-standing debt and employment problems, is associated with multiple problems. Table V shows the relationship between the three measures of long-standing social disadvantage and multiple problems.

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<sup>15</sup> Ab Currie, *The Legal Problems of Everyday Life*, 2009, p. 22.

<sup>16</sup>  $\chi^2 = 71.9$ ,  $p = .0001$ ,  $n = 1532$

<sup>17</sup> This relationship was not statistically significant. However, in view of the other relationships, it is of substantive significance and is included in this discussion.

<sup>18</sup>  $\chi^2 = 26.4$ ,  $p = .02$ ,  $n = 225$

<sup>19</sup>  $\chi^2 = 35.1$ ,  $p = .0001$ ,  $n = 1416$ ; Tau C =  $-.13$ ,  $p = .02$

<sup>20</sup> Not statistically significant.

Table V: Long-Standing Debt and Housing Problems and Multiple Legal Problems

	Number of Problems				
	0	1	2	3 or More	n
	Percent of Respondents				
<b>Frequently experienced debt problems</b>	16.4%	14.2%	18.7%	50.7%	100
	$\chi^2 = 298.4, p = .0001, n = 3030$ Gamma = .50 (approx. significance) = .0001				
<b>Good affordable housing had been a long term problem</b>	13.5%	16.8%	7.9%	61.8%	89
	$\chi^2 = 215.1, p = .0001, n = 2996$ Gamma = .55 (approx. significance) = .0001				

As Table V indicates, respondents with long-term debt and housing problems were far more likely to experience 3 or more everyday legal problems.<sup>21</sup>

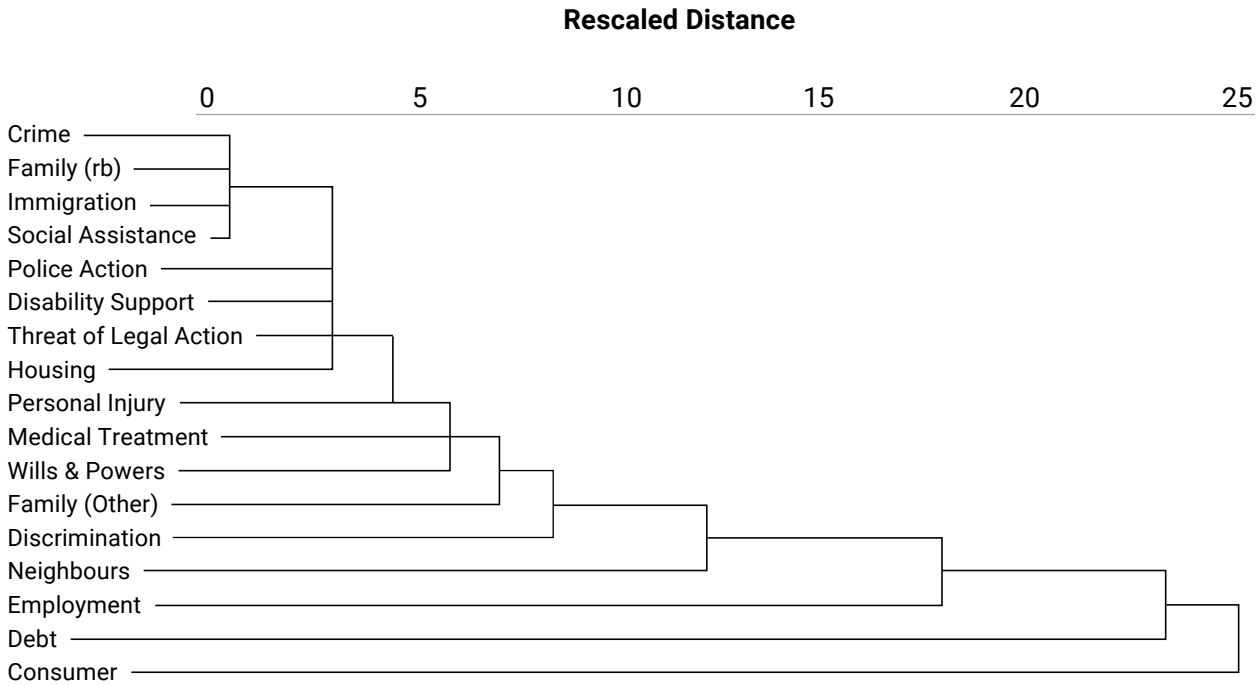
### **Problem Clusters**

Other research has demonstrated that the multiple problems experienced by individuals tend to cluster into distinct patterns.<sup>22</sup> In order to examine the extent of clustering in this data set, a hierarchical cluster analysis was carried out for the 17 problem categories. The technique begins with a matrix of inter-correlations among the 17 variables and then translates the correlations between pairs into a measure of distance. This measure of distance represents the proximity of pairs or groups of problem types that can be imagined in two-dimensional space. Problem types that are closer to each other form a cluster. Problem types that are farther away from other problem types might belong to different clusters. The location of each problem type in relation to others can be determined along a measure of proximity ranging from 0 to 25. The dendrogram presented in Figure III represents the extent of clustering based on these data. A visual inspection of the gaps or spaces in the location of problem types along the scale allows the definition of possible clusters. Identifying clusters can be as much an art as it is a science.

<sup>21</sup> The relationship between long-standing employment problems and number of legal problems was not positive and not statistically significant

<sup>22</sup> Pascoe Pleasence, Alexy Buck, Nigel Balmer, Aoife O’Grady, Hazel Genn, Marisol Smith, Causes of Action: Civil Law and Social Justice, Legal Services Commission, 2004, pp. 37 – 44.

Figure III: Dendrogram Showing the Results of the Hierarchical Cluster Analysis



There is no evidence for substantial clustering in this sample. Reading along the distance scale at the top of the dendrogram, the first obvious break point is at about 9. All the variables entered into the clustering algorithm before that point on the distance scale are close together, indicating little tendency for clustering of respondents experiencing these types of problems. The next obvious cutting points along the distance scale are at about 15 and slightly past 20. The possible cutting point at 15 on the distance scale does not present obvious clusters. The most obvious cluster appears after 20 on the distance scale. Based on their distance from other problems, their position in relation to each other and based on underlying logic, consumer, debt and employment problems make up one clearly defined cluster. Other research employing the same analytical technique has found evidence of greater tendencies for clustering.<sup>23</sup> An analysis of patterns involving trigger and consequence problem pairs can also provide insights into the patterning of multiple problems.

**Trigger Effects**

Another way to view linkages among problems is as the product of trigger and consequence effects.<sup>24</sup> In the present study, respondents experiencing two or more problems were asked if any of the problems they had experienced caused another problem and, if that was the case, what problem was the trigger and which one the consequence. About one third, 33.2%, of respondents experiencing at least two problems, said that a problem they had experienced caused another one. This represents approximately 2.4 million people

<sup>23</sup> Pleasence, 2004 and 2006 and Currie, 2009.

<sup>24</sup> Pleasence, et.al., 2004, pp. 34 - 37

weighted to the population. Respondents identified 52 specific problems from the list of 85 as triggers and 45 different problems as consequences. Crime was not identified as a trigger.<sup>25</sup> No specific problems within the social assistance or immigration problem categories were identified by respondents as trigger problems. Neither immigration nor crime was mentioned by respondents as consequence problems. However, all of these problem types appear in the cluster analysis. While there were 271 specific problems mentioned as triggers, there were only 95 problems mentioned as consequences. Table VI shows the ten most frequent trigger and consequence problems identified by respondents.

Table VI: Ten Most Frequently Mentioned Trigger and Consequence Problems

Trigger Problems			Consequence Problems		
Problem	Number	Percent	Problem	Number	Percent
<b>1. Consumer, Large purchase</b>	21	7.8%	<b>1. Debt, Harassment by collection agency</b>	6	6.3%
<b>2. Employment, Workplace health and safety</b>	20	7.4%	<b>2. Employment: unfair dismissal</b>	5	5.3%
<b>3. Employment, Harassment at Work</b>	20	7.4%	<b>3. Powers of Attorney, managing financial matters of another person</b>	5	5.3%
<b>4. Family Law, Separation</b>	17	6.3%	<b>4. Employment, Unfair disciplinary procedure</b>	4	4.2%
<b>5. Debt, Harassment by collection agency</b>	14	5.2%	<b>5. Family Law, Child support payments</b>	4	4.2%
<b>6. Employment, Obtaining wages or overtime owed</b>	14	5.2%	<b>6. Family Law, division of property</b>	4	4.2%
<b>7. Consumer, Problems with renovations or repairs</b>	10	3.7%	<b>7. Neighbours, Threats or harassment</b>	4	4.2%
<b>8. Consumer, Problem with a bill or invoice</b>	10	3.7%	<b>8. Consumer, Problems with repairs or renovation</b>	3	3.2%
<b>9. Consumer, Problem with purchase of service</b>	8	3.0%	<b>9. Consumer, Problem with a bill or invoice</b>	3	3.2%
<b>10. Neighbours, Regular and excessive noise</b>	8	3.0%	<b>10. Neighbours, Regular and excessive noise</b>	3	3.2%
	142	52.7%		41	43.3%

<sup>25</sup> Crime as a problem type was an outlier in the cluster analysis and could not be related to any of the three problem clusters.

The ten most frequently cited trigger problems make up slightly more than half of all problems mentioned by respondents. Four of these trigger problems are consumer related, three are employment related, and one each falls into debt, family law and neighbour problem categories.

The ten most frequent consequence problems make up 43.3% of the total. Consequence problems fall equally into consumer, employment, family law and neighbour problems with two each. One problem mentioned was a debt problem and one a problem related to powers of attorney.

Table VII shows the trigger and consequence pairs by problem type.<sup>26</sup> The table includes only problem categories for which there was sufficient data on trigger – consequence pairs.

Table VII: Trigger and Consequence Pairs by Problem Type

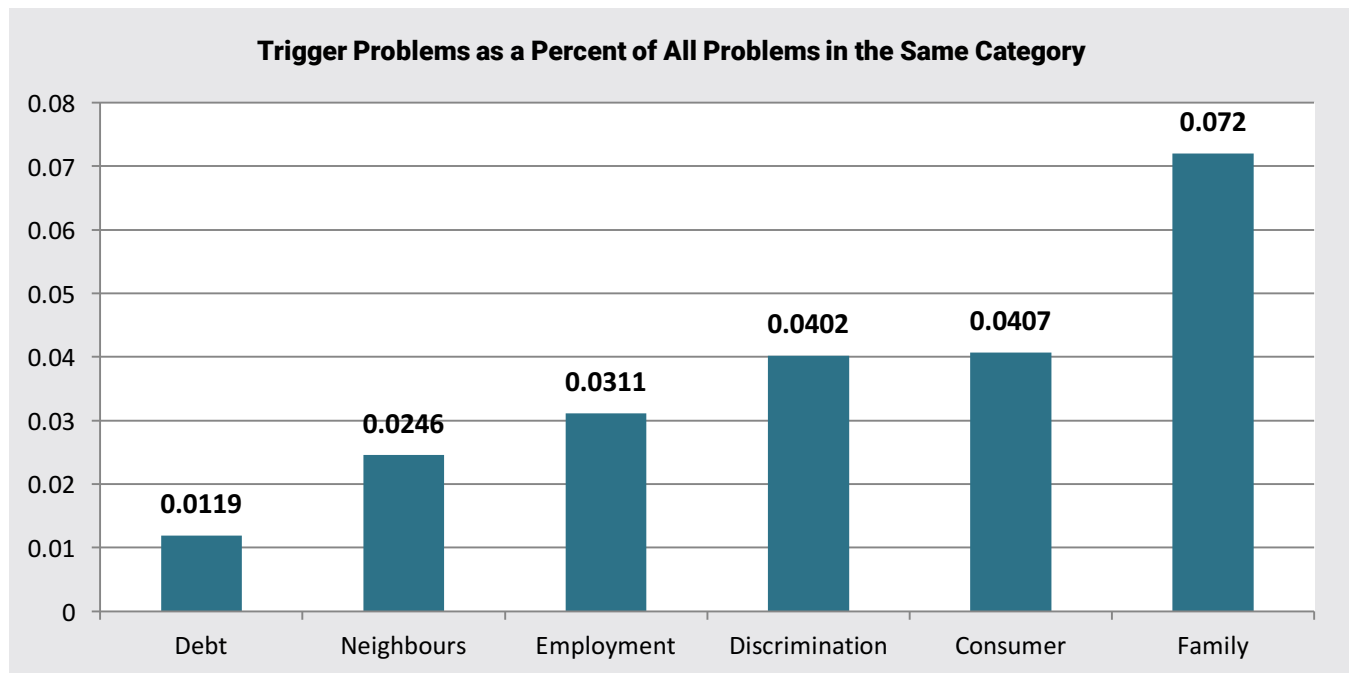
Problem Type	Number of Times Mentioned as a Trigger	Number of Consequence Problems within the Same Problem Category	Number of Consequence Problems in Other Problem Categories
<b>Consumer</b>	27	4	Debt – 7 Employment – 4 Family (Relationship Breakdown) – 3 Personal Injury – 2 All Other Problem Types - 7
<b>Employment</b>	14	7	Other Problem Types - 7
<b>Family (Relationship Breakdown)</b>	9	6	Debt – 2 Wills/Powers - 1
<b>Debt</b>	7	5	Consumer – 1 Housing - 1
<b>Neighbours</b>	7	6	Seven problems mentioned only once - 7
<b>Discrimination</b>	6	1	Employment – 3 Family (Relationship Breakdown) - 2

The trigger – consequence linkages are primarily among problems within the same problem type for family (relationship breakdown), debt and neighbour problems. The internal versus external linkages are mixed for employment. Trigger – consequence pairs are primarily external in cases where consumer problems are the trigger. Both neighbour and consumer problems are triggers for a large variety of other problem types compared with other trigger problems.

<sup>26</sup> The numbers would have been too small to carry out the analysis on individual problems.

The number of times a problem within a particular category is identified as a trigger is partly a function of the number of problems in that category. All other things being equal one would expect that more consumer problems would be identified as triggers because the number of problems in that category is larger overall. To get an idea of the relative importance of problem types as triggers, their numbers are expressed as a percentage of the number of problems within that category. The results are shown in Figure IV for the six main problem types in which trigger problems were identified.

Figure IV: Relative Importance of Trigger Problems<sup>27</sup>



Relative to the overall number of problems in the category, family law (relationship breakdown) problems are far more likely to trigger other problems than problems of other types. In terms of absolute numbers, consumer problems are identified as triggers 4.5 times more frequently than problems involving discrimination. In relative terms, however, problems involving discrimination are about equally important as trigger problems compared with consumer problems.

### The Additive Effect of Experiencing Everyday Legal Problems

An intriguing aspect of multiple problems is that experiencing everyday legal problems appears to create momentum.<sup>28</sup> The momentum or additive effect may be the result of the tendency for certain problems to

<sup>27</sup> This calculation is based on the number of respondents indicating a problem in that type was a trigger divided by the number of respondents saying they experienced one or more problems of that problem type.

<sup>28</sup> Pascoe Pleasence, et al, Causes of Action, 2004, p. 31 and Pascoe Pleasence, Causes of Action (second edition), 2006, p. 53



either trigger or be triggered by other problems. Table VIII shows the probability that an individual experiencing a first, second or subsequent problem will experience another.<sup>29</sup>

Table VIII: The Additive Effect of Experiencing Multiple Legal Problems (Up to Ten Problems)

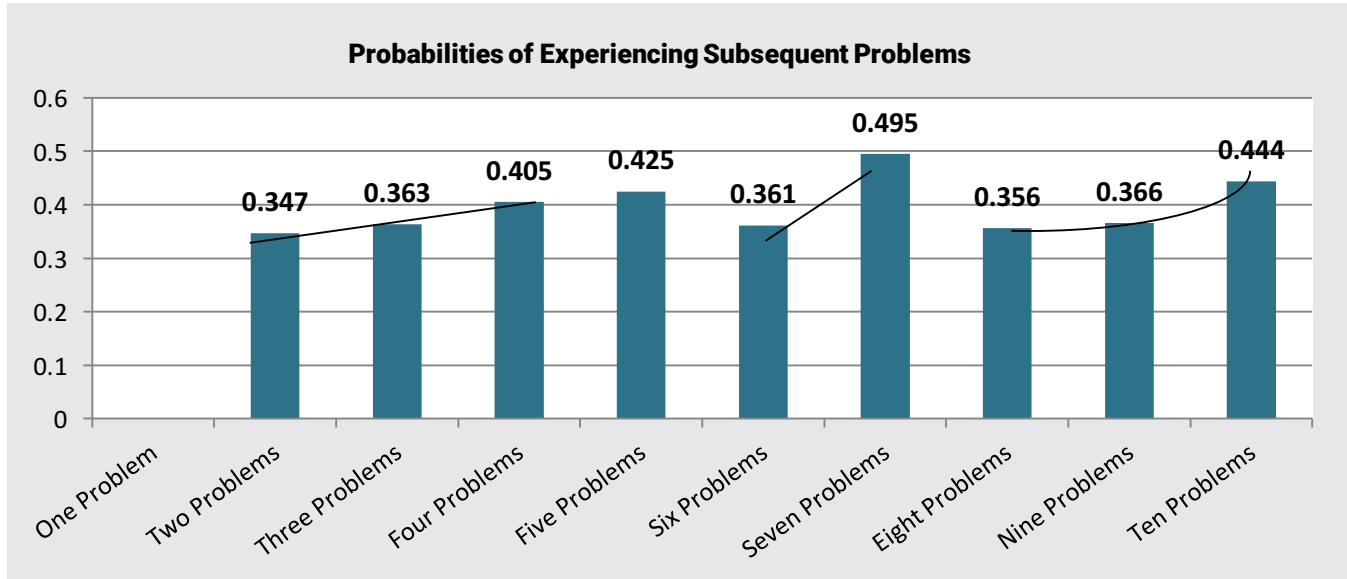
Number of Problems	Number of Respondents Experiencing a Specific Number of Problems	Probability of Experiencing Another Problem Given that the Individual Has experienced Any Given Number of Problems [Proportion (b/a + b)]
1	560	--
2	297	.347
3	169	.363
4	115	.405
5	85	.425
6	48	.361
7	47	.495
8	26	.356
9	15	.366
10	12	.444

As the above Table demonstrates, the probability of experiencing a second problem given that the respondent experienced a first problem is 0.347. Similarly, the probability of experiencing a third problem given that the respondent has already experienced two problems is 0.363. The progression of an increasing probability of experiencing an additional or subsequent problem continues until the fifth problem. From problem six onward the progression becomes irregular. However, there is still evidence of an additive effect as illustrated in Figure V.

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<sup>29</sup> For example, the proportion of respondents experiencing a second problem given they have experienced a first problem is calculated by dividing the number of respondents experiencing the second problem by the number experiencing the first plus the second problems (2/1 + 2). A proportion, one part of a whole relative to the whole, represents a probability.

Figure V: The Additive Effect of Experiencing Legal Problems.



One way to account for this intriguing possibility of an additive effect is that the effects of any underlying conditions do not stop at one, two or even three problems. Another possible explanation is that the trigger and consequence effects may have a tendency to drive the number of problems experienced upward. Multiple problems, the existence of trigger and consequence effects (or in situations in which a single problem triggers multiple or a chain of problems, what might be called trigger and cascade effects) and possible momentum driving legal problems suggest that early intervention and resolution is needed to prevent legal problems from forming interconnected clusters that are more difficult to resolve.

## WHAT PEOPLE DO ABOUT EVERYDAY LEGAL PROBLEMS

As indicated in the 2014 CFCJ survey, only 6.7% of respondents used the formal justice system (courts, tribunals or small claims courts) to resolve legal problems. A further 1.7% said they used mediation or conciliation. Among respondents who used the formal justice system, 47.7% said they used a regular court, 30.7% a tribunal, 12.5% small claims court and 9.7% were not sure. Overall, 56.8% of respondents said they were represented in these venues. Among those, 86.0% were represented by a lawyer, 9.3% by a trained advocate other than a lawyer and 4.7% were assisted by a friend or relative.

The vast majority of respondents took some form of action to resolve their problem other than through the formal justice system. As one might expect, people tend to respond to everyday problems with ordinary responses. The largest percentage, approximately 75%, attempted to negotiate with the other party. Close behind as an alternative response, 61% asked advice from friends or relatives. Other actions taken were: approximately 28% obtained advice from an organization such as a government agency, a voluntary association or a union. Approximately 33% searched the internet for assistance. Approximately 19% obtained legal advice or assistance. Finally, 18.1% of respondents indicated they had taken a variety of other actions.

## The Number and Sequence of Actions to Resolve Problems

About one fifth of people who made some attempt to solve their problem, 21%, took only one action to resolve their problem, approximately 21% took two actions, approximately 20% took three, approximately 14% took four actions, approximately 9% took five actions and approximately 15% said they took six or more. This allows for a large number of combinations of actions. These can be usefully summarized into three categories. First, “self-help” includes respondents who consulted the internet, attempted to negotiate with the other party directly or took advice from friends or relatives. For the purposes of this paper, self-helpers do not include persons who obtained legal advice or authoritative non-legal advice from any organization. Second, respondents obtaining non-legal advice primarily obtained assistance from an authoritative source but could have taken any other action except obtaining legal advice. Third, respondents who obtained legal advice could have also taken any other action so long as legal advice was included. Using these three categories of actions taken and combining the results from problems one and two, self-helpers make up a majority of all respondents taking any form of action, followed by respondents who obtained non-legal help then, followed by respondents obtaining legal help.

Respondents were asked about the sequence of actions taken. Using somewhat more detailed categories than the three summarized above, Table IX describes the sequencing of actions taken by respondents. Problems one and two are combined for this analysis.

Table IX: Percent of Respondents Taking Types of Actions for First, Second and Third Actions

	First Action		Second Action		Third Action	
	%	Order	%	Order	%	Order
<b>Negotiate with the other party</b>	38.5%	1	16.0%	4	12.1%	6
<b>Advice from friends or relatives</b>	23.5%	2	32.2%	1	17.4%	5
<b>Search the internet</b>	21.0%	3	16.7%	2	14.4%	3
<b>Non-legal help from an organization</b>	8.5%	4	16.2%	3	20.0%	2
<b>Legal advice</b>	4.7%	5	10.4%	5	20.9%	1
<b>Something else</b>	3.8%	6	8.3%	6	15.2%	4

As the table indicates, the most frequent course of action taken first was to negotiate with the other party. Taking advice from friends and relatives was the second most frequent course of action among the actions people said they took first. This was closely followed by searching the internet. Obtaining legal advice was the fifth most frequent action taken first. Obtaining advice from friends and relatives was the most frequent second action. Searching the internet was the next most frequent second action, though it was very close in frequency to obtaining non-legal help from an authoritative organization and attempting to negotiate with the other party. Like its rank among first actions taken, obtaining legal advice was still the fifth most frequent second action taken, though it occurred more frequently as a response relative to other second courses of action taken. Turning to the third action taken, obtaining legal advice was the most frequent course of action, at 20.9%.

Consistent with the basic concept underlying contemporary legal problems research that legal problems are aspects of the problems occurring in everyday life, the survey data indicates that people first respond to problems informally. Obtaining authoritative non-legal advice and legal advice only becomes most frequent as the third action taken. Ideally, seeking legal advice or other authoritative non-legal advice should be more prominent earlier. It is well established in the literature that perceived high cost is a significant impediment to consulting a lawyer.<sup>30</sup> Pleasence and Balmer report that 57% of respondents in the CSJPS who obtained advice from an advice centre rather than a lawyer did so because of cost.<sup>31</sup> These results may suggest the necessity of making free legal advice more widely available if people are to make greater use of these sources.

### **Taking No Action**

Only 4.5% of respondents in this sample indicated that they took no action to resolve the problem.<sup>32</sup> This is, in itself, a significant indication that the everyday legal problems identified in this sample are not trivial in the lives of the people experiencing them. The small number of people taking no action is consistent with the methodology that encouraged respondents to report only those problems they considered to be serious. Respondents were asked why they took no action.<sup>33</sup> Combining problems one and two, approximately 34% of the respondents who took no action said the problem was not that serious and about 24% said resolving it would take too much time. These two reasons suggest that for a very small number of respondents the problems were not as serious and difficult as the methodology attempted to establish. However, some respondents who said the problem was not serious enough or would take too much time to take any action also said the outcome was unfair, which is suggestive of at least some ambivalence. When asked about the fairness of the outcome, an estimated 41% of respondents who indicated that the problem was not that serious also said the outcome was unfair. Similarly, about 75% of respondents who indicated that resolving the problem would take too much time also said the outcome was unfair.<sup>34</sup> Among other reasons for taking no action to resolve the problem, an estimated 35% of respondents said they thought nothing could be done, 12% said they did not know what to do, a further 12% said they were uncertain of their rights and 24% said they were too frightened or feared it would cause more trouble to do anything about the problem. These four reasons are possible indicators of a lack of legal capability, a topic that will be discussed in a subsequent section. Also, 18% of respondents said they did not take action because they believed it would cost too much, 22% said it would have been too stressful, and 9% said help was too far away or was too difficult to access. As regards problem one only, 9% of respondents attributed their lack of response to having previously experienced a similar problem for which they received no helpful assistance. In other words, these respondents decided not to pursue the matter this time around because of previous bad experience. These reasons for not taking action all suggest that there are access to justice barriers which need to be addressed. Finally, approximately 1% of respondents taking no action felt the other party was right.

Figure VI shows the reasons respondents gave as being most important for taking no action to resolve the problem. Reasons for problems one and two are reported separately because they are substantially different. The reason given most frequently was that the respondent thought nothing could be done.

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<sup>30</sup> Genn 1999, p. 80 and Pleasence & Balmer 2014, p. 102.

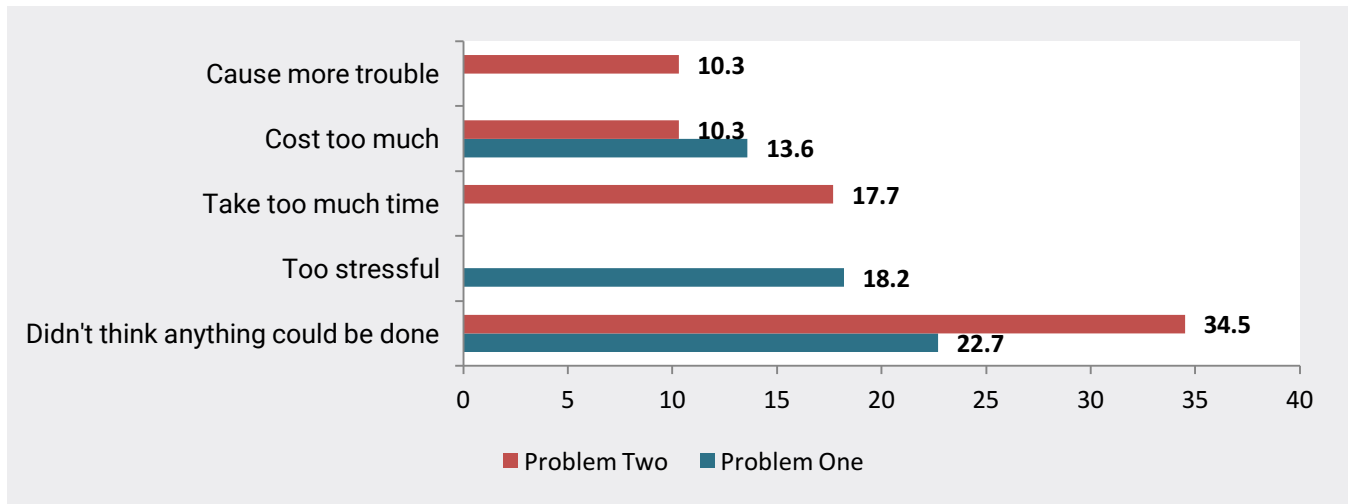
<sup>31</sup> Pleasence & Balmer 2014, p. 99.

<sup>32</sup> This is a much lower percentage of 'lumpers' than usually reported in legal problems surveys.

<sup>33</sup> Respondents indicate as many responses as they wished from 12 options. Therefore, the percentages do not add to 100%.

<sup>34</sup>  $\chi^2 = 7.6$ ,  $p = .02$ ,  $n = 66$

Figure VI: Percent of Respondents Indicating Why They Took No Action



*n* = 22 for problem one and 29 for problem two.

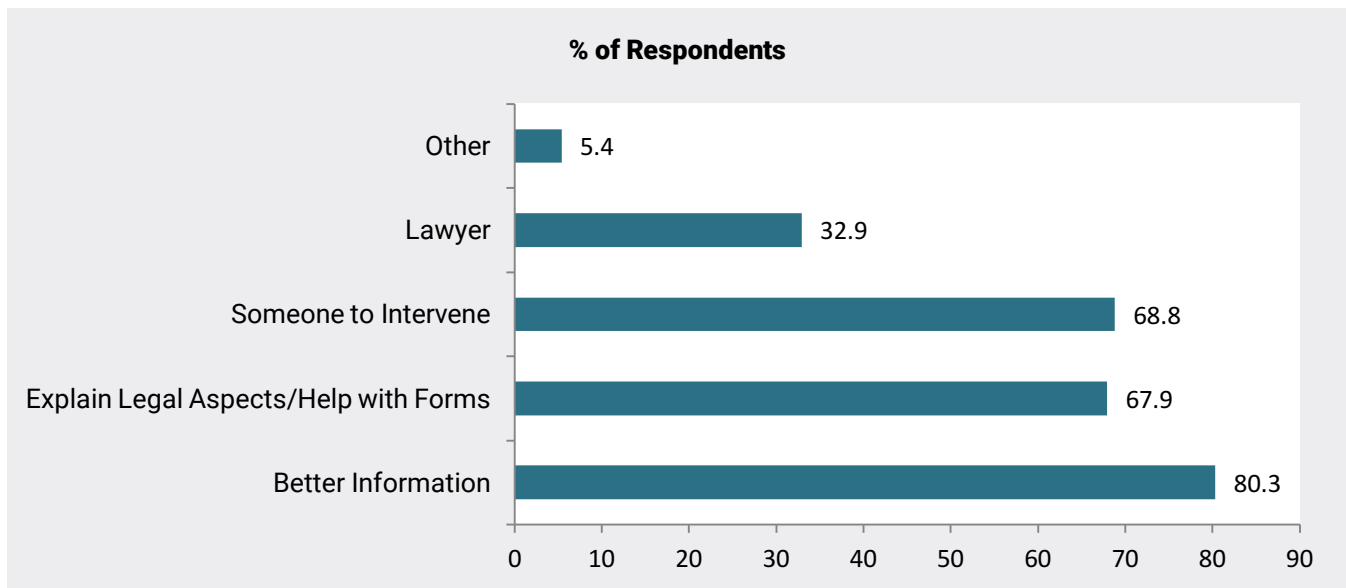
The most frequent among the “most important” reasons for not taking action was that the respondents didn’t think anything could be done, 22.7% for problem one and 34.5% for problem two. For problem one, 18.2% said they took no action because they felt it would have been too stressful. Interestingly, this did not appear as a reason for problem two. On the other hand, 17.7% of respondents said they took no action for problem two because it would have taken too much time. This reason was not mentioned at all for problem one. The belief that it would cost too much was the third most important reason for not taking action for both problems; 13.6% of respondents for problem one and 10.3% for problem two. Finally, for problem two, 10.3% of respondents said they took no action to resolve the problem because they felt it would have resulted in more trouble.

### What Self-Helpers Would Have Done

Self-helpers (*i.e.* respondents who did not obtain legal advice or authoritative non-legal advice) who said the problem had been resolved, were asked if, in retrospect, they thought the outcome would have been better had they obtained help. Combining responses for the two problems for which detailed data were collected, approximately 42% of self-helpers felt the outcome would have been better had they obtained some help. When asked what sort of help they thought would have been useful, 80.3% of respondents said better information, 67.9% said someone to explain the legal aspects and help with forms, 68.8% said an advocate to intervene on their behalf and 32.9% said a lawyer to handle the problem through the legal system.<sup>35</sup>

<sup>35</sup> Percentages are based on respondent’s answers regarding 234 first and second problems. Respondents chose as many answers as they wished. Therefore, the percentages do not add to 100%.

Figure VII: Percent of Respondents Indicating Forms of Help That Would be Useful



Respondents were then asked, had they received the help they felt would have made a difference, whether they would have still preferred to deal with the problem 'on their own' as much as possible. Almost three quarters of this group of respondents, 71.6%, answered in the affirmative. By contrast, about a quarter, 26.3%, said they would prefer not to do so and 2.1% were not sure. The respondents who opted for assisted or supported self-help were asked why they would prefer to handle the problem on their own. The most frequent specific response as identified by 27.7% of respondents was that it is important to take personal responsibility in dealing with life's problems. 14.7% said they would choose self-help because of the perceived high cost of assistance, 9.8% gave privacy concerns as the reason and 6.7% noted the low probability of obtaining good assistance based on past experience. 38.0% of respondents gave a variety of other reasons and 3.1 percent were not sure.<sup>36</sup> The data reveals that a large percentage of people with everyday legal problems are self-helpers and that many prefer to 'handle the problem on their own' out of a sense of personal responsibility.

The very large number of everyday legal problems experienced by the public and the large percentage of people who resort to some self-help strategy to deal with legal problems makes supported self-help an attractive option for expending access to justice. However, a difficult reality confronting this finding is the potentially problematic nature of self-help. In their very thorough analysis of four self-help programs in Australia, Lawler, Giddings and Robertson conclude that self-help materials have the potential to be extremely effective but can also contain many pitfalls.<sup>37</sup> The research showed that one problem with the particular body of self-help materials examined was that it contained too much information about the law and the legal system generally, and about the mandate and functioning of court or other dispute resolution processes. The goals of the organization appeared to overshadow the objectives of the user.<sup>38</sup> Users

<sup>36</sup> n = 108.

<sup>37</sup> Merran Lawler, Jeff Giddings and Michael Robertson, Opportunities and Limitations in the Provision of Self Help Legal Resources to Citizens in Need, Windsor Yearbook of Access to Justice, Vol. 30, No 1, 2012, p. 223

<sup>38</sup> *Ibid.*, p. 221

wanted self-help information that was practical. One respondent interviewed for the study said: “I don’t need to be told what the law says. I need to know how to solve my problem.”<sup>39</sup> Also, importantly, resolving problems often requires non-legal skills as well as knowledge of the law.<sup>40</sup> This brings together self-help strategies and the concept of legal capability discussed below.

**RESOLVING PROBLEMS**

Slightly more than half of all respondents, 53.5%, said the problem had been resolved at the time of the interview, 39.5% said the problem remained unresolved and 7.0% said they had abandoned efforts to resolve the problem.<sup>41</sup> Respondents who obtained legal advice were less likely to have the problem resolved, more likely to say the problem was still on-going and less likely to say the problem had been abandoned.<sup>42</sup> The larger number of respondents with unresolved problems and the fewer having abandoned efforts to resolve them is probably due to the greater seriousness of the problems and amount at stake.

Table X: Type of Action Taken by Status of the Problem

Type of Action	Percent of Respondents				Number of Respondents
	Resolved	On-Going	Abandoned	No Answer	
<b>Self Help</b>	57.0%	33.5%	8.4%	1.3%	823
<b>Non-Legal</b>	51.8%	35.8%	9.3%	3.1%	257
<b>Legal</b>	45.3%	52.0%	2.3%	0.8%	231
<b><math>\chi^2 = 48.2, p = .0001, n = 1311</math></b>					

An examination of which problems respondents said were most likely to have been unresolved or abandoned is limited by the lack of statistical significance for most cross tabulations of outcome by problem type. Among the problem types for which results were statistically significant,<sup>43</sup> the highest percentages of respondents who said they had abandoned the problem occurred for problems involving discrimination (problems one)<sup>44</sup> and medical treatment (problem two)<sup>45</sup>, with 12.9% and 12.5%, respectively, among respondents experiencing one or more problems within those problem types. With respect to problems that remained unresolved, 57.4% of respondents experiencing one or more housing problems<sup>46</sup>, 52.5% of respondents experiencing one or more family (relationship breakdown) problems<sup>47</sup> and 57.7% of

<sup>39</sup> *Ibid.*, p. 216; see also Lawler, Giddings & Robertson 2009.

<sup>40</sup> *Ibid.*, p. 225

<sup>41</sup> Figures are averages of problems one and two

<sup>42</sup> This is based on problem one only. The data for problem two were similar in terms of percentages but not statistically significant.

<sup>43</sup> Problem One: housing, immigration, family (relationship breakdown), discrimination, wills & powers of attorney and neighbour problems; Problem Two: Housing, medical treatment and discrimination.

<sup>44</sup>  $\chi^2 = 16.6, p = .008, n = 1387$

<sup>45</sup>  $\chi^2 = 15.1, p = .01, n = 747$

<sup>46</sup>  $\chi^2 = 15.7, p = .008, n = 1387$

<sup>47</sup>  $\chi^2 = 23.1, p = .0001, n = 1387$

respondents having received a court summons or a threatening letter from a lawyer<sup>48</sup> said the problem had not been resolved.

### **Fairness and Expected Outcomes**

The data indicate that many people who experience everyday legal problems do not feel that the outcome is satisfactory. Respondents were asked if they felt the outcome of resolved problems was fair.<sup>49</sup> Almost 50% of these respondents said they felt the outcome was unfair.<sup>50</sup> Respondents were also asked how much they had achieved in the outcome as compared to their initial expectations.

### **Helpfulness of Actions Taken**

Respondents with problems that had been resolved were also asked about the extent to which the various actions taken were helpful.<sup>51</sup>

Negotiating with the other party was the most frequent action taken to resolve a dispute or problem. Interestingly, it was also the action respondents judged as the least helpful in retrospect.<sup>52</sup> On average, slightly more than half of respondents, approximately 49%, said negotiating with the other party was not very helpful or not helpful at all.

Relatively few respondents said the advice from friends or relatives was not helpful at all or not very helpful, totalling slightly more than a quarter of all respondents. Most respondents found the assistance from this source at least somewhat helpful, totalling approximately 68% when adding somewhat helpful and very helpful together. It is not certain based on these data why people should have found assistance from this source helpful. Buck and Smith conclude that friends and relatives may play a crucial role in advice seeking behaviour because of the importance of social networks and local community in decision-making processes, in informal referrals to expert advice and in transferring trust to advice services. They also suggest that friends and relatives may also play an important role in buffering the stress related to experiencing problems.<sup>53</sup>

It was noted earlier that a seemingly small percentage of respondents, 33%, said they searched the internet for help in resolving their problem. About 58%, said the internet was at least somewhat helpful. It is also surprising that slightly over 41% of respondents said the internet was not helpful.

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<sup>48</sup>  $\chi^2 = 11.8, p = .04, n = 1387$

<sup>49</sup> Finkel argues that there are two types of law. One is black letter law, or the law that is on the books. This is the type of law that sharply distinguishes fairness and justice. There is another law, according to Finkel, "although law may be too lofty or lowly a term to describe it". This is commonsense justice. This is what ordinary people think is just and fair, at once legal, moral and philosophical<sup>49</sup> (1995: 2). Commonsense justice is the deeper ground beneath the formal law. It is rooted in citizen's notions of what is fair and unfair (Finkel 2001: 309). "That's not fair!" is a definitive condemnation of the state of affairs in any domain of life." (Breton et al 2004: 33)

<sup>50</sup> Because the distributions were very similar, the figures for problems one and two have been combined by simple averaging.

<sup>51</sup> Few respondents took only one action. Therefore, the extent to which one action is viewed as helpful or otherwise may be dependent on others taken in concert. For this paper, however, the analysis ignores the possible interaction effects.

<sup>52</sup> Responses reflect whether the action was at least helpful, not instrumental in resolving the problem.

<sup>53</sup> Alexy Buck and Marisol Smith, *The Importance of Family and Friends for Advice Seeking Behaviour*, Social Policy and Society, 142, Cambridge University Press, 2014, p. 184



When asked to characterize what they found on the internet, about 70% of respondents found helpful information, organizations that might help or even problem-solving aids.

It is perhaps surprising in view of the ubiquitous presence of the internet in modern life that only about 33% said they used the internet in an attempt to resolve the problem. Over 40% said the material they found was not helpful and when asked to characterise what they did find about one third said “nothing very useful”. There may be a number of reasons that explain why a large proportion of respondents who attempted to use the internet were met with a lack of success. These reasons may include a lack of computer literacy or skills, poor quality of available internet material, or difficulty finding appropriate material among the large mass of “hits” that came up in the search. In any case, this is concerning in part because of the strong movement to incorporate digital technology into the delivery of legal information and legal services.<sup>54</sup> Consistent with the results of this research, a study of internet use by youth in the UK found that young people showed a lack of digital literacy and capacity to identify appropriate forms of advice.<sup>55</sup> Similarly, Denvir and Balmer conclude that even though the role of self-help in problem solving is increasing, the internet does not increase knowledge of rights nor does it increase the competence or confidence of youth to deal with problems.<sup>56</sup>

Respondents considered non-legal advice from authoritative organizations they contacted for assistance quite helpful. Respondents were asked to report on the degree to which the non-legal advice obtained from up to three organizations was helpful. Because there were a very low number of respondents identifying a third organization, the data only support making observations about two organizations. The distributions for problems one and two are overall quite similar, but some percentages differ significantly and warrant additional reporting as expressed in Table XI.

Table XI: Extent to Which Non-Legal Assistance Was Helpful<sup>57</sup>

Percent of Respondents				
	Problem One		Problem Two	
	First Organization Contacted	Second Organization Contacted	First Organization Contacted	Second Organization Contacted
<b>Not helpful at all</b>	16.9%	6.5%	21.2%	10.5%
<b>Not very helpful</b>	14.3%	9.7%	11.2%	10.5%
<b>Somewhat helpful</b>	29.1%	41.9%	27.1%	36.8%

<sup>54</sup> Roger Smith and Alan Paterson, Face-to-face Legal Services and their Alternatives: Global Lessons from the Digital Revolution, The Nuffield Foundation, 2014; Roger Smith, Digital Delivery of Legal Services to People on Low Incomes, The legal Education Foundation, Quarterly Update, 2015.

<sup>55</sup> C. Denvir, N. Balmer and P. Pleasence, “Surfing the Web – Recreation or Resource? Exploring how young people in the UK use the internet as an advice portal for problems with a legal dimension, Interacting with Computers, 23, 2011, pp. 96 - 104

<sup>56</sup> Cartina Denvir and Nigel Balmer, Digitally (De) Faulted: How do young people use the internet to acquire knowledge of their rights, University College London, n.d., p 3

<sup>57</sup> The distributions for problems one and two are overall quite similar although a few percentages are sufficiently different.

<b>Very helpful</b>	39.7%	41.9%	40.6%	42.1%
	n = 307	n = 31	n = 170	n = 19

Most respondents found the non-legal assistance they received very helpful. For problem one, taken together, 68.8% of respondents found the non-legal help they received from the first authoritative organization somewhat or very helpful. A larger percentage, 83.8% said they found the assistance from the second organization contacted to have been either somewhat or very helpful. For problem two, the same percentages represent an equally large majority of respondents, 67.7% and 78.9%, respectively.

The pattern in the data also shows that more respondents found the assistance from the second organization helpful compared with the first organization they had contacted. Although there are data for only two organizations, the pattern suggests the possibility that people may experience a positive assistance curve (similar to a positive learning curve) as they seek organizations to help with the problem. Given the attention that has been placed on referral fatigue on devising no wrong door, no wrong number access portals this result should be studied in much greater detail.

Legal advice seems to have been the most helpful form of assistance by a slight margin, especially considering the percentage of respondents saying that the advice was very helpful.

Table XII: Helpfulness of Legal Advice

	Percent of Respondents	
	Problem One	Problem Two
<b>Not helpful at all</b>	12.5%	4.7%
<b>Not very helpful</b>	8.3%	12.1%
<b>Somewhat helpful</b>	32.7%	27.1%
<b>Very helpful</b>	46.2%	56.1%
	n = 208	n = 120

A smaller percentage of respondents said legal advice was not helpful at all or not very helpful compared with other forms of advice and a large percentage said the legal advice they obtained was very helpful. Taken together, 78.9% of respondents said the legal advice they obtained related to problem one was helpful and 83.2% said the legal advice related to problem two was somewhat or very helpful.

The analysis of the order in which different actions are taken showed that legal advice tended to be the last in the sequence of actions taken to deal with a problem. However, it was also the most helpful. The fact that legal advice was the most helpful form of assistance may be due to the public lacking legal capability, thereby strengthening the argument that the government should devote more resources to increasing public legal capability. The percentage of respondents finding non-legal assistance from authoritative sources helpful did not fall far behind the figures for legal assistance. This supports the proposition that there are

many paths to justice and the potential effectiveness of developing non-legal approaches to assisting people with everyday legal problems may be of particular importance.

It has been suggested in this section and elsewhere that people generally pursue ordinary solutions to everyday legal problems.<sup>58</sup> Similarly, Sandefur suggests asking people what kinds of help they would like with their problems in order to develop services that meet their own needs<sup>59</sup> even though, as Pleasence and Balmer point out, these may be far from traditional legal services.<sup>60</sup> As noted above, much attention is being paid to the digital revolution in development of approaches to assistance with legal problems. The effectiveness of these approaches, however, may be called into question when considering the large percentage of survey respondents indicating that the information they received from the internet was not helpful. The present study does not indicate whether the ineffectiveness can be attributed to poor internet search skills or an absence of easily accessible and useful information.

## **THE COSTS OF EXPERIENCING EVERYDAY LEGAL PROBLEMS**

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This section examines the monetary and intangible costs to individuals of experiencing everyday legal problems. The intangible costs to individuals are ill-health and high levels of stress that respondents attribute to having experienced a legal problem. The section also examines costs to the state of everyday legal problems. This study examines costs to the health care system, to social services and to employment insurance that are direct consequences of individuals experiencing legal problems. These are costs to the state that occur when individuals use those parts of the social safety net as a direct consequence of experiencing legal problems.

### **MONETARY COSTS TO INDIVIDUALS**

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Of respondents experiencing at least one problem, 43% said it cost them money to deal with the problem. The average for the two problems is 35.7% of respondents. Weighted to the population this amounts to 4.4 million adult Canadians over the three-year reference period, or about 1.5 million people annually. Respondents were also asked how much experiencing the problem cost them. The majority of respondents said dealing with the problem involved relatively small sums of money.

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<sup>58</sup> Ab Currie, Moving Access to Justice Upstream from the Courts, in Bernard Hubeau, Ashley Terlouw and Mies Westerveld (eds.), *Access to Justice, Yesterday, Today and Tomorrow*, *Recht der Werkelijkheid* (36) 3, 2015.

<sup>59</sup> Rebecca L Sandefur, *Money Isn't Everything: Understanding Moderate Income Household's Use of Lawyers* in Anthony Duggan, Lorne Sossin and Michael Trebilcock (eds.) *Middle Income Access to justice*, University of Toronto Press, 2012, p. 245.

<sup>60</sup> Pascoe Pleasence and Nigel J Balmer, *What people Do to Solve 'Legal' Problems*, Legal Services Board, Cambridge, 2014, p. 4.

Table XIII: Percent of Respondents Spending Large Amounts of Money to Deal with the Problem

	Problem One	Problem Two
Amount Spent	Percent of Respondents	
More than \$10,000	15%	17%
More than \$25,000	6%	9%
More than \$50,000	3%	4%
More than \$100,000	1.5%	3%

### The Aggregate Cost to the Public

Although a large proportion of the everyday legal problems experienced by the public can be characterized as low cost, the estimated amount of money spent by the population is large when aggregated over the very large number of people experiencing problems. The total estimated cost to members of the public by weighting the sample number to the population is at least \$23 billion over three years, or about \$7.7 billion annually. Thus, the relatively small costs experienced individually by a large number of people add up to a very large aggregate cost to the public as a whole.

### Intangible Costs to Individuals

Experiencing everyday legal problems also comes with non-monetary costs. Weighted to the population, an estimated 2,002,304 people overall reporting on problem one said they experienced a physical health problem that occurred as a consequence of the legal problem. Further, approximately 65% of respondents experiencing a physical health problem said this resulted in their having used the health care system more frequently than normal, as a direct consequence of the legal problem they experienced. This equals an estimated 1,306,024 people over the three-year time frame of the study. From the data on the second problem they experienced, 81.2% of people experiencing a physical health problem as a consequence of a legal problem, a larger percentage than for the first problem, said they used the health care system more frequently than normal.

Compared with respondents experiencing physical health problems, 47.8%, said they had experienced extreme stress or emotional problems as a result of their first everyday legal problem, an estimated 5,309,024 people over three years when weighted to the population. 41.2% of these respondents said they used the health care system more than normal as a consequence, equalling 2,188,143 separate problems reported by respondents. For the second problem, 48.5% of respondents representing 2,933,518 individuals when weighted to the population, said they had experienced extreme stress or emotional difficulties as a consequence of problem two. Of these individuals, 38.1% of them (representing 1,116,877 people in the population), used the health care system more frequently than their normal level of usage.

The ten problems respondents said resulted most frequently in physical and high stress/emotional problems are shown in Table XIV.

Table XIV: The Most Frequent Problems Identified by Respondents as Having Caused Physical Health Problems and High levels of Stress/Emotional Problems

<b>Problems That Caused Physical Health Problems</b>	<b>Percent of Respondents</b>	<b>Problems That Caused Stress and Emotional Problems</b>	<b>Percent of Respondents</b>
<b>1. Serious and persistent harassment at work</b>	11.1%	<b>1. Serious and persistent harassment at work</b>	7.7%
<b>2. Managing the medical affairs of another person</b>	7.7%	<b>2. Managing the medical affairs of another person</b>	6.1%
<b>3. Care after hospital release</b>	5.1%	<b>3. Collecting wages or overtime owed</b>	5.0
<b>4. Child custody or access</b>	4.3%	<b>4. Health and safety issues at work</b>	5.0%
<b>5. Unreasonably dismissed from a job</b>	3.4%	<b>5. Unfairly dismissed from a job</b>	3.8%
<b>6. Collecting money owed</b>	3.4%	<b>6. Regular excessive noise by a neighbour</b>	3.4%
<b>7. Child support payments</b>	3.4%	<b>7. Persistent harassment by a collection agency</b>	3.1%
<b>8. Threats or harassment by neighbours</b>	3.4%	<b>8. Child unfairly suspended from school</b>	3.1%
<b>9. Division of marital property</b>	2.6%	<b>9. Managing the financial affairs of another person</b>	3.1%
<b>10. Harm cause by a physician or dentist</b>	2.6%	<b>10. Unreasonably stopped and questioned by the police</b>	2.7%
<b>Top ten problems equal 47.0% of the total</b>		<b>Top ten problems equal 43.0% of the total</b>	
<b>11. Health and safety at work</b>	2.6%	<b>11. Threat of legal action over a debt</b>	2.7%
<b>Eleven problems equal approximately 50% of the total (49.5%)</b>		<b>12. Collecting money owed</b>	2.3%
		<b>13. Child custody or access</b>	2.3%
		<b>Thirteen problems equal approximately 50% of the total (49.6%)</b>	

Employment and family law (relationship breakdown) problems appear to be the most frequent triggers for physical health problems. Employment problems are the most frequent triggers for high levels of stress and emotional problems. Neighbour problems and managing the medical care or financial matters for another person are also triggers for both physical health and for high levels of stress and emotional problems.

### **Costs to the State**

There may be many ways in which the costs of everyday legal problems are passed on to society, for example, through lost productivity due to absences from work that occur because of high levels of stress or physical illness. This research examines three areas in which the cost of legal problems are passed on to the state through increased use of the health care system or social programs people use as a direct consequence of their having experienced everyday legal problems.

### **Additional Costs to Health Care**

Respondents were asked about the extent to which they made greater use of the health care system than what would have been normal for them as a direct consequence of the legal problem they experienced. Respondents were not asked about the specific number of additional events in which they used the health care system. Due to the constraints of a lengthy telephone interview, no attempt was made to distinguish visits to physician's offices or visits to the emergency departments of hospitals. Respondents were asked about increased use of the health care system for two problems. Weighted to the overall population, Canadians said they used the health care system an estimated 5,232,582 times over the three-year reference period as a consequence of an everyday legal problem.<sup>61</sup> Without any detail about the exact nature of the use of the health care system, the estimate assumes that each use is a visit to a physician's office. In 2012-2013 the average cost of a visit to a physician's office was \$58.15 for the office visit and related services.<sup>62</sup> Using these figures, a rough estimate of the cost of additional use of the health care system directly attributable to legal problems would equal \$304.3 million over the three-year reference period. This would be approximately \$101 million on an annual basis.<sup>63</sup>

### **Loss of Employment**

Weighted to the population aged 18 years and older, 8.4% of adult Canadians experiencing an everyday legal problem lost employment as a direct consequence of an everyday legal problem they experienced.<sup>64</sup> This represents 932,416 individuals over the three-year reference period. Estimated for the population, people

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<sup>61</sup> Based on the weighted sample data Canadians used the health care system an estimated 1,306,024 times for physical health problems resulting from a legal problems (problem one) plus 621,538 times problem two for a total of 1,927,562 additional uses over the three-year reference period of the study. Similarly, Canadians used the health care system an estimated 2,188,143 times as a result of extreme stress or emotional problems directly attributable to an everyday legal problem (problem one) plus 1,116,877 times related to problem two, for a total of 3,305,020 additional uses. Together these total 5,232,582 visits.

<sup>62</sup> Physicians in Canada 2013, Summary Report, Canadian Institute for Health Information

<sup>63</sup> This could be an overestimate because in some instances respondents used health care services that cost less than a visit to a physician's office. On the other hand, the estimate is based on only two problems for which detailed data were collected. An estimated 41.3% of respondents experiencing at least one everyday legal problem experienced three or more problems. Also the estimate assumes only one additional visit for each problem for which a respondent said she or he used the health care system more than normal. For these reasons, the figure of \$101 million annually could be an underestimate.

<sup>64</sup> This is derived from 7.6% (n = 105) of the sample.

spent an average of 35.9 weeks on employment insurance and received an average of \$384.03 weekly. The average amount of time spent in receipt of employment insurance was 21.6 weeks. Using these figures, the total estimated cost for the three-year period was \$1.35 billion. This equals an estimated annual cost of approximately \$450 million.

### **Social Assistance**

An estimated 2.1% of respondents said they went on social assistance as a direct consequence of experiencing a legal problem.<sup>65</sup> This equals an estimated 238,102 people over the three-year reference period, receiving an average amount of \$285.86 weekly for an average of 34.2 weeks. Based on these data, everyday legal problems cost the public coffers an estimated \$745 million for the three years, or about \$248 million annually.

### **Loss of Housing**

An estimated 2.7% of people lost their housing as a direct consequence of the legal problem they had experienced.<sup>66</sup> This equals an estimated 302,516 people over the three-year reference period. A small percentage of these people, estimated at 3.6%, relied on emergency shelters, the majority obtaining temporary housing from friends and relatives or other means. The 3.6% equals an estimated 6,836 people. Since none of the respondents could say how much they received in housing subsidies, an estimate of the cost to the public is not possible. However, loss of housing represents a significant threat to security of the person and of their families, along with loss of employment. For that reason, the loss of housing is identified in this section even though an associated cost figure could not be derived.

### **Total Monetary Costs Associated with Resolving Legal Problems**

The total estimated amount spent by Canadians to deal with the legal problems they experience is about \$7.7 billion. The estimated annual cost to the state of the everyday legal problems experienced by the public for only the three areas examined in this research is about \$800 million.<sup>67</sup> While these numbers seem large from a perspective rooted in expenditures on justice services, they are very small compared with national economic figures and expenditures.<sup>68</sup>

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<sup>65</sup> The sample percentage is 1.8% (n = 25).

<sup>66</sup> The sample percentage is 2.1% (n = 30)

<sup>67</sup> \$101 million for health care + \$450 million for employment insurance + \$248 million for social assistance

<sup>68</sup> The GDP for Canada in 2012 was \$1.7 trillion ([http://www5.statcan.gc.ca/cansim table 379 0029](http://www5.statcan.gc.ca/cansim/table/379_0029)). Total household expenditures for 2012 were \$987.3 billion (Statistics Canada *Detailed Household Final Consumption Expenditure, Provincial and Territorial* (Table 384-004) (Ottawa: Statistics Canada, 2014). Total expenditures on retail sales for 2011 were \$457.5 billion (Industry Canada, *Consumer Trends Update Summer 2013* (Report) (Ottawa: Office of Consumer Affairs, 2013) online: Industry Canada. Total expenditures for health care in 2013 were \$211 billion (Canadian Institute for Health Information, *Health Spending in Canada 2013*, on-line at <http://www.cihi.ca/en/spending-and-health-workforce/spending/health-spending-in-Canada>. Total expenditures on EI in Canada were \$18.773 billion (\$18.8 billion) in 2013 (2015 Actuarial Report on Employment Insurance Premium Rates on-line at <http://www.osfi-bsif.gc.ca>). Spending on social services in Canada in 2007 amounted to \$172.4 billion (Statistics Canada, *The daily*, Friday, June 22, 2007 (<http://www.statcan.gc.ca/daily-quotidien/070622>)).

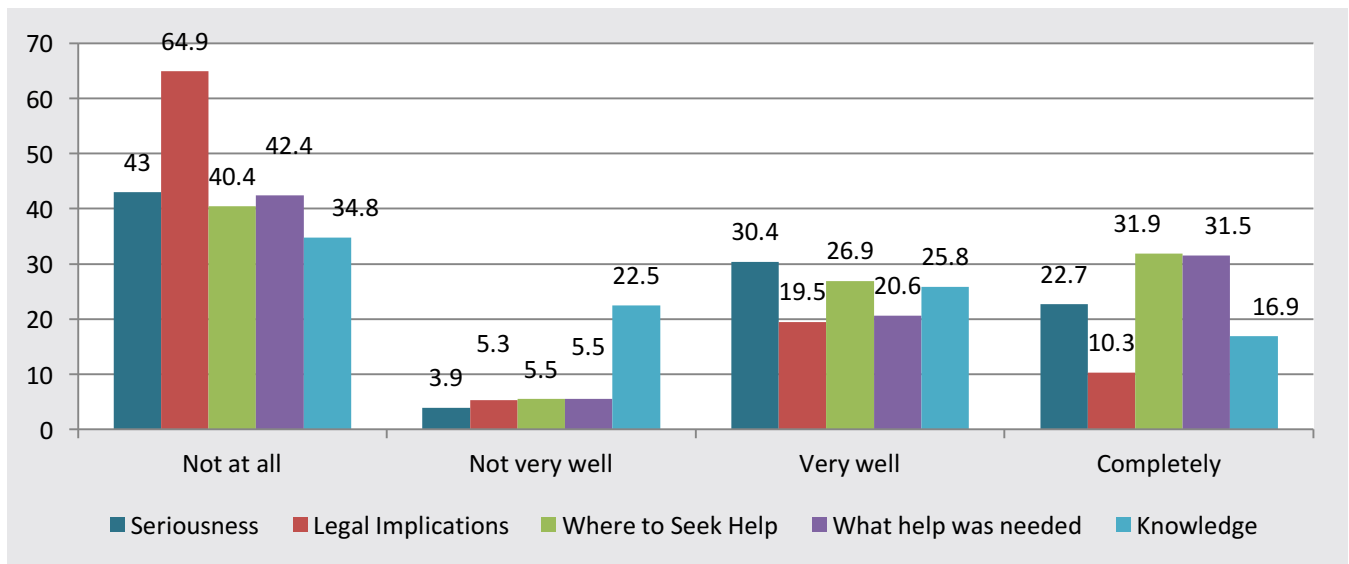
## LEGAL CAPABILITY

Recent research has demonstrated the importance of legal capability as an aspect of legal problem solving.<sup>69</sup> Data from the CFCJ national survey provides the first assessment of the legal capability of Canadians experiencing legal problems. Respondents were asked if, when the first problem occurred, they thought they possessed any of five aspects of legal capability that would, in theory, have allowed them to deal more effectively with the problem.<sup>70</sup> More specifically, the survey asked “When the problem first occurred would you say that:

- you recognized and understood the seriousness or potential seriousness of the problem.
- you were aware of any legal implications related to the problem.
- you knew where to go to obtain reliable information about resolving the problem.
- you knew what sort of assistance you needed to resolve the problem.
- you had the overall knowledge to deal confidently with the problem.”

Respondents were asked to use a four-point scale to respond to the legal capability questions, with the response options being: not at all, not very well, very well and completely. Figures VIII and IX show the percentage of respondents having different levels of self-reported legal capability.<sup>71</sup>

Figure VIII: The Level of Legal Capability of Canadians Who Have Experienced Legal Problems (Problem One)



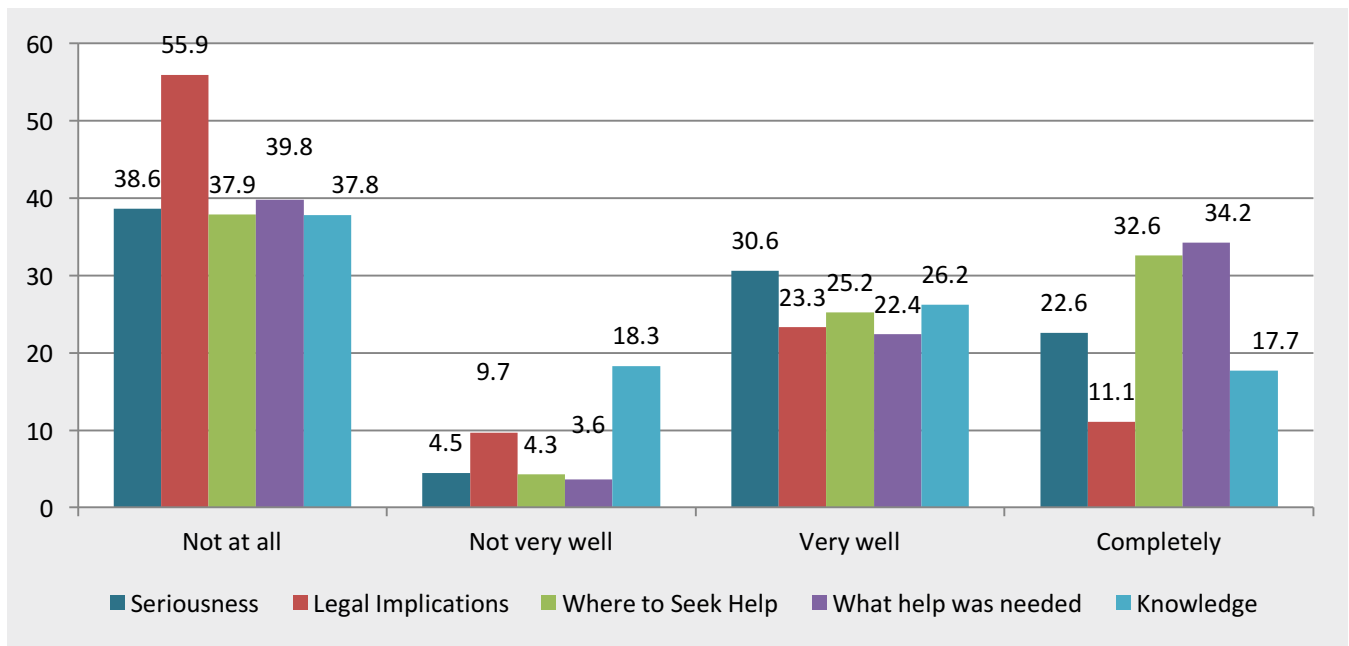
<sup>69</sup> Balmer, NJ, Buck, A, Patel, A, Denvir, C and Pleasence, P, Knowledge, Capability and the Experience of Rights Problems, Plenet, London, 2012

<sup>70</sup> Collard, S, Deeming, C, Wintersteiger, L, Jones, M, and Seargent, J, Public legal education evaluation framework, Personal Finance Research Centre, University of Bristol, Bristol, 2011

<sup>71</sup> The distributions are overall very similar. However, the percentages between certain response categories for problems one and two vary by a considerable amount. Therefore, the data are shown separately for problems one and two.



Figure IX: The Level of Legal Capability of Canadians Who Have Experienced Legal Problems (Problem Two)



The largest percentages of respondents said they had no legal capability on all five dimensions examined here. This is especially pronounced for understanding the legal implications of a problem at the time it first occurred; 64.9% and 55.9% for problems one and two, respectively.

The data provide other less direct indications of a lack of legal capability among Canadians experiencing everyday legal problems. Four of the reasons for not taking action were: thought nothing could be done (35.0%), didn't know what to do (21.8%), was uncertain of one's legal rights (21.8%), and was too frightened or thought taking action would cause more trouble (24.1%). These reasons for not taking action are similar to measures of legal capability used in recent research carried out by the Law and Justice Foundation in Australia.<sup>72</sup> The results of the present research related to self-helpers also provide an indication of a lack of legal capability. About one third of self-helpers with problems that had been resolved said that looking back on the problem, they felt the outcome would have been better if they had obtained some assistance. When asked what assistance they thought might have been helpful, about 80% said better information and about 68% said an explanation of the legal aspects of the problem and help with forms.<sup>73</sup>

The results of this research show that legal capability is patterned according to problem type. This is consistent with the analysis carried out by McDonald and People showing that legal capability can have both geographic and demographic patterns.<sup>74</sup> This part of the analysis is carried out on the basis of problems rather than respondents, showing the types of problems respondents were more likely to have indicated they had some self-reported level of legal capability. Figure X (a) shows the percent of problems for which

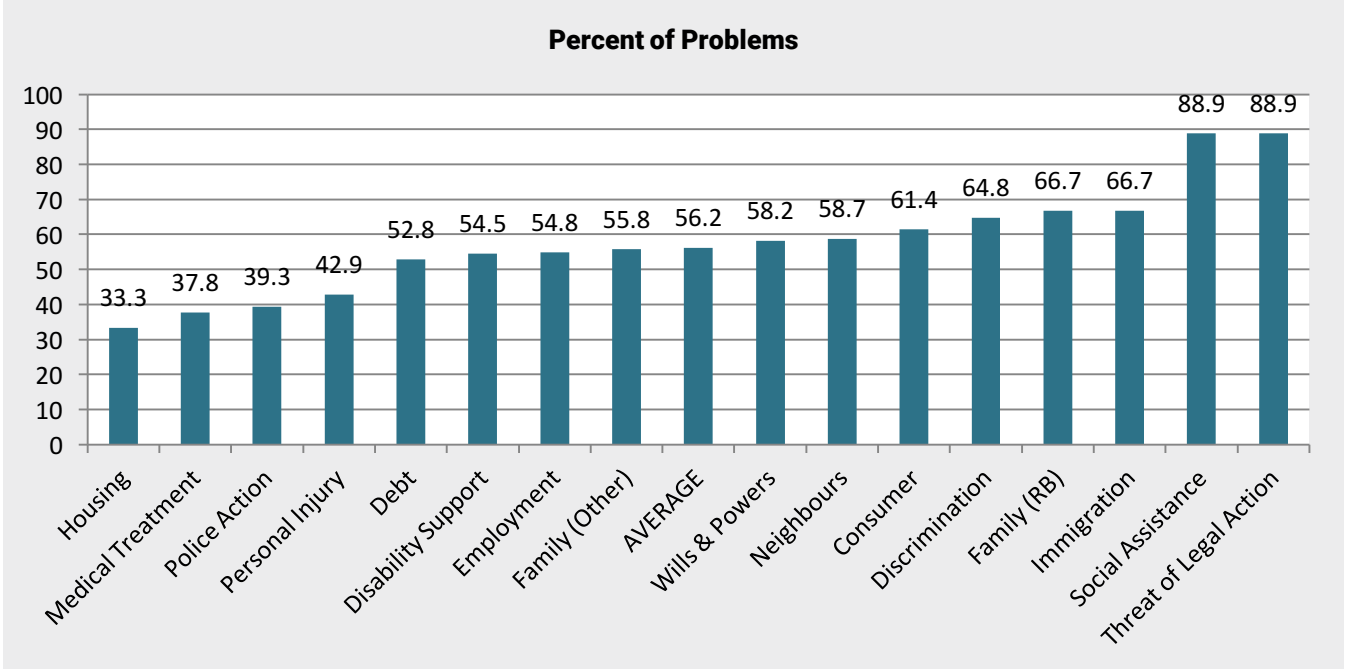
<sup>72</sup> H M McDonald and J People, *Legal Capability and Inaction for Legal Problems: Knowledge, Stress and Cost*, Law and Justice Foundation, 41, 2014

<sup>73</sup> See Figure VII.

<sup>74</sup> c.f. Footnote 73.

respondents said they possessed at least some level of legal capability when the problem first occurred with respect to “understanding the seriousness of the problem”.<sup>75</sup>

Figure X (a): Problem Types and Understanding of Potential Seriousness



As Figure X (a) indicates, respondents were least likely to say that they understood the seriousness of the problem when it first occurred when it came to housing problems, followed by medical treatment, police action and personal injury. The average for all problem types was 56.2%. Six problem types are close to the mean within approximately the 50% to 60% range. These are debt, disability support, employment, family (other), wills and powers of attorney, and neighbour problems. The problem types for which respondents have the highest levels of legal capability on this dimension are discrimination, family (relationship breakdown), immigration, social assistance problems and threat of legal action.

Figures X (b) to X (e) show the same data for the other dimensions of legal capability: understanding the legal implications of the problem, knowledge of where to go for help, knowledge of what help was required and the respondent’s assessment of his or her overall knowledge of how to deal with the problem.

<sup>75</sup>χ<sup>2</sup> = 63.3, p = .02, n = 959

Figure X (b): Problem Types and Awareness of Legal Implications<sup>76</sup>

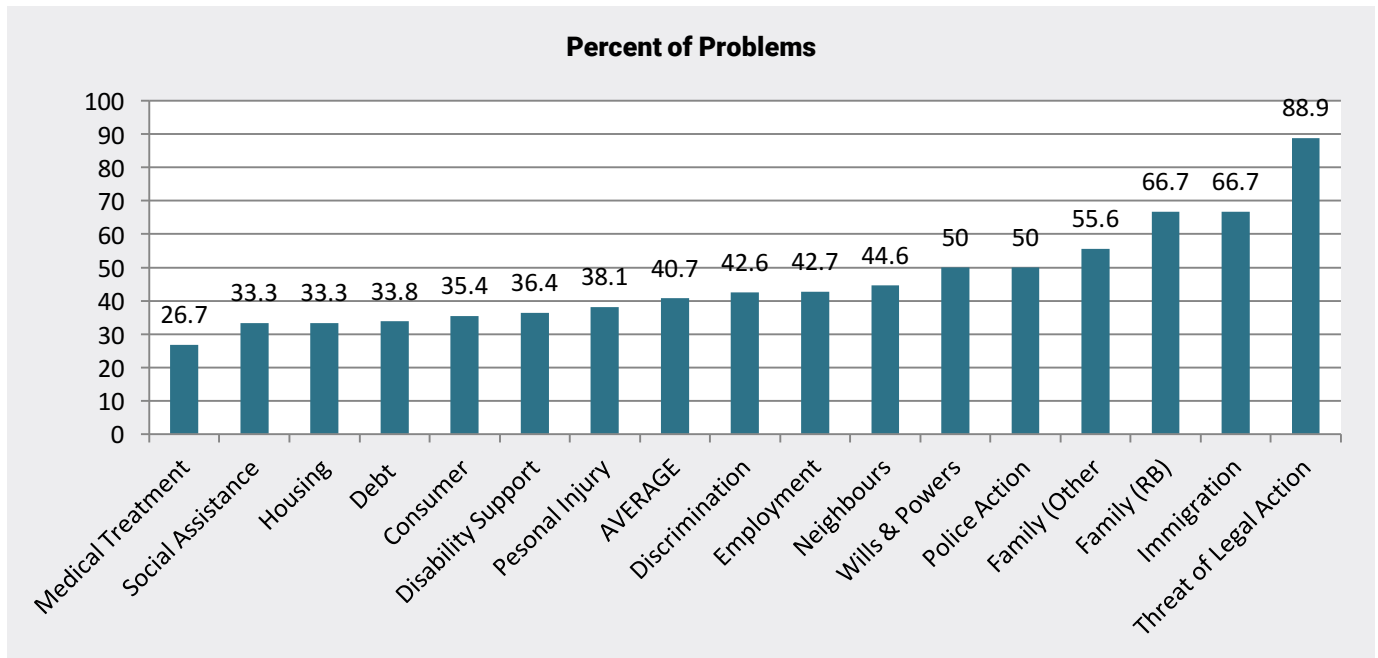
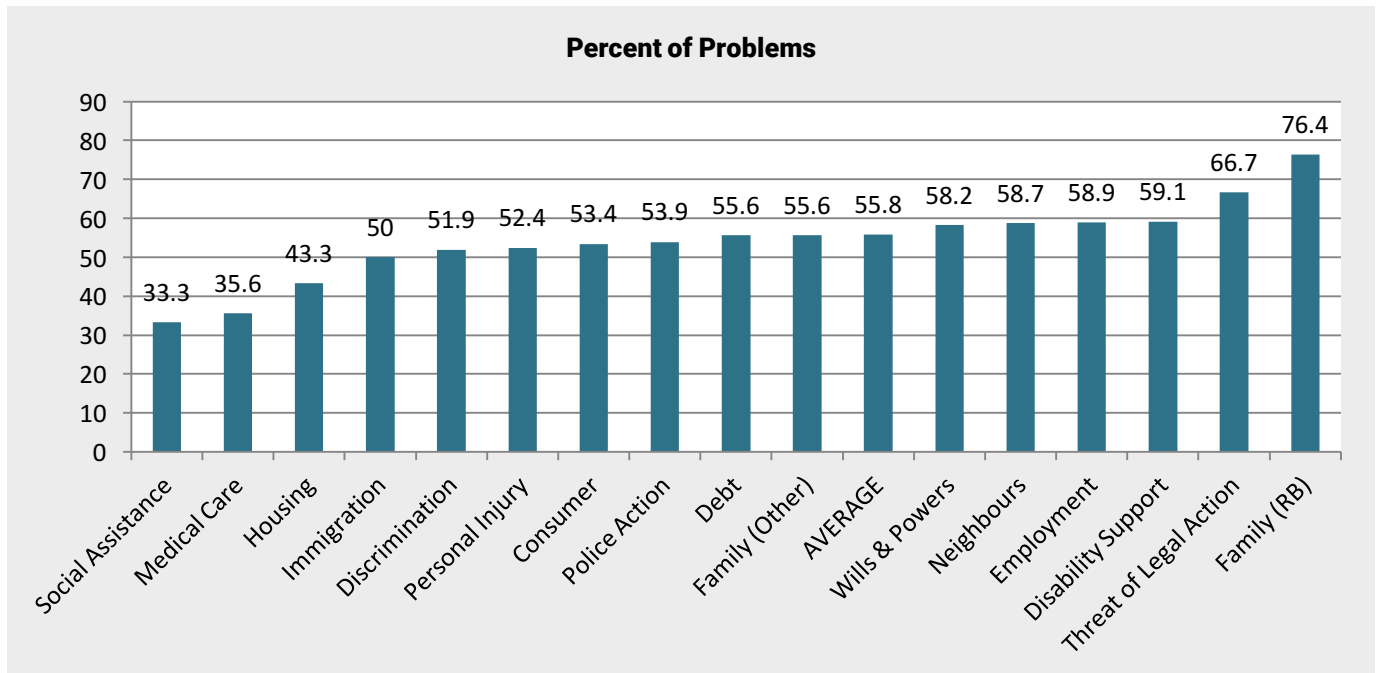


Figure X (c): Problem Types and Knowing Where to Go for Help<sup>77</sup>



<sup>76</sup>  $\chi^2 = 63.3, p = .04, n = 959$

<sup>77</sup>  $\chi^2 = 51.1, p = .24, n = 959$

Figure X (d): Problem Types and Knowing What Help Was Needed<sup>78</sup>

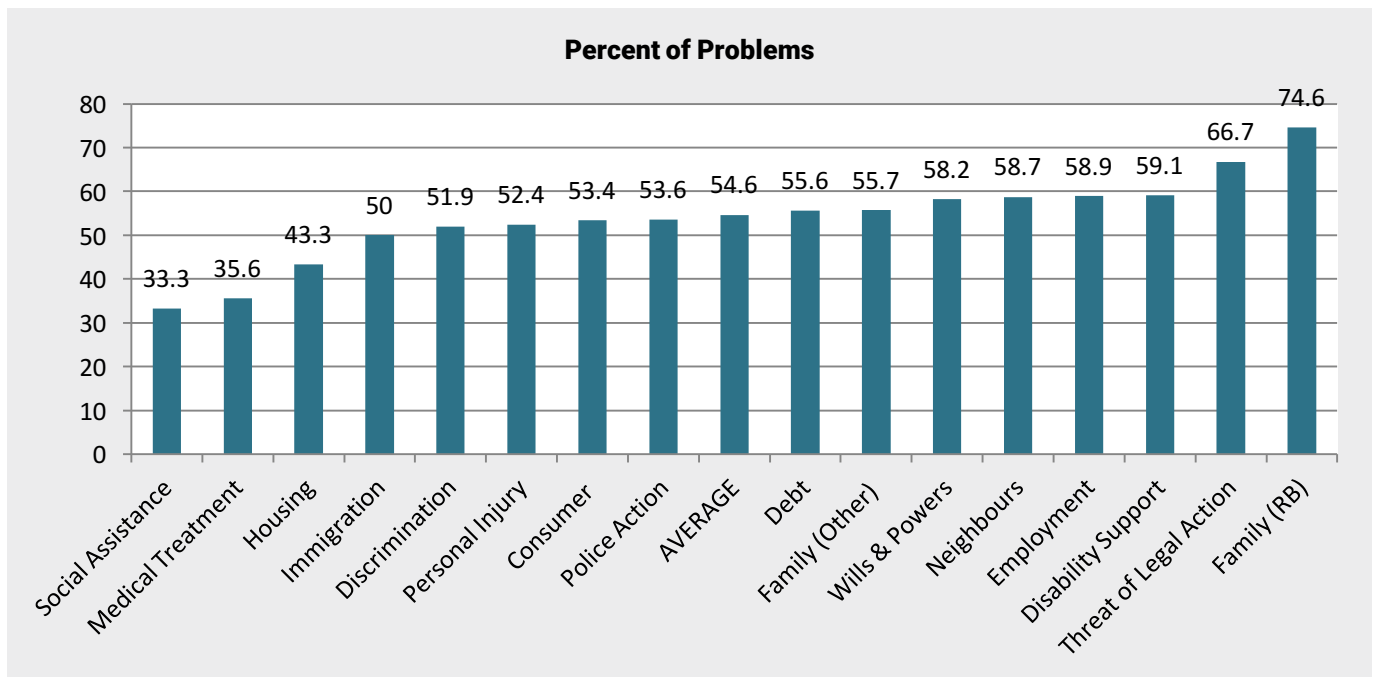
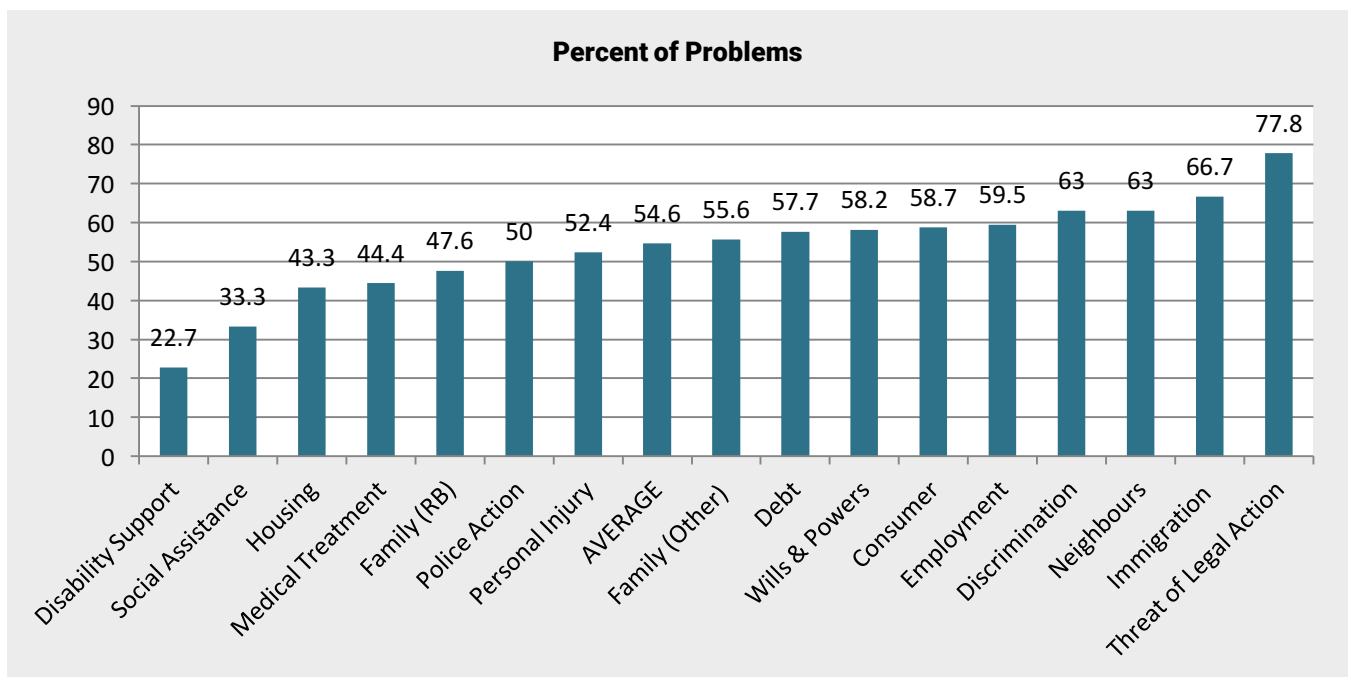


Figure X (e): Problem Type and Overall Knowledge<sup>79</sup>



<sup>78</sup>  $\chi^2 = 60.8, p = .05, n = 959$

<sup>79</sup>  $\chi^2 = 62.3, p = .05, n = 959$

The series of five graphs show the percentage of problems for problem types for which respondents said they had at least some level of legal capability, separately for each dimension of legal capability. An inspection of the five graphs shows that the percentage of problems involving housing and medical treatment issues for which respondents said they had at least some level of legal capability is low across all aspects of legal capability. On the other hand, across four out of five dimensions of legal capability, the threat of legal action and family (relationship breakdown) were the problem types with the highest percentage of respondents saying they had some level of legal capability. Regarding family (relationship breakdown) problems, legal capability among respondents was high on the following four dimensions: understood the seriousness of the problem (66.7%), aware of the legal implications (66.7%), knowledge of where to go for help (76.4%) and knowledge of what help was needed (74.6%). However, the percentage of family law (relationship breakdown) problems for which respondents said they had at least some overall knowledge was much lower (47.6%). This inconsistency within family law (relationship breakdown) problems indicates that aspects of legal capability can be distributed unevenly across problems types. Similarly, the percentage of disability support problems for which respondents said they had some legal capability measured in terms of overall knowledge was low (22.7%). The similar percentages of problems for which respondents said they had some level of knowledge of where to go for help and for what help was needed were much higher, 59.1% for each dimension. The comparable percentages were 54.6% for understanding the seriousness of the problem and 56.4% for awareness of the legal implications. Unlike family law (relationship breakdown) in which the levels of legal capability were quite consistent on the four measures other than overall knowledge, the percentages for disability support problems were higher on two dimensions, moderate on two and low on one. Immigration problems were lower on percentages relating to knowing where to find help, 50.0% of immigration problems for both dimensions of legal capability, but quite high on understanding the seriousness (66.7%), awareness of the legal implications (66.7% for both) and overall knowledge (66.7%). The percentage of problems arising from police action with respondents saying they had some level of understanding of the seriousness of the problem was low (39.3%). The percentages of problems were moderate with respect to knowing where to find help (53.9%), knowing what sort of help was needed (53.6%), overall knowledge of how to deal with the problem and awareness of the legal implications (50.0%).

Table XV approaches the data in a different way by showing the rank order of the five dimensions of legal capability for 16 problem types, rather than the percentage of problems for which respondents said they had some legal capability relative to the average percentage for all problems.

Table XV: Rank Order of Legal Capability Dimensions for Problem Types

Problem Type	Rank Order of Percent of Problems for Which Respondents Said they Had Some Level of Legal Capability				
	Understood Seriousness	Aware of Legal Implications	Knew Where to Get Help	Knew What Help Was Needed	Overall Knowledge
<b>Housing</b>	1	3	3	3	3
<b>Medical Treatment</b>	2	1	2	2	4
<b>Police Action</b>	3	12	8	8	6

<b>Personal Injury</b>	4	7	6	6	7
<b>Debt</b>	5	4	9	9	9
<b>Disability Support</b>	6	6	14	14	1
<b>Employment</b>	7	9	13	13	12
<b>Family (Other)</b>	8	13	10	10	8
<b>Wills &amp; Powers</b>	9	11	11	11	10
<b>Neighbours</b>	10	10	12	12	13
<b>Consumer</b>	11	5	7	7	11
<b>Discrimination</b>	12	8	5	5	13
<b>Family (RB)</b>	13	14	16	16	5
<b>Immigration</b>	14	15	4	4	14
<b>Social Assistance</b>	15	2	1	1	2
<b>Threat of Legal Action</b>	16	16	15	15	15

Rank ordering disregards the magnitude of differences between percentages or the differences from the means. However, it provides a useful overall picture of the patterns of legal capability measures for the different problem types. The ranks are an ordering of the percentages of problems for which respondents said they had at least some level of legal capability when the problem first occurred. The analysis is the same as can be derived from the five bar graphs. Overall, this part of the analysis indicates that different dimensions of legal capability are not always consistent for types of legal problems. Further research should explore this more carefully in developing approaches to improving the legal capability of Canadians.

### **Legal Capability and Problem Outcome**

The data show that having some measure of self-reported legal capability is related to better outcomes. The two outcome measures available in this study are whether the respondent felt the outcome was fair and the extent to which the outcome represented what was initially expected. The two outcome measures were run against the five dimensions of legal capability separately for problems one and two. In each of the twenty relationships, legal capability was positively related to a better outcome. Generally, the correlations were low to moderate and all but two relationships were statistically significant.<sup>80</sup>

Table XVI summarizes the data in relation to the respondent's perceived fairness of the outcome. Reading from the top row of the table, 62.9% of respondents who said they had some degree of legal capability

<sup>80</sup> The statistical significance for one relationship, awareness of the legal implications and fairness of the outcome for problem one was .06. It was considered close enough to the conventional .05 to be considered. The relationship between awareness of the legal implications and fairness was not statistically significant. However, the distribution is similar to the other cross tabulations and is therefore of substantive significance.

(measured in terms of having understood the seriousness of the problem) said the outcome was fair, while 37.1% said the outcome was not fair. Among respondents who said they did not have any legal capability on this dimension, 50.5% said the outcome was fair compared with 48.5% who said the outcome was unfair. The difference in percentages of respondents saying the outcome was fair versus unfair is greater for respondents who said they had some measure of legal capability. The relationship is statistically significant, but the eta measure of the strength of the relationship is relatively weak at 0.14. Compare this with the relationship between knowing where to get help and fairness of the outcome in row three. In this case, 64.5% of respondents who said they had some legal capability said the outcome of the problem was fair, compared with 35.5% saying the outcome was unfair. 44.6% of respondents who said they had no legal capability said the outcome was fair while 55.4% said the outcome was unfair. Compared with the comparable percentages for “understood the potential seriousness of the problem”, the percentages in this relationship reverse for respondents saying they had no legal capability compared with respondents saying they had some. The measure of the degree to which the sample distribution represents what would be expected in the population, the chi-square ( $\chi^2$ ), is larger, the level of statistical significance is greater (.0001) and the correlation is higher (0.21). The data are very consistent in supporting the conclusion that legal capability leads to better outcomes.

Table XVI: Dimensions of Legal Capability and Perceived Fairness of the Outcome

Problem One		% of Respondents		
Dimension of Legal Capability		Fair	Not Fair	Statistical Measures
Understood the potential seriousness	Yes	62.9%	37.1%	$\chi^2 = 15.9, p = .003, n = 800, \text{Eta} = .14$
	No	50.5%	48.5%	
Aware of the legal implications	Yes	63.7%	36.3%	$\chi^2 = 8.9, p = .06, n = 800, \text{Eta} = .10$
	No	54.2%	45.8%	
Knew where to get help	Yes	64.5%	35.5%	$\chi^2 = 30.1, p = .0001, n = 800, \text{Eta} = .21$
	No	44.6%	55.4%	
Knew what help was needed	Yes	66.7%	33.3%	$\chi^2 = 45.2, p = .0001, n = 800, \text{Eta} = .23$
	No	44.2%	47.8%	
Had the overall Knowledge	Yes	65.5%	34.5%	$\chi^2 = 52.7, p = .0001, n = 800, \text{Eta} = .25$
	No	39.8%	60.2%	
Problem Two		% of Respondents		
Dimension of Legal Capability		Fair	Not Fair	Statistical Measures
Understood the potential seriousness	Yes	62.6%	37.4%	$\chi^2 = 7.7, p = .02, n = 378, \text{Eta} = .14$
	No	48.0%	56.0%	

<b>Aware of the legal implications</b>	Yes No	62.7% 55.4%	37.3% 44.6%	Not statistically significant
<b>Knew where to get help</b>	Yes No	62.8% 47.3%	37.2% 58.1%	$\chi^2 = 9.9, p = .007, n = 379, \text{Eta} = .16$
<b>Knew what help was needed</b>	Yes No	65.4% 44.1%	34.6% 55.9%	$\chi^2 = 16.0, p = .0001, n = 373, \text{Eta} = .21$
<b>Had the overall Knowledge</b>	Yes No	64.5% 44.3%	35.5% 54.7%	$\chi^2 = 14.9, p = .001, n = 374, \text{Eta} = .20$

Table XVII shows the relationships between dimensions of legal capability and respondents' assessments of whether the outcome represented what had been expected at the outset. Looking at the first row of data in Table XVII, a higher percentage of respondents saying they had some measure of legal capability with respect to understanding the potential seriousness of the problem were likely to feel they had obtained all or most of what they had expected in the outcome. Moving to the right of the table, a higher percentage of respondents who said they did not have any legal capability were more likely to say they obtained some, little or nothing of what they had initially expected in the outcome. That pattern is highlighted in the first row of panel one, and is consistent for every measure of legal capability for both problems one and two.<sup>81</sup>

Table XVII: Dimensions of Legal Capability and Expected Outcome

Problem One		% Of Respondents					Statistical Measures	
Dimension of Legal Capability		All	Most	Some	Little	None		
<b>Understood potential seriousness</b>	Yes	37.4%	18.6%	8.6% <sup>1</sup>	6.3% <sup>1</sup>	19.0%	$\chi^2 = 24.0, p = .002, n = 795, \text{Eta} = .16$	Bolded figures do not add up to 100%
	No	30.4%	13.1%	8.9%	0.6%	26.5%		
<b>Aware of the legal implications</b>	Yes	38.4%	17.6%	17.2%	7.9%	19.0%	Not statistically significant	
	No	32.4%	15.9%	18.6%	8.4%	24.7%		
<b>Knew where to get help</b>	Yes	39.4%	19.0%	18.0%	6.7%	17.0%	$\chi^2 = 47.9, p = .0001, n = 795, \text{Eta} = .20$	
	No	25.2%	11.0%	19.5%	11.0%	33.3%		

<sup>81</sup> The relationship between awareness of the legal implications of the problems and expected outcome is not statistically significant. However, the pattern in the data is the same as for the other relationships and it is included in the table.



<b>Knew what help was needed</b>							$\chi^2 = 59.3, p = .0001, n = 795, \text{Eta} = .27$
Yes	41.8%	18.5%	16.9%	7.5%	15.2%		
No	22.6%	12.8%	20.3%	9.3%	34.8%		
<b>Had the overall knowledge</b>							$\chi^2 = 65.9, p = .0001, n = 795 \text{Eta} = .27$
Yes	39.7%	19.0%	17.2%	7.1%	17.0%		
No	22.3%	11.4%	21.4%	10.0%	34.9%		
<b>Problem Two</b>	<b>% of Respondents</b>						
<b>Dimension of Legal Capability</b>	All	Most	Some	Little	None	Statistical Measures	
<b>Understood the seriousness</b>							$\chi^2 = 18.9, p = .001, n = 372, \text{Eta} = .23$
Yes	41.1%	16.9%	12.1%	8.2%	21.6%		
No	26.8%	10.0%	24.8%	13.5%	24.8%		
<b>Aware of the legal implications</b>							$\chi^2 = 10.5, p = .03, n = 373, \text{Eta} = .17$
Yes	38.1%	20.0%	12.3%	9.7%	20.0%		
No	33.9%	10.6%	20.2%	10.1%	25.2%		
<b>Knew where to get help</b>							$\chi^2 = 14.5, p = .006, n = 373, \text{Eta} = .20$
Yes	39.4%	17.0%	14.9%	10.0%	18.7%		
No	27.3%	9.8%	20.5%	10.6%	31.8%		
<b>Knew what help was needed</b>							$\chi^2 = 23.8, p = .0001, n = 368, \text{Eta} = .26$
Yes	42.1%	16.7%	14.6%	9.6%	17.1%		
No	22.7%	10.9%	21.1%	10.9%	34.4%		
<b>Had the overall knowledge</b>							$\chi^2 = 21.2, p = .0001, n = 368, \text{Eta} = .24$
Yes	40.7%	17.0%	15.4%	9.1%	17.8%		
No	23.5%	9.6%	20.0%	12.2%	34.8%		

### Legal Capability and Obtaining Legal Advice

Seeking and obtaining legal advice is desirable even if people go on to deal with the problem without making use of the formal justice system. This raises the question of whether self-reported legal capability is related

to obtaining legal advice. The data show a modest but statistically significant relationship between legal capability and obtaining legal advice. The results are summarized in Table XVIII.<sup>82</sup>

Table XVIII: Legal Capability and Obtaining Legal Advice

<b>Problem One<sup>83</sup></b>		
<b>Dimension of Legal Capability</b>	<b>Percent Obtaining Legal Advice</b>	<b>Statistics</b>
<b>Understood the Seriousness</b>		$\chi^2 = 3.8, p = .05, n = 1319$ Phi = 0.05
Yes	19.1%	
No	15.0%	
<b>Aware of the Legal Implications</b>		$\chi^2 = 50.6, p = .0001, n = 1316$ Phi = 0.20
Yes	26.8%	
No	11.4%	
<b>Knew Where to Find Help</b>		$\chi^2 = 9.1, p = .003, n = 1330$ Phi = 0.08
Yes	19.5%	
No	13.2%	
<b>Had the Overall Knowledge to Deal with the Problem</b>		$\chi^2 = 12.9, p = .0001, n = 1326$ Phi = - 0.10
Yes	14.1%	
No	22.2%	
<b>Problem Two<sup>84</sup></b>		
<b>Aware of the Legal Implications</b>		$\chi^2 = 28.2, p = .0001, n = 672$ Phi = 0.21
Yes	26.1%	
No	10.5%	
<b>Knew Where to Find Help</b>		$\chi^2 = 7.7, p = .005, n = 677$ Phi = 0.11
Yes	20.9%	
No	12.5%	
<b>Knew What Help was Needed</b>		$\chi^2 = 4.1, p = .04, n = 670$ Phi = 0.07
Yes	20.3%	
No	14.2%	
<b>Had the Overall Knowledge to Deal with the Problem</b>		$\chi^2 = 5.5, p = .02, n = 667$ Phi = - 0.09
Yes	15.1%	
No	22.3%	

<sup>82</sup> Results are shown for problems one and two because they are slightly different.

<sup>83</sup> The relationship between “knew what sort of help was needed” and obtained legal advice was not statistically significant.

<sup>84</sup> The relationship between “understood the seriousness of the problem” and obtained legal advice was not statistically significant

For problem one, respondents saying they understood the seriousness of the problem and respondents who said they knew where to find help, were more likely to have obtained legal advice. The eta correlations for these two relationships are quite modest but statistically significant. The relationship between being aware of the legal implications of the problem and obtaining legal advice is much stronger. As one might expect, knowing how to deal with the problem has an inverse relationship with obtaining legal advice. In other words, respondents saying they did not know how to deal with the problem were more likely to obtain legal advice. The relationship is weak but statistically significant and in the direction one would expect. The pattern of relationships between legal capability and obtaining legal advice is the same for problem two, except the relationship between understanding the seriousness of the problem and obtaining legal advice was not statistically significant for problem two and the relationship involving knowledge of what sort of help was needed was not statistically significant for problem one. The analysis for both problems reveals the strongest positive relationship between awareness of the legal implications of the problem and obtaining legal advice and a negative relationship between respondents feeling they had overall knowledge to deal with the problem and obtaining legal advice, both of which are to be expected.

The data presented in this section suggest that the overall legal capability of Canadians experiencing legal problems is low. However, respondents who said they possessed some measure of legal capability were more likely to obtain some legal advice and to obtain better outcomes. These results provide strong support for the argument made in the final report of the Prevention, Triage and Referral sub-committee of the National Action Committee on Access to Justice in Civil and Family Matters<sup>85</sup> that improving legal capability of the public will result in expanded access to justice for Canadians.

## CONCLUSIONS

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The basic results from the 2014 CFCJ national survey of everyday legal problems and the Cost of Justice Overview Report are similar to the results of previous Canadian research that has been accumulating since the pioneering studies of the mid to late 1990's. The high prevalence of everyday legal problems is the most basic, familiar and widely cited of results from this body of research. The data on cost adds a new perspective on the nature of everyday legal problems. The monetary value respondents placed on certain types of legal problems and the amount of money spent dealing with them emphasizes that a large percentage of everyday legal problems are low value. The fact that they are low value, however, does not mean that they are trivial. These legal problems are generally ones that the people experiencing them feel are serious and difficult to deal with, that they feel are important to resolve and make some effort to do so. This picture of the nature and extent of everyday legal problems flows from the proposition that a comprehensive understanding of the legal problems facing the public cannot be derived by simply looking at the problems that are resolved in the courts or using the services of lawyers. A broad definition of legal problems or "justiciable events" as used in the 2014 CFCJ national survey is necessary for understanding the cumulative effect that legal problems have on the lives of individuals experiencing them.

The extent to which this approach has been adopted and used repeatedly in research over approximately the past two decades suggests a growing consensus that it provides a better way to understand the legal problems experienced by the public. This does not mean that these are problems that should somehow be

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<sup>85</sup> Responding Early, Responding Well: Final Report of the Prevention, Triage and Referral Working Group, National Action Committee on Access to Justice in Civil and Family Matters, Ottawa, 2013

dealt with by the formal justice system. To the contrary, the starting point of this research, for good methodological reasons, is to move away from the formal justice system. To move back in the direction of the formal system based on the results of this survey would, therefore, be inconsistent with the paradigm on which the research is founded. The policy agenda suggested by this research is to expand the infrastructure of access to justice to address the everyday legal problems that, for good policy reasons, ought to be considered social and legal needs.

As indicated by the survey results, the great majority of everyday legal problems do not pertain to things like contested divorces, bankruptcies or high value disputes. They are, as Rebecca Sandefur has characterized them, problems that lie at the intersection of human adversity and the law.<sup>86</sup> This does not mean that the problems are not legal. A legal problem does not occur when a statement of claim is filed, a court appearance occurs or when a lawyer becomes involved. From the perspective of this research, a legal problem emerges from the normal transactions and transitions of everyday life and, from that point of view, legal problems have a natural history in the lives of the individuals experiencing them. The essence of this idea was captured two decades before the seminal studies in the contemporary body of legal problems research was carried out by Philip Lewis who understood legal problems as being broadly defined. He famously wrote, for example, that a tenant may be seen to have a legal problem if he has a leaking roof and the rental agreement includes a responsibility for repairs. In finding a solution, however, it is not clear whether the tenant would be better off with a lawyer or a ladder.<sup>87</sup>

The results of this research show that the monetary costs of experiencing everyday legal problems are very large. While costs may be small to individuals, the cost to the society aggregated across all individuals is huge. The monetary cost to the public associated with experiencing everyday legal problems is estimated to be at least \$7.7 billion annually. The costs to the state of everyday legal problems are also large. For example, the costs to just three publicly funded programs are at least \$800 million. These are not one-off costs. Everyday legal problems are a nearly normal feature of everyday life. They occur year after year. The overall costs to the society and to the public purse are also on-going, accumulating over time. Experiencing legal problems is a human process, and therefore, the costs are also measured in human terms of high levels of stress and ill-health. This suggests that expanding access to justice would serve valuable public policy purposes. The formal justice system is widely acknowledged as a public good. Similarly, these data suggest that expanding access to justice institutions to assist people dealing with a much larger range of everyday legal problems also represents a public good.

Without attempting to speculate about effective approaches, portals for accessing legal and authoritative non-legal advice and improved legal capability of the public are two ways to build a new infrastructure of access to justice. The results of this analysis show that obtaining legal advice, even though people may go on to use a means to resolve the problem not involving the formal justice system, leads to better outcomes. Importantly, obtaining legal advice usually occurs in combination with other actions taken to resolve problems and is, according to respondents, the most helpful approach. However, it is also the last action people take in a sequence of efforts to resolve problems.

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<sup>86</sup> Rebecca L. Sandefur, *The Importance of Doing Nothing: Everyday Problems and Responses of Inaction*, in P. Pleasence, A. Buck and N J Balmer (eds.), *Transforming Lives: Law and Social Process*, London, 2007, p. 112- 132.

<sup>87</sup> Philip Lewis, *Unmet Legal Needs* in Pauline Morris, Richard White and Philip Lewis (eds.) *Social Needs and Legal Action*, Martin Robertson, 1973, p. 79.

One of the main challenges to expanding access to justice is the lack of legal capability among the public. The data show that a large proportion of Canadians say they had no legal capability when their problem first occurred. The challenge, however, is that having at least some measure of legal capability is related to better outcomes. The vast majority of people experiencing everyday legal problems are self-helpers or obtain assistance from non-legal sources. A large percentage of self-helpers said they felt, in retrospect, the outcome would have been better had they obtained some assistance. Legal capability is the essential “other side of the coin” to providing much better PLE with widely known citizen-friendly entry points to a system providing assistance. In view of the vast numbers of people experiencing everyday legal problems and the small likelihood that most of these problems will or, indeed, ought to be resolved using the formal justice system as it currently exists, supported self-help appears to be the most realistic approach to expanding access to justice.

The basic questions about dealing with everyday legal problems raised by the research might be understood in terms of what C. Wright Mills described as the sociological imagination, which is the connection between personal troubles and public issues of social structure.<sup>88</sup> In legal problems terms, the issue is as follows: Should the everyday legal problems experienced by such a large number of people be understood simply as the personal troubles of each individual or is the correct statement of the problem and the range of solutions a matter for the public institutions of the society? The research tells us that legal problems are ubiquitous features of all of the societies in which research has been carried out, that they arise from the normal activities of everyday life in modern bureaucratic “law thick” societies and, finally, that there appears to be a mechanism by which the experience of everyday legal problems has a momentum or additive effect. This additive effect may come as a result of common underlying conditions or from the more patterned processes, trigger and consequence effects between problems. These features suggest that the nature of everyday legal problems represents more than the personal troubles of individuals.

The issue is difficult because access to justice has become a “wicked problem”, as is often the case, occurring in a paradigm shift. Two of the common features of wicked problems are that basic definitions are changing and new knowledge is constantly emerging to challenge ideas that have been taken for granted.<sup>89</sup> The paradigm shift that is occurring is a movement from the narrative of access to justice centered on the formal justice system to the narrative based on the everyday legal problems approach to understanding the legal problems of the public. Although a paradigm shift may have its origin in the “eureka moment” of scientific discovery, paradigm shifts are slow and complex. Paradigm shifts occur initially at the level of scientific research,<sup>90</sup> then diffusing outward into the domains of public policy and programs. At the same time, the incorporation of knowledge from the world of research to the domains of policy and program development simultaneously propels the paradigm shift. Replicating previous findings about the prevalence and responses to everyday legal problems with up-to-date results, and adding new data on everyday legal problem costs and legal capability to the body of knowledge will hopefully nudge the paradigm shift forward. The everyday legal problems narrative of access to justice will become more widely recognized as a more coherent approach for thinking about the nature of legal problems, about justice and access to justice and, perhaps what we ought to mean by the justice system. This does not mean that every implication flowing from the research must be acted upon. It does mean, however, that expanding access to justice, which is

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<sup>88</sup> C. Wright Mills, *The Sociological Imagination*, Grove, Press, New York, 1959, p. 8

<sup>89</sup> *Tackling Wicked Problems: A Public Policy Perspective*, Commonwealth of Australia, 2007, pp. 3 – 8.

<sup>90</sup> T S Kuhn, *The Structure of Scientific Revolutions*, University of Chicago Press, 1962.

now widely discussed in professional and public discourse, will proceed according to a more coherent agenda.