


Cost of Justice: Weighing the Costs of Fair and Effective Resolution of Legal Problems in Canada

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Canadian Forum on Civil Justice 
Forum canadien sur la justice civile



Canadian Forum on Civil Justice

The “Cost of Justice” Project

The Research

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

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

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

Overview

1. Background – legal needs research & overview CFCJ survey.
2. Costs of legal problems to the individual
3. Legal consciousness
4. Costs of legal problems to the state
5. Policy questions and program implications
6. Research questions and implications

1) Background – Legal Needs Research



1999-2015: legal needs studies around the world

Features of Needs Studies

- Historically, disputing has been narrowly constructed – we must place our understanding of civil justice in a broader context (Pleasence)
- **“Justiciable” or “everyday legal problems”**
 - Problems experienced by people in the course of their everyday lives
 - Engages a non-trivial, real and substantial, rights-based issue
 - Capable of being decided by a court or tribunal
 - May be resolved there, elsewhere, or not resolved
- A matter which raised legal issues, *whether or not*:
 - Recognized by respondent as being “legal” or
 - Any action taken to deal with it involved justice system
- Unmet legal need = Unresolved justiciable problem

Everyday Legal Problems and the Cost of Justice in Canada

- In 2014 the CFCJ completed the first legal needs study in Canada since 2008.
- 1st study of its kind in Canada to measure the multi-dimensional costs of unresolved everyday legal problems.

The Methodology:

- A national telephone survey of 3264 Canadians 18 yrs. or older (excludes territories).
- Respondents were asked if they had experienced any problems from a list of 84 problem scenarios.
- Threshold language was used to encourage respondents to report only problems they considered to be serious and difficult to resolve.
- Respondents were also asked about:
 - Actions taken in response to the problem
 - Consequence of experiencing problems
 - Types and adequacy of assistance received
 - Connection between problems and the costs related to experiencing the problem.

Legal Problems of Everyday Life

- Approximately 50% of adult Canadians will experience a legal problem over any given 3-year period*
- This amounts to 13 million people (per 3 year period)
- Essentially all of us over the course of a lifetime



* NB The Cost of Justice data presented here is preliminary and subject to change upon final review

How many problems do people experience?

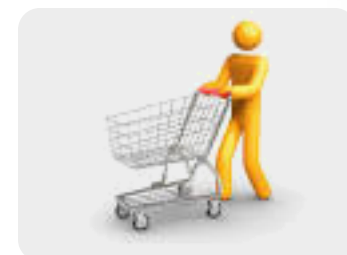


- 30% of people reported experiencing two or more problems
- People experienced on average almost 3 problems per individual.

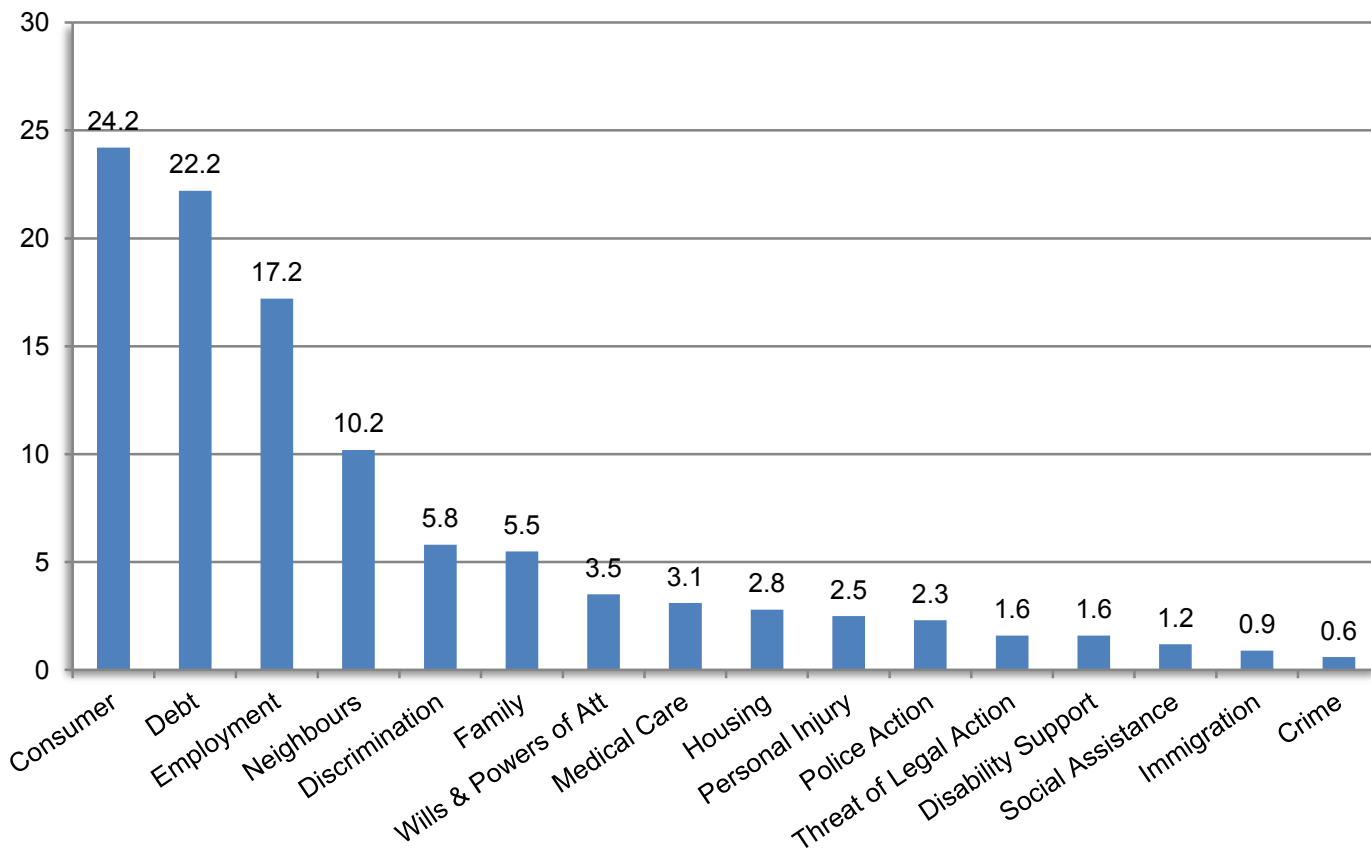
What Kinds of Problems Do People Experience?

- “Many of the problems people commonly experience are nested in legal rights and obligations.”
- Problems span typical areas of modern-day life (consumer, employment, money, debt, injury, health, housing and family relationships)
- The most common problems experienced by Canadians:
 - **Consumer Problems**
 - **Debt Problems**
 - **Employment Problems**

These are followed closely by **neighbor** and **family problems**



Percent with One or More Problems



Who Has These Problems?

Justiciable problems are not evenly distributed

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

How Do People Deal with Their Problems?

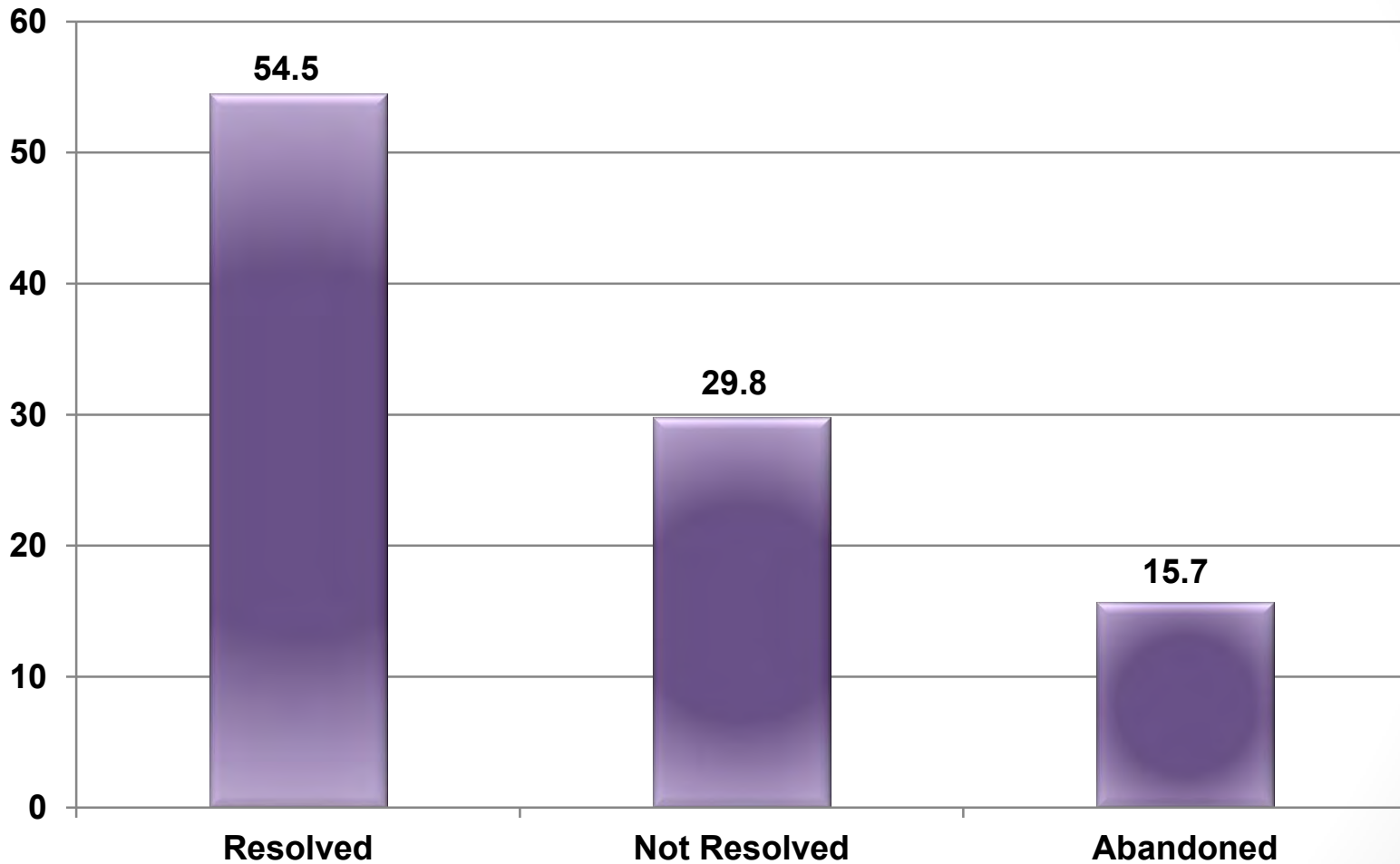
Only 6.7% of people used courts or tribunals to resolve their problem

- 19% obtained legal advice
- 20.8% obtained advice from union or advocacy group
- 33.2% searched online for help
- 75% contacted the other party
- 61.2% obtained advice from family and friends

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

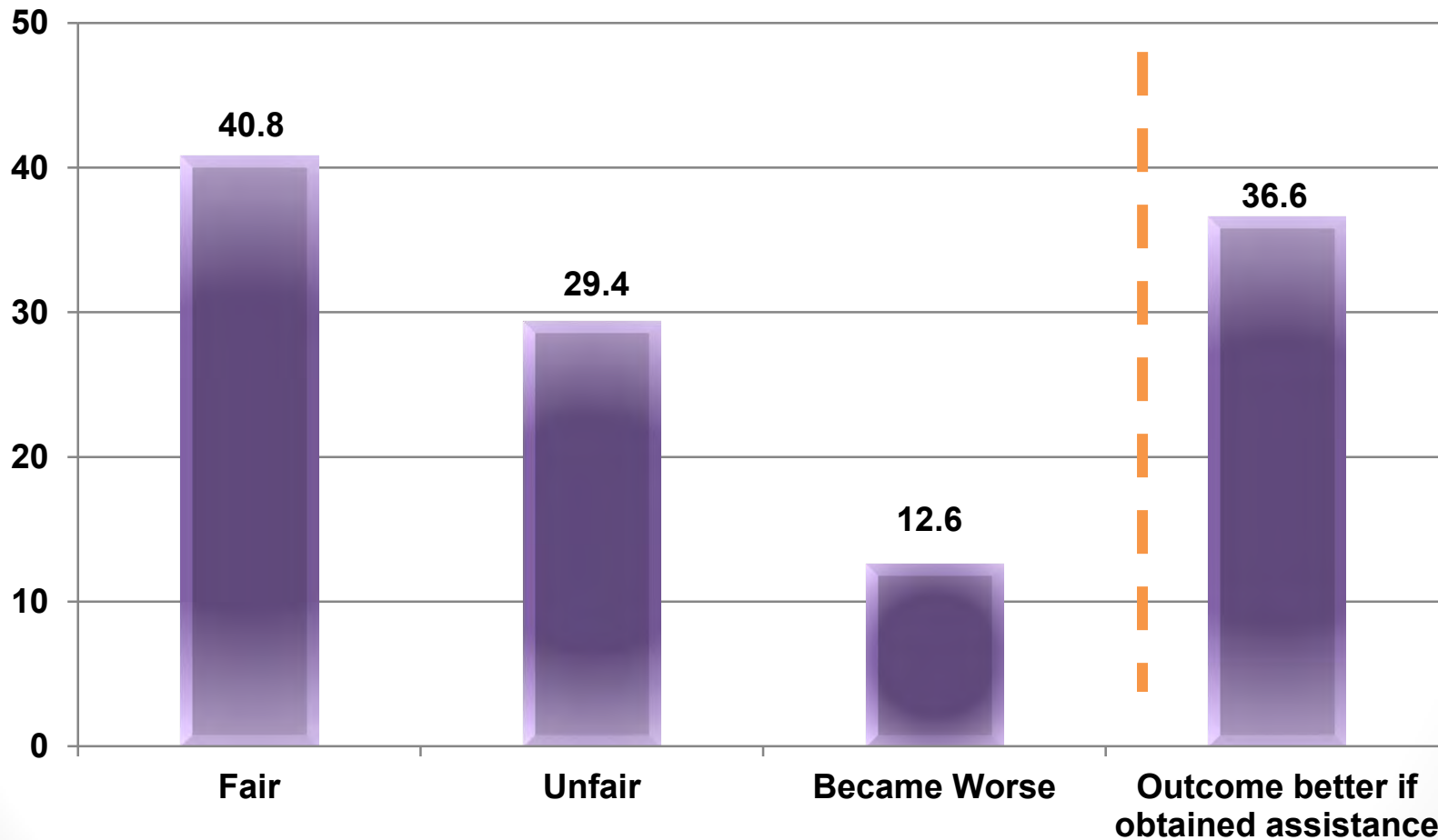
“There is no ‘rush to law’”

How many people resolve their problems?



Based on 2014 survey data from the CFCJ

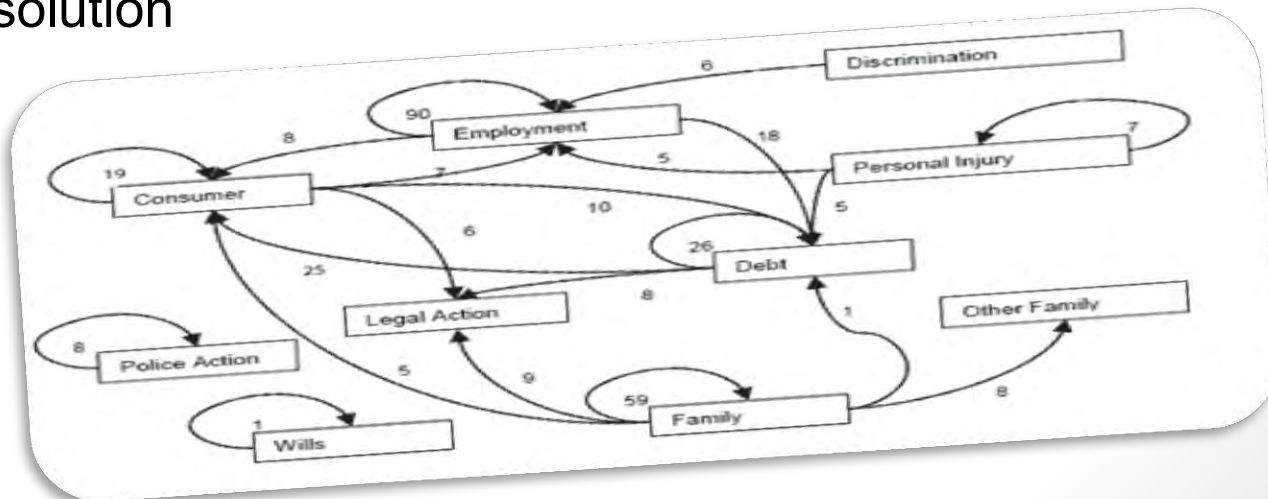
What kinds of Outcomes do people report?



Based on 2014 survey data from the CFCJ

Unresolved Legal Problems Trigger Additional Problems

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



2) Costs of Legal Problems to the Individual

Measuring The Costs of Justice

- Access to justice was typically framed as access to the formal court system.
- Thus, “costs” have been primarily framed in regards to the cost of accessing lawyers, legal aid, etc. (i.e. the direct costs of accessing the formal justice system).



Measuring the Cost of Justice



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

What do we know about Costs in Canada?

- **Private Costs**

- Most frequent types of private costs reported are: **lawyers fees, transportation, purchase of materials** (CFCJ 2014).
- Average hourly fees for lawyer with 10 years experience \$325; 5 yrs. Experience \$264; 1 yr or less \$204 (Semple, forthcoming)

- **Time**

- Problems can remain **unresolved over several years** and civil cases can remain part of a person's for a long time.
 - CFCJ – 30% problem remained unresolved over period of survey (3 years)
 - In family disputes (in Ontario) 27% - took more than 1yr. to resolve; 44% had not resolved at time of survey (Ontario Civil Legal Needs Survey 2009)
- Seeking justice can **consume hours** from peoples lives.
 - Time spent finding information, i.e. “Searching costs”
 - Filling out forms, documents, travelling time

What do we know about Costs in Canada?

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

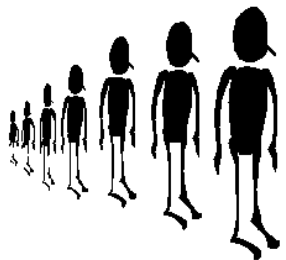


- “She spent eight months at 40 hours a week preparing for a two day discovery...She read and researched”

~ Female family court litigant, Alberta

- “Another challenge is the distance from her house to the registry – one hour to Vancouver and half an hour to Chilliwack. She has to drive to the court each time” ~ Female civil court litigant, British Columbia.

- Has spent more than 100 hours on this but is committed” ~ Male small claims court litigant, Toronto.



What do we know about Costs in Canada?

- **Cost of Delay/Opportunity Costs**

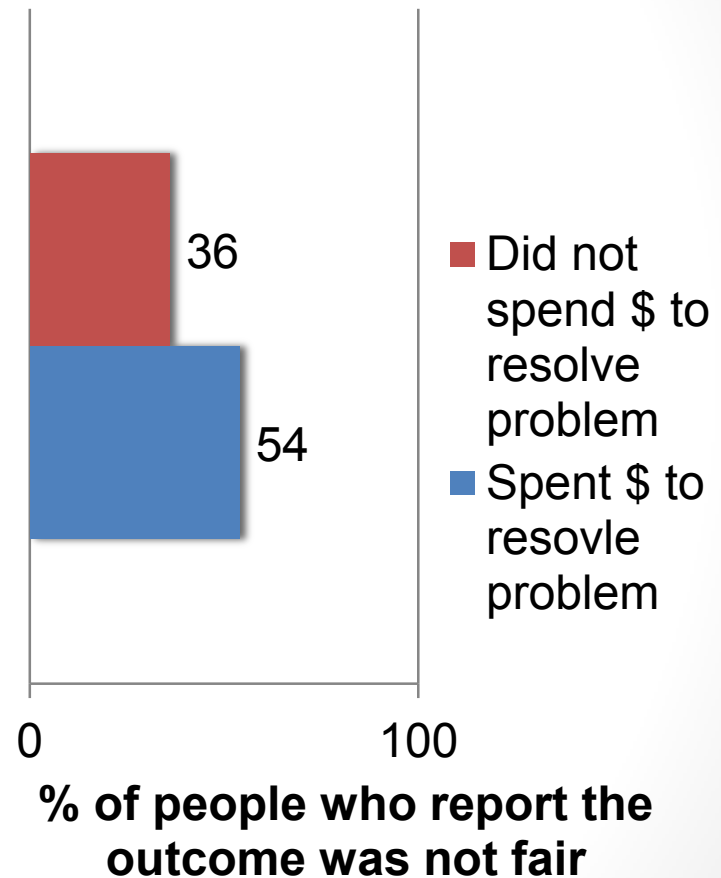
- Inability to resolve problems can result in missed opportunities, income loss, etc.
 - E.g., people use-up their vacation days, or take “non-paid” vacation to pursue justice.
 - Money spent on case could have been put to better use. On average, Canadians **spent \$13 933 to resolve the first problem** they experienced and **\$15, 296 to solve their second.**

- **Emotional Costs**

- **Stress, fear, lack of confidence, damage to relationships;** more difficult to put a monetary value on.
 - In Ontario survey of low and middle income Canadians – **46%** reported **stress related or mental health issues** as result legal problem; **46% reported lack of confidence; 28% experienced relationship breakdown.**
 - National level – 18% reported increased stress or emotional problems; women the percentage was higher for women than men (CFCJ, 2014)

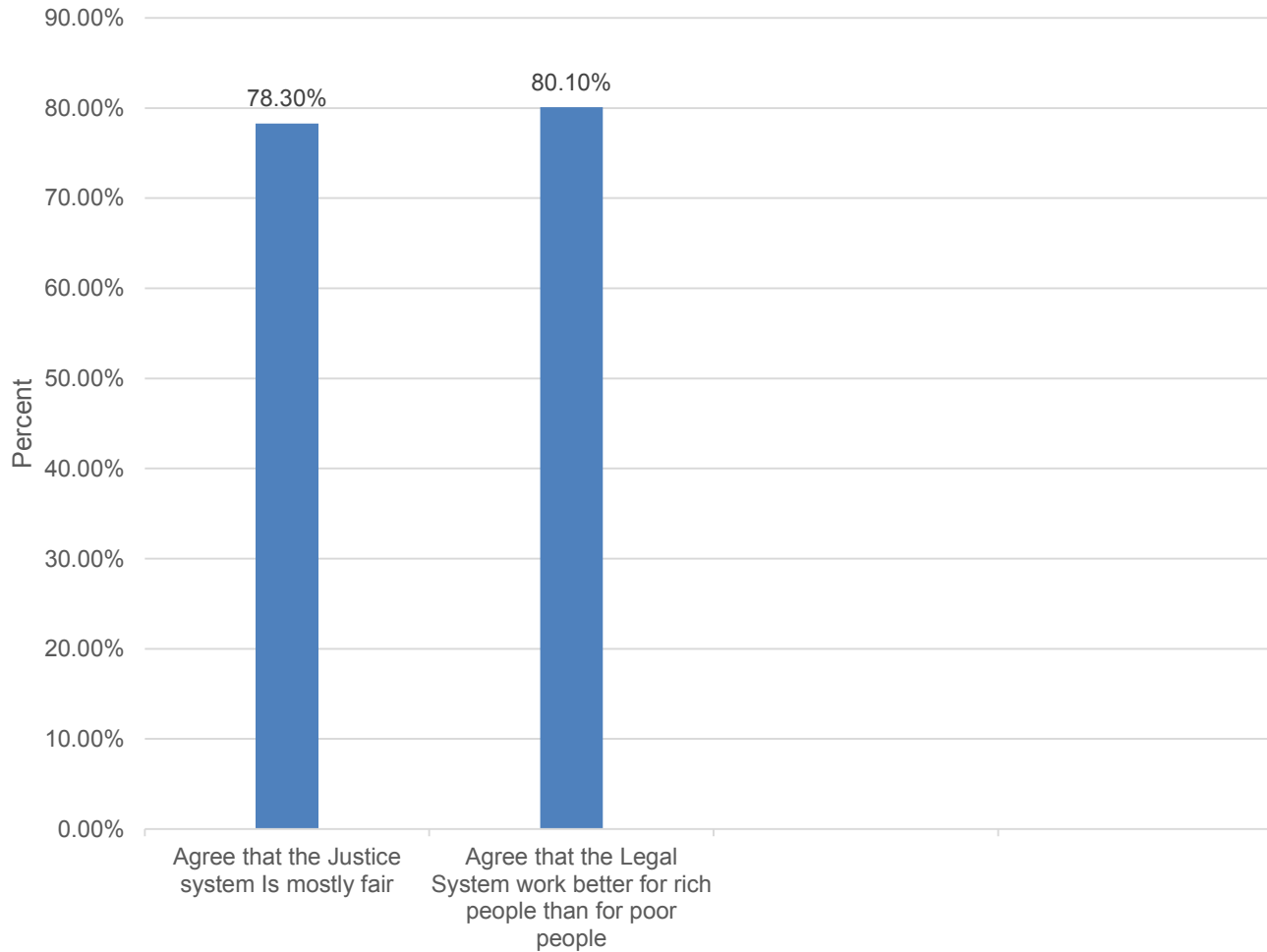
What do we know about Costs in Canada

- 2014 CFCJ Survey data suggests we assume that:
 1. Spending money results in better outcomes (as perceived by respondent)
 2. The more money spent the better the outcome.

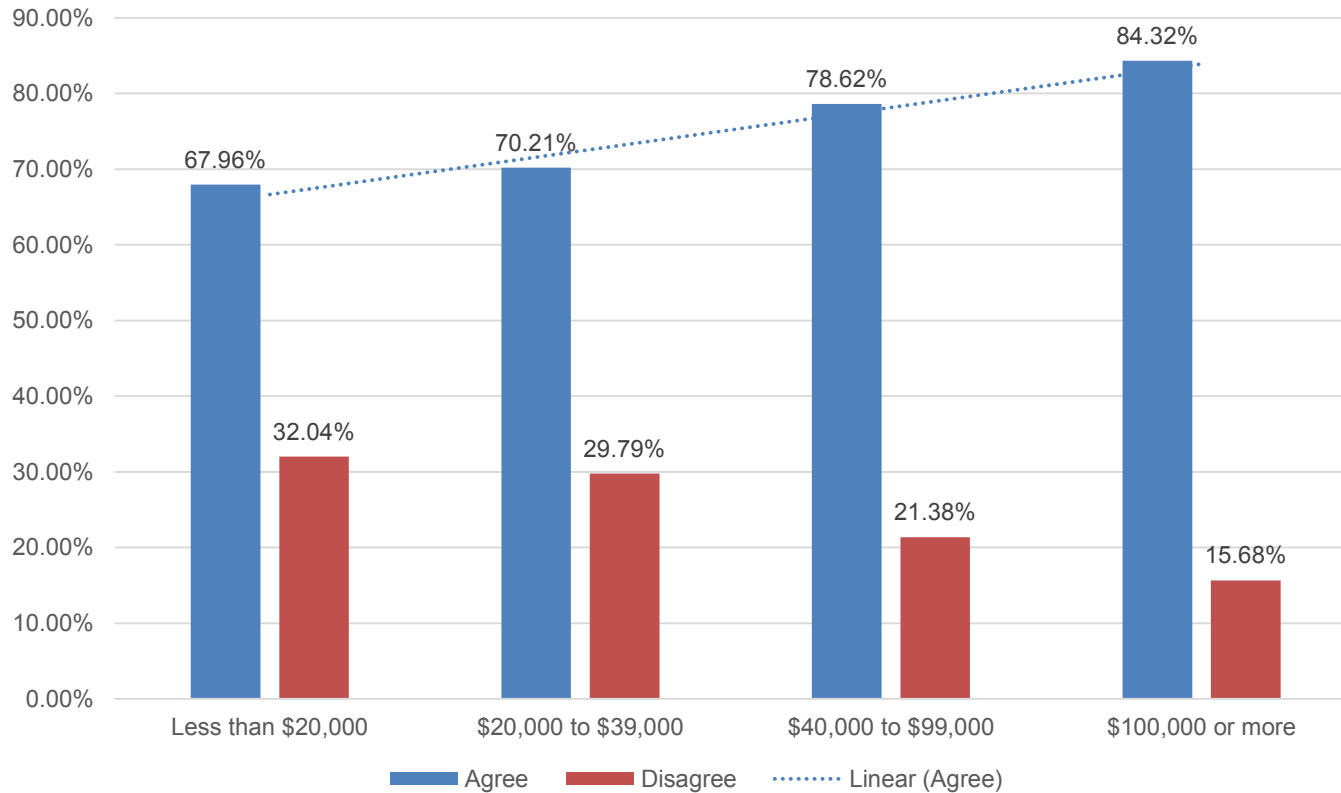


3) Fairness, Legal Consciousness and Legal Problems

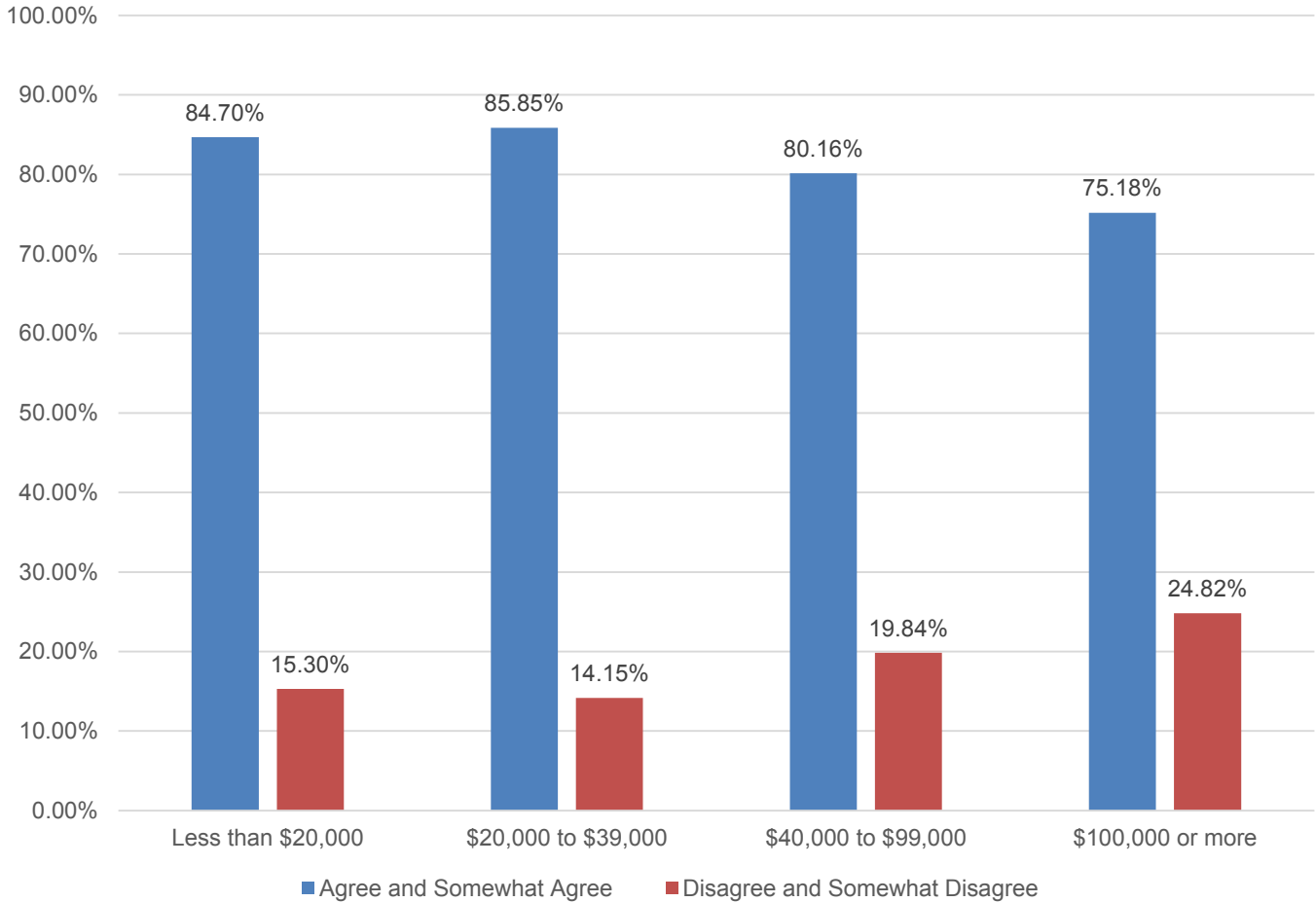
Attitudes on "The Justice system in Canada is mostly fair" beside attitudes on "The legal system works better for rich people than for poor people"



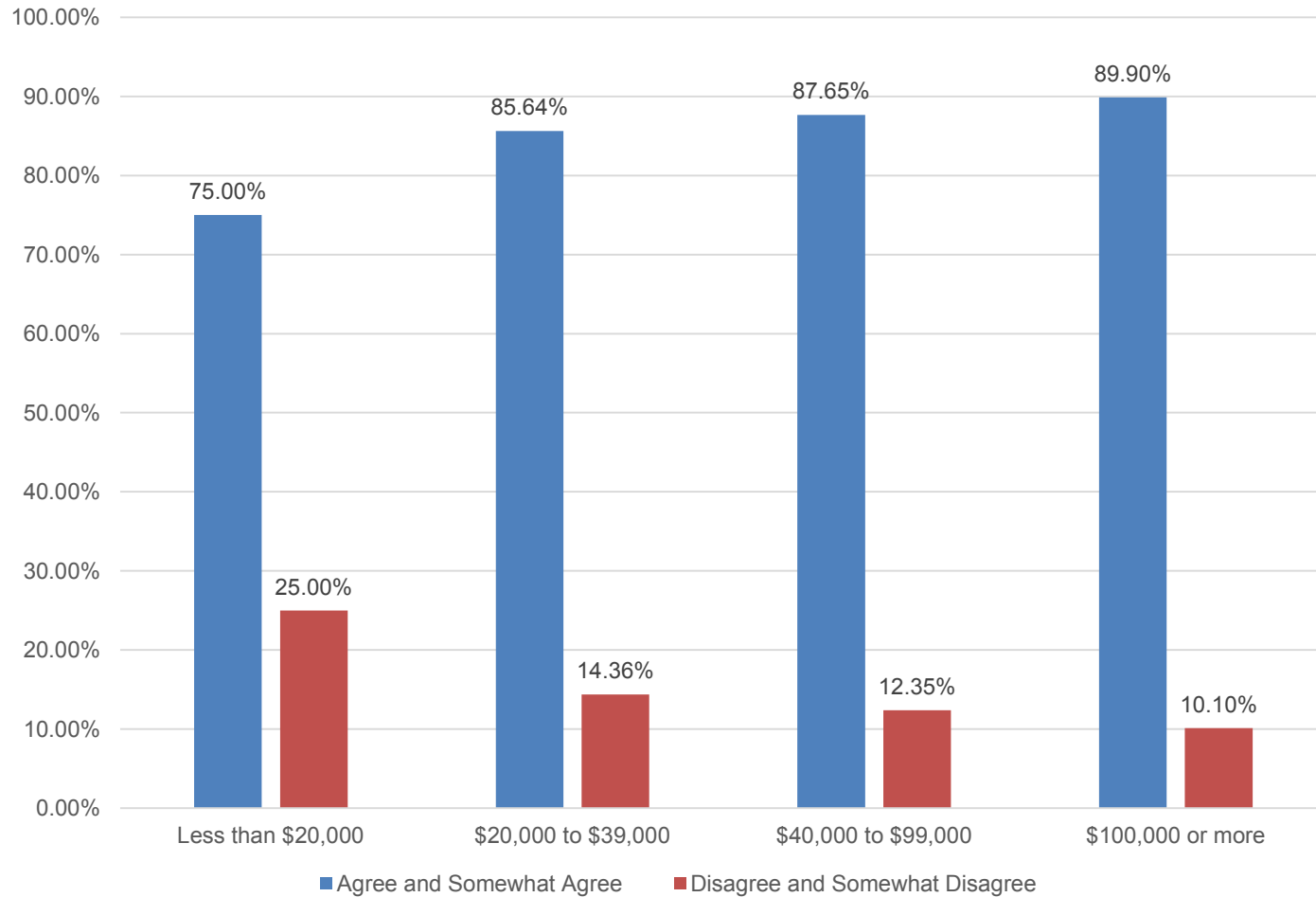
Attitudes on "The justice system in Canada is mostly fair" by Income

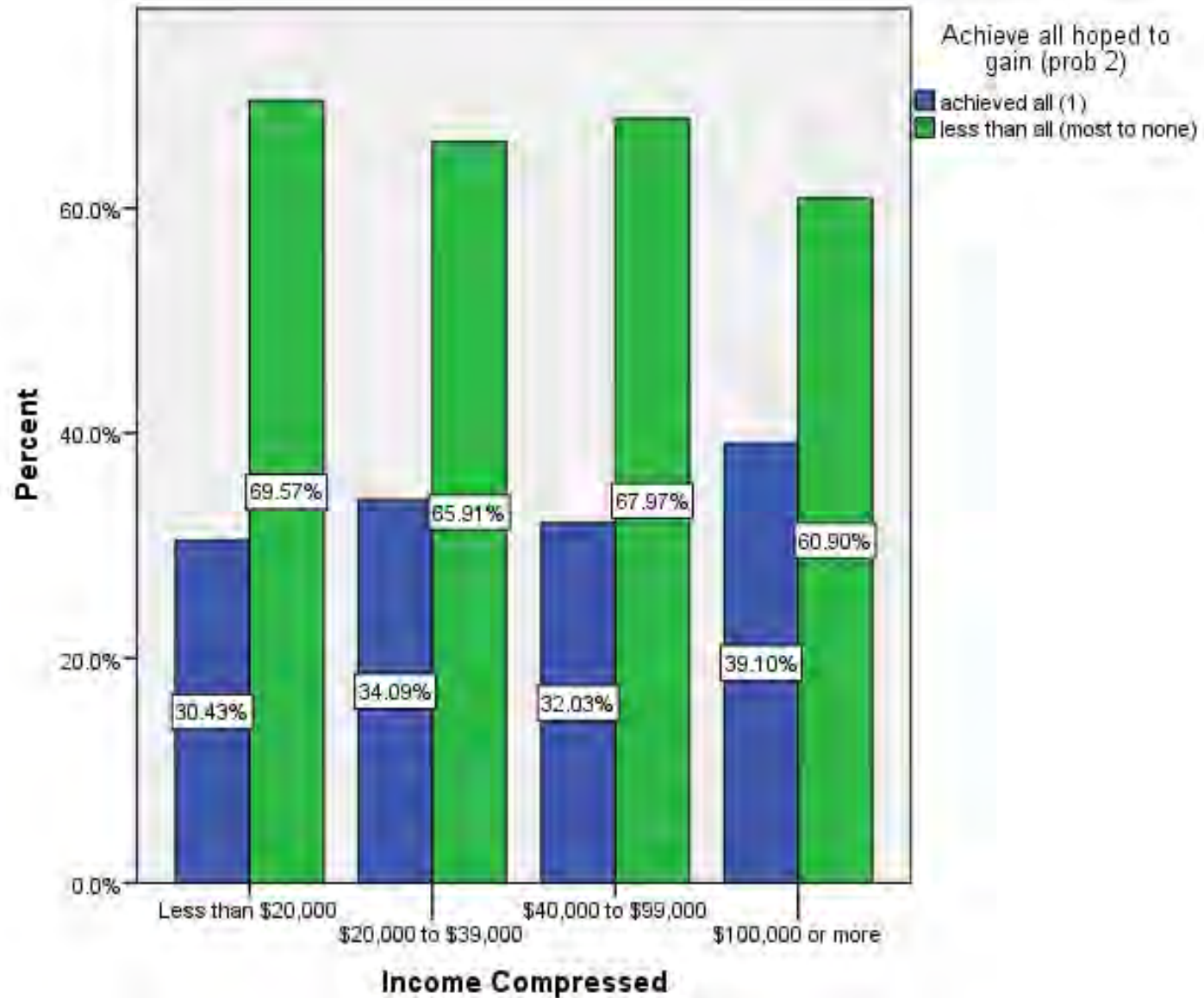


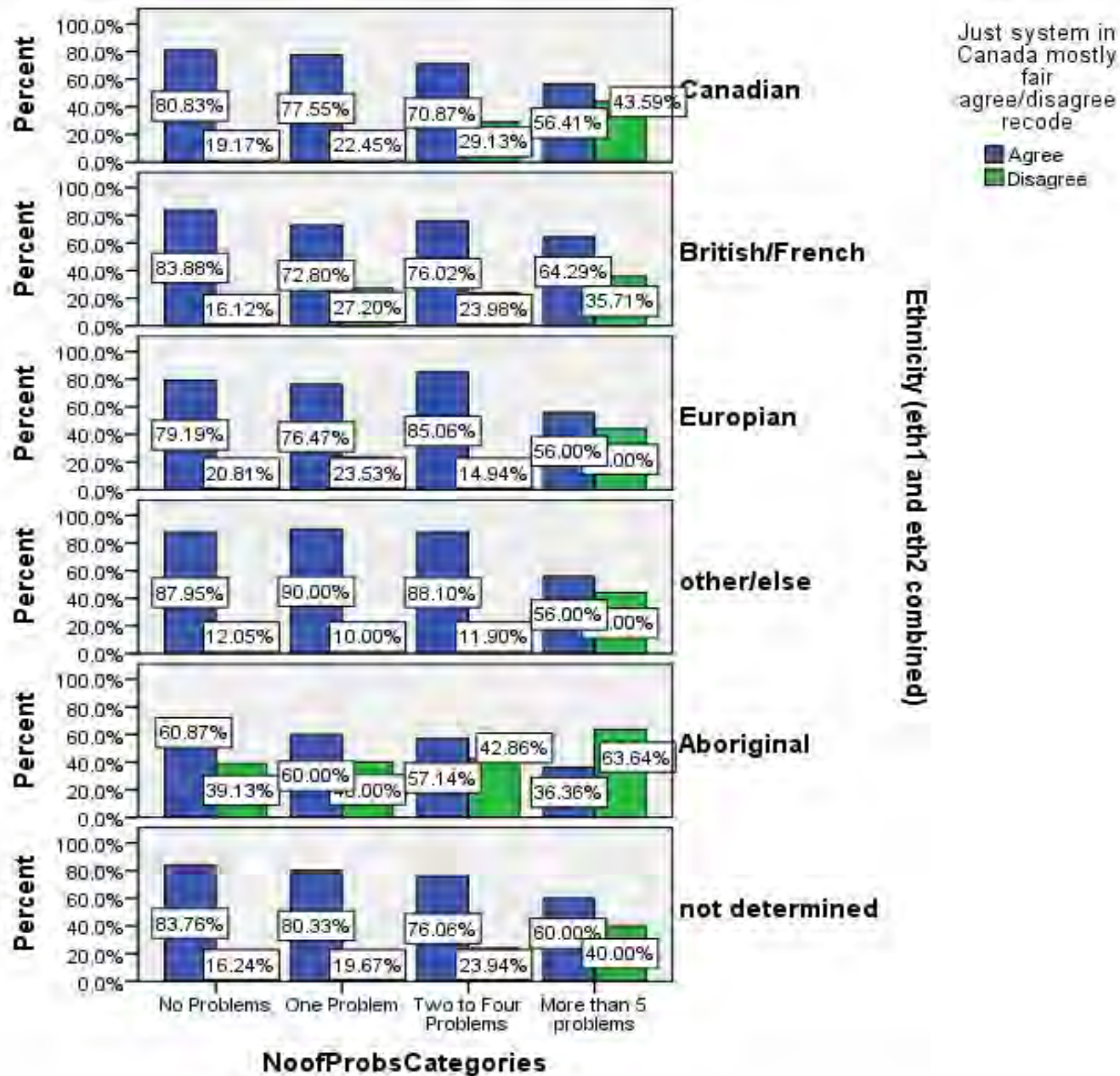
Attitudes on "The legal system works for better for rich people than for poor people" by Income

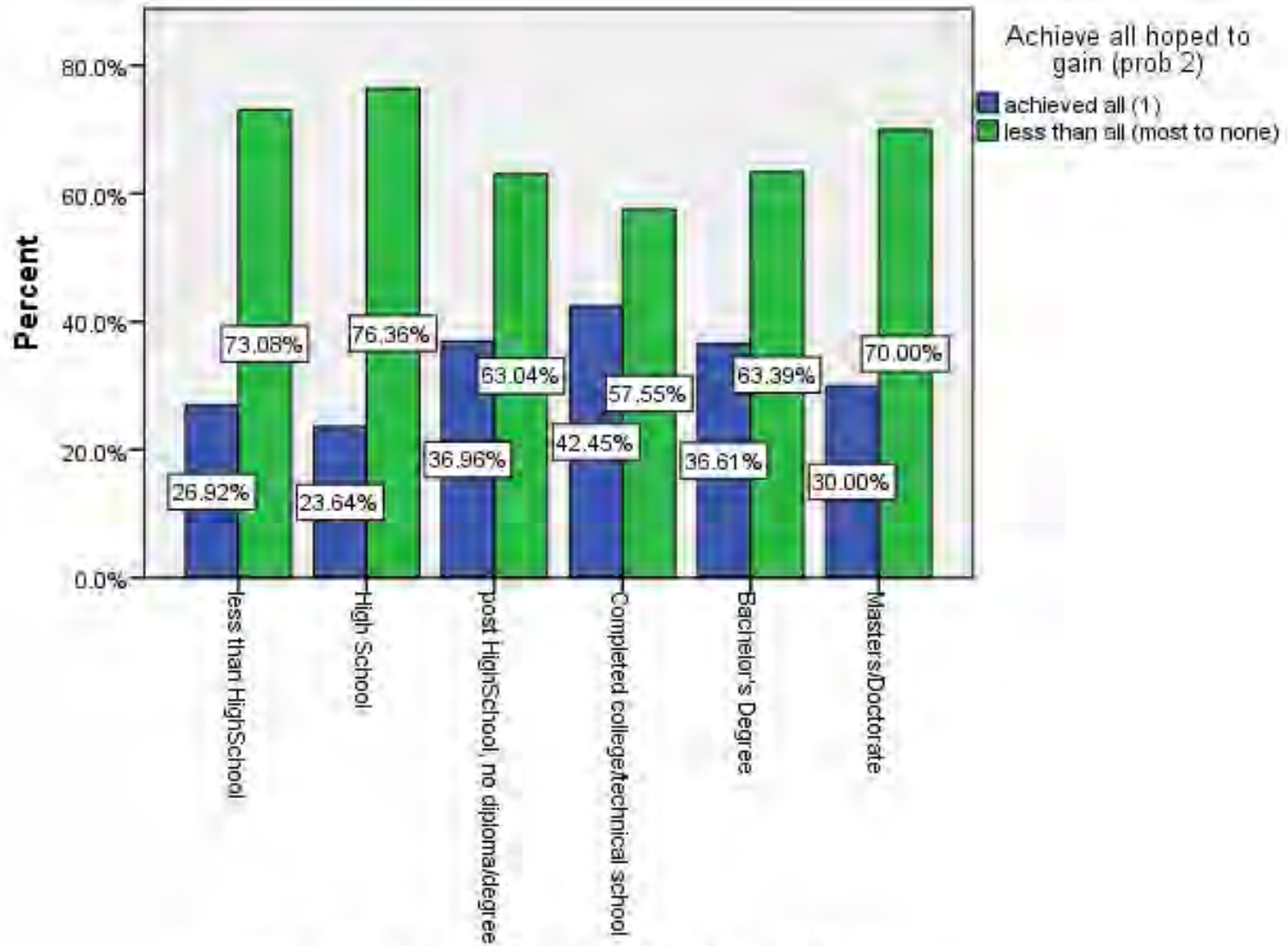


Attitudes on "The legal rights guaranteed in the Canadian Charter of Rights and Freedom make a difference when people have legal problems" by Income



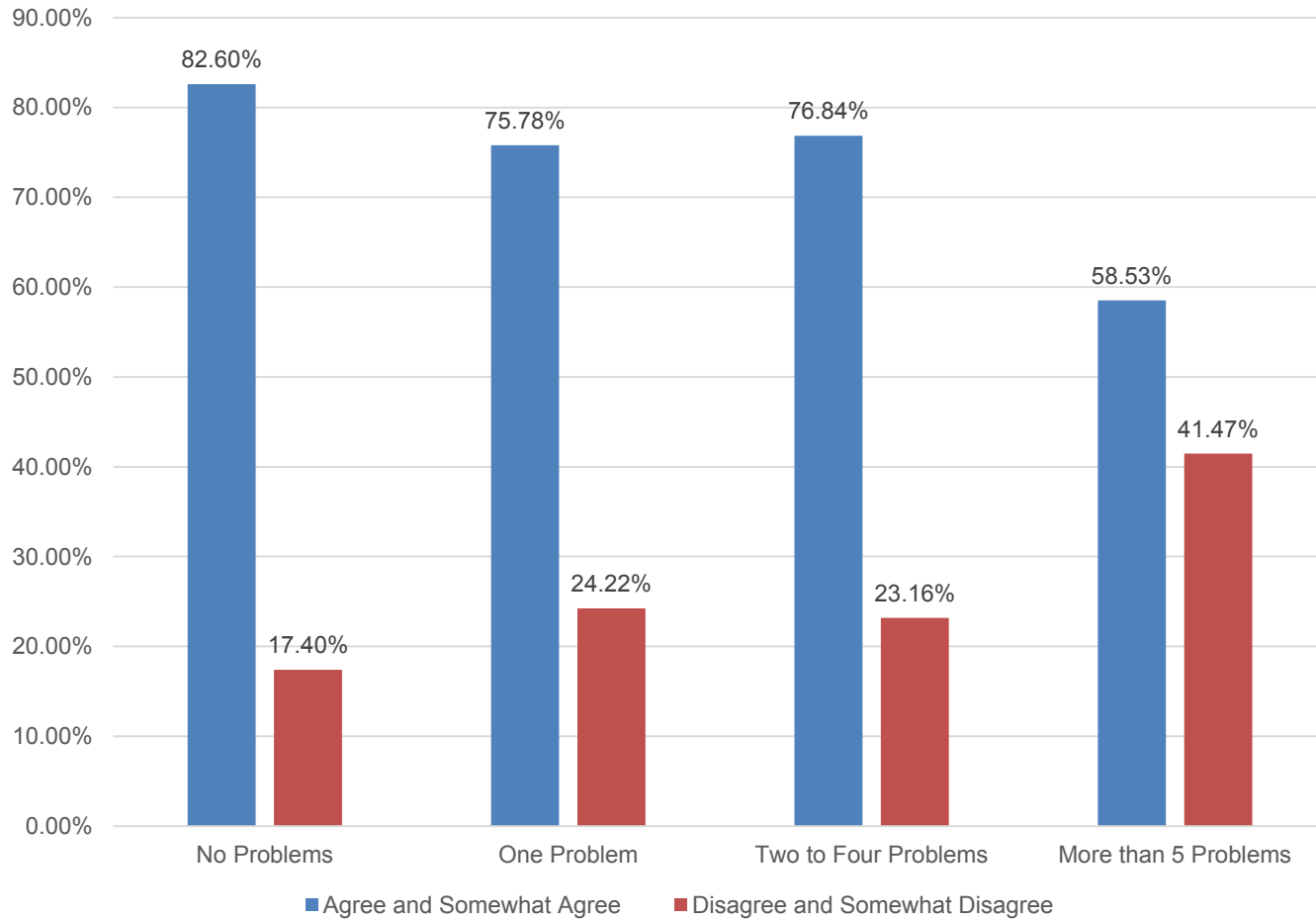




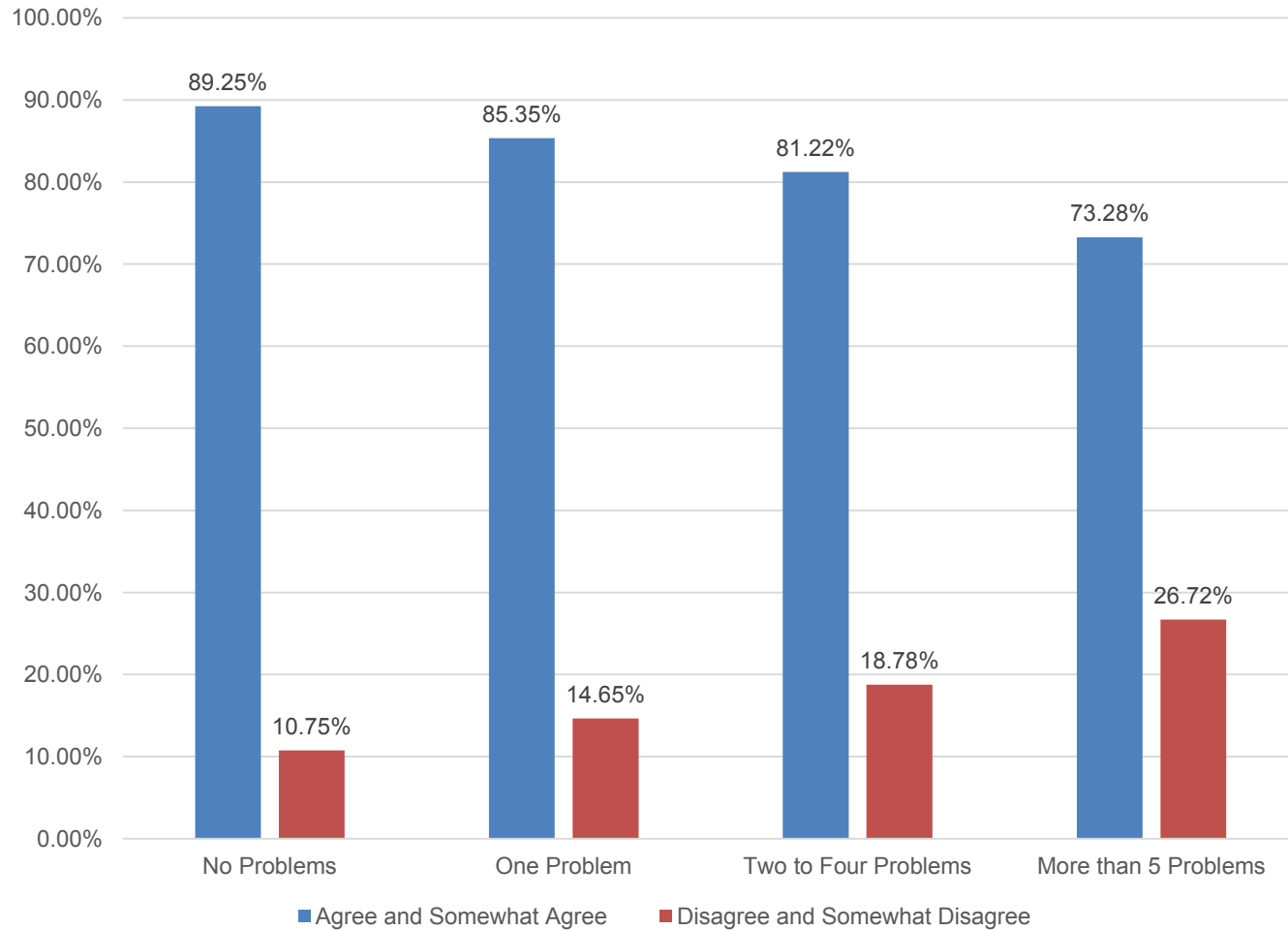


Highest level of education completed - 6

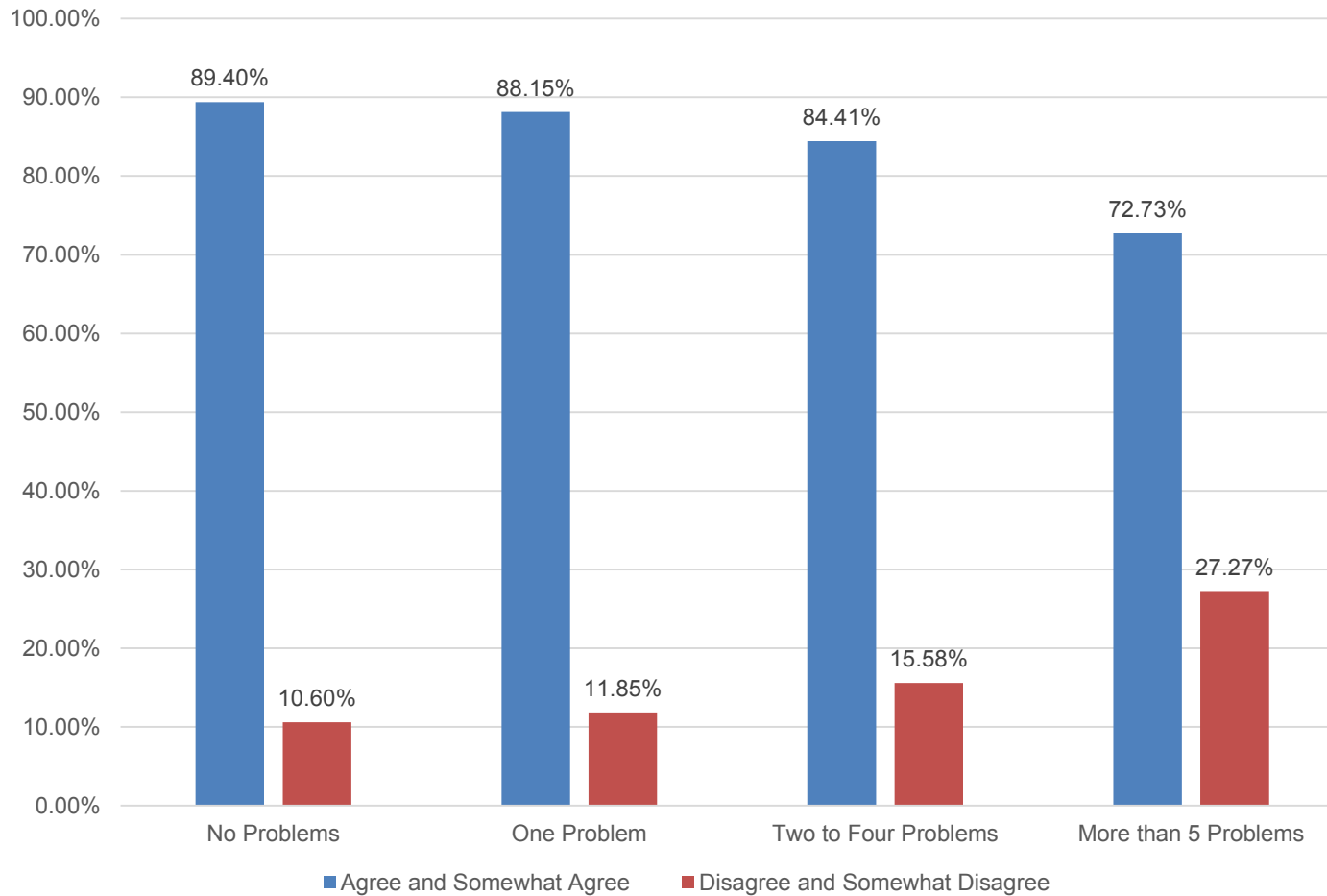
Attitudes on "The justice system in Canada is mostly fair" by Number of Problems

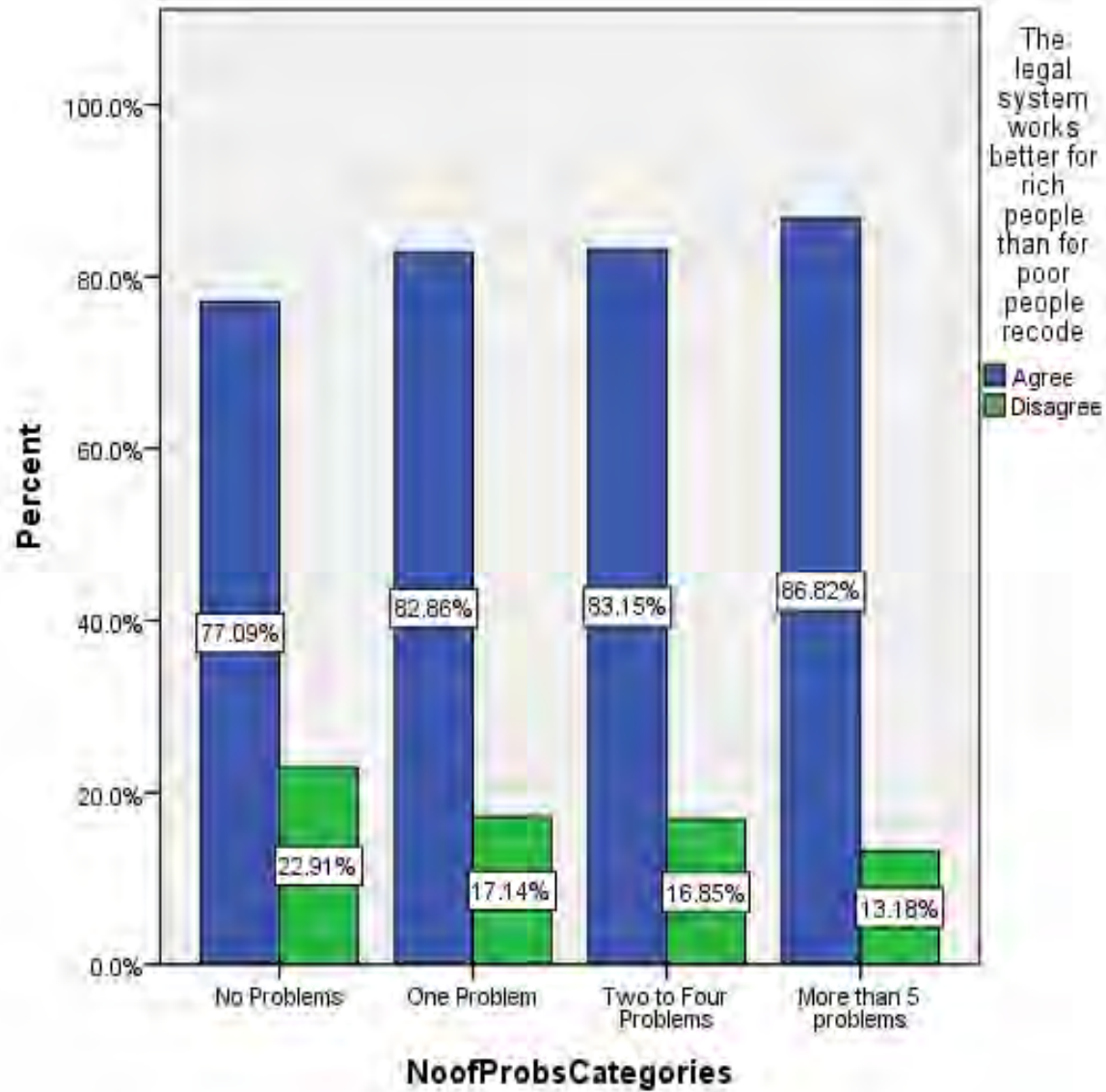


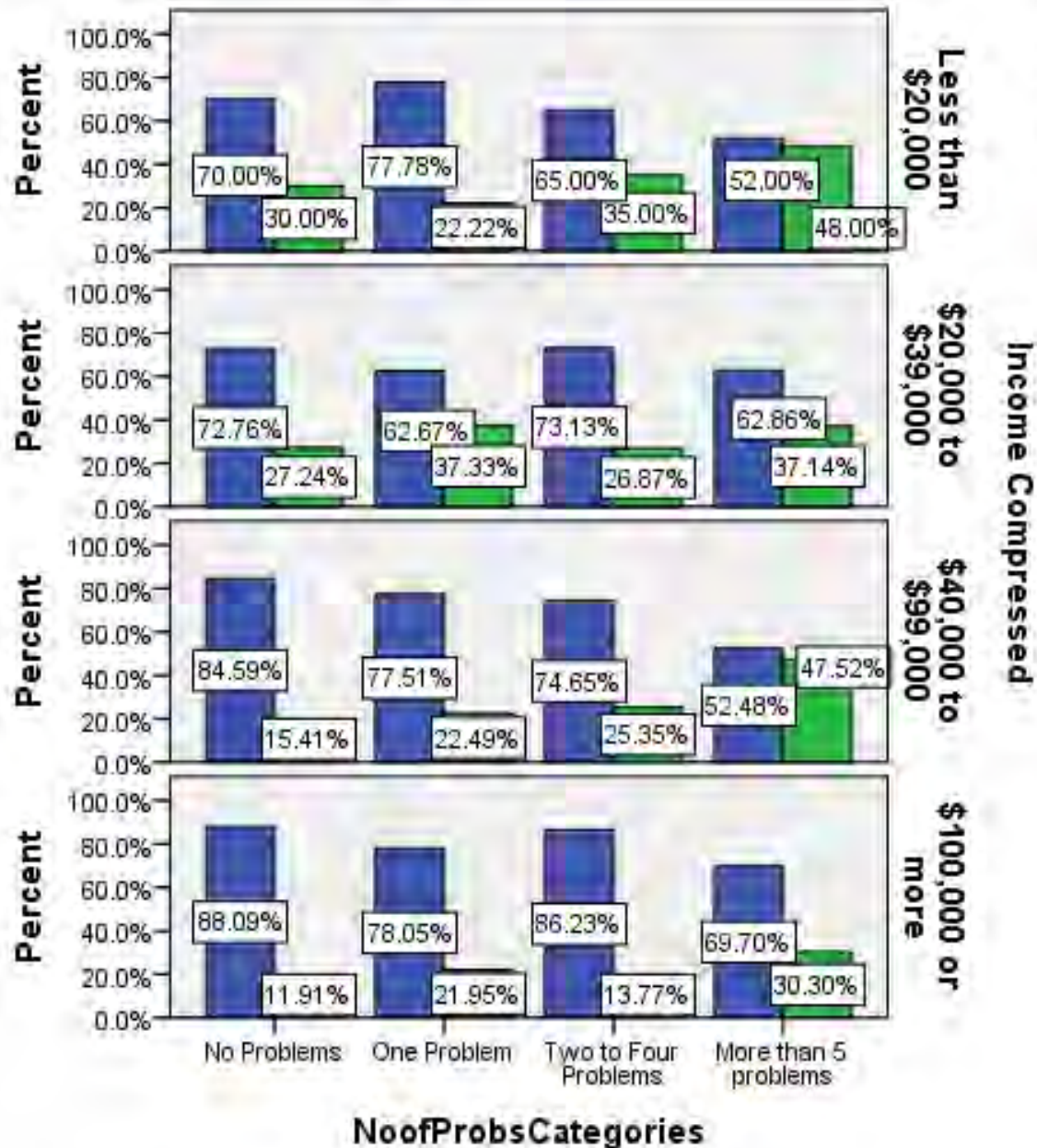
Attitudes on "Courts are an important way for ordinary people to protect their rights"



Attitudes on "The legal rights guaranteed in the Canadian Charter of Rights and Freedoms make a difference when people have legal problems" by Number of Problems

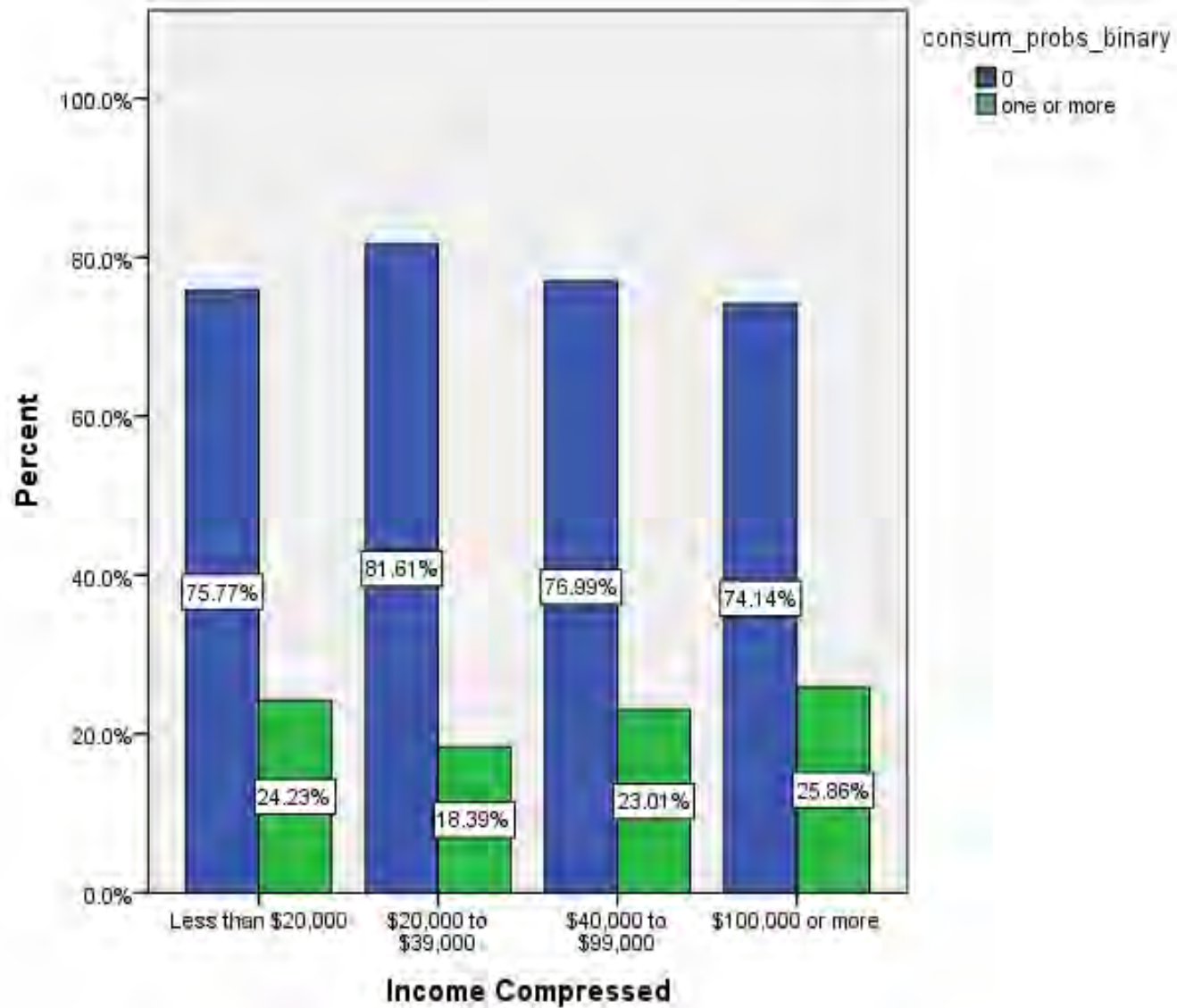


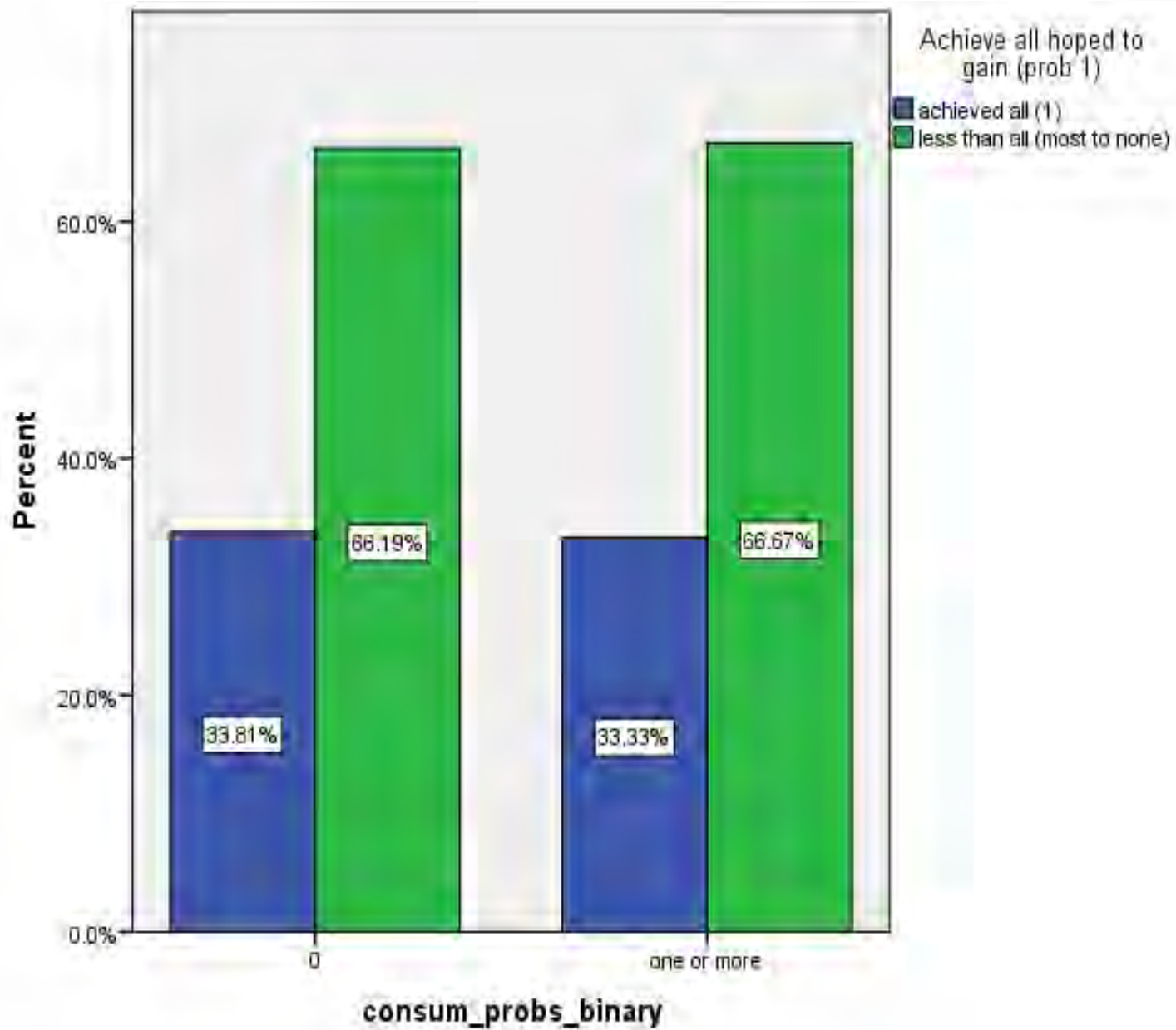


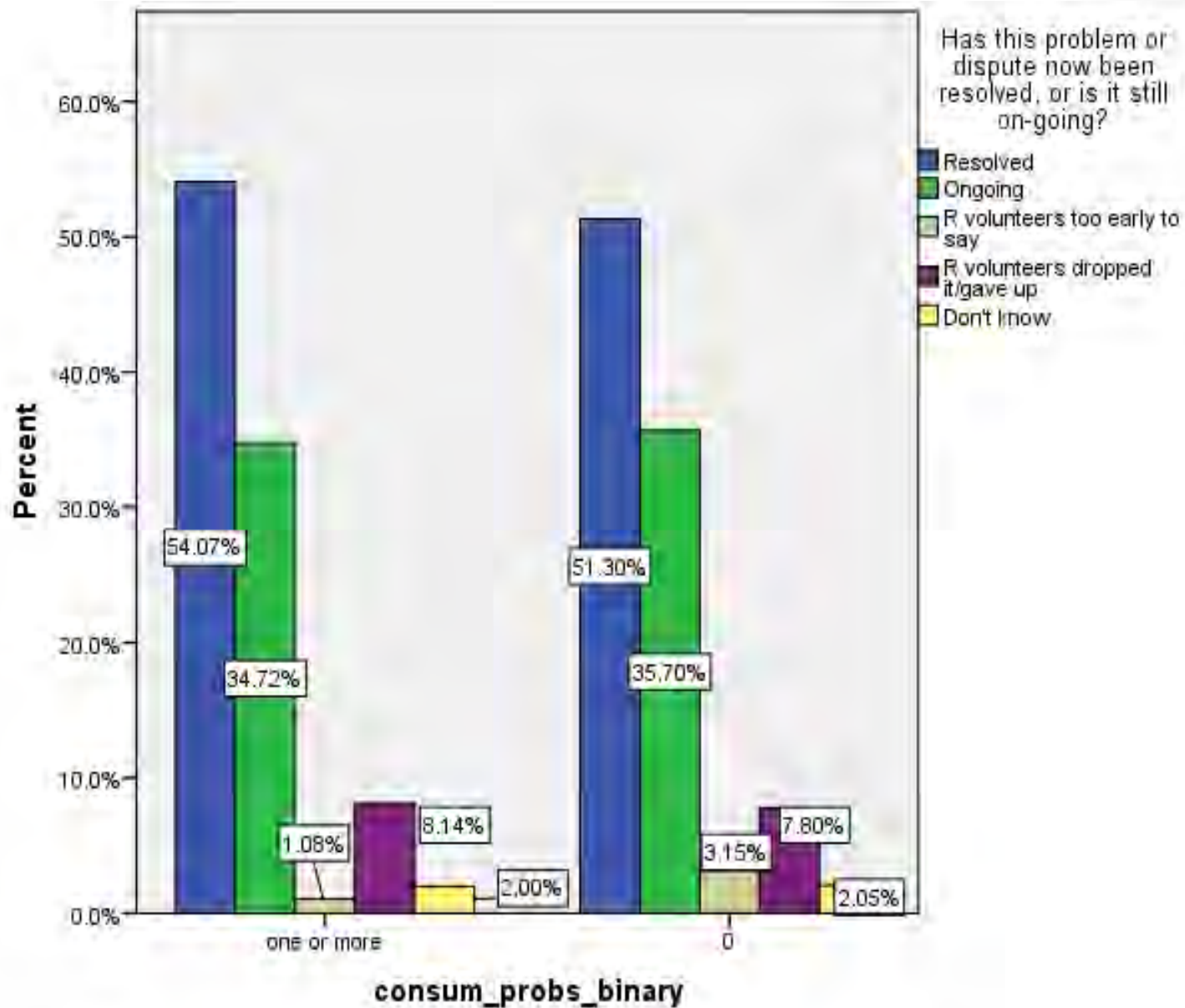


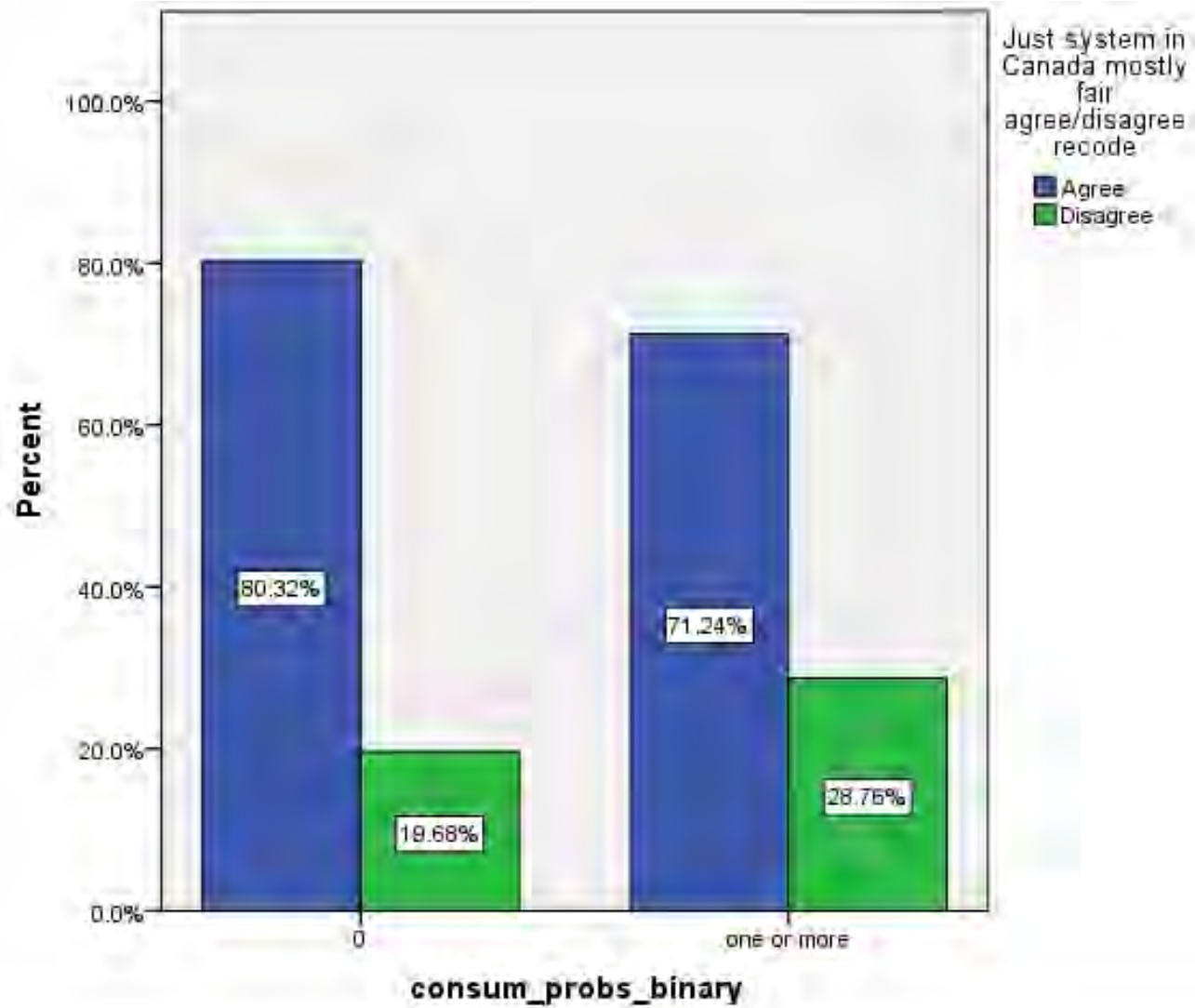
Just system in Canada mostly fair agree/disagree recode

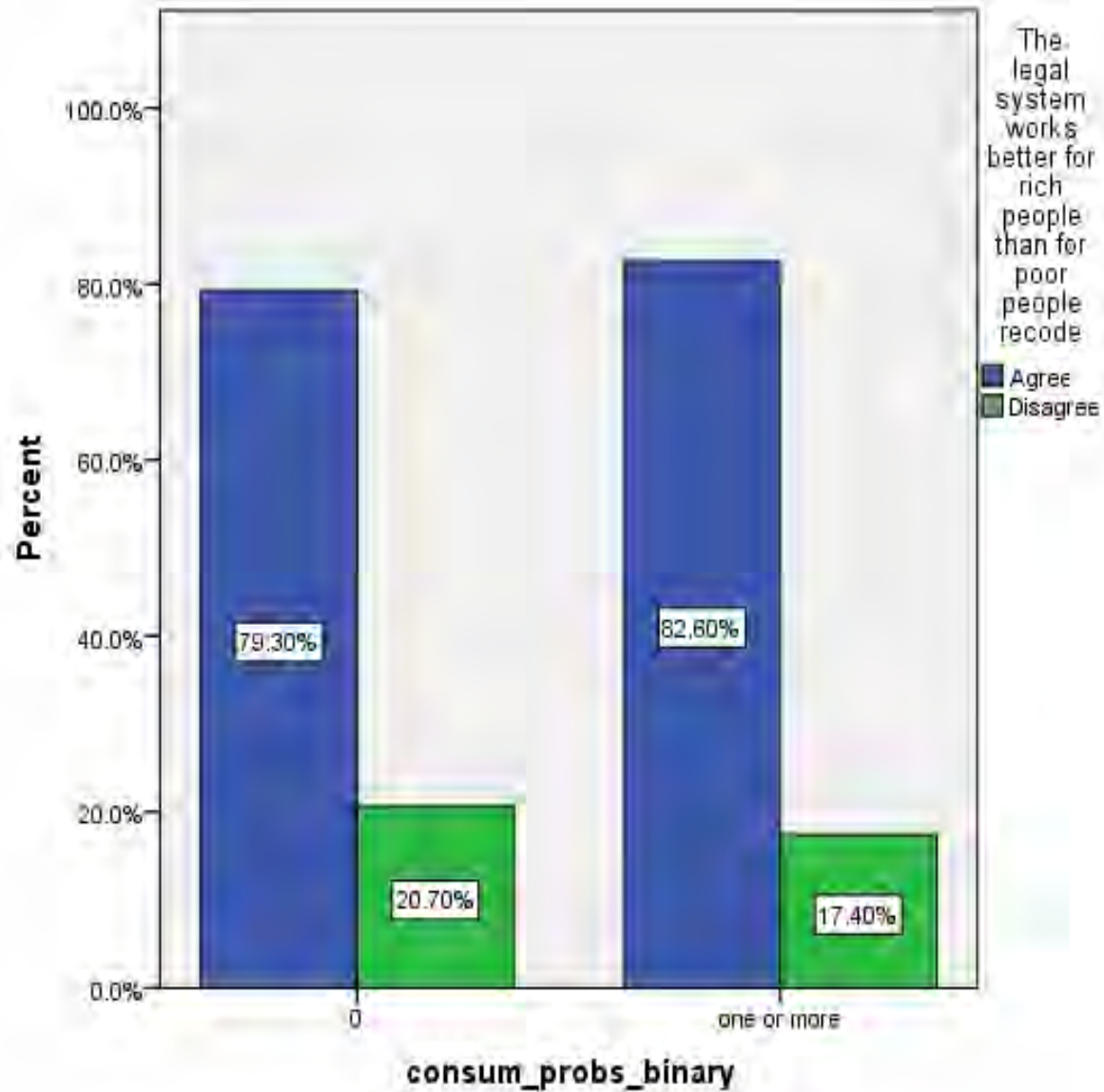
- Agree
- Disagree





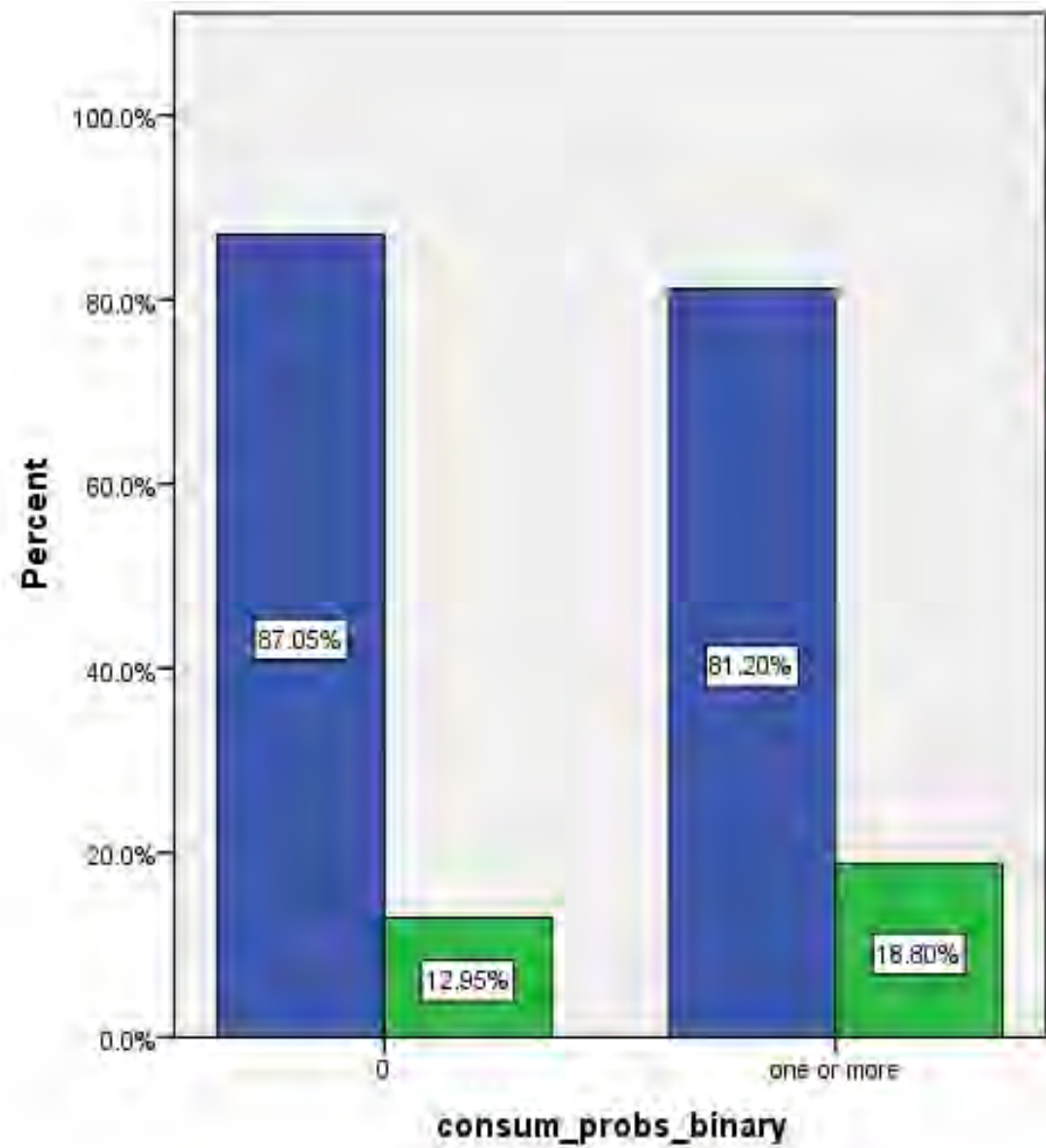


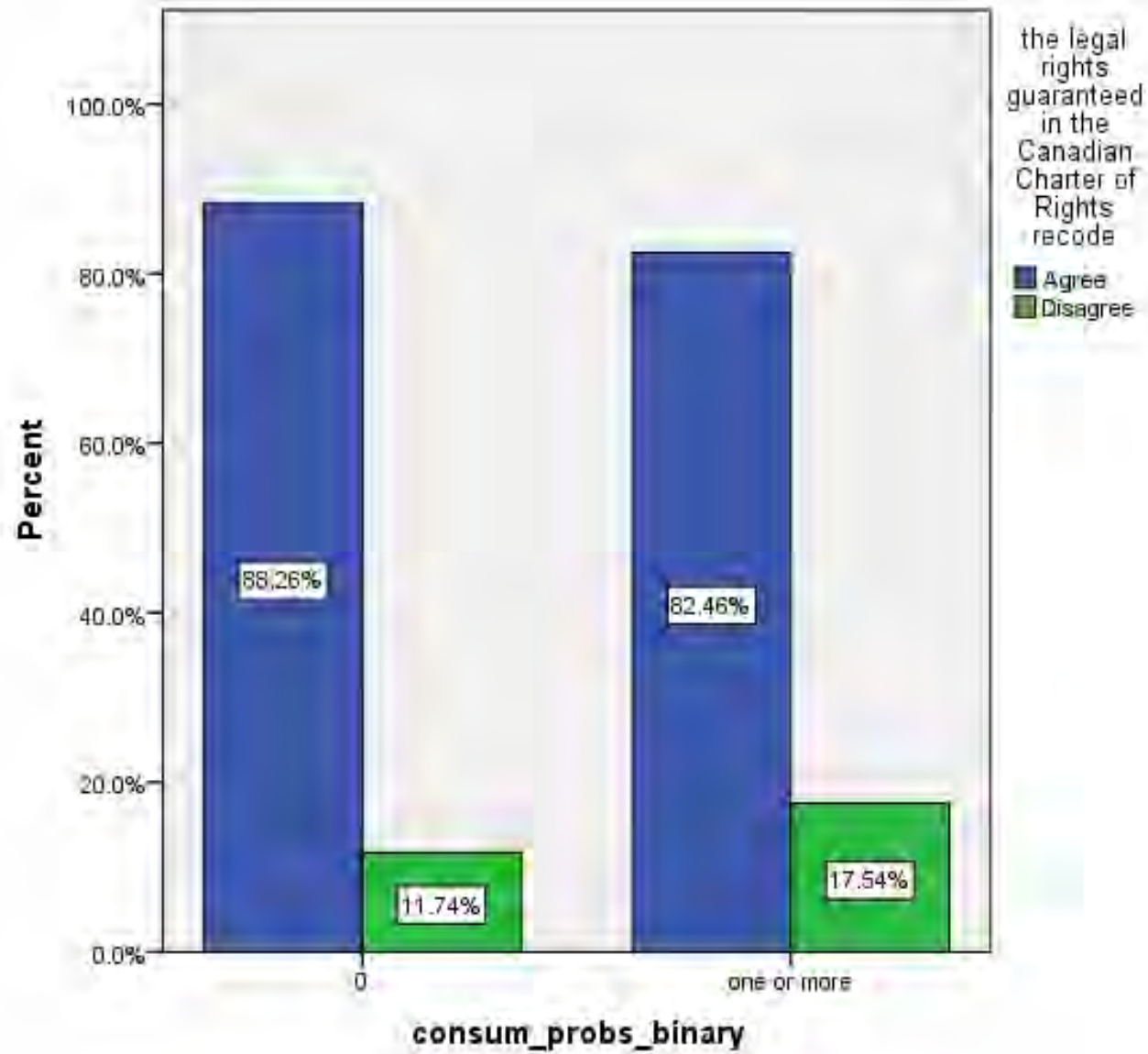




Courts are an important way for ordinary people to protect their rights

recode





4) Costs of legal problems to the state

What costs are incurred by the state as a consequence of legal problems?

A case for the value of law and A2J

- Justice funding: ever-smaller piece of an ever-smaller pie
 - the access crisis and justice credibility
 - political perspective = less product at higher cost
 - fewer lawyers in cabinet
 - no public outcry
 - law as a public good - not self evident
- “A serious issue facing policy makers and academics in the access to justice field is how to understand and articulate a persuasive case for the value of law, legality and access to justice when health and education dominate public interest and public spending concerns.”

Coumarelos et al

“... to understand and articulate a persuasive case for the value of law and access...”

- to understand...
 - want of empirical research
 - limited tradition of empirical research
 - academy’s relative disinterest in procedural law
 - ‘anecdotal’ vs. information-based decision making
 - lawyers and judges making policy and rules for lawyers and judges
- and to articulate...
 - legal-style arguments fall on deaf ears
 - no more reports!
 - justice competing with research-savvy sectors
 - public policy and bean counting

Linking legal problems to health and social costs

- Policy impact of legal needs research
- “Given the high prevalence of everyday legal problems among the Canadian public, it can be assumed that the numbers of people experiencing health problems as a consequence of their legal problems will also be high. This can lead to substantial costs to the publicly funded health care system.”
CFCJ 2015
- “Establishing the connections between justiciable problems and problems experienced by people in domains such as health care is important because it extends the potential value to society of providing assistance with justiciable problems beyond achieving strictly legal objectives or outcomes.” Curry

Civil and Social Justice Survey (UK 2009)

- 36% experience difficult to resolve civil legal problem
- 50% → at least one adverse consequence
- physical ill health common → 80% visit GP or health worker
- 27% of civil law problems lead to stress-related ill-health → 53% visit GP or health worker
 - 90% go to GP
 - 10% to counsellor
 - 5% to a psychiatric nurse



State Costs (UK)

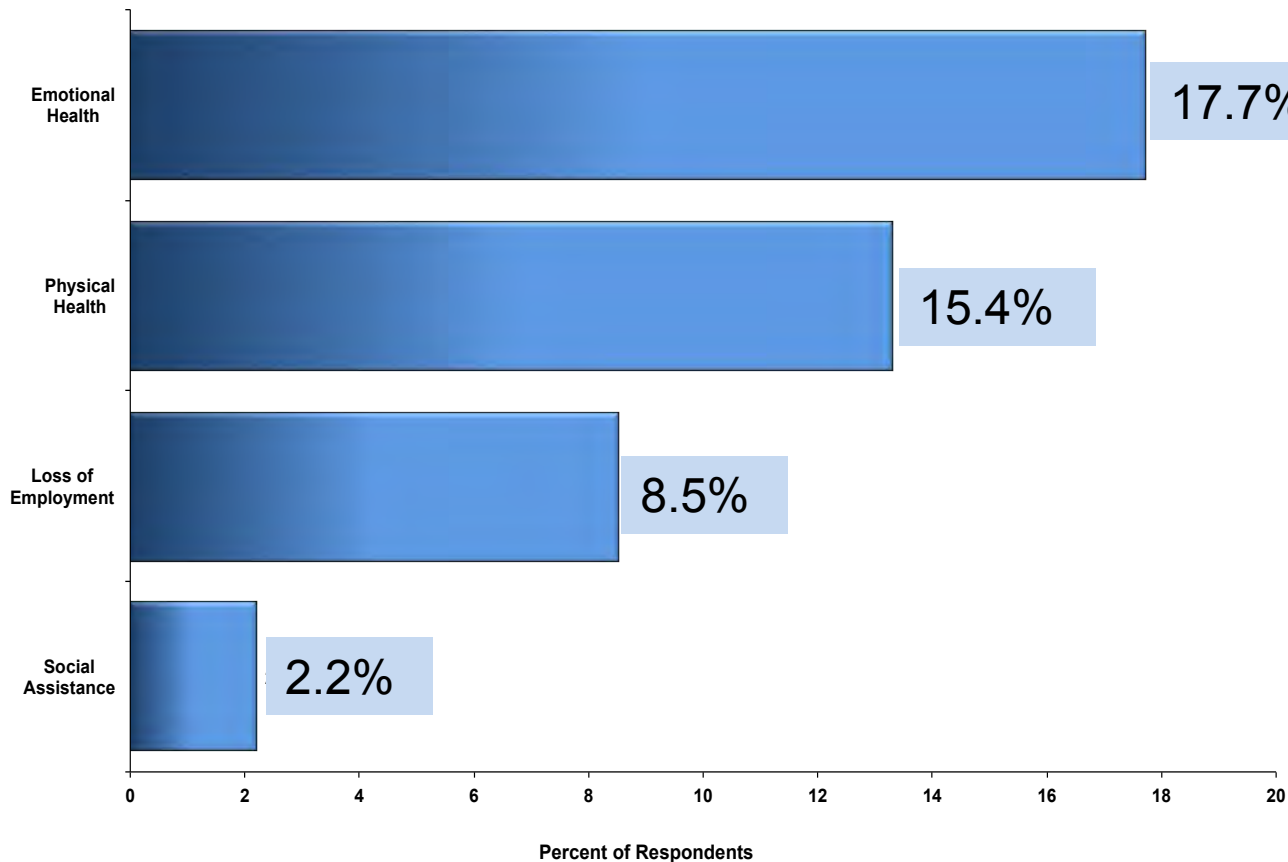
- “Over the 3.5 year period covered by the English and Welsh Civil and Social Justice Survey, it is estimated that the costs to individuals, health and other public sectors was at least £13 billion pounds” (Pleasence 2006)
- “Unresolved problems and disputes seriously affect people’s lives. There are also significant knock on costs to public services, especially for the NHS, Department for Work and Pensions, and the police whose services and resources become the focal points for people with problems. The total annual cost to individuals and public services is at least £3.5 billion each year.” (UK DCA 2006)

Business case for access to justice?

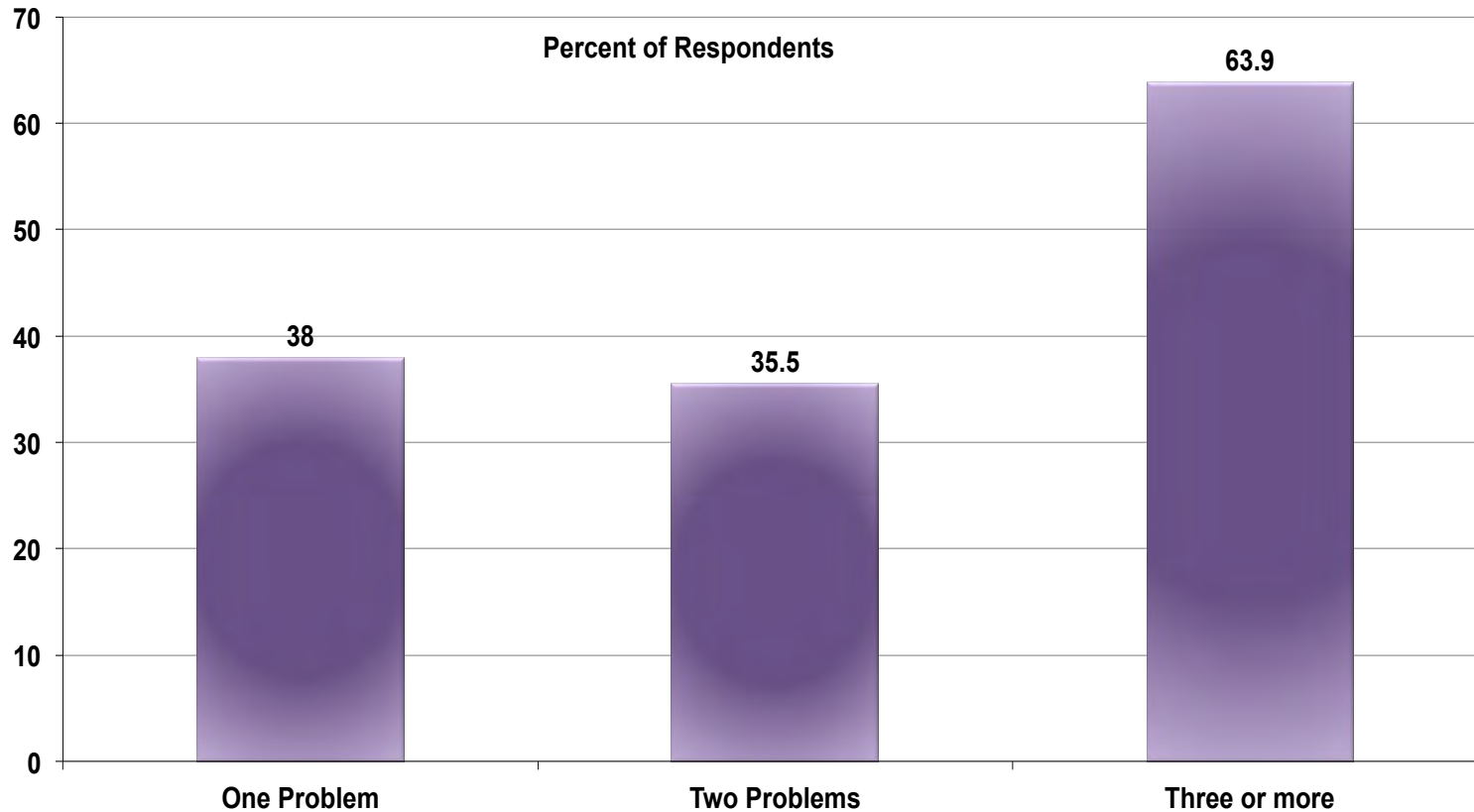
Estimated minimum return on investment in legal aid services in the UK is approximately 1:6 (CAB 2010)

- For every \$1 spent on legal aid:
 - UK government saves between £2.34 to £8.80 on housing, debt, benefit, and employment issues (CAB 2010)
 - Texas: the annual gains to the economy are \$7.42 in total spending, \$3.56 in output (gross product), and \$2.20 in personal income (2009)
 - Massachusetts: the return to the state is \$2 for homelessness and domestic violence issues, and \$5 for federal benefits issues (2014)

Justiciable problems trigger health and social problems (Canadian Forum on Civil Justice 2014)



Of 17.7 % reporting high stress or emotional problems (Canadian Forum on Civil Justice 2014)



CFCJ 2014

State Costs: physical and mental health

- 15.4% → physical health problem
- 62.2% sought treatment
- = 9.6% of total sample = 1.24 M people)

- 17.7% → stress or emotional problem
- 41.2% sought treatment
- = 7.7% of total sample = 1M people

CFCJ 2014

State Costs: Loss of Employment

- 8.5% of respondents lost employment because of a legal problem
- 36% of these respondents (400,000 Canadians) received Employment Insurance
- average weeks on EI (21.5) x average weekly payment (\$375) = \$8062 per recipient
- Total cost to EI program?

- this data tells us that legal problems result in adverse health consequences for which people seek help, yielding individual costs + public costs
- data does not tell us whether (early) resolution of legal problem (A2J) would prevent, resolve or mitigate the fact of, or the seriousness of, the health problem (and the costs)
- however, it is a sensible inference that points to the value of continued action-oriented research building on these results
- (it is another question as to whether the scale of the public cost is sufficient to influence spending priorities)

5. Policy and program implications

1. Make justice more accessible

- “The ubiquity of legal problems across studies has led researchers to stress the importance of access to justice and the utility of adequate legal service infrastructure to facilitate the effective resolution of legal problems” Currie
 - the justice mandate: civil order, public safety, rule of law
 - down-stream costs of unresolved legal problems
 - social exclusion and the particular case of the vulnerable

2. Client-centered vs. system-centered approaches

- problems from point of view of the people experiencing them
- accounting for diverse legal needs and legal capabilities
- public legal information and education

Policy and program implications

3. Build legal capability

- legal empowerment,
- unnecessary helplessness
- client agency, engagement and responsibility

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

- unresolved justiciable problems may contribute to or maintain the conditions underlying health and disability problems
- assistance with the justiciable problem may interrupt the dynamics of triggering and clustering
- → reduced individual and state costs

Policy questions and program implications

5. Integrated, coordinated, cross-disciplinary approaches

- needs research shows that legal issues arise within complex layers of social, interpersonal, economic, health issues
- the folly of isolating and “fixing” the legal issues
- re-contextualizing “legal” problems
- “joining up” services
- (not easy)



6. Justice system redesign / rebalance funding

- now most resource spent on expensive, back-end litigation
- reallocate resources toward the front end (triage, programs, services, ADR), and
- away from adversarial, court-centric processes (prevention)
- (not popular)

Policy and program implications

7. Access to which justice?

- more focus on justice, less on access;
- more than access to lawyers, courtrooms and procedures
- Which problem do we fix? If inequitable social structures are often systemic causes of ill health, legal interventions will be more effective if they target these structures

8. Changing legal culture


- only facts going to legal issues are relevant
- every new case is a potential trial
- truth is best guaranteed by contest
- parties to a disagreement are opponents
- when you win lose
- vested interests, legal needs and the legal monopoly



6) Research Questions and Implications



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