



THE CANADIAN  
BAR ASSOCIATION  
L'ASSOCIATION DU  
BARREAU CANADIEN

## Results from Canadian Bar Association Legal Aid Survey

### Introduction

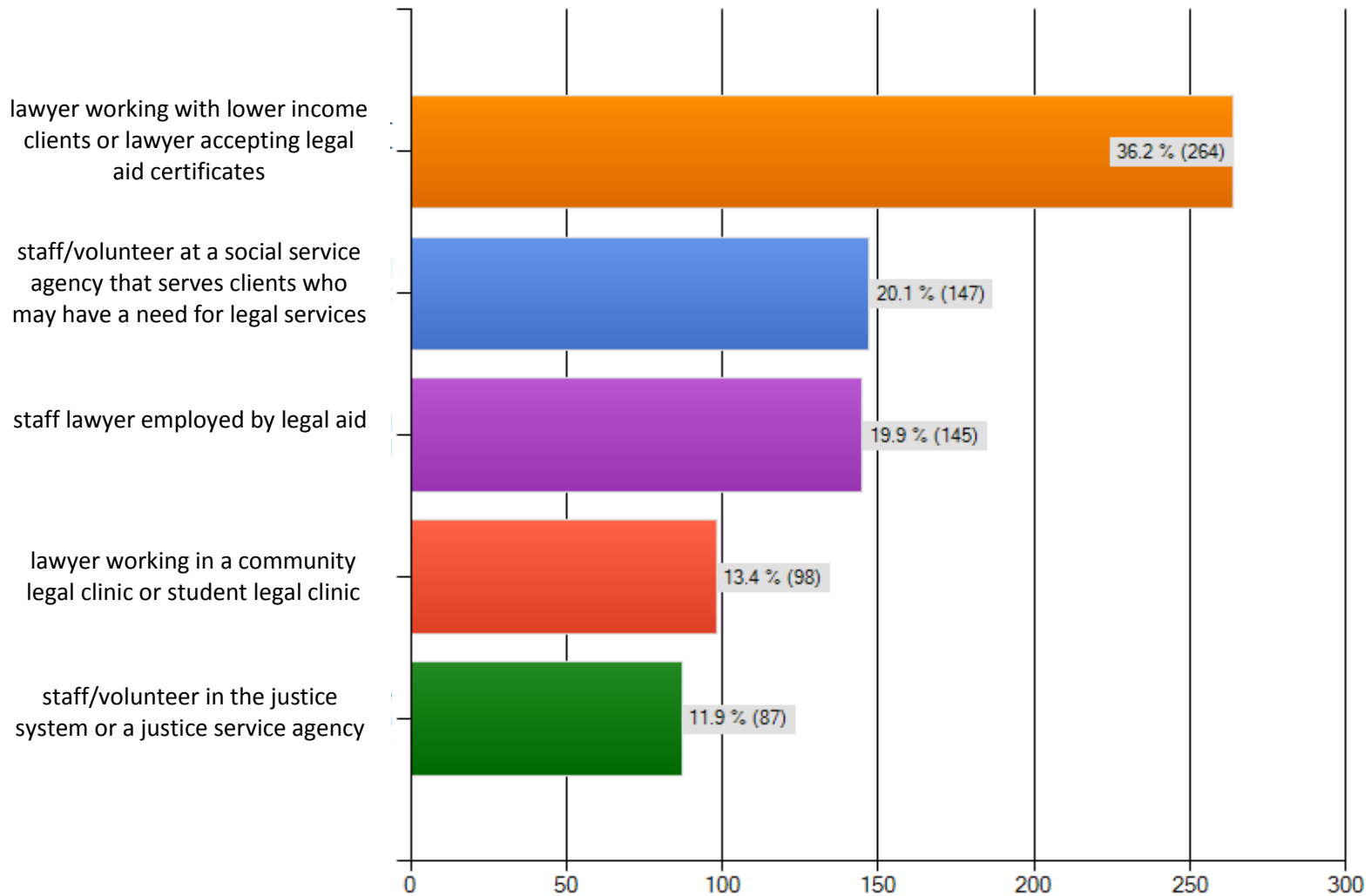
As part of the Canadian Bar Association's *Envisioning Equal Justice* initiative, in February 2013 the CBA Access to Justice Committee prepared a brief survey about the current state of legal aid across Canada, seeking the perspective of those closest to the populations being served. The survey asked for the views of legal aid lawyers (private bar, staff lawyers, or in clinics) and non-lawyers who offer legal services to low income populations, about equal justice and legal aid.

*Envisioning Equal Justice* is a comprehensive CBA project aimed at tackling major barriers to improvements in access to justice. We have identified those barriers as a lack of political profile, need for improved strategy and coordination, absence of mechanisms for measuring change, and shortfalls in information. Access to justice is a complex problem, requiring a range of solutions to address the legal needs of different populations, and a commitment from those within the justice system to collaborate and coordinate their efforts toward a common goal. These issues will be discussed at the CBA *Envisioning Equal Justice* Summit scheduled for April 25-27 2013 in Vancouver, British Columbia ([www.cba.org/pd/details\\_en.aspx?id=NA\\_just13](http://www.cba.org/pd/details_en.aspx?id=NA_just13)).

The survey (appended at the end of this document) was circulated through CBA networks, and through Legal Aid Plans use of their email lists. A total of 735 responses were received and summarized below.

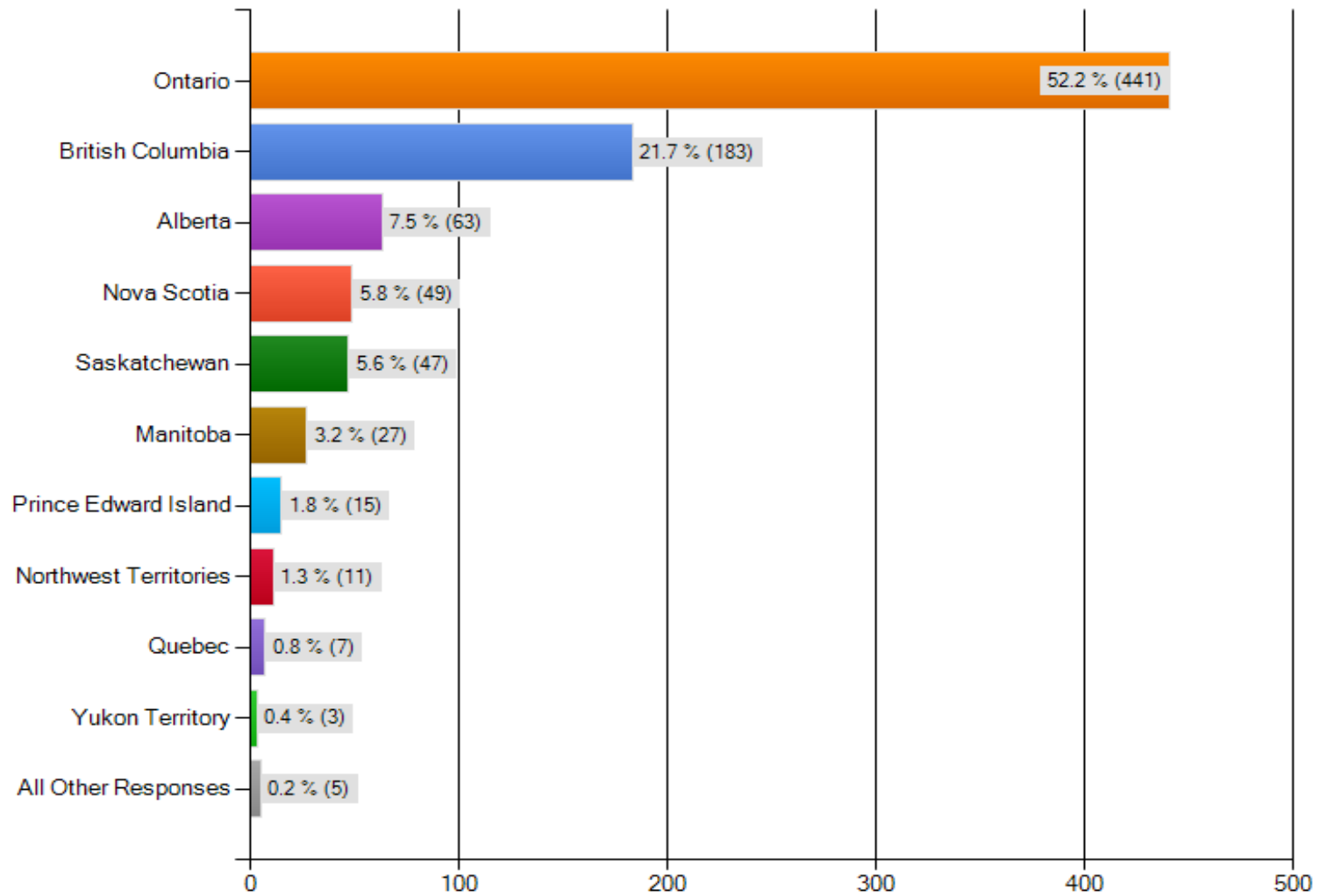
# Question 1

I am a:



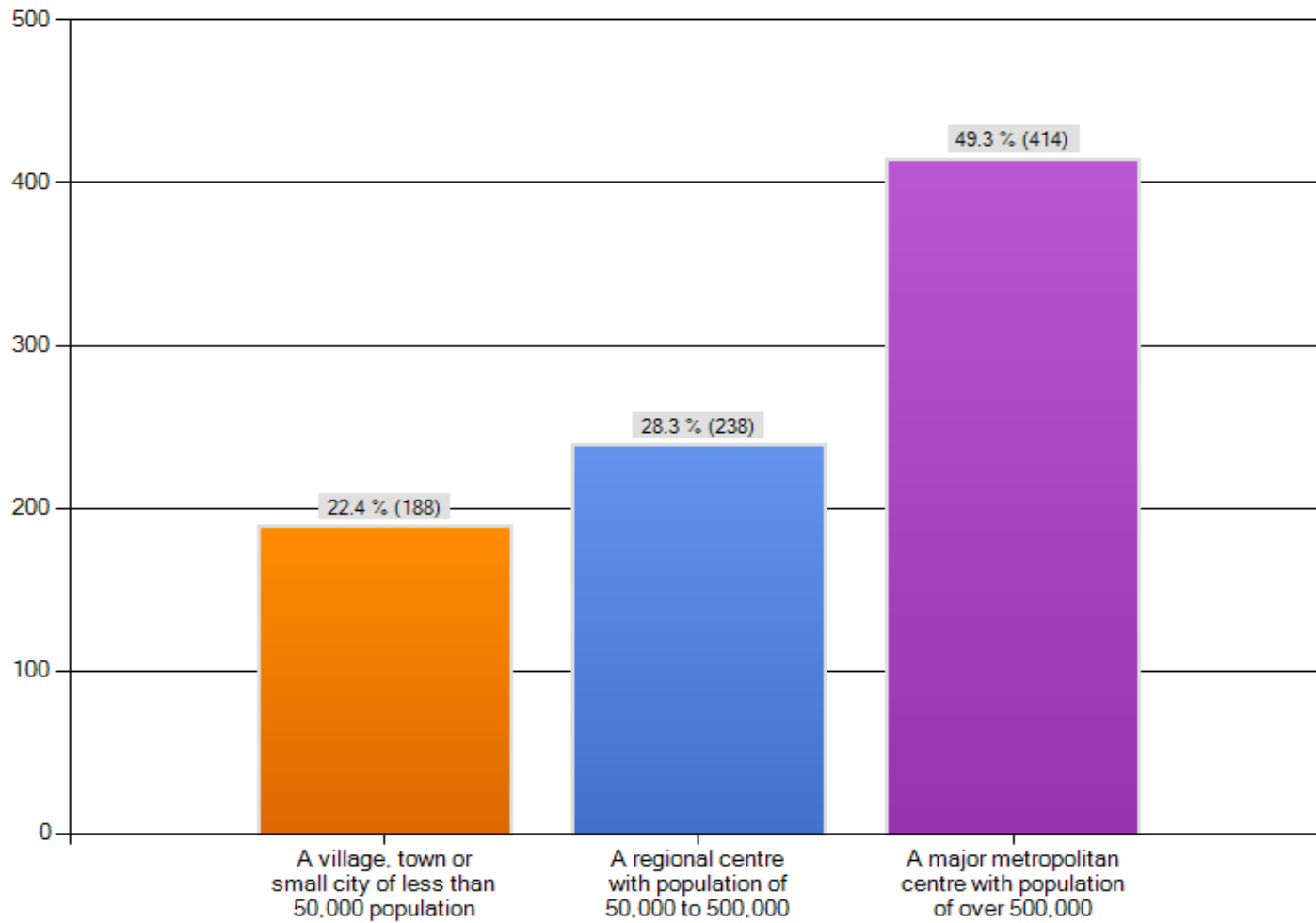
## Question 2

I work in:



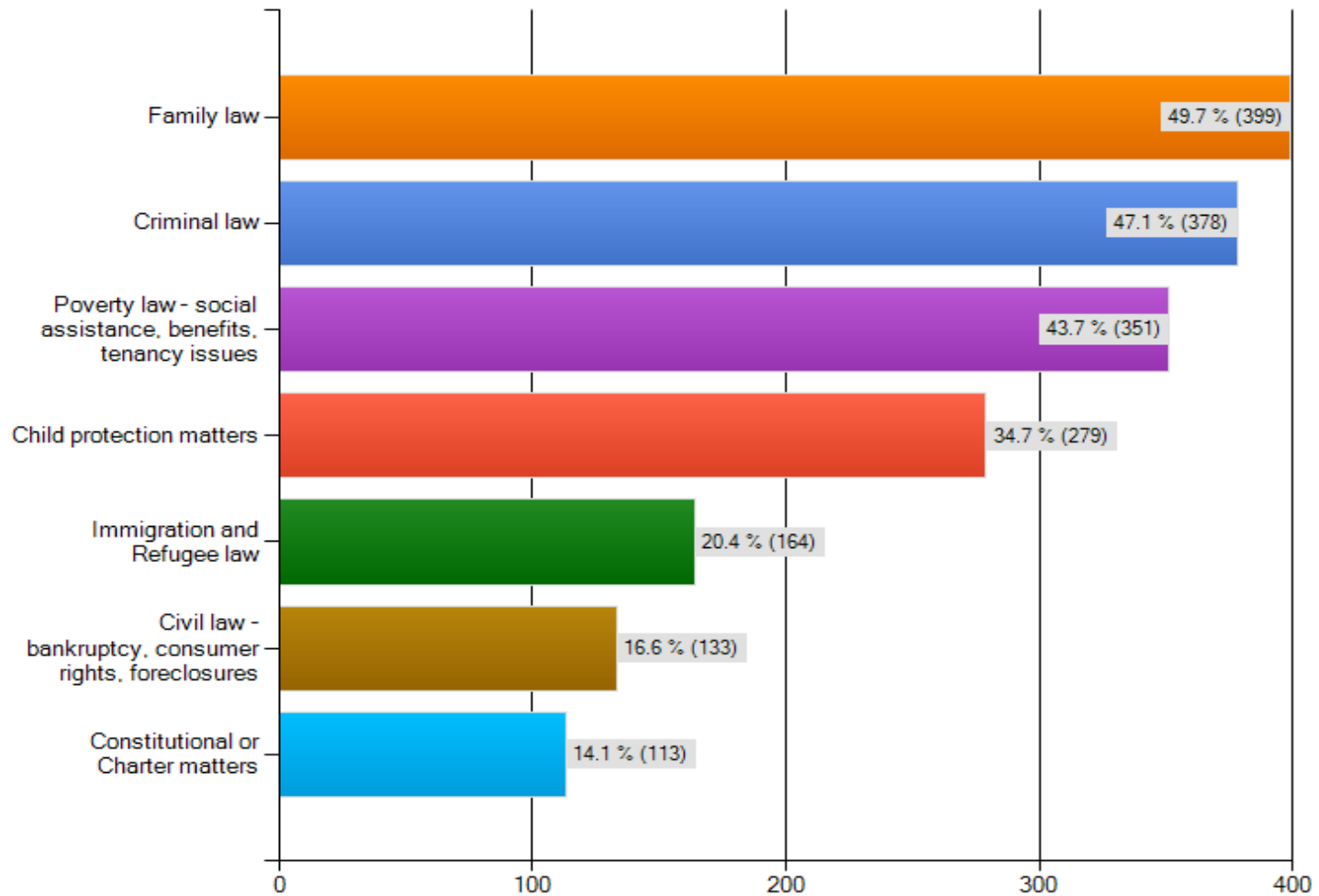
### Question 3

My practice or the organization I work with is located in:



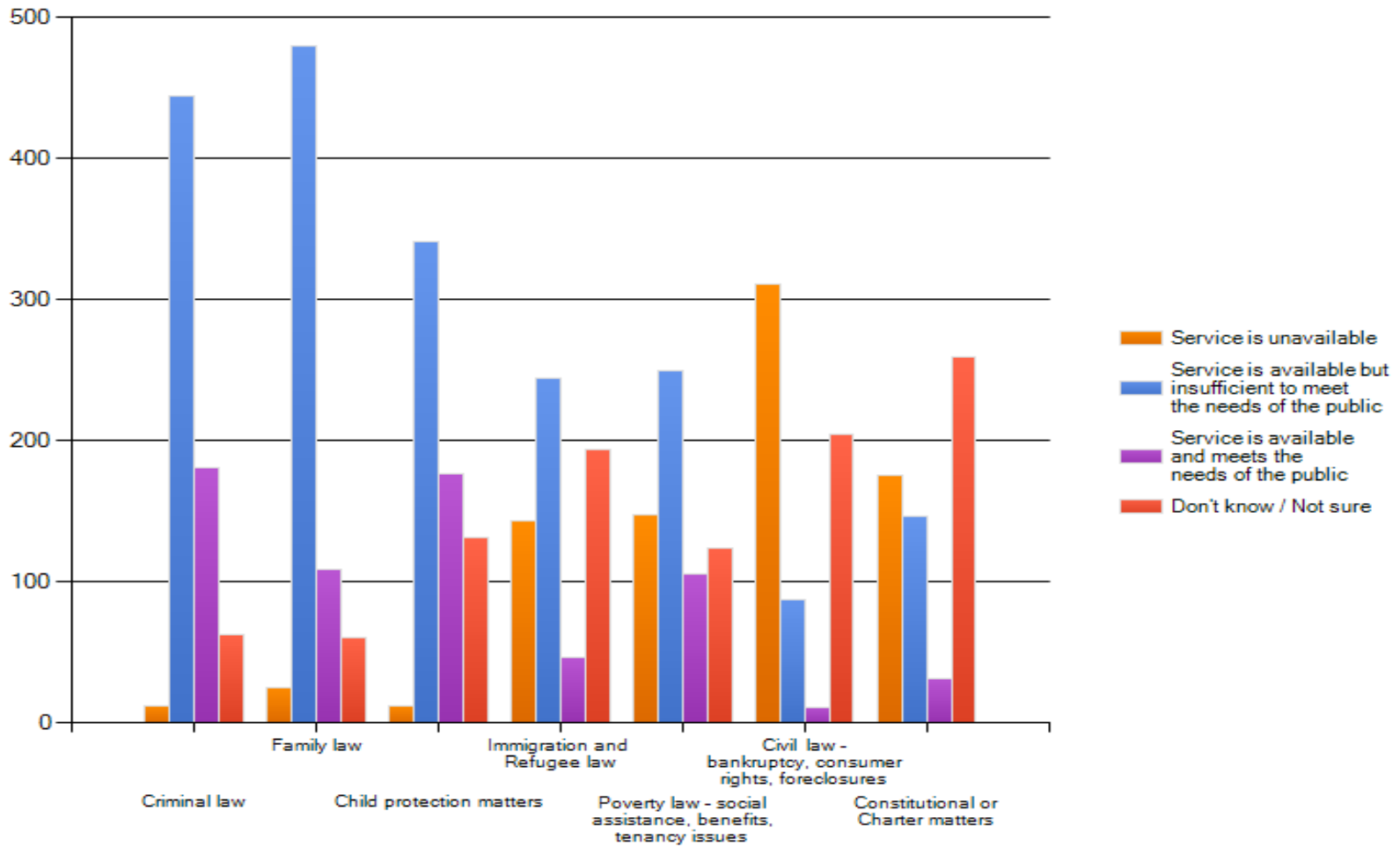
## Question 4

I assist clients who have legal issues in (check as many as apply):



# Question 5

In my jurisdiction, legal aid services are available to those who qualify financially for (check all that apply):



## Question 6

### **Other legal aid Services that I believe are needed, but are unavailable in my jurisdiction include: (232 respondents)**

More than three quarters of respondents called for expanding the legal matters covered by legal aid plans. Examples include: family law (particularly divorce and property matters as well as whenever more immediate risks, such as domestic violence exist); all criminal matters (not just those for which incarceration is unlikely); poverty law; immigration and refugee law; employment matters; elder law; and human rights law.

Respondents focused particular attention on the unavailability of certificates in criminal matters when incarceration is unlikely. As one respondent put it, “A criminal record in and of itself can be extremely detrimental to people.” Likewise, another indicated that many criminal appeals “involve a serious issue of law which needs to be well argued and litigated in the public interest.”

Respondents also called for a greater range of legal aid service delivery models to allow for flexible services linked to the spectrum of client needs. Examples include: drop-in clinics for clients needing quick, summary advice without a formal legal aid application; more staff lawyers working for legal aid plans; increased mediation and collaborative services accompanied by legal representation when required (for example, to negotiate separation agreements); increased use of legal advocates; and increased lawyers’ time for complex litigation services.

Respondents called for raising financial eligibility thresholds. The current levels do not recognize the many “working poor,” that is people who may have minimum wage or very low paying jobs, so do not qualify for legal aid services.

Several respondents stressed that legal aid must recognize the special needs of particular clients in providing services. Family law cases involving domestic violence were cited as particularly complex, requiring specialized training and additional time compared to other family law cases. Clients may also have poor language skills, which makes using text-based (e.g. websites) and phone resources less relevant or helpful. Consideration must also be given to clients in remote communities with limited access to services.

## **Conclusions:**

- More legal matters must be covered by legal aid.
- Client needs can and should be addressed in multiple ways.
- Not everyone needs full representation.
- Some clients are relatively savvy and may benefit from quick advice or help with paperwork. Others, with complex matters or limited capacity, require full representation without a prescribed number of hours.
- Alternatives to court should be better funded. For instance, effective representation during mediation can drastically reduce the likelihood (and expense) of going to court.
- Legal aid services should be more adept at providing services based upon actual client needs and not just based upon strict subject matter or rigid financial means tests.

## **Question 7**

### **Other legal aid services available in my jurisdiction, but insufficient to meet the needs of the public: (177 respondents)**

Respondents expressed a widespread belief that legal aid services are insufficient to meet the ever-increasing demand for services and needs of the community. About three-quarters called for expanding services in legal matters already covered by legal aid, though inadequately. For example, family law certificates are being issued but in some jurisdictions only for cases involving children. Many respondents would like to see expanded coverage for other family law issues (notably spousal support and divorce). Likewise, while criminal law certificates are being issued, they are only for offences where the Crown has not “screened” for jail time or incarceration is unlikely. One respondent remarked, “legal aid appears to only want to assist those who want to plead guilty.” Other matters highlighted as insufficiently covered by legal aid were employment, poverty, and immigration and refugee law.



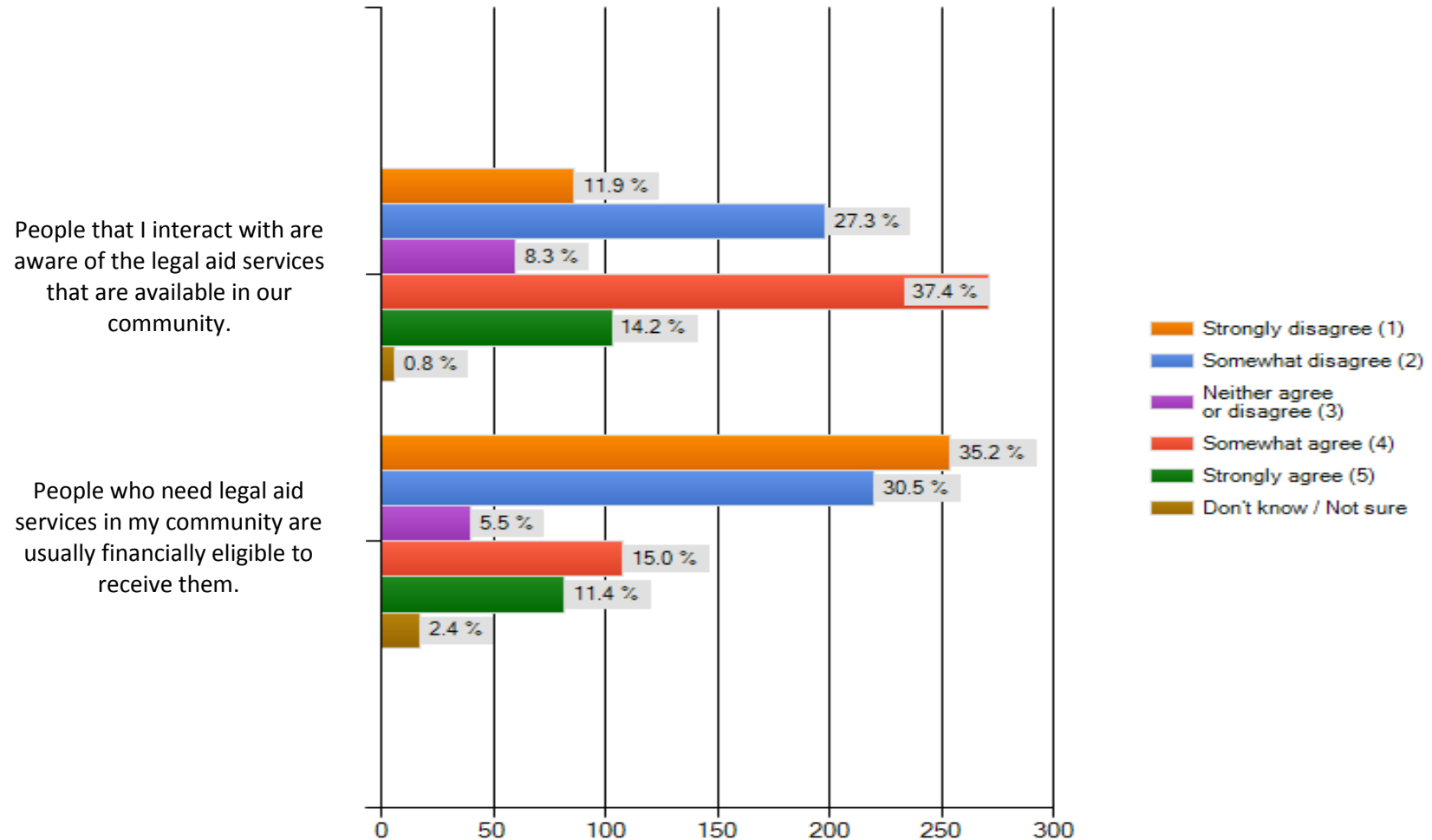
Similarly, many respondents called for expanding the existing ways of providing legal aid services. One example was to increase the number of duty counsel, who one respondent said are “overworked and have little real supervision or support.” Some respondents called for more pro bono and mediation services, as well as legal clinics. A few respondents called for increasing lawyer compensation, both hourly rate and number of hours covered, as a way to increase the number of lawyers willing to accept certificates. One astute respondent noted the need for “better budgets for counsel to enable them to fulfill their legal obligations/duties under the [Law Society] as counsel.”

### **Conclusions:**

- Current Legal Aid Services are inadequate to meet the needs of today’s clients and communities, let alone those of the future.
- Even though Legal Aid funds some family and criminal law matters, in practice only limited matters in each are actually covered.
- Many clients are left with the prospect of no legal assistance with their divorce or spousal support claim, with their criminal charge, and so on.
- Proper planning for the future must recognize increasing demand for services, but also that services must respond to wider community needs and a more comprehensive view of the costs of inadequate legal aid.
- Those not able to get spousal support or a fair divorce settlement can end up in poverty.
- A criminal record (even if no jail time was served) can affect employment prospects.
- Neither of these situations promote healthy communities, and only serve to download costs onto an increasingly-scarce social system.
- At the other end, service providers are also being squeezed, making even the *status quo* more difficult to sustain.
- Duty counsel are overworked and fewer private counsel are accepting certificates.
- The danger is that the quality of the legal services provided suffers and do not live up to professional standards expected of lawyers.

## Question 8

(Please indicate your level of agreement with the following statements):



## Question 9

### **I believe that shortfalls in legal aid cause problems for clients I interact with, including: (127 respondents)**

Respondents said that inadequate legal aid can result in significant delays for the client. For example, respondents noted that self-represented parties create delays in the justice system; clients can act upon inaccurate or misunderstood “self-help” legal information; and problems that could have been easily fixed early on “snowball” and become costly to address down the road. Some respondents noted that arbitrary limits on the number of hours legal aid lawyers can bill may lead to substandard work, to clients’ detriment and lawyers’ dissatisfaction.

Worse than delays, many respondents pointed to direct negative consequences for clients. These include homelessness, returning to a violent household, “pleading out” (i.e. pleading guilty “to get it over with”), deportation, ending up on social assistance (e.g. because spousal support cannot be obtained), health issues due to stress, and family breakdown.

A large number of respondents said that a lack of adequate legal aid services can ultimately result in clients being unable to enforce their rights and entitlements under the law. Respondents suggested that many clients “give up” on their claims, “feel helpless and frustrated,” and are “bullied” by stronger parties (for example, a landlord or an abusive partner). As one respondent put it, rights “become theoretical.”

At a more general level, several respondents noted the effect of inadequate legal aid services on the wider community. Clients may become disenfranchised with the justice system which is detrimental to respect for the rule of law. Some clients “may even begin with the view that the legal system is a mechanism of their own oppression.” One respondent suggested that “unfair and discriminatory laws and practices remain in place because no-one is able to mount campaigns against them.”

Many respondents highlighted the impact of insufficient legal aid services on already-vulnerable clients. Notably, victims of domestic violence may be placed at risk of continued harm and racialized communities may be further marginalized.

## **Conclusions:**

- Shortfalls in legal aid services negatively impact clients in several ways.
  - Legal matters take much longer to address than they would have had adequate assistance and/or representation been provided.
  - Many clients are unable to assert their rights and entitlements under the law, and face dire personal/family consequences as a result.
  - This leads to a perception that the justice system does not work for impacted clients – or even works against them – undermining the rule of law and leaving systemic discrimination unchallenged.
- These consequences may even be more costly to society than providing legal aid services from the beginning.

## **Question 10**

### **The following delivery options for legal aid services are used in my jurisdiction: (55 respondents)**

A few respondents stressed that just because services are available in a given area (e.g. certificates, duty counsel, clinics, web/telephone services) does not mean those services are “meaningful and accessible.”

Another respondent replied, “Likely all of the above (services are available) but given money issues, not realistically any of the above.”

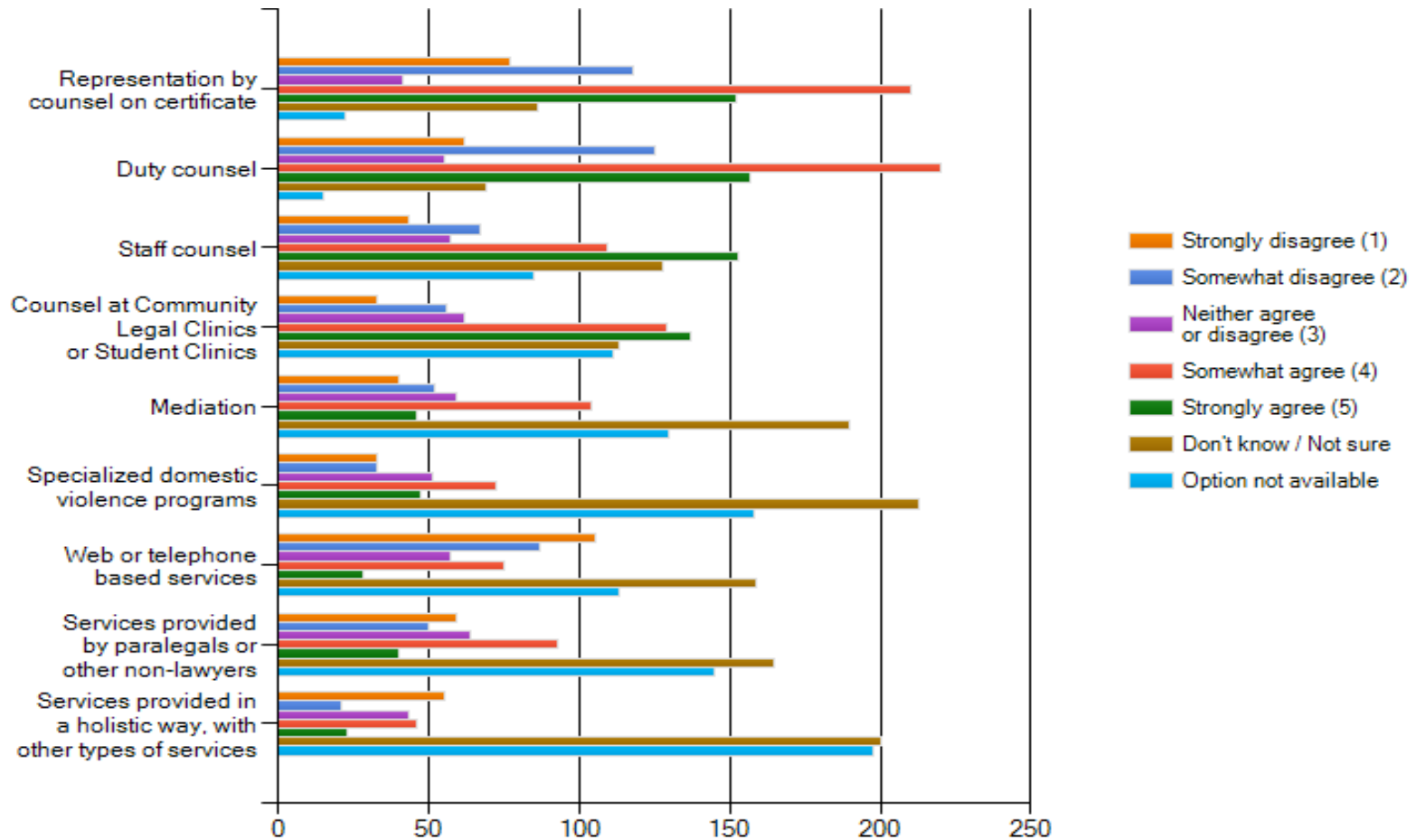
Issues identified include: travel time to/from services for people in rural communities; services offered on a very reduced or limited basis (e.g. staff available only five hours a week); and over-emphasis on web/telephone services at the expense of in-person meetings; and staffing levels (e.g. no lawyers with relevant expertise in the community).

**Conclusions:**

- Formal availability of Legal Aid Services in a jurisdiction is not enough and can be misleading.
- Services may be available on paper, but completely unavailable in any meaningful way on the ground.
- Adequate provision of legal aid Services should come to be understood as substantive availability for those in need. This requires a client-centred perspective to service delivery.
- Are clients actually able to travel to services? Do clients have access to the internet with the requisite computer skills to access web-based services? Do clients have sufficient literacy skills to read and understand written materials? Do clients have access to a telephone to call a central office and can they receive an incoming call if follow-up is needed? Even though Legal Aid issues a certificate, are there any lawyers in the jurisdiction with relevant expertise who are willing to accept it?
- These are just some of the questions that must be asked when designing legal aid Services.

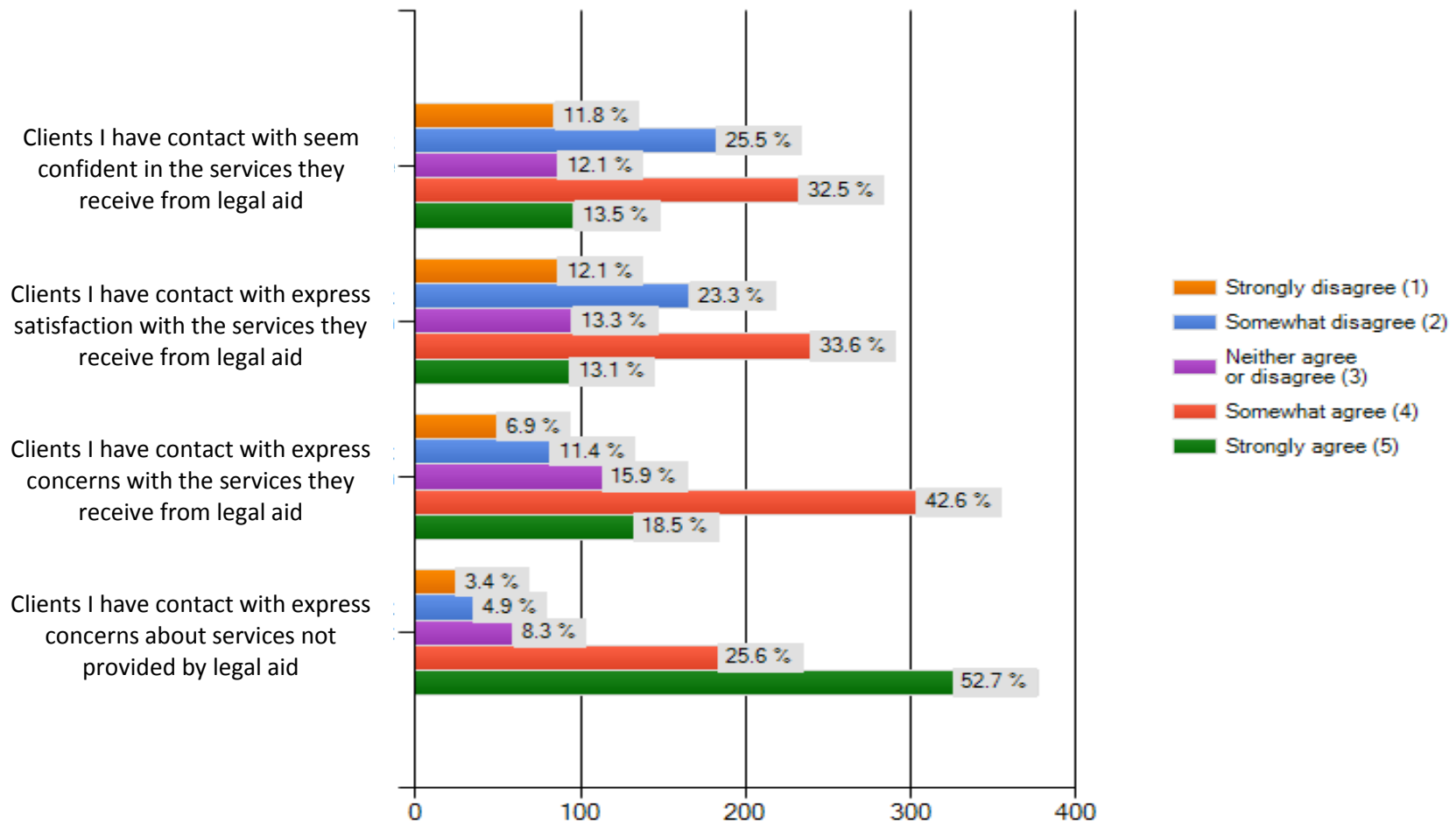
# Question 11

The following delivery options for Legal Aid Services are working well for the clients I interact with:



## Question 12

From my daily experience (please indicate your level of agreement with the following statements):



## Question 13

### **The best thing about legal aid in my jurisdiction is: (448 respondents)**

About a fifth of respondents emphasized the high regard they had for the people (including lawyers and other staff) who work in legal aid. Many respondents called them “experienced,” “dedicated,” “big hearted,” and “compassionate” people who provide “excellent service” even if only for the “few that qualify.” Many also applauded their efforts in the face of limited resources and declining budgets. As one respondent said, “They are trying to do the best they can with the resources they have.” Another suggested that legal aid staff are “overworked and underpaid.”

There was also praise for the variety of services that legal aid provides and the legal matters that are covered, both of which enhance access to justice. Many specifically praised the duty counsel and community clinic model. Several respondents thought that it covered (even if inadequately) important areas of law, such as serious criminal offences, child protection, family law, and youth courts. Indeed, there was praise for how the duty counsel and community clinic system complement one another in providing these services. Importantly, one respondent highlighted the extent to which legal aid services are “supported by the judiciary.”

Many respondents appreciated the physical presence of legal aid services where available. For instance, many respondents felt that the physical presence in court houses of duty counsel and in the community of community legal clinics was important, since it allows in-person consultations and referrals. Also, having a “local contact” was important for other community agencies working with legal aid.

Interestingly, a tenth of respondents thought that legal aid’s continuing existence in the face of many cuts is the best thing about it. One respondent summed up this sentiment by suggesting that the “bare fact that something exists is better than there being nothing at all.”

### **Conclusions:**

- A central problem with the legal aid system is one of having sufficient access and coverage for those in legal need and not the quality of existing services.



- For those few persons who can actually obtain legal aid, the services that exist are well regarded even though they are insufficient.
- There is enormous respect for those who work in the legal aid system and most feel that those staff do their best they can with the limited resources they have.
- Legal aid lawyers are viewed as competent and qualified professionals who provide good representation for their clients.
- Many suggested that the best thing about legal aid is its continued existence despite deep cutbacks. Some felt an “it’s better than nothing” attitude could pervade discussions of legal aid as a justification for maintaining the status quo.

## Question 14

### **The biggest problem with legal aid in my jurisdiction is: (561 respondents)**

About a quarter of respondents indicated that financial eligibility thresholds are far too low and as such, not enough certificates are being issued to those in desperate need. Many called the thresholds “outdated” and “unrealistic” in modern day society. A few respondents suggested that thresholds are so low that “an individual working full time at minimum wage cannot qualify” meaning that “people in need of legal aid just don’t get it.”

Even if clients are able to obtain certificates, respondents found that too few lawyers are actually willing to accept them to meet client demand. Lower hourly pay compared to regular rates, coupled with restrictions on the number of paid hours the lawyer can work on a given case were identified as the main reasons. Those lawyers that do accept certificates “cannot keep up with the case load.” Some respondents thought these problems led to a “lack of experienced counsel” working in legal aid.

About a fifth of respondents identified insufficient funding of legal aid as a major problem. The result is inadequate provision of existing services (e.g. overworked staff lawyers and “over use” of duty counsel, limited number of certificates available) and inability to create additional services to meet community needs (e.g. expansion of legal matters covered by legal aid).

Respondents felt that the underfunding of legal aid services is particularly problematic for lawyers who take on legal aid work. Low hourly compensation “devalues the lawyer’s time.” Many suggested that legal aid does not provide a sufficient number of hours to be “able to do the job”, in other words, to do the job as they thought in keeping with their professional standards and appropriate. One respondent said that the “hours allotted are irresponsible” with another suggesting that in criminal matters the “limits prevent a full answer and defence.” As a result, a few respondents suggested legal aid “takes advantage” of lawyers, since many end up volunteering time above the allotment to complete the file properly for ethical, professional, or moral reasons.

Management of legal aid was also identified as a significant problem by a small number of respondents. One respondent remarked that “the growing bureaucracy takes money away from money for services so desperately needed by clients.”

### **Conclusions:**

- Many of legal aid’s problems stem from chronic underfunding. This has several effects impacting those living in poverty, their communities, and those who actually provide legal aid services.
- Legal services cannot be provided to all those who need them.
- Lack of funding makes it hard to maintain existing services, let alone develop new ones responsive to a community’s changing needs.
- Lack of funding also makes it hard to sufficiently compensate lawyers for the work that is needed in today’s increasingly-complex legal system and also to encourage more lawyers to take on legal aid cases.
- Many lawyers end up feeling taken advantage of because their professional and personal ethics requires them to donate significant time above what legal aid actually compensates.
- Finally, the bureaucracy of legal aid is seen as impeding service provision to those in need.

## Question 15

### **Legal aid would be improved in my jurisdiction if: (532 respondents)**

Some respondents specifically called for increased funding for legal aid services. That money should go towards issuing more certificates, covering more legal matters, and providing more clinic services.

Respondents also called for eligibility criteria to be reformed. Most identified the need to increase income thresholds to cover the many people who cannot afford a lawyer yet who do not qualify for legal aid services. Others pointed at case complexity as a factor in determining eligibility. One respondent suggested “intercepting” those clients whose cases might be easily resolved through early legal aid intervention, before the matter went to court.

Many respondents suggested increasing the range of delivery models for legal aid services. For example, exploring a mix of staff lawyers, summary advice, full and limited representation, legal clinics, and public education – as one respondent put it “increased experimentation.” Some clients may benefit from easily-accessible and quick summary advice without the need for full representation. Others pointed to an increased role for non-lawyers, such as paralegals and legal advocates. Respondents also pointed to some clients’ need for in-person services, especially those without internet/telephone access or with poor English-language skills.

Several respondents raised concerns about the bureaucracy of the legal aid system itself. For example, many suggested looking for savings in what was perceived as disproportionately-high administrative costs before cutting actual services. Others criticized the lack of people with front-line legal aid experience in the ranks of senior management and their insufficient understanding of the realities of legal aid practice. Still others suggested streamlining intake and billing operations.

Finally, respondents identified several challenges for lawyers working in legal aid. One respondent described this issue as a matter of “trust” between lawyers and legal aid. A majority felt that legal aid rates are too low compared to normal rates and that not enough hours are compensated to properly handle cases. Many called for restoring lawyer discretion to bill for the number of hours a case

really takes, rather than awarding a fixed number of hours based on subject matter. A few respondents pointed to potential incentives for lawyers to take on more legal aid cases, for example discounts on licensing fees and charitable tax breaks for those who volunteer their time.

**Conclusions:**

- The goal of providing Legal Aid Services to all those in need requires reform on many fronts.
- Income eligibility thresholds must be raised in line with the actual cost of living in today's world and the increasingly complexity of the legal system.
- Legal Aid should foster an innovation mindset and not be afraid to experiment. For example, creating a system that picks up on cases which could be resolved quickly with Legal Aid intervention rather than wait until much more costly interventions become necessary in the future.
- Additionally, actually assessing what the client needs (for instance, summary advice v. full representation or simple v. complex case) instead of jumping right to issuing a (costly) certificate with a standardized number of hours.
- Legal Aid should employ more people at senior levels of management with "on the ground" experience who can develop such nuanced approaches to service delivery and administration.
- Fundamental to a well-functioning Legal Aid System is the trust relationship with the lawyers who work in it. Legal Aid must place faith in the lawyers working on the ground to sufficiently balance the best interests of their clients, their professional obligation to perform their work with sufficient competence, and the need for judicious use of limited resources.