

By Invitation

The curious case of how big firm lawyers and female lawyers perform in court

What research shows about whether the ‘quality’ of a lawyer – measured by factors such as years of experience – affects performance in court



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For *The Straits Times*

Earlier this week, non-essential court proceedings resumed in Singapore after two months on hold owing to the Covid-19 circuit breaker. In most cases, lawyers will continue to appear remotely before judges via teleconference.

Trying to make a persuasive argument on the Zoom videoconferencing software is not the same as doing so in person. That might be said of everything from teaching to dating, though the stakes in court proceedings – which can determine one’s very liberty – can be far greater.

But should it even matter how “persuasive” your lawyer is?

In theory, the rule of law means equality before the law. Everyone is entitled to a fair hearing and justice should prevail whether you have a great lawyer, a pedestrian lawyer, or no lawyer at all. In practice, of course, there is a war for talent and clients with resources often pay for the best lawyer they can afford.

So is that a good investment? And what does “best” mean, anyway? I recruited a team of students and some Justices’ Law Clerks to try to find out.

JUDGE NOT, LEST YE BE JUDGED

This is, I should note, a sensitive topic. Lawyers are prohibited from citing their own success rates in court as a means of attracting clients. Analysing the performance of judges can be even trickier. Last year, France adopted an extraordinary law prohibiting the

publication of data analytics that reveal or predict how particular judges decide on cases – with a penalty of up to five years in prison.

So my students and I steered clear of France and confined ourselves to every case heard by the Singapore Supreme Court in a two-year period, with some financial support from the Singapore Judicial College.

We gave each lawyer an anonymous identifier and tried to work out if there is a correlation between lawyer “quality” – measured by years of experience, professional status, size of law firm, and so on – and actual success in court.

One of the biggest challenges was what statisticians call selection bias.

Even though we were looking at almost 700 cases, they aren’t really random. A “better” lawyer may win more often because he or she chooses better cases to bring to court – declining or settling those with a lower chance of winning.

In a specific case, of course, winning may be due to many factors other than the quality of the lawyer. As Professor Richard Moorhead, now head of Exeter Law School, wrote almost two decades ago, “poor lawyers win cases, and good lawyers lose cases”.

Even the idea of winning is complicated – victory before a judge may not always put you in a better position than if you tried mediation or settled the dispute without going to court at all. (This was the driver of major reforms to family law in Singapore over the past few years.)

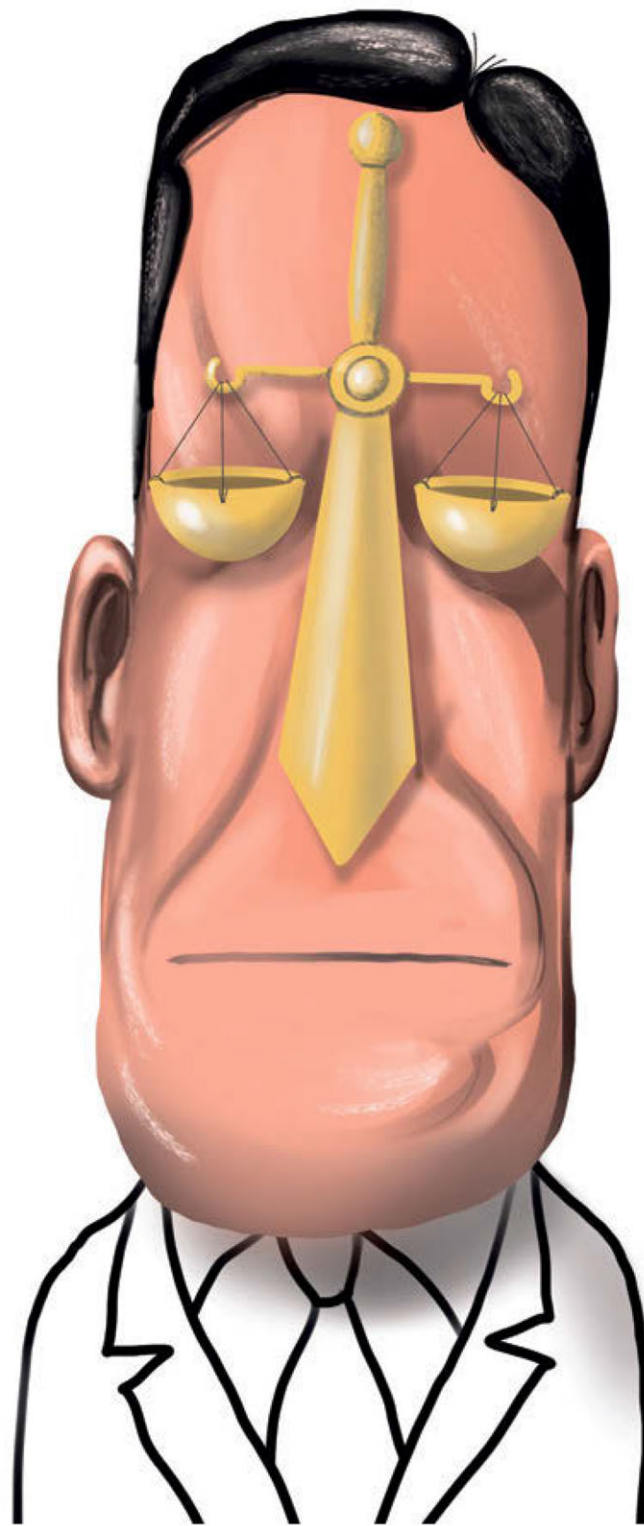
Nevertheless, it was still interesting to see what factors correlated with success in court.

JUDGE FOR YOURSELF

The full results will be published later this year in the *Asian Journal of Comparative Law*, but three of the findings stand out. The first was expected, the second was not, while the third was a surprise.

The result that was broadly similar to studies in other countries is that size and resources of a law firm seem to matter.

Of the 246 law firms in our study, we separated out the “Big 4” firms (all with more than 200 lawyers) from large (31 to 200 lawyers) to



medium (six to 30) to small (one to five).

Lawyers from bigger firms, on average, tend to defeat lawyers from smaller firms. The Big 4 firms, for example, won a little over half the time against large firms, but more than two-thirds of the time against medium and small firms. In the handful of cases where individuals represented themselves, the Big 4 won every single time.

One twist in the Singapore context is that the Attorney-General’s Chambers (AGC) operates like the biggest law firm of all and outperforms everyone. Unlike government legal services in many other countries, AGC offers competitive salaries and the vast majority of cases are handled by full-time employees. It might be expected that AGC would win a high percentage of criminal cases, but the same is true in civil matters. Overall, AGC won about 70 per cent of the time before the Supreme Court.

The unexpected finding concerned experience.

A total of 446 different lawyers appeared in our study, ranging from newly admitted graduates to very senior lawyers with more than half a century of practice under their belt. Most lead counsel had between 16 and 30 years of experience, but it was striking that the Government lets younger lawyers run its cases even at the Supreme Court. This is consistent with anecdotal evidence that AGC is more likely to put forward junior lawyers to gain experience, whereas private clients are more likely to demand that senior lawyers take the lead in the hope of obtaining the best outcome.

Similar studies elsewhere have found a correlation between experience and success. That could explain why senior lawyers are able to charge more for their services: As the joke has it, a good lawyer knows the law, while a great lawyer knows the judge. There would presumably be a limit

– one doesn’t get better and better into one’s 90s and beyond – but our study appears to show that the opposite may be the case.

Even controlling for very old lawyers, more experienced lawyers did not win more often than their less experienced counterparts. This could be because they are less effective. A more plausible explanation is that experienced lawyers take on more challenging cases, while very junior lawyers are given the easier ones.

The surprise concerned gender.

Of the lead counsel appearing before the Supreme Court, men outnumbered women almost seven to one. Despite this disparity – or perhaps because of it – those women who did appear were statistically more likely to win their cases, in particular when they appeared on behalf of a plaintiff or appellant.

It is the weakest of the three findings, but that may be due to the small number of women who stay in the profession. Much has been written about the barriers facing female lawyers – especially litigators – in Singapore and elsewhere. The modest silver lining suggested by this study is that those who do stay tend to be of higher average “quality” than their male counterparts.

DON’T JUDGE A BOOK BY ITS COVER

So should you rush out and ensure that you have a young woman from AGC represent you in your next Zoom court hearing?

Correlation is not cause. These findings have virtually no significance for analysing a single case, and may reflect the resources that go into litigating a case rather than the factors determining its outcome. Most importantly, the study does not take account of the very large number of cases that settle before ever reaching the courtroom.

That said, the formal position that lawyer quality is marginal to the outcome of a case is contradicted by both the market for legal services and the data presented here.

These findings also suggest that the market for justice in Singapore is broadly rational: It would be odd, for example, if the firms able to charge the highest fees were not at least a bit more successful than other firms. That doesn’t mean that they outperform in every case – it may be that they are simply more selective in the cases that they bring to court.

At the same time, even within large firms it makes sense to give more complex cases to more experienced lawyers, with the result that the personal success rates of those lawyers may fall.

On women, by contrast, the results point to a possible market failure, with talented women leaving or being pushed out of the profession.

And as for the performance of individuals, the study bears out an old saying often attributed to Abraham Lincoln – that a lawyer who represents himself in court has a fool for a client.

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