

# Law from disorder

October 6 2015, by Anita Stuhmcke And Pam Stewart

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Are you more likely to succeed if you appear before a judge in the morning? If you're self-represented or hire a lawyer? Legal experts Anita Stuhmcke and Pam Stewart explain how their latest research project, which involves data mining High Court decisions, is set to uncover previously unknown trends in our legal system and help to make Australian courts more efficient.

Data analysis and the discipline of law have traditionally gone together like apples and oranges. In legal terms, data is usually only relevant in the protection of individual privacy or in terms of access to government information. More limited attention has been paid to the use of data to mine legal information – particularly decision-making by judges.

But what if we could use data analysis to improve the efficiency of the judicial process without compromising the delivery of justice? This is something we're hoping to achieve through our latest research project – Data and the Administration of Justice: Applications for Special Leave to Appeal to the High Court of Australia.

It's our belief that data may be able to answer any number of questions about the administration of justice. The questions may be off-beat – for example, 'will your legal case be more likely to succeed if you appear before a judge in the morning or the afternoon?' Or the questions may be ones which we suspect we know the answer to – such as 'are you more likely to succeed if you are self-represented or have legal representation in court?'. The answers to these questions, however, have the potential to alter the current Australian legal landscape.

How will we do this? Our current project links [data analysis](#) to the legal decisions of Australia's highest court, the High Court.

Our research, which focuses on special leave applications to the High Court, is a significant area and would be useful to practitioners, judicial officers, litigants and the wider administrative machinery of government.

These special leave applications run the full gamut of legal matters – immigration, taxation, contracts, family law, personal injury and more (excepting constitutional issues). In terms of matters heard by the Court, applications for special leave to appeal represent the greatest volume of matters filed.

Appeals are usually heard by five or seven Justices. But, and it is a big but, the right to appeal is not automatic. Before an appeal is heard, the Court must have granted leave or special leave to appeal. Special leave applications, which are first examined by a panel of Justices, can be decided without oral argument by members of the panel sitting in open court. Or they may be heard with oral argument with lawyers appearing, usually in Canberra, Sydney or Melbourne, or sometimes by video-link between capital cities.

Our research is examining a snapshot, approximately 1200 cases, of these recent applications. Our aim is to identify administrative trends and to analyse success and failure rates. We are coding each of these cases for over 40 attributes such as success rates for litigants, time taken to resolve applications, gender and nature of applicants and respondents, self-representation, legal professionals involved and the use of technology such as video links.

From this we will be able to answer questions like 'who is using the High Court?', and 'is it a court for all?'.

We will see whether taxation appeals are more often successful in special leave applications than immigration cases; whether female applicants are more likely to succeed than male; if success is more likely in cases originating in Western Australia; if there's a combination of judges that grant leave more often than others? We may also be able to predict results having regard to category of case and types of litigant.

Importantly we have done this form of research before, but on a smaller scale. Our earlier, published, study examined negligence decisions in the High Court and we constructed a database by coding each of the 78 High Court negligence decisions over an 11 year period from 1 January 2000. Our research showed the most successful litigants were large corporations or government and that children were amongst the fewest litigants and the least successful. While there have been no changes to the legal system yet, this research has definitely helped to better inform lawyers and law students.

Ultimately, we want to know how we can make courts more efficient whilst retaining a just judicial system. While we do not see data providing the answer to this eternal conundrum, we do see it as an exciting and expanding area – one which has arrived very late and with too little consequence in the discipline of law. Simply put, we want to turn the apples and oranges into a fruit salad.

Provided by University of Technology, Sydney

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