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What makes a good judge?

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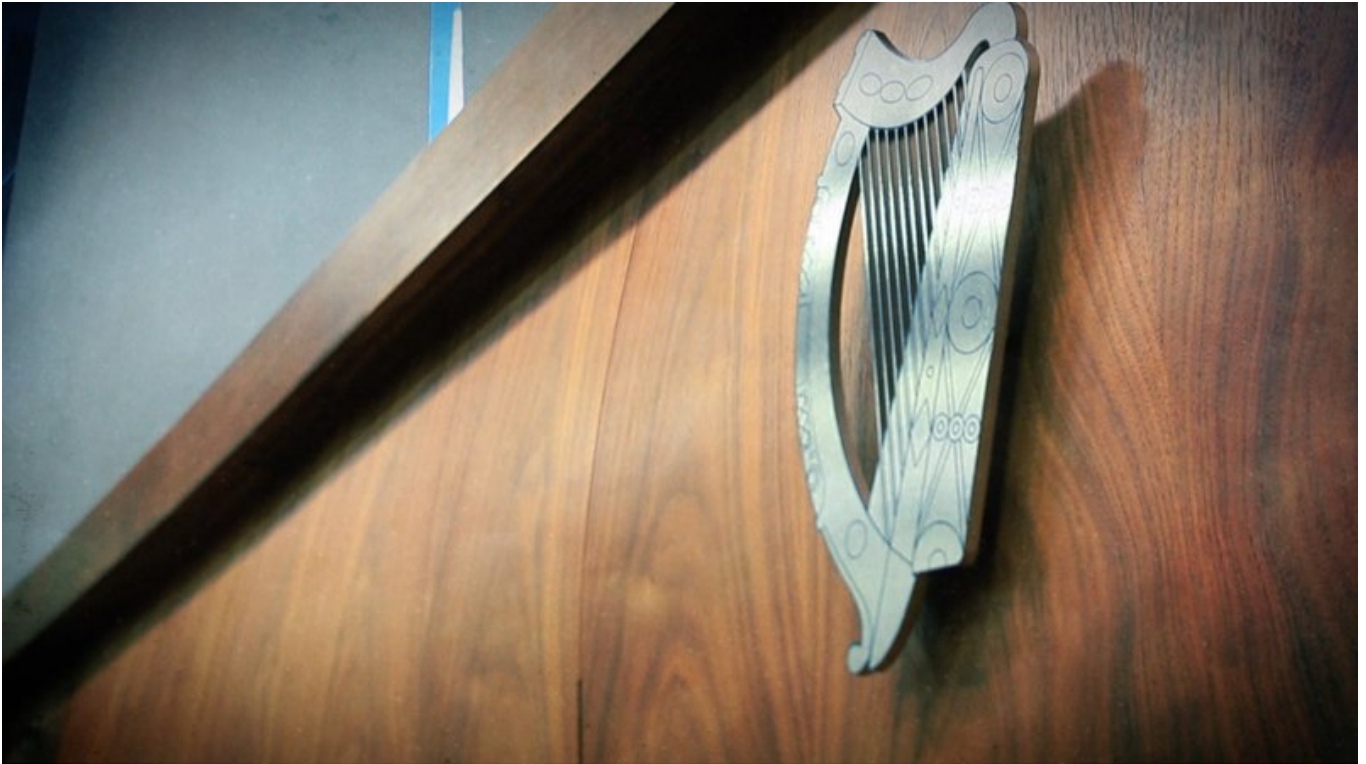


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What makes a good judge?

Updated / Monday, 25 Jun 2018 16:24

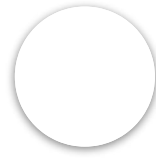


"Of course, judges are human and they make mistakes"

Analysis: how research on judicial decision-making can inform judicial reforms in Ireland

The Irish judicial system is at an important juncture. Imminent legislation will reform how judges are selected, trained and disciplined. [A bill to establish a new Judicial Appointments Commission](#) has had a tumultuous passage through the Oireachtas. In tandem, [legislation](#) establishing a new Judicial Council also looks set to pass.

The Judicial Appointments Commission will be tasked with recommending candidates for appointment to judicial posts and the issue of appointments has generated considerable [controversy](#) and [commentary](#) in recent months. At various stages, the bill has come in for criticism from [the judiciary](#) and [the Attorney General](#), and [a Dáil debate on the bill had to be suspended](#) at one point owing to confusion over legislative amendments on the composition of the Commission. The Judicial Council, [which the judiciary has long contended is overdue](#), will be tasked with facilitating training for judges as well as dealing with alleged misconduct.



04:58

From RTÉ Radio One's Morning Ireland, Conor McMorow reports on testy exchanges in Dáil Eireann about the judicial appointments bill

But the debate to date has predominantly focused on who gets to sit on the Commission and has overlooked a critical question: what makes a good judge? It is, of course, a complex question to answer, but recent interdisciplinary research between the fields of law and behavioural psychology has begun to answer aspects of it.

A judge's role is to make decisions. A good judge should make decisions impartially, fairly and based on law. There is much scope for argument on what these ideals mean. But so much more, other than the law, affects judicial decision-making. Research has demonstrated that biases, psychological errors, emotion and group dynamics on judicial panels can all have a bearing on judicial outcomes. Some of this research has taken a particularly interesting direction, with practising judges asked to rule on hypothetical legal cases to test whether they are influenced by invidious or irrational factors when deciding cases.

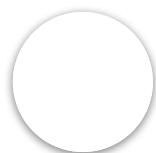
What can this research tell us? And how can it be used to improve the Irish judiciary in this time of legislative reform?

Judges can let biases and cognitive errors influence their decisions. Despite best efforts, experiments demonstrate that **judges find it difficult to disregard inadmissible evidence** that, legally speaking, they are obliged to ignore. This inadmissible evidence can bias judges and affect verdicts in criminal trials.

From RTÉ Archives, a Seven Days' report from 1975 on the legal system and the criteria for the appointment of judges: Irish men "rarely if ever make good judges"

Other negative effects on judicial decision-making can arise from cognitive error; for example, hindsight bias. Judges habitually hand down decisions with the benefit of hindsight. They assess the conduct of the defendant with full knowledge of the negative consequences that have occurred. [Researchers have demonstrated](#) that hindsight bias - the sense that "I knew it all along" - affects judicial decisions.

Should judges be emotional and empathetic in their role? Some commentators, [including Barack Obama](#), argue that candidates for judicial office should have these qualities. The question is: just how emotional or empathetic should judges be? Experimental research demonstrates that the judicial heart sometimes wins over the judicial head. Judges [interpret the same laws differently](#) depending on whether the litigant before them arouses sympathy or disgust.



From RTÉ One's Prime Time, Minister for Transport, Tourism & Sport, Shane Ross discusses his campaign on judicial appointments with David McCullagh

Some courts, such as the [Court of Appeal](#) and [Supreme Court](#), operate as a panel. How do group dynamics among colleagues working together affect judicial decisions? Experimental work on this is relatively limited. But what evidence there is suggests that individual judges' decisions are influenced by interacting with their colleagues. In [one UK study](#), adjudicators operating on three-person panels changed their mind on decisions 22 percent of the time, after they had deliberated the case with their colleagues. Junior adjudicators tended to defer more to their senior colleagues.

On one level, the outcomes of this research could be regarded as disheartening, if unsurprising. Of course, judges are human and they make mistakes. But rather than view this as a cause for alarm, this research can (and arguably should) be rigorously consulted in the context of developing modes of selecting and training judges in Ireland.

Of course, judges are human and they make mistakes

We can learn from other jurisdictions. The UK's [Judicial Appointments Commission](#) puts candidates for judicial posts through their paces. Qualifying tests, situational questioning about scenarios a judge may face and role-play exercises are all used to assess a candidate's suitability for judicial office. In Slovenia, [judges participate in training workshops](#) testing for their susceptibility to some of the non-legal factors described above.

Given the impending overhaul of how judges are selected and trained in Ireland, this research and mechanisms used in other jurisdictions should be thoroughly considered by those developing the new Judicial Appointments Commission and Judicial Council. This will improve the chances of selecting the correct candidates for the bench and practising judges would become more self-aware of their shortcomings. Ultimately, this could pave the way to better, fairer judicial decision-making.

The views expressed here are those of the author and do not represent or reflect the views of RTÉ

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