

Kluwer Arbitration Blog

Equality and Inclusion Revolution

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Many people now readily recognise that there is still a gaping disconnect between the types of people now involved, at a ‘grass-roots’ level, in dispute resolution globally and those who reach the upper echelons of the industry. Across all industries, there seems to be daily news reports emphasizing inequality and often with a focus on gender. We hear about the gender pay gap, inequality particularly amongst male dominated industries such as information technology, science and finance, and other issues such as sexual harassment which disproportionately affect women. Yet addressing the issues faced by women alone does not address the issue of diversity and inclusion as a whole. There are many more ingredients necessary for true diversity: social class, race, ethnicity, disability and regional provenance, to name but a few, which must also be taken into account. These attributes can all be barriers to entry and progression within the legal community.

On occasion, in making any selection we may miss a person’s potential, simply because of a lack of awareness of our unconscious biases. In dispute resolution (whether law firms, the Bar, counsel, judiciary or arbitral tribunals) there is an over-representation of middle aged, white (Euro-American) men. Statistics confirm the existence and extent of this imbalance: of all closed ICSID cases between January 1972 and May 2015 only 4% had been arbitrated by an entirely non Anglo-European tribunal;¹⁾ Africa, Asia and the Pacific represented 32.3% of the parties in ICC cases in 2013, yet less than 15% of arbitrators were from these geographical regions;²⁾ in 2015 only 2 females were listed in the Chambers & Partners “Most in Demand Arbitrators” globally, the majority of the other 33 males being white Europeans.³⁾

More recently, the 2018 International Arbitration Survey conducted by the School of International Arbitration, Queen Mary University of London, in partnership with White & Case, reported:

“In particular, is there any causal relationship between diversity across a multi-member tribunal and the quality of its decision-making? The most popular answer, chosen by a quarter of respondents, was that the effect of diversity across a panel of arbitrators on the quality of that tribunal’s decision-making “depends on the particularities of the dispute in question”. 22% of respondents think that diversity brings about “some improvement in quality” while 18% take the view that diversity leads to a “significant improvement in quality”. A similar number (19%), meanwhile, deem this enquiry to be irrelevant because they consider diversity to be

inherently valuable in and of itself. The views that diversity does not make an appreciable difference in quality or can even reduce the quality of the decision-making were less adhered to. It is noteworthy that no single viewpoint attracted a significant majority of supporters.”

These are just but a few of those figures that should strike the reader. This is not anyone's fault, it is a simple reflection of the world in which we all grew up. Striving for true diversity in our field means challenging every element of that group: age, race/colour, ethnicity, regional dominance and gender. There is clearly a great deal of work still to be done if there are to be any improvements. Lip service is not enough.

Knowledge of the disconnection between a diverse community and representation isn't sufficient; what is needed is real and concrete long-lasting action. Any organisation, new or old, taking steps, bold or small, to increase diverse representation in an otherwise notoriously male-dominated profession, is to be lauded. The [Alliance for Equality in Dispute Resolution](#) was launched earlier this year to tackle, in a collaborative and inclusive manner, the lack of diversity and, therefore, equality, in the international dispute resolution community. In the past, this goal has largely been pursued by others on a piece-meal basis or by focusing on only one element of diversity. Yet, what is needed is a concerted effort to eradicate inequality and the lack of diversity. This means all of us taking a stand for equality of treatment, of opportunity and justice universally and also pushing vigorously and consistently for it. The inequality and inequity of the current position amongst the different sexes, ethnic groups and regional practitioners must be addressed.

One of the manners in which this can be achieved is by providing training in unconscious biases. Evidence suggests that this type of training reduces the impact of bias in the workplace. It provides an opportunity to understand the nature of bias that affects us all. The strategy of categorization that gives rise to unconscious bias is a normal aspect of human cognition. Understanding this important concept can help individuals approach their own biases in a more informed and open way. Sharing your biases can help others feel more secure about exploring their own biases. It is important to have these conversations in a safe space – individuals must be open to alternative perspectives and viewpoints. This means developing the vocabulary for that discussion to take place. This training facilitates discussions by promoting *bias literacy* utilizing the concepts and techniques which have been proven effective in minimizing bias. The Alliance's first workshop on unconscious bias took place in early June in New York in collaboration with the CPR Institute.⁴⁾

Much can be done at a personal level to enable us all to recognise, monitor, manage and reduce the impact of our personal biases. Organisations can support this in very practical ways within policies, practices and at key people decision making points. An organisation's culture and values will necessarily evolve from those of the leadership. Individual actions need to be facilitated and authorised by a clear stance being taken on the culture of an organisation by its leaders – and carried through into systems. Role models of every kind are needed to transform workplace culture. Leaders can help by rewarding and supporting diverse role models. It is important to reward inclusive behaviour and interventions, measure and make public the effect of workplace culture initiatives, and ideas that have worked should be broadcast using data and engaging tools that tell people's stories.

Some control can also be achieved through social norms. In those norms we need to consider accelerators and innovation. Accelerator initiatives work like hot-houses, giving underrepresented

groups all the benefits men have such as mentoring, training, and inclusion in networking and communication. Innovation involves considering strategies to address unconscious bias and conventional social norms; these should be individual and institutional strategies.

Thankfully, there is also empirical evidence in the business world and also national judiciaries which shows that diversity enhances decision making and improves the ‘bottom line’. For instance, a report published by McKinsey in 2014 found a statistically significant relationship between diverse leadership and better financial performance.⁵⁾ There is no reason why this should not translate into the same types of benefits of enhanced decision making in arbitration. Great work has been done in the space of gender diversity but not enough is being done in relation to ethnic, racial and regional diversity. If initiatives for gender diversity have made some inroads then there is no reason why initiatives encompassing a broader group will not do the same.

Life is full of challenges, some of which we are able to meet head on and others which largely lie hidden but show themselves in subconscious behaviour. We should not shy away from tackling both kinds, the explicit and the implicit, the conscious and unconscious, the deliberate and automatic. Ultimately, in one form or another, they all require us to challenge the status quo to be a part of bringing about the necessary change. The next generation of dispute resolution practitioners deserve to come into a workplace where the role models who came before them forged a path, and fought to change the attitudes and cultures that held them back. Those role models should comprise of not only a gender diverse group but also a racially, ethnically and regionally diverse group.

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References

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- ?2 Berwin Leighton Paisner, *International Arbitration Survey, Are We Getting There?“*
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- ?5 McKinsey, *“Diversity Matters”*

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