

Kluwer Arbitration Blog

Dear Sir, where is the 'Madame'? Taking the Pledge for Equality in International Arbitration

Noor Kadhim (Armstrong Teasdale) · Monday, September 26th, 2016

On a rainy Monday 19 September 2016, Freshfields Bruckhaus Deringer LLP hosted an ICC YAF event at its London offices on the importance of women in our arbitration world. The issue of gender diversity was at the forefront of the agenda, and taking the Pledge for Equal Representation in Arbitration (www.arbitrationpledge.com). The YAF coincided with a move by the same firm to change letters addressed 'Dear Sirs' to 'Dear Sir or Madame', in correspondence to opposing counsel including female lawyers. This move was widely reported in the British press. Although the change was poo-pooed by some in the arbitration circle (of which mostly men, I am willing to bet), I think it nevertheless signals a small but important step in the right direction. It may be a cosmetic change, but it emphasises the essence of what was later discussed at the ICC YAF. In other words, we need to promote awareness of the existence of powerful and capable women in arbitration, to the "Madams" in the teams, and not just the "Sirs". Notably, the possibility of competent chairwomen on arbitral panels.

The YAF was introduced by Sylvia Noury, a partner and a driving force in Freshfields' international (commercial and treaty) arbitration practice in London. Having advocated before ICC, AAA, LCIA, ICSID and UNCITRAL tribunals on many high value arbitrations, Noury is a formidable player in international arbitration. But she is but one example. The YAF panel, composed of other strong female voices (Leilah Bruton, Kate Davies, Samantha Bakstad, Mireze Philippe*) highlighted that the household names we have all heard of (Brigitte Stern, Gabrielle Kaufmann-Kohler, Wendy Miles, to name but a few) are just the tip of the iceberg. It is our duty, and particularly the duty of women arbitrators, to promote each other and not to take a backseat in what has traditionally been a "pale, male and stale" arbitration world. We need to address the constant retort that "we don't know of any female arbitrators to appoint" by doing more research into just who is in that pool of arbitrators, and what their background is**. Equally we need to address the other 'get-out' response, that "there are lots of other issues that need addressing, such as discrimination based on ethnicity and race, and religious or cultural affiliations". Such concerns fail to consider that issues of gender diversity are, unlike these other issues (which are also important) universal to all women arbitrators, regardless of ethnicity, religion or culture. Second, we have to start addressing imbalances somewhere. Why not start with gender? After all, it is in our interest as decision-makers that different outlooks (male and female) are catered for on an arbitral panel. Citing Benjamin Franklin, Philippe reminded us, 'if everyone is thinking alike, then nobody is thinking'.

Maybe the problem is that women do not like to promote themselves as much as men. Perhaps it is because it is clients, and not counsel, who insist on having male arbitrators. It may also be down to a subconscious bias, that somehow men make more capable arbitrators – or at least chairpeople – than women. Either way, it is an incorrect view. And it must be corrected. Having worked at the ICC and having administered many cases, I can tell you that whether the chairperson is male or female does not make a difference. The quality of an arbitrator is down to his or her training, intelligence, character, and values. I do not wish to say, and the message of the panel that evening was not, that female arbitrators should be appointed at the expense of their male counterparts. Furthermore, at the ICC, we always took great care to address our audience appropriately, meaning that we tailored each letter depending on whether we needed to address “Sirs”, “Mesdames”, or a mixture of both. Once one begins to pay due care and attention to such details, one starts to notice what is missing, in terms of respect and propriety, when such care is lacking.

What I took away from the YAF was not a pledge of affirmative action. My message, and I hope that which underlies that of the panel and the Pledge, is that we should be striving towards a true meritocracy in international arbitration. Where it is your credentials, your independence and availability, and the diligence you bring to a case, and not your gender, that matter.

I would like to end with an anecdote. In the 1980’s, in classical music, a certain Ms. Abbie Conant applied for eleven trombone positions advertised in Germany. For those familiar with this instrument, the trombone was historically perceived as ‘masculine’. Therefore, Conant received only one audition invitation, and it was, to add insult to injury, addressed to a “Herr Abbie Conant” (i.e. ‘Mr’). She auditioned along with 32 men, behind a screen. It was only when a selection panel listened to her playing behind that screen, without knowledge of her gender, that they were enthralled by her music and selected her. To their amazement, Ms Conant was a woman. She would never have been selected had she been in front of the screen.

Dear Sir and Madame, it should not be this way. Neither in life, nor in arbitration.

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*(Mr) Chris Parker was also on the panel.

** There are at least two fora for searching female practitioners: ‘Find practitioners’ on www.arbitralwomen.org and ‘Arbitrator Search’ on www.arbitrationpledge.com.

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