
Kluwer Arbitration Blog

Equality Won't Fight For Itself

Noor Kadhim (Armstrong Teasdale) · Monday, March 8th, 2021

This month, we formed the arbitral tribunal in our billion dollar investment dispute. Against the odds, the parties selected a majority female tribunal. What is more, they chose a female President.

At around the same time, a [leading US firm picked a woman](#) as both its chair and managing partner for the first time ever. The [UK Supreme Court appointed](#) Lady Justice Rose to its bench, where until now Baroness Hale was the lone female voice amongst a dozen judges. On 15 February, history was made at the World Trade Organization when the [General Council chose](#) a black African woman, Ngozi Okonjo-Iweala of Nigeria, as the organization's seventh Director-General. And last year, the International Chamber of Commerce (ICC) reported that the President of its Court of Arbitration in Paris [is tipped](#) to be replaced by a woman, Claudia Salomon.

This is all positive news. But does it mean we should be patting ourselves on the back on this symbolic day, Monday 8 March, International Women's Day? Is the arbitral community able to celebrate its advances in the recognition of the social, economic, cultural and political achievements of women?

Yes, but there is still a long way to go.

We can't deny that progress has been made on the gender diversity front. Given that there is more awareness and encouragement of women's rights one can hardly go backward. But with the passing of another year we have to ask ourselves, how much has been achieved to promote the equal representation of women in the five years that have elapsed since the introduction of the [Equal Representation in Arbitration Pledge](#)? And is it enough?

I could focus on many areas but will select two: arbitral appointments, and partnership.

In 2020, an International Council for Commercial Arbitration (ICCA) taskforce undertook a [study](#) on female arbitral appointments across all major and specialist arbitral institutions since the Pledge was signed in 2015. Its data leading up to 2020 showed that, since 2015, the proportion of female arbitrators has almost doubled (from 12.2% in 2015 to 21.3% in 2019). This trend of increasing diversity in arbitral tribunals is reflected in the caseload of individual institutions, as well as when averaged across institutions.

What about female partnerships? At the time of the Pledge's inception, according to the US Bureau of Labor statistics, law was one of the least diverse professions in the nation with women accounting for only 17 percent of equity partners. This was similar in [many other major jurisdictions](#). In the five years that followed, this slightly improved; in 2020 there was a 7% to 23%; in the UK there was an 8% increase.

But folks, it's not good enough.

In terms of arbitral appointments, the figure of 20% is still significantly disproportionate to the percentage of women working in the legal profession. When one looks closer at the figures, it can be seen (at page 17 of the [study](#)) that the percentage drops to the single figures in the case of some institutions such as the Permanent Court of Arbitration and the Court of Arbitration for Sport. The [latest diversity statistics](#) from the Stockholm Chamber of Commerce (SCC), which reviewed 1250 arbitrator appointments in SCC cases over a five-year period, are similarly disappointing. It found that although the SCC as an institution was taking steps to increase diversity when appointing arbitrators (at least 30% being female), when the parties were left to their own devices (over 62% of the time) they only chose women 14% of the time.

Turning to partner promotions, let's take the USA as an example. This is the country where [Justice Ruth Bader Ginsburg](#) fought for the cause of gender diversity throughout her life. According to the Legal 500, across the Atlantic, 47% of associates at the 200 largest US law firms are women. But this translates to only 20% of equity and 30% of non-equity women partners, [according to the National Association of Women Lawyers](#). This is a story that repeats itself all over the world. In the top roles, men still dominate.

Why is this?

Unconscious bias is one cause. The Law Society of England & Wales concluded a [review](#) of barriers to female lawyer retention across a number of jurisdictions in 2019. It found that out of over 7,700 participants globally, 52% responded that "unconscious bias was the main barrier" to women's career progression in the law. And if this seems incredible, a small anecdote from the world of classical music from the 1980s that I first mentioned in my [Kluwer blog post](#) on this subject five years ago will help to illustrate the problem of bias. A certain Ms. Abbie Conant applied for eleven trombone positions advertised in Germany. The trombone was historically perceived as 'masculine'. Conant received only one audition invitation, and it was, to add insult to injury, addressed to a "Herr (Mr) Conant". She auditioned along with 32 men, playing behind a screen. A selection panel listened to her without knowledge of her gender. They were enthralled, and she was picked. To their amazement, Ms Conant was a woman. She would never have been selected had she been in front of the screen.

Unconscious bias cannot, however, take all the blame. Women also need to learn to be more forthright in demanding what they believe they are owed. In Deborah Tannen's article in the

Harvard Business Review in 1995, ‘[The Power of Talk: Who Gets Heard and Why](#)’, the author explains that research has shown that women are more likely to downplay their certainty and men are more likely to minimize their doubts. Women are also less likely than men to have learned to blow their own horn. She says that this goes back to childhood, where different patterns of social interaction happen between girls playing together compared with boys. It is vital that we assert ourselves in the workplace, if no one else supports us.

But even if we do, that should not absolve our colleagues from responsibility to uphold the message of the Pledge. The need to promote capable women, including women of colour, across the world needs to happen 365 days a year, not one, because the battle for gender diversity is far from over. It will be over when the hiring of a woman to a top job stops making news headlines, and when there will be no more need for articles like this to be written.


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