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CETA List of Arbitrators – Where are the Women?

📅 28 January, 2020

Dr Katherine Simpson, international arbitrator and legal scholar, has called on the Parties to the Comprehensive Economic and Trade Agreement between Canada, the European Union and its member states (CETA), to remedy the serious under-representation of women in the [agreed roster of arbitrators](#) for dispute settlement under Article 29 of the CETA (“CETA List”). In that list, 50% of the Canadian, 20% of the EU, and 0% of the Chairperson roster nominees are female.

In response, Dr Simpson searched for equally qualified women who could be eligible to add to the CETA List. In January 2020, Simpson provided the Treaty Parties the professional credentials of [70 experienced women trade experts](#) whose skills and qualifications matched at least one person currently on the CETA List. Her substantial research demonstrated what many already know to be true: there is no shortage of qualified women in international trade law, or in international dispute resolution, generally.

Fortunately, there are no legal barriers preventing the Parties from remedying the gender imbalance created in the previously agreed CETA List. Article 29 of the CETA sets fifteen (15) as a minimum number of roster members; Simpson has proposed that the CETA Joint Committee add additional female roster members until gender parity is achieved.

The gender imbalance in the CETA List took many by surprise. Gender equality has been a priority for the European Commission and for the CETA Joint Committee, which even issued an official [agreement](#) in 2018 to “*improve the capacity and conditions for women... to access and fully benefit from the opportunities created by the CETA*”. The Treaty Parties convened a conference and a workshop dedicated to ensuring that women would benefit from the opportunities created by the CETA and international trade. Overall, the CETA List appeared to many as a step backward; it preserved the gender imbalance that the CETA Parties and the von der Leyen Commission have publicly sought to eliminate.

In an interview with Dr Simpson in Houston on 24 January 2020 at the 6th Annual ITA-IEL-ICC Joint Conference on International Energy Arbitration, ArbitralWomen had the opportunity to discuss her initiative to identify equally well-qualified women to serve on the CETA List of Arbitrators. The salient points of the interview appear below.

QUESTION: *International trade law is a niche area that is distinct from international investment and commercial arbitration. What prompted or inspired you to take on this initiative to demonstrate to the CETA Parties – and the international dispute resolution community generally – that the gender imbalance in the CETA List can (easily) be remedied? Why did you do this?*

ANSWER: *When I saw the December 2019 CETA Arbitrator List, I was truly surprised and disappointed. I promptly volunteered to the international community on OGEMID to find at least a dozen women.*

Within a few days, after talking with several colleagues, it became a “put your money where your mouth is” project. I was confident that qualified women existed and that by compiling them into a list, I could prove these women are find-able: it is really up to the researcher to see them.

Further, on a practical level, these rosters are important. Treaty-based rosters of arbitrators serve as public verification of the roster members’ credentials, backed by public accountability. The credence given to these lists is enormous. Gender parity in treaty-based lists of arbitrators can be a powerful step toward achieving gender parity in international dispute resolution, generally.

QUESTION: *What was the most troublesome aspect of the CETA List?*

ANSWER: *First, its authorship. Canada and the EU have made wonderful public statements and programs in favour of gender equality, and the fact that the legal teams of both had been unable to find a single female Chairperson candidate basically communicated that no such woman exists.*

And that was consistent with an oft-repeated explanation for gender imbalance – the “there just aren’t many who are qualified” or “they are just so hard to find” and “we really are few and far between”-es. This baseless stereotype is the go-to explanation for everything from arbitrator appointments to the underrepresentation of women in leadership roles. And then, there’s the “es gibt doch immer einen wirtschaftlichen Grund” or “there’s always an economic reason for the choice.”

I wondered whether I could provide meaningful assistance by making it easier for them to find highly qualified female candidates. I thought the most meaningful and immediate way for me to assist would be to actually identify qualified candidates, by reference to their existing choices. The European Commission welcomed this and provided me the email addresses for the list, and I have offered to provide them my research steps, as well.

QUESTION: Tell us about the research that went into this?

ANSWER: *My goal was to create a list of qualified female candidates who were comparable to the arbitrators already included on the CETA List. I accepted the Treaty Parties’ deliberate candidate choices and proposed only candidates who matched their qualifications.*

First, to find and later recommend women who were truly comparable, I examined the people currently on the CETA List to understand what qualifications made each a valued member of that List. I discovered that each person who had been selected for the CETA roster (and was, therefore, agreed by the Treaty Parties as having “specialised knowledge of international trade law”) had legal experience with the WTO or taught and published about the WTO. The CETA List members could be organized by their [skills and experiences](#), as follows:

- *Four (4) CETA Arbitrators had served on the WTO Appellate Body;*
- *Five (5) CETA Arbitrators have experience as a panellist in dispute resolution proceedings at the WTO;*
- *Four (4) CETA Arbitrators have served as counsel to parties in a WTO dispute or as counsel to the WTO itself; and*
- *Three (3) CETA Arbitrators have academic teaching and publications related to the WTO.*

The CETA List treats each of these experiences as equal to one another. This non-hierarchical list of qualifying credentials is helpful because CETA Arbitrators with one of the identified credentials often had experiences in the other categories of qualifying credentials. Additionally, further experience was noted:

- *Thirteen (13) CETA Arbitrators have had academic appointments*
- *Twelve (12) CETA Arbitrators have expert or counsel experience in international trade matters;*
- *Eight (8) have experience in international commercial or investment arbitration;*
- *Three (3) CETA Arbitrators reported experience in treaty negotiation.*
- *Some or all of the CETA Arbitrators may have once served as counsel to one of the Treaty Parties.*

I used the WTO (as outlined) as a baseline variable and I searched for women who had “specialised knowledge of international trade law” evidenced by experience with the WTO or academic expertise related to it.

Second, my search for qualified women was supported by one commitment and one assumption. I committed to writing down the name of every qualified female I came across. Next, I assumed that if an ethnic, regional, or demographic group was over-represented, it would indicate a failure in my search, as opposed to a shortage of other practitioners.

Third, I asked colleagues for recommendations and reviewed edited publications and international trade organization memberships for names. I used gender-neutral searches in Google. In addition, I asked for recommendations from 210 women who were identified through the recommendations of colleagues and through the Internet searches.

The 70 qualified women identified in the submissions to the CETA Joint Committee were each peer recommended (not one woman on the list nominated herself), agreed to be listed, and worked with me to draft their professional credentials.

QUESTION: What were the hardest parts of this initiative to find qualified women for the CETA List?

ANSWER: *Having to turn people away who did not have what I understand to be the requisite qualifications for the CETA List but were otherwise impressive dispute resolution lawyers. Those were difficult conversations, but necessary. I believe that the women who I did not include on the list would all perform well in a trade dispute, but my goal was to provide a list of women with as close a match to the skills and experiences of those on the CETA List as possible. Therefore, I felt it necessary to not include several senior women who did not fit into the WTO category.*

Throughout this project, the women with whom I connected were helpful and inspirational. In the end, this was a 70+ person group writing project, that was completed in a 10-day period, over what counts as the New Year holiday for many. Every day presented a new challenge and with it, additional inspiration. Each woman worked with me individually (from far-flung locations at all hours of the day or night) to prepare her text for the submission (at the suggestion of one of the women: who better than the qualified woman herself to draft her experience?). Working with these women to memorialize their experience to submit to the CETA Joint Committee was rewarding and energizing. It brought me into contact with some phenomenal women and kept me committed to the project.

QUESTION: Why did you limit this project to 10 days?

ANSWER: *While I was undertaking my research and preparing the list (and after I spoke with the European Commission and received their invitation to make a submission), the CETA Joint Committee and the European Commission again sought a decision from the Council of the EU consenting to the CETA List roster. I wanted this submission to be considered by the Council of the EU before they made their decision, so it was a time-sensitive matter.*

QUESTION: Do you ever see yourself undertaking this kind of project again?

ANSWER: *I am committed to gender parity more than ever after this experience. This work needs to be done. And I am inspired to do more of it.*

QUESTION: *Tell us, what will you do next for women in dispute resolution?*

ANSWER: *I am currently preparing another roster for an arbitral institution, and that one is focused not on gender but on ethnic imbalance.*

In the near future, I might prepare an investor-state list or work with others to create one. The European Commission attributed the gender imbalance in the CETA List to its reliance on Member State recommendations and rosters already in place in other EU trade agreements. In reviewing those other rosters, it is clear that the gender imbalance in the CETA List was not an isolated accident: [women account for only 12.9% of all EU arbitrator roster appointments since 2011, and only 10.6% since 2015](#). In two thirds of the EU's trade agreement dispute settlement rosters since 2011, the EU proposed no women at all.

Regardless of how one feels about the proposed multilateral court, if the EU decides to rely on Member State recommendations or already in place investor-state rosters to establish it, we can expect the same results: EU Member States have named only 19 women to the ICSID roster of arbitrators (out of a total of 99 nominees: 19%, with 13 member states nominating only men to its panel roster (2 states made no nominations).

The European Commission has provided me with its negotiating directives for the proposed court. I hope to connect with them to establish the characteristics they would like to see in arbitrators for that court.

QUESTION: *What can ArbitralWomen and other organisations focused on diversity do to help?*

ANSWER: *Once I establish the baseline parameters for an ISDS list, I hope that ArbitralWomen can contribute to the effort to identify qualified female candidates – not only by suggesting names of qualified women, but by sending out a call to its Membership so that each woman can evaluate whether she is a potential candidate for that list and if so, put her name forward.*

ArbitralWomen Members can continue to keep themselves visible by publishing and networking with both men and women. We can have our own mental rosters of “if I were to recommend 10 women for a construction dispute or a dispute resolution board, they would be ...” Be ready to recommend a colleague!

ArbitralWomen is grateful for the opportunity to sit down with Dr Simpson to learn the behind-the-scenes effort involved in this arguably ground-breaking diversity initiative. The list of qualified women that Dr Simpson submitted to the CETA Joint Committee has been well-received in many circles. Regardless of what happens next with respect to the CETA List, it is a tremendous achievement that in less than two weeks, 70 women were brought to the spotlight and demonstrated their credentials to the world.

While Dr Simpson mentioned that many women inspired her to pursue this project, we take this opportunity to recognize Dr Simpson herself as an inspiration to those of us who seek to promote women and diversity in dispute resolution.

The submissions by Dr Simpson together with the annexes containing the research and alphabetical list of qualified women to the CETA Joint Committee and the Council of the European Union are available at <https://www.simpsonadr.net/pro-bono.php>.

Submitted by Dana MacGrath, ArbitralWomen President

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