

Diversity Toolkit™

Shortlisted for the GAR ERA Pledge Award!



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Remembering and Celebrating the Special Moments of Early 2020

We are so honoured that the ArbitralWomen Diversity Toolkit™ (AWDT) has been shortlisted for a GAR Award by the Equal Representation in Arbitration Pledge (Please see ArbitralWomen's news article regarding all the diversity initiatives shortlisted for the GAR Pledge Award on page 33 herein.)

The AWDT is a ground-breaking diversity training programme designed to help men and women see the role played by biases and explore ways to address and overcome them.

Unfortunately, the GAR Awards Ceremony, like many other events, had to be postponed due to the Covid-19 pandemic. We appreciate this is an extraordinarily difficult period for many around the world. We wish everyone good health and safety during these unprecedented times.

As we currently shelter in our respective homes around the globe, it is somewhat bitter-sweet to look back on the happier times in January and February 2020 reported in this Newsletter edition — a time when we were starting a new year of seemingly endless possibilities. We look forward to our eventual return to some semblance of normal life. In the meanwhile, please enjoy the reports of special moments and initiatives around the world in dispute resolution submitted by our Members and friends for publication in this Newsletter.

Women Leaders in Arbitration

Katherine Simpson

Dr Katherine Simpson, international arbitrator and legal scholar, has called on the Parties to the Comprehensive Economic and Trade Agreement among 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 January 2020, Simpson provided the Treaty Parties the professional credentials of [70 experienced women](#) with the required "specialised knowledge of international trade law", whose skills and qualifications matched at least one person currently on the CETA List. In addition to the alphabetical list that is available online, Simpson sent the Treaty Parties a not-public list where each woman was skills/experience-matched to at least one of the current male nom-

inees, demonstrating that the women proposed are undeniably comparably qualified. This research demonstrated what many already know to be true: there is no shortage of qualified women in international trade law, nor 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 in January 2020, ArbitralWomen had the opportunity to discuss her initiative to identify equally well-qualified women to serve on the CETA List of Arbitrators.

Thereafter, in March 2020, ArbitralWomen had the opportunity to follow-up with Simpson about the progress of this initiative and her further thoughts on the issues. This interview incorporates the follow-up interview with Simpson.

Interview with Katherine Simpson: CETA List of Arbitrators – Where are the Women?

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?

When I saw the December 2019 CETA Arbitrator List, I was truly surprised and disappointed and said, on OGEMID, that I could 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 also findable: it is really up to the researcher to see them.

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.

What was the most troublesome aspect of the CETA List?

First, its authorship. Canada and the EU have made wonderful public statements and programmes 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”. 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.

Tell us about the research that went into this?

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 organised 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 panelist 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 related academic expertise.

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.

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“Working with these women to memorialise their experience to submit to the CETA Joint Committee was rewarding and energising. It brought me into contact with some phenomenal women and kept me committed to the project.”

Third, I asked colleagues for recommendations and reviewed edited publications and international trade organisation 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.

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

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

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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 memorialise their experience to submit to the CETA Joint Committee was rewarding and energising. It brought me into contact with some phenomenal women and kept me committed to the project.

Why did you limit this project to 10 days?

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.

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

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.

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

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.

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

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!

There are many problems in international ADR and now in March 2020, most of the world is focusing on how to deal with the Covid-19 pandemic. In the grand scheme of things, some might ask whether it is worth directing scarce resources now to “diversity” in ADR?

“Diversity” is not some aesthetic goal: it is the tool to improve this field. What if all of the challenges of international ADR – whether they relate to costs, scheduling, legitimacy, transparency, graft and corruption, etc. – could all be ameliorated through diversity?

Innovation happens when different people come together to solve a problem. The appointment of more different people – men and women – will give international ADR an important opportunity for improvement. There is no time like the present, and the Covid-19 pandemic does not excuse the continued appointment of white and male arbitrators in the continued gross disproportion to their representation in the general population.

Who, in your mind, is responsible for the continued gender imbalance?

Inequality is everyone’s issue, even when it is no one’s fault. And it is made even more difficult by the fact that there are exceptionally qualified men who are being appointed or nominated. The issue is that the equally exceptionally qualified women and exceptionally qualified minorities are not being appointed.

Everyone has a different finger to point, and as among

women, institutions, counsel, and clients, there is a circular blame pattern where each is pointing to the others.

Rather than focus on blame, we can focus on the objective fact that women make up a little over 50% of the population, a little over 50% of the law school classroom, and should make up at least 50% of the leadership positions in international dispute resolution, including arbitrator nominations and appointments.

WOMEN can do more to network with men and women, publish, and leave no excuse for anyone to argue that they were invisible.

INSTITUTIONS can expand their rosters, require parity, counsel attorneys on the benefits of parity and the idea that their dispute resolution complaints could be resolved through diversity.

COUNSEL can advise clients on arbitrator appointments, including by pointing out (as and when appropriate) that counsel is unaware of any complaint that any proposed female arbitrator has ever arrived at a hearing or deliberation underprepared.

CLIENTS can accept that women are just as capable and persuasive in the deliberations room, even where they are not represented on Treaty Lists of arbitrators.

MEN can (and many do!) make a tremendous impact by refusing appointments and nominations until they are objectively satisfied that the appointing authority / nominator had actually considered female and minority

This project has shown that there is a root systemic issue that can be remedied. The European Commission volunteered that it had relied on prior treaty rosters and Member State recommendation in creating its List, and all except one person on the European Union roster had had repeat appointments from the EU. On the CETA List, one of the arbitrators has been appointed in 11 of 12 of the EU’s Treaty Lists! This project may be one that shows that the “same-names-game” – the repeat appointment or nomination of the same arbitrators over and over, is partly to blame for continued disproportionate appointments and inequality.

candidates. Many men have recognised that there cannot be an all-male anything — arbitral panel, group of authors in a collected volume, law faculty, or corporate board — without the active consent and willing participation of men. Just like in conferences where men often refuse to speak on all-male panels (and, thereby, have helped conference organisers create diverse panels), men’s refusal to accept appointments or nominations to all-male arbitration panels / lists has helped women to receive appointments.

It is still early, but what has been the impact of your initiative to propose qualified women for the CETA List thus far?

This project has shown that there is a root systemic issue that can be remedied. The European Commission volunteered that it had relied on prior treaty rosters and Member State recommendation in creating its List, and all except one person on the European Union roster had had repeat appointments from the EU. On the CETA List, one of the arbitrators has been appointed in 11 of 12 of the EU’s Treaty Lists! This project may be one that shows that the “same-names-game” – the repeat appointment or nomination of the same arbitrators over and over, is partly to blame for continued disproportionate appointments and inequality.

It is terribly convenient to rely on prior lists of arbitrators – and most firms, countries, and organisations are guilty of it. While some would say that reliance on old rosters is efficient and saves time, others would counter. Given the changes in (at the very least) conflicts of interest and qualifications that happen over years, not to mention developments in the discipline, those rosters can easily become outdated, and any efficiency gains from relying on them would be swallowed up by losses occurring when having to defend one’s arbitrator choice (at least).

Reliance on old rosters also forces people to make appointments based on the state of the industry at the time when the roster was made. Considering the growth of the industry over the past 10 years, one might question the utility or efficiency of relying on a roster 10 years old as the pool for making today’s appointments or nominations. If a roster of available arbitrators was made before telepresence and third-party financing were major issues in international disputes, can one really expect that an arbitrator on that list would necessarily have such expertise?

New rosters and lists can be made and, besides, how long does it truly take to research an arbitrator?

Isn’t it true that many institutions simply have more men to choose from?

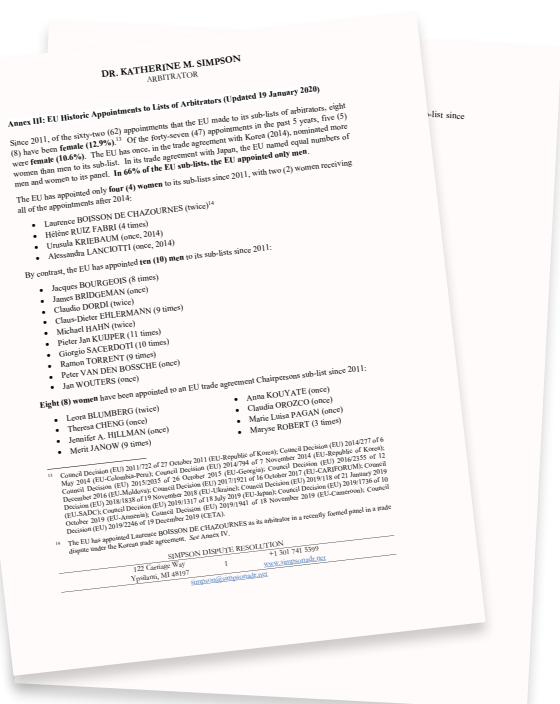
That is beyond question! However, even where there is an overabundance of men on a roster, parity in panel nominations is possible. I struggle to imagine a legitimate roster of arbitrators that is not confined or influenced by even implicit gender or racial prejudice, where it would be impossible to make 50% of the candidates be women. I am open to being proven incorrect, and anyone who wants to try is invited to!

Imagine if institutions were to require gender parity in all of their arbitrator panel proposals. Yes, women would be nominated in a disproportionate amount (as measured by their presence on an institution’s roster), but the market effect could be swift and sweeping: women would become household arbitration names (“I’ve seen her on a few lists of arbitrators”), and perhaps more women would reach out to institutions to be listed! If parity were required, institutions would be under more pressure to improve their outreach.

Gender parity is easy to measure – half and half, 50/50. If a list of proposed arbitrators has 10 people, 5 shall be female. Case appointments are more difficult: the institutions must aim for parity in actual appointments, averaged across cases. And that is where a “parity exception” could come into play: if one gender is overrepresented in appointments, the institution may choose to exclusively propose the appointment of members of the underrepresented group. Law firms could also review their appointments and strive for the same.

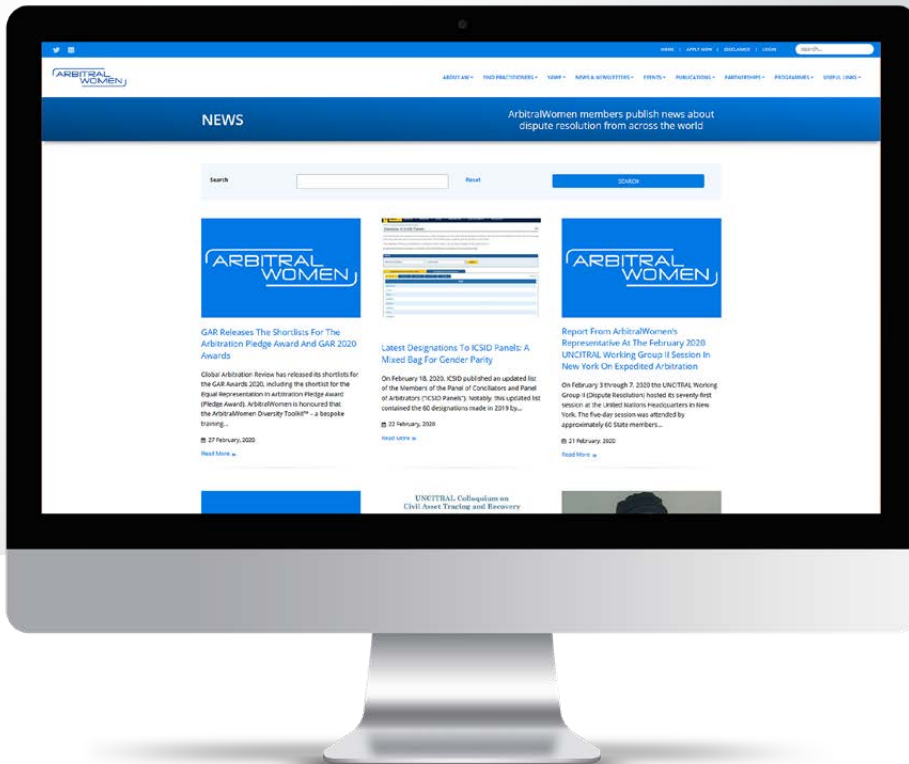
Importantly – this is not about aesthetics – it is a way to actively undermine (unintentional) prejudice against women and diverse members of the ADR community because that prejudice may be leading to sub-optimal outcomes. What if any or all of the problems in arbitration could be better ameliorated or even solved with embracing true diversity?

The submissions by Katherine 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>.



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Visit our website on your computer or mobile and stay up to date with what is going on. Read the latest [News](#) about ArbitralWomen and our [Members](#), check [Upcoming Events](#) and download the current and past issues of our [Newsletter](#).



SPEAKING AT AN EVENT?

If you or other ArbitralWomen members are speaking at an event related to dispute resolution, please let us know so that we can promote the event on our website and mention it in our upcoming events email alerts!

If you wish to organise an event with ArbitralWomen, please send the following information to events@arbitralwomen.org:

- Title of event or proposed event
- Date and time
- Names of ArbitralWomen members speaking or potential speakers
- Venue
- Flyer or draft flyer for approval by ArbitralWomen Executive Board
- Short summary of the event for advertising purposes
- How to register/registration link

ArbitralWomen thanks all contributors for sharing their stories.

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ArbitralWomen Individual & Corporate Membership

ArbitralWomen website is the only hub offering a database of female practitioners in any dispute resolution role including arbitrators, mediators, experts, adjudicators, surveyors, facilitators, lawyers, neutrals, ombudswomen and forensic consultants. It is regularly visited by professionals searching for dispute resolution practitioners.



The many benefits of ArbitralWomen membership are namely:

- Searchability under [Member Directory](#) and [Find Practitioners](#)
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- Visibility on the [News about AW Members](#) to announce news about members' promotions and professional developments
- Ability to **obtain referrals** of dispute resolution practitioners
- **Networking** with other women practitioners
- Opportunity to participate in ArbitralWomen's various programmes such as our [Mentoring Programme](#)

We encourage female practitioners to join us either individually or through their firm. Joining is easy and takes a few minutes: go to '[Apply Now](#)' and complete the application form.

Individual Membership: 150 Euros.

Corporate Membership: ArbitralWomen Corporate Membership entitles firms to a **discount on the cost** of individual memberships. For 650 Euros annually (instead of 750), firms can designate up to five individuals based at any of the firms' offices worldwide, and for each additional member a membership at the rate of 135 Euros (instead of 150). Over **forty firms** have subscribed a Corporate

Membership: [click here](#) for the list.

ArbitralWomen is globally recognised as the leading professional organisation forum for advancement of women in dispute resolution. Your continued support will ensure that we can provide you with opportunities to grow your network and your visibility, with all the terrific work we have accomplished to date as reported in our Newsletters.

ArbitralWomen membership has grown to approximately one thousand, from over 40 countries. Forty firms have so far subscribed for corporate membership, sometimes for as many as 40 practitioners from their firms.



Do not hesitate to contact membership@arbitralwomen.org, we would be happy to answer any questions.