



Orrick and diversity: The only way is up

Naomi Jeffreys - 15 November, 2018

***CDR* discuss the changing dynamic of diversity in international arbitration at Orrick, Herrington & Sutcliffe and how it is supporting its young female rising stars.**

Diversity in international arbitration was a hotly considered topic at *CDR*'s Arbitration Symposium earlier this year, with practitioners sharing experiences and giving practical insight into the efforts being employed by firms to address the issue.

The quest for improved diversity has led to several institutions, such as the **ICC International Court of Arbitration (ICC)**, the **London Court of International Arbitration (LCIA)**, among others, signing ArbitralWomen's Equal Representation in Arbitration Pledge, which strives to improve "the profile and representation of women in arbitration", as well as taking practical steps to consider diversity when appointing arbitrators.

While institutions are taking these steps, diversity among party-appointed arbitrators remains a big issue, with some firms, including **Clifford Chance**, now tracking their use of the female Bar as a means of taking practical steps to combat the issue.

Diversity, of course, goes wider than gender, it spans ethnicity, race, age, religion, culture and background, and these issues are being largely considered in the context of partnership tracks in law firms, as well as the opportunities made available to practitioners.

Orrick, Herrington & Sutcliffe has made concerted efforts in implementing diversity strategies to support its rising female talent, including those who work in its international arbitration practice.

Some measures include providing career flexibility, such as the option for associates to either fast-track to the partnership, or progress at a more customised pace, while in the United States, Orrick offers remote and flexible working arrangements, as well as job-sharing.

CDR recently visited Orrick's London office and spoke to four of its rising arbitration stars: Geneva-based office leader **Vanessa Liborio** and of counsels **Rena Scott**, Paris-based **Sarah Achille** and New York-based **Ayanna Lewis-Gruss**.

Throughout their time at Orrick, the lawyers have been given opportunities at arbitration hearings such as the cross-examinations of witnesses and experts, participating and assisting in opening statements and drawing witness statements abroad.

DIVERSITY IN GENEVA

In June 2015, Liborio departed fellow US firm **Akin Gump Strauss Hauer & Feld** to open Orrick's Geneva office, which for the first two years was 100% women at all levels including partners, of counsel, associates and paralegals.

“We were a very diverse group and from the beginning we tried to make sure that in both the recruitment process, and in assembling team for specific client engagements, to have a diverse team,” she states.

In those early days, Liborio says, they were a small team of three lawyers, so they had to work closely with the firm's other offices in Paris, London, New York and Washington, DC. In this regard, they ensured that every element of diversity was considered, not only gender, but also in using young associates and of counsel on instructions.

And by working with different legal systems “it was obvious that we would have people coming from different legal backgrounds and ethnicity”, she adds.

Scott – who is African-American –brought a different level of diversity to the Geneva office, “because, there are few, if any, other black Americans in Geneva” working at Swiss or US firms.

There is a distinct difference to diversity in Europe versus the US, she says. In the US, Scott explains: “We tend to see diversity in terms of race and gender, and in Europe, what I'm noticing in diversity is that the focus is more on ‘do we have representation from all the different countries in Europe?’ It's not just focused on race, it's more ethnicity, religion and gender.”

ONGOING ISSUES

To what extent diversity in arbitration tribunals has evolved was explored by **White & Case** and Queen Mary, University of London's (arbitration survey) in *the 2018 International Arbitration Survey: The Evolution of International Arbitration* – published in May.

Gender diversity was stressed as important, with almost 60% of respondents agreeing or strongly agreeing that there has been progress in diversity on tribunals over the past five years, with gender disparity receiving the most focus, largely thanks to organisations such as ArbitralWomen.

Diversity is changing and there is a generational shift in appointments and in law, says Lewis-Gruss. “In the US, more than 50% of law students are women, and so we're working on keeping women in the practice, but generationally it is changing because of who is going to law school and who is making a career in the law.”

However, one area where she has not seen a lot of change yet is who the arbitrators are.

In Switzerland, women are well-represented in law firms generally, Scott notes, but the issue is “how far we're advancing at each level of law-firm practice, i.e. from associate to counsel to partner, and female presence on arbitration panels”.

The next point of intervention, she states, needs to be making sure that female lawyers are not leaving law firms to go in-house because of the lack of opportunities to reach the highest level of practice, and making sure that they are decision-makers on cases.

In France, meanwhile, Achille notes there are “more and more women sitting on arbitral tribunals and getting appointed by clients to become arbitrators, so this is improving”, adding that the Paris office hosted the inaugural ‘Women@Orrick’ event, which was created by the firm to invite clients and lawyers to consider diversity and encourage the promotion of women in the profession.

CHANGE IS IN THE AIR

For Liborio, there has been progress and she is regularly appointed as an arbitrator, albeit they are “not the biggest arbitrations in history, it's on smaller cases, but you have to have your name out there and it's not so much a problem of gender, sometimes it's a problem of seniority and aligning that with the members of the company's the board. Of course, that naturally disadvantages women – there are simply fewer of us of that generation”.



Explaining the long-held practice of parties choosing arbitrators with years of experience, who are typically male, she says that for the big arbitrations, companies still only feel safer when appointing somebody who is already known and has been appointed by other parties.

However, hope is on the horizon, with a new generation of chief executives now tending to take some risk in arbitral appointments, she states, and “if you have built a relationship in the past with the company then they will also allow you to take the lead on a big arbitration”.

Liborio adds: “But it takes time and that’s why it’s an ongoing process to really make sure the people in the companies know you and know how you work, and then they will give you more appointments.”

PARTY APPOINTMENTS

The arbitration survey reinforces Liborio’s point that parties often nonetheless resort to institutional lists of recommended arbitrators.

Responses from representatives at various arbitral institutions confirmed that increasing diversity across tribunals is high on their agenda, something which is supported by the statistics which have been released by institutions such as the LCIA, ICC, the **Arbitration Institute of the Stockholm Chamber of Commerce** and the **Vienna International Arbitration Centre** and others, in recent years.

Figures published by the ICC and the LCIA earlier this year, revealed a marked growth in the number of women arbitrators appointed, with the ICC reporting that there were 209 in 2016 compared to 136 in 2015, while the LCIA noted that the rate at which they selected women increased from 4% in 2016 to 17% in 2017.

Despite this admission, institutions responding in the arbitration survey noted that most arbitrator appointments are not made by them, underlining the crucial role that parties and their counsel play in ensuring greater diversity among appointed arbitration.

In this vein, a partner leading a case at Orrick always tries to propose a list to its clients that includes at least one or two names of female arbitrators, with Scott explaining that in the past, the list would have just been comprised of men.

“Now we’re making that extra effort to see what names of female arbitrators we can put forward for potential consideration by our clients. The client might not choose this woman, but we will at least put her name down and have a discussion about it”, which is the effort a firm should be making to move the ball forward.

It is also important for firms to give input on appointed arbitrators because otherwise it can be dangerous, Liborio says.

“There are arbitrators unfortunately who are very well-known, but they don’t do the work. I’ve seen a letter in which the appointed arbitrator requires the parties to acknowledge at the beginning of the proceedings that, because she’s busy, part of her work will be drafted by her secretary and the parties accept that,” she states.

As such, the onus is on the firm to present an arbitrator’s true experience to a client to avoid clients having to work with someone that they do not know, and there are advantages for partners at big firms, as they can communicate with each other and draw on their experience over whether a possible arbitrator is suitable for their client.

If the clients are smart, they will listen to the advice of the partner, sometimes there is pushback which is disappointing, but Liborio notes that clients often follow their advice and the process works.

A WORD TO THE WISE

In June this year, the Law Society of England and Wales published its *Annual Statistics Report*, finding that as of July 2017, there were 139,624 solicitors with practising certificates and 181,968 individuals in total on the roll of solicitors.

As such, breaking into any market can be tricky for young lawyers starting out their careers. Scott advises young lawyers



looking to enter the arbitration practice to seek out cases with international implications, either through a pro bono case, or if they are in a large group that has many practice areas, by asking one of the arbitration practitioners to join one of their cases.

Noting the potential worries for a young lawyer, such as not knowing the law in a different jurisdiction, Scott says: “We all just figure it out, we research the law, enlist the help of our other offices around the world, or we engage the assistance of outside counsel, and once you get involved in a case that has international implications, it becomes easier each time and you realise that in most jurisdictions the law boils down to a few basic core principles and from then you’re off and running.”

Liborio advises junior lawyers to make sure they have strong legal skills, while in international arbitration, she explains that if a lawyer knows at least one or two additional languages, this is very valuable due to the international nature of the work.

Being flexible, not always an easy achievement for those with children, is also an advantage as it is a “very demanding profession because you have hearings everywhere, not all the time, but very regularly you have to meet clients in other countries and you have to travel”.

Achille recommends that young lawyers in arbitration should “not to be too shy or too impressed at the beginning and to really volunteer to do more things during the hearings”.

Young lawyers need to look for opportunities, Lewis-Gruss says, which are sometimes outside the firm, like speaking on panels, writing articles and joining different arbitration boards.

“Things like that helps with business development and helps you understand what others are doing in the field, so you are staying on the cutting edge of where our practice is,” she concludes.