

MANAGEMENT
PRACTICES
No. 6



NEGOTIATION

REDEFINING SUCCESS

Joseph Stanford



CANADIAN CENTRE
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MANAGEMENT PRACTICES No. 6

NEGOTIATION
REDEFINING SUCCESS

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A Word from CCMD

Negotiation is one of the most important things public service managers do. Many are involved in formal negotiations in which the fundamental interests and effectiveness of the federal government are at stake. Many more are involved in the informal negotiations that are an integral part of almost every transaction and relationship in a manager's daily life. To manage is to negotiate.

Recognizing the importance of negotiation to the art of public management, the Canadian Centre for Management Development has established a Negotiation, Consultation and Conflict Management Centre of which Joseph Stanford, the former Deputy Solicitor General, is one of the chief architects. In this paper, which is based on the growing theoretical literature and his own rich experience of negotiation in both domestic and international affairs, Mr. Stanford sets out some of the key elements of the negotiation process. He highlights the potential for creating value for all those involved in a negotiation process by emphasizing interests, not positions, by brainstorming for options, by employing objective standards, by nurturing good human relations and the listening skills that go with them, and by knowing when to commit to a negotiation process, or to walk away from it. Mr. Stanford also explores the

part negotiation plays in the ordinary tasks of public service managers and suggests how they can improve their managerial effectiveness by developing their skills as negotiators.

This publication is another in CCMD's *Management Practices* series. The series aims to provide succinct, practical guidance to public managers on some of the key management functions or management innovations. Comments on this or any other CCMD publication are very welcome and warmly invited.

Ole Ingstrup
Principal

Ralph Heintzman
Vice-Principal, Research

Executive Summary

Managers negotiate continuously, with superiors, subordinates, peers and clients. They negotiate for resources, mandate and the commitment of their colleagues to the vision, objectives, strategies and values of the organization.

Public service executives negotiate with all of the above and with their stakeholders about policies and programs. The whole process of reconciling competing and sometimes conflicting interests, a core function of government, involves continuous decision making by negotiation.

Inefficient negotiations take longer, cost more, produce inferior results and, in this age of "delaying," increase the burden on senior managers as difficult issues are delegated upwards, further and further away from the people closest to the issue and therefore best able to resolve it. The costs of these inefficiencies are borne ultimately by individual Canadians as consumers of government services and as taxpayers.

Effective negotiation, measured by the quality of both the agreement reached and the process by which it is reached, requires a clear understanding of what constitutes "success" in a negotiation. Getting more than your negotiating adversary and getting the most you can for yourself are two quite different

measures of success in negotiation. The former leads, by definition, to a process which is competitive, zero-sum and sometimes confrontational. It can be very hard on relationships. The latter relies on cooperation and joint problem solving to create more value for both sides than they can obtain by competing with each other. It develops and strengthens good working relationships. Such relationships are important to the effective functioning of any organization, but especially of the public service.

The skills of principled negotiation promote cooperative dynamics and more effective and efficient negotiation results. In the public service context this means significantly better decision making. Principled negotiation focuses on the interests (rather than the bargaining positions) of the parties. It creates value by identifying the most creative options for meeting the parties' interests. It relies on objective criteria of legitimacy to break out of the "test of wills" dynamic and to assist a negotiator to defend against an abuse of power by the other side. It recognizes the impact of relationships on negotiation. It addresses the importance of communication, especially effective listening, to enable the negotiator to understand the issue from the adversary's viewpoint and to transform an emotional, confrontational encounter into constructive problem solving. Finally, it encourages the negotiator to know clearly, assess realistically and improve his or her walk-away alternative to an agreement.

No one has enough time to prepare for a negotiation. A significant advantage will go to the side which uses its limited preparation time most effectively. The analytical framework of principled negotiation can greatly improve the effectiveness of preparation for and conduct of negotiations.

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I INTRODUCTION

On Friday, May 24, 1991, the House of Commons spent a full day in emergency debate provoked by allegations that the federal Solicitor General had threatened to withdraw the Royal Canadian Mounted Police from the provincial, territorial and municipal policing services they provide in eight of the ten provinces, both northern territories and almost two hundred municipalities. The Minister was alleged to have made this threat in an effort to convince the provinces to agree to a substantial increase in their payments to the federal government for RCMP services.

Much unnecessary cost, in time and money, can be avoided through a better understanding of what constitutes success in negotiation.

Consuming a full day of scarce parliamentary time over an issue that need never have become so controversial is a dramatic example of the cost of inappropriate negotiating practices, in this case related to the renewal of the ten-year RCMP policing services contracts.

A large part of this unnecessary cost, in time and money, can be avoided through a better understanding of what constitutes success in negotiation and of how to employ effectively

the analytical and communications tools which make success achievable.

The Canada-U.S. Free Trade Agreement, NAFTA, public sector collective bargaining, efforts to remove interprovincial trade barriers: these are a few of the higher profile negotiations around public issues in Canada. Much more common, however, is the constant process of reconciling and balancing the interests, often divergent and sometimes conflicting, of different individuals and sectors of our communities and our nation.

Almost all public business is carried out by processes of negotiation. The quality of these processes significantly affects the quality of government.

This is a core function of government. The processes by which we carry out these transactions deserve more attention, more thoughtful reflection, than we have traditionally given them.

Almost all public business is carried out by processes of negotiation. The quality of these processes significantly affects the quality of government. It is not too radical to suggest the current processes and practices may be substantially improved.

“How To Succeed....”

Negotiation is, in many quarters, a bad word. Its connotations are contest, confrontation, adversarial relationships and a process in which one player is the winner and another the loser. The objective in negotiation, in this popular framework, is to win, with “winning” being defined as doing better or getting more than your adversary. Despite the recent literature on

The most successful negotiators are those who define success not as beating their adversaries but as doing the best they can for themselves.

“win-win” approaches to negotiation, media reports of high profile conflicts and public negotiations as well as our daily experiences in trying to reconcile differences in the workplace all confirm that most of us experience negotiation as competitive and often confrontational.

To some, “win-win” negotiation is unattractive because it carries an implication that both sides get all they want, which is obviously unreasonable. Others, and this includes almost all of us at one time or another, find ourselves in situations where we do not want the other side to share in the “win.” We want to nail them and give them what they deserve! This is often a very understandable feeling. Still, at the very least, it can do us no harm to pause and assess rationally the cost we may be paying for indulging that feeling during the negotiation and whether there might be less costly ways of indulging it.

If our objective in a negotiation is to do better than our adversary, then negotiation is indeed confrontational, win-lose, zero-sum, simply because we have defined it that way.

But what if our negotiating objective is defined not as doing better than our “adversary” but rather as *doing the best we can for ourselves*? The difference may appear subtle, yet it is fundamental. It leads to a very different way of conducting the negotiation.

One of the most significant conclusions of the research in negotiation carried on at Harvard University and elsewhere during the last fifteen years is this: the most successful negotia-

tors are those who define success not as beating their adversaries but as doing the best they can for themselves.

In the vast majority of negotiating situations, far more often than we suspect, the parties will each do better for themselves if they cooperate in developing the best solution to their problem than if they compete with each other. In almost all negotiations, in order to get the best possible deal for yourself you will have to find a way to ensure that the other side does well too.

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When this is the negotiating dynamic, the negotiators are no longer simply adversaries each trying to get the largest possible share of a fixed amount of value at stake, the largest piece of the "pie." First and foremost, they are joint problem solvers seeking to create the largest possible pie – and then to agree upon an equitable sharing of the larger pie they have created.

The two views of negotiation, as competitive or cooperative, each have validity in different negotiating situations. Some negotiating situations really are zero-sum; what you win, I lose. But that is not the case nearly as often as we are inclined to think. In almost all negotiating situations the game is not zero-sum. There are solutions available which will meet the interests of both sides better, and the parties are more likely to find the best solution if they cooperate.

To identify these situations and to deal with them in a way which maximizes his or her gains, a negotiator will find it helpful to be familiar with the concepts and analytical tools which have become associated with principled, interests-based negotiation.

II ANALYZING NEGOTIATIONS

In *Getting to Yes*,¹ Fisher, Ury and Patton of the Harvard Negotiation Project identify a framework for analyzing a negotiation. This analysis provides a basis upon which to prepare for a negotiation, to conduct it at the table and to find the way out of the impasses which lead to confrontation and wasted time and effort.

Interests, Not Positions

Many negotiations take the form of an opening exchange of positions followed by a "dance" of concessions.

The first step is to identify the *interests* of the parties, their needs, wants, desires, concerns, fears and all the other factors which lead them to take the positions they adopt. This is not as simple as it may sound. Many negotiations take the form of an opening exchange of positions followed by a "dance" of concessions. Those most skilled at conducting this dance eventually "win," in the sense of getting the

better of their adversary, which may help the negotiator feel good but seldom secures for his or her clients all the benefits which were available to them through a different approach.

Because we are so accustomed to bargaining over positions, we often fail to take the time to obtain as much helpful information as we can about the other side's interests. More surprisingly, frequently we do not even think through our own interests as thoroughly as would be helpful.

Understanding the other side's perception of the issue does not mean agreeing with it; it does mean knowing what concerns will have to be addressed in any solution the other side would be prepared to agree to and implement.

During the negotiations at Camp David which led to the Israel-Egypt peace treaty of 1979, one major issue was control over the Sinai. The Egyptian position was that every square kilometre of the Sinai must be returned to Egypt. The Israeli position was that Israel must control at least the eastern half of the Sinai. The positions were clear, firm – and irreconcilable.

It was only by searching for the interests behind these positions, the reasons why each side advocated the position it did, that a solution to the impasse emerged. To simplify, the Egyptian interest was sovereignty over all its territory while the Israeli interest was security from Egyptian mobilization on its borders. Returning the whole of the Sinai to Egyptian sovereignty but with restrictions on the location of armaments, supervised by an international force, met the vital interests of both sides. The positions were irreconcilable; the interests were not.

Because success in negotiation depends so much upon understanding the other side's interests, most very successful negotiators have the ability to put themselves in the other side's shoes, to see the problem as the other side sees it. Understanding the other side's perception of the issue does not mean agreeing with it; it does mean knowing what concerns will have to be addressed in any solution the other side would be prepared to agree to and implement.

Creating Options, Creating Value

One very effective way of creating value in negotiation is to brainstorm, to separate the process of inventing options from the process of evaluating them.

Negotiators who have a sound understanding of both their own and the other side's interests in the negotiation are much better able to conceive of various ways in which these interests might be satisfied, that is, to develop *options* for agreement. If the negotiators both have this understanding – and a sufficient level of confidence in one another – they are able to conduct this exercise jointly, with a greater likelihood that they will develop a solution which gains the maximum value for both sides.

One very effective way of creating value in negotiation is to brainstorm, to separate the process of inventing options from the process of evaluating them. The fundamental rule of brainstorming is that ideas may be put forward with absolutely no commitment or even initial debate, thus allowing the creativity to flow freely, stimulate thinking and provoke ideas that would almost certainly never see the light of day in the competitive

dynamics of positional bargaining. Even far-out ideas can provoke different ways of thinking about solutions and it is often a new way of thinking about the problem which allows the truly excellent solution to replace the merely adequate.

The Importance of Objective Standards

Negotiation involves not only creating value – enlarging the pie – it also necessarily involves claiming value – determining how the pie is to be cut. In *The Manager As Negotiator*, Lax and Sebenius refer to the negotiator's dilemma. "Negotiators must manage the inescapable tension between cooperative moves to create value for all and competitive moves to claim value for each."²

It is much easier to persuade the other side to accept a proposal if it is based upon *objective criteria* which are independent of the wills of either of the negotiators.

Often in positional bargaining and competitive negotiation, this becomes a contest of wills, of personalities. Moreover, the two processes of creating and claiming are commonly carried out at the same time. When that happens, the tension and competition around claiming severely impair the process of creating. As a consequence, value is left on the table; the negotiation produces an inferior result.

One way to remove, or at least significantly diminish, this negative effect of claiming upon the negotiation dynamic is to avoid turning the claiming process into a test of wills, with its inevitable perception of an eventual winner and loser (resulting, so often, in two losers and no

winner). It is much easier to persuade the other side to accept a proposal if it is based upon *objective criteria* which are independent of the wills of either of the negotiators. This is so because it enables both sides to feel they have been treated fairly and because the criteria make it easier for the negotiators to persuade their principals of the merit of the proposal.

Identifying interests, inventing options and then choosing the best among them enables the parties to create maximum value for themselves and to share that value in a way which permits both sides to feel they have been treated fairly.

Laws, regulations, professional standards, industry practices, rules of fairness such as reciprocity, community standards of behaviour, are some examples of objective criteria, that is, standards which do not depend for their validity on the will of either party. A negotiator who believes he or she has greater authority or a more forceful personality than the negotiator for the other side may seek to turn the negotiation into a test of wills or authority. The other side can put the negotiation on a more level playing field by invoking objective criteria and the authority behind them.

The Impact of Relationships

Identifying interests, inventing options and then choosing the best among them enables the parties to create maximum value for themselves and to share that value in a way which permits both sides to feel they have been treated fairly. But this is not an easy process. It requires discipline and professionalism.

A good working relationship involves mutual respect, good communication, mutual understanding, reliability and an acceptance of each other's right to differ in good faith on the merits of the issue.

Among the factors which determine the quality of this process and therefore of its results, the two most important are probably the effectiveness of communications between the parties and the nature of the relationship between them.

Many negotiators find themselves in the following dilemma: to succeed in this negotiation, I must be very firm on the substance. But if I hold firm, my *relationship* with the other negotiator will suffer. I must therefore choose between success on the substance (being a "hard" negotiator) and

maintaining a good relationship (being a "soft" negotiator). This is a particularly awkward dilemma when our negotiations are with people with whom we deal over and over again, as in the workplace or the home.

This is a false dilemma. Not only is the choice unnecessary, but we are likely to create inefficient agreements (i.e., leave value on the table, unclaimed by either party) if we behave as if one must choose between the substance and the relationship. A good working relationship is one that can deal effectively with problems:

"The working relationship we need is one that produces a solution that satisfies the competing interests as well as possible, with little waste, in a way that appears legitimate in the eyes of each of the parties. ...A robust relationship should be able to produce such outcomes in the face of differences in values, perceptions and interests."³

A good working relationship involves mutual respect, good communication, mutual understanding, reliability and an acceptance of each other's right to differ in good faith on the merits of the issue. A negotiator who reflects these qualities when dealing with the other side is most likely to encourage similar behaviour from the other party. Most important, it is possible to behave in this way – thus improving the relationship between negotiators – without making any concession on the substance of the issue.

Maintaining a good relationship with negotiating interlocutors, especially "hard" ones, requires a firm commitment to separating relationship issues from those that are substantive.

This approach increases the likelihood that your interests will be considered on their merits. It is much more difficult for the other party to persuade you to "buy" a good relationship with concessions on substance if you show that you are able to make clear distinctions between issues of substance and those of relationship, and that you can address both constructively.

Maintaining a good relationship with negotiating interlocutors, especially "hard" ones, requires a firm commitment to separating relationship issues from those that are substantive. Weigh carefully your long-term interest in a good relationship, then be constructive in developing this relationship, regardless of how you perceive the conduct of the other side – without, however, sacrificing issues of substance for the relationship.

Listen Hard

The second element which determines the quality of the process of creating value in a negotiation is *communication*. Obviously, a relationship of trust and confidence will promote good communication because we will be prepared to share more information, with less concern that our openness will be turned to our disadvantage. But most relationships do not start out that way. Getting them to that point has a lot to do with communication. More specifically, it has to do with *listening*.

The most important communications skill for a successful negotiator is not the ability to speak: it is the ability to listen effectively.

Successful executives have achieved their positions in part by demonstrating the ability to articulate their positions clearly, comprehensively and persuasively. Indeed, as we develop our communications skills, the emphasis traditionally has been placed on our speaking and writing ability.

Yet the most important communications skill for a successful negotiator is not the ability to speak: it is the ability to listen effectively.

We tend to think of the time when the other side is speaking as their "air time," when we are on defence. They have the initiative, and our principal activity while they are speaking is to identify the weaknesses in what they are saying and to begin composing our rejoinder. We are not listening to understand so much as we are listening to disagree, to rebut.

Yet listening to understand, and conveying to our interlocutors that they have been understood, enhances our negotiating power. Effective listening improves our ability to influence our interlocutor and enables us to transform situations which are emotional or where the parties are talking past each other, into rational problem-solving encounters.

This kind of listening is not easy. It requires a commitment to understanding the other side which is difficult to make unless one firmly believes that doing so will enhance one's negotiating power and advance one's interests. It requires the self-control to turn down your internal voice which is rebutting your interlocutor as he or she speaks. (When two voices are talking at the same time, it is impossible to understand either of them, so preparing your rebuttal while the other side is talking is not good rebuttal practice either.)

Decision Time: Commit or Walk Away

When interests have been fully explored, good options have been generated and the best among them identified, it is "decision time." The decision each party must make is whether the best option on which the parties have been able to agree is better than the best alternative course of action it can pursue without an agreement. If it is, the party will *commit* to an agreement; otherwise it will pursue its best *alternative*.

When interests have been fully explored, good options have been generated and the best among them identified, it is "decision time."

Commitments should be made only at the end of the process, when interests have been explored and all the options for satisfying those

interests have been identified. One of the reasons positional bargaining is such an inefficient process is that it involves the negotiator committing to each option (position or concession) he or she puts on the table.

If you put forward only those options to which you are prepared to commit at a time when you have not yet fully explored the interests involved, the opportunities for stimulating creativity are effectively stifled. Imaginative options are missed and, at the end of the negotiation, the agreement reached leaves value on the table, unclaimed by either party.

One of the most important steps in preparing for a negotiation is identifying what will happen if no agreement is reached. What alternative course of action will you follow to satisfy your interests if there is no agreement? Can you improve that alternative? You need to know this in order to know whether to agree to the deal on the table at the end of the negotiation. If the deal is not as good as your best walk-away alternative, obviously you should refuse it. You can make that judgment only if you have a clear idea of what your best alternative is.

Effective Negotiators...

- aim not at “winning” but at doing the best they can for themselves;
- focus on the interests of both parties;
- view the process as joint problem solving with the other side;
- base their negotiation on objective criteria such as laws, standards or practices;
- strive to develop a constructive working relationship with the other party;
- listen to understand, not to rebut;
- are prepared to pursue the best alternative if no agreement is reached.

You also need to make the best assessment you can of the other side's walk-away alternative because they will be asking themselves the same question. Unless the deal is better for them than their best alternative, they will almost certainly refuse it. This tells you to what extent the other side's interests must be satisfied if they are to accept the deal.

III PRINCIPLES IN PRACTICE: A CASE STUDY

The federal-provincial negotiation for the renewal of the ten-year RCMP policing services contracts, referred to earlier, offers an interesting case study in the application of some of these principles.

The federal-provincial negotiation for the renewal of the ten-year RCMP policing services contracts offers an interesting case study in the application of some of these principles.

The main issue was money. Eight provinces and two territories pay the federal government for the RCMP's provincial/territorial policing services according to a formula which requires them to pay a percentage of a cost base for the service. The cost base is somewhat arbitrary in that it does not include all the costs of actually delivering the service.

The two sides firmly established their positions before the negotiation began. In past renewal agreements, the federal government had succeeded

in persuading the contracting jurisdictions to increase their percentage share from around 50 percent to 70 percent of the cost

The deteriorating quality of the federal-provincial dialogue led to misunderstandings, recriminations and, eventually, the allegation which provoked the emergency debate in the Commons.

base. The federal position in the negotiation was that the provincial share must be further increased to 85 percent. The contracting jurisdictions, already hit by a succession of federal budgetary measures they had characterized as "off-loading," were determined not to see their percentage share increase at all.

Once these positions had been firmly established, the parties met for their first negotiating session. It lasted about an hour, just long enough for the provincial/territorial representatives to say they were not authorized even to talk about an increase in

cost shares and for the federal side to say it could not negotiate under such a restriction.

The resulting impasse lasted about a year and a half. The deteriorating quality of the federal-provincial dialogue led to misunderstandings, recriminations and, eventually, the allegation which provoked the emergency debate in the Commons. This period of acrimonious and wasteful wheel-spinning need never have happened.

The federal position, established before the negotiations began, was that the provinces/territories must increase their share of the costs by 15 percent. The *interests* behind this federal position were almost exclusively financial. Greater cost recovery for RCMP services was one element in the government's effort to address the federal deficit. The provincial/territorial

interest was in keeping any cost increase to a minimum, but there was also an interest in increasing the level of policing service provided under the contract.

Were there *options*? Were there ways in which the federal interest might be satisfied other than by increasing the provincial/territorial cost share? Indeed there were. The most obvious was to include more of the actual costs of delivering the service in the cost base to which the percentage formula was applied.

Were there *criteria* or objective standards which might make one of these options more likely than the other to be acceptable? Again, indeed there were. An increase in percentage points could not be justified by reference to any objective factors. It was essentially arbitrary and the message this demand sent to the other side was simply "We want more money!" Not surprisingly, the other side's response was "We don't want to give you any more!" The "negotiation" became simply a test of wills. The provinces and territories, already feeling abused by previous "off-loading" measures, were determined not to be victimized again.

People like to be treated fairly, and the large majority of people also like to feel they treat others fairly.

But a proposal to include in the cost base additional costs actually incurred in the delivery of RCMP services sent a different message to the provincial/territorial negotiators, as well as to their treasury and finance

officials at home. The message was "The cost-sharing formula should be based on what it really costs to provide the service." People like to be treated fairly, and the large majority of people also like to feel they treat others fairly. Resistance to an option

The quality of a negotiation must be measured by both the quality of the decisions which result from it and the time and energy consumed by the negotiation/decision-making process.

is likely to diminish if the option is founded upon principles of fairness.

The quality of a negotiation must be measured by both the quality of the decisions which result from it and the time and energy consumed by the negotiation/decision-making process. The RCMP contract negotiations did well by the first standard, but left much room for improvement in the second.

In the agreement eventually concluded, the percentage shares were unchanged, new elements were added to the cost base and the financial objective set by Treasury Board for the negotiation was fully met. Both sides were so satisfied with the result that the agreement was concluded for twenty years, instead of the customary ten. Yet the eighteen months of acrimony which preceded the period of effective negotiation cost millions of dollars, partly in wasted time and effort (including the costs of the parliamentary debate) but mostly in foregone federal cost recovery because the old, less favourable (to Ottawa) agreement had to be extended for a year while the negotiations dragged on.

IV THE PUBLIC SERVICE MANAGER AS NEGOTIATOR

We all tend to think of negotiation as being about formal processes for dealing with collective labour agreements, arms control, international trade, constitutional amendment or the settlement of large lawsuits. We entrust these processes to people expert in both the substance of the issue and process of

negotiating in the relevant culture, whether that of labour unions or international security.

The reality is that we are all negotiators. The more skilful we are at influencing others, the more we will be able to satisfy our objectives and those of the people we represent.

The reality, however, is that we are all negotiators. We negotiate our way through life – at home, at work, at play. In all these environments, we are constantly seeking to influence others to act in ways which will promote our personal and professional objectives. The more skilful we are at influencing others, the more we will be able to satisfy our objectives and those of the people we represent.

Modern management is about vision, leadership, coaching and mentoring, empowerment and persuading the members of one's work unit to buy into the unit's mission, values and strategies.

For our present purposes, let us focus on the environment of the public service executive. Traditionally, we as managers have accomplished our objectives through the exercise of authority within a hierarchy. But the experience of others has shown that, with a modern work force, especially a modern professional work force, there are better ways to mobilize human resources, to stimulate the creative energy and enthusiasm of the people on whom we rely for our results, the people who will do the actual work, deliver the program on

the line. If we fail to learn and apply these better ways, we will be beaten in an increasingly competitive job market by those who do apply them.

"...negotiation is inherent in managerial tasks involving superiors, subordinates and those outside the chain of command...managers negotiate with organizational and other superiors over purposes, authority and resources (mandates) and...they negotiate with subordinates and those outside the chain of command to produce desired results."⁴

Modern management is about vision, leadership, coaching and mentoring, empowerment and persuading the members of one's work unit to buy into the unit's mission, values and strategies. This "buy-in" cannot be compelled or directed: it must be negotiated.

Modern management is about the effective use of scarce resources. The allocation of resources within an organization is

one of the most important and difficult negotiations in which a manager engages. The quality of decisions taken around resource allocation, and the efficiency of the decision process, will significantly affect the organization's "bottom line," whether that is in a profit and loss statement or an evaluation of service to the public.

Modern management in the public service is about consulting with stakeholders to develop policy options which best promote the interests of different sectors of the community. These

Modern management at the senior levels of the public service is almost entirely a series of negotiations, mediations and occasionally arbitrations.

interests often diverge and occasionally conflict. The public policy decision-making process lends itself particularly well to the interests-based approach to conflict resolution. Many public consultations include a large element of negotiation. The government seeks not only the views of the participants in advance of a policy decision but also a "buy-in" from participants. That result, where it is achievable, cannot be mandated; it can be negotiated.

Modern management at the senior levels of the public service is almost entirely a series of negotiations, mediations and occasionally arbitrations. All senior managers are only too familiar with the problem of upward delegation of responsibility. Issues are referred to senior levels because those closer to the working level are unable to reach agreement. In this age of delayering, with fewer levels of management, senior managers are even less able than in the past to afford these kinds of encroachments upon their time.

Managers who find their subordinates delegating their disagreements upwards can reduce the demands placed upon them and improve the quality and efficiency of their unit's decisions by using these opportunities, not to arbitrate the disagreement by taking the decision themselves, but to mediate the dispute. This requires the investment of a little more time at the beginning, to coach the subordinates in constructive, problem-solving approaches to resolving their disagreements.

The return on this investment of time is a reduction in the number of further differences which come to the manager's desk. These occasions provide opportunities for the most effective kind of learning, that which takes place on the job. Managers can accomplish this on-the-job training in less time (lower investment) and with better results (higher return) if they have a clear understanding of the analytical and communications skills which go into negotiating good decisions efficiently.

V A COST-BENEFIT ANALYSIS

In a large majority of cases in which we negotiate, each negotiator will do better for himself or herself by adopting a *cooperative* rather than a *competitive* approach.

A certain amount of the advocacy for so-called “win-win” or joint-gain negotiations comes across as an appeal to idealism, the sort of stuff that feels good to the believer, but if you try it in the “real world,” hard-nosed bargainers will walk all over you.

For those who truly believe that “If only we can communicate honestly and openly and work together, we can resolve any problem,” an appeal to altruism may be sufficient motivation

to go to the trouble of developing new skills. For the majority of us, however, who believe nothing of the kind, some other motivation is necessary if we are to take the time and make the effort to develop our skills in principled negotiation.

That motivation is, first and foremost, self-interest. In a large majority of cases in which we negotiate, each negotiator will do better for himself or herself by adopting a *cooperative* rather than a *competitive* approach. This is true whether or not

the other side adopts the same approach, although the negotiator will probably have to work harder if the only negotiating style the other side knows is competitive positional bargaining.

Three other major benefits of principled negotiation are of special relevance to the public service:

- It leads to *better decisions* in the sense of decisions which better satisfy the needs of the parties. The interests in play are more fully explored and a conscious effort is made to develop options for agreement which most fully meet those interests. The opportunity for gain, the "pie," is expanded by the process, not diminished.
- The processes for reaching these better decisions are *less time-consuming and costly*. The RCMP contracts are an example on a large scale, but we do not have to think for very long to be aware of disputes in our own daily work which consume inordinate amounts of time in costly

Principled Negotiation...

- focuses on the interests rather than the bargaining positions of the parties;
- creates value by identifying the most creative options for meeting the parties' interests;
- recognizes the impact of relationships on negotiation;
- addresses the importance of communication, especially effective listening;
- transforms an emotional, confrontational encounter into constructive problem solving;
- encourages a clear and realistic assessment of the walk-away alternative to an agreement;
- promotes cooperative dynamics and more effective and efficient negotiation results.

and unproductive wheel-spinning. It need not be that way. We can choose to change it.

- *Relationships* among those engaged in resolving these disputes *can be strengthened* rather than weakened by the resolution process, with payoffs in the quality of our subsequent dealings with one another. In the public service, almost all our negotiations are with people with whom we will deal again. Negotiations which place a strain on relations exact a price in the quality of both present and future decisions. But if our negotiations improve our relationships by creating an environment of joint problem solving, we strengthen rather than weaken our ability to work well together in the future.

It is important for public servants to be able to deal with difficult issues firmly and on their merits without creating burdens on our relationships which will incur costs, personal and professional, in the long term.

It is important for public servants to be able to deal with difficult issues firmly and on their merits without creating burdens on our relationships which will incur costs, personal and professional, in the long term.

Are these claims exaggerated? Can these benefits be achieved in the real world "out there"? The Harvard Business School recently decided to make a course in principled negotiation a mandatory element of the first-year MBA program. This suggests a judgment in the business world that cooperative negotiation is good management and good business. It really can affect the bottom line.

If those are the benefits, then what are the costs? What is the downside? The principal demand this approach to problem solving places upon its practitioners is that they must be prepared to assume responsibility for finding the best solution available and finding it themselves, not referring the problem to someone else to decide for them.

A significant advantage in negotiation will go to the side which makes the best use of its limited preparation time. The time we spend preparing is not so much an expenditure as an investment.

Too often, we deal with difficult issues by “passing the buck.” We may pass it to the boss, the lawyers, even the judge. Our objective is to get the problem off our desk and let someone else fix it for us. Generally, they will fix it, but they will not do as good a job as those directly involved because they do not know the subject as well. Referring a dispute to a third party for decision may break a deadlock – and in that way save time – but it will often result in a less optimal result than the parties themselves might design. And the parties are not

as committed to implementing a third party’s decision as they would be to carrying out a solution they had agreed to themselves.

The second demand this approach places on its practitioners is to use the time spent preparing for negotiations as effectively as possible. And it provides the tools and skills to enable this to be done. We are all short of time. A significant advantage in negotiation will go to the side which makes the best use of its limited preparation time. The time we spend preparing is not so much an expenditure as an investment. The return on that investment is in both a better result and the more effective

use of time spent in the actual negotiation, which translates into less time spent in negotiation. A few days spent preparing differently at the beginning of the RCMP negotiations would almost certainly have saved months of time later on, including a full day of parliamentary time.

Perhaps the greatest demand placed on a negotiator is the self-discipline to keep a focus on the negotiating objective, to avoid being distracted into pursuing objectives different from those brought into the negotiation.

Finally, and this is perhaps the greatest demand, it requires of the negotiator the self-discipline to keep a focus on the negotiating objective, to avoid being distracted into pursuing objectives different from those brought into the negotiation. In the negotiation simulations we conduct in our workshops it often comes as a surprise, even to experienced negotiators, to recognize the extent to which their personal agendas (often related to their feelings about the other negotiator) get in the way of their professional agendas. When that happens, it is the client who pays the price for the negotiator's indulgence. In govern-

ment, that means the department or agency, and eventually the public.

It is difficult to "keep your eye on the ball" in tense, confrontational, sometimes emotional situations. But there are ways of conducting such dialogues which make the task less difficult, which create the possibility for transforming tense confrontation into constructive problem solving.

VI CONCLUSIONS

- We are all negotiators. Negotiation is an integral part of management.
- The negotiation skills of public servants will significantly affect the quality of the decisions they take and the efficiency of the government's decision-making processes.
- Negotiating to do better than the other negotiator and negotiating to do the best you can for yourself are not the same negotiating objectives.
- Many situations which appear to be zero-sum, win-lose, offer opportunities for joint gains. In such situations, a competitive negotiation will leave value on the table which the two sides could have shared.
- In the large majority of situations, you will do better for yourself by cooperating with the negotiator opposite you than by confronting or competing with him or her. It is in your own interest to ensure that the other party also gains from the negotiation.
- Your chances for maximizing your gains at the negotiation table are greater the more familiar you are with the processes of principled, integrative negotiation.

- Public policy and public sector management issues are especially likely to lend themselves to principled, integrative, problem-solving approaches to conflict resolution.
- If these propositions are sound, every public service manager will benefit from a knowledge of the concepts and skills of principled, interests-based negotiation. And the practice of these skills will deliver to Canadians a higher quality of government at less cost.

Notes

1. *Getting to Yes: Negotiating Agreement Without Giving In*. 2nd ed. Roger Fisher, William Ury, and Bruce Patton, New York: Penguin Books, 1991.
2. *The Manager As Negotiator: Bargaining for Cooperative and Competitive Gain*. David A. Lax and James K. Sebenius, New York: The Free Press (a division of Macmillan), 1986, page 6.
3. *Getting Together: Building Relationships As We Negotiate*. Roger Fisher and Scott Brown, New York: Penguin Books, 1988, pages 8-9.
4. *The Manager As Negotiator: Bargaining for Cooperative and Competitive Gain*. David A. Lax and James K. Sebenius, New York: The Free Press (a division of Macmillan), 1986, page 264.

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About the Author

Joseph Stanford's career in the federal public service began over thirty years ago when, after having practised law in Calgary, he joined the Department of External Affairs in 1960. He served in Paris, Kingston (Jamaica) and Bonn, was seconded to the External Aid Office (the predecessor to CIDA) and worked at External Affairs headquarters in the Legal and Commercial Policy Branches.

In 1979 he was appointed Canadian Ambassador to Israel and concurrently Canadian High Commissioner to Cyprus. His senior assignments at headquarters included Assistant Under Secretary for United States Relations; Assistant Deputy Minister, Africa and Middle East; Assistant Deputy Minister, Europe; and Associate Under Secretary of State for External Affairs. From 1988 to 1993, Mr. Stanford was Deputy Solicitor General of Canada.

Mr. Stanford has been directly involved in a number of major bilateral and multilateral international negotiations on legal, commercial policy and nuclear proliferation issues and on the constitution of international organizations. His responsibilities in the policing, corrections and national security sectors, as Deputy Solicitor General, involved him in the conduct of negotiations and management of conflict situations within Canada. In 1993, he joined CCMD as a Senior Fellow specializing in the areas of negotiation, consultation and conflict management.