

CPD-LIVE 2019
FOCUS

STRATEGIC NEGOTIATION
PRACTICE MANAGEMENT

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Peter Spence has over 20 years' experience in negotiation practice, consultation, research, development and delivery of training interventions across the diverse fields of crisis, commercial and social negotiations. He is the founding principal of Strategic Planning and Negotiation Services (SPANS) and the organization's lead negotiation consultant, specialist agent, coach and trainer. Peter has prepared and delivered negotiation skills training and presentations to company Executives, CEOs, Directors, finance and medical professionals across a diverse range of industries, including Health, Finance, Insurance and Mining. His experience has extended to a variety of commercial and crisis negotiations and public dispute mediations.

Peter is a former crisis negotiator and has completed the Harvard Law School Program on Negotiation "Teaching Negotiation in the Organisation" course. He has also presented at international, national, state and regional forums on topics ranging from knowledge management, negotiations, disaster planning and response, Health partnerships, security, change management and developing an effective collaborative networks.

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- Study conventional approaches to negotiation and their limitations
- Encourage participants to reflect upon the strengths and limitations of their own theory and style of negotiation
- Introduce participants to alternative approaches to negotiation that are designed to create value, develop productive and durable business relationships
- Highlight barriers to effective negotiation and methods of overcoming those barriers
- Demonstrate that negotiation is a process of *both claiming and creating value*
- Understanding and applying negotiation power
- Demonstrate how participants can build the collaborative advantage to produce outcomes that will better satisfy their interests and goals

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STRATEGIC NEGOTIATION

'The greatest challenge to negotiating a successful agreement is not the other side, it is ourselves'

The fundamental theories and strategies outlined in this presentation are designed to challenge our own approach so that we may get from No to Yes in achieving what we want from Negotiations.

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SUCCESSFUL NEGOTIATIONS REACH AGREEMENTS THAT:

- Satisfy the Interests of both Parties
- Are Efficient
- Durable, and
- Strengthen Relationships

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Poorly prepared and managed Negotiations result in:

- Failure to reach an agreement where potentially good deals exist but are missed
- Fragile agreements that come undone
- Potential value left behind on the negotiation table
- Ongoing conflict that may damage relationships and add to costs (i.e. litigation, costly disputes)

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CONVENTIONAL NEGOTIATION MODEL

Positional Bargaining:

- Positional Bargaining is the traditional form of Negotiation - also referred to as Distributive Bargaining.
- Negotiators who adopt this approach make extreme claims in an attempt to persuade, force, pressure or deceive the other side into moving toward their own preferred position.

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CONVENTIONAL NEGOTIATION MODEL

- Aligned to a competitive system where negotiators assume that resources are limited or fixed and that any gains can only be achieved at the expense of the other side
- Accordingly, this adversarial approach to negotiation is associated with 'win/lose' or sum/zero outcomes.

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CONVENTIONAL NEGOTIATION MODEL

Positional or Distributive Bargaining is identified by the following key features:

- Competitive, adversarial bargaining based upon positional claims
- Belief in limited or fixed resources – 'fixed pie' mentality
- Identified with Zero/Sum or 'Win/Lose Outcomes
- Suited to single dimension and simple issues

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CPD-LIVE 2019 FOCUS **CONVENTIONAL NEGOTIATION MODEL**

- Culturally understood
- Requires little preparation and is easy to use
- Outcomes are predictable
- Communication tends to be one way (transmission approach)
- Used to divide scarce resources when long term or future relationships are not important or unlikely

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The Bargaining Zone determines the possibility of reaching an agreement & your bargaining success

- Define the Zone Of Possible Agreement (ZOPA)
- The ZOPA is defined by each parties Reservation or Resistance Point or Price
- The Resistance Point is determined by the Parties Best Alternative to a Negotiated Agreement (BATNA)
- A BATNA is based upon your fall back or walk away position

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CPD-LIVE 2019 FOCUS **ZONE OF POSSIBLE AGREEMENT (ZOPA)**

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BARGAINING ZONE - BATNA

The parties BATNA:

- Sets the limits of the ZOPA
- Serves as a benchmark for Negotiation
- Sets the basis for your negotiation strategy
- Is different to your aspiration price

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BARGAINING ZONE

- To often, parties enter negotiations focused upon what they want (aspiration price or position) rather than what they stand to lose if there is no deal- Consider your Worse Alternative to a Negotiated Agreement (WATNA)
- Focus upon Improving upon your BATNA or 'bottom line' to **strengthen your negotiation position and improve your negotiation power**

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ALTERNATIVE MODEL OF NEGOTIATION

Principled Negotiation:

- Principled negotiation has emerged as an alternative approach to negotiation developed by Roger Fisher and William Ury of the Harvard Negotiation Program.
- Also referred to as interest-based bargaining or 'negotiating on the merits'

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FOCUS ALTERNATIVE MODEL OF NEGOTIATION

Principled Negotiation:

- Adopts a collaborative problem solving approach that attempts to meet the substantive and legitimate interests of both parties involved
- Resolves conflicting interests fairly, preserves relationships and creates long lasting durable agreements.
- This form of negotiation seeks a 'win/win' outcome

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FOCUS INTEREST BASED NEGOTIATION

Principled or interest based negotiation is usually identified by the following features:

- Collaborative Problem Solving
- Separates people or emotional issues from substantive problems
- Is focused on interests rather than positions
- Seeks to generate or invent options for mutual gain relying upon an abundance mentality to create value
- Integrative Bargaining

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FOCUS INTEREST BASED NEGOTIATION

- Negotiation is based in terms of objective criteria or fair acceptable standards as issues are 'negotiated on merits'
- Encourages the sharing or disclosure of information
- Seeks 'Win/Win' outcomes
- Creates Durable agreements
- Builds and preserves long term relationships
- Involves strategic approaches to communication

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- 60 to 80% of what will be achieved through negotiation is attributed to the preparation process
- Research into negotiation has found that people often under prepare for negotiation or prepare in the wrong ways
- Negotiators spend a disproportionate amount of preparation time in planning what they want to get out of negotiation
- Focus more on what you may end up with if there is no agreement rather than what you want to get out of the negotiation

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FOCUS **PREPARING FOR NEGOTIATION**

- Prepare to suggest mutually beneficial options
- Anticipate perceptions – likes, bias, bargaining style etc.
- Prepare objective criteria (standards) to support your proposals
- Plan your negotiation process
- Be flexible and prepared to adapt
- Base your preparation around the following 7 key elements of Negotiation

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- Identify and reflect upon Negotiation Styles – theirs and yours
- Clarify your mandate
- Understand your interests
- Think about and try to identify their interests
- Analyze your BATNA
- Work on how you can improve upon your BATNA
- Estimate their BATNA

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7 KEY ELEMENTS OF NEGOTIATION

- Relationship
- Communication
- Alternatives
- Interests
- Options
- Legitimacy – Fair objective standards
- Commitment

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NEGOTIATION STYLES

Focus upon substantive outcomes

Focus upon Relationships

Accommodation	Collaboration
Compromise	
Avoidance	Competition

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MUTUAL GAINS APPROACH

Mutual Gains Negotiation is based upon the Principled Negotiation Theories of Fisher, Ury and Patton.

1. Separate people from the problem
2. Focus upon interests, not positions
3. Invent Options for Mutual Gain
4. Use Objective Criteria to set legitimate principles for decision making
5. Improve your BATNA

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FOCUS SEPARATING PEOPLE FROM THE PROBLEM



- Be Soft on the People and Hard on the Problem
- People problems (emotions) often become entwined with the objective, rational basis for the problem
- Do not ignore the people problems – disengage them from the substantive problem and treat them separately

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FOCUS SEPARATING PEOPLE FROM THE PROBLEM

- Enables you to treat each other as human beings, with understanding, empathy and respect
- Encourage participants to collaborate for the purpose of attacking the problem and not one another

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FOCUS FOCUS UPON INTERESTS, NOT POSITIONS

- Positions often mask what you really want
- Positions often increase people or emotional problems - people issues then take over from substantive issues or interests
- People tend to dig in to defend their positions even when this process may not be in their best interests
- Arguing over positions may contribute to an escalation of the problem resulting in an inefficient and unwise outcome.

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FOCUS UPON INTERESTS, NOT POSITIONS

- Emotions become tied to positions
- By analysing, identifying and focusing on resolving interests, any resulting agreement will be based more upon merit
- A focus upon positional bargaining undermines relationships

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INVENT OPTIONS FOR MUTUAL GAIN

- Avoid searching for a single answer and bargaining over a fixed pie - enlarge the pie and increase value
- Generate options without judging them – brainstorm ideas and possible solutions without deciding or committing
- Search collaboratively for mutual gains – Results in Win/Win outcomes, increases value to the agreed outcome
- Search for shared interests
- Search for different interests that may complement one another to build value –trade across differences

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USE OBJECTIVE CRITERIA

- Without rational, objective standards on which to base your negotiation, the negotiation process degenerates into bargaining over positions and not upon the underlying principles or interest of either party
- Insist that the outcome reflects some reasonable or fair standard that is independent of the will of either party
- Outcomes based upon fair principles tend to be more durable, enforceable and preserve relationships

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BALANCING THE TENSION BETWEEN CREATING AND CLAIMING VALUE

- While you may create value during the negotiation process, at the end of the day you will still have to divide the pie
- Mutual Gains or 'win/win' negotiations do not necessarily translate to equal outcomes – rather the objective is for all parties to gain (win) more than what they would achieve if there was no deal
- The mutual gains approach balances the tension between creating and claiming value

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CREATING VALUE

- Competitive approaches to negotiation focus upon 'claiming value' rather than 'creating value' (distributive bargaining resulting in win/lose or zero/sum outcomes)
- Collaborative and co-operative approaches to negotiation focus upon 'creating value' (integrative bargaining resulting in win/win outcomes – mutual gain)
- Strategies such as empathy, active listening, seeking information from the other party are signposts for co-operation

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STEPS TO CREATING VALUE

- Explore interests on both sides
- Suspend criticism or judgment
- Invent without committing (Brainstorming, generating options)
- Generate options and packages that 'make the pie larger' (integrated diversity – package items that parties value differently)
- Use neutrals to improve communication

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FOCUS USING 'BETS' TO CREATE VALUE

Contingency Contracts or 'bets' may be used to Create Value as they assist Negotiators to:

- Build on their differences (add value by trading on differences)
- Diagnose the honesty of the other side
- Reduce Risk through Risk Sharing (Insurance)
- Increase the incentive of the parties to perform at the stated or contractually agreed performance levels (NBO)
- Manage Decision Making Biases
- Solve problems of trust, when one side has information the other side lacks

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FOCUS DISTRIBUTING VALUE

- In the end the value that has been created must be distributed
- Tension between claiming and creating value
- Can lead to an impasse in reaching an agreement
- Must approach value distribution with a view to preserving relationships

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FOCUS DISTRIBUTING VALUE

- Discuss objective standards or criteria for 'dividing' the pie – pivotal strategy to distributing value
- Mean what you say - promises must be lived up to – design self-enforcing dispute resolution process

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CPD-LIVE 2019 FOCUS **STEPS TO DISTRIBUTING VALUE**

- Behave in ways that build trust – approach the negotiation process with trust and honesty and not deception
- Use neutrals to suggest possible distributions
- Design nearly self-enforcing agreements – Dispute Resolution process (i.e. performance measures and schedule etc.) - this strategy ensures both parties have a clear understanding of agreement
- Agree on monitoring arrangements (linking the self enforcing agreement to a formal decision making process that binds the parties to agreed outcomes)

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- Make it easy to live up to commitments (ensure agreed outcomes can be realistically achieved)
- Keep working to improve relationships (making agreements more durable)
- look at linking to other negotiations (building value post negotiation)
- Agree to use neutrals to resolve disagreements

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- Uncertainty of the problem
- Your own fears or assumptions (expectancy theory) that you are going to be 'taken' causing defensiveness, hard bargaining and attracting similar competitive approach from other party (self fulfilling prophecy)
- Their hard bargaining style
- Under prepared for Negotiation or preparing in the wrong ways
- Lack of confidence in your ability to negotiate

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FOCUS **INDIVIDUAL BARRIERS TO NEGOTIATION**

- Disproportionate amount of preparation time spent on planning what we want to get out of negotiation and not enough time on what we may end up with if there is no agreement (need to spend more time on analysing and developing your BATNA)
- Remember: the biggest barrier to Negotiation may not be the other side. It is often our self.

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FOCUS **ORGANISATIONAL BARRIERS TO NEGOTIATION**

- Negotiators often do not prepare as organisations do not allow them to (insufficient resources, time etc)
- Organisation is not familiar with analysing its own BATNA
- Lack of internal communication and understanding within the organisation on what the negotiators objectives are
- Organisation only rewards hard bargainers
- Lack of internal cooperation in advance of the negotiation task
- The organisation does not provide negotiators with a clear mandate to negotiate

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- Adopt a collaborative, mutual gains approach and build your competencies and confidence in this approach
- Develop Negotiation and Collaboration as core organisational competencies
- Prepare, prepare, prepare – over 80% of successful negotiations are attributed to preparation
- Negotiate your mandate to negotiate
- Employ interest-based negotiation strategies by naming and changing the game to focus on more intelligent problem solving.

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CONTAIN AND NEGOTIATE

- Use your alternatives, rights and power as the 'last resort' to contain the situation and bring the parties back to the negotiation table
- Containment and control: Manage the Negotiation process. If you are dealing with hard bargainers who rely upon threats and aggressive behaviour, don't react and let your emotions lower rational decision making.
- Acknowledge feelings and concerns before moving to problem solving- (acknowledging is not agreeing)

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CONTAIN AND NEGOTIATE

- The pressure of time is often used to force parties into accommodating or compromising – It results in a sub-optimal agreement
- Don't react, but choose a purposeful response that provides you with more time to prepare and negotiate a collaborative agreement
- Reframe, reframe, reframe..... Shift the problem to the '3rd story' conversation – moving the story from positions to interests

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COMMUNICATION

- Communication is Negotiation – how effective we are in communicating will determine our negotiation success
- When another party makes an offer or threat don't react and jump straight in. Take time to prepare your response. You are more likely to give information away by reacting.
- The more you speak, the more power you give away.
- The more you listen the more information and power you gather to prepare and manage your negotiations.

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COMMUNICATION – ACTIVE LISTENING

- Don't go into a Negotiation with arguments to convince the other side they should agree with the strength of your case.
- Actively Listen and learn. Use probing questions to ascertain their strength, underlying motive or interests
- Crisis Negotiators adhere to the universal philosophy 'Talk to me' to engage, develop rapport with and learn from others to promote mutual understanding and agreement
- First seek to understand to be understood.

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DON'T REACT, RESPOND

Don't react but respond to unreasonable demands – use the power of a **Positive No**.

- Listen to and acknowledge the basis for their arguments (actively listen)
- Follow through with a statement that explains why their demand is not acceptable (and won't work)
- Then ask the question on how we can work together to reach a mutually acceptable solution.
- Use a purposeful response to mitigate the emotional (noise), reduce defensiveness and open up communication based on mutual interests and problem solving.

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REMOVE THE NOISE FROM NEGOTIATIONS

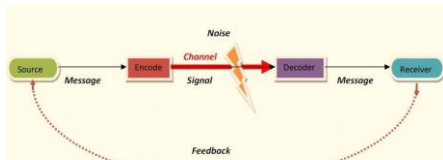


Figure 3: Adding the loop back to Shannon and Weavers transmission model

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FOCUS NEGOTIATION POWER DYNAMICS

- Legitimate - Official – Authority
- Preparation
- Structural Power
- Reward Power
- Resources
- Expert Power – Knowledge


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FOCUS NEGOTIATION POWER DYNAMICS

- Communication
- Commitment
- Position – Coercive
- Referent power (someone you would identify with or be like - Charisma)
- BATNA - Best Alternative to Negotiated Agreement

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FOCUS SOURCES OF NEGOTIATION POWER



Power has different dimensions and applications in Negotiation. How you derive and use power defines your approach and success:

- The use and sources of 'Power over' are usually associated with Positional or Distributional Bargaining. 'Power Over' sources are finite and limited.
- The use and source of 'Power with' signals Mutual Gains or Collaborative negotiation approaches. 'Power With' sources are scalable and unlimited.

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THANK YOU!

Peter Spence is the Principal of Strategic Planning and Negotiation Services – a consultancy that provides negotiation competency training and development, coaching and advisory services. Training and support is provided to individuals, groups and Organisations. This presentation provides entry level fundamentals to Strategic Negotiation. Peter has developed and provides more in depth training and development focussed on each of the key principles of Strategic Negotiation. Peter adopts a hands on action learning training approach aligned to the Harvard PON Negotiation training framework involving a high level of participant interaction, simulation exercises and case studies weaved into the key learning principles. Peter has the professional experience, theory and skills to assist you to become a better negotiator or develop a world class negotiating organisation.

Peter welcomes your inquiries to discuss negotiation training, coaching or advisory needs and can be contacted on:
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