Preparing and Participating in Negotiations
28/11/2023

CCH Learning:

Hello everybody and welcome to today's webinar, Preparing and Participating in Negotiations. My name is Susannah Gynther from Wolters Kluwer CCH Learning, and I will be your moderator for today. A few quick pointers before we get started. In the handout section, you'll find the Powerpoint slides for today's presentation. If you are having sound problems, please check your audio settings. Try to toggle between audio and phone. And just a reminder that within 2040 to 48 hours, a notification for the e-learning recording will be emailed to you. You can ask questions at any point during the presentation by sending them through the questions box. I will collect those questions and ask them in the Q&A towards the end of today's presentation.

CCH Learning also offers a subscription service, which many people have termed Netflix for professionals. It provides members with access to our entire library of recordings, as well as live webinars for a competitive flat fee. That's for over 500 hours of content. For CPD purposes, your viewing is logged automatically. Your presenter today is Bianca Keys, accredited mediator conflict management coach, and educator with Ripple Learning. Bianca is a highly experienced mediator, educator, and conflict management coach. She has a legal background, has worked exclusively as a dispute resolution practitioner since 2004. She specialises in commercial workplace healthcare and personal injury disputes.

Bianca regularly leads mediation, negotiation and communication courses and has an impressive track record training internationally, including for the Sierra Courts in Malaysia, the Malaysian Law Society and Bar Association, Shanghai University, Bahrain Chamber of Dispute Resolution, University of Hong Kong Space, Hong Kong Polytechnic University, and the Thailand Arbitration Centre. Bianca joins as a facilitator with Ripple Learning, a social enterprise, which facilitates customised workshops for workplaces on the skills people need to resolve conflict, manage stress, and maximise performance. 100& of profits are directed to effective youth mental health services. I will now hand you over to Bianca to commence today's presentation.

Bianca Keys:

Thanks so much, Susannah, and thanks so much to Wolters Kluwer for inviting me to be part of this today. Just dealing with our wonderful tech. And just checking, Susannah, can you see my screen?

CCH Learning:

No, we might just try that again. Just hold on a second.

Bianca Keys:

That's okay.

CCH Learning:

Take it back, and then we will change it back to you. These things happen.

Bianca Keys:

Okay. They do. So one moment, everybody. Thanks for your patience.

CCH Learning:

Okay. Yep.

Bianca Keys:

Are we in business?

CCH Learning:

If you want to just... I'm seeing not the slides, but just sort of the back end.

Bianca Keys:

That's all right. You should see the full slides now. I hope

CCH Learning:

They're coming, I think. Yes, there we go.

Bianca Keys:

Computers like to think about things just like we do. That's a good thing. It's good that things are thinking. So yes, a big thank you, Susannah and Wolters Kluwer. For having me along. We, of course, negotiate every day. We are negotiating sometimes with ourselves, certainly with our families, our colleagues, and in the outside world, but there are negotiations that of course we need to give some more consideration to. Mistakes might be higher, and they can make us a little bit nervous, so it can be very useful to give some thought to how we prepare well for those and how we participate in those. Now, unfortunately, in our mainstream media, we see examples of very positional negotiations, whereas I'm going to be talking to you about something quite different today. So the focus will be on preparation, but it will certainly be on changing the game and moving from a positional type of negotiation to an interest-based one.

And when you do that, it quite virtually changes the game. I'll be giving you some thinking, some questions, some tools and resources that, of course, in an hour, we can only do so much justice, but they will give you a good benchmark. Some ideas and things you can look into in further detail. Some of those include considering causes of conflict and sources of conflict. Because if we know what we are dealing with, we can engage differently, and we can prevent conflict in our negotiations. Also thinking about how we set our own parameters for negotiations, how we might shift perspective and consider hypotheticals, and of course, how we can build trust in our negotiation processes. Because ideally, in a lot of the work that you'll be doing, you'll want to maintain, preserve, and improve business and working relationships.

So moving to our next slide. In my 20 odd years as a mediator, what I'm essentially doing is supporting people in their negotiations. Now, in that 20 years, I of course have seen perhaps it all, but I've certainly seen what I might class as disruptors and process allies. And it's the process allies that we want to be when we want to create sustainable outcomes and business relationships. So here's some things I see that work well and work not so well, to put it that way. So certainly, if we think about the negative first and end on a positive, I see in those who perhaps are disruptors or are not supporting the negotiation process, a lack of preparation, I see people who are looking to win as opposed to seeking to understand and find sustainable outcomes. So sometimes they're described as the shark seeking to kind of win or in for the kill.

I see often some parameters or obstacles in limited authority. So really thinking about the authority that you have, the range of authority that you have, and the access to people with authority can be a game changer in itself. I see positional or incremental bargaining, focusing on what people want to say at the expense of listening. We have two ears and one mouth, and we really should use them in proportion is my view. I see rigidity, ultimatums, and a lack of good faith, which can express itself in delays, tactics, and conditions. So putting that to the side, when things work well, what I'm seeing are people who have given broad consideration to a range of possibilities in preparing for the negotiation. People who are flexible and open-minded, recognising that what they hear in the negotiation room may change their mind and may open up doors. I see a preparedness to listen, to ask questions, and to demonstrate that they're trying to understand in how they engage.

I see a preparedness to acknowledge. Now, acknowledgement doesn't mean refuse apology, but it could be acknowledging the value that you see in the other person, in the relationship, in the joint venture, in the services provided. Or it could be an acknowledgement of what could have been done differently could be done differently, or perhaps in hindsight just hasn't been handled well. So all of those things can actually really support good negotiation. Of course, maybe it doesn't need to be said, but it should be said, I see respect in the room, respect for people's differences as well as commonalities. Linked to preparing to listen is seeking to understand, and importantly, an environment that looks at joint problem solving and potentially at mutual gains. So if you operate from that bucket, you're doing well to begin with. Now, what I want to introduce you today as the foundation for all that follows is a paradigm shift.

People who are negotiating well and maintaining and building relationships operate in the paradigm of interest-based negotiations, which is quite different, as I said, from positional negotiations. In positional negotiations, we see this tug of war, so it feels like people are holding on tight. There's a pressure of giving up or compromising, and therefore holding on even tighter. We see people potentially both walking away unsatisfied or partially satisfied. There's also risks in this approach because mediators often talk about... Well, in life, we often talk about the tip of the iceberg, but in this interest-based environment, we're often looking at the tip of the iceberg being the positions rather than the things that are driving those. And if we only solve things at the tip of the iceberg, we are not actually addressing the drivers. And so what we'll find is there are unsatisfying outcomes. They're not holistic enough. They're perhaps not sustainable because they pitch people against each other as your position versus my position, and we miss opportunities to build relationships.

So the alternative, I just talked about an iceberg, but I'm presenting it with a tree, because coming the summer at this point of recording, it's always nice to think of the green. So similar concept, the tip of the iceberg or the leaves on the tree. These are the things that we see. And in negotiations, and particularly entrenched negotiations or challenging negotiations, they're often the positions, the rights, the morals, or the entitlements that people put forward. Now, if we think about in some workplaces, you might find a situation where somebody raises a bullying and harassment complaint. That's their tip of the iceberg, saying that this is bullying and harassment. If we only address that tip of the iceberg, then it's founded, it's unfounded. You are right. You are wrong. That's it. But what it doesn't do is actually address what is underlying and what is underlying there is a breakdown in communication, perhaps a sense of lack of support, a lack of career development, lack of respect, lack of communication, all of these lacks. And if that answer of right, wrong, founded unfounded exists on its own, then none of that has been addressed.

What we are looking at in an interest-based paradigm is we want to actually ask questions and dig a bit deeper. We want to understand the values, the needs, the interests, and the goals that are actually driving those positional statements, because it's there, which is really the life force to this tree, the root system where we'll find meaningful options and meaningful connection. It's also where we might find commonality, because people will often, or if ever, have commonality in their positions, they're often pitched against each other. Whereas the drivers or the values or their needs or the goals, there might be some commonality that we can hold onto.

So the principles of this model come from a book called Getting to Yes by Fisher and Urey, came out of Harvard University some years ago. It's what we call an oldie but a goodie, and it's a very simple read. And these are some of the principles that you see on this slide that come from that book and really support this paradigm shift. Firstly, it's about separating the people from the problem and going hard on the problem rather than the people. So that's a way that you can shift from a blame environment in negotiations to a joint problem solving one. It's an environment where you're seeking to understand those drivers, that life force or that root system, respecting individual difference, empowering others. So it's the concept of rather than seeking to change someone's mind on that positional level, it's a desire to understand which can really change things.

It is looking for that common ground. I mentioned. It's perhaps identifying multiple options. So rather than we have a pie and it's only this big and you can only have this much, how do we make a bigger pie based on what we now understand? It's about building relationships, certainly about objective criteria. For example, what can we draw from? What do the policies or procedures say here? What can we look back on the contract and learn from that? What is our interpretation of this? What support do we need from external criteria to understand what we do next? And it's looking for the win-win, which is that expanding of the pie.

And then, apologies, my slide wasn't quite showing me what I wanted to there. This is what we can get to when we shift to interest-based negotiation. We will find that we can develop outcomes and actually quite creative outcomes that meet needs and interests. So instead of it being a you versus me proposition, it is a you and me, or you and I. How can both sets of needs be addressed? This means that the outcomes that are reached and creatively designed by the people involved are more workable and sustainable because of that co-design. In that co-design and in that environment where you're seeking to understand and identify needs, goals, and objectives, trust and rapport is built, which bodes well, of course, for ongoing relationships and negotiations.

Now, I want to shift gears slightly to talk about how you use this paradigm shift, how you use this interest-based model to prepare well for negotiations. Because let's face it, preparation is key in life and it does a number of things. One of those is it grounds you. It makes you feel more confident and capable and competent and ready to engage. Nothing feels worth than feeling a lack of preparedness. And in fact, it can create a fear or an anxiety that drives behaviours that can be challenging in the negotiation room. You being grounded and perhaps fostering some preparation in the other can also help them feel grounded. And wow, what a game-changer that is, if you both feel like you're on a solid foundation to begin the conversation. So here's some questions you might consider before you even step into that conversation. Firstly, you consider that tip of the iceberg or leaves on the trees.

What is my position here? And flipping it, what is their potential position? Now, I of course, put potential there because assumptions are dangerous, and we might get it wrong because we're operating on limited information. So we are just getting a sense in our own minds of potentially what might their position be, unless, of course, it's obvious because they've told us already. We then want to go deeper. What are my interests here? What is important to me or what is important to the company or to my team? What do we need to get right here? What is our goal, ongoing, immediate, medium term, for example? And then, of course, flipping that over, what potentially might be important to them? What might they need me to understand? What might their needs be, their values, their goals, their objectives here? Then we are having a bit of a think about, is there anything that we share in common, whether that is values, goals, interests, whatever it might be? Because naming that in the early stages can be foundational, something you can keep coming back to as a collective as you go through things.

And hold onto that, and hold up whatever you are coming to against that common goal or that commonality. Considering what topics need to be discussed, sounds like a no-brainer, but you'll be surprised how often people don't think enough about that. And then the next stage of that, how could I frame those topics to promote joint problem-solving? Now, the key there is how do I frame the topics in a mutual way or a co-owned way and in a neutral way? So how do I remove the blame, remove the people from the problem, and actually then come up with something we can both speak about? So for example, I mentioned before in a workplace situation, if someone is talking about bullying and harassment behaviour, putting that as a topic is immediately going to put the other person on the defence. But if you can put up communication, communication strategies, how we engage, those are more mutual neutral, and things that people can engage with. And finally, what early options might there be for mutual gain based on my limited understanding at this point in time of their potential positions, interests and our common goals?

And this is a visual, another way to think about this. So we all learn differently. This might be the tick for you. So another way to think about it, you can think, what do we need to discuss? How do I frame that? What are the assertions arguments or positions deeper? What are the interests? And then what are the options? So that could just be the way you track it. And by all means, use this column approach. And down the bottom, I just want to draw your attention to really consolidate the point that quality options, sustainable options, workable options that include potentially an ongoing relationship, or at best of the worst, an amicable and respectful exit from a relationship, working relationship. Those options come from identifying the interests, identifying the common ground, and quite often from the acknowledgments, people are prepared to put forward in the room. In my experience, the obstacle in some negotiations that feel difficult can be somebody's need for an acknowledgement that they are not getting.

You'll probably know that in your own personal life. You'll have something where you think, if they would just hear this, if they would just acknowledge this, I could move forward. So just to name that, because that's often part of this picture. I also want to share some additional thinking in terms of preparing, and some other tools and resources. So beyond preparing yourself, it's worth thinking about how you might foster the right approach, right approach is maybe the wrong word, but foster an interest-based approach in the other. So you want to reduce their level of fear or anxiety or their lack of feeling grounded coming into this space so that they can engage with you in a confident way as well. So thinking, what information do I need? And what information do I need to share with them so that they feel prepared? That might simply be the topics that you'd like to be able to cover in the meeting so that they can give some thought to those two. You might consider, if appropriate, what can I acknowledge? Now maybe as a baseline, it's that I'd really like to continue working with you.

I'd really like us to focus on this. I really valued the working relationship, the contractual agreement that we've had, the services you've provided in the past. That can be helpful. Or at a different end of the spectrum, I acknowledge that we could have handled things differently. I'd love to use this opportunity to move forward, to figure out how that can also change things. And what tone do I want to set? Because of course, if we go in with a tone that is hard-edged, it's all about me, I want my point to come across, I want to be understood at the expense of seeking to understand, that creates a very different space to the one I'm describing here.

Now, I mentioned that assumptions can be dangerous, and I just wanted to point you in this direction, a tool called the ladder of inference. And now, the ladder of inference, I'm just finding my page in front of me as well, is a tool that's come from Chris Argus, and it's really identifying how our brains process data, make assumptions, and decide on actions that will take based on those assumptions. Now, of course, this is risky because each of you listening to this or watching this right now come from different backgrounds, different experiences. You are modelled in different ways. You might have different philosophical basis, depending on what you're discussing, different belief systems. All of that is okay, but all of that means that we could see the same situation or hear the same thing and interpret it differently. Maybe we are right. Often, we are wrong if we just operate in assumptions.

So this is recognising that at the base of this ladder where we start, there might be what you'd see on CCTV footage, the real data and experience. But the reality is our human brains process thousands and thousands of thoughts per day, perhaps tens of thousands. Don't quote me on that. I'm not the scientist behind that kind of stuff, but we are processing a lot of information. Our brains therefore make decisions to select the data that we feel is important to focus on. Now, the data I select and the data you select could be quite different. So we're already operating on different data from that real data experience. We will each then affix a meaning to that what that data means to us. And we'll then climb it rung up and make assumptions based on that meaning that we've assigned. Those assumptions will, of course, lead us to draw our conclusions.

Those will be fleshed out by our belief systems. And then the action we choose to take will be at the pinnacle of this ladder. Now, I'm just going to use a workplace example again, because we can all relate, given that you're all dealing with different stakeholders. So just a simple example in a workplace might be that you come to work, your colleague has their door closed, and it's usually open. You hear a bit of... It's a bit muffled in there. You're a bit worried, so you call out everything, okay. There's a pause, there's a bit of a muffle, it seems like a short, sharp yep, and you walk away. What you choose to focus on is the door is closed. The response feels a little bit jagged or harsh edged. Now maybe from that, the fixed meaning you put to that is, I've done something wrong. My colleague is mad at me. They don't want to talk to me.

And you make that assumption built on that, or actually part of that was what I've just expressed to you. But the conclusions that you draw of course, are part of that. The beliefs that you have might be, that's not fair. I haven't had a chance to even figure out what's gone on here. I need to make sure everybody knows I haven't done anything wrong. I'll just go and have a chat to a few people in the workplace. Now, perhaps somewhat exaggerated, but I think you can see that unfolding. Now, the person in that office space might come out later, walk into the morning tea room and everybody stops talking because they've been talking about them. And they wonder what on earth's going on. Maybe people are treating them differently. Maybe they get a call at worst from the manager saying, "Can I just have a chat to you about your attitude in the workplace at the moment?"

Now, if we walk back down this ladder to the real data and experience, that person might've cycled to work that morning and be a bit of a sweaty mess and getting changed in their office. They might have closed their door because they just want to attend to some emails before the craziness of the day takes over. They might've just sipped their hot coffee, and all they could manage was a muffled okay response to whatever was being asked. Or because the door's closed, they may not be sure that they were the person that the question was being asked of and didn't want that embarrassment of yelling out, "Yeah, I'm fine. Everything's great," only to kind of throw everybody off outside as to why on earth is this person yelling that they're okay. So this ladder is really just to make us aware that everybody does this.

Sometimes we climb this ladder very quickly and we make assumptions in a matter of minutes. Sometimes we ruminate. We let somebody live a little bit rent-free in our head, and it builds and it builds and it builds. But in either event, if we are aware that our brain works like this, we can climb back down the ladder and we can help other people who are perhaps making assumptions climb back down the ladder simply by asking questions. What else is possible? What information don't I have? How could I find that out? What's available to me? What if it's something different? What if I'm wrong? All of that will help. And being prepared to listen and shift and own that you've made an assumption that isn't quite right can be incredibly important. Now, how does this fit with negotiations if negotiations don't have conflict as such? We all make these assumptions.

So I think just in preparing for negotiation, even understanding that we might be assuming their position, their tone, their interests can be really important. And being prepared to ask questions and climb back down the ladder if we've gotten it wrong, and readjusting, can be vital. Now on this theme, I just wanted to point out as well that a great tool for preventing negotiations from going pear-shaped or into kind of a conflict space or a space in which relationships and sustainable outcomes feel unachievable, it's worth thinking about some of the potential causes of conflict that might arise in the negotiations you're going into. So thinking about, well, what is the sticking point or the roadblock here? What might need to be addressed or acknowledged, that word again in the room that will help shift things and prevent any escalation? And what kind of tone, again, could I create? I've also mentioned before the role of fear and anxiety. In my experience, the most challenging, difficult obstacle field behaviours...

And that's just a label. I suppose the other person might not feel that way that's behaving this way. But in my experience, those come from a place of fear or anxiety. Now, if I can think, what might this person be fearful or anxious about, I might be able to appease that in the first place. So that doesn't change the behaviours in our negotiation. For example, the one I gave before, if the other party doesn't feel prepared, if they don't know what you want to talk about, they might have that level of fear, anxiety, or they might have an anxiety around change, not knowing where this is going full stop or a fundamental need or interest not being met, and that can produce a behaviour. So just giving some thought to that can be quite helpful if it's there.

It can also be helpful to think about, if there is a potential cause of conflict or escalation here, what might be the cause of that? Now, you'll be able to come up with many more, if you think about in your work and your environment, what kind of things produce conflict generally, but here's a handful. One is emotional. So sometimes it's not the thing that was said or done, it's the way you feel about it that creates conflict for you. So if there is that emotional sense, because that's very real, then it's not helpful if we go into a negotiation and say, "Let's keep this professional, not personal," or the saying that I'm yet to hear anybody tell me works, "Calm down, let's not get emotional." And in my experience, that does not calm things down. That flares things up. So a better strategy is to recognise that trying to limit somebody's emotional expression is basically cutting off a way they can express themselves. That is really important in the environment. So giving it the airtime it needs can be fundamental.

Last night, I was working with some newer mediators and supporting their development, and one of them said to me, "I don't have a lot of patience for people's worries and concerns, but the other day in a planning meeting, I recognised they were there. I recognised they might unravel things. I recognised they couldn't perhaps be solved, but I said, 'Let's just spend 10 minutes getting all of the worries out in the table. Let's just get them down. Let's just write them down. Let's just have them there so that we know what they are. They may or may not be able to come into play in terms of what we can negotiate and achieve, but let's just make sure we have them there.'" What this person found is just the exercise of doing that actually meant everybody settled, refocused on what could be achieved, and were really productive. So if you are someone that thinks ick, I don't want to touch the emotions, you might need to reconsider that in an environment in which an emotional edge is there or could create conflict. Another point is it could be someone's sense of identity.

So each of us has a multitude of identities or things that we identify with. Maybe we can sit ourselves loyal, reliable, punctual, ethical, great attention to detail, a good friend, a great spouse. Whatever it might be, these are all things that make up our identity. When we feel like something someone has said or the way that they've said it is a real or perceived attack on that, we become defensive. So a simple example, perhaps you have to walk into a meeting with the other person, and one of the topics is you need to actually talk about some discrepancies in bookkeeping. Now, if the other person prides themselves on their attention to detail and being ethical, for example, the way you put that might create a very defensive response. So consider the way we put it. It could be you are so good at your work and I always value your attention to detail. I'd love your help with something that

I'm struggling to make sense of, really different to we need to talk about the discrepancy in bookkeeping to the person who prides himself and identifies in that way.

The other one, we're often operating on limited facts. There can be many facts, and people's perceptions can be their facts. Operating on limited facts can create conflict. So in that environment, of course we want to pull out facts and we want to seek more or understand what is missing. And another one, mismanaged expectations or communications. So I often find myself coming in to help people with negotiations who maybe they've gone through some kind of complaints handling process. And now, they are more upset about the way the complaints' been managed or the way that they've been communicated with, or whether or not they've been communicated with than the thing they complained about in the first place. So just being able to say to someone, for example, "Today's a really busy day, but I'll get back to you by 10 o'clock tomorrow morning," rather than radio silence can actually shift things, as a simple example. Obviously when something becomes a conflict, it's cumulative, usually.

And building on causes of conflict. I wanted to introduce you to this tool. I find this incredibly helpful in negotiations, full stop. It comes from Christopher Moore, and it's called sources of conflict, sphere of conflict. Some people call it the pie or the pizza, depending on what you're hungry for today. It's the idea that if we can pull apart a negotiation in terms of its fragments, or a conflict, if there is some conflict present, then we can make decisions about how we engage with each. So you can see in that I'm sure that sometimes, for example, your negotiations might encounter data conflict. Maybe there's a lack of data. People's interpretations of it are different, and what we are relying on is different. Or maybe you are coming across a situation where there's structural conflict. So the way an organisation is built, the way that teams have their KPIs developed, the culture of different teams or the barriers or the policies or the processes can create obstacles in negotiation.

So you might need to think of a different approach. So looking into this and recognising that often a negotiation has more than one thing, so you might take more than one approach to each one can be really, really valuable. For example, data conflict can feel like the easiest in many ways because maybe we can agree at least on what data we need and on a pathway to access and assess that data. So we can ask question, what is missing? How can we obtain that? And what process or plan do we want to go through to look at that together? What do we want to be able to do with the result? That can be a fairly simple approach.

Structural, of course, can be more difficult because you can't fight the structure. Often, however, people are so concerned with what they can't do or what they're limited by that it prevents them from thinking about what they can achieve. So giving some thought to, okay, well, that's in the limited basket, but let's shift and look at what we can get some traction on can be really useful. Sometimes in terms of structural difficulties, it can be because roles aren't clearly defined. So we could perhaps address that, and we could look at decision-making processes, a great action plans within reach. With relationships, which, again, if you don't like the emotional stuff can feel quite icky, relationship conflict or potential for conflict in negotiations can be about allowing the expression of what's going on for someone in kind of a kind of contained or parameter environment. So maybe you can agree some values or some structure for the meeting to create those parameters so people can express themselves.

Values is often the one that people, including myself, will say that just feels impossible. I would say it feels impossible if your goal is to change somebody's values because we are just not going to do that. I once had a woman coming to a programme with me, and I asked the question, what would everybody like to achieve from the programme today? And it was on effective communication skills. And she said, "Well, I'd like to know how to change my father-in-law's mind at the dinner table. I'm a woman of science. He's a man of religion." And I said, "Well, I'm not going to be able to complete that for you today. But what if the goal wasn't to change minds? What if the goal was to better understand each other? How would that dinner table be different?" That's a helpful starting point. It can also be helpful to think about a subordinate goal that perhaps you share in common.

So maybe on a work site, people fundamentally disagree with the way that the machinery should be placed or the process for making A move to B, but maybe two or three down the list of their values is safety, and you could hold onto that. We have that in common. Let's use that as a foundation and operate from there, see what we can achieve. Interests, I've left till last, given that it's a focus point for today, and I just wanted to draw your attention to another tool that Christopher Moore offers us, and it is the triangle of satisfaction, which will very much be present in negotiation. People coming into negotiations will have substantive, emotive, and procedural interests that need to be met. So the substantive will be what they need to talk about and address the substance. The emotive or psychological can be I need to eyeball the other person. I need to have a face-to-face meeting and need them to understand what the impacts of this pathway as opposed to this one would be on me and my business.

I need to be heard, I need to be valued, I need to be acknowledged, I need to be respected. All of those are psychological or emotive interests that need to be part of the negotiation room. And procedural, we all like to have a process that feels fair and balanced and visible to us. So what is the agenda? How long is the meeting? How can we incorporate both sets of voices? All of those are procedural interests. And if you think of meeting all three of those, you're in a pretty good state for the negotiation.

Just finally, before we move into how we might participate in these negotiations, a couple of other tools that you might want to look into at a deeper level, or at least start floating through your minds. In the first column, you'll see acronyms because the world loves acronyms. So I'm adding some to your acronym bucket. The ATNAs and the ZOPA. So ATNA, as the A-T-N-A, is talking about, what are your alternatives to negotiating an outcome with the other team party person? What's the best of those alternatives that's available to you outside of this negotiation? And what's the worst? And what that does is give you your parameters for the negotiation, what you will kind of won't tolerate. Is what's being negotiated in this environment better or worse than those parameters? Would I be better to leave the negotiation table, or is it really important that I stay and make this work based on what I know my alternatives to be?

So giving some thought to that before your negotiation is powerful, and it's also something you can revisit during a negotiation, particularly if they're a bit longer or you take breaks and you come back another week to just assess, how is this tracking alongside my alternatives? What's keeping me at the table? What would make me walk away? And ZOPA is about the zone of possible agreement. So all of the possibilities that fill the space for both parties. Recognising that part of that ZOPA or that range in your mind could be insulting to the other person other. So we don't want to put forward possible agreements or options that are just going to insult the other person, because they will go to their [inaudible 00:40:19] and they'll leave the table, and we don't want that, but we are thinking about all of the range of possibilities. Now, the second column talks about perspective shifting. And I think this is something that, in my experience, many people overlook because as human beings, it's just what it is, we think about ourselves. We're very individualistic. At least certainly culturally in Anglo culture, we're very individualistic.

There are some cultures that think more broadly about family and community, but even that might be thinking about my family, my community, and not the others. So it takes a little bit of extra willpower at times to shift, but it changes things and really, really sets the tone you want to set. So we know what we want or what we want to have understood the table perhaps, but have we considered what they want me to understand, what's important to them, what they might need to see or hear from me to be able to move forward with this plan or to come to the negotiation in the first place? What might they need in an outcome? And what might both sets of objectives be met by? So a little bit of that thinking, again, before being potential, because you haven't had the conversation yet, and during, can be a wonderful addition. Then hypotheticals. I think any good meeting has the person who's prepared to say, if I were to play devil's advocate. So another way to do that is to ask the what if question.

What if they don't agree to that? Therefore, how will I adapt? Or what else could I offer? What if this doesn't resolve. How I minimise the risk of that occurring, or what else is available to me? What if that need or interest is not addressed, what are my options to avoid that? What if A, B or C is the preferred agreeable pathway? And then walk down each. What if it's A? What if it's B? What if it's C? So you flesh out and develop what each of those possibilities might look like so they become viable options that you can talk through with the other party, team, person. So all of that helpful before and during.

Now, to shift gears again, and I mentioned we were spending most of the time on preparation because I firmly believe you prepare well, participation is largely taken care of, but just some things to consider when you're coming into the negotiation. Firstly, the environment and the tone are important. So it's worth thinking, where should we meet? Some people can be very put off by being on another's turf. Sometimes it doesn't matter at all. Sometimes, in fact, it could be a wonderful thing to say, "Let's meet at our offices this time, and we'll come to you next time," because that's showing reciprocity and balance. Otherwise, maybe you pick a neutral location, something that's easy for both to travel to, that's accessible, that has the right technology available if that's needed, so that someone doesn't turn up with their wonderfully prepared Powerpoint presentation and then the tech doesn't work because you haven't considered that environment.

What would make everybody comfortable? Natural light rooms, enough space, enough chairs, chairs that are balanced heights rather than creating a power imbalance in the room. It's quite interesting, I come across some negotiations and cultures, in terms of professional cultures, that would like to take the desk away and just sit on the couches, and others who are mortified by that because the desk is protection, and that's where I put my papers and that's my little shield, and that's where I put my tea and my coffee, which I go to when I'm feeling a bit flustered. So thinking about the comfort of that environment can be really important. Also, thinking about the tone you set.

So coming into a room and saying, "This is what I want, and this is when I want it by," is very different to being able to say, "What I'd love to be able to talk with you about today is A, B and C. And I'd really like to understand what you'd like to talk about today," or "What I'd like to achieve is an ongoing professional relationship, something that works for both of us. I recognise there's some obstacles to overcome, but I'd really like it if we can work through those in this conversation." Very different tone. That also links into how I might phrase my message and ideas. And a tip, the use of I, or when appropriate the we or us are much better than the you, you, you. You can come across as shifting blame, shifting responsibility. And if someone is sensitive in a negotiation, it can actually produce a defensive result. So thinking instead of I have a concern about, or my worry with that is rather than what you say is wrong is the shift I'm talking about.

And also, what can you do before and during to encourage information sharing and informed decision making? So good negotiations are about informed decision-making and recognising that you're operating on only your information, not both sets of information at the start. So how do you share information, how do you ask questions in a respectful way to obtain information, and how do you then work together to make informed decisions, is a great question to ask yourself. And then skills-wise, none of these are rocket science, and hopefully things you do every day anyway, but just consider that sometimes they get binned or they get moved down the priority list if you're feeling quite passionate about something. So as I mentioned before, we are often thinking and preparing based on what we want understood at the table. And of course, that's important work.

But if you walk into the room seeking to understand first and recognising that the time will come for you to put your message forward, you'll learn something, you'll settle the other person, and you'll show them respect by showing them that you really want to understand, even if you don't agree, they are more likely to then listen to you. So you're creating reciprocity in the room. Now, it doesn't always work perfectly, of course, but if you can use that as a guiding principle, it's very helpful. Part of that, of course, is active listening. And what I'd encourage each of you to do is consider the person in your life that you go to that makes you feel truly heard and listened to, someone you go to when you need to process your thinking. What do they do that makes you feel truly heard and listened to? Because that's what you want to borrow here. And it's often more than just about listening. It's about demonstrating that you are listening. And I'll come to that with the acknowledgement, the last point in this particular Powerpoint.

The third point here is around when you hear something that immediately you want to go, "That can't be done, no," recognising, that might shut something down very early and take respect off the table when there might be a different way to make your point. So the examples I use here that can be quite value is, "That's interesting," or "I hadn't considered that before or heard that before," or "I have been looking at this differently actually to you," or "Can you help me understand the basis of that?" There are different ways of demonstrating that there is difference in your thinking, but also demonstrating that you respect difference rather than shut it down immediately. And the antithesis, of course, to shutting things down is opening them up. So in a good negotiation environment where you're seeking to understand it's about creating space, and it's about demonstrating curiosity.

So one of your best friends in this environment will be an open question. What I will say is that as adults, we become efficient, effective, deadline driven, got to move on to the next thing, multitaskers. So what we tend to do is start to ask more closed questions and open questions so we can move on to the next thing. But we limit the information that's shared, and we limit the opportunity to connect with people. It might take you a little bit more time, but I would suggest that it creates more sustainable results and saves you time later to ask the how and the what questions, or even while not technically open the, can you tell me more about?

And when I talk about what we do as adults, I think about what we do as children. So anyone who's lived with or is living with a two or three-year-old will know that they are the master of the open question. The shame is they only ask one type. It's the why. So, why, why, why, why? What is incredible though is they're trying to expand their understanding of the world around them. And no one tells them this, but they instinctively get that by asking an open question, that's what they'll get. Now, a shame that it moved beyond why, but incredibly powerful. So in a good negotiation, we are trying to expand our understanding of the problem we are trying to solve. Therefore, we need to move to open questions more. I use the with some caution why here just to recognise that sometimes why can be judgmental. So, "Why did you do that?" can feel judgmental, whereas, "I'd love to understand why that's important for you," has a different feel. So just being mindful of that. And if you get a little bit of defensiveness, realising perhaps why that they've done it. You've asked why.

And the last point is, as I said, it's about demonstrating that you've listened. What I'd encourage, and it's linked to this idea of curiosity, is that if you do so in a slightly tentative way rather than an I know exactly what you've said, I completely understand type way, then you create a permission environment where they can agree, they can correct, they can clarify. If you've gotten it wrong and they correct or clarify, that's valuable because then you know what they're thinking. So I mean things like, "It sounds like," or "I think I'm hearing you say," or "Have I heard you correctly?" Or "Am I correct in understanding?" or "Let me know if I'm off the mark."

All of those create a soft landing for what you're saying and create that permission to be corrected. And that's about space and wiggle room. And I think in negotiations, we want to create wiggle room for people. People who feel they have no wiggle room will hold on tightly to their positions, and we don't want that. So that's some tips for you there. And just finally, recognising that for the most part, your negotiations might be smooth sailing, or they might be completely respectful. But every now and again, we are going to come across a bump in the road where we might be encountering someone who on a particular topic perhaps becomes emotional or appears aggressive. So this is a way that you might put some of the skills together to compensate or address that. This comes from a book called People Skills by Dr. Robert Bolton. He's an Australian psychologist, easy read, great tips in there.

The first, and you can use my hands here rather than a graph, but recognise that people have very high... I'm putting my hand up high for anyone who doesn't have the camera visual of me on. People come with a high emotion, which means they have a low ability to listen to what you are going to say. So there is no point in you trying to assert yourself when somebody is up at this level in their emotions. You need to let the air out of the balloon, so to speak. So the first thing you do is you encourage expression by asking an open question. "What's going on? What's upsetting you? Can you help me understand what's troubling you?" Number two might be the hardest thing you do, depending on what you're hearing, because you might not like it. But listen, even if that feels uncomfortable. That's starting to help this person come down a little bit, but they're not there yet.

They need to know that you've heard them. What you've probably found in life is the person who repeats themselves goes around in random circles. And you might be thinking, I've heard this 16 times, but they don't feel like you've heard it. So step three is really important. You need to acknowledge what you've heard. "So I can hear this as really important to you here. This has been really frustrating. A, B and C are fundamental to address for you." That's going to help them come down from that emotional space. Now, what I should name is before you go to four, sometimes with some people, you might need to go back up and repeat one, two, and three because of how emotional they are feeling about a particular thing, or how passionate they're feeling to reframe that. So you might need to ask another question, listen, and acknowledge again.

But when someone feels sufficiently heard and acknowledged, they're in a far better place to listen to you. So that's when you can say what you need to say, because often, let's face it, you need to say something. So that's when that use of I, my, or for me can be really good at taking the sting out of what you're saying. So "That felt upsetting for me," or "I'm worried about," or "My concern with what I've just heard is" can all soften what you need to say, and you can still say it. So there's some helpful tips that are as helpful for those answering the phones at some of our telecoms or other providers who are in tough spots at the moment and have customers who are very upset. It's useful for them, tough job, as it is with someone in your family who's feeling this way. So it has wide application.

And then just finally, because I'm conscious of time, I just wanted to name the key takeaways that I hope have been takeaways for you today. My star though is to offer you a buffet and for you to take from that buffet what you feel the appetite for. So I hope you've all found something that you've been hungry for in this conversation or in this presentation today. So firstly, shifting to an interest-based approach creates space and the possibility for ongoing relationships. And it creates a space for interests, needs and objectives to be met for creative resolutions and durable outcomes and for joint problem solving and mutual gain. I hope I've drummed in that preparation is key. So considering both perspectives and seeking to identify any connectors or commonalities can be the foundation that you come back to. Establishing your parameters with your ATNAs and consideration of hypotheticals.

Think about sharing information and considering that information, and contemplate any causes or sources of conflict that might be at play and how you might engage with those. And last, participating in a way that demonstrates curiosity and a desire to understand, because that does build respect. It's an overly used saying, but a really powerful one. People won't remember what you said or did, but they'll remember the way you made them feel. Very true. So this is what we are thinking about here, the environment and the tone count. Listening, acknowledging, and using open questions, they count big time. So that's the content I wanted to cover today. And Susannah, I'm going to hand back over to you. Many thanks.

CCH Learning:

Thank you very much for that, Bianca. That's been a great presentation. We will be spending the next few minutes taking questions. So just a reminder to please type them into the questions pane. To give you some time to type those up, I will mention our upcoming webinars. So coming up, we've got our tax technical update for November. We're also going to be looking at insights on managing termination of employment, and maybe some of your negotiation skills from today might be needed. If you are thinking about writing an app, please come to our webinar on the 30th. We've got our cybersecurity update for December, and we're going to be understanding the financial reporting and audit obligations in Australia. And we'll also be navigating our clients through ATO compliance and debt collection activity in 2024. If you're interested in any of those, please head to our website at wolterkluwer.cchlearning.com.au, have a look and see if they are right for you. So let's have a little look at our questions. I have a question from Paul. Paul was asking any good book tips, other than getting to yes and getting past no?

Bianca Keys:

They're good starting points, but it's good to have more books, isn't it? Look, Change Your Thinking by Sarah, I think it's Endelman, is a good one. I like that very much. I would also suggest actually that you look at a website called the High Conflict Institute. Now on that website, there is an articles and resources page that is applicable to all different contexts and different thinking styles and has some wonderful tools and just some ways of framing the person that you might be coming across, or the tough cookie or the tough nut to crack. I love that set of resources because there's such high or broad application there. So the High Conflict Institute led by Bill Eddy, that's another one I'd say has plenty to choose from. Thanks, Paul.

CCH Learning:

Thank you very much for that, Bianca. I hope those hints, good book tips, and that website is helpful for you. I also have a question from Sarah. Sarah is asking, it would be helpful to reduce surprise or concern about an ambush in a negotiation. What are some of the logistics that might support this goal before the meeting?

Bianca Keys:

Look, it's a great question because nobody wants to feel that there's a potential ambush or a real ambush at play, and you don't want the other participant to feel that way either. So a couple of the logistics, I think it's really important to know who's attending. It would be incredibly confronting if somebody turns up, and then you bring the crowd of thousands, and how intimidating that would be in the power play that that would represent. So just being really clear with one another of who will be attending, what their roles will be, what their value adds would be. And if there are any concerns with that, addressing those. So for example, if someone says, "Look, I'm a bit concerned about you bringing five people. Do all of them need to be there?" Maybe you could say, "Oh look, perhaps not. If such and such could come with me, we could always make a phone call if we need to obtain a bit of information for the conversation."

So I think the who is really important, as is the where, so that people are comfortable and agreeable and familiar enough with that. That's very much part of the picture, what I said before about sharing maybe a draught agenda, what you'd like to cover and seeking some input from the other. So you can actually almost co-create an agenda that can be quite a good way to go about that. The other thing I would suggest is reaching out prior to the negotiation, maybe a phone call. Is there anything that you want me to be aware of before we meeting up, or any questions you have of me? Or would it be helpful for us just to get those that are attending on a quick telephone call for 15 minutes just to talk about any of the logistics rather than the substance before we catch up? So I think all of those things can reduce the element of surprise and help people engage.

CCH Learning:

Thank you very much for that, Bianca. I hope that helps you there, Jane. So there was just another question from Michael. Michael was asking, is there any benefit to discussing topics in a particular order? For example, what if there was some low-hanging fruit, something easier to discuss and resolve?

Bianca Keys:

Yeah, it's very tempting to reach for the low-level fruit, and sometimes that's exactly what you should do. So the answer is it depends. If there is that easy to resolve thing, and both are comfortable to discuss that first, then that can create a sense of progress and momentum in the room. And from that, magic can happen, I suppose. So that can be a useful strategy. Where it might not be a useful strategy is where there is something else going on in the room or on that agenda that is big, and it's really... Everything else is contingent on it, or it is the blockage or the obstacle that will get in the way of anything else. So while it might feel big and clunky and tough, not tackling it first can actually be the undoing of the negotiation. So whether you call it the elephant in the room, whether you call it the blockage or the obstacle or the sticking point, sometimes it has to come up earlier so that you can then move on once you passed it.

CCH Learning:

Thank you very much, Bianca. So there you go, Michael. I hope that helps you with your negotiations in the future. Well, that does bring us to the end of our questions for today, but please, Bianca's details are there on the screen, so please reach out if you do have any other questions or comments for Bianca. So in terms of next steps, I would like to remind you all to please take a moment to provide your feedback when exiting. We have asked you a couple of questions about today's webinar, so it's really important for us to hear your opinions. It's also a reminder that within 24 to 48 hours, you will be enrolled into the e-learning Recording, which can be watched multiple times, and have access to the Powerpoint transcript. Any other supporting documentation and a CPD certificate. Oh, excuse me. I would very much like to thank Bianca for the session today, and to you, the audience, for joining us. We do hope to see you back online for another CCH Learning webinar very soon. Please enjoy the rest of your day. Thank you very much.

Bianca Keys:

Thanks, Susannah.