

# ENHANCING YOUR MEDIATION & NEGOTIATION SKILLS

“There never was a good war or a bad peace”

*Benjamin Franklyn*

Letter, 1773

**Facilitated by: Elaine Wint**

A stylized silhouette of a mountain range in shades of brown and tan, positioned at the bottom of the slide against a blue gradient background.

# Conflict and its Management

“Conflict involves struggles between two or more people over values, or competition for status, power and scarce resources.”

- Moore 1986

# Conflict and its Management

- Conflict is inevitable.
- It need not be viewed as only a negative process.
- Has **both productive and destructive potential**.
- Conflict if mismanaged, however, can threaten relationships, systems and institutions.

# Conflict and its Management

Basic approaches to managing conflict:

1. Ignoring the conflict
2. Avoiding the conflict producing situation
3. Coercion and/or violence
4. Negotiation
5. Mediation
6. Adjudication or arbitration

# Conflict and its Management

Historically, all societies have resolved conflict by using:

- Negotiation
- Mediation
- Adjudication

Globally, these are the three primary dispute resolving processes .

# NEGOTIATION

A process where mandated representatives meet in order to resolve their differences and reach agreement. The outcome is often dependent on the power relationship between the groups.

# MEDIATION

When negotiations fail or conflict is present, parties often call in an independent mediator. In contrast to arbitration, mediators act only in an advisory capacity - they have no decision-making powers and cannot impose a settlement on the conflicting parties.

# ARBITRATION

An independent person acts as an adjudicator (or judge) to decide on the terms of a settlement. Arbitration differs from mediation and negotiation in that it does not promote the continuation of collective bargaining. The arbitrator listens to and investigates the demands and counter-demands and takes the role of decision-maker.



# NEGOTIATING

# TYPES OF NEGOTIATIONS

1. Positional Negotiation
2. Interest Based Negotiation
3. Competitive Negotiation
4. Co-operative Negotiation
5. Principled Negotiation

# BARRIERS TO NEGOTIATION

1. Poor communication skills
2. Overreacting & emotional responses
3. Misunderstandings
4. Conditioned or learned responses
5. Relationship dynamics

# RULES FOR NEGOTIATION

1. Be strategic and deliberate with words
2. Be willing to prepare & prepare well
3. Have high expectations
4. Be patient in listening
5. Maintain your integrity

# NEGOTIATION ESSENTIALS

## Communicate

- No clear lines of communication = no negotiation.
- “problems” fall into three categories:
  - perception,
  - emotion, and
  - communication.
- “Facts, even if established, may do nothing to solve the problem.”

# NEGOTIATION ESSENTIALS

## Co-operate

**Be cooperative, but don't let your guard down.**

- Statistics show that cooperative negotiators are more effective than competitive negotiators.
- However, in positional bargaining, a hard game dominates a soft one.

# NEGOTIATION ESSENTIALS

## Listen

### THE POWER IS IN LISTENING

- Ask questions, test for understanding, summarize, and listen, listen, listen.....
- Get more by finding out what others wants than by clever arguments for what you need.
- The cheapest concession you can make is to let others know they have been heard.

# NEGOTIATION WINNERS

1. Have a Game Plan
2. Focus on Your Goals
3. Identify the Issues
4. Have Powerful Justifications
5. Evaluate, Evaluate, Evaluate
6. Pay Attention to Closure



# NEGOTIATION GEMS

- Apply Power Negotiation
- Leverage
- Remember The Game Plan

"The truly gifted negotiator, then, is one whose initial position is exaggerated enough to allow for a series of concessions that will yield a desirable final offer from the opponent, yet is not so outlandish as to be seen as illegitimate from the start."

# Recommended Resource



This e-learning program examines techniques for approaching and productively handling negotiations.

Learn the main concepts of the program by working through the Case, Tools, and Resources.

HBSP Certificate of Completion available.

## Case Role Plays

- A: Preparing for a Negotiation .
- B: Conducting a Negotiation
- C: Striking a Deal
- D: Case Summary:

## Tools to:

- A. Clarifying Interests
- B. Understanding and Developing BATNAs
- C. Avoiding Common Negotiation Traps

## HBR Articles & Cases:

"Six Habits of Merely Effective Negotiators" *by James K. Sebenius*

"Negotiation Analysis: An Introduction" *by Michael Wheeler*

"Turning Negotiation into a Corporate Capability" *by Danny Ertel*

"Breakthrough Bargaining" *by Deborah M. Kolb and Judith Williams*

"Negotiating the Spirit of the Deal" *by Fortgang, Lax, and Sebenius*

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# Mediation



# THE POWER TO MEDIATE

“ Disputes, unlike wine, do not improve with aging. Many things happen to a cause and to parties in a dispute by the simple passage of time and almost none of them are good. Delay in settlement or disposal of conflicting claims is ... a primary enemy of justice and peace in community.”

*- The Hon. Willard Z. Estey,  
Former Justice, Supreme Court of Canada*



# THE CONFLICT WITHIN

“We accuse others,  
we excuse ourselves”

Unknown

# WORKPLACE CONFLICT

“A condition between or among workers whose jobs are interdependent, who feel angry, who perceive the other (s) as being at fault, and who act in ways that cause a business problem”

Daniel Dana

# SIGNS OF CONFLICT

- Anger
- Disgruntled staff
- Low productivity
- High turnover
- Absenteeism
- Frequent 'sick days'
- Dysfunctional meetings
- Bullying

# THE COST OF CONFLICT

- Reputation
- Safety
- Loyalty
- Production
- Recruitment
- Replacement
- Litigation
- Time
- Money
- Wasted time
- Bad decisions
- Lost employees
- Restructuring
- Sabotage, theft,
- Damage
- Lowered motivation
- Lost work time
- Health costs

# CULTURE & CONFLICT

**Dominating organisation:** One in which power contests are the prevailing approach to resolving conflicts.

**Litigating organisation:** One in which right contests are the prevailing approach to resolving conflicts.

**Mediating organisation:** One in which interest reconciliation is the prevailing approach to resolving conflicts.

- *Daniel Dana*

# CONFLICT IS PRODUCTIVE...

## When:

- Used to create and innovate
- The organization develops dispute resolving systems and procedures
- We see it as value neutral rather than negative
- We use the opportunity for growth
- We share new information

# CONFLICT IS PRODUCTIVE....

## When:

- There are new solutions which include everyone's perspective
- We separate the people from the problem
- We discover our “hot button” triggers and find effective ways to cool down our reactions
- We learn problem solving skills
- Attention is focused on the hidden costs

# MEDIATION

**Mediation** - is a voluntary dispute resolving process in which a neutral third party,

**The Mediator**, facilitates and coordinates the negotiations of disputing parties with a view to resolving, or reducing the extent of the dispute.

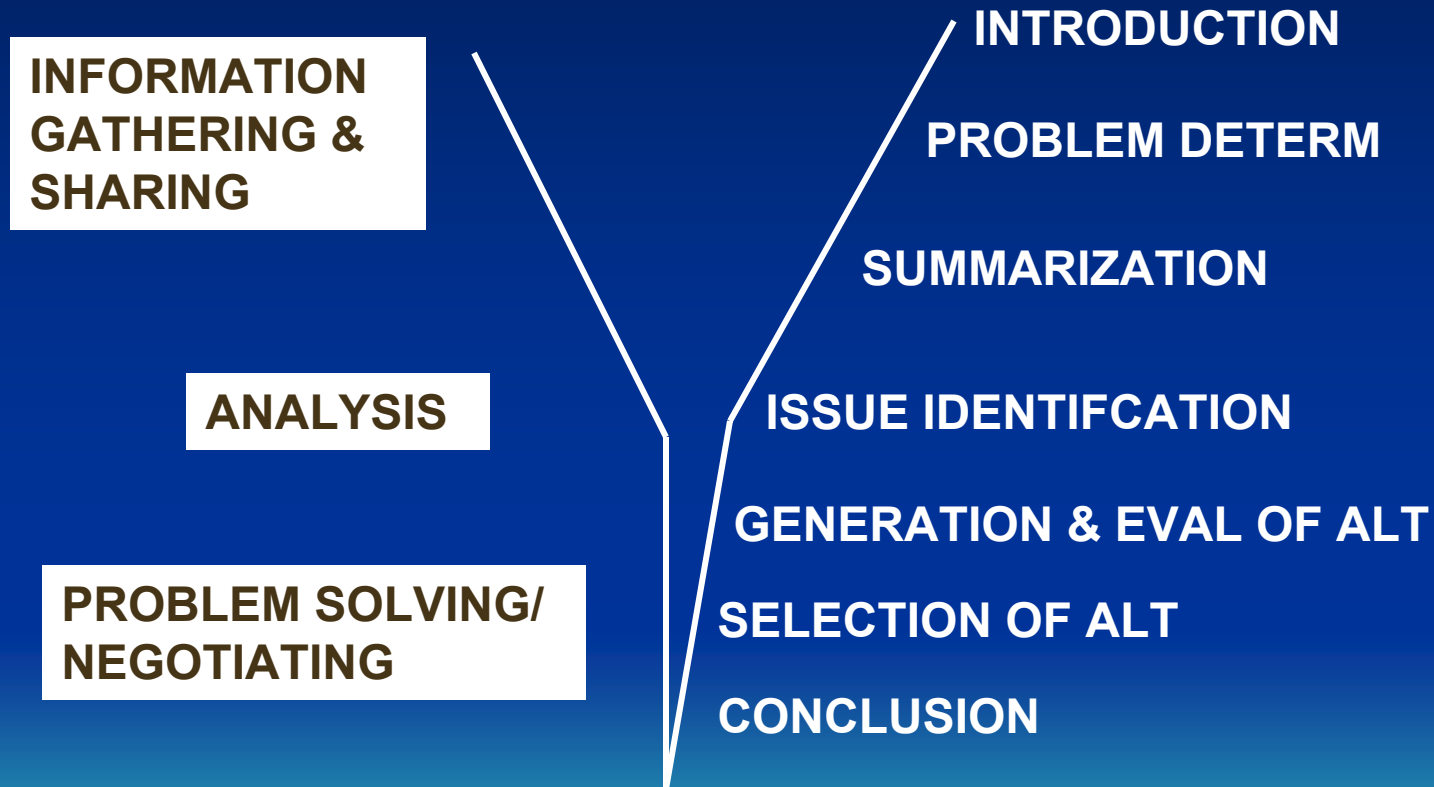


# FACTORS FAVOURING MEDIATION

- Need to avoid publicity
- Desire for speedy resolution
- Need to preserve relationship
- Recognition that hostilities may bar settlement
- Desire to minimize risk of outcome
- Need to reduce high cost of litigation
- No adequate remedy in law
- Desire to avoid adverse precedent /or no need for precedent

Bennet Picker, Mediation Practise Guide

# THE MEDIATION MODEL



# ESTABLISHING CONTEXT

1. Relationship of the Parties
2. Duration of the Problem
3. Single versus Multiple Issues
4. Cultural Influences
5. External Factors
6. Power Imbalances

# THE EFFECTIVE MEDIATOR

- Has a proven record of success in mediation or negotiation
- Is able to gain the trust, acceptance and co-operation of conflicting parties
- Thinks clearly in identifying the real problems and offering practical solutions

# THE EFFECTIVE MEDIATOR

- Is knowledgeable about the organisational structures, strategies and attitudes of the conflicting parties; as well as any relevant laws or agreements
- Is tactful and diplomatic with the necessary powers of persuasion and strong character to nudge the participants progressively towards an agreement.

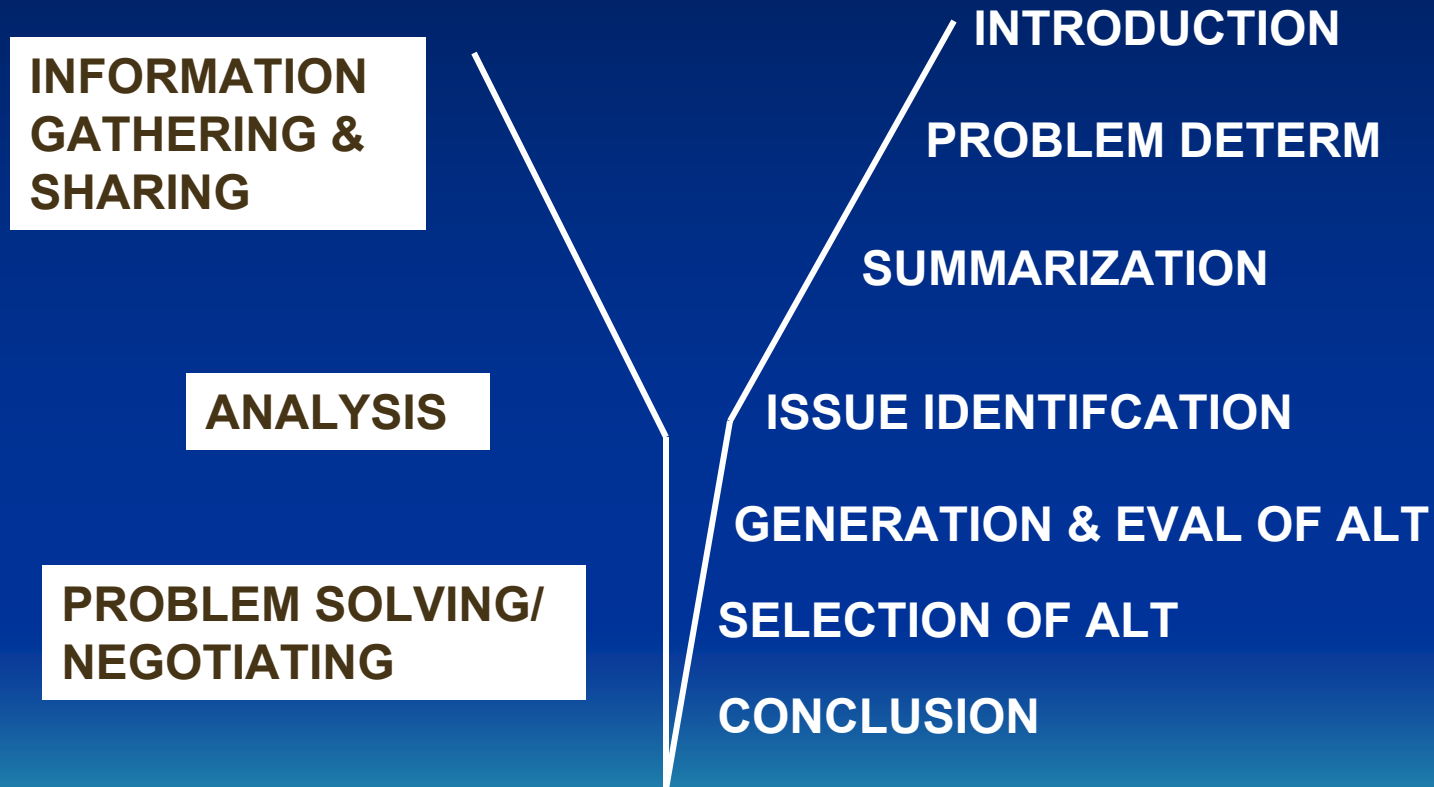
# SPECIAL ISSUES

- Confidentiality
- Neutrality
- Authority
- Integrity
- Credibility

# MEDIATOR COMMUNICATION TECHNIQUES

- Read Body Language
- Practice Active Listening
- Double Check Communications
- Listen As An Ally
- Clarify
- Re-frame
- Summarise
- Silence For Control/Reflection

# THE MEDIATION MODEL





# WHAT CAN YOU DO?

- Include Mediation as part of your conflict resolution strategy
- Conduct conflict resolution workshops for staff
- Develop conflict coaches in the organization
- Use the positives of conflict to strengthen your organization
- Assess the effectiveness of current practices in your organization
- Start tracking the cost of conflict

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