



Précis Paper

Negotiation and Influencing Strategies

A discussion about the process of negotiation, the steps towards achieving a successful negotiation, the practical implications of negotiation psychology and influencing strategies.

Discussion Includes

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- Negotiation style
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Negotiation and Influencing Strategies

In this edition of BenchTV, Michael Hudson (Co-Founder, ENS International, Sydney) and Julia Park (Solicitor, AR Conolly and Company Lawyers, Sydney) discuss the process of negotiation, the steps towards achieving a successful negotiation, the practical implications of negotiation psychology and influencing strategies.

Negotiation and influencing people

1. Anyone can influence and anyone can be influenced.
2. People who negotiate, influence, persuade or manipulate other people, from a behavioural science or neuro science point of view, possess the same basic set of skills.
3. The skillset for both negotiating and influencing is identical.
4. ENS International, an international negotiation organisation notes that negotiation occurs every time someone tries to influence someone else and influencing is every time someone tries to negotiate with someone else.
5. An interesting question is whether negotiation is a subset of communication or whether communication a subset of negotiation.
6. It is arguable that communication is a subset of negotiation because when do people typically communicate without having an outcome in mind?
7. That is, that virtually every sort of communication is negotiation if it is outcome focused, and when is communication not outcome focused?

Negotiation styles

8. As a negotiator it is important to understand what your own natural style is.
9. An effective negotiator can be extremely flexible and operate in styles beyond that which is their natural style.
10. They can move from being tough and abrasive to being tender. The capability to move between styles and to recognise which style needs to be taken is based on what outcome is being achieved.
11. The error that many people make is that they have success in using only one style without thinking about it and therefore are not flexible in changing their style.
12. Lawyers can improve negotiation skills and achieve greater outcomes if they understand the systematic approach to managing negotiations.

Content vs Process

13. There are two important facets to a negotiation; the content, that is the substance, data, facts and the process, that is how a negotiation is managed.
14. The content is subservient to the process.
15. The difference between the process, how it is done and the content, what is being negotiated about, is a very important distinction.
16. For most lawyers, their greatest focus is on the content of a matter over the process. Lawyers are typically very good at preparing content, that is the facts of a situation and do not focus much on the how
17. However, behavioural scientists say that in the hands of a skillful legal negotiator, process defeats content.
18. Typically, a negotiator will have a plan on how to manage the process of negotiation, including how they will manage their negotiating style.
19. Pre-negotiation planning in a systematic way is very valuable in achieving effective outcomes

When does influence start in the process of negotiation?

20. There are three key time zones, the pre-negotiation stage, the formal event itself and the post event stage where influence can take place.
21. More influencing is undertaken and achieved in the pre-negotiation stage than in the formal event.
22. This is achieved by making suggestions to the other party before getting into the negotiation formally.
23. It is important for negotiators to plan the process from initial communications with the other side. This involves finding out the objectives of the other party and also how strongly they hold them
24. It is also important to find out your client's objectives, including the emotional objectives and not just the operational objectives.
25. A good negotiator needs to understand what drives the client and particularly, what the unstated drivers are and how powerful these are in influencing their decision making.

Responses

26. Once a party has disclosed their thoughts and views to the other party, there are four responses that the other party may make.

27. They can fight back, they may flee, they might freeze or they may agree with what has been put forward.
28. Another option, rather than a party disclosing their thoughts and views to the other party, is to invite the other party to discuss their client's needs by asking them open ended questions.
29. In doing so, a skilled negotiator will look for non-verbal reactions which might suggest hidden agenda.
30. These are the two main approaches to negotiation; either be forthcoming in telling the other side your position or asking the other party about theirs.

Questioning techniques

31. Open questioning techniques, such as what, why and how invites the other side to provide information, draws out information from the other party and guides their thinking process in a way that better leads to a committed solution.
32. The skillful, effective legal negotiator draws out from the opposing side and guides their thinking through effective questioning and more importantly, effective listening.
33. To maximise their influencing power, a negotiator must understand how to use questions.
34. Paraphrasing questions assists negotiators in getting the other side to agree and having the other party continuously agreeing and saying yes, helps the negotiator guide the process. This allows for the other party to feel as though they are choosing the outcome and enables them to be more committed to the outcome that is reached.
35. Paraphrasing questions means asking a question, receiving the information back from the other party and then repeating back the information in the form of a question.
36. Finding commonality and moving together on an issue helps parties feel committed to the outcome which is reached.
37. Open questioning and then paraphrasing the information received to get a 'yes' from the other party is known as the open question-reflective question technique.

Commonality vs differences

38. The fundamental pillars for negotiation are;
 - a. process vs content
 - b. drawing out information from the counter party rather than volunteering information to them;
 - c. Finding and building common ground rather than focusing on differences between the parties

39. Legal training teaches lawyers to look for differences between parties and their situations. Skilled negotiators tend to start with common ground and build relationships and rapport between parties based on this common ground.
40. Finding process common ground is much easier to establish and find rapport in than content common ground.

Giving answers and listening techniques

41. There are many ways to give an answer without being offensive. One such example is by using deflecting techniques. An example of a deflective technique is by answering a question with something along the lines of "That is a very interesting question, one that I was speaking about with a journalist last week and he said..."
42. This is known as the acknowledge and deflect technique.
43. In order to be able to give answers and guide the process, a negotiator must have good active listening techniques. This involves building encouragers into your repertoire, such as nodding positively and offering verbal encouragers such as 'please go on'.
44. It is also very important to be non-judgmental and not listening to negate, but listen to understand.
45. Western cultures find it quite difficult to manage silence and the other party will often feel the need to fill the silence and offer up information this way.

Steps in the formal event

46. There are 4 unique sequential steps in the formal event;
 - a. The opening/introductory phase
 - b. The discovery phase
 - c. The solving phase
 - d. The settlement phase
47. The opening/introductory phase of a negotiation includes pleasantries such as a hello and how are you.
48. This phase has cultural variance and in some cultures, not giving it time and attention can infringe on the relationship.
49. The phase of discovery, also known as the phase of differentiation involves a fact finding session with the intention of building up a view of where the other party stands.
50. It is important to note that there is no solving taking place in both the introductory phase and the discovery phase.

51. It is critical that everything is put on the table during the introductory phase and the discovery stage before solving takes place
52. Once this has been done, the negotiation will move into the integration/solving phase.
53. Only once there are sufficient options on the table, then a negotiation will move into the settlement phase. The settlement phase is where final offers are put forward.
54. It is important for a negotiator to understand which phase as they are operating in in order to take process control of the negotiation.
55. It is important to distinguish between close ended questions where the other party is able to say no and open questions which draws out information from the other party.
56. At the settlement phase, there are a number of non-verbal cues when making a final offer such as the sound and look of finality.
57. It is important to also have clear commitment as to what the offer is and how it is to be performed.
58. Rehearsal, prior to negotiation is often important in negotiations to achieve team alignment and to establish the roles of client and lawyer, together with how to manage expectations and interaction.
59. ENS International has a role reversal technique which allows parties to rehearse and explore how they are as themselves and then how they are as the other party.
60. This allows the party to deeply understand where the other party is or may be coming from
61. Rehearsal is an imperative in achieving effective, successful outcomes.

BIOGRAPHY

Michael Hudson

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Michael Hudson is an acclaimed negotiation consultant and mentor for influencing and interpersonal communication. Working across across all five continents, he draws on over thirty years of international experience. Michael empowers individuals and organisations to be more successful in influencing outcomes and negotiating desired agreements.

Prior to co-founding ENS International, his professional background included industrial and organisational consulting and senior management positions with a large multinational working out of Australia, Canada and the United States. Michael is an internationally recognised keynote speaker with a special interest in the practical implications of negotiation psychology, cross-cultural negotiations and mediation. His expertise encompasses the dynamics of persuasion, influencing and conflict resolution.

He holds a Masters in Psychology and a degree in Economics and has authored books including 'Effective Negotiation: A step-by-step guide', 'The Legal Negotiator', 'Negotiating Employee Relations', audio and many articles.

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Julia graduated from the University of Sydney with a double degree in Law and Commerce. Julia's career in law started in 2009 at A R Conolly & Company followed by various litigation work in commercial and personal injury. Julia tutored Business Law at the University of Sydney.