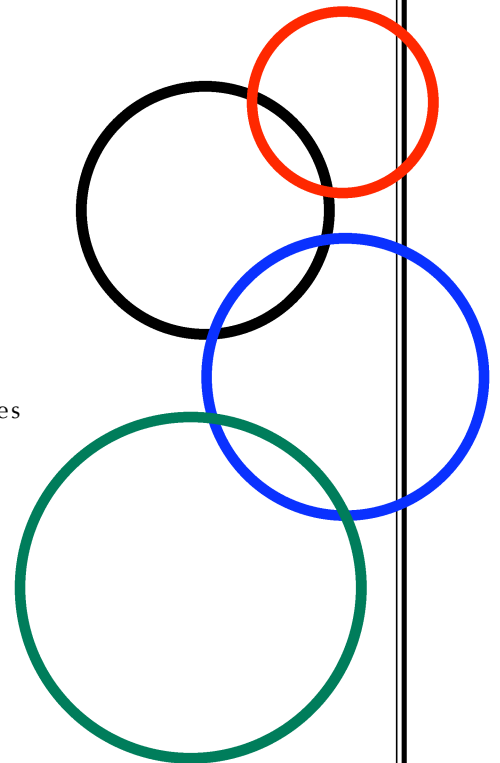


Conflict Co-operation and Culture

A Study in Multiparty Negotiations

MARJORIE L. BENSON

Centre for the Study of Co-operatives
University of Saskatchewan



CONFLICT, CO-OPERATION, AND CULTURE

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A STUDY IN MULTIPARTY NEGOTIATIONS

Marjorie L. Benson



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University of Saskatchewan

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CONFLICT, CO-OPERATION, AND CULTURE

A STUDY IN MULTIPARTY NEGOTIATIONS

Abstract

THIS PAPER PRESENTS a report and analysis of simulated negotiations in a multiparty institutional context, specifically a Canadian Aboriginal-Crown context. The purpose is to offer a conceptual model of skills and processes of successful negotiations under such circumstances. The Aboriginal-Crown subject of the simulation has particular relevance in light of Canada's Supreme Court declaration in *Delgamuukw v. British Columbia*, [1997] 3 S.C.R. 1010 at para. 186 (quoting itself from *Sparrow v. The Queen*, [1990] 1 S.C.R. 1075) that Section 35(1) of the *Constitution Act, 1982* "provides a solid basis upon which subsequent negotiations can take place." The vehicle of the analysis is participant reflections, which offer a 360-degree view of the simulation, selected, classified, and combined into a conceptual model by the instructor.

Multiparty institutional conflicts are large-scale social and organizational conflicts involving multiple groups that have historical, social, cultural, and economic significance, potential legal claims and remedies, and ongoing relationships. Formal negotiations in a multiparty institutional context consider possible changes to some aspect of current institutional arrangements, which are the legal and policy rules governing group relationships.

Multiparty institutional negotiations are high stakes because the goal is institutional reform that will affect large numbers of people over the long term. Neither the outcome of negotiating nor of any particular reform is predictable. Leaders find such uncertainty a heavy challenge, and often participate only when facing even greater risks through violence, institutional breakdown, or external threats.

Institutional relationships are the subject of multiparty institutional negotiations, which bring the forces of existing relationships—history, power imbalances, external accountability, and cultural gaps—to the table. Each relates to a core issue such as group values, identities, survival, or power. Many are incommensurable, requiring negotiators to move to unfamiliar ground in language or procedure to even negotiate, and to accept some change on core issues to reach any meaningful agreement. Both create high levels of stress for negotiators and background groups.

Multiparty institutional negotiations are also high risk. Historical hurts and gaps in understanding influence events at the table, and competitive, position-based bargaining often leads to deadlock and inflamed tensions. Interest-based bargaining, in which negotiators focus on underlying social goals and generate multiple options to achieve such goals, has the potential to be effective but is very difficult because it requires relationships of trust among negotiators and background groups that seldom exist in modern multiparty institutional conflicts.

The conceptual model offered here uses the metaphor of a spiral, with history, power imbalances, external accountability, and cultural gaps all coming into the spiral of multiparty institutional negotiations, where they are combined with negotiators' personalities, preparation, and relationships to shape words and actions, spinning often in a modern context into a vortex of conflict escalation and breakdown. The model moves through getting talks restarted, a partial recovery, and an ultimate failure on substantive issues, as occurred in our simulation. We offer reasons for failure, and conclude that only the long slow process of trust- and relationship-building can provide the basis for successful multiparty institutional negotiations. We also conclude, however, that at the heart of conflict, faced with trust, there exists a transformative power that provides the basis for hope.

The results of this simulation are offered by the class of "Multiparty Institutional Conflict Resolution 2000–2001," College of Law, University of Saskatchewan, in the hope that our experience may provide small gifts of understanding to others. Multiparty institutional negotiations are difficult for both negotiators and background groups, yet if we can bear the responsibility, in group life as in individual life, self-determination is the greatest dignity. No one can do it alone; we can all learn, and every word and action can be part of the solution rather than part of the problem. Everything matters. We can all make a difference.

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Thank you to everyone. I believe I speak on behalf of each person when I say that we dedicate our efforts to the hope that, in reading this, others may catch glimpses of a path of dignity, respect, and peaceful co-existence through the tangled webs of conflict in modern institutional settings. Thank you.

Marjorie L. Benson
Saskatoon, Saskatchewan
December 2001

INTRODUCTION

MULTIPARTY INSTITUTIONAL CONFLICT RESOLUTION studies ways to peacefully and honourably resolve differences that arise in our roles as members of institutional groupings such as parents, children, professionals, co-workers, and so on. Institutions are socially identifiable groups with historical, cultural, economic, political, and legal significance, and ongoing functional interdependence in the society. Negotiations in a multiparty institutional context are discussions undertaken as a member of one of these institutional groupings relative to an issue arising out of our role.

Informal negotiations in a multiparty institutional context are pervasive, occurring each time we engage in discussions to solve problems as members of families and participants in schools, organizations, or workplaces. Daily we encounter persons, places, situations, and forces in our institutional roles that feel not only “other,” but also abrasive. Even our family members, to say nothing of those with whom we associate in the workplace or market, seem to have wildly different needs, desires, and perceptions of what should be done concerning a matter that affects us both. Resolving the difference harmoniously is not easy, but we are unavoidably part of each other’s reality, and unresolved tensions live on to haunt the relationship in the future. The skills of negotiating in such a context are the stuff of human wisdom, but each person has a developing internal compass.

Formal negotiations in a multiparty institutional context are official talks among group representatives to address some aspect of current institutional arrangements with a view to revising them. Institutional arrangements are the legal and policy rules governing group relationships. Usually, such negotiations address some aspect of a larger conflict that has crystallized into a “dispute.”¹ The outcome, if successful, is a change in the law and policy relating to those aspects of groups relationships. Lawyers are always present in such negotiations, because agreements must not only conform to existing law, but are also cast as new laws in the jurisdiction(s).

In both formal and informal negotiations, institutional forces of existing group relationships—including history, power imbalances, external accountability, and cultural gaps—

come to the table. Each of these relate to core issues such as group values, identity, survival, and power. These incommensurables influence both process and substance in negotiation, and the outcome of talks in turn feeds back to alter the relationships respecting these core issues, such as the distribution of social, economic, cultural, or political goods or power.

In 1997, the Canadian Supreme Court declared in *Delgamuukw* (1997) that the entrenchment of Aboriginal and treaty rights in the *Constitution Act, 1982* “provides a solid basis upon which subsequent negotiations can take place”:

By ordering a new trial, I do not necessarily encourage the parties to proceed to litigation and to settle their dispute through the courts. As was said in *Sparrow*, at p. 1105, s. 35(1) “provides a solid constitutional base upon which subsequent negotiations can take place.” Those negotiations should also include other aboriginal nations which have a stake in the territory claimed. Moreover, the Crown is under a moral, if not a legal, duty to enter into and conduct those negotiations in good faith. Ultimately, it is through negotiated settlements, with good faith and give and take on all sides, reinforced by the judgements of this Court, that we will achieve what I stated in *Van deer Peet*, supra, at para.31, to be a basic purpose of s.35(1)—“the reconciliation of the pre-existence of aboriginal societies with the sovereignty of the Crown.” Let us face it, we are all here to stay.

Chief Justice Lamer, in *Delgamuukw*²

I wish to emphasize that the best approach in these types of cases is a process of negotiation and reconciliation that properly considers the complex and competing interests at stake.

Justice LaForest in *Delgamuukw*³

Students of “Multiparty Institutional Conflict Resolution 2000–2001,” College of Law, University of Saskatchewan, simulated such a negotiation, specifically the implementation of Treaty Six, one of the “Numbered Treaties” signed in 1876 in what is now central Saskatchewan.⁴ The class was part of the upper year elective Law program; registration was limited to seventeen students. The simulation took place over two four-hour sessions of Main Table talks, and included extensive background work in class meetings, visits from Elders, consultations with team advisors, research, preparation, and team meetings. The text of our negotiations was the recommendations of the *Report of the Royal Commission on Aboriginal Peoples* with respect to the implementation of treaties.⁵

The methodology in creating these materials involves analyzing participant reports and reflections, selecting, classifying, and combining them into a conceptual model created by the instructor. We adopted this method for the following reasons.

The case method is familiar legal discourse, its genius being that generalizable rules are most meaningfully communicated through a concrete story in which the flesh and blood details carry the message. “Be prepared,” for example, is trite advice in the abstract, but its effects are anything but trite in action. Each case is partial, yet each offers a window through which we might glimpse the whole.

This case is a simulation rather than an authoritative legal source, but it offers transcripts and participant perceptions not available in official negotiations. Perceptions are important because both negotiations and conflict are driven by subjective impressions. We react on the basis of assumptions, expectations, and perceptions that usually remain unspoken. We cannot understand why the other person doesn’t “get it” and is behaving so “irrationally,” while the other person is thinking the same thing about us. Intellectually, we may know that the other person sees the world differently, but just how differently, as participants observed, is almost impossible to believe without first-hand reports. Past perceptual gaps are carried to the table and new ones created at the table reach into the future. Once we see the chasms in subjective perceptions, we can understand how conflict escalates and begin to glimpse what we might do about it.

Participant reflections honour Elder teachings to speak only from our own experience. Each perception is a unique combination of role, history, personality, and experience. The dizzying range of perspectives resists singularity in favour of the diversity that shapes the zigzag path of negotiations. The diversity invites readers to connect with whichever expression most resonates with their own experience. It invites dialogue and discussion, mirroring negotiation as a process of interaction and relationship. As one participant put it, “maybe interest-based negotiation has to be infused with the circle ethic” (Io, p. 28).⁶

Part One concerns legal education, presenting participants’ reflections on the place of multiparty institutional negotiations in law school, the experiential methodology, the particular conflict, and their suggestions for improving the class. These comments provide a context to assist readers in assessing the simulation and its limits.

Part Two presents the simulation chronology, including preparatory classes, visits from Elders, consultations with team advisors, team meetings, negotiation sessions, and follow-up events. The chronology allows readers to draw their own conclusions about the negotiations unburdened by analysis.

Part Three contains the participants’ reflections on what they learned, as selected, categorized, and combined into a conceptual model by the instructor.

Asking participants' permission to share their records and reflections was asking a lot. No one foresaw this as a possible outcome of our work. Most of us would have done some things differently had we known what we now know. Most of us bumped into our own fallibility, running headlong into difficulties of both process and substance. Despite eight hours of Main Table negotiations, we were unable to resolve a single substantive issue. We unwittingly replicated the outcome of a video we viewed of Aboriginal-Crown negotiations in Ottawa between 1983 and 1987 as mandated by the 1982 *Constitution Act*. Most of us left with a haunting realization of how little distance we have come in Aboriginal-non-Aboriginal relationships in Canada and how far we have yet to go.

These materials are a gift of the participants in the hope that others may learn from our experience. Experience is an effective but costly way to learn. Law students will soon be holding themselves out as professionals, with the lives of others dependent on their actions. As a society, violence threatens at every turn, begging for collective learning about how to peacefully navigate oceans of difference. Somehow we have to learn to address conflict in manageable pieces without being overwhelmed by all the unresolved issues that surface as soon as we begin. Somehow we have to grow to be able to peacefully resolve conflict as it unfolds and to see in diversity meaning, richness, and even beauty.

The theme of trust and its absence weaves throughout these pages. Lack of trust sabotages formal as well as informal negotiations in a multiparty institutional context. Conversely, moving to the heart of conflict with honesty and trust mysteriously unleashes a transformative power that issues forth new life.

It is the hope offered by the transformative power of trust that gives us courage to accept the vulnerability involved in sharing our learnings. Writers have no control over the way their words may be interpreted or used. This, too, mirrors the process of negotiation, but to protect the privacy of the students, only the instructor's name is offered for scholarly criticism based on the conceptual model. The students' unique voices are preserved through self-chosen fictitious names.

Quotations are edited with respect to grammar, punctuation, and consistency in the usage of capitalization. Despite compression and juxtaposition, every effort has been made to retain the original meaning and context of the participants' reflection. Introductions and explanatory comments by the instructor are included in square brackets.

To summarize, Part One: Legal Education offers students' thoughts on the place and process of multiparty institutional negotiations in law school. Part Two: Chronology describes the simulation classes, guest speakers, consultations, team meetings, negotiation sessions, and follow-up events. Part Three: Lessons offers participants' reflections on what we learned, as selected, classified, and combined into a conceptual model by the instructor. Short closing reflections and an annotated bibliography follow.

PART ONE

LEGAL EDUCATION

[Participants commented on multiparty institutional conflict resolution and its place in law school.]

Percival, p. 1: I understood conflict to mean the struggle between differing perspectives on an issue. It is not the different perspectives that cause the conflict, but the active attempt to further one perspective to the detriment of the other (or others, as the case may be). Conflict can be internal, a good example of which would be the internal struggle between right and wrong we have all faced at some point in our lives. Conflict can also be between different individuals, organizations, etc. The idea of a multiparty conflict is one that arises between more than two parties. For me, a conflict is resolved when the struggle is over.

Annette, p. 1: Everyday there are multiple party conflicts in the world within multiple layers of institutional history and complex social disputes. There is a need for members of the legal profession, as well as other professionals, to develop skills and understandings in dispute resolution processes involving multiple parties and institutional conflict... With these skills, I want to help resolve multiparty conflicts in my professional and personal life, thus working towards a peaceful coexistence. This seminar has explored the strengths and frustrations of dispute resolution processes. It has taught me the importance of preparation, collaboration, and the difficulties dealing with complexities and emotions...

p. 32: I have learned some important skills such as the importance of sharing power, working together, and accepting emotions in negotiating.

Harrison, p. 26: It is a wonderful thing that mediation is creeping its way into the court system, but its effectiveness is completely dependent on the openness and willingness of the participants. And from what I've observed, this process can be either a wonderful fulfilling experience for all parties, or simply a pain-in-the-ass, court-ordered process, all dependent on one thing—the respective lawyers' approaches.

Denise, p. 31: This will be a class that will evolve over the years to come and, without a

doubt, portray talent that will go on to negotiate and solve many of our society's problems. There will always be some to solve.

Kim, p. 26: With the proper training in skills and knowledge, I can see negotiations being very powerful tools. I agree with what Mr. Molloy said: "It is through negotiations, not litigation nor confrontation, that conflicts will be resolved."⁷

A Nonadversarial Paradigm

[Participants reflected that successful negotiations in multiparty institutional conflict require different skills, attitudes, and learnings than adversarially based legal work. Lawyers are still required to understand their client's case well enough to be able to state it in its most clear and positive way. What is different is that they move on from there to solve a mutual problem rather than adopt a win-lose approach.]

Io, p. 1: The challenge for law students is truly great. We are trained in argument and groomed for a leading role in the win-lose problem solving of litigation. Conflict resolution in the sense we have been studying it is the antithesis of litigation.

Harrison, p. 26: [I]t seems as though the practice of law and the process of mediation are at odds. The practice of law teaches one to advocate one's own interests, at the expense of the other party or parties. It is by its very nature adversarial and confrontational. It is, plain and simple, not a pursuit intent on building relationships. It is a pursuit intent on winning. Mediation, on the other hand, seeks to find win-win situations for all parties. It allows all parties to express their opinions, thoughts, and perspectives, and most of all, involves them in the process. Litigating in court is such an artificial procedure. It does not, as far as I'm concerned, allow for our natural desire and ability to be involved in a solution. It takes it completely out of the affected parties' hands and allows strangers to find a solution. It is no wonder that parties often feel less than fulfilled after a court proceeding, even if they have effectively "won." Who really wins anyway in this environment? From where I stand, only the lawyers and judges win.

Max, p. 4: I found the preparatory stages of the simulation, of all the stages, the most involved and rewarding. I believe that almost all of the group members interchanged roles as students and educators throughout the process, and that the interchange created the capacity to work and experience on a higher level than any of us possibly could have by independent means. Furthermore, when I look back on the experience, I find that interchange astonish-

ing, considering the atmosphere in which it took place. Typical law students, if I may generalize, are strong, determined, and extremely competitive. The experience within the college itself seems to build upon those qualities by fostering and encouraging their growth. For that reason, our free flow of knowledge, understanding, and information amazes me. It provides me with a level of confidence, both in my peers and our ability to work together, that I had previously lost somewhere along the course of my studies.

Harrison, p. 36: This has been a remarkable class. I have enjoyed every minute of it and am so thankful that I chose to take it. I never realized at the time I chose it that it had never been offered before and that we would become the pioneers of multiparty conflict resolution, but that groundbreaking experience has only added to the overall enjoyment of the class. To say that I appreciated the freedom that was offered would be a gross understatement. From the ability to decide on the methods of evaluation to the participation in the overall direction of the class, I unfortunately have to say that I have never had the pleasure of being in such a situation. It seemed rather appropriate, especially considering the chosen topic of negotiation, to be able to work together as a group to achieve a common purpose. I have never felt more as though I was an active participant in a learning environment—an environment created entirely by my peers and me. It was so wonderful—truly a breath of fresh air from the mundane walls of academia that threaten each and every day to rob us of the inherent joy of learning. I am a different person for it.

Janet, p. 2: As an Aboriginal woman, I have many concerns about my future and the future of Aboriginal people in Canada. As an Aboriginal law student, learning the “white man’s law” in the “white man’s” institution has given me even more reason for concern. At one time the general objective of educating “the Indian” consisted of stripping them of their identities in hopes they would become more like the dominant society. Law school has not strayed far from this policy. It allows for, if not promotes, alienation from oneself. For me it’s been an experience of alienation from myself both as a woman and as an Aboriginal person. Law school is not an institution of change, but rather a place where we learn to think *within the box*.

A class like Multiparty Institutional Conflict Resolution (MPICR) is an attempt to change all of this. This class showed me for the first time that the process of obtaining a legal education could also be an experience of intellectual growth and innovation. This class allowed students to become leaders. It allowed students to contribute to their own learning. The class was inclusive and made room for individual contributions. Students’ ideas were being implemented and becoming the foundation of a whole new legal discourse. As an Aboriginal law student, this class was liberating and empowering. My message was given voice.

Janet, p. 29: I initially came to law school to gain the tools that would allow me to better

the lives of Aboriginal people. Like many young Aboriginal women, I wanted answers for all the wrongs committed against my family. Somewhere along the way, this objective got lost. To my surprise, justice was not offered as a course, and what I learned instead was “the law” that justified the dominant status quo. Law school is about narrowing your mind and not expanding it. This class has grounded me back to my original calling.

Harrison, p. 35: Of the few [classes] that really challenge and push the envelope, it would be devastating to see one of them leave or worse yet, change, and in an effort not to offend.

Experiential Learning

[Participants also commented on the methodology of the class, namely, learning through the experience of a negotiation simulation.]

J. Colton, p. 1: I learned about multiparty institutional conflict resolution from the guest speakers, course readings, and the experience itself. Although the speakers and the readings were excellent, the most important lessons came from the actual simulation.... My analysis of what the experience taught me became clear during the process of writing this report.

Lee, p. 8: Meeting with Mr. Molloy was incredibly valuable.... I learned many things from this meeting. When I re-read parts of his book after the meeting, some of the answers seemed to have been available in his book, but being able to ask him questions gave me first-hand answers and understanding.

Kim, p. 25: I learned more during the actual negotiation session—the hands-on work. I did a substantial amount of research and read books.... However, the table was the foremost teacher. It taught me skills, issues, history, psychology, and advocacy. Some of these things I could not have learned straight from a textbook.

Max, p. 24: I have studied personality, conflict, and thought processes *ad nauseum*, but I have only now come to truly appreciate the value in learning from sources other than books and classroom instruction.

Janet, p. 27: [T]he simulation exercise was invaluable. It allowed the students to “experience” the lessons rather than have them described for us. We not only learned about the different negotiation strategies, but we had the opportunity to exercise them. The simulation gave us the opportunity to experience, to some extent, the realities of multiparty negotiations. We were faced with many problems along the way and as a team we had to find ways

to overcome them. I am a believer in experiential learning and I think what we learned in this class was “above and beyond” what we may have learned in a textbook

J. Colton, p. 4: In my experience ... professors cut off discussion before it comes to a natural end. I’ve always resented that. Listening and speaking to each other is so important in the learning process.

Lee, p. 1: Going behind the table and experiencing a multiparty negotiation simulation was one of the best ways to learn. In fact, it was one of the most valuable and memorable experiences I have had in law school ... I will remember this class for years to come.

Harrison, p. 35: I have so much enjoyed the freedom in this class—in every respect. I have enjoyed the openness to be able to chart the path of this course and share responsibility for its direction. What a welcome change. I have found it very interesting and frustrating at the same time in these past few years at law school that the most integrated knowledge I have gained has come as a direct result of my previous experience ... either because I had first-hand experience dealing in certain matters, or else because I could directly relate it to some experience.... I have very little retention of any information that was learned in the abstract, without a practical base. That should be very concerning to the powers that be ... I cannot remember the last time I saw someone learn to drive a vehicle by reading a book.

Max, p. 2: I believe, more strongly now than ever, that true knowledge cannot be given by parents or educators, but that it must be encouraged to develop on its own. The understanding that I presently hold with regard to the very nature of conflict and my reaction to dispute was not easily achieved. It resulted from much personal reflection that at times seemed overwhelming. I consider it so ironic that my present understanding is nothing that I had not been told before. I have studied significantly in the area, but this individual experience has brought more to my realm of true knowledge than any book or lecture ever has. Books and lectures are incapable of conforming to my individual need and perspective.

Which Conflict? Retrospective

[Participants discussed a number of possible conflicts as the subject of the simulation before accepting the Aboriginal-Crown topic.]

Percival, p. 3: We spent a considerable amount of time discussing what conflict we were going to focus on. In contrast, little time was spent addressing the process we were going to use to attempt to resolve the conflict. While we knew from the outset that this would be a negotia-

tion, as a group, I am not certain everyone had the same idea of what a negotiation entails. I feel that this focus on the problem rather than problem solving undermined the effectiveness of the negotiation sessions. In the end, I am pretty confident that the topic of negotiations was irrelevant. It was through the process of negotiating, and in the research of the topic to be negotiated, that I learned from this experience.

Alexander, p. 15: I thought and I still think this Multiparty Institutional Conflict Resolution class was about negotiations on protocols and procedures, not substantive issues. To me the topic could just as well have been the sovereignty of American spy planes in China and our class would still be looking at protocols and procedures.

Kim, p. 3: I soon discovered that it is not the subject-matter that is negotiated that matters, but the actual process itself. Even the simplest of issues gets extremely complicated with all the different backgrounds that people bring to the table. But this was discovered at the negotiating table.

Lee, p. 20: In looking back at our class and simulation, I feel we chose a good issue to discuss because of its importance to Canada. As well, everyone in the class had different feelings and perspectives on the issue, making the simulation more true to life.

Harrison, p. 7: This is working out so well with regards to the topic we chose. I cannot imagine how difficult it would have been to try and simulate the Israeli/Palestinian dispute. Even though, at first, I really wanted to do that one, I'm so glad we chose not to. We have so many resources available to us as regards Aboriginal issues that it would have been entirely ludicrous to do anything else.

Suggestions

[Students' particular suggestions about how to improve the class.]

Janet, p. 30:

- No prerequisite required.
- Have a mandatory reading package that includes readings on the development of MPICR. Include articles on interest versus positional bargaining.
- Expect a lot from your students. You commented once that this was too much work for us. You were wrong. I feel that this is what made the class challenging. This made the simulation even more realistic for me. This opportunity allowed students to assume leadership roles and take control of their own learning. It was great.

- If an Aboriginal issue is going to be tackled next year, much more Aboriginal content is required. The Elders were great and I would build upon my relationship with them. I would also like to see an Aboriginal negotiator speak to the class as well. I think that by allowing students the opportunity to gain lessons from Elders and other Aboriginal professionals, the stereotypes can be eradicated.
- Provide more structure in some areas of the course. Have lectures for the first three weeks on interest-based negotiations. Have the students observe real negotiations.
- Have the participation marks increased to at least 50 percent of the total mark.⁸
- To assist in the writing component of the course, provide a template for students to follow.
- Be prepared for outbursts of emotion....
- Have this course every year.

Max, p. 31: My suggestions relate to one overarching theme, that being the need for more extensive education:

- Educate further on alternative dispute resolution: provide introductory materials and assist students' understanding of them by holding specific classes on the difference between interest-based and positional bargaining.
- Encourage students to police one another. Robert Mitchell said that when he slips back into positional bargaining, his opponents are quick to notify him of his mistake.
- Provide assistance with the subject-matter. I know the ability of law students to take responsibility for their own learning is assumed, but if there is a huge gap in knowledge among the parties involved, significant problems can arise. That assistance may be provided by:
 - a class on the subject-matter; and
 - providing more involved resource persons. Perhaps a teaching assistant could make sure that students were aware of the current developments in the area.
- If the seminar will be on the same topic, I think that you must continue to encourage cultural awareness. I thought that the Linklater's presentation was invaluable, but I think that it could be more so if some sort of bridge was built between the Elders and the class participants. I would suggest attempting this by:
 - having [a non-Aboriginal person] illustrate the effect of the problems characteristic of First Nations communities on the dominant society and how self-government aims to address these problems; and

- devising (sorry) some [additional means] to have students see the relevance of the past on the present and future.

J. Colton, p. 23: [B]ackground in ADR [alternative dispute resolution] or mediation would be helpful. My ADR background was useful because I was familiar with concepts such as interest- and position-based bargaining. Alternately, I would suggest that the class should begin with a crash course in ADR.

During the negotiations, I thought that the class needed more time at the Main Table. After the negotiations finished, I thought that we needed more time to debrief. Now I think that the class needed more meaningful preparation time before the negotiations began. If the class had started with a crash course in ADR and solved the background issues in advance, the negotiations and the debriefing would not have required more time.

The guest speakers had a greater impact than the readings assigned for this class. Professor Donna Greschner's lecture on multiparty negotiations was very helpful. She shared her personal experience and gave us valuable advice. Maria and Walter Linklater made a lasting impression on me. I learned a lot about the history of their community. Although Tom Molloy gave a detailed account of his role as chief federal negotiator in *The World Is Our Witness*, I think that the federal position needed to be reinforced with a guest speaker. I think that the class would benefit from the opportunity to ask questions.

Alexander, p. 29: Seven suggestions for future multiparty resolution classes:

- Keep the dinner. It was very good and created the required informality and debriefing outside the school setting.
- Clearly outline what will be expected from everyone. I realize that we were the guinea pigs, but I think people should have an idea what they are getting themselves into next time.
- The students need to get to know each other before the simulation begins. A discussion on an engaging topic unrelated to the simulation would be my suggestion.
- Encourage students to pick a side in the simulation that perhaps they would not normally pick. I think that as advocates we have to do this all the time. I also think it forces one to learn other perspectives on an issue.
- Negotiations and debriefing should be longer. This was my personal feeling.
- Keep the topic. Aboriginal issues are always going to be very difficult to deal with on many levels. That said, the topic's proximity to everyone makes for great passions. I think you will find that even keeping the same topic every year, the simulations will be drastically different. I believe that each tapestry is woven with an infinite amount

of thread in an infinite number of ways. This makes the range of experience on this topic boundless.

Carlos, p. 25: Although not an exhaustive list, I would recommend the following for future simulations:

- Provide readings that provide a common knowledge base for all participants, as well as providing them with the relevant substantive law.
- Ensure there is no inherent knowledge imbalance between the teams.
- Ensure the details regarding chair, seating, etc. are decided beforehand.
- Allow for teams of equal size.
- Provide a video of substantive negotiations.
- Try to find a round table.
- Decide on a more flexible speaking arrangement.

Annette, p. 30: Recommendations:

- I would have liked some information and training in mediation and conflict resolution beforehand.
- I would have enjoyed watching a multiparty negotiation such as the discussions that Bob Mitchell was involved in with the FSIN [Federation of Saskatchewan Indian Nations] or a similar process that would be like our simulation.
- I would have liked to start researching my role and the type of peace process we were simulating earlier.
- I would have liked more than 30 percent for a participation mark, considering the many hours we spent working together beyond class time. It might have been more balanced to have a 45 percent participation mark and a 55 percent written assignment.
- I would figure out a different physical setup, perhaps without the stone, that would allow more equal speaking for everyone who wanted this.
- One final recommendation is to keep this class! It adds a breath of fresh air into a somewhat narrow set of courses. I enjoyed every moment and it will always be remembered as a meaningful experience.

Lee, p. 25: I feel that much of how the class develops is due to the students who

participate. We all have such different backgrounds and experiences. No two classes of this nature will ever be the same. Therefore I have some general suggestions for this class in the future, but feel each class will develop on its own.

First, I think having Mr. Molloy and Mr. Mitchell (or others like them) come in and discuss how negotiations are held before the simulation would be very beneficial. I also believe watching a negotiation in process is one of the best ways to learn. When splitting into groups, I believe the federal and provincial groups should be split up from the very beginning, and the class split in thirds rather than in half. I don't feel that ADR should be a prerequisite, but perhaps a class to discuss different ways to negotiate and the process would be helpful. I believe the framework agreement in our negotiations was necessary; however, a better explanation (preferably from an authority such as Tom Molloy) is necessary. I understood the framework agreement to be broad statements to help "frame" the negotiations. I felt some of the areas we were stuck on would not have occurred if all of us had a greater understanding of the purpose of the document.

I think the class should be held twice a week; it seemed a long time between classes. I think this class should be graded slightly differently as well. I would suggest a greater mark be placed on participation, even up to 50 percent. One of my classes [at another university] was 100 percent participation and a completely subjective grade. Students were all aware of this in advance and there seemed to be no issues with this marking style. Without participation this class would not work; therefore our marks should reflect this to a great degree.

PART TWO

CHRONOLOGY

[This part presents the events in chronological order as described by the participants.]

Introductions and Choosing a Conflict

[4–11 January 2001]

Lee, p. 1: On 4 January 2001, the Multiparty Conflict Resolution Class began discussing the implementation of a class that had never before been offered at the University of Saskatchewan.

Kim, p. 2: Today we had our first class. We discussed what expectations the class had. [The professor] explained what she expected from the class and the class structure she foresaw.

Janet, p. 4: The class began with introductions. Everyone appears to have either taken a course in alternative dispute resolution or have worked in the field.

Alexander, p. 3: The first substantive thing our class had to do was to pick a topic for our simulation.

Guest Lecture: Professor D. Greschner

[18 January 2001]

[Most participants reported a version of Professor Greschner's talk and "lessons"; only representative accounts are included here.]

B. Larsen, p. 4: Professor Donna Greschner came and spoke to our class about her involvement with the Meech Lake and Charlottetown Accord negotiations. She gave us useful tips about multiparty negotiations.

Annette, pp. 4-5: Donna came into the negotiations in early April 1992 as a negotiator for Saskatchewan. Donna described the protocol in constitutional meetings, which meant there was a certain order in which people sat and spoke. Usually the federal people chaired the meeting. The parties negotiated in the order in which they joined Confederation. The parties varied in size. Donna said that the AFN [Assembly of First Nations] had the toughest job because ... it was difficult to keep ... over six hundred bands ... informed.... Donna said she learned the following lessons:

- You have to know the substantive legal area you're working on. Knowledge is power and the strength of the party's knowledge is dependent on the knowledge of the people at the table.
- Everyone has two chairs at the table but some chairs are more powerful than others. Donna says this is the same as in multiparty negotiations such as with South Africa's new constitution. There is always inequality in bargaining power. Donna said there must be something really at stake to equalize power and this depends on the issue being negotiated. When you enter into negotiations, you must ask, what do I really want at the end of the day? There must be good leadership, but everyone works together and helps each other.
- The most important work goes on away from the table. This would be in private meetings with shifting coalitions. This also included work done back at home, and the "media spin."
- Keep professional distance from people. Don't be friends because you need relationships of trust with everyone and friends expect you to tell them everything. She said use integrity and don't have favourites or enemies.
- Park your emotions at the door in negotiations. Emotions get in the way of consensus and you can't reason with emotion. Show an emotion like anger or tears only when sincere. Donna said the ability to separate the person from the argument is not always easy, but by doing so you make a good negotiator and can focus on what you are trying to achieve. Basically, the job of a negotiator is to talk things through.
- "Know thyself." In intense negotiations, stay grounded and in control, and pace yourself. Know when you work best in the day and what triggers set you off.

Alexander, p. 4: Professor Greschner indicated to our class a number of lessons, among them:

- Substantive law is required.
- Most important work happens away from the table. Sometimes coalitions are secretive.
- Don't have an enemy on your team.
- Separate the person from the argument.
- The job of negotiator is to negotiate, not emotionate.

These particular pieces of learned advice were actually a foreshadowing of things to come.

Constitutional Video

[25 January 2001]

[Most participants also reported a version of their impressions of Dancing Around the Table, a National Film Board video of the Aboriginal-Crown constitutional talks mandated by the Constitution Act, 1982, and held between 1983 and 1987.⁹]

Annette, pp. 6–8: Today we watched a video that involved the same process of constitutional negotiation that Donna told us about. The video was called *Dancing Around the Table: Part I: The Political Struggle for Recognition of Aboriginal Rights*. Ethel Pearson, an Elder of the Kwakwaka'wakw Nation, described how the Crown land of Deer Island was Indian land and that the Indians had lived there for generations until the Timber Barons took over. Ethel's son Bill said that when the Constitution was patriated, Indians were left out....

There were representatives of four Aboriginal groups. There were also ten elected premiers. The first minister of the country, Trudeau, chaired.... Trudeau said that this conference must take account of others besides Aboriginal peoples.... Chief Wilson (Ethel's son) said that his people had been nation-building for three thousand years and that the Euro-Canadians had only a two-hundred-year history on their land, but within that time the white man had erased the Aboriginal right to their own religion and relationship to the land. Chief James Gosnell ... spoke and also said they were the owners of the land, yet everyone else was getting rich from their resources. Bill Bennett and Trudeau looked angry. Trudeau was adamant that they couldn't settle things differently from anywhere else and that history was constantly being rewritten.

Kim, p. 7: Following the video, we finally... decided on the issue and the roles that we would be playing.

J. Colton, p. 1: Everyone in the class elected to participate through active roles for the Aboriginal team or the Crown team, or through passive roles as neutral observers.

Percival, p. 5: The class structure was discussed and agreed upon and an opportunity to do something else was made available to all if they chose not to participate. In that way, everyone chose to participate.

Carlos, p. 3: Students voted on which side they preferred to represent in the negotiations. The Aboriginal team ended up with eight members and both Crowns ended up with seven between them. There were two observers. The Crown further split into a federal Crown and a provincial Crown.

Independent Team Meetings

[25 January 2001]

[Teams held independent meetings at their own discretion. Though meeting reports are included here chronologically, readers are reminded that participants were not aware of events in the other team's meetings.]

Crown Meeting

Kim, p. 8: The Crown group ... met right after class. The Crown group had to decide who was going to represent the federal and provincial side.

Aboriginal Meeting

Janet, p. 13: [The Aboriginal team] discussed the possible roles that people could play and the substantive areas we wanted to cover. We discussed the possibility of having a facilitator; we also started to discuss some general interests that needed to be addressed in the simulation.

Elders: Session One

[1 February 2001]

Janet, p. 8: Maria and Walter Linklater spoke to our class about the significance of the treaties to Indian people—what Walter refers to as the spirit and intent of the treaties.

J. Colton, p. 22: Walter Linklater shared personal stories about growing up in a residential school, alcoholism, and the struggle to find his lost spirituality. His wife, Maria, talked about her experience in a residential school, raising her family, and the state of her community.

Annette, p. 9: [Walter] and Maria have a large extended family, with six children, twenty grandchildren, and close to three hundred foster children over the years... [W]alter attended residential school in Ontario and also went to teacher's college and taught on a reserve. He married Maria after this and they had their children, but he suffered from alcoholism. He said that part of his problem with alcoholism was being forced to become a Catholic at residential school, which was completely different from the Aboriginal spirituality he learned before going to school...

Maria talked about all their children, their grandchildren, and the foster children. She spoke of the strength she felt from having her spirituality and being a strong Cree woman and the responsibility she felt in teaching all her children. She spoke of the sadness she felt at courts taking away young Aboriginal people and the need for healing of all Aboriginal people old and young.

Independent Team Meetings

[1 February 2001]

Crown Meeting

Kim, p. 11: [The Crown team] further established our roles and tried to figure out what protocols would be used as the primary framework. Lee suggested that she could see Tom Molloy... We also discussed the royal commission recommendations. We noted that the Royal Proclamation of 1763 should be used as the basis for any new agreements... The commission also agreed that oral evidence was very important and, as such, should be "admissible in the courts when they are making determinations with respect to historical treaty rights."¹⁰ We agreed that the negotiations should be in good faith, and at all times we were to be courteous and respectful. Lastly, we discussed what substantive issues both the federal and provincial governments would be willing to negotiate. Mainly, all issues that were recommended by the commission were agreed upon. This included economic issues, governance, land resources, and hunting and fishing rights.

Aboriginal Meeting

B. Larsen, p. 5: After [the first Elders' session] members of the Aboriginal side who were present for that session met briefly to discuss the roles we might take in the upcoming negotia-

tions. We agreed on the types of research to be done, and that it may be beneficial to talk to an advisor like Bob Mitchell.

Elders: Session Two

[3 February 2001]

J. Colton, p. 3: Our class met ... to listen to the Elders again.

Annette, p. 11: Walter began with a prayer and smudge again, re-emphasizing the importance of spirituality in Aboriginal life. He talked about the importance of oral history in terms of the treaties and how this was as important or more than the written documents. He said the stories of his and other relatives had been passed on and must be seen as evidence of how the treaties were made.

Janet, p. 10: Walter and Maria continued to speak about the spirit and intent of the treaties. They took a more “academic” approach to sharing their knowledge with us this morning. They talked about the unwritten aspect of the treaties. They talked about the differences between what was said at treaty negotiations and what was written down on paper. Walter explained the important role that oral tradition plays in Indian culture—how it requires people to be good listeners. He warned us about the problems associated with the written text; once something is written down it becomes dangerous—because it will be taken literally.

Annette, p. 11: [Maria] told us about the power of women and their connection to Mother Earth. She said women are connected to the Creator through the land.

Kim, p. 9: [Maria] seemed to concentrate on things that could improve the plight of Aboriginal people ... [such as] her suggestion to teach a mother or a grandmother or offer her practical household help rather than take her children away.

W. Roberts, p. 9: This Saturday, 3 February, anyone in the seminar group had the chance to participate in a sweat lodge ceremony with the Linklaters. This is a sacred ceremony to the Aboriginal people, and it is a central part of both their spirituality and culture.

Carlos, p. 10: While the federal team took part in the two-stage “indoctrination” process, none took part in the sweat lodge experience.

Crown Consultation with Mr. Molloy

[4 February 2001]

J. Colton, pp. 3–4: Lee and I met with Tom Molloy at his office... We were very impressed with all of the awards, certificates, and photographs decorating the walls of his office. We explained our position of Crown and asked him whether we were on the right track. Our group had some ideas on what to negotiate, but we wanted to know if they were realistic issues for the Crown to tackle.

Lee, p. 8: From the beginning of our meeting, [Mr. Molloy's] wealth of knowledge was obvious; I was humbled by the experience. His book, *The World Is Our Witness*, gave me an introductory understanding of his experiences; the pictures and awards on his wall further exemplified the work he had done for Canada... He very openly discussed the issues J. Colton and I brought forward... The Crown group had met prior to our meeting with Mr. Molloy and many of my questions were formulated from this group meeting. [The following] is a summary of the notes I took during this meeting:

- Who talks first? First Nations speak first on what they want to achieve and what their areas of interest are.
- Who would be at the table? Not ministers, they are too busy. There would be a chief negotiator and other civil servants responsible for specific issues. Mr. Molloy suggested that each person be responsible for a different issue. The mandate to negotiate comes from the cabinet and sets out the parameters of the chief negotiator's job, usually with the consultation of ministers and departments.
- Royal Proclamation: The government would not want this to be binding. S.35 of the Constitution provides that treaties and land claims are protected—beginning documents cannot be treaties because they are protected. Legal documents make it less flexible to negotiate. Should be broad statements that are tools to guide negotiations.
- Legislation: Always remember governments cannot enter into agreements that are binding on Parliament. Jurisdiction makes it clear which level of government has the power to negotiate.
- Spirit and intent v. written law: modern treaties and agreements have specific clauses that provide they are not living documents and must be interpreted by the text.

- Protocol agreement: all negotiations would begin with a protocol agreement. Example of such protocol agreement has been provided [Gitanyow Framework Agreement].
- Negotiations: listen to what the First Nations want to achieve and discuss. Go away from table to discuss what government is willing to negotiate and then reconvene.
- Cost sharing: Who is going to pay for this? Usually between province and federal government because First Nation has no money.

Debriefing Elders' Visits and Prenegotiation Discussions

[8 February 2001]

[Participants' debriefing comments are interpretive rather than descriptive, and are included as reflections in Part Three: Lessons.]

J. Colton, p. 4: What a great class.... Most of us had comments to make and we needed [75 percent] of the class.

Denise, p. 8: After our class break, a discussion on some of the logistics of negotiation day began. The [Crown team] presented a protocol agreement that had arisen from [their] meeting with Tom Molloy. The protocol was the Gitanyow Framework Agreement, dated 6 February 1996.... There was discussion at this time of the Aboriginal table bringing their proposed agenda, including its priorities and contents....

There was discussion of the roles to be used. It was pointed out that [Mr.] Molloy usually went with approximately thirty people with expertise in different areas. The federal person suggested there would be four people at the table, two from the federal government and two from the provincial government.

A discussion then ensued on the need for secretarial support. It was decided that a male student who had opted out of the negotiation would be the official scribe.

Independent Team Meetings

[8 February to 1 March 2001]

Crown Meeting

[8 February 2001]

Kim, p. 14: Lee met with Tom Molloy and we received from him a suggested protocol agreement that has been used as a framework for different negotiations.

Alexander, p. 6: We had also decided early on that, as part of our strategy, we wanted the federal government to chair the negotiations. This was due in part to the belief that that was the way it was done in the real world, but more importantly because the person who chairs the meeting may be able to control the discussion.

Carlos, p. 1: Our group made an immediate decision not to entertain any sort of apology. It was not our place, as negotiators, to make such a gesture.

p. 5: We decided how we should dress, how we would address ourselves, how secretive we would be, and what type of information we would leak to the opposition. As representatives of the Crown, we decided that business dress would be appropriate. It lends an air of credibility and professionalism to the proceedings. We would address ourselves formally at the table and in meetings involving members of other groups, but informally in caucus.

Carlos, p. 6: We discussed what our priorities were, what we would not negotiate at the table, and what arguments we anticipated. Our priorities were to take control of the negotiations, bearing in mind that whatever matter we negotiated could only be presented to government for ratification. Under no circumstances would we discuss the Royal Proclamation, or any apology for not standing by the terms of the Royal Proclamation. The issues we anticipated the Aboriginal side would raise for discussion were education, hunting rights, self-government, and taxation. We believed that discussions of any one of these topics would consume our entire allotment of time. We waited for an indication from the FSIN of which topics to research...

We went over what our negotiating style and tactics would be, what order we would speak in, and how we would communicate with each other during the negotiations... Our chief federal negotiator would handle the bulk of the talks. She has a forceful personality ideally suited in presenting a strong front. Alexander would sit next to her at the table. His political science background provides him with knowledge of how government is structured and the processes government must go through. I believed he would prove invaluable when negotiations became hung up on procedural issues. Further, his calm and reasoned demeanour provided a much needed balance to Lee. Whenever Lee became too overbearing, or whenever the other side launched attacks at her, Alexander quickly interjected to diffuse the situation. Alexander's ability to think on his feet and his ability to assess the strengths and weaknesses comes from being involved in prior simulations. It provided our side with some much-needed guidance...

p. 7: Finally, we discussed how accommodating we would be regarding Aboriginal customs and traditions, and who would chair the meetings. We decided an opening prayer was appropriate.

Aboriginal Consultation with Mr. Mitchell

[9 February 2001]

W. Roberts, p. 10: It was a privilege to have a small group session with Mr. Mitchell, who has had a strong provincial political career. Mr. Mitchell has held roles such as Saskatchewan's attorney general and Saskatchewan justice minister. It is, however, Mr. Mitchell's current position that interests me the most. At the current time, Mr. Mitchell is heading up the Federation of Saskatchewan Indian Nations negotiating team for Saskatchewan Aboriginals in negotiations that will work out the details of a self-government agreement. This is a major undertaking that has not been attempted anywhere else in Canada.

Denise, p. 10: [Mr. Mitchell] noted that the agreement-in-principle was only a stepping stone to a final agreement that would hopefully lead to implementation. An agreement-in-principle would see the *Indian Act* gone and the treaties stronger than ever and finally fully implemented. He saw the necessity in achieving a living document. According to the Supreme Court, treaties are living documents, as every constitution is a living document and the Supreme Court regards them as such.

Annette, p. 15: [Mr. Mitchell] talked about a living agreement based on the treaties.... Mr. Mitchell said it would be the idea that treaties change with time and would be seen as living agreements by governments.

Denise, p. 9: [Mr. Mitchell] then began the discussion on interest-based bargaining. He explained that each party was required to bring to the table a statement of its interests. Each party is to do this without taking any positions. He felt that this was a vast improvement over positional bargaining. It allows one to keep the objectives of the discussion in mind.... One should understand the program and options and sift through to find an option that achieves everyone's needs.

He talked of the master negotiator who makes everyone feel as if they have won....

There are federal and provincial representatives ... chiefs and lawyers. The agenda determines who goes to the table. The team should bring as many as they like. Everybody can speak.

Harrison, p. 8: We identified, with input from Mr. Mitchell, the different individuals who should be part of our team: the chief negotiator, the chief of the FSIN, a couple of constitutional lawyers, a couple of Elders, and a couple of chiefs representing different bands.

Max, p. 10: [Mr. Mitchell] informed us that it has become customary for Aboriginal teams to “hold the pen” and to set the agenda.

Janet, p. 14: Mr. Mitchell left us with a number of principles to keep in mind in preparing for negotiations:

- Think seven generations ahead.
- Treaties are living documents.
- Emphasize the importance of the oral versus the written treaty. Be aware of interpretation differences between the parties.
- “He who holds the pen holds the power—Hold the pen.”

We all knew who held the pen last time.

Aboriginal Meeting

[15 February 2001]

B. Larsen, p. 12: After the meeting with Mr. Mitchell, Max, Janet, and I discussed the possibility of the Aboriginal side meeting the following week [15 Feb.]... We agreed that whoever could show up to meet would do so...

Little did I know that I would be sick as a dog by then and end up in bed for a week.

Io, p. 8: Our meeting was small, but we felt an urgency to move towards action. With reluctance, we made the necessary decisions, although we felt uncomfortable about making them without our other members... We made some progress towards defining our roles, and thus our group identity. We have a clear vision of what we need to do to be true to our “constituents.”

Janet, p. 15: Myself, Io, and Harrison met today. Harrison volunteered to get the protocol typed up. The rest of the team would add their comments to the protocol over the break. We had made up a list of interests the last time we met and these will be included in the protocol.

[The University Reading Week was 16–23 February 2001.]

B. Larsen, p. 12: I e-mailed our group on Friday, 23 February, and advised on the roles preferred by members who had e-mailed me (six out of eight had), suggested possible strategies for our teams, and proposed we meet on Wednesday, 28 February, to discuss these things, as

well as to finalize our version of the protocol. Some of our members had met while I was ill and Harrison had typed a sample protocol on her computer.

Aboriginal Meeting

[28 February 2001]

Max, p. 10: Unfortunately, the February break and conflicting schedules prevented our team from meeting again until shortly before our first negotiation session.

B. Larsen, p. 12: All eight of us met on 28 February for two hours and finalized our protocol by going through it clause by clause and redrafting as we deemed appropriate. We then finalized our roles. [We agreed on a nonhierarchical co-chair model]. There was some confusion about whether we had to specify our roles to the point of indicating from which tribe a person who was a chief or Elder originated. In the end we decided not to be specific in order to avoid becoming stereotyped. Harrison undertook to e-mail the final version of the protocol and the list of roles to all members of the multiparty class that evening.

Annette, p. 17: Harrison had put together a draft that she sent us and we looked over it and began to make some changes at this meeting on 28 February. After rewording and changing some clauses, we looked at how the simulation could begin tomorrow. We decided to start with a prayer by Janet. We proposed the idea of giving everyone who wanted it equal speaking time to better facilitate communication, understanding, and respect. Max said she would bring a stone that each person who spoke would hold and nobody else would speak during this time. We laid out our interests and what we needed to have as a solution, which basically included the recognition of Aboriginal inherent self-governance and the building of relationships between the Crown groups and our group.

Io, p. 8: By this time most of us had settled on roles.

W. Roberts, p. 12: We had been given a protocol agreement by the federal side, but it didn't fit with our proposed direction. Our team took time drafting what would be known as a Draft Two of the protocol agreements.

Janet, p. 16: We discussed the protocol, our roles, our interests, seating arrangements, and the significance of the stone. Everyone gave a small lecture on what he or she expected to happen tomorrow and how they saw themselves fitting into the negotiations.

Harrison, p. 20: We met this afternoon, and we actually accomplished a lot ... but I'm

feeling kind of bad that we are only getting the Crown our protocol agreement tonight. Hopefully they get it before we meet tomorrow.

Crown Meeting

[1 March 2001]

Alexander, p. 9: The next time the Crown teams met was an hour before [Day One] negotiations. Both Crown teams were prepared; we had our framework agreement that [the chief federal negotiator] had typed up, some ideas of the substantive issues to talk about, our stances, and a few protocol strategies.

Kim, p. 15: At the meeting, we went through the protocol and made sure that we agreed with all the clauses. We still have not heard from the Aboriginal group. We do not know who will be at the table. This limits the research that we were able to undertake. I personally want to research the particular band or bands that will be represented so that I get a general sense of where it is coming from and what the peoples' needs and interests are. As our negotiations are to begin today, I guess that it is too late for that.

Day One Negotiations

[1 March 2001]

[A class member who had chosen to write a major research paper in lieu of accepting a role in the simulation agreed to take notes of the negotiations as they proceeded. This is the only written record of the simulation, and although the printed word cannot accurately recreate the atmosphere of the proceedings, there has been an attempt to add a sense of immediacy where possible. The terse notes have also been edited for clarity and ease of presentation and understanding. Although readers will note what appear to be tedious sections below, their inclusion is necessary as they give critical context to what follows. We also note here that the Aboriginal team did not accept the note-taker but agreed not to contest the choice; they consequently do not accept the record as official.]

The note-taker signifies particular speakers within individual teams through the use of parentheses, e.g. (Elder) or (Civil Servant). Significations not used by the note-taker but included here are: the insertion of a space after every fourth speaker; a horizontal line to denote negotiation stops; and

abbreviations for Aboriginal team (A), federal team (F), provincial team (P), and chair (C). [Sic] indicates a literal transcription of notes despite uncertainty of meaning.]

- A: We would prefer to have all eight people at the table.
F: We understood there were going to be four, and had requested information ...
A: Did anyone receive my e-mail? (gave it out)
F: We'd like time to caucus.
- A: We decided to represent generic rather than specific bands, to avoid stereotyping.
F: We're ok with eight people, but would want one chief negotiator.
A: We'll agree to one chief negotiator at any given time.
F: We'd prefer there to be only one chief negotiator period.
- A: The chief negotiator will be representing the FSIN; that will change every two hours.
F: We want one named person; we want to caucus; representatives must leave quickly; perhaps the prayer can be postponed.
A: We're okay with that; we'll perform the ceremony later.
F: Alexander is leaving after one hour but wants to read statement from the minister, and the premier has not come yet.
- A: We received e-mail welcoming people to negotiation but were not able to meet during the week.
F: We did not receive any e-mail.
A: We have come up with a protocol agreement that we would feel more comfortable with; it has new elements; the old agreement did not accurately reflect the situation.
F: We are uncomfortable discussing this now that it has begun; we are not happy with the possible change in the situation; we would like to walk out and re-prepare. The Aboriginal side has had quite a big difference ... [sic]
- A: We didn't think the original framework was ok as it was based on negotiating a new treaty; this is an implementation discussion.
F: We understood that we would be using the original framework and discussing negotiations.
A: We did not realize it was a precedent.
F: You are negotiating in bad faith.
- A: It is not fair that we should assume we should negotiate.

F: We would like to caucus for ten minutes.

F: I would like to welcome everyone and introduce the premier of Saskatchewan.

P: (Premier): "Although I am not able to be here for the entire proceedings, I'd like to emphasize the importance of the meeting and the importance of the process. The renegotiated treaty is important blah blah blah blah" [sic].

F: (Civil Servant): Reads speech on behalf of minister of DIAND (Department of Indian Affairs and Northern Development), Robert Nault: "We must deal with the grievances of the past. The federal government is committed to process blah blah blah" [sic].

A: (Says the prayer.)

F: We would like a five-minute speaking limit; we want to negotiate the people speaking; we want to limit speakers to four at any given time; and there should be one chief negotiator at the table at any given time.

A: We accept four people at the table at any given time, but want the chief negotiator to switch every two hours.

F: We want to keep same chief negotiator.

A: We want to switch chief negotiator; we don't see it as a problem as everyone will be in the room at the same time.

F: We had not addressed this issue with the provincial powers, but would accept two co-negotiators, with only one at the table at any time.

P: We agree with the federal representatives.

A: We want a rotating chair.

F: How about if we chair this meeting and the Aboriginal side chairs the next meeting?

A: Is it possible to switch chairs with rotation?

F: We want only one chair, for consistency.

A: (Elder) We should try the Aboriginal way of doing it, not just the white way.

F: We still want one chair for consistency.

A: We do not see any problem with consistency.

F: (Civil Servant) Maybe the federal team should chair the entire meeting, as she will be here for the entire time and provide consistency.

A: What about an Aboriginal chair for the whole time?

F: Why switch now? The chair is not here to squelch people's speech.

A: Since the federal team is a negotiator, what about choosing a neutral chair?

- F: I still think I am neutral.
- A: You are not neutral. What about [nonparticipating student]?
- F: (Civil Servant) The chair is not a big concern given its primarily procedural role.
- A: We are not happy that we did not get a role in choosing the person.
- F: Is your problem the fact that you view the chair as a power position? We view it simply as a procedural matter.
- A: Yes, the chair is the authoritative person in the meeting, and we got no role in this.
- P: We want a consistent chair; we could rotate, but the Aboriginal side is not willing to provide one role [sic].
- A: (FSIN) We have a problem with the time-allocation role of the chair.
- F: It is the chair's role to ensure that everyone has the same time, and if she is the chair she will ensure it is fair.
- A: (Lawyer) I do not question the fairness, but we want to be able to decide how the meetings are being run.
- F: What about tabling the issue of the chair for next time?
- A: Next time there will be two chief negotiators, so what about saying two chairs?
- F: No, a consistent chair has nothing to do with having two chief negotiators.
- A: What about using the Office of the Treaty Commissioner, who is neutral?
- F: (Civil Servant) The neutral observers have not been sufficiently involved nor do they have a stake, so they may not be appropriate.
- A: (FSIN) It's their very disinterest that makes them attractive.
- F: That was not their role.
- A: We realize that the chair must try to be impartial. What about having an Aboriginal chair this time and a federal chair next week?
- F: Why switch? Let's start the speaking list.
- A: Who assumed who is the chair? We can't start the list as that co-opts authority.
- A: (FSIN) Who stated that this ... [sic]?
- F: It was agreed.
- A: No, it was not.
- P: What about just moving ahead and keeping a chair to keep things moving?
- A: That is great, but not someone involved.
- P: But they have to be ready ... [sic]
- F: Yes.

- P: I don't care if it is a federal person, but it has to be someone who knows what is going on.
- F: It doesn't matter at this point. Let's move on to agreement, and keeping the speaker's list is not important. I could step aside and go straight to Robert's [*Rules*].
- A: Let's get rid of the role of chair; there are only four people.
- F: I don't even know who is doing the talking.
- A: What about instead of a chair, what about using a speaking stone?
- F: No, you need a time constraint.
- A: We are not going to get to the substantive issues.
- F: No, you hoisted a new agreement on us.
- A: You are not neutral.
- F: We are willing to allow the Aboriginal issue [sic] to be there for all of next week, but there are some hard feelings about not having any notice about that; we thought we would be talking about the framework agreement.
- A: So did we, and as such we changed and revised the protocol. Sorry about the hard feelings; we did not mean to hoist this on you.
- P: The province has no hard feelings; let's try to move on. We are mostly concerned with the effect of reaching an agreement and not the actual negotiations themselves. The province would be willing to chair.
- F: We could use the talking stone if a five-minute time limit is used and the speaker's list kept.
- A: We request a two-minute caucus.
-
- F: To summarize the federal understanding of the treaty negotiation, it's the feds who invite Aboriginal people to negotiate. We are willing to use the rock but we will need to keep a time limit and the speaking list. Historically it has always been the feds who have done this.
- A: (FSIN) We would like to remind everyone that treaties are a nation-to-nation process, not a one-road street from one more powerful people.
- F: The feds invite people to negotiate.
- A: (Elder) We are not here to negotiate, but to implement.
- F: We are here to discuss treaties?
- A: We are here to discuss implementation, and the treaties have been encroached on.
- F: The federal position is that we invited you here and thus would normally need to chair, but we would be willing to allow the stone, with limits.

- A: We propose with provincial chair ... [sic]
- F: A provincial chair is not acceptable. It is our responsibility to chair to provide fair and equal treatment.
- A: So you are admitting that the chair is not neutral.
- F: Only in the role of representation of the people, the federal liaison.
- F: (Walking out)
- A: (Lawyer) It's the role of procedure to make things go smoothly. The feds should compromise and we have not exhausted ... [sic]
- F: We must consult with the minister; it was her understanding that she was to be chief negotiator ... [sic]

[Federal team leaves]

- C: The Crown team has decided that I should be chair. We will use the speaking stone, limiting speaking to five minutes. The Elder will get fifteen minutes. The order of speaking will be Aboriginal, provincial, and then federal. Anyone who wishes to talk about an issue will raise their hand and be put on the list to be allowed to speak after the circle goes around again. There is some controversy regarding protocol. Certain content is in dispute; we must merge the agreement. The Aboriginal side is to talk about protocol.
- F: We need to clarify that this is going to have to be done line by line as they don't ... [sic]
- C: You must do it line by line.
- A: The chair would like to lead us through protocol initially ... [sic]
- F: Let's just start going line by line.
- P: The Aboriginal proposition makes more sense for time constraint.
- C: (Preamble read)
- P: The province agrees with 1.1. [1.1: The Parties agree to establish a Common Table to discuss areas of mutual concern and facilitate understanding of these issues.]
- F: We also agree with 1.1. Do we want to initial each page? The chair's copy is the main one.
- C: (1.2 read) [1.2: The Parties acknowledge that the Constitution of Canada recognizes and affirms the existing Aboriginal and treaty rights of the First Nations People of Canada. Further, Canada and Saskatchewan recognize the inherent right of self-gov-

ernment that finds its expression in the treaties and is an existing Aboriginal right under section 35 of the *Constitution Act, 1982*.]

P: The first two lines are fine, but the application of “inherent right of self-government” does not apply to Metis. Also, their land rights are fundamentally different as they are based in scrip.

F: We are also concerned with “self-government” and would like to strike from “further” and substitute in clause B of theirs [Gitanyow Framework Agreement, B: The *Constitution Act, 1982*, recognizes and affirms the existing Aboriginal and treaty rights of the Aboriginal peoples of Canada, and treaty rights include rights that now exist by way of land claims agreements or that may be so acquired.]

A: (FSIN) The Metis are a separate issue and we are not here to discuss them.

P: We are concerned about the potential of a Metis or nonstatus person taking the agreement to a court and how they might interpret it.

F: There are some “whereases” from the federal document. The preamble has no mandate to negotiate on overly broad agreement (unclear) ... [sic]

A: (FSIN) Look to 6.1. [6.1: This Protocol is not a treaty and does not create any legal obligations.] This is not a treaty and does not create obligation. We are dealing nation-to-nation and there is no problem recognizing inherent treaty rights of the nations. We could change “First Nation” to “treaty nation.” The federal government web site says self-government is based on the inherent right to self-government. Also, the Liberal Red Book talked about the importance ... [sic]

P: The key word is “existing” and it is not in protocol. There is a fear of extending, of creating new rights, and expanding it to Metis people. 1.2 says we will exist inherent right to self-government ... [sic]. We will only accept current rights to self-government. Switch B for 1.2.

F: We agree, although there is no power to bind the parties. But we would sign off on part B ... [sic]

A: We should keep the inherent right of self-government in the clause. There is no promise to the future in B.

P: It does not say it will, but does not limit it either. We have no problem in B to saying “including the inherent right of self-government.”

F: We should table this section and create a committee to rewrite it.

A: We have two comments. One, we are happy to accept the provincial suggestion. Two, you stated the position of the federal government, but what interests are behind that position? What are they?

- P: Does the federal government have a problem including the clause in B? There should be no problem if it's limited to existing rights.
- F: We have some concern saying "inherent right of self-government." We're just worried about the binding effect of legislation and would need to be able to discuss it with the minister, but we don't want to hold up negotiations and thus want to pass it on.
- C: Does anyone want to table this and make it the first order of business next time?
- A: Since we have no problem with the amended B, and the province has no problem, the federal people should take time to decide and get back to us.
- P: The royal commission suggested recommended [sic] self-government, and Aboriginal communities already work this way.
- F: This is fine.
- C: Do we replace 1.2 with amended B, and the feds will confirm this at the next meeting?
- C: 1.3.1: The Parties acknowledge that the principles of mutual recognition, mutual respect, reciprocity, and mutual responsibility shall apply to all the processes of the Common Table.
- P: Fine.
- F: Fine.
- C: 1.3.2: Discussions at the Common Table will always respect the principles of ethical and honourable conduct.
- P: Fine and 1.3.3.
- C: 1.3.3: In the spirit identified in sections 1.3.1 and 1.3.2, the Parties agree that each individual at the Common Table shall have equal speaking rights pursuant to any rules and guidelines that may be agreed to by the Parties.
- F: We contend that 1.3.2 is redundant and that the principles of ethical and honourable conduct are culturally relative. 1.3.3 is fine. Omit 1.3.2 and strike reference to it in 1.3.3.
- A: We suggest substituting the "principles identified by the Canadian courts as comprising the honour of the Crown." The courts have defined what this means. The amended section would read "Discussions at the Common Table will always respect the principles identified by the Canadian courts as comprising the honour of the Crown."
- P: This term actually means the fiduciary obligation and is not repetitive. The clause is fine as it is. Ethics may be hard to define, but can be recognized when we see them. We have no problem with the amendment.

- F: Placing this statement now imposes federal power with fiduciary obligation, and this is something that would have to be legislated. The honour of the Crown, unless defined in the definitional section, would be hard to interpret. The clause should be struck. Or, we should add a definition acceptable to both parties. Even in recognizing that fiduciary obligation exists as that is more of a legislative thing [sic], and the federal negotiators have no mandate. Maybe we should take back the original clause and add a definitional section to define honour and ethics.
- A: We don't understand the federal position. We thought the federal government had already recognized their fiduciary obligation to the First Nations. We would have no problem with adding a definitional section.
- P: Pass.
- F: You cannot ask the federal negotiator to pass through a legislative bill; the negotiator would not have the power to do this. We would be fine with honour and ethics if there is a definitional section. Principles identified by courts are not acceptable, as this is not a court of law. Any imposition of fiduciary obligation, any future obligation, must be legislated fact.
- A: We don't understand why federal does not accept its historic position. We don't want to go back to the old statement. Table it for next time. The federal government should do its research about its research [sic].
- P: What about limiting it to its existing obligations?
- F: We resent the tone of the Aboriginal side, and we have not had time to prepare as we only got this a few moments ago. The provincial position may be sufficient, but table it and bring it back.
- C: 1.3.2 is tabled and will be Item 2 on the agenda. 1.3.3 should be tabled and will be Item 3.
- A: What about merely taking clauses, and it begins where "The Parties agree" [sic]. [1.3.3: The Parties agree that each individual at the Common Table shall have equal speaking rights pursuant to any rules and guidelines that may be agreed to by the Parties.]
- P: Fine.
- F: Fine.
- C: The first clause of 1.3.3 is struck. Let's discuss 1.3.4. [1.3.4: While recognizing the treaty relationship between First Nations People and the Crown, the Parties approach the Common Table as partners working jointly on the work-plan before them.]
- P: Before we can agree, "partners" and "working jointly" must be clarified. We are not partners. It might cast a bad light if no agreement is made.

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- F: Yes, strike “partners” and replace with “parties” and replace “Crown” with “federal and provincial” to represent all parties.
- A: We consider ourselves cousins and are dismayed over objections to “partners.” Could the province expand on the nature of the word partners?
- P: We don’t want to be partners with either to seem to be friends [sic]. We agree with switching Crown to federal and provincial.
- F: Partners implies two; parties implies more than three. Parties is more legal jointly [sic].
- A: We agree to say “approach the table as equal parties.”
- F: What about “While recognizing the treaty relationship between First Nations people and the federal and provincial crowns, the parties approach the Common Table as equal to work together on the plan” (something like that)?
- C: We will reconvene at 14:30 in a week. S.1.3.2 and 1.3.1 will be the working ... [sic]
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Independent Team Meetings

[1–8 March 2001]

Crown Meeting

[5 March 2001]

Lee, p. 16: After some discussion, it was decided to create a third agreement combining what we felt was acceptable from the FSIN protocol agreement and our framework agreement.

J. Colton, p. 9: The Crown team called a meeting at 12:30 p.m. Alexander, Lee, Kim, Carlos, and I were present. Daryl’s e-mail addresses doesn’t seem to work and he does not respond to phone messages.

It was important for Alexander to hear what he had missed. Alexander had already spoken to Lee and myself, but he wanted to hear everyone’s thoughts.

J. Colton, p. 9: The province, represented by Kim and myself, did not object. We all agreed that it would be appropriate to e-mail Draft Three to the Aboriginal group in advance of the meeting on 8 March.

Lee, p. 16: I spent some time revamping and combining the two agreements and felt that the end result was a very effective agreement that, with some discussion, might be agreeable to all the parties. I forwarded the revised version to our group for approval and then sent it to the FSIN group [on 6 March].

Aboriginal Meeting

[7 March 2001]

B. Larsen, p. 15: Our group met again ... for an hour and a half to prepare for the second negotiating session.... At our meeting we discussed the provisions in the Crown's protocol agreement, particularly with respect to self-government and certainty. Several group members had asked me to speak to Bob Mitchell following the first negotiating session, which I did, and I reported his observations to the group at this meeting. I received documents from him including "Socio-Economic Comparison Study: Highlights and Implications" and a "Socio-Economic Analysis." Our group wanted this information in order to help the chiefs and Elders prepare their speeches, which they could deliver at negotiations in an effort to convey our interests to the other side. We talked about what we might say in order to have the most impact on our audience.

Provincial Meeting

[8 March 2001]

Kim, p. 19: The province had a chance to work alone without the presence of the federal government. We went through all the clauses, and for the ones that were problematic, we thought of compromises with which all parties could potentially be satisfied. We agreed, that is Daryl, J. Colton, and I, that this was a group effort and that we would run all ideas by each other and agree among ourselves before agreeing with the other parties. It was a very productive meeting. We knew what our interests were. We anticipated what the other parties would disagree with and brainstormed how to reconcile those issues so that the province would still maintain its basic interests. We were ready to negotiate.

Day Two Negotiations

[8 March 2001]

- C: Welcome to everyone.
- A: Grandmother said that in historic negotiations there were protocols that varied nationally, but here in Saskatchewan the purpose of these protocols was to create good faith. What would happen is that a pipe would be shared and a gift sharing would occur. This social relationship would break the ice. I would therefore like to share

some gifts. Mother is the giver. The province gets a spider, a female, life-giving, rain-giving symbol. The federal chief negotiator gets a beaded bracelet. The civil servant gets a gift for Mother. In the nineteenth century, Treaty Six and adhesions were signed. We are not negotiating a new treaty. The treaties have been ignored and discarded; federal legislation has trampled on them. Times have changed, but First Nations are still here with a strong voice. This is especially true in Saskatchewan, with the great growth in population. It is good that we are negotiating.

C: We left off last time with tabled items. There have been negotiations since then on a new approach. Please report.

P: Federal has more to say.

F: You don't want to talk?

P: We have looked at Draft Three, an amalgamation of Drafts One and Two. The main purpose is to get over minor points quickly and move on to major points.

A: We have not had discussions outside negotiations. We have looked at Draft Three and find it mostly acceptable, but we want some revisions. We would like to quickly go through it and identify the revisions. Then you caucus and come back with a response. We are not here to renegotiate, but only to negotiate implementation. It would be insulting to renegotiate, especially regarding unrepresented groups. The treaties are sacred documents. The federal government has not implemented the treaty. They have cut costs and programs, even though the Crown was to be benign. The honour of the Crown is at stake.

F: Thank you for the gifts. The revision is purely a new draft to try to amalgamate the two protocol agreements. We are more than happy to negotiate but would want to sign off on each clause. The intention of the federal government is not to renegotiate but to clarify and implement Treaty Six. To do this we must clarify. It is not our intention to insult you, but to clarify things in the context of the twenty-first century. It was the federal government who invited the First Nations here, so we are willing to talk. We have obligations to all of Canada and the First Nations are part of Canada. We would like a quick sign-off to ensure agreement.

C: We will not be revisiting tabled clauses.

F: Agree.

P: Agree.

A: Agree.

C: Would the Aboriginal team quickly lead us through the agreed points?

P: Let's go clause by clause.

C: The Aboriginal side should take us through it.

- F: We would like to caucus after knowing the concerns, but the civil servant would like to talk.
- F: (Civil Servant) Sorry for not being here. Regarding protocol, the federal side should take the lead as we took the lead in preparing it and discussing problems.
- P: Both the federal government and the province say this is only for Treaty Six. We want it to be protocol for all treaties. The FSIN has the power to do that.
- A: We have no problem using the protocol in other First Nation negotiations, but we are here to implement Treaty Six. If we get through this, we have prepared draft legislation. We view legislation as an integral part of implementation. The FSIN has agreed to this legislation for all treaties. We sent this to the feds but have not heard back from them. Regarding the civil servant's comments, we assume the feds agree with every clause as they prepared it.
- F: We don't necessarily agree with items in brackets, but added them for good faith. We are also not sure who would be signing. But we generally stand by the agreement.
- A: We see no problem with you leading as long as we can talk.
- F: I will just read them and we can then tag problem issues.
- F: (Civil Servant) Who has the power to sign off on the clauses?
- F: A read, agreed. [A: The Parties agree to establish a Common Table to discuss areas of mutual concern and facilitate an understanding of these issues.]
- A: Agreed.
- F: B. [B: The *Constitution Act, 1982*, recognizes and affirms the existing Aboriginal and treaty rights [*including the inherent right of self-government*] [sic] of the Aboriginal peoples of Canada, and treaty rights include rights that now exist by way of land claims agreements or that may be so acquired.] Do you accept without brackets?
- A: We want that.
- F: We don't; table that.
- P: Earlier this week we agreed to a merger document, but we did not go clause by clause so we cannot say if we agree with everything, so we want to participate.
- C: You can.
- P: We would like to change "self-government" to "First Nations governing themselves." The effect would be the same, but it avoids the connotation of the term "self-government."
- A: What connotation?

- F: I thought this was tabled?
- A: Do you want to table this? We should table this and maybe create negotiating teams. The only problem is the possible jurisdictional problem with the provincial proposal. First Nations have always had the unceded right to govern themselves. With the *Indian Act* it did take away the rights, although the treaties did not mention it.
- C: I thought we were tabling contentious clauses to get through most of the protocol. Is that ok?
- P: Yes.
- C: Move on to C.
- F: C read. [C: By negotiating a treaty, the Parties seek to achieve certainty with respect to the relationship between the FSIN, Canada, and Saskatchewan, including authority and jurisdiction of their respective governments, as well as ownership and use of land and resources within the Territory.] We took out “negotiating a treaty.”
- A: What does “certainty” mean?
- F: It goes to implementing Treaty Six, and creates certainty in how issues and implementation will be dealt with in the future.
- A: The province has something to say.
- P: Is this tabled?
- C: Do you have proposed changes?
- P: We would like certainty expanded to include that this particular agreement would signify the end of future claims. The province wants an end to claims.
- A: C should read: “By negotiating the implementation of Treaty Six, the parties seek to achieve certainty as to how the treaty should be implemented.” This is a narrower definition, but we could table B and C. These are tough issues. Certainty is important for land claims, but SCC [Supreme Court of Canada] said treaties are living documents not meant to be fixed in time. Obligations change with time. We seek certainty in regards to treaty rights.
- F: (Civil Servant) I have two points. Page 6 has the amendment section and the chief negotiator may change it at any time if it’s done in writing. Treaty Six negotiation is ongoing. The concern is that although SCC has the jurisdiction to interpret treaties and constitution but it is the political decision that the people must approve [sic]. The legislature may change any of these documents. The federal government must consider all people. Regardless of what SCC says, they don’t make the law. The legislature does.
- F: We are okay tabling B and C. With respect to certainty, any negotiations could be written in stone with amendment procedures. These documents should not change in the future; that is what legislation is for.

- C: We are moving away from process; if we want to change things, we should table them.
- P: We agree to table C and proceeding as the chair suggested.
- F: D read [D: The Parties acknowledge the importance of providing public access to the treaty process while recognizing the need to conduct effective negotiations; and consequently the Parties have provided for public access to the process in an agreement, referred to as the “Protocol Regarding the Openness of the FSIN Treaty Process.]
- A: Agree.
- P: Agree.
- F: E (a) read. [E: The Parties of the Common Table agree to negotiate in good faith pursuant to the following Guiding Principles:
(a) The Parties acknowledge that the principles of mutual recognition, mutual respect, reciprocity, and mutual responsibility shall apply to all the processes of the Common Table.]
- A: Agree.
- P: Agree.
- F: (b) read. [(b): The Parties agree that each individual at the Common Table shall have equal speaking rights pursuant to any rules and guidelines that may be agreed to by the Parties.]
- A: We would like to add a clause between a and b. Coming from First Nation draft 1.3.2, discussions will agree with ethics and honour. [1.3.2: Discussions at the Common Table will always respect the principles of ethical and honourable conduct.]
- C: We tabled this last time.
- A: Yes, we should add it in its original form.
- F: We would have to table it; the location is fine.
- P: We are fine tabling [1.3.2].
- F: (b) is fine?
- P: Yes.
- F: (c) read. [(c): While recognizing the treaty relationship between First Nations People and the Provincial and Federal Crowns, the Parties approach the Common Table as equals to work together on the work plan before them.]
- A: You should pluralize First Nations [sic].
- P: Agree.
- F: Agree.

- F: (d) read. [(d): The Parties acknowledge the importance of flexibility and the necessity to proceed by way of discussion and mutual agreement.]
- A: Agree, but add clause 1.3.5 from theirs: “open sharing of information.” [1.3.5: The Parties agree to the open sharing of information and expertise without undue restrictions.]
- F: We have to table that.
- P: Agree, but we have a problem with 1.3.5 so we must table it.
- F: (e) read. [(e): The Parties acknowledge the First Nations people have distinct perspectives and understandings, derived from their cultures and histories and embodied in First Nations languages.]
- A: Agree.
- P: [sic]
- F: (f) read. [(f): The Parties will respect, honour and recognize the customs, practices and traditions of each other in the conduct of business at the Common Table.]
- A: Agree, but insert clause 1.3.8 before it. [1.3.8: The Parties recognize that knowledge which is transmitted orally in the culture of First Nations People is and shall be accepted as equal to any Euro-Canadian written Documents.]
- F: We must table that.
- P: 1.3.8 is fine, but change “shall” to “may be attempted to.”
- C: 1.3.8 tabled.
- F: Definition 1.1 read. [1.1: “**Agreement in principle** means the agreement approved as evidenced by signature of the Parties at the end of Stage 4 of the Saskatchewan Process, and it is comprised of various sub-agreements and other provisions as agreed; the Agreement in Principle is not intended to constitute a treaty of land claims agreement within the meaning of Section 25 and 35 of the *Constitution Act, 1982*.]
- A: Fine.
- P: Fine.
- F: 1.2 read. [1.2: “**Chief Negotiator**” means the negotiator appointed by each of the Parties for the treaty negotiations contemplated by the Saskatchewan process.]
- A: Do you see a problem with co-chief?
- F: No, as discussed earlier, saying chief negotiator is just simpler.
- A: Fine.
- P: Fine.
- F: 1.3 read. [1.3: “**Final agreement**” means the agreement ratified as evidenced by signature of the Parties at the end of the negotiation process.]

- A: Fine.
- P: Fine.
- F: In 1.4, “a” should be “another.” [1.4: “**Overlap**” means a geographic area within the Territory which is claimed by a First Nation, as defined in the Saskatchewan Agreement.]
- A: Fine.
- P: Fine.
- F: 1.5 read. [1.5: “**Sub-agreement**” means an agreement of a substantive issue negotiated by Canada, Saskatchewan and FSIN and Documented in a separate agreement which will be included in the Final Agreement.]
- A: Fine.
- P: Fine.
- F: 2.1 read. [**Purpose:** 2.1: The cooperation of Canada and Saskatchewan with FSIN is crucial to treaty implementation. The purpose of the Agreement is to guide the conduct of negotiations among the Parties and to set forth the substantive issues, process and timing to complete the Agreement in Principle stage of the Saskatchewan Process.]
- A: The purpose statement is substantially the same, but in the opening statement of the First Nation statement there is clause regarding living documents. [**Purpose:** Whereas the Parties recognize that the Treaties are living Documents and serve as the foundation upon which the relationship between the Federal Crown and the treaty First Nations is based, and that the cooperation of the Federal and Provincial Crowns is crucial to treaty implementation, the purpose of this Protocol Agreement is to guide the conduct of negotiations among the Parties and to set forth the substantive issues, process and timing to complete the Agreement-In-Principle.] Maybe we should table this.
- F: Fine.
- P: Fine.
- F: 3.1 read. [**Scheduling and Timing:** 3.1: The Parties will negotiate with the intention of concluding an Agreement in Principle within 24 months of the signing of this Agreement.]
- A: Fine.
- P: What does this mean? Is this not an agreement in principle?
- F: No, this is merely the framework.
- P: Fine.

- F: 4.1 read. [**Parties to the Agreement in Principle:** 4.1: The Parties to the Agreement in Principle will be the FSIN, Canada and Saskatchewan.]
- A: Fine.
- P: Fine.
- F: 5.1 read. [**Substantive Issues for Negotiation:** 5.1: The parties are committed to negotiate the following substantive issues and implementation issues with the intention of concluding an Agreement in Principle.]
- A: Fine, but add at the end: “for Treaty Six implementation.”
- F: Fine.
- P: Fine.
- F: 5.1.1 read. [5.1.1: The following list of substantive issues is not exhaustive and may be amended by agreement in writing of the Chief Negotiators.
- a. Governance;
 - b. Lands and Resources;
 - c. Economic Rights: including treaty annuities and hunting, fishing and trapping rights; and
 - d. Education, Health and Taxation.]
- A: We agree with everything in 5.1.1 except governance. We want that to be like 4.1 in our protocol. [4.1: Jurisdiction: including justice systems, long-term financial arrangements (including fiscal transfers) and other intergovernmental arrangements.] We see that under 5.2 you return to implementation funding and timing. [5.2: The Parties intend to develop an implementation plan which includes but is not limited to:
- implementation funding, and
 - timing.]
- So, you are trying to cover this, but we are not satisfied.
- F: Is 5.1.1 fine except for a?
- A: Fine.
- P: Fine.
- F: 5.2 tabled.
- A: Fine.
- F: 5.3 read. [5.3: The negotiation of a substantive issue listed in Section 5.1.1 does not commit any of the Parties to conclude an agreement on that issue, or any component of that issue.]

F: 5.3 read [as above].

- A: To go quicker, the point of 5.3 and 5.4 is not apparent. 5.3 seems obvious, but what is 5.4? [5.4: Notwithstanding Section 1.5, the issue of whether FSIN governance will receive constitutional protection, including governance provisions as referred to in Section 5.1.1, will be addressed prior to concluding an Agreement in Principle.] 5.3, why is it there?
- F: Nothing is obvious and we should state that, but the whole agreement should not fail if we cannot agree on one point.
- A: Should we table 5.3?
- P: The province is fine with 5.3.
- A: Table 5.3 as it may leave out agreement on a substantive issue.
- F: 5.4 read [as above].
- A: Table.
- F: (Civil Servant) We put it there for your benefit, but if you want it gone we can strike it.
- F: You want to bring in legislation, so we are going to have to discuss it and we should not strike it. I'm not sure what the problem is; we can table it.
- A: Fine, table it.
- P: Maybe we should deal with substantive issues; otherwise we will merely agree with a few points.
- F: We should continue. We cannot discuss substantive issues before we move on. It is tedious, but progress is being made.
- A: Progress is being made. There are very few revisions left, so let's move on.
- P: The substantive issues are the tabled issues.
- F: We should just proceed.
- A: We are almost done; we only have three remaining revisions.
- P: Okay, let's proceed.
- F: What does the co-chief say?
- A: You only need one chief negotiator to sign off. Either one of us has signing authority.
- F: 6.1 read. [6.1: The Chief Negotiators will be responsible for the conduct and coordination of the negotiations.]
- A: Exclude conduct, as our philosophy is that we are each responsible for our own behaviour and we don't burden ... [sic]
- F: Table 6.1.

- F: 6.2 read. [6.2: Where matters are raised which fall within the responsibility of other Ministers or Vice-Chiefs, those ministers or Vice-Chiefs, or their designates, will be invited to participate in the Common Table provided there are only four seats for First Nations, two seats for Canada and two seats for Saskatchewan at the Common Table.]
- A: Fine.
- P: Fine.
- F: 6.3 read. [6.3: Negotiations will be conducted at a main negotiation table (the “Common Table”).]
- A: Fine.
- P: Fine.
- F: 6.3 (a), (b), (c), (d), (e), and (f) read. [6.3: The Common Table will be responsible for:
- a) managing the negotiation process including the development of work plans and the setting of priorities;
 - b) negotiating and concluding an Agreement in Principle and a Final Agreement;
 - c) implementing and managing the “Protocol Regarding the Openness of the FSIN Treaty Process”;
 - d) meeting weekly or more frequently as may be agreed upon by the Parties;
 - e) establishing working groups, side tables and other processes, as agreed; and
 - f) implementing dispute resolution mechanisms, as agreed.]
- A: Fine.
- P: Fine.
- F: 6.4 (a) read. [6.4 (a): The Parties: (a) acknowledge that some issues listed in Section 5.1 will require resolution on a regional basis;]
- A: Fine.
- P: Fine.
- F: 6.4 (b) read. [6.4 (b): acknowledge that some issues listed in Section 5.1 may have province-wide application to all treaties to be negotiated in the Province of Saskatchewan;]
- A: Fine.
- P: In (a) it says resolution on a regional basis; in (b) it says province-wide.
- F: Some issues are not merely provincial, such as Treaty Six.
- P: (b) is fine.

- F: (c) read. [6.4 (c): will determine what issues in Section 5.1 may be best dealt with on a regional basis or on a provincial basis; and]
- A: Fine.
- P: Fine.
- F: (d) read. [6.4 (d): will develop a process for dealing with those issues on a regional or provincial basis as agreed.]
- A: Fine.
- P: Fine.
- F: 6.5 read. [6.5: The Parties will record the results of each negotiation of a substantive issue in a sub-agreement. The Chief Negotiators will signify their agreement on a substantive issue by initialing a sub-agreement.]
- A: Fine.
- P: Fine.
- F: 6.6 read. [6.6: Once they have initialed all of the sub-agreements, the Chief Negotiators will negotiate an Agreement in Principle by consolidating the sub-agreements and adding necessary provisions as agreed.]
- A: Fine.
- P: Fine.
- F: 6.7 read. [6.7: The Chief Negotiators will signify their agreement on an Agreement in Principle by initialing it, and they will recommend the completed Agreement in Principle to their respective Party for approval.]
- A: Fine.
- P: Fine.
- F: 6.8 read. [6.8: Any Chief Negotiator may request that any initialed sub-agreement or Agreement in Principle be reconsidered and amended.]
- P: Fine.
- A: Fine.
- P: Does a simple request open it up?
- F: Yes, in writing.
- F: 6.9 read. [6.9: The Parties will approve the Agreement in Principle by signing it.]
- A: Fine.
- P: Fine.
- F: 6.10 read. [6.10: After signing of the Agreement in Principle, the Parties will negotiate

with the intention of concluding a Final Agreement based on the Agreement in Principle.]

A: Fine.

P: Fine.

F: 7.1 read. [**Overlapping Claims:** 7.1: The FSIN shall resolve overlap claims, if any, with other First Nations and provide regular reports on the status of any overlap claims to the Common Table.]

A: Fine.

P: Table it.

F: Fine, 7.1 is tabled.

F: 8.1 read. [8.1: The Parties will be responsible for obtaining funding for their participation in the negotiation process.]

A: Table that; we want the original 5.5. [5.5: As an element of the Treaty implementation process, Canada will bear the costs incurred for this process by both Canada and the FSIN. Saskatchewan will bear its own costs for participating in the Common Table.]

P: Table.

F: 9.1 read. Typo “from time to time” noted in tabled 9.1; the funding for FSIN may come from this. [9.1: During the negotiation process, the FSIN will continue to enjoy the same rights and benefits as any citizen of Canada and will have access to the various programs and services of Canada and Saskatchewan in effect from time to time, including those directed to Aboriginal People and their organizations in accordance with the criteria established from time to time for the application of those programs and services.]

A: Generally agreed, but change it to “FSIN shall *have* the same right” and not *enjoy*, as we don’t feel we are enjoying them.

F: Table it.

P: Table.

F: 10.1 read. [**Interpretation:** 10.1: Nothing in this Agreement is intended to define, create, recognize, deny or amend any of the rights of the Parties.]

F: 10.2 read. [10.2: This Agreement is not intended to be a treaty or a land claims agreement within the meaning of Sections 25 and 35 of the *Constitution Act, 1982*.]

A: Fine.

P: Fine.

F: 10.3 read. [10.3: This Agreement and the negotiations leading up to or carried out pursuant to this Agreement are without prejudice to any legal positions that have been or may be taken by any of the Parties in any court proceeding, process or otherwise, and shall not be construed as an admission of fact or liability in any such proceeding or process.]

A: Fine.

P: Fine.

F: 11.1 read. [**Amendments:** 11.1: The Chief Negotiator may, by agreement in writing, amend the list of substantive issues for negotiation as set out ... and any protocol or procedural agreement referred to in this Agreement.]

P: That should say “any chief negotiator.”

F: What about pluralizing negotiator?

A: The First Nations make the agenda, so I’m not sure why chief negotiators on the other side would amend it.

F: There are reasons why; table it?

A: Does “agreement” mean “agreed by all parties”?

F: Yes, if we wanted to make changes.

A: Can we just add “by all parties”?

F: Agreed.

P: Agreed; pluralize “negotiator” and “by all parties.”

F: Read 11.2. [11.2: This Agreement may only be amended by agreement of the Parties in writing.]

A: Fine.

P: Fine.

F: 12.1 read. [**Approval of this Agreement:** 12.1: The Chief Negotiators, by initialing this Agreement, will signify their intention to recommend it to the Parties for their approval.]

A: Fine.

P: Fine.

F: 12.2 read. [12.2: The Parties will approve this Agreement by signing it.]

A: Fine.

P: Fine.

F: 12.3 read. [12.3: The Chief Negotiator for FSIN is authorized to sign this Agreement on behalf of the Federation of Saskatchewan Indian Nations.]

A: What about either chief negotiator?

F: We should have both people signing.

A: Fine.

F: Grammar error corrected.

P: Agree.

F: 12.4 read. [12.4: The Minister of Indian Affairs and Northern Development is authorized to sign this Agreement on behalf of Canada.]

A: Fine.

P: Fine.

F: 12.5 read. [12.5: The Minister of Aboriginal Affairs is authorized to sign this Agreement on behalf of Saskatchewan.]

A: Fine.

P: Fine.

F: 13.1 read. [**Suspension of Negotiations:** 13.1: Any of the Parties may suspend the negotiations contemplated by this Agreement by providing written notice, which also sets out the reasons for suspension, to the other Parties and to the Saskatchewan Treaty Commission.]

A: Fine.

P: Fine.

F: If we could get title to put on signatory line ... [sic]

A: Co-chief negotiator for both.

F: Is there anything else to change? What about a caucus now?

A: We don't like 11.1; we need to caucus. We should table it, but we want to let the chief speak before we go.

F: Fine.

P: Fine, but are we splitting up tabled issues?

F: We should have a first go around and if that fails, split into two groups.

C: That is also my agreement; before we hear from the chief, let's confirm (not entered) [sic].

A: We should hyphenate "agreement-in-principle."

C: We are ready to listen to the chief.

A: Fictitious First Nation, skipped. Political and economic blah blah blah b b b b [sic]

C: Caucus.

C: We will now turn to the first tabled issue.

A: What is the concern of the federal government regarding the self-government issue?

F: The problem is that the courts have said there is a right to self-government, but as a negotiator, I don't have the right to say you have the right to self-government. We could just add that the *Constitution Act* says you have the right.

A: But both levels of government have already recognized this right. Does the federal government now renege on this recognition?

F: (Civil Servant) We are concerned that a legislative body would have to do this. As negotiators, we don't have the power. The Charlottetown Accord, the last attempt to do this, failed. You are trying to make a constitutional change, and that cannot be done at this level. You could say the FSIN asserts it.

P: If the problem is with the words "self-government," what about changing it to say "the First Nations governing themselves"?

A: (Lawyer) Somewhere along the line, the federal government thought that First Nations were asking permission for self-government, but we are asserting it. Precontact we had it, pretreaty we had it; the treaty did not recede from it, and never have we ceded that right. It is the federal representatives who are perpetuating a misrepresentation of the situation. The minister has said self-government is the cornerstone. Legislation is not important in light of S.35 of the Constitution. We are not here negotiating. We are here asserting our treaty rights that we hold from time immemorial. Our right to self-government is not contingent upon federal recognition.

F: We have no problem with this assertion, but this is a preamble. So why not say that the FSIN asserts it? We recognize that you assert you have never ceded this right. It could either go on without brackets, or we could add an assertion clause, or small-group table ... [sic]

P: The province agrees with the federal idea to add an assertion clause. The province agrees with the Aboriginal team and is not willing to provide government ... [sic]

A: It is sad that the federal government is not willing to recognize this. The federal government has previously recognized it. There are now ongoing negotiations about self-government in Saskatchewan. All the issues have not been settled, but the right exists. However, we are willing to table it.

F: (Civil Servant) We are aware of other negotiations, but the problem is not with self-government itself. The problem is the location in protocol; any such discussion should be in with the substantive issues. Aboriginals themselves suggested it be under Section 5 [substantive issues]. What about putting it there? We support tabling it.

P: We recognize that self-government is an evolving concept. In the preamble it is not laid in stone. To the province, self-government is a statement of fact. We should not move too quickly to table it.

A: We are not here asking for substantive issues. It's not the federal government's business how we govern ourselves. It's insulting not to have self-government. We cannot discuss this further.

A: (Lawyer) We are losing common ground if this is not recognized. We are not asking the feds to go outside their power; it's common in these types of proceedings. It's regression not to recognize it. It should go to legal teams.

F: (Civil Servant) We don't want to antagonize anyone; we can discuss this. The FSIN seems to be suggesting that this is how it must be. The province is accepting it, and the federal government cannot accept it. We are concerned with the reference to legal teams. This negotiation and cabinet will create legal documents. The courts will interpret these. The preamble is not a substantive clause. Adding the FSIN is not a problem.

P: We have nothing to add. If you want it tabled, fine. If you want to discuss it, fine.

P: The province would like a five-minute caucus.

F: We would like to decline [caucus] to move on to less contentious issues.

A: In terms of being contentious, the FSIN has no problem discussing this. We should try to flesh this out. It is fundamental to why we are here. The right to self-government is essential to implementation. Why are the feds here if they are not willing to recognize this? The feds do have power to do this; if they don't have the power, then these talks have no purpose. We have no problem with a five-minute caucus.

F: (Civil Servant) You want to discuss this. The province wants to make changes; FSIN wants changes; and now the feds don't want to change. We can caucus, but we don't have a lot of room. Our problem is with the inherent right of self-government.

F: We are not saying that the federal government cannot do it; we are saying our mandate does not allow this. We can caucus.

P: With the federal position, maybe we should table the issue. There's no point beating it to death.

A: (Elder) I am concerned that the feds keep talking about their mandate, but why are you taking that position?

A: Also, you say you recognize the right of self-government, but you don't want to include it in the preamble. I have a problem understanding why this is such a huge issue. We are not here to negotiate this. We are just recognizing its existence, not its substance.

- F: The federal government has the power to recognize it. We did not recognize what the right has said, and these rights have to be done via legislation. We must caucus to discuss this further. We should table this issue. C. [the certainty clause] will be as tough according to you. I want to move on. Our mandate is limited, and anything that requires legislation cannot be done. I cannot unilaterally bind the federal government. Aboriginals have a level that is higher than ours [sic].
- A: This is not a treaty right?
- F: What?
- A: Self-government is not a treaty right?
- F: Where?
- A: (Elder) The treaty says Aboriginals shall maintain good peace and order amongst themselves. Legislation does not create that right; it may implement how the right is done. For example, the right to freedom of expression is a statement of the right, but it does not create it. All you can do is either accept or refuse to recognize the treaty right.
- F: You are asking the federal negotiator to recognize this right for the federal ... [sic]?
- A: (Elder) Your mandate stems from the federal negotiator and you should represent those views.
- F: We should table this.
- A: Negotiations are now ongoing about self-government. How can this be ongoing whilst you refuse?
- F: This is being done as a substantive issue; it's not in the preamble. Put it in Section 5 if you want it to be substantially ... [sic]
- P: We will not provide government, and will not allow you to form governments, so they will do ... [sic]. It makes no sense to say that they will go that far. The fact that you are negotiating shows you recognize this. Also, there are no treaties with Saskatchewan as it is part of Canada—only with First Nations.
- A: (Elder) The feds keep talking about the supremacy of the legislator, but the courts have great authority as well. Our people continue to recognize our rights, and Treaty Six did not cede them. We have them historically and will continue to negotiate.
- A: (Elder) Get the minister to revise the mandate.
- C: At different points we have expressed the desire to table [self-government clause]. Can we?
- A: Agree.
- F: Agree.

- P: Agree.
- C: Table. Move on to C. [the certainty clause].
- A: We would like to change it to [achieve certainty whilst recognizing the treaties are living documents] [sic] summary. From the protocol agreement we proposed last week. [2.0 **Purpose:** Whereas the Parties recognize that the Treaties are living Documents and serve as the foundation upon which the relationship between the Federal Crown and the treaty First Nations is based, and the cooperation of the Federal and Provincial Crowns is crucial to treaty implementation, the purpose of this Protocol Agreement is to guide the conduct of negotiations among the Parties and to set forth the substantive issues, process and timing to complete the Agreement-in-Principle.] Things change, so we should recognize that treaties must change—i.e., change in population and the importance of health care and education. We want certainty; it is fundamental to process.
- F: Unfortunately, we cannot agree to stating that any type of agreement is a living document, but we could agree to an amendment process. Looking at B.C. documents, that would never have been agreed to. B.C. documents actually have clauses ending their existence after they have been done. However, they all have an amendment process. “Living documents” implies that they can merely be reinterpreted. First Nations interpretations, as all sides, are unclear as we all come to the table with different perspectives. The importance of this process is to implement clearly. We can never say living document.
- P: The province agrees with the federal government (reads [from Mr.] Molloy’s book] regarding the importance of certainty). The province requires a certainty clause. The negotiations are the final resolution. The province recognizes that the world is changing, but the amendment clause in section 11 covers that fact.
- A: Certainty as to what?
- P: Certainty that this is the final document; this is not a living document; it does not progress from this. If some issue comes up five years down the road, the amendment clause deals with it. The actual agreement itself is done, not living.
- A: UNKNOWN POSITION [sic]. Mr. Molloy is a respected negotiator, but there is a difference between modern treaties and remembered treaties from 120 years ago. We were upset with what happened in B.C.
- A: The federal government and the province want certainty over what we are negotiating for the next twenty-three months.
- F: Certainty over who is negotiating with whom. It is a bigger issue, as there has been so little certainty it has caused problems. We need certainty over jurisdictions, powers,

negotiations, e.g., the dispute over the authority of self-government. To have a living document provides a great deal of uncertainty and conflict, as no one knows what they negotiated. An amendment process allows us to change as needed.

- A: We are talking about two different cultures; there is a culture that does things completely differently. They are a different nation, and people. Federally, the government has taken over without recognizing distinct nations. We should not strive to be the same. It is not a problem not being able to understand. White people have a great deal of faith in the importance of certainty. In the interests of sharing, maybe we should learn what uncertainty is. Maybe that is okay. Maybe the white way is not the right way; maybe having uncertain living documents is okay.
- F: Thank you for stating that, but in the uncertainty for funding and land and resources, it is necessary for us and you to know what you have. The uncertainty in the original treaties has created a great feeling of failure in the Aboriginal communities due to unfulfilled obligations. Federal documents must be certain.
- P: We recognize we represent different cultures, but we don't see how that affects certainty. The Native culture is certain the sun will rise; that is their certainty. If we have an uncertain world, what stops us from taking away Aboriginal rights? Certainty protects everyone.
- C: We're out of time.

Negotiation Debriefing

[15 March 2001]

[One hour of the two-hour class debriefing was taken up negotiating the guest list for the class dinner-seminar.]

Class Dinner-Seminar

[28 March 2001]

[After a class dinner, participants had two hours of circle discussion with team advisors Tom Molloy and Bob Mitchell. Elders Walter and Maria Linklater were unable to attend.]

PART THREE

LESSONS

[This part provides participants' reflections on the lessons they learned about negotiating in a multiparty institutional context, specifically a Canadian Aboriginal-Crown context. The reflections are selected, classified, and combined into a conceptual model by the instructor with headings and short introductions.

As noted in the introduction, participants' names have been changed for attribution of quotes to protect students' privacy, exposing only the instructor's name for scholarly criticism. As one participant noted, "A topic such as multiparty conflict cannot be discussed without being critical.... The purpose is not to show how wrong people were ... but instead to show how the negotiations might have been done better" (Daryl, p. 2).

The conceptual model offers a spiral metaphor for negotiations in a multiparty institutional context. Groups agree to negotiations to address some aspect of their institutional relationship, most often in the face of imminent violence, institutional breakdown, or external threat. The purpose of negotiations is to alter some aspect of the legal and policy rules that govern the group relationships. All the forces of the existing institutional relationships come to the table—history, power imbalances, external accountability, and cultural gaps. To these are added the negotiators' personalities, preparation, and relationships. In the low-trust context of modern institutional relationships, these often spin together into a vortex of conflict escalation and breakdown. In our case, the breakdown came over a procedural matter.

A partial recovery back up the spiral is achieved when informal negotiations get the talks restarted. Once back at the table, however, substantive problems emerged that proved unresolvable. Negotiations ended with agreements only to pro forma clauses.

We offer reflections on the failure of interest-based bargaining, and the conceptual model concludes that only the long slow work of trust- and rela-

relationship-building among both negotiators and background groups can provide the basis for full movement up the spiral to successful negotiations. It also concludes, however, that at the heart of conflict, faced with trust, is a transformative power that provides hope.

Negotiating is not a linear process, but rather an interplay of dynamic, shifting, interdependent forces. Any separation is artificial, but it is attempted here in the hope of offering insight for ourselves and others for the future.]

Optimist, p. 1: Segregating these factors into compartments is not possible. They separately and collectively operate like a woven web throughout.

Alexander, p. 22: Optimist noted that right from the beginning, everything counts. As this entire discussion suggests, every thread without discrimination is woven into the tapestry. Right from the beginning a pattern is being formed.

THE CORE FORCE: TRUST

[Trust. It's all about trust—as simple and complex as that. Webster's defines trust as "confidence in the honesty, integrity, reliability, justice, etc., of another person or thing."¹¹ Talks do not begin without trust that talking can do more good than harm at the moment. Talks do not continue without trust that there is a commitment to solve problems. Talks cannot arrive at meaningful solutions without trust by background groups that their negotiators will use their discretion to make wise decisions at the table. Talks will bog down in self-defence without trust by negotiators that their words and actions will not be used by other negotiators for selfish or manipulative purposes. Negotiated outcomes will be sabotaged in implementation without trust by background groups that they must find a way to live together peacefully and that this will require constant give and take at all levels.

Once lost, trust is difficult to rebuild, and can only be done through the long slow process of acting with "honesty, integrity, reliability, and justice" person by person, situation by situation, relationship by relationship.

When trust was present or restored, participants experienced something vital—energy and new possibilities in themselves and others—transformations that gave them a glimpse of honourable ways to live with diversity through dialogue and relationship.

The presence or absence of trust weaves through all that follows.]

Io, p. 1: Trust is what is at stake in multiparty institutional conflict resolution. It is perhaps the most fragile presence of all.

Optimist, p. 35: Trust-building will always be a primary consideration in building successful negotiation relationships.

SPECIAL FEATURES OF NEGOTIATING IN A MULTIPARTY INSTITUTIONAL CONTEXT

[The stakes, stress, and risk of multiparty institutional negotiations are sufficiently high that group leaders often agree to negotiations only when the alternatives are even worse, such as violence, institutional breakdown, or external threats.]

Annette, p. 8: I felt that the metaphor “dancing around the table” was appropriate in this [constitutional] negotiation, considering all the complex issues involved. It was a moment in history that displayed the multilayers of conflicts involved and the difficulties resolving the issues.

Io, p. 12: For all three groups, acting out our roles according to the rigid rules of the Canadian politico-legal system is problematic: we are afraid to catch our sleeves in the machinery, and so we try to keep a safe distance; we are afraid to stray from the safety of the prescribed and approved, and so we resist the beckoning of the creative impulse.

High Stakes: Institutional Change

[Multiparty institutional negotiations are high stakes because the goal is institutional change, altering the rules by which social groups relate to one another. Institutional change is difficult because large numbers of people must

be persuaded. Any change will affect many people over a long period of time. Outcomes cannot be predicted in advance, and the possibility exists for losses as well as gains. Changes in the legal or policy rules governing group relationships will almost certainly alter the distribution of social and economic goods, creating the potential for inflaming tensions among members of background groups. Yet negotiation failure may also bring serious consequences.]

Janet, p. 14: [Mr. Mitchell] discussed his work and current trends in self-government in Saskatchewan. He told us the importance of self-governance—because the status quo will not do.

W. Roberts, p. 5: When all of the statistics regarding the severity of social conditions facing Aboriginal people are considered, one quickly realizes that in comparison with the rest of society, there is something wrong. The “system” is simply not working for Aboriginal people.

Io, p. 12: [The federal chief negotiator] feared that she would agree to something now that would force the federal government to do something in the future that was against its interests. Her resistance reflects our own resistance: ultimately the reason we resist small things and large is that we fear being responsible. In my group we tend to feel the weight of our responsibility very heavily; it is not our careers as negotiators or chiefs or advisors that we fear tarnishing so much as it is the future of the First Nations that we fear damaging.

High Stress: Institutional Forces Come to the Table

[Because the forces and issues in multiparty institutional talks involve core issues of values, identity, survival, and power, they are intensely stressful for both negotiators and background groups. For talks to go on at all, nondominant groups must concede on issues such as language or procedure. For meaningful problem solving to occur, dominant groups must concede on issues such as power. If successful, the talks will almost certainly change group relationships in relation to these core issues. Background groups are reluctant to authorize any concessions in such areas. Negotiators find themselves having to build trust, not only with other negotiators at the table, but also with different factions in background groups and among different background groups themselves if any concessions in these core areas are to be approved.]

Lee, p. 26: No negotiation is easy, but multiparty negotiations add elements that require considerable patience and faith in believing there is a solution to be found.

Multiple Parties

[An elementary force in multiparty institutional negotiations is the involvement of several groups. As the number of parties at the table increases, the difficulties grow exponentially rather than arithmetically. If successful, benefits similarly grow.]

Lee, p. 23: The multiparty experience created dynamics that are different from negotiating between two parties. Having a third party created situations where two parties agreed while the third did not. Having the interests of three parties involved made finding compromises more difficult.... I feel the greatest difference was how many different interests were involved and how difficult it was to get consensus when dealing with more than two parties.

Optimist, p. 26: [A]ny time the process involves more than two parties, the process becomes more complex, the number of issues escalates, and the chances of success, although not impossible, become more difficult. "There is almost an inverse relation between the number of participants and issues in multilateral negotiations and the likelihood of reaching an agreement that accommodates each participant's issues."¹²

History

[Multiparty institutional negotiations take place in the context of ongoing group relationships. The history comes to the table; what happens at the table is interpreted in light of that history; and table outcomes affect the future of the relationships. In our case, the impact of history was evident from the beginning of the class, including in participants' discussions concerning which conflict to negotiate, the Elders' visits, the larger social conflict, and the effect of the history on our negotiations.]

Alexander, p. 23: I learned ... about the long memory of institutions.

Denise, p. 7: It appears to me that these issues are transcendent in that they last beyond a generation, with every preconceived notion and bias that exists on both sides being passed from generation to generation. How does one deal with that?

Which Conflict to Negotiate

[Our class took three rounds of negotiations before we agreed on which multiparty institutional conflict should be the focus of our simulation. The impact of history is evident in each round.]

Round One

Denise, p. 1: There was talk of the Arab/Israeli conflict. We decided it was too large.... I firmly believed from day one that the conflict should be a Canadian one. I am in love with my country called Canada and I felt that there were many conflicts here to be dealt with.

Kim, p. 3: Although many are leaning towards a domestic issue, I came to the class with the expectation that I will be able to work on an international, multilevel, perhaps multicultural, conflict of some sort. I thought that perhaps the Israeli/Arab conflict would be particularly interesting. The reason why I wanted to work on such a project is because of its complexity. There would be complex ideologies, cultures, histories, languages, and religions involved. I do not think it can get any more complicated than this, especially when all these dynamics clash with each other. I soon discovered that the rest of the class did share my expectations, but they saw a different approach being more applicable. For the most part, people seemed more comfortable to work on a project that involved a subject-matter that was familiar to them, rather than embarking on an unknown journey or issue.

Lee, p. 2: I thought it would be more interesting to move away from this [Aboriginal] topic into something different and fresh. However, in subsequent class discussions it became clear that treaty issues would be a far more accessible topic for simulation and discussion. Though I was not adverse to the idea, I was certainly hesitant. Given that my year in law school has the highest admission of Aboriginal students in the university's history, and that more than 50 percent of the law students are from Saskatchewan, it stood to reason that there would be people in the Multiparty class who were affected personally by any Aboriginal conflict we chose to discuss.... With so many of our class members having been affected by Aboriginal issues and having personal feelings about them, I was concerned that people were too close to the project matter.... Having experienced the disruption one innocent comment created in first year, I did not feel that my concerns were unfounded.

A valid comment was made that if sixteen students could not attempt to deal with some of these issues, there really was not much hope to finding solutions for Canada. Also, we are in university to learn and experience.

Percival, p. 2: I hold a strong belief that while I must always strive to be respectful, supportive, and accommodating, I do not live in the appropriate time or place to be studying First Nations cultures in any formalized way. My bias has been heard for too long. I believe that if I really wish to aid Canada's First Nations, the best thing I can do right now is to defer to their perspectives.

Janet, p. 4: We discussed the different possible conflicts we could address in our simulation. I mentioned to the class that I did not want to do an Aboriginal issue. I identified two reasons for this. First, I feel I have a lot of knowledge in this area and would prefer an opportunity to learn something new. Second, I mentioned that the Aboriginal issue would be an emotional one to tackle. As soon as I shared my thoughts with the class, I wished I hadn't. It initiated a lecture by one of my fellow classmates on how we must adopt a "professional and diplomatic approach." Although no one spoke directly to me, the lecture was indeed directed my way. I was informed that it really is only a "game."

At this point in the class I wanted to crawl under the table. I felt stupid and I felt this was the purpose of the lecture. I was put in my place. They are professional, diplomatic, and detached—I on the other hand still retain my ancestors' savage-like qualities. My excitement at the beginning of this class has now turned to resentment and I feel that again I am being told that I do not belong in law school and certainly not in this prestigious profession.

Round Two

Percival, p. 6: Trust was a concern to me as I was extending myself outside my comfort zone. I know some expressed that they feared others' perspectives of themselves if they represented the views of the Crown. My fear was more linked to whether the group as a whole would address the topic of negotiation with true respect.

Daryl, p. 3: As social events, multiparty conflicts carry with them more than the behaviour or the statements made. The participants included a variety of people with different personalities, cares, and worries. Some students worried about not having equal footing with others because they did not understand the issues, or because they didn't know the others' culture; others felt they may have to act in a derogatory manner to other classmates.

Kim, pp. 3–4: I guess it will be all right to negotiate an Aboriginal treaty. I don't have much background in Aboriginal issues so I am afraid that I'll be completely lost. There are many people in the class who have taken one or more Aboriginal law classes or some classes involving Aboriginal issues. I don't know anything except for the *Delgamuukw* case. And even that is lost in the back of my memory bank. I need to do research, but trying to learn everything about Native issues and concerns in the next couple of weeks seems to be very difficult.

Another problem that I have doing an Aboriginal issue is the emotional consequence of negotiating an issue that so many people in the class take personally. Even though we are supposed to be in roles, if a person of Aboriginal ancestry is insulted during the negotiations for whatever reason, that person will take it personally. Even though all of this is supposed to be fictitious, it is very difficult for people to separate their real identities from such experiments or role-plays.... If that is the case with this class exercise, many people will stop being friends with each other because of some hurtful things that may be said at the table. I fear that. And because I do not want to have people upset with me because of something I said in my role, I am afraid that I will be watching very carefully my every word. I am not sure whether that is realistic. It seems to me that in real negotiations, people speak their opinions and their interests without being all that careful. Sure, the tone and words should be civil and courteous, but the overall message does not need to be censored as, I fear, may be the case in this exercise. But I suppose that I should not get ahead of myself. Perhaps I will be proven wrong and everyone will be an excellent actor or actress.

Janet, p. 5: [The professor] suggested that we deal with an Aboriginal-related conflict in our simulation. The resources are readily available to us and it is likely that all students will benefit from learning about a conflict in our own country. Immediately there was opposition to this issue. Why? Some students said it's not a real conflict. Another reminded the class that it would be too emotional for some of us (weaker folk). I feel this student is definitely just looking for an excuse not to do it. Another student fears being called a "racist white man" if his true opinion is heard.

After listening to these excuses, my original position on the matter changed. I could not believe what my classmates were saying. They basically denied that Aboriginal conflicts were "real" or legitimate. This angered me. My mind has changed since last week and I now think it's a good idea to tackle an Aboriginal-related conflict. The benefits could be enormous and far-reaching. These people need to be educated!

Round Three

Daryl, p. 3: In the end, few disagreed with the idea that an Aboriginal-government conflict was the best issue to deal with. Admittedly I still had concern over the fact that some students had studied extensively in the area of Aboriginal land rights, culture, and treaty rights.

Alexander, p. 3: Although a few of us had hesitations about the Aboriginal issues topic hitting too close to home, the majority agreed to go along with the topic. Looking back, I can recall putting my trust in [the professor]. If anyone could make this topic, which is so personal and important, a success, it was [this professor].

Elders' Visits

Elders: Session One

J. Colton, p. 3: Our class met ... to hear two Elders speak. I borrowed a skirt to wear over my jeans. I didn't mind doing that because it was explained how it was a sign of respect. The talk lasted two hours and I left with mixed emotions. I was skeptical and frustrated about some of their comments, but there were times when I related to their personal stories. Overall it was useful because it helped me to see just how far apart we were.

Kim, p. 9: I am not sure how I feel about the mandatory dress requirement. On the one hand, it is supposed to show respect for their culture, but on the other, it is an imposition of their culture.

Denise, p. 4: One of the most foolish criticisms of the Elder talks that I encountered among the class was discussion on the skirt issues. It seems to me that if one is going to ask people from a different culture to give insight to help one learn, a small measure of respect for their traditions is not too much to ask. What is the big deal in wearing a skirt anyway? I have no time for that foolishness. That is what wasting time is all about.

Kim, p. 9: Walter's discourse insulted me. I got the impression that he was saying that if one does not live in a spiritual house, that person is on his or her way to becoming an alcoholic, drug addict, or a criminal. Moreover, Native spirituality "transcends" all other religions or spiritualities. Am I to infer that if I don't practice Native spirituality, I am doomed?... Perhaps I am interpreting this statement the wrong way. But overall, Walter struck me as a very bitter man. He has had a rough past and, unfortunately, he has not come to terms with it, which is quite regrettable as, otherwise, it would have made his talk not seem so biased and unpleasant.

Maria, on the other hand, was great. She spoke from her heart and was willing to forego the past and get on with the present. Her realism and sincerity were very welcome changes. She seemed to concentrate on things that could improve the plight of Aboriginal peoples. Her ideas helped me quite a bit. For example, her suggestion to teach a mother or a grandmother or offer her practical household help rather than take her children away was both a practical and realistic solution to the problem. It is these kinds of real-life scenarios and suggestions that are needed. It helps when both sides sit down at the table and start negotiating, as then the non-Aboriginal can understand the difficulty the Aboriginal person is faced with on a daily basis. It helped to have this kind of understanding before solutions of any sort can be realized.

Lee, p. 4: I was excited by the prospect... [but] I was very disappointed... I left feeling frustrated and angry. I felt that the Elders' speeches were centred around blaming and bitterness towards all non-Aboriginal people. I felt like I had been talked at for two hours and still had no idea how to resolve any of the issues and conflicts Aboriginal people face... [The] talk reminded me of a portion of Martha Minow's book where she stated:

Victims have much to gain from being able to let go of hatred even when the perpetrator is unrepentant... Victims should forgive not because the other deserves it but because the victim does not want to turn into a bitter resentful person.¹³

Annette, p. 10: I found both Walter and Maria fascinating people. Walter was able to express his deep spirituality and the importance of affirming spirituality in the treaty formation. Maria was full of life and exuded strength. I could feel the pain that she must have felt going to residential school so young and being so homesick. I felt hopeful that their work with the youth courts and social services may make a difference... I was in awe of their wisdom, and having never met Elders before had a chance to get an idea of who an Elder is...

p. 17: Elders were often storytellers and spoke on important issues. They were reflective.

Annette, p. 12: I was amazed by the spectrum of feelings and reactions to the Linklaters... There was a debate over whether the Linklaters were forcing religion or spirituality on us... I said that there was a difference between religion, as in organized religion, and spirituality, and felt that a person could be spiritual anywhere without a group.

Daryl, p. 7: Religion was a major area of discussion. I generally do not subscribe to the idea that the Aboriginal people do not follow a religion and told the class just that. Their beliefs, though different from ours, are similarly religious in my view. If a person views the belief in the Creation and in Mother Earth as religious, then often they cannot subscribe to those beliefs. I shall not worship any false god, as the Bible states. This did not anger me, though, because people can choose to believe in whatever they want. The fact they believe their religion is not a religion seems foolish to me though, and I am tempted to debate that belief, though the circumstances of our meetings did not allow for such an occurrence. Some students were visibly upset at having taken part in the discussion with the Elders. The reason for this is justifiable. Why should students be subjected to the religious beliefs of others? Rhetorically one could ask, could we go to the Catholic church next week? One needed to fully understand why we were there before stating they had so much anger for being taken there. If, for example, we had chosen to discuss the possibility of having Hutterites pay more tax than they are now as our multiparty conflict, then we would need to understand Hutterites first. We met with the Elders before beginning conflict resolution because we must know those with whom we are attempting to gain resolution.

Harrison, p. 5: There was a lot more frustration expressed outside the class.... For whatever reasons, they simply chose not to bring them up within the confines of class time. It's unfortunate, because Lee went out on a limb to be honest and open and ... got lambasted for it. Lee does tend to come across very strongly, but I feel that she is actually very open to things; you just have to give her a chance. And one really admirable quality as far as I'm concerned is her ability to leave things at the table.

Janet, p. 10: After class a number of students seemed upset because they thought it was a waste of time. One student commented to me, "All the Elders talked about was how they ended up drinking because of the residential school.... What does this have to do with the spirit and intent of the treaties?" I laughed to myself in complete disbelief. They were obviously not listening to Walter when he told us that in order to understand what the treaties mean, you have to understand the Indian experience.

Elders: Session Two

J. Colton, p. 3: Our class met at the law student lounge to listen to the Elders again. Once again my emotions were mixed. It is obvious that the Aboriginal people are suffering in our society, but I don't know what the solution is. I agree that their young people are in danger of losing their traditions and spirituality. Generations of their people have been harmed by contact with non-Aboriginal people. There seems to be a lot of mistrust and misunderstanding from both sides. I was glad that these Elders donated their time to educate and promote understanding.

Kim, p. 12: Today, even though it is a Saturday, we had to meet with the Elders again. This was because, as they explained to [the professor], they wanted to share with us as a class as much of their knowledge as they could. It was through this sharing that we could gain insight into the Aboriginal peoples' plight and how they could be helped. Unfortunately, nothing new was gained. Walter again struck me as being very bitter and hostile towards non-Natives. Maria struck me as being a level-headed woman. Substantively speaking, though, I did not learn anything new. Following the meeting, some students attended the sweat lodge that we, as a class, were invited to.

Kim, p. 10: I learned that I have to meet with Elders to learn a particular tribe's culture and history...

p. 13: I still do not understand how we can learn all about Native spirituality and Aboriginal needs if the only way to learn is through attending sweat lodges and meeting with the Elders of that particular tribe. I met with the Linklaters for a total of four hours and I do not believe that I learned enough to be able to help them in a professional way.

Janet, p. 10: Today was great! Walter and Maria were so much more at ease. Only a small group of students were in attendance and this changed the atmosphere drastically from that of Thursday's lecture. I felt that the environment today was much safer. Some trust was established between the Linklaters and our class.

Denise, p. 4: I would suggest that in future these sessions should be essential for both teams.... I was pleased to have a very exciting and emotional experience both through the talk at the law school and the ensuing trip to the sweat lodge.

Janet, p. 12: One student described the Elders as confrontational and claimed that they dwelled on the past. The attitude of a number of students seemed to be that this kind of bitterness and anger hinders any type of process for making things right. Another student said that although the Elders had lots to discuss, they offered no solutions. At this point I became not so much angered as I was dismayed by their lack of understanding. What I interpreted these comments to suggest was that the Indians should just "get over it." This detracts any responsibility from the abuser and places fault on the victims, the Aboriginal people themselves. I have heard the same argument many times before and I am getting tired of it. Maybe it is they who need to come to terms with it....

p. 13: At the end of the class I was upset. I simply announced that I did not think the Linklaters were confrontational. At this point I was not going to share anything with "these people." I saw how they treated the Elders' knowledge and I thought it was disrespectful. The focus was not on the contents of what we learned but rather on the truthfulness of the Linklaters' knowledge.

W. Roberts, p. 9: The seminar group seemed to be divided, with those who had the least knowledge of Aboriginal law showing the least compassion to the topic.

Group Relationships

Optimist, p. 24: A further problem identified by Fisher and Ury in *Getting to Yes* is that the "relationship tends to become entangled with the problem."¹⁴ A major consequence of the "people problem" in negotiation is that the parties' relationship tends to become entangled with their discussions of substance.

Janet, p. 8: [In the constitutional video] I was not surprised at how badly the Aboriginal chiefs and Elders were being treated. This film was shot twenty years ago and although a lot has changed since then, I believe that the lack of understanding and respect still exists. People are just better at hiding it these days.

Carlos, p. 14: In real life, both sides have a great deal of history to draw from, although

Aboriginal people argue that Canadian history ignores the Aboriginal perspective. This was one of the themes of Walter Linklater's talks, and it was mentioned in volume I of the RCAP [Royal Commission on Aboriginal Peoples¹⁵]. Both Linklater and the RCAP report believe that we must set the record straight, and that a common view of the historical record is the first step towards building a sense of trust from which both sides can begin to negotiate in good faith.

Alexander, p. 24: One of the quotes I came across early in the class that I carried with me into the negotiations was:

We cannot ignore the wrongs of the past or the rights flowing from the historical relationships between Aboriginal and non-Aboriginal people in Canada. But we are not prisoners of the past, and we can restore and renew that relationship on the basis of mutual recognition and respect, sharing and responsibility.¹⁶

Harrison, pp. 9–10: If there was one thing that struck me, reading through all the history of Treaty Six and other treaties, it was the trust that the Indian people gave to the Crown and to the white people with whom they were consenting to share their country. I also read excerpts from volumes I, II, and IV of RCAP.¹⁷ It makes me so incredibly sad to think of the abuse that the Native people suffered in the residential schools they were forced to go to. I cannot even imagine the distress of having your children ripped out of your hands and sent away for years to attend a foreign school, taught in a foreign language, to be indoctrinated in foreign dogma. And we were horrified to hear that Hitler did this very thing. To read the actual stories of abuse and neglect suffered at the hands of our government is unthinkable. What would we think if the same were done to our families?

Max, p. 11: I knew that the First Nations were skilled negotiators who bargained purposefully for the contents of the treaties, but their success was largely suppressed by the condescension of the parties with whom their negotiations took place. My reading of the written account of the negotiations indicated to me that Alexander Morris^[18] considered himself to be bargaining with the naïve and unaware. I formed the impression that when the First Nations made their requests, Morris believed that they were asking for trades that they did not fully understand. For if the First Nations were perceived to have negotiated for hollow requests, in the understanding of eighteenth century Euro-Canadians, there was really no reason to implement that which was promised. For example, the requests for flags, medals, and coats were not received as the intent to self-govern in a manner that the Canadian government could recognize. Such reception was never made, even though for the chiefs to attempt that outward appearance was a concession in itself. I suggest that because the

Euro-Canadians believed the First Nations to lack the competence to request the memorabilia for such a purpose, many of the bands never received that which they were promised.

Lee, p. 24: Martha Minow¹⁹ discusses the need for talk in order to get to forgiveness. I have a difficult time with this. I fully admit that there have been grave injustices done to the Aboriginal people in Canada, wrongs that do need to be understood, never forgotten, and to the best of our ability reconciled. What I find difficult is that the fingers of Aboriginal people are pointed at me and my generation. I was not even born when many of the historical occurrences happened. I have never hesitated to say that it was wrong, but we must move on. Learn from our mistakes and find a way to move on. If nothing else, the conflicts in Yugoslavia, Spain, and other countries should be a warning to Canadians that fighting is not a solution. However, Aboriginal communities must also understand that they have a responsibility to work towards something better just as much as Canada does. One party cannot do it alone. Yes, we need to talk about it, but we also need to do something about it. In speaking with the Elders, it was clear that non-Aboriginal people do not have an understanding of the Aboriginal culture sufficient enough to find solutions. It is these communities that need to begin the process. I want to help but I can only do so when communities are ready.

Kim, p. 10: What did I learn [from the Elders]?... There are many problems facing the Aboriginal society. There is a high incidence of alcoholism, teen pregnancy, and abuse. These groups need help and seek such. But they won't be helped by being patronized or assimilated. That can only do more damage. What these people need is practical help that incorporates their culture and spirituality.

p. 11: I am not too sure whether I agree with the last point... I also think that the initiative needs to begin on their part. The high incidence of abuse and alcohol needs to be condemned and stopped right at the reserves. The Elders, as they are highly respected, need to step in and establish proper role models. Unless a person, by his or her own initiative, wants to be helped, any further help may serve to be futile.

Harrison, p. 30: I almost always get frustrated with hearing people blaming past suffering for present problems. I, too, come from a very dysfunctional family with many problems, which are not relevant here, but there comes a time when one must make a decision to take responsibility for one's own life. So I am never very sympathetic to hearing someone put blame on someone or something else for their problems...

p. 10: [I]t may sound ... as though I'm painting all Natives with the same brush. BUT, that's what I've grown up seeing, and there are very few Native people I personally know who have ever challenged me to think otherwise. Thank goodness for those people because without them, I never would have seen the other side and I may have even begun to believe that I

was racist. I know that I am not racist. I am just a frustrated individual who is tired of hearing Native people pity themselves and blame the white people for all their troubles. And I'm tired of being told that I wouldn't understand. We spoke about that today, how Native people are fond of telling White people that they wouldn't understand. As far as I'm concerned, that's a cop-out. It's easier to shut people out and wallow in self-pity than it is to take responsibility for your own healing. I *am* trying to understand, but how about trying to help me understand instead of just shutting me down. That attitude only creates dissension, not co-operation.

p. 14: [E]ven though my perception of Aboriginal culture is changing, the Aboriginal people with whom I am making this association is the older people, the ones who I perceive are responsible and who retain the culture and the history. It is still difficult for me to incorporate this large population of Aboriginal young people who are on the streets, using drugs, selling their bodies, and getting in trouble with the law. I still find that part hard to accept and I am trying to find some way to understand why this is happening, especially to those individuals who did not grow up with this way of life. I still don't get it.

B. Larsen, pp. 5–8: Ever since the Elders came and spoke to us I have been feeling restless, like I need to try to speak about my feelings to them, and to all Indian people from different First Nations directly. This, then, is my "Ode to the Grandmothers"²⁰.... Unfortunately the history of humankind is strewn with many other examples of man's inhumanity to man, not the least of which is our ancestors' conduct towards First Nations of North America.

How can I apologize for bringing all of this craziness upon you? We had no right. As I understand it, we came from everywhere across Europe. Some of us were fleeing religious persecution, some of us were convicted or fleeing criminals, some of us wanted to start a new life where things might be better because they were not so good where we came from. Many of us came from the lower classes of Europe. The lower classes were not fleeing persecution *per se*, but rather sought to escape severe economic oppression that caused malnutrition, disease, and death, and a high rate of infant and child mortality.... Within white society, the upper classes have been treating the lower classes badly throughout recorded history, from the masters and slaves of Greece and Rome, through feudalism and the landholding aristocracy, into industrialization, capitalism, and its marked division between the rich and the poor. We are a brutal people, both to one another and to other races....

We came over with our baggage in tow, evil ones among us, and proceeded to kill almost all of the buffalo, and to conduct ourselves very poorly in our relations with First Nations.... [W]e must learn to work together to solve the problems we have created.

External Group Accountability

[Negotiators in a multiparty institutional conflict are accountable to background groups with diverse agendas, which creates complicated boundary mandates at the table. Further, background groups also have external accountability and negotiations often concern matters of public interest. Consequently, background groups often involve negotiators in explaining negotiations to the public.]

Optimist, p. 28: The authors of *Democracy and Deep-Rooted Conflict* [²¹] recognize that participation is crucial to sustained future relationships: “All those parties with a genuine stake in the conflict have a claim to be included, as have those whose cooperation and endorsement is needed to ensure that the outcome of talks becomes a reality.”²²

Optimist, p. 26: Tom Molloy in *The World Is Our Witness* [²³] experienced the complexity of multiparty negotiations among the federal, provincial, and Aboriginal parties when “all wish to achieve the same goal, but bring fundamentally different approaches.”²⁴ It was evident from his account of the Nisga’a agreement that he was not only negotiating with the parties at the table but also with various federal government departments, as was his provincial counterpart. This is a source of frustration for Aboriginal people as it was in our class negotiation experience. Complex government structures and responsibilities add yet another layer to the already complicated process.

Power Imbalances

[Part of the historical legacy almost always involves imbalances in power relationships among groups. Some groups may have more legal jurisdiction than others, some greater access to financial and human resources, some more favour in public opinion, and some more commitment. There are many kinds of power and the balances constantly shift.]

B. Larsen, p. 4: The lessons Professor Greschner learned are ... there are always inequalities in bargaining power and there is no way around this fact. However, even the smallest party has some power and it must do what it can—in terms of generating ideas, voicing concerns, and working with other provinces.

Io, p. 5: [As Professor Greschner said] [t]here is *always* inequality of bargaining power—

know at the outset that you are not going to get everything you want, and identify what it is you *really* want before you walk in. Team up with other parties where you share the same interest.

Optimist, p. 29: Power differences at the negotiation table are common and an accepted reality. However, in any negotiation that hopes to sustain long-term relationships, these power differences and power perceptions have to be addressed. First, those parties perceived as particularly powerful must recognize and acknowledge that differences exist and make efforts to ensure that the differences are addressed. There is seldom ever a level playing field.²⁵

Kim, p. 27: I also thought back to the [constitutional] video and realized how true it was that a negotiation was all about who held power. The sides were not in positions to do any negotiating until their sense of power was affirmed. It is a political process.

Kim, p. 17: The Aboriginal group tried to incorporate some history into the negotiations, but it seems that the Crown took the Trudeau perspective—let us look to the future and not dwell on the past. But what the Crown has forgotten is the importance of history.

W. Roberts, p. 6: The other result of Mr. Trudeau's actions was that any ground Aboriginals spent time building to support an issue could be destroyed with one sharply worded comment. The power and momentum created by these actions seemed astounding, but in reality the Crown gained nothing because they already had the power.

Optimist, p. 30: There can be little doubt that the federal government of Canada has considerable power in negotiating treaty implementation with Aboriginal peoples. They in effect hold the purse strings, have considerable human resources and expertise to undertake these processes, and have the power to implement changes.... There is, however, a tendency to see these obvious power differences and look no further, not realize that [there are many kinds of power]. Pirie states that “[p]ower will be more a dynamic force, indeterminate, dependent on context, not only causing change but changing itself.”²⁶

p. 31: [For example] external recognition of the rightness of Aboriginal claims influences and tips the scales of power.

Cultural Gaps

[Multiparty institutional negotiations often involve several cultures, creating risks of misunderstandings and hard feelings arising through cultural gaps, and making high demands on negotiators to learn what cultural respect means in each context.]

Carlos, p. 25: Cultural differences play a large part in achieving success in negotiations.

Daryl, p. 18: The cultural groups attempting to work together also affect negotiations. Depending on the culture one originates from, they may be more or less confrontational. This is no doubt also a result of upbringing. This is quite simply another reason for attempting to understand those you are attempting to negotiate with.

Janet, p. 7: I believe she spoke in an honest manner by telling us how it really is, from her perspective anyway. However, this is only one side of a story that has many sides.... By telling this story, I felt she was enforcing the stereotype of the “emotionally unrestrained and undiplomatic Indian.” Being one, I guess I kind of pick up on these things.

Optimist, p. 25: Cultural differences manifest themselves in a multitude of ways; however, some view the concept of time as particularly divisive. Of all cultural features, “[t]he concept of time is among the most insidious. It is ever present, unconscious, and formative. It shapes two subjective features of negotiating behaviour: timing, the judgement of the right moment for the performance of a given action; and tempo, the sense of the appropriate rate of progress or transition from one move to the next. In the absence of shared conventions, cross-cultural differences in assumptions about time can raise the problem of coordination in acute form and can further constitute a recurrent source of negotiating confusions.”²⁷ ... “[P]eople from different cultures not only speak different languages, but, what is possibly more important, inhabit different sensory worlds.”²⁸

Optimist, p. 26: North Americans respect time, are time conscious, and believe in “appearing for meetings on time, being sensitive to not waste the time of other people and in general believe that faster is better.”²⁹ Being late devalues time and therefore devalues the party affected and may be viewed at the very least as discourteous and may even be interpreted as a power strategy during negotiation. Time does not hold this prized place for other cultures ... who focus “on the task, regardless of the amount of time it takes.”³⁰

High Risk: Interest-Based Bargaining in a Low-Trust Context

[Modern multiparty institutional negotiations are high risk. The goal of institutional change, and the institutional forces of existing group relationships that come to the table—history, power imbalances, external accountability, and cultural gaps—mean that “position-based” bargaining (you want x, I want y, and we flex our muscles competitively then compromise somewhere in between) usually leads to deadlock and inflames tensions. Though this is

an accepted North American style of bargaining, it involves shared cultural and professional assumptions, usually in the context of single-issue, private negotiations, that are not present in a multiparty institutional context. An alternative, known as “interest-based” negotiation, popularized by Fisher and Ury of the Harvard Negotiation Project in the late 1980s, involves parties offering “why” particular positions are important to them, and working co-operatively to find solutions that simultaneously accommodate different groups’ “interests.”

Interest-based bargaining holds the potential for success in multiparty institutional negotiations, but it is premised on trust, and many negotiations of this type begin with low levels of trust among both negotiators and background groups. In the absence of trust, success at interest-based bargaining is difficult to achieve, leading to a high risk of breakdown in modern multiparty institutional negotiations.]

Optimist, p. 23: The authors of *Democracy and Deep-Rooted Conflict* state that historical conflicts are “not amenable to split-the-difference, cake-cutting solutions based on compromise.”³¹

Optimist, p. 24: The North American culture historically supports a positional, competitive negotiation style as opposed to an interest-based, co-operative approach. An experienced positional negotiator may find learning a co-operative approach requires a conscious and conscientious effort.

Alexander, p. 23: The entire book *Getting to Yes*³² is based on this simple principle [of “interests not positions”]. Chapter three is entitled “Focus on Interests, Not Positions.”³³ In describing this principle, the authors suggest that “desires and concerns are *interests*. Interests motivate people; they are the silent movers behind the hubbub of positions. Your position is something you have decided upon. Your interests are what caused you to decide.”³⁴ Later on in the book the authors state, “If you want someone to listen and understand your reasoning, give your interests and reasoning first and your conclusions or proposals later.”³⁵ This is the way to negotiate. Interestingly, at the dinner, both Tom Molloy and Bob Mitchell talked about interest-based bargaining as opposed to using positions. They both seemed to be firm believers in this philosophy.

Annette, p. 29: It is important to identify and understand the basic principles of interest-based versus position-based bargaining. It is essential to recognize position-based bargaining through aggressive and strategic behaviour versus interest-based problem solving that emphasizes collaboration and creative solutions, but in reality one needs training to do this.

Io, p. 8: We have proof in Bob [Mitchell] that with clear vision and humble patience, the negotiation process can be played out with the good of the whole as the highest value.

Io, p. 7: Asked to explain interest-based bargaining, [Mr. Mitchell] outlined the process from his perspective and experience. Each party brings a statement of interests (their bottom line) to the table: through this they declare their interests without taking any positions. He noted that the areas of common interest are larger than one would normally think. The parties then keep talking about solutions until everyone can get some of their interests filled.

Because this notion of stating an interest rather than taking a position still seemed to elude most of us, we asked for an example. An objectively based statement of interests would be: First Nations want a high school graduation rate similar to white students. A position would be: We want total control of schools on reserve. The province would counter that position by saying no. The idea of joint or co-jurisdiction might be explored, or the province might offer some improvements to their school system. The end result would be a lot of compromise ... even though only two possibilities have been considered ... [and] the province would not want to give in and “lose” completely on their expressed position.

If neither side pushes a position, both are free to explore all sorts of options to bring the graduation rate up.

Janet, p. 14: Mr. Mitchell gave us some advice on interest-based negotiations. He said you must always declare your interests without taking positions. You must try to find common interests and then work on solutions and then alternative solutions. In positional bargaining you concede too much, where with interest-based bargaining you collaborate rather than compromise.

Harrison, p. 8: [Mr. Mitchell] spoke quite a bit about interest-based negotiations as opposed to position-based negotiations. It was encouraging to hear that this approach is actively used and respected out in the field and is not just a theory. I also found it encouraging to hear that both sides seemed to get along and co-operate very well. That has got to be an accomplishment in itself. To think that they are actually negotiating self-governance and the intricacies involved floored me. I had no idea that this was happening and that it had progressed so far.

Janet, p. 16: I read a couple of articles on interest-based bargaining that Io recommended. The idea makes sense, but how do you accomplish this when our world perspectives are so drastically different? Again, I think it sounds great in theory—but will it work?

W. Roberts, p. 26: Positions and interests: This is the most important lesson of the negotiations. Always try to negotiate with interests; it is more productive and has less unpleasantness associated with it. Although I don't know how to get to this point in a negotiation, I know

that it would be the best method to accomplish goals. I don't know if it can come as a result of good people, good negotiators, or pressure to settle. Interest-based negotiations are, however, not something that can be just agreed to by both sides and then easily put into practice. Interest-based bargaining requires conscious and continuous focus coupled with effort.

PREPARATION (THE PRENEGOTIATION STAGE)

[Successful negotiations, we learned, require intensive preparation, including understanding context, knowing the substantive law; making prenegotiation agreements, taking care of physical matters, and expecting the unexpected.]

Carlos, p. 23: The single most important lesson learned from this simulation is that if you are not prepared you are lost.

Annette, p. 28: The amount of physical and mental preparation involved is immense.

Denise, p. 2: The first weeks included much preparation. This was both a rewarding and an incredible learning process.... The strength of the parties depended on the knowledge around the table.

Optimist, p. (i): The preparation stage is essential to success at the table.

p. 1: Successful negotiation processes ... require commitment, understanding, and trust, much of which will take place in the preparation stages of a negotiation process development.

Understanding Context

[The context of the negotiations includes all the circumstances that surround the negotiations, including the institutional forces of history, power imbalances, external accountability, and cultural gaps, as well as the interests of all groups, current policy developments, and other groups' approaches with respect to the upcoming negotiations. Understanding context deeply enough to be wise at negotiations is the stuff of genuine leadership.]

Kim, p. 16: After I went home, I thought about why the negotiations started on such a bad footing. After some time, I came to the conclusion that the knowledge was not there. As Donna [Greschner] had told us earlier, we need to approach the table having the knowledge, the context, and the background.

Denise, p. 2: Know as much as possible about context, circumstances, and history. Read outside to learn.

Max, p. 31: [I]f there is a huge gap in knowledge among the parties involved, significant problems can arise.

Carlos, p. 21: Experience plays a large part in what one perceives to be the correct interpretation of a role.

Carlos, p. 23: You cannot effectively negotiate the issues if you do not know what they are and what the history is behind them. You are doing a disservice to your client if you allow the other side to gain the upper hand due to your lack of information. Most negotiations begin with one side holding the balance of power. To create a further imbalance because of a lack of information is unforgivable.

History and Culture

Percival, p. 20: [I]t is important that the negotiator understands and respects the historical relationships of the parties.

J. Colton, p. 19: It is an advantage to know the history of the dispute and the parties. A strong knowledge is a sign of respect. It also strengthens the credibility and trustworthiness of negotiators.

Kim, p. 17: I now know that a good negotiator will take the time to understand the other party's culture and negotiating style.

Denise, p. 29: In the context of our own discussions, it seems to me that a lot more preparation was needed to allow the players to have a sympathetic understanding of the others' viewpoints. For instance, I think it should have been a prerequisite to attend the sweat lodge. It is experiences such as these that increase the awareness for individuals of the magnitude of the issues with which they will deal. [Mr.] Molloy talks at length of his trips to some of the areas in question in his negotiations in British Columbia. It is very difficult to put problems/issues forth when you just read about it on paper.

Percival, p. 7: I do not think the Crown team really understood the sensitivity an actual

Crown negotiator would need to have if they were to negotiate effectively in these circumstances. This really hit home when the Crown team discussed ... that the First Nations team would likely request that the negotiation be opened with a prayer. One person said that she did not want to stand during any prayers and that she felt it was disrespectful to her to ask her to do so. Our group then discussed how we should refer to one another and the protocol we should ask for so that our dignitaries would be treated with respect. I was really disheartened by our group's inability to draw a link between having respect for others and receiving it ourselves. I entered the negotiations not trusting that my own team understood what it meant to handle negotiations with true respect.

Your Own and Others' Interests

Kim, p. 23: I would recommend that all parties know where the other parties are coming from—the relevant history, background, interests involved, and the jurisdiction of each party. It was frustrating as only the surface knowledge of the negotiations, history, and so on, came up. It was very difficult to be true to one's role as [I as a provincial negotiator] could not fully appreciate what the opposing side's role was.

Kim, p. 15: I [as a provincial representative] personally want to research the particular band or bands that will be represented so that I get a general sense of where they are coming from and what the peoples' needs and interests are.... I reflected on what Donna had told us earlier and asked myself what the province cared about or wanted to get out of the negotiations. I came to the conclusion that the only part of the protocol that affected provincial interests was the substantive issues part. As long as the people of Saskatchewan were provided for and the provincial economy would not be negatively affected, the province felt that it could be quite flexible with the agreement as a whole.

W. Roberts, p. 27: When in negotiations, it is important to know the other side as much as possible. I don't mean personally, I mean know their side of the issue. If you know this, then it will be easier for you to understand their pressures, goals, and methods. This will help you to present your side of the issue in a better manner.

Current Policy and Developments

Janet, p. 15: I also did a lot of Internet research over the break. I really wanted to be prepared for the negotiations and for whatever the federal and provincial governments were going to come at us with. I spent hours on the federal government website reading government policy and new research on issues of self-governance, land claims, and treaties. I also read the RCAP recommendations regarding treaty implementation. The report made a number of suggestions for the federal government. I didn't think that these should be put into the text of our

protocol agreement. If any of the RCAP recommendations are to be used, I would assume they would be suggested by the federal government, since it is they who have the power to set up tribunals and make legislation. It would be a gesture of good faith if they offered to make a proclamation.

Kim, p. 14: I researched other Saskatchewan treaties. Using the DIAND [Department of Indian Affairs and Northern Development] website, I managed to find a summary of the Agreement-in-Principle between the Meadow Lake First Nations (MLFN), Saskatchewan, and Canada.³⁶ The actual agreement included issues such as governance, jurisdiction, application of laws, MLFN lands, intergovernmental relations, and dispute resolution, among others.

Other Groups' Approaches

W. Roberts, p. 26: It is important to come to the table with as complete an understanding of the other side as possible.... I would recommend that all groups keep an open line of communication so that they know where each other are at when approaching the table. One side may not agree with or like what they get for feedback from the other side, but this would save them the unpleasantness of discovering this at the wrong time.

Knowing the Substantive Law

[Lawyers are always involved in formal multiparty institutional negotiations because both process and substance must be in accord with a complex matrix of international, domestic, constitutional, statute, and case law. Working out the application of these laws requires cultural sensitivity, awareness of conflict of laws, and ongoing discernment and interpretive judgements, all of which are possible if negotiators have a nuanced understanding of the substantive law. Further, any agreement worked out must be translated into formal law in the relevant jurisdiction(s).]

Annette, p. 8: [In the constitutional video] Richard Hatfield brought up the issue of Aboriginal women having no equality. Trudeau said that in law everyone was equal. Mary Simon, an Inuit representative was very upset and said they were talking about a fundamental right. She considered herself an equal but wanted the equality clause settled.

Carlos, p. 23: Knowing the substantive law surrounding these issues is also critical.

J. Colton, p. 19: It is frustrating to work with negotiators who are misinformed or have a lack of knowledge.

Percival, p. 20: The Crown team would have been more effective in the negotiations if we had had a better understanding of the substantive law in the area. This was particularly the case when references were made to decisions of the Supreme Court of Canada. I am not confident that the federal Crown's characterization of the influence of these decisions was accurate. I would have thought that the federal negotiators and the ministers involved would have been very cognizant of the impact of these decisions. The federal co-negotiator argued against the idea that they had some bearing on these negotiations. Because I was not confident in my understanding of the substantive law in the area, I did not challenge this characterization with much force. Despite my personal concerns, even if the characterization was inaccurate, the federal team was not able to articulate themselves well because they lacked the depth of understanding of the substantive law to speak with confidence and authority. Similarly, the Crown negotiators did not have a sufficient understanding of the nature of the treaties to place the comments by Mr. Molloy into context. The First Nations team was quite right when they stated that Mr. Molloy's perspective on certainty from the Nisga'a Agreement was irrelevant to our negotiations.

Making Prenegotiation Agreements

[Negotiators entering multiparty institutional negotiations cannot assume any shared understandings about appropriate procedures. Procedural understandings acceptable to all must be worked out before substantive negotiations can proceed. Procedural negotiations also involve all the institutional forces—history, power imbalances, external accountability, and cultural gaps. Participants found negotiating procedural arrangements at the Main Table to be time-consuming and frustrating, and suggest that as many as possible of these be worked out in advance. Procedural agreements include common understandings about documents to be brought forward or disclosed by respective groups.]

Carlos, p. 23: I also came to appreciate the enormous amount of preparation that goes into the setting up of a protocol agreement. Many small details must be worked out before any negotiating session.

J. Colton, p. 17: Protocol is very important in negotiations. The protocol must be agreed prior to Main Table negotiations. Negotiators should not make any assumptions about the protocol of current meetings based on past negotiating experience. Issues such as the number of chairs allowed for each group at the Main Table, the order of speaking, and the identity of

the chairperson should be negotiated before the parties sit down. Every detail must be clearly stated and agreed.

Optimist, p. 33: Equal time and input are important to equalize the power disbursement.

Optimist, p. 32: A number of sources have suggested common methods to ensure that actual power imbalances do not interfere with the success of negotiations. These include the choice of venue, equal opportunity to speak, the selection of a chairman, the timeframe allowed for negotiation, and maintaining respect during the process.³⁷

W. Roberts, p. 14: It would be in all of the parties' best interests to communicate as much as possible prior to the negotiations in order to work out as many wrinkles of miscommunication as possible.

p. 26: It can be very frustrating to come to the table and try to agree on basic groundwork. Valuable time may be spent hashing out basic elements, which is frustrating, because it prevents the negotiations from proceeding to the heart of the issue.

J. Colton, p. 20: Negotiators need time to prepare for meetings at the Main Table. Groups should negotiate in good faith and avoid surprising another group by giving parties notice of any changes in advance. If the negotiations are under time constraints, it is more efficient to allow groups time to prepare because they are less likely to caucus for so long.

Taking Care of Physical Matters

[Participants found that physical matters have a large impact on negotiations.]

Annette, p. 4: [Donna said that] [o]ne big problem was the physical accommodation of the parties. The technical staff had to come in first and hook up phones, etc. There was also the important aspect of continually replenishing food. This is also mentioned in Tom Molloy's book. He says that food is essential.³⁸ Donna talked about the long days. The negotiations would start at 8:00 a.m. and at 6:00 p.m. they would meet with their teams until late at night because there were huge time pressures.

p. 28: The physical preparations would include arranging the negotiation areas, availability of private caucus areas, accessibility to food and equipment.

Io, p. 5: The actual day-to-day process Donna described struck me as one that was fundamentally geared towards the psychological aspects of negotiation—or perhaps I should say

that her description revealed how much politics is driven by psychological factors. The marathon quality, the insularity, the deadline pressure for making a deal—all seem to me to be ways to let the breaking-down force, the transformative force, work its magic on ordinary humans who otherwise—well rested, comfortable, shielded—would have little incentive to let go of their favoured notions in order to reach agreement.

Optimist, p. 33: Selecting various sites to accommodate the various parties when undertaking long-term negotiations can further knowledge and cultural understanding, as in the Nisga'a negotiations.³⁹ Circular seating arrangements are traditional in Aboriginal and some Asian societies and are known to facilitate discussion, although the Nisga'a negotiation table was rectangular or triangular, which must have been acceptable to all.⁴⁰

Io, p. 10: The caucusing rooms, especially the refreshments room, created a space apart in which we could reunite, reassess, and reinvigorate ourselves. These rooms were as important to the process as the Main Table room. It would have been difficult if we had had to stand in hallways instead of being able to sit together and relax our bodies, so that we could muse about our (nonphysical) situation.

Io, p. 17: We have experienced the physical set-up of the negotiations, and next time around we can rearrange the room to some extent to improve our group support. Decreasing the distances between ourselves and the other parties (one table-width away instead of two) may enable us to relate more as persons, and yet we may end up too close for comfort. We need more room behind the Main Table for our back-row people to be comfortable and accessible to our front-row speakers.

Expecting the Unexpected

[Participants learned that the best-laid plans will frequently be disrupted by the unexpected.]

Alexander, p. 8: I found out [26 February] our College of Law's administration team had forgotten my change of flight for the moot competition in Ottawa. I had discussed the situation with two of the people in the College of Law's administration, explaining that there was no way I could miss my [Day One negotiation] Multiparty class. In light of this, they both had assured me that I would be on the Friday morning [next day] flight. As it turned out, they forgot, and I was scheduled to fly out of Saskatoon at 1 p.m. Thursday [Day One]. That was unacceptable; I would miss the entire first day of table negotiations. The next day I went over to Travel Cuts and looked into changing my flight. The only flight they could arrange for me

was a 4:50 p.m. Thursday flight. I paid the ... charge for changing the ticket. At least I was then able to attend the first hour of that Thursday's negotiations. By implication, I could no longer be the chief federal negotiator.

February 27th I spoke to [my teammate] and informed her she would now be the chief federal negotiator. She was reluctant but she knew there was really no other choice.

Lee, p. 13: On Tuesday, 27 February 2001, I was also asked to take on the role of chief federal negotiator because of Alexander's obligation to his moot team. Though I understood his position, this left a very heavy burden on my shoulders. I was honoured that Alexander would feel I could carry this responsibility, but I also felt that I certainly wasn't the best choice. Knowing that I have a very forceful personality and that my emotions can often be read like an open book, I didn't feel that these qualities made a good chief negotiator. I felt that my knowledge was limited in the area of negotiating as the federal government and I have had no experience in negotiations of this type. The meeting with Mr. Molloy provided a certain level of information and framework, which gave me a sense of, at least, a starting point.... Alexander's confidence in my abilities was both surprising and encouraging to me.

Io, p. 9: I had intended to arrive half an hour early, to be with my people and to assess the room and how we could best position ourselves to keep our strong group feeling and mutual support flowing among ourselves. Instead, frustrating circumstances resulted in my being ten minutes late: the worst way for me to begin.

Kim, p. 26: Other variables also play a huge role—hunger, tiredness, or illness.

Alexander, p. 16: The previous night [before Day Two] I had eaten at our on-campus bar. Unfortunately by 2:00 a.m., I had the worst case of food poisoning I have ever had in my life. This had an effect on me at the negotiation table. Sure, I was still active at the table, but I think I would have thought things through more carefully and acted more quickly if I wasn't concentrating so much on not throwing up at the table.

NEGOTIATORS' PERSONALITIES,
RELATIONSHIPS, ASSUMPTIONS,
AND MISUNDERSTANDINGS
COME TO THE TABLE

[The institutional forces of history, power imbalances, external accountability, and cultural gaps, the contextual forces of interests, policy developments, groups' approaches, the preparation with respect to the law, prenegotiation agreements, and physical arrangements, plus unexpected developments, all come spinning to the table when negotiations begin. To these are added the personalities and relationships of the negotiators, as well as whatever assumptions and misunderstandings they may carry.]

Optimist, p. 23: [W]hile negotiation involves the solutions to interests, it is people who actually do the negotiations.... Individuals involved in negotiations can negatively or positively influence the entire process.

Percival, p. 15: I also learned that the negotiations are only as effective as those negotiating.

p. 22: How one negotiates, and to a lesser extent, who negotiates, is critical.

Kim, p. 4: It is common knowledge of human psychology that we bring our personalities and backgrounds to whatever tasks we perform, and consequently, whatever we learn through those tasks, we incorporate into our personalities. There are exceptions to the rule, but this process seems to hold true for most people.

Percival, p. 9: We did not think through our decision of who would fulfil what role in our team. We made the decision based on interests and desire instead of who would be the most effective negotiator. If I have learned one thing from these negotiations, it is that who is sitting at the table is critical to the effectiveness of the negotiation.

Negotiators' Personalities

Kim, p. 17: Personal styles matter; depending on what the personal style is, that is how the world will be perceived.

Daryl, p. 18: [S]ome people do not have the appropriate personality to work as negotiators.

Kim, p. 23: It also seemed that our personalities, as well as our positions, got in the way of actual negotiations.

Kim, p. 6: [In the constitutional video] [t]he Crown ... was very hostile, arrogant, and rude. I felt embarrassed when watching Trudeau raise his voice while saying the Lord's Prayer just so that he could be louder than the Aboriginal peoples, who were also praying. I suppose he didn't agree with them praying before every meeting. His question to the chiefs: "Are you going to pray every morning?" in a very arrogant manner supports that belief. The video was a rude awakening for me as I have always considered myself a Trudeau loyalist. He could never do anything wrong. I was mistaken. I still think of him as a great prime minister, but now I can see that he had many faults. This suggested to me that personalities play such a major role in negotiations.

Carlos, p. 20: Discussions with Tom Molloy, both before and after the negotiation process, indicated that interpersonal dynamics dictate the style and pace of negotiations.

Negotiators' Relationships

Optimist, p. 23: The trust relationships that people are able to form in the prenegotiation stages will allow the parties to come together in a spirit of co-operation, which is necessary in order to move from position- to interest-based negotiation.⁴¹ Tom Molloy found that by coming into the negotiation after the prenegotiation stage, it was particularly difficult to establish this trust because the other parties had nothing but his past reputation rather than personal experience to rely on.⁴²

Alexander, p. 24: In our microcosm, we did not have that essential trust and mutual respect, never mind the materials to build meaningful relationships... [Mr.] Molloy recalls: "We felt comfortable enough with the work and with one another that we could hold discus-

sions over a meal or a beer as well as across the negotiating table.”⁴³ I do not think this relationship was ever developed at our negotiations.

Carlos, p. 13: [W]e were thrown into a situation where there was no contact between the parties (in their roles) before sitting down at the table for the first day of talks. We distrusted each other because we had no history, no reasons to trust each other.

Io, p. 10: As I walked into the room the first time, I saw the federal and provincial parties, and I had to hesitate and wonder if I was in the right place: I hadn't seen them for so long that although I had been intensely aware of them as opposing forces, I had forgotten them as people.

Assumptions and Misunderstandings

[All of us carry assumptions, and often misunderstandings about other people, of which we are not aware. Multiparty negotiations bring into focus not only invisible cultural assumptions, but also a false but widespread assumption that others perceive a situation in the same way we do. In our case, assumptions and misunderstandings about what and how we would be negotiating had far-reaching effects.]

What Document Would Be the Basis of Negotiation

Daryl, p. 9: Though some have stated they believe the negotiations did not go well because we were unsure of what we were negotiating, I do not believe this to be true. Our problem began with the belief on the part of the federal representatives that we would negotiate on what they had put forward at the class before the meeting.

Annette, p. 13: [In the February 8th class] we talked about [the two observing students] being recorders at the simulations, and other logistical needs. We discussed modifying the Molloy protocol and using this at the Main Table negotiations.

Lee, p. 9: [On February 8th] it was decided that the framework agreement ... from Tom Molloy would be the precedent used for the negotiations. I agreed to type the agreement and replace any ambiguous terms.

Daryl, p. 9: The chief federal negotiator was angry. She had thought that everyone agreed to do as she wanted. This is not how I remembered things, and I somehow doubt that it is true.

Janet, p. 13: [On February 8th] Lee presented the class with a proposed draft protocol agreement. She said it would be on reserve for us to look at. I decided that this was an attempt to control the process.

Io, p. 12: The very way in which the Gitanyow agreement had first been presented created the initial challenge for our group and set the ground for a battle: the chief federal negotiator had taken a controlling and autocratic stance from the moment of the original presenting of the GFA [Gitanyow Framework Agreement⁴⁴]⁴⁴—every one of our side had perceived that moment as indicating that the federal government saw itself as having the power and authority to dictate the process, and that it would use heavy-handed tactics to control the course of the process.

Max, p. 10: I was aware that the Aboriginal team was expected to accept that draft as the document from which to base our negotiations.... Because I was aware of their expectation, I was also cognizant of the fact that a spokesperson for our team deliberately consented to look at the proposed draft, but not to use it.

B. Larsen, p. 13: We received their protocol on Thursday, 8 February 2001, which we undertook to examine and revise as necessary. We did not accept the protocol agreement presented at that time, nor did any of us receive their revised version of the Molloy protocol, which they had completed in the interim. Moreover, we did not undertake to have a revised version of the protocol to them by any particular date. Our understanding was that the protocol would be the first item negotiated at the session.

Janet, p. 17: The federal team made many assumptions about what our agenda was. They said we agreed to use their protocol. We did not. I was there the day that the federal government's protocol was *suggested*. I wasn't busy talking—I was listening.

Io, p. 12: Our side had never simply agreed to negotiate on that basis—our side understood the very object of the day's negotiations to be a mutually acceptable framework agreement or protocol.

W. Roberts, p. 14: The federal team felt that they had received an agreement from the Aboriginal team in class a couple of weeks earlier. I ... do not recall members of the Aboriginal team agreeing.

Speaking Arrangements

J. Colton, p. 5: As a class we agreed to have two four-hour sessions on 1 March and 8 March. We also agreed to have four chairs each at the Main Table. The Aboriginal group agreed to disclose which groups would be represented at the Main Table.

Lee, p. 9: We also decided [8 February] that there would be two chairs for each party at the table, one chair for each party being their chief negotiator, who would remain constant.

Alexander, p. 10: The Crown teams, myself included, were quite sure ... we had all agreed that only four persons from the Aboriginal side would sit at the table and that we would work from the framework of the protocol agreement that Lee had got from Tom Molloy.

Annette, p. 13: The Crown group said they would have two federal people and two provincial people at the table. We then split into our groups.

What Disclosure Commitments Had Been Made

Lee, p. 9: The Aboriginal group was also to contact me before or during Reading Week [16–23 February] to provide me with the name of the groups they represented and any other details that needed to be amended in the document.

Alexander, pp. 6–8: I became aware [12 February] that the Aboriginal team had not released the “who is who” for their side of the table yet. Our understanding from the previous meeting [8 February] was that the Aboriginal team would e-mail us by the previous Friday [9 February]. I made inquiries to [other Crown team members]; they had not heard anything either.

On 13 February my journal entry reflects my impatience with the Aboriginal team. At that point I decided to look into the situation myself on an informal basis. At the same time I sent an e-mail to the rest of the Crown team to see if anyone else had heard anything yet. By 15 February no one had responded to my e-mail so I decided to take matters into my own hands. In order to deal discretely with the matter, I waited until the weekly Thursday night law pub [15 February] to ask one of the members of the Aboriginal team. Unfortunately, that particular night, no one from the Aboriginal team showed up.

February 16th at 3 a.m. I decided to send an e-mail to the Aboriginal team myself to find out who is going to be who. At the time I thought there might be some fallout for my actions from my team, as other people, not the negotiators, were in charge of contacting the other teams. In the e-mail I requested a response by 20 February. This was so I could do my research over the spring break [as it was] the only time I would have to prepare. I ended off that journal entry with the snipe, “I just hope everyone starts taking this seriously.” By 20 February there was no response to my e-mail. My plan to find out what groups were to be represented at the table and do the research in advance was not going to happen.

February 26th I returned to Saskatoon after the spring break and by chance came across B. Larsen from the Aboriginal team. She apologized for not e-mailing back as she was sick during the break. She said that things would not be finalized for the Aboriginal team until

Wednesday [28 February] and that they would let us know then. Although I did not say anything at the time, I was not impressed! Not one person on their team had the courtesy to pick up the phone or even acknowledge receipt of my e-mail. The Aboriginal team was now firmly on my bad side.

Carlos, p. 11: Knowledge is strength, and we had no knowledge. For the two-week period leading up to the negotiations, the federal Crown repeatedly tried to gather information from the Aboriginal group as to what they wanted to negotiate. We needed this information in order to research and to speak knowledgeably on the various issues. We had to know what and with whom we were negotiating. There was no information forthcoming, and frustration and anxiety began to set in. Finally, on the night before our first session, a mere twenty hours before we were to sit down together, an e-mail arrived. This communication stated that the negotiating group would be representing Treaty Six Indians in Saskatchewan, headed by the Federation of Saskatchewan Indian Nations. The e-mail mentioned neither the issues nor the names of the individuals handling the negotiations. It was the night before negotiations and we still did not know what we would be talking about.

Percival, p. 10: The Crown team entered the first day of negotiations frustrated and unprepared. As one would expect, not the best of circumstances to start negotiations. The frustration stemmed from the fact that our team really wanted to have a realistic experience and the First Nations team seemed to prevent us from doing that. They had had three weeks to meet and prepare, and yet no contact was made with our team to let us know with whom we would be negotiating.

Percival, p. 5: In the prenegotiation stage, we also failed to ensure that the parties had a clear understanding of the process to be followed at the negotiation table. Likely this can be attributed more to the commitment and expectations of the individuals involved than anything else. Commitments to share information prior to the negotiations were not met and follow-ups were ignored.... I really have no suggestions on how to prevent that from happening again in the future. I think the appropriate groundwork was laid.

B. Larsen, p. 17: I had a long, thorough conversation with [a member of the Crown side] about where our group was at when we came back from break week [26 February]. I told him I had been sick, that we had been revising their sample framework agreement and would send it to them Wednesday night [28 February] after our small group meeting, and that we were not taking specific roles because we did not want to constrain ourselves. The chief of the FSIN was the most specific role. I talked to him about just doing general research into Saskatchewan First Nations cultural history and the FSIN, but we were not doing research on any specific chief, or tribe, or anything.

His suggestions that he did not know what to research because the federal side did not receive specific roles sounds like an excuse for not doing any research. After all, it is not as though the federal government specified what roles they were assuming. But pick up any relevant text on Aboriginal issues and choose the horror story you would like to read. Perhaps the story of the war chief who went to the Indian agent to ask for food for the starving Indian people, and the agent told him if they brought wood, he would give them food. They did, but the agent refused to give them any food, so they killed him and stole the food because they were starving and the federal government failed to implement the treaties. Read some accounts of what it was like for First Nations people to be locked away in residential schools, to freeze to death as they tried to run away in the middle of winter, to be abused and denied their culture. Pick your horror story and you will have researched the First Nations side of the table.

W. Roberts, p. 12: We had been given a protocol agreement by the federal side, but it didn't fit with our proposed direction. Our team took time drafting what would be known as Draft Two of the protocol agreements. We were aware of the fact that the federal team would be angry that they only had a day to look over the protocol, but we felt that due to the circumstances it would suffice.

Max, p. 10: Members of the federal team were given forewarning to expect such a document via e-mail. We found it very interesting that the members of both crowns claimed not to have received that document, considering that our entire team ... received it by the same means and at the same time as it was sent to all other parties involved.

ENERGIES SPINNING: BEGINNINGS, CONFLICT ESCALATION, AND BREAKDOWN

*[The dominant energy of all the forces that have come to the table—
institutional forces of history, power imbalances, external accountability,
and cultural gaps; contextual forces of interests, current developments, and
group approaches; preparations concerning law, prenegotiation agreements,
physical arrangements, and the unexpected; negotiators' personalities, rela-
tionships, assumptions, and misunderstandings—are lasered into the first
few interactions, creating a momentum for the talks that, if reinforced by*

beginnings, becomes very difficult to turn. If, as in our case, the dominant energies and the beginnings are negative, conflict escalates. Both sides dig in and positions harden. At some point, something crashes, one of the groups refuses to continue, and the talks break down.]

W. Roberts, p. 13: On the way to the negotiations, I ran into members of the federal team in the hallways. I took the chance to feel things out with a few off-topic questions. There was tension in the air, and I could see that the federal team was upset. I did not stay long, due to the nervous energy that seemed to be ready to explode. As I left for the Aboriginal team's meeting place, I felt that the negotiations would be a struggle. I knew that there would be no friendly or relaxed atmosphere.

Upon arrival at the negotiation site, I met with one of the [Aboriginal team] Elders. The Elder told me that this is always the way it is, and that I should just be calm and take things as they come.

Denise, p. 12: I could anticipate trouble as I heard rumblings of the displeasure the Crown felt. They knew that something was coming. I heard complaints that morning that nothing would be accepted from us and they would have to caucus right away. They would not negotiate on something they had not seen.

Kim, p. 15: We finally started our negotiations. What a mess!

The Power of Beginnings

[Like sunlight through a magnifying glass, the incoming energy gathers and focusses in the first few interactions.]

Incoming Energy Lasers

[A few categories of incoming energies are offered for illustrative purposes, but any separation is artificial; the incoming forces act simultaneously. The negative forces in our case are evident.]

Assumptions and Misunderstandings

J. Colton, p. 5: Today was the first meeting at the Main Table and it was full of unforeseen obstacles. There were so many misunderstandings that everything was bogged down for hours.

Carlos, p. 12: The first [day] of our negotiations, two incidents occurred very early in the process that caused both sides to view the other with suspicion.

The first incident occurred when we walked into the conference room the next day. We intended to introduce ourselves to the other parties, ascertain the issues, and then immediately caucus to try to establish a cohesive position on the issues. When the time came to begin talks, two members of the Aboriginal team had not yet arrived, including one of their chief negotiators. We had previously discussed using the same (and various other) strategies to achieve our goals, so we viewed this as a deliberate (but valid) strategy on the part of the Aboriginal group. We eventually came to know the delay was unavoidable.

Alexander, p. 9: To make matters worse, two members of the Aboriginal team showed up nonchalantly twenty minutes late with no excuse and no apology.

Max, p. 24: In reality, we were late because of difficulties in scheduling, not because of any tactical moves.

Percival, p. 11: We also entered the day with an understanding of the agenda and process to be used. The enthusiasm displayed by members of the First Nations team during group discussions seemed inconsistent with the notion that the delay was due to leaving this to the last minute. Thus, as we waited, we started thinking that this was some kind of strategy on the part of the First Nations team to get the upper hand in the negotiations. These suspicions only seemed confirmed when we arrived, were handed a new agreement that would be the basis of negotiations, and had to wait for members of their team, including the chief negotiator, to arrive. In hindsight, we did not handle these suspicions productively. Instead of seeking out the other team to explain their intentions, we assumed the worst.

Annette, p. 18: As we entered the room, we apologized for being late and sat down. I saw Lee speaking loudly to Harrison. Lee appeared angry and hostile. I was shocked. Apparently, Lee and the other members of the Crown tables had not received our modified protocol agreement until now. She said she thought they were unwilling to negotiate something they did not have a chance to look over. Harrison told her that she had sent everyone the new copies and that our group had received them. There was an awkward silence.

Io, p. 10: A prenegotiation meeting might have been really helpful. It seems that each side had been meeting on its own, building its preparations around different understandings of what we were going to negotiate. Initial differences of perception had thus grown into very different views of our common purpose.

Kim, pp. 15–16: There was a lack of understanding on issues—all sides had a different understanding when it came to the issues or the protocol. It would have been much better if both sides had the same understanding as to the exercise before coming to the table.

Carlos, p. 13: Neither side trusted the other. Much of this initial distrust could have been avoided if a process of preliminary agreements had actually taken place. These types of processes serve to build trust, both among and between the parties involved.

Kim, pp. 15–16: The Aboriginal side brought surprising documents—not fair as it didn't give us a chance to prepare.

Alexander, p. 26: Disclose what needs to be disclosed: Teams should bend over backwards to make sure the other teams are getting the information they need and deserve. I think this is the basis for utmost good faith. What happened in our simulation was that despite efforts by my team to get any information, we were ignored. Instead, everything was dropped on us in the first few minutes of the table negotiations. Perhaps there was an attempt to e-mail something to the multiparty e-mail distribution list. That was never really investigated. But why didn't anyone phone one of us to make sure we had the documentation? As it turned out, the entire Aboriginal perspective rested on the agreement they had produced that we had not seen. Too bad they didn't disclose sooner. The negotiation ... would have taken shape in a much different way.

Alexander, p. 10: The framework protocol agreement was particularly hard to swallow for our team.... It was our understanding that we would work off the sample agreement provided by Tom Molloy, and as such, Lee had spent a great deal of time retyping a new framework protocol agreement for our negotiations. Like a slap in the face, the Aboriginal team presented their own protocol agreement in its place.

Carlos, p. 13: The FSIN group also presented a new protocol agreement, claiming that the old agreement did not accurately reflect their position. We thought that the new agreement varied considerably from the original agreement and resented being taken by surprise at this new turn of events. It was bad enough not knowing which issues the other side wanted to discuss; it was far worse to find out that the protocol previously agreed upon was now useless.

Alexander, p. 9: The first day of table negotiations began on 1 March. To say it started on the wrong foot would be an understatement. We had not even been introduced to each other when the whole thing fell apart.... [T]he Aboriginal team had not let us know anything up to this point. The last we had heard, the Aboriginal team was going to let us know what was going on by Wednesday night. No one on the Crown teams had heard anything from the Aboriginal team.... I was not impressed and planned to walk out of the room. In my mind, the Aboriginal team, intentionally or not, was dealing underhandedly.

Lee, p. 12: The [lack of communication] left me feeling exceptionally frustrated both as a class member and as a member of the Crown team. Our team (me specifically) had agreed to

type the framework agreement on the understanding that information would be provided before Reading Week. As the information was not received, I did not believe we were in a position to begin negotiating. As well, if this negotiation was to be true to life, we would have received this information long before we were at the Main Table. Given the shortened time-frame of a one-semester class, having a week of time for preparation, I feel, was not unrealistic or asking too much of the other side.

Percival, p. 12: The Gitanyow Framework Agreement became the federal Crown's position, even though we entered into the negotiation with the expectation that the agreement would merely be a guide we would use to draft our own agreement.

Power Imbalances

Alexander, p. 10: Finally, to top it all off, the Aboriginal team decided they would be representing "generic bands," and as such, no possibility of researching specific bands or their histories was ever possible. Not that it mattered anyway; we had no time to prepare for any of this whatsoever.

Lee, p. 14: We were then faced with two more unexpected changes. The First Nations group now wanted eight chairs at the Main Table and had brought a completely different agreement to discuss. These two things were exceptionally frustrating to me, and it showed. I felt that the idea of a good-faith negotiation was broken from the outset by the First Nations group. One of my first thoughts was that we should have kept notes from the class before the break. It was my understanding that we had decided then the number of people and the agreement to be used. The meeting did not begin well.

J. Colton, p. 5: [T]he Aboriginal group proposed to have eight speaking seats at the table. Once again, the Crown was caught off-guard. The class agreed two weeks ago that each group would have four seats at the table. The Crown did not see any need for the Aboriginal group to have eight seats at the table.

By this point, the chief federal negotiator was at the boiling point. She became angry and emotional while trying to remain professional. The rest of the Crown group was feeling frustrated and irritated.

Physical Arrangements

[At the last moment, when a member of the class fractured a kneecap, negotiations moved from our mezzanine round-table seminar room to the faculty library for occupational health and safety reasons.]

Lee, p. 14: I was thrown by a variety of things that happened. First, the room change was unexpected and a very different set-up from our regular classroom. My position at the end of the table was not effective, and the lack of organization as to who would sit where made it confusing.

Carlos, p. 5: We really had no choice as to the shape of the table. The rectangular shape we ended up with seemed to be very confrontational: it caused an “us against them” atmosphere. An appropriate table for multiparty talks is a round table, with no position of power. A round table allows all parties to see every member’s face. As it was, the federal and provincial teams [all on one side of the table] had to strain forward to see each other. It also fostered the feeling that both levels of government were ganging up on the Aboriginal side. A casual on-looker might easily have mistaken the federal and provincial groups for a single team. That was far from being the case.

Io, p. 10: The physical environment of the room was difficult to work with. The table was conducive to separating the parties and keeping them at a distance from each other. The narrowness of the room led my group, in the beginning, to spread ourselves out in a long line, crippling our ability to lean on each other for support and guidance. Towards the end of the day (after 5:00), we brought ourselves into a tight knot by physically locating ourselves in a cluster (even though this was somewhat less than optimal), where we could be in contact once again and share insights and information.

Beginnings Infuse the Rest of the Negotiations

[The negative beginnings set a tone for the remainder of the negotiating session.]

Percival, p. 21: The emotional response by the chief federal negotiator to the First Nations team at the opening of negotiation had a significant impact on the effectiveness of the negotiations. It influenced the tone of the negotiation as well as the trust held between the parties.

Daryl, p. 9: Now we had an obviously angry centre of negotiations. Her anger left all members at the table with a feeling of distrust, though the Aboriginal members were most opposed to her. Any respect that a chief federal negotiator would have had, upon entering the room, had been lost. From this point on, things just got worse.

Percival, p. 11: In error, and without considering its implications, we allowed the chief federal negotiator to express the frustration we felt when we arrived at the first day of negotiations. Ideally, we should have handled the whole situation better, or at the very least, have

had someone other than the chief negotiator express these frustrations. When the chief negotiator first spoke, we did not consider how this would influence her future relationship with the First Nations team. Her credibility with the First Nations team was destroyed and her effectiveness as chief negotiator for the federal team was undermined.

Daryl, p. 9: The chief federal negotiator[?]s ... obvious anger towards the Aboriginal representatives hurt negotiations from the start.... The opening fifteen minutes of negotiation had irreparably harmed the whole process.

Alexander, p. 11: The first thirty minutes could not have been much worse. The dark threads of mistrust and disrespect had been permanently woven into the tapestry.

Io, p. 12: The energies in the room were intense: a cocktail of frustration, anger, righteousness, defensiveness. The session began with what our group saw as a scolding: we had been bad, we were told; we had pulled a fast one and disrupted the plan. This was an extreme approach that was offensive not only because the accusation assumed an intention on our part that did not exist, but more importantly because it assumed a plan that did not exist. The primary source of the aggressive energy in the room yesterday was the misunderstanding over the Gitanyow Framework Agreement: our side had never simply agreed to negotiate on that basis.

Harrison, p. 21: I know that situations happen in everyday life and if [people] show up spitting fire ... they will get absolutely nowhere, and will lose all respect from the other parties.

Janet, p. 17: The simulation started off badly. The federal team told us they never received our protocol. Basically we were scolded. I felt like I was a bad little Indian. I wonder how everyone else on my team was feeling at that moment. As I looked around the table, I saw only shock. One team member told me she felt we were being treated like stupid children. Well, that is just the type of condescension many Aboriginal people deal with daily.

W. Roberts, p. 14: The start to the negotiations showed ... that the federal team thought they would be setting the tone for the negotiations. They would be the ones who would bring proposed protocols and procedures to the table, and the Aboriginals and the province were more or less assumed to have agreed. I wasn't sure if this was the result of a strong personality or if this was a negotiating strategy. It doesn't really matter which one of the two it was, because either way it had the effect of grinding the negotiations to a halt.

Janet, p. 17: We were accused of acting in bad faith. I feel sick and I am shaking. These introductory remarks sadly ended up hindering the negotiation for the rest of the day.

B. Larsen, p. 13: Our negotiations are going to be tougher than I thought. The first four-hour session was pretty amazing. It started off with a bang when we came under attack from the Crown side because they received our revised protocol agreement Wednesday evening. This was completely uncalled for given the circumstances.

W. Roberts, p. 13: These ground-breaking negotiations started with blame and disagreement about nothing. The Aboriginal representatives and the federal team argued about the communication details leading up to the negotiations.... The disagreements over proposed roles and procedures started the negotiations off poorly.... I was very concerned with this beginning, where the Aboriginals were scolded seven times (I counted) for not communicating properly with the federal team. Other than showing poor form, why was this so important?

W. Roberts, p. 14: The ... problem that seemed to come from this rough start [on Day One] was a quick departure from interest-based negotiations. The whole process simply fell apart too quickly.

Conflict Escalates

[Negotiators recollected themselves in a short caucus following the negative beginnings, and began again with planned starting rituals. Soon, however, the dominant negativity erupted at another flashpoint and the conflict escalated.]

J. Colton, p. 5: Everyone needed to caucus. The Crown decided not to let the Aboriginal group have eight chairs. [The federal civil servant] warned [the chief negotiator] to keep her cool. He was afraid that she would lose credibility with the Aboriginal group for the whole negotiations.

Carlos, p. 13: We caucused to discuss the situation, eventually returning with a better idea of what we were up against.

Denise, p. 13: A caucus demanded by the Crown saw them conceding on the issue of the protocol. It would have to be approved step-by-step by each side.

Alexander, p. 11: After caucusing, the Crown was finally allowed to do their greetings and introductions. [The Saskatchewan premier] and [the minister of Indian Affairs and Northern Development] gave addresses.... After the Crown team's speeches, an Aboriginal prayer was given. All of this should have occurred right from the start.

Lee, p. 14: Immediately caucusing was very helpful. We discussed our strategy and took a quick look at the new agreement. I was glad we stayed in the room because it allowed us the opportunity to set the room up the way we wanted. When we reconvened, I felt much more in control. The speeches and prayer all went well. I then tried to start the meeting on the assumption that I would chair. I started discussing speakers' lists and time limits, and then was made aware that my being chair was going to be a problem.

Procedural Disagreements Flare

Lee, p. 14: To say the very least, this was an interesting beginning. Our strategy was to ensure I took control and gained the chair position. It seemed obvious to the Crown that the federal government would chair any negotiations.

Carlos, p. 8: I thought that in the real world the federal government chaired these types of negotiations. No negotiations take place that concern the federal government unless the federal government is involved and in charge. They are the major player in these proceedings. The Crown also has a stake in maintaining an objective role in chairing these talks. They are under intense scrutiny from the media, the opposition, interest groups, and their Aboriginal counterparts. The position of the chair ought to be one of impartiality, order, and continuity. It was our position that [the chief federal negotiator] could chair the meetings while still maintaining her impartiality.

Janet, p. 17: We caucused for a moment and went back to the table after a short break. Upon entering the room, I noticed that the federal team had positioned themselves in the middle of the table. The chief federal negotiator was standing, and as we entered the room, she announced that she would be chairing the meeting. I was shocked.... No way is this going to happen. I was not prepared for these manipulative tactics. For an hour, we argued that we did not want the chief negotiator to chair the meeting. She lost our trust long ago, and in good conscience we could not deal with this person.

Denise, p. 13: A determined squabble over who would chair the meeting ensued. The chief federal negotiator understood that it would be her.

Io, p. 14: If I had to identify one particular emotion that surfaced most strongly, I would say it was the sense of betrayal. The government groups felt betrayed by our last-minute proposal, and we felt betrayed by their belief that they were intended to be in charge of what we saw fundamentally as a two-way (or three-way) process. I was personally very frustrated because I didn't know how this impression had been created for them. Were they just making this up as a tactic? Was this a rule of the game that I had somehow missed? In any event, it seemed completely unfair for one group to have been given such an advantage, and so my group refused to concede.

Max, p. 13: The federal negotiators not only failed to recognize the need to make procedural concessions, they also failed to actually propose the manner in which they wanted negotiations to proceed. In reality, they assumed and forced it. We later discussed as a team how different the declaration as to the position of the chair would have been received had it been preceded by the words “I suggest that.” Instead, the words “I will be chairing” initiated the contact between the teams.

Alexander, p. 11: Unfortunately, we still had the problem of who was going to chair the meetings... [A]n hour and a half into the table negotiations ... the arguments were still centred on who was going to chair the negotiations. A crucial dispute, I assure you, but it seemed as if nothing was going to work.

J. Colton, p. 6: Next [the FSIN] proposed alternative chairs for the negotiations. [The chief federal negotiator] suggested that she chair today and the Aboriginal group chair the next meeting. [She] argued that it would be inconsistent to have rotating chairs during the meeting. [The FSIN] challenged the consistency argument and suggested [one of the nonparticipating students] as a neutral party. It seemed quite clear to me that [that person] was not willing to taking on the role as chair. When her name was mentioned I saw [her] eyes hit the floor...

The federal team was at a loss trying to explain to the Aboriginal group that the federal government always chairs the negotiations. The negotiations were stuck on who would be the chairperson at the Main Table. We haven't even scratched the surface of the negotiations yet! The federal government was not willing to compromise on chairing the meeting.

By this time [the federal civil servant] had left so [the chief federal negotiator] and [support person] were left to represent the federal government.

Carlos, p. 14: Even the idea of separate chairs for separate meetings did not gain acceptance. For their time as chair, the FSIN wanted to alternate the position between two people. We would have ended up with three different chairs for eight hours of meetings. Our side was dead set against the idea of three chairs. We wanted structure and continuity.

p. 15: [T]he possibility for widely divergent protocol enforcement from three separate chairs was completely unacceptable to the federal camp. We made our position clear. To get us back to the table, either the province or the FSIN would have to come up with a workable solution we could live with.

By now, the federal group had retracted its offer to allow the FSIN to chair the second meeting. The proper protocol, as we saw it, would have the federal side chair the entire negotiation process. We did not think this would sit well with the other side. We were right.

J. Colton, p. 6: Next [the FSIN] suggested having a “speaking stone,” with unlimited speaking during the Main Table negotiations, especially for Elders. [The chief federal nego-

tiator] had no problem with the speaking stone but rejected having unlimited speaking and suggested that everyone, including the Elders, should be limited to five minutes.

Once again the Main Table broke down for a caucus.

Events Are Interpreted in Light of Incoming Forces

[Tangled incoming energy forces are evident in the reactions to the chair issue, such as history, power imbalances, external accountability, cultural gaps, negotiators' personalities, preparation, relationships, assumptions, and misunderstandings in such a striking way that participants commented specifically on some of them. A separation is offered here, but it is artificial and illustrative only.]

J. Colton, p. 17: I had no idea that these issues could cause so much grief. The Aboriginal and Crown teams were both concerned about bias and an imbalance of power. Before these negotiations, I did not consider the chairperson to have any influence over the negotiations. At the time, I could not understand why the Aboriginal group was opposed to the chief federal negotiator acting as chairperson. Now I understand that factors such as miscommunication, mistrust, and emotion were underlying the disagreements about protocol.

Denise, p. 7: [In one of the first classes] [t]he question of how to interpret was discussed. It was noted that the implications of interpretations vary and the powers of interpretations are very important.

History

Io, p. 13: The reason the way the protocol issue played itself out was such a crucial point for our side is that it mirrored the whole history of Crown/First Nations relations.

Max, p. 13: The self-appointment [of the chair] was far too reminiscent of the unilateral decision making that has occurred throughout the relationship between Canada and the First Nations, and for that reason it raised considerable alarm. As a result, heated debate over the position of the chair ensued and continued well into the session.

Power Imbalances

Daryl, p. 10: [Aboriginal people] as a group, in negotiations, are counting on the Crown to act honourably. If the Crown then shows spite or frustration, everything is lost. One only need ask, who is it that suffers in Canada, is it the Crown, or Aboriginal people? For the

Crown to show up at negotiations angry with the Aboriginal members is at least peculiar, as it is the Aboriginals looking for the alleviation of the suffering of their people.

Max, p. 11: I initially attributed the negative and hostile atmosphere during the first day of our simulation to a misconception held by all teams about the need for control. Even though I now believe the situation was complicated by many additional factors, I continue to hold my initial impression that control issues were central to the problems we faced during that early stage.... From my perspective on the First Nations team, I was very concerned about the nation-to-nation status being apparent in the very manner in which the negotiations were to proceed. That concern, I am sure, was informed by my exposure to First Nations politics ... in combination with my awareness of the manner in which the treaty negotiations had occurred more than 125 years prior.

p. 12: I entered the simulated negotiations fully aware of the importance associated with bargaining from positions of equality and of having that equality recognized from the onset.

Cultural Gaps

Percival, p. 7: I was fortunate ... to have a group who was very excited and committed to the class. They wanted to represent the interests of the Crown accurately. Unfortunately, I do not feel we were able to represent these interests effectively. From the start, we were too focussed on our roles. Too much time was spent discussing what we should negotiate and who should do it, instead of how we should negotiate. We strategized purely on a superficial level. Our discussion of strategy was focussed on the perceptions we would create for the team and not on how we would best reach mutual agreement.

Percival, p. 10: In our error, the Crown team placed an inappropriate amount of emphasis on what we would be negotiating and who would be across the table from us. The emphasis on with whom we would be negotiating came from our earlier meetings with the Elders, who stated over and over again how important it is to negotiate from a position of understanding.

Max, p. 15: We were so ill prepared for the federal reaction. At the time, that reaction appeared quite antagonistic. It now appears that the antagonism may have been the result of misunderstanding or ignorance. I wish that I could have interpreted it in such a way at the relevant time so as to remedy the deteriorating relationship that we had with the federal team. Instead, I was shocked and horrified. The federal team seemed not only reluctant to admit rightful entitlement, but also adamantly opposed to admitting established legal rights. My faith in the ability of education to inform and create social awareness precluded any preparedness for that reluctance and opposition. I never expected that individuals with a legal

education who had spent significant amounts of time specifically informing themselves on these particular issues would hold so firmly to such a position. I now assert that their strong hold illustrates the power of social construct.

Knowledge Differences

Percival, p. 22: I agree with the Elders that it is important that the negotiators understand and respect the historical relationship of the parties. The federal team did not have a sufficient knowledge of the historical relationship shaping these negotiations. The federal negotiators did not have a sufficient understanding of the promises made to Treaty Six First Nations, and therefore could not provide a sufficient explanation of why their positions were contrary to statements made by the federal government in a number of different forums. In that way, we were acting inconsistently, which served to frustrate the First Nations team and undermine the effectiveness of the negotiations.

Percival, p. 8: We also did not spend enough time researching our positions. Most of the group had a “wait and see” attitude. We felt that we needed to see what the First Nations team wanted to negotiate before we started researching. When the First Nations team did not provide us with that information in timely fashion, we were not clear on what to research.

Io, p. 11: In terms of understanding the issues, the histories, and the present state of policies, I do believe the First Nations side was more aware and up-to-date. As one of my colleagues noted as we left the building, the people on our side tend to have a long-standing interest in the issues, through years of personal experience and ongoing concern.

Carlos, p. 11: The Aboriginal group consisted of several members of Aboriginal descent who were well rehearsed in many of the issues and processes under discussion, while the federal and provincial groups were viewing them for the first time.

Carlos, p. 11: Once again, in hindsight, the talks may have been more effective had more people with inherent knowledge of the Aboriginal position opted to represent the Crown. This would have provided the Crown with both a knowledge base and additional live bodies to do actual research. As it stood, both Crown parties were overwhelmed. If this situation had existed in real life, how would the federal Crown react to such an imbalance of knowledge? The role is unfamiliar to them. I believe that talks would be postponed until such time as both sides agreed upon these preliminary matters and the federal side had ample time to conduct their research.

Percival, p. 4: I do not feel sufficient time was spent understanding, as a group, the objectives of the Crown. Consequently, the Crown team easily slipped into a defensive, reactive

mode when we were presented with a new agenda on the first day of negotiations. I do not feel the team was comfortable enough with our role to move beyond the positions adopted by the Crown in the past, to the underlying objectives of the government in reaching those positions. Had we been able to do that, I think the Crown team would have been much more effective negotiators. The time spent with Walter and Maria Linklater and the discussion afterwards provided such an opportunity for us to learn about the interests of First Nations people. Similar time needed to be spent on the Crown side. While Professor Greschner's discussion was interesting and provided a picture of how multiparty negotiations have occurred in the past, it did not provide me with a clear understanding of the interests of the parties during the negotiations. Similarly, *The World Is Our Witness*⁴⁵ was fascinating and fostered a great deal of excitement among the class. However, it failed to help the Crown team learn about the interests we would be representing....

Some members of the Crown team were also concerned that the First Nations team would not be able to separate the individuals from the roles.... Had the [class] discussed the Crown's role in negotiations, it may have eased the mind of my teammates. The First Nations team would have had a context in which to evaluate the actions of my teammates.

Negotiators' Personalities and Relationships

Percival, p. 21: The emotional response by the chief federal negotiator to the First Nations team at the opening of negotiations had a significant impact on the effectiveness of the negotiations. It influenced the tone of the negotiations as well as the trust held between the parties. While the chief federal negotiator felt that she was able to rebuild some of that trust as the negotiations progressed, I disagree. I am quite certain that all other statements made by her were viewed with suspicion. This was most evident by the First Nations team's reaction to her objection to the word "partner" in one clause of the framework agreement. The worst of possible motives for the objection was assumed, when, in fact, her objection was based on her concern that it implied two parties when there were three parties at the table.

Harrison, p. 21: My team members ... all kept saying that they knew that the Crown would react that way, and that they knew that [the chief federal negotiator] in particular would react that way.

Percival, p. 12: I think it's fair to say that the First Nations team saw [the chief federal negotiator] as hostile and unapproachable.

Janet, p. 19: Everything our team did and said after [the chief federal negotiator's] initial outburst was in contemplation of how she would react thereafter. I resented the fact that a single individual could affect the entire simulation in this manner.

Janet, p. 21: I now realize, as does my team, that the issue is not about federal control—rather it's about [the chief federal negotiator's] control. Again, I can't believe we are forced to discuss how to deal with this one individual. I am so very angry. Is it real or is it a tactic? If it's real then I guess I should be frightened for all future generations. If it's a tactic—to undermine this process—then I am disappointed because it diverts our focus away from some important social issues. It reduces this entire class to a game of tactics and manipulation.

p. 27: I am disappointed in how much of my team's energy was spent on trying to deal with one "difficult" person. I think that if we were in the real arena, we would never have had to deal with a person like our chief federal negotiator. I felt bullied by her throughout the entire process.

Daryl, p. 14: Hostility was a major problem with the chief federal negotiator at the beginning of the negotiations. Her hostility had lessened by the end of negotiations, but as frustration rose, the hostility of everyone else went up.

Harrison, p. 21: Where do I even begin? I came home tonight completely energized. That was awesome!... The only thing ... I expected the Crown would be somewhat ornery because we didn't get them the information they had requested, but I certainly did not expect the hostility.... And it was all real.... I came ready for a simulation, and I got real life.... [T]hey certainly were not very happy, and they let it be known.

Positions Harden

[As the conflict escalates, sides become ever more positional, drawing lines in the sand with declarations that they will not move until certain demands are met. Talks become oppositional and confrontational.]

Percival, p. 13: Our strategy to deal with this loss of face was, once again, to hide behind the accuracy and correctness of our position.... The loss of trust between all parties resulted in a win-lose attitude by the federal Crown and First Nations teams. This became evidently clear in the conflict over the meeting's chair. Neither team was willing to accept the other team's proposal for chair for fear of loss of control.

Kim, p. 17: The table resembled a court rather than a negotiating table. The federal government and the Aboriginal side were very adversarial in their positions.

Kim, p. 23: It was definite power struggles with everyone trying to prove their worth and the power that it entails.

Carlos, p. 13: We were a determined bunch and both sides were ready to dig in their heels.

Apparently, these negotiations were going to be strictly position-based arguments—not a good sign.

Daryl, p. 14: We were unable to fully articulate and give reasons for our decisions. The federal negotiating team, for instance, often stated that the ministers would not allow them to discuss the issue any further. Often I felt like saying, “Well, maybe you should call them and ask them why.” Near the end we were all so immersed in what could best be described as an argument that we could no longer articulate as well as we once could have....

The hostility led to an inability on the part of all members to express themselves in a full manner. People were no longer logical and articulate, but instead they simply restated the position of others. These statements were neither constructive nor worthy of articulation.

Carlos, p. 13: Eventually, emotions got the better part of both sides and irrational comments began to appear in the dialogue. One perceived that the FSIN was actually baiting the chair into angry responses, just to prove their point about her being biased.

Breakdown

[Finally, something crashes and talks break down.]

Lee, p. 14: After caucus, the confrontation between the Aboriginal group and the federal government over who would be the chairperson continued. I tried to persuade the Aboriginal group with no success. There was no room to negotiate. We were at a “stalemate.” Finally, I stood up and walked out. I didn’t see any other choice. This was not an easy decision. I was *very* worried and upset to be in that position.

Carlos, p. 12: [The federal Crown believed] that these were our meetings and that we should therefore chair the proceedings. The FSIN group took great offence to a member of the federal team automatically chairing the meeting, not believing that the chairperson would maintain an objective posture throughout the negotiation process. An offer to allow the FSIN group to chair the next meeting was rejected. The fact that they were left out of the decision to select the chair for the initial meeting was an issue that would not go away. It seemed to be a deal-breaker. The argument went on for over an hour, and the emotions and personalities of the players began to emerge. The insistence of the Aboriginal group to have an equal say as to who was to chair the first meeting, as well as their assertion that they did not trust the chief federal negotiator to remain unbiased, forced the federal group to walk away from the table.

Daryl, p. 9: The federal negotiator, who had shown so much anger towards the Aboriginal group, now stated she must be the chair of negotiations. This was a strong stance and she appeared immovable in this position. The class members had shown a willingness to listen to each other when discussing what topic we would negotiate, but the chief federal negotiator would not show any willingness to give in any way or to discuss any other possibility. She eventually left the table.

Denise, p. 13: Since no agreement could be reached over the chair, [the federal chief negotiator] took her team and walked away from the table.

W. Roberts, p. 16: The next portion of negotiation carried on much like the first fifteen minutes of the negotiations.... As a result of this, the tension around the table continued and the federal team eventually walked out.

Annette, p. 19: Harrison said we were not willing to accept Lee as chair and chief negotiator because we saw this as a conflict of interest. With that statement, Lee said the federal Crown was not willing to negotiate, picked up her papers, and left the room.

B. Larsen, p. 14: The cycle of escalation continued throughout the disagreement of who would be chair of the negotiations. A crisis occurred when the federal negotiator left the table.

Janet, p. 17: At one point the federal government walked away from the table.... I felt as if I was a child again. I felt like I was a guest in [the chief federal negotiator's] playground and I had to play by her rules or she was going to cry, yell, or poke me in the eye. Wow, I wonder if this is how she sees her role as a federal negotiator. One thing she kept on repeating over and over again was that it was the First Nations who had requested this negotiation and she assumed this to mean that we had to play by their rules. My assumption, on the other hand, was that this was a simulation and maybe we could work outside the narrow parameters of the box and instead collaborate on new negotiation processes.

PARTIAL RECOVERY, SUBSTANTIVE CONFLICT, CONFLICT AVOIDANCE, AND A CASUALTY: INTEREST-BASED NEGOTIATIONS

[The talks get restarted, but substantive difficulties emerge that cannot be resolved before time runs out on Day One. Tension continues to build over events between Day One and the final negotiating session on Day Two. Day Two negotiations start more amicably, but again run into substantive difficulties. Talks end with agreement on noncontroversial clauses in a protocol agreement. Some participants experienced this as success; more experienced it as failure. This section includes participants' reflections on the fate and patterns of our negotiations, including conflict avoidance and salvage, the emotional consequences, and our failure at interest-based bargaining.]

Getting Talks Restarted

[For a number of complex reasons usually relating to the even greater dangers of the alternatives to negotiations, pressures build to get back to the table.]

Carlos, p. 16: Lee and I discussed this option, and we decided it was acceptable—anything to get the talks going again.

Informal Talks Away from the Table

[Getting talks restarted usually involves informal talks among individuals who have some trust with one another in settings away from the Main Table.]

Carlos, pp. 15–16: The process for solving this stalemate proved interesting.... During this initial impasse, I ended up talking to W. Roberts in one back room over a cup of coffee. We spoke as friends, neither one looking for anything from the other. We commented on the deterioration of the process and then discussed going to a hockey game later that night. Eventually, we talked about our dilemma and how we could best resolve it. We both agreed that we needed a new chair. Comments made by [the Aboriginal] group at the table precluded [the chief federal negotiator] from any further duties at that position. I suggested that maybe I could take over for now, and that [the federal civil servant] would chair the next meeting. The solution appeared to allow both sides to back down from their position at the impasse while not losing face. It sounded okay to W. Roberts and he took it back to his team for consideration.

The idea of any new agreement was to provide the talks with an unbiased chairperson. The sole role of this person would be to chair the talks at both meetings. We (the federal group) had already decided that the chair had to be changed. [The chief federal negotiator] was becoming frustrated and it was beginning to affect her credibility as chief negotiator for our side. If she continued to antagonize the FSIN because of her firm stance on the issue of the chair, we believed her opinion would carry less weight in the negotiation process. We decided to propose that I would chair the rest of the meeting for that day and when he returned next week, Alexander would chair the second meeting, and continue his role as a member of the federal team.

W. Roberts, p. 16: It was settled that before the parties would return to the table, there would be a new chair, one who would not take part in the negotiations. The rock would be used, and the Aboriginal team would have one of two chief negotiators at the table. The reason that this small compromise was even achieved was the hallway meetings and the province acting as a bridge between the parties.

Denise, p. 13: The Aboriginal team retired to the faculty lounge for what would turn out to be the best part of an hour. Carlos finally arrived with an offer from the Crown.

The “Third Side”⁴⁶

[Often individuals from groups with connections to both opposing groups, but who are not directly part of the confrontation, act as mediators.]

Lee, p. 23: Occasionally [having multiple parties] was of great assistance to the group. For example, when the federal government negotiators walked away from the table, the provincial government negotiators were instrumental in putting the negotiations back on the rails.

J. Colton, p. 8: As a province, we walked over to speak with the Aboriginal group. [A member of the Aboriginal team] and I wanted to solve the chair problem once and for all so we didn't end up fighting about it next week. We spoke to [the Aboriginal team] about the federal position and gave them time to respond. Then we walked back to relay the message. This went back and forth a few times until we had enough agreement to return to the table. Time was moving and there was so much to discuss.

Everyone agreed to let [the federal support person] chair and use the speaking stone with a fifteen-minute time limit for Elders and five minutes for everyone else. It was also agreed that the stone would be passed clockwise: Aboriginal group, province, and then federal.

Carlos, p. 16: For their part, and unknown to us, the province argued for the idea that a neutral chair for both meetings was the best solution. They advanced my name for the position and it was agreeable to all parties (third side to the rescue!).

Substantive Conflicts

[Back at the table, the procedural agreements allowed the talks to continue, but substantive conflicts arose, could not be resolved, and were tabled before time ran out.]

Procedural Truce

Kim, p. 15: Once Carlos started being the chair, things immediately improved. It is remarkable how important personalities are when it comes to negotiations—ironically, during Trudeau's era, he chaired the meetings. So much for neutrality.

J. Colton, p. 8: Now we are back at the Main Table with Carlos acting as chair. The federal team lost a player but it was worth it to get the parties back to the table. I filled in for [the federal civil servant] and took a seat at the table beside [the chief federal negotiator]. For the time remaining, the Main Table looked at the Aboriginal group's protocol agreement line by line. The speaking stone was in use and Carlos was doing a good job as chair.

Carlos, p. 18: We returned to the table after about ninety minutes of backroom discussion. A different atmosphere permeated the room this time around. I positioned myself across from the Aboriginal team and between the two Crown teams. I called the meeting to order, introduced myself, and laid out the ground rules for speaking. We chose the Aboriginal group's amended protocol as the basis for our agreement, but we required all parties to sign off on each clause.

Annette, p. 19: While we were in our [Aboriginal caucus] group and walking through the halls, Donna Greschner came by and inquired how things were going. We said that the chief federal negotiator had left the Main Table after refusing to step down as the chair. Donna said that in her experience, the feds never leave the table and there are often co-chairs. This chance meeting with Donna somehow changed the situation. I got the feeling that the other teams were upset and felt that we had gotten information from her.

Carlos, p. 16: In hindsight, the appointment of a chairperson, even though not technically neutral, from either the federal or provincial Crown, was a bad idea. Both our teams were short-staffed to begin with. Our group went from three bodies to two. The Aboriginal side had eight bodies. A more practical solution would have been the appointment of one of their members to the position of chair. The Aboriginal side had a distinct advantage. They outnumbered the federal group eight to two and the provincial group eight to three. The federal side endured a further disadvantage for the remainder of this meeting because, until [the federal civil servant] returned, the [chief federal negotiator] was by herself.

Substantive Problems

[Many of the words or phrases in the Aboriginal protocol agreement were objectionable to the Crown, including “inherent right of self-government” and “honour of the Crown.”]

J. Colton, p. 8: The Crown team had very limited time to read through the document. There were many objections from the Crown team about the wording of the protocol agreement. The Crown team also tried to insert portions of the original framework agreement into the protocol agreement....

The Aboriginal team seemed frustrated when the chief federal negotiator could not give an immediate response. [She] was on her own because [the federal civil servant] was gone and [her support person] was chairing. I think that they could have been a bit more understanding when [the chief federal negotiator] offered to come back next week with a response.

“Inherent Right of Self-Government”

Daryl, p. 12: The major issue we found ourselves unable to overcome was the right of Aboriginal people to govern themselves. I ... considered the federal negotiators’ unwillingness to allow self-government a result of a lack of knowledge. Aboriginal people already self-govern on reserves and have done so for many years. Self-government means nothing more than the right to elect one’s own representatives.... Electing representatives to govern you is not only an inherent right of Aboriginal groups. Self-government is a democratic right, a

right we would fight and have fought wars over.... I believe they viewed self-government as allowing a country to form within Canada. This is incorrect in my view. I would explain it as allowing similar rights to those available to a municipality.

Harrison, p. 30: I did not really understand why the Crown was so rigid in terms of their position regarding the “inherent right of self-government,” although I wasn’t nearly as hot over it as my fellow teammates. I guess I did not really understand the federal government’s position regarding this item, so it was difficult to understand where they were coming from with their arguments. Again, knowledge is everything, and I felt at a loss as to the Crown’s interests and history.

“Honour of the Crown”

W. Roberts, pp. 5–6: [In the constitutional video] [t]he actions of Pierre Trudeau were, in the context of an Aboriginal negotiation, unacceptable, because they breached the principles behind the fiduciary obligation of the Crown and the honour of the Crown that are owed to Aboriginals.... The nature of Mr. Trudeau’s actions and comments established Crown control. Anything that the Aboriginals would be allowed to do from this point on would be at the discretion of the Crown.

Denise, pp. 14–15: After agreeing to mutually respect one another, the debate began again with respect to clause 1.3.2, “Discussions at the Common Table will always respect the principles of ethical and honourable conduct.” This apparently was a little too cozy for the feds, who felt it was “redundant,” and were concerned that cultural differences may give different interpretations to this wording. [The Aboriginal team] suggested replacing this with “principles identified by the Canadian courts as identifying the honour of the Crown.” The province threw a wrench in by saying that a fiduciary obligation exists here and they would prefer to leave it as it was.

The feds casually mentioned that they would not approve of a fiduciary obligation being placed in a protocol agreement. The Aboriginal team expressed dismay and stated that they did not understand the federal position. The feds then said that they would accept the clause if “ethical and honourable conduct” was defined in the definition section. The chief federal negotiator was adamant that she would not mandate a future fiduciary obligation unless it was a legislated fact. The Aboriginal team decided to table this as they were concerned with the reluctance to include the honour of the Crown.

Carlos, p. 4: RCAP recognizes that a fiduciary relationship exists between the Crown and the Aboriginal peoples.⁴⁷ The commission is of the view that the federal government owes this fiduciary duty to Aboriginal people to “reverse this colonial imbalance and restore its relationship with treaty nations to a true partnership.”

Daryl, p. 11: The next issue we attempted to discuss was whether or not the Crown's honour should be included within the documentation. The federal negotiators said they did not think it should be included. I believe this is a misunderstanding of the law. The Crown's honour refers to something similar to a fiduciary obligation and is therefore owed unless otherwise stated. There has never been reference to the denial of the Crown's honour in any treaty, and it is therefore taken to apply within all dealings between the Crown and Aboriginal groups. It quite simply means that the Crown will act in the Aboriginal people's best interests and will not act opportunistically while doing so. This should always be agreed to because otherwise suspicion will arise.

B. Larsen, p. 15: There was another dispute that arose from conflicting information with respect to a clause that referred to the "honour of the Crown" in the preamble. The federal government maintained it could not include such a clause without "accompanying legislation," whereas the First Nations believe that the involvement of the honour of the Crown in any negotiations with First Nations has already been publicly acknowledged by the federal government.

Max, p. 12: I was cognizant of the fiduciary obligation owed to the First Nations by the federal government and that, because of that obligation, the honour of the Crown is always at stake when Canada deals with Aboriginal peoples. I had thought, in recognition of the fiduciary relationship, that those representing the federal government would be open to discuss the manner in which the negotiations would proceed. I had further anticipated that there would be some procedural concessions made by the federal negotiating team on the understanding that the control exercised by their departments over the past approximately 125 years was coming to an end and that a new relationship was emerging. I thought this because I believe that the federal duty and the honour of the Crown so provides.

Time Runs Out

Carlos, p. 18: [M]any [protocol clauses] received perfunctory agreement while the more contentious clauses were tabled for the next meeting. We made some inroads into the protocol agreement, but we adjourned our meeting before a great deal had been done. All parties made a commitment to return the following week with renewed energy and respect.

Intervening Events

[Day One's events and outcome fed into the energies that had come into the negotiations to create new actions, interpretations, and reactions between the

two days of formal negotiations. Evidence of the complex mix of energies can be seen throughout the intervening events: a press release, a merged protocol, and a backroom approach.]

The Press Release

Alexander, p. 13: I decided a newsletter of some sort was appropriate. From what I saw and subsequently learned from my teammates, it seemed that all the teams needed to be reminded of why they were there and whom they were representing. It was not that I thought we should be talking about substantive issues. Rather, it was to give the public a say in the process and show how the media might be portraying the antics of players at the table. I wanted the newsletters to be as objective as possible: one portraying how the federal team was being viewed nationally and one portraying how the population of Saskatchewan was looking on the provincial team and the Aboriginal team lead by the FSIN. [After unsuccessfully attempting to get some help], I wrote both articles myself. I tried to be as objective as possible while I took shots at the federal team in “The National Natter” and then at the Aboriginal and provincial teams in “The Provincial Pulse.” I would like to think that I was somewhat accurate; at least it was the way I felt. Even before the release of the two newsletters on 6 March, I knew that secrecy was of the utmost importance.... It worked; through misdirection and a few lies I was able to distance myself from the newsletters and keep my position on the federal team from being blemished.

J. Colton, p. 10: Alexander handed me an article in the library. Without asking what it was, I began to read it. To my surprise and delight it was a MultiParty press release. The articles were great. I thought that the authors gave a true account of what happened in the meeting on 1 March. I actually found it embarrassing to read.

A few more of our classmates entered the library and received a copy of the press release. We started to speculate who wrote it. My first guess was [the professor]. I thought that it was her way of telling us to smarten up! Someone else asked whether I had written it! I have now come to the conclusion that [it was written by the two nonparticipating students].

p. 20: A media release is a clever communication tool for multiparty negotiations. It was grounding to read an outside perspective about negotiations that I had witnessed personally. In other situations, it may be used to sway public opinion or build pressure on groups involved in the negotiations.

Denise, p. 16: A news release of sorts was distributed on Tuesday, the 6th of March. It bothered some Aboriginal team members who blamed it on the seemingly neutral note takers. We later learned it was a Crown team member. The articles were entitled “First Nations wanting to control processes at critical treaty talks” and “Little Stone carries more weight than Aboriginal issues in Saskatchewan.”

Annette, p. 22: I couldn't believe it when I saw that the "reporter" noted that "talks started out on a sour note when two prominent Aboriginal players failed to arrive on time." Those two players were B. Larsen and I. The interpretation and impact of the media reminded me again of Tom Molloy's book when he said that members of the federal negotiating team participated in various media events and "frequently had to rebut the columns and editorials in Letters to the Editor."⁴⁸

p. 28: I felt the newspaper article definitely slanted things towards the Crown side and felt as though I wanted to refute the comments as Tom Molloy said he did in his book.

Io, p. 20: I then read the news release. How damaging that little piece could be when circulated among a public with no other information about what had taken place. How unfair the piece seemed, how superficial. But in reality, that is one of the powers of the media: to trivialize and distort. How to deal with it? I guess just to dismiss it as a red herring flung in our path, an effort to tie up our energy in trying to defend ourselves—another vision of the Trickster.

Janet, pp. 19–20: I received a phone call from one of my team members, who was very upset about the content of the press releases. She read them to me over the phone. They were very disrespectful and I was very disappointed.... What upset me more, however, was that [the writer] told his own team members that [the professor] wrote it. They honestly believed him and didn't hesitate to get the message to my team that this was the work of [the professor].

The result of this lie was that it undermined the Aboriginal team's position. It gave the federal and provincial teams some confidence that their approach was the correct one. Furthermore, the articles supported their view that it was our team who was sabotaging the negotiation process by creating issues where there weren't any to be found. For my team, this lie created self-doubt and even shame.

Max, p. 18: The terrible gap between uninformed portions of society and the First Nations became readily apparent in the contents of the "news release" that circulated between the two negotiation sessions. It attempted to reflect the position of a neutral third party. In fact, members of all three parties were intentionally misled to believe that the writer was neutral (we were told the writer was [the professor]). On first reading, the news release devastated me. I couldn't help but wonder if a neutral observer had been responsible for its preparation because, if that was the case, the Aboriginal team had been horribly misunderstood. Once I realized that the information and background knowledge of the writer were so limited, I was angered by what I had read. The content was insulting and insensitive. But in the end, the news release left me with a valuable impression. It illustrated the complexity of cultural differences and the misattributions that can too easily result. Cultural differences can create

barriers to understanding. When such barriers exist, groups in opposition more readily perceive each other to be acting in bad faith. This explains how conflict escalates and how particular dynamics can make the situation more volatile.⁴⁹

B. Larsen, p. 17: Sometimes I think people criticize because they believe this is how to be most useful. I had a lot of feelings going on today, especially with respect to some of [a member of the other side's] tactics. In a way, I think it's all part of a strategy to get my/our goat. This was further evidenced in an inflammatory newsletter he circulated, which was completely unorthodox in my view.

Protocol Draft Three

Lee, p. 16: The Crown group met between the two negotiation sessions to discuss issues and lay out strategy. We began this meeting by thinking that we would continue to use the agreement presented by the FSIN group. I felt this was a very difficult agreement for us to work from, given its biased nature. As well, this agreement lacked many of the clauses that I felt were necessary to lay out the foundation as a framework agreement should. Some of the important clauses we wished to add included clarifications on who was signing the agreement, amendment procedures, and other organizational matters.

Kim, p. 18: This was the first time that we could meet as a group following the first set of negotiations. We discussed the draft that the Aboriginal side presented to the table. We all agreed, province and federal government alike, that the proposal was too one-sided and biased and therefore we could not work with it. As a result, we all voted to merge the protocol that the Crown had presented with the Aboriginal protocol. Our plan was to offer the protocol to the table as a means for negotiation.

Kim, p. 18: My role, along with [my provincial co-negotiators], as we are representing the province, was to be the middle person, the arbitrator [sic]. Most of the struggle and head-bunting last week was between the federal government and the Aboriginal side. The province was seen as the party that could act as a mediator between the two. I am not sure how realistic that is. I am not sure whether in real life the province would interfere and act as the middleman. Nevertheless, we felt that since none of our interests were being compromised, we could act in that role. The provincial position then was to convince the Aboriginal side that the proposed protocol was, in fact, a merger, and that it represented the interests of all parties involved.

Denise, p. 16: Wednesday [7 March] arrived and so did a NEW protocol agreement from the feds. Is this reality? What kind of a tactic is this? It would not have happened in the real world. Why would we spend time last day working through a proposal that would never

come up again. It seemed to me that this was more of a power struggle than anything. There were some hard heads on both sides though.

Io, p. 21: I also spent time going through the draft sent to us by the federal side last night. Contrary to what we had been told, instead of flagging contentious areas, the document had been redrafted to leave out the portions of our draft protocol that were not acceptable to the feds and to leave in their portions. Also, words that were considered very important to us were changed. In our group meeting before last week's negotiations, we had given a lot of consideration to the choice of the word "jurisdiction" and what it signified in comparison to what "governance" signified. The choice to go with "jurisdiction" was an extremely important one to us—yet the other side had replaced it with "governance." Good faith *bargaining*?

Harrison, p. 24: It was also very frustrating having Lee e-mail another protocol agreement that was completely redone. It's even called something different—it's back to the framework agreement that they proposed in the first place. And there is a whole bunch of stuff in there that is either redundant or completely unnecessary, not to mention some points that are not even applicable to our negotiations. I realize they wanted us to use the Gitanyow Framework Agreement, and that's fine for them to assert their own documents, but they do not seem to understand that first of all, the Gitanyow were negotiating a brand new treaty, and second of all, it was very focussed on land claims. We are not negotiating a treaty here and we are certainly not focussed solely on land claims. This framework agreement just does not serve our purposes well in those areas, but, for some reason, the Crown team seems to think that it does.

p. 25: It bugs me that we had a nice, clean, simple protocol agreement, and now they are suggesting a long, convoluted document, that, as far as I'm concerned, does nothing more than our proposed one did, except of course, for bringing more of their interests and less of ours.

Carlos, p. 18: The only clue I had as to any backroom work was upon entering the boardroom before the second round of negotiations. The federal side prepared a new protocol agreement. This new protocol, entitled Draft Three, was an amalgamation of the one used at the first meeting and the one that was originally agreed upon. I could not help but think, "Here we go again," but the FSIN group seemed okay with Draft Three, provided we went through it clause by clause and, once again, every clause needed the approval of all three parties.

A Backroom Approach

Io, p. 19: Today in the library I ran into Alexander from the federal side. I broached the subject of trying to get past the personal dynamic that had developed at our first negotiation, by

trying to get down to interest-based negotiations, but he was reluctant to speak to me. He seemed to be of the view that we could not speak outside duly scheduled meeting times, and he felt he could not speak without first clearing it with the chief federal negotiator. Kim from the provincial side joined us, as did Max from the First Nations side. The rest of us felt that personal exchange was not only OK, it was a big part of the whole process of trying to reach agreement; but Alexander left, and so we were unable to make any headway there. Kim, Max, and I continued to talk about the possibility of reaching the chief federal negotiator's heart, and departed company with a tentative proposal that one of the Elders should take the federal negotiator for a little walk and a little talk, with the hope of getting down to talking interests.

Alexander, p. 15: On 7 March, I ran into [two members] from the Aboriginal team and they wanted to discuss their disappointment over the lack of substantive issues being discussed.... I refused to discuss the issue with them, no matter how much I would have liked to, because I refused to step out of my role [of federal civil servant]. I suggested to both of them to contact the chief federal negotiator if they wanted to discuss anything. I'm quite certain they were left wondering why I was playing my role outside of the class. My feeling was that you have to stay in the role you are immersed in until the simulation is done.

The Final Negotiation Session: Day Two

[Negotiators know, consciously or unconsciously, that the fate of this round of negotiations will be sealed in the last session. Evidence of all the forces of what came into and were developed in the first day's negotiations, and what happened in between, now feed into Day Two. All the previous forces can be seen in Day Two, as well as a new force—better beginnings. Participants moved through the Draft Three Protocol Agreement, tabling any clauses that caused conflict to be dealt with at the end. During the last half-hour, participants addressed the substantive issues, and again were unable to resolve any of these before time ran out, including “the inherent right of self-government,” “jurisdiction”/“governance,” and “certainty.”]

Better Beginnings

J. Colton, p. 11: The class assembled in the faculty library. The Main Table negotiators had taken their seats at the table. I noticed that the Crown and Aboriginal negotiators had switched sides but I don't think it meant anything.

Carlos welcomed everybody back to the negotiations and then Elder Janet gave a prayer in Cree. Janet also talked about the importance of trust, good faith, and exchanging gifts. She wanted to present gifts to the Crown in honour of her grandmother and those who had signed the treaties. The chief negotiators [for the federal and provincial governments] received handcrafted beaded jewellery and [the federal civil servant] accepted a hair accessory on behalf of the minister of DIAND [Department of Indian Affairs and Northern Development].

Lee, p. 17: I liked the feel of these negotiations much more than our first day. After the Crown meeting on Monday, I completed the amalgamation of the two agreements, e-mailed it to our group for approval and to the FSIN on Tuesday. I believe receiving the agreement earlier allowed for preparation time and cool-off time.

p. 18: The negotiations began on a much calmer note and with a less confrontational feel. It seemed that since some parameters had been set, there was a better understanding of how the process would flow and there was less tension between the groups. Janet's gifts to the negotiating teams were a wonderful touch.

Annette, p. 23: We began on time this week with Janet starting with a prayer in Cree and a reminder of the importance of trust, respect, and good faith within our Protocol. She also discussed the relevance of the pipe carrier and the importance of this action. Then Elder Janet surprised us all by giving gifts to the Crown and provincial negotiators, signifying good faith and trust. She gave them hair barrettes and bracelets made out of beads. Everyone appeared very touched by this motion, especially Lee, federal negotiator, whose face lit up with joy when Janet presented her with the beautiful beaded bracelet and became more positive. It felt as though there was a fresh approach, which included the new draft.

Harrison, p. 28: Wow, what a day. Today our team all showed up on time, thank goodness, and Janet, unbeknownst to the rest of us, presented the negotiators on the Crown side with gifts. We had spoken about that possibility before, but that's where it had stayed, so it took us all by surprise, but what an awesome surprise. Talk about diffusing a bomb—those gifts had such a calming effect on the atmosphere of the negotiations. It was great.

Day Two Events Unfold

Alexander, p. 16: The table negotiations this time started off well. Janet as an Elder from the Aboriginal team read a speech and presented what I thought to be peace offerings. It worked very well for the establishment of good faith. Next, the Aboriginal team agreed to drop their previous framework agreement in favour of the new hybrid agreement now being referred to as Agreement #3 [Draft Three]. Consequently, I was a little shocked to hear the Aboriginal team say that they had not discussed the document... That was an unfortunate step. From

my perspective, we had purposely not dropped this on them like they had done with us, so why had they not yet discussed it?

Alexander, p. 12: [In our Crown group meeting it had] come out how W. Roberts, Janet, and Harrison seemed to be the most conducive to the negotiations. At the same time, B. Larsen was marked as a hindrance to accomplishing anything. From that point on, those alignments were added to the federal team's strategy. We decided to work on our relationships with Harrison, W. Roberts, and Janet, while at the same time delegitimizing B. Larsen. It was nothing personal, just strategy.

pp. 14–15: We [had] discussed strategy and decided that the hybrid agreement, known as Agreement #3, would be sent to the Aboriginal group via Harrison two days in advance of the [Day Two] table negotiations. We felt that we were showing our support and respect for Harrison by disseminating the new agreement through her alone.

Alexander, p. 16: The negotiations went along fine while we marked the document and skipped over the substantive issues. There were only a few minor concerns and the fact that [the chief federal negotiator] kept forgetting to get the provincial team's "okay" on several line items. During the negotiations, I was trying to support [the chief federal negotiator] as much as possible. I understood my role in this whole simulation. I also tried to work on our strategy by concentrating on W. Roberts, Janet, and Harrison at the same time as delegitimizing B. Larsen. I am sure it got under B. Larsen's skin.

Annette, p. 21: It appeared that it would take hours to be able to agree on [the inherent right of self-government] and many other clauses. After [tabling that clause, and disagreeing on "certainty," so tabling it] we seemed to fly through many sections, but instead of discussing our differences, the chief negotiators on each side put them aside and tabled them for group caucus later. It was beginning to feel like we were going nowhere, so I suggested that we take a break. Alexander (Minister of Indian Affairs) was reluctant since he felt we were making progress [and said] perhaps just I might take a break.

J. Colton, p. 12: Carlos moved the talks forward by turning everyone's attention to Draft Three.... It was agreed that the federal negotiators would lead the group through the document. I noticed that people were speaking out of turn and not using the speaking stone. I also observed that the provincial negotiators were being completely ignored. The federal representatives would move on without hearing from the provincial negotiators. Finally [a provincial negotiator] spoke up and reminded the group that the province was also required to sign off each clause in Draft Three.

J. Colton, p. 12: The Main Table continued to work through the document. If there was disagreement about a section, it was automatically tabled for small-group discussion.

Carlos, p. 19: All three sides quickly moved through Draft Three. We tabled any contentious issues.

Daryl, p. 12: The next day of negotiations went somewhat better... We moved through an entire document, but only did so by tabling any controversial issues. When we finally began negotiating the contentious issues, we were unable to resolve them.

Lee, p. 17: Though this negotiation started on a much better note, there were still many frustrations to overcome. I felt that the provincial negotiators came to the table very unprepared and kept the other parties waiting. I also kept ignoring the province when we were agreeing on clauses. This was not intentional, but rather a product of the set-up of the room. I also felt my perception of the purpose of a framework agreement was very different from that of the FSIN. This difference caused difficulties because some of the clauses we got hung up on were issues I felt should have been a part of the negotiations, not the framework. The four hours for this second session seemed to go by very quickly. I felt we all had a better understanding of how to proceed, so the flow, for the most part, was improved.

Substantive Conflicts

“Inherent Right of Self-Government”

J. Colton, p. 14: [After caucus], [t]he Main Table could not agree on the first tabled section. The first tabled section was a hot issue because the federal government negotiators refused to recognize the right to self-government. [The chief federal negotiator] and [civil servant] argued that they had no problem with the Aboriginal group asserting this right, but they did not have the authority to recognize it.

The provincial negotiators sympathized with the Aboriginal group and criticized the federal position. [A provincial negotiator] and [the Crown team co-ordinator] called for a Crown caucus but [the chief federal negotiator] declined. This was a very emotional issue for the Aboriginal team.

Alexander, p. 17: The table negotiations reconvened at 5:30 p.m.

pp. 18–19: The recent smoothness of the table negotiations stopped there. A major problem had developed. The federal team was not prepared to discuss the inherent Aboriginal right to self-government issue. Frankly, we did not know how to approach this multidimensional problem, so we were up front with the teams at the table. Right from the beginning, the federal team entrenched itself by saying we could not discuss the issue. Sure, it was probably not right to take such a strong stance or even a position at all, but at least we were dealing in the utmost good faith. I think that if the federal team had not let its position on self-government be known right away, we could have pretended to discuss the issue, even caucused

for a while and then come back with the same position. I think that would have had the appearance of being more open to negotiation on the issue. The problem is that those actions by the federal team would have been just a façade. I believe that this was one of the utmost good faith moves that the federal team did, even though the other team saw us as destroying inherent Aboriginal rights. In my opinion, we laid our cards on the table for everyone to see; the problem was it was not what they wanted to see....

[E]ven if I personally agreed with the inherent Aboriginal right to self-government and had researched the topic, there was still a major problem with the placement of this issue in the preamble. Preambles are not the place for substantive arguments. Another problem was the fact that this was a framework for treaty that included a number of bands and spanned beyond provincial boundaries. Whether or not the FSIN or the provincial team could even discuss the self-government issue was questionable to me. Anyway, things had got personal. At the end of it all, we had the Aboriginal team [everyone] along with the provincial team pitted against the “anti-Aboriginal” federal team, and two people on the Aboriginal side visibly upset.

B. Larsen, p. 16: The First Nations’ group was stunned by the federal government’s position on our inherent right to self-government and their refusal to allow inclusion of this in the protocol. Their side appeared to me to be hostile towards our group and inflexible in their position.... How can the inherent right to self-government be in dispute? Aboriginal people were governing themselves long before the white man arrived. They had their own ways of governing and living in community with one another. They never surrendered this right. Whites destroyed the ability of Aboriginal people to govern themselves with colonizing instruments such as the *Indian Act*, Indian agents, residential schools, discrimination, and other insidious forms of forced assimilation. In Saskatchewan, both levels of government have recognized the inherent right of First Nations to govern themselves. To refuse to allow its inclusion in the preamble is a huge step backwards. The federal government has some strong personalities and powerful positional negotiators, but they appear to be narrow-minded and somewhat limited in their approach to both procedural and substantive issues involved in these circumstances.

W. Roberts, p. 21: During Day Two of the negotiations, there was a tremendous problem with the recognition of the Aboriginal right to self-government in the preamble to the protocol agreement. The federal and Aboriginal sides had come to loggerheads over the issue and had agreed to caucus. To the disapproval of the federal government, the provincial government had supported the Aboriginals. The provincial government pointed out that the Aboriginal people in Saskatchewan have a high percentage of the population, and there is a need for Aboriginal people to be able to tax themselves in order to sustain an economy of sorts. The only way for this to happen is through some form of self-government.

I personally had a difficult time arguing the self-government issue, since I understood it to be a settled area of law and government. The Liberal website supported my views.

“Jurisdiction”/“Governance”

Io, pp. 24–25: As to the issue of governance vs. jurisdiction, lack of awareness did seem to be at play here. The most startling indication to me that the other side was misreading or failing to read us altogether was Alexander’s bafflement that we had chosen not to include governance as a substantive issue to be addressed in the protocol agreement. I took this as revealing two related possibilities: one, that he didn’t understand the idea that by tabling it, we were indicating only that we were not prepared to agree to the drafting, and not that we didn’t think it was important to the whole process; and/or two, that he simply didn’t understand how absolutely crucial the idea of governance is to a new relationship between Canada and the First Nations, even though we had been indicating all along that this was the prime concern to us, and a fundamental aspect of a nation-to-nation relationship.

Had we not run out of time because we had all gotten caught up in the normative process of going through the agreement line-by-line, we would have attempted to reach agreement on the key point: First Nations governance (the *conduct* of life and business) is not on the table. We want to hammer out the details of jurisdiction (the range of authority and the persons, matters, and territory over which it extends), but in keeping with the inherent right of self-government, the manner in which the First Nations govern within their jurisdiction is not a negotiable matter that should require making deals with other governments. The blind-folding effect of normative thinking about the relationship between Canada and the First Nations prevents this from being easy to grasp.

“Certainty”

J. Colton, p. 12: The table agreed to move on to the second tabled section. The Aboriginal group wanted to insert “living document” into the section.

Kim, p. 20: The week prior, I tried to research whether treaties needed certainty clauses or whether the living document title was applicable. Of all the treaties that I looked at, including Tom Molloy’s discussion of the Nisga’a, there was always a certainty clause.⁵⁰ The more I thought about it, the more sense it made to have that kind of provision within the agreement. Sure, there have been many critics of the clause, equating it to an Aboriginal extinguishment. But I believe that if proper terminology is used, all sides can be assured of their rights and obligations by using the certainty clause, and at the same time avoid the negative “extinguishments” connotation. I particularly like the way the Nisga’a phrased it.⁵¹

The night before, I also accessed the DIAND [Department of Indian Affairs and Northern

Development] website to see what it had to say pertaining to certainty, and certainty when it comes to treaties. According to the federal Treaty Negotiation Office, “[t]he objective of achieving certainty through treaty negotiations reflects both the need to end disputes and claims over rights to lands and to ensure Aboriginal and non-Aboriginal people have a clear and common understanding of the extent and meaning of their rights and responsibilities.”⁵² I realize that this is the Crown perspective, but is it not in the interests of all concerned to be assured that their rights and obligations are secure and will not be taken away the following day?... This is what “certainty” means to me. Sadly, the Aboriginal side did not concur.

Io, p. 20: I spent some time with the Tom Molloy book, musing on his definition of “certainty.”⁵³ Certainty includes the notion that the Nisga’a Agreement sets out *all* the rights of the Nisga’a under s.35, and the *limitations to those rights*. Certainty imports a full and final settlement, and releases the government from any rights-based claim founded on past infringements or as-yet-undiscovered rights that may be found in the future. So, certainty may be certainty for the government, but it doesn’t sound like certainty for First Nations. Certainty is something the government wants, so it will be up to them to present compelling arguments for it. My feeling is that we can accede to the desire for certainty as regards the agreements for treaty implementation we reach, but not beyond that. And in our negotiations, we cannot commit to certainty until the contents of all the subagreements are agreed upon.

Carlos, p. 19: The talks ended with much discussion regarding cultural differences, and how they served to provide different perceptions of treaties. Once again, the FSIN argued that treaties should be living documents, while both the federal and provincial Crowns argued for certainty. The Crown’s need for certainty stemmed from their obligations to First Nations for funding, land, and resources. The FSIN stressed the cultural gap between Aboriginal and white society, commenting that maybe a little uncertainty is not so bad; that, in the interests of sharing, the white community should learn what uncertainty is.

W. Roberts, pp. 19–20: The word “certainty” came into the negotiations. The provincial team as well as the federal team began to point to the words of Tom Molloy: “Certainty provides that once a treaty is signed, it constitutes a full and final settlement. The First Nation signatory cannot return with further demands related to past grievances. Possible future claims to lands ... are eliminated. Negotiations are over.”⁵⁴ Mr. Molloy means political disposal of the issue. This is not what negotiations should be about. They should be about trying to solve the real problems.

The Aboriginal group had discussed the passage in Mr. Molloy’s book, since we felt that it would be an issue. One of the Elders felt that this passage did not apply to us because it was the Nisga’a who negotiated it, and it was only in reference to land. However, when it was

brought up in the negotiations, it made me uneasy; it wouldn't be until I reflected upon a previous conversation and applied it to some comments made during the debriefing that this feeling made sense.

When Mr. Molloy used the word "certainty" in his book, he meant certainty in terms of politically disposing of this issue. Mr. Molloy means certainty in tying up the legal aspects of Aboriginal claims. I feel that this is either to miss the point of, or to violate the reasons for, the negotiations. Mr. Molloy should turn the focus of the words "certainty" towards finalizing the details of solving the social and spiritual situations of the Aboriginal people.

p. 24: Is certainty not just another way of saying [that this is a political exercise]? I believe that it is.

Io, p. 23: Certainty: a collision point between bargaining positions, but more fundamentally, a collision point between the interests of two very different cultures. On this point, our side cannot say that the other side was misguided or uneducated as to the present reality and the historical relationship. Certainty was at the heart of the Crown's interests in the original treaty making, and the words of the written treaty attest to this. The Crown sought the signing off on the ceding, surrendering, and releasing of all the indigenous peoples' rights, title, and privileges whatsoever—certainty—so that settlement and development could move forward. Then, as now, certainty is said to be in the best interests of the First Nations. It is said to be necessary to enable the First Nations to develop! What is left unspoken is that it is only the existing uncertainty over land claims that are hindering nonindigenous groups in their quest to develop. And the uncertainty over when and what claims for infringement will arise in the future seems to be driving the Canadian government and the Canadian public crazy. Yet the First Nations are being offered certainty as the requirement for granting certainty! And it's all in their best interests! It is *for them* that the certainty clause is included in the first place! In telling us this at the negotiating table, the other side was indeed correctly mirroring the position of the real-life federal and provincial governments—but in the process they were losing any chance of trust.

Time Runs Out

Carlos, p. 20: It was at this point that time ran out. Discussion of substantive issues had barely begun and we had to stop.

Conflict Avoidance and Salvage

[As noted, three of the four hours on Day Two were spent agreeing to noncontroversial clauses. We continued to talk, but "avoided" rather than "resolved" the conflict—termed "conflict avoidance"⁵⁵ in the literature and

used here in a technical sense without evaluative connotations. Conflict avoidance, often encased in the colloquial expression “Don’t go there,” is a common strategy of individuals living in families or communities with whom they have intractable differences. Some choose conflict avoidance intentionally and experience it as success; others feel forced into it and experience negative emotional consequences.

In formal negotiations, conflict avoidance occurs when groups at the table conclude they are not going to be able to resolve the differences before them. In our case, some experienced it as success. Some experienced it as an uneasy truce. Some experienced it as failure. Each left a different residue for the future.]

Denise, p. 19: Tabling seemed to be the avenue of choice when we reached a stalemate.

Conflict Avoidance

As Success

[Some groups, often dominant ones, choose conflict avoidance as a positive intentional strategy, believing it to be in their own or others’ interests. As long as talks continue at some level, small agreements may create the basis for larger agreements, the relationship is not completely “broken,” and negotiators and background groups do not have to explain to themselves or others why the talks have broken down, or be responsible for choosing an alternative.]

Lee, p. 20: [I] was pleased with how much better the second day went. I believe there was a genuine desire to accomplish something and we had all succeeded in learning valuable lessons through this simulation.

Carlos, p. 19: The motivation for [moving through the agreement quickly] was a desire ... to get the little things out of the way so we could discuss issues of some importance.

Lee, pp. 19–20: During the last portion of our meeting, I felt we got stuck on issues that should have been moved to working groups. I wanted to get past the first page of the framework agreement in the hopes that we would come to an agreement on most of the issues. I felt that if we had done that there might have been a most positive, upbeat feel to the table—a sense of eminent completion and accomplishment.

As Uneasy Truce

[Some felt conflicted about tabling controversial clauses. These accepted it as the only thing to do to avoid greater conflict, but experienced a lingering unease.]

B. Larsen, p. 16: It was frustrating and incredibly time-consuming to go through the protocol agreement clause by clause and agree/sign off on each one, rather than simply adopting them in principle and addressing only those on which we disagreed. The federal government was adamant, however, and quite positional in their approach. At least we got through most of the protocol at our second session.

Kim, p. 23: Some things that we argued about were very insignificant. There was no prioritization.... For example, we spent so much time discussing the preamble when the time could have been spent on more relevant and important issues. I realize that everything is part of the larger picture, and as such, all little matters are important. But there are limits to that. We were too caught up in the little details.

p. 19: But we managed to get through the entire proposal and we tabled very few items.

J. Colton, p. 12: I felt that it was unnecessary to table so many sections. When there were words or phrases in dispute, the disagreement could have been resolved quite quickly if only a party would compromise just a little.

Carlos, p. 19: I am not sure if this [moving through the agreement quickly] turned out to be such a good idea. Looking back on the eight hours of talks, we discussed nothing of any substance until the sixth or seventh hour. We spent the majority of our time discovering areas of common ground. While that process is a key to building trust, we were in a situation that had extremely tight time constraints. We needed to resolve substantive issues. A more beneficial approach may have been to resolve issues as they arose. Additionally, a tabled issue may directly or indirectly affect a subsequent agreed-upon issue, though it may not appear to do so on the surface. This process has the potential to create ambiguity.

Harrison, p. 23: I'm not sure I agree ... that it was best to get on with it. This is supposed to be as realistic as possible, so then every issue should be nailed down and agreed to before we go on.

Denise, p. 19: The caucus included haggling over wording that I knew would not be adopted in this negotiation. I found this portion of the day frustrating because this was a

hurdle that would not be overcome in these few remaining hours. I do not know how we would have done it differently. I do not think tabling the protocol to move on to other issues would have necessarily been the proper course of action either.

As Failure

[Some experienced not dealing with substantive matters as failure, often with an emotional residue that would carry into the future.]

Annette, p. 8: Another Inuit representative [in the constitutional video] said this conference was a failure.

Janet, p. 22: For most of [Day Two] we discussed the new protocol. Our team basically had to specify which provisions were problematic for us. At this point, I felt that we were defeated—at least until we got to talk about the substantive issues within the text of the protocol. I guess we could have discussed our interests throughout, but this was not acceptable to the federal team.

Carlos, p. 23: The negotiations began with both sides not trusting each other and they ended the same way. We wasted a lot of time over the ultimately trivial matter of chairing the meetings. Once that issue resolved itself, talks progressed with greater ease. I was disappointed that any issues of significance that required debate were tabled until the end. This left little time for any real negotiation.

Io, p. 23: Two substantive issues were actually addressed—“certainty” and the “governance”/“jurisdiction” question—although [the civil servant’s] comments indicated that he and the chief federal negotiator had failed to see that this latter issue was really at the heart of the whole matter, and that our side had been talking about it all along. This is where the blinding effect of colliding cultures was perhaps most palpable.

Daryl, pp. 13–14: Overall, I felt that the negotiations had failed. There was no doubt from the beginning that we would be unable to reach a resolution, but I felt that we had failed because we were unable to overcome even one major issue.

Io, p. 22: The “metafailure” of the second negotiation lay in what I will loosely call the normativity dynamic. The hard-fought struggle of last week had resulted in a process in which, while we had the right to speak in turns as governed by the rock and an impartial chair, that speech was mainly focussed on working towards signing off on acceptable clauses of the protocol agreement and tabling unacceptable clauses.

Max, p. 19: While ... conduct on the second day of negotiations had civility ... it was lacking in its capacity to create any productive experience or results. Our awareness of the potential for the atmosphere to become heated forced us to examine the particulars of the protocol in a nonthreatening manner. We simply identified for one another areas of both concern and agreement. The process was quite tedious and unnecessary, I felt, because although we had a duty to play our roles accurately, we also had a duty to ourselves and to our classmates to make the experience of the class as useful as possible.

Max, p. 22: I feel that this has been very much an artificial experience. The artificiality goes far beyond the fact of simulation. The role-playing has been largely inadequate. The players have substantially failed to simulate the mandate of the parties whom they have undertaken to represent. I believe that, in reality, the drive would be to create mutually agreeable solutions rather than to frustrate the process.... I believe, perhaps idealistically, that real-life participants understand the importance of the process that they contribute to and that they envision a political utopia, albeit limited by reality, in which the future has structure capable of benefiting all of Saskatchewan's children, regardless of their ancestry.

Max, p. 22: I had anticipated this class to be a venue for experiencing conflict resolution on a much higher level. The potential for doing so was certainly apparent in the seminar's informal structure. We were empowered to make the experience everything we hoped it could be. Unfortunately, I do not feel that a high level of conflict resolution was experienced due to the conduct of the parties involved. There is a substantial discrepancy between what I expected to achieve and what I actually have achieved by way of conflict resolution experience; my expectation interest has been thwarted and, in this context, there is no remedy.

Salvage Strategies

[When groups, often nondominant ones, perceive no mutual commitment or capacity for problem solving, they are faced with the responsibility for ending talks, or alternatively, attempting to salvage something. In our case, the nondominant group made a conscious decision to attempt to use Day Two to explain interests and to educate.]

Janet, p. 20: Over the week, our team decided to do more research in regard to First Nations interests. We decided that the most effective method for getting our interests across was to have the Elders speak. Each of us would discuss some aspect of why we are negotiating with the government.

Harrison, p. 24: We need to get some more of our interests out there instead of so many positions being knocked around.

Io, p. 22: We have been able to set up a strategy for dealing with tomorrow's negotiation session. We plan to keep explaining our interests until the other side hears us and responds. Whether we will be able to do it is something we will have to find out.

Io, p. 18: Maybe we are more familiar with the issues and history and present, but perhaps this simply means that we should act as patient teachers, rather than assume some ulterior motive behind the ideas expressed by the other side. If we listen past the objectionable statements until we hear the underlying interests of the other side, perhaps we can reflect those back to them, and not only gain some trust, but also set a tone for the negotiations. We can also try harder to formulate our interests and present them explicitly.

Janet, p. 20: I was asked to speak on matters concerning good faith and trust. Having had such a lack of trust in the last meeting, we felt it was important to discuss its role in negotiations, especially negotiations with Aboriginal people.

Io, p. 22: Our side's approach had built around our plan to interject wherever possible an expression of our interests. The objective of this plan was three-fold: to try to model interest-based bargaining in the hope that this modeling would be contagious to the other side; to shame the other side into addressing our concerns (such as the education, employment, and poverty rates among First Nations peoples); and to channel our emotional energy into constructive education about the issues. Although we did that as often as we could, most of the precious negotiating time was snatched away by the normativity dynamics, even as the first negotiation has been snatched away by the personal dynamics.

Reasons for Conflict Avoidance

[Negotiators move to conflict avoidance for complex reasons, both intentional and unintentional. For everyone, conflicts concerning the unavoidable core issues of values, identity, survival, and power in multi-party institutional conflict are intensely stressful. Some groups, usually politically dominant ones, may lack the political will, mandate, vision, or skill to address the conflict in a way other groups find meaningful. Other groups, usually politically nondominant ones, lose trust in the negotiations as any meaningful signal of a change in historically oppressive relationships.]

Background Groups or Negotiators Lack the Political Will, Mandate, Vision, or Skill

[Background groups may lack the political will to risk meaningful concessions at the table, tying negotiators' hands with a lack of mandate. Even if negotiators manage to build trust among themselves, trust is very difficult to

build among background groups. Further, even well-intentioned background groups or negotiators may lack the vision, skills, or knowledge to conduct negotiations successfully.]

Kim, p. 25: I also learned how much external forces control things.... At least from the federal perspective, nothing could be agreed to because of the bureaucratic constraints that were placed on the team.

J. Colton, p. 8: I think that the Aboriginal group suspected that the Crown team was objecting for tactical reasons. However, the Crown team was only trying to stay within their parameters. The Crown team was very aware of what a negotiator does and does not have authority to agree to.

Harrison, p. 24: I suspect that [the chief federal negotiator] refused to let it go because of her belief that this was the way the federal government always did it.... If that is the case, and I find it hard to believe that they would be so legalistic, then you would think that they would not get very far in negotiations.

Lee, p. 9: What became clear to me were the limitations placed on a negotiator for the federal government. I was made very aware that negotiators cannot agree to anything that might bind the federal government. Though I know this from learning about the government in high school, I was reminded that we live in a democracy and the government is a figurehead that may only pass legislation through a vote of the majority. To agree to anything at a negotiation table that would bind the government or the people of Canada would go against the fundamental principles upon which our country stands. I began to realize that being a federal negotiator was not going to be an easy job. I felt, and was made ever more aware during the process, that there were greater limitations and responsibilities placed on the federal government than on any other party at the table.

Alexander, p. 15: I never thought that this class, this microcosm, was about discussing substantive issues. If it was, then in my mind the Aboriginal team right from the beginning had compromised the whole process.

Background Groups or Negotiators Lose Trust in the Negotiations

[Background groups and negotiators who begin the negotiations in good faith often discern during the process that nothing meaningful is going to be achieved. The conflicts are too broad, deep, and wide, and the chasms in understanding too great, to allow meaningful progress. Groups in this situa-

tion often preserve their dignity by salvaging what they can in the particular negotiation, and concluding that until the table becomes more effective, they must rely on other processes, often litigation.]

Annette, p. 6: [Chief Joe Gosnell] said the First Nations people had hoped that this conference would restore them to the previous respect for their rights, but the conference just reduced them to dancing around the table.

Annette, p. 7: Bill Wilson said that every time they seemed to get close to doing anything, the government had a strategy for avoiding this.

Kim, p. 17: I appreciated what the premier of Newfoundland said—one cannot discuss any issue with conviction if one feels that the negotiations are going nowhere.

W. Roberts, p. 6: Even though the Aboriginal representatives [in the video] were well spoken, they lacked the [legal cases as] ground to stand on. It is impossible to ask the ones who have wronged you to recognize their wrongs and give up some of their power to help right the wrongs in some fashion. This is against the very purpose of an organization that is meant to govern, as well as the human nature of those who carry out the actions of the governing body.

W. Roberts, p. 19: I feel that the second day went smoother because both teams knew what to expect from each other: nothing. If there was one lesson that I learned from the first day of negotiations it was, “Don’t expect anything from the other side.” I do not mean this in a facetious way.

Janet, p. 23: We heard a lot of policy and we heard that [the federal government] had the “public” to answer to. This comment angered me because it assumes that Indians are not the “public.” It assumes that we do not participate in elections, that our interests are less than those of the “non-Aboriginal public.”

Janet, p. 22: I feel the process was sabotaged from the beginning. If it had not been, we would have discussed ... interests hours before.

Max, p. 15: I believe that there was a desire to actually frustrate the process. In making that assertion, I rely upon an informal meeting between members of all three negotiating teams that occurred just prior to the second day of negotiations. The purpose behind that casual meeting was to devise a strategy by which to enable a more productive session the following day. We were all frustrated by the way in which the previous session had transpired and were eager to dismantle the emotional barriers to our progress so that we might all enjoy

the benefit of a more enriched experience. During that meeting, it was disclosed by a federal team member that it “might” have been the intention of certain individuals on the federal team to keep negotiations from succeeding in any regard. That disclosure received support by a [Crown team-member’s] comment made during our classroom debriefing that the self-appointment was tactical in some way.

Harrison, p. 23: But then again, this is just a simulation, so maybe it was good that [we] didn’t bring [other issues] up—it just may have sent the [federal team] packing for good.

Daryl, pp. 10–11: If you want to understand anything about Aboriginal people, it is that if you treat them badly they will not talk to you any more.... To know whether you are acting badly, all you have to do is look at others as though they are more powerful than you are, and if you would not treat them the way you are if they were, then you are acting badly.

The Casualty: Interest-Based Negotiation

[Reflecting on their experience, participants concluded that the lack of trust they had experienced at all levels—arising out of the institutional forces, the contextual forces, the negotiators’ personalities, preparation, and relationships, and the events at both negotiating sessions—had led to a failure of interest-based bargaining.]

Carlos, p. 13: There was no sense of trust at the table at all.... Neither side trusted the other.

Percival, p. 22: No one attempted to build a relationship of trust, so that the negotiations could be used to transform the relationship of the parties involved. Instead, the parties hid behind their positions and reinforced the historical, adversarial relationship.

Percival, p. 12: Personally, [the chief federal negotiator] did not like the position she now found herself in.... Aware of this, our team comforted her with the assurance that her position was justified and correct instead of trying to mend fences. This locked both teams into a negotiation based on positions rather than interests. The Gitanyow Framework Agreement became the federal Crown’s position, even though we entered into the negotiation with the expectation that the agreement would merely be a guide we would use to draft our own agreement.

From that point on, there was no free exchange of ideas, but merely a presentation of two positions, the federal Crown’s and the First Nations’, followed by an attempt to reconcile the two. The province was left on its own to agree or disagree with either of these positions.

Kim, p. 22: Perhaps, of the things I learned, the one that stands out the most is that all the parties were position-oriented rather than interest-based. There was an Elder who explained what was happening in her community, but that did not transfer over to the negotiations. There was an expression of interests, but it was never fully explored or explained. There wasn't a good enough understanding of the roles and the interests in order to have been able to explain them to the other side. How can one explain why he or she is arguing something unless he or she knows the motivation behind the argument? There was no consideration of the interests behind it that were affected. We did not seem to have this specialized knowledge.

Annette, p. 28: I also felt that our side frequently became positional and did not always encourage co-operation, but we did not know how to change from positional to interest-based problem solving.

Janet, p. 23: We never really did hear what the federal government's interests were.

W. Roberts, pp. 14–16: I don't think that either of the sides had really intended to negotiate on the friendly grounds of interests rather than position. A position is so much easier to advance and stand behind; one can put up defences and simply not worry about working towards a compromise.

I believe that the federal side initiated the positions, and the Aboriginal side improperly responded with positions. The federal side argued for consistency and rigidity in the functioning of the table. The federal side wanted one chief negotiator to remain at the table for the duration of the negotiations, as well as limited seats at the table. The federal team appointed themselves as the chair of the meeting and assumed that we would all follow the speaker's list that they designated, etcetera.

The Aboriginals argued for flexibility in who can be at the table and when, as well as the use of a rock; both of these requests stem from forms of respect in Aboriginal culture. This was baffling to me, though, because our team had not discussed this. The idea of a rock was simply a position put forward that our team wanted met, just so that we would have something to take a position up on also...

Upon caucusing, the Aboriginal group faced the fact that we would make no progress. Again, our team took a position that we had not discussed previously, and we dug our heels in to stop the process. However, our representatives argued that this was more of a personality situation with the chief federal negotiator than it was a federal team strategy. As a result, we began to move towards the position that the federal team produce a new chair for the negotiations.

Max, p. 15: As a team, we found it very difficult to initiate interest-based negotiation when our respective levels of comprehension with regard to the subject-matter were so vastly different from those on the other negotiating teams.

Max, p. 30: As much as our successful teamwork illustrated the benefit of collaboration, the simulation itself illustrated the devastating effects that competition can have on underlying interests.

Io, p. 17: The day of negotiation was marked for me by a disappointed expectation: I had understood that we would all be engaging in interest-based bargaining. I had read of the ever-present danger of falling back into position-based bargaining, but I didn't realize how powerful that tendency is. I have noticed that our group as a whole has been more focussed on positions and tactics and predictions than on getting a grip on how we are to present our interests. We seem to have been stymied by our belief that the other side is going to be high-handed and cutthroat. Can we trust a new process? Can we prevent ourselves from falling into a pattern of reacting, and instead keep turning the focus of negotiations back to interests? Can we even formulate our interests and express them clearly to the other side? Can we make interest-based negotiation work?

Io, p. 23: We likely would not have dealt directly with substantive issues had it not been for the provincial chief negotiator urging us to break away from the formalities of signing off and tabling to talk about those issues. In this way, he reopened a space for us all to experience interest-based bargaining for at least a little bit of time.

W. Roberts, p. 15: I had hoped that this would be an opportunity to explore solutions and co-operate to produce plans that would help solve the persistent problems facing Aboriginal people. However, this turned out to be all too realistic, with more of a confrontational atmosphere rather than a partnership among the three sides at the table.

p. 19: I personally expected the negotiations to go in a certain direction and this led to disappointment. I had wanted to approach the table with an open mind and try to reach agreements on new ground, in new manners. This is what I felt was the future of Aboriginal law. However, the reality of our negotiations jolted me back.

Max, p. 22: I believe that the duty I felt we owed to ourselves and to our classmates was not adequately met. As a result, I felt undercompensated for the effort I expended on this project. I was eager to learn, by trial and error, the process of reducing positions to interests and achieving something beyond compromise. I believe that when parties enter negotiations in good faith, a consensus may be a viable goal. I regard consensus as an elevated form of simple negotiation. That is because the aim is to achieve more than a middle ground. Rather, the aim is to find common ground from where innovative solutions can develop.⁵⁶ When we started planning for the simulation, I was so excited about the prospect of really developing my negotiation skills so that I could become a more effective advocate in the practise of law. In my opinion, actually experiencing negotiation and consensus building would be the ultimate in legal education. Instead, I have learned how to manage personal dynamics. I consider that to be a valuable lesson nonetheless, just not the lesson that I had expected to received from this arena.

REBUILDING TRUST: THE LONG SLOW ROAD

[If success in multiparty institutional negotiations requires interest-based bargaining, and if interest-based bargaining requires trust, the solution is to build trust, as simple and as complex as that. Rebuilding trust after it has been broken is a long slow journey. Trust broken over generations will take generations to rebuild. There is no place to start but with ourselves and where we are. Rebuilding trust in negotiators and background groups starts one person, one situation, and one relationship at a time. Everything matters, and everyone can make a difference. Participants reflected on what we need, to what we need to know and pay attention to in ourselves to build trust.]

J. Colton, p. 18: [T]rust is an important factor in multiparty negotiations. Tom Molloy discussed how trust was essential and that building that trust may be difficult.⁵⁷ It takes time to develop trust between groups. Once the trust is lost, it is very difficult to get it back.

Io, p. 1: While the subject-matter encompasses an outer world of ideas and practices, and while the aim of multiparty conflict resolution is the restoration of harmony and co-operative action, the process of conflict resolution itself takes place within and among individuals.

Io, p. 1: Not only should we be seeking win-win solutions, but the nature of the conflict we adopted—the struggle to form a new relationship between the First Nations and Canada and Saskatchewan—means that we need to begin the development of that new relationship at the negotiation table.

Annette, p. 30: We must learn how to trust each other.

It Starts with You

[Rebuilding trust and relationships starts with the individual's thoughts, words, and actions.]

Io, p. 1: This is what I have learned above all: Each person involved in the process is responsible for the result. There are no individual heroes, only the occasional heroic act. If one is not part of the solution, one is part of the problem, as the old saying goes.

Io, p. 1: It is not a matter of coming to an agreement and *then* starting to be partners in governance; we *are* the start of the partnership.

Kim, p. 25: I will never forget how human nature, personalities, and characters are involved—from the basic role that you play to the very words that you speak.

J. Colton, p. 19: The emotion of one group member tends to spread among the group to create unwanted stress and tension.

Io, p. 1: Everything we do and say becomes part of the history of the relationship, and affects the future.

W. Roberts, p. 3: The most interesting topic in the discussion with Professor Greschner was her personal observations as to what qualities the best negotiators display. Specifically, Professor Greschner spoke of the federal negotiator in the Charlottetown Accord. This experienced lawyer was the chief negotiator for the federal team and displayed a great deal of patience and poise. Professor Greschner was impressed with his calming manner and the way that even in the most heated situations he would have the most dignified answers.

Janet, p. 28: W. Roberts demonstrated wisdom, patience, and thoughtfulness. I suspect he is a mediator by nature. Daryl asked insightful and important questions. He challenged all parties on issues we never would have noticed as problematic if he had not brought them to our attention. His concerns were well founded and came from somewhere deep within himself. Harrison listened intently and always thought before she spoke. Walter Linklater would have been impressed with her.

Janet, p. 13: He has so much calmness and wisdom for such a young man.

Know Thyself

Percival, p. 11: [W]e should have paid equal attention to Professor Greschner's assertion that one of the most important things she learned from her negotiation experience was to "know thyself." From my limited experience, I think it is the most important piece of knowledge one should have when entering negotiations.

Lee, p. 26: We are all only human and should remember our limitations while using our strengths.

Max, p. 32: [O]ur thoughts and ideas are largely products of circumstances, experience, and temperament to such an extent that I was previously unaware. Only through awareness of that influence are we ever in a position to take true ownership of our thoughts and ideas.

J. Colton, p. 19: I learned that it is important to know yourself and how you handle stressful situations. A negotiator should be aware of the strengths and weaknesses of their personality. If a negotiator is emotional, he or she should know when to take a break or let someone else take over for a while. If a negotiator is argumentative, he or she should focus on their interests rather than their position in the negotiations.

Io, p. 6: Know what *you* need in order to function, and find a way to get it.

Strengths and Weaknesses

Annette, p. 28: Also, we are all different and our individuality should be appreciated and strengthened in our conflict resolution simulations.

Io, p. 18: We had seen our emotional reactions, and those of the other parties, and we are now more aware of both our strengths and our weaknesses.

Max, p. 7: The disparity of prior knowledge in the area had both disadvantages and advantages.... [T]he disparity largely stunted our ability to engage in interest-based negotiation. In contrast, I felt the disparity also created an advantage ... in that we came to the table with much more than basic research could provide. Those of us with a strong background in the area had instincts that could never have been created through the course of the seminar.

Lee, p. 2: I was concerned ... because I have a "fix it," "get it done" personality. Aboriginal issues are not going to be "fixed" or "done"; there is no easy way to deal with the problems and no quick answers to resolve the issues that have been raised. Furthermore, First Nations

people do not want to be “fixed” or “dealt with.” The issues do not fall neatly into my style of problem solving.

Alexander, p. 28: I realize I need to make sure things get done, and a lot of the time that means doing it myself.

Annette, p. 3: My strengths are patience, life experience, hopefulness, a good listener, a people person, a sense of humour.

W. Roberts, p. 28: I feel that approachable but firm is a good combination.

Io, p. 6: Know what triggers set you off, and watch that they don't interfere with your own professionalism.

Max, p. 34: By realizing our own tendencies and biases, they can actually be overcome, and once this occurs, we can truly advocate effectively.

Lee, p. 22: I need to learn to listen more and judge less.

B. Larsen, p. 14: I need to work on how to respond to anger appropriately.

Io, p. 26: I need more patience and faith if I am to negotiate with others.

Lee, p. 22: I also needed more confidence in the abilities that I do have.

Alexander, p. 28: I often struggle with things, usually in my mind, until I know they have been dealt with adequately. I need closure. This tapestry for me was not complete until the moment I walked out of the door after dinner. With closure comes tranquillity.

Act with Integrity

Carlos, p. 25: An enormous amount of trust is essential. When talks break down to their basest level, only one's own integrity and credibility can carry the day.

J. Colton, p. 21: I would have been more likely to compromise if I had been on the federal side. I was beginning to doubt the federal argument because the Aboriginal team was so compelling. I was more concerned about preserving harmony than the mandate of the government.

Io, p. 2: Throughout the course, we each attempted to be true to our chosen roles; but beyond these roles, we tried to remain true to ourselves, in order to begin developing our own negotiating styles.

Io, p. 19: As good as our teamwork has been, it is clear that we each have our own

approaches. We are only together as a working unit for a short time, and we have adopted an egalitarian style for our intragroup processes. The best I can do is try to use this brief experience to begin developing a style that conforms with my inner views; if it is successful, sometime in the future I may be able to further the cause of peaceful co-existence in the real world.

Alexander, p. 21: I am well aware that values, integrity, and reputation are the very essence of how we present ourselves. It is who we are; it is all we have to show others, especially in the legal profession.

p. 27: Protect Your Reputation at All Costs: [M]y moot professor William H. Roe [said that] [a]s lawyers we start off our careers with a 100 percent nonrenewable resource—our reputations. I know this is very important; a person’s reputation should be defended relentlessly.

p. 28: Keep Your Integrity: In order to understand integrity, I need to define it. The best definition I know is: “[T]o the extent that a person’s ethics and morality are integrated, that person has integrity. To the extent that a person’s ethics and morality are not integrated, that person lacks integrity.”⁵⁸ Basically, practise what you preach.

Alexander, p. 28: I learned that although we need to play a specific role, we can never get away from our individual characteristics. Unless someone is a good actor, pretending to be someone we are not does not fool anyone. So don’t be a phoney.

Alexander, p. 19: I was also struggling with whether or not we as a federal team were right, had we taken the right stances and made the right decisions. I began to look for answers as I felt my personal integrity was at stake.

Percival, p. 5: During their sessions, the Elders spoke often of the tension between oral traditions and historical documents. I realized that the overemphasis of the written word in our culture has resulted in a society where one’s word has little meaning. I believe it’s a matter of integrity to do things I say that I am going to do. I think it’s sad that others do not.

Don’t Expect Anyone to See It As You Do

[One of the most dramatic lessons of the simulation for all was how differently each person experienced the same event. Though we know intellectually that no one sees it as we do, emotionally we have to keep relearning the lesson. A perception is so obvious to us that we think the other person must also see it and can’t imagine why they are acting so “irrationally,” while they are thinking the same thing about us. Both reactions make sense in terms of the perceptions that ground them. The assumption that the other sees it as we do causes constant carnage in trust and relationships. We do not know how another person sees it until we ask.]

Janet, p. 28: As I reflect back on this class, the only thing I can be sure of is that no one sees things exactly the way I do. Each one of us perceives the world differently and therefore we understand differently. If this is the case, then how can people with different cultural and spiritual beliefs ever find common ground?

Io, p. 26: The overall effect of the debriefing was to cause me to wonder how I manage to function in a world where others see things so differently from me.

B. Larsen, p. 19: It's funny how two people can look at exactly the same thing and come away with two entirely different perspectives.

Lee, p. 21: During the debriefing session, it was interesting to note how different all our perceptions were.

Lee, p. 18: During this process I have found it fascinating to see how people in the same meeting and privy to the same information and documentation can have such different perceptions and understanding of what happened.

Lee, p. 22: Often I felt like my team saw me through very different eyes than I did. How one is perceived can be very different from what one is trying to get across.

B. Larsen, p. 1: We came up with three or four definitions of "debriefing" in our last class. As I think about them, there is no reason why the word cannot encompass all of them: the emotional release/venting about issues we are exploring; review/reflection with respect to the process we are engaging in; and dialogue about conflicts between individuals (although I am not sure whether the latter was offered as a definition or whether it arose in response to a latent anxiety.) Debriefing could mean all of these things.

Alexander, p. 11: While caucusing, the Crown teams were able to look at the agreement. It was so one-sided; it appeared more like a list of demands from hostage takers rather than a basis for negotiations.

p. 21: This demonstrates that not every person's understanding of a particular situation is always the same.

Take Responsibility for What You Think and Feel

[The corollary of "no one sees it the same as you do" is "what you see and feel is what you see and feel." Others will see and feel something different. One is not "wrong" and the other "right." That our culture gives more weight to some persons' perceptions than others in social decisions does not diminish the reality of any person's experience or perceptions. Acknowledging our perceptions as our own does not diminish them, but rather builds trust.]

Kim, p. 23: There was a lot of finger-pointing—you did this and you did not do that. It carried over into the debriefing as well.

Harrison, p. 32: One thing that maybe could have changed with the debriefing was that in order to avoid confrontational approaches and the brewing of hostilities, we could have prefaced our comments with the “I” word—“I felt like,” “I thought that,” “When this happened, I felt as though.” I have always found that when you start with these types of phrases, it allows freedom of expression without pigeon-holing the other parties or blaming them for your personal feelings. There is nothing worse than someone stating your intentions in the definitive when they really are stating their perception of what your intentions were. The two can be vastly different.

Percival, p. 10: I did not enjoy many of the discussions we had as a class, but I found the time with the Elders wonderful. I think I would have enjoyed the class discussions more if people owned the ideas and insights they were sharing.

p. 18: I was surprised by the lack of introspection in the comments that were made. After the class, some of my classmates expressed regret that the time allocated was too brief. They felt the need to respond to what was being said around the table and did not have an opportunity to do so. It is clear to me that I have a very different understanding of the goals and purposes of debriefing than most of my classmates.

This exercise was a role-play designed, I thought, to provide me with an opportunity to experience a multiparty negotiation. Because my goal was personal growth and reflection, I did not feel the need to participate in group debriefing. I tried my best to only be critical of my experience, therefore I did not have any outstanding issues with other members of the class. When I did participate, I spoke of my experience only. I did not discuss the behaviour, actions, and perceived motivations of others. Debriefing was thus a personal exercise that I felt no need to share.

Don't Be Surprised by Internal Conflict

[Conflict is internal as well as external, as our inner being seeks the balance between the mental, physical, emotional, and spiritual energies, values, and priorities that will yield peace of mind in a particular situation.]

Harrison, p. 3: I'm pretty sure I've made a grave mistake. I want to learn, but not in that type of environment. I feel as though I'm in way over my head. The more I talk about it, the more I'm feeling as though this is not going to be fun any more. Maybe I should just switch—I don't want to spend the next two months despising the experience. But then, again, I don't want to feel as though I'm copping out either. I am feeling really torn.

p. 4: Maybe I should [switch teams]. What really bugs me is that I seem to be the only person who is out of their comfort zone... I am still really uneasy about this situation. Kind of cliché, but I feel torn between what I want to do and what I should do. This is ridiculous; I want this to be an enjoyable experience as well as an educational one. Ah, what to do, what to do.

Percival, p. 2: I did not expect the class to be as practical (as opposed to theoretical) as it turned out to be, and I never imagined that I would be asked to be so active in an area so far out of my comfort zone.

The Only One You Can Control Is Yourself

Percival, p. 5: I feel that each individual, despite the role she is playing, has control over the impression she leaves. How she handles herself in the negotiation, the respect she shows for others at the table, and the language she uses to present her ideas, shape the impression she leaves.

p. 23: Prior to this class, I understood, in theory, that the one person I have control over is myself. I cannot change anyone else. When I find myself in an unworkable situation, I must identify what I can do to make the situation better. I put this theory into practice during this class and found this experience to be much more enjoyable and rewarding.

Io, p. 27: “[W]e let each other down; we didn’t do our interests well; we are all too adversarial.” When I heard these things, I was not only surprised, I was ashamed, and I went into denial—now as I read these words again, I realize that there is truth here. I hear the word “devotion” as an answer—more hard work.

Max, p. 3: I felt that to ground my role in ... the social and economic problems that have become typical of reserves across the province ... would help me to engage in, and help me to help my group engage in, interest-based bargaining. That was a fair assessment. It did help, but obviously without providing any sort of assurance that positional bargaining would not occur.

The Personal and the Emotional

[Participants found that both the personal and the emotional are unavoidable parts of negotiating in a multiparty institutional context. The forces that come to the table, and that are at issue in the talks, are core issues of identity, values, power, and survival. These are intensely personal and emotional as well as institutional matters. Further, we have seen how

negotiators' personalities come to the table, and we found that, whether in conflict or conflict avoidance, we had emotional reactions. The conclusion was that neither the personal nor the emotional can be denied in multiparty institutional negotiations, so the challenge is to sort out the many meanings of personal and emotional and their appropriate and inappropriate roles in negotiations.]

Emotions Are Part of This Work

[Participants found the negotiations an emotionally intense process, and that this was true whether they were experiencing conflict or conflict avoidance.]

Carlos, p. 20: In discussing the negotiation process in the Nisga'a agreement, [Mr.] Molloy described himself as pouring his heart and soul into the talks for two and one half years. When the Nisga'a accepted the final proposal on 15 July 1998, he and his team became very emotional.⁵⁹ His relief after thirty months must have been monumental compared to the relief I felt after only eight hours.

Io, p. 14: I was surprised by the intensity of emotions stirring within my group. Some were reluctant to speak lest they lose composure. If I was surprised by my own group, I was taken aback by what seemed an even greater intensity of emotion in the federal group.

Kim, p. 23: I also learned that it was extremely difficult to keep your personal emotions out of the procedure. I stipulated that this would happen, but seeing it in play was bewildering. I can only imagine a real-life scenario where there is more at stake and nothing is held back. It must be so emotionally draining.

Janet, p. 28: [T]his class challenged my physical, emotional, and spiritual well-being. At times I wanted to give up from either exhaustion or frustration, but I ended up staying because of the team and because I wanted to see this project through.

Annette, p. 21: After the negotiations were over, our group went to debrief. We all agreed we were emotionally drained. I was exhilarated by the experience yet frustrated when I realized I had forgotten to give my speech [on education]. I wondered whether I would have really had a chance to speak and would have made a difference.... In the end I realized that both sets of negotiations had been overwhelming and challenging, especially in feeling out my role, but it was a meaningful experience.

Emotional Consequences of Conflict

J. Colton, p. 16: I decided to wait until I calmed down to write.

B. Larsen, p. 14: There was an anger/arousal cycle. The trigger was the Crown's attack on our side because we submitted a revised protocol Wednesday evening. My muscles tensed, my heart rate increased, my adrenaline soared, and my voice became louder. The cycle of escalation continued throughout the disagreement of who would be chair of the negotiations... During the negotiations on protocol, First Nations referred to becoming depressed in response to the provincial government's opposition to including the word "partners" (as opposed to "parties") in the preamble.

Kim, p. 16: Following the session I felt so drained. Some people told me how tired they were physically, but I was absolutely drained mentally.

Janet, p. 19: By the end of [Day One] I was both physically and emotionally exhausted. I was disappointed in myself and disillusioned with the day's events. I went home and went straight to bed.

Max, p. 9: [I]f I were to here disclose the contents of my journal, I fear that a narration would result that would be characterized chiefly by blame and upset.

Daryl, p. 12: The first day of negotiation could best be described as frustrating. We had not achieved anything really. We had picked a chair and we had tabled issues, but other than that we all just looked cross at each other. The professor at this point feared she had got us to discuss an issue that we would begin to hate each other for having to discuss.

Emotional Consequences of Conflict Avoidance

Harrison, p. 24: I think that everyone is getting tired of this process, especially not knowing how far we'll get. It gets frustrating spending so much time reworking the protocol agreement to have it say what we want it to say, when we know that we will go tomorrow and the Crown will tear it to shreds. That is a frustrating job. And today [7 March] it did not seem as though anybody had the energy to go into another day of emotional drain.

J. Colton, p. 19: Negotiating is a time for problem solving and listening. During the negotiations, far too many sections of the agreement were being tabled. I found that avoiding topics created discontent and frustration in the room.

Carlos, p. 23: Maybe part of the frustration of participants was that they never got their teeth into any real substantive issues such as education or natural resources, issues that I expected to negotiate.

B. Larsen, p. 14: [This crisis of the chair] was followed by a recovery of sorts and also some postcrisis depression.

Carlos, p. 20: Even though we had achieved little, if any, success, I sensed a great deal of relief that this exercise was over. Success or not, the exercise was very stressful. As for myself, I was disappointed that more had not been ironed out.

p. 23: My disappointment at the result matched my relief at the conclusion. I now realize that negotiations are a long, tiring, and stressful process. There can be long stretches where nothing gets accomplished.

The Many Meanings of Personal and Emotional

[Participants reflected on the many meanings of personal and emotional, and the appropriate and inappropriate roles of both in negotiations.]

Personal vs. Well-Being of the Whole

[Participants concluded that the well-being of the whole as focussed in the negotiator's role must be given priority over the negotiator's individual point of view.]

Io, p. 1: To resolve conflict, one must move beyond conflict; nothing less than the letting go of the personal, in pursuit of the good of all, is demanded.

W. Roberts, p. 25: When at the negotiating table, it is important to realize that you are in fact representing a group, no matter how close your personal affiliation is. As the representative of your group, you must reach goals. When reaching goals, it is important to focus on the task at hand. If you leave the role to address other issues, you may become sidetracked and suffer the consequences of poor results.

W. Roberts, p. 16: Many of the negotiators began speaking in the first person and losing sight of why they were at the table in the first place. If they revisited the discussion with Donna Greschner, they would soon realize that one of the primary rules of a successful negotiation had been broken: Always maintain the role you represent and do not take things personally.

Harrison, p. 2: Never once did I ever dream that this simulation would be more than just that—a simulation. I suppose I anticipated that each individual would be playing a role, not acting out their own beliefs, but I was wrong—completely and utterly wrong.

Kim, p. 15: Agreements were difficult to come by—I sense much personal bias getting into the negotiations.

Alexander, p. 25: If I got anything right during the negotiations, I think it was this one. Previous experience in other simulations had given me a respect for the roles people must play. As the chief federal negotiator, I knew I was the leader of the federal team, a prominent player in the entire negotiation process. When I changed to being [the chief federal negotiator's] sidekick, I knew she would have to fill this role and make the sometimes difficult decisions. My whole purpose was then to advise and support her at the table while voicing my opinions to her behind closed doors. [The chief federal negotiator] and I worked well together because we knew our roles and stood united.

B. Larsen, p. 2: [O]ur ability to think things through together is based on the notion that we can overcome limitations with our cognitive functions, and transcend personal differences in order to engage on a purely abstract level of thought, where all we have is an exchange of differing ideas that are completely removed from our individual personalities *per se*—or some such rationalist approach.

W. Roberts, p. 27: Remember why: While at the table it is important to remember why you are there. For a team representing the Aboriginals, it is important to always remember that you are there to change the social conditions of your people. You are not there for any other reason, and you must always let that push you. Maria Linklater spoke clearly of why we are at the table, and we must not forget that.

Emotions As Early Warning and Protection

[Emotions are much older parts of our evolutionary biology than our verbal thought processes. Emotions monitor incoming information that touches core issues of identity, value, survival, and power, as institutional negotiations do. Everyone is on unfamiliar and unpredictable territory in both process and substance, creating frequent instances of threatening situations, with an accompanying “fight or flight” reaction. Emotions may react directly by becoming angry or defensive to protect ourselves, referred to in some literature as emotional “flooding.”⁶⁰ If we feel these, it is good to remember that, if given a moment, the mind can recover and take over.]

W. Roberts, p. 13: When the negotiations started, all three parties showed their nervousness... This is a point in the negotiations when experience and confidence would be invaluable assets.

Lee, p. 15: My lack of experience and knowledge were difficult for me not to feel frustrated about. I would not have been in a position negotiating for the federal government with so little experience and knowledge. A lot of what I was saying was by feel and I was not at all secure in my position.

Kim, p. 23: [I]t was very difficult to effectively negotiate. People were trying to protect their image, their role, and perhaps their egos... It seemed that everyone had to secure his or her position and status first before venturing into any debate. The sides were not very sure about their interests or values, and in order to make themselves feel good or to reaffirm those interests and values, they needed to devalue the interests and values of the other side.

Carlos, p. 13: We wanted to win, and it seemed as if we did not care how we won. Small, petty victories were nonetheless victories.

Lee, p. 13: Having to step into the role of chief negotiator, I was very worried about the outcome. In alternative dispute resolution one must learn a style of mediation—listening without backing down, but compromising. My personality and style is much more of a dictator, especially when cornered and lacking in knowledge. I felt the biggest hurdle for me in these negotiations was to be in control with a perceived level of understanding and compassion without backing down from our position.

B. Larsen, p. 14: There were aspects of anger I had forgotten about, such as the way it stops/stultifies any progress from being made; how it may sometimes be a bluff, cannot be maintained, and will eventually run its course; how others can help diffuse it by trying to understand where the anger is coming from, using open-ended questions, reflecting back feelings, reassuring the other person, trying to reframe the issue in a more positive light, and by not judging.

Percival, p. 13: The federal team walking away from the table was the best way to handle the situation. Both teams needed to distance themselves from the strong personalities at the table because their personal feelings were preventing them from negotiating effectively.

Don't Give or Take Anything Personal

[Participants concluded that it is essential to the success of negotiations that, regardless of what we were feeling, we not attack another at the level of their

personhood. All individuals are bigger than any particular words and actions and can accept disagreement or criticism in this regard without feeling threatened as a person. But if the message we get is that we are a bad person, that hurts, and we too will become defensive to protect ourselves. Participants called this “not giving anything personal.”

If we are on the receiving end of an emotional attack, reacting in kind only escalates the conflict. A more constructive alternative is to quickly assess whether we have done anything to merit the anger, and if so, to make an appropriate remedy, but if not, to understand that person’s reaction as their way of handling a threatening situation, but not one for which we are responsible. Whatever its language, we can look beyond it as not being about us. Participants called this “not taking anything personal.”

Fisher and Ury in Getting to Yes make a similar suggestion in their advice to separate the “person from the position” and identify it as a cardinal rule of interest-based negotiation.⁶¹]

Daryl, p. 5: [D]isparaging remarks and personal confrontations had little to do with multiparty conflict resolution.

p. 18: The negotiators must attempt not to take things personally.

W. Roberts, p. 25: In the negotiations, one of the most important rules is not to take anything personally. At the table, whenever someone took a comment in a personal capacity, they quickly departed from the issues and took more of a position-based argument. This movement to a position-based argument was also spoiled with an attitude that seemed to promote petty power struggles.

When the effects of a personal comment or perception thereof are taken into account, it is easy to see that it is also unproductive to give them. The important thing to note is the halt in the progress that occurs. It is very unproductive to bring these types of comments into the negotiation in any form, or time.

Alexander, p. 24: “Don’t take anything personally and don’t give anything personal.” This truism coined by W. Roberts is especially crucial for us in the profession of law. In private you can hate anyone and everyone, but in public, under the microscope of negotiations, taking anything personally or attacking someone personally will undoubtedly create animosity. [Mr.] Molloy says, “We usually managed to remain friendly, though, and always avoided insult and blasphemy.”⁶² [Mr.] Molloy adds further, “despite the pressures, the exhaustion, and the perennial differences of opinion at the table, we remained civil to each other until the end.”⁶³

Io, p. 15: Lucky for me, my most emotional moment came when the chief federal negotiator registered her complaint that I was being disrespectful, and I suddenly saw that she was right. When another person is getting away with saying things that I am certain are incorrect and unfair, I am prone to losing my manners and making a show of my disgust. Certainly this is not productive, and I need to learn to see past the offensive behaviour to discover the key to transforming it, rather than dissipating my emotional energy in a fruitless or even self-defeating way.

Daryl, p. 16: I believe [the personal/professional] separation is worthwhile attempting to achieve. All the members at the table, including myself, were unable to achieve this goal. As a result, frustrations rose and we were then left arguing rather than negotiating. We were all so immersed in the argument that no one seemed able to find a logical and persuasive way to overcome our conflicts. Although it may appear impossible, one should attempt not to take things said at the table personally; instead, negotiators should attempt to place themselves outside the negotiations. Negotiators cannot, of course, physically separate themselves from the negotiations, but they can do so within their own minds. If this perspective is used, negotiators can provide assistance during the conflict rather than just contributing to the overwhelming urge to argue emphatically without reason or logical purpose.

Lee, p. 21: In our initial class, a pact was made not to take these negotiations personally and not to fling personal insults. I felt this pact was broken during the debriefing session and I was discouraged.

The Great Responsibility of the Nonrational

[Participants also reflected on the emotional and the nonrational as having immense power to heal or to hurt, and the need for great respect of them in ourselves and others.]

Alexander, p. 19: I have learned ... that people will forget what you said, people will forget what you did, but people will never forget how you made them feel.

Kim, pp. 15–16: I have a feeling that there will be a lot of hard feelings among students, regardless of being told to leave all feelings at the door—and at the end of the day, it will be these feelings that will be remembered.

Io, p. 7: Negotiation has much to do with saving face. And that face is all too human. It is disappointing to me to think that human ego, partisanship, and grasping for power can overwhelm the search for the good of the whole.

Janet, p. 7: I was amazed at Professor Greschner's discussion on the restraining and manipulating of emotions. I agree with her that a weeping negotiator may put a damper on things. However, I do not think a person can be shut on and off like a light switch. She spoke of tears as tools of negotiation rather than representing a deeper meaning. She somehow separated the tears from the person and from issues. This defeats the purpose of the tears because it merely reduces them to tactics.

W. Roberts, p. 27: Humour can play a strong role in negotiations. In the words of Mr. Molloy, "it can diffuse a very tight situation." We saw this with Mr. Trudeau in the video, where he used sharp, sarcastic comments to topple the seriousness of the points advanced by the Aboriginal people. This was a different type of humour than Mr. Molloy was speaking of, but it still had a strong effect.

W. Roberts, p. 5: However, in light of all this devastating [social] information and this giant burden of the past between the Crown and Aboriginal people, Pierre Trudeau laughed. The denigrating nature of the sharp comments made by Pierre Trudeau to the Aboriginal representatives who spoke in the language of hurt and sorrow was intolerable. All of the factors that brought these parties to the table were for nought. Mr. Trudeau disrespected the Aboriginal issues named previously, and also made a mockery of the Aboriginal's prayer. The moment that these sarcastic comments came out of his mouth, the negotiations in spirit had ended....

I feel that disrespecting the Aboriginals as Mr. Trudeau did for the purpose of power and momentum is not acceptable. These two words are the simple lesson that I took out of this video.

We Are Whole People

[Negotiators come to the table as whole people—reasonable and emotional, personal and professional—alive, changing, growing human beings with all parts interconnected and interdependent. We are personally as well as professionally responsible for our words and actions, and listening to all parts of our being can provide important information about ourselves and others that helps us keep our balance and act wisely.]

Daryl, p. 6: Of particular significance to me was something the professor had said about professionalism and the work we chose to undertake. Her view was that whatever type of work we become involved in will affect us personally.... Whether this was true or not would become clear to me by the end of the negotiation. The question is, can we truly separate out professional self from our personal self?

p. 13: We were unable to separate the professional from the personal.

Max, p. 19: [In addition to my duty to play my role accurately], I felt a personal, threefold duty as well. As my daughter's mother, I felt obligated to explain her interest in a substantive outcome; as a student, I felt compelled to contribute to my own learning by attempting to assist the process; and as an individual with a deep appreciation for the issues involved, I felt a need to attempt to educate those who were unaware about the real-life significance of the subject-matter with which we dealt.

Max, p. 2: The personal element leaves my experience laden with bias and assumption. I have found it impossible to separate those biases and assumptions from the lesson that I learned; it seems that even they have a place in discovering the self.

B. Larsen, p. 3: In some respects [separating the emotional/rational] is a lofty fiction that lends support to the idea that we are progressing, at least intellectually, as a civilization. I am uncertain whether this is true or not. What I do know is this: Sometimes this rational approach fails to be effective, and the reason for this is that sometimes people, even men, are unable to "forget it." Although they may go to the bar afterwards and pretend to have forgotten all about the heated exchange with Joe/Jane at the meeting, the truth is that it festers inside them. They carry it around for weeks or months or even years, and every time they see Joe/Jane, they experience negative emotions. If they have the opportunity to hurt Joe/Jane in some way, they seize it because they have not been able to forget what s/he said/did or failed to do/say that day at the meeting. In many cases, the incident may have been nothing more than a simple case of miscommunication or misunderstanding.

Janet, p. 4: The comments from my peers about separating reality from the role might work in theory, but I don't think it will work in application. Is this a cultural difference? I am utterly offended by being told that emotion is not professional. I am bewildered at how these people view it as weakness—I see it as truth and commitment. When the topic is an Aboriginal issue, it is always real for me. Why is this true for me and not for them? Well, I feel it is not an issue for them because they have all the power. I am angry, embarrassed, and humiliated.

Emotions As Gifts

[Emotions are carriers of vital life energy, and when expressed with respect for ourselves and others, can be moving gifts.]

W. Roberts, p. 4: [T]he importance of emotion should not be underestimated; at times the showing of anger or frustration is beneficial to the negotiation. I feel that this is important,

and there should never be an artificial display of these emotions. They are beneficial and carry weight only if genuine.

Percival, p. 21: While I agree with Professor Greschner that, for the most part, emotions should be “checked at the door,” there may be an appropriate time for emotions. The [Aboriginal team] Elder’s expression of frustration during the discussion of certainty towards the end of the negotiations was one of those times. Had I been one of the negotiators, it would have reminded me of the patience Canada’s First Nations community has had with the Crown. It would also have served to bump me off my positional stance and helped me to refocus on the interests behind those positions, so that we could finally move towards agreement.

Janet, p. 29: It took so much energy to withhold my tears and anger throughout the entire process. I don’t want to do that again. However, after discussing the experience with my mother, she explained to me that this may actually be a strength and not a weakness. Maybe it is my deep connection to the issues that will make it “real” for others. My challenge now is to try to learn how to channel this emotion. I need to learn to articulate what I feel.

Io, p. 15: The emotional element of negotiation exhausts one’s energy as surely as the mental effort to be constantly alert and focussed. The tasks seems to be that of monitoring, containing, and channelling emotional energy so as to shape-shift it into a positive force driving the movement towards the realization of goals—no mean feat.

Io, p. 18: Our emotional distress can perhaps only be relieved by channelling the energy into preparation—knowing our deepest concerns and values, knowing where our demands may be less than fair, knowing where we will take our stand.

Behaviour That Builds Trust and Relationships

[Participants had a number of suggestions for negotiators as to behaviour that builds trust and relationships.]

Trust Is Built One Situation, One Relationship, at a Time

Start Where the Trust Is

[Participants found that trust could be built one-on-one, making agreements possible away from the table that would not have been possible at the table.]

Carlos, p. 24: [The second most important thing I learned after preparation] was the effectiveness of backroom negotiations.

Carlos, p. 17: Heart-to-heart talks in backrooms allow people to use their own people skills to judge others. It is easier to trust someone when you talk at close quarters; it is easier to look into their eyes, to notice their expressions. You are not afraid of being out-negotiated....

In the hallways, my natural personality emerges. I am no longer in a role and my comments are off the record. These informal talks build trust. I believe that the type of trust needed for any successful negotiations comes not from your performance in the boardroom, but from your performance in the backroom.

Carlos, p. 24: The biggest conflict we had was purely a procedural conflict. We could not decide on the method best suited to resolve our differences. Both sides began to compete with each other. Boardroom negotiations were almost exclusively position-based bargaining, while backroom discussions were almost exclusively interest-based. There, negotiators were willing to state their needs, and what they were willing to concede, in an atmosphere of informality. There was no opportunity to appear weak in front of their teammates. Once in the boardroom, however, there was very little give and take.

Carlos, p. 15: Informal negotiations in the backrooms, or while going outside for a smoke, seemed to progress more quickly, and engendered a greater feeling of mutual trust, much greater than that of the formal negotiating in the boardroom. In the backrooms, there was no posturing, no need to save face, no need to present a united front, no need to be politically correct, and no need to be careful of what you said. It was all unofficial. There was much back and forth and a lot of true discussion. There was no formal speaking order, and individuals from all three parties eventually reached a consensus after the floating of several trial balloons.

Percival, p. 13: Once we were away from the table, the Crown team looked at the interests that formed our position that the chief federal negotiator should chair the meetings. We realized that we were interested in having an effective chair that kept negotiations moving, provided everyone with an opportunity to speak, and who would ensure that there was a written record of the agreements reached. Once we understood our interests, a compromise was easily brokered between the two teams.

Percival, p. 22: [A]way from the table, we were better able to get to the underlying interests of the parties involved. Away from the table, I was able to approach the team member with whom I was most comfortable. I was also able to share ideas in a more informal, relaxed environment. This seems to me to be the reason why some of the most important decisions are made away from the table.

W. Roberts, p. 3: [Professor Greschner] conveyed the importance of the late night, informal, secret meeting. The purpose of each meeting varied; these meetings were sometimes used to pin down another team's interests, and possibly align positions. Other times these meetings were used to share expertise or lend help to groups who were struggling.

Alexander, p. 25: Tom Molloy referred to this as "an informal conversation—'a walk in the park to discuss the facts of life.'"⁶⁴ These talks are secretive and are not disclosed at the negotiation table. Professor Greschner alluded to this in her lecture as well; she mentioned that the most important work is done away from the table. In politics, this is referred to as backroom politics and it is where the substantive work is done. As far as I am aware, we had no walks in the park as the federal team. [We] never met with the Aboriginal team on an informal basis, during the negotiations or even outside of them.

J. Colton, p. 18: I learned that important work happens away from the table.... Sitting behind the table, I was able to leave the room during negotiations to talk in the hall with another classmate. We were able to share ideas and take messages back to our groups without interrupting the talks. During caucus meetings or breaks, I was able to move between groups to help move along the negotiations. I found that the groups were more reasonable and less emotional away from the table.

W. Roberts, p. 17: I had a conversation with Carlos, who was at that time a member of the federal team. This was a productive conversation; in five minutes in the hallway we managed to uncover more interests and pinpoint more needless causes of tension than all three teams did during the negotiations. This is truly an important method of doing business because it allows for a person to get behind positions and see what compromises or moves will produce results.

Percival, p. 13: The fact that I was not sitting at the table was a benefit to the negotiations on the first day. I was able to separate myself from the anger expressed by the federal Crown team at the opening of the negotiations. When we were trying to get a deal to bring the federal team back to the table, I was able to speak informally with the First Nations team and suggest ideas. I was also able to learn what motivated the First Nations team's objection to a federal Crown negotiator chairing the meeting. Prior to this, neither team was listening to one another. I believe that had the solution that was finally agreed to regarding the chair and meeting structure been presented at the table, it would have been quickly rejected for no other reason than it was presented by one team or the other.

Trust and the Main Table

[The Main Table is the place where everyone is present. Decisions of the group can only finally be made by the group, so a Main Table gathering has

an important role in any final agreement. The Main Table is, however, also the most public layer of negotiations, out of which background groups expect reports and outcomes, and media scrutiny is often present. As we experienced, the stakes, stress, and risk of multiparty institutional negotiations make the Main Table almost an impossible place to work out detailed agreements. Participants became keenly aware of the limitations of Main Table talks until some trust and common understandings have been built.]

Carlos, p. 17: Why are these backroom negotiations so much more informal and effective than those in the boardroom? Are public negotiations and positioning a mere formality? Are they meant to give the appearance of participation? Is it a show for the media and/or the public? How many agreements are determined before the parties even sit down to the table? The answer is trust....

As much as this exercise involved role-playing on our part, I believe that in real-life negotiations there is just as much role-playing. In the boardroom, I have difficulty in being myself. If I have a particular role to play, I am mindful of playing it. I find myself always on guard and overly careful. In real life, it may be that there is a powerful authority figure holding me accountable.

Kim, p. 24: There were no actual negotiations. All of the agreements occurred while the parties caucused. Now I know that Mr. Molloy talked about how most of the negotiations occur away from the table,⁶⁵ but he couldn't have meant that all negotiations transpired around a dinner table. If that were the case, what was the point of having a negotiating table? That is how I felt at times. What is the point? We are not accomplishing anything. Everything that we have agreed to happened away from the table.

Janet, p. 11: Mr. Molloy established a relationship with the Nisga'a based on trust and respect. I am in awe. This could not have been easy and it appears to be sincere.

Carlos, p. 25: [T]rust is created in the backroom, not in the boardroom. Negotiating away from the table is an art form unto itself, and quite possibly may replace the formalized settings now in place.

Carlos, p. 24: One wonders if informal types of negotiation are the way of the future. Maybe the old chiefs had it right all along. Less structure and more flexibility of meaning may make for better agreements. For negotiations to work, we require honesty, openness, and a sincere desire to reach agreements that address the needs of all involved. Only then can we move forward in peaceful coexistence, two nations living as one.

Choose Collaborative Negotiators

[Participants concluded that negotiators with co-operative personalities and approaches are more effective at building trust.]

Harrison, p. 7: I'm extremely curious as to the personality types that seem to make good negotiators.

Optimist, p. 24: The negotiator's personality is also a factor in this process. "[T]hose who are more reflective and who can recognize the innate complexities of situations tend to adopt a non-competitive approach.... [Those] who are able to develop trust, and who form good working relationships with others are likely to be most effective as a cooperative negotiator."⁶⁶ Conversely, the highly competitive personality will not likely be able to achieve this objective.... It may be possible to sustain a style counter to one's personality for a short period of time; however, in long-term negotiations, this is unlikely.⁶⁷ The choice of negotiators becomes a crucial factor.

Max, p. 26: [T]he simulation also taught me the importance of involving the right people for the task at hand. For example, I believe that it has become obvious that to employ those who are likely to excel in the adversarial arena may not be a benefit in the context of multi-party conflict resolution. That is because the days of positional bargaining in conflict resolution are gone and a new type of advocate is required. That new type of negotiation is an art, and like any other art, certain characteristics are essential in those who intend to engage in it successfully: a willingness to learn must be coupled with a natural ability to stay calm and focussed on the underlying interests at hand.

Lee, p. 19: Some individuals seemed easier to negotiate with than others.

Harrison, p. 23: [V]ery quickly, you can figure out who is reasonable and who is going to be difficult to get through to. You can quickly assess who will be your ally and who will be an impediment, and [the chief provincial negotiator] was definitely an ally. He was very reasonable and easy to negotiate with, but at the same time, you knew that he had his own agenda to preserve, and that was fine because you knew where he was coming from. He was very much appreciated by my team, both for his rational approach as well as his ability to see both sides. And [the chair] was awesome. Wow ... he was entirely neutral and he handled himself very well.

Percival, p. 24: I do not think a Crown negotiator will ever be effective if she feels the need

to defend the actions and honour of the Crown. Instead, an effective Crown negotiator will be one who looks for ways to transform the traditional adversarial relationship between the two parties into one that is based on respect and mutual benefit.

A “Feminist” Approach

[Some participants called the collaborative approach “feminist.”]

Carlos, p. 21: In discussing the simulation at the wind-up dinner, [Mr. Mitchell’s spouse] made an interesting observation. She believed that the move away from positional-based negotiations towards interest-based negotiations was directly related to the increased involvement of women in the negotiation process. I am inclined to agree with her. There is much less “macho” posturing involved in interest-based talks. Excluding the chair and the two observers, our simulation involved ten females and only three males, yet the arguments were extremely position-based. I cannot account for this paradox.

Janet, p. 5: I would like to see more men join us. Why are they not taking this class? Now if it were mostly men in the class, would they even think of the imbalance?

Daryl, p. 18: Attempt to use a more feminist approach to negotiations. Patriarchal approaches are most likely going to be taken as an attempt to dictate.

Max, p. 13: In addition to the need for control, I also first attributed the fact of the self-appointment to an acceptance of the patriarchal and paternalistic system in which we operate. I think [the chief federal negotiator’s] acceptance of that existing system took all of us on the Aboriginal team somewhat by surprise. We had envisioned a talking and sharing circle as being the ultimate in procedure. We felt that by openly sharing and communicating, our negotiations would necessarily become interest-based. The rock ... was intended to prevent interruption and assist grounding in the interests with which we were concerned. Our ideal procedure never materialized; the influence of patriarchy and paternalism was far too strong.

B. Larsen, p. 2: Views were expressed about disengaging from conflict immediately after ... and “forgetting about it”.... It comes from theories with respect to male sports, such as football, where men beat each other to pieces and then buy each other drinks afterwards, which makes them adept at business, where “professionals” meet and engage in work that often becomes adversarial, and then “get over it” immediately after the meeting. This is referred to as the “male model” of business behaviour and stems from the tendency of men to separate, unlike women, who are more prone to connect. The male model can be found around the world everyday in boardrooms, bars, and probably in bedrooms too. In most

cases, it is the standard *modus operandi* of professionals; indeed, if it were not, the professional would not last in the average workplace for very long. However, it is not the only way...

[A] female model of conduct is emerging that is based more on connecting and communicating. This refers to the phenomenon of discussing our differences in more detail and depth until we find a way to mend the strained relationship. It is similar to a debriefing session where, after a tense meeting, you sit down over coffee or tea and talk honestly to each other in a real, authentic manner about what just happened. And you continue to speak openly with each other until you both feel comfortable again.

Daryl, p. 3: We began the first class on what could be described as a decidedly feminist adventure. The professor asked the students what they would like to do as a topic. I was certain that this was in error. A patriarchal society requires leadership. Our society requires someone to enter the room and tell everyone this is what you will do or not do. My original thoughts were, no doubt, sexist in the sense that to not follow the prescribed and long-used approach was, in my view, in error.

p. 15: The first thing to acknowledge is that the professor in the beginning of the class treated the class in a feminist manner. She allowed the class to take on the issue it chose and this approach worked well. During the actual negotiations, the centre of the negotiations took on a patriarchal approach when she decided to dictate to all members the issues and the documents to be negotiated. The professor's approach worked well while the chief federal negotiator's approach did not work.

p. 9: As was seen in the negotiations for our topic, the class trusted the centre of the negotiations, the professor.

Io, p. 13: A blessing on our [Aboriginal] group is the devotion of many of our members to the feminine ethic. It informed our relations with each other as well as our approach to our task. This strong force was at work balancing the more masculine ethic that appeared to move the other parties. In the end, when Carlos took over as chair (bringing neutrality and respect into the process), the balance that was achieved allowed a flow to begin. Where there had been a raging whirlpool, locking us into a spiral of confusion, a channel appeared, and we became possessed once again of our respective powers.

Treat Each Other As Equals

Io, p. 3: [P]erhaps ... we who would seek peace have to move beyond our own conceptions of right and wrong and try to discover what the violator sees as right and wrong. We have to understand his or her mind in order to have an effect, to reach the violator with persuasion that touches him or her specifically. The reaching into the mind of another is perhaps the most

difficult task precisely because it requires us to set aside the ego and acknowledge the other as equal.

Daryl, p. 15: The reason the professor's approach worked was because she was able to gain the respect of the class... In short, when entering negotiations, the negotiators are better off treating each other as equals, even if they are not, because it results in mutual respect for all involved, and it is therefore more likely to bring about resolution.

Watch and Listen

Daryl, p. 18: The people involved must show a willingness to listen and acknowledge each other's views.

Annette, p. 29: It is essential to listen attentively to each other and acknowledge what is being expressed. William Ury talks about listening being one of the simplest and most powerful methods for healing relationships.

Daryl, p. 2: I have come to the realization that if you watch what others do and say, then you are likely to gain a fuller understanding of the issues than if you are immersed in the discussion.

Lee, p. 5: Perhaps by listening, almost between the words, I could learn significantly more.

Daryl, p. 8: I did find one part of the Elder's discussion personally angering. The Elder told us that he had suffered for a long period of time in his life as a result of being placed in a residential school. He became an alcoholic, wandered without purpose, lacked education, and generally could not find happiness. Many people state similar things about their lives. Often one will hear, "If this had not happened, things would have been different." I am not passive to comments such as these and will not enable self-pity. In this situation, I found myself personally outraged, though, because I know so many people who overcame the same situation in their lives. I think it also casts a bad shadow on a whole group of people for someone to show themselves as a representative of a cultural group, and then state they cannot overcome what has occurred in the past.

I believe my comment in class was, "He should just get over it." The responses to my comment bothered me somewhat. The professor stated later that some people just say things to be heard; it is part of their healing. This bothered me, not because the professor was wrong, but because I was so wrong. All I was really supposed to do was hear him and validate the way he thought by acknowledging his pain, whether I agree with his statements or not. People say things not to have someone solve their problems, but instead, just to be heard. This may seem like a simple concept, but in negotiations I have come to believe it can

become an invaluable tool. One must realize that people say things during negotiations that do not require a response, but instead an affirmation or an acknowledgement.

Daryl, p. 15: The professor also showed a willingness to listen to the concerns of the students and to take their concerns into account... Often people speak simply to be heard, and even if you totally disagree with what they are saying, they should be heard and acknowledged. Negotiations are hindered when representatives refuse to discuss an issue to its logical conclusion. Denying speaking rights [to individuals] to express their views, and therefore denying them the right to have their views acknowledged, angers those with differing views and destroys confidence in the negotiating process. A willingness to listen to others also shows respect to people at the negotiation table.

Io, p. 11: One of the shortcomings of the talks yesterday was the lack of listening. This seemed to be happening not only [across the table], but also to some extent within our own group, even though we were trying very hard to listen to each other. The problem was greatest in the beginning, and up until the point where a neutral person (or should I say, a person who was admirably capable of behaving in a neutral way) was accepted as the chair.

J. Colton, p. 22: I have learned to listen to victims. At the time, I thought I was listening, but now I realize that I wasn't. As they were speaking, I was thinking of arguments against what they were saying. I have been trained to rebut rather than to listen. I will remember this valuable lesson in my future as a legal professional.

J. Colton, p. 24: The theme of the importance of listening was threaded all the way through this class. The Linklaters invited our class to listen to their stories. The negotiators wanted the Main Table to understand and hear their interests. The students during the debriefing needed the class to listen to their feelings.

Don't Judge

Percival, p. 10: I think a better way of approaching the knowledge shared with us by the Elders would have been to avoid value judgements altogether. Instead, we should have looked at how their experiences shaped these perceptions and tried to understand where they were coming from.

Percival, p. 24: [T]here is a need for negotiators who are able to respect the beliefs and traditions of First Nations people without making value judgements when these beliefs contradict their own.

See the Other's Perspective

Daryl, p. 16: The willingness to listen also helps negotiators by allowing them to understand the perspective of those who are speaking. The chief federal negotiator had shown disdain for

some of what the Aboriginal members had said, as did I, but our purpose was to understand their perspective whether we agreed with them or not. Simply stated, we should attempt to understand the perspectives of those with whom we are negotiating even if we disagree with them, and this understanding can only be gained by listening and acknowledging the views of those speaking.

Percival, p. 9: An effective negotiator must be able to, and more importantly, willing to, see things from the other's perspective.

Daryl, p. 18: Negotiators must attempt to understand the perspectives of those they are dealing with, even if they disagree with them.

Harrison, p. 3: I certainly do not profess to know anything about Native culture, politics, treaties or anything... But that is exactly why I chose to be on this team. If there is one thing first-year moots taught me, it's that if you want to gain a wealth of knowledge about both sides, argue the side you know least about, or are most opposed to ... maybe [we should] all switch sides.

p. 13: [T]his whole thing sure has been a stretch for me, but it's also been such an incredible learning experience as well... [W]hen you know nothing, it's not hard to improve on that. I have read everything I could get my hands on. I'm not sure that it has all stuck, but it sure has helped me to soften my perspective toward Natives people... I suspected that it might.

p. 14: [T]his has been a very positive experience so far and I'm very glad that I decided not to switch teams. It just never fails—if you have a chance to argue the side that you most disagree with, you gain a perspective that not only helps you in your understanding, but also quite often changes your own perspective.

p. 22: I have learned so much from this exercise—not only the simulation, but everything, and I was right. I have learned so much more from being on the Aboriginal team than had I been on the Crown team. I am so very glad that I did not switch, although I still think it would have been very interesting to have had everyone switch. Now that would have been very different dynamics.

Io, p. 13: [W]e all seem to have chosen roles to play that dovetail with our own personal styles. It makes me curious about the possibilities of a scenario in which people identify their preferred roles, and are then asked to play their counterparts.

Percival, p. 19: I was somewhat disheartened by the hostile tone of debriefing. Many people sought to justify their actions during the negotiations based on assertions of correctness. I have spent a lot of time wondering why that is so. I was reminded of a time when I often did the same thing. When I was younger and developing my own identity separate

from my parents, I was very righteous. My lack of confidence and certainty in my personal identity made it difficult for me to accept that people have different values. Because I was somewhat unsure of myself, I became a militant promoter of what I thought was true and correct. I felt that if I could get others to validate my values and beliefs, I would gain confidence in my identity. I do not think I ever succeeded in having anyone validate my beliefs while I adopted a righteous attitude. Interestingly, I realize that I only became comfortable with myself when I began to listen and look for the value in other people's beliefs.

Percival, p. 6: For the most part, I felt that during the prenegotiation stage, the class listened well to one another and respected each other's viewpoints.

Give the Benefit of the Doubt

Max, p. 24: Pam Marshall['s]⁶⁸ ... analysis helps to explain how our disputes may have arisen. From my perspective, the upset seemed to occur when the federal negotiating team realized that we intended to question that which they had assumed. Furthermore, the Marshall analysis helps to explain how the federal government has recently become subject to numerous Aboriginal and treaty rights claims in Canada. Or, more accurately put, how those claims failed to be put forward until today.

The allegations of bad faith are particularly telling in this method of analysis. I submit that our rejection of the draft presented by the federal team was perhaps attributed to bad faith because we disputed that which the other parties failed to see as a problem. Further, because the unilateral decision making was not recognized as problematic in nature, we were not regarded as having cause to dispute. I additionally submit that our delinquency in preparing and submitting our own proposal was perhaps considered an action of bad faith because the other teams neglected to make a conscious effort to give us the benefit of the doubt.

Speak Carefully and Respectfully

Annette, p. 7: The second day of the [constitutional] conference began with an Aboriginal prayer and Trudeau asking the Elder if he was going to pray every morning. Trudeau said that if that was the case, then everyone should pray to his own God. Then as an Elder was saying his prayer, Trudeau interrupted loudly, saying the Lord's prayer.

Annette, p. 8: I found this video quite different from Donna's experience. It seemed much more emotional, with a great deal of anger and animosity from all tables. Pierre Trudeau was stubborn and disrespectful of the Aboriginal people. His interruption in the Aboriginal prayer was very rude.

W. Roberts, p. 6: The other result of Mr. Trudeau's actions was that any ground Aborigines spent time building to support an issue or topic could be destroyed with one sharply worded comment.

Daryl, p. 2: I will not speak until the debate lends itself to a formulated idea within my own mind as to the proper approach. I generally try to offer a solution at that point. There are a couple of reasons for this approach. First, my upbringing lends me to not state things "off-the-cuff" as often these remarks are taken the wrong way, or they are in serious error. Often such remarks cannot be taken back, and most people will not allow another person to change their mind. Second, I have come to the realization that the person who does not speak until they are fully capable of articulating everything they want to say is usually given more deference and credited with more intelligence than those who argue emphatically for their own view without ever really saying much. I do not view others as wrong who do not act similarly. Logic, however, suggests that the above would be the best way to negotiate. It shows confidence, gains admiration, and generally people appreciate what the speaker has to say.

p. 9: [The chief federal negotiator's] contempt should have been kept to herself. This is why you should fully understand what you are trying to achieve and know how to articulate it before you speak.

p. 17: She later confessed that this was inappropriate and that she would rather not have spoken the way she did. My response is simply, "too late." As stated earlier ... people generally will not allow you to take back something after you have said it. A person in negotiations should therefore undertake to speak thoughtfully, carefully, and respectfully.

Percival, p. 23: I am proud of the way I handle myself when working with individuals with very different perspectives from my own. In the past, I have often fought to have these people see things from my point of view. The result was always frustration. This time around, I tried to see things from their point of view. This allowed me to propose ideas that were suitable to all of us. At other times, because I had expressed my concerns in a respectful manner, they were at least listened to before being dismissed. Though I was frustrated sometimes, I do not feel that it disrupted our relationship or prevented us from continuing to work with one another.

Percival, p. 6: I made a conscious effort not to dominate group discussions and only spoke when I felt that my perspective would add a level of depth to the issues being discussed, provide something new, or when I did not understand something. I believe others in the group with dominant personalities also tried to ensure the discussions were balanced. I think this achieved a certain amount of trust among all involved.

Make Positive Beginnings

[As noted, the opening moments in a negotiation have an importance out of proportion to their clock time. If the first few interactions are negative, the negative energy from incoming forces picks up the anticipatory energy to create a negative momentum that is very difficult to turn. If the first few interactions are positive, they magnify the positive aspects of incoming energy and send those vibrations into the negotiations.]

J. Colton, p. 20: I learned that the opening of negotiations is very important. The opening sets the mood for the entire process. It is a way for each group to express goodwill. A positive opening also helps to establish a trusting relationship between the parties. It is difficult to proceed when the negotiations begin on a sour note.

Percival, p. 15: I saw the presentation of gifts by the First Nations team as an important event that set the tone for the second day of negotiations. It was a kind gesture that was not expected. It showed me that the First Nations team was hoping that the second day of negotiations would be different from the first.

Carlos, p. 19: This second and final round of talks began with the presentation of gifts from an Elder to both the federal and provincial sides. This immediately created an air of goodwill, a feeling clearly missing from the first round of talks.

J. Colton, p. 12: The Crown team was visibly touched by the gifts, and the tension in the room had lifted. It was a perfect example of how the opening sets the tone for the negotiation process. If only our first meeting had started in such a positive and uplifting way.

B. Larsen, p. 16: The second session started off a lot better when Janet gave the other side gifts. Although she had not told us this was her plan, I think it was a very good move and it seemed to lessen the hostility in the room.

W. Roberts, p. 19: The second day of negotiations started off better than the first. One of the Elders presented gifts to the federal negotiators, which seemed to lighten the moods. This simple gesture seemed to create a better atmosphere in the minds of many.

Speak, Make Explicit

Io, p. 27: [L]esson for me: communicate, communicate, communicate—till you get understood.

Max, p. 32: The essence of what I have learned through this experience in simulation centres around communication. It has become apparent that conflict quite often arises simply because certain individuals fail to recognize the existence of a problem. That creates a need for effective advocates to explain the problem in a manner that the unaware individuals are capable of understanding. Only once an educated level of comprehension is put in place, can interest-based bargaining even proceed.

Lee, p. 22: Tom Molloy made the comment that it is better to be honest and say what needs to be said. Sometimes “softening the blow” can lead to false beliefs and assumptions that may be detrimental in the future.

Harrison, p. 22: I have a saying.... “Say what’s on your mind, but say it with respect.” I wish everyone lived their lives like this. I despise dishonesty and I detest fakes. I cannot stand conversing with someone who is less than genuine. It drives me crazy.

Io, p. 26: [C]ommunication has to be tailored to the recipient—no matter how impossible a task that may seem—to do this I *must* understand the other.

Io, p. 11: Our greatest teacher yesterday was the chief federal negotiator, and we owe her respect for that.... Her behaviour mirror[ed] our own inner intellectual difficulties. It was not until she finally revealed *her interest* that we could begin to make sense of her approach and begin to relate to her as a person. She felt responsible for some future state of affairs (legislation to be enacted somewhere down the road, based on the agreement we might reach once we had agreed on a protocol for negotiating that agreement).

Optimist, p. 31: [P]erceptual differences influence the negotiation process.... [C]ommunicating these perceptual differences can shift the perceived power differences substantially and exert pressure on the other parties to accommodate these perceptions.

Io, p. 13: I believe as individuals our group tended to take the view that because the feds had tried to steamroller us in the beginning, the natural consequences would catch up to them and show them the error of their ways. It sounds self-righteous, but if they were not able to see themselves as we were seeing them, this was their mistake—if it cost them two and a half hours of negotiating time to reach the point of beginning to work on a mutually acceptable protocol, so be it. The lesson I see them needing to learn is the flip side of the lesson we need to learn: listen/make explicit.

Let Everyone Contribute; Use the Resources in the Room

Alexander, p. 30: I discovered that everyone involved had something to add to the overall finished product.

J. Colton, p. 21: I felt comfortable observing and listening during the negotiations. I am a good judge of character and have always been sensitive to body language. I was able to sense the students who would be most open to compromise in backroom discussions.

J. Colton, p. 21: I enjoyed the experience of drafting.... I was good at brainstorming new words or phrases for the document.

Lee, p. 10: My experiences working in law firms with corporate documents provided me ... with the understanding of organizational issues that needed to be dealt with before negotiations between parties could begin.

J. Colton, p. 21: I liked the challenge of finding mutually agreeable solutions. Since the federal and Aboriginal team positions were so polarized, the province was left to bring the parties together. It was very rewarding work. As a provincial representative, I felt accepted and trusted by the teams.

Percival, p. 24: I am often the first to share my opinions, volunteer for things, etc. Therefore, taking a less public role in the negotiations was a new experience for me. To my surprise, I like that role better. It allowed me to be a lot more objective, as I was somewhat separated from the process. I had the opportunity to reflect on how we were negotiating instead of being focussed on the substantive issues at the table. As a result, I feel I was more effective in my role than some of my teammates, because I did not lose sight of the underlying interests of the Crown. It was easier to prevent myself from being pulled into a positional focus because of this separation.

Make Trust-Building the Norm

Optimist, p. 23: These kinds of conflicts necessitate good leadership.⁶⁹

Annette, p. 2: Everybody introduced themselves around the circle.... I felt a warmth in the air. When I introduced myself, I felt free to be able to speak freely and for once not have to rush!

Daryl, pp. 3–4: The first area to be discussed is the negotiations with respect to the topic we would actually negotiate. This area is taken as an actual multiparty conflict, since that is what it actually was.... Most notably, the class emphasized that there are no simple answers to “what should the focus of the class be?” It would have been glib for me to have spoken up at this point and simply say, “Pick something.” Such a statement would only further compromise the already apparent conflict. It would ignore the views of others who perceive our world as a complex set of social values with some issues carrying with them more value than

others. Further, some worried about the distorted conflicts that would later occur if the “wrong” subject of conflict was chosen. This was our first multiparty conflict...

In three short classes we had come to an agreement upon the issue for debate. How could this have occurred? The professor had shown an effort to discuss this issue, and even though she had given us the choice, we had chosen her topic. My question was, why?...

pp. 5–6: We chose the Aboriginal issue, not because we all wanted it, but because we felt we could deal with it. We felt this way in part because of the limited research, but what really brought us to the issue was the central figure in the class. The professor had shown the students respect, she had allowed the students to discuss and overcome issues on their own. This is in my mind a feminist way of doing things... As law students, we are among the brightest in society, but to allow us to choose our own topic is, for some reason, a rarity. Here, the central figure of the class had shown the students respect, and as a result, the students had chosen the topic she put forward, not necessarily because we all totally agreed, but because we liked her and she could be trusted. If an Aboriginal issue is what she thought we should deal with, then that was what we would discuss. I attempted to abstain from the vote that resulted in us taking on this issue, but in the end, I too agreed to it even though, at the time, I wondered why.

We as a class had overcome our first multiparty conflict and we had done so because of an overall trust in the figure most prominent in the class. We had also followed a format of thought that allowed for the free flow of ideas and an understanding of others’ perspectives. No one had taken a hard-line approach and stated “this or nothing.” I was surprised that this approach had worked. Because I feel primarily akin to a more patriarchal approach, I had thought we would eventually need to be told our topic. Consensus had seemed impossible to me, but through a little giving in we were able to agree on our topic. The students of our class would have done well to recognize what had occurred, and then follow a similar approach when we came to the Aboriginal issue we were about to discuss.

Meeting Resistance

[The forces that come to the table, and the depth and difficulty of the conflicts, mean that negotiators are almost certain to encounter resistance in spite of their best efforts, both across the table, in background groups, and in the public. Participants reflected on how to try to hear and be heard in the face of such resistance.]

Io, pp. 16–17: One of the frustrating aspects of the negotiations was the sense that the federal party was clinging to the spirit of an age past and refusing to embrace the spirit of the pres-

ent. Despite protestations, the retention of control seemed (to us) to be the principal interest of the feds: a threshold was open to them, yet they balked at passing through. A fair future lies on the other side of the threshold, in a world unlike the one we know now. Our side, too, has its problems with entering that other world. My biggest concern is that we are afraid to give up the sense of security, such as it is, that comes with [a dependent] relationship. It is going to be hard to make a sound and convincing argument for a trilateral *partnership* until we can argue without reference to what is a position of inherent inequality. In this we are like the feds, resisting the forward momentum out of a fear of being responsible for a future state that we cannot predict.

Balance Energy

Io, p. 18: Balancing the energies in the room is essential to forming a strong framework for the negotiations. Because we have quite different energies at work, there is a need to refine the expression of those energies. The power with which we meet their power has to be of a complementary nature: opposite in a way that opens up a circuit, not opposite in a way that creates a collision and short-out.... I don't see this as something that is going to take place in any perceptible way, but rather as an ideal to aspire to. This is perhaps where the elements of emotion and self-control must be woven in with the even less tangible.

Io, p. 13: Some fault lies on each side. My perception is that at the time (the initial in-class time), the federal side was not listening to and observing our side. Looking back, I recognize that we did not meet the forcefulness of the other side with an equally powerful force, and thus an imbalance was created.

Io, p. 14: Our teacher, the chief federal negotiator, seemed to be suffering, and yet there was nothing we could do to ease that, or at least nothing we could do right. The lesson I take from this is that when emotions become imbalanced, the negotiation process will suffer, the interests of our side will suffer, we will suffer.

Stay Flexible

W. Roberts, pp. 2-3: Professor Greschner focussed on the importance of side-stepping formalities in circumstances where it will be beneficial. In the grand scheme of it all, a good team knew when to bend the rules and formalities to address issues and progress.

Annette, p. 30: Because multiparty conflicts are so complex, flexibility is a significant element of resolution. Flexibility helps create fluidity and allows problem solving to evolve.

Max, p. 6: [Mr. Mitchell] instructed us to proceed to the negotiation table with a list of

our goals and to remain open to different methods of achieving those goals, regardless of how those methods differed from those we had envisioned.

Lee, p. 22: It is sometimes better to let things go for the greater good.

Annette, p. 28: [T]here are many uncertainties, and too often we forget about this in the narrow confines of the theoretical approaches we learn in law school. My grandmother had a mug that said “Life is what happens while we make all our plans,” which is appropriate for our negotiations.

Io, p. 16: My group had to back away from an instinctive mistrust in order to allow the provincial team to play mediator between our group and the feds. So long as we focussed our attention on the behaviour of the federal party, so long were we blind to the possibility of aligning ourselves with the province. We both had interests that were being frustrated by the feds, yet we were not easily available to be moved in that direction.

Carlos, p. 8: We were actually trying to impose our values upon the group. What they seemed to want was to allow as many people as possible to participate—to empower them. In the final analysis, what did it really matter to us who chaired the meetings? If it was, as we said, a position of no influence, we should have been content to allow anybody and everybody to take a turn. I think we just did not want to be seen backing down from a position taken so early in the negotiations; we did not want to lose face.

Io, p. 27: [L]esson for me: Scrutinize myself closely to see when I get mired in one way of thinking.

Be a Third Side

Io, p. 2: I am delighted by the use of the concept “third side” as the key to peace.⁷⁰ ... [W]hen two forces create an imbalance, look for that third element that represents the dynamic between the two forces. How marvellous to think that in the peace process, we can find our answer through the idea of three, rather than remaining locked in the oppositional mode that characterizes so much of our public and personal debates, our litigation processes, our ingrained way of seeing.

Carlos, p. 1: From the federal perspective, the talks ended up as a bilateral process with the Aboriginal group. While we were mindful of the presence of the provincial group, their involvement did not affect our position at all, and in fact, I do not believe we addressed the provincial side more than once or twice during the entire negotiation process.... What the provincial side did do at times was to play the role of the “third side”⁷¹ in diffusing potentially

inflammatory exchanges between the federal Crown and the FSIN. The third side is usually a neutral or disinterested party who steps in on their own to help resolve conflicts. While the provincial Crown was certainly not neutral, their intervention resulted in the resolution of these conflicts. Their actions in both the boardroom and the backrooms benefited both sides.

Io, p. 2: I am also delighted by the way Ury shows that the third side can remain completely nonviolent while actually stopping the violence by others. He uses the story in the movie *Witness*, where the nonviolent Amish prevent violence from occurring simply by being present as witnesses.⁷² This is a call to move beyond noninterference, to become involved in the actions of others, yet without the necessity of using force to make others conform to one's idea of what is good.

Each Negotiation Will Take on a Life of Its Own

[Participants commented that negotiators should never expect two sessions to be the same. The factors that influence each particular negotiation are almost infinite, and negotiators must respond to the particular dynamics in order to be effective.]

Lee, p. 25: I feel that much of how the class develops is due to the students who participate. We all have such different backgrounds and experiences. No two classes of this nature will ever be the same.

J. Colton, p. 24: I seemed to sense a conflict between keeping the negotiations as realistic as possible and actually working on the negotiating skills.

Alexander, p. 5: The real world, whatever that may be, gives the simulation its bearings, but once the simulation has begun it takes on a life of its own. It is almost as if any reference to the way it is in the real world undermines, if not taints, the experiment, and hinders the lesson. You cannot at every juncture of the simulation say, "In reality this is the way this would work." By doing so, you are trying to legitimize what you are doing by stepping outside the simulation. Certainly there is a need for anchoring, an anchoring of the ideas, actions, and reactions. In my opinion, this should all be done within the boundaries of the simulation. Otherwise you get into a conundrum of pretending on pretending, when you no longer know if you should be playing a role or deferring to the real world.

p. 12: Somewhere in the quagmire of the table negotiations [Day One] I remember [the instructor] stepping in and suggesting we should get out of our roles or pretend a number of days had passed in order to get over the hard feelings. By this time it was not possible.... It is impossible to pretend on pretending. This experiment had already taken on a life of its own.

Whatever feelings were hurt or bad blood that existed by this point would have to be and should be dealt with within the confines of the negotiations. [The instructor] from then on allowed the tapestry to take form by itself.

Alexander, p. 13: I also learned that Professor Greschner was getting involved on the Aboriginal side. I considered this as having a harmful impact on the simulation. It was tainting the experiment ... and I think a position of noninterference should have been followed by all those not directly involved.

It Will Take Time

[Participants commented that all parts of the process took more time and energy than they had anticipated.]

Kim, p. 3: Today, we further discussed the possible issues that we could negotiate. The class seemed to be split in terms of choosing an Aboriginal issue or the Israeli-Arab conflict. I cannot believe that it is taking such a long time to decide an issue.

B. Larsen, p. 35: The work involved took up more time than I had anticipated. Background reading, research, meetings, phone and personal conversations with other team members, preparations for negotiations, journalizing—all these things took more time than I realized. On the other hand, it felt good to learn new things, reflect on them, and enter negotiations with a feeling of confidence that we were prepared to deal with whatever might come up at the table.

Harrison, p. 14: [T]oday I've been working on revamping the protocol agreement of our team. It's more work than I anticipated.

Optimist, p. 27: As the number of parties increases, so too does the time required to build sufficient trust between the various parties to enable co-operative interaction. Tom Molloy faced this problem when he entered the Nisga'a treaty negotiations at the negotiation stage rather than the prenegotiation stages. He was viewed as the interloper who threatened the existing process.⁷³ In his particular circumstance, he did have a past reputation from previous agreements; however, it would still take time and effort on his part to foster trust. Many of his trust-building opportunities arose from informal gatherings and experiences—the bus trip, for example—which would eventually allow him to perform the task he accepted.

Carlos, p. 21: You cannot ignore cultural bias when it comes to these interpretations. We can avoid these misconceptions by creating more common history between negotiators; unfortunately, time constraints did not provide us with the opportunity.

Annette, p. 8: We had a very short meeting with our Aboriginal group. Who wanted what role? Was there going to be anyone to co-ordinate this process on our side? When would we meet again? We had just begun to discuss these issues when [a runner] came in and asked for a list of roles. Apparently the Crown and provincial people had already decided their roles. We were shocked!

J. Colton, p. 13: [The provincial representatives] found an empty office to work in. We discussed the tabled sections and tried to think of compromises that the province could make. Carlos came by to inform us that the federal team was already finished, but the Aboriginal team needed another thirty minutes. When I heard that the federal team was finished, I was afraid that they weren't prepared to negotiate on anything. I have learned that it takes time to compromise and find solutions. I predicted that the negotiations between the federal government and the Aboriginal group would not be very productive.

Harrison, p. 22: [I]t's so funny—we thought that there was a chance that we would actually get to the substantive issues during the second day. Yeah, right.

Annette, p. 29: The amount of time from the beginning of preparations to the debriefing is enormous. This is because of the co-ordination of the multiple parties involved, and all the other complexities. Tom Molloy said the Nisga'a had been negotiating for twenty-one years.⁷⁴

B. Larsen, p. 16: Reaching consensus takes time, as evidenced by the various processes we have been through in this class.

W. Roberts, p. 4: Professor Greschner was also impressed with the way that this negotiator would move on from an issue if he felt that the parties were too upset to discuss its particulars. This negotiator would make progress by periodically bringing the issue up again at just the right time.

Kim, p. 25: The last thing that I learned was how the negotiations took over a person's life. We carried our roles outside of the room and we were still in our roles after the negotiations were finished. We at times forgot that there was an outside world, a sentiment that was repeatedly echoed by Mr. Molloy. If this was a real-life negotiating session, I have a feeling we would be eating, sleeping, and living the negotiations.

Harrison, p. 25: I find myself thinking about it all the time.

B. Larsen, p. 14: We had our debriefing session today and there was not enough time to really do it thoroughly.

Kim, p. 22: In my opinion, we probably needed more time [debriefing]. There were still

many feelings and conflicts that needed to be brought to the surface and resolved.... I felt somewhat better following the [debriefing] session, but I felt I needed more time. I wanted to express my frustrations over the process, share my newly gained knowledge of the process, and my interest in the process. I also wanted more time to finish the negotiations, to have been able to reach some consensus or agreement.

Denise, p. 23: The class supper was a very nice occasion to simply sit and eat and chat as friends. The presence of the real-life negotiators was fascinating, and the stories they told were quite engaging. The evening was a very good idea and a thoughtful endeavour on the part of our professor.

Annette, p. 21: In spite of the feelings of frustration, there was a real feeling of true negotiations. After all, why would we think that real multiparty conflict resolution would be easy! We heard from Donna that the Charlottetown talks were lengthy and tedious. The video we saw showed us the reality of emotions and the struggle for power, and Bob Mitchell talked about falling into positional bargaining. I think that all these occurrences happened in our simulation.

Lee, p. 26: I think the class should be held twice a week; it seemed a long time between classes.

J. Colton, p. 19: Multiparty negotiations are very time consuming. Participants should stay focussed on the reasons why they are at the table. Successful negotiations require a combination of patience, energy, and flexibility.

Io, p. 27: [G]etting people to change their attitudes is the key; doing so takes constant effort.

CULTURAL RESPECT

[Participants reflected on what would be required to understand and treat nondominant culture, in this case Aboriginal culture, with true respect in negotiations.]

Percival, p. 23: An effective negotiator is one who can see all sides of an issue and can find a solution that satisfies the interests of all parties involved. I do not feel this can be achieved if the negotiator does not have true respect for the parties at the table. This respect is shown by being mindful of traditions and honest about concerns. I am not satisfied that many at the table had the requisite level of respect to be effective negotiators.

Janet, p. 24: I did not want to go to the debriefing class. I did not want to share a part of myself with “these people.” They don’t understand. It’s not even in their interest to understand. By not having the knowledge, they do not have to care. What is worse is that if they gain even a little knowledge, they may use it as justification for saying they “know what the Aboriginal plight is” when they truly do not.

W. Roberts, p. 9: I believe that if we are to provide proper legal assistance for Aboriginal people, it is important that we learn about cultural and spiritual aspects. We must know the ways of the Aboriginal people so that we can respect their culture and spirituality as we try to understand the situations that we are involved in. This effort to understand and help is to be balanced with the respect for the Elders who will communicate the results that they want us to achieve.

Alexander, p. 24: In speaking about negotiating land claim agreements, [Mr.] Molloy indicates trust and appreciation of cultures as the basis for any resolution at a negotiating table.⁷⁵

Io, p. 22: The strong personal dynamics that influenced the shape and tenor of the first negotiation were [still present] in the second; but I believe crosscultural dynamics were the strongest features of the second.

Janet, p. 20: We also wanted to explain to the federal and provincial teams that our perspectives not only have a place in the substantive areas of the negotiation but also a place in the *process* of negotiating.

Negotiating Is Not a Game

Denise, p. 8: The book *Treaty Elders of Saskatchewan* was presented in class. It illustrates the often-quoted treaty language that has been subject to many interpretations over the years:

We were told that these treaties were to last forever, the government and the government officials, the Commissioner, told us that as long as the grass grows, and the sun rises from the east and sets in the west, and the river flows, these treaties will last.
(Treaty Six Elder Alma Kytwayhat)⁷⁶

... I could feel the intensity associated with the phrasing that no doubt has been spoken and analyzed at length for many years.

W. Roberts, p. 1: "They told us that ... you would not be deterred from living your way of life. Our land, wildlife, the way we live [wouldn't] be altered and we [wouldn't] be bothered over it."⁷⁷

The Aboriginal people of North America made solemn agreements with the Crown. In the years to follow, these agreements have not been honoured. The treaties were so important to the Aboriginal people that Elders have said that "the treaties can only be broken through the will of the Creator."⁷⁸

W. Roberts, p. 24: [Some members of the class] viewed the negotiations with our Aboriginal group as purely a political exercise. This is a difficult point to give weight to because of the way in which our simulated negotiations intermingled with real life... I saw that they believed these claims to be the head for a group pushing for power through a technicality or two. Simply because the government treated the Aboriginals a little improperly in the past, or cut a few corners on the treaties, there are some outstanding claims that need to be dealt with before we move on. The pesky Aboriginals just can't seem to understand the way it is. This is an oversimplified statement of what I perceived, yet it illustrates the fact that they don't understand why the Aboriginals won't go away.

Janet, p. 24: [T]he only strategy we discussed was in regard to how to get our interests across, and later, how to deal with the chief federal negotiator. It made me aware of how differently the two groups approached this assignment. Our group wanted to get our Aboriginal perspectives across to the Crown. We wanted them to acknowledge the need for restoring the

relationships between First Nations and the Crown. We wanted to talk about implementing the treaties—something even the Crown admits it has not done. We took this assignment very seriously.

Max, p. 14: Actually, we considered virtually any tactic to be an element of positional bargaining rather than the interest-based variety we had hoped to experience. Our only tactic, if we had one at all, was our intention to engage in open and honest sharing and discussion. To proceed in any other manner would have been to undermine and deny the benefit of experience for us all.

Poverty and Social Conditions

W. Roberts, p. 4: I have titled this day “The Trudeau Video” because Mr. Trudeau stood out in my mind. The video was a record of federal negotiations with Aboriginals in the early-to-mid-eighties. In these negotiations, there were many great Aboriginal organizations, leaders, and nations at the table. These great leaders spoke of many things: the misinterpretations of treaties; the poverty of their people; the oppression of their culture and spirituality; and the lie that the great white grandmother told when she said that she would look after their people. These leaders spoke of both past wrongs and present failings of the system, and they spoke with generations of frustration and pain.

p. 6: The issues that the Aboriginal people were finally allowed to bring to the table are some of the gravest that history has faced: racism, spiritual oppression, cultural destruction, and poverty. Due to the reaction of the Crown in the face of this, my perception of Pierre Trudeau will forever be changed.

W. Roberts, p. 24: Aboriginal people have a higher rate of high school dropouts, substance abuse, criminal conviction, and poverty than the rest of society. However, with all this being said, some people still don’t understand why Aboriginal people and groups are trying to effect change. This was the heart of Maria Linklater’s talk: things aren’t working, not the way they are and not for her people. This is a social and spiritual movement more than it is a political exercise. The Aboriginal people need something to change.

Oral and Experiential Culture

Janet, p. 11: I spent the afternoon doing research at the Saskatchewan Indian Federated College. I read a number of articles that addressed the issues surrounding treaty implementation and interpretation. They discussed the fact that there is really no agreement on the meaning and the content of the treaties. From the Aboriginal perspective, the written document does not reflect the spirit and intent of the treaties. This is in line with what Walter Linklater told our class just a couple of days ago.

Janet, p. 10: I agree with Walter that the written word can be a dangerous thing. In our Euro-Canadian culture we assume that when something is written down on paper it's the truth. No one seems to rely on a handshake or on anyone's word any more. What does that say about us?

Percival, p. 5: During their sessions, the Elders spoke often of the tension between oral traditions and historical documents. I realize that the overemphasis of the written word in our culture has resulted in a society where one's word has little meaning. I believe it is a matter of integrity to do things I say that I am going to do. I think it's sad that others do not. Therefore the only way to avoid what happened in the prenegotiation stage may be to place value on one's word.

W. Roberts, p. 21: The Aboriginal group had a discussion during one of the caucusing sessions about oral evidence. Many referred to *Delgamuukw* and wanted to pin the weight of oral testimony to that of written government records. I, on the other hand, thought that to tie traditional oral communication to written history would be a disadvantage because it would be subject to comparison. This was simply a disagreement in philosophies, but I believe that Aboriginal issues must be built upon their own footing, so they form their own unique containers in law.

Treaties as Living Relationships

Carlos, p. 9: I envisaged a difficult time in these negotiations. According to Aboriginal Elders, the black-letter law of existing treaties means nothing to them. While the majority of the population, including the federal government, holds these documents as binding, the Aboriginal people hold oral history and traditions as sacred. They believe that you can better judge the spirit and intent of an oral agreement. They have a difficult time with politicians and lawyers who point to a treaty document and say, "You can't do this because it says so right here." They take a spiritual and holistic approach to these matters; the federal government has in the past, and I believe will continue, to adopt a purely linear approach.

The Aboriginal idea of a living document is one that changes with the times; no definition has only one meaning. What a term or condition can mean in one era can mean something else entirely in another. How do we reconcile this with the federal government's concept ... of black-letter interpretation? The document speaks for itself. The language must be clear and certain. Its meaning will not change with the passage of time.

The Role of Spirituality

Janet, p. 8: Walter explained that in order to understand the Indian perspective, you have to take a look at the role spirituality plays in their daily lives.

Carlos, p. 10: It is one thing to believe you have an understanding of Aboriginal culture, but the Elders argue that you cannot have the proper understanding of their culture until you have experienced the spirituality of their culture. Their history is an experiential one, not a written one. One must get special permission from the Elders before one can put to pen the oral traditions of the Aboriginal people.

W. Roberts, p. 7: Walter centred on his belief that part of the reason for the lack of confidence and security among his people is the fact that they have systematically had their spirituality and culture stripped by the government and European beliefs. Walter felt that the higher crime, teen pregnancy, alcoholism, and lower education rates all relate to the lack of spirituality in the lives of Aboriginal people. This personal belief is one of the reasons why the Linklaters take in children and try to educate them in the traditional ways of the Aboriginal people.

Janet, p. 11: The Elders in *Treaty Elders*⁷⁹ reiterated this same understanding. Many of them stated that you cannot understand the treaties unless you understand the cultural and spiritual traditions of Aboriginal people.

Annette, p. 9: Walter Linklater began with a prayer in Cree and spoke for a length about the importance of spirituality in their lives and in the treaties. He said that we couldn't begin to understand the treaties unless we understood the Aboriginal cultural and spiritual traditions. He said that everything was connected to the Creator and that the traditions and spiritual knowledge they looked to were involved in the different ceremonies such as the sweat lodge they participated in.

Annette, p. 16: The book on treaty Elders was written from an Indian understanding of treaties as spiritual foundations. The book ... outlined five fundamental principles identified by the Elders that were affirmed by the treaties:

- joint acknowledgement by the treaty-makers of the supremacy of the Creator;
- commitment between the parties to maintain a relationship of peace and respect;
- mutual agreement to initiate and create a good relationship (wahkohtowin);
- mutual sharing; and
- a guarantee to the First Nations and their citizens of a continued right of livelihood.⁸⁰

W. Roberts, p. 8: Spirituality is important and it is a strong tool for healing a broken person. I think that Walter had many good points, and the truth remains that in any culture, a person or society without spirituality is not whole.

The Values Are in the Language

Kim, p. 10: [W]hat did I learn [from the Elders]? As with any negotiations or discussions, both parties need to understand each other. This means either learning the Aboriginal language that is being used or getting a translator.

Janet, p. 15: I had a huge job to accomplish over the break. I was going to play the role of an Elder at the negotiation table. I told the team that I would like to say a prayer at the negotiations, as this was customary. That meant that I had to learn to say the prayer in Cree:

Noh-tow we nan (O Creator)

Tiniki mena kootuck (thank you for another)

Kesegow eme thee uck (day you gave us)

Tipi che kewin (we pray thee)

Methenan nisto tumowin (to lead us in the way)

Tawe mitho we-che we-towuck (give us understanding)

Eya-go oma, kinto tama-tinan (to have a good relationship with one another)

Noh tow we nan. (Amen.)

Speak Only from Your Own Experience

Percival, p. 9: Something the Elders shared with us really influenced how I wish to carry myself in group discussions. They spoke only from experience.

Denise, p. 17: I compiled something to say, but changed my mind when I read a clause in an article on Treaty Six [by an Aboriginal scholar]:

For no one can truly represent an indigenous person or claim to understand the significance of their treaties unless they have an understanding from within the cultural and spiritual context. It requires a perspective that encompasses the total picture, and an understanding of the cultural values, beliefs, and philosophy that have been practised for many generations, a view from within.⁸¹

Even though I had researched the role of an Elder, I did not feel truly equipped to speak as one.

Think Seven Generations into the Future

Max, p. 7: Throughout our preparations and negotiations, I was able to use my awareness [of the children] as a reference point. As the First Nations did many years ago, I measured any

decision that we made by considering the implications that such a decision could have on the children of the First Nations seven [generations] into the future. Doing so ensured that our bargaining began interest-based.

Sharing

Carlos, p. 20: This concept of sharing resources and knowledge seems a difficult one for governments to grasp, while the First Nations people regard it as second nature. Elder Jacob Bill, a Treaty Six Indian from the Pelican Lake First Nation, spoke of his people sharing with the white man: "It was the will of the Creator that the White man would come here to live with us, among us, to share our lives together with him, and also both of us collectively to benefit from the bounty of Mother Earth for all time to come."⁸²

This sharing is also mentioned by William Ury in his book *Getting to Peace*.⁸³ He tells the tale of a Semai tribesman in Africa who vigorously defended his territorial hunting range. When asked if he excluded all other tribes from his range, he answered yes, but not in time of shortage or famine. He did not believe he had the right to decide whether another person starved. This view of sharing resources, however simplistic, is a noble view, yet it is not one advocated by our government. This is another example of a cultural gap that hinders the understanding essential to negotiating successfully.

Gifts

Annette, p. 8: [In the constitutional video], [t]he second conference was in 1984. I thought the gift by the Inuit to Trudeau of the whaler's hat was very special and symbolized friendship and good faith.

Janet, p. 21: For homework tonight I prepared a speech for tomorrow's simulation. I wanted to get some interests out on the table. I also wanted to start off the negotiations with a lecture on diplomacy and on treating each other in a respectful way. I did a lot of thinking about what happened at the original treaty signing. It was at this time I realized that we had not complied with the customary protocols for nation-to-nation negotiations. At the original treaty negotiations, gifts were exchanged between the First Nations and Crown. This was an Aboriginal custom and it signified publicly that the parties were acting in good faith. It was a seal for the promises made. I wanted to establish the same relationship with the federal team. This might have been the reason why things went so badly the first day.

Io, p. 22: In our group debriefing, we all expressed, each in our own way, the feeling that the giving of gifts by our Elder Janet had set the tone for the meeting and had turned the tide in a new direction. She had not only explained to the participants the historical protocols of the First Nations as they met with the representatives of the Queen to conduct treaty negotiations, she followed those protocols.

Harrison, p. 28: And you know, [the Elder's gifts] taught me something about the First Nations people as well. Giving a gift immediately dispels any hostilities or animosities and indicates that party's willingness to proceed in a spirit of co-operation and respect. I personally think that that single gesture made all the difference in the world to that day's negotiations. It broke the ice, and even though there were still hurt and frustration appearing on my side of the table, everyone was more rational and respectful that second day.

Consensus Decision Making

Janet, p. 16: We wanted to ensure that everyone on our team had an opportunity to speak at the negotiation table. We wanted all of our team to be sitting at the table. At this moment something dawned on me. Our meetings always ran smoothly. We operated by consensus and everyone had input into the process. We never discussed how our team meetings would run—they just ended up operating in this manner. Wow.

Io, pp. 8–9: Our meeting was small, but we felt an urgency to move towards action. With reluctance we made the necessary decisions, although we felt uncomfortable about making them without our other members. It seemed against what we accept as the method by which our group should operate (circle, consensus based). I think that is why we did not try to formulate a definite plan of action....

I still have some anxiety about the free-floating nature of our group. I find myself looking for a leader and tending to look to [our Aboriginal Elder] to take charge. She is following her own light in this respect and is not taking a power role.

Our group process is an amorphous one. I am reminded of how I came to rely on the word "process" after listening to Elders and leaders in the Buffalo River Dene Nation. I have known for some time that for me—for my life—choosing a process and then following it makes more sense than choosing a goal and pursuing it. It is so easy to choose a goal wrongly, or mistakenly—so much easier and more sensible to choose a process based on my values and then let it take me where it will. My sense is that this approach will serve me in negotiations—so long as my process is founded in the interests of those for whom I speak.

Max, p. 2: As a group, we identified roles that we felt would be essential in creating an accurate simulation of an Aboriginal negotiating team. The role of chief negotiator was not included in the preliminary stage of that identification. In retrospect, I find that exclusion illustrative in regard to the makeup of the group in which I took part. I feel confident in the accuracy of describing my group as quite feminist. In doing so, I do not rely on the gender of the participants but on their perspectives. I found the character of the group extremely beneficial to the role-playing experience because, for reasons that I will not diverge into here, I consider feminist and Aboriginal perspectives as being quite closely aligned. Because of our

perspective, the necessity of having a chief negotiator was not apparent; we rejected hierarchical ordering among people and wanted to illustrate that rejection in our organization. However, in the interest of efficiency, we elected to have a chief negotiator who would voice concerns for the team, just as the hereditary chiefs had represented the voice of the people in the original treaty process. Partly because our team included two interested and capable persons, and partly in an effort to illustrate the rejection described above, the role of chief negotiator was ultimately filled by two members of our group. In addition to chief negotiators, our group decided that the team should consist of lawyers, chiefs, and Elders. The group expressed ideas regarding who should fill those roles, but individual group members made the ultimate decision.

WHAT WE GIVE UP

[Everyone in multiparty institutional negotiations has dramatically different needs and interests, many of which are core issues of value, identity, survival, and power. Yet talk cannot even begin, let alone arrive at meaningful problem solving, without everyone making concessions of procedure and substance. The concessions that allow the process to move forward carry different costs for different negotiators and background groups. Concessions on core issues are high-cost. Concessions in a low-trust context make us vulnerable to others whose behaviour we cannot control or predict. No concession is immune from unpredictable consequences. If what we gave up to keep the process moving turns out to be too high-cost for us, it will generate new conflicts for the future.

In our case, participants reflected what they gave up to keep the process going, what it cost them, for example, in table speaking arrangements and in teamwork, and what is involved in “letting it go.”]

Everyone Has to Give, and Costs Are Unequal

Speaking Arrangements

Carlos, p. 5: We thought it would be fairer to have only two speakers per group, but the Aboriginal group wanted all eight of their members to speak at the table. We reached a

compromise: while they had four speakers at the table, only two would handle the bulk of the negotiations.

Alexander, p. 11: The Aboriginal team ... then agreed to have only four people at the table at any given time. This was an important act of good faith in trying to find a common ground. The federal team responded after a few more arguments by agreeing to let there be two co-chief negotiators from the Aboriginal side.

Kim, p. 6: It was very frustrating—it was difficult for me of the province to get a word in edgewise as there were only a few people who did most of the talking.... It was not well organized—people talking out of turn and there were many interruptions.

Annette, p. 19: [W]hat happened after an hour was that Lee agreed not to be chair, but that Carlos would resign from his position in the Crown group and become chair for both sessions. We finally agreed to this, although our group would not be chairing at all. I was a little disappointed and wondered whether we should have conceded.

Io, p. 18: We have seen the calming effect of the rock, and the way it channels the flow of energy, the way a river rock diverts the flow of water according to its shape.

Kim, p. 24: I enjoyed the rock and the restrictions that were placed at the table. Although it was very difficult to keep quiet at times, keeping order was necessary. The rock, or at least what it represented, enabled all parties to have a chance to speak, as well as made sure that no party spoke for too long. I noted that as soon as the rock or its symbolism was forgotten or neglected, order started to crumble.

Io, p. 18: We have gained ground by accepting Carlos as chair and getting the rock as a mechanism: it is a workable blend of Canadian rules and First Nations traditions. Now we have something to show that a creative approach can be good for all three parties.

Annette, p. 20: [Other Aboriginal team members] did not realistically get a chance to say much. There was a feeling of hurriedness in the meeting and the physical layout of the rectangular table made it difficult to equally take the stone. The stone seemed to be taken more by the chief negotiators.

Carlos, p. 7: The speaking stone was a further concession to the FSIN—one that I believed was a show of good faith. The stone slowed down the speaking process, and when a matter became contentious, the use of the stone made for some awkward moments. People became frustrated when they could not answer immediately. They had to wait their turn. Other members of a team became frustrated when they could not voice their opinion because their teammate had already used up that team's turn. The Aboriginal team took advantage of this

several times. With four members at the table, they had to pass the stone among themselves to the next team. Now and then, one of the four members took this opportunity to hang onto the stone and speak out of turn. When it came time to pass the stone, it was often physically difficult to do so. People were constantly rising from their chairs and straining to pass the stone across the table. Eventually, people began to slide the stone across the table, something I thought was inappropriate.

Janet, p. 19: Overall, I felt that our team conceded much more than we should have. I did not like the fact that we limited the amount of time that the Elders had to speak. This is just wrong. I could see problems with the way the stone was being used. For one thing, it was being thrown across the table. This is disrespectful and I explained my concerns to the team.

Max, p. 26: The interest in creating an accurate simulation at times conflicted with our educational interest in gaining valuable experience and understanding. In some situations, the simulation appeared to trump the class experience. For example, we spent a considerable amount of time tediously working through minor details of the protocol agreement instead of attempting interest-based negotiation. Other times, concessions were made for the purpose of allowing the class to continue. For instance, I knew instantly that we were conceding far too much by allowing a time limit to be put on our Elders' ability to speak. That limit contradicted the very nature of First Nations' learning and understanding. In making that concession, we stepped out of role in the interest of enabling the simulation to continue, for we were told that if we did not, our negotiation experience would be brought to an end by a childish fit.

Annette, p. 32: I would figure out a different physical setup, perhaps without the stone, that would allow more equal speaking for everyone who wanted this.

Lee, p. 20: I feel this was a very ineffective way of having a discussion.... Having experienced many group meetings both formally and informally, it was my opinion that a speaker's list is a much more effective tool. It keeps conversation flowing and allows direct comments on issues without first having to go around the table. At our table, I often felt groups made comments simply because they had the stone, not because they were valuable or would further negotiations. I felt there were far better ways to have discussions. The stone, to me, did considerably more to hinder rather than help our negotiations. It became an obstacle to the free flow of the table and did not allow those parties being questioned to respond directly.

Harrison, p. 29: Today our team all showed up on time, thank goodness.... But—big “but”—I enjoyed the first day better. I absolutely hated the fact that we had to take turns speaking and I considered it totally redundant that we were using that stone. The stone was only meant as a tool to be used as an alternative to the Crown's suggestion of a speaking list

(actually, I shouldn't say suggestion, since it was more of a declaration than a suggestion), not as a redundant mechanism that only hindered instead of helped. I actually stopped using the stone when I was at the table during the second half of today's [Day Two] session simply because I thought it was ridiculous and of no use, but the Crown kept using it, I suspect as a show of respect for our team.

Besides the stone, what bothered me even more was the frustration of having to wait my turn before responding to the feds' comments. That bothered the heck out of me. This was definitely a different type of negotiation than I had encountered the previous day. It was more formal and regimented and I found it hard to abstain from speaking until it was my turn, and then when I did get the stone, I felt as though I had to capitalize on the time I had because otherwise I'd have to wait a full rotation until I could respond again. Not only that, but when the stone did come around again, I had to make sure I shared it with my other teammates who were at the table, so occasionally I did not get to speak until after a couple of rotations. By then I not only had to remember what I wanted to say in the first place, but also any other comments that had come up since my last turn. It was a really frustrating experience. When it was my turn, I felt that since I did not get much opportunity to speak, I had to give a long speech instead of just responding to other comments. That was more difficult because I have trouble adding a lot of fluff to my comments—I tend to get straight to the point and not embellish a lot. I recognize that there needs to be some kind of rules of speaking, but I just did not function well within those particular parameters.

Intra-Team Conflict

Percival, p. 8: In hindsight, the fact that only two people in the group met with Mr. Molloy and that not all of us had participated in a mock negotiation was problematic. In any group situation, control of information is usually linked with power. While I do not want to suggest that anyone in the group intended to exclude others from decisions and discussion, I do think more deference was paid to the opinions of those people than perhaps should have been. "Because Tom said so" was an effective mechanism to shut down discussion and achieve consensus within our group. Interestingly, that did not work at all in the actual negotiations. This left us struggling to justify our positions at the table because we did not understand their motivations.

Daryl, p. 10: I had originally attempted to become the chief federal negotiator, but failed in that attempt. None of the other Crown members were from Saskatchewan, and none had specific knowledge about issues within Saskatchewan to the extent that I do. I felt at that point I should take on the provincial perspective, though by nature and as a result of past experience, I believe I would have been most suited as the central figure of negotiations.

Daryl, p. 9: Had [the chief federal negotiator] stated before the meeting that she believed we had all agreed to the document, I would have told her that I did not think I had agreed or that the Aboriginal representatives had either.

Daryl, p. 10: I as chief provincial negotiator ... suggested that as Crown negotiator I could take on the position as chair. This would have helped the negotiations I felt... Unfortunately for all involved, this attempt by the province failed as the federal representatives denied it as a possibility, although the Aboriginal representatives were for the idea.

Alexander, p. 13: As for the Crown, the team dynamics were showing some strain. [One member] was becoming too much of a wild card and a loose canon, while [two of us] were having big disagreements on a number of fronts with [a fourth member]. [The chief negotiator] I learned from another member had lost a lot of credibility at the negotiating table. Upon hearing that, I resolved to become the hard-nosed federal person at the table. I hoped that by doing so it would take some of the pressure off Lee, who after all was the chief federal negotiator.

p. 14: [O]ur wild card failed to show up and the rift between [the fourth member] and [the chief federal negotiator and myself] was growing.

p. 17: During that [Day Two] caucus, the federal team talked about its position on each tabled item and decided on a stance. By this time, the provincial team was already on their own; they had been presenting perspectives at the negotiation table that we had not seen before. Too bad [the wild card] had not shown up to any of our meetings (except the first one) or attempted to contact any of us on the Crown team. I think that the provincial team was now seen as a liability for the federal team.

Percival, p. 12: The provincial chief negotiator effectively distanced himself from the federal Crown team enough to regain the trust of the First Nations team. He was able to act as a go-between for the two conflicting sides and present ideas that helped facilitate the continuation of negotiations after the federal team walked out.

While the provincial chief negotiator's actions helped rebuild his relationship with the First Nations team, it left the federal Crown feeling betrayed and other members of the provincial team feeling left out. His actions were carried out independently, without discussion with the other provincial team members. The Crown team had agreed to present a united front in these negotiations at a meeting he did not attend. It was felt that he acted without the appropriate authority. His failure to participate in group decision making and to defer to them caused a significant amount of tension. The federal team felt that his failure to support them caused them to lose face in the negotiations.

Kim, p. 19: [A]s we started going through the actual document, I, as a representative of the province, felt insulted. The first part was actually spent going back and forth between the

federal government and the Aboriginal side. The province was completely ignored as to whether it agreed with a particular clause... Overall, there was no provincial input.

Percival, p. 14: [Day One, the federal team worked well together]. But that was not the case on the second day of negotiations. I imagine most people will be saying that the second day of negotiations were much better than the first, but I would have to disagree. My experience on the second day left me frustrated and disheartened.

pp. 15–18: At the end of the first day of negotiations, there was a suggestion that we schedule regular breaks for caucus meetings. When I suggested this on the second day of negotiations, the idea was quickly dismissed. It was apparent that the group's main focus was to get through as much of the document as possible and to achieve an agreement. I wish I had been more persistent. In the end we caucused once. The break was not sufficient. Everyone at the table needed the opportunity to reflect on what was happening. Despite the air of nicety and co-operation on the second day, positions became further entrenched. Had the teams separated more frequently, perhaps this entrenchment would not have occurred. The breaks would have provided an opportunity for the teams to evaluate the process.

That being said, I am not confident that more breaks would have corrected the federal Crown team's positional focus. In the one break we did have, the federal Crown team was not prepared to discuss our interests or motivations. I tried to have the team stand away from their positions and look at how they were negotiating. When I refused to take a positional perspective during the caucus, I was ignored. My teammates saw the caucus as an opportunity to reassure themselves that their positions were correct. I thought it quite telling that our meeting lasted less than half an hour, while the other two teams took a considerably longer period of time...

I was extremely frustrated by my federal Crown teammates when we returned to the negotiations after the caucus. They completely excluded me from the negotiation process. We had decided as a team that my role would be that of chief of staff for both the provincial and federal teams. My responsibility was to ensure that the team was working well together, that no one was acting independently outside the range of authority given to that person by the group, and that the negotiators were representing their respective interests accurately and effectively. In essence, the team agreed that I was the boss. However, when I had some concerns about the language used and the respect shown to the First Nations team first during the self-government discussion and later, the discussion about certainty, I was ignored. My repeated requests to caucus were ignored. An attempt by my provincial teammates to get the federal negotiators to respect my request was also dismissed. This effectively excluded me from the negotiations and frustrated me to no end.

p. 18: I heard the federal negotiators say ... that the federal government did not believe that the treaties were sacred and that there is no inherent right to self-government. It was on this point that I felt the federal negotiators allowed their personal feelings on the matter to

dictate how they would negotiate. My role as chief of staff was to prevent that from happening and to point out that they were not acting appropriately. I was not allowed to fulfil that role as a result of the actions of my fellow teammates.

Daryl, p. 13: The one point where I could have aided was when I asked to conference with the federal negotiating team. The “team” denied this request and instead stated there was no reason to leave the table. This only added to my frustration, as I knew that if given a chance at that point I could have persuaded at least one of the federal negotiators.

Alexander, p. 25: Professor Greschner talked about not having an enemy on your team. I think that goes hand in hand with knowing your role.... The enemy on our team was [one member] because she tried to control things beyond her reach. She became the enemy on our team not because she had a difference of opinion, but because she never understood her role. Tom Molloy shed some light on this topic when he explained that the associate chief negotiator working with him understood what she could do.⁸⁴

Harrison, p. 10: [W]ell, our team was supposed to meet today but only four of us showed up. Not impressive. I was somewhat frustrated to say the least, especially since the four of us agreed that we had all discussed it the week prior and agreed to meet.... If that wasn't bad enough, we still have not received any e-mail from [our colleague] regarding our roles, which was supposed to have happened last weekend. I am starting to get very annoyed since I for one would like to prepare, especially during the break. I feel as though our team is starting to fragment, even before it has had a chance to solidify.

Harrison, p. 15: February 19: I am concerned that [our colleague] still has not e-mailed us out a list of what our roles will be. I am beyond the point of frustration. Not only do we need the list ourselves as a team, but also [the federal civil servant] e-mailed all of us on Friday, requesting the roles that we are playing so that they can do their own homework before negotiations. I feel like e-mailing him back and just acknowledging his e-mail at least, but I think that that should be coming from our chief negotiator and we don't have a clue who that is yet. I think that we can stall a few more days, but to go more than that is pretty inconsiderate as far as I'm concerned.

Harrison, p. 17: February 24: I'm feeling really badly that we have yet to e-mail anything to the other team; it seems a matter of common courtesy in my opinion. Obviously the rest of the group isn't worrying about it, so maybe I shouldn't either, but I do not agree with it.

Harrison, p. 20: February 28: I'm feeling kind of badly that we are only getting the Crown our protocol agreement tonight. Hopefully they get it before we meet tomorrow.

Harrison, p. 23: I don't get this late business.

Harrison, p. 32: [W]hat bothered me more was that it was very difficult to get anyone to get anything done outside of class time. And not only that, it was difficult to get anything done in a timely fashion. The break has been blamed a lot for the reason why we didn't get the protocol agreement to the Crown more quickly, but I'm really not convinced that it would have happened any sooner even without the break having been in the way.

W. Roberts, p. 17: The Aboriginal team met ... to go over some of the strategies and topics for the second day of negotiations. The group meeting started out with a little venting about the negotiators for the federal team.

The members of the Aboriginal team seemed to be concerned and frustrated because they felt the federal negotiators were bringing personal feelings to the table when handling issues. This talk continued for some time. I listened for half an hour and then decided that I should try to move the group on. I agreed with the suggestions that the federal team was letting some rather frustrating personal quirks disrupt the flow of the negotiations. I immediately posed the question, what are we going to do about it? Our group had pinpointed what they felt was a major obstacle to progress, so I thought we should come up with actions and strategies to get around it. The question was indirectly ignored.

W. Roberts, p. 18: It seemed that each person in my negotiating group had a distinct set of personal feelings to address. It was very interesting to listen to each person's insecurities and personality quirks come to the surface.... The one thing that our group seemingly didn't talk about for the first half hour was progress.

This was a point of frustration for me in the Aboriginal group sessions. The Aboriginal team was doing the very thing that we were accusing the federal team of doing. Any strategy or definition of topics that the Aboriginal team managed to deal with came from the smatterings that the group agreed on between complaints. I am not saying this to criticize the Aboriginal group. This was a good group that worked hard and had good ideas. The problem was that most people seemed to get along too well. It think that maybe members with less in common would help us to focus more on the negotiations.

Other Unresolved Issues

Structural Team Equity

J. Colton, p. 2: We were all surprised and thankful that the class split evenly. I'm not sure what would have happened if everyone had picked the same team.

Carlos, p. 3: I found it interesting that all involved thought these numbers turned out to be perfect. We had eight on one side and seven on the other. That is only two sides! These

were supposed to be multiparty negotiations, with three parties involved. Looking at it that way, the Aboriginal side had a distinct advantage in sheer numbers.

Interpersonal Conflicts

Alexander, p. 20: I decided not to pull any punches and welcomed criticism. I talked about the value of integrity to me, how I thought the Aboriginal team had been unethical by not informing us on what they intended to do and by dropping their agreement on the Crown team without any warning.... I reported that I was the author of the two newsletters. No one, not even my teammates, had figured that out.

B. Larsen, p. 20: I think if [a member of the Crown team] continues to use these tactics in the real world, the old-time lawyers will eat him alive. Experienced professionals will not be impressed with this kind of gamesmanship.

Alexander, p. 20: I strongly feel she attacked me personally.... I feel I should have confronted her right then and there, but instead, out of respect for the process, I let her continue.... Sure, I had said do not hesitate to critique us, but I meant as a team in a negotiation, as a character in a role. What she did was attack me as a person.

p. 22: With much anticipation I had watched, listened, and respectfully kept quiet while I was attacked. The class debriefing was done, but I still needed more. I talked to others outside the class about having another debriefing. Most felt that we had done enough; a lot of energy had already been expended. So I left things in an uncompleted state. My main concern then became that people ... who really knew me before this class were still my friends. It wasn't until 17 March that I came across [a member of the Aboriginal team I had worked with previously] again. She was still talking to me and we were still friends, which made me feel good. Our class, our experiment, did finally come to an end. [The professor] graciously had a big yummy dinner and by the time I walked out the door I knew things were now complete; the final debriefing was done.

J. Colton, p. 15: The negotiations ended on an emotional note. The Aboriginal team seemed disappointed, frustrated, and shaken. The federal team was concerned about any hard feelings. Carlos wanted the class to go for drinks, but the Aboriginal team needed to debrief before they could talk about the negotiations. I think it was too soon to talk about it over beers.

“Letting It Go”

[If what we gave, or someone gave on our behalf, in order to keep the process going feels too costly, because, for example, it cut too deeply into our core

values, or had higher costs than we anticipated, or was not reciprocated, leaving us with a sense of unfairness or injustice, we face choices. One path to peace is to raise the issue with the relevant negotiators or groups, to ask, and for both groups to be prepared to give, the time, energy, and commitment to mutual problem solving needed to work the conflict through to a resolution. This, however, requires high-trust relationships. Another alternative, one over which we have control individually, is to “just let it go,” thinking of the cost as part of what we are willing to accept to live peacefully and harmoniously in our mind and in our relationships. Our cultural historical legacy has been to do neither, leaving the pain to fester and grow inside individuals and institutional memory, erupting violently in unpredictable ways and places, and exacerbating the negative institutional forces that will carry forward into any further interaction or negotiations.]

We Are Each Responsible for What We Take Away

[Participants concluded that we are each responsible for what we take away, implicitly echoing psychologist Victor Frankl’s conclusion that the only thing we can finally control is our own attitude.⁸⁵]

Harrison, p. 34: [I]t is completely impossible to create a safe environment where everyone can say exactly what is on their mind without fear of repercussion and without every individual making a choice to subscribe to this attitude. That is not a decision anyone can make for them. In my experience, even some people who make that decision outwardly don’t really buy into it wholeheartedly, and when actually faced with it, collapse.... [A]t the end of the day, I really do not think that all the hard feelings and acrimony were left in the classroom. But you know, I find nothing wrong with this. Individuals had a choice—they could either learn from the experience, or choose not to. It was entirely at their discretion. As far as I see it, even if they chose to allow hostility to rule their lives, they also had the opportunity to learn from those feelings, and then let it go.... So to the majority’s credit, even though there were a lot of hard feelings flying around at first, for the most part, they were left at the negotiation table.

Daryl, p. 4: As social events, multiparty conflicts carry with them more than the behaviour or statements made. The participants included a variety of people with different personalities, cares, and worries. Some students worried about not having equal footing with others, because they did not understand the issues, or because they didn’t know the others’ culture.... These complex social concerns cannot be overcome; they can be dealt with or

talked about, but they remain, and are best left unresolved. I can never truly state that I fully understand another's culture, and I don't believe I will never insult or disparage another. What I can do is show respect for another's culture and attempt not to act in a derogatory manner. This is what the students in general had come to realize.

WHAT WE GAIN

[Given the stakes, stress, and risk of multiparty institutional negotiations, are they worth the effort? Despite our low-trust context, participants reported that they learned different lessons than intended, but substantial. Many experienced the power and synergies of teamwork. And, at the heart of conflict, faced with honesty and trust, a magic of transformation shone forth.

Further, there is no noninstitutional space, and unresolved group conflict swirls at every turn. Either as groups we accept the responsibility of shaping the institutional arrangements that will govern our lives, choose the stress of being the authors of the next generation of institutional arrangements, do the long work of building the trust that can make negotiations successful, or we let the future be decided by violence, institutional breakdown, or external forces over which we have no control. Participants therefore reflected on what can be done to begin to deal with the long-term problem of lack of trust among large background groups.]

We Can Learn from Everything

[However inelegant our process, and even in a low-trust context, negotiations approached with honourable intentions, dedication, and commitment, led to substantial learnings.]

Max, p. 17: I have always felt that knowledge of our own “not knowing” may in fact be the greatest knowledge that we could ever hope to gain.

Harrison, p. 1: After all, certainty is only in the eye of the beholder, is it not? I have come to believe that my certainty is only as certain as I make it. It may not extend to my neighbour and it may not extend even to the future, but the one thing I am certain about is that it is mine, and I am thrilled that it is changing and growing as my life experience challenges me.

Carlos, p. 25: Simulations such as this are only as effective as the participants. The more knowledgeable the participants, the better the result. In our case, misplaced importance on the role of the chairperson caused controversy beyond what that issue deserved. It stole precious time from the discussion of substantive issues. An unexpected benefit from this was that I saw the emergence of many different personalities at the table, an experience I was likely to have missed had there not been controversy.

Daryl, p. 14: While the negotiations themselves were in my view a failure, there was an achievement in the process. The entire goal of the class was to learn multiparty conflict resolution techniques. We as a class have learned about the difficulties of negotiating and we have all learned a little about ourselves.

Alexander, p. 26: I'll be one of the first to admit that the Crown teams did not know the substantive issues well enough. What ended up occurring was that I went looking for answers on the substantive issues after the negotiations were over. It took time, but I found what I needed to know, even if it was after the fact. Notably, the background to the Aboriginal inherent right to self-government issue is found on page 123 of Tom Molloy's book.⁸⁶

Carlos, p. 8: After talking to Tom Molloy and Bob Mitchell, my views changed drastically. According to these two men, there is either no chair or an alternating chair. When there is no chair, they reach agreements regarding protocol by consensus. They discuss when they should take breaks and what the agenda contains. When there are alternating chairs, the table first agrees on the agenda, the chair maintains a speakers' list, and the chair maintains his/her position/interest at the bargaining table. After the success experienced by both these men, who can argue with their negotiating style? It does not mean that we were wrong to insist on chairing the meetings, just that we overemphasized the importance of the chair. Our group simulation went through substantial growing pains in our endeavour to appoint a chair for our meetings. More research in that area would have meant substantially more time allotted for substantive issues in the negotiation process.

Io, p. 28: The result of debriefing? I feel sad. Some of us came face to face with our limitations, our pettiness, our pride; some of us still see ourselves as being "right." On deeper reflection, we can all be a little kinder to ourselves. We didn't come to the table as experienced negotiators. We all learned something, and we each have the opportunity to take that which we have learned and try to create something fine with it. If I never sit as a negotiator, at least

I will have some basis for understanding what those who do negotiate face. If I am given the task of negotiating, I will at least have some reference point, some experience to help me understand what happened in the process. This exercise is a starting point, not a finished task.

Harrison, p. 36: I have gained perspectives and knowledge that I never anticipated and a new appreciation not only for Aboriginal issues, but also mediation, negotiation, social science, and self-awareness, to name a few.

Harrison, p. 25: For me, this has been very much like a game, and I have thoroughly enjoyed it. And the learning I have achieved has been nothing short of amazing. It really has been wonderful. I find myself thinking about it all the time, and I am really interested in the whole process. [It was asked] if some of us could possibly sit in on some negotiations [our team advisor] may be involved with in the next little while.... From the sounds of it, these people have been together for a while, negotiating self-governance, and have become quite amicable and co-operative, so it would be nice to see how they operate. Hopefully we can do this before the end of classes.

The Power and Synergies of Teamwork

[Participants reflected on the power and synergies created by co-operative teamwork.]

Annette, p. 30: We must work together as a team. Our collective power is critical in bringing out interests, and the support from group members strengthens each individual. Together we can express more.

Lee, p. 7: It was interesting to observe the dynamics of having so many leaders in one group. Alexander, Percival, Kim, and I all have strong personalities and tend to be in leadership positions. Having four such personalities in one group created a situation for potential conflict; instead it became one of give and take.... The most fascinating observation that I had from this meeting was how the dynamics of the group played out. Each individual's style of negotiating was brought out, even at this stage. We all "negotiated" our position on the team. I have a great appreciation for those with quieter styles who listen first and speak after some thought. Because these people are heard from on fewer occasions, I believe their words carry more weight. Often, it is their words that provided us with the easiest solutions.

Percival, p. 14: Despite the fact that the first day of negotiations was challenging, the federal Crown team worked well together, with everyone sharing their ideas and concerns freely.

Action was only taken after a decision was reached by consensus to do so. Everyone was also very conscious of their roles and spoke openly about how it made them feel representing one position or another.

Denise, p. 17: Some of the others had a decisive advantage with respect to knowledge, whether it was a result of their roots, their experiences, their education, or their circumstances. Our team was fortunate to have had such expertise and it led to a very informative and well-organized presentation of the issues in the negotiations.

Annette, p. 18: I felt as though we were working very well as a team. As I looked around and listened, I found myself seeing different strengths in each of us in our group. Io was a deep thinker and whenever she spoke it was very insightful. She was very knowledgeable about Aboriginal issues and treaties. Harrison was very efficient and had done a lot of written work for our group. She was energetic and open-minded. Denise was a person with strong convictions and was very supportive. She had done a lot of research.... Janet was passionate and extremely helpful in providing materials for us to read from the FSIN.... [S]he seemed to really understand the Aboriginal issues. W. Roberts was a very easy-going person but had strong convictions. He reminded us of the importance of interest-based problem solving in our simulation. B. Larsen was full of energy.... Max was intense and well-spoken.

Harrison, p. 9: I sensed at this meeting that we were starting to get more comfortable with each other as a team, but obviously no one wanted to step on anyone's toes, so it was a bit frustrating trying to make any decisions.... [W]e agreed to keep any and all information that anyone got on Denise's shelf in the library and only to keep it out for two hours when we were reading any of it.

p. 9: [Our Elder] has been amazing.... [S]he either knows or can access all the information we could possibly need.... I was at the library this evening looking through all the information on [our team's] shelf. Quite a way to spend a Valentine's, I must say. Oh well, such is life. There was a LOT of information there—I could hardly stop reading, it was all so fascinating. [Our Elder] had a whole box of stuff and Io had placed a full file of information.

p. 13: We sure have bonded well as a team. We worked very well together, even if not everyone pulled his or her weight. In the end, though, it didn't bother me that much since I would rather do the work myself and make sure that it gets done the way I want it to.

Janet, p. 8: Our team met today to discuss how we should prepare for the negotiations. Everyone was prepared and immediately we asked questions; we learned from and guided one another. Everyone had something to offer the group; this team is going to be awesome.

B. Larsen was familiar with current self-government negotiations. She had gathered research from the FSIN's treaty office. Io and Max were knowledgeable about treaty issues and history. Harrison told us she had no information to offer, but this was not true. She came to

the meeting with a list of recommended books. She had finished reading at least three of the assigned textbooks for the class and was halfway through another.

I talked about current First Nations' governance in Saskatchewan. I explained how the Federation of Saskatchewan Indian Nations was structured and how each band was represented in the FSIN. When all of this information was brought together we admired the powerhouse we had created.

Janet, p. 16: I could not believe the amount of preparation that my team members put into this. It was great and I was proud of their hard work, their interest, and their dedication. I never dreamed that there were non-Aboriginal people who would take this simulation as seriously as I did.

p. 28: I believe it was fate that brought the Aboriginal team together. We fit together like a puzzle. Each person had so much information to share. Without even planning it, we supported and guided one another through the entire process. I think we all felt that rare and special connection. I am grateful for this opportunity.

p. 31: This year I was lucky to work with a team that gave hugs and provided emotional support. If it was not for them, I may have thrown that stone.

Max, p. 4: Much information was shared among the group, and it seemed that almost everyone had something to contribute.... As a group we held several meetings in which we discussed our findings and identified areas in need of further work. The preparatory stages were, in fact, so involved that we quite often made time to assist each other in smaller, less formal groups. Those meetings were seldom planned but occurred at random. They were compelled by our recognition of the ambit and depth of the subject-matter with which we were dealing.

p. 32: This class has reinforced my belief in the prospect for collaboration to produce the most desirable results.

Io, p. 14: [O]ur group's emotional component created much cohesiveness for us. I felt this was the source of our strength every bit as much as was our intellectual appreciation of the issues....

p. 21: Our group met from 2:30 till 5:00. We were more focussed this time, and better able to test our ideas against our perceptions of the process and the parties. As always, I am amazed at the egalitarian ethic of this group. We are working better and better together. While I had previously interpreted our interactions as searching for a leader on some level, at this meeting I became comfortable with the fact that we are all looking to each other for guidance, and for "moments of leadership" depending on each person's unique ability to contribute. The pleasure of being with this group makes up for the frustrations of dealing with the other team, and it is certainly a learning experience. It is messy, but it works.

Through our discussions I have had a wonderful opportunity to hear what others really feel about the negotiation process: each person brings forth something from within, and the result is a whole. I believe what we have is respect, and I hope we will be able to infuse tomorrow's process with that quality.

Janet, p. 25: I was not looking forward to the potluck tonight. I was emotionally drained and I wanted nothing more to do with some of these people. However, once I arrived at [the house] I felt immediately at ease. My fellow classmates greeted me at the door with open arms and warm smiles. I smiled back and I could already feel my body loosening up.

Max, p. 8: Th[e] experience has left me with a newly found confidence in teamwork that I consider invaluable. Prior to this seminar, I had been quite reluctant to work in group settings. I consider that reluctance attributable to: distrust in group members to produce an end result at a level that I can have pride in; discomfort with voicing my ideas, as opposed to acting on them independently; and concerns regarding equitable workloads. This experience has brought those concerns to an end: the resulting preparedness of the group as a whole was much greater than any one of us could have achieved on our own because of the unique perspective presented by the individual team members I was not only comfortable giving voice to my ideas, but felt compelled to do so for the good of the group.... For these reasons I feel so fortunate to have had the opportunity to work with the individuals in my group. Their dedication to the experience and their interest in the outcome have given me a new sense of awareness with regard to my ability to contribute in a group setting. Without them, my prior beliefs would undoubtedly have held and certainly affected my career.

Max, p. 23: Despite the fact of my disappointment in the conduct of the parties and the impact that I believe that conduct to have had on the simulation, the entire experience has taught me far more than a conventional seminar on multiparty conflict resolution ever could. I do not regret the experience and I know that I have learned lessons that I will be able to use throughout the course of my life. Primarily, it has raised my awareness of the competing interests that arise under such circumstances and of the significance of personality and social constructs when multiple parties come together.

Alexander, p. 1: Life is a tapestry. Experiences, thoughts, feelings, and interactions all make up the intangible threads that are inconspicuously woven together to make an intricate and beautiful life. Each of the threads creates a pattern so elusive to the human mind, so ingenious, that no person could ever calculate the beginnings or the ends of the tapestry.

Our multiparty conflict resolution experiment, a microcosm if you will, was itself a tapestry. From every action, thought, and reaction, a pattern was interwoven and a tapestry emerged. In this way, countless numbers of tapestries were created on a number of mind-boggling levels.

p. 2: I feel as though every action, every thread in this tapestry could be analyzed and re-analyzed from a number of perspectives; however, this is but a snippet ... a taste of the whole production. Like any life project, the thoughts, feelings, and actions will not end here.

p. 30: As a class, something came from nothing. Situations transpired that were both good and bad. One by one they became an integral part of the whole. To try and go back and undo what was done, to feel regret for one thing or another, would be wrong. In doing so, we would be pulling at the very threads of our class tapestry—a tapestry that has become part of our own lives. Remove one thread and the whole tapestry may come undone.

Transformation at the Heart of Conflict

[Further, at the heart of conflict, faced with honesty and trust, participants experienced moments of transformation. Each of these moments involved trust, often moments of kindness or generosity in the face of distrust. The risk and vulnerability of such actions carries a surprise that can cut through layers of distrust and touch another at some deep level. When trust connects with other sparks of trust in ourselves or others, powerful things can happen. Transformations often take place inside our own heads; sometimes, as in our case, they were palpable to all in the room.]

Annette, p. 30: William Ury talks about how trust was built between nations in 1977, when “Egyptian President Anwar Sadat shocked the world and offered to fly to Jerusalem, the capital of his enemies, to talk peace.”⁸⁷ Ury says Sadat had pierced the psychological wall of suspicion that may separate parties more than a physical stone wall.

Harrison, p. 4: [A]mazingly enough, I seem to have found a peace about my decision to be on the Aboriginal team. Where that came from I’m not sure, but I am certainly glad I did not ... switch teams. So, for better or for worse, I’m going to stick it out and see what happens.

Io, p. 19: Where are the spaces we can leave open, so that we are receptive to inspiration? We have been focussing on predicting and discovering the tactics of the other side. I have been uncomfortable with this, and it has caused me to wonder if I am too naïve to be a negotiator. I fear that if we set out to find signs of tactical moves, we are going to see everything as a tactic and miss the moments where a threshold opens for something genuine to enter.

Janet, p. 28: [T]his class gave people the opportunity to share their unique skills and gifts, an opportunity they would never get in other law classes.... I felt almost everyone contributed to the process and to our learning, but [some] individuals really impressed me because I did not expect them to offer so much of themselves.

Lee, p. 26: A smile and a sincere compliment can go a long way.

W. Roberts, p. 27: Educate: Martha Minow ... alluded to the fact that the process of fighting for your case educates people so much that it may be as important as the actual outcomes.⁸⁸ This is profound, and this is also the way that over time individuals ... will be swayed. During negotiations it is important that you take time to educate the other side in subtle manners. Actions like the gifts by Janet will in the end have a greater effect than all the positions you could advance.

Max, p. 18: When the second day of the simulation began, the tone differed significantly. I ascribe that difference directly to the offering of gifts by a member of our team to key actors on the other sides. The acts of both gifting and receiving can be quite humbling when they occur in the midst of a tense situation such as our simulated exercise. When viewed analytically, the gifting individual offers far more than the gift itself. That was especially so in this circumstance because of the personal element involved. Once such an offering is made, the giftor becomes powerless as to how it will be received. In that way, she becomes vulnerable to the other side, who may graciously accept, mock the offering, or have any other reaction imaginable. In certain circumstances, such as the one we experienced, those in receipt may consider the gifting to be a humbling experience. I think it fair to assert that it is often more difficult to receive than to give.

Lee, p. 18: Janet's gifts to the negotiating teams were a wonderful touch. I was very honoured to receive such a beautiful bracelet. I felt a sense of openness, faith, and trust in my abilities when I received this gift.

Io, p. 22: To my mind, [our Elder in presenting the gifts] had focussed and directed the power of love to balance the powers that had been met at the last negotiation session. This power of love was able to deflect the power of fear and redirect the energy towards problem solving. A space was opened for respect to flow in to moderate the strong emotions on both sides, enabling us all to hear each other better.

J. Colton, p. 12: [The Aboriginal co-chief negotiator] made an eloquent argument for the insertion. She argued that they would not agree to a fixed document because the world was constantly changing. The federal representatives agreed that life was not certain, but they could not accept a "living document." [A provincial negotiator] read an excerpt from Tom Molloy's book about the need for certainty in an agreement such as this. Elder Janet took the speaking stone and became very emotional. I could not see her face when she began to speak, but I could sense a change in the air of the room. I looked over and her face was trembling as she spoke.... The federal negotiators were moved by [the Elder's] emotions, but they continued to argue the need for certainty in documents. [The Aboriginal co-chief negotiator] talked

about the cultural differences between Aboriginal and non-Aboriginal people, and the importance of certainty to non-Aboriginal people. The Crown team argued that certainty protects all interests.

Janet, p. 22: By sharing information with the class I knew I was educating others, but at the same time I was opening up my soul. I am scared to do this with a group that cannot appreciate the significance of even the smallest piece of information. (I learned later that this gesture was not perceived as a lesson but rather as a tactic. On break, a member of the federal team approached me and asked if I wanted my things back. My head fell and I thought to myself, they just don't get it.)

My team was tired after three hours of going through protocol and we finally got to express our interests in that last half-hour of the simulation.... [O]ur team finally got to share our knowledge and concerns with the Crown. We defined areas that were of concern to all parties at the table. This was a powerful and beautiful moment for us.

Janet, p. 23: At the end of the simulation I felt a wave of sadness and hopelessness overcome me. Kim quoted from Tom Molloy's book in regard to the importance of certainty. I had to react to this. After five hundred years, these people still do not understand that as First Nations we are different and independent from one another. Certainty has no place on this table except with regard to land boundaries. However, when I got hold of the stone, only tears came to my eyes and I could not find the words. If it were not for Harrison's touch and her wise words, I would have thrown that sacred stone.

Harrison's speech was very powerful. She expressed her personal struggle with finding a place in this simulation and in this ever-changing province. She taught me about something that I had almost given up on—the "white people." She taught me not to give up hope on the non-Aboriginal people of this province. She showed me that some are willing to listen and learn. She taught me that people like her will walk with us as partners, as cousins, as sisters, to make this province and this country a better place for all our children. I will never forget her honesty.

Harrison, p. 31: Another thing that really hit me was when Janet started to speak about the Nisga'a treaty proceedings in BC and she broke down and could not speak any more. She had been planning on delivering an entire speech on this subject and she only got a few sentences into it.... I found the entire negotiations to be extremely realistic—more so than I had anticipated—but up to that point I had found them real because of the emotions flying, the conflicts, the disagreements, and the uncertainty as to how it would all play out, to name a few. But Janet breaking down hit me in a new way. I realized in that moment what she was carrying around with her. I realized that while this was still only a simulation, the issues were all very real to her. I cannot even begin to pretend to understand all the things she struggles

with as an Aboriginal person, especially one who looks more like a white person than what I would think of as an Aboriginal, but at that moment, when I took over for Janet, I felt an incredible sadness wash over me.... It seemed as though all the weight of the world descended on me at that point and I could only wonder if we will ever be able to live in peace as fellow Canadians. The concept of sharing and only being guardians of the Earth makes a lot of sense, and yet, how will it ever fit into a society that covets ownership and individuality? We no longer live as communities; we live as single-family units, with virtually no dependencies on anyone else. In any case, I left that meeting with an incredible sadness.

There Is No Noninstitutional Space

[As we experienced, multiparty institutional negotiations are high stakes, high stress, and high risk in modern culture. Are they worth it? The answer is yes if the alternatives are even worse, such as violence, institutional breakdown, or external threat. There is no noninstitutional space; we are all immersed in institutions and their conflicts. The greatest empowerment, for groups as for individuals, is self-determination in life and in relationships. If we can bear the responsibility, there is great dignity in facing and solving our problems ourselves, and in passing on to the next generation a legacy less filled with the negativity of pent-up institutional conflict, and more skills at resolving conflict as it occurs. Both as negotiators and as citizens, we are members of the background groups among whom trust must somehow begin to be restored if there are to be future successful negotiations. Individual and institutional processes are interdependent, and both are necessary to resolve multiparty institutional conflicts. Participants reflected on institutional solutions that might help to begin to restore trust among Aboriginal and non-Aboriginal groups in Canada.]

B. Larsen, p. 1: Sometimes it seems as though we are quite unequipped and completely unable to deal with some of the problems we create.

Denise, p. 10: [Mr. Mitchell] emphasized how the status quo was not a viable option for Saskatchewan.

Daryl, p. 14: I did state at our final meeting that it would be easier to go to court.... [L]awyers in general would certainly find it easier to simply state their position and argue it without negotiating, but the client would be better off with negotiation.

Empower

W. Roberts, pp. 8–9: Maria was simply saying, “The system isn’t working, not for her people, not as it is.”

Maria spoke of how her people are hurting, and was not too proud to say that they need help. This is where her words began to take on huge meaning. Those of us who would choose to represent the Aboriginal people, either in this seminar, or in real life, would look back to discussions like this and see them as motivation. This is the reason that we are at the table; there is need for a change. This was the message for me: things must change, now.

p. 10: I have just begun learning about Aboriginal law issues in the last few years, and I have already seen enough injustice to understand why Aboriginal people like the Linklaters feel as frustrated as they do.

During the discussion, the question was asked, how do we help? How do we learn enough about Aboriginal ways and culture to effectively set up systems that will work? Some students felt that we will need to immerse ourselves in the culture so that we can learn it well enough to set up effective systems for Aboriginal people. I feel that this is important, but we need to be careful not to produce a flaw in the perception of the problem. This is what got Aboriginal people into the position in the first place. I don’t think that is our problem as lawyers at all. If you were not raised in this culture or don’t have a working knowledge of it, then the best thing to do is to stand back and allow the Aboriginal people who know their way of life best to make these decisions. I feel that it is simply our job as lawyers to help these groups open doors; what they do when they are inside is their own business.

Kim, p. 7: With respect to the Aboriginal issues that were discussed, I felt for the people. I do not think that I was ever aware that they had undergone so much pain and misery... I got a completely new perspective on Aboriginal needs and desires—a partnership where they could decide for themselves how to live their lives and have control over their lives. They did not want emancipation but membership and a right of participation. How can anyone argue with such a request? Is it not the notion that Canada is a free and democratic state rather than a big-brother type that controls its citizens? I completely disagree with the comment Trudeau made in the video: [I]f you think you’re an equal, then you are. If you think you’re not, then the law cannot do anything.⁸⁹ If the law or the system is not allowing them to choose how to live their own lives, then no matter how much the Aboriginal people think they are equal, that they should be equal, they are not. Their psychological well-wishing will not change the current practice.

Annette, p. 30: “Collaborative Democracy”⁹⁰ is a tool that can be developed to build democracy and promote fair sharing of power in multiparty institutional conflicts. William

Ury explains how creating a collaborative democracy helps handle difficult disputes starting at home. This method of problem solving involves devolving power from the top to the bottom so that in a family situation, children are given increasingly more responsibility over their lives.

Carlos, p. 3: On a purely personal level, it was my feeling that after reading parts of Martha Minow's *Between Vengeance and Forgiveness*, the federal government ought to have armed any negotiating team with the power to apologize for what I perceive as a failure to adhere to the Royal Proclamation. Minow believes that an apology makes the wrongdoer—in this case the Canadian government—more vulnerable. It is this volunteering of vulnerability that empowers the victim—in this case the Aboriginal community. It empowers them to either accept or reject any such apology. Until now, the balance of power in any negotiations between these groups lay almost entirely with the federal government. The empowering of the Aboriginal community helps even out the imbalance of power, and Minow recognizes it as a first step to promote healing. It seems as though the federal government is not willing to place itself in such a position of vulnerability with regard to Aboriginal peoples. How is such an apology any different from the apology given to thousands of Japanese incarcerated during the Second World War? Tens of millions of dollars in reparations accompanied the apology to the Japanese. Could it be that the federal government believes it will be morally or legally liable for billions of dollars in reparations to First Nations' groups, and untold billions more in land claims?

Educate

Max, p. 17: I have always believed in education as the tool for eliminating cultural misunderstanding, and the simulation experience brought that belief under attack. I have spent considerable time since the simulation struggling with my faith in that regard. After much deliberation, I can still argue that education is key to understanding and enlightenment, but I would qualify that argument by stressing the need to educate at the earliest possible opportunity. The results of failing to do so are so dire that I consider the nonexposure of the dominant society to First Nations' culture a Canadian tragedy. That said, to educate later could certainly never be characterized as a wasted effort. This experience has shown me that a possible result of later exposure may be the development of the understanding that there are significant gaps in acquired knowledge... However, as a multicultural community, we cannot credit those who qualify their position with "this area is new to me," while continuing to assert the correctness of their position and persistently grasping for a means to have it validated. Early intervention, through education, really appears the only effective means of building relationships and bridging cultural divides.

Optimist, p. 28: Public education regarding the issues and possible repercussions for the people within the provincial boundaries is imperative. In the Canadian context, provincial public support is needed for a successful long-term relationship.

Lee, p. 5: We speak different languages in more ways than just words. Our cultures are exceptionally different. So much of the Aboriginal culture is learned by experiencing and is passed down by oral traditions. In today's society, with the dawn of fax, e-mail, video conferencing, etc., the pace is so fast; a culture that must be learned by doing, seeing, and experiencing seems to get lost at this speed. I believe that to resolve some of these issues, Canada and the negotiators for our country are going to have to learn patience—to listen more and talk less for the moment.

Denise, p. 29: William Ury ... notes that everyday people in the community are the “third side” and that it is in our “self-interest” to try to aid in solving disputes. He attempts to direct the mobilization of the third side to prevent, resolve, and contain conflict.⁹¹ The community in our situation is the Canadian community, which needs to be made fully aware of the issues at hand. The problems faced are not public enough and the stereotypes that exist need to be effectively rectified.... He notes that conflict escalates because of conflicting interests, disputed rights, unequal power, and injured relationships. He suggests dealing with these problems through mediators, arbiters, equalizers, and healers respectively.⁹² There is no doubt that what we need to do is head for reconciliation before we are faced with a situation that would involve containing and dealing with a worsening situation. The time to fix this is now, before the resentment and hard feelings spiral out of control and there is irreparable divisiveness in our country.

Lee, p. 23: Since the beginning of my studies at the University of Saskatchewan, I have had the opportunity to learn more about a conflict that I believe will become an even greater concern within my lifetime. Being in a class that discussed this issue so openly was a valuable experience. It reaffirmed my belief that solutions will not be found at the bargaining table. In order to resolve the problems that are faced by Aboriginal communities, we must take a closer look at the community and discuss the problems and viable solutions from a community standpoint.... I believe that working from the community outward is the only way we are going to stop the injustices that are done to Aboriginal people. One of the “chiefs” during our negotiation made a very eloquent speech about looking at the west side of Saskatoon and looking at the communities to understand what we are negotiating for. My belief is that until we resolve the problems within the community, there is little hope for resolving the larger issues within Canada.

B. Larsen, p. 24: In Canada, the federal government needs to address the atrocities it has committed against Aboriginal peoples. These atrocities include but are not limited to: passing

the *Indian Act* with its oppressive administration and appointment of Indian agents; relegating First Nations people to life on reservations; implementing the pass system and thereby severely restricting their mobility; and disrupting the spiritual and cultural life of First Nations families. This last act was accomplished by, *inter alia*, forcing First Nations children to leave their homes and live in residential schools run by white Christian missionaries, who tried to teach them to revere European cultural and religious beliefs, to speak the English language, and to despise their own culture, religion, and language.

Harrison, p. 8: I think it's [that there are negotiations] wonderful, but as I sat there listening, I could not help but think that there was a tremendous problem with the whole process. It may be that this process is the right thing to do, but what will that matter if Canadians, and more specifically Saskatchewanians, do not understand the history behind the negotiations or appreciate the purpose. Indeed, I do not think those people involved directly in the negotiations completely understand all the implications, so how could the average layperson fully grasp the effect it will have on Canada? I strongly feel that if people are not educated before the negotiations are complete, the entire process will have been for naught. I don't think anyone would contest the fact that the present system is not working and that something needs to change. What I do think will be a problem, however, is if this idea of self-governance is suddenly thrown upon everyone as a complete and final package ready for implementation, when there has not been any introduction of the concept beforehand. I would like to be able to say that I am the exception and that most people know about these negotiations, but I do not think that is the case. And maybe that's all right. Maybe the powers that be have a plan of action for this purpose. I hope so.

Heal

Harrison, p. 16: I've been reading this book, *Ahtahkakoop*.⁹³ It has been absolutely fascinating—so many of the stories that the chiefs and Elders relay in this book have striking similarities to Christianity... It really struck me reading this, that we as people get so fixated on upholding our own doctrines and beliefs that we overlook the fact that there are many similarities to the beliefs that other people hold... [W]hy do we spend so much energy fixated on our differences when in reality, we have so much more in common than we do that's different?... So why, having grown up as a Christian, did it take until right now to realize the similarities between this particular Indian spirituality or religion and my Christian religion? I find that frustrating. It's the differences that cause conflict. It's interesting to know the differences, but the similarities are what relationships are based on. It is those similarities that could bridge the gap between past and present and help us to move towards the future.

Alexander, p. 4: Up to this point, I have never talked to an Elder, and now here I was

listening with intent to what each of them had to say. I am glad I went and listened... Even the talk of the Creator and nature struck chords of Christian commonalities with me. This was a small watershed for me; it was something completely unexpected.

Optimist, p. 2: Understanding, recognition, and reparation are essential trust-building components necessary to negotiate a long-lasting implementation agreement.

B. Larsen, p. 21: The negotiations our class engaged in are part of what Minow refers to as “[g]roping for legal responses,” or “an effort to embrace or renew the commitment to replace violence with words and terror with fairness.”⁹⁴ This is an enormous and worthwhile goal. Minow informs us what is required in the journey of making such an effort of replacement: “remarkable personal strength ... and a capacity to transform the impulse for revenge into a search for something larger”⁹⁵

It is clear that, as a society, we need to face our fears and conflicts and try to transform them into something greater. But pain and suffering tend to lead people to vengeance, and transforming this need for revenge into something greater takes strength and patience and courage.

Harrison, p. 13: [H]ere in North America we have, for so many hundreds of years, striven towards general acceptance of all peoples, regardless of race, religion, or differences... We have tried to create a world where equality is the norm, an accepted way of life. Generally, these are good things—things that we should hold fast to, but perhaps this has hindered our acceptance of the Aboriginal treaties and the rights inherent in them. It is much like our acceptance of Québec, isn't it? We westerners are very quick to criticize this “distinct society” jargon... This, I think, goes a long way towards understanding why we view the Aboriginal people as a frustrating lot. We want them to be able to meld with our society, not be distinct from it. This isn't to say that it can't happen—we just have to be able to change our thinking, to *challenge* our thinking. Perhaps we are guilty of trying to impose this type of thinking upon the Native people. Perhaps this idea of “distinct societies” has its place within the general idea of the melting pot. Perhaps they can coexist and emerge better for it. There's a thought.

Harrison, p. 6: I ... started to understand the reason why the Aboriginal people seem to have this burning desire to tell their story (as we spoke about in class), and this lingering distrust and even hatred of white people ... especially the older ones, who experienced such injustice and abuse at the hands of a government in whom they had put their trust. So if they need to vent and if it seems as though they're lashing out at us just because we're white, then that's OK. I understand... Even though I wasn't responsible for those atrocities, I'm sure that when they see me, they see a representative of the white people, a race who took advantage of them and treated them like savages. It's unfortunate that after all these years we have not learned to listen to each other.

J. Colton, p. 22: I have a greater appreciation and understanding about Aboriginal people in Saskatchewan. My perceptions have changed from listening to Aboriginal students in class and meeting with Maria and Walter Linklater. Martha Minow in *Between Vengeance and Forgiveness* helped me to hear the real message behind what they were saying.... I remember feeling defensive because I thought [Walter and Maria] were blaming non-Aboriginal people for their problems. Unfortunately, I was listening with a critical ear and missed the message. Martha Minow recognized the power of truth telling and the significance of kind witnesses.⁹⁶ I learned that they were not blaming anyone. All they wanted was the chance to be heard. Now I understand that they need to heal by speaking and telling their stories.

Harrison, p. 31: I do understand, however, that a person may need the chance to tell their story of the hurts and sorrow before they can move on, and I think that simply telling their story over and over may not be enough. Perhaps that story must be heard by individuals who are responsible, or more closely responsible, for what happened to them before the healing process can be complete.

Kim, p. 17: We must come to terms with what has happened so that it never happens again. People who have been victimized or hurt need reconciliation and a chance to heal. This comes from the opportunity to speak about their experiences or a chance to hear an "I'm sorry." They will not heal by merely forgetting what has happened.

Janet, p. 12: One student reacted to [others'] criticisms by explaining to the rest her interpretation of the Elders' lecture. She stated that before Aboriginal people can reconcile with the past and get on with the future, their pain and loss must be validated. She went on to say that by speaking about the past, it becomes real for those who might otherwise deny it. I totally agree.

Harrison, p. 30: It's not that I have any more sympathy for those Aboriginal individuals who I see walking the streets, or abusing their children, or falling down drunk outside the bars. The difference now is that I have some understanding of the culture and the history, and most of all, I have met and gained respect for certain Aboriginal individuals in leadership who recognize the problems and want to change them.

Harrison, pp. 10–11: I agree with what Lee said in class last week—that it is time to put bygones behind us and get on with life. I acknowledge that Native people are hurting, but let's talk about it; let's talk about it until we can't talk about it any more. I want to hear the stories. Let's get it all out on the table, deal with it and go on. We can't keep living like this; it does no one any good. Whether we like it or not, we all have to live here, in harmony with one another, and the sooner the better.

Io, p. 3: Apologies: My initial reaction to the idea of apologies as critical elements to restoring peace where great wrongs have been done⁹⁷ was that they are insubstantial. Formal apologies have always seemed to me to be manipulative: the wrongdoer is forced to make a show of remorse, and the wronged is put on the spot to accept what seems insincere. Apologies seem too little, too late; they cannot assure that what was once possible will not again become possible. Minow's examination of the symbolic aspects of apologies does help me set aside my cynicism in this regard. Her insights into the paradox of apology—that while it cannot undo what has been done, it does do so in some mysterious way—make the process understandable to me. I am particularly intrigued by her statement that “the methods for offering and accepting an apology both reflect and help to constitute a moral community.”⁹⁸ The key point is that the *methods* on both sides are what matters. This is the heart of the matter.

Io, p. 4: Memorials: I have not given enough thought to the function of modern memorial constructions. I suppose I have seen them as political, local, particular, and have missed their contribution to the psychological, the spiritual, the universal. Minow speaks of historian Eric Foner and his vision of how the memorials created by one segment of a population—in celebration of the meaning of an event for them—can be extended in their meaning by the juxtaposition of other concretized memories that express a different view of that event held by a different group. This seems a peaceful solution, one that has the potential to open minds, to push understanding over the brink to transcendence of the cherished and the personal. I like the idea that rather than force the removal of memorials that serve a minority (such as statues of Confederate heroes), one could add memorials addressing the perceptions of other minorities, and thus, as Minow says, “mark important junctions between the past and a newly invented present” and “render new meanings to memories.”⁹⁹

Truth and Reconciliation Commission?

B. Larsen, p. 22: There are vengeful feelings on both sides in the situation between the governments and the First Nations people in Canada. Therefore, it is important we find an alternative.

p. 23: Minow is equally wary of forgiveness, however, which can lead to exemption from punishment, to forgetfulness, to a general ignoring of the crimes on the part of the public, which allows them to fester.¹⁰⁰

Annette, p. 13: J. Colton said that their pain and loss must be validated. This reminded me of the Martha Minow book where she says, “For the victimized deserve the acknowledgment of their humanity and the reaffirmation of the utter wrongness of its violation.”¹⁰¹

W. Roberts, p. 6: In the context of [the constitutional negotiations], Mr. Trudeau neither

apologized nor offered compensation for the past actions of the Crown. A sarcastic “So what do you want me to do about it?” was the best Mr. Trudeau could offer. However, “[t]he process of seeking reparations, and of building communities of support while spreading knowledge of the violations and their meaning in people’s lives, may be more valuable, ultimately, than a specific victory or offer of a remedy.”¹⁰²

B. Larsen, p. 24: It is unclear just how the federal government of Canada can atone for these atrocities. Perhaps truth commissions would include honesty on issues such as the abuse perpetrated by the residential school system, and by the police force or other government agencies. This may lead to increased public awareness and healing for Canada as a whole, and for First Nations people in particular. However, a truth commission would have to have power to recommend prosecution where circumstances warranted; otherwise it may be viewed as an exercise in futility.

More openness, honesty, and education are required with respect to Aboriginal issues and First Nation treaty issues. Canadians need to understand the suffering Aboriginal people have endured at the hands of white governments. We all need to be more aware of ways in which we as Canadians have been, and in some cases continue to be, complicit in an oppressive regime. A truth commission would serve to increase the communication between the parties, particularly through publicized testimonies and perspectives.

p. 26: It has been argued that even “severely traumatized”¹⁰³ individuals can recover through the “process of truth telling, mourning, taking action and fighting back, through connecting with others.”¹⁰⁴

p. 28: It would appear that a truth commission may offer healing for First Nations and probably for many other Canadians. If truth commissions can provide empowerment to First Nations and a sense of reconnection through the process of truth telling, the whole country would benefit. Such an effort, particularly if it were to recognize the harms inflicted upon the dignity and equality of First Nations people, would transmit the message that every individual in Canada is important and worthy of respect.

It is also important that survivors be able to tell their story in full, including the suffering they have experienced physically, mentally, emotionally, and spiritually. The passage of time may lead us to forget, or repress, physical reactions to physical assault or torture, but it is important for survivors to be able to talk about these issues. The physical body is intimately connected with the mental mind, and both affect our emotional, feeling self. After a violent assault, all three entities operate together to enable the survivor to reconstruct the experience. In a way, remembering torture is like weaving together three separate strands of the same story. The body has its own story and it is a very physical one. The body develops aches and pains in response to physical harms inflicted, and it retains bruises, sores, scars, ligature marks, and other indications of abuse. The physical self has its own memory, its own story, and it will tell it to the mind tuned to hear.

p. 29: Therapeutic services should be provided for victims, and counsellors/listeners should have access to debriefing services. It is hoped that a national shared experience may be created, together with a vision that is conducive to healing for First Nations and for Canada as a whole. To achieve this, trust must be developed between the parties. Because First Nations and Aboriginal people have been oppressed since the arrival of the white man, they have developed many social problems, including increased crime rates, addictions, and dysfunctional families. These injustices and their consequences must be addressed.

p. 30: It would be useful to document the causes and conditions that contributed to the current situation between Canadian governments and Aboriginal peoples in a contextual and analytic manner, with a view to establishing a shared understanding among Canadians and to preventing future injustices.

PART FOUR

CLOSING THOUGHTS

[The participants deserve the last word.]

Janet, p. 2: It may be months or even years before I realize the implications this course has had on my life and the lives of my peers.

Io, p. 28: [M]ultiparty institutional conflict resolution: a spiral dance. Once engaged in the process, there is no straight progression, no unmoving ground, no easy answer. We each start from our own best understanding of the issues at hand and begin the long process of working our way to the centre and back out again. As our words and actions issue forth, they take on a life of their own, hindering us or propelling us along, but always shaping our image in the eyes of everyone else. Everyone is listening, everyone is watching, everyone is dancing; eventually we each see each other person, each word, each action, not as they were when they came into the spiral, but as they appear before us anew at each turning. And each participant we see reflects our own image back to us, teaching us. In the end, we may accomplish what we set out to do, we may not. But we will have been revealed to each party at the table in ways we can never control. Integrity is the key to maintaining self-respect in this intensely personal endeavour. The negotiation process is intimate. It is alive with a life and power of its own. We can't fool it, though through it we can show ourselves to be fools. It changes us.

Lee, p. 6: Minow suggests: “[B]etween vengeance and forgiveness lies the path of recollection and affirmation and the path of facing who we are, and what we could become.”¹⁰⁵ Canada is still learning “who we are”; what we will become is something my generation and generations to come are going to have to recognize and make concessions to on the path to understanding.

Optimist, p. 35: Negotiation of treaty implementation agreements across Canada will require a sensitive understanding of the historical relationships and an equal willingness by all

parties to accommodate cultural differences, which will eventually lead to the trust necessary to accomplish this daunting task. The financial resources appear to be in place, and more importantly, the human element, the negotiators, are gaining the knowledge, understanding, and expertise to carry out this important task. There are a large number of agreements left to be negotiated or renegotiated; there are a large number of difficult resource and social issues to be resolved; and the timeline to complete these agreements is undeterminable. However, the process has at least begun, which should give us all hope.

Io, p. 25: The ultimate lesson of the day, as so eloquently and powerfully expressed by our co-chief negotiator Harrison at the close of negotiations, is that what we have been participating in is an encounter between two cultures. Not only are our interests very different; our respective approaches are fundamentally opposite. To me, the persuasiveness of Harrison's oration is born out of her unique location in this cross-cultural exchange: she occupies the threshold between the white/Canadian governors/hierarchical-patriarchal group on the one hand, and the indigenous/"excessively governed"/egalitarian-feminist group on the other. She made it plain that she had joined our side without a background knowledge of the issues and history, and so had no more time than the federal-provincial group to learn those issues and history. She had never been part of a circle-style organization, yet she had learned to trust its process to find answers and work effectively. Her personal plea for giving "uncertainty" a chance was thus, in my view, a powerful invitation to the other side to rethink the possibilities: there is a potential future Canada that both indigenous and nonindigenous ways of knowing can support.

Denise, p. 30: I found here a province not that different from my own. The people were friendly; students came from rural areas to the urban to study. People depended on nature to sustain themselves in many ways. Each province has been touted as being a "have not" within the country. The people of each province have a mystique or a strength that carries them through the tough times, yet leaves them standing tall.

Janet, p. 26: A sense of loss overcame me when the potluck ended. I felt a deep connection with all of my team members.... Harrison showed me that it is possible to bridge the two cultures. I thank her for this. I thank my team for being themselves and for showing me that as Aboriginal and non-Aboriginal people, we do have a common interest—our future.

NOTES

1. The legal literature tends to use the word “dispute” in claims with identifiable plaintiffs, defendants, and potential legal remedies, as in the phrase “Alternative Dispute Resolution,” while the word “conflict” implies legally inchoate disagreements. Andrew Pirie notes that this distinction is not shared by other disciplines: “Conflicts and Disputes” in A.J. Pirie, *Alternative Dispute Resolution: Skills, Science, and the Law* (Toronto: Irwin Law, 2000) at 37–41 [hereinafter Pirie].
2. *Delgamuukw v. British Columbia*, [1997] 3.S.C.R. 1010 at para. 186, 153 D.L.R. (4th) 193 (S.C.C.) at para. 186 [hereinafter *Delgamuukw*].
3. *Ibid.* at para. 207.
4. A. Morris, *The Treaties of Canada with the Indians of Manitoba and the North-West Territories, including the Negotiations on which they were based, and other information relating thereto* (1880; reprint, Saskatoon: Fifth House Publishers, 1991) [hereinafter Morris].
5. Royal Commission on Aboriginal Peoples, *Looking Forward, Looking Back*, vol. I, pt. II (Ottawa: Minister of Supply and Services Canada, 1996) at 64–94 [hereinafter Royal Commission on Aboriginal Peoples].
6. References such as this in the text—with a name and page number—refer to student essays submitted for the course; they are in the possession of the instructor.
7. W.T. Molloy, Alumni Achievement Award Acknowledgement Address, College of Law, University of Saskatchewan, 19 March 2001.
8. The class had agreed on an evaluation structure of 30 percent participation, and 70 percent individual essays, with the understanding that essays would record independent research as well as group activity to permit credit for individual work.
9. National Film Board, *Dancing Around the Table: Part I: The Political Struggle for Recognition of Aboriginal Rights; Part II: The Issue of Native Self-Government* (Ottawa: National Film Board, 1983, 1987).

Section 35.1 of the *Constitution Act, 1982*, reads:

35.1 The government of Canada and the provincial governments are committed to the principle that, before any amendment is made to Class 24 of section 91 of the “*Constitution Act, 1867*”, to section 25 of this Act or to this Part,

- (a) a constitutional conference that includes in its agenda an item relating to the proposed amendment, composed of the Prime Minister of Canada and the first ministers of the provinces, will be convened by the Prime Minister of Canada; and
- (b) the Prime Minister of Canada will invite representatives of the aboriginal peoples of Canada to participate in the discussions on that item.

Section 25 of the *Constitution Act, 1982*, reads:

25. The guarantees in this Charter of certain rights and freedoms shall not be construed so as to abrogate or derogate from any aboriginal, treaty or other rights or freedoms that pertain to the aboriginal peoples of Canada including:

- (a) any rights or freedoms that have been recognized by the Royal Proclamation of October 7, 1763; and
- (b) any rights or freedoms that now exist by way of land claims agreement or may be so acquired.

10. Royal Commission on Aboriginal Peoples, *supra* note 5 at 69.
11. *Webster's New World Dictionary*, College Edition (Toronto: Nelson, Foster and Scott, c.1962) at 1565.
12. F.O. Hampson with M. Hart, *Multilateral Negotiations Lessons from Arms Control, Trade and the Environment* (Baltimore, ME: The Johns Hopkins University Press, 1995) at 28.
13. M. Minow, *Between Vengeance and Forgiveness: Facing History after Genocide and Mass Violence* (Boston, MA: Beacon Press, 1998) at 19 [hereinafter Minow].
14. R. Fisher and W. Ury, *Getting to Yes: Negotiating Agreement without Giving In*, 2nd ed. (New York: Penguin, 1991) at 19–21 [hereinafter *Getting to Yes*].
15. Royal Commission on Aboriginal Peoples, *supra* note 5.
16. *Ibid.*, book cover.
17. *Ibid.* Royal Commission on Aboriginal Peoples, *Restructuring the Relationship*, vol. II; *Gathering Strength*, vol. III; *Perspectives and Realities*, vol. IV (Ottawa: Minister of Supply and Services, 1996).
18. Morris, *supra* note 4.
19. Minow, *supra* note 13.
20. This student paper goes on to provide a brief history of the treatment of women throughout Christianity.
21. P. Harris and B. Reilly, eds., *Democracy and Deep-Rooted Conflict: Options for Negotiators* http://www.idea.int/publications/democrac...d_deep_rooted_conflict/ebook_contents.htm (accessed 6 March 2001) [hereinafter *Deep-Rooted Conflict*.]
22. *Ibid.* at 3.4.1.
23. W.T. Molloy, *The World Is Our Witness: The Historic Journey of the Nisga'a into Canada* (Calgary: Fifth House, 2000) [hereinafter Molloy].

24. *Ibid.* at 43.
25. Pirie, *supra* note 1 at 138.
26. *Ibid.* at 141.
27. J. Bercovitch, ed., *Resolving International Conflict: The Theory and Practice of Mediation* (Boulder, CO: Lynn Rienner Publishers, 1996) at 119.
28. *Ibid.* at 109.
29. R.J. Lewicki, J.A. Litterer, J.W. Minton, and D.M. Saunders, *Negotiation* 2nd ed. (Toronto, ON: Irwin, 1994) at 421–24.
30. *Ibid.*
31. *Deep-Rooted Conflict*, *supra* note 21 at 2.5.1.
32. *Getting to Yes*, *supra* note 14.
33. *Ibid.* at 40.
34. *Ibid.* at 41.
35. *Ibid.* at 52.
36. Department of Indian Affairs and Northern Development, “Meadow Lake First Nations Agreement in Principle,” online < http://www.ainc-ianc.gc.ca/pr/agr/ml/mlcaip_e.pdf > (date accessed 8 February 2001).
37. Pirie, *supra* note 1 at 144.
38. Molloy, *supra* note 23 at 36.
39. *Ibid.* at 54.
40. *Ibid.* at 47.
41. *Deep-Rooted Conflict*, *supra* note 21 at 2.6.
42. Molloy, *supra* note 23 at 36.
43. *Ibid.* at 103.
44. This was the draft protocol agreement that the Crown team had received as a sample from Mr. Molloy in its meeting with him February 4th.
45. *Ibid.*
46. W.L. Ury, *Getting to Peace: Transforming Conflict at Home, at Work, and in the World* (New York: Viking, 1999) [hereinafter *Getting to Peace*].
47. Royal Commission on Aboriginal Peoples, *Restructuring the Relationship*, vol. II, pt. I, at 42–43.
48. Molloy, *supra* note 23 at 203.
49. M. LeBaron Duryea, “Mediation, Conflict Resolution, and Multicultural Reality,” in

- E. Kruk, ed., *Mediation and Conflict Resolution in Social Work and the Human Sciences* (Chicago, ILL: Nelson-Hall, 1997) at 322.
50. Molloy, *supra* note 23 at 202.
51. *Ibid.* at 220, which reads, “The Treaty addresses the issue of certainty through a number of provisions. Key among these is a clause which provides that the Treaty is a full and final settlement of Nisga’a Aboriginal rights. Another provision clearly states that the Treaty exhaustively sets out the Nisga’a section 35 rights. There is also an agreement that the Nisga’a Aboriginal rights and title are modified and continue as set out in the Treaty. Finally, the Nisga’a agree to release any Aboriginal rights, including Aboriginal title, that are not set out in the Treaty or which are different in attributes or geographical extent from the Nisga’a section 35 rights set out in the Treaty.”
52. Department of Indian Affairs and Development, “Achieving Certainty About Rights,” online: http://www.ainc-inac.gc.ca/nr/nwltr/trty/1995/treatynews_december_1995_e.pdf (date accessed 7 March 2001).
53. Molloy, *supra* note 23 at 62–63.
54. *Ibid.* at 103.
55. The term is used in the Alternative Dispute Resolution literature to refer to not addressing disagreements. See, e.g., Pirie, *supra* note 1 at 75, or C. Moore, *The Mediation Process: Practical Strategies for Resolving Conflict*, 2nd ed. (San Francisco, CA.: Jossey-Bass, 1996) at 104–8.
56. G. Cormick, N. Dale, P. Emond, S.G. Sigurdson, and B Stuart, “Building Consensus for a Sustainable Future: Putting Principles into Practice” (Ottawa: National Roundtable on the Environment and the Economy, 1996) at 4–11.
57. Molloy, *supra* note 23 at 36.
58. S. Buzzell, K. Boa, and B. Perkins, eds., *The Leadership Bible* (Grand Rapids: Zondervan, 1998) at 1150.
59. Molloy, *supra* note 23 at 16–19.
60. Daniel Goleman, *Emotional Intelligence* (New York: Bantam Books, 1995).
61. *Getting to Yes*, *supra* note 14.
62. Molloy, *supra* note 23 at 131.
63. *Ibid.* at 109.
64. *Ibid.* at 109.
65. *Ibid.* at 208.
66. Diana Tribe, *Essential Legal Skills: Negotiation* (London: Cavendish Publishing Ltd., 1993) at 11.
67. *Ibid.*

68. *Ibid.* at 8.
69. *Deep-Rooted Conflict*, *supra* note 21 at 2.5.1.
70. *Getting to Peace*, *supra* note 46.
71. *Ibid.* at 3–4.
72. *Ibid.* at 170–75.
73. Molloy, *supra* note 23 at 43.
74. *Ibid.* at 11. [The next sentence reads: “One hundred and eleven years had passed since they first approached the government of British Columbia in an attempt to settle their land claims.”]
75. Molloy, *supra* note 23 at 89.
76. H. Cardinal and W. Hildebrandt, *Treaty Elders of Saskatchewan* (Calgary, AB: University of Calgary Press, 2000) [hereinafter *Treaty Elders*].
77. *Ibid.* at 31.
78. *Ibid.* at 25.
79. *Ibid.*
80. *Ibid.* at 31.
81. Sharon Venne, “Understanding Treaty Six: An Indigenous Perspective,” in M. Asch, ed., *Aboriginal and Treaty Rights in Canada: Essays on Law, Equity, and Respect for Difference* (Vancouver: UBC Press in association with the Centre for Constitutional Studies, University of Alberta, 1997) at 206.
82. *Treaty Elders*, *supra* note 76 at 7.
83. *Supra* note 46.
84. Molloy, *supra* note 23 at 101.
85. V.E. Frankl, *Man’s Search for Meaning: An Introduction to Logotherapy* (New York, NY: Washington Square Press, 1963). Dr. Frankl chronicles the power of attitude in determining whether those confined to concentration camps lived or died.
86. Molloy, *supra* note 23 at 123 reads: “DIAND Minister Ron Irwin and Minister Anne McLellan, then Federal Interlocutor for Metis and non-status Indians, announced a new policy to recognize the inherent right of self-government as an existing right within section 35 of the *Constitution Act, 1982*. The policy, first articulated publicly in a press release dated Aug. 10, 1995, was based on the view that First Nations have a right to govern themselves in relation to matters “that are internal to Aboriginal communities; matters that are integral to Aboriginal cultures, identities, traditions, languages and institutions; and matter relating to their Aboriginal land and their resources.” The policy was an explicit acknowledgement that the Aboriginal peoples were the first inhabitants of Canada, and that they had developed governments, laws, and spiritual beliefs that allowed them to be fully func-

tional societies centuries before the arrival of Europeans.” (referenced at Molloy, p. 236 to “Aboriginal Self-Government: The Government of Canada’s Approach to Implementation of the Inherent Right and the Negotiation of Aboriginal Self Government,” Federal Policy Guide, published under the authority of the Honorable Ronald A. Irwin, PC, MP, Minister of Indian Affairs and North Development, Ottawa, August 10, 1995).

87. *Getting to Peace*, *supra* note 46 at 164.

88. Minow, *supra* note 13 at 93.

89. Trudeau in *Dancing Around the Table*, *supra* note 9.

90. *Getting to Peace*, *supra* note 46.

91. *Ibid.* at 113.

92. *Ibid.* at 143.

93. D. Christenson, *Ahthahkakoop: The Epic Account of a Plains Cree Head Chief, His People and Their Struggle for Survival 1816–1896* (Saskatchewan: Ahtahkakoop Publishing, 2000).

94. Minow, *supra* note 13 at 2.

95. *Ibid.*

96. *Ibid.* at 65.

97. *Ibid.* at 112–17.

98. *Ibid.* at 114.

99. *Ibid.* at 140.

100. *Ibid.* at 15.

101. *Ibid.* at 196.

102. *Ibid.* at 93.

103. *Ibid.* at 64. Minow quotes Eric Santner’s definition of trauma as the overstimulation of a person’s psychic structures so that the individual needs to reinvent or repair the basic ways of making meaning and bounding the self and others. Eric L. Santner, “History Beyond the Pleasure Principle: Some Thoughts on the Representation of Trauma,” in Saul Friedlander, ed., *Probing the Limits of Representation: Nazism and the Final Solution* (Cambridge, MA: Harvard University Press, 1992), 143, 147–48.

104. Minow, *supra* note 13 at 65.

105. *Ibid.* at 147.

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- Finkel, Conrad, and Veronica Strong-Boag. *History of the Canadian Peoples, 1867 to the Present*. Toronto: Copp Clark Pitman, 1993.
- at 122: "If these schools are to succeed, we must not have them too near the bands; in order to educate the children properly, we must separate them from their families. Some people may say that this is hard, but if we want to civilize them, we must do that" (a cabinet minister, 1883, describing the government's philosophy).
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Max, p. 5: I felt particularly fortunate to read the Molloy account of the Nisga'a treaty negotiation against the backdrop of Canadian history, which for me, involves the treaty process across the western provinces. While I found the book incredibly insightful with respect to the Euro-Canadian insider perspective on the federal position, I did not regard it as information on precedent that will apply in Saskatchewan. That is because the history and relationship between the First Nations in British Columbia and the Canadian federal government differs markedly from the relationship that exists in Saskatchewan.

Alexander, preface: Tom Molloy's book ... was excellent. I do not exaggerate when I say it effectively turned me from a neutral position on the Nisga'a and the treaty process to a firm supporter of both. Molloy's book was both relevant and informative.

Janet, p. 11: I appreciate that Mr. Molloy shared aspects of his personal life with the readers. By including his family affairs in the text, it tells me that not only does this federal negotiator have a human side, but also that he realizes the Nisga'a treaty benefits all Canadians. It sets a precedent for all future Aboriginal-Crown relations.

- Moore, C. *The Mediation Process: Practical Strategies for Resolving Conflict*, 2nd ed. San Francisco, CA: Jossey-Bass, 1996.
- Morris, A. *The Treaties of Canada with the Indians of Manitoba and the North West-Territories including The Negotiations on which they were based, and other information relating thereto*. 1880. Reprint, Saskatoon: Fifth House Publishers, 1991.

Max, p. 6: One of the most insightful pieces into the original treaty process was a compilation of the numbered treaties that included the nineteenth-century federal government's account of the negotiations on which the treaties were based. The concerns of First Nations were so strong during the original treaty negotiations that they are apparent within the text even though it was prepared from the federal perspective.

National Film Board. *Dancing Around the Table*. Part I, *The Political Struggle for the Recognition of Aboriginal Rights*; part II, *The Issue of Native Self-Government*. Ottawa: National Film Board, 1983, 1987.

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At 292, quoting R.B. Sunshine: “Cultural values generate a cultural perspective, which in turn shapes the negotiating behaviour.”

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At 116, re: assimilation: “If this in any way conflicts with the aspirations of Indians whose faces are set against ultimate destiny, it can only be regretted.”

Tribe, Diana. *Essential Legal Skills: Negotiation*. London: Cavendish, 1993.

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