

NEGOTIATING SYNERGIES

A STUDY IN MULTIPARTY CONFLICT RESOLUTION

MARJORIE L. BENSON

CENTRE FOR THE STUDY OF CO-OPERATIVES
UNIVERSITY OF SASKATCHEWAN



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University of Saskatchewan

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ABSTRACT

EVERYTHING MATTERS

Definitions

- “negotiations” are discussions or other communications through which humans navigate individual and group relationships
- “institutions” are groups with economic, political, legal, or social standing recognized in the culture, e.g., parents, children, employers, employees, national, ethnic, religious, or other organized groups
- “multiparty” means many groups

Combining these definitions, “multiparty institutional negotiations” are discussions or other communications among representatives of multiple groups in relation to the terms of their economic, social, political, or legal relationships. Such negotiations may be formal, as in multi-lateral negotiations or peace processes at the international level, or constitutional, federal-provincial, or stakeholder negotiations at the domestic level. They may also be informal, as members of families, communities, workplaces, businesses, professions, social, religious, and ethnic organizations daily navigate the conflicts arising out of the institutional roles and the differing needs, desires, and aspirations of those with whom they live and work.

The theme that emerges is that in multiparty institutional negotiations, “everything matters.” History, identities, cultural gaps, values, power imbalances, personalities, external events, and timing all come to the negotiating table and influence the process. Negotiations take place through words and actions, publicly and privately, officially and unofficially. Negotiations often take place in the context of long-standing social conflict among the respective participating groups. Outcomes are unpredictable, power is constantly shifting, and the results can range from agreements (in principle or in detail, binding or nonbinding, among all or some of the parties) about any aspect of their relationship (to meet again, to end violence, to divide territory, to alter legal rights and responsibilities) to no agreement, with increased or decreased animosity.

This project offers a conceptual model of multiparty negotiations from a process and skills point of view. The lessons are brought to life through three case studies presented in three different structures: an annotated analysis, a negotiation template, and a glossary.

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The Centre for the Study of Co-operatives has made the work accessible to a wider audience; editor Nora Russell committed herself with great patience and skill to format and style the students' reflections in a way that honoured their honesty, vulnerability, and transformation.

This work is dedicated to enhanced consciousness and energy in thought, word, and action, in all of us.

CENTRE FOR THE STUDY OF CO-OPERATIVES

THE CENTRE FOR THE STUDY OF CO-OPERATIVES WAS established in 1984 as an interdisciplinary teaching and research institute at the University of Saskatchewan. It is supported financially by the co-operative sector—Credit Union Central of Saskatchewan, Saskatchewan Wheat Pool, Federated Co-operatives Ltd., Co-operative Trust, The Co-operators, and the CUMIS Group—the Government of Saskatchewan, and the University of Saskatchewan. The university not only houses our offices but provides in-kind contributions from a number of departments and units—Agricultural Economics, History, Management and Marketing, Political Studies, and Sociology—as well as financial assistance with operations and nonsalary expenditures. We acknowledge with gratitude the ongoing support of all our sponsoring organizations.

The objectives of the Centre are:

- to develop and offer university courses that provide an understanding of co-operative theory, principles, developments, structures, and legislation;
- to undertake original research into co-operatives;
- to publish co-operative research, both that of the Centre staff and of other researchers; and
- to maintain a resource centre of materials that support the Centre's teaching and research functions.

Our publications are designed to disseminate and encourage the discussion of research conducted at, or under the auspices of, the Centre for the Study of Co-operatives. The views expressed constitute the opinions of the author, to whom any comments should be addressed.

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INTRODUCTION

Everyone has experience at multiparty negotiations. Since childhood we have been navigating relationships with parents, brothers, sisters, friends, and other adults—several parties voluntarily or involuntarily connected with one another, each needing or wanting something from the other, each with different priorities and concerns, each drawn to the other, yet each cautious because the other’s reaction is unpredictable and may be either benevolent or hostile. We have all experimented with ways to negotiate such relationships—speaking, remaining silent, or striking out.

Broadly speaking, multiparty negotiations include all the direct and indirect ways individuals and groups establish hierarchies, distribute resources, and trade power, including litigation and force. Such a definition, however, excludes little in history, and multiparty negotiations are understood more narrowly as talks by parties or their representatives aimed at agreeing on the terms of their economic, political, social, or legal relationships. They are the words and actions of parties connected by circumstance or will who have decided that they have more to gain by attempting to agree than by permitting a solution to be externally imposed. If parties can agree among themselves as to the terms of their relationship, while maintaining the peace and staying within external constraints (e.g., the law), relationships are preserved and autonomy is furthered. Such negotiations include informal or formal talks to settle issues within families, workplaces, or communities, among organizations, corporations, or heads of state.

At the international level, multiparty negotiations such as trade negotiations, environmental negotiations, and peace processes are preceded by years of uncertainty and difficulties in relationships. There are widely diverging group interests, power imbalances, historical animosities, conflicting cultures, differing legal systems, and often the absence of enforceable or impartial adjudicative regimes. Negotiators must attempt to forge procedural, substantive, implementation, and dispute-resolution agreements in the context of often deep mutual mistrust. Sometimes even if negotiators succeed, the constituencies they represent are still locked in hostilities and refuse to accept the agreement.

Multiparty negotiations create synergies—positive or negative. Positively, the resources of several parties can co-operate to create mutual benefits far superior to what any party acting unilaterally could have achieved. When these win-win solutions are achieved, faith in human

nature and the human condition is restored, however temporarily, and the forces of darkness seem to be held at bay. Negatively, when weaker parties feel they offered significant concessions and received no reciprocity, when stronger parties feel they gave it a chance and it didn't work, there are hardened unilateral positions and increased mistrust. Negotiation is a non-linear process, subject to personalities, changing governments, and shifts in external relationships. Outcomes can seldom be predicted in advance, and the possibility exists for losses as well as gains.

The stakes are sometimes small, but the time and energy required to come to successful agreements in a context of multiple parties and multiple interests are so high that parties usually persevere only when there is true interdependence—when parties know they can be badly hurt by unilateral action on the part of other parties—and when stakes are extremely high, such as vast sums in trade negotiations, or the lives and deaths of thousands in peace negotiations.

Durable agreements require good-faith participation, reciprocity, and implementation. Often there is insufficient trust to ground meaningful risk taking. Decisions with respect to multiparty negotiations almost always have to be made in conditions of uncertainty (the presence of unknowables) making them high stakes, high stress, and high risk. Parties often agree to participate only when the potential costs of violence or third-party adjudication are even higher.

Once agreed to, talks can be conducted formally or informally, at agreed times, among agreed parties, in agreed ways, or on an ad hoc basis. Formal talks can be open, i.e., with media or observers present, or closed, permitting only negotiators and/or support staff to be present.

The Institutional Context

Multiparty negotiations involve roles and external realities. Roles include negotiators' responsibilities as parents, employers, or representatives of organized groups at local, national, or international levels. External realities include relevant law and history, cultural and religious beliefs, monetary systems, and balances of power. These institutional dimensions “come to the table,” and negotiating competence requires knowledge of the relevant institutional context.

The outcomes of multiparty negotiations alter institutional contexts. Changes in economic, political, legal, or social relationships agreed to by heads of states or corporations affect large numbers of people directly. Less directly but rather cumulatively over time, the outcomes of daily negotiations among individuals and groups in homes, workplaces, and communities, alter the balance of power among social groups and eventually the legal, political, and economic structures.

The institutional dimension means that individuals and groups who have had no direct

input into the decisions are affected. Resistance may develop to any change in the “rules of the game.” Intractable issues of values and identity enter, alongside issues of resources and power. Groups affected often do not agree internally as to the appropriate strategy. Agreements reached among negotiators may inflame tensions and may unravel in the face of pressures from background groups.

The Process

In multiparty as in bilateral negotiations, position-based bargaining involves parties stating their desired positions (you want x ; I want y), then testing each other’s respective strengths and weaknesses, and if all goes well, compromising somewhere in the middle. Often, however, the approach leads to stalemate. An alternative, known as interest-based negotiation, or a problem-solving approach, involves parties offering information with respect to their needs and concerns, “must-haves” and “can’t have,” and then working co-operatively to generate options that satisfy as many of the parties’ needs and concerns as possible.

Interest-based bargaining offers potential for creative and constructive solutions, but it requires trust, which is often in short supply in multiparty negotiations involving long-standing social conflict. Negotiators find themselves needing to build trust, not only among the negotiators themselves, but among background groups, to ensure that an agreement, if reached, can be implemented.

Success

Success is an elusive word in a multiparty institutional context. Power is constantly shifting, outcomes are unpredictable, and success means different things to different groups.

Negotiation results can range from:

- agreement—in principle or in detail, binding or nonbinding;
 - among some or all of the parties—relating to any aspect of the relationships;
 - with any content—to meet again, to divide territory, to alter respective privileges and obligations; to
- no agreement, with increased or decreased animosity.

Agreements depend on complex balances of readiness and timing, personalities, and external forces, and, as noted, agreements may be achieved but may not be durable because of the opposition of background groups. Even so, new channels of communication may be opened that can form the basis of renewed communication in the future.

Everything Matters

In multiparty negotiations, everything matters. Words and actions are constantly being interpreted. Miscommunications as well as substantive disagreements create barriers in negotia-

tions. Events combine in unintended ways. Emotions as well as reason drive interpretations. Interpretations ground behaviour, which in turn drives negotiations. Negotiations take time and energy, and often expose human nature and the human condition in uncomfortable ways. The challenge is to bring sufficient knowledge and skill to the table to be able to articulate, listen, perceive dynamics accurately, envision, and persuade with respect to win-win strategies.

This Work

Because multiparty negotiations are processes—a dance of interacting forces—they are most effectively demonstrated through example and learned through experience. Though patterns repeat, each negotiation is unique. Understanding human nature, understanding the depth and breadth of the issues in the negotiation, understanding group identities, cultural gaps, power imbalances, negotiator personalities, and the institutional context, as well as practising to gain an instinct and educated judgement as to how the forces work together, are the best preparation for effective negotiation.

The conceptual model of forces and skills in multiparty negotiation is therefore offered through concrete examples of case studies. Students in the College of Law, University of Saskatchewan, conducted three multiparty negotiations, then courageously analyzed them. The 360-degree view of perceptions reveal dizzying differences in interpretations of the same event—interpretations that in turn form the basis of decisions in negotiations. Each case reveals different aspects of what to do and not to do in effective negotiation. Case one is presented through an annotated analysis of an unfolding negotiation; case two provides a step-by-step template for preparing and conducting a multiparty negotiation; and case three offers an annotated glossary organized alphabetically for easy reference.

All student names and designations have been made anonymous in order to protect privacy. Every effort has been made to contact all students. In the majority of cases, this has been successful, and in all such cases, quotes have been included only by permission. In Year One, every quote has been explicitly approved and students offered individual anonymous name choices. In the few cases in Year Two and Three where all attempts to contact students have been unsuccessful, and where individual student involvement could not be eliminated without destroying the integrity of the narrative, the instructor has made every attempt to include only quotes believed to be in keeping with the spirit of the student's participation, and, of course, to do so in a way that ensures privacy. Any of these latter students who recognize their words are encouraged to contact the publisher at the address on page iv.

Quotations, referenced in the text with page numbers from the students' papers for the class, have been edited with respect to grammar, punctuation, and capitalization. Despite compression and juxtaposition, every effort has been made to retain the original meaning and context of the participants' reflections. Instructor comments are in square brackets.

In the case studies, most of us bumped into our own limitations as well as the complexities of the process. In the words of one student, “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 participants were law students—students who will soon hold themselves out as professionals and make negotiation decisions that affect the lives of others. These materials are offered in the hope that we may all be better negotiators because of the contribution of these students.

PART ONE: YEAR ONE

CASE CHRONOLOGY

A. Prenegotiation

[The class spent the first half of the term preparing for Main-Table negotiations. Preparations included:

- *choosing a simulation conflict;*
- *guest lecture and video re multiparty negotiation;*
- *guest lectures re Aboriginal culture and reactions;*
- *initial team meetings;*
- *procedural negotiations; and*
- *pretable events.]*

1. Choosing a Conflict

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

a) Week One [11 January 2001]

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 an [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 per cent 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.... 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.

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.

b) Week Two [18 January 2001]

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.

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.

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 resources [to deal with an Aboriginal problem] 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!

c) Week Three [25 January 2001]

Kim, p. 7: [W]e finally ... decided on the issue and the roles that we would be playing.

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.

* *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*].

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].

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.

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.

2. Guest Presentations

a) *Professor Greschner*

[Professor Donna Greschner, University of Saskatchewan, College of Law, offered a guest lecture on the lessons she had learned from participating in the 1992 Constitutional Talks.]

Annette, pp. 4–5: [Professor Greschner] came into the [constitutional] negotiations in early April 1992 as a negotiator for Saskatchewan. She 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. Professor Greschner said that the AFN [Assembly of First Nations] had the toughest job because ... it was difficult to keep ... over six hundred bands ... informed.... Professor Greschner 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. Professor Greschner says this is the same as in multiparty negotiations such as with South Africa's new constitution. There is always inequality in bargaining power. She 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 such as anger or tears only when sincere. Professor Greschner 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, foreshadowing of things to come. Among the lessons were:

- 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.”

b) Constitutional Talks

[Students viewed Dancing Around the Table, a National Film Board video of the Aboriginal-Crown Constitutional Talks held between 1983 and 1987, as mandated by the Constitution Act 1982.¹]

Annette, pp. 6–8: Today we watched a video that involved the same process of constitutional negotiation that Professor Greschner told us about. 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. 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.

c) Elders' Visits

[Aboriginal Elders Maria and Walter Linklater lectured twice to the class to provide background knowledge on Aboriginal culture in preparation for the substantive negotiations. They also invited class members who wished to participate to join them in a sweat lodge. Students had diverse reactions to the visits.]

i) Lecture 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 teachers 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.

J. Colton, p. 3: 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 sceptical 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.

ii) Lecture Two [3 February 2001]

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 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.

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.

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

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.

d) Student Reactions [8 February 2001]

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.²

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, a 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 helps to have this kind of understanding before solutions of any sort can be realized.

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.

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.

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.

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.

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.³ 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, or

that they should be equal, they are not. Their psychological well-wishing will not change the current practice.

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.

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.⁴ 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.

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 done⁵ 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.”⁶ The key point is that the methods on both sides are what matters. This is the heart of the matter.

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 juxta-

position 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.”⁷

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.⁸

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 acknowledgement of their humanity and the reaffirmation of the utter wrongness of its violation.”⁹

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.”¹⁰

B. Larsen, p. 24: It is unclear just how the 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”¹¹ individuals can recover through

the “process of truth telling, mourning, taking action and fighting back, through connecting with others.”¹²

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.

Harrison, p. 16: I’ve been reading this book, *Ahtabkakoop*.¹³ 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 simi-

larities 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.

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.

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.

3. Independent Team Meetings

[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 teams' meetings.]

a) Crown Meetings and Consultations

i) Crown Meeting [25 January 2001]

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.

ii) Crown meeting [1 February 2001]

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.”¹⁴ 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.

iii) 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*,¹⁵ 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 Nations have no money.

iv) 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.

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 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.

v) 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.

b) Aboriginal Meetings and Consultations

i) Aboriginal Meeting [25 January 2001]

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.

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!

ii) Aboriginal Meeting [1 February 2001]

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

iii) 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.

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.

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.

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.

iv) 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, 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 accepted 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. 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.”

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.

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.

v) 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.

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.

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.

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 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.

4. Class Procedural Negotiations

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 student who had opted out of the negotiation would be the official scribe.

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 Agreement¹⁶]¹⁶—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.

5. Pre–Main-Table Events

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 AM I decided to send an e-mail to the Aboriginal team myself to find out who was 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.

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 PM 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 PM 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 felt 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.

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.

Carlos, p. 11: 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.

B. Main Table

[In multiparty negotiations involving large-scale historical conflicts, groups often agree to come to the table only in the face of imminent violence, institutional breakdown, external threat, or in our case, constitutional recognition and judicial recommendation. The purpose of negotiations is to agree on some aspect of the legal and policy rules that govern the group relationships. All the forces of the history and context come to the table—vast gulfs in interests, power, and resources; past animosities and mistrusts; entrenched religious and cultural differences. To these are added the negotiators' personalities, preparation, relationships, and the shifting dynamic between negotiators and background groups. 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. Backroom talks got negotiations restarted, but once back at the table, substantive problems proved unresolvable. Negotiations ended with agreement only to pro-forma clauses.]

1. Day-One Beginnings

[As students learned, the opening moments in a negotiation have an importance out of proportion to their clock time. The positive or negative energy of the first few interactions creates a momentum that colours transactions throughout the session.]

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!

J. Colton, p. 5: Today was the first meeting at the Main Table and it was full of unforeseen obstacles.

a) Assumptions and Misunderstandings

[Students were constantly shocked by the different understandings people had of the same event. Each assumed that if something was self-evident to him/her, it would also be so to others, and found that that was absolutely not true.]

J. Colton, p. 5: 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. 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.

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.

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.

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

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.

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.

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.

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.

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.

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.

b) Physical Arrangements

[At the last moment, when a member of the class fractured a kneecap, negotiations moved for safety reasons from the class round-table room to the faculty library, which is a long room with a large rectangular table that leaves little room for movement behind the chairs.]

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 [sat all on one side of the table and] 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 onlooker 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 the third hour), 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.

c) A Negative Momentum

[The energy in a negotiation begins to cumulate, creating a positive or negative synergy. Once established, the synergy continues to draw new energy to it, and is very difficult to turn. In our case, the negative beginnings created a negative synergy that continued to gain momentum.]

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.

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?

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.

2. Conflict Escalates

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

a) Caucus and Beginning Again

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.

b) Procedural Disagreements Flare

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.

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: When we re-entered the room after the caucus, 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 [be the] chair. 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 meet-

ing. [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 [had to leave] 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 negotiator] 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 for a caucus.

c) Interpretations Become Reality

[Everything is being interpreted by everyone all the time, and these interpretations become the basis of actions and reactions. As well as the misunderstandings noted above, history, power imbalances, knowledge gaps, and negotiators' personalities and relationships were all evident in actions and reactions. The forces are tangled and any separation is artificial.]

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.

i) 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.

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.

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.

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 Peoples*¹⁷]. 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.¹⁸

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*.¹⁹ 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 Morris²⁰ 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 Minow²¹ 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. 11: 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 prove 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"²².... 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.

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.

ii) 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.

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.

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.

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 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, to 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.”²³

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

iii) Knowledge Gaps

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 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.

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....

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*²⁴ 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.

iv) 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.

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.

d) Procedural Disagreements Continue

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 [stone], 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.

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 speakers 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.

e) 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.

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.

3. 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: 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.

4. Backroom Talks Restart Negotiations

[For complex reasons usually relating to the even greater dangers of the alternatives to negotiations, pressures build to get back to the table. Getting talks restarted usually involves "backroom talks"—informal talks away from the Main Table among individuals who have some trust with one another. Often individuals from groups with connections to both opposing groups, but who are not directly part of the confrontation—a "third side"²⁵—act as mediators.]

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

pp. 15–16: The process for solving this stalemate proved interesting.... During this initial impasse, I ended up talking to W. Roberts in one backroom 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.

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!).

5. 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.]

a) 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. Professor Greschner said that in her experience, the feds never leave the table and there are often co-chairs. This chance meeting with Professor Greschner 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.

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.

b) 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.

i) "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 rights similar 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.

ii) "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 cosy 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.²⁶ 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 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.

c) 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.

6. 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. Tension continued to build over events between Day One and the final negotiating session on Day Two. The complex mix of spinning energies was evident in a press release, a merged protocol, and another backroom approach.]

a) 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, where 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.”²⁷

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 version 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.²⁸

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.

b) 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.

p. 18: My role, along with [my provincial co-negotiators], as we are representing the province, was to be the middle person, the mediator. 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 proposal, 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.

c) Another 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, 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.

7. 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. Day-Two negotiations start more amicably, but again run into substantive difficulties. Participants move through the Draft Three Protocol Agreement, tabling any clauses that

cause conflict to be dealt with at the end. During the last half-hour, participants address the substantive issues, but conflict again arises and is unresolvable before time runs out.]

a) Better Beginnings

Janet, p. 21: For homework [last night] I [had] prepared a speech for [today'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.

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 hand-crafted 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].

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.

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.

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.

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.

Janet, p. 15: I had [had] a huge job to accomplish over the break. I was going to play the role of an Elder at the negotiation table. I [had] told the team I would like to say a prayer at the negotiations, as this was customary. That meant 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.)

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 [whose attitude then] 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.

b) Moving through Draft Three

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 as they had done with us, so why had they not yet discussed it?

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.

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 as if we were going nowhere, so I suggested that we take a break. Alexander (civil servant) 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.

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.

Max, p. 26: 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.

c) Substantive Conflicts Resurface

[In the last half-hour of negotiations, negotiators turned to the substantive conflicts, but could not resolve them. Troubles arose over several phrases, including "the inherent right of self-government," "jurisdiction/governance," and "certainty."]

i) "Inherent Right of Self-Government"

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

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] [sic] called for a Crown caucus but [the chief federal negotiator] declined. This was a very emotional issue for the Aboriginal team.

Alexander, pp. 18–19: The recent smoothness of the table negotiations stopped. 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 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.

ii) "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 blindfolding effect of normative thinking about the relationship between Canada and the First Nations prevents this from being easy to grasp.

iii) *“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.²⁹ 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.³⁰

The night before, I also accessed the DIAND 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.”³¹ 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.”³² 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.”³³ 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 word “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 the existing uncertainty over land claims that is 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.

d) Time Runs Out

[So talks ended with the previous agreement on noncontroversial clauses. No substantive agreements were reached.]

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

WHAT HAPPENED?

[Students reflected on what had caused the negotiations to fail substantively and to achieve only trivial agreement. Students reflected on how interest-based bargaining had withered in the face of positional stances, on groups losing confidence in the negotiations and retreating to salvage strategies, and conflict avoidance. Students' debriefing thoughts and thoughts re the class supper close this section.]

1. The Difficulty of Interest-Based Bargaining

[Students concluded that the lack of trust they experienced at all levels—arising out of historical animosities, power imbalances, misunderstandings, different assumptions and interpretations, the negotiators' personalities, preparation, relationships, and events at both negotiating sessions—had made interest-based bargaining impossible.]

Alexander, p. 23: The entire book *Getting to Yes*³⁴ is based on this simple principle [of “interests not positions”]. Chapter three is entitled “Focus on Interests, Not Positions.”³⁵ 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.”³⁶ 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.”³⁷ ... 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.

Percival, p. 12: [The chief federal negotiator] did not like the position she now found her-

self 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's, followed by an attempt to reconcile the two. The province was left on its own to agree or disagree with either of these positions.

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.³⁸ 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 receive.

Optimist, p. 24: An experienced positional negotiator may find learning a co-operative approach requires a conscious and conscientious effort.

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.

Percival, p. 7: I was fortunate ... to have a group that 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.

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 speakers list that they designated.

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 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.

2. Groups Lose Confidence in the Negotiations

[At some point in the negotiations, groups decide, consciously or subconsciously, whether any substantive progress is likely to be made. Often groups decide that the mistrust is too deep and wide, the power differentials too great, the differences in interpretation too vast, and the historical animosities too

entrenched, to make any meaningful agreement at the table possible. Such a conclusion becomes a self-fulfilling prophecy.]

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.

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.

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.”

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 among 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 chairperson’s 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.

3. 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 by staying at the table. In our case, the nondominant group made a conscious decision to attempt to use Day Two to explain interests.]

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.

Janet, p. 20: 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. 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 modelling 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.

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.

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.

4. Conflict Avoidance

[As noted, three and one-half of the four hours on Day Two were spent agreeing to noncontroversial clauses. Talks continued, but “avoided” rather than “resolved” the conflict.]

Either way, continuing the talks without facing substantive issues is termed in the literature “conflict avoidance”³⁹—a technical, not evaluative, term. 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. It is easier to avoid them than to force a confrontation and its unpleasant consequences. Talking about whatever the parties can agree on, however small, while avoiding the issues on which parties have unresolvable differences, permits co-existence at however minimal a level.

Some experience conflict avoidance as success, others as failure. Whichever way it is perceived, suppressed conflict involves suppressed emotion, which is by its nature volatile, making conflict avoidance always an uneasy truce on the edge of unravelling.]

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

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.

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

a) Perceived As Success

[As long as talks continue at some level, small agreements may create the basis for larger agreements, the parties can co-exist at some level, and negotiators and background groups do not have to explain to themselves or others why things have broken down.]

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 more positive, upbeat feel to the table—a sense of eminent completion and accomplishment.

b) Perceived as Failure

[Continuing to participate in talks after parties decide no meaningful agreement is possible is to avoid conflict. Talks within families or communities avoid issues that they know from past experience are unresolvable. International negotiations avoid directly their deep conflicts about values, religion, and historical interpretations because parties know those differences are unresolvable. Substantive issues known to be most intractable are placed later on the agenda, because experience teaches that there is no hope of resolving those unless some trust can be built through resolving some of the smaller issues. Talking about small things on which the parties may be able to agree, while avoiding the conflict concerning other issues, permits talks to continue.

Some experienced not dealing with substantive matters as failure, often with a lingering negative emotional residue.]

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.

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.

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.

c) *An Uneasy Truce*

[Some felt conflicted, accepting the avoidance as preventing the talks from breaking down completely, but feeling a keen sense of unfinished business that would surface in the future.]

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 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.

5. Debriefing

[Listening to each other's interpretations of what had happened brought a range of emotions.]

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.

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.

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.

Alexander, p. 20: [In the debriefing class] 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.

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.

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.

6. The Class Supper

[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.]

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.

Alexander, p. 29: Keep the dinner. It was very good and created the required informality and debriefing outside the school setting.

p. 22: 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.

LESSONS

[Students reflected on the lessons they had learned about negotiating in a multiparty 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, students' names have been changed for attribution of quotes to protect privacy. As one student 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 lessons are classified into three major topic areas: preparation, negotiators, and energies spinning.]

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

A. Preparation

[Preparation addresses knowledge the students learned they must accumulate—with respect to history and context, their own and others' interests, relevant law and power, current policy and developments, and relationships they must attend to; with respect to negotiators and the readiness of background groups; and, if and when parties agree to negotiate, then procedural and protocol agreements that must be worked out for talks to proceed. Students were surprised at the amount of preparation that goes into effective negotiations.]

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 is immense.

1. Knowledge

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.

Kim, p. 16: 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.

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

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

a) Context and History

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

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.

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.

i) Descriptions of Aboriginal Cultural Values and Context

[Students later reflected on the cultural values and context they had learned through the Elders' lectures and their own readings.]

a. Parties Have Different Interpretations of Almost Everything

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)⁴⁰

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."⁴¹

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."⁴²

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 dif-

ferently 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.

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.

b. Aboriginal 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.

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.

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.

c. Aboriginal Oral, Experiential, and Spiritual 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.

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.

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.⁴³

Even though I had researched the role of an Elder, I did not feel truly equipped to speak as one.

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*⁴⁴ 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.

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.⁴⁵

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.

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.

d. Aboriginal Perceptions of Sharing, Gifts, and the Future

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."⁴⁶

This sharing is also mentioned by William Ury in his book *Getting to Peace*.⁴⁷ 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.

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.

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.

b) Know Your Own Interests

Kim, p. 15: I 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: 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.

c) Know the Other Side and Its 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.

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.

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 is 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.

d) Know the Substantive Law

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

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 the issues 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.

e) Know 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 website, I managed to find a summary of the Agreement-in-Principle between the Meadow Lake First Nations (MLFN), Saskatchewan, and Canada.⁴⁸ The actual agreement included issues such as governance, jurisdiction, application of laws, MLFN lands, intergovernmental relations, and dispute resolution, among others.

2. Relationships

[Because core issues of value, identity, survival, and power are involved, multiparty negotiations are stressful for both negotiators and background groups whose lives are affected by the outcome of negotiations. For talks to go on at all, nondominant groups must concede on such issues as language or procedure, and often make large opening concessions. For meaningful problem solving to occur, dominant groups must concede on issues of power. Positive or negative synergies created at the talks affect background groups. Negotiators find themselves having to attempt to build trust both with other negotiators at the table, and also among the factions and background groups that will be affected.]

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.

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

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; however, this takes time.

Optimist, 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.

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.

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.⁴⁹ 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.⁵⁰

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.⁵¹ 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.

Denise, p. 29: 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 in perspective when you just read about it on paper.

3. Process Agreements

[Shared understandings as to process cannot be assumed, and these must be worked out in advance. Attempting to work out protocol arrangements at the Main Table is time consuming, frustrating, and ultimately unworkable. Negotiating protocol agreements is also an important opportunity for the negotiators to learn about each other and to build trust.]

J. Colton, p. 17: Protocol is very important in negotiations. The protocol must be agreed upon 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.

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.

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.

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.⁵²

a) Procedural Agreements

[Procedural agreements include common understandings as to agenda, speaking arrangements, voting procedures, documents to be negotiated, and information precirculation.]

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.

b) How Many Places at the Table and Speaking Arrangements

Alexander, p. 10: The Crown teams were quite sure, myself included, that ... we had all agreed that only four persons from the Aboriginal side would sit at the table.

J. Colton, p. 5: As a class we 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.

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.

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

c) Physical Arrangements

[Students learned that physical arrangements have a major impact on negotiations—positive or negative. Limitations of space, time, food, drink, or facilities, constrict communications and create negative pressure in the negotiations. Sometimes these limitations catalyze action.]

Annette, p. 4: [Professor Greschner 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.⁵³ Professor Greschner talked about the long days. The negotiations would start at 8:00 AM and at 6:00 PM 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 Professor Greschner 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.⁵⁴ 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.⁵⁵

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.

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.

d) The Document to Be Negotiated

[Negotiations cannot proceed without agreeing on the document that is to form the focus of the negotiations. If there is not considerable resonance among the parties concerning the first document, negotiations are severely hampered.]

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.

Alexander, p. 10: The Crown teams were quite sure ... we had all agreed that we would work from the framework of the protocol agreement that Lee had got from Tom Molloy.

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.

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.

Max, p. 10: I was aware that [we] were 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.

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.

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.

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.

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.

e) What Will Be Disclosed in Advance

[If there are misunderstandings as to what disclosures and communications are to be shared and by when, tensions will rise.]

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.

Percival, p. 5: Commitments to share information prior to the negotiations were not met and follow-ups were ignored....

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 [our document] via e-mail [the night before the negotiations]. 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.

B. The Negotiators

[Students found they needed to grow their own awareness and skills to be successful negotiators. Individuals found that they must know themselves, learn that everyone sees things differently, and learn as much as they can about human beings. They learned that they must be able to separate their ego from their role, take responsibility for their own feelings and behaviour, walk their talk, practice, speak respectfully, try to see another's point of view, watch and listen, and be prepared to co-operate. As members of teams, they learned to stay flexible, to find ways to allow each individual's strengths to be incorporated, and to expect both positive team synergies and intrateam conflict.]

1. It All Starts with Individuals

[Negotiation is a human process, and it all starts with individuals. Outcomes depend on how the individuals involved think and behave—individuals as negotiators, as members of teams, or as members of background groups.]

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. As the old saying goes, if one is not part of the solution, one is part of the problem.

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.

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: Negotiations are only as effective as those negotiating.

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

Harrison, p. 7: I'm extremely curious as to the personality types that seem to make good negotiators.

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.

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.

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.

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.

a) Awareness and Attitudes

[Change at the individual level involves changing both what goes on in our minds and in our behaviour. Changing what goes on in our minds begins with awareness of ourselves and an attitudinal commitment to change. Then we need to implement attitudinal change as behavioural change.]

i) 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.

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 interests rather than positions in the negotiations.

Io, p. 6: Know what you need in order to function, and find a way to get it.

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 multiparty 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.

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.

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 noncompetitive approach.... [Those] who are able to develop trust, and who form good working relationships with others are likely to be most effective as co-operative negotiators."⁵⁶ 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.⁵⁷ The choice of negotiators becomes a crucial factor.

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.

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. 6: Know what triggers set you off, and watch that they don't interfere with your own professionalism.

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 tranquility.

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 lessons that I learned; it seems that even they have a place in discovering the self.

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. 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.

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 need more confidence in the abilities that I do have.

Io, p. 27: [L]esson for me: Scrutinize myself closely to see when I get mired in one way of thinking.

"[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.

ii) Don't Be Surprised by Internal Conflict

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.

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.

Optimist, p. 23: These kinds of conflicts necessitate good leadership.⁵⁸

iii) Learn as Much as You Can about Humans

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.

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 had spoken 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, 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.

iv) Learn That Everyone Sees It Differently

[One of the most dramatic lessons was how differently each person experiences and interprets the same thing. We assume the other person sees it as we do. But they don't. We can't imagine why they don't "get it"; they think the same of us. The result is constant carnage in trust and relationships. The only way to know how another person sees it is to 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.

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.

p. 22: Often I felt as if 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.

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.

v) Be Able to Separate Your Ego from Your Role

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.

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 Professor 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.

Kim, p. 15: Agreements were difficult to come by—I sense much personal bias getting into the negotiations.

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 devalued the interests and values of the other side.

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.

Alexander, p. 25: 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.

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) Behaviour

[Awareness and attitudes are a first step, but what others see is behaviour. Thus implementation and action are what count.]

i) Don't "Give or Take Anything Personal"

[Fisher and Ury in Getting to Yes advocate separating the "person from the position" as a cardinal rule of interest-based negotiation.⁵⁹ Students experienced how difficult this is to do in practice.]

Daryl, p. 13: We were unable to separate the professional from the personal.

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.

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 our professional self from our personal self?

p. 5: [D]isparaging remarks and personal confrontations [have no place] in 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 ... 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.

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 ... because their personal feelings were preventing them from negotiating effectively.

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.”⁶⁰ [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.”⁶¹

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: All the members at the table, including myself, were unable to achieve [the separation of the personal from the professional]. 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.

ii) Emotions

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.

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.

W. Roberts, p. 4: [T]he importance of emotion should not be underestimated; at times, showing anger or frustration is beneficial to the negotiation. I feel this is important, and there should never be an artificial display of these emotions. They carry weight only if genuine.

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.

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.

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.

iii) Take Responsibility for What You Think and Feel

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 think I would have enjoyed the class discussions more if people owned the ideas and insights they were sharing.

p. 23: When I find myself in an unworkable situation, I must identify what I can do to make the situation better.

iv) Walk Your Talk

Alexander: 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."⁶² Basically, practise what you preach.

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.

Percival, p. 5: 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.

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.

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.

v) Value Experience

Carlos, p. 21: Experience plays a large part ...

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.

Percival, p. 3: We spent little time ... 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 negotiation ... I am not certain everyone had the same idea of what a negotiation entails.... 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.

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.

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.

vi) 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.

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.

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.

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.

vii) Don't Dismiss Difference per se

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.

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.

viii) See Another'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.

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.

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.

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.

ix) Give the Benefit of the Doubt

Max, p. 24: Pam Marshall[s]⁶³ ... 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, 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.

x) Speak 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.

p. 8: I found this video quite different from Professor Greschner'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 Aboriginals 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.

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.

Daryl, 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.

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.

xi) Be Prepared to Collaborate

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.

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 the chair 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.

2. As Members of Teams

[Individuals in multiparty negotiations work in the context of groups—negotiating teams and background groups to whom the negotiating teams are accountable. The values of the group influence individuals. Thus a negotiator who knows the values (culture) of the relevant groups has a better opportunity to anticipate and influence group behaviours.]

a) Attitudes and Awareness: Understanding Cultural Differences

[The maxims “know thyself” and “know as much as you can about the other party” from the individual level translate at the group level to “know your culture” and “know as much as you can about the other cultures.” In this case, the dominant cultures involved were Euro-Canadian and Aboriginal.]

Carlos, p. 25: [Understanding] cultural differences play a large part in achieving success in negotiations.

Daryl, p. 18: Depending on the culture one originates from, one 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.

Optimist, p. 25: Cultural differences manifest themselves in a multitude of ways; however, the concept of time is 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, crosscultural differences in assumptions about time can raise the problem of co-ordination in acute form and can further constitute a recurrent source of negotiating confusions.”⁶⁴ ... “[P]eople from different cultures not only speak different languages, but, what is possibly more important, inhabit different sensory worlds.”⁶⁵

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.”⁶⁶ 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.”⁶⁷

p. 24: The North American culture historically supports a positional, competitive negotiation style as opposed to an interest-based, co-operative approach.

Percival, p. 7: [T]he Crown team discussed ... [how we would handle the fact] 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. We also discussed the protocol we should ask for to ensure that our dignitaries were treated with respect. I was disheartened by our group’s inability to draw a link between having respect for others and receiving it ourselves.

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.

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.⁶⁸

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.

b) Behaviour

[In groups, as with individuals, behaviour is what others see and interpret and it is therefore an immediate force in negotiations.]

i) Separate Group Ego from the Task at Hand

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.

J. Colton, p.19: Participants should stay focussed on the reasons why they are at the table.

ii) Be Open to Change

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 present. 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.

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.

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.

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.”⁶⁹ 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.”⁷⁰

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.

iii) 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.

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.

c) The Team

[Negotiations are done by teams, which means both the synergies of co-operation and additional conflict in the form of intrateam conflict. How teams work together to maximize the synergies and resolve the conflicts has a significant effect on the outcome of the negotiations.]

i) Positive Synergies

[In the words of the old nursery rhyme, “when [it] was good, [it] was very, very good.”]

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.... Each individual's style of negotiating emerged. 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 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.

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.

ii) Intrateam Conflict

[“... and when [it] was bad [it] was horrid.” Though intrateam conflict is normal and inevitable, students found it exhausting and often frustrating. How much energy intrateam conflict absorbs, and how satisfied team members feel with outcomes, have a significant influence on the performance of the team at the negotiating table.]

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.

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.

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 was 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.⁷¹

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.

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.

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.

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.

p. 23: I don't get this late business.

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.

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. I think that maybe members with less in common would help us to focus more on the negotiations.

C. Energies Spinning

[Each multiparty negotiation is unique, but each is a fluid dynamic of shifting forces. Energies Spinning identifies some of the forces that negotiators can expect—power imbalances, emotions, slow progress, mistrust, setbacks, unpredictable outcomes—and offers ideas as to how negotiators can respond to influence the dynamic—speaking, caucuses, informal talks, and risk and surprise to shift momentum.]

a) Forces That Will Be Present

Annette, p. 21: [W]hy would we think that real multiparty conflict resolution would be easy! We heard from Professor Greschner 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.

i) Things Take Time

J. Colton, p. 19: Multiparty negotiations are very time consuming.

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.⁷²

B. Larsen, p. 16: Reaching consensus takes time, as evidenced by the various processes we have been through in this class.

J. Colton, p. 13: [The provincial representatives] ... 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.

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.

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.

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.

ii) Negotiations Take Energy

[Students found the negotiations mentally, physically, and emotionally taxing.]

Io, p. 14: I was surprised by the intensity of emotions stirring within my group. Some were reluctant to speak lest they lose composure.... [There] seemed an even greater intensity of emotion in the federal group.

J. Colton, p. 16: I decided to wait until I calmed down to write.

Max, p. 19: [In addition to my professional duty], I felt a personal duty as well. As my daughter's mother, I felt obligated to explain her interest in a substantive outcome;... as an

individual with a deep appreciation for the issues involved, I felt a need to educate those who were unaware about the real-life significance of the subject-matter with which we dealt.

Janet, p. 4: 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.

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. 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.

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.

B. Larsen, p. 14: [This crisis of the chair] was followed by a recovery of sorts and also some postcrisis depression.

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.

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.

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.

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.⁷³ His relief after thirty months must have been monumental compared to the relief I felt after only eight hours.

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

Io, p. 27: [G]etting people to change their attitudes is the key; doing so takes constant effort.

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.

iii) Interest-Based Negotiations Are Difficult in Practice

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?

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.

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.

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.

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.

Annette, p. 29: It is important to identify and understand the basic principles of interest-based versus position-based bargaining. [One can] recognize position-based bargaining through aggressive and strategic behaviour, versus interest-based problem solving that emphasizes collaboration and creative solutions, but in reality, [this is very difficult].

iv) The Core Force: Trust

[What makes interest-based bargaining so difficult is that it requires negotiators to reveal information about their deeper needs and wants. Revealing such information makes one vulnerable, because it can be used against one. Thus it can only safely be revealed where reciprocity is assured. This occurs only when there is a relationship of trust.

With trust, parties can afford to take the risks of revealing the information that allows creative solutions to be reached. Without trust, however, negotiators must protect themselves, hence cannot afford to reveal any information that might be taken advantage of.]

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.

Annette, p. 2: [At the beginning of the class] 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 was our first multiparty conflict... 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...

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.... 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.... 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 conflict we chose to discuss.

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.

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 discussions over a meal or a beer as well as across the negotiating table.”⁷⁴ I do not think this relationship was ever developed at our negotiations.

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.”⁷⁵ A major consequence of the “people problem” in negotiation is that the parties’ relationship tends to become entangled with their discussions of substance.

p. 2: Understanding, recognition, and reparation are essential trust-building components necessary to negotiate a long-lasting implementation agreement.

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.

v) *External Accountability to Background Groups*

[Negotiators are accountable to background groups from whom they take their direction. This limits negotiators’ freedom as they have a limited mandate at the table. Sometimes background groups give shifting direction, reflecting internal conflict in the background group. More importantly, however, these groups have not had an opportunity to build the trust that negotiators have built among themselves. Historical animosities and lack of trust cause these groups to interpret agreement negatively, often leading to rejection of agreements painstakingly arrived at by negotiators.]

Optimist, p. 26: Tom Molloy in *The World Is Our Witness*⁷⁶ 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.”⁷⁷ 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.

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.

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?

Optimist, p. 28: The authors of *Democracy and Deep-Rooted Conflict*⁷⁸ 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 co-operation and endorsement is needed to ensure that the outcome of talks becomes a reality."⁷⁹

vi) *Power Imbalances*

[There are almost always power imbalances among the parties. Some groups have more legal jurisdiction, some greater access to financial and human

resources, some more favour in public opinion, some stronger leadership, and so on. There are many kinds of power and the balances constantly shift during the negotiation process.]

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.⁸⁰

Annette, p. 30: “Collaborative Democracy”⁸¹ 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.

vii) The Presence of the Subjective and Nonrational

[Participants found that the issues of identity, values, power, and survival all come to the table and are at stake in the talks, implicating not only our minds, but also the emotional, physical, and spiritual. Students used the words “personal” and “emotional” to describe these categories.]

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, page 30: Be prepared for outbursts of emotion....

B. Larsen, p. 3: In some respects [saying that we can separate the emotional from the 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.

J. Colton, p. 19: The emotion of one group member tends to spread among the group to create unwanted stress and tension.

b) What to Do in the Face of These

i) Try to Make Positive Beginnings

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.

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.

ii) Stay Flexible

J. Colton, p. 19: Successful negotiations require a combination of patience, energy, and flexibility.

W. Roberts, pp. 2–3: 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: [P]roceed to the negotiation table with a list of ... goals and remain open to different methods of achieving those goals, regardless of how those methods differ 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.

*iii) Balance Energy**[Students recognized that they needed to match strength with strength.]*

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.

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.

p. 14: 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, and we will suffer.

*iv) Speak, Make Explicit**[Just as we can't assume we know what the other party is thinking, we can't assume that other parties know what we are thinking. One cannot blame another for not "getting it" if we have not spelled it out clearly and precisely.]*

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.

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.

v) Use Backroom Negotiations

Carlos, p. 24: The second most important thing I learned [after preparation] was the effectiveness of backroom negotiations.

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.

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.

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.

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.

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.

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 [who would keep] negotiations moving, provide 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.

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.’”⁸² 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 then 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.

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,⁸³ 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.

vi) Know That Outcomes Are Unpredictable

[Students commented that negotiators should never expect two sessions to be the same. Each negotiation will take on a life of its own and outcomes will be

determined by the interaction of the forces that tangle together in complex and infinitely varied ways.]

Lee, p. 25: I feel that much of how the class develops is due to the [negotiators] who participate. We all have such different backgrounds and experiences. No two [negotiations] will ever be the same.

Alexander, 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.

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.

vii) Use Risk and Surprise to Shift Momentum

[Taking an unexpected risk can often shift the energy and redirect momentum in negotiations. For example, students concluded that the Aboriginal Elder's gifts when they were not expected had a profound effect on the negotiations.]

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."⁸⁴ Ury says Sadat had pierced the psychological wall of suspicion that may separate parties more than a physical stone wall.

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.

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.

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 gifter 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.

viii) Transformation at the Heart of Conflict

[Further, at the heart of conflict, faced with honesty and trust, participants experienced moments of transformation.]

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.⁸⁵ 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.

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.

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.

D. Unfinished Business

[Time runs out, and there are always things that have not been dealt with, both among individuals and among groups. Students conclude that each individual is responsible for what he or she takes away, and that the path to healing historical animosities among groups is a long one.]

a) We Are Responsible for What We Take Away

[Students concluded that the only person they can control is themselves, but that each is responsible for his or her own interpretations and feelings in relation to the negotiation.]

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.

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

p. 30: This class ... 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.

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 [class] 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.

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 astonishing, 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.

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 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.

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. 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.

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 multi-party 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.... I feel as though every action, every thread in this tapestry could be analyzed and reanalyzed from a number of perspectives; however, this is but a snippet ... a taste of the whole production.

b) Rebuilding Relationships in Background Groups

[Students reflected on what might help to reduce historic animosities among background groups in a way that might help make interest-based negotiations possible in the future.]

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.

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 communities 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.

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.⁸⁶ 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.⁸⁷ 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.

E. Year One Suggestions

[Before leaving, students were asked to offer suggestions as to how to improve the class.]

Lee, p. 20: Looking back, 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....

p. 25: 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.... A class to discuss different ways to negotiate and the process would be helpful.

Harrison, p. 7: 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.

Alexander, p. 29: 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 passions. I think that even keeping the same topic every year, the simulations will be drastically different. 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....

p. 15: I thought and I still think this 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....

p. 29: 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.... 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.... Negotiations should be longer.

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.

Janet, p. 30: Have a mandatory reading package that includes readings on the development of multiparty institutional conflict resolution. Include articles on interest versus positional bargaining.... p. 30: Have lectures for the first three weeks on interest-based negotiations. Have the students observe real negotiations.

J. Colton, p. 23: I would suggest that the class should begin with a crash course in alternative dispute resolution.

Annette, p. 30: I would have liked some information and training in mediation and conflict resolution beforehand.... I would figure out a different physical setup ... that would allow more equal speaking for everyone who wanted this.

Carlos, p. 25: Allow for teams of equal size.... Ensure the details regarding chair, seating, etc., are decided beforehand.... Try to find a round table.... Decide on a more flexible speaking arrangement.

PART TWO: YEAR TWO

CASE CHRONOLOGY

A. Preparation and Procedural Negotiations

1. Year Two Changes

[In year two, the syllabus specified eight hours of substantive talks and recommended that the students engage in prior procedural negotiations to choose a chair, decide on speaking and voting arrangements, and agree on a dispute-resolution procedure. The instructor assigned the substantive issue for negotiation subject to student ratification, provided in-class negotiation instruction, but made cultural instruction optional in order to respect cultural difference. Names and contact information was provided for Aboriginal resource people, practising negotiators, and student coaches.

Year two changes the naming mechanism—using two letters to identify each individual. The first letter denotes the team; the second denotes the individual within the team. Though at one level this is less personal than the year-one approach, in which individuals chose their own anonymous names, at another level it allows the reader to identify the team interests that are the context for the student's quote while still preserving anonymity.

Team letters are as follows:

A = Aboriginal

F = Federal

P = Provincial

CCA and CCB = Co-Chairs

A, B, C, D, and E, are separate individuals within each group. AA, for example, is the first person in the Aboriginal group, AB the second, etc.]

AA, p. 2: The early stages of the seminar (five sessions) were devoted to lectures and discussion of necessary skill requirements and development in multiparty negotiations.

2. Procedural Negotiations

[The students engaged in formal procedural negotiations to choose teams, to choose a chair, to decide on speaking and voting arrangements and a dispute-resolution procedure.]

AB, p. 8: The class decided that it would be advantageous to negotiate the same topic as the previous class, as we had the experience of seeing where particular stumbling blocks were and could as a result avoid them. Therefore, it was agreed that our topic would be “to negotiate as the Aboriginal Peoples of Canada, federal Crown and provincial Crown, the implementation of Treaty No. 6 within Canada.”

PE, p. 6: On 11 February 2002, the MPN (multiparty negotiation) class established the procedural parameters of the negotiations.

AA, p. 9: The procedural rules for Main-Table negotiations were established fairly smoothly and quickly over three, two-hour sessions.

a) Choosing Teams

[The students decided to choose teams by drawing names out of a hat.]

FC, p 30: The first thing that had to be done was that students had to be separated into groups. We decided that each group would consist of an equal number of people.

PE, p. 3: The class decided that assigning people to teams would best be accomplished randomly. Everyone’s name was put into a hat and assigned as they were drawn to the federal, provincial, or Aboriginal team.

b) Choosing the Chair

[The students determined they should have a designated neutral chair who would leave his or her team to perform chair functions. The students nominated two candidates, voted, but decided following the vote to accept both candidates as co-chairs.]

AB, p. 12: The role of chairperson was the first issue for discussion. The initial discussion was fraught with comments on the importance of neutrality and the skills required of an effective chairperson, as the chairperson is a crucial element in the dynamic of a negotiation.

p. 13: [After a caucus], the group indicated their desire for a single neutral chairperson as opposed to a rotating one. Two students, CCA of the federal team and CCB of the Aboriginal team, were nominated to assume the chairperson role. These individuals were asked to tell us why they should have the opportunity to be the chairperson and subsequently left the room to permit a private vote.

PE, p. 7: After discussing the two potential nominees, a vote was held, won by CCA. The two nominees were asked back into the room. This was where the class first showed its dedication to arriving at creative solutions. It was decided that there really was no rule against having two chair people. The class took into account the fact that no allegiances had been made to individual teams as well as our combined perceived admiration and respect for both of the nominees.

AA, p. 8: Since one of the co-chairs came from the federal team and one came from the Aboriginal team, each of those teams was left with four members. The provincial negotiation team still consisted of its original five members.

c) Table Protocols

[Students agreed as to how table speaking, voting, and dispute resolution would occur. The students determined that they would have a different voting method for procedural as opposed to substantive issues.]

AB, p. 13: The chairpersons requested a five-minute break so that they could set the session's agenda.

CCA, p. 17: We had an outline of the areas we needed to address from the syllabus. Having only an outline without a concrete document allowed us to be creative in how we set up and carried out negotiations.

CCB, p. 26: [Because it was a familiar procedure to most], *Robert's Rules of Order* guidelines were used as the basic procedure as to when parties have the floor, how to make motions, and how to take votes. This basic understanding was added to by the parties themselves. We devised specific regulations for voting on substantial and procedural issues, speaking arrangements, and dealing with impasses. The combination of established general rules and procedures to satisfy [group] needs provided a backdrop with the legitimacy necessary for effective and efficient negotiations.

FC, p. 34: Given that the federal and Aboriginal teams were left with only four members each while the provincial team retained its full five members, this imbalance of power had to be reconciled in the voting procedures.

i) Procedural Votes

[Each team would have four votes in procedural matters and a motion would pass on a simple majority.]

PE, p. 8: The group decided that each team would have four votes in procedural issues. This would take account of the fact that two of the teams had only four members, while the other still had five.

FC, p. 34: After many different ideas were acknowledged, it was decided that during procedural negotiations:

- each group would have four individual votes;
- each group would internally decide the direction of the four votes; and
- a simple majority of individual votes would pass procedural motions at the Main Table.

FB, p. 15: An amendment addressed missing members: it was decided that the remainder of the group would carry any missing member's fourth vote in procedural matters.

ii) Substantive Votes

[Each team would have one vote in substantive matters, and a consensus of all three team votes—federal, provincial, and Aboriginal—would be required to pass a motion.]

FC, p. 34: For substantive issues, it was decided that:

- each group would possess only one vote; and
- a consensus among the three votes would be needed to pass a motion.

AA, p. 12: Any substantive agreements had to be passed unanimously with each party having one vote.

AB, p. 18: The most important decision made by the group during procedural negotiations was the agreement that a consensus among the federal Crown, the provincial Crown, and the Aboriginal representatives, must be reached in order to pass any substantive issue during the course of the negotiations. This was the crucial proposal of the negotiation session as it levelled the playing field, allowing the teams to resolve the issues under negotiation and to work to find acceptable solutions for all parties, as opposed to the majority.

p. 16: It was also decided that the distinction between whether an issue was substantive or procedural would be made by the chairpersons.

iii) Speaking Arrangements

[Students concluded that one person in each team would take the lead in speaking for that team for that day, and that that leader could defer to any other member of the team to speak on a particular issue.]

PE, p. 8: Speaking arrangements were also decided on 11 February 2002.

FB, p. 15: We decided in favour of a daily group leader who would identify him or herself to the chairs and speak on behalf of the group, [but who could] defer to another member of the team for a particular issue.

PE, p. 8: This allowed for the negotiations to have a certain amount of collective participation and gave everyone an opportunity to address the class in negotiations.

AB, p. 31: Personally, I spent the week before the first two substantive negotiation sessions defending the manner in which our team chose to interpret the speaking arrangement policy. It seems as if numerous negotiators from both Crown teams were under the impression that, since AA was the sole negotiator for the Aboriginal representatives during the negotiation sessions, he was forcing his opinions and beliefs on the rest of our team. However, this was hardly the case. The team itself made the decision to proceed with a single negotiator during substantive negotiations to portray an image of team solidarity. It was also the case that Aboriginal caucus meetings were extremely engaging, with all members of the team participating actively in the decisions made and strategies adopted.

iv) Dispute Resolution

[Students agreed that if consensus could not be achieved, teams would caucus, then have another Main-Table discussion, and if necessary, another caucus prior to a vote. Additionally, any team could request a caucus break at any time. In general, caucus breaks were to be limited to five minutes.]

AD, p. 5: All sides agreed that before an issue was tabled a particular procedure would be followed:

- Groups would caucus for a maximum of five minutes to discuss why the issue(s) reached an impasse.
- There would be a Main-Table discussion of the impasse.
- There would be a further five-minute caucus to consider positions.
- The chairs would use their discretion as to when this procedure would occur.

AA, p. 12: [Thus] when an impasse was reached, there would be a mandatory caucus to discuss the impasse, a return to the table for further discussion, and then another mandatory caucus prior to a vote.

AB, p. 27: Caucus meetings were to be called whenever one team felt that a break was required to discuss strategy, to determine group consensus, or to discuss any other issue of importance that may arise.

FB, p. 15: The dispute resolution mechanism was also one that encouraged discussion, expression, and understanding among groups.

v) Seating Arrangements

[Students agreed that the teams would form four sides at the table, with the Aboriginal team facing the chair, and the federal and provincial teams facing each other.]

FC, p. 34: The next issues regarded the seating arrangements for the negotiation. The Aboriginal group expressed a preference for occupying a position directly across from the neutral chairs. They were opposed to being seated across from either the provincial or federal government.

FB, p. 15: [After caucus], it was accepted that the Aboriginal group would face, and the Crown groups would flank, the chairs in the Main-Table negotiations.

d) Recording: Audio vs. Video

[The students decided to audiotape the Main-Table talks as a record to be placed in the library for students to consult if they wished.]

AC, p. 8: The next issue was how we should record the negotiations. We had three options: i) videotape; ii) audiotape; and iii) written transcripts.... Watching a tape from previous negotiations, I noticed that the participants seemed very stiff and formal. Audiotape would be okay, except that it would be time-consuming to listen to all the talks again. Transcripts would be great, as we could simply skim over the negotiations and focus on the issues that we wanted to. But the transcripts required someone who could record and type them up; this would be a tedious task that nobody really had the time to do.

AB, p. 17: The group decided against videotaping.... p. 22: We decided that an audio recording of the substantive negotiations needed to be made and would be kept on reserve in the law library.

e) External Advisors

[Teams agreed to consult external resource advisors on their own option.]

AB, p. 17: The group agreed that external resource persons would be invaluable assets to the teams as they could provide a perspective of the negotiation process that could not be acquired through traditional research methods.

f) Scheduling

[Students decided to complete their eight hours substantive negotiations in two, two-hour class sessions, and one Saturday morning four-hour session.]

AC, p. 8: After the break we talked about the timetable for substantive negotiations. [The syllabus specified] eight hours [of substantive negotiations], with everything wrapped up by March 18th. We had to decide whether we wanted four two-hour sessions, or two two-hour sessions and one four-hour session. The last option was difficult to decide because we had to try to find a time when everyone could attend. This issue took a lot of time, as it seemed near-

ly impossible to get everyone together for four hours at the same time. Some people were not willing to put in some of their weekend because it inconvenienced them. Finally, we decided to meet for two two-hour sessions and one four-hour session on a Saturday morning.

FC, p. 34: The structure for negotiations was set up as having two two-hour sessions and one four-hour session. It was believed that a four-hour session would result in an increase in the expediency and effectiveness of the negotiation.

CCA, p. 17: [In sum], the procedural protocol that we finally came up with was relatively simple and contained only a few clauses:

Teams Federal: FA, FB, FC, FD
 Provincial: PA, PB, PC, PD, PE
 Aboriginal: AA, AB, AC, AD
 Co-Chairs: CCA, CCB

Speaking One person is to speak on behalf of each group each day but may defer to others within the group.

Decision Making

Procedural

Each group has four votes.
 Motions are passed by a simple majority of votes.
 Before each vote there is a mandatory two-minute caucus.

Substantive

Each group has one vote.
 Motions are passed by consensus among all groups

Dispute Resolution When consensus is not reached, the procedure is as follows:

1. Groups will caucus for a maximum of five minutes to discuss why the issue(s) reached an impasse.
2. Discussion of impasse at the table.
3. A further five-minutes caucus to consider positions.

g) Substantive Agenda

[Students agreed on a procedure to have an agenda developed and circulated prior to the first two-hour session.]

PE, p. 17: The Aboriginal team agreed to take responsibility for developing an outline of issues to be discussed. In order to avoid the unfortunate incidents from last year's class, it was agreed that the outline would be made available in sufficient time to allow both the provincial and federal teams time to research the issues before the beginning of Main-Table discussions on 4 March 2002. It was decided that the Aboriginal group would e-mail the issues to the other teams no later than four days prior to our first session to ensure full disclosure and opportunity to speak to the issues.

B. Substantive Negotiations

[Over the eight hours of substantive negotiations, students came to agreements on a tribunal to determine infringement of Aboriginal rights and new provisions in relation to health care and education.]

1. Pre–Day-One Team Meetings and Substantive E-mails

[Each team held meetings prior to Day-One negotiations at which they discussed their interests and actions.]

a) Aboriginal

[The Aboriginal group developed an agenda and e-mailed it to the other groups. A conflict developed over the content and tone of the e-mail.

Teams discussed their interests, opening statements, and how to begin the negotiations on a positive note.]

AD, p. 10: We met briefly on 25 February and again on 27 February to prepare the outline of our goals and interests that we had agreed to circulate.

AA, p. 13: We decided to submit for negotiation the inherent right to self-government, building on the existing treaty.... p. 14: We attached ... a preamble drafted to portray, in explicit terms, the need for self-government from the First Nations perspective. The “need” for self-government is grounded in the historic Aboriginal-Crown relationship; what has transpired between the Crown and the Aboriginal peoples of Canada gives rise to the contemporary issues facing Aboriginal people.... p. 16: We identified financing and resource development be the first issue to be negotiated. Our negotiation proposal was e-mailed five clear days in advance of the first round of Main-Table negotiations.

AC, p. 9: The provincial group responded that they would like five minutes before negotiations to state their interests, and that such an opportunity should be given to all the parties. The federal party sent us an e-mail that took us by surprise. The feds stated that no one group should be able to dictate the agenda of the negotiations.... Ironically, it was the feds and the province who placed the onus on us to identify the substantive issues.

AD, p. 10: The Aboriginal team sent e-mails back and forth responding to the federal government’s position. We were unsure how to approach the federal team’s attempt to establish their own agenda and prioritize the issues. Our team contemplated contacting the province to get their reaction to the e-mail; however, time became a factor.

b) Provincial

[The provincial team developed a list of its issues and agreed to request that each team make an opening statement to the table.]

PE, p. 19: The provincial team met on 1 March 2002.... p. 21: [The provincial team decided that its concerns were] limited to three issues: i) how a new level of government would fit into the existing political framework; ii) how the implementation of self-government would be funded (a primary concern for the government of a province with a shrinking tax base); and iii) the scope of the Aboriginal right to self-government. We decided that it would be necessary to ... develop a reciprocal relationship among all levels of government.

p. 22: The provincial team also decided that we would request that each team have an opportunity to address the Main Table at the beginning of the substantive negotiations on 4 March 2002. The provincial team felt that there needed to be an honest display of willingness to bargain in good faith combined with an opportunity to address the three aforementioned provincial concerns before substantive negotiations began. PA agreed to e-mail the class with the request, accompanied by a statement outlining the province's indifference to the order of the speeches. [We] thought this would show how dedicated the provincial team was to this creative effort.

The team also agreed to bring some form of gift to the Main Table.

c) Federal

[The federal team developed a response to the Aboriginal e-mail and agreed that teams needed to put forward their interests rather than positions at the first meeting.]

FB, p. 20: The Aboriginal group's apparent leader, AA, put forth an e-mail outlining their position and an agenda for negotiations based on the royal commission's recommendations as they pertained to Treaty 6 and Aboriginal self-government initiatives. While comprehensive in its scope, presentation, and its detailing of the Aboriginal positions, it simply did not sit well with our team.... p. 21: Following a group meeting to discuss the Aboriginal group's position, the federal group developed a statement in response, as did the provincial group. These statements were e-mailed to all members of the class, reiterating the co-operative nature of the negotiations, but stating that agenda setting was not a unilateral process. We said that we appreciated the efforts of the Aboriginal group to put forward a starting point for negotiations, but we felt that all groups needed to put forward their "interests" rather than their "positions" at the first Main-Table meeting.

FA, p. 16: As the federal team, we wanted to start negotiations on a positive note.

2. Day-One Negotiations

[Students found that, despite positive preparations and expectations, Day One ended in disturbing conflict and an impasse over governments' rights to infringe Aboriginal s.35 constitutional rights.]

FA, p. 16: As we entered the room and sat down, I felt an excitement in the air. Everyone seemed fresh and ready to go. [Team members] across the table smiled.

AB, p. 27: The substantive negotiation commenced with the chairpersons acknowledging and welcoming each of the teams to the negotiation.

AD, p. 11: The provincial government brought doughnuts for everyone and the federal government passed around homemade chains.

FA, p. 17: The provincial team spoke first. Their speech was positive and spoke of the requirement of a good relationship and an attempt to come to an arrangement that was good for all parties. They brought doughnuts to share.... Then it was the federal team's turn. They welcomed the parties to the table and passed around keychains.... p. 18: The Aboriginal team gave their opening address and had no gift offering.

PE, p. 24: The Aboriginal group headed by representative AA did not reciprocate the government's promises of good-faith bargaining and did not thank the federal and provincial representatives for their gifts. Rather, they initiated a discussion focussing entirely on the Aboriginal right to self-government.

CCA, p. 20: After the opening there were some procedural clarifications that needed to be addressed, the most contentious of which was with regard to who set the agenda.... Prior to the first substantive session, both the provincial and federal groups [had] expressed concern that one party in these triparty negotiations was dictating the agenda.

In response to these concerns, the chairs invited all parties to present a statement of interests and raise issues to be addressed in the negotiations. Thereafter a caucus was taken to discuss what was raised and the issues that were to be put on the agenda. After the caucus the agenda was set down.... CCB and myself as chairs organized what was on the table into an agenda for substantive negotiations. The issues needed to be broad enough to capture all the interests, but not so broad as to be impossible to negotiate, given the time constraints that we were working within. The three issues that we proposed and that were agreed to by all parties were: (1) how Aboriginal self-government fits into the current political scheme; (2) the scope (jurisdiction) of Aboriginal self-government; and (3) how the implementation of Aboriginal self-government will be funded.

AA, p. 19: We had recognized prior to negotiations that the inherent right to self-government would necessarily be an s.35 right.¹

FC, p. 37: I stated the federal government position as outlined in the 1995 *Federal Policy Guide*.² I acknowledged that we recognized the Aboriginal's inherent right to self-government based on the view that Aboriginal peoples of Canada have the right to govern themselves in relation to matters that are internal to their communities, integral to their unique cultures, identities, traditions, languages, and institutions, and with respect to their special relationship to their land and resources.

The provincial team disagreed with this position and stated that in order to provide an Aboriginal group with any type of governmental jurisdiction, the constitution would have to be amended. Their position was that given the extreme difficulty of amending the constitution ... all powers awarded to Aboriginal governments would consist in delegated powers from the jurisdiction of either provincial or federal government.

FC, p. 38: An impasse was reached regarding the issue of inherency, and a caucus was called. When the parties returned, the province had changed their position and [accepted] inherency. Subsequently a motion was made and passed accepting inherency.

CCA, p. 23: Another impasse followed in defining limits to the federal and provincial governments' ability to infringe that right. It was agreed that court-established procedures for the infringement of constitutionally protected rights would be adopted.³ The contention was with the procedure to "infringe a nonconstitutionally protected right..."⁴

The Aboriginal group argued that there could only be infringement ... if there was consent. They also contended that the past procedure for infringement of these rights only required consultation, which amounted to advance notice of infringement and that this was not enough. The federal group agreed that consultation was too little, but contended that consent was too much. Both the province and the federal groups articulated that the vantage point from which they approached the issue was looking at the broad rights for all people of Canada. Furthermore, there would need to be checks and balances to the formation of any new aspects of Aboriginal self-government to ensure that the rights of all Canadians are protected. The federal government proposed that the justification could be arbitrated by a court of law.

AA, p. 19: [The Aboriginal group] looked at what the court had said in *Campbell v. British Columbia* (Attorney General) (2000), 79 B.C.L.R. (3d) 122 in regard to self-government at paragraph 182-83:

Any decision or action which results from the exercise of this nonentrenched treaty right is subject to being infringed upon by Parliament and the Legislative Assembly. The Supreme Court of Canada has determined that both Aboriginal and treaty rights guaranteed by s.35 may be impaired if such interference can be justified and was consistent with the honour of the Crown.

We had clearly identified our interest as having jurisdiction over certain areas under self-government that are integral to the survival of and well being of the peoples of Treaty 6. The inherent right to self-government for Aboriginal people in Canada at the outset is an empty right. It only becomes meaningful when there is sufficient jurisdictional room for developed and established governance institutions to provide for the needs of the people. In the Canadian context this means that both federal and provincial powers will have to be given up to some degree to allow for Aboriginal governance to become established and to flourish. Where, then, is the sense in the Crown making jurisdictional room for Aboriginal government, only to continue to hold the power to limit and infringe upon that jurisdiction?

Under the justification portion of the test for infringement of an Aboriginal right, the Supreme Court in *R. v. Sparrow* [1990] 1 S.C.R. 1075 held that the Aboriginal group whose right might be infringed must be first consulted. I concede that the extent of the consultation can vary depending upon the circumstances, but it can potentially mean as little as notification.

It became critical to negotiate our way out of the test for infringement as set out in *Sparrow* if we hoped to ensure continuity and sustainability of meaningful self-government for future generations of Treaty 6 peoples....

p. 20: I pointed out that rights under self-government could be infringed by a valid objective born from interests of an individual or private nature such as regional or economic fairness. In *R. v. Gladstone* [1996] 2 S.C.R. 723, Lamer C.J.C. writing for the majority suggested that—and using the rhetoric of reconciliation—the pursuit of economic and regional fairness might give rise to a valid objective under the *Sparrow* standard for justification of the infringement of an Aboriginal right. I tried to make the other parties understand that consultation was not enough when nonconstitutionally protected interests [on the part of governments or individuals] could form the basis of a valid objective and thus be justified under the *Sparrow* standard.

p. 21: I appealed to the moral unfairness of a situation that would allow a nonconstitutionally protected interest [by governments and individuals] to be a valid objective that could infringe upon a constitutionally protected right, in this case the inherent right of self-government protected by s.35. However, the reality is that any infringement of the right to self-government will manifest itself through an act of Parliament or the legislature of the province. Therefore, if we could negotiate consent as a replacement for consultation as part of the justification standard for the infringement of the right to self-government, we would in effect “handcuff” certain federal and provincial powers. Those powers under the enumerated heads of power found in the *Constitution Act 1867* (30 & 31 Victoria, c.3. U.K.) most likely affected would be s.91(24), the federal power over “Indians and lands reserved for Indians,” and the provincial powers under s.92(13), “Property and Civil Rights in the Province,” and s.92(16),

“Generally all matters of merely a local or private Nature in the Province.” I would suggest that if these powers are left unchecked, in relation to an s.35 right to self-government, any negotiated agreement between the federal Crown, provincial Crown, and a First Nation will always be surrounded by an air of uncertainty.

FB, p. 20: After the relatively conflict-free and efficient negotiation of procedures and dispute-resolution mechanisms, my fears were aroused by the possibility that we would now be forced to take defensive positions in the substantive negotiations.

CCA, p. 23: Tempers began to rise and hostility across the table mounted. There were no motions on the table and we were nearing the end of the session.

FC, p. 39: The [federal team] proposed that the courts would determine whether an imposed infringement upon the jurisdiction of Aboriginal government would be justified and in keeping with the honour of the Crown. The provincial government echoed the concerns raised by us. As the provincial group was expressing their concerns, time ran out on the first session.

CCA, p. 23: Before we could depart, as chairs we attempted to summarize what happened and where we would be for the next session.... [The session ended with a statement by PD of the provincial team] that [the status quo was not working and that] “we should not lose the forest for the trees.”

3. Post-Day-One Team Meetings

[Each team held additional meetings prior to Day-Two Negotiations.]

a) Federal

[The federal team discussed how to get past the impasse. One member offered a proposal for a federal-provincial-Aboriginal tribunal to determine infringement issues.]

FB, p. 22: Following the first session, the federal group met at Alexander’s⁵ for a group think tank.

FC, p. 40: Everyone was frustrated by the impasse.... [After considerable discussion], FD put forward a solution....

FD, p. 22: I would like to suggest an innovative solution.... Any infringement on non-constitutional issues will be examined by a nine-party tribunal consisting of three representatives from the province, three from the Aboriginal team, and three from the federal team. These parties would work together much like a panel of judges and decide by a majority whether a breach is justified or not.

FC, p. 40: We decided [this] should be proposed during the next negotiation.

b) Provincial

[The provincial team concluded that a discussion on shared financial responsibility and accountability was needed before other discussions could proceed.]

PE, p. 23: The provincial team met again on 3 March 2002 to further discuss the approach that our team would take the next day at the Main-Table discussions.... The team decided that we would all feel comfortable in promoting a form of “self-sustaining self-government.” This paradigm would be based on the knowledge that provincial financial support of Aboriginal self-government would be contingent on the ideal that self-government would one day become self-sufficient. Throughout the meeting, various members expressed their concern over the issue of accountability. How does one ensure any government is accountable for their actions? Governments must have a certain degree of autonomy to spend public money for programs, procedures, and activities considered to be in the best interests of the public. Aboriginal self-government is a precedent-setting idea. The newness and complete lack of a frame of reference is troublesome to those who prefer orderly paradigms that are controlled by the majority view. Accountability and responsibility for one’s actions are absolutely imperative to the success of Aboriginal self-government if it is to become a fully functioning third element in Canadian governance.

The provincial team decided that before we addressed the substantive issues presented by the Aboriginal team, a discussion on accountability was imperative. The team had not focussed its argument within the form of the Aboriginal team’s agenda; however, the province felt that “before we can decide what colour to paint the bedroom, we must come up with the resources to build the house.” In other words, the province felt that the group should look at the bigger picture of who was going to pay for what, who was going to lose or gain jurisdiction over what, and how do we ensure mutual accountability among all levels of government, before we decide on education or health issues.

c) Aboriginal

[The Aboriginal group met with external resource advisors.]

AC, p. 19: Our group arranged for a lunch meeting with the chief negotiator for the FSIN (Federation of Saskatchewan Indian Nations), Bob Mitchell. He arrived with Alex Joseph Felix (AJ), the treaty governance consultation officer for the FSIN.

p. 20: We held a meeting prior to the second negotiations session to discuss any thoughts we had over the week. We had nothing new to add since the last session.

4. Day-Two Negotiations

[Day-Two negotiations also proved exceedingly difficult.]

CCA, p. 24: [At the beginning of Day Two], before discussion could resume on the issue of infringement of nonconstitutionally protected rights, the provincial group asked to speak to a concern that arose from the last day's negotiation. The concern that they wanted to address was a clarification of their position in the talks and a definition of the relationship between the Aboriginal group and the province. The provincial group proposed what would come to be known as the neighbour principle. In this proposal, the Government of Saskatchewan would agree to legislate in such a manner as not to infringe on Aboriginal self-government within the province as far as section 35 of the *Constitution* concerns environmental issues. In return, the province asked the Aboriginal groups to take reasonable care in the exercise of those rights not to harm the citizens of Saskatchewan. In sum, what was being proposed was a formal recognition of the relationship between Aboriginal nations and the province according to a neighbour principle, whereby the standard in relations would be that of reasonable care. This was important to the provinces because of the potential conflicts between the two systems of government (i.e., the provincial government and the Aboriginal government) and overlap of laws between the two groups.

FB, p. 22: The Aboriginal group noted that they would sign a paper to be a good neighbour if it would "appease" the province. FC, from the federal group, suggested that the neighbour principle was already covered by tort.

CCA, p. 25: In response to this proposal, the Aboriginal group highlighted that while they would never do anything in terms of the environment that would harm the peoples of Saskatchewan, they would agree to reciprocal legislation that entrenched the neighbour principle. They also stressed that provincial laws cannot infringe on treaty rights. At the time of Treaty 6, Saskatchewan was not a legal entity and as such was not contemplated by the treaty. While the Crown can divide itself into the federal and provincial governments, this cannot interfere with treaty rights. In response to this point, the provincial group indicated that they viewed the province as part of the treaty, being not only bound by the treaty terms but also able to enforce them.

At this point there was an opportunity to put the proposal to a vote and sever all discussions around the issue. However, this issue was connected to the impasse that was reached in the last session and as such it was important to talk about the two in conjunction with each other. Therefore, as chairs, CCB and I exercised our discretion and moved on to discuss last session's impasse.

PE, p. 33: The province revisited the issue of whether the province is a party to the treaty by establishing that if the province is not a party to the treaty, then we were not willing to participate in an Aboriginal self-government funding scheme.

FB, p. 24: The province seemed to dig in their heels on this point, leaving the final negotiation in serious limbo.

CCA, p. 26: Discussion continued around the appropriate procedure for infringement of “nonconstitutionally protected rights” within the sphere of Aboriginal self-government. It was apparent that tension still ran high, but ... every group seemed eager to find an appropriate resolution that would satisfy all parties....

After a short caucus, the federal group came back with a proposal in which a tribunal would be set up to determine if a breach of nonconstitutionally protected rights occurred, and if so, whether it could be justified. The tribunal would consist of nine members, three from each of the federal, provincial, and Aboriginal groups. The tribunal would be subject to judicial review in the decisions that it rendered. Furthermore, the tribunal would have a life span of five years. The five-year period would be a probationary period after which consent on the part of Aboriginal government would be required for infringement of “nonconstitutional rights.” This would be a first step towards self-sufficiency in the establishment of Aboriginal self-government. It was also put forward that funding to implement self-government would be provided. As long as “things were going right” with the development of Aboriginal government, then more room would be given.

p. 27: Although the Aboriginal group was intrigued with this proposal, the problem was raised about the election of a new government every four years. It was put forth that there would be no guarantee that the new government elected after four years would honour the tribunal proposal. In response to this issue, the federal group indicated that the deal reached would be constitutionally protected so that the deal could not be changed with the change in successive governments.

The Aboriginal group also proposed that the funding be locked in for five years, with the possibility of being renegotiated at the end of the third year. The purpose was to prevent gaps in funding at a crucial time in the establishment of self-government. The goal articulated by the Aboriginal group was that they would be able to decrease reliance on the federal and provincial groups for funding and be able to sustain themselves. To be able to attain the ultimate goal of self-sufficiency, the Aboriginal group indicated that there would have to be a trade-off with respect to some of the resources that overlap with federal and provincial jurisdictions. There was a request for clarification as to the criteria that would be established to determine whether development was proceeding along the “right lines.” It was also put forth that these guidelines/criteria should take into account cultural aspects of the Aboriginal peoples.

The provincial government raised concerns with the five-year window as “parental” on the part of the federal government. They would prefer that the tribunal have an indefinite life span to help deal with problems as they arise in the future. Furthermore, the provincial group indicated that they would only be willing to provide funding if they were recognized as part of the treaty and as such able to enforce its terms. In response to this, the Aboriginal group

maintained that they would not recognize the province as part of the treaty. The federal group indicated that the money that was paid to it by the province would be allocated in the most efficient manner. Such a manner would be to provide it to the Aboriginals who were in the best position to utilize the resources in their development.... Since time was running out, the session ended shortly after that caucus, with a clarification of the proposals on the table and a reiteration of the agenda for our final negotiation session.

FB, p. 24: We concluded the second session, with only the four-hour final negotiation remaining.

5. Post–Day-Two Team Meetings

[Each team again assembled prior to Day Three, all discussing ways to try to get the negotiations moving more positively.]

a) Federal

FB, p. 24: The federal group met at Alexander's for the final time. We resolved that we had to get negotiations back on track. We opted to revisit the principles and mission statement of our negotiations. We opted to reaffirm the tripartite model of negotiation, with its inherent respect for the interests and inputs of all parties, via a statement at the beginning of the formal negotiation. We opted to move past substantial procedural wrangling about the tribunal by suggesting a motion to accept it as a dispute-resolution mechanism in principle, with the actual procedural components to be revisited at a later fictitious meeting.... Our group was unanimous in their support of these ideas, and by this time we knew the direction we wanted the negotiations to go as a collective and cohesive group.

b) Aboriginal

AD, p. 20: Following the negotiation session, our group had a short caucus. We felt that it was essential that our team do some talking with the other sides before Saturday or nothing would be resolved. Whether or not we would be able to reach an agreement would depend largely on what went on outside the Main-Table negotiations.... Our intention was to try to help the provincial government understand our interests and clear up any misunderstandings.

c) Provincial

PE, p. 34: [We decided at our caucus meeting prior to Day Three to give up the attempt to discuss treaty status on the grounds that] the four similar-minded team members did not see the point in beating the proverbial dead horse.

6. Day-Three Negotiations

[During the final four-hour session, after a long debate, a resolution was found to the log-jam over the tribunal. Once this occurred, other agreements followed quickly.]

FB, p. 25: The final negotiation began with two rooms, one for the negotiation, the other for caucusing and refreshments. From the outside, it appeared as though people were somewhat anxious about what the day would hold, and whether we would move forward or become mired in impasses.

CCA, p. 29: In our final session there were several issues that we had yet to resolve. The talks began with an urgency to get something resolved in concrete terms....

MOTION #1: NEIGHBOUR PRINCIPLE: The Aboriginal group put a motion on the table with respect to the neighbour principle, whereby there would be an agreement in principle to set up a framework of reciprocal legislation with respect to environmental issues. This legislation would require both parties to exercise a duty of care with respect to matters concerning the environment, keeping in mind the effect of actions on the other party. This motion was passed by consensus.

p. 25: The passing of the motion was significant not only because it was the first substantive issue that was resolved, but also because it was resolved after an entire session of negotiation. The process to passing the neighbour principle threatened the talks in that it challenged the parties at the table in what they believed to be their roles and the position that others thought they played. After the motion was passed, new life was breathed into the process, giving the parties to it the “second wind” they needed to continue.

AB, p. 37: Upon further reflection, I began to question whether the agreement on this issue was motivated by the group’s desire to succeed where the previous multiparty class had failed, that is, to pass a substantial issue by consensus.

CCA, p. 30: **MOTION #2: TRIBUNAL PROPOSAL AND ADR MECHANISM:** The second motion put on the table related to the tribunal proposal for infringement of nonconstitutionally protected rights that fell within Aboriginal self-government. In addition to the concerns that had been raised with the five-year limit on the existence of the tribunal, members of the provincial group put forth an alternative dispute-resolution mechanism as an ongoing process to aid in the resolution of conflict between the parties. This mechanism would take effect after the tribunal had reached its life expectancy and would be in place indefinitely as a means of dealing with unforeseen conflict in the future. According to the provincial group, this mechanism would be in place to facilitate conflict resolution that arose among the parties themselves before the matter resorted to the courts. Further, this mechanism would encourage the development of the relationship between the Aboriginals and the province, building it into the future.

The contention with this proposal came from the federal government, which claimed that the mechanism was merely a check on Aboriginal self-government. It was their position that the five-year time limit was an essential step in the progress towards self-sufficiency. After that time, the governments (provincial and federal) of Canada had to let Aboriginal self-government grow and develop. This ADR mechanism was viewed as a useless step. If the conflict occurred and there was a deadlock in resolving it, then the fallback would be the court system. The end result would be the same regardless of the implementation of an ADR mechanism. The view of the mechanism by the federal government was that it was an unneeded safeguard for which the courts held the default position.

The Aboriginal group for the most part sat back and let the province and federal government “fight it out.”

In an attempt to clarify the proposal, I as chair asked questions of the provincial group as to how the ADR proposal would fit in with the tribunal proposal, and reiterated what I thought was the purpose behind the proposal.... After the issue was clarified and the purpose reiterated, we broke for a caucus.

AD, p. 21: The federal government reaffirmed the tribunal proposal that had been discussed in the last negotiation session. The provincial government wanted to agree with the tribunal proposal, but on condition that a dispute resolution procedure be put in place. The province felt that the tribunal was a one-shot deal and wanted a dispute-resolution procedure to be put in place before having to go to the courts. The federal government was having trouble understanding the province’s reasoning. The province wanted a board created in addition to the nine-party tribunal. The federal government felt that this was just one extra step that was entirely unnecessary in the process.

The federal and provincial governments had come to a deadlock on these issues. The chair stepped in at this point in an attempt to get some clarification on the provincial government position and the model they were proposing.

CCA, p. 32: When we reconvened at the Main Table, the Aboriginal group put forward a mediated agreement between the federal and provincial groups.

AD, p. 21: [After caucus] AA finally spoke for the Aboriginal side. He made a suggestion that all parties agree to engage in reciprocal legislation to the effect that should disputes arise, there is an agreement to engage in ADR prior to litigation. This reciprocal legislation would be bilateral (provincial/Aboriginal and federal/Aboriginal).

FB, p. 25: Following the amendment ... the tribunal motion passed in three stages. First, ADR legislation would be created to extend beyond the life of the tribunal. Second, the tribunal was passed as a five-year tripartite mechanism with a review at the five-year mark. Third, the funding arrangement within that five-year window was approved with a review at the

three-year mark. All proposals were accepted as a framework at this time, with procedures to be established at a later fictitious meeting.

CCA, p. 33: **MOTION #3 AND #4: HEALTH CARE AND EDUCATION:** Health care and education were the only issues surrounding scope that we got to.

AA, p. 21: The second half of the session was based on trying to define the jurisdiction and funding of self-government. Mitchell suggested in our meeting with him that a good place to start was health and education.

CCA, p. 33: In health care it was proposed that there would be an establishment of on-reserve clinics/infirmaries to be run by the Aboriginal government. Funding for this proposal would be provided by taking money paid by Treaty 6 peoples who purchase goods subject to the GST and channelling that money back into health care on a dollar-for-dollar basis.... The provinces would maintain off-reserve health care through existing mechanisms, as funded through taxes and federal transfer payments. After two caucuses to achieve this motion in its entirety, all parties passed it by consensus.

FC, p. 46: In education, the Aboriginal group proposed that the federal government was responsible for the education of Aboriginal people who resided on the reserve, within which Aboriginal people would control education to the extent that they could insert a cultural perspective into education for Aboriginal children. This control over the curriculum would be subject to the predetermined standards required to obtain postsecondary education.

FB, p. 26: The motion provided for the diversion of Aboriginal property taxes to fund curriculum development in regard to Aboriginal culture and language in both on-reserve and off-reserve provincial schools. All students would have access to these programs, and GST diversion could also assist in this venture.

AB, p. 38: It was noted by the group, following adoption of each of these motions, that the group had determined the principle framework of the entire health-care system of the Aboriginal people of Treaty 6 in approximately ten minutes, and that of the Aboriginal education proposal in approximately twenty minutes.

FB, p. 26: We had passed two substantive motions in one and a half hours! We looked around the room at the groups in disbelief, wondering where the friction and frustration had gone from the previous negotiations. AA then put forward the closing motion of the class: to adjourn on the positive note that we had achieved. This was unanimously passed in a rousing round of applause.

AB, p. 41: During the substantive negotiations, six motions were passed by consensus over the course of approximately eight hours of negotiation, including: (1) a motion on Aboriginal self-government; (2) legislation in relation to the neighbour principle; (3) alternative dispute-resolution legislation; (4) an agreement-in-principle in regards to a tripartite tribunal; (5) a health-care administration agreement; and (6) an Aboriginal education curriculum agreement.

7. Debriefing at Class Supper

[Students met the Sunday evening following the four-hour session for a class dinner and debriefing session.]

PE, p. 43: In an attempt to determine whether there was going to be one of Professor Benson's famous dinner parties, I spoke out, which seemed to snowball into a combination supper/debriefing session for the next evening.

ANALYSIS

A. Multiparty Negotiations: What, Why, How?

[Multiparty negotiations may be broadly defined as the ways in which multiple individuals and groups trade resources and power to establish social or economic place or benefit in the face of unavoidable co-existence and interdependence. Such a definition, however, excludes little social and economic interaction, hence multiparty negotiations are generally more narrowly defined as voluntary talks through which groups seek to agree on the terms of their social, economic, political, and/or legal relationships.]

Multiparty talks involve institutional roles. Negotiators participate not only as individuals but also as representatives of social or economic groups such as parents, teachers, lawyers, heads of organizations, corporations, or states. What they negotiate are the rules by which individuals and groups agree to govern their behaviour to share rights, privileges, obligations, and responsibilities.

Multiparty talks involve large numbers of people not at the table. Negotiators are accountable directly to political or corporate masters, and indirectly to larger constituencies who will be affected by any agreement reached by the negotiators. Such "background groups" are invisible yet palpable presences at the table, limiting negotiators' mandates or rendering agreements moot should they have been arrived at with insufficient attention to background group realities.

Before agreeing to talks, parties assess whether they have more to gain or lose by participating. Parties may attend initial meetings as a way of assessing this situation. If parties decide to stay in talks, they assess whether they have more to gain or lose by co-operating to seek a mutually beneficial solution. Parties with more power weigh the potential consequences of unilateral action against the potential costs of sharing their power. Parties with less power weigh the risks of losing autonomy and visibility through agreeing to less-than-ideal terms, usually in the context of the absence of affordable or enforceable third party intervention.

Parties' comparative power and resources are primary determinants of whether multiparty talks on a particular subject begin, continue, and lead to a co-operative alternative to unilateral action. There are many kinds of power, and power dynamics are constantly shifting. Multiparty talks that conclude in mutually beneficial solutions enhance autonomy, dignity, and relationships. But multiparty talks consume time, energy, and resources, with unpredictable outcomes, so parties constantly assess the costs and benefits of talking and of potential agreements versus their alternatives.]

CCA, p. 5: Multiparty conflict resolution occurs on a daily basis, such as between friends who argue over what movie they want to watch or where they want to go for dinner. “Official” multiparty conflict resolution occurs on a grander scale involving issues of national or international concern.

FD, p. 15: When a dispute evolves beyond the boundary of one-on-one and single-issue conflict negotiation, the entire dynamic shifts, as do the repercussions of what occurs at the table. The roles of the collective are far less defined, the boundaries become blurred, and accountability is heightened to a whole new level.

CCB, p. 2–3: [Multiparty] negotiation is a human process intended to solve conflict between two or more parties.... It [attempts] to achieve solutions that satisfy the parties in conflict without bloodshed, and to offer a viable alternative to vicious cycles of retribution.

p. 12: The aim of negotiations is ... to “prevent harmful conflict *before* it arises, then to *resolve* what cannot be prevented, and finally to *contain* what cannot be resolved.”⁶ Negotiation provides a structure within which parties attempt to persuade each other using reasoned and balanced argument.... The structure of negotiation also imposes limits on what parties can do once within the confines of the negotiation process.... Negotiation is both liberating and restrictive; it is a process of accepting new privileges and obligations; the parties cannot take one without the other if negotiation is to be “valid” in its outcome.

AD, p. 27: The prime benefit of negotiations is that the parties affected by a decision can

identify the issues involved and work out creative approaches in an effort to maximize their overall interests.

CCB, p. 26: Negotiation is built on the free will of the parties to agree or disagree. Each party's autonomy fits together to form a relationship among the parties that is less vertical or horizontal than a network:

A network is people sharing information and resources. If a pyramid has the social structure of an army, a network has the social structure of a street market or a town meeting. Whereas pyramids are usually held together by coercion, networks are held together by mutual interest. While pyramids tend to block their members from leaving, networks generally offer alternatives and exits to their members. It is hard to leave an army, but easy to leave a street market.⁷

Each party is guided by its own interests and has a part to play in the process. If the parties reach an agreement, the result is potentially far greater than if a solution was imposed on them. It represents an exercise in joint decision making.

p. 25: Negotiation is valid because it is based on the participation of the parties. Each participating party has the opportunity to present its side as well as the duty to represent its side in the discussion forum....

p. 5–6: Not only are negotiations a forum where solutions to problems are obtained, but they are also a process used to diagnose and understand conflicts between and among parties. Conflict is seldom simple or one-dimensional. Rather, it is elusive and interpreted [differently] by the parties themselves. Parties might agree that there is conflict, might feel the tension between them, and yet fail to agree on the cause of the conflict or [the core issues].

p. 31: Multiparty negotiation is a human process. Both the negotiators and those they represent are human; both reflect the values, needs, and wants of humans in a world of scarcity. The problems are human problems—a result of human interactions with each other and with nature. The visions, suggestions, and ideas brought to the table are human; they represent the creativity and ingenuity of humankind. The resolutions, or lack thereof, are the result of human participation and yield human satisfaction or discontent.

p. 1: The conduits and mediums of a human process do not offer the invariable speed of an electric wire or the consistent melting point of a metal. A human process promises variability and inconsistency. It is fickle, capricious, unpredictable, and will fail as often as it succeeds. It is a process that happens at one moment in time, yet is also a combination and intermingling of many times and events. It is a process laden with histories of relationships, biases, experiences, contradictions, and adversity.

AA, p. 8: [A]ll aspects of human interaction are at play in the negotiation setting. The human dynamics include, *inter alia*, ego, communication skills, the ability to be understood

and the ability to understand, body language, voice inflection, emotional control, and even seating arrangements.

CCB, p. 27: Negotiation allows the flexibility for wide ranges of participation. The process will take on a shape according to the goals and personalities of the participants. The representatives might be leaders or followers, group-oriented or authoritarian.

p. 13: Negotiation centres around the parties and people involved. Negotiation will only advance as far as the parties are willing to go.

p. 31: Despite being a human process vulnerable to so much subjectivity and so little certainty, we still regard it as something that can bring real solutions to enduring problems. A human process affords the possibility of a humane solution. It embodies the potential for understanding, fairness, and trust building among the parties. It is an exciting process in which all parties have an opportunity to be heard and to contribute to the outcome.

p. 24: The irony of negotiation is that parties are negotiating because they could not get along, but the only way they can negotiate successfully is through co-operation. Negotiation will only be successful if it ameliorates this irony.... p. 31: The negotiation process is a paradox. It is a human solution to remedy human problems—an avenue to address conflicts in a way that prefers discussion to bellicose actions. It can only succeed, however, if those involved set aside the human characteristics of biases and negative emotions that taint the process.

p. 10: The understanding that parties develop during claims and counter-claims leads to an assessment by the parties. Either they decide to pursue the process and work together co-operatively, or they opt for a unilateral solution. Each party assesses the costs of continuing on its own. If a unilateral path is blocked, costs too much, or is less attractive for whatever reason, parties will gravitate towards negotiation. If a party perceives that there is too great a power disparity between them, however, they will be sceptical of negotiation.

[Thinking unilaterally], each party regard[s] the problem with a winning mentality, seeking ... ways to overcome and get what it want[s]; [negotiation requires a] ... shift to a conciliatory mentality, believing the solution to be found with, not against the adversary and preparing to give a little to get something, to settle for an attainable second best rather than to hold out for an unattainable [total] victory.⁸

p. 10: Recognizing a possibility for conciliation is a vital condition for negotiation. Negotiations do not occur where ... there is so much conflict that common interests cannot be identified....⁹ Have parties changed their perceptions of each other so that conciliation is possible?... Parties shift not only their perceptions, but also definitions and acceptability levels. As parties change from a spirit of antagonism to one of conciliation, they become less rigid in their categorization of conflicts and more tolerant of the other parties' views.¹⁰

Throughout the process of interaction, the parties give each other information, directly

and indirectly. Each engages in learning about the other, about himself, and about the possibilities and impossibilities of their common situation. Negotiation is a process of discovery. Discovery leads to some degree of re-organization and adjustment of understanding, expectation, and behaviour, leading (if successful) eventually to more specific discussion about possible terms of a final, agreed outcome.¹¹

p. 16: An inherent limitation of negotiation is the possibility that it no longer serves the interests of a party or parties. “Negotiation does not involve only an exchange of offers and concessions to make the offers finally fit together. Offers are measured against two other notions: expectations of an outcome, and estimates of an outcome without agreement.”¹² Each party will ask itself what the best alternative to a negotiated agreement is. If at any point a party decides to walk away from the table, it is at liberty to do so. The negotiation process can therefore be very fragile. It requires that the parties constantly reassert their good faith at the table and their desire to continue.

p. 14: Other processes, such as court proceedings, also take into consideration the interests of the participants, but negotiation, as a mirror of the interests and concerns of the parties, has the flexibility to address the needs of parties in multiple and particular ways. This feature is significant because each party has a different opinion of what is fair. A negotiation process allows the parties to determine what is fair.

FD, p. 2: During an industrial organizational psychology class ... couched in the term “intergroup conflict,” ... I was introduced to the concept of shifting conflict in a functional direction within an intergroup conflict. Rather than learning to suppress or eliminate conflict, managers and other such organizational members were being taught to manage it. In some instances, conflict was even encouraged. Nonetheless, conflict diffusion strategies were necessary. I remember encountering strategies steeped in terms such as “compromise bargaining,” “cultural sensitivity,” and “integrative problem solving.” In addition, when conflict was escalating, managers were being encouraged to bring in an outside consultant. The task of the consultant would be to establish trust, set procedural rules, and help the parties identify the most important problems at work....

CCB, p. 22: Negotiation is not only a mirror that reflects what actually is, but also a map for the future.... All parties are looking forward, analysing the implications to their relationship.... Fundamental to an enduring process of negotiation is developing co-operation among the parties. Getting along is the basis for negotiation. “The objective of negotiations is to create a good and enduring relationship among the parties.... Agreements that are essentially one-sided cannot endure indefinitely.”¹³

p. 17: The [fragility] is sobering to a process that promises so much. But every process has its boundaries. The parties involved know that there is a limit to how much they can ask for and how much they can give up.

B. Preparation

[Students are surprised at the amount of preparation that goes into being a good negotiator. It takes years to understand the subject being negotiated at a sufficiently deep level to be able to simultaneously protect your party's interests and envision mutually beneficial and feasible solutions. Preparation includes understanding the particular history and context of the dispute, the power and resources of each party, the consequences for each party if no agreement is reached, what each party needs and wants, and what legal rights and regimes are involved. Beyond that, it involves understanding human nature and the human condition, the leadership ability to articulate a new vision, and sufficient respect from others to be able to lead them there. A good negotiator is a formidable human being.]

FD, p. 9: For any negotiation to proceed smoothly, preparation is essential.

AC, p. 38: I have observed the importance of preparing thoroughly.

FD, p. 16: Planning includes knowing myself, knowing my team members, knowing our collective BATNA (best alternative to a negotiated agreement), and having a comprehensive understanding of the background, the issues, and the substance of the negotiation.

p. 26: Unfortunately, the playing field was far from equal. I was admittedly unprepared to negotiate on issues I had only a marginal understanding of.... I lacked the necessary tool—knowledge [on the substantive issue]—I needed to truly test my skills as a negotiator. As it stood, I was intimidated and lacking in confidence.

1. Substantive Knowledge

[Substance is knowledge of the subject-matter being negotiated, in all its manifestations. Students commented on the need to understand the sources and distribution of power among the parties, each party's interests, what is at stake in the negotiations for each party, the legal rights involved, if any, and the history and context of the particular dispute.]

a) Power

[There are always power imbalances among the parties. Being aware of the relevant power of each party is a fundamental survival skill in negotiations. There many kinds of power, including institutional authority, economic resources, military power, natural resources, legal rights, public opinion, or allies. Individual negotiators also each bring a different level of personal power, including knowledge, leadership skills, charisma, respect, perceptiveness, vision, and understanding.]

FD, p. 19: Being able to assess the impact of power asymmetry on the negotiation process and on any negotiated outcome is an important part of knowing whether and how to begin or continue negotiation.¹⁴

AA, p. 5: The rhetoric surrounding negotiated conflict resolution implicitly asserts that the parties to the process have relatively equal bargaining power. [*This is false.*]

CCB, p. 22: A process that projects an unreal sense of equality will produce an unreal solution—one that will be left unfulfilled in one way or another.

FD, p. 19: Effectiveness during a negotiation can only be achieved by gaining an understanding of one's power role.

PD, p. 19: The dynamics of power will inevitably be at the negotiation table.

CCB, p. 17: Although all sides are represented at the table, the power each party exercises will often be disparate and asymmetrical. Power is asymmetrical when one party has little or no ability to exert influence on the other party in reply to the influence exercised upon it....¹⁵ Power imbalances take many forms, and may be actual or perceived, for example: superiority in resources;¹⁶ skilled negotiators; personal power—the ability to exercise individual traits and characteristics in an influential manner; relationships, when there is a recognizable mutuality or interdependence such as a fiduciary relationship; “the ideas, values and beliefs that structure or order individual lives, relationships, or people in general”;¹⁷ and a party with more to lose or gain is more vulnerable: a party with less to lose or gain can walk away more easily.

p. 19: Which power imbalances are relevant, i.e. “the balance of capabilities directly relevant to the issue under negotiation and the ability to use those capabilities effectively to gain influence and support one's bargaining tactics,” vary with each negotiation.¹⁸

AD, p. 20: I believe the lack of progress [Day Two] was based on an unclear understanding of the issues. Each side had different areas of expertise in the area. Groups were communicating their interests in a manner that confused other participants who were not familiar with these issues.

AA, p. 6: The power imbalance must be recognized in all its manifestations.... It cannot be assumed, however, that all parties will perceive the power imbalance in the same way.... Even when the negotiators inform themselves of the historical relationship between the parties, and are cognizant of a resulting power imbalance, this imbalance will not be viewed through the same lens.

FD, p. 19: There are a number of categories of power.... For example, the federal government has formal authority, resource power, procedural power, habitual power, and sanction power. The provinces share many of those powers. The Aboriginal people, it can be argued, have [media power and constitutional power].

AD, p. 29: The federal team had the powerful expertise of FC. The Aboriginal team had AA's knowledge. Procedural issues, such as the setting of the agenda, the pace of the process, and precedent were all factors in the distribution of power. However, it was the personalities of the negotiators that truly dictated the power. Each team had at least one person with a strong personality who assumed the leadership role. A balance of these personalities allowed sides to reach agreements.

p. 4: The consensus model gave our Aboriginal team, a weaker party, some leverage in the decision-making process. A consensus model preserved some element of power on all sides. The power to make decisions ... would not be left to the federal and provincial teams.... There was a risk that a party to the negotiations could stop the entire process by persistent opposition.... However, we decided as a group that it was our best option in light of the power imbalances at the table.

PB, p. 9: "For the least powerful individual or groups, perhaps due to gender, economics, race, culture, differing abilities, or other characteristics, a movement that place[s] great emphasis on interests as opposed to legal rights raise[s] concerns about both harm and perpetration of systemic inequalities."¹⁹

AC, p. 3: It is a scary feeling to [think] that you are powerless and you must go in front of those who wield the power and ask them to give you something they do not want to give, nor do they have to give you.

PD, p. 28: [As one whose background makes me very sceptical of authority,] I learned how those who are privileged many times flaunt their privilege without even realizing it because it is entrenched. It is part of them. Trying to change these entrenched attitudes is going to take longer than most advocates for change expect. The saving grace is to know what one is facing. We have a proverb in my mother tongue, Luganda, that literally translated means "That which comes when you know, takes very little." The moral behind that is "Know your enemy." There will be no nasty surprises if you do.

p. 29: Power is a double-edged sword. The more you use it to subjugate others, the more resistant those subjects will become. That is why eventually revolutions occur.... Human dignity is not for sale.

b) Interests

[Each party has different interests—things it needs and wants to achieve. A party will agree to negotiate only if it decides there is more possibility of achieving these interests through negotiating than through unilateral action. These interests motivate particular demands at the table—demands that are often starkly incompatible. If information can be accumulated on party needs and wants, solutions may become visible that meet sufficient interests of each

party to lead to an agreement that provides more than parties could achieve unilaterally.]

FD, p. 19: “The effect of power on negotiation is inescapable. The substantive interests of the parties involved are inseparable from their view of their power situation and their desire to protect or enhance it.”²⁰

FC, p. 48: I learned that every group of people and more specifically, every individual, has a different agenda. As Andrew Pirie argues, different people are concerned about widely different things.²¹ As a negotiator, your job is to learn as much as you can about the person you are negotiating with: what each person’s agenda is, and through what method you can most effectively appeal to that agenda.

AC, p. 38: I have realized the importance of being aware of the underlying concerns and interests of the participating parties in order to tailor a negotiation strategy that encompasses mutual gains.

FD, p. 5: Satisfaction is viewed as a triangle with substantive, procedural, and psychological needs on the three sides.... Substantive refers to time, money, and land needs. Procedural refers to the process of how things are done—for example, whether I was involved and understood. Psychological refers to security, well being, and emotional needs.

p. 19: Professor Christopher Moore describes interest-based bargaining as “seek[ing] to enlarge the range of alternatives so that the needs of all parties are addressed and met to the greatest extent possible.”²² He describes the conditions needed to make interest-based bargaining work:

- Parties have at least a minimum level of trust in each other.
- Parties have some mutually interdependent interests.
- Equal, but not necessarily similar, means of influence exist, or the party with the superior power is willing to curtail the exercise of power and work towards co-operative solutions.
- Parties have a high investment in a mutually satisfactory outcome because of mutual fear of potential costs that might result from impasse.
- Parties desire a positive future relationship.²³

p. 8: [Steps in interest-based bargaining]:

1. Story telling: Because the cause of the conflict is seldom agreed upon, the task is to give each party a chance to tell their story, and then to identify interests, issues, and build an agenda.
2. Problem solving: This step involves generating and analysing options, and reaching an agreement. This is often the least important step. If step 1 is done well, there will be less difficulty with this step.

3. Implementation: This step is also important because the process is for naught if no implementation occurs. In basic terms, it must be determined who will do what and by when.

PA, p. 17: According to the *Oxford Dictionary*, an interest is “a principle in which a party or group is concerned.”²⁴ It is the motivating reason [for] people [to] take a position on an issue.²⁵ An interest in a multiparty context is akin to an “outcome goal” in a sporting context...²⁶ p. 16: Generally, in the sporting context, goals have been assigned to three major categories: Outcome Goals, Performance Goals, and Behaviour Goals...²⁷ p. 17: An outcome goal would be a goal for the whole season, or the duration of the time that members are together.²⁸ It is the united vision that provides the direction, inspiration, and motivation for teammates to work together.²⁹ An outcome goal is a realistically achievable dream.... The province’s outcome goal was to implement the terms of the treaty in a way that would balance the needs of all citizens of Saskatchewan, while recognizing the duty of the Crown to honour the treaty.

p. 18: When setting outcome goals, some things must be kept in mind. First, one must ensure that all members of the team are involved. Total involvement is necessary because outcome goals are the motivating purpose of being part of a team.³⁰ Second, the goals must be realistic.³¹ Third, there should be a deadline for achieving [them].³² Finally, goals should focus on concrete and specific outcomes ... over which a team has control (i.e., beating another team should not be the outcome goal, but “doing well” is too vague).³³

p. 21: Teams set long-, medium-, and short-term goals, goals to be met by the whole team and goals for individual parts of the team.

p. 22: In the world of multiparty negotiation (MPN), it is necessary to maintain focus. As such, team members must know what is important to them. Issues and goals must be prioritized in order to ensure that outcome goals are met.³⁴ Conversely, too many goals can leave a team without a clear focus.

AC, p. 38: I have observed the importance of remaining focussed on the ultimate objective.

AA, p. 28: The [tribunal] proposal was a solution because it had three essential characteristics. First, it met the interests of the deadlocked parties. What I saw in the federal proposal was a balancing of interests.... [The second and third characteristics are “innovative and creative” and “delivered in a timely fashion”—see below].

c) Stakes: The Will to Make an Agreement

[Parties with the most relevant power in a negotiation have no incentive to sacrifice any of that power to make an agreement unless the stakes are high. High stakes means a situation of interdependence in which the costs of unilat-

eral action are high. Unless each party has something to lose from talks not succeeding, there will be no will to make an agreement, in which case no agreement will almost certainly be the result.]

CCA, p. 17: Parties come to the table because they have a vested interest in seeing the process succeed. Each party has something to gain at the table and something to lose if the process fails.

AA, p. 3: This class was conditioned by what we had read about the experience of the previous class. Procedural issues had clearly become a major stumbling block for them, and our class, collectively, was determined not to get bogged down in the establishment of procedural protocols. I believe this played a major role in contributing to the ease with which the procedures were established.

CCA, p. 5: [Last year] a lot of matters were tabled, so the discussion could not move to some resolution. There were a lot of factors that contributed to the process grinding to a halt every time there was disagreement. I felt that it was an accurate depiction of what real life multiparty negotiations are like....

p. 8: [Last year] set the stage for our class to want to succeed where the others had failed. The common point of breakdown appeared to be a lack of willingness to give up ground and move towards the middle. Finding this middle ground would be indicative of success in the process. To succeed where others had failed became the driving point behind the negotiation and settlements that were ultimately reached.

FD, p. 16: Having read the insurmountable problems faced by the class of 2001, every member of our class was determined not to repeat the same mistakes. There was an air of anticipation, excitement, and impatience, and as a result we moved through the procedural issues with remarkable speed.

PE, p. 6: It was very apparent from the experiences of last year's class that nothing should be taken for granted. I was surprised at how last year's participants' miscommunications, misconceptions, and attempts to control the negotiations backfired. This created more distrust and culminated in their negotiation efforts being stalled at the procedural level, with no substantive solution to the questions before them. It was obvious to this year's participants that it was absolutely imperative to work out the procedural boundaries of the negotiations before we entered substantive negotiations. Last year's failures would be what this year's teams would address first in order to avoid the same mistakes and effect real solutions.

FB, p. 17: The dizzying pace with which the procedural matters had been dealt with was astonishing.... I felt that there were many potential reasons for our early success on procedure. First, everyone had the benefit of reading the text from the previous year's experiences. Second, we had a strong group of individuals with experience in negotiations, which invari-

ably led to some experience in voting, dispute resolution, and physical arrangements. Our class, to a member, seemed anxious to develop the substantive issues that were not effectively addressed by the 2001 class. Group motivation contributed to an overall team atmosphere to the procedural and preliminary discussions.

PB, p. 15: After viewing the *Dancing Around the Table* film, and reading [about] the previous class's experience, we were all determined to strike some sort of deal, just to say that we were successful in our negotiation.... p. 19: Before we even entered into the negotiations, there seemed to be an underlying theme that we would decide on something and we would come to some mutually agreeable solution.

FC, p. 36: Throughout, it was [the federal team's] aim to achieve progress and make some sort of deal. In hindsight, this attitude was most likely the result of reading the experience of the previous year's class. The class before us did not get past the procedural negotiations in their simulation, and I believe that many people, including myself, viewed their experience, perhaps incorrectly, as less than a success.

CCA, p. 5: After watching the video, the general consensus among the class was that this was *not* how we wanted our negotiations to proceed. Given the influence of the chair in the process, it was decided that the chair had to be absolutely neutral. Furthermore, there was an underlying consensus that for the process to succeed there would need to be give and take, none of which we saw in the video.

AD, p. 4: Early on, pressure was felt by all parties to reach an agreement on the issues. The majority of the negotiators probably had in the back of their minds the events of last year's class and the difficulties the group had in reaching agreements.... The strong desire to reach an agreement on all sides of the table may have led to the successful outcomes arrived at using consensus voting on substantive issues. There was a pressure on all parties to reach a decision ourselves before the court would be forced to make the decisions and deprive our teams of control.

d) Legal Rights

[Legal rights have some of the same functions as power in negotiations—acting as trump cards by creating boundaries as to what negotiators will agree to. If a party has legally recognized and enforceable rights that can be obtained outside the negotiation setting, then, as with unilateral action through power, it has no incentive to agree to anything less. Accurately understanding enforceable legal rights is key to competent negotiation preparation.]

FC, p. 1: It is my belief that the *only* problem with this class was the disparity of knowledge among classmates. Some students were very well versed and possessed a great deal of [substan-

tive] knowledge, while other students possessed no more than a basic understanding. I think many people in the class felt alienated because of their lack of knowledge and simply allowed those with knowledge of the issues to take over the negotiation.

PE, p. 45: I absolutely would not have pursued asserting the province's right to be a party to the treaty if I had understood in the beginning that the province has only the responsibility to effect complementary and parallel legislation. I was really confused as to why both the federal and Aboriginal groups would refuse to accept the province as party to the treaty when all I could see was the potential for mutual benefit.

e) History and Context

[Each dispute has its own particular history, cultural, religious, economic, legal, and causal context. Disputes that have been negotiated frequently across time also develop their own particular culture, unwritten understandings, and protocols. Competent negotiators know that these forces will come to the table and that good preparation requires understanding them deeply.]

PB, p. 15: There are often historical issues that will significantly affect the negotiation. Issues such as resentment, mistrust, unkept promises and obligations, and a failure to be accountable will slow the negotiation process ... and lead to a tedious process that often ends in no resolution at all.

PD, p. 9: One needs to be conversant with the history and context—otherwise it will hit you in the face. As Andrew Pirie notes:

The context, which gives a dispute its shape and content and ultimately influences the course a dispute takes, must be well understood. [We] must appreciate the full where, who, what, when, and why of disputes.³⁵

FC, p. 1: As Andrew Pirie suggests, problems arise when negotiators are inadequately prepared [with] regard to the subject matter of the negotiation....³⁶ I believe at the very least, a basic understanding of the history of Aboriginal people in Canada is required before anyone should participate in a simulation involving the incredibly complex and multifaceted issue of Aboriginal self-government.... It is absolutely essential for students to understand why the federal government, right or wrong, acted in the manner it did when dealing with Canada's Aboriginal people. As well, it is imperative to understand the ... extreme poverty of Aboriginal people and the social problems that such poverty entails.³⁷

FD, p. 3: Understanding how a given dispute occurs, what might explain the disputing behaviour, and ... the necessary steps ... to constructively assist the resolution process, is not the exclusive preserve of any profession.³⁸ Every discipline has something to offer, and not understanding and practising [dispute resolution] as a multidisciplinary concept means

that only parts of the whole are ever articulated, accentuated, or acted upon.³⁹

CCB, p. 5: [It is important to know the cultures involved because] a legitimate process for dispute resolution reflects the community that believes in it. For example, a society of strong, short-tempered individuals looks to violence as an efficacious route. A bureaucratic society relies on memos, letters, and delays as the proper and just way. Politicians engage in debates, scrums, and referendums. Parties directed by religious beliefs look to their holy books. The path parties take will be one that is logical and natural according to their groups.⁴⁰ In the West it is now culturally relevant to define the natural and rational path in the context of democracy. In Alexis de Tocqueville's words:

I think that democratic communities have a natural taste for freedom; left to themselves they will seek it, cherish it, and view any privation of it with regret. But for equality their passion is ardent, insatiable, incessant, invincible; they call for equality in freedom; and if they cannot obtain that, they still call for equality in slavery. They will endure poverty, servitude, barbarism, but they will not endure aristocracy.⁴¹

In the West, therefore, it is cogent to talk of a valid process as one that incorporates the opportunity for equal participation, while in other places groups desire approaches based on tradition or exclusion.

AA, p. 15: Some argue that the negotiation process must be forward-looking and visionary, with agreements to move from the status quo and provide for a better future relationship among the parties. The argument implies that dwelling on the past will encumber the negotiations and the visionary aspirations sought from the process. Such an approach delineates time into past, present, and future, and attaches different importance to each segment. This is a Euro-centric approach to time as opposed to an Aboriginal concept of time, in which all things are interconnected, including time. Our Elders teach that "To know where one is going, one must know where one has come from." So while the Crown will likely be reluctant to enter into a dialogue about past failures and problems created for Aboriginal peoples by federal policies and legislation, the Aboriginal considers discussion of the past integral in working towards any agreement designed to create a better relationship for future generations.

AC, p. 2-3: Although it feels like I will have little to contribute because I have little [substantive] knowledge, I am a visible minority in Canada, and I know a little bit what it feels like to be different from the majority that surrounds me... Some people might call me brown or nonwhite. I am not a colour. I have cousins with blue eyes and blond hair. Does that make them white even though they come from the Middle East? I think it is cultural socialization and context that identifies a person as being from a certain nationality, not the colour of their skin.

CCA, p. 35: I believe that having a chance to see where the process fell apart last year and the results of sticking inflexibly to one's position gave us insight in how to approach the nego-

tiation. The past exists so that we can learn from it in the future. The whole point of history is to commit the past to paper so that it can serve as a template for future learning in similar situations. Last year's experience provided us with insight into how far we would get if parties were not willing to move beyond positions.

CCB, p. 10: The parties learned from the negotiating processes before them. Not only did we see what went wrong in national conferences, but we also had the advantage of looking at how the simulation unfolded last year. It served us as a filtering process that increased our efficiency, especially during the early stages of the simulation. We were, as the saying goes, able to see further because we stood on the shoulders of others.

2. Make a Plan for Process and Substance

[Part of preparation includes being quite precise about a party's overall goal in the negotiations, about the issues that must be addressed if its interests are to be met, about what it needs to achieve in relation to each of the issues, about how to present its issues and its needs at the table, and how it might react in various scenarios to achieve its goals.]

PA, p. 18: Performance goals are short-term goals used to achieve final-outcome goals. They are the plan....⁴² p. 19: Some of the provincial team's performance goals, akin to positions, were to have the other teams recognize the "neighbour principle" and to be recognized as a party to the treaty.... To speak of wanting a treaty relationship within the spirit of the agreement is useless without setting up steps [by] which to achieve the outcome goal. What makes a performance goal/position successful is that it is short term and easily revised. Changing a performance goal should not threaten the team as a whole....

Successful performance goals are positive....⁴³ They state what a negotiating team would like, not what they don't want. Second, performance goals aim at improvement, not punishment.⁴⁴ Accomplished goals should be acknowledged, while those not accomplished should be viewed as ways to improve rather than as failures.

p. 28: Some significant performance goals were set. For example, in response to the Aboriginals' proposal, we decided that three themes would have to be resolved. Those were:

1. How will Aboriginal self-government fit into the current political framework?
2. How will Aboriginal self-government be funded?
3. How will Aboriginal self-government and other governments deal with the same issues in the same spatial areas?

We also decided that we would try to get the neighbour principle inserted into the treaty.

p. 20: Setting outcome and performance goals does not ensure a team's success: "If players do not enjoy the process of accomplishing these goals and if they do not become better peo-

ple—not just players— ... their on-field success will ultimately mean very little.”⁴⁵ Behaviour goals define the team’s values, what it stands for, and how members will act in a manner consistent with those values.⁴⁶ There must be principles and guidelines for team conduct on and off the field.

Behaviour goals are useful for a number of reasons. First, they define a code of conduct. This is important because players come from diverse backgrounds and it cannot be assumed that they all have the same understanding of what successful team behaviour is.⁴⁷ Second, behaviour goals create positive pressure to improve—they define how a team wants to act. Third, they put player’s actions within the team’s control. Fourth, they foster team unity.⁴⁸ To be successful, teams must operate within the same thinking and principles. Finally, they help players control their emotions. Ultimately, behaviour goals ensure that principle, not individual agendas, governs player actions.⁴⁹

3. Make Procedural Agreements

[Procedural agreements determine how talks will proceed and how decisions will be made, disputes resolved, and if reached, how agreements will be implemented. Initial scheduling requires authorized officials to agree on who will meet with whom, when, where, and for what general purpose. Procedural negotiations are sufficiently time- and resource-consuming that parties may agree to use existing procedural protocols, or may leave procedural understandings implicit unless and until a problem arises. However it is achieved, parties must agree on some method to create agendas and discussion documents, circulate premeeting information, chair meetings, make decisions, and resolve disputes. Procedural issues often continue to arise during talks. If substantive agreements are reached, a host of new procedural issues arise with respect to implementation.]

CCB, p. 1: The process can be as determinative as the substance. The process determines not just what and how matters are addressed, but also who participates in the process and what impact each party has on the outcome. Slight modifications to the process have the potential to result in a decision significantly different from that arrived at under another process.

AC, p. 38: I was surprised to learn that physical arrangements also had the potential to impact on the negotiation process. I learned that what I had previously considered little things, such as agenda setting, also have an impact.

PB, p. 18: A large part of the negotiation process is actually spent on the rules of process. Although this can be frustrating, discussing the process prevents disputes.⁵⁰ Negotiating procedure keeps the negotiations moving and prevents breakdown.

CCA, p. 17: The initial relations among the parties in preliminary negotiations will taint

the subsequent negotiations. As such it is important to start out [with] the right tone and carry that tone throughout the process. If distrust is allowed to fester in the initial stages, then there is [little] hope that the process will move beyond laying down the procedural steps to discussing the substantive issues.

p. 18: Getting through the procedure relatively quickly and with minimal glitches was a builder of confidence in the process.

p. 11: Imposition of roles [by drawing from a hat] ensured that we moved beyond the small things onto more substantial issues with trust amongst all parties preserved. There was a potential at that stage for tempers to flare, sides to be chosen, and divisions drawn, and we had yet to decide which individuals were on each team. It was my perception that preservation of trust among everyone was key in getting the process rolling and parties working together. We would not be able to accommodate everyone in their choice of team, given that we had agreed teams were to be evenly numbered with five members per team. The end result would be that some individuals would get their first choice and others would not. But who would decide who got what? The imposition of roles by a random draw was the only reasonable way to get around this small mole-hill before it became a mountain.

FB, p. 16: The [agreement to make substantive decisions by group] consensus ... illustrated a willingness by all parties to negotiate in the form of a true partnership.... It was a positive opening round of procedural negotiations that set the tone for the substantive work to come.

CCA, p. 5: Multiparty negotiations will fail if the procedural protocol is not sufficient to handle impasses that arise. The easiest method to handle such impasse is to table the issue, which is what [often] happens. This is immensely frustrating because it feels like the negotiations are getting nowhere.

AD, p. 5: The implementation of the dispute-resolution procedure led to agreements being formulated and finalized rather than issues being tabled. The dispute-resolution procedure ensured momentum was sustained when looking for a compromise. This procedure allowed parties to take a step back from the Main-Table negotiations when required. Then in private caucus rooms, they could work on proposals and/or agree on compromises to bring back to the Main Table in the hope of reaching an equitable agreement.

FB, p. 16: I personally felt that this was a very progressive dispute-resolution framework. The encouragement of open dialogue and ideas would permit groups to express their interests and concerns, while almost displacing the anxiety, fear, and hostility that unanimous voting would almost certainly generate. We were on the right track!

CCB, p. 1: [We know procedure and substance are interrelated]. Despite this realization, structure and procedure are difficult to fully understand. The amount of influence that procedure has on substantive results is far from clear.

a) Choose the Chair

[The co-chairs earned the respect of the class as neutral chairpersons, and were able to facilitate procedural issues smoothly for the remainder of the negotiations.]

CCA, p. 15: The chair is an immense power position in the negotiation because control of Main-Table discussion means control of the process.

FC, p. 34: I believe that after watching the videos of previous negotiations, all sides believed that having a neutral chair was imperative, and indeed the only logical choice.

AB, p. 12: At the time, I did not appreciate the complexity of the chairperson role, as during our negotiation the chairperson was responsible for the movement of the negotiation, the clarity of the issues being negotiated, the mediation of disputes among the various teams, and the recording of agreements made among the parties. In fact, the role of chairperson encompassed the traits of a recorder, transcriber, mediator, paraphraser, and referee.

FC, p. 34: Through a series of nominations and votes, CCB and CCA became neutral chairs for the simulation. Hence, they would leave the groups to which they had been assigned and sever all ties with them. I believe this was done without any problems. Throughout the entire negotiation, I do not believe that anyone would have accused them of being biased in favour of any one side. It was this lack of bias that I believe contributed significantly to the simulation's overall success.

CCA, p. 3: The "toolbox" that I brought with me was already starting to develop with my previous experiences in other alternative-dispute-type courses that I have taken.... While I wanted to challenge myself ... p. 13 ... my initial reaction to being nominated as chair was to decline. I suddenly felt thrown out of my comfort zone into a role in which I had no experience. I also knew how difficult the position was from talking with [a previous student chair].... As chair I wouldn't be able to just choose to participate when issues arose that concerned my group; I would have to participate in all aspects (substantive and procedural) of the negotiation. I would be in the driver's seat and I would have to give the process direction—direction that I was not totally clear on to begin with.... Being the chair would be a challenge—that I knew. Nonetheless, I took the nomination because I never back away from challenging myself; growth comes from a better understanding of the person you are.... Pushing the boundaries and resetting the bar yet again was what I took on as chair.

AD, p. 6: The chairs had to gain the respect of all negotiators.

CCA, p. 18: As chairs, we had to establish the confidence of the parties at the table not only in the process but also in us. To do this, in the initial moments after being elected to the role, both CCB and I had to take control of the session and lay out where we were going, even

though we ourselves were not exactly sure where that was. Formulating the agenda was immensely difficult as it had to be done on the spot.

AD, p. 7: As organizers, prompters, and communicators, the chairs played a crucial role in allowing the parties to reach agreements.

CCB, p. 29: For much of the negotiations, as chairs we assumed a very passive role during the discussion. Our agreed procedure was to assemble the groups, give preliminary remarks, and then open the floor for discussion. This method worked well for the most part. Parties proposed issues and discussion followed....

Whether chairs take an active or passive role, it is important that they be perceived as neutral. Often a passive stance is more conducive to the development of this view. The more involved chairs become, the greater the chance of one of the parties criticizing the chair for not being impartial. If the parties regard the chairs as neutral and unbiased, there is an opportunity to build trust among the parties—chairs included—and in the process itself. A chair who is perceived as neutral is also perceived as having no stake in the terms of the settlement, and may be better able to persuade parties to re-examine their positions.⁵¹

p. 30: The other view is that chairpersons have a duty to change the relationship among the parties:

The primary objective of the facilitator of cognitive change is to create a problem-solving atmosphere in the negotiations within which creative search can take place to look for new solutions to the problem. The [chair will act as mediator] to encourage the participants not to deal with one another as opponents, but rather as members of a group seeking solutions to common problems.⁵²

Chairpersons who favour this approach do have an interest in the outcome. They will use their influence in the process to have parties re-examine their positions and think through all of the possible circumstances. The advantage of an interested, yet neutral, chair is [in having a person with an independent thinking process. Listening to all sides, the chair might be able to formulate a viable solution that never occurred to the parties. The disadvantage is the possibility that the chair will take over the process.... The chairpersons must remember that the process belongs to the parties. This is one of the central features of negotiation. Whatever role chairs take in the negotiation, they never assume the position of a judge.

CCA, p. 15: What we did as chairs when an impasse was reached was important in surpassing the impasse. Furthermore, proposals and tactics at the Main Table were all influential in how the discussions proceeded.

b) Secretariat

[As well as keeping motions straight, the chairs kept notes of the debate and were able to summarize issues and discussions on request in a way students found helpful.]

CCB, p. 28: While the parties caucused we, as chairpersons, took advantage of the time to summarize the proceedings as well as share general observations. CCA was especially skilled at assembling and summarizing the proceedings. As the negotiation advanced, we found it more and more useful to recapitulate progress made. Feedback from the parties encouraged us to continue on with that method. It was useful not only to show the parties the progress they had made over such a short time, but also to give them a platform from which further discussion could spring.

Often, the exercise was not as easy as we would have hoped. There were times when we perceived that the parties had reached some kind of understanding, but it had not been formalized. The parties seemed anxious to carry on with other matters and it became difficult to know when we should halt their discussion in order to get a previous discussion voted on, and when we should allow the parties to continue.

CCA, p. 19: [As chair, I organized my notes] of Main-Table negotiations into issues/motions. I noted what issues had been raised, what motions were on the table, and what were the positions of the parties. By organizing my notes in this somewhat general fashion of what was on the table at any given time, I was better able to keep track of where talks were headed. My reasoning was that if I could organize and understand what had happened in macro terms, then I could relate that understanding to the table, and in doing so, ensure that we were all on the same page at any point in the negotiation. This would avoid confusion and unnecessary backtracking in the process, thereby keeping us moving forward. The summaries that were given from time to time throughout the negotiations, and the quasi-minutes that CCB and I prepared for the class, aided in this forward movement.

AD, p. 7: One of the most important duties the chair carried was the documentation of the negotiations. There were numerous times when ideas and proposals were being tossed around on a variety of topics, which led to confusion. The negotiators would then ask for clarification of the issues from the chairpersons. The chairs were able to re-establish the pace and direction of the negotiations by providing a clear and concise summary of the discussions.

C. Substantive Negotiations

[Students reflect on the forces that drive negotiations. Perceptions become reality as words and actions are constantly being interpreted (differently) by everyone and the interpretations ground reactions. Negotiating styles conflict; mistrust and uncertainty makes parties cautious. Negotiations become a shifting dynamic as individuals and teams speak, listen, ask, act, group, and regroup in the attempt to appear co-operative but at the same time preserve their parties' interests and bargaining power. Teams experience both positive synergies and intrateam conflict.]

1. What to Expect: Governing Dynamics

[Students learned the extent to which the dynamic created by perceptions, negotiating styles, and trust (or its lack) governs what happens in the negotiations.]

a) Everyone Perceives and Interprets Differently

[Negotiations are driven by perceptions and interpretations, and everyone perceives and interprets differently. It is almost impossible to believe the profoundly different ways in which people interpret what has happened, what is happening, and what should happen. This section provides the students' own words as to their interpretations and perceptions of: i) events; ii) substance; and iii) strategies and ethics.]

i) Events

[Students had dramatically different perceptions and reactions to major events in the negotiations. Comments here cover choosing the teams, choosing the chair, interventions by the chair, speaking arrangements, the creation of the initial agenda, the meaning of opening day gifts (or their absence), and the attempts to resolve the Day-One impasse.]

a. Choosing Teams

[Most students accepted choosing teams by lot, but not all. Students decided not to make an issue of the distinction, nor of their personal team preferences, but instead to focus on the work ahead of them.]

FD, p. 16: Organizing ourselves into groups was amicably done by placing all our names into PD's hat. I was later informed that not every name had gone into the hat. AA had refused to put his name in as he would not participate unless he was on the Aboriginal team. This irked me. I strongly suggest that it is more beneficial to argue the opposite side of that to which you are emotionally committed.

AA, p. 3: The class decided (with the exception of myself) to place their names in a hat to be drawn for a position on one of the three parties to the negotiation. Since I was the only Aboriginal person in the class, I felt it necessary to be part of the Aboriginal party, feeling strongly that this would give the simulation greater authenticity. I do not wish to debate the merit of "knowing the other side" because my experience is that there is always a deficiency in perspective when culturally specific roles are taken by persons of a different cultural background.

FC, p. 30: We decided to simply draw names out of a hat. I believe everyone approved of this method except for AA, who had a strong preference for representing the Aboriginal people in the simulation. AA is an Aboriginal law student who possesses a great deal of knowledge in relation to the issues surrounding the implementation of self-government. I too would have preferred to represent the Aboriginal people since I had completed work in this area on behalf of a law firm I worked at the previous summer.... Although I would rather have represented the Aboriginal people ... I was excited to represent the federal government. I viewed it as a great opportunity to gain a new perspective and to view the self-government negotiation from the opposite side.... [Further], although I viewed AA's knowledge of Aboriginal self-government as second to none in the class, I now maintain that he nonetheless held some extremely unrealistic goals regarding its implementation.

FB, p. 13: [In the name draw] I was assigned to the federal Crown team. In this assignment, I was placed in a group that I felt comfortable in, yet I couldn't help but think that a "bump" in my comfort level may have given me a different perspective. The Aboriginal student in the class was a strong negotiator, and I was a Law Students' Association leader as well as an experienced negotiator. I couldn't help but feel that our experiences would have been more unique if we had switched roles.

PE, p. 3: [As the class had agreed], everyone's name was put into a hat and as they were drawn they were placed on one of either the provincial, federal, or Aboriginal team. I had my fingers crossed that I would be put on the Aboriginal team and was disappointed when my name was drawn for the provincial team. I felt that I would have the most to contribute to the Aboriginal team because of my very unique personal experiences. Although initially unhappy with the [choice of] group, I was very happy to be with the four other people whom I had been placed with.... [Later] p. 19: It was at this juncture that I realized that my personal connection with the Aboriginal viewpoint was quickly becoming secondary to my affiliation to the viewpoint of the provincial government. Although I felt that all my conversation and intrateam input was infused with an Aboriginal perspective, I had become much more conscious of my team's responsibility to every citizen of Saskatchewan.

FD, p. 16: As for myself, I had no particular preference except for a distant feeling of not wanting to be on the provincial side. This was due to last year's negotiation, during which the provincial team played only a peripheral role. Of course, as it turned out, the provincial team was in every respect an equal player.

b. Choosing the Chair

[Students had different recollections as to whose idea it was to accept both the nominees as co-chairs.]

CCA, p. 12: I was part of the federal team before being elected to position of chair. Our first group caucus, and the only one that I attended as a member of the federal group, was around how the chair was to be chosen. In that meeting there was discussion as to whether we wanted a rotating chair from each group or a single fixed chair. One of our members, FA, was of the view that the only way the negotiation could be fair was if the chair could rotate and each group was given an opportunity to chair a session. She also pointed out that this would give individuals who wanted to try being the chair a chance to do so. While FA's proposal was well taken, it was my view that for consistency, a single chair would be preferable. Furthermore, to be neutral, a chair could not be part of a group at the table; the chair would have to give up his/her position in the group and act in the interests of all for the sake of neutrality. In the rotating chair proposal, when the turn to chair the session came around, being part of a group would make detachment from group mentality difficult if not impossible, and this would affect the neutrality of the chair. Our group ultimately decided that we would support a single fixed chair.

p. 15: While we were outside, CCB and I had an opportunity to talk about the position, and came to the conclusion that a chair and co-chair might be a good idea, given that we were both interested in the process more so than the content of the negotiations. When we re-entered the room, our chair/co-chair idea was put forward and accepted without any discussion. Thereafter, control was officially turned over to us.

AB, p. 15: When the nominees were filing back into the room, PD suggested that they share the role as co-chairpersons, thus allowing each person to bring their unique skills to the chairperson role, thereby benefiting the negotiation process in general. As a result, this suggestion was passed by consensus and both individuals became co-chairpersons.

PE, p. 8: If we're trying to think outside the legal box, why not start here? The class then decided to abandon the first decision ... and allow two people to chair the negotiations. What seemed to be a little unorthodox in the beginning really paid off, because both chairs dealt with their very difficult job with skill, humour, and grace.

c. Chair Intervention re Seating Arrangements

[Students had very different reactions when the co-chairs unilaterally accepted the Aboriginal proposal for seating arrangements.]

AA, p. 11: The Aboriginal group realized that ... we could further neutralize a confrontational approach by geographically positioning ourselves across from the chair.

PE, p. 14–15: AA made known the Aboriginal preference to be seated directly across from the chairs at the Main-Table negotiations. Watching the reaction of this request ripple across the faces of the rest of the class was very interesting, as people reacted not to what AA had said

but to how it was said. The tone of the statement appeared to be that AA considered [this] a right and not a request. My initial reaction was one of automatic wariness directed to the tone of the statement. When we split into our teams to discuss this, it became clear that other members of my team felt that the tone was troublesome too, but it was also established that the province was entirely dedicated to not making the same mistakes as in the past. We made a conscious decision to do what was in our power to make informed decisions based not on initial emotion but on our goal to effect real change. The provincial team decided in that caucus that the seating arrangement did not matter in the scheme of what we wanted to get accomplished, and if it made the Aboriginal team feel comfortable at the table, it was worth making happen.

FC, p. 35: [The federal team] caucused and discussed the issue. I put forth that we should allow the Aboriginal group to sit across from the chairs. I saw no distinct advantage of sitting in that particular spot and thought we should support this request as an indication of our good faith. FA thought that such a concession was unrealistic. I disagreed with her and perhaps it was my bias coming through, but I told my group that it was most logical for the Aboriginal group to sit across from the neutral chair because ... they ... have the grievance and they are the reason that we are all here. The rest of my group agreed with me to support the motion.

AA, p. 11: As it would turn out, we really didn't have to negotiate the Main-Table seating arrangements. It was at this point that the advantage of having a neutral chair became apparent. To our surprise, it was the chair who proposed that the Aboriginal team have a permanent position across from the chair at the Main Table. I have to believe that because it was the chair who pointed out the rightness of having these seating arrangements, the Crown parties found the proposal to be more acceptable than would have been the case had our group made the same proposal.

CCA, p. 16: AA commented that he was pleased when we suggested the seating arrangement about the table. This proposal was deliberate in the sense that we as chairs felt that the adversarial position is typically the one across from the opposing side. We assumed that the provincial and federal teams would agree on many issues, so sitting across from one other would not be indicative of an adversarial position....

Perhaps this was not a very neutral strategy for the chairs, who were to be neutral in the process. However, the role of the chair in the negotiation was not only to ensure that the parties got a chance to speak and that procedural protocol was followed, but also to aid in the substantive negotiations as far as was necessary to keep the talks moving. As such, the set-up of the Main Table was a factor in creating the right atmosphere for negotiations to occur. If the atmosphere was hostile from the beginning, then the trust that needed to be established for negotiations to occur in a forum conducive to collaboration would not come into being.

AB, p. 21: While I was impressed by the events of the negotiation session, I felt as if the

chairpersons had stepped beyond their role of an impartial and neutral party, and by their suggestion of the seating arrangement for the substantive negotiation, had taken an active role in the negotiation process. However, I also realized that this action benefited [my team] so I remained silent regarding this action. The way I handled this situation caused me to see how easy it must have been for the federal and provincial Crowns in the video to justify the blatantly obvious bias demonstrated by the chairperson during the negotiation.

d. Speaking Arrangements

[Different individuals and teams had quite different interpretations of the appropriate application of the agreement that one person would be the lead speaker for each team each day.]

AA, p. 10: It was decided by a majority vote of eight to four (all eight votes for came from the Crown parties) that ... one person [would] speak on behalf of each group, with the speaker having the discretion to defer to other members of his/her group. From that point forward, with one exception, I spoke exclusively on behalf of the Aboriginal party. [Later], members of the other groups approached a member of our group complaining that they didn't think it was right that only I should speak on behalf of our group.... I would suggest that when there is only one speaker representing a group at the Main Table, that group will always present a unified appearance. Further, with only the one speaker,... that speaker can maintain the focus on the interests relevant to his or her group regardless of the direction the negotiations are going. The result ... creates an image of a solidified, confident force, with a concomitant power image that may have an intimidating effect upon the other parties.

FB, p. 22: [During the federal team meeting after Day-One negotiations], FA and FD expressed their frustrations about AA's domination of the Aboriginal group and the entire negotiations. It was clear that AA, as an Aboriginal person, had strong feelings about this negotiation, and it was also clear that he was particularly well versed in the academic and legal elements of present federal/provincial/Aboriginal negotiations. Our group collectively developed speaking segments to combat this aggressive negotiation style of AA, as it appeared that no other member of the Aboriginal group was willing to put forward ideas orally at the negotiation table.

CCB, p. 29: As chairs, we recognized those who wished to speak. The parties had decided in the preliminary phase of the negotiation that each party would have one key speaker, who would then defer to another member of the group if necessary. This procedure was not really followed, and with the exception of the provincial team, it appeared as though it was rarely even thought about. Neither did it seem necessary to make it a major point of contention. Members of all the parties were courteous, raising their hands when they wanted to speak, and not interrupting when others had the floor.

PE, p. 8: As the negotiations developed,... the intention of the deferring principle [deferring to another member of the team to give everyone an opportunity to speak for their team in the negotiations] was somehow lost along the way and was not sufficiently acknowledged as a rule rather than an option.

e. The Substantive Agenda and the Aboriginal E-Mail

[Again, individuals and teams had very different understandings of the agreement as to how they would arrive at the initial agenda.]

PE, p. 16: On 25 February, the class [discussed how it would set the substantive agenda]. AA spoke on behalf of his Aboriginal team and highlighted the fact that the purpose of these negotiations was the implementation of self-government under Treaty 6. Once again, I felt extremely uncomfortable with the tone of the conversation, which was in my opinion quite hostile. I felt at the time confused and a little hurt that AA had taken such a confrontational approach to the negotiations when everyone at the table had expressed a desire to come to a creative, mutually acceptable agreement. It seemed like a verbal slap in the face, and immediately I could tell from the body language around the table that others were equally as offended and disturbed by the tone of the Aboriginal team's position. It seemed to me to set an unfortunate and potentially hostile precedent to the beginnings of substantive negotiations.

p. 17: After leaving the class, a number of us congregated in the library.... I was approached by ... a member of the federal team, who expressed her concern over the tone of AA's address to the class. The discussion that seemed to me to be hostile was interpreted by her even more unhappily. She felt that AA was not initiating the negotiations in good faith and the aggressive verbal stance that he had taken earlier in class was counterproductive to the process, the negotiations, and the ultimate goal of effecting change. I agreed with her that the tone of the conversation was troublesome because it seemed to come out of nowhere and intimidated a very aggressive and what appeared to me to be immovable position that did not bode well for future negotiations.

p. 19: I was reminded again [in the Aboriginal e-mail of 27 February] of the confrontational tone of the Aboriginal representative a few days earlier. Words like "assert," "imposition," "separate and distinct," "inherent right," as well as "assimilation" and "extinguish" set the tone for the proposed outline. Combined with my feeling of uncertainty as to the direction the negotiations would take over the next few weeks, I felt some trepidation and felt unsure that the MPN class of 2002 would be any more successful than the MPN class of 2001. The tone of the proposal, combined with the tone of the speech given by AA, started to solidify into a general sense of unease. The proposal on its face seemed to be somewhat harsh.

FD, p. 18: The proposal received from the Aboriginal team as to the substantive issues we

will negotiate was aggressive and dictatorial. I believe now that this was actually a negotiating technique.... The result was that immediately our hackles went up. First, we were not prepared to be bullied. Second, the sheer amount of issues proposed was overwhelming. We felt that the focus needed to be narrowed to a workable agenda. We drafted a reply suggesting that each group bring to the table issues they would like negotiated.

FB, p. 20: While comprehensive in its scope and detailing of the Aboriginal positions, it simply did not sit well with our group.

FA, p. 20: I interpreted AA's tone as condescending and rude. I think that initial reaction shadowed my entire experience within the negotiating process.

AA, p. 15: One student would later comment that he found the statements made in the preamble to be condescending in tone. I found his characterization disappointing.... The student's statement reflected, implicitly, a total lack of understanding of the importance of the historical Crown relationship necessary in Aboriginal-Crown negotiations.... p. 16: Even though the Crown parties had requested that we generate the issues for negotiation,... a response came back from the federal party "that the agenda should not be dictated by any one party."

CCA, p. 20: As part of the role as chair, imposing procedure was necessary at various points in the negotiation. The procedure we imposed to address concerns raised by the federal and provincial groups in relation to the Aboriginal e-mail was necessary to ensure that all parties had a role in deciding the substantive issues. If one party was assumed and believed to have control in setting the agenda, regardless of whether this was actually the case or not, then the atmosphere of collegiality would be destroyed. It was important to keep the sides vested in the process as equals. To ensure this, CCB and I [asked the parties to state their interests and then proposed a cumulative agenda].

f. Day-One Opening Gifts and Statements

[In respect for what they understood to be the Aboriginal tradition of presenting gifts as a token of good will at the opening of negotiations, individual federal and provincial team members expended personal time and expense to ensure that gifts were presented to all on the first day. The Aboriginal team's choice not to reciprocate the gift giving and its adoption of what appeared to others to be an aggressive tone created tensions that lingered throughout the negotiations.]

CCA, p. 20: The first day of substantive negotiation started with a short welcome and reaffirmation by the chair of the decisions made by the group to that point. The opening statement was important to set the stage for negotiations.... A reaffirmation of [the collegial atmosphere

to this point] and the purpose for which we had come to the table needed to be articulated, as we were about to get into very contentious issues in substantive negotiations. In addition, the opening was an opportunity for the chair to remind everyone of the ground rules in terms of speaking at the table, and to reaffirm out loud the basic principles of common courtesy (i.e., not to interrupt when any individual has the floor).

p. 22: The willingness to negotiate in good faith was expressed by all parties not only in their opening remarks but also in their actions. Both the provincial and federal groups presented the parties to the table with gifts, tokens that were a further indication of the willingness to come to the table as allies and not adversaries. It was interesting, however, that the Aboriginal group did not come to the table with tokens symbolic of their commitment to the process.

PE, p. 22: I offered to ask my landlords if they could provide us with doughnuts. I thought that sugar food would be appreciated by the class at that time of the day, and the rest of my team agreed to this form of gift.

p. 24: The provincial team presented their symbolic doughnuts to the class, which was followed by the presentation of symbolic keychains by the federal team, made by FA. I was somewhat taken aback that the Aboriginal team did not present anything, but decided not to dwell on it.

Accompanying our doughnuts, provincial member PA gave a speech regarding mutual respect and the province's dedication to bargaining in good faith, [which was] quickly echoed by the federal team. The provincial team also focussed the topic for discussion in order to entertain the concerns our team had identified with regard to jurisdiction, funding, and the effect of implementation on the current political framework....

I was thoroughly disappointed by the Aboriginal team's reaction to what my team considered a noteworthy change in negotiating etiquette. The provincial team had noticed in the [constitutional video] that only the Aboriginal contingent brought gifts of respect and friendship to both federal and provincial governments. It was our intent to reinforce our good will in a symbolic way by initiating such an offering of respect. I never expected that our carefully designed attempt to show our intent to bargain in good faith would be so noncommittally received. I felt somewhat slighted that I had gone out of my way to arrange getting doughnuts from my landlord's business, which they considerately donated, and did not have the gesture recognized for the legitimate effort it was.

FA, p. 17: Then it was the federal team's turn. FD welcomed the parties to the table and began by passing around my keychains. This was a very nervous moment for me. I wanted the opposing teams to accept the gifts as a token of our good faith.

p. 16: I had been very careful choosing a gift for the parties to the negotiation. I decided to make keychains, but I did not want them associated with bad connotations. At first I had

thought about keychains with animals on them. But then I thought of possible Aboriginal responses that involved the “white man’s” disrespect for the Creator’s creatures.... In the end, I decided to decorate the keychains with beads, which I stitched into the shape of flowers. I hoped the flowers could symbolize growth of the relationships among the parties. Maybe this could be a feeling of a new beginning or a fresh start—a springtime, happy feeling....

p. 17: I felt like I had put myself out on a limb.... I felt powerless; I had put a piece of myself out to the other parties and they had the power to accept or reject my peace offering. I watched the container get passed from person to person around the table. In general the reaction was good. I began to feel warm and happy with how people reacted. However, as AA took his keychain, I saw no reaction. His face appeared cold and sober. I felt defeated. My heart sank.... AA’s was the reaction I cared most about. I felt it was imperative that we obtain a positive start to the negotiations. I felt that AA, an Aboriginal person, would have a much greater understanding of the underlying purpose of such gifts....

p. 18: I was even more upset when the Aboriginal team gave their opening address and had no gift offering.

p. 19: Another disappointment in the Aboriginal initial address was the negative feelings that I got from it.... I was shocked. Listening to AA speak, I felt that the Aboriginal team seemed to be bitter and angry with all of us. In light of our efforts, I was hurt.

AD, p. 11: As an Aboriginal side, we did not begin the negotiations with a ceremonial prayer.... I did not feel it was appropriate to engage in this form of cultural ritual if we did not fully understand or have the background to appreciate its significance.

AB, p. 28: I realized that [our Aboriginal team] was the only one not to simulate the traditional ceremonial aspects of an Aboriginal-Crown negotiation. That is, the Aboriginal representatives did not request a prayer prior to the negotiation process, nor did we demonstrate our willingness to negotiate in good faith by presenting the other negotiators with a gift.... While I read about these occurrences when I was preparing for the negotiations, it did not seem important to the Aboriginal representatives’ strategy to reproduce these activities. Rather, the Aboriginal representatives felt it was much more important to focus on the substantive portions of the negotiation process, and assumed that all parties would be bargaining in good faith. In retrospect, I believe the Aboriginal representatives ignored a crucial symbolic element of the Aboriginal-Crown negotiation process.

CCA, p. 22: It appeared to me as though the Aboriginal group was adopting a style of negotiation that was not traditionally theirs, according to characteristics displayed in the video and by the individuals who did the simulation last year. They were adopting a “white man”⁵³ type approach to negotiation. Utilizing such an approach appeared to be an effective way of decreasing the differences between the two groups. The Aboriginal group thereby empowered

their position through becoming more like their opponents at the table. Like the adage “When in Rome, do as the Romans do,” the Aboriginal group was in effect emulating the techniques of the other groups at the table.

g) Breaking the Day-One Impasse

[Both the federal and Aboriginal teams were acutely aware that if they could not get past the impasse reached on Day One, the talks would go nowhere.]

FA, p. 19: Day-One negotiations went very badly for me. The way I saw it, all sides stated their respective positions and we, as the federal team, suggested an alternative. I internalized Day-One negotiations as a bad experience all around. I felt as though we were hitting our heads against a brick wall, as the Aboriginal team wanted nothing to do with our suggestion or position.

p. 20: [The federal team] were all a little shocked by AA’s attitude towards the provincial team. His harsh words seemed to pierce the provincial team members.

AA, p. 24: We had come to an impasse.... If we couldn’t get by this impasse the negotiations would collapse. I saw only one option, as we were very near the end of our time for that session. Could I get past what their minds were stopping them from hearing?... I went through an intense moment of angst. Should I even try this? Is it appropriate in a contrived setting to engage in such things? This last question I asked myself was most determinative. Had I reached the level of consciousness necessary to communicate to the spirit of another human being? I decided that if I couldn’t do this now, then I would know that I would not yet be ready for a time when it might really count....

p. 25: I have come to understand that there [are] differing levels of consciousness, and although I am far from the higher levels, I constantly strive for greater understanding. Having said that, as we move to different levels of consciousness, we move further away from the restrictions of the rational mind. In other words, the impossibility of the existence of a different reality is removed; the requirement of scientific proof to establish its existence and validity is unnecessary. We move to a reality in which the spirit is not limited by the conditional response of any paradigm of the mind.

As best as I can describe it, the spirit is something felt. It is a feeling intertwined with emotion, sensitivity, a deep-rooted understanding, awareness, acceptance, and connectedness, all intermeshed and harmoniously engaged. As I understand it, the spirit exists in a reality larger than the rational mind, and communication can take place at the spirit level without restriction as to medium. But this was negotiation, and the medium was sound.

I recognized that barriers had been raised around the concept of consent. To speak to this directly would only re-engage those barriers.... I had to speak in collateral terms, and to a

space larger than the individual. I locked my eyes directly on the neutral chair and began to speak. As I spoke I let go; I spoke from the centre of my being. I felt emotion welling up inside; I felt a tone of passion attaching to the words I was speaking. I finished by saying something about finding a solution to the impasse. I had thrown the ball into their court.

FC, p. 39: It was the opinion of the federal team that the Aboriginal group had not yet conceded anything during the first negotiation session. We believed they had simply stated their position and were holding firm to it. In our eyes, we had come up with a valid compromise between mere consultation for infringement and the requirement of Aboriginal consent.

FA, p. 20: We were all thinking of starting the next negotiation by digging our heels in. We considered ourselves to have moved on our position. We were going to tell the Aboriginal team that we wanted evidence of their good faith by seeing them move off their starting point.

FC, p. 40: We thought this was a good idea, but that it should only be done as a last resort. This type of approach would destroy the good faith we had worked so hard to establish. FB suggested that we first push the Aboriginal team to come up with a compromise, and if that failed, we would resort to FA's speech.... If AA wanted to end up with 100 percent of what he wanted, the negotiating table was not the proper arena for him to attempt to settle this dispute. In my opinion, if you [expect] to receive everything you want, you should take your issue to court, where there are clear winners and losers. Negotiations are places where one should be prepared to make concessions and to compromise to make an agreement that all sides can live with. It was my belief that AA did not possess this attitude during the first session of negotiations.

It was at this time that FD put forward an ingenious solution, which later turned out to be the "deal maker" of the simulation ... [the tribunal]. Because all administrative tribunals are subject to judicial review through the existing court system, it was my belief that this was merely the same deal we had previously offered the Aboriginal team, with the administrative tribunal acting as an intermediate step before the courts. We decided that this was a great idea and that it should be proposed during the next negotiation. However, we decided that this was our final concession. If they refused to negotiate upon this proposal, then FA would give her speech ... and I would unleash my thoughts towards the Aboriginal group, and AA in particular, about how I felt they did not come to the table to negotiate.

FD, p. 22: I wrote the tribunal proposal down and presented it to my team as a means of breaking the impasse. I was pleased that my team readily accepted it, but would the Aboriginal team? I read my speech in class and saw the Aboriginal team visibly relax. This was my proudest moment, and as I later learned, rightfully so. Outside of class, AA told me that if it was not for this suggestion, the entire negotiation was on the verge of breaking down. I strongly believe that this exercise was a chance for the students to think outside of the box. As we were never truly accountable to anyone, we could attempt to come up with innovative solutions, and indeed we did.

AA, p. 27: At the outset of the second round, the federal negotiators brought forward a proposal that would get the negotiations past the impasse... Without this proposal, I believe the negotiations would have collapsed....

Can I prove that I was able to communicate through my spirit to the spirit of the others in the room during that round of negotiations? No.

If polled, would anyone say that what they heard touched a cord within them? Possibly, but I doubt it.

Did I attempt to manipulate another's way of thinking? Not at all. What I did was attempt to bypass the barriers created in the rational mind so that a solution might be developed that would address not only our interest but theirs as well.

Can only Aboriginal peoples engage in communication through the spirit? All things that possess spirit can communicate through the spirit. What is required in the human dynamic is the ability not to be limited to only what the rational mind will accept.

Do I believe I was able to communicate from my spirit to the spirit of the others through what I said? Absolutely.

ii) Substance

[Groups had very different ideas as to the appropriate direction to be taken for solutions to the substantive problem, different interpretations of the words in the authoritative documents, and widely differing proposals for table consideration.]

a. Solutions

i. Federal

[The federal government believed the solution lay in having Aboriginal people take control of their own lives to reach the point of self-sufficiency, which would in turn reduce federal funding.]

FC, p. 1: Until one becomes familiar with the history of Aboriginal/white relationships in Canada, one will not understand that many of the problems facing Aboriginal people today can be most effectively reconciled through the Aboriginal people themselves taking control of their own lives. The history of Aboriginal people in Canada will show how ... through no fault of their own, [they] lost command over their lives through the process of colonization. It is this loss of control that has created and perpetuated many of the problems plaguing [them] today. In order for Aboriginal people to most effectively begin to heal from the damage caused by the effects of colonization, this basic freedom to manage their own affairs must be returned

to them. This freedom and control may most ideally be returned to the Aboriginal people of Canada through the creation, evolution, and utilization of their own system of government.

FD, p. 21: Our long-term goal was to reduce funding. We were open to suggestions, and were open to making suggestions in the hope that the Aboriginal people would one day be self-sufficient.

ii. Provincial

[The provincial team was internally divided as to the solution, with one strongly held view that Aboriginal people should receive a transitional payment, after which time they would be citizens on the same basis as other citizens. Others were focussed on “creative and collaborative” solutions. The team agreed that before any meaningful decisions could be made on self-government, discussions were needed on who would pay for what, on how existing jurisdictional lines would be adjusted, and how accountability would be ensured.]

PE, p. 18: On 26 February 2002, the provincial team members received an e-mail from PC.... PC felt the Aboriginal assertion of self-government was an un-co-operative and aggressive position. He proposed the fundamental term,⁵⁴ which was in direct conflict with the Aboriginal view. PC felt that the provincial team should adopt a most sceptical stance towards any implementation of Aboriginal self-government. This position was based on what he called “spill-over”—something he assumed would be an automatic result of self-government. PC felt that First Nations people would leave reserves in increasing numbers to move into the surrounding towns and cities, producing a strain on provincially funded social and municipal services. PC proposed the way that the provincial government should deal with this would be to propose a payment to each individual Aboriginal band member in the amount of \$10,000 in exchange for the extinguishment of all Aboriginal title, rights, band membership, and Indian status so that they would become a Saskatchewan resident like any other.

p. 21: Acknowledging that positional bargaining had not worked in the past, PD proposed that the provincial team abandon the failures of the status quo and attempt to arrive at substantive solutions through a process of collaborative and creative negotiations. It was finally agreed that the provincial team would become the “shining example” of inventive negotiations in an attempt to address a perceived path of conflict between the federal and Aboriginal teams. PC was not an enthusiastic participant in this conclusion, but was able to agree that the strategy he had proposed may be too inflammatory if our goal was to be creative compromise.

p. 23: The provincial team met again on 3 March 2002 to further discuss the approach that our team would take the next day at the Main-Table discussions. PA expressed her view that as

long as our team approached bargaining with a mind to representing the concern of all citizens of Saskatchewan, she would feel comfortable in supporting a progressive and creative bargaining position.

PA continued by expressing the view that the province should support self-government in the form it took contemplated eventually moving towards self-sufficiency. [We] decided that before we addressed the substantive issues presented by the Aboriginal team, a discussion on accountability was imperative. The team had not focussed its argument within the form of the Aboriginal team's agenda; however, the province felt that "before we can decide what colour to paint the bedroom, we must come up with the resources to build the house." In other words, the province felt that the group should look at the bigger picture of who was going to pay for what, who was going to lose or gain jurisdiction over what, and how do we ensure mutual accountability among all levels of government, before we decide on education or health issues.

iii. Aboriginal

[The Aboriginal team believed that the treaties had assured them they would be able to continue to regulate their lives and communities.]

AC, p. 19: [In the meeting with Aboriginal negotiators], I learned that the Indians' comprehension was that they did not cede their rights to govern themselves when they signed the treaties, but that they were agreeing to share the land with the Europeans in exchange for medicine and agricultural knowledge.... The First Nations understood that they would continue to govern themselves through their systems of regulating their lives and communities.

AA, p. 13: In light of the interests of the peoples of Treaty 6, as we identified them, we sought through negotiations on self-government to obtain self-determination [without using the word self-determination] as set out in Articles 1 and 2 of the *International Covenant of Civil and Political Rights*:⁵⁵

1. All peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social, and cultural development.
2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of their own means of subsistence.

b. Words of the Relevant Texts

[The teams had very different interpretations of what the treaties had said.]

PB, p. 6: Although the spoken words of the treaty negotiations are well documented, each party had a different interpretation of what they thought they were entering into. This ... caused contentions from the very start and has continued to the present. Even in our class negotiations we argued over what was the spirit or intent of both parties during the treaty negotiations.

CCA, p. 30: The provincial government believed that it was a party to the treaty and as such was not only bound by it but also could enforce its terms. The conception of the role that the province played in the treaty was much different according to the Aboriginal group, [which] believed that the province was not contemplated by the treaty and as such was not a party to it. This conception had a monumental effect in the role that the province was to play in these negotiations. If [it] were not part of the treaty, then [it] would not be willing to negotiate on issues of funding and resource sharing.

PE, p. 29: Why wasn't the province a part of the treaty? All the research the provincial team had done intimated that the relationship was between the Aboriginal groups and both governments equally.... The exercise, according to AA, was to implement the existing treaty, which only contemplated the federal government as party to the treaty. The province [adamantly] believed that we were contemplated by the original treaties to be parties to the treaties, with all the responsibilities and obligations that entailed. AA answered this resoundingly in the negative, stating, "The courts have interpreted the treaties to exclude the provinces." I couldn't believe what I was hearing. Had the provincial team missed something in its research?

During the second caucus, I retrieved my copy of the *Report of the Royal Commission on Aboriginal Peoples*⁵⁶ and found that the provinces had a particular obligation to participate in meaningful implementation of Aboriginal self-government. I misunderstood this at the time to mean that the provinces were indeed contemplated in the treaties as parties to them. PC also asserted that he had definitely read somewhere in Treaty 6 itself that the provinces were contemplated as parties. It was this misunderstanding of the words that coloured the rest of the negotiations that day. The province's view was, "Why wouldn't you want the province to be held accountable as a party to the treaty?" The Aboriginal perspective was that the provinces are just not parties to the treaty, end of story. It was completely perplexing to me that the Aboriginal representative would balk at the chance to include the province in constitutionally entrenched obligations. I did not understand where AA's refusal to even contemplate the issue came from and started questioning whether or not the Aboriginal representative was attempting to limit the province's role in the substantive negotiations.

p. 33: AA reiterated that this exercise was not one of treaty renegotiation and this was not the forum to debate the intricacies of treaty interpretation. Once again I was astonished by the apparent abhorrence to the idea of provincial treaty status. Where is it written that the

provinces were not contemplated as parties to the treaty? AA asserted that the power moved from the Queen to the Crown in right of Canada, which did not include the provinces at the time the treaties were made. The provincial party felt that it should be implied that the provinces held that status, and felt that in doing so the Aboriginal team would benefit greatly. The constitution states and implies throughout that the federal and provincial governments enjoy broad and plenary powers, intimating that the two forms are separate but equal. The provincial team just could not figure out why the other two teams were so adverse to this idea.

c. Proposals

i. Neighbour Principle

[The provincial team proposed contractual agreements among governments to ensure accountability through the “neighbour principle” (a principle of tort law requiring that one not act in such a way as to intentionally or unintentionally harm another who is foreseeably harmed by one’s actions). Team interpretations of the proposal varied widely.]

PC, p. 34: However, the fundamental term did play an important indirect role in the simulation case study. Indeed, it generated “the neighbour principle,” which had the potential of serving as an appropriate, nonconfrontational foundation for the relationship.... p. 41: W. Ury’s *Getting to Peace* is an indirect authority for the position that framing a relationship in terms of being a “neighbour” is a helpful way to promote coexistence with a minimum of destructive conflict: “No dispute takes place in a vacuum. There are always others around—relatives, neighbours, allies, neutrals, friends, or onlookers. Every conflict occurs within a community that constitutes the ‘third side’ of any dispute.”⁵⁷

PE, p. 28: The province felt that in order to address issues of accountability there needed to be a reciprocal program in which all governments involved would treat the others as its neighbour. Each party to this principle would have reciprocal responsibilities and obligations to not intentionally or unintentionally do harm to other entities around it in the exercise of its constitutionally recognized right to govern. We decided that it would be best to describe the duty along similar lines as the tort-based duty of care, where the parties promise “to do unto others as you would have done unto yourself.”

p. 29: AA felt that the neighbour principle in effect built upon an existing treaty and was thus outside the province’s scope of powers.

FC, p. 42: The final, and in my mind, least important issue that came up during the second session of the negotiation dealt with a proposal of the provincial government concerning a possible neighbour principle that would be implemented between the provincial and future Aboriginal government. The proposal was the brainchild of PC. As I mentioned [see below], I

was concerned with what type of issues PC would bring to the negotiation table, and this proposal confirmed my previous fears. The provincial government proposed that there would be a reciprocal duty upon the Aboriginal and provincial governments to take care not to exercise legislation that would be inconsistent with each other's rights. The provincial government wanted the principle recognized as part of the treaty. My position [was] that it is a principle that is already recognized at law. I perceived PC was ... throwing a wrench into the negotiations and in my mind, simply wasting time. The neighbour principle already exists in the area of tort law. It states that people have a duty not to harm their neighbours. In my mind this duty already applies to governments. Provincial and federal governments have been sued in the past for harming people, so I have no idea why the same liabilities would not apply to Aboriginal governments. The Aboriginal group responded to this proposal with sarcasm. In my opinion, however, this sarcasm was warranted. AA commented to PC that if he wanted him to sign a piece of paper that said he was his neighbour, then that was fine with him. However, he stated he would not allow such an agreement to be included within Treaty 6.

PE, p. 29: The biggest problem was that both the federal and Aboriginal teams were not interpreting what to us was a clear and useful proposal. There was absolutely not a single element of paternalism in the neighbour principle. When coming to the decision that there should be some sort of arrangement between the parties to address accountability in the event that something happened, the province was attempting to entrench not only the First Nations' duty of care but also the federal and provincial duty of care. It seemed only logical that the Aboriginal group would want to tie itself into an agreement with both the federal and provincial governments to ensure that each party do its best to avoid causing the other harm.

The Aboriginal representative, AA, stated quite bluntly that provincial laws of general application are of no force and effect to s.35 treaty rights. AA then continued in a derogatory tone, giving the province a paternalistic pat on the head by reluctantly agreeing to the neighbour principle. I was shocked. I felt that the province had just been blatantly disrespected. I felt that the Aboriginal representative was being outwardly patronizing, and it grated on my overly sensitive nerves.

p. 32: The province felt that ... a disturbing trend of ignoring the provincial presence at the table was starting to develop. It was at this point that the provincial team asserted its concerns that the neighbour principle had been somehow sidelined. My team tried to explain in better wording that we felt the neighbour principle embodied a principle of reasonable care not to exercise provincial legislative rights in such a way as to undermine Aboriginal self-government....

This position was met with FC very casually saying that the neighbour principle is an implied fact of life and there is no need to write it down. I considered this overt attempt to limit the potential benefits of the entrenchments of the neighbour principle as another

example of the federal team's refusal to include the province in meaningful substantive discourse.

FB, p. 23: [FC's response at the Main Table to the neighbour principle] demonstrated a lack of respect for the province's interests and a lack of respect for the provincial negotiator on a personal level. While the provincial negotiator may have been persistent, we had no way of understanding if he was representing his entire group's position, and in fact, why they held that position, because it was summarily dismissed by the other two groups. If we were seeking consensus on substantive matters, this was not the way we were to achieve it.

ii. The Provincial Amendment to the Tribunal Proposal

[The federal proposal was that infringement of constitutionally protected Aboriginal rights would be decided by a nine-member tribunal, three representatives from each of the federal government, the provinces, and Aboriginal organizations. If the tribunal failed, the issue would go to the courts. The provincial team proposed an amendment that mediation be attempted before resorting to the tribunal or the courts. Again, team interpretations of the proposal varied widely, creating another virtual impasse in the negotiations.]

FC, p. 44: I believed we were incredibly close to reaching an agreement with the Aboriginal group [on the tribunal proposal] when the provincial government again interjected, through what I initially perceived to be another attempt to throw a wrench into the progress that we were making with the Aboriginal group. The provincial government [suggested] ... that before any issue regarding infringement [was] sent to the administrative tribunal proposed by FD, all three parties would agree that should disputes arise, an agreement would be made to engage in a form of alternative dispute resolution. This was the brainchild of PD, who I believe is a proponent of any type of ADR. [It] meant that before any recourse was made to either the proposed administrative tribunal or the courts, the parties [would] sit down and consult with each other. I perceived this as just another hoop to be jumped through before an issue went to court.

PE, p. 38: The province never intended this proposal to appear as some form of check on the Aboriginal right of self-government; rather, this mechanism was proposed to deal with the eventuality of impasses between and among the three levels of government. The provincial team was beginning to become very frustrated that the federal government was for some reason clearly not "getting it."

CCA, p. 28: It appeared in this session that the Aboriginal group had aligned to some degree with the federal group, and were working to show the province how beneficial it would be to set up this tribunal and to help the Aboriginal group become self-sufficient in their gov-

ernment. The federal group articulated that it would be in the best interest of the province for the Aboriginal group to be self-sufficient in funding, because it would be less taxing on the province's pool of available resources. The Aboriginal group indicated the province would be responsible only for off-reserve funding, along with the federal government. While the Aboriginal group refused to recognize the province as a party to the treaty, they did propose that they would be willing to enter into contracts to facilitate resource sharing and would sign a document implementing the neighbour principal between the Aboriginal government and the province. There was a short caucus to discuss the proposals on the table.

While all these attempts were great strides in finding the middle ground, I sensed that the provincial group felt a bit ganged up on. This was unfortunate because the proposals on the table and the strides taken to satisfy some concerns were solid. However, I believe that what held the province back was resentment as to how it was treated at the table. Its concern with respect to being part of the treaty was an important one that needed to be clarified before the negotiations could move on. As chair, I wanted to interject in the process the importance of all the issues brought to the table and that everyone was deserving of equal consideration. However, at the time I felt as though this was not indicative of being a neutral chair. By interjecting, I would be defending the provincial side. This would seriously undermine the parties' confidence in me as a neutral third party. Once that confidence was destroyed, there would be no way to get it back and the process would be soured.

p. 31: The Aboriginal group for the most part sat back and let the province and federal government fight it out. This lack of involvement in the discussion was very surprising because the mechanism had more to do with the provincial/Aboriginal relations than it did with the federal/Aboriginal relations.⁵⁸ AA described it as "watching a tennis match," which is actually what it was. The parties were talking about the same thing, yet they did not understand each other.

AD, p. 21: The negotiations had reached a stalemate.... The problem between the provincial government and the other teams at the table may have been due to a difference between the parties' understanding of each other's interests. This miscommunication or lack of communication seriously impeded all sides from coming to an agreement on the tribunal proposal.

The chairperson assisted in moving past this deadlock by asking the provincial government to clarify its proposal. Effective communication requires each side to listen actively to the other side and acknowledge its arguments. The chairperson was acknowledging the provincial government's argument, and the federal government and Aboriginal side were asked to listen. I feel this was a pivotal step in moving forward in these negotiations.

CCA, p. 31: Something had to be done as the discussion was not going anywhere, and the federal side did not seem to understand the proposal that the province was putting forward, despite several attempts to make it clear. As chair, I felt it fell on my shoulders to bring some

clarity to the issue so that we could move beyond it. I asked questions of the provincial group as to how the ADR proposal would fit in with the tribunal proposal, and reiterated what I thought was the purpose behind the proposal. The questions and reiteration were not really for clarification, but a tactic to let the other sides listen to the proposal without attacking it outright.

This was a very partial move on my part, but the way it was framed carried with it a level of impartiality. I was not being absolutely neutral in my assistance to the province, but as chair it was immensely difficult to attain absolute neutrality in the situation. I could see the impasse forming and a way to avoid it before it fully developed. It was my understanding that as chair I was to aid the process in an impartial way. I understood this to mean that I could not unduly favour one side over the other in the process, and [I could] not interfere with the substantive negotiations. But that impartiality was not infringed by clarification of issues to the entire group.... After the issue was clarified and the purpose reiterated, we broke for a caucus.

FC, p. 44: After arguing with the provincial government over the necessity of such a process, I was eventually convinced that such a system would be beneficial to all parties involved. PD convinced me that a process of having the parties attempt to resolve their conflict before resorting to outside parties would instil a sense of co-operation among the governments and create a greater camaraderie and good faith among them. After caucusing with my group, and acknowledging my change of heart, we as a group decided to support such a proposal.

AA, p. 35: When negotiations resumed after the second caucus, emotions appeared to be running high with the provincial negotiators; their voices were rising and their frustration was apparent. There was nothing wrong with the interest they were trying to have understood.... During this running dialogue, I heard PA of the provincial party mention that disputes would not arise in a triparty manner,... that most disputes would likely be biparty in nature, either Aboriginal-provincial or Aboriginal-federal. This was the key to the solution; all that was needed was a correct framing of a proposal that could be delivered in a timely fashion. As the frustration of the provincial party was reaching a peak, I interjected and was recognized by the chair. I proposed that as a solution to the problem the Aboriginal party would be willing to enter into reciprocal legislation of a bilateral nature to the effect that, should disputes arise, it would be agreed that ADR would be engaged prior to any resort to legislation.

PE, p. 38: AA took this heated opportunity to exclaim the Aboriginal team's support of the provincial proposal. AA explained that he did not feel that the provincial government was trying to implement a limit to the Aboriginal government's ability to deal with issues within its jurisdiction. The class came to the conclusion that the provincial proposal was not aimed at limiting Aboriginal self-government, and decided that reciprocal bilateral legislation as between the Aboriginal government and each of the other levels of government would have the power to engage in an alternate dispute resolution process prior to moving to the courts and litigation.

d. Health Care and Education

[After the impasse was resolved on the Tribunal Proposal, the Aboriginal team made proposals for policy and resource-sharing adjustments in relation to health care and education. The federal and provincial teams found these sufficiently in their interests to be able to accept them.]

FC, p. 46: Negotiations resumed with a new sense of vigour. The Aboriginal group indicated that they wished to discuss the issues of health care and education respectively. The Aboriginal group proposed that under the terms of Treaty 6, the primary responsibility for health care remained with the federal government. We conceded this point, as Treaty 6 had written in its plain text that we agreed to provide the team with a “medicine chest.” The Aboriginal group further proposed that all money paid by Treaty 6 people under the GST be funnelled into Aboriginal health-care systems (clinics, etc.). We viewed this award of tax revenue to the Aboriginal government as tax money that we would be paying nonetheless to Aboriginal governments to cover the costs of creating and maintaining these clinics. With this in mind, we viewed the tax diversion as providing the Aboriginal government with not only a source of revenue, but a sense of legitimacy as well. Because this tax diversion did not affect us financially (it would simply lower the payments made to Aboriginal governments for health care accordingly), we supported the motion, as did the provincial government. It was amazing to have gotten through this stage of the negotiation so quickly. However, I fear it was also unrealistic. As PE commented, we just settled the enormous issue of health care in less than twenty minutes!

PE, p. 41: It was finally decided by a unanimous vote to support the Aboriginal contingent’s proposal of funnelling GST money paid by Aboriginal people into the development of Aboriginal health centres, with the eventual goal of self-sufficiency. It was as if we were riding a natural endorphin high. There didn’t seem to be a problem too difficult for our class to come to an agreement on. Bring on the Middle East, I thought.

FC, p. 46: The Aboriginal group proposed that the federal government was responsible for the education of Aboriginal people who resided on the reserve. We readily conceded this point, as Treaty 6 states:

And further, Her Majesty agrees to maintain schools for instruction in such reserves hereby made, as to Her Government of the Dominion of Canada may seem advisable, whenever the Indians of the reserve shall desire it.⁵⁹

The Aboriginal group further proposed that the province be financially responsible for the education of Aboriginal people who reside off-reserve. Interestingly enough, the province conceded this point. I believe that a lack of education regarding Aboriginal law denied the class a real opportunity to engage in some very meaningful negotiations.... If I were a member of the

provincial government, I would have advanced the argument that there is an obligation on the part of the federal Government of Canada to provide funding for status Indians who reside off-reserve.

FB, p. 26: The next motion passed in relation to education. The motion provided for the diversion of Aboriginal property taxes to fund curriculum development in regard to Aboriginal culture and language in both on-reserve and off-reserve provincial schools. All students would have access to these programs, and provincial sales tax diversion could also assist in this venture.

FC, p. 46: Such programs would be available to all children who were interested in enrolling, but the province would be exclusively responsible for paying for these other students. As representatives of the federal government, we felt extremely fortunate to be left out of this section of the negotiations.

AA, p. 38: I believe that the drop-out rate experienced by Aboriginal people can be reduced by making the curriculum culturally sensitive. At the same time, the curriculum must be designed to produce graduates who meet or exceed the standards required to enter postsecondary education.... [Also], it has been my experience, as father of two children, that children in the lower elementary grades (kindergarten through grade five) do not distinguish other students on the basis of skin colour or ethnic origin; they see everyone as the same.... I believe that ignorance forms the root cause of racism and discrimination.

FC, p. 47: Although an outside spectator may have thought that the federal government merely conceded to the demands of the Aboriginal group regarding the issues of health care and education, nothing could be further from the truth. The Aboriginal group made proposals that were entirely realistic and well above what we considered to be our "best alternative to a negotiated agreement." While considering the proposals of the Aboriginal group, we were cognizant that we did not want to fall victim to what Julie Macfarlane has termed the "incompatibility bias."⁶⁰ This theory posits that people assume that if something is good for one side, then it can't possibly be good for the other, without even considering the option seriously. Macfarlane argues that research shows that people will think of a solution differently depending on who proposes it. We did not want to prejudice or be overcritical of the proposals by the Aboriginal group simply because it was they who had made the proposal. The proposals made in regard to both health care and education ... adhered to what we perceived to be our best interests.

iii) Strategies and Ethics

[Actions and approaches that some saw as simply strategic others saw as unethical. Some felt that their trust and openness had not been reciprocated and felt betrayed.]

CCA, p. 35: We all wanted to attain something positive from this experience and to that extent were committed to making the process work. Commitment to making the process work also necessarily entailed employing differing negotiation strategies at different points in the sessions. Doing what was best for the position that one represented was not necessarily negative, but rather added realism to the process. PC did this on many occasions by pushing the provincial group's interests. On the same footing, FC did this with the federal group's interests and AA for the Aboriginal group. These three personalities often clashed across the table. The clash had everything to do with how the issue was perceived by the party and where the issue fell into their mandate for these negotiations.

The personalities in the different groups also dictated what type of strategy was employed. In the Aboriginal group, presenting a united front by having only one member (the most knowledgeable member) speak was a tactic that fit in with the personalities on that team. AB said he took a role that he was comfortable in at the Main Table and that discussions off the Main Table were quite different, with all members contributing equally. While AA was the only one who spoke at the Main-Table discussions, I was expecting him to do so. This is largely a factor of what I know about AA. The fact that he was the only one who spoke was met with mixed reaction. Some felt that the other members should have been given an opportunity to speak, and that not doing so gave a negative view of the Aboriginal team.

On the federal team, FC, who possessed the most amount of knowledge in this area, was the lead speaker in dealing with issues that arose. However, there was much more deferring occurring on various points and on proposals that were raised (i.e., the tribunal proposal). When [matters] involved knowledge of Aboriginal issues, FC handled them. In cases of general discussion, where only knowledge of the process was required, the other members participated. This group displayed tactics midway between the Aboriginal and provincial groups.

In the provincial group, there was no dominant person who possessed all the knowledge, but rather a sharing of the role among all the members. This group displayed the other extreme to the Aboriginal group.

AA, p. 4: It became evident in the constitutional videos that the prime minister as chair ... had a large measure of control over the flow of the table discussions.... p. 7: At the early stages of negotiations, there were no determined speaking arrangements; the floor was open. Since I saw everything as having a purpose, I chose not to sit quietly by, but rather engaged openly in discussion and took a suggestive approach. Basing my argument on a principle of "equal parties to the negotiations," I suggested that to have anything but a neutral chair would be disadvantageous to what we were trying to accomplish.... It was finally determined by majority vote that since there were two persons nominated for the chair position, we would have neutral co-chairs. By having a neutral chair, and even better, neutral co-chairs, a major hurdle was overcome in terms of "levelling the playing field" from our [Aboriginal] team's perspective. The Crown parties had, knowingly or not, relinquished a power position.

p. 9: We made a pact not to openly disagree with each other in front of the other parties... Everything we did or said at the table had the appearance of a united front.

p. 13: It started to become apparent that whoever spoke last in presenting a proposal to be voted on would carry the vote. From that point forward, I endeavoured to speak last whenever appropriate.

p. 17: Since the substantive issues we wished to negotiate were still intact, we did not rebut the provincial proposal [re agenda]. However, again it appeared to us that it was important to the Crown parties to believe that it was their ideas that generated the proposal.

CCA, p. 25: The concession by the Aboriginal group that they were “neighbours” of the province was made with a sarcastic slight (i.e., “if you want us to sign a paper then we will do so”). Such sarcasm was later found out to be a strategic tactic employed by the Aboriginal group. This tactic was employed so that when parties came back to the table and the Aboriginal speaker apologized for the slight (which he did), he would look like a good guy in the process. This in my mind was a very gutsy move to make, because if the province felt belittled, then the whole negotiation could have turned sour and the entire process would [have] come to a halt. In response to talks surrounding the neighbour principle, the federal group merely indicated that this was a given and wanted to move on.

AA, p. 33: When the negotiations began [on Day Three], I was the first to speak. I immediately took a conciliatory stance and openly apologized to the provincial negotiators for having appeared to take their proposal on the neighbour principle lightly.

p. 35: The federal-provincial dialogue went back and forth for some time; two caucuses had been held and still no movement had been gained. During the caucuses, I told other members of our team to sit tight, that time was on our side, and I went for a smoke. I wasn't trying to hide anything from my teammates. I really didn't know how this was going to play out. I just kept thinking: balance interests, innovation and creativity, timeliness...

p. 36: After a short caucus, an agreement was reached on this proposal. The province agreed they were prepared to accept the agreement in principle reached between the Aboriginal party and the federal party in regard to the infringement issue and the establishment of the tribunal. FC of the federal party deferred to me to present the proposal for a consensus vote...

As Professor Benson had pointed out on more than one occasion, “He who holds the pen writes the policy.” There I was, holding the pen. As I framed the proposal, I purposely left out that a majority vote of the tribunal would resolve disputes concerning infringement of the constitutionally protected right of self-government that would arise under Parliament's POGG (peace, order, and good government) power. The proposal was passed by consensus anyway. We had successfully negotiated an agreement-in-principle in which the only justifiable

infringement of the constitutionally protected right of Aboriginal self-government would be allowed under the federal power of peace, order, and good government. In effect, the tribunal was redundant. Since we had conceded that Aboriginal government would be subject to the limited application of POGG power, the situation would be the same whether the tribunal was in existence or not. It gets even better; after five years under the agreement, the tribunal is phased out (assuming the Aboriginal government has met a checklist of requirements) and other than infringement under POGG, all other attempts to infringe would require Aboriginal consent. For example, if the province after six years passes a law under its power of property and civil rights in a way that infringes upon some matter within the jurisdiction of the Aboriginal government, the argument can be made that: a) the offending law was not made under POGG and is therefore of no force and effect; and b) even though the offending law was not made under POGG, it cannot be justified without Aboriginal consent.

Certainly, in a real world situation, such a proposal would never fly. However, in our simulation, the only one to even mention its application was co-chair CCB, as we discussed it during a break in the negotiations.

PE, p. 38: [In the debriefing], both AA and AB acknowledged a strategy that their Aboriginal team had utilized from the beginning, whereby conflict and misunderstanding between the federal and provincial teams were used to their advantage. I was shocked. I had no idea that there was a strategy or agenda that was being perpetrated and perpetuated by the Aboriginal team. I felt as if we had been disrespected as a group and also took it quite personally, because I had on several occasions felt that the provincial team had an affinity with the Aboriginal negotiators, based on previous friendships brought to the table. The strategy of the Aboriginal group was to allow for conflict between the two government teams, and then come down on one side or the other depending on whose views best mirrored their objectives. I had truly believed throughout the entire process that all the groups were striving for transparency and a sense of camaraderie. I was very disappointed to find out that the Aboriginal group had been using conflict to better pursue their own goals.

FA, p. 34: Negotiation involves a certain amount of respect. According to Trudy Grovier, “Each party has a worth and dignity in its own right—and neither is to be manipulated, exploited, or treated as an instrument of the other. There is a norm of moral respect and equality in the process.”⁶¹ I felt throughout the negotiations that a certain level of respect had been maintained by all parties. However, in the debriefing, it appeared to me that the Aboriginal team had only been pretending in that respect.

FD, p. 20: I am quite sure that the federal team, or in any case me personally, would not have recognized a tactic whether sneaky or not, if it was written in flashing neon lights. We were so confident and pleased that the negotiation was going smoothly; it would have been a real battle to convince me that all the cards were not laid out on the table. However, as I only

just learned, the Aboriginal team maintained a poker face equal to that of any Las Vegas gambler.

If we had any tactic as a team, it was in using concessions early on in order to demonstrate good faith. Although my experience has led me to prefer interest-based bargaining, our negotiation tended to lean towards compromise bargaining. Our long-term goal, or at a stretch our tactic, was to reduce funding.

p. 21: During the final day of negotiations, a battle ensued between the province and [the federal team]. The province wanted to reach an agreement to have a bilateral dispute resolution process over any disputes involving division of powers. The entire crux of the dispute revolved around a misunderstanding as to what the province was asking for. AA was fully aware over where the confusion lay, but admitted to sitting back and “letting the province and federal teams fight it out.” He further admitted to playing these same sides off each other throughout.

FA, p. 2: I negotiated with full trust and did not anticipate deceit by other teams. Some consensus was reached, but as a result of later finding that the Aboriginal team had manipulative intentions throughout the process, I subsequently felt lied to and hurt.... p. 14: I felt very manipulated when I heard the Aboriginal team marvel at how they got us to think and do certain things. This really hurt, as all I wanted to do was be sincere and have good faith in our dealings with them.... p. 36: Little did I know that the entire process was just a game for some in the class.... p. 27: It did not hurt that I had lost; it hurt that I had been played.... I was embarrassed that my trust had been abused.... I did not see it as a game at all. I saw it as an important new process of attempting to solve real problems. I had put my heart into it, and now I was crushed that others had not taken the process as seriously as I had.

CCB, p. 24: It is difficult for parties to co-operate because of the mistrust embedded in each conflict. Often the conflicts start because one party did not do what it promised.... Further, even if one party is trying to be sincere and straightforward, the other party may perceive its motives as otherwise. While each party purports to be acting in good faith, and in reality might be, the other party might perceive it as self-serving.

FA, p. 32: Empathy is not something I foresaw as being important in the negotiation process, nor the debriefing. In a study reported by Daniel Goleman, mothers who reciprocated infant emotions with empathy gave an infant a reassuring feeling of being emotionally connected....⁶² A lack of empathy seems to be able to force us to repress emotions, because we receive a message that what we have experienced was wrong and unacceptable. That was the feeling that was going through my head. Once I told my experience to the group, nobody reacted. Nobody told me that my feelings were relevant or okay. In fact, I found that afterwards, the other students either avoided bringing up the subject again or just pretended I had not said anything.... The lack of empathy expressed for my experience made me feel stupid....

p. 34: When nobody else told of an experience close to mine, I felt hesitant to tell mine. I felt that maybe I was overreacting. This was why I suppose I quickly summed up my experience, not going into much detail.

FD, p. 20: “Where the other side seems to be using a tricky tactic: recognize the tactic, raise the issue explicitly, and question the tactic’s legitimacy and desirability—negotiate over it.”⁶³

b) Negotiating Styles

[People also have profoundly different intuitive reactions to conflict, which translate into different negotiating styles with different interpretations of the meaning and appropriateness of particular negotiating behaviours. Negotiators who do not understand their own or others’ styles risk misunderstandings and frustration.]

FA, p. 30: There are two main approaches to negotiation: adversarial and problem solving.⁶⁴ The adversarial approach is based on there being a winner and a loser. The primary goal is to maximize individual gain....⁶⁵ The problem-solving approach focusses on joint gain, as opposed to individual gain.... I did not realize that other teams might utilize the adversarial approach, because I saw the adversarial approach as being more of a court process, and we were negotiating to avoid a court process.... p. 35: My understanding was that all parties were at the table to produce an amicable solution that everybody could live with. I saw my role as one of a collaborator. There was nothing wrong with that. My error was in seeing everyone else at the table as perceiving their role in the same way I did.... p. 30: I think my disappointment over the entire experience was, in part, because negotiating strategies differed.

PB, p. 13: [Some lawyers who advised us on negotiation said], “In the real world, a lawyer is a hired gun who must learn to go for the throat. If you are not doing that, you are doing a great disservice to your client.”... Lawyers are trained to argue the law in the best possible light for their client. The lawyer’s job is to fit a dispute into a legal category. However, by only focussing on the law, conflicts tend to escalate, relationships are damaged, and destructive conflict is promoted.⁶⁶

p. 22: PC wanted the negotiation to be treated as a competition, where we would enforce our own concerns and would see giving any concession as a weakness on [our] part. The rest of us felt that we could collaborate with the other two teams in attempts to come to a win-win situation. Throughout the negotiation process, all types of conflict resolution styles were present. At times we were all competitive, compromising, collaborating, avoiding, and accommodating.⁶⁷

FD, p. 3: Kenneth Thomas, Ralph Kilmann, and Christopher Moore⁶⁸ categorize five

major approaches to conflict: i) avoiding; ii) competing; iii) accommodating; iv) compromising; and v) collaborating. The following are Professor Moore's comments with respect to the assumptions, methods, and results of each one.⁶⁹

Avoiding: is the most common method of dealing with conflict, especially by people who see conflict as destructive. [B]ut in the long run, [it] can defeat the goals of both parties and damage the relationship as unfulfilled needs and desires build up.

- How? physical flight, mental withdrawal, changing the subject, blaming or minimizing, denying the problem, postponing to a more appropriate time
- Results: disputes are not resolved, may build and explode later; low satisfaction leads to complaining, discontent, and backbiting; stress spreads to other parties, e.g., family or co-workers
- Appropriate when: the issue is trivial or unimportant, or another issue is more pressing; possible damage outweighs potential benefits; timing is inappropriate (allows emotions to settle, or gather more information)

Competing: when there is a high commitment to goals and low commitment to relationships; when an individual pursues his/her own goals at the other person's expense, using whatever power seems appropriate to win; when a person defends a position, interest, or value that he/she believes to be correct; often supported by structures (courts, legislatures, sales quotas, etc); can be initiated by either party.

- How? use power of authority, position, or majority; use power of persuasion or pressure techniques—threats, force, intimidation; disguise the issues; tie relationship issues to substantive issues; can be appropriate or inappropriate (as defined by the expectations of the relationship)
- Results: conflict may escalate or one party may withdraw; reduces quality and durability of agreements; people reach for whatever power they have when threatened; increases likelihood of future problems between the parties; restricts communication; decreases trust
- Appropriate when: there are short timeframes and quick action is vital; issues are trivial; there are tough decisions that require leadership (e.g., enforcing unpopular rules, cost cutting, discipline)
- Inappropriate when: you are flexible on the outcome and the issue is more important to the other person; preserving harmony is more important than the outcome; you want to build good faith for future problem solving; you are wrong or in a situation where competition could damage your position

Accommodating: when there is a higher commitment to relationship than to goals; opposite of competing; one foregoes one's own concerns to satisfy the perceived concerns of the other person.

- How? minimize the conflict in order to maintain surface harmony; self-sacrifice mode; yield to the other point of view
- Results: attempts to build relationships to hopefully lead to co-operation in future problem solving or to gain accommodation from the other party on other issues; does not assist communication
- Appropriate: when you are flexible on the outcome and the issue is more important to the other person; when preserving harmony is more important than the outcome; when you are wrong or in a situation where competition could damage your position; or to build good faith for future problem solving

Compromising: immediate commitment is to goals and relationships; the objective is some expedient, mutually acceptable solution wherein both parties give up something and meet mid-way.

- How? split the difference; exchange concessions; find the middle ground; may permit introduction of multiple issues
- Results: both parties may feel they “lost” and need to “get even” next time; no relationship established, though should not cause relationship to deteriorate; danger of stalemate; does not explore issue in any depth
- Appropriate when: time pressures require quick solutions; to use as a backup if collaboration or competition fail; to obtain short-term solutions while more information is obtained

Collaborating: all parties have high commitment to goals and relationships; attempt to meet concerns of the other party as well as your own; some trust or willingness to risk is required.

- How? maximize use of fixed resources; works to increase resources; listen and communicate to promote understanding of interests and values; learn from each other’s insights
- Results: builds relationships and improves potential for future problem solving; promotes creative solutions
- Appropriate when: parties are committed to the process and adequate time is available; the issue is too important to compromise; new insights can be beneficial to achieve creative solutions; there is a desire to work through hard feelings that have been a deterrent to problem solving; there are diverse interests and issues; participants can be future-focussed

c) The Core Force: Trust

[Students discovered that trust is indeed a core force in negotiations: too little of it and no meaningful agreement is possible; too much of it without reciprocity leads to frustration and a sense of betrayal.]

FA, p. 34: Trudy Grovier notes that a certain amount of trust is essential to get the parties to come together to negotiate.⁷⁰ But that does not mean there is full trust. Negotiation [usually] implies a conflict, in which some distrust exists between the parties.

CCA, p. 17: The simplicity of the [procedural] document is in my opinion indicative of trust between the parties. There was no need for an elaborate legislative-type document to bind the parties so that everyone played fair. In our negotiations, there was an underlying agreement that for this to work we all needed to be playing by the same rules and we all needed to be bound by our word. While this was not explicitly stated, it was implied by the spirit of the negotiations.

FD, p. 23: “Destructive conflict is characterized by its tendency to expand and escalate.... As a result, destructive conflict often becomes independent of its beginning causes.”⁷¹ Constructive conflict has been likened to creative thinking. Therefore, if the parties are willing to solve the problem—in other words, if there is sufficient motivation or commitment to do so—constructive conflict is reached. If conflict is recognized as a common problem, the chances of success are markedly improved. With this recognition, communication becomes more open and honest, each party recognizes the legitimacy of the other’s interests, and a trusting atmosphere develops.

FC, p. 40: It was my personal feeling during the first negotiation session [that] AA had [unrealistic demands] and did not possess [the willingness to make concessions]....

p. 41: It seemed as though in the second session of negotiations, AA had a different attitude, and he was willing to compromise in order to make a deal that could be acceptable to everyone. At this time, it appeared as if a new and improved sense of good faith had been built between the Aboriginal and federal groups, and its positive effects were reflected throughout the remainder of the simulation.

AD, p. 16: [The Aboriginal Elder AJ Felix] did not deny that there was much anger and resentment in the Aboriginal community; however, he focussed more on what needs to be done in the future. He did not appear to be dwelling on the past. He summed up the oppression issue by saying “What goes around comes around.” ... Felix was not attacking anyone or any social institutions, but suggested that co-operation is the answer.

FA, p. 27: I did not want to share my pain with these people, not even with my own team. As I briefly summed up my experience, I peered at the floor.... Nobody reacted.

p. 31: Pirie mentions that things can go wrong if a negotiator trusts other negotiators too much.⁷² At p. 126, the author lists a number of factors that make a person an ineffective negotiator. Trusting is among the list of factors. He does not say exactly what can go wrong, but I think I understand, now that I have done it. In trusting the other team too much, I allowed them to manipulate me. I saw the process as one of win-win, where everybody came to a just

agreement. In trusting the Aboriginal team, I essentially gave all my power to them; I let them make the rules and lead the way. This really bothers me as I did not see the process as a game. I feel ashamed that I had been manipulated in such a way. Almost violated....

p. 35: All parties must be truthful and willing to want to help the other side.... This negotiating experience has helped me to realize that people are not always as they appear to be; I am now less trusting....

p. 36: The negotiating experience was emotionally draining for me, and in the end, I felt betrayed. I feel ashamed. I was naïve. In any future negotiations, I will be on guard not to be tricked again. Any personal interactions with the parties of the negotiations will be similarly guarded. I will never be the same.

2. The Dance of Negotiations

[Negotiations are fluid, pulsing, and dynamic. Students reflect on the forces at work and suggest ways to achieve both party goals and table progress. These include assessing other parties' communications and negotiators, making small agreements, speaking to make one's interests explicit, compromising where possible, reframing, using caucuses and backroom talks, watching for new opportunities, using risk and surprise, taking advantage of external resources and "third sides," and being aware of the importance of time, timing, and back-ground groups.]

a) Assessing Parties and Positions

[Paying close attention to each party's statements and negotiators gives valuable information as to the dynamic and potential ways to influence it.]

PA, p. 24: Attention should be paid to both verbal and physical communication. Eighty percent of communication is nonverbal.⁷³

PB, p. 24: During the initial negotiations, each party was reluctant to make offers. Each party put out vague terms they wanted to see fulfilled; specifics were left undiscussed. This is common.... We find comfort in appearing conciliatory; however, we are reluctant to give up too much. This middle ground in negotiation is often the most nebulous. Identifying the issues and [offering rhetoric] is the easy part; attaining a specific resolution is the difficult part....

At first we [displayed our legal training] by arguing what we could and could not do within the confines of the law. This went on for an entire class and little progress seemed to be happening.

FC, p. 32: Viewing the make-up of the other teams, I took immediate notice that AA was to negotiate on behalf of the Aboriginal team, with AB, AD, and AC as teammates. AB and FA are second-year students and very quiet by nature. I did not know them well, but I did not expect their presence within the simulation to substantially affect the negotiations, at least not overtly. AC and I were in the same small group in first year, and I got to know her well. AC is an extremely intelligent and very outspoken person. However, I believe she is only outspoken in regard to issues for which she has knowledge and passion. AC, being of Iraqi descent, would have been a dominating force had the subject of this negotiation been Middle-East peace talks. However, AC is not overly familiar with Aboriginal issues, and I therefore concluded that she would not, again at least overtly, be the drive of the Aboriginal team. AA would be the leader of this team and the person on whom I would focus the majority of my attention.

As for the provincial team, I immediately noticed PD and PC. PD is a grad student and is an academic in every sense of the word. I believe that mediation, ADR, and negotiations such as the one we were entering were his forte. PC and I were also in the same small group together during first year. PC is an extremely unique person. I sincerely believe he is an intelligent and capable person, but his intelligence is beyond my comprehension. I had no idea what he would contribute to the negotiations, but what I knew for sure was that his input would be felt. The remainder of the provincial team consisted of PB, PE, and PA. All three, I am sure, are capable people, but none I thought possessed the dominating or overbearing personalities that would warrant me to change my strategy in negotiating with the provincial team. It was PD and PC who concerned me. I had no idea what position they would take nor [in] what direction they would attempt to steer the negotiation.

b) Make Small Steps Based on What You Can Agree on

[Small agreements build confidence at the table to address larger, more intractable, disagreements.]

CCB, p. 24: William Ury suggests trying to find common interests. “Most of the time, most people get along.... Peaceful co-existence is [more than] a vision. It is a reality.” If we can identify the places we get along, we can build on that to produce a spirit of co-operation that can help us render a solution through negotiation.⁷⁴

CCA, p. 18: My conclusion from negotiating [is] that it is best to start with small issues that can be easily agreed upon and then move on to the larger problem areas. Momentum of the process is thus built from the bottom up, such that when the big issues are tackled, there is already an atmosphere of partnership whereby we are working together as opposed to against each other. If success can be attained at small steps along the way, the view is that the larger steps can be tackled and surpassed as well.... As each hurdle is overcome, confidence is built that the next hurdle will be surmountable as well.

c) Speak, Make Explicit

[Parties cannot expect others to know their needs and wants unless they state them explicitly. A party's needs or interests are most convincing to others if they are presented in a way that shows how they also meet other parties' needs and interests.]

AC, p. 26: [The province] felt that their English was not coming through to the feds. This situation illustrates just how crucial it is to communicate with another party effectively when you are resolving disputes.⁷⁵ If you can articulate your concerns in such a way that the other party understands them and sees them as legitimate, you are ahead of the game. Communication is crucial when you are trying to get another party to understand your position.

p. 38: The skill of practising effective communication appears to be paramount to successful negotiation techniques.

FC, p. 48: I learned that I must convince the opposing side that whatever I propose to them will coincide with their best interests. During the simulation I found myself ... listening to the [other parties] and would ask myself, "How is their proposal going to help me achieve what I perceive to be my best interests, either financially or politically?" ... Through this initial experience in multiparty negotiations, I believe I have learned a valuable lesson in the art of negotiating and in a broader sense, dealing with people in general.

d) Give on What You Feel You Can

[Agreements require give and take on all sides. Different words, actions, and issues have different significance, costs, and values for each party. There are usually some concessions each party can make that have greater value to the receiving party than to the donor party. These offer the benefits of co-operation without sacrificing any parties' interests.]

AB, p. 11: In order for the negotiation process to be successful, each negotiator and team must approach the negotiation process in good faith, with a willingness to move away from the status quo by compromising on the negotiation issues.

PE, p. 9: I was amenable to having the process videotaped, but I also felt that ... it might cause some concern and might in effect engender a representation of a less-than-true bargaining process. It is possible to see that being recorded might make those already unsure of public speaking even more so. Personally, I think that having one's performance on videotape would be helpful to those who may choose to make their living in situations where public speaking is part of their livelihood. In the spirit of compromise, I felt it was an issue not worth arguing over.

p. 34: [The provincial team decided to give up on treaty status.] The four similar-minded team members did not see the point in beating the proverbial dead horse. The Aboriginal team would simply not contemplate the provincial government being a party to the treaty. Earlier that morning I had the opportunity to speak with AB, who advised me that the Aboriginal team was not trying to thwart the province's legitimate ideas, [but] rather, in order to focus on the outlined issues, [felt they] could not develop a new treaty relationship with the provinces. We began to see that although our provincial team motives were excellent and legitimate, they were misplaced in the context of what we were trying to achieve in this exercise. I informed my group of that view, and it was decided by the majority that the issue of provincial treaty status should be retired for the purpose of this exercise in order to effect meaningful solutions to the issues before us. PC felt that, in an attempt to reach a compromise, we were selling out our position that we had so carefully developed. The rest of the team felt that it would be worthwhile to leave whether the province is considered a party to the treaty issue to concentrate on the neighbour principle.

FC, p. 43: After some initial tinkering, a motion was passed [on the neighbour principle] on the basis of a duty of care with respect to environmental issues. Despite the fact that I thought this type of safeguard already existed at law, we voted in favour of it in order to move on. I believe the Aboriginal group agreed to it for the same reasons. I believe they thought they already owed the provincial government such a duty, so for them to simply agree in order to make them happy was only a small concession, if one at all.

e) Reframe

[Reframing looks at the matter from a different point of view. Words and actions, just as pictures, look very different depending on the way they are composed to give meaning. Providing a different frame of reference can dramatically affect how negotiators react to and interpret events.]

FD, p. 6: A good negotiator can analyze problems, identify and separate the issues, and frame the issues for resolution.... p. 7: Ascertaining the parties' interests was the most difficult step.... The key is to phrase the questions and the reframing appropriately.... p. 8: The hardest skill to learn was to truly listen, question, and reframe the needs of the parties.

CCA, p. 3: [Reframing] is often used in situations ... where an impasse has been reached. What has been said up to the impasse is summarized with a forward-looking spin [or different interpretation] attached to it. In this way, the parties are given a summary of where they have reached and a gentle push to where they may head.

Reframing is easier when there are only two parties and one or two issues, but it is much more difficult to do with more parties and complex issues. Nonetheless, reframing was

immensely useful in our negotiation. The technique aided in organizing the discussion up to a certain point, summarizing the positions, and setting out where the process was going, either for caucus discussions or the next negotiation session. Although use of this technique was crucial (in my opinion) to forward movement in the negotiation, its timing was even more important. It was a deliberate tactic on my part that the summary was to occur at points where the parties needed time to digest what was on the table. This often occurred just before caucusing and after there were motions raised.

f) Caucus When Needed

[Caucus breaks are valuable “time-outs” during which teams can regroup, compare notes, and revise their approaches. Caucus breaks also allow a “cooling off” period when tensions are running particularly high at the table.]

PE, p. 8: I was initially unsure of the need for constant caucusing as our group seemed to share a collective goal and I felt that it wouldn't be necessary for us to use the caucus. As negotiations evolved, this proved to be completely inaccurate. Caucusing is necessary at every stage of negotiations because it ensures that each member is on the same page.

AD, p. 19: The five-minute caucus was crucial in ensuring that tempers and emotions did not run too high.

CCA, p. 15: [As co-chairs], how we approached discussions ... was a result of sitting down and considering the proposals before us.

g) There Is Always a New Opportunity

[Negotiations are a nonlinear process, and the fluid dynamism always creates new openings, however dark the prospects seem at the moment.]

FB, p. 22: Negotiations can change dramatically from one day to the next, with issues being jumbled about like deck-chairs on a swaying ship.

AD, p. 17: Day Two took a twist that our team was not expecting. We had felt, coming out of the first session, that if confrontation was to arise it would be with the federal government. However, to our surprise, the province created more difficulties than we expected in reaching an agreement.

AB, p. 27: Each day of negotiations is a new opportunity for both success and failure.

h) Risk and Surprise

[Taking a surprising risk at a crucial moment can sometimes create sufficient shock to snap negative momentum and provide an opening for more positive negotiations.]

CCB, p. 24: What will lead the parties to a spirit of co-operation from a spirit of distrust? Terrence Hopmann suggests that the answer lies in one party dispelling the perception the other party has of it, if that perception is not reality. This is [accomplished] by behaviour that surprises the other party. The behaviour must be clear and unambiguous, voluntary and repeated.⁷⁶

AA, p. 22: I believe seeing how the world looks from [the other parties'] point of view is a critical component in multiparty negotiations. In the crosscultural context, a problem could arise from the fact that the world-view paradigms are so divergent that it will be difficult to see from the other's point of view. Nevertheless, it may not be necessary to have a total understanding of [their] world-view. By simply engaging in "empathic listening,"⁷⁷ the parties may see at least enough of the other's point of view to help make the negotiations progress towards consensus.

p. 23: What do we do when the other party or parties are not engaging in emphatic listening, either out of reluctance, lack of understanding of its importance, or ignorance? How do we communicate our view in a way that those listening will accept and understand? How do we speak so as to touch a cord in the recipient?

From my perspective, hearing, like the other senses, is a gift, and listening is but one way in which this gift is used. In other words, listening and hearing are not the same. I would suggest that listening engages the mind, whereas hearing engages the spirit. This fits with the definition of empathy, in the psychological meaning of the word—"the power to enter into the feelings or spirit of others."⁷⁸ It seems possible, if one has empathic power, to engage the spirit of others through both delivery and receipt. In other words, it is possible to communicate spirit to spirit, and in doing so, the understanding communicated is not ... distorted by the rational mind.

p. 28: [After balancing interests, the second characteristic of a solution to an impasse] is that it is innovative and creative. It became palatable ... when it reflected a solution that had not occurred to the deadlocked parties, who, focussed on their individual interests, felt there was no apparent solution.

i) Timing and Time

[Timing is critical; the same word or act has dramatically different consequences according to the timing of its delivery. Further, negotiations take time, much more time than one expects.]

AD, p. 21: The silence and timing were key in reaching an agreement on this day.

AA, p. 28: The third characteristic [of a solution to an impasse] is timely delivery. The [tribunal] proposal was brought forward at a point where the frustration level created by the

impasse was peaking, yet the desire to resolve the impasse was still evident. If a proposal is delivered too late, positional lines may have hardened to the point where a party will hold that the impasse must be resolved in their favour or not at all.

AB, p. 25: [I]t appeared to me that many individuals were not prepared for the reality of the numerous hours of information gathering and team meetings, and were surprised at the time commitment required.

PB, p. 18: I learned that negotiations take time and are often a slow-moving process.

CCB, p. 25: Parties do not complete a series of negotiations concerning significant issues during the lunch hour, but over a number of days, months, and years. The element of time required to allow parties the opportunity to consider proposals on the table, discuss them within [their groups], and change their perspectives as they learn about the [other] parties is essential for an enduring solution.... Negotiation is a process measured in years when something of magnitude is at issue.

PB, p. 29: MPN has given me greater respect for institutional decision making. Before taking this class I was often frustrated with the fact that labour negotiations, international negotiations, or peace processes, took so long to come up with pragmatic solutions. I often thought that the reason for this was that the leaders of the negotiations were more concerned with their golf while they were away in exotic places negotiating with each other than [with] the actual negotiation itself. I have now learned that many factors come into play and that progress, although possible, is a slow moving process.

j) Backroom Talks

[Backroom talks are positive if they are communications among individuals who may have a higher level of trust with one another than exists at the Main Table. Information can be traded and options explored without fear that anyone will take advantage of the information. Backroom talks can be negative if parties perceive that deals are being made behind closed doors to which other parties are not privy, or that they are taking place there in order to avoid the greater scrutiny of Main-Table talks.]

FB, p. 27: Backroom dealings or simple asides with members of the other teams were not as prevalent as I ... thought they would have been, but nonetheless, I had the opportunity to speak with AA, as well as with FD from my group, at a few casual junctures during the term. As stated earlier, frustrations and tensions were beginning to grow.... These casual meetings served to provide AA with some input as to how and why the negotiations weren't moving along to his satisfaction. There is no doubt that AA's position softened in many regards, and I believe that this could have singularly saved the entire negotiation.

PB, p. 25: Over the spring break, I met with AA on an individual basis. We were able to forego the formalities of Main-Table negotiations in hopes that we could come to some form of agreement. I asked AA what his party needed, why they needed it, and what they would be able to agree to.... For my part, I said accountability was necessary in order to prevent bankrupting the province. After our private meeting, we were both able to go back to our parties and inform our group members what the other party's bottom line was.

PD, p. 12: We have to be careful not to assume a universal template. In the constitutional video, there was a sudden move on the part of the premiers to abandon the Main-Table talks for behind-closed-doors talks. This did not sit well with the Aboriginal negotiators, who viewed the sudden move with a tint of suspicion. This bred an air of mistrust. This goes back to the issue of context. If you sense that a lot of mistrust has been brought to the table, it might not be a bad idea to reinforce transparency, i.e., hold off some of the backroom brokerages. If I want to be a seasoned negotiator, I have to keep my options open. Sometimes back-room wheeling and dealing may well enhance trust through private assurances. Sometimes it may turn out to be a faux pas.

k) Take Advantage of External Resources

[The amount of knowledge and understanding required to effectively prepare and conduct negotiations makes it a matter of prudence to take advantage of available external resources. There is not time to reinvent the wheel.]

FB, p. 27: I am very grateful to EE, who served as a student coach for the federal team. EE's assistance at our Alexander's meetings was immeasurable, and often put us back on track to some of the successful interpersonal and interest-based tools we utilized in the negotiations. EE had the experience of last year's growing pains in this process, and we were able to avoid many of the interpersonal animosities that clearly plagued that group.

AC, p. 19: The meeting [with Aboriginal Elder and negotiator] helped me understand the cultural context behind the land treaty negotiations.... The meeting helped me understand that the First Nations comprehended that they did not cede their rights to the Europeans, and that Aboriginal self-government is an inherent right.... I also appreciated the rich cultural aspects of the meeting, and the historical information helped me to better understand the Aboriginal perspective with respect to self-government.

PE, p. 45: I [missed having an in-class] opportunity to speak with an Aboriginal negotiator in order to get a better handle on Aboriginal goals and issues.... I think that there should be peer helpers and professional resources for all parties to turn to.

l) The Third Side

[As everyone knows informally, direct conflict is sometimes most easily broken up by a third party. The most effective third parties are those with a connec-

tion to both parties and accepted by both parties as being a legitimate mediator in the moment.]

AD, p. 7: William Ury proposes that in all conflict there is a third side that can intervene to strive to “transform the conflict into co-operation.”⁷⁹ The third side can take on different roles ... to assist others in finding a resolution that “satisfies the legitimate needs of the parties and at the same time meets the needs of the wider community.”⁸⁰

CCB, p. 15: “The third side is *people*—from a community; using a certain kind of *power*—the power of peers; from a certain *perspective*—of common ground; supporting a certain *process*—of dialogue and non-violence; and aiming for a certain *product*.”⁸¹

One manifestation of this voice is as a kind of conscience. “It is the voice that urges us to heal old grievances; it is the capacity to listen to the other side and to show empathy; it is the impulse to respect the basic human needs of all.”⁸² “The third side is not some mysterious or special other. It is us. The missing alternative to force and domination is in our hands.”⁸³

AD, p. 12: The provincial and federal teams also took the role of “healers.”⁸⁴ A healer is the third side that attempts to repair the relationship, often in the form of gifts.⁸⁵ The provincial and federal teams both presented gifts as healers in attempting to start the negotiations off on a positive foot and defuse the possibility of a hostile environment. “Apologies, sincerely offered, play a vital role in helping emotional wounds heal and restore injured relationships.”⁸⁶

p. 8: The chairs took on a strong third-side role as referees throughout the negotiations. The referee tries to set the code of conduct or establish the rules to be enforced when it comes to fighting.⁸⁷ The chairs assisted the parties in establishing the ground rules that would guide the negotiations. [They] ensured that the rules of acceptable conduct and the procedures under which negotiations would be conducted were agreed to by all sides. This was done by a majority vote. To ensure that all parties were aware of these rules, the chairs e-mailed the code of conduct to all negotiators. The chairs also ensured that the ground rules were enforced equally on all groups throughout the negotiations. The chairs were what Ury describes as a “safety net.” If the parties at the table failed to use their abilities to solve the conflict, the chairs were there to prevent the parties from falling: “Each of the third-side roles is like a single safety net. If one fails to catch destructive conflict, another stands ready. The key is to line up all the safety nets in advance.”⁸⁸

CCA, p. 23: While the summary was effective in organizing discussions of that session, what was more useful were the comments made by PD at the end of the session. PD articulated the purpose behind why we were all at the table, and reminded everyone what we had set out to do and not to lose focus of that. While this might not have been a typical move [by] a member of the provincial group, it was what we all needed to hear. It is so easy to focus on the specific to the extent that we “can’t see the forest for the trees,” and in that situation, all it

takes is someone to point out the “forest” so that perspective is regained. This is what PD did.

p. 32: [The Aboriginal amendment to the tribunal] was a surprising and amazing move. There was nothing special to the motion itself. It was the concrete embodiment of where the process was headed. What was amazing about the motion was that it came from the Aboriginal group, [acting] as “mediators” between the federal and provincial governments. This was a role that I did not believe would be occupied by the Aboriginal group. In all the background research I did to prepare for the substantive negotiations, the Aboriginal groups were always in an adversarial position to the federal and provincial governments, who were more times than not, allies in the process.

By this tactic, the Aboriginal group became empowered in the process. It was my feeling that at this point the Aboriginal group came to be viewed in a new light, and in turn viewed their role in a new light as well. This new view encompassed a great deal of deference, as the Aboriginal group came into the dispute at the right time as the voice of reason. This tactic was immensely useful in affecting the agenda and the motions passed. All subsequent motions were put forward by the Aboriginal group, and the negotiations turned from a style where interests were protected through argument to a style where interests were raised and articulated in a discussion-type framework. In this manner each subsequent motion was raised, concerns were discussed, and the motion was put to a vote. This orderly fashion to the negotiation helped us move along quickly to touch on issues of scope.

AD, p. 15: The third side can take the role of being a provider. The provider may not necessarily be able to solve conflicts directly, but may be able to show people how to help themselves. They can provide access to resources and share knowledge to assist people in resolving disputes.... Mitchell and Felix (external resource people) took on the role of provider, or outer third side. They were not directly involved in our conflict in class, but were able to share their knowledge and experience to assist our efforts in the negotiations.

FD, p. 8: An unfortunate trap for a mediator is to adopt the role of rescuer/saviour. In turn, this results in the creation of a dependency-type relationship. Such a dependency may create infantilization, which is further perpetuated when the mediator removes the party's power by solving their problem.

m) Background Groups

[Multiparty negotiations rise or fall on whether agreements reached at the table are acceptable to background groups that will be affected. Negotiators will have direct accountability to some background groups, such as political masters. Others are diverse and diffuse constituencies and populations consisting of many factions. While the reaction of individual factions to particular agreements may be predictable, the overall effect of the combined factional

reactions is seldom predictable. Thus, sometimes even hard-won agreements achieved by negotiators in painstaking steps over years can come to naught as they are rejected by background groups.]

CCB, p. 21: Talks may happen at the table, but the issues and concerns ... also live on the other side of those doors. The people present at the negotiation are merely representatives of those groups or states who are not present. Representatives are accountable to those who sent them.

AD, p. 25: Tom Molloy described that [a particular] decision could have been made if he and the other negotiators could just, “sit down, talk, [and] work things out; it sounds simple enough. If we had been left to ourselves, it probably would have been.” However, he cautioned that this simplistic model “might also have been a recipe for disaster. Much as we sometimes might have liked to, no one can negotiate in a vacuum.” ... “Behind the scenes, every government department—federal, provincial, and local as well as numerous advisory committees—had to get involved in some way and every bureaucrat have his or her say. Many were potentially affected by the Agreement.”⁸⁹

3. The Team: Positive Synergies and Intrateam Conflict

[Negotiators have to negotiate not only at the table but also within their individual teams. Students found these negotiations as intense and difficult as Main-Table negotiations.]

AC, p. 38: I was surprised at the complexity of ... intragroup dynamics.

a) Positive Synergies

[The support and confidence of other team members create a synergy greater than the sum of the individuals acting independently.]

PE, p. 8: I was surprised and heartened by our immediate bonding as a team; we consistently showed a united, yet informed front in the initial stages of this exercise. By the end of our procedural negotiations, I felt secure in just looking to my teammates to receive either a slight nod in acquiescence or a shake of the head, which would indicate to the rest of the group that we needed to speak more about the issue.

FD, p. 18: If someone asked me to describe our group, I would have said the dynamic was very good, conciliatory and respectful. I was most impressed with every member listening and responding to each other's thoughts, suggestions, and questions. In particular, FC, who was the most knowledgeable, took the time to explain and keep our positions realistic.

FB, p. 20: Our group achieved a quiet confidence and respect for one another throughout the negotiation that permitted us to present our interests and oral discussions at the Main Table in an accountable and confident manner. I was particularly impressed with our group's commitment and camaraderie.

CCA, p. 15: I believe that having a chair and a co-chair was beneficial in the process. Both CCB and I brought different things to the Main Table in our collective role as chair. As such, when an impasse was reached, CCB and I (in our chair debriefing sessions) had two minds [instead of one] working at creative ways around the impasse.

b) Intrateam Conflict

[Members of each team experienced internal team conflict. The intensity and intractability of intrateam conflict depended on the particular combination of knowledge, views, and personalities in the team.]

CCB, p. 28: I realized that the intraparty disputes are sometimes harder fought than interparty conflicts.

i) Federal

[Some team members found themselves requesting more internal communication on matters of interests and approaches, while others found themselves disagreeing on the interpretation of events at the table.]

FD, p. 16: I realized the importance of preparation, but had a difficult time encouraging our team to discuss such issues. Unfortunately, my knowledge of Aboriginal self-government was so limited that attempts to educate myself barely scratched the surface. It was frustrating to rely on others who were more knowledgeable on the issues, but who shared only bits and pieces of information. I made a number of attempts to suggest we discuss our position and our interests; however, FC would merely reiterate that we (the federal team) want to "let the Aboriginal people become independent. We do not want to keep forking out money." I would agree in principle, but there has to be some underlying concerns or strategies we should discuss as a group. Apparently not.

p. 17: At an initial caucus we were attempting to determine how our group would speak at the table. I knew from past experience, specifically at my [clinical mediation] placement, that structure and rules were essential. FA, however, wanted to speak out whenever she pleased....

p. 18: Another snag occurred in relation to which party would sit across from the chair. The Aboriginal team requested this position, and I saw no reason to deny them this request. I

was therefore surprised when FA took issue with it. We ... could not convince FA that this was a reasonable request and that in actuality the federal party would concede such a point. She was convinced that it would diminish our power and was an unrealistic portrayal of our role. I was very surprised. FC and I patiently talked it out with her, but to no avail. Unfortunately, we ended by declaring “majority rules.”

ii) Aboriginal

[Some Aboriginal team members wondered at the extent to which they should be deferring to the team member with most knowledge.]

AB, p. 25: [I] wondered whether AA’s personal beliefs were not inadvertently influencing both the negotiations themselves and the decisions of the Aboriginal representatives in general. At the same time, I also was cognizant of the fact that confronting AA would have the effect of creating intragroup conflict within the team, which would weaken its cohesive appearance. It was only later I realized that by not confronting my concerns with AA, I had snuffed out an important element of the negotiation process for the Aboriginal representatives: the element of intragroup conflict resolution.

AD, p. 28: AA’s dominant personality and depth of knowledge may have benefited our group at the Main Table, but not necessarily within the caucus room. I now wonder if the way we always agreed on all topics may have been due to a “group-think” occurring. There were times when it seems that we were accepting AA’s ideas unconditionally. This resulted in the inability to discover holes or concerns in our arguments that would have been revealed in a more devil’s-advocate-type challenge. Having friction and contradictory points of view helps to stimulate new ideas.... Ideas evolve and grow through a progression of discussion and contradicting opinions.

iii) Provincial

[The provincial team struggled to find a way to synthesize diametrically opposed views, all strongly held, and to deal with knowledge gaps. The struggle consumed much of the team’s energy throughout the negotiations.]

PE, p. 9: Though it was decided at the Main Table that motions would only be passed by the consensus of all three groups, the question of intragroup consensus was only briefly discussed.... p. 15: Internal disputes were to be resolved by each team in a caucus before presenting the team’s views and positions at the table.... p. 9: This was a particularly important issue for the provincial team because as the negotiations developed, we became quite aware that although four members of our team had similar views and approaches to this process, one

member had views diametrically opposed to the majority of the team. We ultimately decided that the majority should carry the day when there were internal disputes. At the time it seemed fair and appropriate for our team of five to give every member's views equal attention, but that at the table a unified front or "party line" would be presented, based on the theory that the majority of the team who felt any one way would carry the day. It was only in the middle of negotiations that I realized how thankful I truly was that the majority rules intrateam dispute resolution process was implemented. The internal disputes between the four members with similar views and the fifth member far outweighed any disputes that had to be dealt with at the table between the teams.

PB, p. 20: I found that collectivity and cohesiveness within our team was the most difficult part of the negotiation.... From the start there seemed to be a split with four on one side and one on the other. PC is one of the top students in law school. I have a strong admiration for his ability to decipher the law and write the law in a clear, organized fashion on an exam. PC announced at the start what we would discuss and what we would argue. I can understand why he attempted to do this because in every other class, PC is able to tell the rest of a study group what the law is and how to apply it. He knows—and the rest of us know that he knows—the law very well, and in every other class we appreciate his instruction. This was like any other class to him and therefore he should not act any differently.

PC, p. 34: I was randomly assigned to be a member of the team negotiating on behalf of the provincial government. On 11 February 2002, as soon as our team assembled, I introduced my proposed fundamental term,⁹⁰ both in general and local forms, to my negotiating team. The team was made up of five young adult Canadians: three men and two women, with at least one member born in Europe and one in Africa, but no members of visible or self-identified North American Aboriginal descent.

My explanation of the fundamental term was that it would break down the predictable image that the negotiation was really a confrontation between the collective Aboriginal and the collective non-Aboriginal. I promoted the term as a tool to weaken the foreseeable rhetorical stance of "us against them."... p. 46: When I first conceived of the fundamental term, I had hoped that it would promote the following two attitudes:

- a sense of trust and common belonging between representatives of collective Aboriginality and representatives of collective non-Aboriginality; and
- a sense of control over the role of one's community, as aligned with collective Aboriginality or collective non-Aboriginality, in the wider context of Canadian society.

My desire to promote these attitudes in the simulated negotiation stemmed from the following observations: "Talks do not continue without trust that there is a commitment to solve problems.... Negotiated outcomes will be sabotaged in implementation without trust by background groups that they must find a way to live together peacefully, and this will require constant give and take at all levels."⁹¹

Unfortunately, this did not happen because the fundamental term was effectively rejected by my own negotiating team as being redundant. This shows that a particular proposal, no matter how carefully designed, will not necessarily be appreciated and adopted by any particular individuals.

PE, p. 22: The provincial team felt that there needed to be an honest display of willingness to bargain in good faith combined with an opportunity to address [each team's] concerns before substantive negotiations began. PA agreed to e-mail the class with the request and indicate that we were indifferent as to order of speeches. I was convinced that this would show how dedicated the provincial team was to this creative effort.

p. 18: [When I received PC's e-mail] I nearly had a heart attack. I was apoplectic. I was stunned. AA's viewpoint was admittedly strongly worded and problematic, but PC's reaction was, in my mind, simply going too far. The payment of any amount of money for inherent rights is an abhorrent concept to me, and my first reaction was that PC could not possibly be serious. If indeed he was serious, the implications were very troublesome.

I had to take a step back from my initial reaction to try to develop a response to PC's proposed strategy that was not reactionary or inflammatory. I came up with the idea of trying to explain my absolute refusal to support this strategy by making an analogy to the right of freedom. I made up my mind to try to explain the right of self-government [as being] akin to the right of freedom, neither of which could or should be extinguishable by the payment of money.

p. 20: I personally felt that it was not an issue of whether the province would bargain in good faith to implement the Aboriginal treaty right to self-government; rather, it was more a question of how we were going to accomplish it. At first, my other team members were not completely adverse to taking a strong position in the negotiations. It was only after having discussed the history of mistrust brought to the table ... in these negotiations that the team began to see the benefits of a nonabrasive approach, which would highlight our dedication to good-faith bargaining. Hardball bargaining on entrenched positions has historically been proven not to work. I wanted our team to think outside the legal box by taking a chance on interest-based bargaining strategy. To me, the province's interests lay in the satisfactory and successful implementation of [Aboriginal] self-government, taking into account the best interests of every Saskatchewan citizen as an element in attaining this goal.

p. 19: [At the next team meeting], I arrived a little early to try to gather my thoughts and was shortly joined by teammate PD. We commenced discussing PC's proposed strategy. PD had not received the e-mail and was surprised and concerned at the tone of [it]. PD and I agreed that this was not acceptable, not only because we considered it fundamentally wrong, but also because we both felt that this was the wrong way to effect real and creative change to the status quo. To bring this to the table would make the provincial team appear to be confronta-

tional and disrespectful of a concerted attempt to implement the inherent right of self-government.

p. 20: When the rest of the team arrived, including PC, we began to discuss and debate the proposed provincial strategy. It was immediately apparent that four team members with similar viewpoints would not support this proposal. There were varying reasons, generally based on avoiding bringing to the Main Table a position not based on compromise in a collaborative attempt to reach creative solutions. PC was adamant that the provincial team not appear to be overly eager to compromise; he thought it important to experience the reality of positional bargaining in this negotiation exercise. PA tried to elicit from PC what it was that he hoped to gain with this strategy.... PC seemed more fascinated with the process of negotiation than with the possibility of changing the status quo. Eventually, PC began to compromise, understanding that although his strategy was not one based on ill-will or ignorance, it would be perceived as such by at least the Aboriginal team, which had initiated an aggressive bargaining position.

PB, p. 23: Our biggest fear was that PC would decide to go out on his own and offend the other two parties during Main-Table negotiations. Our strategy, or rather our safety measure, to prevent this from happening was to compromise with PC. We agreed to certain things he insisted upon, but with conditions.

p. 21: The difficulty that we felt in negotiating against PC was far more intense than what took place at the negotiation table. The majority of our team took a conciliatory approach to the negotiations and wanted to come to a certain co-operative agreement.... At times, negotiating within our own team would break down because of the anger that party members had for each other. I could see how we moved from interest-based reasoning to a positional stance. Often, PC would become very defensive because he felt that the group was trying to suppress him. In attempts to come to some agreement, we often returned to interest-based negotiation. We would ask PC why he felt we should do something and what purpose his actions would serve. Quite often, he had no answer for these questions. He would simply say, "I want to see how they react." We would then ask why. We continued to point out that our purpose was to negotiate and not to compete.

PE, p. 44: PC felt that the province was so dedicated to doing better and more than last year that it had created a sense of false moral superiority over [last year's] participants, which acted as an inhibitor to open conflict. It was very interesting to see how PC had interpreted the provincial group dynamics. What he perceived to be selling out for the compromise, I perceived to be legitimate compromise to come to mutually responsible and beneficial solutions to the problems before us.

p. 34: The provincial team met on 15 March 2002 to establish goals for the last day's negotiations. Although our team had experienced almost constant in-fighting and flaring tempers

since the substantive negotiations had started, I was not prepared for the reality of what was to happen next. PC is an amazing, wonderful, and extremely bright person, but he is quite unaware of all the nonverbal signals people give when something is said that they don't agree with....

I could sense PC's frustration with us and I knew he was becoming increasingly unhappy with his ideas being overridden by the majority vote. I could also feel PA's frustration mounting as PC continuously mounted reason upon reason as to why the team should not abandon the treaty status issue. I felt badly that PC was becoming the proverbial fifth wheel. The four of us who consistently agreed had developed an easy-going jovial rapport. Our reactions to PC's insistence and positivist outlook became increasingly pointed and at times were admittedly a little harsh. At one point, in her frustration in trying to explain why a certain course of action proposed by PC would be detrimental to the team and to the process, PA lost her patience; to PC's continued requests for explanations, she exclaimed something to the effect of "Because I said so!" Although it may sound a little juvenile, one only has to make an analogy to a small child always asking "Why?" There is a point where all the best intentions are laid aside for one sharp comment to stop the constant barrage.

p. 34: It was at this meeting that the provincial team decided by majority to stop pursuing the issue of the provinces being parties to the treaty ... for this exercise in order to effect meaningful solutions to the issues before us.... Unfortunately, this was not welcome news to PC, who felt that we were pursuing a compromise to the detriment of a legitimate position.... PC felt that we were selling out our position that we had so carefully developed in an attempt to reach a compromise.

p. 36: The final day of substantive negotiations dawned bright and very early on a Saturday morning.... The provincial team had decided to meet early in order to finalize the province's position before going into the negotiations. We met and decided that I would be the principal speaker this round, with the power to defer to those other members of my team who may have input. PC was still very reluctant to let go of the status issue; it was a continuing struggle to keep him involved as an integral contributing member while he didn't agree with the team's majority decision as to our party line.

p. 37: [That morning at the Main Table], the other four members of the provincial team almost fainted with shock when PC presented his own unique spin to the province's ADR proposal. At no time had "quasi-judicial" even been mentioned, and at no time had PC been authorized to present that view as the legitimate view of the province. The provincial team, after having recovered from the shock of being so blatantly misrepresented, had to spend an inordinate amount of time back-peddling from that position. The province's views had centred around something akin to a labour board with the power to make binding decisions that would ultimately be judicially reviewable. There was never once even talk about a quasi-

judicial entity, and it became quite noticeable that PC had possibly had his own agenda.... The province in our case did not agree to PC's view and spent quite a long time trying to assuage the other teams' fears of an overly rigid court-like dispute resolution mechanism.

PB, p. 23: Although the conflict within our team was by far the most intense part of the negotiation, and although it was the most frustrating element of the negotiation, it also provided us with some of the best lessons in negotiations. Our meetings within our own party were far more intense for each provincial member, and we all played a very active role in deciding what we would put forward at the Main Table.

PE, p. 46: The constant internal struggle between the majority of the provincial members and PC was almost a blessing in disguise. The struggle, to be fair to every member, had to be balanced with the majority's belief in what the best path would be. It made all of the members with similar views confront a very different mindset, without which we would not have been subject to essential internal conflict and compromise.

PD, p. 28: [At the debriefing] the conversation turned to PC and how our group spent 90 percent of its time negotiating with him rather than the other groups in the Main-Table negotiations. It occurred to me that despite the irritation, frustration, anger, and sometimes outright hostility we felt towards PC, he was a blessing to our group. Perhaps by not agreeing with us every time, he made us stronger; he made us subject our beliefs to strict moral scrutiny. As Oliver A. Johnson said:

No theory that cannot defend itself in the court of critical inquiry should have any claim to our allegiance. It is essential that we approach each new theory in a spirit of objective open-mindedness, but it is equally essential that our examination be critical and our final judgement of it based solely on the weight of the arguments pro and con. Only by adopting such procedures can we hope to advance the cause of truth.⁹²

c) Team Building

[One student researched team-building theory in sports literature. Recognizing differences between sports and multiparty negotiations, but hypothesizing that several aspects of team building may hold in both cases, the student offers her research conclusions in relation to team building.]

PA, p. 10: According to both team sport and negotiation theories, successful teams (institutional representatives) are those that work well together. In *The Art of Team Coaching*, Jim Hinkson states, "Teams don't win if players have different agendas."⁹³ Similarly, in *Human Factors in International Negotiations: Social Psychological Aspects of International Conflict*, Daniel Druckman posits that parties must "perceive some degree of common interest in order to have a stake in maintaining the relationship."⁹⁴ As such, groups must first resolve internal structure

problems.⁹⁵ Sports teams and institutional teams both face the challenge of working together successfully before they can hit the field (negotiating table) and successfully interact with other teams. How can this be done? Teams must first set up a process for making goals.

p. 35: Three things are necessary in order to create team dynamics that are not destructive. First, a process must be established in which all team members feel free to contribute to goal building. Second, teams must create a sufficient quantity of varying types of goals, including outcome, performance, and behaviour goals. Finally, the goals that a team creates must be implemented, reinforced, and revised throughout the team's lifetime.

p. 21: The benefits associated with setting outcome goals include:

- getting everyone thinking the same way;
- getting a team started and keeping it going (motivation);
- generating self-motivation;
- defining the team's feedback (a gauge for measuring progress);
- creating positive pressure;
- getting a team past rough spots (nourish spirit and fuel enthusiasm); and
- knowing how to plan to anticipate problems.⁹⁶

Teams are comprised of individuals. Those individuals will all think and act differently. Further, each individual will have a unique reason for being on the team. As such, individual goals will naturally conflict where there are differences in interests, values, and relationships.⁹⁷ When conflict is sufficient, polarization among team members occurs.⁹⁸ However, conflict within a group hinders teamwork. For a team to be successful, individuals must be committed to it.⁹⁹ To a great extent, members of teams must sacrifice their individual identity for a more communal one.¹⁰⁰

However, the idea that all team members must be clones tends to offend the Western notion of freedom of thought. There is value in differing perspectives. In fact, team growth and strength also lie in the diverse talents of its members. Individuals must be given an opportunity to use their unique talents and experiences for the betterment of the team as a whole.¹⁰¹

p. 12: The meshing of individual and group interests can be done by defining team goals with enough breadth to allow team members to conceive of team goals as their own goals as well.¹⁰² The goals of the organization must mesh with the goals of the individual in order for them to have a vested interest in the outcome....¹⁰³ Negotiation literature recognizes that internal consensus regarding objectives and the means of achieving those objectives must be resolved.¹⁰⁴ How can this be done? According to Linda Topper, sport team theory has posited several ways in which teams can reach consensual success throughout their mandate, including:

i) Create a Sense of Belonging and Trust

[Sports team builders have found that team activities outside the field, clear roles, and backing up team members when they take risks within agreed limits helps build team unity.]

Plan goals in a climate that is comfortable and informal; the goal is to replace skepticism, jealousy, and fear with an overall sense of trust.¹⁰⁵ An individual must feel as though, when the team is trying to reach its consensual goal, she/he will be able to, when necessary, act in the team's name without seeking group approval.¹⁰⁶

Because of the high stakes outcomes, significant risks at the goal-setting stage are more likely to be embraced by team members than significant risks taken by individuals while the game is in play. Again, team members must feel free to communicate alternative suggestions and ideas.¹⁰⁷ Mistakes should be valued as part of learning.¹⁰⁸

When team players are highly involved in a team, an environment of commitment and pride ensues. Members can commit more readily to each other and to team goals.¹⁰⁹ In order for group cohesion to develop, teams may want to address several influencing factors identified in *The Measurement of Cohesion in Sport Teams*.¹¹⁰ These factors include:

Have team members work in close proximity to one another. The more opportunities for interaction, the more likely team members will understand and appreciate one another. Increased interactions should occur both at work and in a social setting.

FB, p. 19: I believe that as a group we functioned particularly well. We did not carry out our group meetings in the confines of the school, or in staid, clinical settings, but rather at Alexander's restaurant. This atmosphere permitted us to grow together as friends and colleagues over food, drinks, and unrelated conversation. I often hold my informal meetings in these settings ... because it puts people at ease and permits them to put a human face on academic or business negotiations. I appreciated the opportunity to learn more about my teammates and their personalities. These meetings generated more ideas and tactical strategies than any other could have provided, in addition to providing us with a measure of confidence in each other, both as teammates and friends.... p. 27: The good feel we had at Alexander's contributed to group cohesion and friendship development that likely would not have occurred in a more clinical environment.

PA, p. 13: **Have team members work in smaller groups.** Cohesion is generally more easily attained among smaller groups. If a group is too large, subgroups and subtasks should be created.

Have team members embrace things that make them distinct as a team. In the world of sports, mottos, slogans, and clothing are often used as a way to unite team members. They are

visual and oral cues reminding members of the reasons that they are a team. While the idea that an MPN team comes to the negotiating table in matching windbreakers seems a little preposterous, cues do not need to be that pronounced. A review of the team goals before meeting other teams, a team pin, or other small items, are subtle things that may remind the team of their distinct identity without other teams knowing of their existence.

Ensure team members have clearly defined roles. Cohesiveness develops more readily in groups where members have specialized functions that they understand and accept. Roles and their significance must be clarified and must be seen as worthwhile. If so, individuals will feel more attracted to a group, and a group goal.

Reward co-operation and sacrifice. Co-operation should be rewarded by drawing attention to its functional importance. Conversely, individual members should be acknowledged and rewarded for sacrifices made for the betterment of the team. Sacrifices not only make a teammate more attractive, but also influence other players' perceptions of group unity.¹¹¹

ii) Encourage Diversity of Opinion and Honest Communication

Individuals on sports teams are usually chosen for their particular characteristics and skills. As such, they must be valued for those skills.¹¹² "Group-think" should be avoided.¹¹³ Again, in sport team and MPN environments, skills should be recognized and roles should be created to reflect those skills.

When group members have opportunities to present their ideas and opinions, members gain a feeling of importance because they are able to contribute.¹¹⁴ Again, individuals will be more attracted to a group when they perceive their ideas to be integrated.¹¹⁵ Further, when players feel comfortable enough to confront each other about hidden problems, withheld information, and overstated positions, they will better know what roles, performance, and behaviour are expected of them.¹¹⁶ Finally, because team members are often in the best position to know what is happening, they should be the ones to provide self-correction.¹¹⁷ Self-correction means that team members feel free to "express their ideas, feelings, and thoughts," and must actively listen.¹¹⁸ Conflicts should be viewed as natural and settleable without personal bias.

p. 15: Studies suggest that there are a number of things a coach can do to promote intrateam communication, including periodic team meetings, staying in touch with formal and informal team leaders to assess the group's attitude and feelings, focussing on successful outcomes before discussing failures, involving the whole team, and providing informal channels for athlete input.¹¹⁹ Regardless, open communication must take place in both formal and informal environments.¹²⁰

iii) Recognize Interdependence

[Whether team members like it or not, their fates are now intertwined. One student drew from sports literature the various stages in team development members can expect—formation, conflict, resolution, and performance.]

Team members should recognize that they need each other's knowledge, skills, and resources to produce results together.¹²¹ Individual roles and role relationships should be clarified and committed to, but members must be willing to "step out" of roles when necessary.¹²² Simply restating roles/tasks that individuals have committed to may help others recognize interdependence.

The previous six factors (a climate of trust and openness, a sense of belonging, open and honest communication, diversity of opinions, risk taking, and recognition of interdependence) are necessary in order for a team to be able to set successful and functional goals.

p. 24: Just because goals are set does not mean that they will be followed. Team members must develop ways to reinforce goals throughout their team's existence. How can this be done?

First, there are natural stages that a team (and its goals) must go through. According to Linda K. Bunker, effective teams evolve through fairly predictable phases before they truly share responsibilities.¹²³ These stages are formation, conflict, resolution, and performing.

a. Formation

In the formation state, great energy is spent establishing a social structure for the group. The primary needs of group members are inclusion and acceptance. As such, behaviour is generally polite and dependent. Conversations are superficial and polite, as group members are still cautious. Additionally, because group structure has not yet developed, much of the interaction is characterized by discussing group purpose. Group satisfaction is high as individuals attempt to enact their preferred roles. However, this satisfaction is not soundly based.¹²⁴

b. Conflict

The conflict is characterized by struggle. Individuals are trying to find support and establish their place within the group. As members question their ability to sufficiently influence group issues, conflict arises due to a lack of status consensus and competition for leadership; "struggles to control the team's destiny and goals, and fundamental trust may be questioned."¹²⁵ This stage is necessary because it is only when a team is able to fight that it can "break through everyone's resistance against buying into the team's overarching goals at the expense of their own ... comforts or wishes."¹²⁶

c. Resolution

The third stage, resolution, is typified by a general agreement on status, roles, and group norms.¹²⁷ Members are both independent and interdependent. Team members function within their individual job descriptions and, as such, their satisfaction increases, inspiring most to work towards accomplishing team goals.¹²⁸

d. Performance

The fourth and final stage of team building is the performance stage.¹²⁹ Only after going through the first three stages is a team equipped with the skills needed to trust each other in a performance situation. The group cohesion attained allows team members to work as a team.

p. 26: Some steps can be taken to assist effective and efficient passage between the stages. First, a team should recognize that the stage exists; if [team members] know the underlying reasons for the way they interact, they will be able to address them in a more direct manner. In other words, knowing that the initial stages of team building are mostly about roles and goals may make focussing on goal making and role definition a simpler task. Second, goals should be reviewed consistently. A change in goal expectation can cause significant conflicts within groups. If goals are written out and put in view of all team members, there is less confusion and changed expectations are less likely to develop.¹³⁰ Goal reinforcement can also occur orally in team meetings.¹³¹ Further, when goal expectations do shift, skilled team members should attempt to persuade their counterparts to revised hardened expectations.¹³² “The negotiator can manipulate the bargaining situation so that the inducement to alter expectations arises out of the situation rather than from his own arguments or analysis.”¹³³ The most helpful quality in dealing with differences is preserving the ability to revise thinking in light of fresh situations.¹³⁴ Finally, the processes that make goal building successful also transfer well to goal implementation. Recall, those processes are: creating an environment of openness and trust, creating a sense of belonging, allowing open and honest communication, encouraging diversity of opinions, ideas, and experiences, encouraging team members to take risks, and recognizing interdependence.

d) One Analysis of Team Behaviour

[Using the sports team development template, one student analyzed a simulation team's behaviour, concluding that the team had not sufficiently defined roles or created, or enforced, behavioural goals—especially self-control and focus.]

p. 28: Much as sport theory stated it should, our initial group dynamic reflected the formation

stage of team growth. Behaviour was polite because group members did not want to start out on the wrong foot. Group satisfaction was high as we discussed the general group purpose.

At the meetings before the main negotiation ... there was, for me, a sense of trust and openness as members attempted to set goals.... Open and honest communication occurred. For example, at the very first meeting, PC proposed that we attempt to pay the Treaty 6 Aboriginals a lump sum to give up their treaty rights. The rest of the members were clearly opposed to going in that direction, but critiqued only the idea and not the person. I tried to open up the proposal by asking PC what he was trying to achieve by putting forth the idea. A discussion followed, and while we decided not to use the proposal, we got a better understanding of PC's concerns. From my perspective, we encouraged diverse opinions, and while we may not have adopted all of them, we learned from them. Risks were allowed....

p. 29: Because of this openness, in the beginning the provincial team was able to set some significant goals. First, as stated, we came up with outcome goals [that we presented as the agenda].... p. 28: [We also] set one behavioural goal: no matter what, we were a team and the team comes first.... Majority rules and those in disagreement would tow the party line....

p. 28: Clear roles did not develop. This most likely occurred because of the form of the Main-Table negotiations. At the table, one person would represent each team. We had decided to rotate that person daily, and as such, no clear leader was created.

p. 29: The prediction that group satisfaction in the formation stage is not soundly based turned out to be true. By the middle of the negotiations, the group had clearly hit the conflict stage of team development. Conflict arose for three main reasons. First, there were no clear roles. Second, there were not enough behavioural goals. And third, our outcome goal was not properly defined and reinforced.

i) Team Members Did Not Take on Defined Roles

[The student concluded that team members did not have distinct individual roles that fit together as a unified whole.]

As we sat down together, no one in the intrateam meetings took on significantly defined roles. There was no leader. Beyond the fact that PB was usually the secretary, we could not recognize our interdependence because no one had a unique role. We were all playing every part because everyone wanted to control the direction in which the team was to develop.

Further, role formation was made a particularly difficult task because group dynamics were rarely the same. As the length of our meetings increased, often one or more people would have to leave. The way that one or two of us would interact was quite a bit different from the way in which all of us would interact. When all five members were there, eventually a vote could

take place and meetings would move ahead. When only two or three of us were there, without a clear leader, heads would butt for hours but compromise would rarely be attained.

ii) Team Members Did Not Create Adequate Behaviour Goals

[The student concluded that members did not share goals sufficiently to be able to direct behaviour to a unified end.]

Beyond majority rules, members of the provincial team were pretty well able to say and do whatever they wanted. Our diverse backgrounds revealed that we clearly did not hold the same behavioural expectations. As such, emotions rose and team unity was challenged. The two areas where behaviour goals were clearly lacking were self-control and focus.

a. Self-Control

[The student concluded that successful team behaviour requires more individual control of emotions.]

p. 22: Self-control and focus will have to be explored in more detail.

- i. *Anger* By the middle of the negotiations, our team was using the technique of raised voices in order to get points across. Most often, I was raising my voice at PC, and he would often respond in kind. Unfortunately, as more members of the team got frustrated with PC, more caught my aggressive style of communication. In the end, other group members were clearly angry as well. Further compounding the problem, PC informed us that nonverbal communication should not play a part in interpreting other people's reactions. Where tone and body stance might have sent a less aggressive message, volume became the only way of expressing emotions. Stress, competition, and goal blockages clearly took a toll on our group dynamics.
- ii. *Guilt* In response to the fact that I knew that yelling was generally an ineffective way to communicate, I felt guilty for how I was interacting. PD had also expressed the feeling that our diatribes, consistently aimed at PC, were not ideal. We felt badly cutting PC off, but could not find an alternative method that would allow the team to move forward.
- iii. *Pride* In acknowledging our achieved goals, group unity was again challenged. In the beginning we had decided to learn from the barriers that the previous year's case study had to face, and [determined to] take a radically different approach. The previous year's negotiations became our benchmark. When we "got further" than the previous year, we acknowledged it with a sense of pride. I felt that the acknowledgements were made with a sense of thanks that the previous year had shown us the barriers that we could now avoid. PC, I believe, felt that our pride was inflated, as it was at the expense of the previous year. Our different interpretations of the situations left us with different levels of satisfaction when the negotiations concluded.

Self-control is “the ability to control or manage emotions so one’s performance is not hurt”¹³⁵ In sport, as in MPN, players who manage their feelings have an advantage because they are able to perform at their best.¹³⁶ There is an optimal arousal level for any task. That level is specific to the individual performing the task.¹³⁷ The problem with team sports is that there is a tendency for members to “catch” emotions, even if an emotion is not specifically directed at the “catchee.”¹³⁸ In fact, top teams have different communication profiles, but typically their profile is stable.¹³⁹

Extreme emotions generally occur when there are goal blockages or, conversely, when goals that are highly valued are accomplished. In other words, emotions rise in response to events that are “important to the individual’s” goals, motives, or concerns.”¹⁴⁰ For example, anger rises when an individual is attempting to remove a source of harm from the environment. Anger occurs when an individual’s goals (and ego) are at stake, causing him/her to blame others;¹⁴¹ guilt is an attempt to make reparation for harm to others.¹⁴² On the other hand, pride is an acknowledgement of an attained goal; confidence is a reflection of the belief that an outcome can be achieved.¹⁴³ Regardless, emotions rise when there is stress and arousal in competition.¹⁴⁴ In addressing emotions, attention should be paid to both verbal and physical communication as 80 percent of communication is nonverbal.¹⁴⁵

Because emotions tend to arise when there are goal blockages, the most obvious solution, again, is to co-ordinate individual and team goals as much as possible. Further, should conflict continue to occur, there are several things that an individual can do to ensure that their emotions do not get out of hand. First, they must recognize that they can only control certain things and [must] let the rest go.¹⁴⁶ Second, they must be made aware that their emotions can hurt their own and their team’s performance.¹⁴⁷ Third, they must discover what gets them upset and then visualize how they will deal with the situation.¹⁴⁸ Fourth, they should practise controlling their emotions and learn to pause before reacting.¹⁴⁹ Finally, they should try to begin each interaction anew.... Every game starts at 0–0.

b. Focus

[The student concluded that the team had not agreed on a central overall goal for the negotiations, which meant that there was no shared focus to which each member could return to guide behaviour and assess next moves.]

Our team was clearly split on the number of issues we should address and the priority that they should take. PC would often come to the meetings with new ideas and new directions that he felt we should take. Where the rest of us were more interested in addressing the issues set to be discussed at the Main Table, PC was more interested in completely revamping the direction that the negotiations should go. As such, in the spirit of acknowledging new ideas, we would spend hours discussing the plethora of new proposals that PC wanted to address.

We would try to focus PC more than he wanted because we felt that presenting the other teams with a multitude of distinct issues ... might [distract them from] the big picture. PC felt, I believed, that unless all of those distinct issues were addressed, the rest of the negotiations were being done simply to beat the previous year.

Most importantly, the reason for our [diverging] focus came down to different interpretations of time. PC, it seems, was operating under the assumption that these negotiations were a slice of what would in reality be much longer negotiations. The rest of us, it seems, were operating under the assumption that time was limited and that we should accomplish as much as possible within the hours given. Often we overruled his ideas simply because they were so big that they would never be resolved in the time allotted to the exercise. Perceptions of time became one of our team's most divisive enemies.

Had our team set out clear behaviour goals, we might have avoided overt conflict. We could have clearly stated that yelling was not allowed. However, without other coping mechanisms, the time that we allotted to intrateam negotiations would have had to substantially increase. We could also have clearly [delineated] the timeframe of the negotiations. However, if majority ruled, cohesion amongst four of the group members may have remained high, while the fifth might have been even more dissatisfied with negotiations.

Karl-Heinz Granitza, a former star of the US professional soccer team, once stated that a player must "always concentrate 100 percent on scoring goals."¹⁵⁰ Team players must concentrate on the task they are performing; [they] must block out distractions and have refocus plans.¹⁵¹ Refocussing can be as simple as using refocus cue words such as "enjoy," "stop," or "forget it." While words such as "forget it" may seem flippant in high-stakes negotiations, "forget it because ..." may be necessary in order to reassess the existing situation in light of overarching outcome goals.

iii) Team Members Did Not Define and Reinforce Their Outcome Goals

The provincial team did define an outcome goal relatively early on. However, as time transpired, we did not consciously revisit the goal. We did not restate it at meetings and it was not written out in a form for all to see. As a result, dramatically different interpretations of the goal developed. Near the end, we realized that PC's goal for the negotiations was clearly different from [that of] the [other] four members. The [other] four were working towards achieving the outcome goal in the time allotted. PC was working towards achieving some small aspect of the goal that would eventually lead to its implementation. As such, PC was interested in the journey, while the rest of us were focussed on the class outcome. We had stated an outcome goal in the beginning, but had not indicated how individual interests would operate within the goal.

Our group was still in the conflict stage of team development when we were forced to

bypass the resolution stage and head straight to the performance stage. By any calculations we should have been doomed ... but we weren't... Our one behaviour goal, majority rules, [kept us going]. Eventual cohesiveness in a team is, in fact, more likely to occur when there is some divisiveness. This is because the moderates collude to stop the extremists.¹⁵² On our team, four of us united, perhaps more strongly than we would have, to stop one. Majority rules gave us the added power to ensure that our vision was carried through efficiently.

At the bargaining table, the majority view carried the vote. When PC spoke, he knew that he could not digress too far. When his opinions were not that of the group, our facial expressions made it clear to the other negotiating parties that his view was not that of the provincial team. At the end of the day, if PC's ideas did not reflect that of the group, his ideas were essentially shut out. The provincial team became a cohesive team and to a great extent achieved its goals ... at the expense of one team member.

D. Outcomes

[Students reflected retrospectively on the "success" or "failure" of their negotiations.]

1. The Negotiations

[Most felt the satisfaction of having reached an agreement, but doubts surfaced as to the feasibility of their agreements in a real-world context.]

CCB, p. 2: When do we say that a process of conflict resolution works? The answers to this question vary with each person and groups of people. One group might focus on the results. They look to see if the process yielded the anticipated results and determine whether they are satisfied with the outcome.... Other groups look to the consistency of the process. From their perspective, the process is valid if it follows the stipulated, predetermined guidelines.... This party will be satisfied if the procedure is fair.... A third is the middle ground between these two, which draws criticism from both sides. The part of the public closely attached to the victim clamours for a "quick execution of justice," while those unattached generally emphasize the "innocent until proven guilty" maxim.¹⁵³

Regardless of the focus, parties do make judgements as to whether or not the process is valid and therefore legitimate. These judgements are both objective and subjective. Objectively, the reasonable person observes that the questions and conflicts plaguing the parties are being addressed. Subjectively, the parties must believe that the issues are being addressed.... p. i: A valid process is [one] that fulfils the aims of the negotiation process—to satisfy the interests of the parties and to prevent further conflict. The technique employed—

that of participation—follows procedures, is objectively and subjectively legitimate, and reflects the community.

p. 13: Negotiation might still be considered legitimate, even though it does not yield the anticipated results, if the outcome at least brings some satisfaction to the parties. A process that never provides a solution will invariably lose its validity over time. A process that continually reverts parties to the original position, with no change in parties' perspectives, will have little enduring benefit. The process must seek a solution to the conflict plaguing the parties, with a possibility of delivering it.

p. 26: Negotiation relies on participation to give it subjective validity. Parties don't attend the negotiation process unless they believe [it] is capable of legitimacy; they continue only if [the process maintains its validity]; and agree to resolution only when satisfied with the solution. If parties are unhappy with the process at any point, they can remove themselves from the table. The results of such autonomy are twofold: The parties will either reach an understanding—whether it be an agreement or a desire for more negotiations—or they will decide it is in their best interest to discontinue negotiating. Although the efficacy of negotiation comes into question if the latter consistently occurs, in both scenarios the process remains subjectively valid as the parties had the opportunity to exercise their wills.

p. 32: There is no single aspect of the process that makes it valid. While we try to establish a process that is fair, encourages understanding among the groups, and bridges cultural gaps, it is the playing out of the process itself that produces results. Negotiations that do not fulfil the substantive aims of the parties are nonetheless seldom complete failures. All parties gain an understanding of each other. This understanding is then processed in combination with each party's perspective to form a new creation. As perspectives alter, even slightly, the chance of success on substantive issues in the future improves.

p. 14: Regardless of its success or failure, the resulting agreement will “be a mirror of the concerns, interests and status of the parties participating.”¹⁵⁴ p. 17: A “mirror” result is a realistic result, not necessarily an ideal result.¹⁵⁵

FC, p. 45: After [the neighbour] agreement had been made, I can hardly describe the relief and joy I felt. We were all so overwhelmed that we burst out into applause. We had bantered back and forth over this main issue for the majority of the first six hours of the substantive negotiations. I felt like the weight of the world had been lifted from my shoulders. I realized that all of the tinkering we had done throughout the negotiation was not all for nothing.

It was not until the completion of the agreement that I realized every single argument and suggestion proposed by the groups contributed to the final product. I was very proud to be a part of the process. Tom Molloy stated ... that when the Nisga'a accepted the final proposal on 15 July 1998, he and his team became very emotional.¹⁵⁶ I can now only begin to imagine

the elation Mr. Molloy must have felt when concluding an agreement that took years to negotiate, compared to mine, which took hours.

FD, p. 22: The final day of negotiations was incredible. Whether this is good or not, I am still not sure. We literally sailed through health care and education. Every team had proposals and innovative ideas. In particular, the Aboriginal team played to our federal team's concerns—money. The proposal that GST and property tax from reserves be applied to fund health care and education respectively was the clincher. We ended by clapping and cheering that we, an upper-year law class, had just solved two enormous and contentious issues. Incredible. Perhaps too incredible. Where was the conflict that had raged throughout history?

FB, p. 26: It was an unbelievable end to an unbelievable day's simulation. The sense of pride, accomplishment, camaraderie, and friendship at this point was both touching and satisfying. It was a unique experience to witness a group of law students come to that sort of cooperative conclusion to a day's negotiation, and one I won't soon forget.

PE, p. 43: What a sense of accomplishment. The MPN class of 2002 had completed successful negotiations on issues plaguing these actual parties in real life. With a little innovation and creativity, complemented by responsible compromise, our class had resolved real-life issues while staying true to each group's mandate and restrictions. I felt a huge sense of accomplishment and felt that many of the world's problems would be best addressed by the youth of society. We had come through this perilous journey not only triumphant, but also for the large part, with our original relationships intact if not solidified.

CCA, p. 9: Just as not enough movement on either side was seen to be critical in the downfall of the process in past attempts to negotiate, we would come to learn that too much movement would give the process an air of impracticality. What we would come to question is whether the agreements reached would be feasible and likely in actual negotiations between the parties that we represented at the Main Table.... p. 33–34: While the motions for health care and education were put forward and passed with relative ease, I have come to question the realism behind the proposals.... While the (health) proposal is creative, it still does not address the strained resources on staffing and supplying equipment to hospitals due to lack of funding within the province. How can the province build new hospitals when its resources are taxed in trying to keep the current hospitals open? This question was not addressed and poses a substantial barrier to the implementation of this proposal.

FD, p. 19: [The federal team] spoke of our anxiety that AA, who I considered to *be* the Aboriginal team, would take the negotiations very personally. We all had roles to play, and I was anxious that they not spill out of the classroom as they had last year. As it turned out, it was the most amicable negotiation I have ever experienced; dare I say too amicable?

2. Debriefing

[Debriefing revealed that both positive and negative synergies had indeed been created in the negotiation, and students struggled to come to grips with their new awareness.]

FB, p. 27: I could not get away from the feeling that what we accomplished as student negotiators would both help and frustrate us at the real-life negotiation tables of the future....

p. 28: Failures were early and few in this simulation. It is my fear that the larger failures are yet to come. While I feel that the experience gained in this simulation was incredible, I cannot help but feel that it was somewhat unrealistic. Clearly, we could not know the complexities of the law and all of the socio-political barriers facing these types of negotiations. Nor was that the intention of the exercise or the course as a whole. As a practical skills course, this was a resounding success, and the students will all leave here with something on their transcripts that is more than valuable to firms, organizations, and governments. In terms of our successes at the Main Table on the last day, I believe we would be fooling ourselves to think that MPN would move at such a lightning quick and amicable pace.

FD, p. 27: I truly appreciated the chance to debrief.... It was such a crucial final step. Any good negotiator knows of the importance of the chance to vent and express frustration or, at the other end of the scale, appreciation for the process.

PD, p. 27: The food was excellent! The company was great and the surroundings were amicable. After dinner, we reflected on our experience. One recurring theme that emerged was that we were successful this year because of our competitive nature as law students. We wanted to beat last year's team and reach a deal. The real world is not like that. With respect, I beg to differ. I believe we did a good job.

CCA, p. 34: At the debriefing session, PC made the comment that the process was more a drive to make this class better than last year, and as such we were too co-operative. It is my understanding of PC's position that the process was not very realistic and thus not successful.... p. 35: I would agree with him in that perhaps there was too much co-operation, such that the process attained an air of bias to getting something. There was definitely a push to succeed where others had failed. Where I think his and my view of the process differs is in the effect of last year's experience on our negotiation and our views of success of the process....

p. 37: In my view, success revolves around being able to take the process and create something, to "put something in the Earth that wasn't there before."¹⁵⁷ This was exactly what we did. We were able to formulate a collective mandate in which discussions were to occur and to highlight the issues that we wanted to talk about. We were able to deal with contentions as they

arose, and most importantly, to surpass the hurdles that we encountered. All this we did as a group composed of different sides. While at times there was disagreement, we were able to deal with it and leave the table just as we entered, as colleagues and as friends. For these reasons, the process for me was a resounding success.... For me it was liberating to succeed where others had failed, and I believe that I am not alone in that view. In our simulation, the majority possessed a shared vision of the process and its outcome. It was this shared vision that enabled the wheels of progress to turn and new ground to be laid.

FA, p. 35: In MPN, from subject-matter to parties involved, everything matters.... The outcome of negotiations is dependent on the cohesiveness of the parties' personalities, coupled with past experience both with the parties and apart from the parties. The lectures, discussions, and reading leading up to the negotiations all affected the path our negotiations were to take. And now any future negotiations I take part in will be shadowed by my experience here.

FB, p. 30: As law students, we are taught to defend and protect our positions.... The MPN model provides a foundation for dealing with the invariable factions that develop when ... relationships break down. Whether it's a moot group having problems working together, a relationship breakdown, or the disintegration of a friendship, law students do not typically utilize the MPN techniques. It is my hope [that] ADR and MPN coursework may one day become mandatory for law students, as their daily interactions are punctuated by the typical win-lose legal mentality in many instances.... p. 33: MPN was an outstanding practical class.... The lessons learned in this class will continue to assist me.... I will remember this class and its lessons for years to come.

PB, p. 28: In dealing with such an immense multiparty conflict, one feels they are only a pointless tiny article in a huge sea of conflict and confusion. If we believe that we are pointless, I would argue that we have already lost the battle. However, if we believe that no matter how small we are within a conflict, we are significant, and that every particle can affect the change of the whole, [then we can believe that progress is possible]. As one anonymous author put it: "When a butterfly flutters its wings in one part of the world it can eventually cause a hurricane in another."¹⁵⁸

AD, p. 32: In the words of one author, "Later the boys asked me how the war went. 'It went pretty well,' I was able to say. 'Each fought for their own truth in the best way possible—through dialogue and forgiveness.'"¹⁵⁹

PART THREE: YEAR THREE

CASE CHRONOLOGY

1. Changes from Year Two

[In year three, the syllabus suggested that students attempt as the subject of their simulation a major current international issue, specifically, the next steps in implementing the Kyoto Accord.

As with year two, letters are used to represent groups and individuals within those groups. In this case, letters were assigned as follows]:

F = Federal

P = Provincial

I = Industry

N = Nongovernmental organizations

A, B, C, and D are separate individuals within each group. FA, for example, is the first person in the federal group, FB the second, etc.

a) Preparation

[Students prepared for their simulation through in-class negotiation instruction, substantive instruction re the topic, and decisions regarding the specific topic to be negotiated and the teams that would be involved.]

i) Negotiation Instruction

[Brief excerpts of the constitutional video viewed in years one and two as well as an instructor lecture on negotiation were included.]

PA, p. 21: The constitutional video was a great example of what not to do in a multiparty negotiation. I just hoped that with our dynamic group of individuals we would be able to avoid these pitfalls.

IC, p. 2: Professor Benson lectured on negotiation terms and strategies, explaining behaviours such as interest-based and position-based bargaining. The lecture also explained the stages of formal negotiation, which helped prepare us for what we would soon be experiencing for ourselves.

ii) Substantive Instruction

[A knowledgeable member of the local community kindly agreed to a class visit to provide students with detailed understandings concerning the Kyoto agreement, and more specifically the issues surrounding carbon sinks.]

NB, p. 4: Ann Coxworth of the Saskatchewan Environmental Society gave us background information on Kyoto. The scientific facts behind Kyoto are extremely intricate.

PC, p. 11: I had taken international law and environmental law and thought I had a good knowledge base, but I had no idea that carbon sinks were so complicated.... You have to be properly informed to know where you stand. For example, industry was trying to claim the forest and the wood products as carbon sinks, but once they are cut they are no longer sinks, and they will soon release their carbon back into the atmosphere. If we hadn't known that, we could have set up an entirely faulty credit system. We did a lot of research on our own, but I don't think we would ever have understood things in the detail that we learned in that information class. Not only was it invaluable for the negotiations, but it also made me realize just what a complicated problem the government has gotten into by signing on to Kyoto.

PA, p. 23: I thought I had a pretty good grasp of what was going on, but I was completely overwhelmed. A person could devote his entire life to this area and still never cover it all.... Professor Benson sent out the proposed problem and told us to come to class prepared to discuss how we should limit the problem, and to pick teams.

PC, p. 13: The good thing about learning about Kyoto is that the resources are just about endless.... There are so many websites about Kyoto, and the government desperately wants to inform us about climate change. Also, the United Nations website was great because it was as if we were going right to the source.

iii) Substantive Issue

[Students chose from a list of issues offered by the instructor to frame the detailed issue they would negotiate. They also concluded that there would be four teams: federal government, provincial government, industry, and non-governmental organizations.]

PD, p. 4: It was almost entirely unanimous that we attempt to tackle the Kyoto problem rather than the Aboriginal problem. Many of us had heard the stories from last year's class, where some friendships were put in jeopardy because of the negotiations. It also was very unnerving reading the problems that the group had two years ago as outlined in *Conflict, Co-operation, and Culture*.¹ We felt the Kyoto conflict was a less personal type of problem and would be one we could sink our teeth into, but [which would also allow us to] leave class and separate ourselves from the views and opinions relayed in the course of the negotiations.

IC, p. 1: The multiparty negotiation was between four teams that were trying to negotiate the development and implementation of a system that would allow the Canadian prime minister to meet Kyoto Protocol guidelines.

PA, p. 24: Today we had a class discussion on the problem and decided to narrow it down. Everyone had different opinions and came with a different knowledge base. I could see that this wouldn't be an easy process.

IC, p. 3: We decided to negotiate the following substantive questions:

1. Determine whether a trading market will be permitted to allow emission-reduction credits, and if so, under what terms?
2. Will incentives be required to make the mandatory reduction targets workable?
3. What penalty scheme will exist?

We also agreed to a baseline of 2002 levels and a goal of 15 percent below 2002 levels across the board on everyone—federal, provincial, industry, and nongovernmental organizations (NGOs).

PA, p. 24: We ended up negotiating on a quite specific area of the Kyoto Accord: trading markets for both emission permits and credits, and how the system would be structured. The specificity of the choice ... allowed a very direct focus, which would really test our negotiation techniques.

IC, p. 3: A crucial decision was made to eliminate individuals as a negotiating group. This was unfortunate, but necessary, because of the limited number of people in the negotiation itself.

NB, p. i: The negotiations include the following parties: the federal government, the provincial governments, industry, and NGOs.

[The analysis of the class is contained in the following glossary section under alphabetical headings.]

ANALYSIS: GLOSSARY

Agenda

[Who sets the agenda, and how, has a significant impact on the tone and progress of negotiations.]

FA, p. 23: I would have preferred a table agenda be set before the actual negotiations that day. That would have required all parties to agree to issue identification and to agree what issues we would spend time negotiating.

PB, p. 13: While the agenda for the next session is ideally discussed at the end of the session, negotiators often wish to adjourn quickly to undertake other responsibilities or to end tense negotiations....

Efforts must be made to deliver the next session's agenda to the parties as soon as possible so that parties may be able to review the agenda and prepare for the next negotiation session at their convenience.... The later the agenda is sent out, the less likely it is that it will be carefully considered and researched in preparation for the upcoming session. This will slow down or stall negotiations.

p. 14: Attempts were made to establish an agenda through e-mail, but I would be slow to recommend this, as it would result in the chair creating the agenda without the simultaneous input of all of the groups subject to it. This may result in the adoption of an agenda not acceptable to all the parties involved, and create the feeling among participants that the position of the chair is dictatorial or autocratic rather than facilitating co-operative negotiations.

Attendance

[In any teamwork, attendance of all team members is crucial.]

PC, p. 6: We needed to get things done that need input from everyone, and [absentees] hold things up.

IC, p. 4: For decisions to be made, it is easier if all stakeholders are present and involved.

NB, p. 34: **Absenteeism*** affects a team. The power differential created by a missing teammate calls for forewarning if at all possible.

Background Groups

[Negotiators are accountable directly to political or corporate masters, whose mandates limit negotiators' boundaries, and indirectly to diffuse constituencies without whose support negotiators' agreements may not be implementable.]

PD, p. 22: It is almost as if there is another party at the table that can have demands, but cannot be questioned about them.

Backroom Talks

[Backroom talks are communications among representatives from different parties that occur away from the glare of Main-Table scrutiny. These talks are positive if they permit options and agreements to be tested in a higher trust environment as a means to reducing confrontation at the Main Table. They are negative if they become perceived as exclusionary deal making for self-interested motives.]

FA, p. 28: The purpose of backroom communication is to create alliances, trust, and cohesion before going back to the table.

NA, p. 9: I was not at all prepared for how important backroom “wheeling and dealing” was. This was where the most meaningful and successful dialogue occurred. We might have solved all of the issues during the caucus breaks if we had had more time. The further we moved towards a more humane, informal means of dialogue, the greater we were able to address the issues.... p. 12: During the caucus breaks, “the gloves came off.”

p. 16: The less formal backroom discussions were more productive than the informal Main-Table negotiations. With each step, there was less distance between us and we were able to be more fully human.

p. 13: I am still awestruck at how much can be negotiated behind closed doors and how much is lost in the formal negotiations at the Main Table. I have thought a lot about what Tom Molloy refers to as “a walk in the park to discuss the facts of life.”²... What is it about these walks in the park that makes them so appealing and successful during negotiations? Could it be that formal negotiations are so artificial and the human part of us seeks human contact? Could it be that the more formal the process, the less human we become? I still do not know.

PA, p. 26: Several of us met after class and discussed what was going on. Everyone was in agreement that we had to find some way of bringing focus back to the discussion and keep things moving forward.

* Boldfacing of the first letter indicates that the statement is part of NB's “ABC of Negotiations.”

FA, p. 27: When we were satisfied that we had secured support, a matter could then be put to a vote. These behind-the-door communications helped create trust among those teams and also allowed for more efficient negotiations, especially in the voting environment.

Best Alternative to a Negotiated Agreement (BATNA)

[Clarity about one's BATNA makes clear the boundaries of what a party should accept at the table. Parties with a strong BATNA have more bargaining power because they can leave the table if negotiations do not promise more than unilateral action.]

IA, p. 14: Common in preparation is determining what negotiators call your BATNA—Best Alternative to a Negotiated Agreement.³ When assessing your BATNA, you must be realistic of what you can actually achieve.... By keeping your BATNA at the forefront of your mind, you have a point with which you can determine if another party's suggestion is beneficial for you. "BATNA is the key to negotiating power. Your power depends less on whether you are bigger, stronger, more senior, or richer than your opponent, than on how good your BATNA is."⁴ Therefore ... know your options, and consider all positions against your BATNA. Your BATNA can keep you focussed on your goal, and reduce anger that may develop if negotiations are not going as planned.⁵ After your BATNA is developed, you can develop your reservation point [the point you will not go beneath], which is the quantification of your BATNA.⁶

p. 16: Literature suggests that determining other parties' BATNAs would be very helpful;⁷ however, I note that you must be careful not to assume too much. If you make an erroneous assumption, then you could head down the wrong path, which will dwindle valuable time and patience.

Brainstorming

[Parties offer as many possible solutions to the problem as they can think of, without the group evaluating them until later. This activity is used to generate potentially creative solutions, and is most effective if performed after parties have some mutual understanding of respective needs and wants.]

IA, p. 29: Various parties are at the table, with a roughly common goal, but each has different reasons for being there, different reasons for wanting that goal, and different ideas of how to achieve it. Brainstorming requires that the parties work together and allows expression of possible solutions that may not have been previously considered by others. These new ideas can create a springboard effect, causing expansion on ideas that may not otherwise have been created. This is referred to as piggybacking—building upon another's idea to produce a better one until the possibilities are exhausted.⁸ "The goal of brainstorming is to maximize the *quantity* and *quality* of ideas.... A group is more likely to discover a really good idea if it has a lot

of ideas to choose from.”⁹ ... [T]his brainstorming technique is only to gather ideas; from there, a decision-making process begins, which involves discussing the options, evaluating them, and then arriving at some form of agreement.¹⁰ This method is premised on an encouraging, value-free, environment, and will not work if parties criticize each other during the brainstorming period.

p. 30: Another technique, the nominal group technique (NGT), is a way of assessing the options discovered in a brainstorming period.¹¹ “NGT is intended to assure equal participation of all group members by rigidly structuring the discussion and the voting on individual judgments. The purpose of NGT is to reduce domination by strong members.”¹² ... This method ensures that all parties are involved and encourages a positive environment for decision making. The process is as follows: each group will take the accumulated ideas, create a potential answer to the problem, and write it down. They will create as many solutions as possible. Then a neutral party, possibly the chair, will ask each group, one by one, for one possible solution without any explanation. Once the solutions are out in the open, members can discuss and modify them.¹³ After discussion, the third party (chair) assesses which options have been most supported and puts them to a vote.¹⁴ The plan with the most supporters prevails.

Brainstorming and NGT require agreement of the parties for both participation and adherence to the final vote. However, as the parties are directly involved, these techniques encourage co-operation, nurture a positive negotiating environment, and develop solutions that meet as many needs as possible in a final binding agreement.

Caucus

[Groups found that caucuses—consultations among members of the same team away from the Main Table—were important and necessary.]

PB, p. 16: The use of the team caucus was crucial as a device through which individual groups might organize strategies, discuss unexpected issues or strategies raised by the other parties, or cool tensions by providing a brief respite from the heated negotiation.

PD, p. 32: One of the best strategies was the use of the caucus. It was a great way to stop momentum when it seemed to be going against us. We could brainstorm how to shift the process of the negotiation to our benefit. It also provided an opportunity to put heated negotiations into context without continued conflict.¹⁵ We could step away from the problem and talk it out in our own private sessions. We also used these sessions to have little meetings with our coalition partners to ensure they were still on side with us.

PB, p. 22: The caucus periods served not only as a means to discuss privately our positions, tactics, and those of the other groups, but as a respite from the disagreeable conditions found in the formal negotiation session.

PC, p. 17: There is a great value to caucusing. When we had caucuses, the first thing we did was make sure we were all thinking along the same lines, then we vented, then we strategized. The caucus time was needed to keep on track with the team because it was hard to talk to the team when we were all at the table. It was also a mini-debriefing for us. We could reflect on what had happened and how we felt about it. Then we could decide where we wanted the negotiations to go and how we were going to achieve that.

PB, p. 17: The caucus was used as a procedural tactic. During one formal negotiation session, one group stated at their turn on the speakers list that “we would like to take our caucus now,” at which time they stood up and left the room, with little regard for the fact that there were still a number of students on the speakers list.

NB, p. 27: I experienced frustration during some of the caucus time, when the other parties would not let us discuss as a team. Instead, we were propositioned, propositioned, propositioned.

IC, p. 33: I think [we] did not allocate ourselves enough caucus time. Five minutes were not sufficient to deal with surprises and to come up with new tactics.

FC, p. 16: Caucus time was in short supply, and we had to pass notes at the Main Table that were illegible or unclear; this was inadequate for our needs and could have been easily solved with a preclass meeting.

Chair

[The chair manages the flow of speaking and decision making during negotiations. The chair is often called on to interpret procedural rules and make instant decisions applying those rules to unforeseen fact situations.]

PC, p. 12: The chair took on a tremendously important role in the negotiating process.

NB, p. 34: Chairpersons¹⁶ affect negotiations. Choosing a skillful chairperson who can control the negotiations while commanding the respect of all parties is key to the success of negotiations.

IC, p. 32: The success of the chairperson at each session depended upon the personality of the individual in the role on that day.

PC, p. 12: The dynamics of the entire group was different with every chair.

PB, p. 2: The selection of the chairperson is critical. The chairperson must focus on maintaining control of the process rather than maintaining control of the parties. The chairperson must be well versed in the issues surrounding the substance of the negotiation; failure will result in a process hampered by lack of focus. The chairperson must also be well versed in the process of negotiation, and able to detect apparent strategies of the parties involved.

IC, p. 9: The reality of being a chairperson is that you need the respect of the group; and the group should want you to be the chairperson. The chairperson is a leader who helps to maintain order and calm in the frequently chaotic multiparty negotiations.

PB, p. 9: The chairperson may effectively dictate the course of the negotiations, and ultimately its outcome, through the quiet subversion of the rules. This is especially true in a situation in which the negotiators are not well versed in the procedural rules agreed upon by the group. While the process may be dictated by the malevolent will of the experienced chair, it may also inadvertently be dictated by the benevolent efforts of the inexperienced chair. Because of this, strong and informed chairpersons, and negotiators well apprised of the rules and processes, are both crucial to an efficient negotiation.

Clothes

[Clothes are part of negotiators' presentation image, which affects both their self-perception and how others perceive them.]

IC, p. 26: In preparation for the day's negotiation, I dressed in a suit, which had the effect of changing my inward feelings and outward appearance to a more professional demeanour.

Coalition

[Negotiation parties create alliances to support each other in negotiations. Alliances may be long-standing or temporary, extend to several issues or few, and be based on an intricate variety of trade-offs.]

FA, p. 28: Trust may also be found in a shared enemy.¹⁷ This was probably a large incentive and reason for the three groups getting together to communicate our mutual dislike for industry's negotiating style! The coalition that formed was, however, also due to the fact that we actually did have similar interests and agendas.

ID, p. 12: The other teams were talking with one another, setting up some form of alliance with each other. When we returned to the negotiating table, the federal team began talking about incorporating some of the provincial positions in their proposed arrangement. Also, the NGOs talked about reaching a solution that would benefit everyone. The groups were open to each other's suggestions and concerns.... p. 13: The federal team was overseeing implementing a practical agreement to achieve what they had promised to do when they signed Kyoto. The provincial team was being soothed that their powers were not going to be taken from them by the federal government. The NGOs were ensuring in some manner that the environment was being cared for.

IC, p. 28: It soon became apparent to industry that the motions being put forward and voted on were previous agreements made during caucus time among the other groups. We

were not brought into any discussions with the other teams, although they seemed to all be working together. They had formed a voting block.

Communication

[What information is offered to whom, when, and how, has a dramatic impact on the path and outcome of negotiations. Words and actions both send messages, and messages received are often not the ones intended.]

PA, p. 9: If the parties aren't willing to share their information and their positions, the negotiations will fall apart. Each party must understand what the other is trying to accomplish and why they are trying to achieve these goals.

IC, p. 15: Some participants were nervous speaking to the entire group; they were therefore speaking very quickly and I was unable to write down a lot of the key points they were making. Further, team members were talking to each other during another team's presentation, and missed key points. The problem became evident when teams asked questions that had already been answered.

PA, p. 28: It has dawned on me that clarification is the key to our discussions. Even though we are discussing the same issues, everyone understands them in their own way. By clarifying issues, we were able to make some progress.

IA, p. 20: An enormous problem was the ability to communicate exactly what was intended. For example, we had a terminology obstacle. The term "credit" was used by all parties, but it had a different meaning for some and then an alternative meaning in other contexts. This is particularly problematic when a proposal is suggested and parties are not sure if they understand exactly what the proposal involves. If the term's meaning is not accurately identified, people can draw inferences and meanings different from those intended. "It is all too easy to fall into the habit of putting the worst interpretation on what the other side says or does."¹⁸ Further, the tone used to express ideas and proposals can result in drawing an unintentional or even a literal meaning that was not anticipated.

IC, p. 28: At one point in the negotiation, I was trying to explain industry's vision of how the credit-trading system would be overseen by an independent third body. Both the federal and provincial teams were having a hard time understanding me. No one enjoys being misunderstood, so I asked my team members for help in clarifying my point, as I had tried my best several times to explain the system as we saw it. It became clear that no team had a vision that closely resembled the others.

NB, p. 35: Verify standpoints represented by other teams if you are unclear. It is better to ask a question of clarification than to sit silent because you do not understand a point.

IB, p. 9: Selective speaking is often a good strategy both in team meetings and at the main

negotiation table. I think I made a mistake by speaking so much in general, because the sheer bulk of my words devalued my statements, and even my important or strategic statements were lost in the clutter of IB dialogue.

NB, p. 11: Growing up I was taught to thoroughly think through what I say. As well, I firmly believe that opinions lack validity unless they are well founded on fact. Therefore, I do not often state what I think if I view what I have to say as opinion not yet based on enough factual evidence. However, in these negotiations, I realize that ... a person who has to formulate [their] position to one hundred percent legitimacy in [their] own mind before speaking may lose out. Other people speak based on opinion. Some speak based on emotion. Others speak positions rather than interests. Others are simply confrontational. Mixed in are people who have amazing things to say and a way of presenting them that begets attention and respect. All of this shapes negotiations. If I continue to wait until I have mastered a sentence or interest, I may not put enough of my interests on the table and the negotiations may get away on me.

Conversely, I do not want to lose my way of conducting myself.... Ideally, all parties would speak when they have legitimate things to say, but not sit on their interests waiting for the perfect moment until it is too late. This kind of change is hard to do overnight. Yet, I may have to, because we have some very strong personalities who may overtake the negotiations if the rest of us let them.

p. 35: **Yammering** is an ineffective negotiation strategy. Most people are not receptive to incessant whining.

NA, p. 19: I learned from our negotiations that sometimes *how* you present is as important as the substantive law, interests of the parties, and issues to be resolved.... It is important to have good, fair, respectful, and open-minded negotiators arguing your case because the outcome of the negotiations depends on how well it is received. It should not have surprised me so deeply how the process of negotiations could be so fallible; after all, it is a very human process.

If people come across as aggressive, pushy, and not open to compromise, then what they are trying to say will not be heard by the others at the table.... I can see how the process of negotiations is very much dependent on how effective one is at communicating one's ideas and having them well received.

ID, p. 32: If there were only one piece of advice someone reading this paper would take away, I would want it to be that open communication is key. This, however, is much easier said than done. Negotiations will be much more effective if everyone is open to understanding the perceptions, goals, and fears of each party. Not only must you be open to receive the information, but you must also communicate back what you understand to be the case, to ensure the other party that they have been heard.

Consensus

[A form of decision making used in negotiations whereby all parties agree on, or at least agree not to actively oppose, a proposed decision.]

FB, p. 20: My vision for the negotiation table was that we would talk over the issues and concede some issues, win on other issues, and come to a consensus on still other issues; we would talk things over until we were all happy or at least content. I was expecting us to be consensual; I was gravely opposed to the voting process because I saw it as the majority rules model.

PC, p. 5: The nature of this course is negotiation, but I didn't expect that every single thing would be negotiated, which topic we used, how many problems we had, and how to pick groups. Everything had to be a consensus, and I really wasn't used to that. I thought, "Why couldn't someone just lay out the groundwork and then we could go ahead and negotiate?" What I didn't realize was that this was also some very important negotiation experience.

It would be the only time we used consensus, and while I found it tedious to reach a consensus, I realized later that this was the only time people came out of this thing happy—when we all agreed. I didn't know how much of an effect other people's happiness with the agreements would have on me, but I really did want everyone to be happy with what went on in there, and that was the only time everyone was. Also, when people know their opinions are important, I think they are more willing to listen and try to understand, but when people can be voted out, that's when all the sneakiness and tactics come into play.

Context

[Each negotiation takes place within a unique web of events, cultures, powers, personalities, and history, all of which come to the table as hidden forces, and all of which the competent negotiator invests considerable effort to understand.]

PA, p. 9: Thompson suggests that when you are assessing the situation, you must take into account many different factors.¹⁹ For example, you must consider if the negotiation is a one-time thing or a long-term or repetitive negotiation. This will stop you from fouling a relationship that you will be forced to work with in the future. You must also consider whether the negotiation is of necessity or merely for gain. This doesn't have to be the same for both parties. One party might need the deal to survive, while the other party is only hoping to gain from the deal. By accurately assessing the situation surrounding the negotiation, the negotiator can gain an immense amount of understanding into the underlying issues.

Cooling Off

[Negotiations are intense, and individuals and groups need ways to defuse built-up tension, both at and away from the Main Table.]

NB, p. 31: I learned that an act of calmness or slowing things down [can be useful] to extinguish aggression. For example, calling a caucus during an aggressive outbreak gives everyone a chance to regain self-control.

IA, p. 31: An effective method of cooling down parties at the negotiating table during our simulation was a caucus. While the purpose was to strategize with your group on a current issue rather than to calm tempers, it had this secondary effect. The distance from other parties and focussing on a specific issue helped to control the emotional environment very well. When the parties returned to the table, the mood was lighter, the discussion was focussed, and we were able to get back to negotiating.²⁰

IC, p. 35: The best solution I found when my emotions took over was to take a personal time out. I would do this by sitting back and observing for awhile, rather than participating in the discussion. I found this tactic helped me to focus on the issues rather than on my own emotions.

IA, p. 32: One author suggests telling a story or joke to lighten the mood when you can't actually leave the negotiating space.²¹ This mood-lightening technique happened automatically during our negotiations. When a party called a caucus, often other parties would stay at the table and chat about life outside the negotiations. This curtails anger since you can reflect on the fact that the negotiators are your friends or acquaintances who are there for the same reason as you—to negotiate.

If you cannot take a physical break from the table, you can still take your own mental adjournment. When you are in the midst of negotiating a point and can't call a caucus, take a few moments to say nothing and use the time to think and regroup.²² Such a mental break in place of responding when you are frustrated or angry—which is only likely to cause more frustration—can alleviate negative feelings.²³ Frustration clouds judgement; thus, capturing a few moments to collect your thoughts can improve your ability to view the situation objectively, control your feelings, and allow you to respond rationally.²⁴

Culture

[Groups, organizations, and societies all build understandings over time as to what particular words and actions mean, what behaviour is appropriate in what situations, and what can and cannot be discussed. These understandings infuse thinking without individuals even being aware of them and come to the table as invisible forces, creating expectations that are often not met, interpretations different from those intended, and leading to judgements that become a continuing source of conflict.]

FB, p. 19: Culture plays a role in one's negotiation strategy, and this fact is not trivial.²⁵ "There is quite a bit of evidence that culture affects the way people negotiate."²⁶

p. 23: Research analyzes the different world cultures and their different negotiation styles;²⁷ a global negotiator dealing with other countries such as Japan, Hong Kong, Germany, or Israel, will want to be schooled in the various approaches.

IB, p. 5: Every negotiation process that I had ever been involved with apparently had some basis in *Robert's Rules of Order*. Upon realizing that PB and I were the only ones familiar with *Robert's Rules*, I was quite intimidated by the thought of choosing our own procedure. I had always taken it for granted that everyone was familiar with *Robert's Rules*. This drew some major implications in my mind with regard to international relations. If my classmates, of similar culture, origin, and education to a certain degree, were unfamiliar with this basis of negotiating, then any negotiations with foreign cultures certainly would not always know how to play the game I knew.

The best thing I can liken it to is a card game. In an international poker championship, the participants are definitely going to know all the same rules, because they would not be there if they did not know all the rules. However, in a random game among a few guys in a bar in a random country, the chances of everyone knowing the same rules are minute. Moreover, if they do not have the same basic knowledge of cards, it will cause extreme problems, because it is not within the scope or practicality of their circumstances to go out and learn common rules. Without any common basis, it will be hard for either party to begin to teach the other any rules. Therefore, negotiations without any common basis might be prone to falling apart.

ID, p. 23: I understand in a polite Canadian society ... that the meaning of displayed emotions may be quite different from my tradition. Thus, the unemotional state may be perceived by some as superior. It is always important to know your audience.

FC, p. 11: Language and cultural barriers can add another layer of fog to the works. I noticed great frustration from a fellow member on the federal team, who had a more collectivist or collaborative mindset and wanted to establish a relationship of trust and harmony upon which further negotiation could be based. However, most of our classmates, myself included, were more linear and task oriented, and wanted to have something more tangible completed (i.e., procedural negotiations) as a guidepost of progress.

FB, p. 21: Thompson in *The Mind and Heart of the Negotiator* seeks to strike a balance between [mind and heart.] "... [T]he *mind* of the negotiator ... involves the development of deliberate, rational, thoughtful strategies for negotiation. We also focus on the *heart* of the negotiator because it involves emotions, psychology, and the intuitive aspects of negotiation."²⁸

This negotiation advice is similar to what the Elders teach. They say that our mind and heart need to be connected, but we should always talk from our heart, not our mind. Aboriginal leaders need to ensure they are healthy before negotiating on behalf of our people; we need to ensure we are "balanced." We are balanced when we take care of our mental, emo-

tional, spiritual, and physical aspects. If we neglect any of these aspects, then we are not balanced and will have a hard time doing what is required. This approach needs to be incorporated in everything we do—that is why an Aboriginal approach to negotiations would include prayers, medicine, and Elders (spiritual); food, breaks, and environment (physical—I really liked the round table); debriefing and sharing feelings (emotional); and strategizing, negotiating, and agreement (mental).

NA, p. 14: This simulated negotiation affected me deeply and tied many of my experiences together. I can see a bigger picture. I can see how the law and other formal Western institutions are slowly evolving, transforming, becoming enlightened. It is happening. I feel it and see it. It is what drew me to this class. It is what has created space for a class like this within the hallowed halls of such a rigid institution. Western (European) tradition has had a long history of separation. It is a history blighted with the separation of man from nature, man from woman, man from state, etc.... It strives to create an artificial distance between people and creates artificial institutions and boundaries to ensure that order, power, and control are maintained.

Debriefing

[Reflecting on the experience verbally with others allows awareness to be tested, sharpened, and consolidated.]

NC, p. 9: Build-up of past tension is a difficulty that must be managed to prevent carry-over of emotional baggage.

IC, p. 34: When we [were] on caucuses or a food break, the conversation would still be about the negotiation; however, it was in a lighter context. Quite often, after the day's session ended, a few of us from different teams would end up in the hallway discussing what happened that day. I think this helped us put the negotiation into perspective and helped some people vent their frustrations.

IB, p. 28: On a personal level, the most crucial aspect to the negotiation was the unofficial debriefs that happened amongst the classmates in the hallway after each class. It helped maintain my sanity because it was an opportunity to reflect on what had happened during the roller coaster of each two-hour session. It was also of great value because it was an opportunity for each of us to vent a little bit so that we did not take our frustrations and conflicts home with us. PC had regularly noted that the discussion had her riled up well into the evening. The need to put things into perspective made it logical that PB and I always made a point of spending a few moments talking so that it was clear that any animosity we had in class stayed back in class. The negotiations were so emotionally charged that on a few occasions, it seemed that a hug was in order. It was very strange.... It takes a great deal of control and professionalism to be able to divorce your work from your personal life and interactions.

I think it will be even harder during a real negotiation because our debriefs were no holds barred, whereas in real life, there would be some definite limitations on what could be discussed outside the negotiation [room].

It might have been logical for some behind-the-scenes deals to be made during these debriefs, but that never seemed to happen. The debriefs were done without being in character. It was great for the learning experience of seeing other people's perspectives immediately after the event occurred.

PC, p. 23: One thing I noticed during the debriefing class was that everyone still seemed to feel the same way about their positions, but everything was lighter. I think by debriefing and being able to talk about it as having happened in the past, it helped us all separate from the event and look back at it objectively. It is a very important class to have. It was a great feeling to know that it was all over, we were all okay, and there were no hurt feelings or upset.

NB, p. 33: Debriefing allows for closure. Tensions escalated, especially near the end of our time together. A debriefing session is required to ensure that there is no carry-over of feelings that last past this class.

p. 23: I hope that there are not any hard feelings between individuals as a result of this class. I think that is the purpose of the debriefing class Professor Benson says we need.

IB, p. 31: Most of all, I learned that the key to learning from these experiences is in the process of debriefing, be it after each session, or in the form of a paper.

Emotion

[Negotiators come to the table as whole persons and find a range of feelings surfacing in them during negotiations.]

FA, p. 30: Many reported in the debriefing session on the stress levels and the emotions that come with multiparty negotiations.

NB, p. 16: The plethora of emotions I experienced in one class is indescribable.... p. 23: I experienced a surplus of emotions. I had adrenalin rushes of excitement when things started to move and people discussed cogently and respectfully of others. Alternatively, I encountered blood-boiling frustration when people got off track, ranted, acted childishly, and continued to treat [us] as a pawn!

IA, p. 5: Emotions are at the table whether we acknowledge them or not.

p. 4: I was amazed how wrapped up in negotiating a position one gets on a topic that has no personal significance. To discuss an issue you have devoted years of your time and energy to can only heighten emotions.

PC, p. 6: It may seem silly for someone being a lawyer, but I hate conflict and confrontation. Upset people make me uncomfortable.

FB, p. 13: To some degree our emotions are not under our control.²⁹

ID, p. 21: During negotiations, it is more than likely that emotions will run high. Almost every academic source and personal experience in negotiations will testify to this. According to Ikle, everyone is influenced according to his or her own sympathies and hostilities.³⁰

IA, p. 8: Interestingly, many books ignore the topic of emotion in negotiations. Some even recognize that it is an exceptionally understudied area.³¹ This seems ... bizarre. People have been studying human behaviour at a fundamental level for many centuries. Since emotions were at the forefront of our simulation, I expected the literature to be saturated with discussions of the pros and cons of emotions at the negotiating table. However, possibly it is understudied because emotional effects are uncertain. People have different personalities, needs, and desires. Despite our differences, I believe that we also have emotional-physiological similarities.

The ability to study emotion as a negotiating technique³² is further complicated in multiparty [as opposed to bilateral] negotiations. Each time you sit down at the table, dynamics differ. There are varied numbers of parties, different forms of power, and past hurts that must be addressed. I ponder if this is why emotions are not studied. Regardless, in light of my short multiparty negotiation experience, it is an area that I believe needs examining.

FC, p. 18: After hearing the reactions of others at the debriefing, I judge that my emotional reaction to the negotiations was relatively mild in comparison to others. I found the negotiations invigorating yet civilized, since arguments were mostly based on reason and fact. Although there was a certain level of emotion and sometimes tone and mannerisms that bordered on offensive, there were no ad hominem attacks. There wasn't the level of hostility often evident in a lower-level, real-world conflict such as a child custody case or a labour union dispute.

Emotional Negotiating Styles: Unemotional, Positive and Negative

[Negotiators may not consciously control the feelings they experience during negotiations, but they can consciously control the way they express those feelings at the table. Different cultures and individuals have very different perceptions of what presentation styles are appropriate, and therefore very different interpretations of the meanings of particular words and actions.]

ID, p. 22: How we use emotions has a profound effect on negotiations. Thompson identifies three emotional styles: the unemotional, positive, and negative.³³

a) Unemotional

[Negotiators who display no emotion are viewed in Western culture as strong and rational, while other cultures read such behaviour as cold and uncaring.]

ID, p. 22: [According to Thompson], unemotional/rational persons conceal or repress their emotions. They portray the “poker face,” depicting that they do not feel any emotion—that they remain unaffected.³⁴

FB, p. 11: A common piece of advice in negotiation is to “keep a poker face.” This advice stems from a belief that showing emotion is a sign of weakness and that emotion makes a negotiator vulnerable to giving away too much of the bargaining pie. The absence of emotions is consistent with the principle of rationality.³⁵ ... Emotions can impair the effective decision making necessary for negotiation.... The negotiator who expresses relief, satisfaction, and approval risks settling for a worse outcome than does the poker-faced negotiator.³⁶

p. 12: Becoming aware of my emotional style has contributed to my learning process. I wanted to be the calm, cool, and collected negotiator; I strove to control my emotions and put on my poker face. To a degree, I thought I managed this reasonably well. This, in effect, allowed me to obtain respect from the other parties at the table.

p. 13: Being the poker-faced negotiator all the time is not good either; one needs to be flexible so the negotiation process is not strained.... p. 14: Positive emotions can be healthy to the negotiations, and a positive mood can help one be more creative, generate integrative information, and be more flexible in conveying thoughts.³⁷ If I am too serious and never display any real emotions, it can have a negative effect on the process. I wanted to be taken seriously, but my style made others think that I am too serious about this simulation.... I saw some people as being not serious enough, but on the other hand, I was too serious. This makes me just as guilty as they are—I need to learn to balance things and put things into perspective.

FC, p. 18: Initially, I allowed my emotions to express themselves on my face, especially when I did not agree with the industry team. After watching the expressions and reactions of other negotiators, I decided that was unprofessional and not a good strategy in any case. Openly broadcasting one’s feelings about a player’s move is not a good idea because negotiation is an information-seeking process. The more accurate the information, the more likely one can reach a more precise and effective negotiating position. This infers that being able to consciously choose what information we release or withhold will be an advantage and help maximize our gain. Of course, this teeters into the whole area of what is ethical behaviour, and what is negotiating in good faith.³⁸

p. 19: By the last four-hour round of negotiations, I decided to put more effort into maintaining a neutral face. However, I made sure to show a reaction when jokes were being told, so as not to seem too distant.

ID, p. 22: To some, showing emotions is viewed as a sign of weakness, making the negotiator vulnerable. During our simulation, I would categorize the majority of the negotiators in this category.... p. 24: Many theorists [speaking in a bilateral context] see this rational, unemotional manner as a positive approach. In a multiparty situation, there are many other parties to try to analyze and gauge at the same time. If each party chooses to show no emotion, or if your attentions happen to be turned when a party does take a momentary break from their façade, frustrations will mount. Perhaps at the core of this frustration is the lack of communication it conveys. It impedes communication because those who are trying to express themselves feel no acceptance or acknowledgement of their fears or frustrations. The more distraught they become, the more likely they may say something in the heat of the moment that is unintentional or comes across wrong to the other parties, and thus tensions escalate even further.

p. 24: For example, when parties were making their presentations, there were many blank stares and faces. When I was reciting facts or my teammates were throwing out suggestions, I remember looking at the faces of the NGO and federal teams. It was driving me crazy that I couldn't gauge what they were thinking. While set in our position when negotiations first began, it was still our desire to come up with a solution that would be desirable to all. Even had there been a frown or raised eyebrow, there would have been some way to assess the other party's reaction and determine how to respond to them to calm their fears.

There are times during negotiations when I agree that an unemotional reaction might be beneficial. For example, when a concession is made, or a vote goes the way a party wishes, giving them a slight victory, showing emotion in a manner such as gloating is not a positive response. I saw this happen among the provincial team when they were able to pass a motion they had proposed. While the gloating didn't help much, given that it was industry who got stung from the motion, at least I got to see something that gave me more indication of where my team stood on the playing field.

b) Positive

[Negotiators who display positive emotion create a positive tone at the table, unless the emotion is perceived to be disingenuous or to reflect facile thinking.]

ID, p. 25: [In Thompson's taxonomy] the positive negotiator is one who does allow emotions to be portrayed and does so in a positive manner.

p. 27: Studies have concluded that information is processed differently by someone in a positive mood as opposed to someone in a neutral or negative mood.³⁹ ... A negotiator in a positive mood will not only use a more co-operative approach to negotiations, but is seen as less antagonistic than a negotiator in a neutral or negative mood.⁴⁰

IA, p. 9: Studies examining the impacts of positive feelings and humour on negotiations⁴¹ show that positive emotions, such as generosity or helpfulness to others, facilitate communication and the development of creative ways to resolve issues.⁴² Also, positive emotions are contagious in the same ways that negative emotions are. Everyone has experienced a blue day when a genuinely happy person has brought a little sunshine into their day and lifted their spirits, even if only a little. Just as I learned that hostility creates more anger, so happiness creates a lighter mood, which is more conducive to discussing problems.

p. 10: I suggest that the old adage You can catch more flies with honey⁴³ is true. This involves expressing positive feelings and trying to instil them in the other parties.⁴⁴ There is evidence that positive emotion “enhances the quality of negotiated settlements, as compared to poker-faced negotiations.”⁴⁵ People are better able to process information when they are in a good mood, as anger blocks the information processing system.⁴⁶ ... [A]n emotionally content person is susceptible to information receipt.⁴⁷ “A good mood promotes creative thinking, which, in turn, leads to innovative problem solving.”⁴⁸ After all, you are at the table to solve the problem in the best light possible for everyone.

ID, p. 25: Thompson offers three steps the positive negotiator can employ to achieve this. First, attempt to feel a positive emotion. Next, try to express the emotion in a positive manner. Finally, try to engender it in the opponent.⁴⁹

p. 27: Certainly, it is true that a smile can be contagious. Most everyone would prefer to be in a good mood. I agree that the mood in which suggestions are delivered may allow the communication to be received more openly. My only suggestion regarding this theory is to distinguish a positive mood of general reception from a positive mood where the person portrays a happy-go-lucky attitude. Someone portraying a positive emotion in the latter sense may be seen to be trivializing the matter to the other parties, especially if one party is distraught about a certain issue. Thus, the manner and context of the situation in which the positive emotion is expressed must be taken into account.

c) Negative

[Negative emotion in the form of anger, hostility, or personal attacks escalates the tension at the table.]

ID, p. 28: Thompson terms the negative style as the “rant and rave” or “irrational” approach.⁵⁰ Anger, rage, impatience, and indignation are examples of emotions expressed in a negative manner. Academics suggest threats are frequently made in this manner during negotiations; they certainly were in our simulation.

Hopmann suggests that this form of emotion fosters an environment of hostility.⁵¹ In bilateral negotiations, when both parties hold hostile images of the other and communicate in a

manner emitting a negative emotion, such emotion may only prod each party in their belief of the other's aggressiveness and hostility. This may in turn lead to negotiations breaking off.

IA, p. 14: A positive outlook on a problem can help minimize hostility and anger during negotiations.⁵² Literature supports the view that control of hostility is essential. Angry negotiators achieve less in the negotiation, and hostility reinforces negative behaviour, making it more likely to be displayed again later in negotiations.⁵³ Angry or aggressive tactics are warrior tactics, not problem-solving tactics.⁵⁴ The warrior tactic sees the other side as the enemy and attacks instead of suggesting solutions; warriors approach solutions radically and seek victory.⁵⁵ If victory is desired, then negotiating is not the appropriate resolution method. A victory mindset leads to a win-lose attitude. There are arenas appropriate for the aggressive negotiator, but not the multiparty negotiation arena.⁵⁶

p. 4: I concluded from our simulation that while positive emotions are helpful, negative emotional displays hinder the negotiating process.... p. 36: [A] positive negotiating climate can advance the negotiations more quickly than a negative environment. Further, negative emotions have a bundle of unwanted results such as damaging relationships, causing parties unnecessary frustration and anger, and even stopping negotiations short.

p. 8: Early on in our negotiations, it became clear that although emotions are natural, there are certain negative emotions that are undesirable at the table. As soon as attitudes became hostile, the negotiations shut down.⁵⁷ Personal attacks are inappropriate and must be controlled for successful bargaining.... Personal attacks are further inappropriate because they not only hinder bargaining, but can also damage the long-term relationship the parties must often endure.⁵⁸

ID, p. 28: Pruitt in "Strategy of Negotiation"⁵⁹ adds that hostility between parties has the effect of constraining any yielding, making it harder for an agreement to be reached. This, however, typically occurs in an environment where it is perceived that the other party is acting in a manner that is less than honourable, be it by exploitation, violating rights, or acting in an unfair or underhanded manner. Yielding to such hostility is seen as condoning this poor behaviour.

p. 27: Fisher proposes that emotions should be acknowledged as legitimate to facilitate the negotiation process, and made explicit.⁶⁰ Fisher suggests that if one party becomes emotional, the best course is to let them let off steam. Venting without retaliation may prevent a violent quarrel.⁶¹

IA, p. 37: Temper flares and frustration are natural consequences of the negotiation process. While minimizing hostility has been proven to be a valuable goal, it will likely be impossible to eliminate it entirely. The hostility may depend on group dynamics. However, there is no harm in attempting various techniques to minimize anger. While multiparty

negotiations are group oriented, each individual can take steps to help control the environment. Individuals can take a negative attack and find a way to turn it into a positive solution. We can find a way during the negotiation to ensure that anger does not repeat itself. Our world today is filled with more anger than most of us know how to deal with. Reducing anger in negotiation is a laudable, and attainable, goal....

The steps in the process include an analysis of your own inherent negotiating behaviour to ensure you are involved in controlling hostility. Prepare for the discussions to prevent as many surprises as possible. The fewer the surprises, the more likely the negotiators will be able to control the negotiating environment and fend off undesirable negative emotions. Focus on an interest-based approach instead of positions. This can keep the negotiator focussed on the issues, build trust, eliminate power, and foster healthy relationships. Employ techniques to creatively involve the parties in the decision making. Take physical or mental breaks from the negotiations when necessary to cool off the atmosphere. Be cautious about using e-mail and other technological resources; these methods can be valuable in negotiations, but without careful attentiveness to drafting they can have detrimental results.

d) Respect Emotional Needs

[Negotiators have human needs for recognition and respect, which, if not met, will sabotage negotiations.]

IA, p. 21: The goal is emotional control, not elimination. There are times when emotional expression is not only required but can also help control later unwanted emotions. Without an understanding of basic needs at the outset, it cannot likely be understood why parties feel the emotions they express. Freeing emotions is at times a psychological release that is needed to advance bargaining.⁶² Emotions may demonstrate how a party has been hurt on previous occasions, and provide an outlet to address the emotions to get to the phase of reconciling differences.⁶³ If the parties' interests are not conveyed, the expression of past hurts may not be received in the helpful manner that could eliminate anger if received effectively.

By expressing your emotions, while recognizing that [it] includes controlling hostility, parties will hopefully be able to resolve the feelings and move onto resolving the problem. This was experienced in our simulation. I often felt ignored by other parties—that they simply were not listening to my concerns. If they had listened to my concerns and acknowledged them as legitimate, then I could have stopped the cycle of anger.⁶⁴ Once this cycle is put to rest, the pursuit of a substantive agreement is more achievable.⁶⁵ Instead, other parties just ignored industry's feelings of alienation, and moved on without our input. This was certainly a burden on the negotiating process from my point of view. I would have been more levelheaded and accommodating if they had simply acknowledged our needs.

ID, p. 25: Druckman in *Human Factors in International Negotiations*⁶⁶ makes two points: 1) accurate learning of another party's positions and values rarely occurs, and to the degree that it does, it largely depends on the participation of the opposing party in aiding to formulate these positions; and 2) the more accurately a party understands and attempts to learn the opposing party's position, the smoother negotiations will flow. The intentions of the opposing party should then likely be less competitive and more co-operative. Druckman concludes that once a party's intentions are established, the opposing party will interpret their behaviour in light of these intentions.

p. 26: I recommend this model in a multiparty context.... I found that communication, and a need for acknowledgement of one's views, are essential for smooth negotiations. A few times during the course of our simulation, the federal team acknowledged my concerns. This opened the door for me to be willing to listen to what they were proposing. The provincial team, on the other hand, was not effective this way, and as such I was neither interested nor inclined to listen to anything they had to say. I found myself dismissive of their agenda. Rather, it was the federal team in the last round of negotiations I found myself drawn to and willing to communicate with. Had it not been for them, I may have walked out of the negotiations earlier.

p. 26: I would also apply these conclusions to behind-the-scene negotiations when parties are caucusing. My party ran a tight ship, and our caucusing consisted of only each other. I noticed that other teams were interacting with one another, with heads nodding and an exchange of smiles. While I would desperately have liked to join in those conversations, I perceived through closed body language that perhaps the other negotiators were not willing to speak to me concerning negotiation topics. As such, my team became more distant.

Energy

[Negotiating is an energy-intensive process.]

PC, p. 1: When we first began this class and our objectives and plan were described to us, I thought, "Wow, this will be simple." I was so wrong. One hour of tense negotiations can be harder than a whole day's work. I should have known that; I have been involved in tense negotiations before. But I thought, "A bunch of law students and a simulation problem; nobody will get too invested in that." Wrong again.

PA, p. 39: I would never have imagined the process would take control of a person the way it did!

NB, p. 22: Whew! Today was our four-hour run of negotiations. How exhausting!

PA, p. 39: I left the classroom this day feeling worn and exhausted. These negotiations took an amazing toll on me. I would never have imagined that it would be like this.

FB, p. 16: I am trying to analyze why I got so stressed out from this seminar. I hated the class and I loved it at the same time.... Even though I found it to be very stressful, I also found it to be very challenging and rewarding. It motivated me to be prepared for class, and tested my handling of situations during the more stressful times.

IA, p. 2: Being “worn out” was my experience at the end of every meeting. It is surprising how much energy negotiating requires. Negotiators undergo intense preparation and research for the upcoming meeting. You feel ready to go into that room and present your ideas. You feel equipped to take on the table and convince them that your position is the logical choice. Once you get there, you find out that negotiations can shift directions in an instant, and you lose control, although it is truly debatable whether you ever really had control. In the end you scramble to get your ideas across, but it appears that no matter how hard you try to make it clear, it is not communicated as planned. By the end of that day you are tired of talking, frustrated at listening, and exhausted from negotiating.

PC, p. 21: I have always been a nonconfrontational person. When people aren't happy, I'm uncomfortable. When people are upset, I have butterflies in my stomach. So I was so nervous about the substantive negotiations. During the second two-hour negotiating period I was very nervous, but it was nothing like the four-hour negotiation period. I was shocked at how physically it affected me.

Early in the four-hour negotiation I realized I was shaking. I thought that maybe I hadn't had enough sugar or hadn't had my caffeine for the day (even though I'd already had both brownies and a cup of coffee). So PB went and got me a cup of coffee, and I drank it and it didn't help. For awhile I thought I was going to be ill. Not ill in my stomach, but I thought I was going to faint or something. Only after a later break, when I found myself jumping up and down to get rid of some of the nervous energy, did I realize just how nervous I was. From the time that negotiation started to the time it ended, my heart was going a mile a minute. I have never felt my heart beat so fast for so long. It didn't even settle down completely until about ten o'clock that night. I had no idea I was that nervous.

I was shocked that something I thought was so small could affect me physically that much. It was something I learned about myself. That particular kind of conflict makes my heart race. And it played a huge part in my negotiation.... I think I am going to have to go out and actively search confrontation just to get used to this, because the way the negotiation affected me is absolutely unacceptable. It was very shocking.

IC, p. 31: After the negotiation, I was exhausted but invigorated at the same time. I went to the gym and then took my dog for a long walk to release any leftover tension from the negotiation.

Ethics

[The interactive, communication-rich, and dynamic nature of negotiations, the broad range of strategic and outcome possibilities, the layered involvement of multiple parties, issues, and background groups, as well as widely divergent individual and cultural assumptions about what is ethical, create the need for moment-to-moment attention to ethics and its implications.]

FC, p. 19: Deception can take several forms in negotiation, including: misrepresentation; bluffing or falsely stating one's intentions; falsification; deception; selective disclosure or misrepresentation.... Selective disclosure covers a wide range, and every negotiator is probably guilty of at least some measure of this if he or she has any self-interest.

PC, p. 23: I learned a lot of useful things in the debriefing. For example, I assumed that everyone had the same motives in this class. I was wrong. I assumed everyone was there to negotiate as best they could. I thought it would be safe to assume that all of our main goals were to represent our party's best interest. But NC started talking about how people would ask him if his team agreed; he would say "oh sure" but not actually mean it. He also talked about how it was fun to him to see how others responded to different things he would say. It was as if he were treating the whole process as one big experiment or game, while some of us were trying very hard to make it a realistic negotiation. I suppose that could be analogous to how everyone is working a certain angle or agenda that others don't necessarily know about.

Expect the Unexpected

[Negotiations are a turbulent mix of histories, personalities, powers, cultures, needs, and wants, interacting in complex ways in a field of uncertainty, which means that the process often throws off surprising behaviours, events, and reversals.]

PA, p. 20: I am starting to realize that this negotiation process is going to be much trickier than I would ever have imagined.

NA, p. 26: My best advice is to expect the unexpected. I learned that multiparty negotiation is a very human process, and human nature is very unpredictable and complex.

PD, p. 11: As much as you can predict how you think other groups will act, you can never be sure.

FA, p. 20: At the beginning of the negotiations, my initial prediction on outcome was that the provinces and industry would unite and the federal government would have to defend our agenda against a very economically based perspective. But this is not what happened.

IB, p. 25: Throughout the negotiations, I kept making mistakes with regard to my dealings with the provinces. On the very first day ... I made the assumption that industry and the

provinces would be allies, and would most likely end up on the same side when it came to voting. I thought that the provinces would certainly recognize the importance of keeping industry happy.... I never realized how important it is to wait as long as possible before making up my mind about things, because it is hard to change my own opinion once it has been ascertained.... Once I figured out that they were not playing the role of provinces as I would have expected, I should have just dealt with it by changing my approach and moving on. Instead, I was stubborn.

Experience

[Negotiators agree that experience is one of the finest preparations for negotiating.]

PA, p. 11: Experience will be a major factor in how the negotiations are conducted. If the negotiators are familiar with each other and know each other's style, then many of the preliminary things can be set aside. The experience of the negotiator and the people you are negotiating with will have a huge impact on what kind of strategy you use to approach the negotiations.... Each party is trying to plan ahead so they can gain the results they desire without having to give up much in return.... The more you draft strategies and plans, the better they will become. The negotiator will develop a feel for how to proceed.

IC, p. 34: I found I was able to leave my emotions and tensions inside of the negotiation room after each session.... p. 35: I think one of the reasons I am able to do this is because I learned so much about my negotiating personality in the alternative dispute resolution (ADR) class I took last term. I was able to adapt the tools I had learned from ADR to the multiparty scenario.

Flexibility

[Stay flexible as to the various ways interests may be able to be achieved.]

NB, p. 34: Entertain other possibilities. Negotiations are about considering alternatives and compromise, so listen to what other parties propose.

p. 35: **Xenophobia** should be avoided at all costs. Being afraid of foreign concepts results in a very narrow negotiation process.

Frustration

[Negotiators agree that frustration is a universal experience among negotiators.]

IA, p. 13: From my experience, negotiating is an exceptionally frustrating process. Knowing this and other pitfalls up-front can help curb the frustration that may turn into anger.

PA, p. 27: I was happy to hear that I wasn't the only one feeling overwhelmed and confused as to what we were doing and how we were ever going to get there.... I spent a lot of time reflecting on our classes, and I was really wondering if we would ever get this to work. It seemed as if there were so many conflicting personalities and opinions that we would never be able to get anywhere.... I wasn't looking forward to [our second procedural negotiation] class at all. All I could foresee was more discussion that would lead to nothing.

IA, p. 2: In many ways I feel dissatisfied with the whole experience, especially since there was an enormous amount of what seemed to me like wasted time. The initial classes regarding the technology for negotiating ended up being superfluous, as very little of the technology was used, and what was used only caused more aggravation. I am also dissatisfied with the result of the negotiations. We began with a grand agenda, including several important issues. However, we spent an incredible amount of time on procedural negotiations, which reduced the amount of time for substantive discussions. Of particular note was the entire day we spent discussing what teams to place absent students on. Once substantive negotiating finally got underway, I was dissatisfied with the positions that were taken by other teams and with the final decisions that were made.

Human Process

[Negotiations are a human process, with all the potential for heroism and horror among the people involved. As individuals and groups are pushed to the boundaries of, and must take conscious responsibility for, what they will and will not agree to and compromise on, negotiators come face to face with their own nature and the human condition.]

NA, p. 20: When I looked back at the process, I could see how human nature is perhaps the most important factor at play during the negotiations. When I reflected on this and the fact that there are vast numbers of issues negotiated every day, I became slightly alarmed because they may also be prone to human fallibility.... I had no idea that the negotiation process was such a delicate balance of emotions and human characteristics.

pp. 26–27: I am grateful that I had the opportunity to experience this process with the other members of the class. Every individual contributed in his or her own way to make the experience a success. I will keep the lessons I learned close. I will remember the human emotions I felt during the entire process. The discomfort I felt when I was not prepared. The anxiety I felt when I could not talk. The anger when I felt industry was not playing fair. The comradeship I felt when we formed a coalition behind industry's back. The fear I felt when the negotiations stopped. The closeness I felt to the other members when we tried to get industry back to the dialogue. There is little room for the human experience in law school. We are taught to maintain separation and distance between one another by being unemotional, objec-

tive, logical, and rational. We rarely get the opportunity in law school to look at the human forces that shape our experiences.

Humour

[In negotiations, as elsewhere, humour breaks tension, reveals hidden dimensions, and lightens perceptions. Negotiators cannot, however, be at all certain what others will find funny.]

IB, p. 2: Throughout my [commerce] negotiation experiences, I had trained myself to divorce emotions from the work. Likewise, the people I was working with did not consider the negotiations in terms of emotion. The emotionally anaesthetized state made it hard for people to get offended by what was said. The resulting dialogue was therefore much colder than this situation. It was not uncommon to hear the parties making fun of each other or even have a little casual swearing in the midst of the negotiation.

It was a nice change to be in an environment where everyone treated each other with the most respect they could. But the fact that the class members were more emotionally sensitive than I was accustomed to required me to pay close attention to what I said.... The aspect of my past where parties would make fun of one another was a function of trying to inject humour into these situations. It had its place and its reasoning. I think there is always room for humour. Consequently, I was inclined to make jokes whenever I could, but I had to be very careful about what types of humour I tried to inject. I attempted to use humorous examples and comparisons that still got the point across, such as the inherent stuffiness of procedure. However, that was a dangerous line to walk because I had to be careful not to undermine the sanctity of the procedures that we had constructed.

Information Technology⁶⁷

[New communication technologies open new possibilities for conducting negotiations, including, currently, e-mail and video conferencing. Each has its efficiencies and inefficiencies, advantages and disadvantages, and evolving etiquette.]

IC, p. 34: Technology played a minor role in the negotiations. The industry team used e-mails to communicate ideas with each other and also set up a password-protected folder in the multiparty course bin⁶⁸ to post a presentation. There were also two sets of minutes posted in the course bin, which was a good way to distribute the minutes. The class used e-mail to negotiate only when there were misunderstandings amongst the class, for example when trying to allocate participants to the teams, or when we were looking for the minutes of the meetings. Overall, I found that using e-mail to negotiate was not productive and usually needed follow-up explanation in person.

FA, pp. 26–27: Much of our intragroup strategizing, commenting, sharing information, or just plain ranting came in the form of e-mail communication. We often sent intragroup e-mails sharing our thoughts and proposed ideas on how we could address a particular issue... E-mail communication was also utilized to gather support “behind the doors,” although to a limited degree. When it became apparent the federal and provincial teams were substantially in agreement, we started to communicate by e-mail on issues of agreement. This communication showed us where and when we had support at the table for certain issues.

PB, p. 30: Multiparty negotiations are exploring the future of the law with its growing utilization of information technologies and Internet-based communication systems. The effects these nontraditional technologies will have on the highly interrelated and dependant procedural frameworks, the communication of substantive information, and the dynamics of interpersonal relationships between participants, will surely be profound.

IA, p. 33: “To be successful, negotiators must not only know how to negotiate via technology but also understand the social dynamics that it produces.”⁶⁹

There is little doubt that face-to-face communication carries with it valuable indicators of emotion through “body language, facial expression, and tone of voice.”⁷⁰ Negotiating via technology not only eliminates these fundamental indicators of expression, but can even convey unintended or misinterpreted emotions. The consequence of these unintended messages is often anger or frustration at the individual who composed the message. Further, frustration can be cultivated by the volume of messages required in technological communication in order to state a simple idea....

“Face-to-face communication (as opposed to using the telephone or more restricting forms) fosters the development of interpersonal synchrony and rapport, and thus leads to more trusting, co-operative behaviour.”⁷¹

Face-to-face communication encourages many of the essential criteria for creating a positive negotiating environment—trust, co-operation, listening, etc. Therefore, one wonders immediately what effect the cold transmitted e-mail message has on this environment. Since the reader of an e-mail cannot see the facial expressions, tone of voice, or physical demeanour of the writer, he or she must rely solely on the substantive content of the e-mail to extract the underlying expression. Moreover, written statements remain long after they are made.⁷² An e-mail remains for as long as the recipient keeps it, and can be referred to as many times as the reader desires. This is why care should be taken in drafting an e-mail. If an unwanted message is sent, not only can the reader get angry at the initial reading, but also every time he or she reviews it, which may build on this anger.

p. 34: It would be unrealistic to suggest that technological methods be avoided in negotiations. In today’s world, this would be entirely impractical and almost impossible. I do, however, encourage efforts to ensure that unwanted messages are not conveyed.

First, take the time to make sure that nothing can be misread, make the tone of the e-mail light, and follow it up to ensure that it has been received as it was intended.⁷³ This will help minimize conflict or anger that could result from a carelessly written e-mail.

Second, experts suggest that shorter messages are better at conveying the meaning that is intended.⁷⁴ “Screen loading, or the tendency to write very long messages, can lead to annoyance on the part of the recipient.”⁷⁵ Exchanging more frequent, shorter messages leads to less miscommunication and therefore less frustration.⁷⁶ However, in our simulation, I found the sheer number of messages, in itself, annoying.

Third, make sure that you actually return messages. While unreturned messages were not too much of a problem for my team, there were occasions when members did not respond, which was aggravating. When preparing for a meeting, input from all members is required, so when members didn’t respond, it made me feel isolated and responsible for a whole group’s amount of work. An easy way to rectify this is for the recipient to send a short e-mail apologizing for not currently having time to deal with this and providing an alternative time to discuss the issue. Literature also recommends letting others know in advance how often you check your e-mail. Providing an expectation can minimize anger at a nonresponse.⁷⁷

p. 35: There are a few positive effects of using e-mail messages. First, sending a message can be much less intimidating than speaking before a large group and expressing ideas. Thompson suggests that oral communication is often dominated by a few, while others in the conversation remain silent.⁷⁸ Giving those negotiators who feel less comfortable communicating orally the option of communicating electronically may provide an outlet for their feelings, hopefully in a controlled manner. This allows these members to develop trust and rapport,⁷⁹ which are critical for maintaining a positive negotiating environment.

Second, electronic messages can alleviate some of the power that is evident at the table. A party’s power is not as apparent in an e-mail as it is with physical cues such as body language, tone, and group dynamics. Eliminating power influence is another way to encourage a positive negotiating climate.

Finally, receiving an e-mail instead of a directed question at the table allows you to take your time to formulate a response. At the table you are put on the spot and expected to answer immediately, but via technology you can take a mental break if necessary and give yourself a chance to regroup and respond rationally. The inherent time delay in this form of communication can be an enormous benefit in being able to help control emotional out-breaks.

IC, p. 11: One of the problems with e-mail is that once you open the message, if you don’t respond to it or deal with your messages right away, you forget about them.

FC, p. 10: Decision support systems, or software used in e-negotiations, are more prevalent

in business than in multiparty institutional conflicts, but their usage is inevitably on the rise. Most negotiation software is heavily dependent on certain economic bargaining theories and does not incorporate descriptive and prescriptive models.⁸⁰

PC, p. 4: I am fundamentally opposed to conference calls and webcams and negotiating over the Internet. I think a good negotiator would tell you there is so much to be read in the tone of someone's questions or even just the tightness in the voice that they are trying to hide. It tells you what point they are at. Whether they are encouraged or frustrated or scared or angry can all be communicated with the same words and different tones of voice. Also, body language is hugely important; it gives away all the same things. If someone is making eye contact, or fidgeting, or crossing their arms, or using certain facial expressions—these are all things I look for on a daily basis in conversation. I can't imagine negotiating without the ability to assess that.

The very nature of negotiation is entirely human; not only logic is involved, but also personalities, emotions, and biases. These are things that are usually never communicated with words; you have to read the other person. I believe there is a certain element of trust that you can only get from the other person physically being there, whether it be that they are shaking your hand, or just the fact that they made the time to meet with you so you know you are respected. Whether it is because you are valued or feared, you know that you are being held to importance.

I am a big believer in intuition and all the little things that we don't even notice we pick up—details more minute even than body language, a certain sigh, perhaps, that our subconscious picks up; we get a feeling about that person. The farther away you are from a situation, the less powerful and accurate intuition is going to be. When dealing with people, I just think you need to be there.

p. 4: There was some use of technology; our group e-mailed back and forth when trying to decide tactics for the next set of negotiations, and it was a good way to get in touch with people without others finding out.

PB, p. 27–29: The first and most basic of the information technologies and Internet-based communication systems employed is e-mail. The use of e-mail is fast becoming the standard form of communication among parties in the university environment.⁸¹

Another Internet-based technology incorporated into the process was the use of "course bins," in which students might post documents such as the agenda, supporting information, and personal communications. This technology was underutilized throughout the sessions, with only two of the four groups incorporating it into their practice. Our group did not use them because we did not send documents that could not fit into the body of an e-mail message. Further, the fact that the course bins were not accessible to uploading by individual

groups meant that the documents had to go through a third party for upload, so one could not say definitively when the file would be posted. Even had the course bins been available for student upload, there is little likelihood that they would have been utilized as [the function] requires File Transfer Protocol software, which the average law student may neither have nor be familiar with.

A third Internet-based technology used by our group was MSN Messenger⁸² software, through which group members discussed the previous day's negotiation session, planned negotiation strategies, and brainstormed ideas.⁸³ ...

A fourth technology not used by the groups but that would have presented a great learning experience was that of the videoconference. Students were hesitant to incorporate this into the class experience, despite the position of some students that, though it would present difficulties in the flow of the negotiation, some situations may dictate that a party cannot attend a negotiation in person.

IB, p. 23: The idea of using and experiencing videoconferencing would have been great.... If it were to be entered into the process, it would have been best if it were forced on us, as if someone were snowed in, as it would be in real life. The technology becomes less intrusive the more times it is used, as the group becomes familiar with it. I think it would also have been valuable to show everyone how much they should appreciate the opportunity to negotiate with everyone present at the table....

PowerPoint would have been useful for such procedural aspects as writing out the motion on the table so that every party knew exactly what they were voting on. In our sessions, it seemed the motion on the table had to be repeated, iterated, and reiterated numerous times. A projection device would have saved much time. As well ... the exact wording of a particular motion that is carried can greatly affect its application.

At the very least in our context, this might have facilitated better explanation during our opening presentations. This amount of technology would not have been an intrusion at all. PB had advocated the use of the Moot Court room. Whilst the seating arrangement would not have been appropriate for our regular discussions, it would have been perfect for our beginning presentations.

FC, p. 19: I was disappointed with the class vote not to have the sessions videotaped, as I would have liked to have seen and analyzed my own body language as well as that of others. Videotaped negotiation sessions would not only be an excellent pedagogical aid for future classes, but a tool for self-assessment for students in the class. It would also encourage a more professional demeanour among the students, and make the simulation more realistic.

PC, p. 25: I think videotaping would be a good idea, but I think everyone has to agree to it. Although being videotaped may limit some people in this negotiation process, it would still

be a great negotiation experience to learn one's own reaction. You don't necessarily know what it will be like for you until you try it.

Interests

[Interests are needs and concerns that motivate particular demands. For example, a demand might be to pay \$1,000, while the need beneath that demand may be for sufficient revenue to continue producing. A demand might be to turn over a particular territory, while the concern beneath that demand may be to stop the violence.]

IA, p. 14: Entering negotiations knowing [your interests] can help keep you on track during the negotiating. You can reveal your own interests by asking these questions: “What is it that I want?” and “What problem am I trying to solve?”⁸⁴ Determine your basic needs from the negotiation, those you simply cannot do without.⁸⁵ You can keep negotiations positive by knowing what your ultimate needs are and working up from there.

PA, p. 9: You must know what you want and what alternatives there are to reaching a solution. Thompson states that to be able to do this you must know what the main issues are that need to be discussed, and you must know the minimum you will be willing to accept. Often people get caught up in the negotiations and don't stop to think until it is too late; by this point they have rejected offers they would otherwise have accepted, or conceded a point that they wouldn't otherwise. She says that you must know what risks you are willing to take.... I think that the authors [on this subject] would all agree that there is no better way to serve your needs in a negotiation than to know what you want and how you can begin to get it.

ID, p. 14: Fisher argues that the most powerful of all interests are those that are basic human needs, and that while these are fundamental, they are very easy to overlook. If there is anything this negotiation taught me, it is that vital fact. I believe that once these basic human needs began to be overlooked, it became the turning point for industry in the negotiation where everything began to spiral out of control.

Interest-Based Negotiation

[In “interest-based” bargaining, parties precede any debate on particular demands with an exchange of information about respective needs and concerns, as well as limits to bargaining authority. Parties then brainstorm options to generate as many ideas as possible about solutions that might work, and then evaluate those options from the point of view of satisfying as many parties' needs and concerns as possible while staying within respective bargaining mandates. Interest-based bargaining is difficult in practice because it requires a level of trust among parties that is seldom present in multiparty negotiations.]

ID, p. 10: An interest-based approach is to be achieved by examining the concerns, desires, fears, and pressing needs of the parties.⁸⁶

NB, p. 34: Interest-based negotiating is more likely to have a successful outcome than position-based negotiating.

PA, p. 13: Pirie discusses two main approaches to negotiation: adversarial (position based) and problem solving (interest based). In the adversarial approach, the negotiations usually focus on a limited number of resources, trying to determine how to split the resources among the parties. These negotiations usually centre on how each side can maximize its share while giving up as little as possible to the others. The end result is that what one party gains, the other loses. This approach pits the parties against one another. Each side picks a position and struggles to maintain it. The negotiation becomes a competition between the negotiators, where each party is willing to do whatever it takes for their side to win. This approach is similar to a conventional court battle.

In the problem-solving approach, the parties try to meet the underlying needs of everyone involved... This is a collaborative system, where the parties first try to understand the problems and the underlying issues before they attempt to solve them. By doing this, the negotiators are able to expand what is being negotiated for and find alternative ways to meet parties' needs and desires. Often the negotiators are able to generate alternate solutions that wouldn't be possible in the adversarial system.

For the interest-based system to work, the parties must develop trust. Each has to trust that the others aren't going to take advantage of or abuse the other parties. The biggest benefit to this approach is that it enables parties to meet needs. Parties walk away from the negotiations feeling as if they have either won or gained something they wouldn't have achieved otherwise. This is especially important when there is an ongoing relationship.

IA, p. 22: The theory behind the interest-based approach is that reconciling interests is easier than positions, because in the positional method, the proposal put forth appears to be your only goal.⁸⁷ Your interests are often several. If interests are clear upon commencing negotiations, it is easier to incorporate a few of each party's interests rather than each party's proposals, which cannot all be accommodated.⁸⁸

FC, p. 3: Fisher and Ury's principled, or interest-based, approach⁸⁹ includes four general rules: 1) separate people from issues; 2) focus on interests rather than positions; 3) generate a variety of options before settling on an agreement; and 4) ensure that the agreement is based on objective criteria.

a) Separate People from Issues

[Focussing talks on the problem helps negotiators avoid becoming so impatient with the humans involved that they give up.]

IA, p. 22: Fisher and Ury suggest a need to separate the people from the problem.⁹⁰ This makes sense, as “[a] working relationship where trust, understanding, respect, and friendship are built up over time can make each new negotiation smoother and more efficient.”⁹¹ The opposite is also true. If negotiators already have a strained relationship, it can hinder the negotiating process.⁹² Failing to separate your feelings about the negotiators from the problem makes it easy to take what another says personally, causing hurt and anger, and therefore damaging progress.

FC, p. 3: I began as an emotionally-detached observer ... but as negotiations continued, there was a slow but definite halo effect growing, and I began to associate people with the positions or stances they expressed.... Others’ outbursts of emotion began to colour my views of the issues. Separating people from issues was certainly my goal, but was difficult to put into practice. I suspect that the more time one has spent advocating a certain viewpoint, the more one is emotionally invested in that viewpoint, and the greater the difficulty of the separation.

b) Focus on Interests, Not Positions

[Ensuring that parties understand each other at the level of needs and concerns, “must-haves” and “can’t haves,” allows negotiators to glimpse solutions that may meet several of those interests, while saving the precious time, energy, and goodwill that would be lost on positional confrontations.]

IA, p. 23: Interests vary among parties; this can cause parties to view each other as adversaries. If viewed as an enemy, comments will be directed and received as personal attacks, causing further anger.⁹³ Focussing on interests, not individuals, and solutions encompassing as many interests as possible, can eliminate personal attacks and angered feelings.⁹⁴ Interests are what guide your positions or propositions anyway, so initially removing the step of creating a proposal to express your position is a valid way of focussing on the problem rather than the people.⁹⁵ Interests, which are more fundamental and tend to be simpler than positions, can combat miscommunication and minimize emotional disruption in the process.⁹⁶

NB, p. 35: Understand where the other parties come from. We may know what our interests are, but do we understand the other parties’ interests?

IA, p. 16: To prevent surprise, you need to anticipate the other party’s needs. Negotiation is a group dynamic; how can you expect to meet your own needs if you can’t meet the other party’s interests?⁹⁷ Make an effort to look into the team’s background, where they are coming from, and what their likely interests will be. Then consider how these either compare or conflict with your own interests. If you understand the other parties’ interests in the negotiation, you will more genuinely understand their motivations and keep hostility to a minimum.

Further, if you can find common ground between an interest you have and an interest you anticipate another to have, you can start on a positive note with that party.

PA, p. 9: Thompson suggests that you must know who the other parties are and what interests they represent. If you know what they want and why they want it, you are in a much better position to offer alternative solutions to every problem that you encounter. If you take the time to identify the issues the other side feels need to be discussed and decided, you are able to have a more focussed and direct negotiation. You will be able to avoid being side-tracked into useless and pointless discussions that may leave both parties frustrated. Understanding the other parties also better enables you to assess what types of offers will be acceptable to them. This will prevent you from making offers or assertions that may sour the negotiations before they ever really start.

IA, p. 23: [T]rying to guess the interests of the other sides can simply cause more damage. Faulty assumptions lead to unnecessary compounding of issues in an already extremely complicated situation, and are likely to create hostility. Having a clear understanding of interests provides a solid starting point for negotiating.

PB, p. 5: In our negotiation, opening statements were independently oriented and dealt exclusively with the immediate positions of the parties and their opinions of what the final resolution would ultimately be. This [approach] may serve to divide the parties rather than bring them together to work towards an agreeable and practical resolution of the issues. It would have been more helpful for each party to include the issues it considered sensitive and ... in need of notice to the [other] parties. A contextual example would be the forestry industry representative's presentation of the precarious economic position of the softwood lumber industry. This would sensitize the other parties to a particularly delicate issue of crucial importance to that party. Had this been done, the raising of that concern would not have been perceived to be a blocking tactic or threat to the abandonment of negotiations, as it was later.

A party's opening statement could also include [information about] any past or present relationships with other parties at the negotiation. For example, the provinces could have stated their ongoing efforts to assist the forest industry in international markets. This would bring to the fore the continuing relationships among the parties and perhaps deter both from departing from their past history of collaboration.

Opening statements are presented to parties who may well be opposed to the ideal resolution of the presenting party. To effectively communicate, parties must frame their position in terms that are palatable to the other parties. Having to frame one's issues this way may help set the presenting party in a negotiative mindset as well.

NB, p. 15: Impasses result when parties bring a position-based rather than an interest-based opening statement to the table. If interests are raised initially, a stalemate is much less likely to occur, because the teams will be able to negotiate based on like interests and meet at some middle ground.

IA, p. 20: Instead of advancing a proposal right out of the starting gate and attempting to read the other parties' responses, it is better to first discuss all parties' underlying interests in an issue....

Establishing interests early on in negotiations may help combat communication problems, which can alleviate hostility.... If a party's position is reduced to basic needs, it is an emotionally beneficial starting place for negotiations. This strategy minimizes confusion of parties' wants and is a point on which to build ideas and develop an agreement that will hopefully cover some needs for everyone.

FA, p. 13: Whatever the rationale for giving brief presentations of other parties' objectives in our simulation, the result was that it made it difficult to learn what the other interests were at the table, and may have contributed to a breakdown of trust. Assessing the other parties was also more difficult because there was no intergroup communication at the beginning outside the negotiations themselves. The only way we could really learn about the other parties was at the table itself.... We watched others' words and actions as we spoke; we learned who were the strong members of each team.

ID, p. 14: Under the interest-based approach, it is absolutely fundamental and crucial that we all learn not just to listen to what the other party has to say, but really hear what they mean when they are saying it. These concerns, fears, doubts, hopes, etc., must be understood before any agreement can be hashed out that will be satisfactory to anyone. Everyone sitting at the table has some important interest that the other parties may not realize, but that may indirectly affect all parties involved if not taken into account.

PA, p. 40: I think the biggest problem we encountered was that most of us were taking too much of a position-based approach rather than an interest-based approach. The groups had decided what they wanted and weren't willing to consider other viewpoints. This made the negotiations very difficult because you were forced to fight about everything and had to try to convince the other parties to see things in a different light. This wasn't an easy process.

NB, p. 23: I realize that most teams were position based as opposed to interest based. I tried to redirect the course of the negotiation and state what the NGO *interests* were—i.e., the environment—and open discussion back up, but things turned back to position-based logic time and again.... If adversarial views are too ingrained in individuals, there is a risk that they may not realize they encompass behaviour that is counterproductive to negotiations.

ID, p. 11: Not being schooled in the art of negotiation, I did not enter these negotiations with a view to trying to listen or to ask the other parties what their concerns were. This was because I believed I already knew what they were. The situation, I believed, was as follows: the federal team was in a position of power, having already signed the Kyoto Protocol on behalf of the country; the provinces were going to want to implement a bureaucratic program that

would up our tax dollars; the NGOs were a harmless team that might throw out suggestions as to how we might reduce emissions—ideas and technology that we ourselves were already developing.

This lack of interest may have ended up hurting our team in more ways than one. Several times around the table, I picked up the sentiment that our team was driven only by money, they we had little to no regard for the environment or other concerns.... p. 12: When we became the underdog, I began to feel that our interests had not been listened to, acknowledged, or weren't of concern to anyone at the table. This in turn led my fiery personality to try to explain, in a very loud persuasive manner, our deep concerns. I realized too late, or perhaps perceived, that the other teams just didn't get our position. Our underlying interest was not just how much profit we would make or how little we could do to comply with the regulations, but rather about security of jobs. Unfortunately for us, it did not appear as if the other teams cared about or perceived as legitimate our concerns, fears, needs, or desires.

Had we been more open in our dialogue asking the other parties about their concerns, rather than presuming to already know the depth of their concerns and interests, they may have been more willing to take a second look at ours and thus be more receptive to what we had to say.

c) Generate a Variety of Options

[Once interests are understood, parties can generate a range of ideas as to possible solutions.]

IA, p. 20: Exploring ways to meet the interests of all parties can turn a negative climate into a favourable one.⁹⁸

FC, p. 6: This principle of Fisher and Ury's negotiation theory again emphasizes shared interests to avoid the win-lose mentality, and encourages brainstorming in an informal atmosphere. Shared interests during the simulation were not expressed and were difficult to tease out. Although there was some minor brainstorming for solutions during initial presentations in the form of requests for proposals, this was never fully explored.... We did not properly identify the frame and scope of all the issues on the table, and it was apparent there were different knowledge bases among the teams.

d) Establish Objective Criteria for an Agreement

[Including measurable criteria in an agreement provides a way to verify implementation.]

FC, p. 8: Developing objective criteria is a fine ideal, but the theory does not provide much by way of assistance as to how to do this, especially for our simulation, which was particular-

ly fact based and technical. There was an overwhelming amount of information available on the Internet. Reams of scientific fact, somewhat conflicting, confused me. I found scientists who still questioned whether greenhouse gases (GHG) were truly a threat to the global climate and the fact that the Kyoto Protocol assumed this somewhat arbitrary. Yes, it was possible to measure GHG emissions, but measuring present and future uptake of carbon by any segment of the biosphere with any kind of accuracy and verifiability was another matter. There was no consensus in the international community as to who should get credit for carbon-saving practices such as forests, or halting the construction of coal-fired power plants. There were also larger technical issues such as being unable to quantify the carbon effects of social actions such as eviction, or changed investment behaviour from tree planting or energy-efficient projects.⁹⁹ This led to the reasoning that no one is able to specify what would have happened in the absence of such projects, and the headaches involved in measuring them. None of these issues was brought up in class, but had we had time, debating these would have been interesting.

Alternatively, the lack of objective criteria would have led us to the next suggestion on Fisher and Ury's list, which is agreement on a fair procedure, but the discussion on carbon sinks was cut short, again due to lack of time.

Knowledge

[Knowledge of negotiating processes, of the subject matter at hand, of human nature, and the nature of groups, are all important preparations for negotiators.]

PC, p. 11: The class where we learned about negotiation procedure and technique itself was very important. However, it would have been really helpful if we had two or three classes like that.... [We needed] more time to learn the ins and outs of how to negotiate and different styles of negotiation. Instead, it just became one big debate at times. We didn't know what to do, so we just fell back into the argument mode. [We needed] to have explored the different aspects of negotiation.

IB, p. 9: I found it quite interesting that the roles in the groups were not determined by personality traits, but rather based on knowledge.

FC, p. 14: The topic was daunting in the sheer amount of information that needed to be read, understood, and analyzed. I did most of the initial legwork and research for our group, motivated by major paper concerns. However, a smarter method would have been to organize the group before class and divvy out assignments for each group member, with each member presenting and sharing knowledge. If we had recognized potential allies in the provinces and the NGO teams earlier, we could have shared information, saving ourselves time and generating a better understanding of issues and interests.

p. 13: We did not have sufficient grasp of the issues or the situation to come to the table with fixed package proposals, which would have been ideal and given us greater bargaining power.

PB, p. 2: I found both as chair and as negotiator that the issues surrounding the substance of the negotiation were extremely difficult to define succinctly. This was in part due to my lack of knowledge base in the fundamental theories and science of the environment and the protocol itself. Though I did research the issues relating to the Kyoto Protocol's economic and scientific issues, the issues raised by the protocol are highly interrelated and interdependent. It was extremely difficult to negotiate one particular aspect of an issue without focus being shifted to an interrelated issue.

PC, p. 14: I didn't realize before how deeply the constitution dealt with forestry and natural resources, so I was excited when I found out that those powers were provincial. As with all legislation, there were words that were important but undefined. I had to do a lot of looking into appendices and tables to find out the full extent of the power, but it was all very exciting.... And when [our team] put together legislation regarding forestry and credits, that was great. It was writing the laws; we actually felt as if we had some power. A lot of our research ended up not being able to be used at the negotiation table, but it was our wall and our backbone. We knew we had research and proof to back up all our arguments if anyone were to attack them, and that let us be much more assertive in our negotiations....

The downside of Internet research is that you can find almost anything you want there.

Life of Its Own

[Each negotiation develops unique positive and negatives synergies, a unique character, tone, and momentum.]

NA, p. 22: I have learned that the negotiators come to the table with individual traits, but the sum of all creates the atmosphere, and the negotiations take on a life of their own. I think that effective negotiators are those who can read the room and adjust their own behaviour accordingly. I reflected on this and concluded that multiparty negotiation is a living, breathing entity, and we all have to co-operate for the process to function. Every negotiation will be different because no two tables will have the same group dynamics. However, I think that the personalities of the individuals will be an important issue during every negotiation. How individuals conduct themselves during the negotiations will deeply affect whether or not the other members at the table embrace their ideas.

p. 26: The actual negotiation process will take on a personality of its own. It will be fed by the personalities of the individuals who are sitting around the table giving it life. More importantly, the forces of human nature that shape the individuals before they come to the table will dictate the processes of the negotiation itself.

Listening

[Listening attentively to hear not only the words but also the needs and concerns behind the words as nearly as you can judge them, as well as ensuring that others feel heard, are key negotiating skills.]

NB, p. 16: Listen to what other teams have to say. You cannot accurately negotiate if you do not listen to the other parties' interests.

IA, p. 16: In order to be able to listen to the other parties' thoughts and ideas, you must be prepared; otherwise you will spend time scheming in the midst of discussions. Not listening creates a feeling that "they didn't listen to me so why should I listen to them?"¹⁰⁰ This anger, which is completely preventable, hinders further negotiating. You literally cannot negotiate if you aren't listening.

p. 17: Again, a key element to assessing your opponent is listening to them. While preparation by determining their interests is valuable, there is no point in doing this prenegotiation work if you are not going to listen when you are sitting at the table with them. "It offers a window into your opponent's mind. It gives you a chance to engage him in a co-operative task—that of understanding *his* problem. And it makes him more willing to listen to you."¹⁰¹ If you listen to the needs of the other negotiators, you can amend your conclusions to reflect their true desires if you determine that your analysis was incorrect. If you don't listen, you may pursue your original conclusions as to their needs, instead of [taking into account] what they just stated directly. This will likely result in frustration on behalf of the other parties.

Multiparty Negotiation

[Formal and informal talks among multiple parties with multiple interests seeking to agree on the terms of individual and group economic, social, legal, or political relationships.]

FC, p. 1: Although bilateral negotiations are generally acknowledged to include multiparty negotiations because each side contains several parties with different interests,¹⁰² multiparty negotiations are much more complex because they not only involve two different factions, but also have the weight of institutions and bureaucracy behind them. There are also group dynamics that are unique to multiparty negotiations.

Multiparty negotiating involves group decision making, and group work can be a slow and frustrating process. Researchers have shown that the effective attention span of a group to discuss a single issue is fifty-eight seconds, and the average group leaps from topic to topic with spurts of decision-making progress.¹⁰³

So why do we negotiate in groups? Ellis and Fisher,¹⁰⁴ drawing upon current social science research, offer some reassuring conclusions. First, individuals tend to oversimplify complex

problems. Groups, which by definition have more intellectual resources, generally perform better as the complexity of a task increases. Even expert individuals can become overconfident or misinterpret evidence. Secondly, decisions that have no obvious solution and require judgment rather than expert knowledge are better handled in groups. Thus, when the quality of the decision outweighs the time spent, multiparty negotiations, or group decision making, is valuable.

ID, p. 1: Environment, health, decisions to go to war—these are all issues that affect us globally and cannot be justly decided between two parties without great uproar from other interested parties. Thus, multiparty negotiations are developing prominence at a domestic and local level as well as at the international level.... p. 32: As we deal with issues that touch on everyone's well being, studies in this field need to expand to assist us in our effectiveness in reaching peaceful agreements.

IB, p. 1: Multiparty conflict negotiations are complex. There are innumerable factors that work together to determine the success or failure of the process. Each situation is as unique as the participants who engage in it. Unlike a debate, multiparty conflict negotiation is not about winning or losing, but the experience of the process itself.

ID, p. 31: The complexity involved in multiparty negotiations is astounding. When you mix motivations, approaches, and emotions, with personalities, parties, and issues, it makes for an ever-changing and evolving dynamic as unique as a person's fingerprint.

FC, p. 10: Strauss cites Zartman in suggesting a loose classification of seven overlapping analyses of negotiation, which emphasize different variables and outcomes.¹⁰⁵ They are:

- 1) *pure historical description* of the negotiations;
- 2) *contextual* study based on history of the negotiation or history surrounding the negotiations;
- 3) *structural*, based on the patterns of relationships among parties;
- 4) *strategic*, based on the structure of values at stake and choice;
- 5) *personality*, based on personality types or negotiation styles;
- 6) *behavioural* skills; and
- 7) *process*, in which offers are exercises in power—parties use their bids to respond to counteroffers and influence the next.

p. 21: I sought a metaphor of negotiation to integrate my new understanding of conflict, justice, and procedural negotiations, but none of the theories really fit into the same framework and all were quite narrow. Even the spiral¹⁰⁶ as a conceptual metaphor for multiparty conflict seemed inadequate, being too flat. Then I considered a bicycle wheel, each spoke representing a different concern and feeding into the center—the conflict. However, the bicycle wheel still did not convey the complexities and shifting importance of various aspects such as power, time, information, negotiating style, and bargaining strategies, which would change

with each negotiation. Finally, I decided on a biological metaphor. A complex molecule may be an irregularly shaped cluster of component atoms. Each atom can represent a sphere of influence such as tactics, conflict management style, or power. Clusters of atoms can represent a party, and the entire molecule could represent the negotiation or conflict itself. All the atoms are continually in motion, as well as the molecule itself. Atoms, like the factors that determine a party's BATNA, can be added or removed or modified, with various atoms making different combinations, changing the nature of the conflict itself.

NC, p. 6: Negotiation with multiple parties can develop into the equivalent of a kick-line, with everyone attempting to lead the others and no one fully knowing the steps.

PB, p. 29: Perhaps the most important thing to realize is that just as no two personalities are the same, so no two negotiations are the same, either in terms of process or substantive information. An infinite number of parameters and variables exists in the world of multiparty negotiations. To state "I know the right way to run a multiparty negotiation" would be to fail to recognize that participation in the multiparty negotiation is a learning process, and one that never stops. The best that participants can do is critically analyze their experiences, recognize their responsibilities in both successes and failures, and attempt to apply their newfound knowledge to the next negotiation.

Negotiation

[The words and actions of a dialogue that attempt to revise some aspect of individual or group interactions or relationships.]

IC, p. 1: Negotiation is a more peaceful means of resolving disputes than court, or war for that matter.

FC, p. 1: A broad definition¹⁰⁷ is "the use of information and power to affect behaviour within a 'web of tension.'" A more precise definition,¹⁰⁸ as used by H. Peyton Young, is "the process of joint decision making ... communication, direct or tacit, between individuals who are trying to forge an agreement for mutual benefit."

NC, p. 3: The term "negotiation" has been defined as "the process of trying to reach a decision where there is more than one view on what the decision should be and what factors should be taken into account ... a process of trying to find a positive, realistic, and wide-ranging solution to a problem, which offers as much as possible to both sides."¹⁰⁹ ... p. 27: "[Negotiation] is a collaborative process in which both sides look objectively at the whole problem and try to find a joint solution."¹¹⁰

p. 7: Negotiation occurs when "what I got you want, what you got I want" (wigyw-wygiw, pronounced wigu-wigu). "Negotiation is about exchange. True negotiation embodies a win-win outcome; each participant in the negotiation believes that he benefited by the exchange."¹¹¹

FC, p. 20: "... there will always be conflicts between conceptions of the good, moral conflicts, both in the soul and in the city; there is everywhere a well-recognized need for procedures of conflict resolution, which can replace brute force and tyranny.... The skillful management of conflicts, [is] among the highest of human skills."¹¹²

PA, p. 19: Each negotiation process will be a unique experience. Each person brings his and her own experiences and life history to the negotiations. We can't separate the negotiator from the person, so there can be no one set way of doing things.... The negotiation process isn't as simple as most people believe. There are so many complex variables and factors involved that negotiators could devote a lifetime to learning it and still be confronted with a situation they don't know how to handle. The beauty of negotiations is that you always have to expect the unexpected. You will never encounter two negotiation situations that are identical, so no matter how much experience negotiators have, they will always be learning.

Nourishment

[Negotiations are helped if physical as well as other needs are addressed positively.]

IA, p. 37: The food and drink were a nice touch. The atmosphere of the room improved 100 percent. I was amazed to see the effect these things had. People were opening, talking about the issues, and were laughing and joking with each other. Everyone seemed so relaxed.

NB, p. 35: Nourishment is vital. Long periods of negotiation require food and beverages to keep the parties going. It is a good idea to bring a bottle of water to the table.

Observe

[Watching carefully yields important information about unspoken leanings, dispositions, motivations, and vulnerabilities, as well as subtle changes in the negotiating environment, which can be acted on to shift direction or momentum at the negotiating table.]

IB, p. 8: I wish I had spent the time of the procedural discussion learning the types of players we had in our class. I should have paid attention to who the extroverts were, who was easily offended, who liked to have their egos stroked, who were the leaders, and other characteristics of the various teams. I could have used this knowledge to my team's advantage throughout the course of the negotiations. I could now see how the procedural discussion could be used like a practice game of poker, where a wise player might use the time to identify his opponents' strengths, weaknesses, positions, and "tells" (subtle physical cues that indicate whether they have a good or bad hand).

PA, p. 41: Many of the things that I didn't pick up during the negotiations are now very evident and clear. It is amazing how you can completely miss the signs when you are caught up in the negotiations.

IB, p. 17: I might not have been very good at reading her signals, or signals in general.

Perception

[Everyone perceives and interprets events differently. What is self-evident to one is absolutely not to others. Negotiators are constantly startled at the extent to which their own readings of situations are not shared by others.]

PC, p. 1: That, in fact, was the biggest mistake I made throughout the class—assuming I knew what other people would do and think.

PA, p. 25: I was beginning to understand that even though everyone agrees to the same thing, it doesn't mean everyone understood the same thing. I felt this was going to get really tricky real fast.

p. 32: I found it amazing to see how everyone can discuss the same issues and agree on the same things and yet interpret them in vastly different ways.

IC, p. 6: The lesson from the last few days is that when a decision is made in class, not everyone comes away with the same understanding of that decision. A few people, or many, may be on different wavelengths. This was the first of many misunderstandings that would take place during our weeks of negotiation.

PA, p. 40: The most interesting thing was to see how everyone could interpret the same set of events in a completely different manner.

p. 39: It was amazing to see how sixteen different people all bring something different to the negotiations, and that each person will have their own understanding of the events, which will differ from everyone else. This is truly an amazing experience.

PC, p. 16: It's amazing how something can seem so clear that you think everybody else will see it, and they don't. At the debriefing, a lot of people commented on the same thing. They thought that everything they were saying made perfect sense and just assumed that everybody else would see it that way. We thought that many times. We assumed we would know what the other party was thinking because it was what made sense to us, but apparently it wasn't what made sense to the other party. I think it's important to try to figure out what the other parties are thinking, but you shouldn't count on it.

NC, p. 17: Rule #1 is to beware of false assumptions.

NB, p. 15: I find very interesting the multitude of personalities meeting at our table. The vast array of personalities leads to a range of views on the process. [Some] are more concerned with efficiency: "majority vote and move on". [Some] are more concerned with meeting people's needs and interests, and really pondering the issue of the moment to ensure that everyone is as happy as possible with the outcome. The dynamics between these two mindsets are interesting to watch. It is almost as though neither side can believe the way the other thinks.

Individual Interpretations and Learning

[Individuals reviewed the negotiating experience retrospectively to better understand for themselves what happened and what they had learned.]

a) Procedural Negotiations

IC, p. 3: The class first negotiated procedural issues before turning to substantive matters. We discussed the questions that Professor Benson had proposed and agreed that we should eliminate questions one and two, because we felt we would not have enough time to negotiate all six questions.

The next procedural issue was choosing a team to represent; accordingly, the class divided into four groups: the federal government, the provinces, industry, and NGOs. A crucial decision was made to eliminate individuals as a negotiating group; this was unfortunate, but necessary, because of the limited number of people in the negotiation itself. We chose the groups we wanted to represent by going around the room and stating our preferences. Astonishingly, everyone present received a place on the team of his or her choice. Unfortunately, a problem arose because there were several people absent, ... and we spent most of our time discussing how those people should be allocated to groups in a just and fair way. We were very concerned that people should be happy with the team they were placed on because it would be necessary to do a lot of work for that team. We tried to design a solution that would accommodate those concerns. We finally decided to e-mail the absent members, asking for their team choice and informing them that the spots would be filled on a first come, first served basis via e-mail. As a backup, if a situation arose where there were no responses, we would draw names out of a hat and allocate them to teams that still had space. The results were teams made up as follows: federal: FA, FB, and FC; provincial: PA, PB, PC, and PD; industry: IA, IB, IC, and ID; NGO: NA, NB, and NC.

PD, p. 5: The fact that people got to pick the team they would represent was a great idea. It allowed people to decide if they wanted to align with their interests, or try a different view. Either way, everyone got to make their own decision as to which team they wanted to be on, [and] everyone was where they wanted to be when negotiations began. It created a positive environment; everyone felt important to the pending negotiations, and we all were excited to start.

p. 9: In the first procedural negotiation, everyone really got a taste of the negotiating process and how it was going to play out. A shock to me and to my team was that the group did not immediately embrace our ideas. It seems that sometimes our way is not always seen as the unanimous choice for others, no matter how good it seems to us. Kind of humbling.

FB, p. 3: This was the most frustrating part of the course ... negotiating how we will negotiate in the actual negotiation.

NB, p. 10: The procedural matters proved to be more difficult to conclude than I ever imagined.

IB, p. 6: There were some who were advocating very open and informal procedures.... Others were trying to win over the class with a more structured system, with hand raising, a speakers list, and even limited numbers of people speaking per team.

PD, p. 10: Our group thought that this was going to be a relatively easy negotiation. We thought our ideas were very rational and in the best interest of the group. We wanted two representatives from each group to be at the table for each meeting. We were concerned, even though we had four group members, that the NGOs and federal government had three members each. That might put them at a disadvantage if everyone was allowed to be at the table and talk. We were doing it for the best interest of the group and the negotiations, but there was a lot of resistance. I don't know if the two smaller groups felt we were trying to manipulate them, but they were not very receptive to our suggestion.

NB, p. 2: During procedural negotiations, someone said, "We need to get started." I do not think people realized that we had already started to negotiate.... p. 4: Some are expressing frustration that we are not getting anywhere.... I feel that we *are* getting somewhere and appreciate the desire to have group consensus for once.

PA, p. 26: We decided that we had to have a chair for the meetings as that would force us to keep focus and not jump all over the place.

PB, p. 7: During the initial process of the negotiation phase, the class had a great deal of difficulty establishing a temporary chair. The negotiations were extremely difficult.

PD, p. 9: The negotiation process was very rocky during this preliminary stage.... After the class, I approached at least one member from each group and discussed what kind of chair would be effective.... We required someone to keep notes, and no one was willing to give up a team member. We also preferred to have someone who could be consistent over the course of the entire negotiations and who was impartial.

IC, p. 9: The group decided to have an agenda in order to make the next session more productive.¹¹³

PB, p. 10: As students expressed their desires to get the negotiations going, they failed to realize that the negotiations were actually already underway. This, plus the unfortunate personal animosities between some of the individual group members, contributed greatly to the lack of conciliatory tone that was prevalent throughout the entire negotiations.

PA, p. 26: Procedural discussions once again shook my confidence right down to the ground. I was beginning to wonder what I had gotten myself into. It seemed as if we couldn't agree on anything.... We couldn't decide how we should speak, if we should have a chair,

group voting rights, or anything else. Every time we seemed to be making progress, something would come up and we would be back to square one. It was starting to look as if we would never get anything accomplished. This is a very frustrating process and it is beginning to show in the tone of voice and the body language around the room. Then suddenly we had an agreement. For procedural items, we would adopt a majority rules position. This wasn't much, but at least it was one positive step forward that people could grab onto. Class ended without much else ever really being decided. I was disgusted with us. Fifteen grown adults, all with university educations, and we couldn't agree to anything.

PB, p. 8: It is unfortunate that the first experience of the class with the utilization of a chairperson and *Robert's Rules of Order* was such a difficult one. It was my observation that a great number of the class harboured strong reservations about the efficacy of the implementation of such a process and only reluctantly agreed on its implementation. In an attempt to ease tensions, inform students, and gain support for my position that advocated for a process that utilized a chair and some variation of *Robert's Rules of Order*, I forwarded a brief summary of *Robert's Rules* that I previously prepared for the University of Saskatchewan Law Students' Association to all of the students in the class.¹¹⁴ It was my hope that this would improve the course of the negotiations in both the process and substantive portions, and ease tensions raised during the first few classes.

IB, p. 7: Perhaps we should have set a deadline for how much time was to be spent on deciding procedure.... I wish I had not put up much of a fight and discussion over what procedural structure we used because there was always the potential for us to revisit the issue as necessary, unless we agreed that the procedural structure could not be amended. Therefore, if I were to do it again, I would not have cared about what the rules were, so long as a frame was chosen. Every procedural structure is like a game. There are different strategies, flaws, and loopholes to be exploited. Therefore, if a person is open-minded and willing to be dynamic in response to his procedural environment, any game should do fine.

Caring less about the specific procedure would have been a good strategy for later negotiations, because at the outset it would have been nice to have been seen as a giver as opposed to a fighter in the eyes of the other parties. In the future, my strategy would be to just pick something and move on. I do not mean to undermine the importance of procedure.... I just do not know if it was worth the costs. Perhaps my unique need is that I do not want too much time spent on procedural decisions. The procedural needs of the group are very group specific and it is hard to ascertain what the group will need until the negotiations are rolling. Perhaps it should be seen as an organic process that evolves as the group works through the dispute.

PC, p. 8: The procedures we ended up choosing are what made this negotiation our own.

p. 9: We decided to have a rotating chair for our substantive negotiations.... Allowing every member to put a member in as chair gave a sense of fairness.

NB, p. 6: Rotating chairs throughout would give us a feel for what it is like to have different chairs, as well as an opportunity to give more students an opportunity to experience chairing a meeting.

p. 35: The team can waive its turn to chair if it does not want to lose a member of the team to fulfil this obligation.

PC, p. 8: We decided on majority voting because we had already had so much frustration using the consensus. The big issue with voting was whether it would be a vote per team or a vote per person.... We settled on a vote per team. A vote per person would have been unfair because two groups had only three people [the other two had four] and one group with three people had someone who didn't show up all the time.... One vote per team also forced more communication among team members because they had to make sure they were all on board.

p. 9: People at the table: our team initially suggested only one or two people at the table [for efficiency] and to even out the difference among teams. However, other teams wanted everyone to be able to speak. In the end, everyone was allowed to be at the table; it made for frantic, confusing situations sometimes, but at least everyone participated actively.

NB, p. 10: We decided:

- All are able to speak, instead of every team choosing a head negotiator.
- Allow each team one vote on substantive matters.
- Have a definite speaking order for presentation of interests (ten minutes plus five minutes questions) at the beginning of each topic: federal government, provinces, industry, and NGO.

PD, p. 10: We decided to use a speakers list to be kept by the chair. This seemed like a good decision, as it was a model that we all could use, and no one was at a disadvantage because of lack of knowledge. We also voted to allow ten minutes for each group to present its side to the group, followed by a five-minute question period from the other groups. These decisions were made quite quickly, obviously as a result of a desire to get through these initial negotiations and get on with the real stuff. We all had a lot of frustration from the initial procedural negotiations, and it was a way to get this part finished so we could wash our hands of it and get on with the real negotiations.

NA, p. 8: We decided to try both formal and informal procedures during the actual substantive sessions.

NB, p. 9: Today was fairly efficient and productive. However, I question whether or not all parties are happy. We pushed things through today at a high rate. I think this may have been to get them decided, and not necessarily based on consensus.

PA, p. 28: As our procedural negotiations continued, there was tension in the air and voic-

es were starting to be raised. I couldn't begin to imagine what would happen next. Suddenly, for no apparent reason, people started agreeing to everything. It was as if it was a totally different discussion. It seemed as if once things were clarified and the first major agreement was made, everything just fell into place.... By the end of class, we had agreed on a speaking order and how things were going to proceed. We had suddenly completely wrapped up our procedural negotiations in one class, after the two previous classes of just spinning our wheels.

IC, p. 12: E-mail proved useful as a communication tool when after the session, PB e-mailed everyone the decisions that the class had made at the session. I found it very helpful to have a written reminder of what had actually been decided. During the negotiations, you do not always have time to write all of the decisions and motions down, as you are busy discussing and negotiating. Another benefit of a summary e-mail is that once the decisions are down in a printed format, the misunderstandings should hopefully decrease.

b) Intervening Events and Meetings

FA, p. 10: The federal team divided up research on Kyoto to match our individual strengths. FC was the strongest researcher for the scientific information; FB researched constitutional law and federal government interests and rights; I covered Canada's international obligations....

p. 11: Our team thoroughly researched and were aware of Kyoto and negotiable issues as shown in our research log.

p. 16: Although we all did our own Internet research on Kyoto, FC was a strong researcher and she presented the team with many of the options and avenues that we considered adopting for a federal agenda. We then met as a group weekly during the actual negotiations to discuss these options and a strategy. At these meetings, we would sort through the material and then discuss what plan we would adopt and propose at the table. I was a strong strategist, and once we knew what we would propose at the table, I discussed strategy to bargain our deal: what teams we need support from; what teams we could likely expect support from; and what players at the table we had to communicate with in order to attract support. Both FB and FC allowed me maximum flexibility to strategize on how we could best advance our position in a negotiation-by-voting table.

FC, p. 13: We communicated with the provinces on the subject of carbon sinks through e-mail and some preliminary meetings before the negotiations started.

PA, p. 31: I sent an e-mail to my team on 25 February to try to set up a date for us to meet to discuss our team position and strategy. By 28 February I had no responses, so I sent another e-mail suggesting what I thought we should be bargaining for and what possible alliances I could see that would benefit us. The e-mail also stated that I definitely felt it would be beneficial for us to meet at noon ... Monday [before the multiparty class at 3:30]; noon was the only time I had free. I received a five-line reply from PB and six lines from PD; that was it. They

both agreed we should meet, and it sounded to me that they agreed to meet at 12:30 PM. When Monday arrived, I was at our designated meeting place, but no one else showed up. I was very frustrated and a little disturbed by this. I went to my 2:00 PM class still fuming about my team's apparent lack of concern.

When I got to class, I ran into NB and we started talking. It seemed that I wasn't the only person who was having no luck organizing things with their team. NB had tried the same approach as I had with the e-mails and the meeting time, but she met with even less success than I had. She hadn't even gotten a reply from her teammates. NB and I spent five minutes venting and then both cooled off. I was relieved to see that it wasn't only our team that would be going into negotiations without having met as a team. NB and I also discussed what issues we thought would come up and agreed on a fair number of them. I could see an alliance starting to form between us, but neither of us was willing to speak for our teams as we had not met with them.

Later, heading to the multiparty class, I ran into my teammates. They had all finally arrived at school and we managed to meet as a group for five minutes before the class began. It wasn't much, but at least it was something. We were the last group to enter the room because we had been discussing what we thought we should go for. I noticed a feeling of tension in the air.

NB, p. 12: I am getting to experience some real-life issues with regards to teammates. My team is not communicating. Prior to today's class, we had to prepare for our presentation. I did some research and e-mailed what I had compiled by way of suggested interests/proposals to my team. The e-mails were sent to no avail.... I did this on Thursday.... I received no e-mails back, and when we met on Monday before class, nothing was said to me by way of reasons.... p. 13: As well as not communicating in technology form, we have not met.... As I was the only one to have done any research and come up with proposals and NGO interests, I was delegated as the speaker.

IC, p. 12: The industry team discussed its action plan for the following week. We debated the issue of which industry to represent, and decided to represent the forestry industry for question three on credit trading and sinks.¹¹⁵ We decided on the forestry industry because it produces sinks more readily than other industries we could think of. Also, Ann Coxworth had already provided us with an immense amount of forest-industry-related data we could build on. We decided to do individual research and then share the results in order to formulate a presentation....

I interviewed Mr. R. Falls with Carbon Corporate Management of Vancouver by telephone. Mr. Falls has been working with companies trading credits in North America for the past few years, and he provided me with invaluable information on how the current credit-trading system works. Mr. Falls directed me to the Gemco website, an organization he helped

found that operates in the credit-trading area. I also found information about a pilot project that has been set up in Canada since 1998, the GERT, which is a voluntary system being run with the co-operation of governments and industry.

p. 13: In addition, I used the information that Ann Coxworth had provided for the class during her presentation on 27 January 2003 as a basis of knowledge. All this research helped me to formulate a carbon credit-trading system that I proposed to my group.

The majority of our decisions were made through e-mails in the morning before the session. We also met fifteen minutes before the negotiations began to discuss our research and to determine who would present which topics in the allotted ten minutes.

*c) Day One*¹¹⁶

IC, p. 13: The provincial team had the option to chair the negotiation today and chose PB as their chairperson. He has a good command of the procedural aspects of meetings through his experience as the LSA president. He used *Robert's Rules* to manage the negotiation. I felt that he had control of the process, which made the negotiation function quite smoothly.

We sat for ten minutes waiting for all of the federal team to arrive. Unfortunately, we only have a limited amount of negotiation time, so every minute is extremely valuable and I did not like to see that time wasted.

p. 13: The discussion was centred on question three: Will a trading market be permitted to allow emission-reduction credits to be traded, and if so, under what terms?

p. 15: We began the negotiation with ten-minute presentations from each group. The federal team presented first and introduced themselves as the ministers of justice, environment, and energy. The provincial team presented next and represented every province and the territories. The NGOs followed and represented the David Suzuki Foundation. Finally, industry presented as the representative of the forestry industry.

*[The federal government presented a three-phase plan for domestic emissions trading. Phase One is an educational and voluntary reductions phase. Phase Two involves regulations requiring companies to hold a permit for each ton of GHGs they emit, with permits purchased at auctions or internationally (alternatively, permits could initially be allocated at no cost, and then traded for growth, with companies permitted to buy offset credits through carbon sinks, the provinces to administer). In Phase Three, companies can purchase credits internationally.]*¹¹⁷

PA, p. 32: The federal team went first. I was immediately struck by how well researched their presentation was. They knew exactly what they were talking about. It also appeared that

they had spent a substantial amount of time discussing things amongst themselves and were working well together as a team.

IC, p. 14: The federal team proposed a new standard for a baseline, which surprised me as the class had agreed to an across-the-board baseline of 2002 levels and a goal of 15 percent below 2002 levels at a previous meeting. I asked for clarification, explaining that it was my understanding that we had already decided this particular issue. Only one member from the federal team was at the meeting where this decision was made, so it is understandable that she missed some points. A misunderstanding about target levels demonstrates how important it is to begin a negotiation from the same benchmark, and how important it is to have minutes of the sessions. I also think that it is important to be attentive and to listen to the discussion so that you do not miss vital information and decisions.

[The provincial presentation suggested separating permits from carbon sinks. Permits should be allocated by the federal government to the provinces to administer, because each local situation is different. Carbon sinks should be owned by the provinces under the property and natural resources jurisdiction of the constitution, s. 92(a)(1)(b).¹¹⁸]

PA, p. 33: Our presentation came next. I was embarrassed. Most of our team had done lots of research, but we never had a chance to put it all together. We fumbled through the presentation and had to field many questions to clear up our presentation. I hope our presentation sounded better to the class than it did to me. I felt most of this could have been avoided if we had been more organized right from the start.

PC, p. 12: With PB, things were more productive because when a motion was made he wouldn't let it drop. However, this led to things being more rule-oriented and formal; we did not get as in-depth because people were not as comfortable. PB was also very worried about appearing unbiased; for example, when I didn't say the right thing during the presentation portion, he interrupted me. That really shook my confidence in speaking. I know he thought he was doing what was right, but at times I felt that he was too strict in a way that halted discussion.

[Representing the forest industry in Saskatchewan, the industry team felt that the federal government should set up a certification system, and companies could buy credits from the certifiers, similar to a stock exchange. Companies would get credits for carbon sinks and for emission reductions. They agreed to offer the ... scientific method to deal with the issue of tracking carbon absorption over the life of a tree.]

PA, p. 33: The industry team presented next. Once again their presentation was well researched. It was starting to appear that IC was the leader of the team. She seemed to be

directing the rest of her team members even to the point of telling ID what she should be saying. I was a little shocked to see that the industry team had decided to only represent forestry. It seemed to me that they would have to leave a whole lot of issues out because of this one-sided approach. I started to wonder if it was even worth discussing anything with them, as we were to negotiate the Kyoto Protocol, and they would only be representing a very small portion of industry with a very specific interest. I didn't even think that they should be at the negotiating table because of this. Apparently I wasn't alone, as several other students voiced this concern and were greeted by a very abrupt and almost rude reply from the industry team that they could do whatever they wanted and this was what they had decided to do. I felt my negative opinion about them growing every second.

[The environment was a major concern for the NGO team. They would prefer a cap to set a maximum on available permits because overall reduction is the goal. They expressed a need to determine ownership and the international implications for credit trading. The NGO team felt there was a need for an independent enforcement body.]

PA, p. 33: Finally the NGO team presented their material. NB did most of the presentation and I could tell that she was very flustered with her teammates. They were representing the David Suzuki Foundation and their main concern was the environment. She did a good job of putting herself into that role. She had researched and knew what she wanted. I was impressed with how well she did, considering that her team had not met before negotiations had started.

NB, p. 12: The presentations went well and the clarification period proved to be a very good idea. Having a predetermined clarification period ameliorates many problems before actual negotiations get underway.

IC, p. 14: One of the NGOs' proposals dealt with companies receiving credit for changes they had already made to become more environmentally friendly. I asked for clarification on this proposal, and they stated that they would like to go back to 1990 to give credit to companies that had made changes before being mandated to do so. Another proposal they tabled was to have an independent third party run the credit-trading program. Both of these proposals supported positions industry had taken.

p. 15: After all the teams made their presentations, the provinces asked for a caucus. When the provincial and federal teams left the room, we took that opportunity to canvass the NGO team on their mutual interest in seeing a third party run the credit-trading system.

PB, who was the chairperson that day, told us we were not allowed to talk to the NGOs without everyone else in the room. We dismissed his protest, because we felt that negotiation involves private talks in addition to group meetings. Canvassing individuals, or a small team of three members, is sometimes easier than addressing the whole group. I think you are able to

step out of your role in a caucus situation to find out the true interests of the other teams. Hence, we asked PB to leave the room and championed our ideas to the NGO team.

We knew that it was an interest they had expressed, so we tried to focus on their needs for having a third party monitor the system. We explained our proposal to have an accredited party administer the system, rather than the federal or provincial governments having any role in managing [it]. The NGOs agreed with us on this issue, although we did not receive a firm commitment from them. I believe they felt uncomfortable making deals with industry, which they typically see as their adversary. Overall, I found it was a successful use of backroom dealing without the formal requirements of the negotiation; even if the NGOs did not support our proposal, at least we had showed them we were interested in working together with them on a plan that would further benefit their interests.

IC, p. 15: After the caucus break, when the general discussion resumed, I proposed that the group decide on the credit-trading system....

[Editor's paraphrase of minutes: The group asked how to structure discussion on the issue. The chair said it was up to the group. Industry suggested that the discussion focus on how to implement a credit-trading market. They had suggested a stock-market-type approach, which would not involve new taxes. The provincial government said it would not participate in a system that required them to invest in research and development if they were not getting any money from the new credit-trading system.]

NA, p. 10: We were trying the formal procedure and PB was chairing. I felt very constrained. I could see that we were getting nowhere with such a formal process; we were all talking at each other rather than to each other. It seemed as if the focus was on making sure that we were heard, instead of focussing on listening to and trying to understand where others were coming from. The structure of advocating and defending our positions felt very adversarial and put everyone on guard. It is impossible to truly dialogue if you feel vulnerable that your ideas will be attacked if they are not fully thought out or articulated well. This seemed such an artificial way to speak to one another. This rigid form of dialogue hurt the discussion, because it seemed to force us into positional arguments in which we did not listen to each other.

I did not speak very often, but by observing, I figured out that we were not coming to a meeting of minds. That is, the federal and provincial teams were focussing their discussion on a domestic trade-credit and permit system, but the industry team was discussing an international trade system. I could see that if we could get a clear idea as a group of what we were discussing, we would see that there was not as much conflict in our interests or positions as there seemed to be. It was too bad we were using the formal speakers list, because I wanted to tell the group that I was observing this and draw this point to their attention.

p. 11: I squirmed in my chair because I was so eager to show them that maybe

compromise was possible ... we were all on different pages of the same book ... industry was a couple of chapters ahead, but the interests were the same. I think there was not that much conflict of positions because we were all interested in seeing the Kyoto implemented. Because of the formal process, I had to wait. I was literally holding my mouth; it was all I could do because I wanted so badly to blurt out this observation.

However, the provincial chair had me low on the speakers list. I could tell that even the other groups could see my excitement and wanted to hear what I was so eager to say. Somebody even passed their turn to see what I had to say, but by the time I was allowed to speak, the issue shifted to a real conflict of whether the federal government would appoint the independent body to oversee the credit-permit system. Aaaaug.... I think we could have made some real progress during this point of the negotiations because I think others were also seeing this apparent gap of understanding among the parties.

IC, p. 15: Unfortunately, after each group gave its presentation, we only had a limited amount of time to start debating and tabling motions before time was up. This was regrettable because the momentum we had gained was creating useful dialogue, and then our negotiations were cut short. There were optimistic feelings and good faith around the table. Due to the fact that it was the first day of presentations and we had taken so long to get here, I think everyone was fresh and wanted to start making decisions and resolving the issues.

NB, p. 12: I was disappointed that the time was at an end [on Day Two] and could not believe how quickly it had dissipated.

[Moved by IB, seconded by NC, to have no formal agenda for next session.]

d) Post-Day-One Perceptions, Meetings, and Events

IC, p. 16: At the end of the session, our industry team met and decided to formulate an agenda with issues to bring forward at the next meeting....

NB from the NGO team called me asking whether the entire negotiation was about carbon sinks or whether it was just a portion of the negotiation. I told her my interpretation was that sinks were just part of the negotiation, not the focus.

p. 17: I began e-mailing my industry teammates to find out what kind of proposals we should submit at the next meeting, as well as the approach we were going to formulate for the next question on the agenda.¹¹⁹

Through e-mails, our team decided to continue to represent the forestry industry. We had been considering switching industries for each session or topic to try to give a broader representation to industry during the negotiation process. However, we decided that it would be more efficient to represent the same industry for at least the next meeting. We also considered how the other teams would view a switch of industries during the negotiation process. We

thought they might interpret a switch as a tactical manoeuvre, with bad-faith intentions, if we came to the table representing a different industry each time.

p. 19: Not having access to the minutes for a period of two days hindered our progress. Late Friday afternoon, the minutes from the last meeting were placed in the multiparty course bin, so I was able to look at the opening statements of the other teams to help formulate proposals that would be acceptable to everyone.

PD, p. 11: We all expected the federal government to be as they were, representing Canada and trying to use the negotiation as a forum to help hear different points of view and any concerns. The NGOs were also quite predictable. They were there to ensure that everyone kept their minds on the environment and the benefits to mankind. It was industry that was quite different from what anyone expected. They came out quite aggressively and seemed to denounce everyone else. They took the position of representing the forestry industry, which other teams agreed limited their bargaining power. Their aggressive personality and very cold attitude did not put them in the best negotiating position to start off with.

p. 12: In the first negotiation as to procedural issues, IC came across as a very dominant personality in the negotiations. She sent out an e-mail that was supposedly her suggestion for the agenda for that meeting. This suggestion was offered to set the basic text of the agenda, and help get the issues organized. While this is a seemingly helpful motion to advance negotiations, it is also a powerful tactic. This kind of document tends almost always to set the agenda and focus the parties, not only on particular issues, but also on a prescribed resolution of those issues.¹²⁰ It was a really sneaky way to take the initiative in negotiations and gain some control. IC even made a statement in the class that she thought we all had agreed to submit our agendas. Our group was not aware of this supposed request, so we were quite suspicious that IC was just trying to find some way of justifying why she submitted an agenda. Through this document she was able to manipulate the discussion and place emphasis on what they [the industry team] perceived as being the important issues to address.

After class, I talked privately to both the federal government and the NGOs. Industry doesn't seem to want either the federal or the provincial government to be involved, so they have alienated both governments. Naturally, the NGOs [have feelings] against them as well because they are traditionally the anti-industry voice. So I was able to befriend all groups and was also able to reinforce an already apparent separation between industry and the other groups. I just said to them that it's obvious they don't want either level of government to be involved with respect to the credits, so why shouldn't we all just get together and overwhelm them in voting?

I felt this decision was a very poor negotiation strategy by the industry group. I don't think they understood the repercussions that came with standing alone. It was quite easy to organize a coalition early in the negotiations, with our common bond being to eliminate the power of the industry group. As a coalition, we were able to have a greater influence on the outcome

because of the additional voting power. We also further maximized our power and status in the group through our co-operation.¹²¹

FB, p. 7: Originally, I saw the industry team as being the team with the most power—the most power to tell the federal team what they wanted. They could have easily been tough negotiators and put high demands on the table and conceded little; however, I believe they gave up their power; I believe choosing to come to the table representing Saskatchewan Forestry cost them their bargaining power. I was no longer concerned about what they would get in these negotiations, as I took the position that Saskatchewan Forestry does not represent all of industry, and the federal team or provincial team would have to look out for the rest of the industries. I also wasn't concerned about the NGO team; I did not see them as powerful negotiators at the table, because traditionally NGOs do not have a lot of power. I interpreted their style to be more co-operative, and thus reciprocated their co-operation and equality interests. The provincial team was our biggest competitor in these negotiations.

FC, p. 3: The team representing industry was composed of four individuals, who did not seem to appreciate that they had an unfair advantage over other teams, such as our federal team, which only had three members and therefore less processing power and insight. The industry team also had some of the most outspoken personalities in the class, which I found simultaneously amusing, in that it mirrored in reality the importance of industry, and exasperating, because they seemed determined to put forward arguments at times deliberately confrontational or unreasonable, or expressed them in a way that seemed overly passionate or abruptly hostile (i.e., wanting credits for carbon sinks after trees were cut down, wanting a bottom line, and threatening to move to the US).

FA, p. 6: The federal government thought industry would be better represented with a diversity of sector interests, given that we were negotiating a national environment plan. Industry then wanted to give information, but we were not receptive to receiving such information on behalf of forestry.

FC, p. 6: Industry's early announcement that they would be representing only the forestry industry of Saskatchewan puzzled me, because their arguments would have had greater force and persuasiveness if they had spoken for the forestry industry of British Columbia, or the oil, gas, and hydro companies across Canada. I was anticipating negotiation in these areas and was dismayed that so much of my preparatory work was wasted. Later, during the negotiations, when the industry team decided without announcement that they were also speaking for other sectors in addition to Saskatchewan Forestry, I felt betrayed and resentful. On a personal level, I began to see certain individuals merging with issues. Though I should have been exploring and pushing for common interests, I felt reluctant to do so, since the industry team seemed unreliable, unpredictable, and inconsistent. Positions were easier to reassess; all I had to know was the federal position and assume industry would automatically oppose it, even if reasonable.

PA, p. 34: I think it would have been very helpful to have a basic written outline of each team's position, so that during the week we could start to figure out how to proceed.

IB, p. 11: Our selection of only one industry to represent proved to be confusing for the other teams. It shows how important a party's anticipation of their adversaries' standpoint is to the process. Other teams seemed to have already planned a course of action to rebut the pollution practices of big business and big industry. I think they were caught off-guard by our discussion of planting trees and in-depth proposal of how to manage processed trees by amortizing the carbon sink over the lifespan of an average tree. It was also interesting how I had anticipated that the NGOs would be basing more of their analysis on more altruistic and environmental issues, when in fact they seemed to be more concerned about accountability and ensuring that issues were not overlooked in the process of negotiations. I would have greatly appreciated if each team had a manifesto or statement of goals that the other parties could refer to in order to clarify the direction they were heading.

PD, p. 13: As part of the silent coalition we had developed, I quickly and quietly met with representatives of the NGOs and the federal government before our second substantive session. We all thought that industry had made some very bad decisions with respect to their own interest. The distinction of their group only representing the forestry industry really restricted the type of defenses they had.... My goal with this second meeting was to reinforce the suggestions I made to them after the last session. They had time to think about it and to discuss it with their group members. Now I wanted to ensure they still felt the same way, and would be aligned with us. I also wanted to maximize my status as a leader in the coalition group.

e) *Day Two*

IC, p. 20: IB from the industry team was chairperson today, and he used a more flexible version of *Robert's Rules* than PB did. For example, if someone asked a question, IB would allow you to answer the question out of turn, if you were on the speakers list. He did not make you wait to get on the speakers list again in order to answer the question. I found IB's relaxed approach allowed better communication during a negotiation, rather than waiting for your turn, when the point you wanted to address may be moot. The relaxed approach continued for a bit, until PB told IB to stop letting us talk out of turn and that the chair had to follow the speakers list. I am not sure if it was intentional, but PB situated himself next to IB and was continually whispering to him; I suspect it was on how to govern the meeting. I found that certain aspects of *Robert's Rules*, such as the speakers list, hinder the process of direct communication. A more relaxed form of *Robert's Rules* is helpful in generating direct communication, especially when teams are acting cordially to each other.

IB acting as a neutral chairperson and not a member of the industry team was somewhat disadvantageous to the industry position. There were a few times when we could have used

IB's knowledge during the negotiation. Initially I did not think that having one less voice representing us for one session would be detrimental, but a few times during the discussions it was. This helped me to understand the federal and NGOs' reluctance to take on the role of chair. With only three members on a team, if one person were chairing, the source of knowledge within the team would be significantly diminished.

PA, p. 35: I couldn't wait to get to today's class. I had spent the previous week thinking through all the presentations and had a mind full of questions that I wanted to get clarified. We had agreed that IB would be the chair for the class, and NB summed up the minutes from the previous day. The stage was set and things started off in high gear. We started to discuss what exactly a credit would be. It seemed as if everyone had an opinion. We spent a lot of time trying to agree to a price for a credit. In the end, after a whole lot of confusion, we agreed to set it at market price. During this negotiation, it really became apparent that clarification is the key to getting matters resolved. Several people were saying the same thing, just in a different fashion, and no one would agree to it. It seemed once we had it clarified it went through without much problem....

We then went on to negotiate credit ownership. I could see from the start that this would be a very controversial issue. Industry wanted the credits for themselves and we, as the provinces, wanted the credits to go with the land and therefore to us. This discussion took up a lot of time without ever getting any kind of general agreement. It finally was tabled to be discussed later....

Next the federal team wanted to discuss what kind of system we should implement. Once again this set off fireworks. The industry team was opposed to the federal position.

[Editor's note: The discussion was between a "Cap-and-Trade" and a "Credit-and-Trade" system. The minutes show a cap-and-trade system as allowing purchases of permits as a fraction of historical emissions, while a credit-and-trade system allows permits to be project-based through purchases of offsetting credits beyond the baseline of the industry average.]

FC, p. 4: My prenegotiation reading had indicated that a cap-and-trade regime was widely used in the US, the UK, and Australia, and supported by large corporate entities.¹²² There seemed to be a general consensus for cap-and-trade over a credit-and-trade regime,¹²³ so I assumed that cap-and-trade would not be opposed by the industry team, and was very surprised when they did so. I had assumed they knew their own interests well enough, but it seemed they were choosing an opposite position just for the sake of argument. They immediately challenged the validity of the cap-and-trade regime in the US Acid Rain program,¹²⁴ widely touted as a success by both industry and government. I perceived this as a lack of knowledge, and it did not inspire my confidence in the validity or strength of their arguments, and regrettably tinged my view of their arguments thereafter....

I observed some clarifying questions being asked of the industry team by the provincial team. There was some identification of interests, but positions seemed to factor more greatly. In part, this may be due to the industry team vacillating on what industries to represent, and the resulting response by the other teams. I thought I had prepared for the classes well enough by reading the written views of some of the major industry and some environmental stakeholders¹²⁵ who were sure to oppose my team, the federal team, on a number of issues. However, I was taken aback at times by the industry team's reactions, which seemed counter-intuitive and in opposition to their interests.

NA, p. 24: It was very frustrating dealing with industry because they used the Kyoto Protocol and Canada's reliance on carbon sinks to their advantage, and switched interests and positions whenever they wanted. This frustrated the negotiations and angered the other groups, but more importantly, it ultimately soured relations against industry. The other groups thought this switching was unfair, and I think it strengthened a coalition against them. There is some part of the human psyche that seeks justice and fairness, and I think that it was at play during the negotiations. We did not think that industry was playing fairly at all.

FC, p. 9: My perception of the industry team was that at times they seemed only to be maximizing their own gains and not willing to compromise, which makes principled negotiations useless.

PC, p. 20: I realized that ... industry seemed to think they would be getting credits every time they replanted, when from all the information we had ... carbon sinks are only created when you plant forests where there were none or haven't been for a long time. I decided we needed to straighten this out, because it would affect all of the arguments industry was making. For example, they were all concerned with who would get the credits from forests, but once we determined there would be no credits for the forest they were replanting, it wouldn't matter. It would also make them really, really mad, and I didn't want to have to deal with another discussion where they spent the whole time talking as much as they could so they could distract everyone else from voting. So I thought I would try to get everyone else's agreement, so that when it was brought up in a vote, it was quick and painless. I sat through one negotiation tense the whole time because I was worried the topic would come up before I got a chance to check with my teammates.

IA, p. 17: *Attentiveness* was an enormous problem in our negotiation. I observed ignorance towards other parties on many occasions. It not only angered me when other teams weren't listening to our ideas, but also when they weren't listening to other teams. The federal team on several occasions ignored the events taking place at the table. Then, only minutes later, they brought up a topic that had already been specifically addressed. Other times, when the meeting was over and decisions had been made, their team asked for a review of what had just been decided because their attention had been elsewhere. This was an extremely

frustrating scenario, which could be prevented by paying attention to the other parties.

PA, p. 35: This discussion seemed to be going in favour of the federal team. It appeared that the NGO team supported the proposition and it was in line with what we wanted. We called a caucus to discuss matters away from the Main Table. During this caucus, there were a lot of other meetings going on. We had the agreement of the NGOs on several key issues to us, and we had also talked to the federal team and told them we would support most of their propositions if they would support a few of ours. Our team was working well together. We were standing strong, and we knew what we wanted and what we had to do to get it. I started to think that we should be able to hammer through a few items when we returned because it appeared that there was support. When we returned from the caucus we tried to call a vote, but industry opposed. They went on a long rant about what they wanted and how no one was listening to them. They seemed to be getting flustered and were talking in circles. I noticed that the industry team was controlling the floor. It seemed as if no one else was getting a chance to speak other than them.

IC, p. 21: With PB a member of the provincial team today, rather than chairperson, he took advantage of his knowledge of *Robert's Rules* to get motions passed. He would propose a motion before the group had an opportunity to fully discuss the issue. The first time he did this, the group stopped him by tabling the issue.¹²⁶ However, the second time he did this, everyone except industry was willing to vote. Industry was in a panic because the motion was on a cap-and-trade system, which we were opposed to. The federal and provincial representatives made it clear that we only represented the forestry industry and that we should not be concerned about the implications for other industries. Nonetheless, we stated that we knew the position of our fellow industry colleagues, and that they also wanted the credit-and-trade system. The momentum was obviously moving in favour of the provincial and federal teams passing this motion through.

ID, p. 5: I found that, driven by the provincial team, a series of issues was pushed through.... This was done before we as industry had barely discussed the impact of what the consequences would be on us.... As industry, whatever agreement the group at large voted to implement would affect us directly. This is because any negative effects would end up costing the consumer, workers, and business in some aspect. As such, we stood with the most to lose.... p. 6: This ended up shutting us out of the picture and making us feel as if we should not have even been at the negotiating table.

IC, p. 28: When the motions were put forward, it appeared as if we were slowing the process down because we were the only team that wanted to know the details and how exactly everything would work out. I felt that the atmosphere had changed.... From industry's point of view, the goodwill and trust was gone from the negotiating table. We were seriously questioning why we were there, as the other teams were not the least bit interested in our concerns, nor were they including us in backroom discussions.

p. 22: Industry was in a panic because we could see the direction the negotiation was taking and the shift of power to the provincial team, so we called a caucus. We also wanted IB's input, but unfortunately could not receive it while he was chairing. IB suggested he act as a partisan chairperson and favour our group procedurally during the negotiation. We decided that that tactic, while interesting, would not be conducive to achieving unanimous decisions. We felt he might even be removed as chairperson.

IB, p. 14: I enjoyed my day as chair. It was nice to be able to sit back and listen to what the parties were saying, because it seems that in the heat of discussion, I do not listen as closely as I should, as I am waiting for my turn to speak. I tried to listen as closely as possible to get a better grasp on what the different parties wanted so that I could bring that back.... The interesting experience of listening quickly began to fade as the conversation got heated and I started to wish that I was allowed to speak. It also worked out that day that I was mediator; the provinces were working extra hard to push their motions through. Thus I felt as if I was chair for my own team's downfall. I have been the chair for several meetings in the past. In those meetings, I felt that my reputation was on the line and therefore was as perfectly objective as I could be.

I had jokingly contemplated being a biased chair. I thought it would be fun to do, and would be an interesting experience for the class to see what it would be like. But I thought better of it because it might make other teams harbour resentment against me and consequently injure future negotiations. My decision on this matter changed midway through the negotiation session. Partially due to frustration at not being able to speak and help out my team, I tried to be as biased as possible without it being obvious. I humoured my team speaking out of turn and responding to questions much longer than I should have. I also slipped IC's name onto the speakers list a few times without her signalling me. I did this partially as a filibuster technique to draw out discussion so that it would not immediately go to a vote. I also did it partially because I kept seeing the speakers list grow longer, and I anticipated that she would want to speak prior to such time as she would end up speaking. I did not think anyone was noticing my bias besides PB, who exhibited his frustration by tapping my speakers list and making a few comments to me under his breath. But I ignored him and proceeded. I realized that it was an underhanded thing to do, but it was fun, and it helped the team out a bit. This was one of the things I enjoyed about the class; because there was not very much personally at stake, I was able to try things that I normally never would have done.

PB, p. 9: The lack of attention to *Robert's Rules of Order*, which were adopted during the initial process negotiations and subsequently implemented during the substantive negotiations, left open the possibility for those students who were aware of the Rules to take advantage of the other students' lack of knowledge regarding procedure. I became aware of IB repeatedly failing to take notice of the speakers list, as well as the attempts of students who were not in IB's group to be placed on the speakers list. After adjournment of the discussion that day, I

talked with IB so that we might compare notes on our experiences of chairing the substantive negotiations....

PC, p. 12: When IB was the chair, something very interesting happened, which he later admitted to: he abused the power of the chair. When people first talked about wanting to have an unbiased chair, I thought, "Big deal, how is anybody here going to abuse the chair?" I didn't really think a chair could have much influence over what goes on. But when IB was chair, his tactic was to let people from his team interrupt people and talk when they weren't on the speakers list; this prevented people he didn't want to talk from talking. I have really learned the importance of an unbiased chair!

PD, p. 14: In the second half of the class, we were set to vote on a proposed cap-and-trade system. We had quickly talked to the NGO and the federal government groups in the break, and they had agreed that it should pass. When we came back for the vote, it was obvious that industry knew they were outnumbered. They tried to stall by using threats that they would move out of the country and that this would cause increased costs and loss of jobs. The rant worked only to slow down the vote. None of the coalition parties changed their minds, but the federal government and the NGOs wanted to respond to what industry said. It was very frustrating to witness this. There was no reason to try to rationalize our view to the industry group when it was obviously a stall tactic, and a desperate one at that. All we needed to do was to vote to stop the argument. But it seemed there was this feeling in the other groups that we should try to convince industry that this way was best for everyone. This was a complete waste of time. Finally we were able to get the vote, and it was a three to one win for the coalition over the industry group. That successfully stopped the debate.

IC, p. 22: Industry decided to use our caucus at a time when we needed to slow down the negotiation. We also used the caucus as an opportunity to devise other strategies to slow down the negotiation. We decided to come up with a strategy to convince the other teams that credit-and-trade was a better system. We came up with four points that we would address. We also decided to try a delay tactic that involved the three of us getting on the speakers list and talking for as long as possible, a mini-filibuster. Our tactic failed, and as soon as ID had made one last, long, heartfelt speech, PB called for the motion to be voted on.... p. 21: Our tactic eventually failed and the proposal was passed.

ID, p. 23: I was becoming upset because I believed the other parties would not listen to what my position was, which had me simmering until I had to burst. When I was pleading to them, and threatening possible consequences that would be detrimental to us all, looking out into this sea of unemotional poker faces set me off even more. Every time I came close to making a point, because I could get no response from their faces or mannerisms, I assumed they had not understood my point. To this I responded by talking longer, louder, and faster. My perception was that they just did not care. What I was looking for was a nod, or open body language from anyone, to indicate they were actually listening to what I had to say and

taking it to heart. Coming from a southern European tradition and extensive relationships and travels in the Middle East, I am used to an atmosphere where people are much more expressive. Using expression to me is an indication of life, of understanding, and an essential means of communication. For someone not to respond to that expression is seen as an insult: they could not be bothered to listen to you as you are not important enough.

PA, p. 35: Finally someone cut off the industry team and forced a vote on the issue of what type of trading system to adopt. The vote was three to one in favour of the cap-and-trade system. The industry was the team opposed. I could see that they were not happy about how things went. There was a whole lot of confusion surrounding a permit and a credit, so I asked for a precise definition of them. To my dismay we never got one. It seemed people were mixing them up and using them interchangeably.

NB, p. 18: We passed a motion to have a cap-and-trade system for credits in Canada, much to industry's consternation.

FC, p. 4: Although the cap-and-trade regime passed on a vote of three to one, the industry team being the only dissenter, I could see their dissatisfaction and the vague feeling that they had been taken advantage of, yet they could not air or articulate their concerns and interests properly in time before a motion to vote was called. I thought that further discussion of the issues would be helpful to build a relationship of trust, but my federal teammates were convinced that more time allowed for discussion would backfire on us and give them the opportunity to sway¹²⁷ the other teams to a credit-and-trade regime.

PD, p. 32: At caucus, we were able to address any problems we had with their actions at the table, and we could also renew the other groups' resentment of the industry group by reinforcing how against us all they were. We accomplished a lot on behalf of our own interests in just five minutes of caucus time. When industry was stalling one of the votes, we called a caucus to get things settled down. When we came back, we got the vote done immediately and it passed. The caucus provided us with the ability to get groups focussed back on the issue and what needed to be accomplished.

IA, p. 2: I became very familiar with the term "alienation" by the end of negotiations. I (a member of the industry team) entered negotiations thinking our ideas could not be ignored by the other parties. I particularly expected support from the provincial and federal teams, considering that industry ensures maintenance of both the provincial and Canadian economies. I thought we had a strong bargaining position. However, after each decision, I felt more alienated at the table than before. It became clear that the other parties had a certain agenda and the industry position appeared completely irrelevant. Motions were put forth, seconded, and before I could suggest further discussion, a vote was taken and the motion was passed. When I did manage to suggest that the matter be discussed further before a vote, my suggestion was often shuffled aside. Industry apparently did not have the influential seat at the table I expected. Along with this growing alienation came a growing feeling of anger.

IB, p. 2: I was on the industry team, which was alienated. I thought and still think that one of the major reasons why we got alienated is because most people in law come from the humanities, with a disdain for the corporate world. Industry gets blamed for many things and is an easy target for jokes and criticism. Industry was the easiest group at the table for others to bond and rally against.

NB, p. 27: The federal team did a good job of explaining its proposals, yet remained open to hear what others had to say. At times, when the intricacies of their position confused them, they reverted back to the fact that everything was still open to negotiation, and that their proposals were simply that—proposals. They ensured that they asked for other parties' input, and constantly asked if there were alternative proposals.

p. 18: Passing the cap-and-trade motion came back to haunt us later in the negotiations, when we could not decide exactly what the terms and conditions under the system entailed. However, I think passing the cap-and-trade system was the most compromising we could come to based on all teams' interests. Now the future is our destiny and we can decide what will best work for us under the system we voted in. I sense industry has a lack of trust and understand their concern. However, compromise between reaching Kyoto targets and maintaining industry's economic viability must be made. I believe the cap-and-trade system can work to meet Kyoto targets and industry's interests if we formulate the system in a satisfactory manner.

A major misconception held by some individuals and teams is that we have to completely take over another country's system [of cap-and-trade] and implement it as our own. Canada is a very innovative country with a lot to offer internationally. We can observe certain aspects of other countries' systems that have worked or failed, and use their experience as a guide.

IC, p. 21: The frustrating dimension to the group's decision was that it became clear soon after the vote that the teams were in disagreement on the definitions and meanings that would be attached to a cap-and-trade system. I think the federal and provincial teams were just trying to pass motions with the intent of deciding later what the specifics of the motions would be. FA even stated at one point that the federal team would like to get together with the provincial team to divide the credits between them. The unfortunate side effect of passing motions too quickly is that not everyone understands what they have voted for because the idea has not been fully explained or discussed.

Whenever industry raised points of concern, the federal team reassured us that they would take our concerns into consideration later. I thought that they should take our concerns into consideration at the time, as we were there to decide on a system that all parties felt they had participated in and was meaningful to them. The federal, provincial, and NGO teams had turned back to the group's "get it decided quickly" mentality that was encountered earlier during the procedural negotiation.

PA, p. 35: Before we knew it, class was over. I couldn't believe that time was up. It seemed as if we had just started and then it was done.

f) Post-Day-Two Perceptions, Meetings, and Events

PA, p. 35: Upon leaving the class, several of the students hung around outside and started discussing what had happened. Someone revealed that industry was trying to delay the vote. They knew that the vote was going to go against them, so they figured if they could delay it long enough, they might be able to change someone's mind, or else we might all just give up and go to a different issue. I also learned that the supposed neutral chair wasn't being so neutral. He was allowing his fellow industry members to control the floor and speak even when they weren't on the speakers list. Somehow this didn't surprise me from the industry team.

I was suddenly very thankful that we had decided to try next class without a chair to see how things went. The next class we had would be the final one. I felt that there was just way too much to get done. We would never get through everything. I knew we had four hours to negotiate, but it just seemed as if we weren't making any real progress and that we couldn't expect much more to be made in the final class. I found it hard to imagine that four hours instead of two would make much difference.

FA, p. 26: E-mail from FC: Here are the main issues I got out of last class:

1. Cap-and-trade vs. credit-and-trade system: industry and provinces seemed to want a credit-and-trade system; NGOs are with us—cap-and-trade.
2. Carbon accounting—more specifically, credits after a tree is cut down. Only industry wants this...
3. Baseline—???
4. Regulatory body: industry wants trading commission made of certification companies. Province wants to have a say, otherwise they will provide no research dollars. NGOs want representation from all levels.
5. Ownership of sinks: industry: their position is unclear to me; provinces want ownership; NGOs agree with provinces, due to accountability and trading issues.

FC, p. 13: Meetings for the federal team members were held face-to-face outside of class and involved information exchange, trying to predict other teams' positions, debriefing, and mapping out crude strategies.... During the latter half of the negotiations, we had a better idea of what we wanted and were able to work out a general bottom line, which was general control of the cap-and-trade regime and control over who received credits and permits. Our main problem was opposition from the industry team, which felt that there should be an outside commission controlling allocation. We were uncomfortable with this, since the certified companies comprising such a commission, no matter how nonpartisan and neutral, would not

be answerable to the international community in the same way that the federal government of Canada is accountable and subject to penalties. We decided that instead of handling the industry team ourselves, we would encourage the provinces to align with us by giving up administrative control of the scheme to them. In short, industry would have to switch their focus from us to the provinces.

p. 14: We did not see the environmental team as having much power—they were relatively quiet throughout the negotiations until the last session, and were not as vocal about industry's claims as I thought they should or could have been.

PC, p. 20: After I checked with my team and was sure they all agreed [about no carbon sink credit for forest replanting], I e-mailed the NGOs and the feds. The NGOs didn't e-mail me back, but the feds did. They agreed with my proposition, but one of them wanted to have a discussion and make industry feel better before we voted.... I talked to NGOs at the beginning of the four-hour class and they agreed with what I said, but only to a certain extent, so I said, "No problem, we will only vote it to that extent."

NB, p. 20: One of the NGO team had been absent last day, but I asked the other member to meet with me on Thursday to discuss our position.... As predetermined, we met. We decided to e-mail one another with some ideas. I e-mailed ideas; he did not.... I am learning not to get as upset about these things any more. As well, I e-mailed the list of things I compiled and asked for other input. I received my only e-mail response of this whole process from my other teammate, asking that I call her instead as she does not have liberal access to e-mail. I called her, explained how things had gone at the last meeting. We decided to meet half an hour before our four-hour run to discuss some final matters. I e-mailed our intentions for a meeting to our other teammate.

IC, p. 24: I did research on the website for The Centre for European Policy Studies, "Thinking Ahead for Europe."¹²⁸ I found under Article 2.3 of the Kyoto Protocol that parties shall strive to implement policies and measures in such a way as to minimize adverse effects. As industry, we interpret this to mean that the government should not require industry to shoulder the entire cost burden in implementation of systems in order to meet Kyoto targets. One of the consequences of not helping industry would be loss of jobs, which goes against Article 2.3. Both of these points are central to industry's need to have a system that is cost effective.

The Centre for European Policy Studies website had a link to the government of Norway, which has put in place guidelines for Kyoto implementation. Industry found the Norwegian Parliament's guidelines useful in the creation of a system for Canada. The guidelines are:

1. Do not punish enterprises that have reduced emissions early.
2. Link to international systems, such as Clean Development Mechanism and Joint Implementation.

3. Be flexible enough in creating the guidelines to allow for adjustments of the system to meet emission requirements of international commitments.
4. The allocation of permits free of charge to sectors of industry that are not taxed for CO₂ emissions today to maintain a healthy domestic industry infrastructure.¹²⁹

IC, p. 23: The four of us met before the negotiation session to collaborate on our ideas and put them into cohesive proposals. We came up with seven proposals; however, we were only able to bring up one of these for discussion during the negotiation.

g) Day Three

PA, p. 37: This was it, our final class. I was very disappointed at how everything started out. We had all agreed as to the time and place we would meet, and yet only six out of sixteen people were there. I couldn't believe it. This really soured my mood. My biggest peeve is when people are late. I hate it. I think it is very disrespectful. Those of us who had made it there on time started talking and everyone seemed to be of the same opinion... Professor Benson told us to go get some food and hopefully everyone could be rounded up by the time we got back... When we finally returned to the room, everyone was accounted for. I was still a little ticked off because we had now wasted over half an hour waiting for everyone to arrive.

We had all agreed that for today we would start things without a chair. It started out wonderfully. There was a great flow to the negotiations. People were polite enough not to interrupt and things were going fine.

IC, p. 26: We began the negotiation by changing the format that we had been using for the last few meetings; we decided to proceed without a chairperson. As a result, more interaction among the participants, and more question-and-answer conversations were taking place. For example, when there was a misunderstanding, the members were able to discuss the issue back and forth until they understood each other, or agreed to disagree.

NA, p. 12: I enjoyed the more flexible, informal process, but I could see the need for order when we needed to pass motions or vote on issues. It would have been a good idea for us to discuss things informally, but when one group wanted to pass a motion, we should have reverted to a more formal procedure. It was very beneficial for our table to be able to voice our concerns when the issues were still fresh in our minds. Overall, in the informal procedure, the discussion was exciting, lively, and engaging.

FC, p. 13: [Our strategy of shifting the attention to the provinces] was relatively successful, and the last four-hour session of negotiations provided much food for thought, and if the negotiations had gone on, ample background for more strategization. With less actual discussion from our team, I found it easier to observe and follow the different arguments and nuances of body language and behaviour.

PD, p. 15: The start of this negotiation was going to have no chair. This was an invaluable learning opportunity. The open process worked quite well for awhile, until different conversations were going on at the table.... This situation was good in moving forward the talks, but I wonder if they were moving forward fairly. Those people at the table who were more aggressive flourished in this environment. IB, FB, PB, IC, and ID demanded most of the attention and were able to control the floor. FC, NC, and FA didn't even attempt to contribute anything into the discussion during the free-for-all. They just sat back and looked genuinely intimidated by what was going on around them.

PC, p. 12: When we worked without a chair, things actually didn't go as badly as I thought they would. But people got out of line, and you couldn't follow an argument, and nobody would agree on rules of procedure, so you couldn't vote or really even accomplish anything that you wanted to.

IC, p. 27: The noise level gradually increased as more people were excitedly talking and different conversations were taking place at the same time. Some participants became frustrated with the disorganization and demanded that we go back to the chair format. Since the matter was a procedural issue, the group voted on it, and the majority decided to implement a chair. The federal team opted to have PD from the provincial team chair on their behalf. Once again, PB was seated beside the chair and was giving the chair directions on how to proceed.

PA, p. 37: Then, suddenly out of the blue, tempers started rising and things started to get heated. Without a chair to force some control, things completely broke down. There were five separate conversations going on and nobody was listening to anyone else. The room had broken into utter chaos. Without a chair to maintain some kind of control and order to the speaking, I didn't think there would be any way to stop the chaos other than a caucus. A caucus was called and we decided to put a chair back in place.

p. 38: Once we were back from the caucus, you could see that people had cooled down. The chair kept things more broken up and it really hurt the flow. We decide to go with a very relaxed chair who would only jump in if things were getting out of hand.

PC, p. 12: PD as chair wasn't a lot more productive because he was shy about telling anyone what they were supposed to do. He didn't stop people from talking out of turn, and the group didn't follow through on motions.

ID, p. 16: As industry, our strategy was to use standards that the Europeans had implemented, so that at a minimum we would not be disadvantaged against them in the global market. Our research indicated that Europeans had implemented an emission trading system for their industries, while what was being proposed by the federal government at our table was a base/cap system, which would restrict the number of permits our industries were allowed. We saw this as a disadvantage to us in relation to European industry. However, despite our

protests, attempts to implement an agreement to reduce emissions based on the European model failed at the table. The power had shifted at this point, and led by the provinces, the group pushed through a base/cap system before we barely had time to utter an objection.

FC, p. 16: Caucus time ... [brought] a general consensus among the various nonindustry teams to bring a motion to vote. I received the general impression, or at least it was not contradicted, that the industry team was seen as being intractable and somewhat unreasonable in its demands. In the last negotiating hours, a federal team member was able to privately negotiate with an environmental team member and put forward certain propositions that would look palatable coming from a third party. It was enlightening and interesting to see fellow negotiators being very conscious of seeming overly aggressive without support, yet asking negotiators on other teams to bring forward the same arguments.

IC, p. 28: It soon became apparent to industry that the motions being put forward and voted on were previous agreements made during caucus time between the other groups. We were not brought into any discussions with the other teams, although they seemed to all be working together. They had formed a voting block. When the motions were put forward, it appeared as if we were slowing the process down because we were the only team that wanted to know the details and how exactly everything would work out. I felt as if the atmosphere had changed. The other three teams wanted to rush motions through, even though we did not have the details worked out, and none of the teams agreed on what the motions even meant. I understand the desire to pass motions, as it gives a sense of accomplishment; however, the motions that were passed did not seem to accomplish much. Generally, the federal team would delegate to the provincial team, who in turn said they would figure out the details later. This entire train of thought was very frustrating, and when industry tried to point this out a few times, we were seen as the roadblock to the negotiation. I think that is why the other three teams continued to propose motions, while ignoring our requests to discuss the exact features of the new carbon credit-trading system.

PC, p. 16: One of the most frustrating parts of the negotiation process was when we had other parties' agreement and commitment, and then they changed their minds. At least twice we were led to believe that some other parties would be backing us up and they didn't. I understand that negotiation might not always be done in good faith by some people, but it was absolutely no advantage to them to lie to us. They did not gain anything from us by telling us they were on our side. They would not have lost anything by telling us that they didn't agree with us. But still, they led us to believe they agreed with us and then did not follow through. I guess they changed their minds or chickened out. But if they changed their minds, the least they could have done is explain it to us. And to go back on a deal because you chickened out is unthinkable to me. I guess we are old-fashioned because we believed that when someone said they'd do something they would. We were very disappointed.

NB, p. 19: I am amused by how our team was propositioned by all other teams during caucus time and outside of class. They all started their serenade by stating how we both have common interests. How on earth could we have common interests on the same point with all the parties?... We have not once made a commitment to another team, but instead have let them think what they want to. As a result of this, each team *thinks* we are on board with them. They see what they want to see.

PD, p. 20: Half-way through the four-hour class the feds came to see us in our caucus and told us they were fed up, so I said, "Let's put it to a vote right away" [the issue of no carbon sink credit for replanted forests]. They agreed, but when it came back to the discussion and industry wouldn't participate, the feds felt bad and wanted to convince industry that they would be taken care of. Because we didn't have a strong chair at the time, the issue was never brought back to a vote.

PB, p. 21: During a series of informal meetings occurring over a break in the four-hour negotiation, agreement was made by the NGOs, federal, and provincial representatives to give "permit authority" to the provinces. It was also agreed that I would call for a vote on the matter, and that it would be seconded by one of the parties, at which time we all would vote for the motion. When the negotiations resumed, the issue was raised and discussed for some time in an effort to gain the support of the industry representatives. It became clear that they were adamant at stalling the issue through unsuccessful motions to suspend discussion, so I called the question.

To my surprise, there was no seconder for my motion, as had been agreed during the prior informal meetings. I then forwarded a note to NGO and federal representatives asking, "What's up? I thought you agreed that you were going to vote on the matter."

The reaction from the NGOs and federal government was one of uncomfortable surprise, not by the content of the note, but by the fact that I forwarded a note at all. Upon discussion during the next caucus, they informed me that they did not second the motion because it seemed that the industry representatives wished to further discuss the matter. I then expressed my feelings that industry was trying to stall the matter and that they were taking extreme efforts to be unco-operative, and it would be best for us to just "push it through."

NB, p. 26: Other parties ... have propositioned our team ... to swing deals and form agreements that will pass a motion so we can move on. We ... continue to listen without saying a word.... Each assumes that we are on-board ... we never said yes or no to anyone.... When we met back at the table,... the provinces sent a note ... asking why we did not follow suit. Industry asked why they were not being included in the notes being passed around the table. This was in reference to a note the provinces had sent that said "for NGO and federal eyes only," referring to a motion the provinces wanted to make in relation to an advisory committee to the governments about emissions.

All of this revolved around a mess that had been building from the outset of the negotiations. We were having difficulty agreeing on a credit and permit system and what it should entail. At the same time, none of us could agree to an appropriate enforcement body. Industry is sceptical (understandably so) of government running the system. The governments think an advisory committee is sufficient. We proposed a system that we thought would be a good compromise for all, and once again all sides interpreted things the way they wanted to. In the end, the provinces sent the note. What industry did not know is that we did not go along with it. When handed the note, we read it, but this does not mean we agreed to it.

PB, p. 22: The industry representatives had a very strong reaction to the passing of the note, and stated that they would like to know what was in it. One representative from industry even went as far as to request the note. All of this greatly increased the level of tension in the negotiation and ultimately resulted in the industry representatives' withdrawal from discussion upon second motion and passing of the motion that gave permit authority to the provinces.

PC, p. 18: There seemed to be a lack of reality when industry asked us what was on the paper we were passing around. That strikes me as incredibly unprofessional; if the writer meant it to be communicated to them, it would have been. This is not a day care; secrets aren't ruled out, and we don't have to share everything. In Parliament, people pass notes; there is a whole group of people actually employed to do that. Further, industry seemed to be implying that we were breaking some rule by talking to people outside of our scheduled negotiation time. That just seems like an obvious part of the negotiation process to me.

NB, p. 31: As NGOs, we were not perceived as an equal party. Yet we were regarded as the pawn that if played correctly could sway the momentum in the proceedings. When a team is perceived as the pawn, clever tactics must be employed to dodge the never-ending propositions made by other parties. Being the pawn is very empowering, but must be handled carefully. Propositions can result in major turmoil and lead to personal attacks. We experienced this when industry [accused us] of underhanded dealing. Being attacked for such things is not a good feeling.

IC, p. 28: Halfway through the session, after trying the process with a chair and without a chair, the class decided to proceed with no chairperson. In the absence of a chairperson, the communication amongst the negotiators operated efficiently. Everyone respected the other members of the group enough to allow one person at a time to talk. I believe [we] learned from our earlier attempt at a chair-free option that we could maintain only one conversation at a time and still have a semblance of order.

There was a noticeable difference between conducting the negotiation with and without a chairperson in terms of who would speak. I found that without a chair, some group members would stop talking. There are definitely outspoken members of the class who will talk regard-

less of the procedure in place to monitor their speech. However, the quieter members of the class would not speak when there was no order to the process. I can only speculate that those who did not speak did not feel comfortable trying to vie for the floor in order to be heard.

p. 29: Industry called a caucus because motions unfavourable to us were being pushed through, and we saw a note being passed from the provinces to all of the other groups except ourselves. We tried to find out what was on the note, to no avail. We knew that we would be outvoted three to one; as a result we had to think of some tactics. We decided to get on the speakers list as much as possible to get our points across.

ID, p. 20: During industry's caucus time in the last two rounds of negotiations, we realized that we were fighting a dying battle. There had been a shift in the power balance among teams, and the other parties were no longer prepared to listen to what we had to say. It was during this caucus time that we decided to pull out the power card of impending doom, withdrawn investments, or possible bankruptcy if we could not be assured of certain protective measures. We felt we were almost pushed into this type of power move as a defence rather than an offence to try to force the other parties to listen to us.

IB, p. 18: The most dramatic moment for the industry team came in our last negotiation session, when we were so frustrated at losing motions and the appearances that all the other teams were colluding against us. There also appeared to be notes floating around that we were not privy to. It is one thing to feel as if you are losing. It is another thing to feel that nothing you say or do will make any difference. I think IC said it best when she told the class that if they were going to make decisions without us, then why were we invited to the negotiations? We had sensed that it would get to this point as far back as our caucus, so we had planned to have a tirade or speech and then walk out. We were thinking of doing this around the time that ID had to leave for [her other commitment].

But things backfired because around the time ID had to leave, things were actually going okay for our team. Consequently, we did not feel that it was an appropriate time to have a tirade because it would have seemed unjustified. However, IC and I had whispered to this effect, then passed the message to IA, who was about to pass it down to ID, but by that point it was too late. ID had already launched into her speech, partially due to the fact that she thought it was still the plan, and partially due to her wanting to get her frustration off her chest before leaving.

There was little the rest of us could do. Perhaps we could have signalled her for a little sidebar, but that would not have looked good. I would rather have to deal with the consequences of having a team member say things that are slightly off-point than appear to be dis-jointed even for a moment. It would also have been seen as though the rest of the team was undermining her and would have made her feel embarrassed. Therefore, I think we did exactly as we should have in the moment.

ID, p. 13: I agree with Fisher and Ury when they conclude that despite attempts to be interest based, parties may still misperceive and not fully understand the needs of others. When the federal team addressed industry as a show of good faith and asked for our ideas to contribute to their plan, I was still under the impression that they just didn't get it. During the time I was getting very irate and conducting my second rant and rave, I remember looking out at all their faces and seeing these blank stares. I interpreted the stares as them not caring. This infuriated me no end. As I was talking, in the back of my mind I was searching for something, anything I could say to make them understand what I believed was a very real threat for my industry. Despite all of their interest and desires, I was fighting for what I perceived to be a basic human need, something that would affect my people as they came to a decision.

p. 30: My use of negative emotions was done at a point when I deemed the situation had become truly desperate.... I noticed a hush across the room when I was speaking. While at many times during the negotiations teams talked among themselves, or caucused with another member of a different party trying to work something out, all this background chatter and noise came to a halt while I was ranting. Thus the high negative emotional state did succeed in drawing attention to my cause and desperation, in drawing very rapt attention to what I had to say.

Another observation I made while speaking in this negative manner was the sudden clarity of thought. Suddenly all the ancillary issues melted away and I was able to get to the big picture, and was seeking to evoke a spirit of co-operation to get to this end, and using a threat as a last resort should trust and faith prove too little too late. As to the ultimate effect this had on the other parties, I cannot speak directly as I had to withdraw from negotiations early due to a completely unrelated matter,... but when I walked out the room was silent. At that point, I was informed that my team employed another negative emotional style, giving the other parties the silent treatment, even when asked a direct question. I believe that together these techniques aided in finally driving home our point that we were scared and being excluded. I find it amazing that other teams began to argue our issues for us in the end amongst themselves.

If there is one thing I have learned from using this negative emotional style, it is to take a minute and actually listen to what the irate party is saying. From my experiences and readings as to when others have used such techniques in negotiations, the reason is because there is some fear or issue that is not being addressed, such as a feeling that you are not really being listened to or are not justified in your beliefs. Consequently, I would counsel in a multiparty situation to show some kind of response indicating that you are listening and taking heed [of] what the other party is saying. Responding in a hostile manner would be the wrong way to deal with the situation. There is likely something at the heart of the issue, such as survival, fear, or security, that the other side, while they may think they understand, either doesn't understand or has not acknowledged as legitimate. As such, the issue needs to be dealt with in a satisfactory manner to calm the fears before negotiations can move on.

IA, p. 6: There came a point on the last day of our negotiations when I felt that our team had received no consideration of its needs from the other parties. We got so angry we wanted to leave the table. As an alternative to leaving the table, we chose to try the silent method: to sit back, say nothing, and see if the others even noticed that we had stepped back from the table. Initially this made the provincial team very angry, supporting my anger-breeding-anger philosophy. However, on another level, this tactic worked. Others began to show interest in our needs without us expressing them. It took silence to get attention.

PA, p. 38: Up to this point in the class, nothing had really been accomplished. There was much heated discussion about the various systems and what everyone wanted. It was very evident that industry was still bitter about the last vote they lost. They were feeling as if no one was listening to them. We were all listening, but no one was agreeing with them.

Then, without much notice, PB forced a vote on one of the most hotly debated topics of the day. He knew full well that he had federal and NGO support, so there wasn't a doubt in his mind what was going to happen. He was right. The vote passed three to one, with industry being the one to disagree. Boy, was industry mad. I have never seen a group of four adults look like such children. They actually refused to speak to the rest of class because they didn't get their way. When they did speak, they were livid, and accused us of shady dealing because we had gotten agreement from the other teams before the vote. IC was demanding to know what was contained in a note PB had passed to the NGO and federal teams. Industry was coming across like a bunch of children on the playground having a temper tantrum because they lost a game. I found it all fairly funny. [A member of the NGO team] had told me earlier that industry had been continuously coming to them for support. Trying to get the NGO team to back them, and then when it doesn't work out for them, it is suddenly wrong. They would have done the exact same thing had they been given a chance. In fact, they tried to do it themselves; it was just that they offended too many of the groups to ever get away with it.

I also couldn't believe they were demanding to know what was in the note and what was discussed in our backroom meetings. I couldn't even believe they were saying such things. I couldn't imagine something like this ever happening in other negotiations. Note passing and backroom deals are a common occurrence, and the only reason the industry team was mad was because it wasn't favourable to them. I can't even say I felt sorry for them. All I could think was, "suck it up."

Then when they finally did re-enter the negotiations, they were taking very personal jabs at PB for the way he was dealing. I felt that was entirely uncalled for. I know they were upset because things weren't going their way, but to start attacking someone personally ... I mean come on, are we grown adults or not? Eventually negotiations got back to normal, but by that time the class was over and we were done.

NB, p. 23: Today there were some especially tense moments. At one point, industry either

strategically or sulkily withdrew themselves from the negotiation. I cannot decide which motive to attribute to their actions. At this point, some uncalled-for stabs were dealt by two members at the table—one from industry and one from the provincial team. I thought this was infantile, but also acknowledge that tensions run high during negotiations. All people handle things differently.

PD, p. 16: During the four-hour negotiation, there was another vote of which industry was afraid. There was another rant by their group, and the threats again revolved around money and jobs. The stall tactics this time were not as successful and the vote was passed. The industry group was visibly upset. After a caucus, the industry group refused to talk at the table. It was quite the scene, with pouting and short, no-comment answers to direct questions. I thought it very immature; it was either to get the rest of the group to feel sorry for them, or to try to regain some power at the table. I think they expected other groups to start to concede things in order to coerce them back to the table. This was the most childish display of negotiating I could imagine, but I think they really expected to be begged to come back into the proceedings.

p. 27: One of the most interesting times in the negotiations was in the last session. Industry came back after a caucus and did not say anything for quite awhile. They sat at the table, refusing to speak or answer a question.

It was quite amusing to our group, as we thought they were being very immature. It was actually a bit of a relief to have some time to negotiate in the group without them trying to be in the centre of everything. This tactic was trying to utilize a sudden change of mood to confuse the other parties and create vulnerability to demands.¹³⁰ The federal government was extremely concerned with their silence and overcompensated to try to get them back in the conversation and save the relationship. They asked them direct questions and tried to elicit some response. We thought this was playing right into industry's hands, as they were only looking to gain power by this sudden change of mood.

PC, p. 18: There were a lot of tactics at work during these negotiations. Some were subtle; others were not. For example, IB's tactic of letting his teammates answer questions when he was chair took awhile for me to catch on to. Industry's tactic of talking as much as they could to prolong a discussion on a vote they knew they would lose was absolutely frustrating, but it was working. So after awhile, we all decided we would just vote on things and forget about what industry had to say. Then they switched tactics; they stopped talking. At first I thought, this is the stupidest tactic ever. Who's going to care if they just sit over there pouting? I deal with that in my three-year-old niece all the time; I didn't think I'd have to deal with it in negotiations.... Then something happened. The feds started asking for industry's input. They started trying to reassure them and ask them what they wanted. And I was thinking that it was crazy. They kept threatening to walk out and take their industry with them, but with the

exception of the car manufacturers in Ontario, all of Canada's serious industries have to do with natural resources: coal, potash, forestry, fish, hunting, diamonds, agriculture. None of that can be moved; I couldn't figure out why the feds felt the need to cater to industry. It was all their tactics. The silent treatment made the feds feel bad.

IC, p. 30: We decided to remain silent, our form of a symbolic walkout. Our tactic finally made the other teams realize that they were excluding us. At this point, the federal team became very interested in hearing our viewpoint on certain topics. When we sat silently and did not respond, they continued to discuss the issues and tried to involve industry and wanted to know what would be best for us. I found it very difficult to stay silent, as they were finally engaging us, which had not happened for the last three hours. However, our group had decided to remain silent, so I stuck with the group decision.

IA, p. 8: In our simulation, two negotiators directed negative comments at one another as personal attacks. During the final day of negotiations, a member of the provincial team suggested that the industry team was pouting. This was a response to our experiment with silence. A member on our team did not appreciate the negative comment and struck back with a hurtful personal comment. This was unnecessary and caused the negotiating mood to deepen.

IB, p. 19: Things were going well for us [with the silence] until PB ... spoke up with something to the effect of, "If industry is done pouting, maybe we can get somewhere in these last few moments." I was completely incensed. The word pouting stood out with me. I remember turning to IC and IA with an indignant look on my face and being a little surprised to see that they were not as mad as I was. I guessed that they did not hear exactly what he said, so I wrote the word POUTING in huge letters on my notepad and showed it to them. They both looked at the word with shock... It was amazing to me how PB had undermined our entire silent protest with the painful use of one deft word. He turned our insightful and strategic vow of silence into a form of senseless, irrational, and childish behaviour.

IC, p. 30: Our silence lasted until PB made a patronizing comment that "industry was pouting." His comment was a cold splash of water in the face—uncalled for and hurtful. However, the comment brought me back into the negotiation quickly, to defend our team and to let the group know that we were not pouting; rather we were making a point. I may have been drawn back into the negotiation by emotion, and I am not sure whether my team agreed. I still believe the tactic worked for us. We finally had the other teams' attention, and it seemed important to the federal and NGO teams to include us in the decisions.

PC, p. 22: The worst part of the whole negotiation for me was when things got personal. There were very high emotions in the room; each group knew how they felt about the other groups and their positions and tactics. But when a comment about tactics was responded to with a comment about someone personally (using the name of that person), I felt this was where the line had to be drawn. The whole room went absolutely silent. And it wasn't that it

was a terribly nasty thing to say, but it was that someone had taken the antagonism in the negotiation and class setting and made it very personal. To me that was incredibly inappropriate. I can't imagine a professional negotiator ever acting that way, although I guess upset parties in a negotiation may act that way. Maybe at some time in some place it could serve a tactical purpose (although I can't think of one). But here there were no tactics. It was just a negotiating party losing its cool, and it visibly made the whole room uncomfortable. I really think negotiations slowed down after that comment.

IB, p. 20: After that, we were forced out of our shell and we slowly began to negotiate again. At this point, it was close to the end, and I think that the entire class was starting to recognize that we were about to end without having agreed to very much. So I think that everyone suddenly started to loosen up a little bit, and we finally agreed to a small motion. Even though it was small, it was very satisfying to finally agree to something. I never thought that I would be so overjoyed at such small progress, but it did the trick.

IC, p. 29: With only minutes left in the negotiation, the group agreed upon a motion.¹³¹ I think we all wanted to end on a positive note after a lengthy session of nondecision.

NB, p. 22: I *am* glad that we ended the day with a passed motion. For some reason, by the end of the four-hour run, I too needed to feel as if we had accomplished something.

p. 28: After four hours, I was almost relieved that our time was up. Not because I wanted our substantive negotiations to end, but because we needed to end for today. Tensions were high, energy was drained, and it was time for the day to end.

h) Retrospective

FC, p. 15: As part of the federal team, I was satisfied that we were accomplishing our agenda, especially when all the voting in the substantive negotiations was favourable to our party. When I observed the unhappiness of the industry team, I had to reassess the success of the outcome. I was struck by the thought that any ongoing or possible future relationships with these leaders of industry had been damaged. If this particular negotiation had been one in a long series, I would have approached it differently, with an eye for the long-term goal....

The process of negotiation can be as important as the result itself. If we had not hurried to make a motion to vote, but explored some of the issues with the industry team, or one of us had made an overture to an industry team member in private during caucus periods, things might have gone much more smoothly.

PB, p. 21: I had wrongly assumed that it was common knowledge that the passing of notes between parties during the formal negotiation sessions, and the interparty discussions that took place during class breaks and caucus periods, were standard practice in the multiparty negotiation setting. I should have considered that prior to the passing of the note, the tone of

the negotiations was extremely adversarial and unconciliatory. I also should have considered the possible reaction of the parties to the note prior to sending it, as my decision only contributed to the unconciliatory tone. Further, I did not realize at the time that my reaction was also highly adversarial, in that I requested that the NGOs and federal representatives assist me in pushing the motion through the process despite the industry representatives' dissent. Extra efforts should have been made on my part to assist in the creation of a negotiation environment more conducive to discussion and co-operation.

FC, p. 4: The aim is to define a problem in terms of the parties' underlying interests, so that it is possible to find a solution that satisfies both. Upon reflection, this was not done very well at all with regards to the issues of credits and permits and the resulting discussion on cap-and-trade.

FA, p. 24: The federal government did not articulate what was in our proposal for industry. This is probably due to the fact that industry was competitive and came across as adversarial from the beginning of the negotiations, and we did not consider their interests thereafter, perhaps alienating them further.

PA, p. 40: I am fairly confident that if we had had more time, we could have come to an agreement that everyone was happier with. The time constraint put lots of pressure on us to try and come to some kind of agreement so we could get a sense of accomplishment.

IA, p. 15: Our team determined that the credit-and-trade system was the best option to meet our needs. Clearly we had not considered all the possibilities or arguments against this system, as by the end of the discussion and into the next day, I could no longer remember why we so desperately wanted this system. I became frustrated at trying to answer questions about this system and angered with the teams who did not seem to understand.

p. 23: In our simulation, what was entirely unexpected was that the NGOs wanted a neutral third party to run the trading system. It was not surprising that the federal and provincial teams wanted to keep their hands in the cookie jar, but we, the industry team, also wanted a neutral third party. Considering that NGOs are environmental protectors and industries are its primary polluters, we expected to find nothing in common with them. We had in fact inappropriately discounted their views under the mistaken assumption that they would not agree to anything we wanted. While their reasons for a neutral party were no doubt different from ours, it is a convenient demonstration of when discussion of basic interests would have been beneficial. We could have launched a positive relationship with the NGOs instead of harbouring negative impressions that were unjustified.

ID, p. 28: In our negotiations, I would not say any party was outright hostile to another party. The presence of more parties in a multiparty context makes it easier to control negative emotions that would lead to hostility. Each time I conducted a rant and rave, followed by a threat, while negative, I did not intend to be hostile. My wrath (I was not angry at the people

so much as angry and scared of the situation I found myself in) was not vented on one particular party. I tried to address everyone, looking at everyone and no one in particular at the same time. I believed that by conducting myself in such a way, my negative expression would not be [focussed] intensely on one particular party, and would thus alleviate some hostility.

p. 14: I believe that tensions arise when one party's concern is not being heeded. It is vital that we be legitimized in the others' eyes. No one likes to feel they are being patted on the head and told to settle down like a child out of control who doesn't know what is best for them. Until we can truly understand and recognize the other party's perspective, and relay to that other party that not only have we heard their concern, but also that we acknowledge it as a valid concern, I don't think multiparty negotiations can ever be truly effective. In the end, even if an agreement is arrived at, nobody really wins, as no one will be completely satisfied.

IB, p. 26: It was a good learning experience to feel that we, as industry, were the odd ones out, because in my previous negotiation experiences, I had tended to be on the side of the majority. I never knew how personally frustrating it is to walk into a room and know that each day is going to be a major uphill battle wherein it is unlikely that my side will prevail.... A criticism I would have of the other groups was their inaction upon learning that we were starting to feel alienated. Our team kept on hinting that we did not feel as if we were part of the negotiations. Our team even said words to that effect out of frustration with the fact that nothing was changing with regard to the behaviour of the other teams. The Kyoto Protocol will not work without the participation of industry... While the other parties want to get their points across and win the debate, it is imperative that parties that have to implement the new plans do not walk out on the negotiations.

NA, p. 24: As I look back, I can still feel how uncomfortable the environment was when the negotiations totally broke down and industry stopped talking. We could have continued and voted without them, but I was most impressed that the other groups tried various means to get them talking again. The negotiations might have been successful, and we probably could have resolved many issues quickly when industry stopped talking because they were the group that frustrated the discussion the most, but we did not. I do not think it was a purposeful strategy on the part of industry; I believe that they were really angered by the coalition they perceived to be taking place against them and decided to just stop talking. Whatever the reasons, it worked, because we all came together with a common purpose and tried to include them back into the negotiations.

It was at this point I learned an even more valuable lesson of human nature. It would have been a hollow victory for the table if we had moved on without industry, and instead we all tried various means of coaxing them back into the dialogue. For the first time since we started these negotiations, we were a group co-operating for the common goal of getting industry back to the dialogue.

By the end of the day, we were still stuck on the first question. We could not seem to resolve the credit/permit issue. I do not think we even came to any common understanding or definition of what a credit and permit actually are. However, I think that we caught a glimpse of something greater than a credit/permit issue when the negotiations truly fell apart. We felt for a moment like a group of human beings working together for a common purpose. I do not know how I would answer whether or not our Main-Table negotiations were a success. I guess I would have to say it depends. It depends on how one measures success. I think we learned more from the whole experience, even if we were not successful at reaching a collaborative resolution of the issues at the Main-Table negotiations. I think that we were successful because we learned a valuable life lesson on the complexities of human nature.

p. 21: I know that what I learned during these negotiations will stand as a reminder every time I sit at any table in the future. I will remember how aggressive industry came across, how arrogant they acted, how angry they became when they did not get their way, and how uncomfortable we all felt when they sat in silence.

IB, p. 27: I think that our negotiation failed, or would have failed if it ... had played out till the end. The other parties became too secure in the fact that voting would carry the day and create legitimacy. However, I think that multiparty negotiations require a huge degree of diplomacy.

Parties cannot win a vote on an issue and then spit in the eye of the losing party. The winner of a vote needs to be all the more gracious. Just as in alternative dispute resolution (ADR), multiparty negotiations are only as effective as the degree of participation of the parties and their faith in the system. The ability to negotiate without being perpetually concerned about how votes will turn out is what gives ADR and multiparty conflict resolution their strength. If all that was going to matter was the vote, we need not have spent so much time negotiating, but rather just had the public-at-large or our constituents vote on it at the outset, without any discussion.

The class might have acknowledged the importance of having a balanced discussion rather than regular voting if our simulation had included the portion of the process where each of the parties takes the proposals back to their constituents to have it approved. If that were part of the process, it would be unlikely that industry would even be willing to bother taking it back because of inevitable rejection.

Personalities

[Individuals are the movers and shakers of negotiations at all levels, and the particular combination of skills, strengths, proclivities, and vulnerabilities at the table—individual uniqueness however one defines it—profoundly alters outcomes.]

NA, p. 21: I could not have fully realized the impact that individual personalities have on the negotiation process without this simulation.

IC, p. 31: [T]he personalities of the members of the class had a large impact in determining the direction the negotiation would take.

PC, p. 7: Maybe the decisions would still have been the same, but the personalities affect the process. For example, when we let industry know that we thought they were asking for ridiculous things, and they let us know they thought we were jerks, it added tension to the process.

NA, p. 19–20: I was surprised that the personalities of the negotiators could have such an impact on the negotiation process. Actually, in retrospect, I was a little disturbed to see how much personality conflict could affect the outcome of the process. I was under the impression that negotiations are preferable to an adversarial system for resolving conflict, because the process strives for outcomes that are most beneficial to all parties involved.

ID, p. 3: In *The Negotiation Process and the Resolution of International Conflicts*,¹³² Hopmann, reflecting on personality style, indicates that everyone falls under one of two categories: task-oriented, or affect-oriented. Task-oriented people appear to have little at stake personally in the outcome; rather, they concentrate on accomplishing the specific task at hand. Affect-oriented people, on the other hand, tend to be more emotional, displaying more of their personalities in the negotiation, and trying to focus more on the big picture rather than details.

IC, p. 31: I think most of the class was co-operative and wanted to come to an agreement that would be in the best interest of their team as well as the group. There were many leaders in the class and sometimes this caused conflict, but usually the participants respected each other's opinions and listened and tried to understand different points of view. There were also quiet leaders, who may have been directing the scenes from the background without other participants knowing they were in control. Finally, there were personalities who were more inclined to follow the direction of their teammates or classmates, rather than causing conflict by disagreeing. The different roles people were willing to take on depended on their personality and how comfortable they were in expressing their opinions to a group.

PD, p. 23: FC was ... very quiet and was mostly on the sidelines for the free-for-all and during the heated times. But when she did speak, she was decisive, intelligent, and convincing. When she was asked a question, she could capture the interest of the whole room by her knowledge and speaking ability. Gifford talks about how the effective co-operative negotiator is someone who has the ability to develop positive working relationships and trust, yet at the same time can be persuasive.¹³³ ... FC could have said that the world was flat and I would have believed her. Everyone seemed to really value her insight and trust her statements almost unconditionally. She was a very powerful force at the table, even without saying much....

p. 35: FC proved that you don't have to be a dominating personality at the table to be a dominating force in the negotiation.

PA, p. 31: PC was very quiet, and when she did speak her tone was soft and polite. She almost seemed a little shy and afraid to put her opinions to the group. I know PC is a very confident person, so I was shocked by this. The really interesting part was the effect she had on the group. It seemed that when she spoke it helped relieve some of the mounting tension.

IC was outspoken, but in an informed manner. It was quite evident that she had done a lot of research into this ... she knew precisely what she wanted and wasn't afraid to go after it. IC wasn't afraid to say what she thought and stand up for what she wanted.

PB was very outspoken; he has done lots of work in these types of situations and was speaking from his experience. I found it interesting that his experience appeared to make him a threat, in that everyone seemed to think that he was just trying to serve his own ends.

PD was fairly quiet. He only spoke up when he had something valuable to contribute. His tone was always soft, and other people seemed to respond positively to this.

PD, p. 6: I knew FB from before this class, and I had a lot of respect for her as a very intelligent and determined person. She also brings a lot of life experience that few of us could match. I knew very little about FA and FC....

I knew NC quite well as we had taken a class together in undergrad. I knew he was an intelligent guy who was not afraid to contribute his own opinions. NB was in my first-year class, so I knew her well. She is a very outgoing, social person who is not afraid to let her point be heard. I had never seen NA before this class.

The industry team was the most intimidating and influential group on paper. I have had many classes with IA, and I knew that she was extremely intelligent and a very intriguing speaker. ID was also in many of my classes, and I knew that she was a very emotional and charismatic person. I also knew IB well, and I was very aware of his high intelligence and manipulative speaking ability. As if this group wasn't powerful enough, they also had IC. I know IC quite well, and one thing I know is that she loves to disagree. In all nine years of my academic career, I have never met anyone else who is able to antagonize me in a conversation like IC. This group was going to cause some serious problems unless we could find a way to balance the power with which they were coming to the table.

My group was the provincial government. I have known PB since we started law school almost three years ago. He is extremely intelligent and very creative. He also has extensive experience from the LSA meetings. I also know PC quite well, and it was good to have an emotional person on our side to counteract ID within the industry group. PC is a hard worker and very intelligent. I barely knew PA, but he always seemed like a very mature and polite guy. I thought he might be perceived as more professional to the rest of the group. I was happy with our wide range of personalities.

NB, p. 24: I concluded today that certain personalities are well suited to negotiate, and that others should *not* be negotiators (or at least need to hone their skills and work much harder to do what comes naturally for others). The latter category includes:

- people who let their emotions take over and lose their ability to separate their emotions from the negotiation process;
- people who are unwilling to learn bona fide information in the area they negotiate, but who hold strong opinions on the matter;
- people who are extremely competitive;
- people who only think in black and white, inside-the-box terms and cannot see the beauty of the grey; and
- people who do not listen to others.

This list is in no way exhaustive, but outlines some of the personality traits that get in the way of a good negotiation process.

Physical Facilities

[The comfort, convenience, efficiency, and functionality of physical facilities, or lack thereof, can enhance or constrict negotiations.]

FC, p. 11: [N]egotiation theories may benefit from areas of study such as proxemics, which is the communicative use of space. Territoriality, personal space, and group seating arrangements can be used to encourage or discourage interaction.¹³⁴

IB, p. 4: The round negotiation table in the small classroom seemed like a good idea at first, but by the end it seemed too constrained. The room itself made it difficult to change the format of our meetings. It was impossible to use visuals; even using the chalkboard was a chore. The benefits of a round table are that there do not seem to be clear teams, positions, or battle lines. A problem with the round table is that it makes it difficult to communicate within groups. Given that our primary mechanism for communication within groups was whispering, it was hard to get a message across to the people sitting on the ends of the team's section of the circle. Passing on a verbal message ultimately leads to confusion as it always gets mistranslated, and a significant amount of time is wasted when at least one person in the group is not listening to the debate. There were suggestions of using a square, or perhaps a circle in which two of the group members were sitting behind the other two in order to facilitate whispering. However, the decision to let everyone speak meant that each team should have all of its members at the actual table.

PB, p. 23: Given that the formal negotiations took place around a circular table, around which there was little or no room to adjust the placement of chairs, the members of groups were forced to sit in one row beside each other. This made communication within the group very difficult during the formal sessions, as I could only effectively communicate with the

members of the group sitting immediately beside me. In caucus I felt part of a strong communicative group, but in the negotiations context I felt shut out from half of the group. [Others reported that] this seating arrangement also discouraged some members of the group from participating in the formal negotiation session, because they were unsure if the entire group agreed with the statement or point they wished to communicate to the other groups.

PC, p. 15: There are certain things that you don't realize will affect the negotiation, but do. For example, the particular room we negotiated in. The fact that we negotiated around a round table made the parties feel as if they all started on equal ground. However, with a team of four, it was a hindrance to have us all lined up around the table, because you could only talk to the people on your team who were sitting right beside you. It really stifled team conversation. I think if we had been able to talk among ourselves about more things, we would have been more vocal. The other aspect of the room that affected us was its size. Your back was always against a wall so you felt closed in—as if you had nowhere to go. I think being closed in meant the energy in the room had nowhere to go, so the room just got full and more tense. If we had been in a larger room with more space for both energy and people to diffuse, it would have been a lot better.

IB, p. 4: Another desirable aspect with respect to venue would have been a common lounge area, be it coffee room, water cooler, or foyer. Once teams left the room [which opened onto the library], everyone dispersed because there was no clear place to go. This decreased the ability of groups to make agreements behind the scenes. It also decreased the ability of the teams themselves to take advantage of the down time, because it was never clear where everyone was.

Groups also needed designated caucus areas to allow one group to approach another to discuss issues during caucus time. This would not only permit deals, but also informal clarification. Discussion time spent on clarifying terminology for specific groups could have been done more efficiently in individual caucuses.

PB, p. 16: The assignment and publishing of rooms for each of the parties would have many benefits, save time, and facilitate joint caucuses. This would also make it clear to all parties that joint caucuses are neither offensive to the formal negotiation process nor a shady backroom tactic—sentiments expressed by a number of the students. On the contrary, joint caucuses would surely foster a spirit of co-operation among the caucusing parties.

Power

[In the end, it comes down to power. Power comes in many shapes, sizes, and forms—legal, economic, political, social, moral, personal—but in negotiations, as in other things, the parties with the most power relevant

to the situation will dominate. Within the ebb and flow of negotiations, power is constantly shifting as different types of power come to the fore at different moments.]

FB, p. 4: Being the underdog [in the procedural negotiations] was no fun.

ID, p. 18: Bertram Spector argues that there will be compliance with the power initiator's desire if the other party believes the force to be imposed is credible, and that the costs of not complying are substantial.¹³⁵ ... As industry, going into negotiations, I believed that our team held power, since we were the economic force.... We were of the mind that what we asked for, within reason, we would get. We believed no one would dare say no to us and risk the economy falling apart.... The other teams did not view our power in the same manner as we did, as in the end they barely listened to what we had to say, and formed their own variation of power against us.

p. 20: Another party may perceive the other's power differently. Comments muttered around the table such as, "Are you going to take the trees and oil with you to the States?" indicated that others thought I could not realize on my threat—that my power was not as influential as I was indicating.

PC, p. 19: Constitutionally, the provinces have a whole lot of power, and everyone refused to recognize that. They negotiated as if the feds had the power, and the feds wanted to please industry, but in reality, when it comes to implementing laws and regulations, the provinces have [significant] power.

NB, p. 19: As NGOs, I get the feeling we are not being listened to and are only seen as the deciding vote. On the flip side, this gives us a feeling of power. Admittedly, we are likely the weakest party at the table, and suddenly the table has turned and we are seen as having a position of power.... p. 33: With the power imbalance comes many roles, one of them being the mediator. The weakest party [may] play out the mediator role because it is not considered a threat to the parties who lack trust.

ID, p. 19: Another instance of power particular to multiparty negotiations is strength in numbers ... the power of coalitions and votes.

IA, p. 26: It would be unrealistic to believe that some parties are not more powerful than others in the negotiating process,¹³⁶ but it is helpful to address this power in the beginning of negotiations in an effort to make parties more at ease with expressing their desires. Feeling powerless may brew concern about expressing your interests. A safe environment is crucial for the release of personal information. This safe environment cannot be fostered if one party's power towers over you. Two techniques are suggested to help minimize this power struggle. First, protect yourself from wrongly agreeing to a decision that does not meet your needs; and second, make the most of what you have to offer.¹³⁷

Protecting yourself against agreeing to an adverse decision will help minimize power influences over your interests.¹³⁸ Be aware of your bottom line and don't allow yourself to be dragged beneath it.¹³⁹ Fisher and Ury suggest that your bottom line inhibits imagination,¹⁴⁰ but I assert that reference to your bottom line merely as a method of ensuring that the powerful do not trample on your interests will not inhibit creativity. Used solely for this purpose, it will eliminate the focus on your bottom line and allow you to focus on your interests.

Making the most of your assets includes referring to your BATNA.¹⁴¹ Use your BATNA as leverage and negotiate on the merits of the issue, knowing that you have an alternative available.¹⁴² Recognizing your options will minimize the power influence over the mind of a weaker party, keeping the negotiating environment positive. Further, keeping your BATNA in mind is a useful way to keep your cool at the table when dealing with a more powerful party.¹⁴³ If, by minimizing power exertion, you can turn the win-lose attitude of a powerful adversary into a win-win attitude, the negotiating environment will benefit significantly.¹⁴⁴

Preparation

[Preparation is as essential to good negotiating as it is to any other form of professional practice.]

PA, p. 39: I think the most valuable lesson I received from this process was that if you are prepared, you can handle [almost] anything that comes at you.

NB, p. 28: One of the most fundamental lessons I learned was the importance of being prepared to come to the table. That means preparation individually, so that you comprehend the points at issue, *and* as a team, so that all members represent the same opinion at the table. There is nothing worse than individuals from the same teams lamenting different facts on issue. Preparation is essential for another reason too: credibility. A misrepresentation on your behalf results in you and your team losing credibility, as well as pronounced monitoring of all your future statements in assessment of their validity.

PA, p. 8: [After trust, the second most important] factor in successful negotiations is very simple in concept but very difficult in practice—preparation. Although this may sound simple enough, it is much more complex than one would imagine. *Webster's* defines to prepare as “to make ready beforehand for some purpose, use or activity.”¹⁴⁵ In *The Mind and Heart of the Negotiator*,¹⁴⁶ Thompson suggests that in order to be properly prepared for negotiations you must have the ability to self-assess, assess the other parties, and assess the situation.

NA, p. 18: The most important thing I learned was that one has to be prepared both emotionally and intellectually for an experience like this. I learned a lot about myself from this experience, but more importantly, I discovered that if I feel comfortable with the knowledge I have, I have the confidence to express myself. After the four-hour session, one of the provincial team members came to me and said that I expressed the things she wanted to say, but

could not find the words. I was so taken aback by this comment because she had no idea how much I struggled emotionally to be able to speak in this class. Having the confidence to give voice to your ideas might not be an issue for some people, but for others it is a real struggle. When I hear the expression that knowledge is power, I will think back to my experience during this class, because I have learned how powerful knowledge can be. I am grateful for having the opportunity to learn this, because law school is a very hostile place for those of us who do not speak so loudly or aggressively. When I hear that knowledge is power, I will think back to this experience and always strive to *know* more, so that I never feel as powerless as I did when I was not prepared.

NB, p. 33: It is impossible to submerge oneself in negotiations without first laying the groundwork. Like running a marathon, there must be preparatory training beforehand to enable one to enter the race. Negotiations require a fit mind, body, and soul for all members to flourish.

p. 34: **Be prepared.** Preparation includes knowledge of substantive issues, as well as mental preparation for what lies ahead.

IA, p. 13: Preparation includes, first, assessing what is most important to you—your needs, wants, and possible alternatives.¹⁴⁷ The second step is assessing the other parties and trying to determine what their desires will be.¹⁴⁸ The third step is assessing the actual negotiation environment, determining the negotiating goal and how to best achieve that result.¹⁴⁹

p. 14: Once these steps are complete, then you can analyze each issue, and within each problem develop subissues that you need to address.¹⁵⁰ By thinking about dividing each problem into several issues at the preparation stage, you can predetermine possibilities that may arise, be prepared to discuss these, and suggest alternatives with your interests in priority.

PA, p. 9: I think one of the biggest messages I got ... is that knowledge is power.... All the parties at the table must have adequately prepared and researched so they know what the other parties want and possible ways of achieving the different results. Coming to the table with the proper knowledge base will provide a huge benefit to the negotiations and allow for a faster, easier resolution of many of the imagined problems.

PB, p. 18: I found the role of the negotiator to be drastically different from that of the chairperson. As chair, one is in part removed from the tensions or may appropriately deal with them through process. As negotiator, I came to know stress the likes of which I have never found in any previous law class. This experience has taught me that preparedness is especially important, and that just as the process must be designed uniquely and specifically for each particular negotiation, so too must one's preparation techniques.

IA, p. 18: Consider the needs of the negotiation. What is the goal and what timeframe do you have to achieve that goal?¹⁵¹ Consider the resources available and whether the goal is

optional or mandatory.¹⁵² ... If all parties are aware of the issues when they enter negotiations, then people are attuned to the goals of negotiation and there will be fewer surprises.

NB, p. 35: **Zealously** learn information regarding the topic of negotiation.

PC, p. 22: I had to be absolutely sure of what I was going to say before I said it. I think it is something that I would get used to after awhile. I think I could even be good at it if I was confident enough. But that's the key; I have to be confident in what I know to be comfortable saying it.

IA, p. 15: The only true certainty I experienced in the negotiating process is that there will be a great deal of uncertainty. You can never be fully prepared for negotiating, and you cannot be certain about the outcome of negotiations. However, by preparing yourself and considering your interests as completely as possible, it will be much easier to prevent unnecessary disputes and hostility. I observed the ease with which negotiations can get sidetracked in our simulation.... Preparation is key to keeping your own mind on track, which will, in turn, keep your emotions in check.

IB, p. 17: Knowing one's opponent personally is not always an advantage. It might confuse the issues, especially if I think I know them well enough to think that I can take my knowledge of their opinion for certain, or for granted.

IA, p. 15: In addition to your own preparation, you also expect the other parties to be prepared. Negotiating is a group commitment and it can be equally frustrating when you spend your own time and energy in preparation for the meeting to find that the other teams are "winging it." This happened occasionally when parties were discussing their needs in the middle of the negotiation. When one party is not prepared and is making decisions on the spot, it shows a lack of concern for the parties who are prepared. If parties are not listening to your ideas because they are not themselves prepared, it causes anger for those who spent numerous hours getting ready for these discussions. In order to be able to listen to the other parties thoughts and ideas, you must be prepared so you don't have to spend time scheming in the midst of discussions. Not listening creates a feeling that "They didn't listen to me, so why should I listen to them?"¹⁵³ This anger, which is completely preventable, hinders further negotiating. You literally cannot negotiate if you aren't listening. An extension of this issue is team members not attending discussions. The message here is lack of interest in the entire negotiations. Without a concern for negotiating, the parties should not even be at the table, and this is not a positive foot to put forward. These inattentive behaviours are bound to create tension, leading to undesirable hostile behaviour. Yet, this conduct is preventable with preparation.

Procedure

[Procedural disputes can bog down a negotiation as quickly as substantive disputes.]

FB, p. 3: Within the various stages of the formal negotiations, procedural negotiations and agreements fall within the pre–Main-Table negotiation phase. It makes sense that before formal negotiations, we need to negotiate the bureaucratic issues of voting, chairing meetings, speaking arrangements, and other procedural issues that we are going to deal with during the substantive negotiations.

FA, p. 3: The procedure adopted at the table has critical relevance to the outcome of the negotiations. It should be carefully negotiated, depending on what participants expect, or desired results, at the table.

PB, p. 10: Process seemed to be regarded as little more than an administrative technicality before the actual substantive negotiations. This was evident in the apparent lack of attention to the *Robert's Rules of Order* forwarded to all members of the class.

p. 15: A well-thought-out process may play a significant role in the smooth operation of a negotiation. Conversely, a poorly designed process may have a dire impact on the negotiation through an increase of personal tensions, lack of perceived legitimacy, and unpredictability. [Good] process is much like a road trip in a well-running automobile, in that one needs to give little attention to the smooth operation of the engine and may focus wholly on the road, the map, and the desired destination. [Poor] process can be like a road trip in a car with missing cylinders, a leaky radiator, and no map, in that one becomes so distracted by the problems with the car that one may lose sight of the destination altogether, perhaps even deciding to turn around and go home.

FC, p. 12: I was one of those who was impatient with the procedural discussion, and would have preferred to be given a written protocol of *Robert's Rules* or general procedure beforehand. However, after negotiations concluded, I discovered that negotiating procedure first was useful, in that it gave time to develop some trust relationships with others in the class, observe negotiating styles, and mentally note which personalities, especially the more forceful and aggressive ones, were on different teams.

PB, p. 10: The proper establishment, recognition, and respect for the process is extremely important, as it is through process that the perception of legitimacy is founded. Crucial to this perception of legitimacy is the transparency and clear definition of the process.

FC, p. 20: I have come full circle, from initially dismissing procedural negotiations as of little to no significance, to now seeing that they are just as important as the substantive issues of the conflict at hand.

PB, p. 9: As the multiparty negotiation may be difficult enough on its own, the avoidable issues raised by the presence of participants uninformed of the requisite rules as laid down in the process negotiations will serve only to direct negotiations towards the grounding reefs of failure.

NB, p. 34: **H**ard-and-fast rules are not necessarily the best procedurally. Allow for some flexibility to ensure that the teams do not feel imprisoned by procedure.

IC, p. 28: I found that the *Robert's Rules* method of running a meeting slowed down the negotiation process, because participants were not able to directly respond to questions unless they were on the speakers list. If you were on the speakers list, by the time your turn came, the point may have been moot, or forgotten. Instead of being able to have a discussion, you were again limited to one point. I found this process frustrating, as people were making points on different issues and there was no focus to the discussion. Eventually, the group made a motion that you could answer someone if they asked you a question and you were not on the speakers list.

p. 32: The use of *Robert's Rules* during the negotiation had both negative and positive aspects. The positive aspect is the fact that we needed some format in which to operate and were moving along very slowly until we implemented *Robert's Rules*. Initially, I think *Robert's Rules* made the class more comfortable when we began negotiating, because it gave us a set of guidelines in which to operate. When the class became more comfortable negotiating, *Robert's Rules* became burdensome. The formal aspects of *Robert's Rules* were helpful when it came to procedural matters such as voting. However, the *Robert's Rules* were inflexible in promoting the flow of communication. We responded to the inflexibility by adapting *Robert's Rules* to meet our needs.

IB, p. 6: I eventually realized that some modicum of structure was necessary in order for anything to be accomplished. In retrospect, based on an occasion when industry and the provinces broke off into their own dialogue in the midst of a regular session, being a guy who is loud is pointless if no one is listening. I think that procedure in a group of active participants is not so much about when and who gets to speak, but more about ensuring that everyone is listening to what is being said. Managed listening is what is most important.

PC, p. 9: The speakers list was very controversial because it started out as having to hold your hand up to talk.... Some people felt that it would stunt the flow of the negotiation ... but [without it] people spoke over top of other people. A speakers list ensured that everyone would be heard.... I think a speakers list made things much more productive once we put in the you-can-answer-a-direct-question rule.

IC, p. 27: I feel that PB is accustomed to being in control of meetings. I could sense his frustration when IB and PD were chairing the meetings and were not adhering to a strict version of *Robert's Rules*. I am immensely appreciative of PB's knowledge of *Robert's Rules* and thankful he was part of the negotiation process for all of the experience he brought to the table. However, I do think that part of the negotiation process is learning to figure out how to find a system of communication and the structure surrounding that system that works best for the problem you are negotiating. In our scenario, using a strict form of *Robert's Rules* was not

necessarily the most appropriate structure for our purposes. In fact, it was too restrictive and often blocked the flow of communication.

PB, p. 10: As chair, my biggest mistake was in assuming that these negotiations would require chair strategies similar to those that I had incorporated in other meetings or negotiations of which I was a part of.... p. 11: My first recommendation is that each negotiation session begin with a statement by the chair clarifying the focus of the session for all participants, as well as communicating that it should be done in a co-operative manner. A statement such as this states not only what is to be discussed, but also why we are discussing the issue. This may be helpful to assist the parties to recognize that there is a common goal, even though there may be disagreement on the particular issue before them. An example applicable to this year's class negotiation might be:

The groups are meeting today to discuss an agreeable and reasonable determination for what is included in the term "carbon sink," so that we may move forward in establishing a mutual understanding of the issues raised by the trade of credits in national and/or international markets.

The second recommendation would be for the chairperson to review the session's progress, decisions, and agreements, and prepare a copy thereof to be presented at the opening of the subsequent meeting. An example of this might be:

During the previous session, the parties agreed that a careful consideration of the forestry industry's economic position must be included in any discussion regarding the definition of carbon sinks, as too narrow a definition may place too heavy a burden on the industry, thus risking current employment levels and the industry's capacity to compete in international markets.

While at first glance this may seem to be only a reiteration of the previous negotiation session, the implementation of a previous mutual achievements/agreements/decisions statement may promote a sense of co-operation and mutual respect among the groups.

The third recommendation is that groups establish a common procedural agenda in each negotiating session, such as:

1. Call to order.
2. Reading of the previous session's resulting decisions/agreements.
3. Reading of the common goals of the current session.
4. [The day's substantive discussion.]
5. Discussion of the next session's agenda.
6. Adjournment.

Similar to the goals statement, deciding next day's agenda at the end of each session would clarify for all members the next focus and help the negotiations through a mutually agreeable

path of discussion. Practically speaking, this may be difficult to implement, as time is short in the context of class negotiations.

p. 5: Opening statements educate each party to the facts, the issues, and the positions/interests of the other parties, thus saving the parties from attempting to divine the other parties' intentions throughout the negotiation itself.

IB, p. 11: In retrospect, I wish I had suggested that each group use the opening statement to state their position and philosophy. Then, separately, each group could have presented a list of United-Nations-style proposals to solve the problem. Following that, we could have gone through each group's resolutions, analyzed, and voted on them individually. It would have made for a much clearer debate.

NB, p. 35: Presenting motions should not be undertaken in an ambush-style fashion. This catches people off-guard. Matters should be discussed before being voted on.

PD, p. 13: When motions or other procedural matters were submitted, those with the experience ruled the table. They were able to manipulate discussion and control the negotiations. Those like myself, who had no *Robert's Rules* experience, felt uncomfortable and helpless in the excitement of the negotiations.

NB, p. 35: Only pass motions if you are very sure that you want what has been motioned. Once passed, there is no going back....

Quit discussing an issue by tabling it, if you feel you are at a stalemate. By resolving other issues, you may be able to come back and agree on something at a later time.

FC, p. 12: In retrospect, I would have also argued against a one-vote-per-team structure, because this is too unrealistic and artificially downplays the power imbalances that are always present in negotiations. One vote per person would have been better, or weight the votes in accordance with the power of the players. The underlying, unspoken policy behind one team, one vote was of fairness, but there was too much emphasis on an idealistic process that I doubt would be seen in practice.

PB, p. 1: I underestimated the interrelatedness of the procedural frameworks, the communication of substantive information, and the dynamics of interpersonal relationships among parties.

Rational

[Offering reasons (needs, concerns, and motivations) reasonably (in a way generally perceived by the group to be fair, appropriate, and proportionate) with a rational argument (connecting events, issues, and circumstances, perceived by the group to be relevant) has far greater persuasive power in negotiations than arbitrary statements and demands.]

NB, p. 35: **Reason with yourself and your party.** Making unreasonable demands is counterproductive to the process.

p. 34: **Justify the opinion you bring to the table.** Otherwise, they are simply unfounded opinions and are difficult to take seriously.

p. 35: **Stay focussed.** It is easy to get off-track in negotiations, but staying focussed is important in order to make headway.

Reciprocity

[Returning concessions and co-operative acts extended by another allow negotiators and parties to build trust as a basis for tackling future problems. Both negative and positive acts are reciprocated. Without positive reciprocity, parties retreat to defensive behaviour to protect themselves.]

FB, p. 22: “Negotiators are quite likely to reciprocate each other’s strategies. When all negotiators are from the same culture, reciprocity reinforces culturally normative negotiation behaviours. When negotiators are from different cultures, reciprocity may help negotiators adjust their strategies to each other.”¹⁵⁴

p. 5: [In the constitutional video] competition was reciprocated; the best way to avoid this is not to engage in it in the first place....¹⁵⁵ p. 8: The principle of shaping opponents’ behaviour by reinforcing or punishing styles was reflected in our simulation.

IB, p. 1: It’s like thirteen people trying to share a small blanket throughout the night. If everyone is pulling as hard as they can, trying to get it all for the whole night, then everyone will be cold all night and awake all night. But if everyone gives slack when they are hot, pulls a little when cold, then throughout the course of the night everyone will be warm when they need to be and thus will sleep comfortably. Because no one was giving slack, I got enraged when I finally wanted to pull (after having given slack for awhile) and no one was reciprocating. So then I fell into the trap that others were in of always pulling, and things went nowhere.

Relationships

[Positive and negative relationships among both negotiators and background groups form a starting point of trust or mistrust at the table. Relationships are enhanced or diminished through negotiating, and leave residues that form the basis of future judgements after negotiations end.]

IC, p. 35: The most significant factor I learned is that relationships are an integral part of a multiparty negotiation. Once the relationships among the parties begin to break down, so does the negotiation. During the last session, the relationship between industry and the other

three teams broke down, and industry disengaged from the negotiation process. When the teams began to rebuild the relationships near the end of the session, we were able to pass a final motion unanimously. The motion reflects the success of the healing of the relationships.

ID, p. 21: One other theory of how power may be gathered and utilized, as stated by Fisher, is through the development of a “good working relationship between the people negotiating.”¹⁵⁶ Fisher writes that the better one’s working relationship is with the other party, the more likely you will be able to influence decisions that party is going to make. I think this boils down to open communication, taking an interest-based approach, and not coming across as an aggressor, but rather someone trying to ensure a fair standard for all. It allows you to disarm your opponent with kindness, rather than making an enemy. This is definitely a very beneficial power.

FB, p. 10: When the federal team, provincial team, and NGO team starting co-operating on issues, our relationship changed and became more positive. We were more likely to agree rather than gamble. The environment became less stressful.

The type of relationship the parties have will affect a party’s negotiation style. Thompson states that “those who had a negative relationship with the other person preferred to gamble.”¹⁵⁷ The federal team and industry did not have a positive relationship ... and therefore we were more competitive and argumentative. Competition can bring negative effects to the table. I was prepared to take a more aggressive role with the industry team because we did not have a positive relationship.

IA, p. 32: [Talking with negotiators as people outside the negotiations] helps the process of separating the people from the issues, which is necessary to maintain a relationship with these individuals outside the negotiations.¹⁵⁸

Rights

[Rights may be BATNAs distributed in various quantities and qualities among the parties. A party with a legally enforceable right outside the negotiation may not accept anything less within the negotiation.]

ID, p. 15: A rights-based approach is one where the negotiator’s focus is on an [external] standard, whether it be the norms of what every other business is offering, what every other contract considers and allocates, or what courts have adjudicated in the past and set as a standard.¹⁵⁹

FB, p. 5: [In the constitutional video], the style of the Aboriginal groups reflected a rights-based approach in which the negotiators focussed on the rights.¹⁶⁰

FA, p. 13: FB took a very strong legal position referred to in theory as a rights-based posi-

tion. She researched and knew constitutional arguments and the rights of federal government to enforce law. As a negotiation tactic, she sometimes used the rights of the federal government to intimidate other teams to gain agreement with federal rights, specifically in situations where other parties were not receptive to our position. Generally, she only advanced a scare tactic when the table was already in an adversarial disposition. A rights-based position theoretically works in very limited situations, because advocating rights tends to have the effect of inciting conflict.

An example of FB's strategy in operation occurred when industry said they were already trading internationally. FB responded, "No, you cannot, and since international trade is a federal matter, we will stop that in the near future." This had the effect of raising a lot of heated argument and conflict at the time. The rights-based strategy worked at this table for a number of reasons. It had the effect of letting the table know that we were taking a hard-line position on that issue.

At another time, FB wanted to play the tough team role and used her legal research on federal power and rights to try to force agreement with our position and interests at the table. She told the table that if we were unable to reach agreement, then the federal government would simply enforce the powers of taxation to reach our environmental obligations.

As the strategy was used cautiously, it had the effect of creating boundary lines as to what the federal team was not willing to concede.

Silence

[The ambiguity of silence makes it both a tool of possible control in the negotiations and a source of unpredictable interpretations by others. If the interpretation is negative, or if the party is not seen to have meaningful relevant power, silence can lead to the party being ignored.]

IB, p. 19: Our only option seemed to be to keep silent. The suggestion came from IA, who had apparently been implementing this strategy for some time, but I did not even realize it at the time. Being silent was a unique experiment. It turned out by having one of the loudest groups suddenly turn silent, the class instinctively noticed that side of the discourse to be missing, and very surprisingly, they began to fill the void themselves. The feds and the NGOs began to raise our arguments for us. The feds specifically started asking for our input and acknowledging that they did not really understand what our position was and that they were curious to hear it. The most progress we had made all day, we made by not saying a word. It was fantastic! In general I am so intent on talking that I forget the power of silence. I could not believe that silence was truly golden. I learned a great lesson from IA that day. I used to think that introverts and quiet people had less power in these situations, but I now know that the self-control to remain silent is an exhibition of great power.

Single Text

[Negotiations are facilitated by having all parties focus discussion on one document. The greater the resonance among parties in relation to the initial document, the greater the likelihood of an agreement being achieved.]

FC, p. 15: I would have suggested we try using a variation on the single negotiation text (SNT) method. Fisher and Ury report developing this and applying it in Middle East peace negotiations between Israel and Egypt at the Camp David Negotiations in 1978.¹⁶¹ In this case, the US worked as a mediator between the parties, presenting an initial tentative document called SNT-1, and asked Israel and Egypt to evaluate it. Subsequent modifications and evaluations continued until no joint improvements were possible.

Having an actual document with articulated proposals for discussion would make it easier for the group to keep track of issues.

Substantive Conflict

[Disagreements and differences are pervasive among individuals and groups. When such differences interfere with a party's achievements of its goals, abrasion results that we call conflict. Almost any aspect of life can become the subject-matter of a conflict—hence a substantive conflict.]

FC, p. 20: Through my readings for multiparty negotiations and conflict resolution, I came across a common thread, even an overwhelming subtext: that conflict was “evil,” something to be avoided at all costs. Even the class debriefing and the student reactions in *Conflict, Co-operation, and Culture*¹⁶² suggested that escalating tension was perceived as unpleasant and emotion better avoided entirely. This was confusing to me since logical reasoning indicates that: a) humans are individuals with differences; b) these differences will cause friction as manifested by displays of emotion, argument, and eventually conflict; but c) not all conflict need end in armed force. Negotiations are about verbal conflict, at the opposite end of the spectrum from armed conflict. In general, conflict should be seen as a growth opportunity.

Further reading shows that there is an answering thread to the concept of conflict as undesirable. Ralph Peters¹⁶³ has remarked that conflict—indeed violent disorder—may be a natural phase that a region or institutions must endure before reaching a more peaceful equilibrium.

A similar line of thinking pervades the writing of philosopher Stuart Hampshire,¹⁶⁴ who states that consensus on substantial issues is impossible. The aim should be on improving institutions that arbitrate among irreconcilable opposites, or facilitating procedural justice.

Strategy

[Strategies are the means chosen by individuals or groups to achieve their interests at the negotiating table. Individuals and groups differ greatly on their assessment of the ethics of particular strategies.]

PA, p. 11: Webster's defines strategy as "a careful plan or method: a clever stratagem."¹⁶⁵ It defines a stratagem as "a cleverly contrived trick or scheme for gaining an end."¹⁶⁶

IA, p. 1: "Standard strategies for negotiation often leave people dissatisfied, worn out, or alienated—and frequently all three."¹⁶⁷

PA, p. 40: I also realize now that several of the things that struck me the most were other teams using various strategies to try to get what they wanted. During the negotiations, I never even gave it a second thought, but now I can see how blinded I was by it all.

p. 11: People use common strategies and approaches, but they aren't completely clear and separate from one another. As each person is different, they will apply each technique in a different and unique fashion. In most circumstances, negotiators will not be relying on only one technique or strategy, but will instead be mixing parts of each into their own unique process and adapting it to suit the situation.

p. 12: Pirie, in *Alternative Dispute Resolution: Skills, Science and the Law*,¹⁶⁸ sets out considerations in deciding on negotiation strategy. One of the most important considerations is to determine if your strategy is actually compatible with the goals you seek to achieve. Often times, certain strategies will not offer realistic solutions to the goal you are seeking. Pirie also states that you should consider the possible strategy of the other parties to the negotiations. By considering what the other party is trying to achieve, you are in a better position to properly respond and pick the most effective strategy to actually achieve results.

You need to have the necessary knowledge and style to implement some of the strategies.... Each style has advantages and disadvantages; it is the negotiator's job to make sure that these have been considered before picking a strategy to follow. A strategy will be an overall plan to achieve ends ... but it is important to have some fluidity in your strategy. You must be willing and able to adapt and change to meet the circumstances that you are facing. If you set a strategy and stick to it no matter what occurs, you will end up hindering the negotiation process before it can ever really develop.... Individual negotiators will have to develop a feel for themselves, based on the actual situation at hand and their experience.

FA, p. 8: I believed we had an obligation to advance our interests by any method possible. FC and FB thought we had to play a fair game and thus built their strategy around listening to everyone talk and then trying to build consensus by identifying common interests. In other words, I had a very competitive style and my other team members were much more co-operative. Compared with the other teams at the table, industry was competitive as well....

If the dynamics and personality of the table are set out from the beginning of the negotiations to be competitive and not based on trust, the strategy adopted by the individual teams will reflect the table personality. This is precisely what happened at this table. It started out very competitive, and no one really knew exactly where the other party was coming from. If

trust and confidence had been secured from the beginning ... then the negotiations might have taken a very different direction based on meeting our common interests.

p. 19: Our first [federal] strategy was to always present first at the table. We thought this would require all parties to respond to our agenda.... p. 21. Our [second] strategy was to carefully articulate how the main points in the federal agenda matched the provincial objectives. In negotiation theory, this is similar to a strategy of using your opponent's objectives as an anchor in the negotiation process.¹⁶⁹ ... p. 22: I talked directly to the provincial team, careful to speak slowly and look directly at them.... We talked *with* the provincial team, not *at* them.

NB, p. 16: At times, the negotiations were controlled by an individual other than the chair. Granted this is a sign of a strategic negotiator, but it led to a process with a very adversarial undertone, as opposed to an interest-based negotiation. The adversarial notion is so ingrained in law students' minds that the mere concept of "negotiations" is foreign at times.

PC, p. 18: Our tactics as the provincial team were fairly straightforward—maybe less than brilliant, but simple. We spelled out what we wanted, tried to make alliances with the feds and NGOs, and were very clear about our opposition to most of industry's standpoints.

Style

[Individuals and groups develop different approaches to negotiation, including competitive styles, where the attempt is to "win," and co-operative styles, where the attempt is to jointly solve problems. Either can be effective providing the other adopts a similar style. If styles conflict, the competitive may dominate, and the co-operative feel taken advantage of.]

NC, p. 7: An effective negotiator must remember to "treat [others] courteously, and remember that what you are seeking to do is not to score points off [them], but to secure a favourable result for your client."¹⁷⁰

ID, p. 4: We began our negotiations deciding procedure ... on a co-operative approach. While attempting to listen to everyone's concerns of possible scenarios that may arise, we were taking a more affect-oriented approach. Everyone wanted to discuss issues of procedure in depth. However, in my team's opinion, this was getting us bogged down.... During the second round of negotiations, we pushed through procedure so it would be decided quickly and we could get to the substantive issues. This took on a more task-oriented feel.

IA, p. 5–8: Common polar-opposite bargaining tactics are hard and soft negotiating.¹⁷¹ Hard negotiators make few concessions and hold their position until the end.¹⁷² Soft negotiators are friendly and give in quickly to other parties' desires.¹⁷³ ...

I experimented with both these positions. I tried the strong position by being assertive and making threats that industry would cut back on production, resulting in higher consumer pricing. Our team held a firm position on the system we desired to implement; however, the

system that we lobbied against was passed. The hard negotiator's role did not advance my position any further, but instead frustrated me. Further, when parties used the hard-line approach on me, it made me angry. The more strong-willed and unwilling to move off a position a party is, the more I ignore their wants and hold out for my own position. It feels natural to want to defy a difficult opposing negotiator.¹⁷⁴ What I discovered from applying this approach is that "anger breeds anger."

"Frustrated and angered by your opponent's intransigence, you may feel like striking back. Unfortunately, this will probably provoke him even further."¹⁷⁵ This breeding ground for anger is not helpful for negotiating an agreement. It may even hinder the negotiation process and put a stop on constructive bargaining. These negative qualities of the hard-line approach can only cause more delay and difficulty at arriving at a solution.¹⁷⁶ ...

On the other hand, my experience as the soft negotiator did not get me very far down the negotiating path either. On a couple of occasions, I suggested our willingness to concede certain issues in the interests of attaining an agreement. Despite my adaptability, the other parties did not want to address the issues on which we were willing to concede, so they shuffled us aside yet again.

Thus, while the strong position may work well when negotiating a business deal, or signing a labour or employment agreement, it was not effective in the multiparty scenario. While the soft, give-and-take approach may work well for one-on-one bargaining situations, such as with family or friends, I found it also did not work well in multiparty negotiations.... The hard negotiator comes across as uncaring and rude, while the soft negotiator appears spineless and willing to give you everything. When more than two parties are involved, the negotiating dynamics change dramatically. A tactic that may convince one party will not necessarily convince any of the others. In addition, being too weak in the multiparty arena sends a message to all other parties that you are not a force to be considered at the table. This is not a message you want other parties to receive. Neither approach was particularly helpful for "dividing the pie"¹⁷⁷ the way we wanted. Therefore, I submit that a middle-of-the-road tactic, without being neutral, because you still need to have your opinions considered, is the best scenario for approaching multiparty discussions.

It makes sense that individuals tend to adopt one negotiating style more than another.¹⁷⁸ Negotiators have instinctive personalities that make a certain style of bargaining more appealing.¹⁷⁹ This is not to say that approaches a negotiator would not naturally choose cannot be learned.... Once we become aware of our own natural technique, we have achieved the first step towards adapting our style to advance our desired goal.¹⁸⁰ Being aware of our own style and the psychological effect we have on other parties is a valuable tool in negotiations.¹⁸¹

PA, p. 14: [Both adversarial and problem-solving approaches] can be very effective in one circumstance and totally useless in another. Negotiators need to know what they are trying to achieve and be flexible in trying to achieve that goal.

FB, p. 5: Parties are likely to reciprocate the different styles of individualism, competition, and co-operation.¹⁸² ... p. 6: Individualistic negotiators prefer to maximize their own goals and are not overly concerned about how much the other parties are getting.¹⁸³ The competitive negotiator would prefer to “beat” the other side.¹⁸⁴ The “co-operative negotiator” is interested in equality and minimizing the difference between the two sides.¹⁸⁵ This assessment is apparently determined by my underlying personality.¹⁸⁶ To a degree, this assessment is a reflection of my personality, as I tend to be assertive, aggressive, and determined. However, I can be more accommodating and co-operative if I am dealing with children or another cultural approach to negotiation.

ID, p. 2: Thompson identifies three main motivations in the negotiating process: individualist, competitive, and co-operative.¹⁸⁷ ... p. 3: Individualist negotiators take a very self-interested approach. Their main goal is to maximize their own personal gains.¹⁸⁸ ... p. 4: The individualistic motivation became very apparent towards the end of negotiations;... the other teams were not willing to negotiate in depth and listen to [industry’s] concerns.... p. 5: It felt as if the provincial team was attempting to check off every one of *their* issues that *they* wished to see implemented in this agreement, rather than pause to ensure that we were making progress as a group.... p. 6: It appeared they were focussed more on their own gains and agenda, with little or no regard as to what our team would be getting out of the agreement....

FB, p. 5: [In the constitutional video], I viewed the federal government’s negotiation style as being “tough.” Their style included making high demands, conceding very little, holding out, and rejecting offers that were within the bargaining zone.¹⁸⁹ They based their approach on power: “focus[ing] on power, attempt[ing] to resolve disputes by analyzing status, rank, and other types of power, such as the ability to hold out.”¹⁹⁰

ID, p. 6: Thompson identifies the second style as competitive, which means that the negotiator is concerned with winning. To win would mean to “beat” the other side, or to gain a larger winning margin compared to the other side.¹⁹¹

My initial response to a competitive style in multiparty negotiations is that there is no place for it. The foundation of multiparty negotiations is that each party has interests that we need to see represented. As such, everyone must be willing to come to the table ready to listen to the other side and be prepared to compromise, or entertain suggestions. If someone is there with the sole interest of winning, then they are not open to listening to the concerns of the other sides. This may have drastic consequences in the outcome of the negotiation.

p. 7: A small element of competition occurred in our simulation during our negotiations for procedure. Our first round of negotiations got us nowhere fast; it only made the majority of us frustrated that we were not accomplishing anything. As such, during our second round of negotiations, we decided to vote as individuals for procedural issues, and the strategy became to vote out those dissenters who were slowing us down. The majority of us were not interested in hearing hypotheticals, such as someone might be shy ... or perhaps someone’s

feelings might get hurt. Many of us felt the only way to overcome what was viewed as the unsubstantiated talking and theorizing that was hindering us from getting to the substantive was if we all ganged up as a majority. We wanted a set of rules as a foundation to cling to in order to create greater certainty. The greater the deliberation for contingencies that no one knew would happen, the greater the uncertainty. Thus we sought to win as majority by out-voting the minority.

p. 8: At the time, I viewed this as a great success. We, the majority, got what we wanted when we wanted it—right then and at the present. Given that it was mainly the federal team that was dissenting, I felt some chagrin that we had strong-armed them into a decision, and they did not look very happy....

This attitude, however, may have contributed to our downfall in the negotiations later on. In our case, competition fostered an environment leading to an aggressive individualistic nature, even though we were all at the table to negotiate.... In retrospect, we should maybe have spent more time on procedure and attempted to foster an environment in which an issue must be discussed in full before it can be voted on. It was the competitive attitude that led to escalating tensions around a table composed of negotiating friends.

p. 9: Thompson's third style is co-operative;... negotiators look out for the joint welfare. They win only when everyone else wins.¹⁹²

Co-operation is the motivational style I believe needs to be emphasized and stressed in multiparty negotiations.... On Day Three, the provincial team passed a motion with the federal and NGO teams allowing for a base/cap system as to the number of permits to be allocated to industries for emissions. As the industry team, we were absolutely infuriated, because we believed this was detrimental to our business and the economy.... We realized that there had been a major power shift, where the provinces, the feds, and NGOs could, and possibly would, be outvoting any interests that industry may have.... Our backs were up and we were on the defensive. However, one of the members of the federal team in a calm manner tried to address our concerns by asking us for our suggestions and assuring us that our interests were their concern as well. Seeing this different [approach] after dealing with the provincial team did help to divert me from wanting to go for the jugular. The NGO team followed suit by stating that its purpose was to propose suggestions so that everyone would come out on top. Such an attitude is greatly appreciated, especially by the group that is the underdog or stands to lose perhaps its means of existence.

FB, p. 9: The overall style at the negotiation table varied from week to week. A few times we were more in sync with each other and we were all co-operative; other weeks we were individualistic and sometimes fairly competitive.... Clashes occurred when the different teams were practising a different style at the same time. When this happens, the theory goes that the co-operator will realize that the other team is being competitive, and thus they will change

their own style to compete with the competitive opponent.¹⁹³ Competitive negotiators, however, do not change their style. This tended to be played out in the simulation. The competitive and individualistic styles outweighed the co-operative style.

FA, p. 8: The intergroup conflict ... arose partly because of the different negotiating styles and due to the expectation of other teams. This had a lot to do with the amount of or lack of trust at the table.

NB, p. 30: There is a difference between being assertive and aggressive. Assertiveness is a valuable means of negotiation.... Aggressiveness, on the other hand, is counterproductive to the negotiation process. Time and again ... aggression led to failure.

FC, p. 17: Observation of fellow negotiators, especially during nonchaired periods of free talk, showed distinct differences in conflict management. Although the social science research is inconclusive about any single personality type or characteristic being linked to successful negotiation,¹⁹⁴ it may be helpful in long-term negotiations to look for patterns and thus get a framework for possible predictive behaviour.

According to Thomas (as reported in Lewicki and Litterer),¹⁹⁵ there are five major conflict-management styles:

- 1) competing style—high on assertiveness, low on co-operativeness;
- 2) accommodating style—low on assertiveness and high on co-operativeness;
- 3) avoiding style—low on both assertiveness and co-operativeness;
- 4) collaborating style—high on both measures; and
- 5) compromising style—moderate on both styles.

The expressed style may or may not be a rational conscious choice of the negotiator or a situational factor caused by the structure of the simulation.

Team

[Multiparty negotiations usually involve several individuals working together to represent each party. The shared effort leads to positive co-operative synergies, but also to internal group conflict, which requires its own time- and energy-consuming negotiations.]

a) Positive Synergies

[Co-operative effort, with each member taking initiative and responsibility to contribute his or her strengths, creates a whole greater than the sum of its parts. Acting within a framework of team support can be exhilarating and empowering for individuals.]

PC, p. 24: One thing I learned in the debriefing is that my team knew how tense I was. PD made a comment that they had to hold me down because I was vibrating. It's very comforting to know that they noticed that about me and they were looking out for me. That they still trusted me to speak up and try to work deals when they knew what a bundle of nerves I was means a lot to me.

PA, p. 25: Our group seemed to function well together. Each of our individual styles and knowledge bases seemed to complement the other members of the group. We couldn't have asked for a better team. We fit together like a glove. Once again, I am starting to feel more confident about this whole process. The way our group was meshing together bolstered my spirits.

PC, p. 14: I enjoyed when the team got together to plan. We could share all the information that we learned, and the team was actually really appreciative of what I'd learned, so it made me feel very useful.

PB, p. 22: The group I was a part of was extremely fortunate as there were no mentionable personal or ideological conflicts among us. All members of the group had a very high degree of respect for one another, and an equal voice was shared by all members throughout the caucuses, informal meetings, and communications.

FB, p. 4: I found support when we conversed within our federal team. Even though we had different ideas, we were more open-minded with each other and I felt we were much more like-minded overall. We complained about the same problems and validated each other's negative opinions about "those people." The negotiation process within our team was not stressful. We tended to play off each other's strengths. We saw the same picture.

FA, p. 4: Individual roles within the federal team were very complementary and allowed our team to coalesce. The federal team drew on the strengths of each member.

p. 10: We divided up research to match our individual strengths.... p. 11: We had a lot of confidence in individual members and allowed maximum voice at the table without having to confirm everything we said with each team member before speaking. This had the advantage of allowing all team members to respond and to learn to negotiate in their own style by actual participation at the table.

FB, p. 12: Within our team meetings, I allowed my emotions to take off; I used the other members of the team as a debriefing mechanism. In this environment, I was able to "rant 'n' rave"; I demonstrated "blatant, negative emotions, such as anger, rage, indignation, and impatience."¹⁹⁶ I was the "irrational negotiator."¹⁹⁷

b) Intrateam Conflict

[Differences and disagreements are as inevitable within teams as between teams. The extent to which individuals resolve the conflicts, support each

other despite the conflicts, or become debilitated through the conflicts, has a significant impact at the table through the effectiveness of team functioning.]

NB, p. 34: **Decide** exactly where your team stands on issues. Credibility is lost when disagreement between teammates ensues at the table.

FA, p. 5: The federal team might have seemed cohesive at the table, but there was intragroup conflict in negotiating what role the federal government should adopt. There were two theories that clashed both within our small group and at the table about the role each team adopted or should have adopted.

One side thought that there should be a clearly chosen and defined role, and once that role was adopted, the team was limited to adopting and playing that role. A clearly defined role would help other teams in building their strategy. For example, the provinces would be easier to gauge if we knew they were Saskatchewan or Alberta. In this theory, negotiations become easier if the team only proposes interests in line with their chosen role. Therefore, trust and confidence may be built at the table because: i) we know the other team; ii) its interests may be better predicted; and iii) that team will stay within that role and not change during negotiations. This was FA's position. Within our group, she advocated a strict federal position that we should learn by researching the actual federal position on Kyoto.

The other theory is that anything can happen in negotiations. Parties should not place too much trust and confidence in another party's chosen role because predictability may be better measured by watching the actual players, parties, and dynamics at the table—watching what is said, and what is *not* said by each party. According to this theory, there are better indicators to gauge parties and predict their responses than what role they choose to represent. This was my position.... Since FA was the strongest researcher on our team, we adopted the actual federal position, in spirit.

p. 15: The issue of the federal role and the conflict surrounding it arose at every intragroup meeting, and at times it was very conflictual because of the differences in our negotiating styles. We overcame our differences by depending on the individual strengths within our team.

p. 16: Intragroup conflicts also arose because I believed that the best way to advance our agenda within a negotiation by voting was very aggressive compared to both FB's and FC's negotiation styles. My strategy was to vote immediately upon knowing that we had secured enough support at the table to pass a motion. I was of the view that we were at the table to advance as much of our position as possible, and if we could win on one issue, then we should pass a motion to vote, get it passed, and move on to the next issue. By this method, we would advance as much of our agenda as possible. FB and FC wanted to find common interests without voting and gather support for the federal plan by finding common ground among the various interests at the table.

PA, p. 33: [In the provincial team], our opening presentation was to me a painful experience, but one that taught me a pretty important lesson. If I had to do it again, I would force my teammates to sit down and meet before we ever began the substantive negotiation. From the question period, I could already see that there would be lots of resistance to our proposal and that the negotiating wouldn't be an easy process.

PD, p. 10: There were serious internal group problems in the negotiation process of the substantive issues. Even though our group had discussed what we would prefer as to procedural rules, some of our group members changed their opinion during the negotiations. PB all of a sudden moved to a more structured approach and wanted to use a *Robert's Rules* model. His previous experiences made him extremely comfortable with this model. We had discussed this in our group and felt that because we were not all familiar with that model, it would be a disadvantage to those who did not have sufficient experience using it. I felt that this was seriously affecting our reputation and the way the other groups were looking at us. We looked divided and unsure of what we wanted. This was not the way I wanted to start the negotiation process. We wanted to portray a united front to the group.

NB, p. 13: The brunt (or should I say all) of the work has thus far fallen on my shoulders.... I really like my teammates as people, and they are very easygoing. I am simply getting first-hand experience of what it is like to work with people who are not real go-getters.... Sometimes being laid back is not so advantageous in terms of the desire to prepare. This frustrates me. I am a very thorough person by nature and I like things to be done well. Until matters are taken care of, I worry about them. As a result, I cannot just leave things alone and take a "good enough" approach, as was suggested by my [partner]. He thinks I am working too hard on this and letting it affect my other affairs, while others depend on me. I, on the other hand, think that I will not get the full advantage of the class if I take his suggested approach. His rebuttal to my argument is that I am too obliging and a "bleeding heart." The reference to the bleeding-heart was made after I made the argument that possibly my teammates have other things going on in their personal lives that make this class less of a priority to them. He said, "Possibly they realize you are going to do the work and are relying on that fact." I think it is good to have these things pointed out to me, but I still have to believe that I am not being used.

IB, p. 11: A major influence on the way the negotiations went was our decision to just represent forestry.... This problem was the instigator of our first internal conflict. We tried to reason out which industries might be the most dominant and would have their views triumph over other industries. However, each member of the group seemed to have a different perspective on which industry would get its way.... Our group was very averse to conflict, so upon realizing that performing our own miniature multiparty negotiation process was getting us nowhere, we agreed that we should just pick one industry and go with that. We ultimately chose forestry because we thought that forestry would want things that would be conducive to what the other parties at the table would want.

p. 12: A fairly piercing aspect to this multiparty experience was my inability to anticipate where the discussion would go.... Consequently, it was imperative to pay close attention to what my teammates were saying so that nothing was contradicted. This proved to be remarkably difficult because we had intentionally divided up our expertise on different topics.... This also taught us a lesson, because if the information was not intelligible to other teammates, then there was likely no hope that the other parties were going to understand it either....

At one point, I think that we properly dealt with confusion and consistency of group opinions. IC and I had made a number of comments that were contradictory in nature. Upon realizing it, we both tried to cover for each other, but this just served to create more contradictions. It might not have been such a problem except that the provinces kept asking for clarification.... Just as we thought we were going to fall apart, we called a caucus. Perhaps we should have called it earlier, but the important thing was that we did call it.... It gave us an opportunity to get out and straighten out our stories and just take a breather.

IC, p. 23: In a small group of four, I did not think there would be a need for a leader to delegate work; however, it seems that we did need a guiding force to determine the direction of the group. I felt as if I took on the role of leader within the industry team. I assumed the role because we had so much work to do and so many decisions to make that we needed a clear direction. For example, during caucus breaks I would begin by stating what we needed to discuss and ask for ideas. I felt I was doing a good job of focussing our group, but it was difficult at times. I felt like a pest sometimes because I would e-mail or ask the rest of my industry teammates to share their research and ideas. I became bothered and felt as if I had already been trying to motivate the group, so I did not press any further as I had little response to my e-mails for proposal ideas three days previous. When I checked my e-mail inbox the morning before the negotiation, the e-mails began to accumulate. Questions such as: "What is a proposal?" and "I don't really understand what we are supposed to be negotiating?" started to appear.

IB, p. 13: I wish that our team had had an environment wherein we could give and take constructive criticism. Instead, because we were so afraid of internal conflict, we just brushed over these topics....

Perhaps our group would have functioned better if there had been some team bonding. Though we all knew each other from before, I do not think that any of us were very familiar with each other in a social or working context.... In the future, I think I would make an effort to do so, because a level of friendship and comfort would have gone a long way with regard to constructive group dynamics. Every group should have the internal capacity to give constructive criticism to its members.

Third Side

[Any third individual or party can function as a buffer or mediator between two directly conflicted parties, allowing the energy of conflict to be redirected

and focussed on a common external person or party—hopefully one with enough power or respect to be able to broker at least a temporary peace and perhaps a longer-term solution.]

NB, p. 32: Near the end, when there was a breakdown, our nondominant team tried to salvage the process by redirecting all the parties back to one small point instead of the whole picture. At one of our caucuses, we discussed our role as mediators and decided we needed to fix the situation. As a result, at the major point of breakdown, I summarized a key point of contention and listed the interests that one particular proposal met for each party. This got all the parties talking again, and at the very end we passed a motion.

Time

[Negotiations take a long time. Time is also a source of conflict.]

NB, p. 12: Professor Benson suggested that we have a four-hour negotiation period so as not to continually disrupt the stamina that we built after about an hour. I now realize how important this is.

IC, p. 26: The last day of negotiation was a lengthy four-hour session, which was physically, emotionally, and mentally draining. The meeting did not get off to a good start when only eight people showed up on time, and certain participants were up to twenty minutes late. I found the fact that participants were casually strolling into the session extremely aggravating. I may have been taking the role more seriously than necessary, but I knew that we only had a limited amount of time in which to try to negotiate and agree on an immense amount of material.

IA, p. 19: An example of managing the negotiating environment was the class's awareness of the time constraints. Many efforts were made to push things along and make decisions. Keeping the negotiations moving was a benefit to the process, as there often wasn't time to get bogged down in the negative details. Time is better spent negotiating what can be decided. This was seen particularly during the procedural negotiations. After spending a whole day "wasting" time negotiating which team absent members would be placed on, the group recognized our time constraints and we moved rapidly through the next day of procedural negotiations. All negotiators had an interest in getting on with the substantive side of the negotiation, and this positive influence was reflected in our environment that day.

NB, p. 5: We learned first-hand that negotiations can be slow.... p. 3: I realize now how long a process multiparty negotiations can be.

PD, p. 9: It also was quite shocking that the negotiations did not flow as quickly as a lot of us expected. There was a collective surprise at how fast the two-hour session passed and at how little was actually decided. I think many of us expected to breeze through the procedural negotiations in one session, or maybe even less.

IB, p. 20: It became evident why these negotiations take years and years without getting very far. It also occurred to me that we could have taken so many baby steps of agreeing on little things over the course of years and then still have the overall negotiations fail. I cannot fathom how frustrating that would be for the participants of those negotiations.

Tone

[Negotiations take on a tone—positive or negative—that infuses the table and colours perceptions, interpretations, judgements, and reactions. A tone, once established, is difficult to change.]

PB, p. 10: It has been my experience in past negotiations that once the negotiations take on the tone of “I want” rather than “this is something that might be reasonable to all of the parties involved,” it is exceptionally difficult to reestablish a conciliatory environment for the subsequent negotiations.

IA, p. 11: Mood is a state of perception that has incredible impact on the surroundings. There are many variables in a multiparty negotiation that can dramatically change the mood of negotiations and allow anger to enter. Anger creates more anger and less willingness to cooperate in an already complicated situation.¹⁹⁸ Therefore, it is in the interests of all parties to control their emotions and not let emotions determine the path of negotiations.

FB, p. 18: I volunteered to do the opening statement for the federal team because I was eager to sound like a politician and drew on bureaucratic rhetoric to make the simulation more real. I even wanted my own team to be aware of the tone I wanted for the negotiations. I wanted to sound like a politician as they have a tendency to be bureaucratic about matters. In some cases they are patronizing as well.

Trust

[Trust is a core force of negotiations. With trust in a relationship, risks can be taken because there is confidence that reciprocity or mutual support will be forthcoming. Trust can be built through a series of shared reciprocities or through shared values and goals. Without trust, parties give their primary concern to self-protection. Once broken, trust is difficult to rebuild.]

NB, p. 35: Trust is necessary to accomplish harmony in the multiparty institutional negotiation setting.

FB, p. 23: Building trust among the negotiators is important, because trust helps build relationships and “good relationships often mean better negotiations.”¹⁹⁹ The level of trust present at a negotiation table can be assessed by the degree of information sharing among the parties; whether direct and indirect questions are asked and answered; whether information

sharing is reciprocated; and whether parties attempt to meet each others' expectations.²⁰⁰

PA, p. 39: Professor Benson's trust in us made this class what it was.... The fact that we, the students, were given control to make this process work or fail made this by far the most rewarding class experience I have had in law school.

NB, p. 29: Industry's words and actions made it clear that there was no trust in any one of the other parties. They clearly felt that they were being ganged up on. I tried to ameliorate this situation near the end, but it was too late. Trust needs to be built from the beginning, and if present at the beginning and then lost somewhere along the way, it has to be addressed instantaneously. This is the key to success.

IA, p. 24: Focussing on interests instead of positions is suggested as a valid way to minimize the negative generation of emotions. Expressing these basic concerns and desires may, however, be difficult, particularly in a multiparty situation. There may be parties at the table with whom you have no working relationship, which makes it difficult to divulge your personal wishes. Further, relationships you do have may be negative. If another has caused you hurt or double-crossed you, then lack of trust may come into the picture. Trust can be, and was in our simulation, a colossal problem in negotiations. Trust issues are exacerbated when one party has been *intentionally* wronged by another....

Interest-based negotiating involves every party expressing vulnerabilities, so all parties are in the same uncomfortable position. The positive outcome of expressing interests is that it helps to bridge the gap between your own interests and the interests of others.²⁰¹

p. 25: Developing trust must include acknowledging when other parties have been hurt. Ignorance of emotion will not benefit the negotiating environment. Listening attentively and genuinely acknowledging the feelings of another party will help build the necessary trust for negotiating. In appropriate situations, if you offer an apology for them, assuming you are the instigator, then the foundation for a trust relationship can be formed and the emotional environment will benefit.²⁰² Once you have listened and expressed sincere concern, the injured party is also more likely to listen to you.²⁰³ Providing an attentive ear is instrumental in building the bridge of trust and communication. The key, however, will be to ensure that these exchanges are not only expressed in a genuine nature but also genuinely felt....

Trust is also imperative to reducing conflict, which in turn fosters a co-operative environment rather than one filled with frustration and animosity. How does trust reduce conflict? Trust creates an expectation that another will abide by their commitments.²⁰⁴ This pressure to adhere to what you have agreed upon ensures that commitments are more likely to be followed, leading to fewer arguments over fault and therefore less conflict.²⁰⁵ Phrased another way, we tend to view other parties through "the lens of our expectations," meaning that we attribute others' behaviour with our own expectations.²⁰⁶ If we develop trust, then we can view

others through a lens of trust and the expectation of appropriate behaviour. The result is that “trust reduces conflict because it increases tolerance.”²⁰⁷

FA, p. 6: Conflicts revolved around a lack of trust at the table... Trust and confidence are difficult items to secure at any negotiating table. A party could use their best efforts to attempt to create trust, but often the table dynamics and table personality will counteract it... We attempted to create trust by giving a thorough representation of our interests in our initial ten-minute presentation. Our strategy from the beginning was to share information; according to theory, this is a good starting point in building trust.²⁰⁸ We were frustrated that we put so much work into our ten-minute presentation, but other parties did not give a comprehensive strategy plan... We had done our part to build trust and confidence in the federal team; however, we had to incorporate the dynamics of the table.

NB, p. 29: We, the NGOs, had a lack of trust of all parties (especially at the beginning) and feared that the whole scheme would be turned into a capitalist one and all sight of the environment would be lost. At the same time, industry lacked trust regarding the high emission-reduction targets of Kyoto, and felt that they would be forced out of economically viable positions. A general mistrust of the government by both sides was something that had to be disproved from the onset.

FB, p. 24: Trust and the lack of trust at the negotiation table were both evident. In some relationships, trust was being developed, and in other cases, not. My opening statement for the federal government went the extra mile, including words such as: “I would like to conclude this introduction by assuring you that the federal government is committed to”; “the issues before us today are a concern for all of us—we need to work together to develop a strategy;” and “we have come to the table ready to discuss and negotiate the issues, and look forward to hearing your positions based upon your interests.”

The purpose of the remarks was to help set the tone of the federal team. We were not there to litigate our position. We saw our role as being an intermediary [that would] ensure everyone walked away happy, including the federal team... We tried a number of tactics to develop trust... We provided handouts during our initial presentation because we did not have anything to hide and we wanted disclosure. At one point, our team discussed taking a more “hidden agenda approach” and saying only those things that we wanted the other teams to hear, but refrained from this tactic as we thought this would negatively affect the negotiation process. The federal team built trust with the provincial and NGO teams, but not with the industry team.

p. 25: I formed opinions about the different teams fairly quickly, from their presentations and perhaps their behaviour during the procedural negotiations. My lack of trust towards the industry team continued throughout the whole negotiation process. I saw them as committing a number of breaches of trusts against all the teams, including “poor pie expansion,” egocen-

trism, and dispositional attribution.²⁰⁹ They were not reciprocating information; at one point, one member of their team said something to the effect that they picked Saskatchewan Forestry because it was part of their overall strategy. I perceived that they came to the table with a hidden agenda. They did not meet my expectations. They were adversarial. At one point, I did pull out the federal “power card” and told them that if they were currently trading carbon sinks at the international level, these actions would be terminated because they were infringing upon federal jurisdiction. I distrusted them and was suspicious of them throughout the process. It became apparent to me that the other teams also saw them as being “less trustworthy, tougher, or less easy to work with.”²¹⁰

p. 27: The industry team got on everyone’s nerves and we turned against them. This resulted in them having to deal with the difficult challenge of rebuilding trust with the rest of the negotiators. They were very frustrated and understandably so. They noticed that we were caucusing with the other teams and were bothered by the “behind the scenes” negotiations. Their lack of trust in the rest of the teams played a huge part in their participation level.

p. 26: On the other hand, I trusted the provincial team and NGO team. We were able to build a more trusting relationship with these two teams, which was evident during the caucusing and e-mails.... We capitalized on a number of trust-building mechanisms including reciprocity, schmoozing, self-disclosure, and mere exposure. The three teams found a shared enemy: “It is remarkable how the presence of a common enemy can unite people and build trust.”²¹¹ The shared enemy in this case was the industry team.

It is unfortunate that all four teams did not build trust based on our common goals. We did not succeed in finding a “common goal, or common enemy [to] remove the perception that parties’ interests are completely opposed and build a new value represent[ing] a higher-order principle that all parties find motivating.”²¹²

IA, p. 27: An example from our simulation that comes to mind incorporates both power and trust concerns. Trust was often a crutch relied on by the “powerful” federal team. Motions were speedily passed and the weaker teams were told not to worry since our concerns would be addressed later. When the cap-and-trade system was passed, our team expressed concern and suggested discussion before a vote was conducted. The federal team wanted us to draw upon on good faith (which had not yet been earned) and trust that our concerns about the system would be considered during the implementation discussions. Due to their inherent power, I felt that I could not trust that they would actually take care of us in later negotiations. I had no reassurance that once the system was passed they would have any reason to actually consider our needs at that point. There was very little we could do. The system was passed; in response to the federal position of power and my distrust, I felt annoyed.

Had we been operating with an interest-based approach, our interests would have been expressed early on and there may have been more willingness, on my part, to trust that the

federal team would consider us later on. If we had developed some trust, giving the federal team leeway to make a decision and deal with our interests in the implementation phase would have been easier to swallow. I would have felt more at ease knowing they heard our interests, understood why we were opposed to this system, and would have felt more confident in their promise.

NB, p. 27: The required trust for a successful negotiation was not built among all of us from the outset. It is apparent that industry lacks trust, especially for the governments. They expressed their concerns about being told one thing to get a motion passed and having the governments rescind on their promises. Mistrust of governments is not something to be disregarded. However,... the bottom line is that Kyoto targets must be met, and it is the government of Canada that will be held accountable if they are not. This is something industry never once conceded.

PA, p. 6: Without the trust of the other parties at the table you won't get anywhere. *Webster's Ninth New Collegiate Dictionary*²¹³ defines trust as "assured reliance on the character, ability, strength, or truth of someone or something." It is impossible to even start negotiating with other parties if you can't trust them. I feel this is one of the biggest areas where we went wrong. We didn't take enough time to establish trust with the other groups at the table. Everyone felt that the other teams were only concerned about themselves, and no one trusted the other teams enough to have faith that they were acting with honesty and integrity. Trust is the cornerstone of effective negotiations and communication. I don't think as a group we ever really established a high enough level of trust in each other to allow the negotiations to succeed.

By failing to establish trust, we effectively hamstrung the negotiations before they were ever underway. I think we started the negotiations with a low level of trust for the other groups, and as negotiations went wrong, the little trust we had for each other was lost. Once lost, it is a long journey to regain it. We didn't have the time or the energy to even begin rebuilding what we had destroyed by jumping into the negotiations without putting adequate thought into the process.

p. 7: Our negotiations were in a very safe setting. We were all starting from the same point and were in a safe environment. If we had been put into a foreign situation with groups of people we didn't know, we would have been first forced to build the trust level among our team members and then to try to build trust among the other teams at the table.... When you don't trust someone either on your own team or on the other teams, you will quickly start to become intolerant of them and automatically take a defensive stance to everything they say. As soon as the person starts to speak, you are ready to defend yourself and contradict anything they might say. Often, you won't even really listen to or try to understand what the person is saying. In a situation where there are several different cultural groups trying to negotiate, this

will be deadly. Everyone will hear what they want to hear and you will not get anywhere. Trust is the foundation of a good negotiation strategy...

Everyone is more open and willing to listen to other people when they know that no one is trying to belittle them or to diminish their value. If everyone is treated as an equal and given the respect and trust they deserve, any negotiation environment will become conducive to an open forum for discussion. Once a solid trust level is established, the negotiations will flow freely in directions that would otherwise be off-limits or impossible to even approach. Trust is the key, and without it, you will never see the possibilities on the other side of the door.

NB, p. 29: To successfully negotiate a matter, teams need an immense amount of trust, and this leads to interest-based rather than position-based negotiations. When there is no trust, people are more apt to present their positions and be unyielding. They do not perceive a likely discussion based on interests, so they defensively speak of their positions. This is what happened with our negotiations and why there was headbutting at the table on numerous occasions.

ID, p. 13: Perhaps [my plea] was too little too late. [They thought] I did not listen to them or their concern when I had the chance, and now they were no longer prepared to listen to mine, even though in my argument, my concern was going to become their reality.

FB, p. 27: Although negotiation itself is a “direct confrontation dispute resolution procedure,”²¹⁴ it can become destructive when it produces too much negative energy. A number of times throughout the process, conflict broke out and trust deteriorated further. When destructive conflict escalates, a number of strategies can be used to help manage the imbalance. Some suggested strategies include: cool off; triangulate, including about process; involve a third side, formally or informally; cycle back to interests; do not retaliate; and build trust.²¹⁵ When discussion was getting heated, all teams at one point or another called a caucus as a cooling-off period. During Day Two, the industry team called a caucus just as the discussion was getting heated over the cap-and-trade versus credit-and-trade systems. They did not want a cap-and-trade system for all of the industries, as they saw it not to be in their best interest. They were feeling overwhelmed by the fact that it was evident at this point that the three other parties wanted this type of system.

Conflict peaked again during Day Three. The issue under discussion was that the federal team wanted to oversee the cap-and-trade system, while industry wanted an independent, third-party watchdog. This conflict arose at a point when we chose to have no chairperson, but left the floor open for negotiators to talk at will. I thought this process was working well up to the point when the next conflict arose. Industry became frustrated over this issue, as they were not getting their interests met. A number of people were talking at the same time and this broke down the negotiations. The federal team called a caucus as a means of cooling off and getting back on track. This was a timely tactic used by our team to manage the con-

flict... p. 29: Trust fell apart, and neither the federal team, the industry team, nor the provincial team tried to create an “honest, fair, and equitable” environment or did any “relationship building.”...

The following is a guide²¹⁶ to illustrate how trust can be repaired:

1. Insist on a personal meeting right away.
2. Tell the other party that you value the relationship.
3. Apologize for your behaviour.
4. Let them vent.
5. Do not get defensive, no matter how wrong you think they are.
6. Ask for clarifying information.
7. Say that you understand their perspective.
8. Let them tell you what they need.
9. Paraphrase your understanding of what they need.
10. Think about ways to prevent a future problem.
11. Do an evaluation of the situation at a scheduled date.
12. Plan a future together.

None of these strategies were used in our negotiations. It is noteworthy to be aware of these steps for future negotiations.

Will to Find a Solution

[Parties come to the table for such diverse reasons, with such diverse needs, wants, resources, intentions, and powers, that agreements are extremely elusive. Without at least some level of commitment to find an agreement among the most important parties, however, little agreement will be possible.]

PA, p. 5: This process is a very tricky and delicate balance of many different factors. There are a multitude of different techniques and approaches that are used, but they all come back to the parties at the table. If the people negotiating aren't willing to try and make things work, then the negotiations become pointless and futile, and no matter what technique you use, nothing will get accomplished.

p. 27: Professor Benson proposed to the class that we consider having one four-hour class for negotiations so we could get a better feel for things. I was amazed at how everyone thought this was a good idea. I don't know if everyone was simply responding to Professor Benson's authority as our teacher, or if everyone genuinely thought that this was a good idea. I found it kind of amusing when we started to discuss when the four-hour class would be. I would never have imagined that it would be that difficult to try and get sixteen people to agree to a time to meet. By the time the class ended and the smoke finally cleared, we had agreed to meet on 14 March from 2:00 to 6:00 PM [On Day Three], only one person would have to leave early. I was

surprised to see the effort all the students were making to figure out a time that would work. It was a complete contrast from our procedural negotiations, where we couldn't get everyone to even come close to agreeing on anything. I believe that everyone agreed to this idea because they trusted and respected Professor Benson's authority.

IC, p. 31: Multiparty negotiations are only as successful as the people involved allow them to be. Therefore, co-operation and compromise are necessary components in the process of achieving resolution.

PD, p. 33: Towards the end of the last negotiation session, all the groups were feeling the time crunch. We could tell some of the parties were very motivated to get a final agreement before the negotiation session ran out. This makes teams make concessions they wouldn't normally make to achieve the desired result.²¹⁷ I think we had an advantage because we decided as a group that we did not need an agreement to be made. So we tried to force the other groups to concede more in order to achieve some form of agreement that was more biased to our best interest.

Yourself

[Ultimately, the only person one can control is oneself; the place to start to enhance negotiations, therefore, is with oneself. Growing one's own consciousness, rationality, knowledge, understanding, and energy means more power in negotiating, as one has more to contribute to a team and the table.]

Individual Growth

[Individuals reflected on what they had learned about themselves through the negotiations.]

FB, p. 11: "Knowing thyself" is one of the most important pieces of knowledge when entering into negotiations.²¹⁸

NB, p. 34: **Know** your personal boundaries. If you know you possess personality traits that may hinder the negotiations for your team, identify these beforehand and be careful that they do not take control of you....

Mean what you say. If you sense things are getting out of control, do not say something you do not fully want, just to appease the other parties.

FB, p. 12: Am I really thinking before I speak?... I feel some people talk with arrogance and anger and want to impose their perspectives on me. I do not want to take that away from the learning experience. Rather, I want to ask, how did I handle the situation and what was my response to that person? Am I able to handle the situation with respect and integrity? If I cannot do this, then my reactions are no better than their behaviour. There will always be people who will block progress. How do I handle these difficult people?

IA, p. 12: The first step in controlling negative emotions at the table is examining your own technique and inherent negotiating personality. Negotiators' personalities will shine through in their approach. If we examine our behaviour at a personal level, we will know what is needed to control our own emotions. "Instead of reacting, you need to regain your mental balance and stay focussed on achieving what you want."²¹⁹ You cannot expect to eliminate the negative emotions from other negotiators if you cannot control your own emotions.²²⁰ The amazing part is that you, as the individual controller of your own emotions, have the power to stop the cycle of negative emotions.²²¹ You can step back in the midst of an evolving heated discussion and simply not react. Instead, reframe your position and step ahead on a positive note.²²² Know your "hot buttons."²²³ Once you recognize these, you can control the natural reactions that you do not want released.²²⁴

PA, p. 31: I found it interesting that the only negotiators I seemed to notice outside my own team were the loud and outspoken people. Most of the quieter people seemed to fly by unnoticed. This got me wondering what people in the class were thinking about me.... It is amazing how different you act when you stop and think about how other people might be thinking about you. I think that to be a good negotiator and really go after what you want, you can't be self-conscious in these types of situations. I notice myself holding back and going with the flow because I am wondering about the opinions people are forming of me.

NB, p. 34: **G**row as a person. Let yourself develop throughout the negotiation experience and consensus may be reached with the other parties.

FB, p. 30: The lessons learned in this seminar will be with me for a long time to come....
p. 2: The simulation exercise has been a long and difficult task.... I have learned much about my negotiation style and myself.

p. 1: The practical knowledge that I received ... is remarkable. I went through "a process of growth."... At first, I was disappointed with my own negotiation skill level; I have progressed with my skills and outlook because I chose to examine myself. Despite the fact that the experience was interrelational,... concentrating on other peoples' faults and styles was frustrating for me and was not contributing to my own growth. Concentrating on where I am at and what I need to change has allowed me to constantly improve my skills as well as my mental and emotional well being.

p. 30: There is a lot of responsibility when undertaking a negotiation. It is important to be competent, because the result of the process will affect the future of people's lives. One must appreciate and understand the substantive issues, as well as the theory and the negotiating process about one's culture and others at the table....

"Successful negotiation skills do not come through passive learning. Rather, you will need to actively challenge yourself."²²⁵

PA, p. 4: Even though it was mentally, physically, and emotionally draining, I would do it all over again in a minute. I came away ... with more practical knowledge and experience than I could ever have hoped for.

PC, p. 16: Something I would like to ask everyone in the class is, “If someone only knew about you through watching these negotiations, what would they think about you, and would they be right?” It’s a hard question to answer, to look at yourself objectively. I don’t really know how I seemed. I think I was obviously nervous, and maybe not very professional, but intelligent and brave when I had to be, and if that’s how it was, I am happy with it. This isn’t something I would tell someone at the beginning of the class, because you wouldn’t want to guard your behaviour. But in the end, it’s an excellent tool for learning about yourself.

p. 1: MPN has been an absolute learning experience for me. I learned about Kyoto and carbon sinks. I learned about the powers of the government. I learned about negotiation tactics, strategies, and backroom deals. I learned about myself and my classmates. That being said, this was a very trying class, and I earned every bit of knowledge that I got. However painful it was for me at times, I came out of the last class thinking, “I am so glad I have had this experience, and I am proud of myself for participating wholeheartedly.”

FC, p. 20: Learning by actually participating in negotiations benefited me more than reading dozens of papers. I was able to integrate the lessons of this class deeply, on a personal level, and going back to research the literature afterwards made the information more meaningful. Negotiation is not only an important skill for lawyers, but also a life skill for every individual. Individuals with excellent negotiation skills will most likely have higher social intelligence.

PA, p. 39: Now that I have had time to reflect on everything, I can truly say that this was a great experience. I have learned so much that I can’t even begin to put it all into words.... Although at times the process was excruciating, it was all worth it.

p. 41: It was a wonderful experience. It was far more work than I could ever have imagined, but it was worth every second of it. I have come to realize that when you are dealing with sixteen individuals, all with different levels of knowledge and understanding, you are dealing with a unique and challenging situation, and any agreement that you can get is an amazing accomplishment. When I look back on it all, I am proud of what we accomplished, ashamed of what we didn’t accomplish, embarrassed by some of the things that occurred, and relieved that it is all over. The negotiation process was a physically, mentally, and emotionally draining experience that I wouldn’t change for the world.

CONCLUSION

TEN LESSONS

The conclusions of this work are offered in summary form as ten lessons of multiparty negotiations. The ten lessons are divided into four categories: The Individual, Dynamics, Process, and Synthesis.

The Individual

1. It Starts with the Individual

There is much the individual does not control in negotiation—external events, history, law, group conflict—yet negotiations start at the level of the individual, and outcomes can alter the larger forces for the future. Individual creativity, wisdom, courage, and strength—as negotiators, as members of teams, and as members of background groups—initiate change. Individual thoughts and actions shape outcomes, directly and indirectly, long and short term. It can, and does, start with the individual.

2. Knowledge Matters

The larger one's knowledge base, the better negotiator one can be. Competent substantive knowledge in what is being negotiated is an essential beginning. Beyond that, the larger one's knowledge of oneself, of others, of the sciences, humanities, and arts, of history and the human condition, the more hope there is of understanding the complex dynamics of any particular situation, and envisioning solutions that may actually work.

3. Skills Matter

Knowledge becomes effective through application. Multiparty negotiation skill means being able to communicate one's vision effectively, to read internal and external dynamics relatively accurately, and to adapt one's responses in ways that simultaneously preserve one's own interests, persuade, and further reciprocity. Mustering the inner resources to overcome the existential angst of change, and conscious responsibility to develop dexterity and poise in new behaviours, strengthen one's competence at negotiations.

Dynamics

4. Interpretations

Interpretations drive behaviour, and behaviours drive negotiations. Individuals and groups have vastly different perceptions of events. Nonverbal as well as verbal signals are constantly being interpreted. Everyone perceives differently, and miscommunications as well as substantive disagreements plague negotiations. Individuals can't imagine why others don't "get it," while others think the same in reverse. Asking another's interpretation rather than assuming it, may avoid serious impasses. Taking interpretations seriously and respecting their power to ground action, even as we may disagree and work to change them, are key to negotiation success.

5. External Forces

Multiparty negotiations are subject to powerful external forces. History, law, culture, group values, beliefs, resources, and external events all come to the table and influence outcomes. Negotiators' mandates are limited by background groups, who may not approve negotiators' hard-won solutions. Negotiation outcomes can be altered in an instant by a change in the external environment.

6. Trust

Trust is a core force of negotiations. With trust, co-operative solutions are possible; without trust, conflict may escalate rather than diminish. With confidence that one won't be taken advantage of, one can risk moving to new ground, while without such confidence, self-defence is the safer route. Trust takes time to develop, and once lost, a long time to recover. Multiple negotiators, teams, and background groups create a complex network of relationships, all with different levels of trust. Small, low-risk agreements at whatever nexus of trust can be found, followed by faithful implementation, may form a toehold on which to build larger agreements in the future.

Process

7. Preparation

Technical competence in the subject-matter under negotiation, as well as an understanding of the history and context of the issues, the relevant law, relationships, power, parties' interests, concerns, and alternatives, are essential to competent negotiations. Preparation includes having details at one's fingertips, developing an overall goal against which to test solutions as they come up during the negotiations, and developing strategies of presentation, boundaries, and margins of acceptability in relation to outcomes.

8. Prenegotiation and Procedural Negotiations

Parties assess each other in multiple ways—power relationships, relative interests, legal rights, history, resources, motives—before they decide whether negotiations hold out more hope than unilateral actions. Negotiations can create losses as well as gains. Even with a shared commitment to a positive outcome, win-win agreements are elusive, but coming to the table without a conviction that negotiation is in one's best interest often becomes a self-fulfilling prophecy. Prenegotiation is what occurs before parties agree to come to the table.

Once a decision is made to participate, shared understandings as to process cannot be assumed. Attempting to work out procedural arrangements during substantive negotiations is time-consuming and frustrating. Parties make procedural agreements as to agenda, speaking arrangements, disclosure obligations, documents to be considered, decision making, and dispute-resolution procedures. Parties continue to assess each other during procedural negotiations, getting to know negotiators and refining judgements of trustworthiness.

9. Speak and Listen, Reciprocity, Risk and Surprise, Transformation, and Slow Work

Beginnings matter. The tone of the first few interactions, constructive or destructive, will establish a momentum that is hard to change once negotiations are underway.

Parties cannot expect others to know what they are thinking. Explicit speaking and careful listening on the part of all parties with respect to interpretations, needs, concerns, “must-haves,” and “can't have,” reveal the potential zone of agreement. Reframing may be necessary as part of this communication process to uncover common interests.

Effective negotiators offer concessions, but require reciprocity in smaller concessions before making larger ones. Reciprocity itself is an art form, as concessions carry different costs for different parties. The costs of resource and power concessions vary depending on relative supplies, while concessions on identity and values are typically high-cost. Different members of the same team may disagree on the appropriateness or cost of a concession. Concessions risk lack of reciprocity and unpredictable consequences. If a concession cuts too deeply into values, or has higher costs than anticipated, or is not reciprocated, new animosities can be created.

Negotiations move forward through give and take, both within and among groups. Decisions as to what is worth fighting for and what can be given away without substantial loss are ongoing, have to be made on the spot, and always in conditions of uncertainty. The potential for reciprocity is often tested in backroom talks among negotiators who have some trust among themselves in ways that are not possible at the Main Table.

Taking a surprise risk in negotiations—especially one of kindness or generosity—can sometimes shock established behaviours. The vulnerability created by the unpredictability of

responses, the possible lack of reciprocity, can sometimes strike a chord of humanity in the receiver. A spark of reciprocal trust may arise that, whether it remains dormant for some time, or whether it produces a palpable change in the room, creates a transformative hope at the heart of negotiation. Such moments, when they occur, are dramatic and empowering, but much of the work of negotiation is the patient day-to-day slogging of trying to understand each other and work out the details of a relationship the parties can at least live with.

Synthesis

10. There Is Always More, and Everything Matters

Negotiations may be unsuccessful as parties discern that the substantive differences and the lack of trust among background groups are too broad, deep, and wide, to allow meaningful agreements. But external events are always changing, and next year things may be different. There will always be more awareness to achieve and more to be resolved. Even if negotiations are successful, there are always more synergies to be created. What is important is that every thought and action adds its weight to the balance and has the capacity to make a difference. We are all negotiators. The direction and tone of our engagement is always ours to choose. Everything matters.

APPENDIX

Introduction to *Robert's Rules of Order*

The following is a brief introduction to the set of rules for conduct that allows everyone to be heard and to make decisions without confusion. It has been edited to reflect gender neutrality.

Follow a fixed order of business. Below is a typical example.

1. Call to order.
2. Roll call of members present.
3. Reading of minutes of last meeting.
4. Officers' reports.
5. Committee reports.
6. Special orders—important business previously designated for consideration at this meeting.
7. Unfinished business.
8. New business.
9. Announcements.
10. Adjournment.

The method used by members to express themselves is in the form of moving motions.

A motion is a proposal that the entire membership take action or a stand on an issue.

Individual members can:

1. Call to order.
2. Second motions.
3. Debate motions.
4. Vote on motions.

There are four basic types of motions.

1. *Main Motions*: The purpose of a main motion is to introduce items to the membership for their consideration. They cannot be made when any other motion is on the floor, and yield to privileged, subsidiary, and incidental motions.
2. *Subsidiary Motions*: Their purpose is to change or affect how a main motion is handled, and is voted on before a main motion.

3. *Privileged Motions*: Their purpose is to bring up items that are urgent about special or important matters unrelated to pending business.
4. *Incidental Motions*: Their purpose is to provide a means of questioning procedure concerning other motions and must be considered before the other motion.

How Are Motions Presented?

1. Obtain the floor.

- a. Wait until the last speaker has finished.
- b. Rise and address the chair by saying, “Mr./Ms. Chair.”
- c. Wait until the chair recognizes you.

2. Make your motion.

- a. Speak in a clear and concise manner.
- b. Always state a motion affirmatively.
Say, “I move that we ...” rather than, “I move that we do not ...”
- c. Avoid personalities and stay on your subject.

3. Wait for someone to second your motion.

4. Another member will second your motion, or the chair will call for a second.

5. If there is no second to your motion, it is lost.

6. The chair states your motion.

- a. The chair will say, “It has been moved and seconded that we, ...” thus placing your motion before the membership for consideration and action.
- b. The membership then either debates your motion or may move directly to a vote.
- c. Once your motion is presented to the membership by the chair, it becomes “assembly property,” and cannot be changed by you without the consent of the members.

7. Expand on your motion.

- a. The time for you to speak in favour of your motion is at this point in time, rather than at the time you present it.
- b. The mover is always allowed to speak first.
- c. All comments and debate must be directed to the chair.
- d. Keep to the time limit for speaking that has been established.
- e. The mover may speak again only after other speakers are finished, unless called upon by the chair.

8. Put the question to the membership.

- a. The chair asks, “Are you ready to vote on the question?”

- b. If there is no more discussion, a vote is taken.
- c. On a motion to move, the previous question may be adapted.

Voting on a Motion

The method of vote on any motion depends on the situation.

There are five methods used to vote.

1. *By Voice*—The chair asks those in favour to say “aye” and those opposed to say “no.” Any member may move for an exact count.
2. *By Roll Call*—Each member answers “yes” or “no” as his/her name is called. This method is used when a record of each person’s vote is required.
3. *By General Consent*—When a motion is not likely to be opposed, the chair says, “If there is no objection ...” The membership shows agreement by their silence however if one member says, “I object,” the item must be put to a vote.
4. *By Division*—This is a slight verification of a voice vote. It does not require a count unless the chair so desires. Members raise their hands or stand.
5. *By Ballot*—Members write their vote on a slip of paper; this method is used when secrecy is desired.

There are two other motions that are commonly used that relate to voting.

1. *Motion to Table*—This motion is often used in the attempt to “kill” a motion. The option is always present, however, to “take from the table,” for reconsideration by the membership.
2. *Motion to Postpone Indefinitely*—This is often used as a means of parliamentary strategy, and allows opponents of motion to test their strength without an actual vote being taken. Also, debate is once again open on the main motion.

Parliamentary procedure is the best way to get things done,
but it will only work if used properly.

1. Allow motions that are in order.
2. Have members obtain the floor properly.
3. Speak clearly and concisely.
4. Obey the rules of debate.
5. Most importantly, BE COURTEOUS.

ENDNOTES

PART ONE

1. 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).
2. M. Minow, *Between Vengeance and Forgiveness: Facing History after Genocide and Mass Violence* (Boston, MA: Beacon Press, 1998) at 19.
3. Trudeau in *Dancing Around the Table*, *supra* note 1.
4. Minow, *supra* note 2 at 65.
5. *Ibid.* at 112–17.
6. *Ibid.* at 114.
7. *Ibid.* at 140.
8. *Ibid.* at 15.
9. *Ibid.* at 196.
10. *Ibid.* at 93.
11. *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 *Probing the Limits of Representation: Nazism and the Final Solution*, ed. Saul Friedlander (Cambridge, MA: Harvard University Press, 1992) at 143, 147–48.
12. Minow, *supra* note 2 at 65.
13. D. Christensen, *Ahtahkakoop: The Epic Account of a Plains Cree Head Chief, His People, and Their Vision for Survival 1816–1896* (Shell Lake, SK: Ahtahkakoop Publishing, 2000).
14. *Royal Commission on Aboriginal Peoples, Looking Forward, Looking Back*, vol. I, pt. II (Ottawa: Minister of Supply and Services Canada, 1996) at 69 [hereinafter *Royal Commission on Aboriginal Peoples*].
15. W.T. Molloy, *The World Is Our Witness: The Historic Journey of the Nisga'a into Canada* (Calgary: Fifth House, 2000).
16. 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.
17. *Royal Commission on Aboriginal Peoples*, *supra* note 14.
18. *Ibid.*
19. *Ibid.*, *Looking Forward, Looking Back*, vol. I; *Restructuring the Relationship*, vol. II; *Gathering Strength*, vol. III; *Perspectives and Realities*, vol. IV (Ottawa: Minister of Supply and Services, 1996).
20. 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).

21. Minow, *supra* note 2.
22. This student paper goes on to provide a brief history of the treatment of women throughout Christianity.
23. Andrew Pirie, "Conflicts and Disputes," in *Alternative Dispute Resolution: Skills, Science, and the Law*, by A.J. Pirie (Toronto: Irwin Law, 2000) at 141.
24. Molloy, *supra* note 15.
25. W.L. Ury, *Getting to Peace: Transforming Conflict at Home, at Work, and in the World* (New York: Viking, 1999) [hereinafter *Getting to Peace*].
26. *Royal Commission on Aboriginal Peoples, Restructuring the Relationship*, vol. II, pt. I, at 42–43.
27. Molloy, *supra* note 15 at 203.
28. M. LeBaron Duryea, "Mediation, Conflict Resolution, and Multicultural Reality," in *Mediation and Conflict Resolution in Social Work and the Human Sciences*, ed. E. Kruk (Chicago, ILL: Nelson-Hall, 1997) at 322.
29. Molloy, *supra* note 15 at 202.
30. *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."
31. Department of Indian Affairs and Northern 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).
32. Molloy, *supra* note 15 at 62–63.
33. *Ibid.* at 103.
34. R. Fisher, W. Ury, and B. Patton, *Getting to Yes: Negotiating Agreement without Giving In*, 2nd ed. (New York: Penguin, 1991) [hereinafter *Getting to Yes*].
35. *Ibid.* at 40.
36. *Ibid.* at 41.
37. *Ibid.* at 52.
38. 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.
39. The term is used in the Alternative Dispute Resolution literature to refer to not addressing disagreements. See, e.g., Pirie, *supra* note 31 at 75, or C. Moore, *The Mediation Process: Practical Strategies for Resolving Conflict*, 2nd ed. (San Francisco, CA.: Jossey-Bass, 1996) at 104–8.
40. H. Cardinal and W. Hildebrandt, *Treaty Elders of Saskatchewan* (Calgary, AB: University of Calgary Press, 2000) [hereinafter *Treaty Elders*].
41. *Ibid.* at 31.
42. *Ibid.* at 25.
43. Sharon Venne, "Understanding Treaty Six: An Indigenous Perspective," in *Aboriginal and Treaty Rights in Canada: Essays on Law, Equity, and Respect for Difference*, ed. M. Asch (Vancouver: UBC Press in association with the Centre for Constitutional Studies, University of Alberta, 1997) at 206.
44. *Treaty Elders*, *supra* note 40.
45. *Ibid.* at 31.
46. *Ibid.* at 7.

47. *Getting to Peace*, *supra* note 25.
48. 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).
49. P. Harris and B. Reilly, eds., *Democracy and Deep-Rooted Conflict: Options for Negotiators*, online: http://www.idea.int/publications/democrac...d_deep_rooted_conflict/ebook_contents.htm (date accessed: 6 March 2001).
50. Molloy, *supra* note 15 at 36.
51. *Ibid.* at 43.
52. Pirie, *supra* note 23 at 144.
53. Molloy, *supra* note 15 at 36.
54. *Ibid.* at 54.
55. *Ibid.* at 47.
56. Diana Tribe, *Essential Legal Skills: Negotiation* (London: Cavendish Publishing Ltd., 1993) at 11.
57. *Ibid.*
58. Harris and Reilly, *supra* note 49 at 2.5.1.
59. *Getting to Yes*, *supra* note 34 at 19–21.
60. Molloy, *supra* note 15 at 131.
61. *Ibid.* at 109.
62. S. Buzzell, K. Boa, and B. Perkins, eds., *The Leadership Bible* (Grand Rapids: Zondervan, 1998) at 1150.
63. Tribe, *supra* note 56 at 8.
64. J. Bercovitch, ed., *Resolving International Conflict: The Theory and Practice of Mediation* (Boulder, CO: Lynn Rienner Publishers, 1996) at 119.
65. *Ibid.* at 109.
66. R.J. Lewicki, J.A. Litterer, J.W. Minton, and D.M. Saunders, *Negotiation*, 2nd ed. (Toronto, ON: Irwin, 1994) at 421–24.
67. *Ibid.*
68. Molloy, *supra* note 15 at 89.
69. Minow, *supra* note 2 at 2.
70. *Ibid.*
71. Molloy, *supra* note 15 at 101.
72. *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."]
73. *Ibid.* at 16–19.
74. *Ibid.* at 103.
75. *Getting to Yes*, *supra* note 34.
76. Molloy, *supra* note 15.
77. *Ibid.* at 43.
78. Harris and Reilly, *supra* note 49.
79. *Ibid.* at 3.4.1.
80. Pirie, *supra* note 23 at 138.
81. *Getting to Peace*, *supra* note 25.
82. Molloy, *supra* note 15 at 109.
83. *Ibid.* at 208.

84. *Getting to Peace*, *supra* note 25 at 164.
 85. Minow, *supra* note 2 at 93.
 86. *Getting to Peace*, *supra* note 25 at 113.
 87. *Ibid.* at 143.

PART TWO

1. *Constitution Act, 1982*, s.35, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c.11.
2. Aboriginal Self-Government, online: Indian and Northern Affairs Canada, http://www.aicn-inac.gc.ca/pr/pub/sg/plcy_e.html (last modified: unknown).
3. The parties agreed that the Supreme Court of Canada, in the line of cases following *R. v. Sparrow* [1990] 1 S.C.R. 1075, had established guidelines for governmental interference with “constitutionally-protected rights.”
4. This use of the term is technically incorrect. As noted in Aboriginal AA’s comments below, the term was introduced by the Aboriginal team to argue that a nonconstitutionally protected Canadian right, such as economic development, should not be able to trump a constitutionally protected right such as s.35 inherent right to self-government. Nonetheless, the phrase “right to infringe a nonconstitutionally protected right” dominated the rest of the negotiation. Arguably, the use of the term in this way did not prejudice the development of the tribunal proposal that came to be the group solution, but the fact remains that the phrase originated in a technically incorrect interpretation of the term.
5. A local restaurant.
6. W.L. Ury, *Getting to Peace: Transforming Conflict at Home, at Work, and in the World* (New York: Viking, 1999) at 49.
7. *Ibid.* at 95.
8. William Zartman, “Prenegotiation: Phases and Functions,” in *Getting to the Table: The Processes of International Prenegotiation*, by Janice Gross Stein (Baltimore: The John Hopkins University Press, 1989) 1 at 6–7.
9. P. Terrence Hopmann, *The Negotiation Process and Resolution of International Conflicts* (Columbia: University of South Carolina Press, 1996) at 25–26.
10. Zartman, *supra* note 8 at 13–14.
11. P.H. Gulliver, *Disputes and Negotiation: A Cross-Cultural Perspective* (Toronto: Academic Press, 1979) at 70.
12. I. William Zartman, “Theory and Reality,” in *International Negotiation: Art and Science*, eds. Diane B. Bendahmane and John W. McDonald, Jr. (Washington: Department of State Publications, 1984) 1 at 5.
13. Hopmann, *supra* note 9 at 27.
14. Andrew J. Pirie, *Alternative Dispute Resolution: Skills, Science, and the Law* (Toronto: Irwin Law, 2000) at 138.
15. Hopmann, *supra* note 9 at 109.
16. *Ibid.* at 101.
17. Pirie, *supra* note 14 at 140–41.
18. Hopmann, *supra* note 9 at 111.
19. Pirie, *supra* note 14 at 13.
20. B. Mayer, “The Dynamics of Power in Mediation and Negotiation” (1987), 16 *Mediation Quarterly* at 77.
21. Pirie, *supra* note 14 at 65–67.
22. C. Moore, *The Mediation Process: Practical Strategies for Resolving Conflict*, 2nd ed. (San Francisco: Jossey Bass, 1996) at 104–5.
23. *Ibid.* at 106–8.

24. *The Canadian Oxford Dictionary*, 1st edn, s.v. “interest.”
25. Daniel Druckman, *Human Factors in International Negotiations: Social Psychological Aspects of International Conflict* (Beverly Hills: Sage Publications, 1973) at 11.
26. *Ibid.*
27. L. Topper, ed., *Play for Power: Creating Leaders through Sport* (Reston, VA: National Association for Girls and Women in Sport, 1996) at 24.
28. *Ibid.* at 61.
29. *Ibid.*
30. *Ibid.* at 65.
31. *Ibid.* at 66.
32. *Ibid.*
33. *Ibid.* at 65.
34. L.N. Rangarajan, *The Limitation of Conflict: A Theory of Bargaining and Negotiation* (New York: St. Martin’s Press, 1985) at 145.
35. Pirie, *supra* note 14 at 15.
36. *Ibid.* at 94–95.
37. *Report of the Royal Commission on Aboriginal Peoples*, vol. I, *Looking Forward, Looking Back* (Ottawa: Minister of Supply and Services Canada, 1996).
38. Pirie, *supra* note 14 at 29.
39. *Ibid.* at 301.
40. Hopmann, *supra* note 9 at 143.
41. Alexis de Tocqueville, *Democracy in America*, trans. Henry Reeves (Cumberland House: Wordsworth Classics of World Literature, 1998) at 204.
42. Jim Hinkson, *The Art of Team Coaching* (Toronto: Warwick Publishing, 2001) at 70.
43. *Ibid.* at 72.
44. *Ibid.*
45. *Ibid.* at 81.
46. *Ibid.*
47. *Ibid.* at 82.
48. *Ibid.*
49. *Ibid.*
50. Pirie, *supra* note 14 at 41–43.
51. Thomas Colosi, “A Model for Negotiation,” in *International Negotiation: Art and Science*, eds. Diane B. Bendahmane and John W. McDonald Jr. (Washington: Department of State Publications, 1984) 15 at 25
52. Hopmann, *supra* note 9 at 234.
53. “By ‘white man’ approach, I am referring to the negotiation strategy that we observed in the video *Dancing around the Table*. In the video, the Aboriginal groups brought gifts, said prayers, and passed around the ceremonial pipe. In response, the federal and provincial groups did nothing except voice their position in the negotiations. Throughout the negotiations, the two Crown groups negotiated without the extras of prayer, gifts, or stories that were employed by the Aboriginal groups.”
54. The fundamental term is this student’s thirty-page proposal to re-vision Canadian-Aboriginal relations in Canada on the basis of formal equality.
55. Adopted 16 December 1966, entered into force 23 March 1976, G.A. Res.2200A (XXI), U.N.Doc. A/6316, 999 UNTS 171.
56. Volume 2, parts I and II, *Restructuring the Relationship* (Ottawa: Minister of Supply and Services, 1996) at 68.

57. Ury, *supra* note 6 at 7.
58. These appeared to be dealt with by the tribunal idea that was put forth by the federal team.
59. Consolidated Native Law Statutes, *Regulations and Treaties 2000–2001* (Toronto: Carswell, 2000) at 608.
60. Julie Macfarlane, ed., *Dispute Resolution: Readings and Case Studies* (Toronto: Emond Montgomery, 1999) at 120.
61. T. Grovier, “Trust, Acknowledgement, and the Ethics of Negotiation,” in *Speaking Truth to Power: A Treaty Forum, Law Commission of Canada and BC Treaty Commission* (Ottawa: Minister of Public Works and Government Services Canada, 2001) at 99.
62. Daniel Goleman, *Emotional Intelligence* (New York: Bantam Books, 1995) at 96.
63. R. Fisher and W. Ury, *Getting to Yes: Negotiating Agreement without Giving In* (Boston: Houghton Mifflin, 1981) at 130–32.
64. Jacqueline M. Nolan-Haley, *Alternative Dispute Resolution* (St. Paul, MN: West Publishing Co., 1992) at 19.
65. *Ibid.* at 20.
66. Pirie, *supra* note 14 at 57.
67. Moore, *supra* note 22 at 75.
68. *Ibid.* at 104–08; also Kenneth W. Thomas and Ralph H. Kilmann, *Thomas-Kilmann Conflict Mode Instrument* (Tuxedo, NY: Xicom, 1974).
69. Moore, *supra* note 22 at 103.
70. Grovier, *supra* note 61 at 95.
71. Pirie, *supra* note 14 at 45.
72. *Ibid.* at 95.
73. Hinkson, *supra* note 42 at 94.
74. Ury, *supra* note 6 at xviii–xix.
75. Pirie, *supra* note 14 at 114.
76. Hopmann, *supra* note 9 at 132.
77. Steven Covey, *The Seven Habits of Highly Effective People: Powerful Lessons in Personal Change* (New York: Simon & Schuster, 1990).
78. *The New Lexicon Webster’s Encyclopedic Dictionary of the English Language*, Canadian Edition (New York: Lexicon Publications, 1988).
79. Ury, *supra* note 6 at 195.
80. *Ibid.* at 17.
81. *Ibid.* at 14. Emphasis in original.
82. *Ibid.* at 21.
83. *Ibid.* at 24.
84. *Ibid.* at 177.
85. *Ibid.*
86. *Ibid.* at 165.
87. *Ibid.* at 17.
88. *Ibid.* at 177.
89. T. Molloy, *The World Is Our Witness: The Historic Journey of the Nisga’a into Canada* (Calgary: Fifth House, 2000) at 47.
90. See note 54.
91. M.L. Benson, *Conflict, Co-operation, and Culture: A Study in Multiparty Negotiations* (Saskatoon: Centre for the Study of Co-operatives, 2002) at 53.

92. O.A. Johnson, *Ethics: Selections from Classical and Contemporary Writers*, 6th ed. (New York: Harcourt Brace Jovanovich, 1989) at 4.
93. Hinkson, *supra* note 42 at 61.
94. Druckman, *supra* note 25 at 21.
95. *Ibid.* at 37.
96. Topper, *supra* note 27 at 62.
97. H. Miall, *The Peacemakers* (London: Macmillan, 1992) at 53.
98. *Ibid.* at 54.
99. Hinkson, *supra* note 42 at 61.
100. H. Schellenberger, *Psychology of Team Sport* (Toronto: Sports Book Publisher, 1990) at 127.
101. J. Bangsbo and B. Peitersen, *Soccer Systems and Strategy* (Champaign, IL: Human Kinetics, 2000) at 83.
102. Topper, *supra* note 27 at 91.
103. *Ibid.* at 1.
104. Druckman, *supra* note 25 at 67.
105. Topper, *supra* note 27 at 92.
106. *Ibid.*
107. *Ibid.* at 93.
108. *Ibid.*
109. *Ibid.* at 92.
110. W.N. Widmeyer, L.R. Brawley, and A.V. Carron, *The Measurement of Cohesion in Sport Teams: The Group Environment Questionnaire* (London, ON: Sports Dynamics, 1985).
111. *Ibid.* at 67–75.
112. Topper, *supra* note 27 at 93.
113. *Ibid.*
114. Widmeyer et al., *supra* note 110 at 70.
115. *Ibid.*
116. *Ibid.*
117. *Ibid.* at 93.
118. *Ibid.* at 92.
119. *Ibid.* at 10.
120. Topper, *supra* note 27 at 92.
121. *Ibid.* at 94.
122. *Ibid.*
123. L.K. Bunker in Topper, *supra* note 27 at 97.
124. *Ibid.*
125. *Ibid.*
126. *Ibid.*
127. *Ibid.* at 99.
128. *Ibid.*
129. *Ibid.* at 100.
130. Hinkson, *supra* note 42 at 56.
131. *Ibid.* at 104.

132. Druckman, *supra* note 25 at 67.
133. *Ibid.*
134. R. Fisher, E. Kopelman, and A.K. Schneider, *Beyond Machiavelli: Tools for Coping with Conflict* (Cambridge, MA: Harvard University Press, 1994).
135. Hinkson, *supra* note 42 at 91.
136. *Ibid.*
137. Y.L. Hanin, ed., *Emotions in Sport* (Champaign, IL: Human Kinetics, 2000) at 35.
138. *Ibid.*
139. *Ibid.* at 127.
140. *Ibid.* at 21.
141. *Ibid.* at 55.
142. *Ibid.* at 27.
143. *Ibid.* at 58.
144. *Ibid.* at 113.
145. Hinkson, *supra* note 42 at 198.
146. *Ibid.* at 91.
147. *Ibid.*
148. *Ibid.*
149. *Ibid.*
150. K-H. Granitza in D. Faries, *Advice from the Soccer Pros* (Mountain View, CA: Anderson/World, 1980) at 17.
151. Hinkson, *supra* note 42 at 94.
152. Druckman, *supra* note 25 at 49.
153. Martha Minow, *Between Vengeance and Forgiveness: Facing History after Genocide and Mass Violence* (Boston: Beacon Press, 1998) at 9.
154. Manfred Lachs, "International Law, Mediation and Negotiation," in *Multi-Lateral Negotiation and Mediation: Instructions and Methods*, ed. Arthur S. Lall (New York: Pergamon Press, 1985) 183 at 186.
155. Hopmann, *supra* note 9 at 27.
156. Molloy, *supra* note 89 at 16–19.
157. 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).
158. Fritjof Capra, *The Web of Life* (New York: Random House, 1997).
159. Ury, *supra* note 6 at 168.

PART THREE

1. M.L. Benson, *Conflict, Co-operation, and Culture: A Study in Multiparty Negotiations* (Saskatoon: Centre for the Study of Co-operatives, 2002).
2. W.T. Molloy, *The World Is Our Witness: The Historic Journey of the Nisga'a into Canada* (Calgary: Fifth House, 2000) at 109.
3. L. Thompson, *The Mind and Heart of the Negotiator* (New Jersey: Prentice Hall, 2001) at 11.
4. W. Ury, *Getting Past No: Negotiating with Difficult People* (New York: Bantam Books, 1991) at 21 [hereinafter *Getting Past No*].

5. *Ibid.* at 22.
6. Thompson, *supra* note 3 at 12.
7. *Ibid.* at 23.
8. R.J. Lewicki, A. Hiam, and K.W. Olander, "Think Before You Speak: A Complete Guide to Strategic Negotiation," in *Dispute Resolution: Readings and Case Studies*, ed. J. Macfarlane (Toronto: Edmond Montgomery, 1999) at 224. The authors discuss brainstorming as a method to generate ideas and note that the key to this method is that when ideas are being generated, they must not be evaluated or it will hinder the process of making suggestions.
9. Thompson, *supra* note 3 at 178.
10. M. Bazerman and M. Neale, *Cognition and Rationality in Negotiation* (New York: The Free Press, 1991) at 117.
11. *Ibid.*
12. *Ibid.*
13. *Ibid.*
14. *Ibid.*
15. G. Goodpaster, "A Primer on Competitive Bargaining," (1996) *J. Disp. Resol.* 325, online: LEXIS.
16. One of NB's "ABC of Negotiations."
17. Thompson, *supra* note 3 at 124.
18. R. Fisher and W. Ury, *Getting to Yes: Negotiating Agreement Without Giving In* (New York: Penguin Books, 1983) at 25 [hereinafter *Getting to Yes* 1983]. Fisher and Ury use the following example: If your spouse says the kitchen is a mess, intended simply as an observation, you (the receiver) may take it as a personal attack of not keeping the kitchen clean and therefore not doing your duty.
19. Thompson, *supra* note 3 at 24.
20. *Getting Past No*, *supra* note 4 at 31. See also Thompson, *supra* note 3 at 96, who suggests that negotiators build into the process some cooling off periods to allow them to assess their interests and deal with issues as they arise in the negotiations.
21. *Getting Past No*, *supra* note 4 at 32.
22. *Ibid.* at 27.
23. *Ibid.*
24. *Ibid.* at 28.
25. Jeanne Brett, *Negotiating Globally: How to Negotiate Deals, Resolve Disputes, and Make Decisions across Cultural Boundaries* (San Francisco, CA: Jossey-Bass, 2001) at 203.
26. *Ibid.*
27. Brett, *passim*.
28. Thompson, *supra* note 3 at 8.
29. *Ibid.* at 106.
30. Fred C. Ikle, *How Nations Negotiate* (New York: Harper and Row, 1964) at 143.
31. M. Bazerman and M. Neale, *Negotiating Rationally* (New York: The Free Press, 1992) at 121 [hereinafter *Negotiating Rationally*].
32. Thompson, *supra* note 3 at 85. Thompson recognizes that emotion is a negotiating technique.
33. *Ibid.* at 101.
34. *Ibid.* at 102.
35. *Ibid.* at 103.
36. *Ibid.* at 104.

37. *Ibid.* at 107.
38. H. Cohen, *You Can Negotiate Anything* (Don Mills, ON: General Publishing, 1980) at 124.
39. Thompson, *supra* note 3 at 104.
40. *Ibid.*
41. *Negotiating Rationally*, *supra* note 31 at 122.
42. *Ibid.*
43. Thompson, *supra* note 3 at 104.
44. *Ibid.* at 85.
45. *Ibid.* at 104.
46. *Ibid.*
47. *Ibid.*
48. *Ibid.*
49. *Ibid.*
50. *Ibid.* at 108.
51. P. Terrence Hopmann, *The Negotiation Process and the Resolution of International Conflicts* (Columbia, SC: University of South Carolina Press, 1996) at 132.
52. *Ibid.*
53. Thompson, *supra* note 3 at 105.
54. G.R. Williams, "Style and Effectiveness in Negotiation" in *Dispute Resolution: Readings and Case Studies*, ed, J. Macfarlane (Toronto: Edmond Montgomery, 1999) at 149.
55. *Ibid.*
56. *Ibid.*
57. *Getting Past No*, *supra* note 4 at 12. Ury suggests that anger that escalates during a negotiation can even lead to a corporate shut-down, lawsuit, or war, depending on the context of the negotiations.
58. *Ibid.* at 13.
59. In Victor A. Kremenjuk, ed., *International Negotiations: Analysis, Approaches, Issues* (San Francisco, CA: Jossey-Bass, 1991) at 82.
60. R. Fisher, W. Ury, and B. Patton, *Getting to Yes: Negotiating Agreement without Giving In*, 2nd ed. (New York: Penguin, 1991) at 30 [hereinafter *Getting to Yes* 1991].
61. *Ibid.* at 31.
62. *Ibid.*
63. *Ibid.*
64. *Ibid.*
65. *Ibid.*
66. Daniel Druckman, *Human Factors in International Negotiations: Social-Psychological Aspects of International Conflict* (Beverly Hills: Sage Publications, 1973) at 54.
67. Editor's note: Some of the technical aspects of discussion that follows are included as footnotes because of the specificity of the issues to the U. of S. technological environment.
68. The technology used in the College of Law to communicate information re courses.
69. Thompson, *supra* note 3 at 280.
70. *Ibid.* at 272.
71. *Ibid.* at 274.
72. *Ibid.* at 278.

73. *Ibid.* A table is provided describing emoticons used to convey emotions. Reference to this table could ensure that you are using the correct desired emoticon for the correct emotion, eliminating miscommunication. In addition, most e-mail writers know that writing in capital letters is the same as shouting at someone. If this is done without knowledge of this expression, it could seriously hinder communications.
74. *Ibid.* at 279.
75. *Ibid.*
76. *Ibid.*
77. *Ibid.*
78. *Ibid.* at 281.
79. *Ibid.* at 283.
80. G.E. Kersten, "The Science and Engineering of E-Negotiation: An Introduction," in *Proceedings of the 36th Hawaii International Conference on Systems Sciences*, ed. R.H. Sprague, Jr. (Los Alamitos, CA: IEEE Computer Society Press, 2003), online: <http://interneg.org/interneg/research/papers/2003/09.pdf> (date accessed: 04 April 2003).
81. Even though in 2002 all University of Saskatchewan students were issued an e-mail account, few are in the practice of using that resource. As a result, it is difficult to set up a list-serve of e-mail addresses through which one can be assured the communications do in fact reach the intended recipients.
82. <http://messenger.msn.com/>
83. <http://messenger.msn.com/support/features.asp?client=2>
84. *Getting Past No*, *supra* note 4 at 19.
85. Thompson, *supra* note 3 at 91. See also *Getting to Yes* 1991, *supra* note 60 at 41.
86. *Getting to Yes* 1991, *supra* note 60.
87. *Getting to Yes* 1983, *supra* note 18 at 43.
88. *Ibid.*
89. *Getting to Yes* 1991, *supra* note 60 at xii.
90. *Getting to Yes* 1983, *supra* note 18 at 17.
91. *Ibid.* at 19.
92. *Ibid.*
93. *Ibid.* at 38.
94. *Ibid.* at 41.
95. *Ibid.* See also *Getting Past No*, *supra* note 4 at 18.
96. Thompson, *supra* note 3 at 93.
97. *Getting Past No*, *supra* note 4 at 19.
98. *Ibid.* at 8.
99. L. Lohmann, "The Kyoto Protocol: Neocolonialism and Fraud." Talk given at "Resistance Is Fertile" gathering, The Hague, April 2002, online: <http://www.thecornerhouse.org.uk/document/riftalk.html> (date accessed: 04 April 2003).
100. *Getting Past No*, *supra* note 4 at 37.
101. *Ibid.* at 38.
- 102 These are known as "two-level" games, which involve internal and external bargaining. US Secretary of Labour John Dunlop said: "Every negotiation involves at least three negotiations—one across the table and one on each side." (As quoted by Howard Raiffa in *The Art and Science of Negotiation* (Cambridge, Mass: Harvard University Press, 1982).
103. D.G. Ellis and B.A. Fisher, *Small Group Decision Making: Communication and the Group Process*, 4th ed. (New York: McGraw-Hill, 1994) at 48.

104. *Ibid.* at 17–18.
105. A. Strauss, *Negotiations: Varieties, Contexts, Processes and Social Order* (San Francisco, CA: Jossey-Bass, 1978) at 8.
106. Benson, *supra* note 1.
107. H. Cohen, *You Can Negotiate Anything* (Don Mills: General Publishing Co., 1980) at 16.
108. H.P. Young, “Negotiation Analysis,” in *Negotiation Analysis*, ed. H.P. Young (Ann Arbor: University of Michigan Press, 1981) at 1.
109. Inns of Court School of Law, *Advocacy, Negotiation and Conference Skills*, 5th ed. (London: Blackstone Press, 1993) at 120.
110. *Ibid.*
111. <http://www.ronmccray.com/teachings.htm>
112. Stuart Hampshire, *Justice Is Conflict* (Princeton, NJ: Princeton Univ. Press, 2001).
113. Procedures: vote on chair at beginning of next meeting; motion for rotating (neutral) chair next week; motion to have each team allowed up to ten minutes to present on the issues of the day before voting; voting, on procedure, one vote per person; on substantive, one vote per team; everyone from every team be allowed to sit at the table. Substantively, if we get to it, Q.3: Terms of carbon sinks.
114. See Appendix.
115. Question 3. Will a trading market be permitted to allow emission-reduction credits, and if so, under what terms?
116. Minutes of all sessions on file with author.
117. Federal handout on file with author.
118. *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K), 1982, c.11.
119. Editor’s note: Question 4 was: Will incentives be required to make the mandatory reduction targets workable?
120. Goodpaster, *supra* note 15.
121. Thompson, *supra* note 3 at 190.
122. International Emissions Trading Association, online: IETA Homepage, <http://www.ieta.org/> (date accessed: 9 March 2003).
123. From Point Carbon, online: IETA’s Trading Scheme Database, <http://www.pointcarbon.com/schemes.php> (date accessed: 9 March 2003). Their public summary on carbon trading schemes noted more cap-and-trade than credit-and-trade systems in their database. However, the same summary report also noted that only 21 percent of those cap-and-trade regimes were active compared to 54 percent for the credit-and-trade regimes.
124. US Acid Rain Program, an example of a successful cap-and-trade regime. Online: EPA’s Clean Air Markets <http://www.epa.gov/airmarkets/arp/> (last modified: 29 January 2003).
125. National Stakeholder Workshops 2002, written views by various stakeholders, including many major industry representatives, in response to the federal discussion paper. Online: Canada’s National Climate Change Process website http://www.nccp.ca/NCCP/national_stakeholders/submissions_e.html (date accessed: 04 April 2003).
126. Motion to table an earlier motion that all general credits are owned by the Crown.
127. In communication research, this is known as the Persuasive Arguments Theory (PAT). Advanced by Meyers, it states that group members are influenced by the arguments of other group members, and shift their decision, sometimes towards the extreme. H.P. Young, ed. *Negotiation Analysis* (Ann Arbor: University of Michigan Press, 1981) at 47.
128. Website for The Centre for European Policy Studies, <http://www.ceps.be/Default.php>
129. *Ibid.*

130. Goodpaster, *supra* note 15.
131. Editor's Note: There is no exact record of the motion shown in the minutes.
132. Hopmann, *supra* note 51 at 133.
133. D.G. Gifford, "A Context-Based Theory of Strategy Selection in Legal Negotiation," (1985) 46 Ohio St. L.J.41, online: LEXIS.
134. Ellis and Fisher, *supra* note 103 at 76–80.
135. B. Spector, "Negotiation as a Psychological Process," in *The Negotiation Process: Theories and Application*, ed. I. Wm. Zartman (Beverly Hills: Sage Publications, 1977) at 59.
136. Brett, *supra* note 25 at 159.
137. *Getting to Yes* 1983, *supra* note 18 at 101.
138. *Ibid.* at 102.
139. *Ibid.* at 103.
140. *Ibid.*
141. *Ibid.* at 106.
142. *Ibid.* at 110.
143. *Ibid.* at 104.
144. *Getting Past No*, *supra* note 4 at 7.
145. *Webster's Ninth New Collegiate Dictionary* (Springfield, MA: Merriam-Webster, c.1991) at 929.
146. Thompson, *supra* note 3.
147. *Ibid.* at 10.
148. *Ibid.*
149. *Ibid.*
150. *Ibid.* at 15.
151. *Ibid.* at 25.
152. *Ibid.*
153. *Getting Past No*, *supra* note 4 at 37.
154. Brett, *supra* note 25 at 22.
155. *Ibid.*
156. *Getting to Yes* 1991, *supra* note 60 at 179.
157. Thompson, *supra* note 3 at 91.
158. Benson, *supra* note 1 at 59. A relationship after negotiations is a concern for many and must be remembered throughout the whole process, which is why control of negative outbursts is extremely important.
159. Thompson, *supra* note 3 at 92–93.
160. *Ibid.*
161. H. Raiffa, *Art and Science of Negotiation* (Cambridge, Mass: Harvard University Press, 1982) at 211.
162. Benson, *supra* note 1.
163. "Americans assume that violent disorder is an unnatural state that must be resolved, but high levels of violence in a society or region may simply maintain a different kind of equilibrium than that to which we are accustomed. At the very least, periods of violence may be lengthy transitions that cannot be artificially foreshortened. We need not condone violence to recognize that it is not an artificial imposition upon human nature, nor will insisting that violence is unnatural make it so. We know so little about the complex origins of violence that our beliefs about it are no more than superstitions."
Excerpt from Winter 2001 R. Peters article, online: Stability, America's Enemy, <http://carlisle-www.army.mil/usawc/Parameters/01winter/peters.htm> (date accessed: 06 April 2003).

164. Hampshire, *supra* note 112.
165. *Webster's Dictionary*, *supra* note 145 at 1165.
166. *Ibid.* at 1164.
167. *Getting to Yes* 1983, *supra* note 18 at xii.
168. A.J. Pirie, *Alternative Dispute Resolution: Skills, Science, and the Law* (Toronto, Ontario: Irwin Law, 2000).
169. Thompson, *supra* note 3 at 24.
170. Laurence Sharman, *The Practical Skills of the Solicitor* (London: Oyez Longman Publishing, 1981) at 35.
171. Thompson, *supra* note 3 at 85. See also *Getting to Yes* 1983, *supra* note 18 at 9.
172. *Getting to Yes* 1983, *ibid.*
173. *Ibid.*
174. *Getting Past No*, *supra* note 4 at 12.
175. *Ibid.* at 8.
176. Thompson, *supra* note 3 at 102.
177. *Ibid.* at 85.
178. *Ibid.*
179. *Ibid.*
180. *Ibid.* at 17.
181. *Ibid.*
182. *Ibid.* at 92.
183. *Ibid.* at 88.
184. *Ibid.* at 87.
185. *Ibid.*
186. *Ibid.*
187. *Ibid.* at 85.
188. *Ibid.* at 87.
189. *Ibid.* at 84.
190. *Ibid.* at 92.
191. *Ibid.* at 87.
192. *Ibid.*
193. *Ibid.* at 90.
194. R.J. Lewiciki and J.A. Litterer, *Negotiation* (Homewood, Ill: Richard D. Irwin, Inc., 1985) at 276.
195. *Ibid.* at 266.
196. Thompson, *supra* note 3 at 105.
197. *Ibid.* at 101.
198. *Getting Past No*, *supra* note 4 at 9. Ury suggests that it is a natural inclination, when your opponent attacks you, to want to attack back. But resistance to a difficult opponent can simply increase the tension and resistance, thus hindering the negotiations.
199. Thompson, *supra* note 3 at 109.
200. Strategies for building trust taken from Thompson, *ibid.*, at ch. 6, and Brett, *supra* note 25 at 60–64.
201. *Getting Past No*, *supra* note 4 at 8.
202. *Ibid.* at 42.
203. *Ibid.* at 50.

204. Brett, *supra* note 25 at 159.
205. *Ibid.*
206. *Ibid.*
207. *Ibid.*
208. Thompson, *supra* note 3 at 68.
209. *Ibid.* at 130. Dispositional attributions are a threat to trust because they attribute a person's behaviour to character rather than to context.
210. *Ibid.* at 132.
211. *Ibid.* at 124, 126–27.
212. *Ibid.* at 125.
213. *Webster's Dictionary*, *supra* note 145 at 1268.
214. Brett, *supra* note 25 at 108.
215. Benson, lectures.
216. Thompson, *supra* note 3 at 133.
217. Goodpaster, *supra* note 15.
218. Benson, *supra* note 1 at 133.
219. *Getting Past No*, *supra* note 4 at 8.
220. *Ibid.*
221. *Ibid.* at 16.
222. *Ibid.* at 17.
223. *Ibid.* at 26.
224. *Ibid.*
225. Thompson, *supra* note 3 at 8.