WHAT ARE POSITIONS AND INTERESTS?

The core concept in interest-based problem solving is the ability to understand and accept ourselves, others and the situations in which we find ourselves.

All negotiating is an attempt to meet human needs. Interest-based negotiating is a process of creating multiple understandings to better identify and address those needs.

Human beings can be open and straight forward. They can also be covert, scheming and selfish. Every one of us will use both of these approaches at different times in different situations. One of the goals of interest-based problem solving is to shift people from traditional covert, self-centered styles of negotiating to a more open and "honest" approach.

The change from a positional to an interest-based approach to problem solving requires a fundamental shift in the way many of us react when confronted with conflict. This change can occur if a proper climate is created that fosters a spirit of co-operation and trust.

Some definitions may be helpful:

Position: A statement of what you want to happen; what you initially believe would be your preferred outcome.

Interest: The needs that have to be met to make a satisfactory solution; what is important to you.

Issue: The topic of discussion or agenda item that is to be discussed or resolved.
POSITIONAL BARGAINING AND INTEREST-BASED PROBLEM SOLVING

Whether we think of it as negotiating, discussing, bargaining, or problem solving we are constantly involved in processes in which we seek to meet our needs, define our relationships and create new realities for ourselves. These processes can also help create new understanding of ourselves, others, and the situations in which we find ourselves.

This section will compare two very different models of problem solving: Positional Bargaining and Interest-Based Problem Solving.

POSITIONAL BARGAINING

Positional bargaining is basically adversarial and distributive in nature. It begins with each party developing their specific ideal solution for resolution of a dispute. This unilateral demand is then met with a position put forward by the other party and an ongoing exchange begins. Positional bargaining has certain advantages and disadvantages.

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<thead>
<tr>
<th>Advantages</th>
<th>Disadvantages</th>
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<tr>
<td>Can maximize one party's outcome where resources are truly fixed</td>
<td>Promotes win/lose attitudes</td>
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<td>Does not require personal commitment to others</td>
<td>Damages relationships</td>
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<td>Involves little trust</td>
<td>Is hard on people (they have a need to &quot;save face&quot;)</td>
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<td>Does not require openness</td>
<td>Promotes adherence to positions and limits options</td>
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<td>May prevent unnecessary concessions</td>
<td>Polarizes parties and emphasizes differences</td>
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<td>Forces compromise</td>
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<td>Narrows discussions, limits understanding</td>
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<td>Risks wasting resources on the &quot;fight&quot; rather than resolution</td>
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<td></td>
<td>Emphasizes confrontation rather than co-operation</td>
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With positional bargaining, communication is guarded, deceptive and may be judgmental. Attitudes are aggressive or defensive and may result in alienation. Disputants believe that a resolution of the problem will occur when they are able to dominate the other disputants. Both parties know in positional bargaining that the other party is often lying because each party will overstate their needs to create room for compromise. Negotiation then becomes a process of determining how much each party is lying. The overall process is very strategic, often manipulative, and at times appears to have more to do with gamesmanship than problem-solving.

In order to diminish the differences between each party's positions, they look to each other for "compromises" in the form of alternate positions. If sufficient compromises are made, the parties see their initial positions eroded to the point where the differences in positions is minimal and agreement can be reached. This agreement can represent a solution which is so sufficiently, mutually unsatisfactory to all parties they all find it acceptable.

Where compromise cannot erode positions sufficiently, disputants get locked into "final" positions and one of three outcomes will result:

1. Discussions are abandoned and the problem remains unresolved, leaving all disputants unsatisfied;
2. One disputant "gives in" to an agreement, but is unsatisfied;
3. A third party is called in to settle the dispute (such as an arbitrator or Judge) which will result in a decision that may create differing levels of satisfaction or dissatisfaction for all parties.

Positional bargaining is most likely to be used when:

- Resources are clearly fixed or very limited.
- The parties' interests are clear and incompatible.
- Relationship issues are not important.
- Time is limited.
- Parties have strong alternatives to a negotiated arrangement.
- There is minimal cost to the parties in not reaching an agreement.
POSITIONAL BARGAINING METHOD

Positional Bargaining begins by each party envisioning an ideal solution - This solution would satisfy each party's separate needs and represent complete success to that party given the context of the dispute. How ideal this solution might be would depend on:

- an assessment of the bargaining abilities of each party;
- an optimistic assessment of each party's best alternative to bargaining;
- an optimistic assessment of what each party needs. Primary consideration is given to the needs of the party proposing the solution.

This ideal solution then becomes an opening position for each party. In some cases parties may choose to inflate this solution to allow more room for concessions in order to appear to compromise, or in an attempt to emphasize the seriousness of their position.

Next, each party will envision the least acceptable outcome that could be accepted. This outcome will become the "bottom line" or "walk away position". In considering the bottom line each party will want to consider:

- the least optimistic assessment of the most likely alternatives to bargaining;
- the least favourable assessment of how well bargaining might proceed;
- an assessment of the minimum that could be done to address needs;

When each side finishes developing their opening position and bottom line they will spend some time anticipating what the other party in bargaining will want in their opening position and bottom line.

Much of this step will be speculative as there may not be much indication yet from the other party regarding their expectations in bargaining. It is a necessary step, however, as it may influence opening strategies in bargaining. This step also allows each party to be able to provide some initial response to the other side when their opening position is presented.

Each party will then contemplate a range of alternative positions. Between the opening position and bottom line are a number of other positions that could be advanced as required to demonstrate concessions as movement is made to a compromise. These alternate positions may also increasingly reflect the needs of the other party, at least to the extent those needs can be discerned. In bargaining each party will demonstrate increasing resistance to these alternate proposals as they are advanced.
Plan a general negotiating strategy

- How long will each position be maintained?
- What will cause movement from position to position?
- What alterations could be made to positions to incorporate the needs of the other party?
- If there are several issues, which issue is most beneficial to begin negotiations?
- What will be disclosed to the other party? As a rule, minimal disclosure is ideal and the other side should be the one to initiate anything more than minimal disclosure.

Bargaining begins with an exchange of opening positions. Each party explains why their position is acceptable to them and tries to explain why it should also be acceptable to the other party. Arguments are advanced to support the reasonableness of each parties expectations and to try to persuade others to reconsider their expectations.

After hearing opening positions each party will listen for areas of agreement.

Areas of agreement should be noted and commitment to those areas firmed up.

Areas of easy compromise will be noted and obvious alternate positions can be put forward to forge more areas of agreement. Commitment to those areas of agreement will be sought as negotiations progress. Final commitment will often be withheld until more issues are negotiated.

In areas where positions are very different:

- Each party will offer arguments to demonstrate the reasonableness of their position and the unreasonableness of others positions.
- Consideration will be given to whether further discussion is warranted at the present time.
- Consideration will be given to whether and how to begin moving through the alternate positions. Who should begin the process of offering alternate positions?
- As alternate positions are offered, each area of agreement will be noted and commitment sought.
- Some effort will often be made to balance each party's benefits and losses as an agreement is formed.
INTEREST-BASED PROBLEM SOLVING

Interest-based problem solving is collaborative and integrative in nature. It begins with a statement of what you really need in a solution. Your needs are your interests and the object of negotiation is to find a way to accommodate the greatest possible number of interests for all parties. Interest-based problem solving has certain advantages and disadvantages.

<table>
<thead>
<tr>
<th>Advantages</th>
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<tr>
<td>• Focuses on satisfying the interests of all parties</td>
<td>• Requires some trust or in the absence of trust, some risk</td>
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<td>• Seeks to minimize polarity and emphasizes agreement</td>
<td>• Requires open disclosure</td>
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<td>• Builds relationships, is easy on people</td>
<td>• May require recognition and accommodation of more interests of the parties</td>
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<tr>
<td>• Creates more open discussion and builds understanding</td>
<td>• May create high expectations</td>
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<tr>
<td>• Promotes creative solutions</td>
<td>• May require more personal commitment</td>
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<td>• Emphasizes co-operation rather than confrontation</td>
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<tr>
<td>• Promotes trust</td>
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<tr>
<td>• Reduces the levels of uncertainty</td>
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<td>• Focuses resources on resolution</td>
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Interest-based problem solving promotes communication that is open, honest and persuasive. It creates an atmosphere in which attitudes of respect and trust can develop. It separates people from the problems they encounter, and encourages them to act together to overcome the problem. The problem is only resolved when a way can be found to accommodate the interests of all parties. Interest-based problem solving discourages strategic approaches or gamesmanship. It builds relationships.

In considering the effect of a conflict resolution process on relationships, it is important to remember that several possible future relationships may exist:

- The potential relationship with the other disputants;
- The potential relationship with others not directly involved in the dispute but who may be affected by it, or who may judge you by the way the current dispute is handled;
- The future relationship with yourself (e.g. "In the future, how will you feel about how you handled the problem?" or, "How were you treated, or how did you treat others?").

Interest-based problem solving is most likely to be used when:

- It is unclear what resources are available (what exactly is the size of the pie).
- Issues are complex, unclear or interconnected.
- Relationships are important.
- An appropriate amount of time is available.
- Parties' interests are not clearly understood.
- There is a desire for mutual gain.
- Parties want to do better than their most likely alternatives.
- There is a need for resolution and durability in agreement.
INTERESTS

WHAT ARE INTERESTS?

• Needs that a party wants satisfied which are usually expressed in terms of concerns, hopes, expectations, assumptions, positions, beliefs, feelings and values.

• The motivating force behind what is in dispute - What it is you hope to achieve by taking a position; what is motivating you?

Remember that behind every stated position there are interests, and a particular position is one possible way to satisfy them. By identifying these underlying interests other solutions can be generated and participants will then be able to choose the option that best meets their interests.

TYPES OF INTERESTS

Substantive
• Needs such as money, time and resources.

Procedural
• Needs relating to the process by which the dispute is resolved.

Psychological
• Needs regarding how one feels about the problem and solution.

Do not underestimate the significance of each type of need. Do not assume you know which one is the most important. Conflict resolution practitioners have found that while most disputants focus on the substantive interests, these interests are the least likely to prevent a solution. Most problem-solving processes fail because the procedural and psychological interests of the parties are not addressed.
The following Satisfaction Triangle illustrates the interdependence of these three kinds of needs.

The Triangle, or resolution, is not complete unless there is satisfaction on each of the three sides. A satisfactory substantive resolution without procedural and psychological satisfaction may be inadequate to induce a durable outcome.

Satisfaction Triangle

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February, 1993
PSYCHOLOGICAL INTERESTS (EXAMPLES)

1. Recognition: need to be satisfied that the other party understands or recognizes my situation or feelings.

2. Acknowledgement: The other party acknowledges and confirms their understanding of my situation or feelings.

3. Acceptance: The other party indicates they accept my situation, although this does not necessarily mean agreement.

4. Remorse: The other party has shown remorse for their actions, perhaps in the form of an apology.

5. Fairness: May be very subjective, but was the outcome or treatment similar to precedents?
   What are perceptions of outside parties?
   Was I forced to "give in" on issues?
   Did the other side "move" or reciprocate?

6. Dignity: Need to save face with participants, outside parties, constituents.
   Maintain pride.

7. Respect: May feel the other party does not value my contribution or appreciate my role.

8. Identity: Need to maintain identity, is how I define myself jeopardized.

9. Values: Values should not be threatened, and hopefully recognized by the participants.

10. Retribution: Need to "get-even" due to past actions by the other party.

11. Trust: The past relationship and subsequent level of trust may impact communication and participants' ability to problem solve.
PROCEDURAL INTERESTS (EXAMPLES)

1. Participation: Need to have meaningful input. Were the right parties represented in the process?
2. Authority: Did the participants have the authority to effectively participate?
3. Legitimacy: Do participants have control over the outcome of an issue?
4. Representation: Are constituent’s views adequately represented by participants? Are outcomes being adequately reported back to constituents.
5. Informed Choices: Was sufficient time, information and support available to make good decisions.
6. Balance: Were the issues identified prior to problem solving. Were my ideas an important part of the plan?
7. Ownership: Need to have development of data, concepts and options, as a joint effort. Ensure that participants are not left in the "role of a critic".
8. Trust: Confidence that the agreement or intentions of the other party will translate into actions.
9. Durability: Need to have an outcome that will be workable and will decrease the potential for future problems.
10. Negotiation Style: Is the process consistent with my style of problem solving or can it accommodate different styles. Need to understand the negotiation style of the other participants.
11. Safety: Do I have the ability to negotiate without the fear of threat or recrimination?
SUBSTANTIVE INTERESTS (EXAMPLES)

1. Money and Resources
   • How resources are divided or distributed.
   • Is it possible to expand the level of resources or improve efficiency of use of resources?

2. Time.

3. Health.

4. Flexibility Vs. Predictability.

5. Level of risk or security.
IDENTIFYING INTERESTS -  *Shifting Judgement to Curiosity*”

Identifying interests is like peeling an onion - you can keep peeling away layers of interests to reveal underlying interests. The communication skills of active listening, questioning and reframing facilitate probing for and understanding interests. Some ways to help identify interests beneath positions include:

1. Exploring further a person’s statement which begins with “I want ... or don't want ...", "I need ...", "I'm afraid that ...", "I'm concerned about our taking on a new project"
   Response:  "Why does that concern you?"
   "What does it mean for you to take on a new project?"
   "How would it impact you to take on a new project?"

2. Explore the participants "worst case" or "best case" option.
   Response:  "Tell me more about why you think this is the best for you?"
   "What does this satisfy for you?"

3. Asking what is important about a topic or subject area, for example, leasing agreements:
   Response:  "What is important to you about the leasing agreement?"

4. Listening for and probing judgmental words, including "good", "bad", "reasonable", "worst", "best". "This new computer program is completely ineffective!"
   Response:  "What do you mean by ineffective?"
   "Can you explain how it is ineffective?"

5. Observing patterns of behaviour: "I notice you interrupt and change the topic when we begin to discuss the importance of taking holidays."

6. Asking the participants to make a list of what is most important to them or concerns them most, and why.
SHIFTING FROM POSITIONAL BARGAINING TO INTEREST-BASED PROBLEM SOLVING

Most people begin discussions about a dispute by stating their position - a demand that if met, will result in a desirable outcome for them.

To find an outcome that will be satisfactory to all disputants, it is necessary to encourage a shift from position-taking to an open discussion of interests.

To facilitate such a shift:

1. Acknowledge positions, then ask why the position has been taken;
2. Do not take positions, and do not ask others for their positions;
3. Avoid positional language: "My first offer is ...", "To get things started I'll propose ...", "My bottom line is ...";
4. Talk openly of interests - theirs and yours;
5. State that the goal of the discussions is to find a solution that addresses the interests of all the disputants;
6. Ask disputants to list the important things that they would need to see in any solution or agreement;
7. Point out common interests;
8. Look for consistent points in a series of offers or proposed solutions to identify the interests;
9. Ask disputants what principles they will use to determine the acceptability of any propose solution or position. Are there any principles common to all?
10. Don't ask for solutions until all of the interests have been disclosed;
11. State that knowing everyone's interest will allow disputants to select the most workable, mutually satisfactory and, therefore, durable solution.
THE ROLE OF POWER, RIGHTS AND INTERESTS IN CONFLICT RESOLUTION

In determining how to resolve a conflict, people consider their Power, Rights and Interests.

Power refers to resources that could be used to influence behaviour in others to meet one's own needs. Power can come from physical strength, social status, moral authority, gender, race, financial status, voting strength, personal charisma and many other sources.

Rights refer to using or invoking laws, regulations, court decisions, policies, agreements, past practices, customs and other similar authorities to lay claim to or prove entitlement to something that one needs or wants. The laws, regulations, or policies upon which claims to rights are based are usually enacted to protect needs or interests that a community or organization perceives should be protected at a particular time. Rights are often invoked to offset the perceived use of power.

Interests refer to people's substantive, procedural and psychological needs. The desire to protect or meet needs is why people invoke the use of power or demand a recognition of rights.

In many traditional conflict resolution processes, people utilize these three sources as follows:

- Firstly, power
- Secondly, rights
- Lastly, if necessary, interests

In interest-based problem solving these sources are utilized in the reverse order:

Firstly, Interests - What do people need and how can those needs be accommodated?

Secondly, Rights - If an appeal to rights meets people's interests better than the options coming out of the interest-based problem solving process, then those rights need to be recognized in the process, or pursued in some other process.
Lastly, Power - Interest-based problem solving does not encourage invoking power to protect or meet interests because the process allows those same needs to be protected or met in other ways. Interest-based problem solving does not reward the use of power because its use in the process often creates an outcome which is not durable, or may cause the process to end which leaves all parties with no alternative but to invoke all their power or appeal to all their rights in an effort to meet their needs. In the end these consequences discourage the use of power because they will fail to meet the needs of the parties as well as might have occurred if they had continued in an interest-based problem solving process.

There are obvious connections between power, rights and interests in all conflict. Rights may reflect power or purport to offset it. Power may advance needs in the short run and threaten them in the long run by creating resistance. Rights may advance interests or prevent the recognition of interests when dispute resolution is reduced to a competition between rights. The analysis of how power, rights and interests interplay is complex.

As a general rule the greater the emphasis on the recognition and accommodation of interests in problem solving, the more satisfying the outcome will be. This in tum will create more effective relationships between people.
EMPHASIS IN PROBLEM SOLVING

EFFECTIVE PROBLEM SOLVING

Interests
Rights
Power

INEFFECTIVE PROBLEM SOLVING

Power
Rights
Interests
RESCUER’S DILEMMA

People who have problems often turn to others for help with their problems. Those who are engaged to help are viewed as "professional problem-solvers", that is, they possess the skill, training and experience necessary to fix the problem - these "problem fixers" may indeed be professionals who are hired by clients or they may be a co-worker, family member, friend, customer, employer, etc.

People turn to "professional problem-solvers" because they have been unsuccessful in solving their problem and they believe:

• that they lack the knowledge, ability, expertise, resources, etc. to solve their problem;
• the "professional" has what they don’t ability, expertise, etc;
• when they engage the "professional" they can turn the problem over completely and the "professional" will rescue them by fixing their problem for them.

Alternately, "professional problem-solvers" believe:

• their role is problem fixer, a rescuer;
• they are successful and have "earned their pay" if they take over and can provide answers and fix the problems brought to them, that is, rescue the person from their problem;
• there is great satisfaction in coming up with solutions and rescuing others;
• they have failed or lack competence if they don’t rescue the person with the problem by coming up with a solution that is regarded as satisfactory by the person being rescued.

The "rescuer's dilemma" arises when these two views meet - the person with a problem expects to be rescued and the rescuer believes that they should take over the problem and fix it - because two things happen:

1. The "rescuer" is put in a "no win" situation. If a satisfactory solution is produced, the "rescuer" is viewed as merely doing their job. If anything is not satisfactory the "rescuer" is responsible.

2. The person with the problem has only one role, that of critic. They do not develop an understanding of their problem or have any investment in a particular solution because they haven't been part of the problem-solving process. They also miss an opportunity to develop problem-solving skills which could be used to deal with future problems and would lessen their reliance on "rescuers".
The best that can happen in this situation is that all will go well and everyone will have a neutral view of what occurred.

It is more likely, however, that not everything will go well. Instead, while the person with the problem may initially be relieved to be rescued, to have given their problem to someone else to take care of, they soon begin to feel victimized. This occurs because they are not participating in the problem-solving process; they don't know what is going on, which solutions have been considered and discarded or why. Feeling they are uninformed and have no choice in a decision that may have a major impact on their lives, they become angry, frustrated, disappointed and feel powerless.

Since the "rescuer" is held responsible for this victimization, the "rescuer" regards the person they were trying to help as unco-operative and unappreciative. The dissatisfaction of both sides causes the relationship to deteriorate.

How to avoid the "rescuer's dilemma":

1. Establish at the outset that you will work with the person to solve the problem but you will not take ownership - the problem is theirs.
2. Ensure that "1" is honoured. When the going gets tough the person with the problem may try to shift the responsibility, hoping to be rescued, and the person giving assistance may be tempted to take over.
3. Respect people's abilities and right to solve their own problems by using an interest-based collaborative problem-solving process that allows their full participation.
4. Leave final decisions about the best way to solve the problem with the person whose problem it is and be willing to accept solutions you may not have chosen.