

Lucy White Consulting

WEBINAR
SERIES **FOR ARTS**
PRESENTERS



ONTARIO
PRESENTS

Canada 

Contract Negotiations

Webinar Reminders

2

- You can hear us, we cannot hear you!

- Can't hear?
 - ▣ Try turning up your volume
 - ▣ Call in by phone or use your computer headphones

- Have a question? Use the Q&A box.

Agenda

- 1:00 – 1:15 Contract Basics
- 1:15 – 1:30 Negotiations 101
- 1:30 – 1:45 Breaches & Remedies
- 1:45 – 2:00 Questions and Answers

Contract Basics

- **Elements of a contract**
- **Best practices**
- **Good and bad faith**

Four Essential Elements of a Contract

- Offer
- Acceptance
- Intention
- Consideration

Offers

6

- An offer should be as specific as possible:
 - ▣ Handshake agreements
 - ▣ Written agreements

- An offer will lapse:
 - ▣ when the time for acceptance expires;
 - ▣ if the offer is withdrawn before it is accepted; or
 - ▣ after a reasonable time in the circumstances (generally the greater the value of the contract, the longer the time)

Acceptance

7

- Only what is offered can be accepted.
- There can be many offers and counter offers
 - ▣ i.e. negotiations!
- Acceptance can be given verbally, in writing, or inferred by action.

Intention

8

- A contract requires that the parties intend to enter into a legally binding agreement.
- Intention is **presumed**.
- Otherwise, you must clearly state in the contract for it not to be legally enforceable.

Consideration

9

- Valuable consideration is required
- Must be agreed
- Can be anything of value:
 - ▣ Money
 - ▣ Promise NOT to do something
 - ▣ Refrain from exercising a right
- Doesn't need to be fair!
 - ▣ Exceptions: fraud, duress or unconscionable conduct

Good & Bad Faith

10

- Good faith is a general presumption that the parties to a contract will deal with each other honestly and fairly.
- Bad faith dealing occurs when there is no intention to reach agreement.

Best Practices?

11

- Get it in writing
- Control the paper
- Boilerplate language for standard clauses
- Seek legal advice
- Put non-standard terms in rider(s)
- Manage liability!

Basic steps:

- *Strategy*
- *Preparation & Process*
- *Tools & Tactics*

Positional v Interest-based Negotiations

Strategy

13

Strategy

- ▣ High level goals
- ▣ Intangibles v Tangibles
 - Be creative especially if tangibles are weak
- ▣ BATNA
 - Status quo or other options?

Preparation & Process

14

- Research the environment
 - ▣ What's their situation?
 - ▣ What is yours?
 - ▣ What is happening in the field?

- Discuss the process in advance

Tools & Tactics

15

□ Tools

- ▣ Advocates (lawyers, volunteers)
- ▣ Research, evidence, precedents

□ Tactics

- ▣ Good cop/bad cop, intimidation, brinkmanship, cherry picking, logrolling, nibbling
- ▣ Bad faith
- ▣ Principles such as fairness, professional standards

Negotiating Best Practices?

16

- Everything is negotiable
- Listen more; talk less
- Use emotions sparingly
- Structure the offer & counter offer
- Don't negotiate with yourself!
- Control the paper; get it in writing

Positional v Integrated / IBN

17

Positional Negotiations	Integrated Negotiations
adversaries	partners
differences	similarities
disclose wants	disclose motives
narrow field of discussion	wide-ranging field of discussion
demand concessions	collaboration
pressure tactics / tricks	openness / principles
short-term win	lasting relationship
victory (win / lose)	solutions (win / win)

Which Style to Use?

18

Positional bargaining is used when:

- ❑ The negotiated resource is limited (e.g. time, money, etc.)
- ❑ Interests are contradictory, mutually exclusive and not interdependent
- ❑ One party (or both) want to keep to a narrow field of discussion
- ❑ One party wants to maximize their share of a fixed sum pay off
- ❑ The relationship is a lower priority than the immediate gains

Integrated bargaining is used when:

- ❑ The interests of both parties are interdependent
- ❑ The issue negotiated is not a fixed sum
- ❑ The relationship between the parties matter
- ❑ Compromise of principles is unacceptable

And still it all goes crash!

19

- Each term in a contract gives rise to a contractual obligation.
- Any breach can give rise to litigation.
- Not all terms are stated expressly and some terms carry less legal weight as they are peripheral to the objectives of the contract.

Breaches & Remedies

20

“No rights without remedies.”

- non-performance
- poor performance
- part-performance
- performance which is substantially different from what was reasonably expected

Damages

21

- In law, damages are an award, typically of money, to be paid to a person as compensation for loss or injury.
- compensatory (or actual) damages
 - ▣ economic losses such as loss of earnings, property damage and medical expenses
 - ▣ general damages, such as pain and suffering and emotional distress
- punitive damages

22

Q & A

Resources

23

- *Ask for It* (Babcock and Laschever)
- *Getting to Yes* (Fisher and Ury)*
- *Power and Love: A Theory and Practice of Social Change* (Kahane)
- *Solving Tough Problems* (Kahane)
- Program on Negotiations, Harvard Law School
www.pon.harvard.edu
- www.shenegotiates.com

Feedback & Thank You!

24

Survey: www.surveymonkey.com/s/JLKLX7R

Lucy White Consulting

lucywhiteconsulting@gmail.com

www.lucywhiteconsulting.com

416 807-9106