

## BOOK REVIEW

### NEGOTIATION: THINGS CORPORATE COUNSEL NEED TO KNOW BUT WERE NOT TAUGHT\*

by Michael Leathes

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1 It is no secret among law students that the path towards becoming a skilled and competent corporate counsel is one that runs squarely through the school of hard knocks, a school that is notoriously difficult to navigate on one's own and made infinitely easier with a wise and of course successful mentor. Thankfully, aspiring corporate counsel looking for such a mentor can rest easy knowing that they now have the privilege of learning from one of the best in the field and on one of the most challenging disciplines expected of corporate counsel. Michael Leathes is one of the most well-known professionals in his field, with a career spanning famous multinationals such as Gillette and Pfizer, and having worked in the world capitals of Brussels, New York and London. In his latest publication, Leathes draws upon his extensive experience to share invaluable mindsets that he feels are fundamental to the role of a corporate counsel's work. This is blended with a very compelling case for the need to incorporate more negotiation-based training for legal practitioners and law students alike, to assist them in becoming better value-creators to the organisations they serve. This review will highlight some features of Leathes' work that would be of interest to not only his intended audience of current or future corporate counsel, but also readers who have an interest in negotiation.

2 First, a quick look at the chapters. Chapter 1 is aptly titled, "Expectations", and introduces the reader to the range of issues facing the modern lawyer, from changing perceptions of the role of internal lawyers to the need for pre and post-qualification negotiation training. Even in this introductory chapter, the reader is already exposed to the wide scope of Leathes' extensive research, with numerous references to studies and reports. These are typically followed by a sharing from his past, such as the exciting story of how he helped his company save huge legal costs using collaborative negotiation skills to manage a long-standing acrimonious relationship with an international competitor in relation to mutual trademark challenges. Readers who enjoy a writing style that combines intellectual rigour with personal accounts will be delighted to know that this approach is consistent throughout the book.

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\* Kluwer Law International, 2017. A review copy was kindly provided to the Singapore International Mediation Institute by the publishers.

3 The rest of the book takes the reader on a deeper dive into various aspects of negotiation that Leathes feels are essential to corporate counsel. It is thus no surprise that ch 2 is titled, “Preparation”. What is surprising, however, is the sheer amount of guidance provided in this chapter. Readers will appreciate Leathes’ focus on assisting the reader in designing their own preparation framework for a negotiation. There are suggested issues and an order to tackle them, along with detailed references for the reader to find further tools either in subsequent chapters or from external sources.

4 Chapter 3, “Neuroscience”, is an especially “heavy” chapter, with ample references to scientific terms and neuroscience models, bringing the reader on a journey to compare our brains to computers with not just one but three operating systems. Some readers may find the material in this chapter challenging and the chapter summary provided at the end, which is also done for every chapter, was especially helpful to this reviewer in digesting the contents in relation to better understanding the unseen cognitive processes and interactions in a negotiator’s mind.

5 Chapter 4, “Culture”, is notable for its wide use of visual aids to illustrate the many models and aspects of understanding cultural differences and how they affect a negotiation. Astute readers would not recognise Geert Hofstede’s six cultural dimensions as well as the insightfully entertaining flowchart diagrams by Richard Lewis from his own seminal work on *Cross-cultural Communication: A Visual Approach*.<sup>1</sup> As a starting point for readers with no background to culture studies or theory, this is a fantastic introduction. For readers who have some familiarity on this topic, this reviewer is confident they will find value in the concise yet thorough manner Leathes has packaged the contents in this chapter.

6 In ch 5, “Leverage”, Leathes touches on a popular issue in negotiation. This is a short chapter, relative to the rest of the book, and in this reviewer’s mind, perhaps aptly so. As a negotiation tutor for law students at the National University of Singapore, Faculty of Law, this reviewer has seen many students placing too much emphasis on the presence, or absence, of leverage. Without understating its relevance, this reviewer finds the brief treatment of the topic realistic and sufficiently informative.

7 Chapter 6 brings the reader into the world of “Communication”. A challenging topic to manage, entire tomes have been written on this aspect of negotiation alone. Yet, Leathes has managed to repeat the same feat he did with culture in ch 4, providing a useful summary complete with stories from his own learning journey to add context to the points raised. This reviewer finds especially worth reading, Leathes’ account of his

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1 Richard D Lewis, *Cross-cultural Communication: A Visual Approach* (Transcreen Publications, 1999).

encounter with Professor Joel Lee from the National University of Singapore, Faculty of Law at a seminar on non-verbal communication in Kuala Lumpur. Suffice to say, Leathes was left bewildered by, but completely convinced of, the good professor's capacity to deploy tonality alone as a means of eliciting very primal emotions. A masterful display of negotiation techniques, and a story, is what this reviewer is sure many readers would enjoy reading about.

8 Chapter 7, "Process", has a special place in this reviewer's heart, mainly because of how wonderfully it merges the worlds of mediation and negotiation, which also happen to be this reviewer's professional pursuits. In hopes of bringing order to an often unstructured exercise, Leathes suggests the use of a neutral deal facilitator, someone who will be neutral and impartial and of course, in possession of the same fundamental competencies as a mediator of disputes, such as experienced commercial mediators. Leathes makes a strong case for doing so and he represents the vanguard of the coming evolution of dispute resolution into, in this reviewer's opinion, dispute *pre-emption*. By having a professional facilitate negotiations, Leathes' point is not only that previously unworkable deals might have a way forward, or that deals with better value could be explored, but also that deal facilitation can help avoid future problems arising from the deal.

9 It is then perhaps only natural to expect that ch 8 looks at "Disputes". Readers may find it odd that a book on negotiation has a chapter on disputes but in this reviewer's view, it is only fitting for Leathes to cover this since another way of seeing dispute resolution is simply negotiation escalation. In this chapter, Leathes again employs his deft treatment of the topic as we have already seen for culture and communication, informing the reader with an engaging mix of visual aids, academic references and real-life case experience, across a spectrum of dispute resolution platforms corporate counsels ought to be familiar with such as "Arb-Med-Arb", "Negotiation: Early Case Assessment" and of course, "Mediation".

10 Chapter 9, "Ethics", like ch 6, is a relatively short piece but perhaps here, it is intended to inspire the reader to become a stakeholder in the global growth of principled and ethical negotiation. While Leathes certainly provides his views on ethical and unethical behaviour, he ends the chapter with a call for an international code of negotiation ethics. Always the pioneer, Leathes had previously started the worldwide movement pushing for international mediation standards, readers will be definitely tempted to join him in taking up his challenge.

11 Last but certainly not least, the book ends with the topic of "Techniques" in ch 10. Although Leathes did not intend for this work to be a book on negotiation skills, readers do receive an overview of various "moves" such as "Salami Slicing" or "Whiteboarding", to round out their journey with Leathes as their negotiation mentor. These are briefly covered and while there is no underlying framework tying the techniques together,

references to previous chapters are made to situate when and how a specific tactic might be understood.

12 In summary, *Negotiation*<sup>2</sup> by Leathes is an extremely engaging piece, highly readable and capable of holding an arm's-reach spot on the shelf of any user of negotiation. Information is written in a very accessible style while generous appendices provide sufficient reference material, including forms and an entire article by Prof Lee on the role of culture in mediation, a remarkable inclusion given the article's own role as a seminal piece. Leathes' anecdotes are not only relatable but charming and one would be hard-pressed to ask for a better mentor to make sense of the tumultuous world of negotiation, especially as the corporate or general counsel of an organisation.

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2 Michael Leathes, *Negotiation: Things Corporate Counsel Need to Know But Were Not Taught* (Kluwer Law International, 2017).