



## WITHOUT PREJUDICE

Dear Ms. Smith:

**Re: Collaborative Separation and Divorce Process**

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I have been retained by your spouse John Smith to assist in negotiating a separation agreement. I understand you and John have talked about your separation and you would like to move forward with your divorce in a way that considers the needs of you both and your children.

I am writing this letter to you to outline some options. He told me that the well-being of your children is, understandably, a top priority for both of you.

One very effective option that considers the needs and interests of you, John and your children is called "Collaborative Practice". Collaborative Practice is a process where you and John work together to make decisions about your children and the division of your assets and debts.

You each need to hire a collaborative lawyer to start the process.

Due to recent changes to the *Divorce Act*, you must both participate in Interpersonal Violence and Power Imbalance screening which will be done by a collaboratively trained Family Professional. This screening takes place after you have each retained a collaborative lawyer. Sometimes it is helpful to continue working with the Family Professional (following the IPV screening) to develop a detailed parenting plan. We can talk about this at our first 4-way meeting (you, your lawyer, John and me).

The collaborative approach is non-adversarial. We want to ensure that you both achieve the best outcome possible in all of the circumstances. You and John will each set your goals and interests at the beginning of the process. The collaborative lawyers who assist you are there to help you achieve an outcome you can both live with. We focus on facilitating better communication and mutual respect throughout the process.

We find that the children adapt well to their parents' separation when the parents handle it well themselves. The situation can be challenging when separating parents continue to live together as they separate. Children often pick up on the stress their parents are experiencing. John wants to work collaboratively with you so that you can separate respectfully. Doing so will require your participation and communication.

There are options other than collaborative practice to deal with issues that arise from your separation, including negotiation, mediation, arbitration and court.

A collaborative approach is different from the other approaches. One of the most important principles in collaborative is that you commit to settling your issues without going to court, or even threatening to go to court. Before negotiations begin, you and John and your lawyers sign a "Participation Agreement", committing you to this principle. If either of you decides to go to court, both lawyers must resign from the case. This agreement ensures that everyone works hard to reach a settlement that is acceptable to both of you.

There are many benefits to using a collaborative approach. The issues are resolved sooner and often less expensively. The clients are in charge, rather than the lawyers or a judge. You customize your own solution, one that is focused on the needs of your children and your unique family situation. As parents and former partners, you can be more creative than you could be if you went to court, and you are more likely to be more satisfied with the outcome. It is a private process, so details of your separation are kept out of the public record which is not something that happens if one of you starts the process by filing court documents. Filing court documents makes your separation part of the public record.

John would like to proceed collaboratively, and I encourage you to consider choosing the Collaborative Process. You will need to select a lawyer who is specially trained and qualified to practice collaboratively. You can find more information about Collaborative Practice, and a list of lawyers trained in the collaborative approach at [Best4All.ca](http://Best4All.ca).

I look forward to hearing from you or your collaborative lawyer soon so we can start the process. I suggest that you contact a collaborative lawyer right away for a consultation. Once retained, ask your lawyer to contact me before DATE so that we can start the process.

I have attached an article about interest-based negotiation which you may find helpful in understanding more about the collaborative approach.

Yours truly,

Tracy L. Miller

cc. Mr. Smith

Encls.: Interest-based article

# Integrative or Interest-Based Bargaining

In integrative bargaining, the parties attempt to "enlarge the pie" or allocate resources in a way that everyone gets what they want.

Integrative or Interest-Based Bargaining

By  
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- [Guidelines for using \*Beyond Intractability\* resources](#)
- [Citing \*Beyond Intractability\* resources](#)

## What is Integrative or Interest-Based Bargaining?

Integrative bargaining (also called "interest-based bargaining," "win-win bargaining") is a negotiation strategy in which parties collaborate to find a "win-win" solution to their dispute. This strategy focuses on developing mutually beneficial agreements based on the interests of the disputants. Interests include the needs, desires, concerns, and fears important to each side. They are the underlying reasons why people become involved in a conflict.

"Integrative refers to the potential for the parties' interests to be [combined] in ways that create joint value or enlarge the pie." [1] Potential for integration only exists when there are multiple issues involved in the negotiation. This is because the parties must be able to make trade-offs across issues in order for both sides to be satisfied with the outcome.

## Why is Integrative Bargaining Important?

Integrative bargaining is important because it usually produces more satisfactory outcomes for the parties involved than does positional bargaining. Positional bargaining is based on fixed, opposing viewpoints (positions) and tends to result in compromise or no agreement at all. Oftentimes, compromises do not efficiently satisfy the true interests of the disputants. Instead, compromises simply split the difference between the two positions, giving each side half of what they want. Creative, integrative solutions, on the other hand, can potentially give everyone all of what they

want.

There are often many interests behind any one position. If parties focus on identifying those interests, they will increase their ability to develop win-win solutions. The classic example of interest-based bargaining and creating joint value is that of a dispute between two

little girls over an orange. Both girls take the position that they want the whole orange. Their mother serves as the moderator of the

dispute and based on their positions, cuts the orange in half and gives each girl one half. This outcome represents a compromise. However, if the mother had asked each of the girls why she wanted the orange - what her interests were -- there could have been a different, win-win



William Ury tells how he managed to build trust with the leaders in Venezuela and through shuttle diplomacy and

outcome. This is because one girl wanted to eat the meat of the orange, but the other just wanted the peel to use in baking some got them working together cookies. If their mother had known their interests, they could have prevented violence. Both gotten all of what they wanted, rather than just half.

Integrative solutions are generally more gratifying for all involved in negotiation, as the true needs and concerns of both sides will be met to some degree. It is a collaborative process and therefore the parties actually end up helping each other. This prevents ongoing ill will after the negotiation concludes. Instead, interest-based bargaining facilitates constructive, positive relationships between previous adversaries.

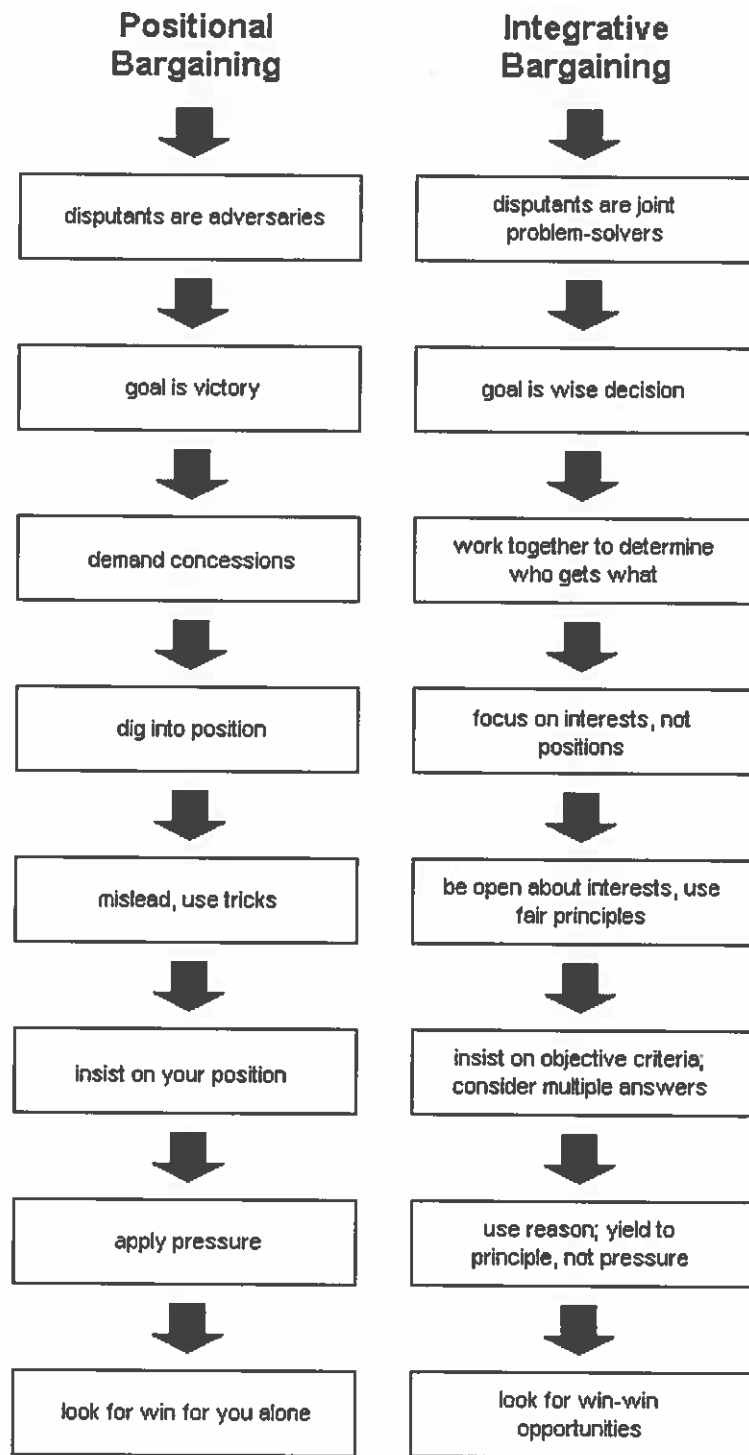
**Identifying Interests:** The first step in integrative bargaining is identifying each side's interests. This will take some work by the negotiating parties, as interests are often less tangible than positions and are often not publicly revealed. A key approach to determining interests is asking "Why?" Why do you want that? Why do you need that? What are your concerns? Fears? Hopes? If you cannot ask these questions directly, get an intermediary to ask them.

The bottom line is you need to figure out why people feel the way they do, why they are demanding what they are demanding. Be sure to make it clear that you are asking these questions so you can understand their interests (needs, hopes, fears, or desires) better, not because you are challenging them or trying to figure out how to beat them.

Next you might ask yourself how the other side perceives your demands. What is standing in the way of them agreeing with you? Do they know your underlying interests? Do you know what your own underlying interests are? If you can figure out their interests as well as your own, you will be much more likely to find a solution that benefits both sides.

You must also analyze the potential consequences of an agreement you are advocating, as the other side would see them. This is essentially the process of weighing pros and cons, but you attempt to do it from the perspective of the other side. Carrying out an empathetic analysis will help you understand your adversary's interests. Then you will be better equipped to negotiate an agreement that will be acceptable to both of you.

There are a few other points to remember about identifying interests. First, you must realize that each side will probably have multiple interests it is trying to satisfy. Not only will a single person have multiple interests, but if you are negotiating with a group, you must remember that each individual in the group may have differing interests. Also important is the fact that the most powerful interests are basic human needs - security, economic well being, a sense of belonging, recognition, and control over one's life. If you can take care of the basic needs of both sides, then agreement will be easier. You should make a list of each side's interests as they become apparent. This way you will be able to remember them and also to evaluate their relative importance.[2]



This chart was derived from a more complex chart in Getting to Yes [2]

## Creating Options

After interests are identified, the parties need to work together cooperatively to try to figure out the best ways to meet those interests. Often by "brainstorming" -- listing all the options anyone can think of without criticizing or dismissing anything initially, parties can come up with creative new ideas for meeting interests and needs that had not occurred to anyone before. The goal is a win-win outcome, giving each side as much of their interests as possible, and enough, at a minimum that they see the outcome as a win, rather than a loss. mediators focus on



Using Integrative and Distributive Bargaining Together parties' needs to come up with the widest range of possible solutions.

Although distributive bargaining is frequently seen as the opposite of integrative bargaining, the two are not mutually exclusive. Distributive bargaining plays a role in integrative bargaining, because ultimately "the pie" has to be split up.

Integrative bargaining is a good way to make the pie (joint value) as large as it possibly can be, but ultimately the parties must distribute the value that was created through negotiation. They must agree on who gets what. The idea behind integrative bargaining is that this last step will not be difficult once the parties reach that stage. This is because the interest-based approach is supposed to help create a cooperative working relationship. Theoretically, the parties should know who wants what by the time they split the pie.[3]

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[1] Watkins, Michael and Susan Rosegrant, Breakthrough International Negotiation: How Great Negotiators Transformed the World's Toughest Post-Cold War Conflicts (San Francisco: JosseyBass, 2001), 31.  
<<http://www.beyondintractability.org/bksum/watkins-breakthrough>>.

[2] The principal ideas regarding identifying interests outlined here were drawn from: Roger Fisher and William Ury. Getting to Yes: Negotiating Agreement Without Giving In, 3rd ed. (New York: Penguin Books, 2011).  
<<http://www.beyondintractability.org/library/external-resource?biblio=23737>>.

[3] The idea that integrative or interest-based bargaining will always include distributive bargaining too, was originally put forth by David Lax and James Sebenius in The Manager as Negotiator: Bargaining for Cooperation and Competitive Gain, 1986.  
<[http://books.google.com/books?id=FN\\_OIG0-aIEC](http://books.google.com/books?id=FN_OIG0-aIEC)>.

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