
CITADELPHIA CINCH NEGOTIATION

Teaching Note

“Citadelphia Cinch” is a two-party, multi-issue negotiation between Fran Foley, Esq., agent for Professor Sandy Alder, and Clyde Coburn, VP and General Counsel of Citadelphia Arts Consortium.

Foley is the founder of Famous Force, LLP, a Canadian agency representing musicians, performers, and other creatives. Alder is the retiring longtime Chair of Composition at Canada’s preeminent music faculty, an esteemed composer worldwide, with strong conducting experience. As its name suggests, the Citadelphia Arts Consortium oversees and represents the U.S. city of Citadelphia’s Symphony Orchestra (CSO).

The parties are to negotiate the terms of a commission for Professor Alder to compose an orchestral piece in honor of Citadelphia’s bicentennial celebration.

This simulation was originally written for a cross-law school negotiation among classes in Cincinnati, Montreal, and Saskatchewan, as an exercise in email-only negotiation. While the original, email-only instructions are preserved in the “Only Email Negotiation” version, they have been removed from this version. There is no reason to limit this exercise to email only unless you seek to learn and teach the limitations and benefits of this communication medium.

There are five categories of terms to be negotiated. The parties’ instructions create a ZOPA for each term, but Pareto efficient agreements are achievable with trades across terms, reflecting the parties’ differing needs, interests, priorities, and preferences.

- 1) Called “The piece and the price” in the Consortium’s information and “Commission fees and costs” in the Agent’s information

In addition to the commission fee, other incidental financial terms should be negotiated, including costs of a “music copyist” for separate orchestral parts; Professor Alder’s visit to Citadelphia for an initial consultation; and Professor Alder’s travel to the pre-concert rehearsal and premier performance, including airfare and hotel.

- 2) Naming rights
- 3) Ownership of the piece and royalty rights
- 4) Agreed upon process and termination option
- 5) Other interests and terms?

Though not spelled out in the category title provided to the negotiators, the confidential information raises the possibility of Professor Alder conducting future CSO concerts: he enjoys conducting and would like to do more; the CSO’s current conductor is leaving; and the CSO anticipates significant expenses for guest conductors. This is part of the reason the CSO is concerned about the budget for the commission.



ZOPAS and interests in each term to be negotiated

- 1) Referenced as “Commission fees and costs” [Agent] and “The piece and the price” [Consortium]

The CSO’s music director stated that he prefers a 15-20 minute piece. It should be “upbeat, lively, and triumphant, with well-developed brass segments.” Professor Alder wasn’t specifically aware of this but should have no objection.

Both sides’ information state there’s no “standard fee” for composers’ commissions. Some composers charge by the finished minute, and they generally differentiate between solo works duets, trios, quartets, and so on, with the highest rates for full orchestral works.

The agent’s information states that “well-known composers might charge \$100 per minute, but experienced composers easily charge \$1,000 per minute for solos and \$2,000 per minute for fully orchestrated pieces. Frankly, very famous composers in high demand would charge flat fees of \$25,000 or \$50,000 or much more for a substantial piece.”

The Consortium’s information has different estimates for these numbers. They estimate the rate for a solo piece as \$50-\$1,000 and for an orchestral composition as \$250-\$2,000 per finished minute, or much higher for a more senior, famous composer. They estimate flat fees for a famous composer might be \$20,000, \$30,000, \$50,000, or more. The Consortium is concerned that Alder may want top dollars because, as a professor, he doesn’t have unlimited time for commissions and because he has an agent. They are unaware of Alder’s plan to retire.

Professor Alder’s primary interest isn’t money. He has no other commission obligations at present and is bursting with musical ideas to bring to fruition once has no teaching responsibilities. Alder’s main interest is exposure on the world stage as a composer and conductor. (Alder’s past commissions and conducting gigs weren’t paid in the highest range—a reason to hire an agent.)

A precise minimum fee is not set within the agent’s role information. On incidental costs and arrangements, Alder would prefer the CSO to pay for the music copyist, and he strongly prefers that an initial consultation be in person, with the CSO paying travel costs. They should also pay for his travel to the pre-concert rehearsal and premiere performance. The professor sees these as “small changes”: if the CSO doesn’t take them graciously, this would signal they don’t respect his stature.

The CSO has an interest in paying less for the commission. Their information suggests aspiring to a commission fee between \$5,000 and \$10,000 and limiting overall costs to \$15,000. Their top limit for the commission fee is \$20,000 unless they can reduce other expenses. (As explained below, this upper limit can be raised if Alder agrees to name the piece according to a donor’s wishes.)



Regarding other financial terms, the CSO estimates costs as \$2,000 for a copyist, \$1,000 for Alder's trip to Citadelphia for an initial consultation, and \$3,000 for Alder's weekend travel to the pre-concert rehearsal and premier, including wining and dining. (Their information suggests asking if Alder would do the initial consultation remotely but doesn't push this.)

The CSO is concerned about impending expenses resulting from the current Maestro leaving and the consequent need to pay and audition guest conductors. As explained below, hiring Alder as a guest conductor at a lower than budgeted but fair price would meet both of their interests, but the negotiators must discover this.

2) Naming rights

While Alder enjoys autonomy and wants the name of a piece to reflect its spirit, he would agree to cooperate with the CSO regarding the name.

Unknown to the composer's agent, the CSO has a financial interest in having the name "Rose" included in the title of the commissioned piece. A longtime patron and donor's wife passed away recently, and a namesake granddaughter was soon born after that. The CSO strongly believes he would donate \$10,000, perhaps up to \$20,000 if the piece's title included "Rose." This donation would enable the CSO to exceed the \$15,000-\$20,000 commission fee limit. If the fee is lower, the donation might cover it.

This raises tactical issues for the CSO negotiator: if this fact is kept secret until the financial terms are set, he or she can use the donation to defray the cost of the contract. If revealed too early, Alder's agent may seek to raise the price in exchange for giving up naming rights.

3) Ownership of the piece and royalty rights

Both sides' instructions state: "The general rule is that the composer or the composer's publisher owns the copyright for a commissioned piece. The commissioner typically has the right of first performance and to perform it subsequently without charge for a specified period, generally not more than 5 years. piece. Outside of that, the composer may decide only to let selected entities perform it, generally for a price, or to publish it for broader use, subject to royalty fees. Of course, when a composer just writes a new piece, one that was not commissioned, the composer receives royalties each time it is played – in live public performances or recordings."

The composer's agent's instructions provide for some willingness to share future royalties when other entities perform it, if Alder's initial commission amount seems Professor Alder must be credited as composer, in any performance and print music.

Royalties are unlikely to generate substantial revenues; ownership is symbolic and more likely to matter to Professor Alder. Then again, offering a royalty share (either way) might be a small concession in exchange for another term. If student negotiators spend too much time on it, they will have missed the forest arguing about a tree.



One important issue for Citadelphia Arts is royalty rights on recordings of the CSO's first performance. The CSO is planning a live video recording of this concert, including its performance of Alder's piece, and would like to be able to sell that – in CD or streaming format - without paying royalties on the recordings to Alder. (Alder doesn't know this, but it shouldn't be surprising).

The Citadelphia Arts is open to creativity for royalties on other future performances. In fact, they would like the CSO to have the right to play it in perpetuity, without charge (or at least past five years), and to extend that right to extend to all Citadelphia Arts Consortium organizations.

While recognizing it's unorthodox, Citadelphia Arts might ask for a share of Alder's or his publisher's royalties on *other* public performances and recordings. Even if shared royalties wouldn't yield much revenue, the board might accept it as justifying high commission fees. Of course, Professor Alder would always be credited as the composer.

4) Agreed upon process and termination option

Process: The CSO's Maestro insists the composer agree to a process to include an initial consultation about the goals of the piece and the relative strengths of the orchestra sections. The composer would submit a preliminary "sketch," receive feedback and comments and complete the piece. The composition sketch must be provided at least nine months and preferably a full year before the performance date. The piece should be fully completed and orchestrated, and copies of all instrumentalists' parts finished at least three months before the concert date. Rehearsals would start shortly after that.

Alder is open to cooperating with the Citadelphia Symphony Orchestra (CSO) director by submitting an early sketch of the piece. Alder is disciplined and always timely. Producing the sketch early on won't be a problem and he is happy to adjust a composition to meet the CSO's goals.

Termination: Negotiating the terms and timing related to termination can be challenging in this case. That's partly because imagining and then drafting a multi-stage termination provision is tricky, even without real conflict. [As written both sides' role information includes the bracketed instructions: "In real life, you could spend quite a bit of time on the particulars – a schedule, graduated payments, specific penalties, and the like. For the purposes of this exercise, while discussion of these issues is fine, we suggest that you not be too concerned about specifics here." I call this to your attention here because, if your course time and objectives allow for negotiating and drafting a detailed termination provision, you would want to correct that instruction.]

In this case, the parties' interests regarding termination do conflict. Citadelphia must have the right to terminate without significant cost if Alder refuses to make adjustments or if, based on the sketch, the piece is entirely unsuitable or terrible.



Citadelphia would prefer the right to terminate on 30 days' notice, with little or no cancellation penalty, unless the composer can demonstrate substantial completion of work on the project. It also seeks the right to terminate without penalty if the composer fails to meet the deadline for the finished piece.

The composer's agent will resist giving the CSO the right to terminate the contract and reject the final piece, due to past negative experiences. If the CSO insists on the right to terminate before completion, the agent will insist on a cancellation fee related to time spent and Alder retaining all rights to the piece at that point. Alder's agent prefers a contract that does NOT give the CSO the right to reject the final commissioned piece if it meets specifications as to the type of piece (orchestral) and number of minutes. However, if the CSO won't agree, the agent will insist Alder be paid a minimum flat fee and retain the rights to publish the piece or use it. The agent will also insist any termination provision include "non-disparagement and confidentiality" language. Assuming the piece is accepted, the agent wants a guarantee that CSO will perform it as planned.

5) Other terms and interests

Professor Alder is VERY interested in future conducting gigs, and in his retirement, may be interested in other types of opportunities in the music world.

The background portion of agent Fran Foley's confidential information contains a hint about possible future conduction or music director opportunities there. It reports that the agent had "heard via the grapevine that the CSO may be looking for some guest conductors in the not-so-distant future because its music director, Marty Maestro, may have accepted a position with a European orchestra." This caused the agent to speculate that the CSO might "be looking for a new music director, and possibly some interim guest conductors."

In fact, Citadelphia Arts was recently informed that the CSO's "maestro" music director leaving. They anticipate a year of guest conductors who typically charge about \$15,000 for a weekend of concerts and pre-concert rehearsals, though a few conductors "auditioning" for the music director's job might offer a price break. They estimate this will cost the CSO a net \$200,000 *more* than the previously budgeted music director's annual salary. This is based on calculating the music director's salary at about \$8,000 per concert weekend. These guest conductors may cost \$6,000-\$7,000 per concert weekend more, over 30 or so weekends – about \$200,000.

While some student negotiators miss this, it's a real way to generate value in the negotiation. Professor Alder had conducted in the past for "ridiculously low" fees: \$3,000 - \$5,000 by the Canadian symphony organizations years ago. He knows top guest conductors in large US and European cities get paid \$8,000 - \$10,000, maybe as much as \$15,000, for a long concert weekend of rehearsals and performances. He greatly enjoys conducting but recognizes that he's less well-known as a conductor than as a composer. To get his foot in the conducting



door in the U.S. and Europe, he's willing to quote relatively low fees for conducting, at least for now.

Thus, a good chunk of guest conductor engagements will meet Alder's interests and enable Citadelphia Arts to save significant projected costs.

This offers a strong lesson for negotiators who miss the future conducting open entirely: don't forget to inquire about the other's interests, circumstances, and capacities. To do so is to miss an enormous opportunity for both sides here.

And for integrative negotiations – creative options, exchanging that information is a sound strategy. On the other hand, too much candor may disadvantage you – Alder's agent probably wouldn't be wise to mention the low fees for past conducting in Canada, and the Citadelphia Arts representative wouldn't be wise to mention the full range of high anticipated fees.

About teaching with this case

Background and disclaimer: As of the date of this note, I have used the Citadelphia Cinch exercise only as "email only" – students from my law school in the U.S. and two law schools in Canada were paired and instructed to negotiate via email only. They were permitted but not required to contact each other via Zoom or cell phone in advance, only by way of introduction, no negotiation was permitted. The instructions given to the students are included in the full Citadelphia Cinch packet on this site, as are my adaptation of the additional components of the exercise – and outline, two levels of peer review, and reflection. The designer of this entire terrific exercise is Professor Michaela Keet at the University of Saskatchewan's Law School. After using quite a simple case for a few years, Professor Keets and two other professors in the collaboration agreed that a more complex problem would work better. I agreed to write one and Citadelphia Cinch was the result.

This means that I have never watched the students as they negotiate, and I've been able to review the text of their agreements before substantial debriefing.

The email-only rules do allow for reflection and discussion of the advantages and disadvantages of having no synchronous in-person or voice contact. Some students prefer having the time and space to reflect and organize. Others miss the ability to read facial expressions or to establish in-person rapport. That everything must be written allows for insights into the importance of visually organizing text in a way that facilitates clarity and reduces the chance that important points will be missed. There are always examples of interpreting the written text as offensive or strident when it may not have been intended. Without the opportunity to vocalize, Students note the benefit of articulating (some) emotions, intentions, or reactions in the email text. Many students who skip the option of Zoom or Skype personal introductions (without negotiation) express some regret. Several students who exercise the option observe its usefulness for building a sense of commonality and trust.



Having said that, there's just no reason Citadelpphia Cinch wouldn't work in person, or on Zoom, or permit the student to use any communication method or technology they choose. It's simply a two-multi issue negotiation, with a mix of financial and non-financial interests and terms. The dollars overlap and the parties' differing contexts, interests, priorities, and specific circumstances allow for value creation.

Whether by email or in person, this negotiation takes a while. If you do it within a class period, you might (or might not) have time for very briefly eliciting the outlines of their agreements at the end of class. Frankly, I doubt you could cover much. The end-of-class debriefing might just consist of whether they reached agreement, whether it was difficult or easy and why, etc. Their post-class assignment would be to draft their agreements with some care and sign them. Those who haven't finished can do so. Give them a short deadline to turn these in.

As with the email negotiation agreements submitted, in a class of any significant size, I go through the agreements and select quite a few that are quite different. I'm looking for agreements that seem to me to strongly favor the interests of one side or another, some that seem balanced or particularly rich with creative ideas. Depending on the timing, these are distributed to students either via the course platform (Canvas, TWEN, etc.) or on paper in class.

I then ask the students to review the 8-10 agreements and give them two scores on a scale of 1-10, representing how well the agreement meets the composer's interests and Citadelpphia Arts' interests. If it's during class, I might ask students to do and discuss the scoring in small groups.

When you then ask about the results, you usually find that some agreements were viewed as heavily weighted toward one side or another, others more balanced. You can plot the scores on a graph and use it to discuss Pareto optimality.

At some point, either after the scoring, or right at the beginning of the class period, you might do a standard debriefing as to "what worked well and what would you do differently?" It's useful to ask what aspects of the negotiation were tricky: how did they manage it? What information did they exchange and what did they strategically withhold? How did they time the information provided? For example, it's arguable that Citadelpphia Cinch would be wise not to mention the naming issue until after the discussion of commission fees. If possible, they'd like to lock down the fee first. And they might not want to mention "Rose" as yielding a sizeable donation. They might characterize it differently, as honoring the donor's wishes.

If they stalled or couldn't agree on a single term, you might ask why. Was that term critical to your client? Did their time allocation in negotiation reflect their client's priorities? Your debriefing might also elicit comments as to whether anyone has "agreement term envy." Do they see great creative terms in other agreements that are far outside of any terms they discussed? You're not asking about higher or lower dollars or heavily negotiated terms, but



rather about missed opportunities. You can turn to the highly creative groups and ask about their negotiation process. Or, you can turn to the scoring exercise, if that hasn't been done. It's interesting to see if the highly scored deals match those with terms of interest.

Now for a radically numerate teaching idea: this past year, I had the students conduct an issue by issue utility analysis for Citadelphia Cinch, instead of the overall score exercise described a few paragraphs above.

By way of background: a few weeks earlier in the course, we had done a scorable negotiation simulation. The point values for various options have been provided. The students universally appreciated having those point values to work with, as it enabled them to see what terms and trade-offs benefitted them and which did not.

As you may know, this author is a firm believer in lawyers' use of decision analysis. While this is more typically done for litigated cases, I think it's useful for negotiators to consider the utility scores of different possible agreements in a multi-issue, multi-term agreement. If you separately score a range of possible terms under each issue, you can evaluate the overall benefit or utility of one agreement – package of terms – compared to another. In essence, it's waypoints are assigned in a scorable negotiation simulation.

To teach this, I assigned the students an article about utility analysis, and both sides of a very simple unrelated case with an explanation and worksheet demonstrating how you would do a utility analysis in that simple case. That packet is included in this simulation's folder.

Without going into details, it involves determining the weight of each issue for their client – distributing 100 points across the terms. Hypothetically, for the composer, the importance of financial terms might be weighted at 20%, termination at 40% importance, naming at 10%, ownership and royalties at 15%, and conducting and other opportunities at 25%. Then you must assess the value of a given term under each issue, from 1 – 100. These can add up to more than 100 as one term might be worth 60 points out of a perfect 100, and another might be 70% there or 70 points, and so on. To do a utility analysis, you multiply the weight of each issue category, by the points assigned to individual terms underneath it.

So, if an issue is relatively unimportant, but a particular term addressing that issue is GREAT – worth 80 points out of 100, you would multiply $.20 \times 80$, and the utility value of that term would be 16.

In class, I first made sure students understood the method. (It seemed they did.) Then I asked them to work in small groups, with other students who had been on their side of the case and do a utility analysis for a deal in Citadelphia Cinch.

This exercise allowed for a discussion of the fact that what we can measure tends to be overvalued (measurement bias). People tend to overlook the monetary aspects of an agreement because they are easily measurable. Other items may be described as equally or more important. But translating them into numerical utility value enables us to compare



monetary and other gains more clearly. It's also true that not all dollars are created equal. In some circumstances, most of the financial utility may come from dollars up to a certain point. Beyond that, while money is nice, it doesn't accomplish much more. Or it may be that a small increase in dollars has an outsized positive or negative impact on a party. Utility analysis lets you see that. More important, it lets your client see it.

Understandably, students asked whether a lawyer would "really" do a utility analysis with a client. I confessed that I had not but had seen a lawyer undertake a spreadsheet in a mediation caucus room with his client. It gave them a way to evaluate the benefits of the many options and packages that were flying back and forth in the mediation. I did note the benefits of deconstructing the elements of a deal and discussing them with the client.

Frankly, I gave it less time than warranted in the class because I didn't think students would see the value of the exercise for their legal practices. A number of them stated they would have appreciated more time and making a stronger case for utility analysis for negotiating and preparing the negotiation with a client. I plan to give the utility analysis exercise more care and attention next time.