

**Bring Me Your Disputes and I will Set You Free**

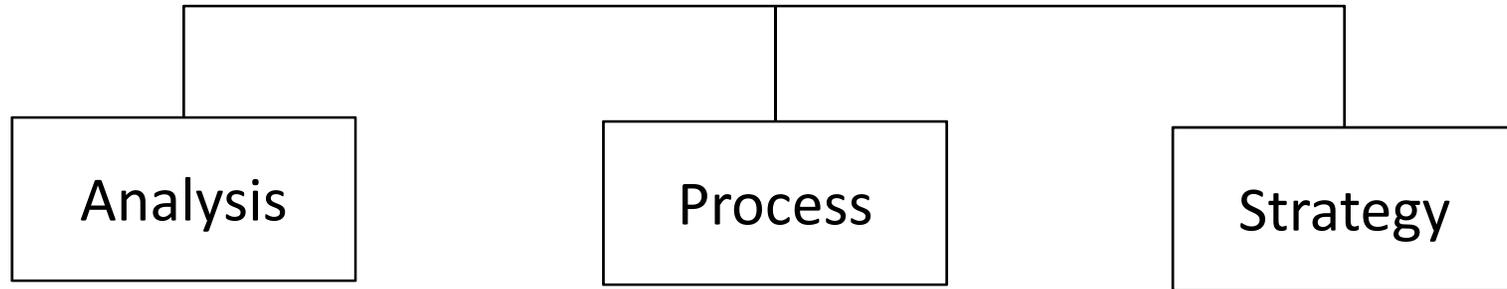
**Presented by:** John Champion  
November 28, 2017



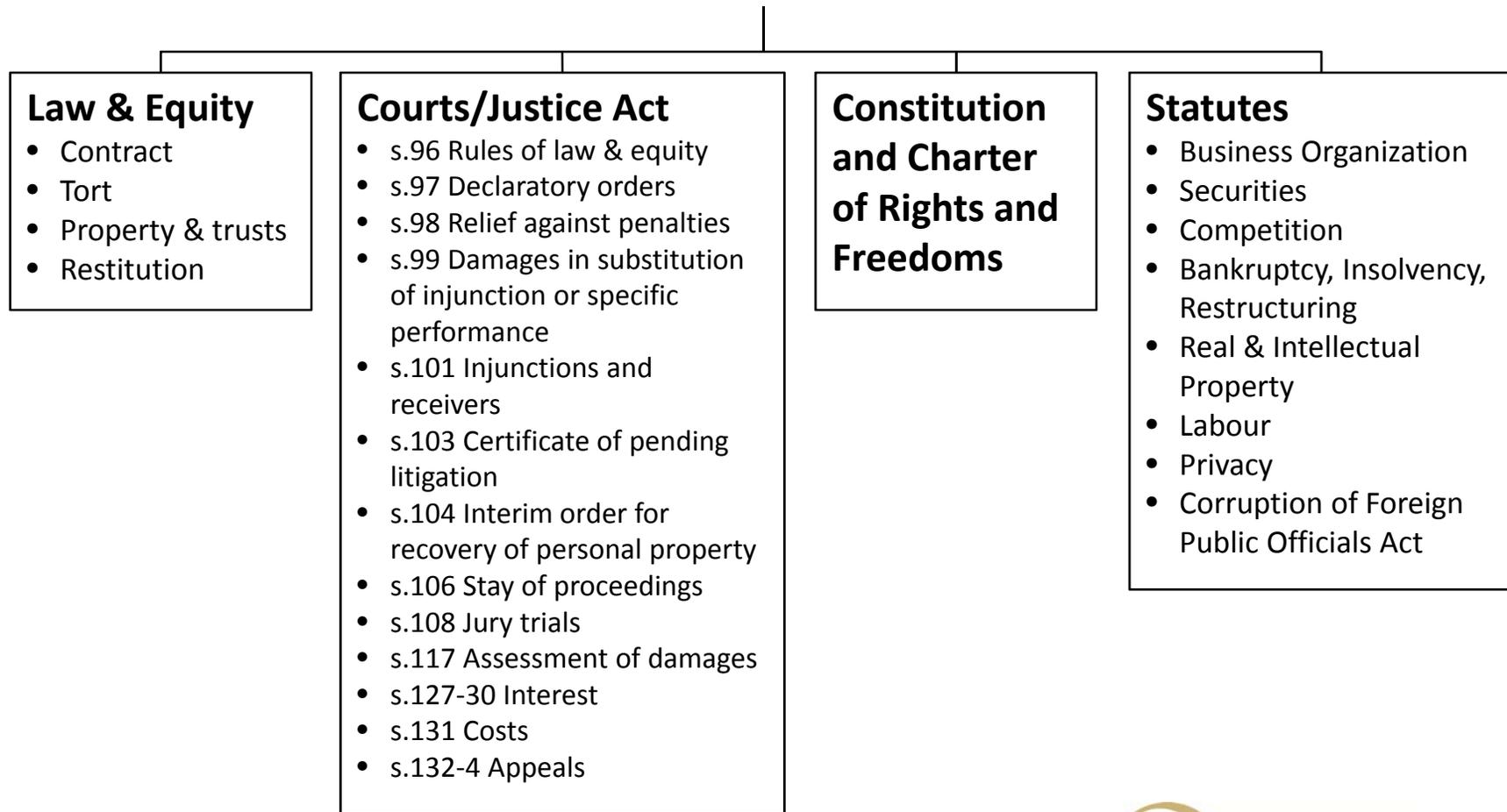
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# The Code: The Legal Mind

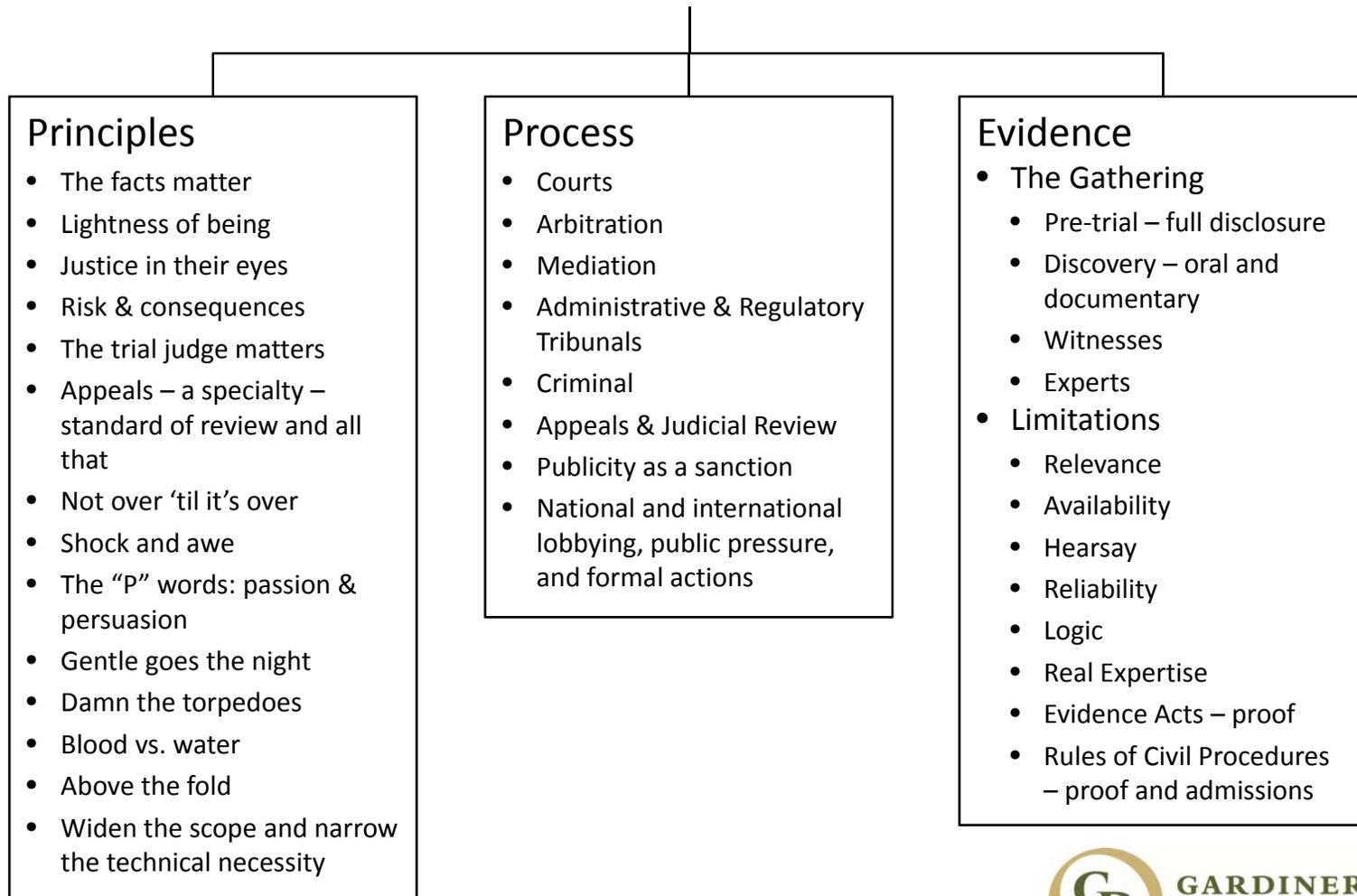
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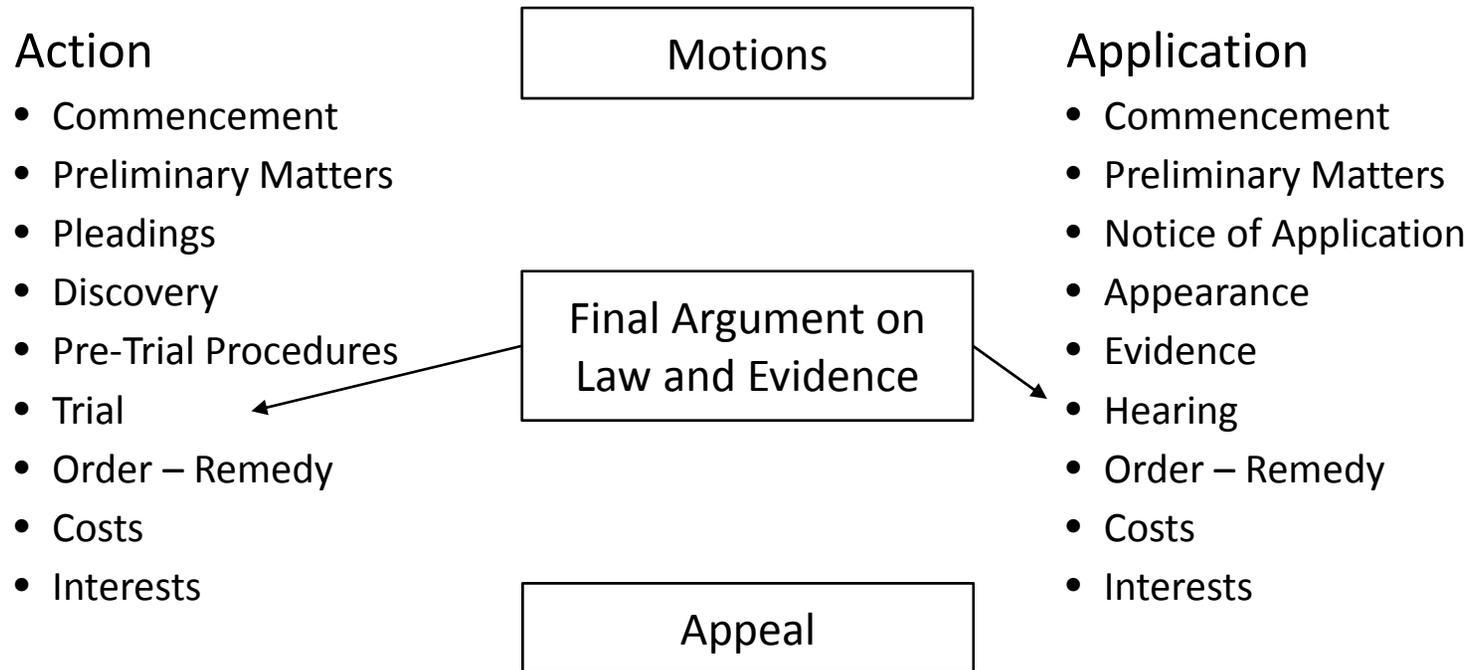
# Analysis: Overview – The Learning of The Ages



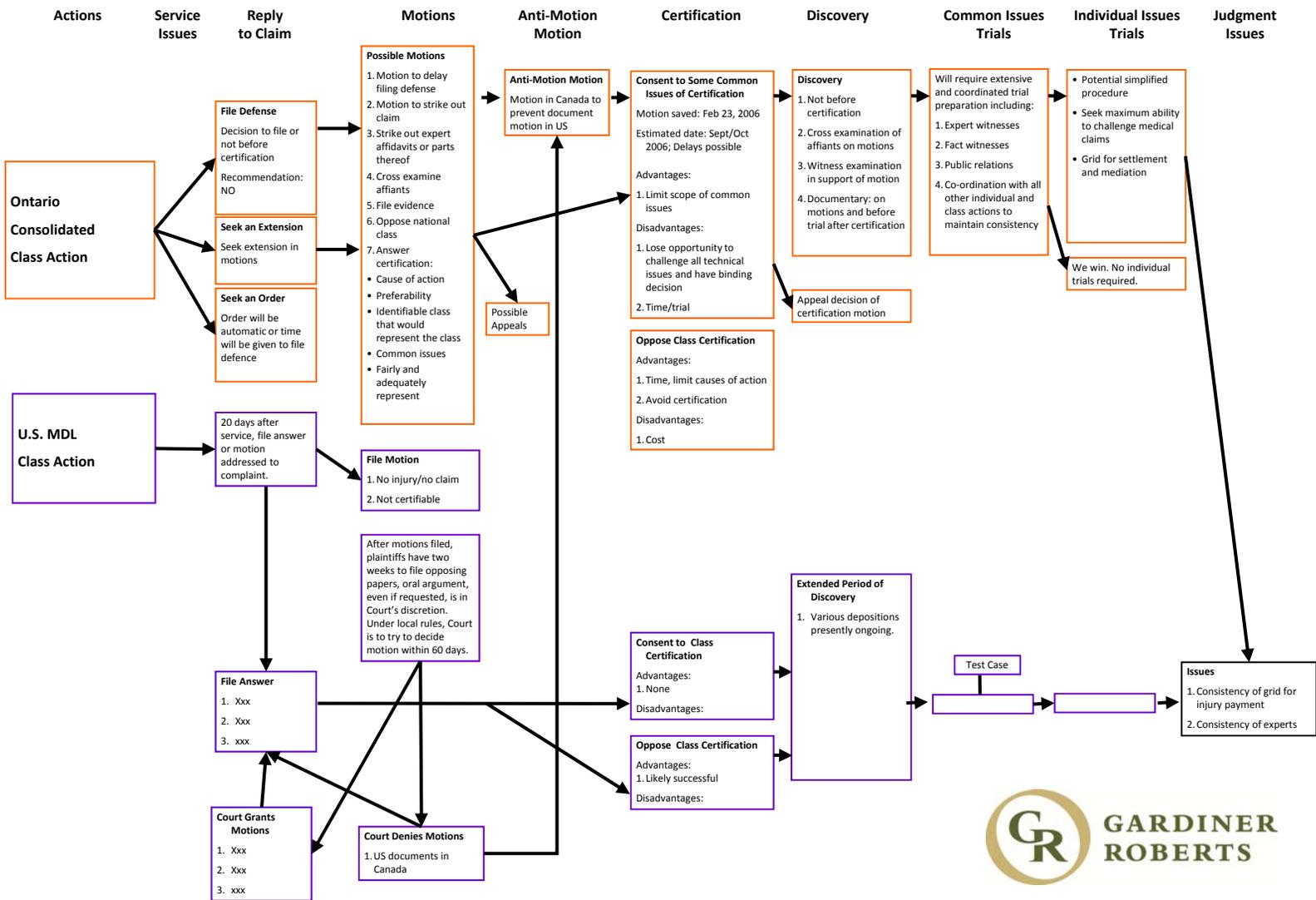
# Process: Proof and Principles



# Litigation Process - The Universal Main Event



# Litigation Process – Class Action



# Arbitration – Process Globalization

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1. An existing dispute (not merely an unresolved issue);
2. Parties choose neutral decision-maker under an arbitration agreement;
3. Expressed intention in the agreement that the decision be binding and be made in a judicial or quasi-judicial manner;
4. The hearing be impartial and fair;
5. The decision in the hearing be based on evidence and argument;



## Arbitration – Process Globalization

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6. International arbitration (not defined in model code – see federal and provincial Acts): parties have places of business in different States when arbitration agreement is made; one of the following is outside the State where parties have places of business – place of arbitration, place for performance of obligations, place where subject matter of dispute is most closely connected; commercial arbitration acts that adopt or incorporate UNCITRAL Model Law – applicable to all provinces and federal arbitrations;



# Arbitration – Process Globalization

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7. Domestic commercial arbitration: modern provincial arbitration Acts that provide for domestic arbitration based on the model law; provisions vary significantly from province to province (contracting out, appeal rights and contracting out, procedural rules, administration of arbitration and deemed agreement provisions;



# Arbitration – Process Globalization

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8. Federal legislation: United Nations Foreign Arbitral Awards Convention Act R.S.C. 1985, C.16 (2nd Supp): Implements the New York Convention on recognition and enforceability of arbitral awards (effective May 7, 1986). New York Convention: Contracting States recognize arbitral awards; limited grounds for refusal to recognize and enforce; limited to recognition and enforcement of commercial arbitration awards made in contract in the States;
9. Guidelines: for arbitrators, awards, remedies, enforcement, legal requirements, appeals, ethics, finality.



# Mediation – Process Maximizing Client’s Role

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1. Pillars of Process: Contracting, story, interests, options, alternatives, best alternative to negotiated agreement (BATNA), agreement.
2. Contracting: Engage the participants in the process of making a contract; explain the process, clarify roles and responsibilities of participants and mediator; negotiate ground rules.
3. Defining the problem and dealing with conflict: understanding the conflict, the parties’ view of the conflict (individual stories), working with the dynamics of the conflict; understanding the law – analyzing the legal risks and opportunities.



## Mediation – Process Maximizing Client’s Role

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4. Understanding interests: explore the parties’ needs and interests (what matters to them going forward); generate options; evaluate options using the parties’ goals, needs and interests, the law and other reference points; develop packages; test packages against parties’ goals, needs and interests for stability, durability and commitment.
5. Looking to the future: draft agreements; review, refine and improve upon agreements; have a concern for the unrepresented; determine next steps; implementation – provision for future review and modification.



## Mediation – Process Maximizing Client’s Role

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6. Identify and control: drama, narrative, identity and emotion.
7. Trust in the mediation and commitment to trust for future action.
8. Imperfections: dysfunctional communication and emotion; asymmetries of information; extreme “partisan perception” bias; disrespect (real or perceived); failure to understand others’ views, or care; strong desire for revenge or vindication; agreement has unpalpable meaning.
9. Process variance: preliminary work (pre-planned, a formal evaluation phase, mediate discovery, caucuses single-text model.



# Mediation Made Simpler

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Variable **Five Stage© Resolution Process** to early and later stage dispute assessment, strategy, risk audit assessment, mediation, arbitration, litigation and resolution.

- **Stage 1** – Setting the base for success – trust, creativity and tailoring the process, mediation/arbitration agreements, desire/pressure to resolve.
- **Stage 2** – the gathering – facts, chronology, analysis, explanations, documents and data and compiling all in a common independent programme developed on consent.



# Mediation Made Simpler

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- **Stage 3** – process selection – interchange, combinations and switching: managed direct settlement negotiation or offer exchange (online or face to face), mediation, arbitration.
- **Stage 4** – expert advice – area of dispute (large corporate, closely held enterprise, estates, on-going relationships) psychological factors, settlement design, tax implications, media, regulatory and government relations.
- **Stage 5** – philosophy – settle what is known through identifying and prioritizing legal issues and actual interests; have a process to deal with future issues if and when they arise through negotiation or arbitration.



## Process – Regulatory & Criminal: Ceding Control

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Business Corporations

Securities

Energy

Office of the Children's  
Guardian

Public Trustee

Labour

Real Estate & Business

Brokers

Criminal Code

Tax

Insurance

Broadcasting

Transportation

Professional Complaint:  
Self-regulating professions

Lawyers

Doctors

Nurses

Accountants

Other



# Strategy – Psychology 101

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- LAMS: Litigation, arbitration, mediation, settlement
- Analysis and process – combine in a complex interaction, depending on realistic goals, timing, financial, psychological and other limitations, advantages and disadvantages
- Impacts inside legal system – “In” Factors
  - Corporate
  - Directors
  - Public – negative
  - Securities – disclosure
  - Professional status
  - Criminal act and recovery



# Strategy – Psychology 101

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- Outside legal system – “Out” Factors
  - Business and political impact
  - Publicity as a tool and a sanction
  - Resources of parties
    - Financial
    - psychological



# Contact Us

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