

Dennis is one of the best positioned authors and professionals to have attempted to document and argue the application of the *lex sportiva* in Football in South Africa. He has been passionately involved at the forefront of the management of this sport. He has de-mystified complex legal theory and applicable principles with a focus on practitioners being able to grasp the essence of disciplinary processes and procedures, and to implement them in a fair and just manner. I am certain that football governance in the country and continent can only improve by engaging with the content and implementing the steps as globally accepted and practised.

Paul Singh, Research Professor, Da Vinci Institute

Finally, we have someone who is able to guide future administrators on the right path to professional and competent administration of this beautiful sport. Dennis has been able to put into words that everyone who takes the time to read this amazing work will be set on the right path. Football administration has moved from "car boot" governance to "Corporate Governance". The manner in which he sets out the fundamentals of Ethics and Good Governance is something that is sorely needed in our Sporting culture today and should be the basis on which each and every future administrator begins his career. I congratulate Dennis on this masterpiece and pray that anyone entering the beautiful game take the trouble not only to read this book but to use it as their "football bible".

Raymond Hack (Former SAFA CEO and Chairman of the FIFA Players' Status Committee and Chairman of the CAF Disciplinary Committee)

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How to Fix South African Football's Dispute Resolution System

OUR FOOTBALL IS BROKEN

Dennis A. Mumble

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How to Fix South African Football's Dispute Resolution System



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Structure of this Book



Dispute Resolution in SA Football

PART ONE - UNDERSTANDING THE DISPUTE RESOLUTION SYSTEM

1. The Constitution is the Bedrock
2. Democratization of World Football
3. Separation of Powers
4. SAFA's Relationship with Its Members
5. SAFA's Regulatory Framework
6. The Different Types of Sanctions
7. Disciplinary Powers of an Executive Committee
8. Unreasonable Delays & *Blocking*
9. Role of the SAFA Judicial Bodies
10. What Are *Unforeseen Contingencies*?
11. What is *Force Majeure*?
12. What Is the Meaning of *Disrepute*?
13. Proportionality in CAS Jurisprudence
14. Abuse of *Ad Hoc* Committees
15. The Applicability of PAJA
16. Constitutional Protections for Accused Persons
17. How to Challenge Disciplinary Sanctions
18. A Toolkit for Disciplinary Hearings
19. Procedural Rules for Disciplinary Committees

PART TWO - RESTORING THE BALANCE OF POWER

20. Democracy Through Free and Fair Elections
21. Six (6) Case Abstracts
22. Epilogue – The Value of Rules

The Football Dispute Resolution Universe

Building Blocks of the Dispute Resolution System

1. Players' Status	2. Agents	3. Disciplinary
4. Regulatory Compliance	5. Rights (naming, image)	6. Interpretation
7. Inter-Member Disputes	8. Interpersonal Conflicts	9. Behaviorial Conflicts
10. Gender-Based Violence	11. Racism	12. Int'l Coach Disputes
13. Territorial	14. Solidarity & Training	15.

NATURAL JUSTICE

INTEGRITY

POLICIES

COMPLIANCE

APPLICABLE LAW

UNIVERSITAS

STATUTES / CONSTITUTION
REGULATIONS

SEPARATION OF POWERS



PAJA

TRANSPARENCY

AUDI ALTERAM PARTEM

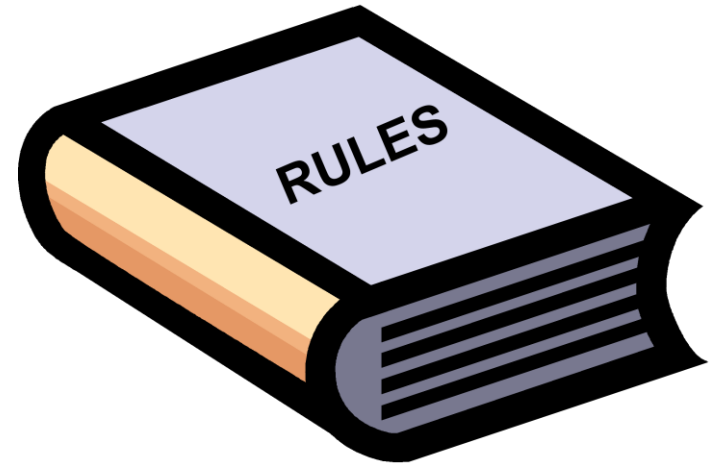
FAIRNESS

NO BIAS

COMPLIANCE

DISCIPLINE

RULES



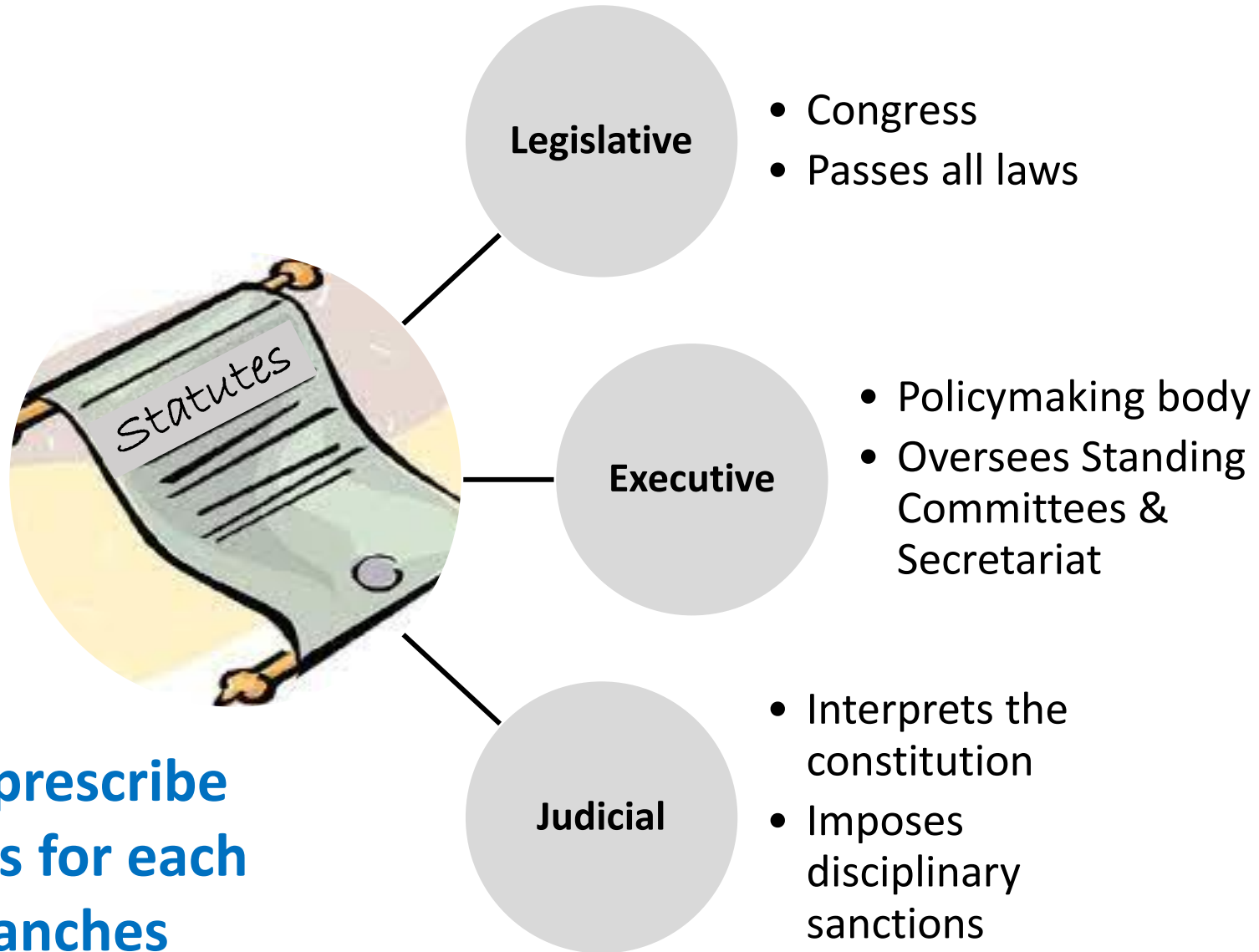
The Basic Structure of the Statutes



The Principles of Good Governance



Separation of Powers



The Statutes prescribe the boundaries for each of these branches

FOOTBALL TRANSFORMATION FORUM

**The
Symbol
of a
Broken
Promise**



100% PRINCIPAL, 0% PERSONALITY



Mushroom Management

Until our ... system accounts for people as well as things, we will operate our organizations in the dark. Of course, some people don't mind the dark, especially those who are into "*mushroom management*", the primary ethic being "Keep people in the dark, pile lots of manure on them, and when they are fully ripe, cut off their heads and can them."

Stephen R Covey, Principle-Centered Leadership, p225

CONGRESS

52 Regional Members, 10 Associate Members, 1 Special Member (NSL)

National Executive Committee

Judicial Bodies

Provincial Executive Committee

Standing and Ad Hoc Committees

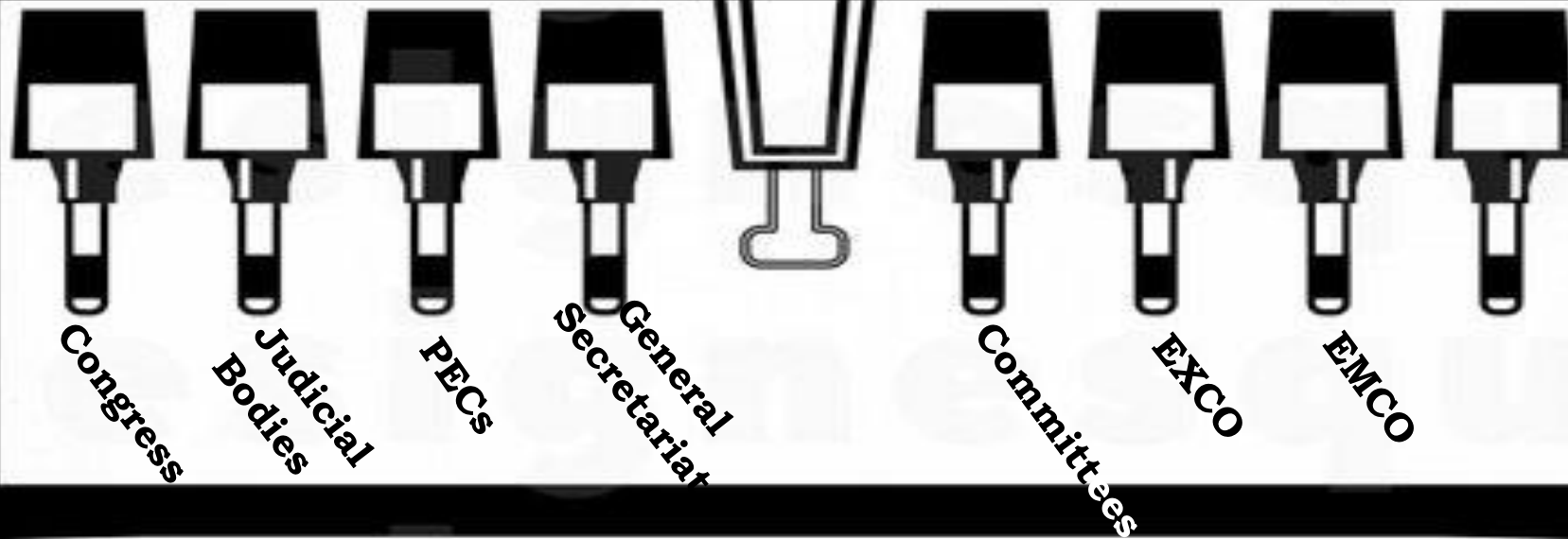
Management Board

General Secretariat

The Statutes outline what each body can do

Article 2 of the SAFA Statutes

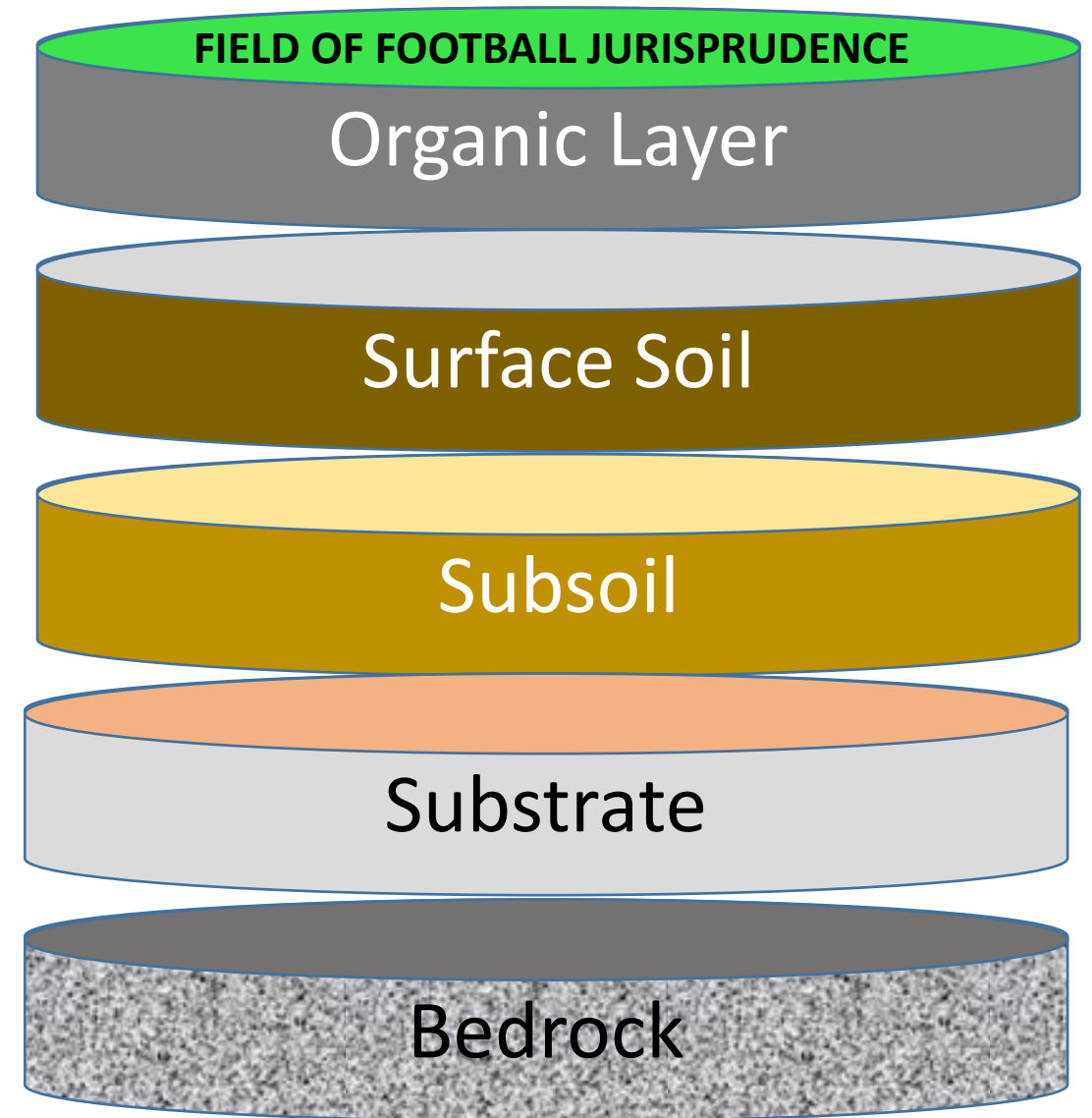
Aims, Objectives and Powers of the Association



How Authority is Separated

6b. Legal principles that govern implementation of the rules

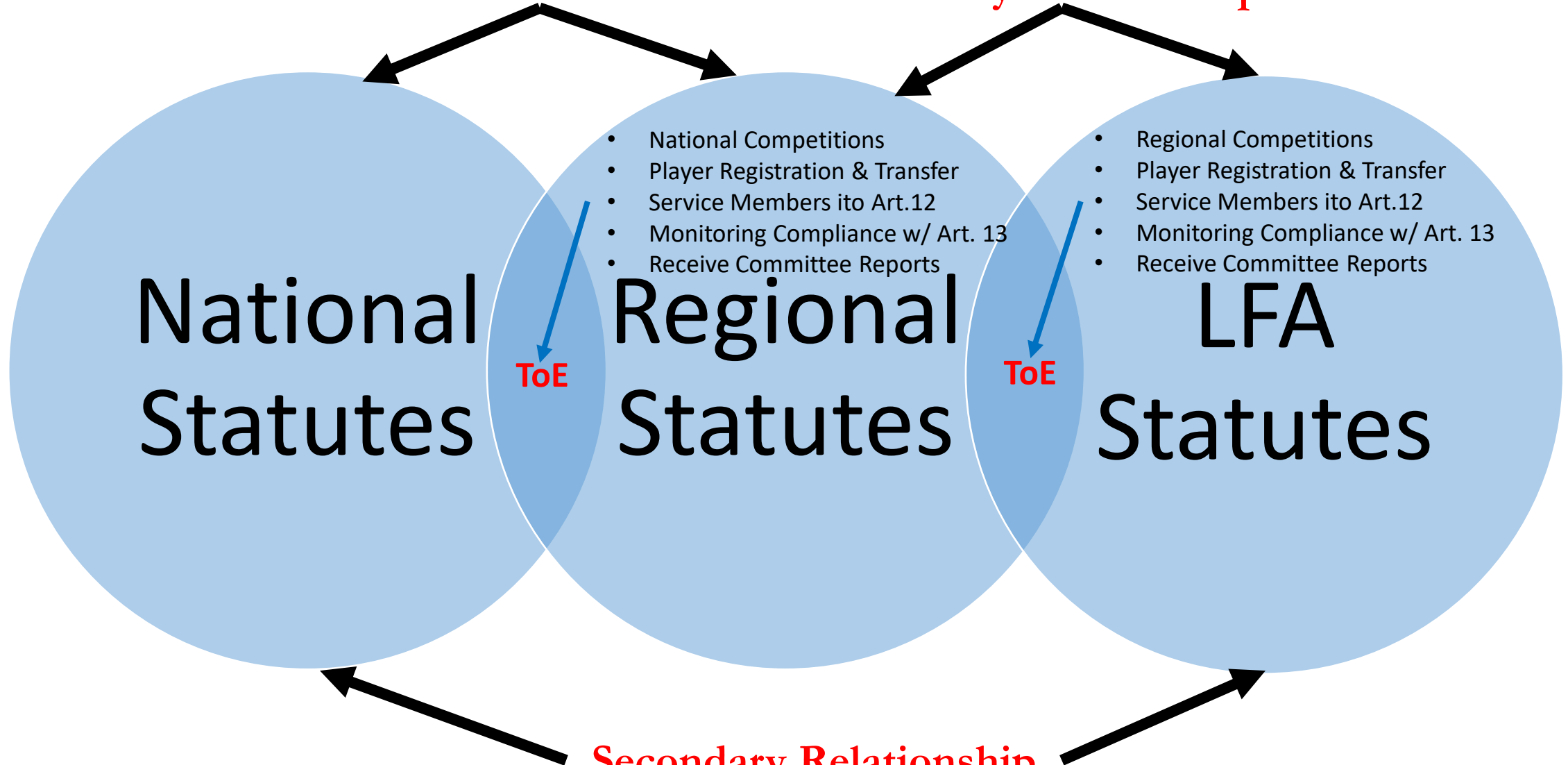
- nulla poena sine lege*
 - nulla poena sine lege clara*
 - force majeure*
 - disrepute*
 - stare decisis*
 - audi alteram partem*
 - nemo iudex in causa sua*
 - sine poena nulla lex*
 - contra proferentem*
 - ne eat iudex ultra petita partium*
 - nemo est supra legem*
 - nemo tenetur armare adversarium contra se*
 - nulla poena sine culpa*
 - nullum crimen, nulla poena sine praevia lege poenali*
 - sine poena nulla lex*
 - tempus regit actum*
 - ubi lex voluit dixit, ubi noluit tacuit*
 - expressio unius est exclusio alterius*
 - testis unus, testis nullus*
 - venire contra factum proprium*
 - *omnia praesumuntur rite esse acta*
- THE LEGAL FERTILIZER**
- 



Constitutional Connections

Primary Relationship

Primary Relationship



ToE = Terms of Engagement

National Governance Structure

NATIONAL CONGRESS
(The Legislature)
52 Regions, 1 Special Member, 10 Associate Members

National Executive
Committee

Judicial Bodies

Standing and Ad
Hoc Committees

National Disciplinary
Committee

Secretariat

National Appeal
Board

Art. 34 decides what
the NEC can do

Arts. 41-69 decide
Committees roles

Art. 65 decides what
Secretariat can do

Art. 22 decides
what Congress
can do

Arts. 67 & 68
decide what
Judiciary can do

Regional Governance Structure

REGIONAL CONGRESS
(The Legislature)
of LFAs, # of Associate Members

Regional Executive
Committee

Judicial Bodies

Standing and Ad
Hoc Committees

Regional Disciplinary
Committee
(serves as Appeal
Committee for LFA Appeals)

Secretariat

Art. 34 decides
what the REC
can do

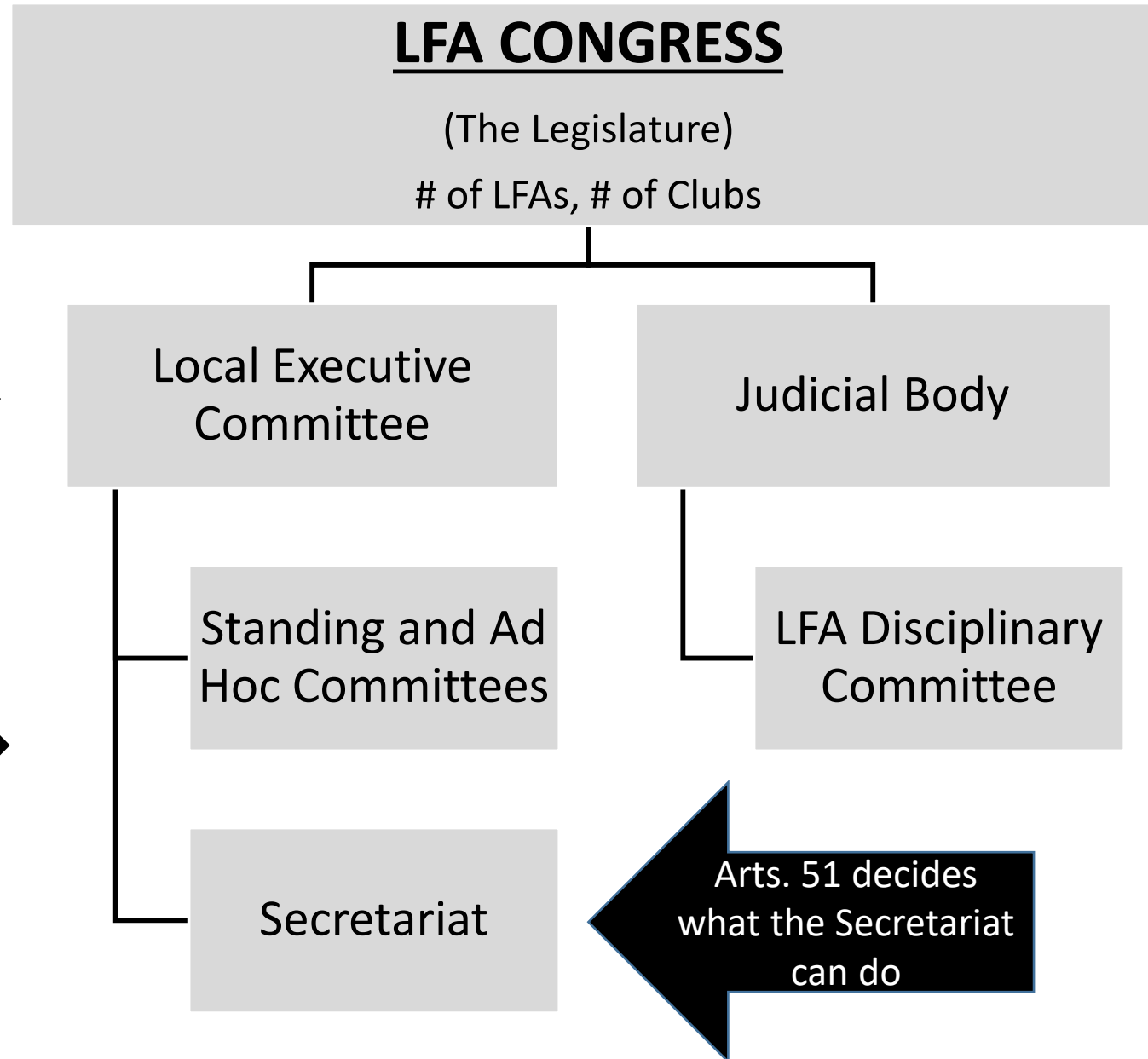
Art. 50 decides
what the
Committees can do

Arts. 51 decides
what the Secretariat
can do

Art. 22 decides
what Congress
can do

Arts. 52-54
decides what
Judiciary can do

LFA Governance Structure



Art. 34 decides what the LEC can do

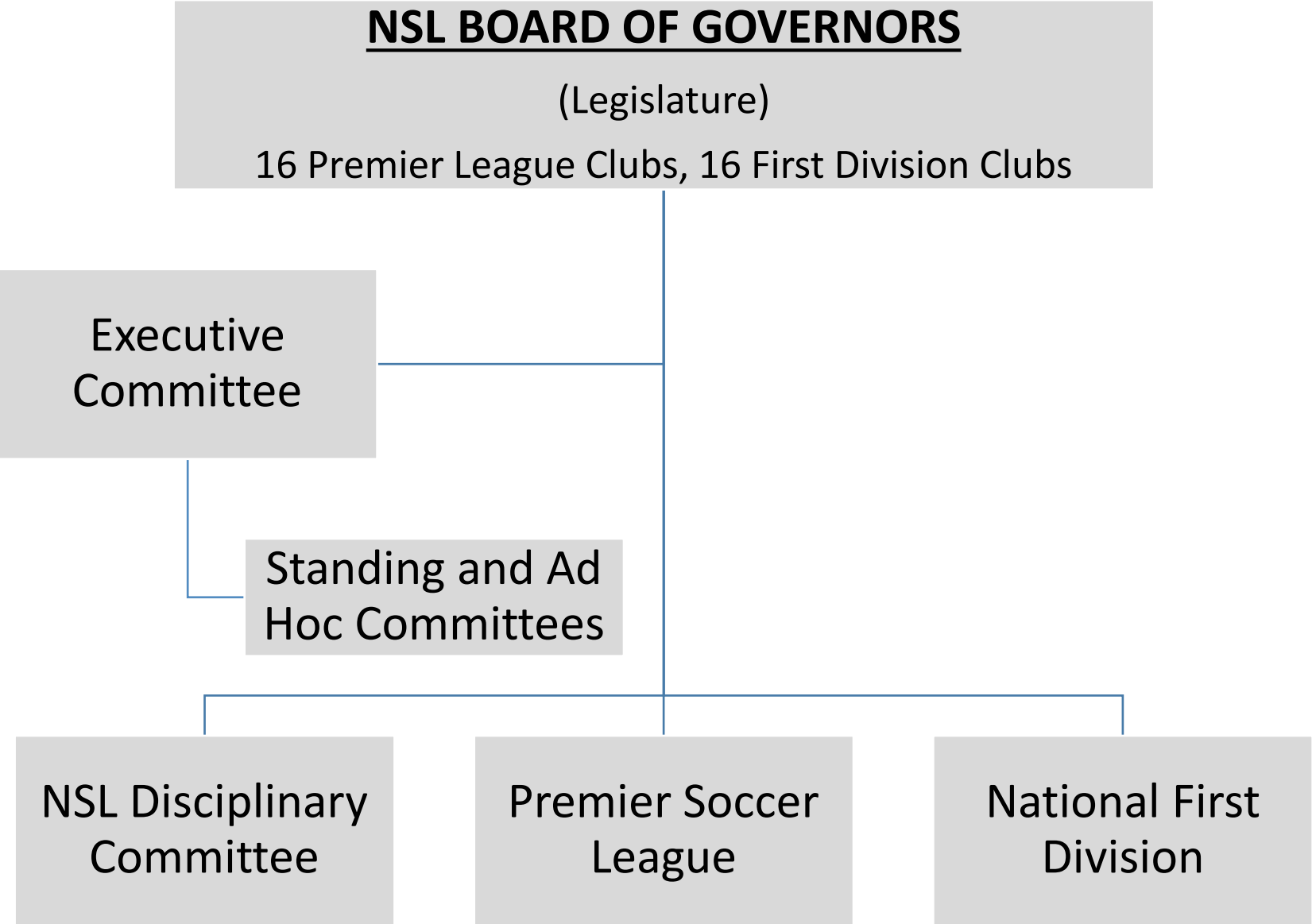
Art. 50 decides what the Committees can do

Art. 22 decides what Congress can do

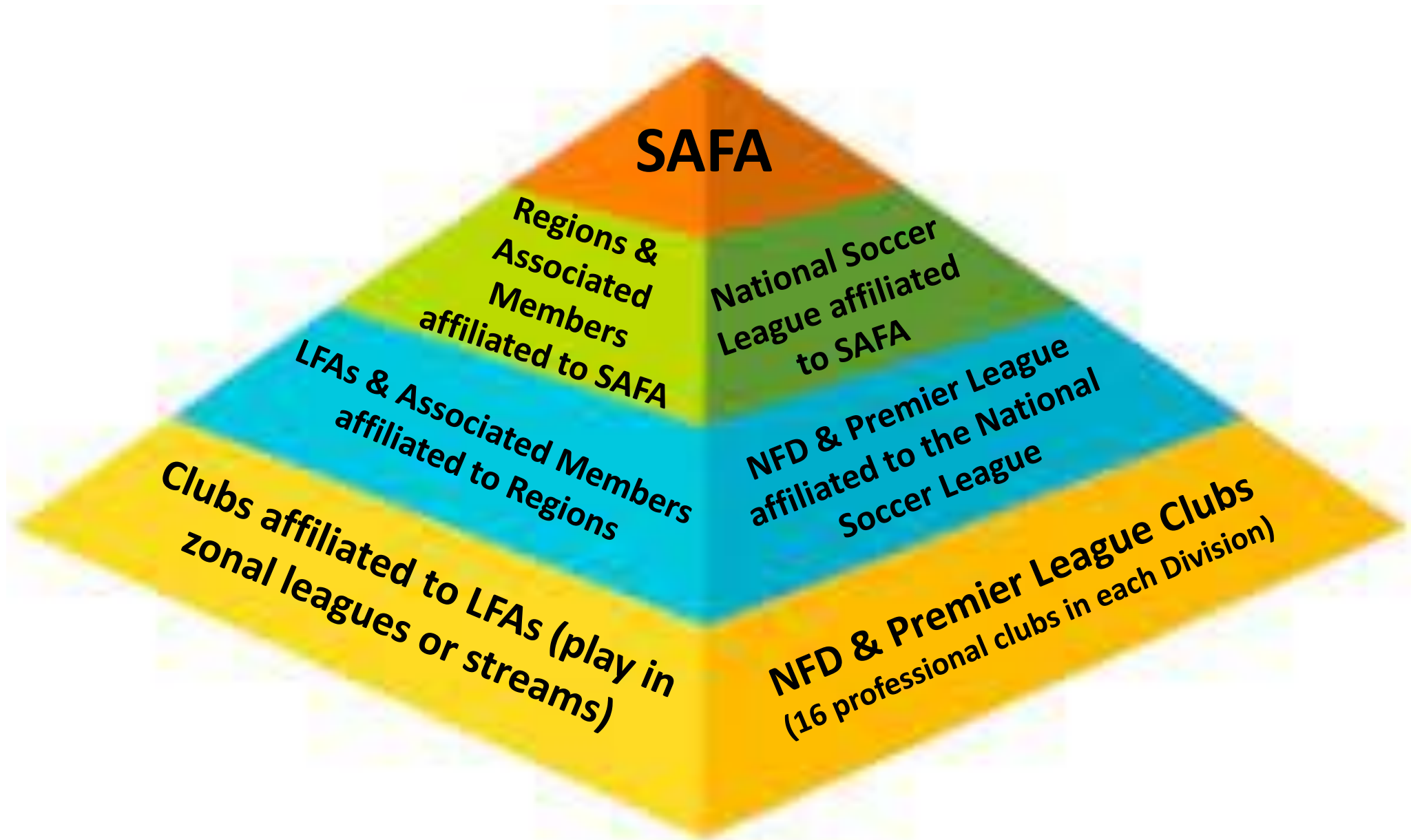
Arts. 52-54 decides what Judiciary can do

Arts. 51 decides what the Secretariat can do

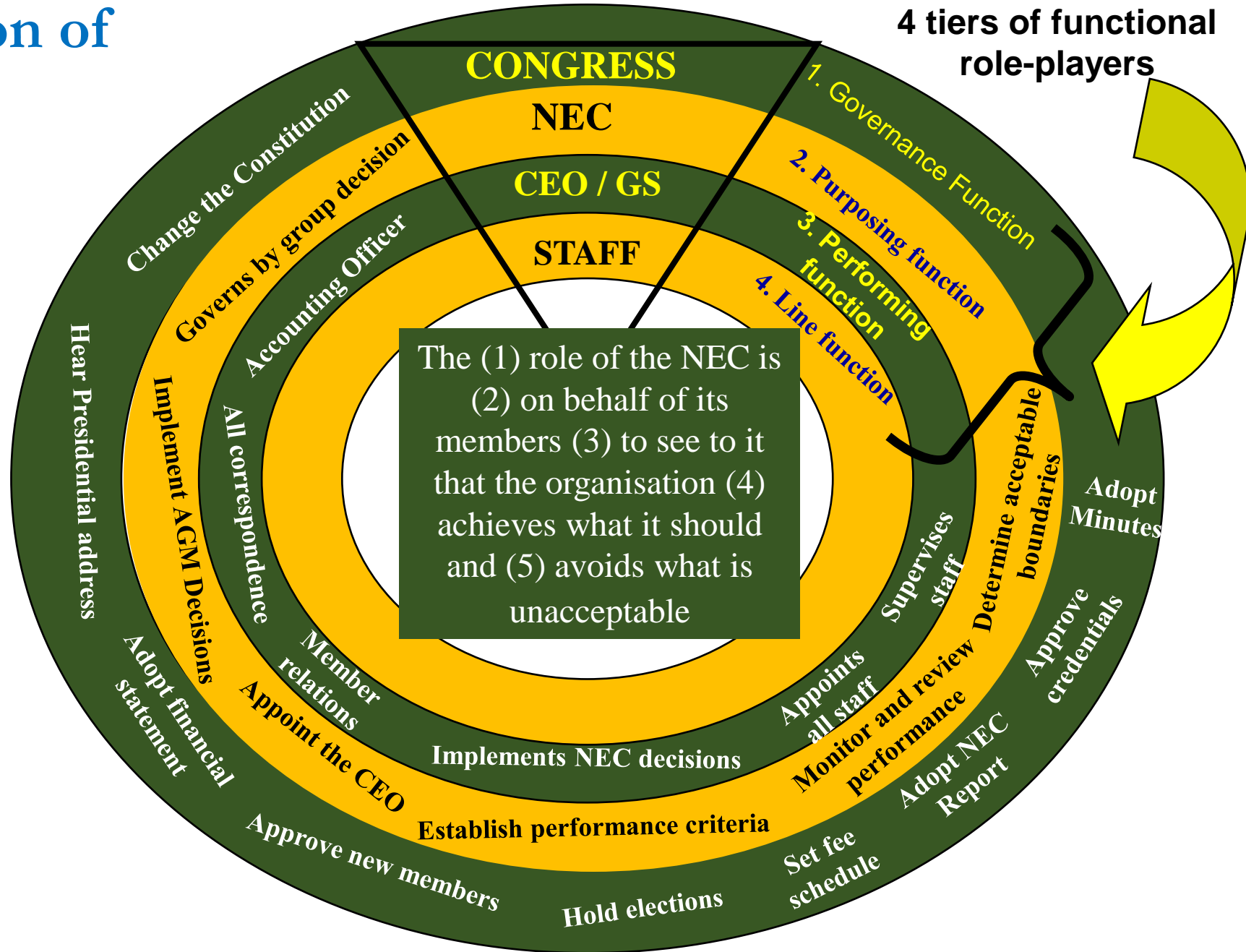
National Soccer League Governance Structure



The South African Football Affiliation Hierarchy



Separation of Powers



South African Football's Governance Principles



SAFA's Regulatory Framework

SAFA STATUTES

- National
- Regional Standard Statutes
- LFA Statutes
- PEC Standard Statutes

RULES

- Competitions
- Meetings
- Application of the Statutes

REGULATIONS

- Disciplinary Code
- Electoral Code
- Player Status & Transfer Regulations
- Players' Agent Regulations
- Academies Regulations
- Standing Orders for Meetings
- Club Licensing (amateur & professional)
- Code of Ethics
- Ethics, Fair Play & Anti-Corruption
- Hosting Int'l Matches in SA
- Communications Policy
- Match Commissioner Code of Conduct
- Electoral Code of Conduct
- Regulations on Application of the Statutes
- Referees Code of Conduct

ADMINISTRATIVE POLICIES

- Financial
- HR
- ICT
- Other operational policies

- National
- Regional
- LFA
- PEC

STATUTES

Disciplinary Code

- Ethics, Fair Play & Anti-Corruption
- Electoral Code
- Hosting Int'l Matches in SA
- Player Status & Transfer Regulations

REGULATIONS

- Academies Regulations
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- Standing Orders for Meetings
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- Club Licensing (amateur & professional)
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RULES

- Competitions
- Meetings
- Application of the Statutes

- Financial
- HR
- ICT
- Other operational policies

POLICIES

- Communications Policy
- Players' Agent Regulations
- Match Commissioner Code of Conduct

THE SAFA REGULATORY FRAMEWORK

a Sanction and a Decision (according to CAS)

What is a Sanction?

For a measure to qualify as a SANCTION or disciplinary in nature, the prevailing view requires that the adverse effects be inflicted in response to an alleged violation of the rules or some form of misconduct. In short, there are three necessary elements of a sanction:

- (i) adverse consequences;
- (ii) that are designed to punish;
- (iii) misconduct by the addressee of the sanction.

CAS 2020/O/6689 World Anti-Doping Agency (WADA) v. Russian Anti-Doping Agency (RUSADA), award of 17 December 2020

What is a Decision?

A DECISION is a unilateral act sent to one or more determined recipients and is intended to produce legal effects. Such act must:

- (i) express an *animus decidendi* (an intention to decide on a matter) of a sport governing body in connection with a specific topic or legal situation, and

be communicated to the relevant addressee.

CAS 2016/A/4586 Altay Football Club v. Professional Football League of Kazakhstan & Football Federation of Kazakhstan (FFK), award of 23 January 2017 (operative part of 24 October 2016)

Different Types of Sanctions

Expulsion

- from the sport itself

Suspension

- from a match/es
- For a defined period

Dismissal

- for a defined period of time

Ban

- from a place or activity under the jurisdiction of the Association, player acquisition and transfer

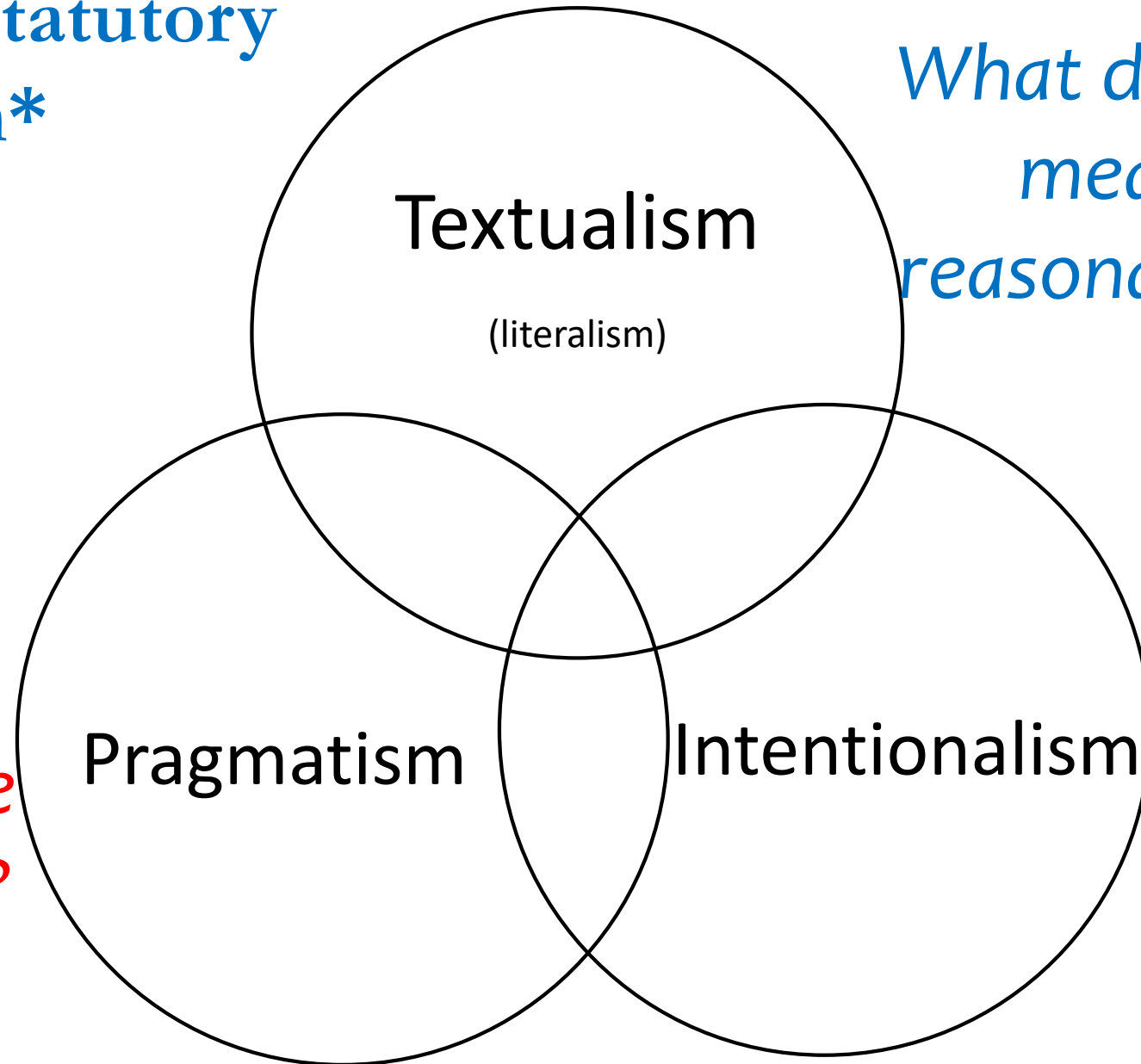
Removal of Elected Officials

- How to remove officials according to the rules

Invoking Article 2.17.16

- Intervening in the administrative and/or financial affairs of a Member

3 Models of Statutory Interpretation*

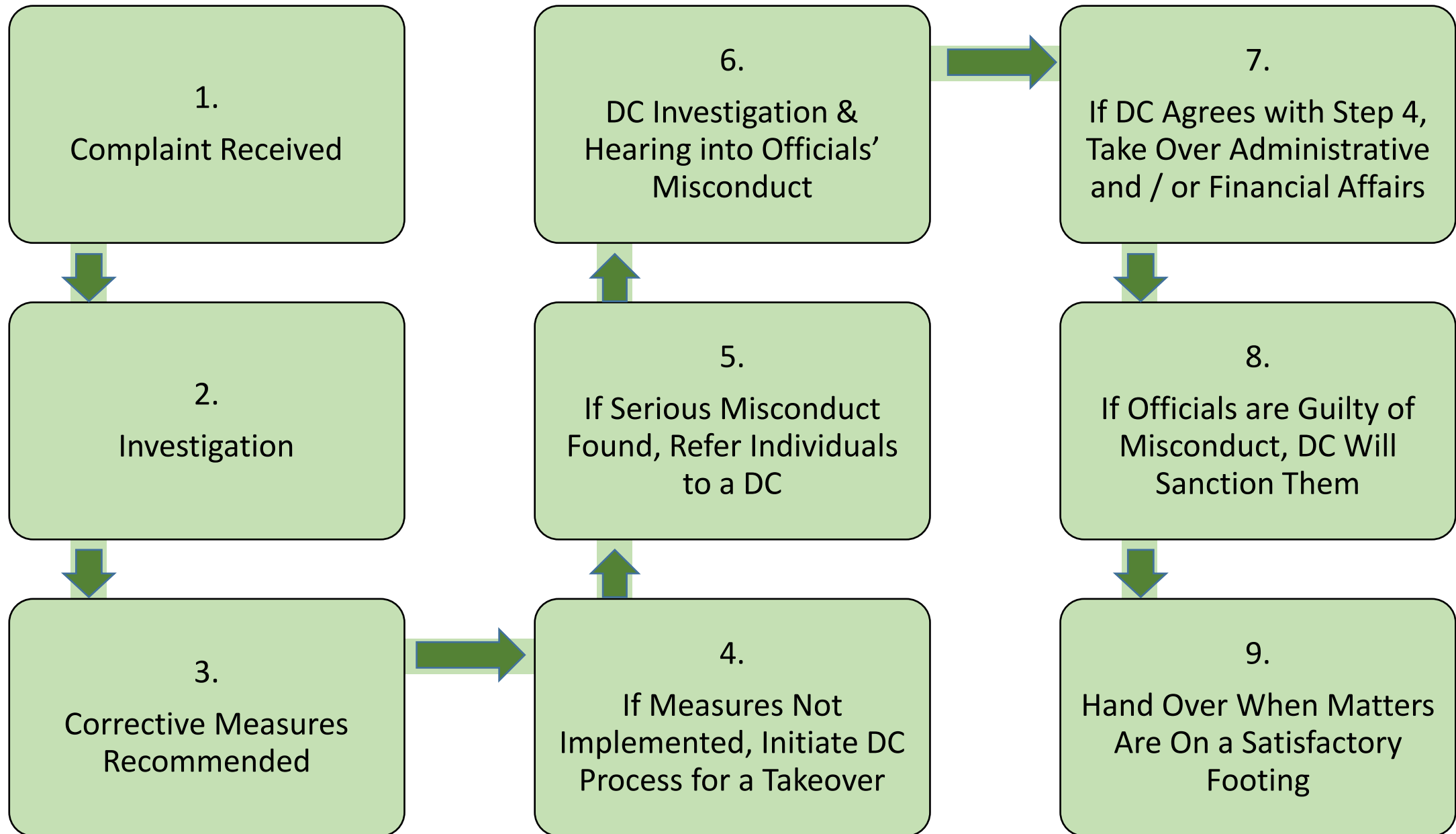


What does the text mean to the reasonable person?

In what context is the rule situated?

What was the intent of the legislature?

Article 2.17.16 Does Not Allow SAFA to Put A Member Under Administration



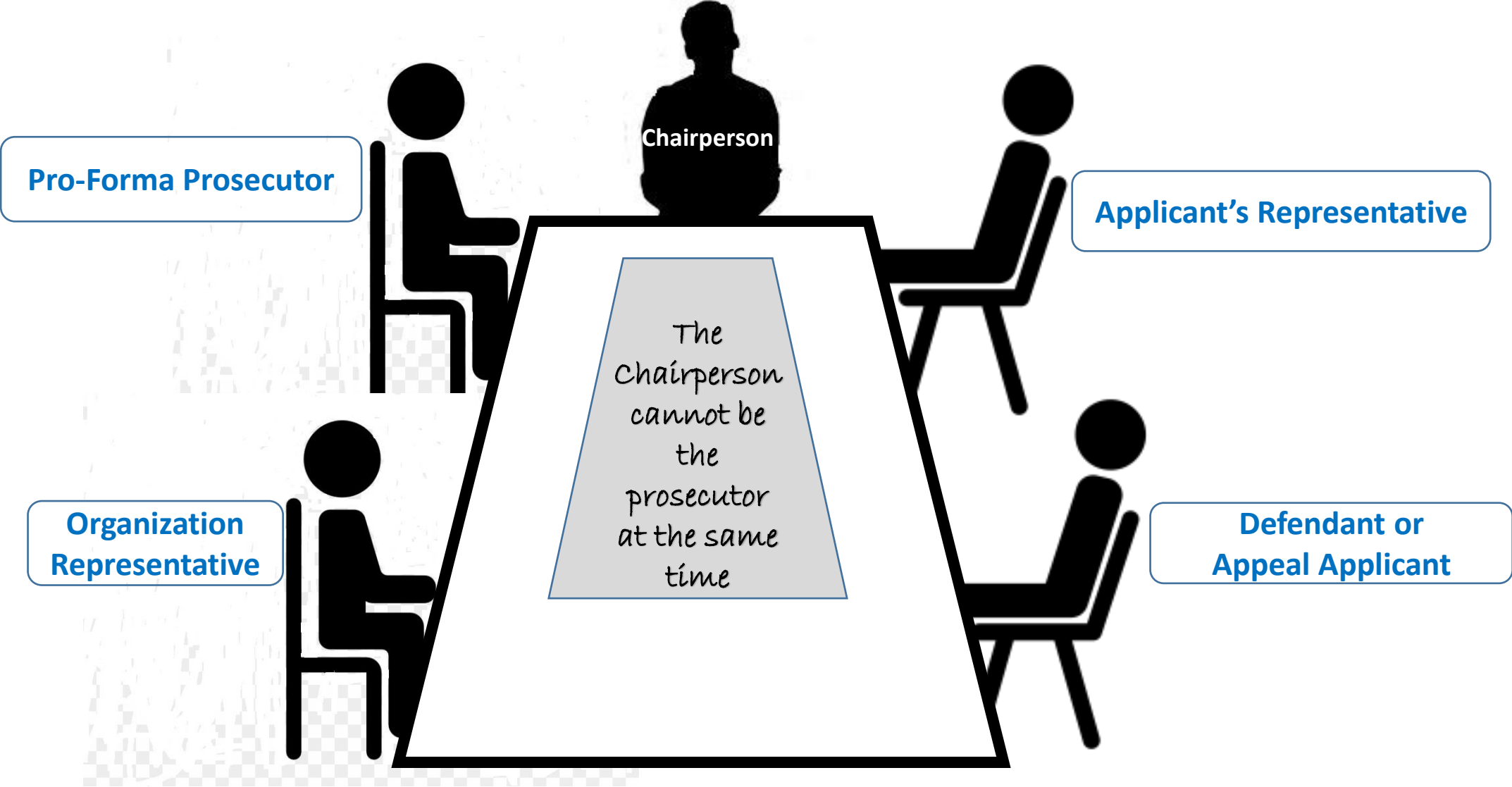
“Blocking” Is Another Form of Decision

“A DECISION is a unilateral act sent to one or more determined recipients and is intended to produce legal effects.”

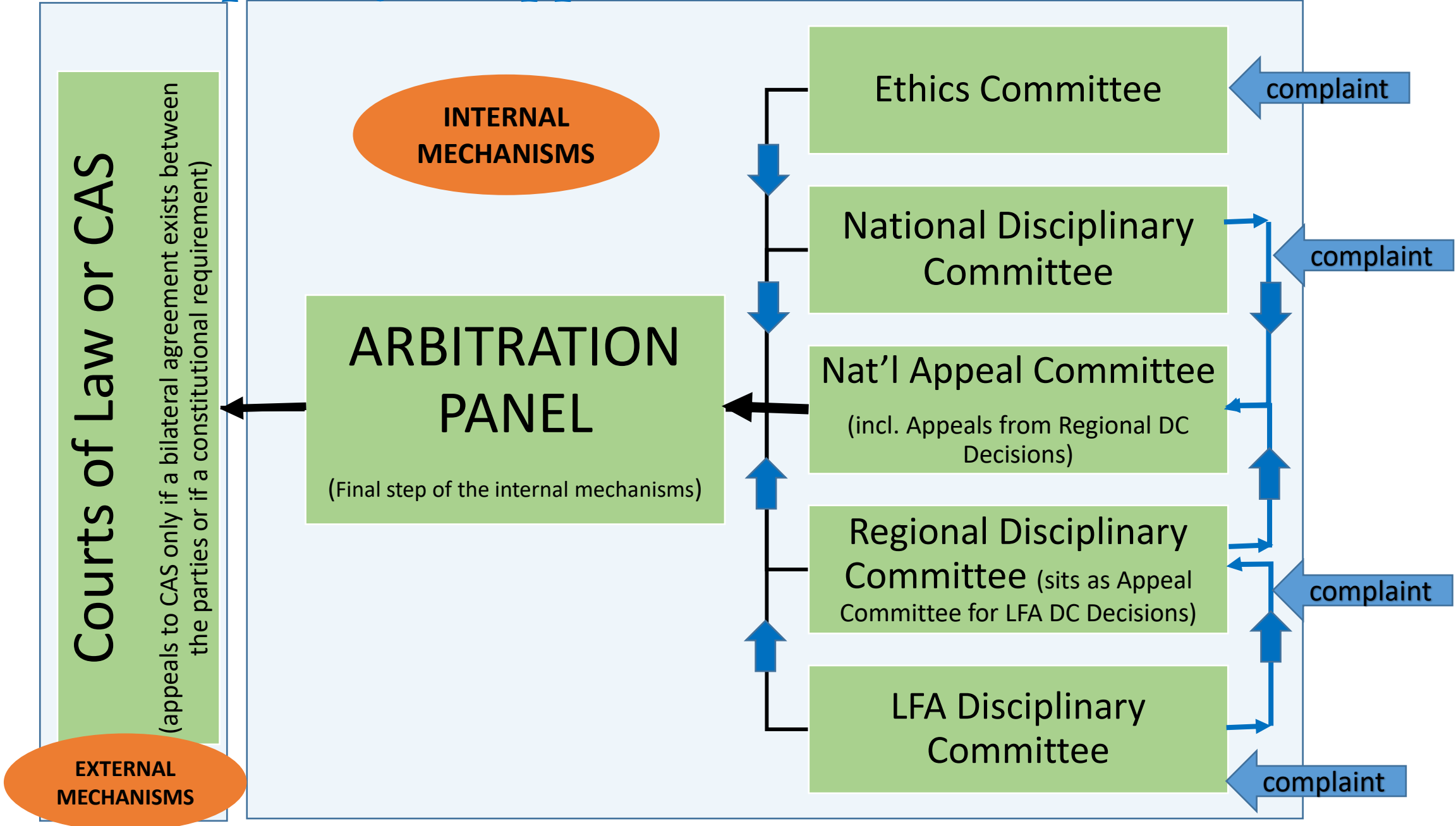


Refusal to forward a matter to the relevant body cannot be considered as a binding decision, but rather an administrative act of not forwarding a complaint to the first instance body tasked with dealing with the matter.

6. Participants in a Disciplinary or Appeal Hearing



SAFA's Disciplinary & Appeal Structure



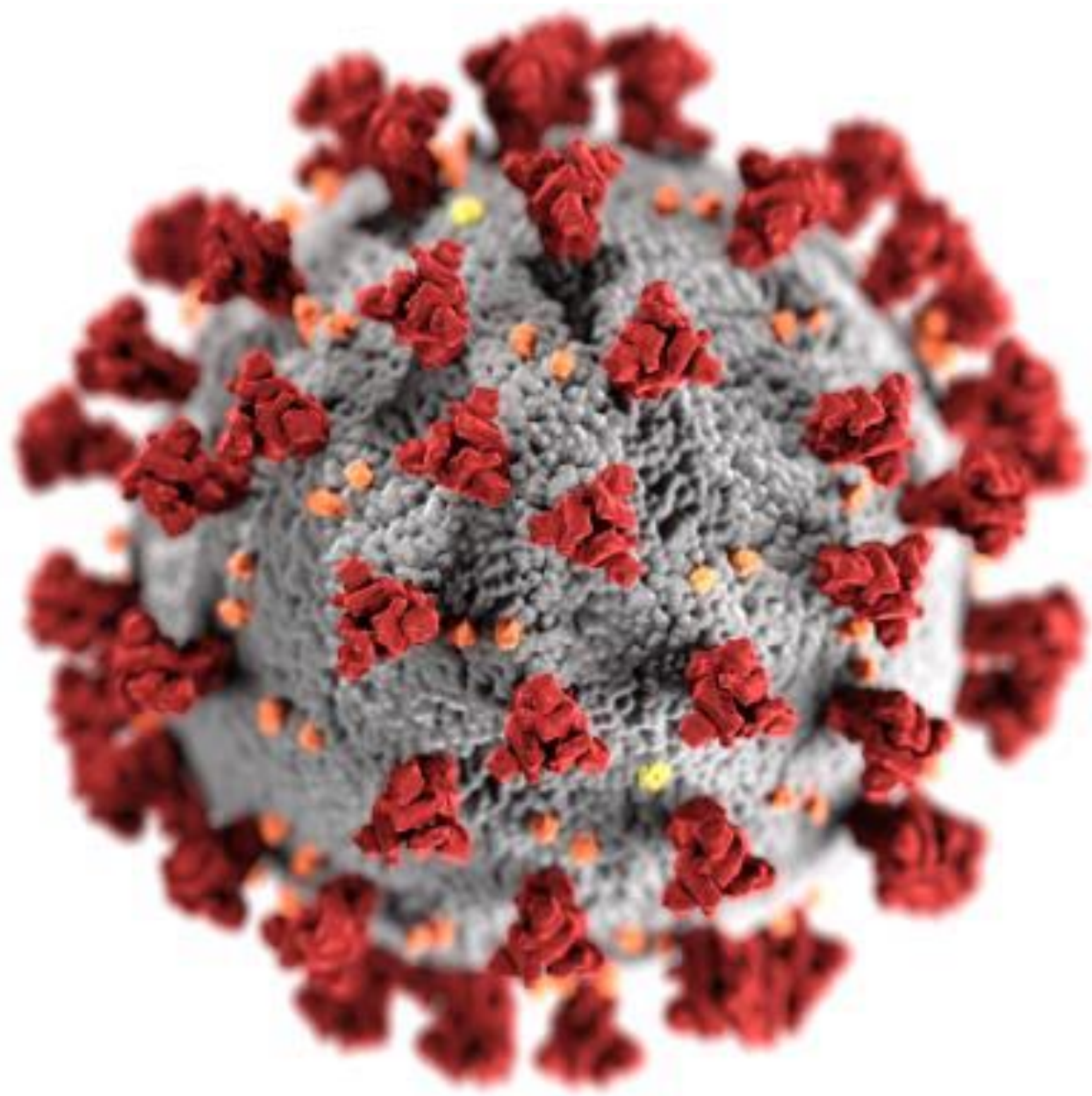
Unforeseen Contingencies

Bad Plannin

Leads to unforeseen contingencies

9





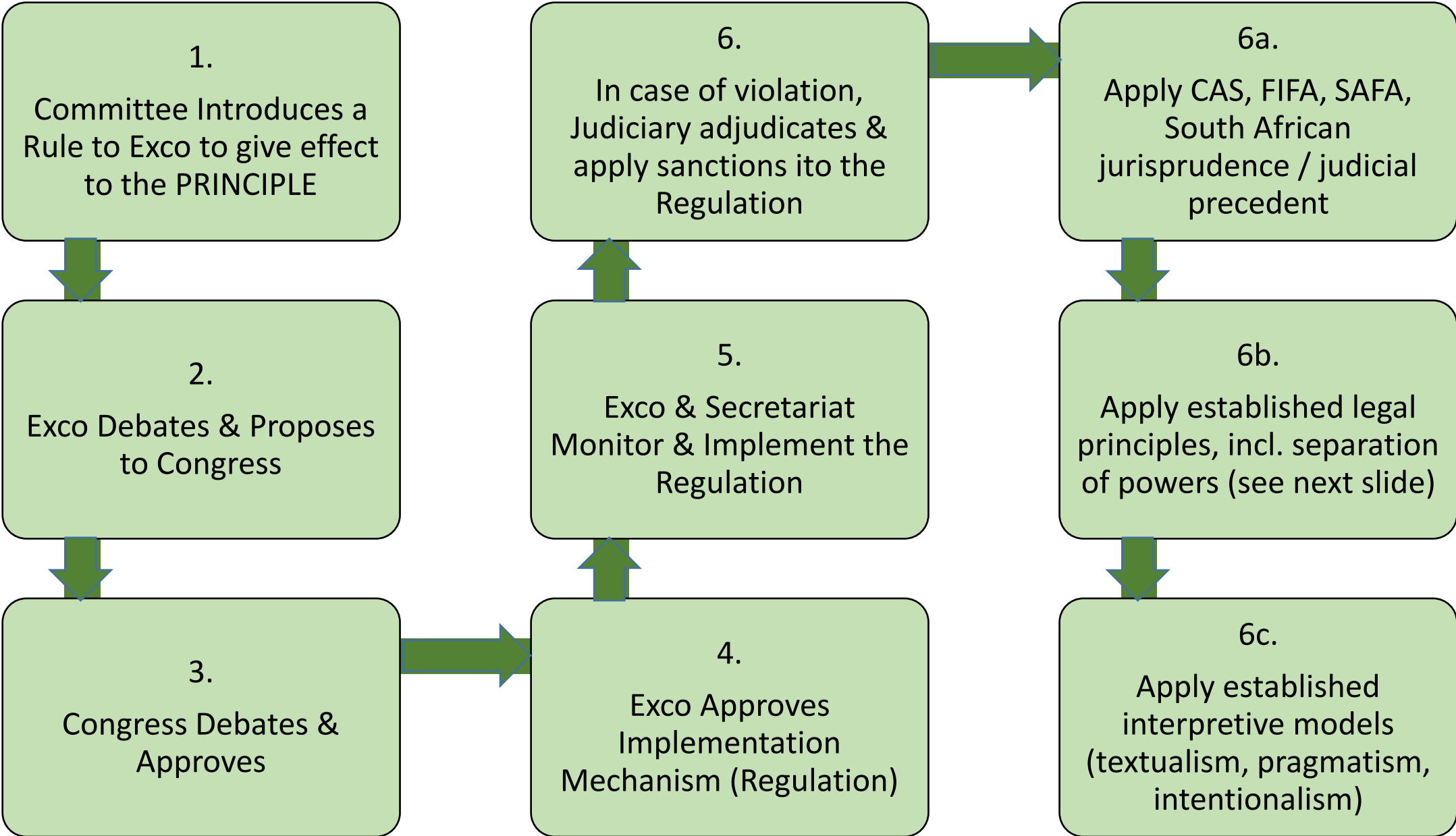
The Constitution

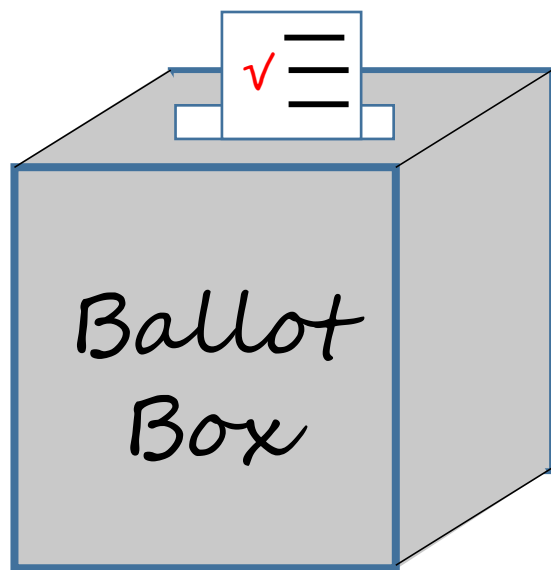
of the Republic of South Africa, 1996



Act 108 of 1996

How to Turn a Constitutional Principle Into A Football Law





The Electoral Committee is responsible for ALL elections in SAFA.

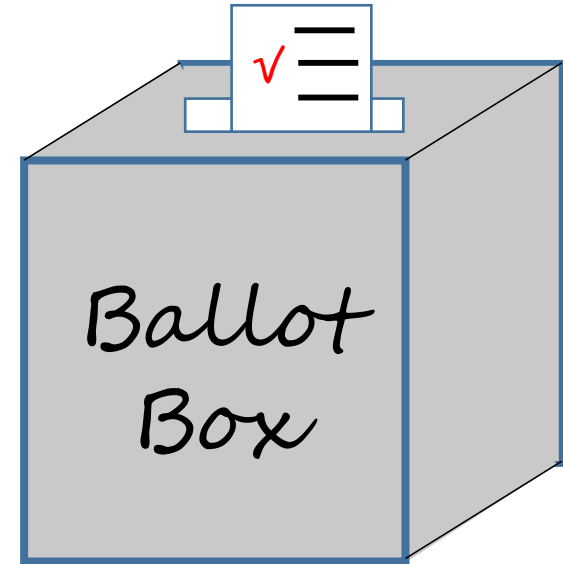
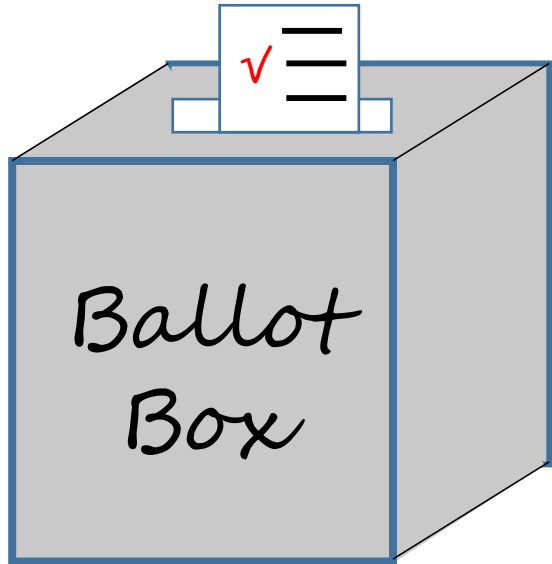
If Regions or LFAs do not have their own electoral codes, then the SAFA Electoral Code must be applied in terms of Article 1(b)



O**T****E**

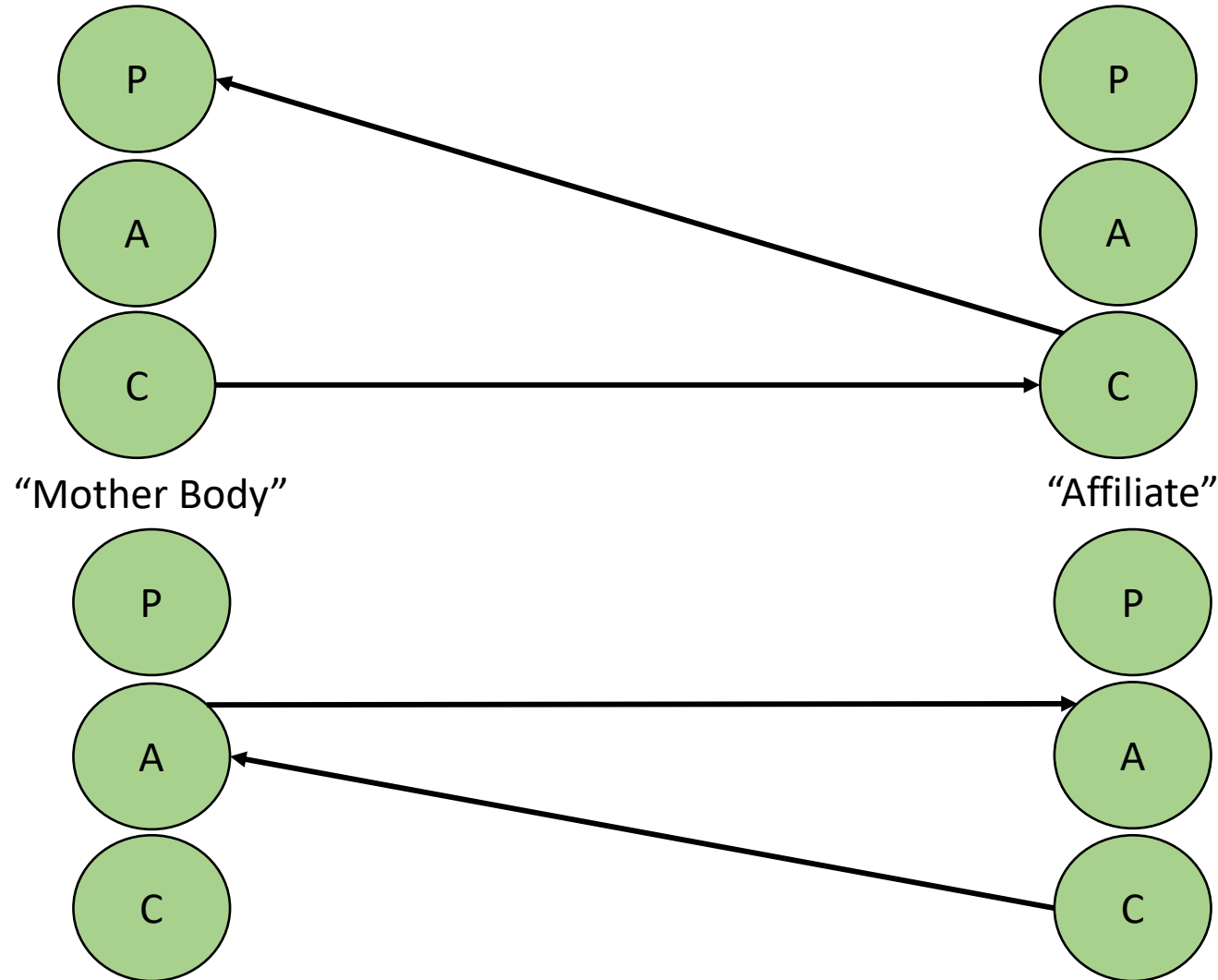
If the Electoral Committee did not oversee the election, it is not legitimate

**Voters must choose
their leaders!**

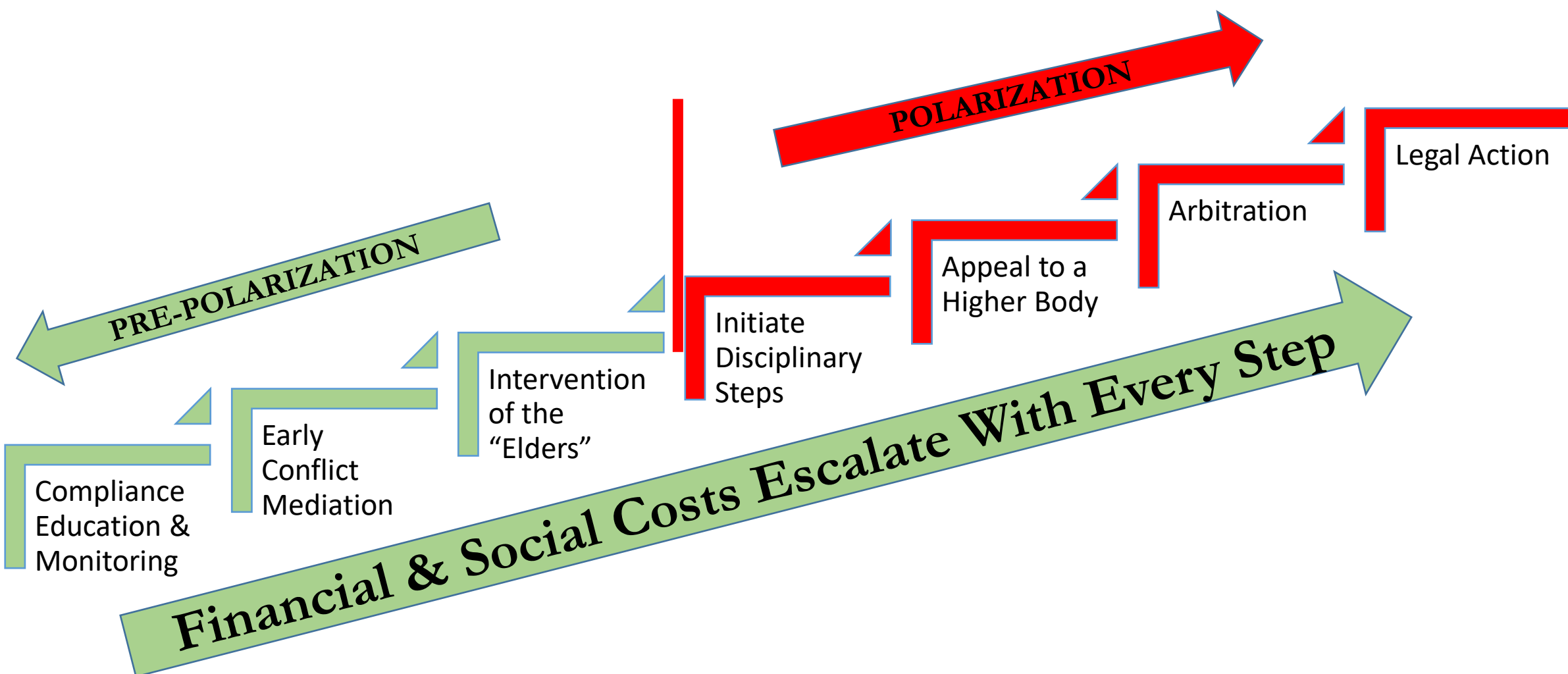


**Leaders must not
choose their voters!**

Crossed communication occurs when the message sent by one person's ego state is reacted to by **an incompatible unexpected ego state** on the part of the other person



Redesigning The Dispute Resolution System



The Justice & Fairness Line-Up



The Ancient Chinese Cuju Ball

