

Presentation to:

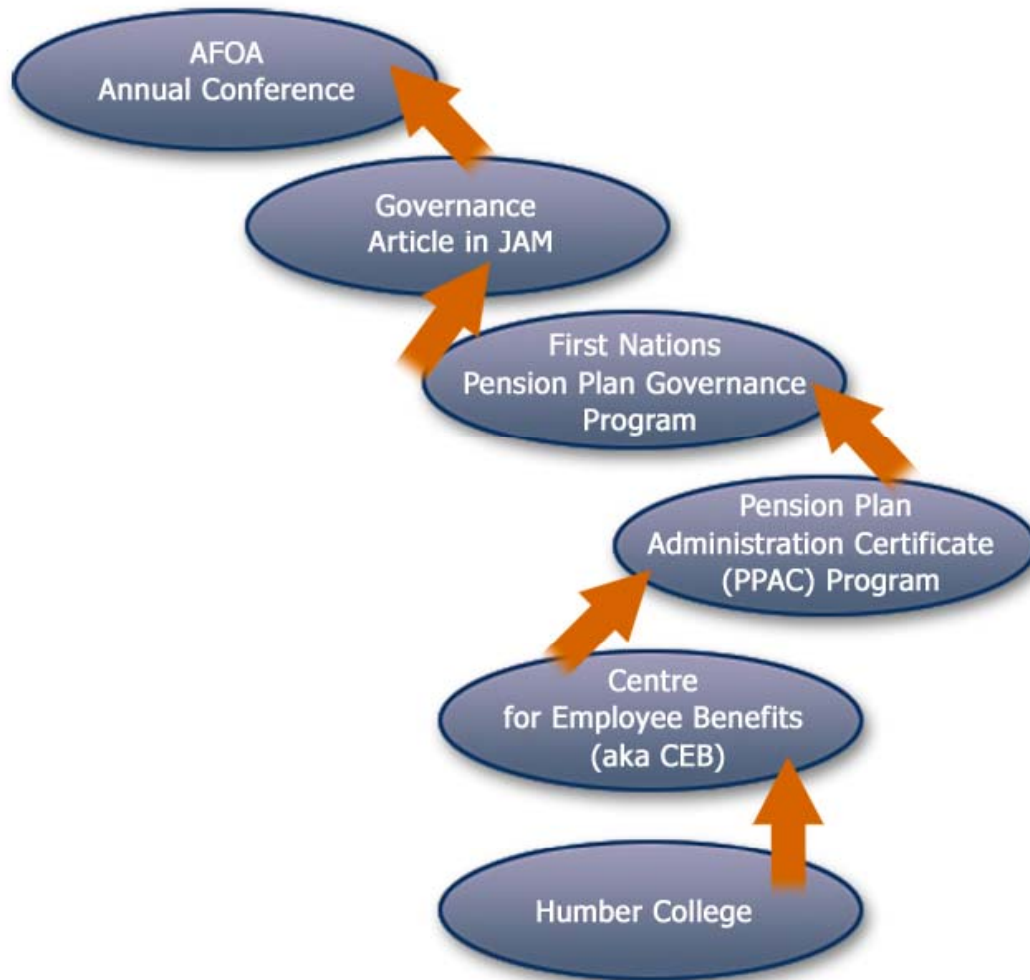
AFOA National Conference

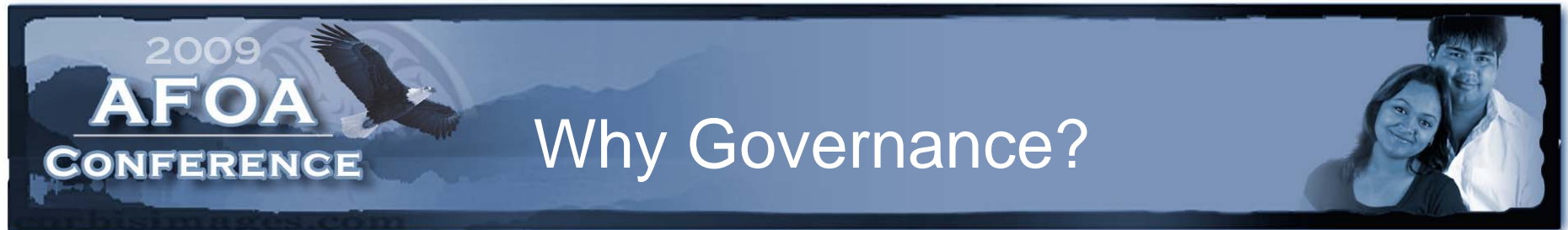
February 25, 2009



IN SEARCH OF
GOOD
GOVERNANCE
FOR FIRST NATIONS
PENSION PLANS

www.humber.ca/ceb

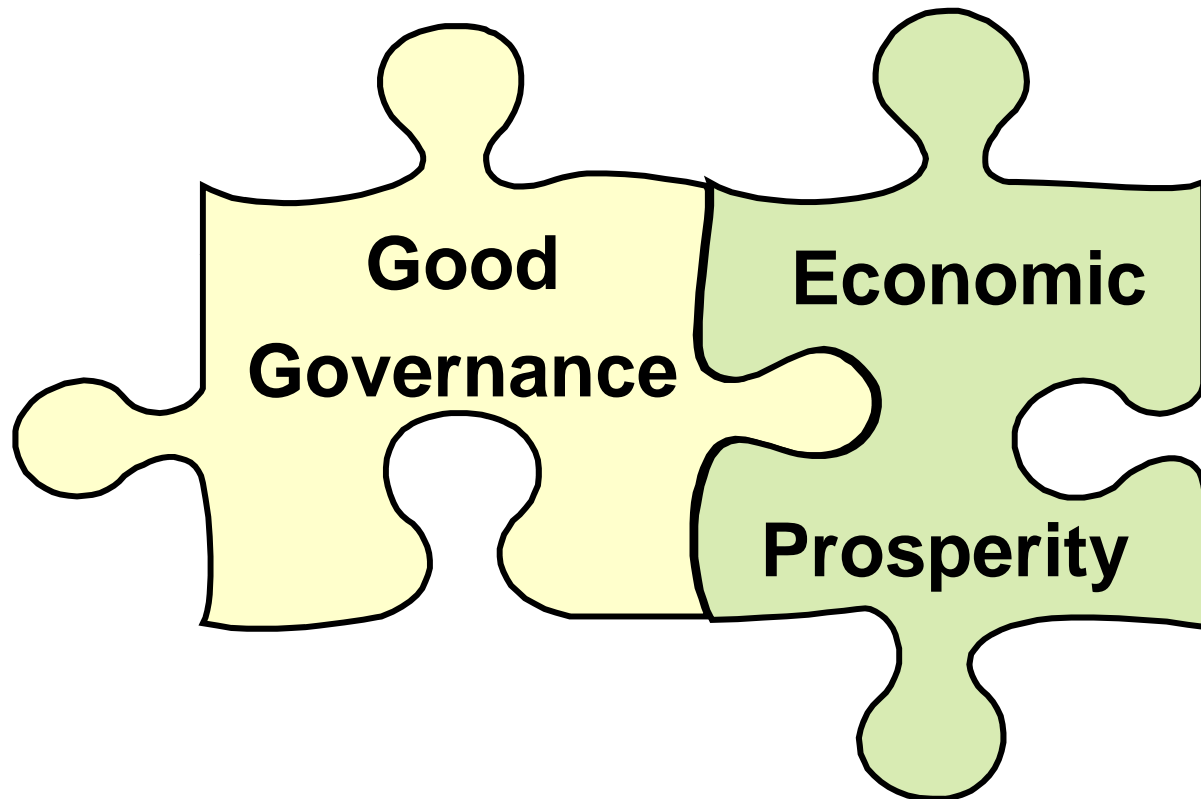


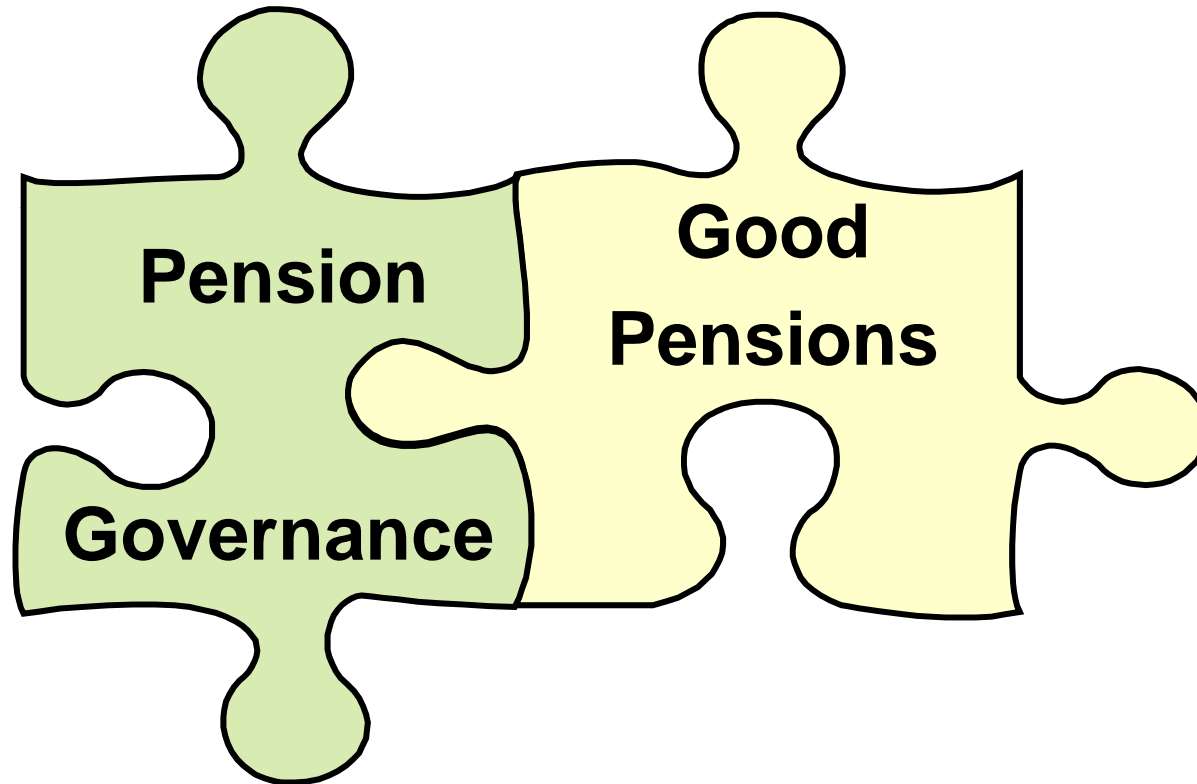


- Governance is good business practice!
- Governance is all about having control
 - ▶ accountability,
 - ▶ transparency, and
 - ▶ integrity



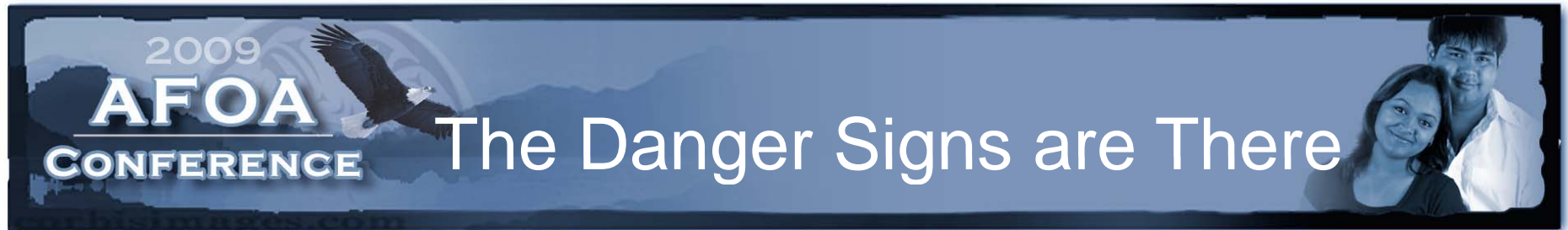
Why Governance?





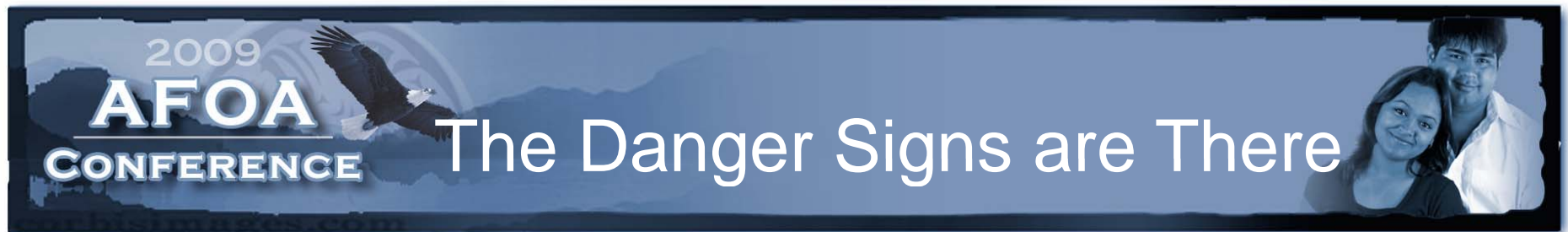


- Regulator concerns
 - ▶ protect pension plan members' benefit entitlements
- Plan member concerns
 - ▶ having enough pension to live on at retirement
- Preventative measures needed
- Because there is always the human factor –
temptation > greed, ego, \$\$\$\$\$\$
- And the danger signs are out there.....



On a Huge Scale in the USA & Canada

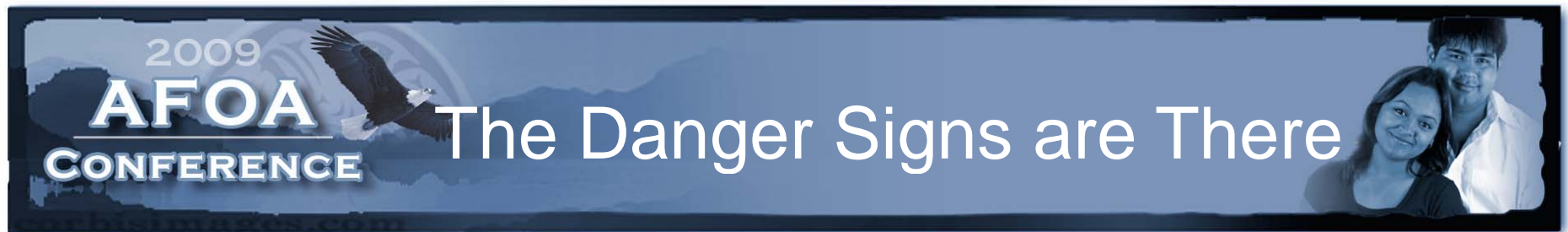
- What if a pension fund had invested with Bernie Madoff?
 - ▶ All assets would be lost
 - ▶ Plan and member holdings would be reduced or eliminated
 - ▶ Some Members could be destitute
- Madoff isn't the only "Bernie" fraudster
- Consider the following...



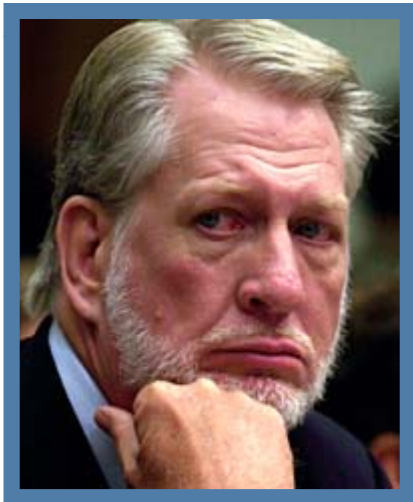
Do You Recognize this Man?



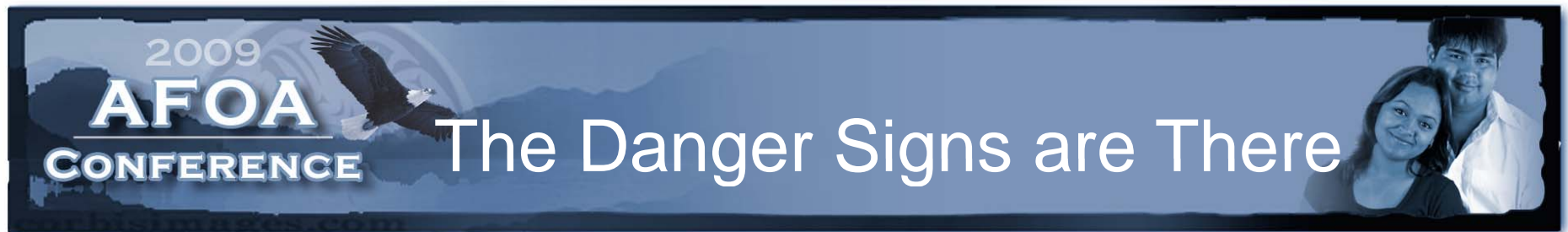
- He is Bernie Cornfield
- Co-founder of IOS and mastermind of a gigantic mutual fund Ponzi scheme in the 1970s



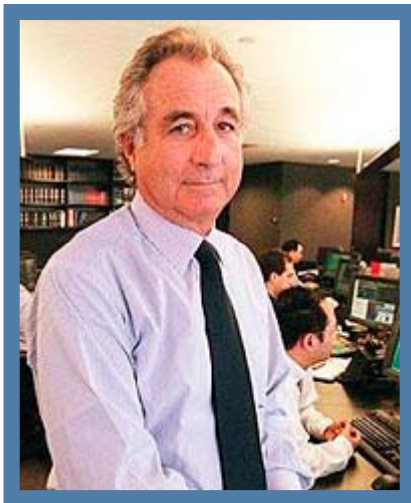
Do You Recognize this Man?



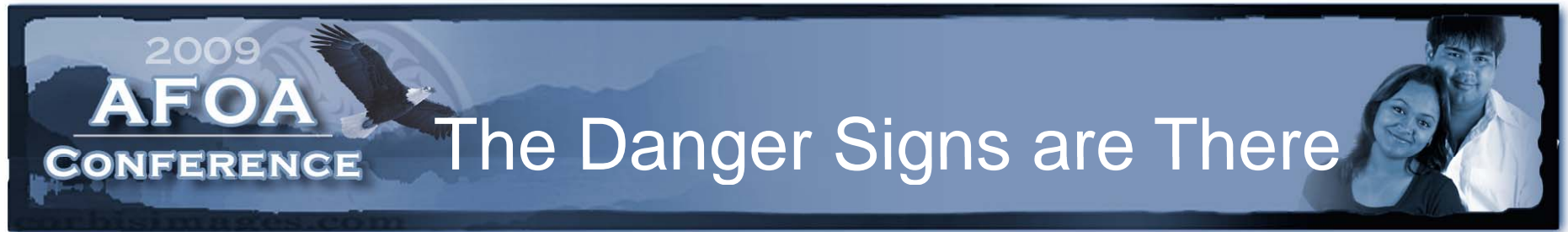
- He is Bernie Ebbers
- CEO of WorldCom who pocketed hundreds of millions for himself while faking profits and cooking the books



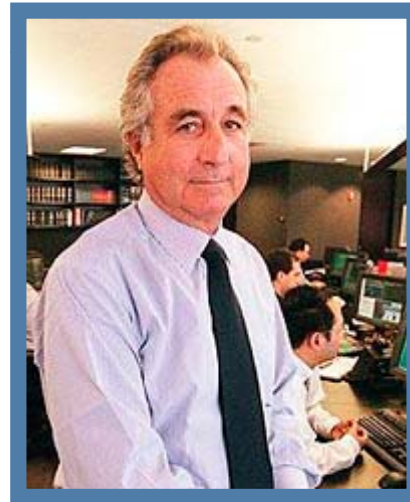
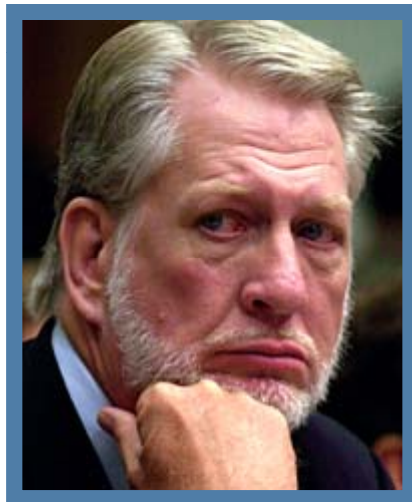
Do You Recognize this Man?

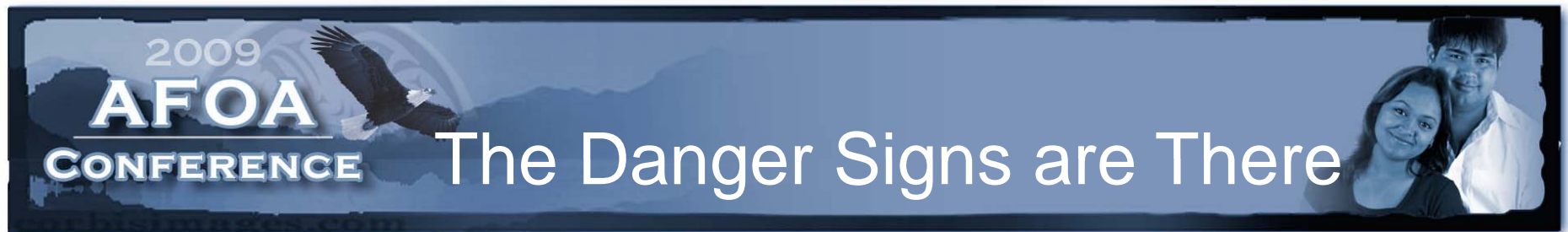


- He is Bernie Madoff
- The newest inductee into the Hall of Bernie Fraudsters who may prove to be the biggest swindler of them all (\$59 Billion+?)



Hall of Bernie Fraudsters





3 Canadian Pension Plan Cases

■ Enfield Pension Plan

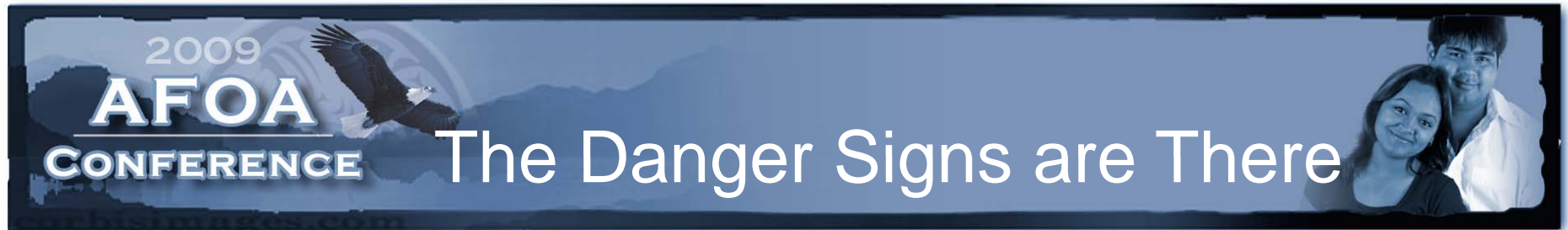
- ▶ In-house pension investment manager unsupervised
- ▶ Result? Millions lost following failed take-over bid

■ Participating Co-ops Pension Plan of Ontario

- ▶ Trustees ignored investment policy guidelines
- ▶ Result? Pensions cut by 50% for all Retirees and Members

■ Canadian Commercial Workers Pension Plan

- ▶ Trustees accused of failing to follow investment policy
- ▶ Result? Don't know yet



A Community Owned Store in Northern Ontario

- A Band in Northern Ontario – Runs a Convenience Store
 - ▶ It appeared to be successful, but
 - ▶ Each year books showed a deficit, for some reason
 - ▶ Band decides to put in funds needed to help
 - ▶ A closer look at the finances was recently done
 - ▶ Several people apparently removed over \$1million
 - ▶ They have been charged

- Why? No Governance program in place to detect this type of fraud



Business

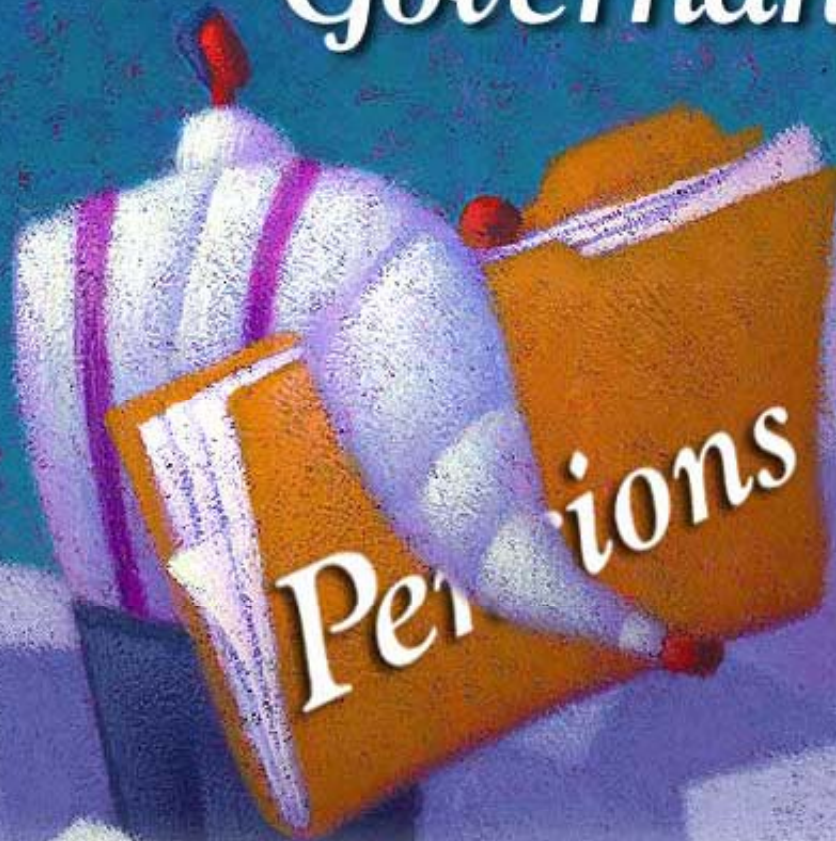
Health

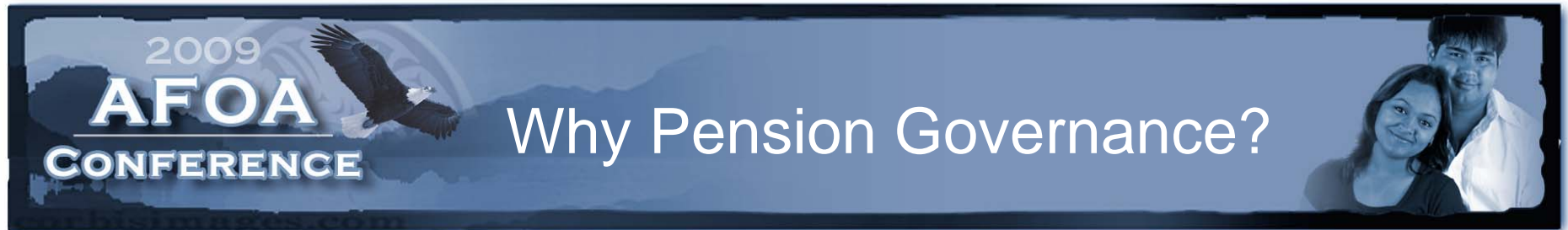
Pensions



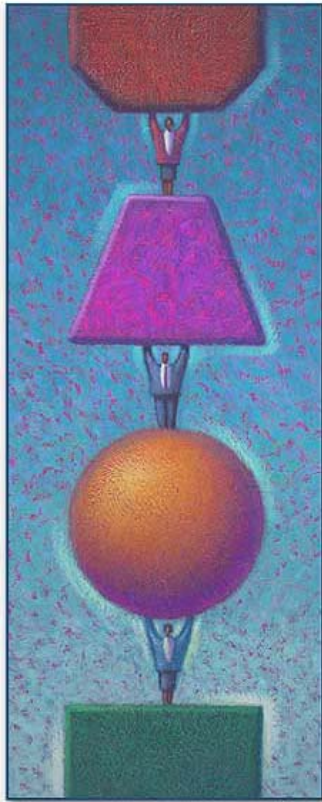
Before Problems Appear!

Why do Pension Plans need Governance?





- Plan Administrators have significant responsibilities
- Beneficiaries/Stakeholders are affected by their actions
- Specific parties are accountable who cannot directly discharge the significant responsibilities:
 - ▶ Band Councils, Tribal Councils, Pension Committees, etc.
- Other parties – both internal and external - must be employed, tasks must be delegated to them and their progress monitored, on an on-going basis

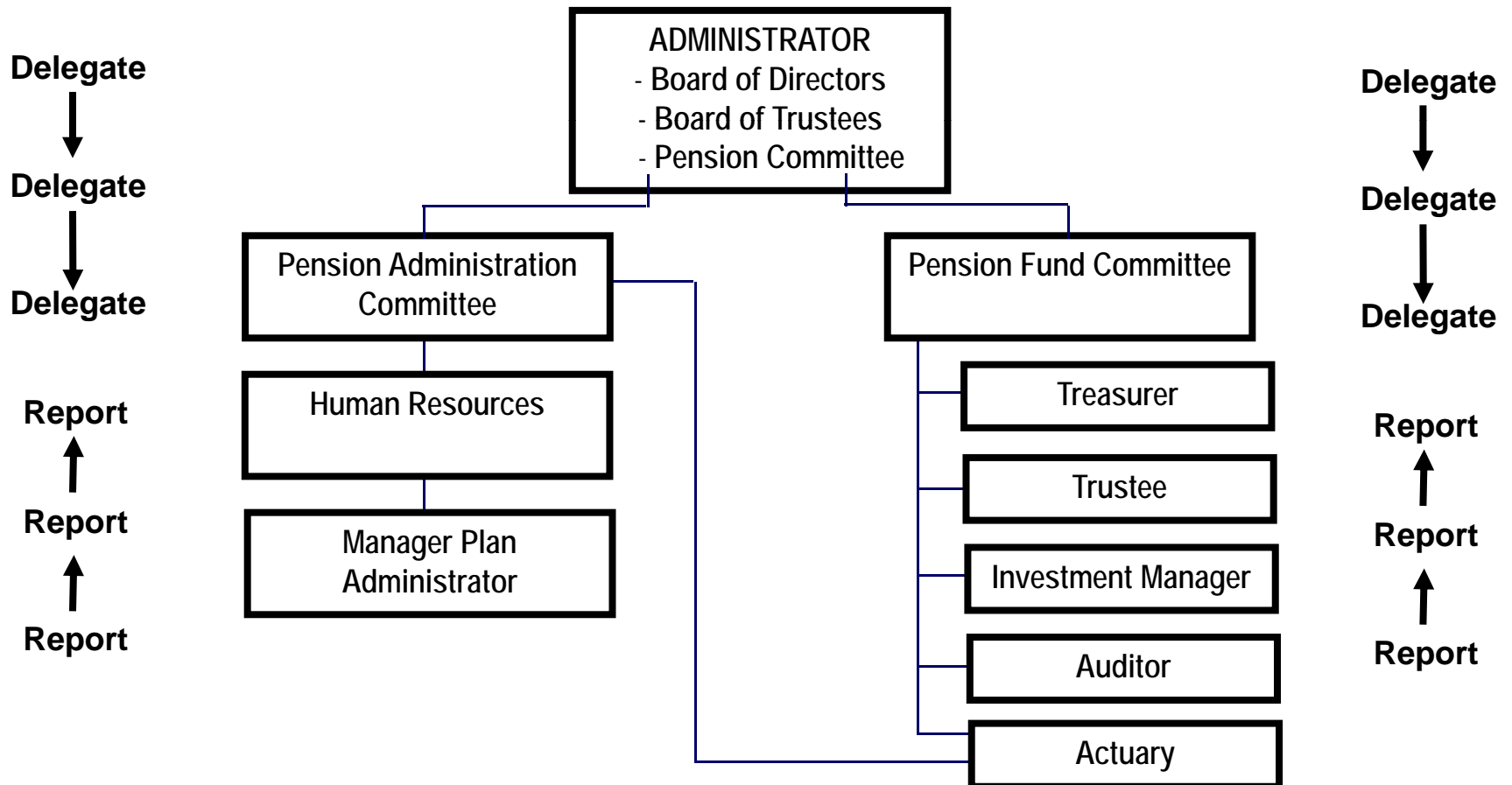


The
decision-making structure
and
supporting **policies & procedures**
that enable an organization to
achieve its *PENSION* objectives
and
discharge its *PENSION* obligations
to
its employees, retirees and others

In a nutshell - **a system set up to deliver the pension promise**



Your Decision-Making Structure may look like this

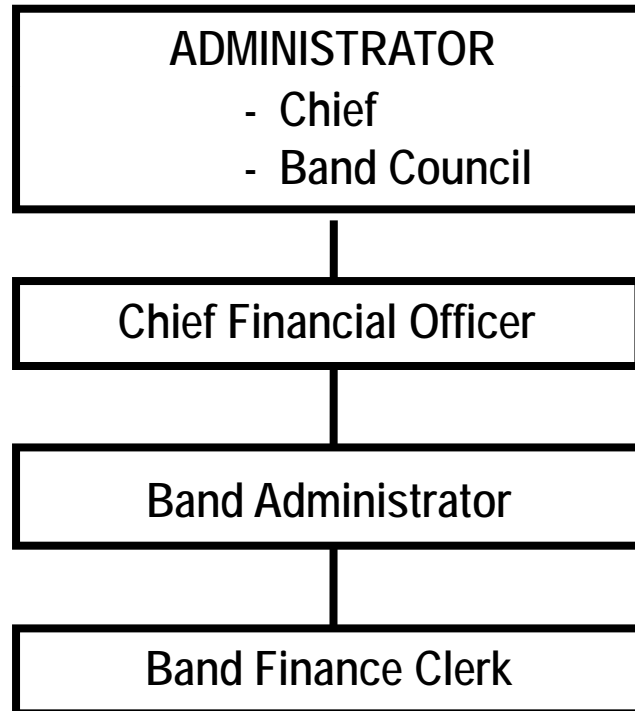


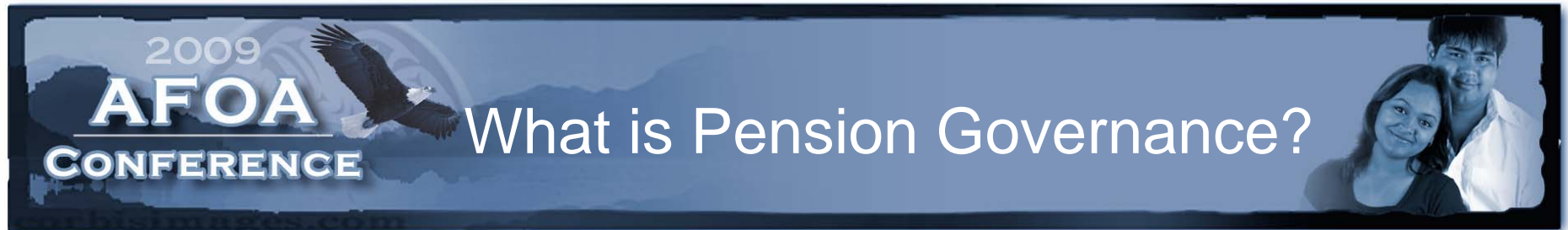


Or the Decision-Making Structure may look like this

Delegate
↓
Delegate
↓
Delegate

Report
↑
Report
↑
Report





What are Supporting Policies and Procedures?

Some examples:

- Statement of Investment Policy & Goals (SIP&P)
- Policies and Procedures following:
 - ▶ death
 - ▶ retirement
 - ▶ termination
 - ▶ divorce
- Policies and Procedures for government filings, investments, fund deposits, etc.



What are Pension Objectives?

Some examples:

- Maximum pension on retirement
- Attraction and retention of workers
- To supplement other programs
- To reward workers for long and loyal service
- To meet pension obligations





What are Pension Obligations?



- They are the “rules of the game”
- Where do they come from?
- Consider the following sources...



Source of Pension Obligations

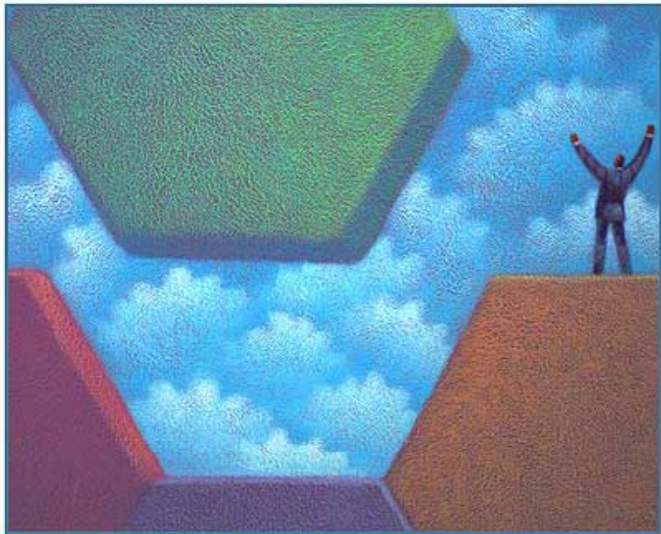




1. Plan Promises



Structure of the Pension Plan

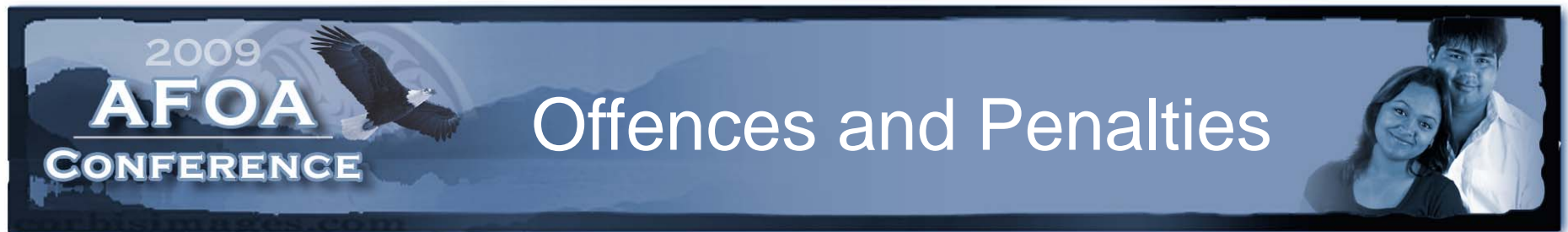


- Terms of Plan set out in the written Plan Text
 - ▶ Sets out Plan Promises including rules for funding pensions
 - ▶ Must comply with legislated minimum standards
- The “source” document in Court disputes



Administrator must:

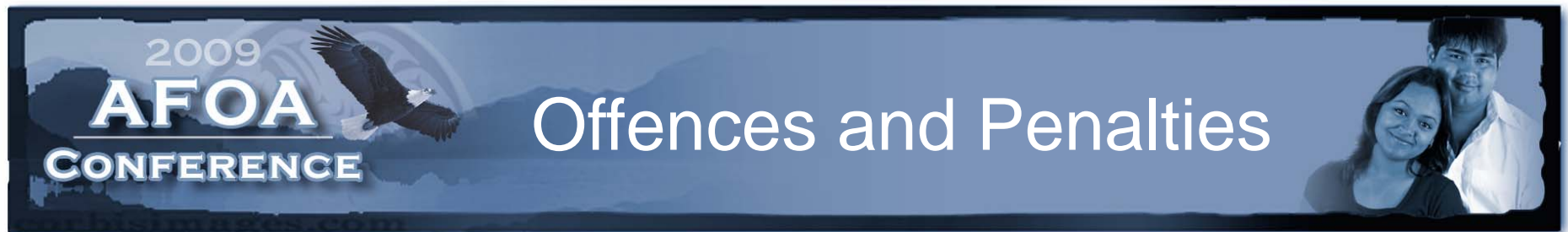
- Administer the plan per the **PBSA/ITA**
 - ▶ Register the plan and file documents
 - ▶ Enroll eligible members
 - ▶ Collect & remit contributions to funding agent
 - ▶ Oversee investments and options
 - ▶ Disclose specific information
 - ▶ Ensure benefit payments
 - ▶ Attend to regulatory filings



Statutory - *PBSA S.38(1)*

- **Who:** Every **person** who...
 - a) contravenes any provision of this Act
 - ...
 - d) **being an employer**, fails to remit to the pension fund all amounts that the employer is liable so to remit

- Is Guilty of an Offence



Statutory - *PBSA S.38(5)*

- **Who:** Where a **corporation or other body...**
... every officer, director, agent or member of the corporation or body who directed, authorized, assented to, acquiesced in or participated in the offence is a party to and guilty of the offence and is liable on summary conviction to the punishment provided for the offence, **whether or not the corporation or body has been prosecuted or convicted**
- Is Guilty of an Offence



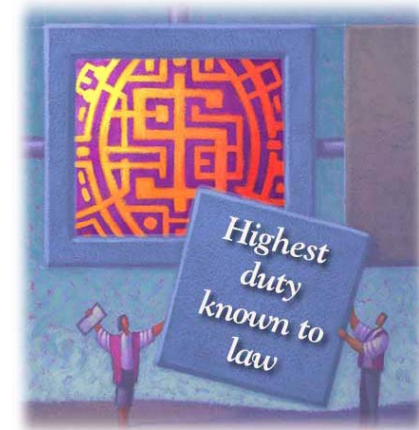
■ **PBSA Penalties**

- ▶ For **persons:**
fines up to \$100,000 and/or up to 12 months in prison
- ▶ For **corporations:**
fines up to \$500,000



Plan Administrator has fiduciary duty to:

- Act prudently & beneficiary's best interests
- Be loyal to beneficiaries
- Avoid conflicts of interest
- Not profit personally
- Treat all beneficiaries even-handedly



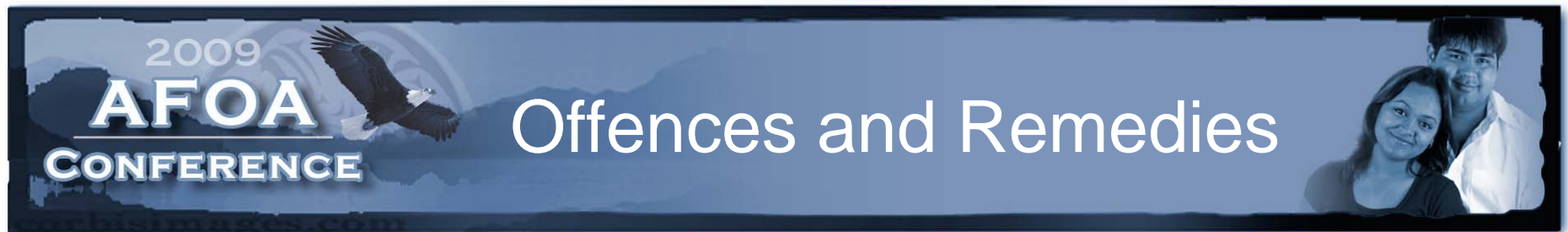
Common Law imposes these duties when a “fiduciary” relationship exists



Supreme Court of Canada – Common Law Test

A party becomes a Fiduciary (and Fiduciary Duties arise) where acting pursuant to a Statute, agreement or unilateral undertaking, that party has an obligation to act for the benefit of another, and the:

- Fiduciary has scope for the exercise of some discretion or power
- Fiduciary can unilaterally exercise that power of discretion to affect the beneficiary's legal or practical interests, and
- Beneficiary is particularly vulnerable to, or at the mercy of, the fiduciary holding the discretion or power

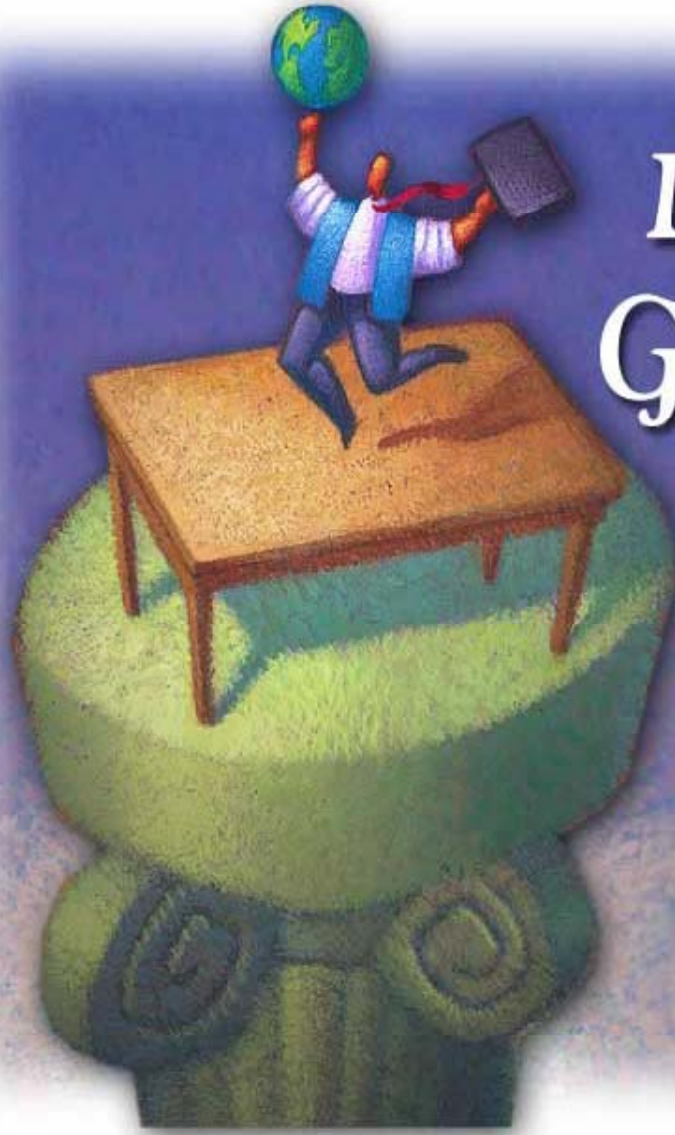


Common Law

Where a Plan Administrator commits a Breach of
Fiduciary Obligations

■ **Remedy:**

- ▶ **Restitution**
 - restore beneficiaries to prior position
- ▶ **Declaratory relief**
 - ask the Courts to declare who owns what
- ▶ **Account for profit**
 - return the illegal profits back to beneficiaries

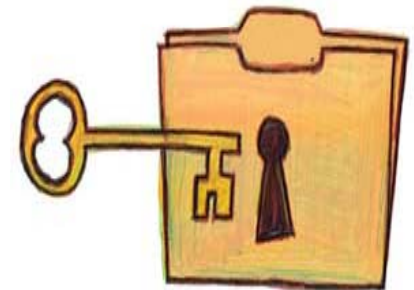


Let's look
at the implications of
Governance
on the administration
of a pension plan



- Plan Administrator must administer pension plan, and pension fund, in accordance with Plan text, funding agreement and applicable law using only:
 - ▶ Internal Service Providers available within organization
 - ▶ External Service Providers hired to fill in talent gaps

- Managing Service Providers
 - ▶ Internal and External
 - ▶ Key Element of Plan Governance





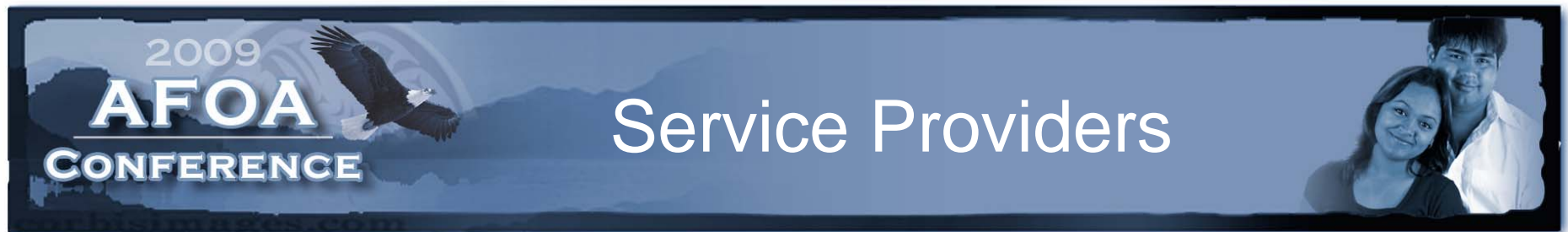
- Internal providers include:
 - ▶ organization/Band departments
e.g. Human Resources, Financial Manager
 - ▶ Band employees/internal committee members

Who are your internal service providers?



- External Service Providers include:
 - ▶ Trustee/Funding Agent
 - ▶ Investment managers
 - ▶ Brokers
 - ▶ Auditor
 - ▶ Lawyer
 - ▶ Consultants

Who are your external service providers?



Ask yourself these questions...

- Who selects or appoints the service providers?
- Are there written guidelines for selecting/hiring?
- To whom do they report?
- How often do they report?
- Are there written performance expectations?
- Are there written agreements for external providers?
- What on-going monitoring of performance takes place?

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You Need a Governance System!



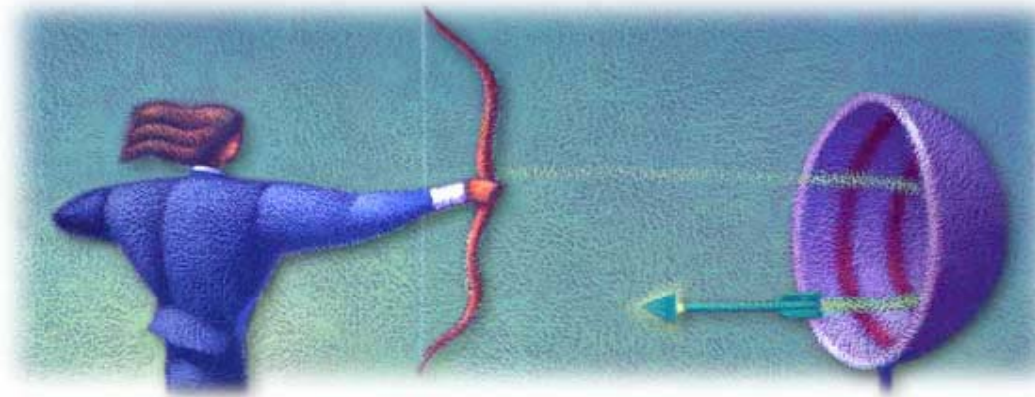


To Protect Yourself from Liability



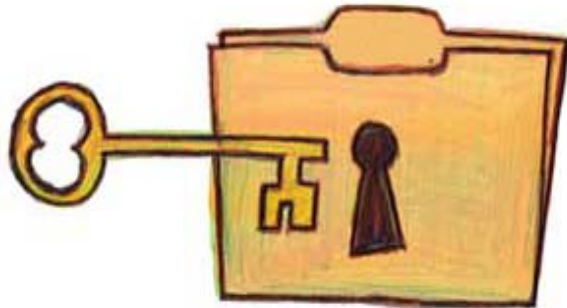
Best defense is:

- An effective, well organized, well documented, plan governance system
- Proper plan governance system is crucial to setting up a due diligence defense





.... There are 4 key elements

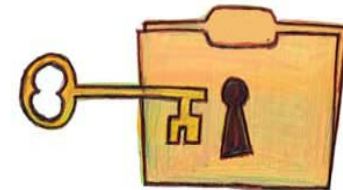


1. proper knowledge
2. proper delegation
3. proper monitoring/oversight
4. proper documentation



1. Proper knowledge...

- Participants in governance system must have **proper knowledge** of their duties and obligations
- Is there a process in place to identify the knowledge and skills necessary to effectively govern the plan?
- Do current participants have the requisite knowledge?





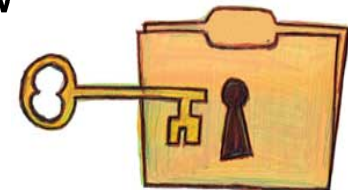
2. Proper Delegation

- Delegation of duties and obligations to be made to **properly qualified**, and **selected**, external and internal people or organizations
- Are the objectives pre-defined, clear and measurable?
- Does delegation include authority to sub-delegate and broad enough to allow delegate to reach his/her objectives?



3. Proper Monitoring/Oversight

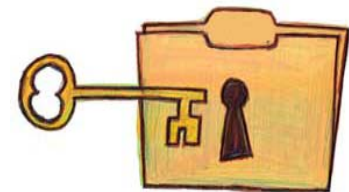
- Performance of properly selected and qualified external or internal delegates must be **monitored** and **evaluated** on an on-going basis
- Is there a process in place to properly monitor and evaluate the performance of the delegates?
- Has a detailed and regular reporting and review system been established and are the reports generated sufficient for purposes of monitoring and evaluation?





4. Proper Documentation

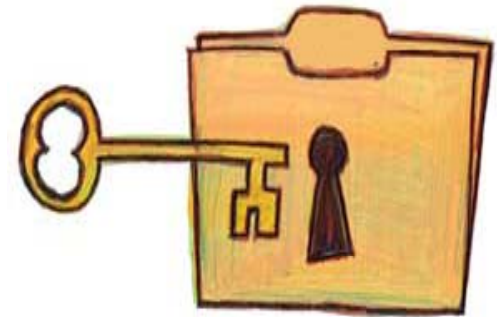
- External & internal relationships, duties, obligations, expectations and compensation need to be properly **documented**
- Are the tasks necessary to effectively govern the plan defined and documented?
- Are job descriptions used?
- Are service agreements used with other service providers and suppliers and do they reflect true practice?





An effective pension governance system will...

- Identify the players
- Identify what has to be done
- Define the tasks
- Assign roles and responsibilities
- Ensure proper monitoring and reporting
- Be well documented



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Pension Governance



A Practical Approach

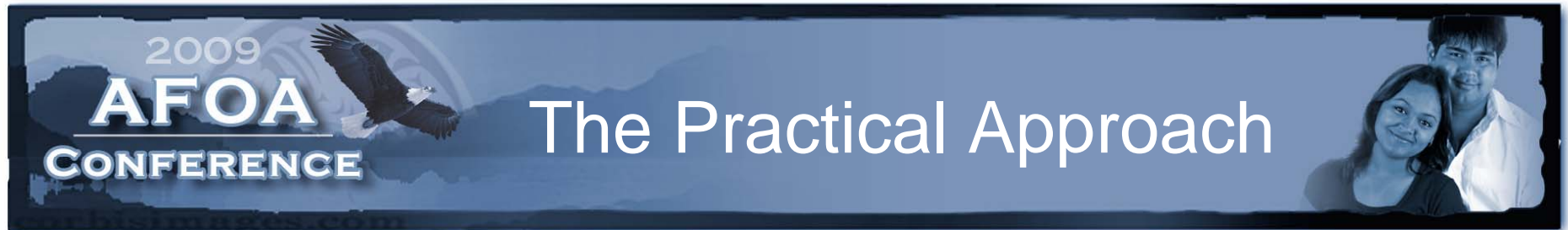


Take it one step at a time



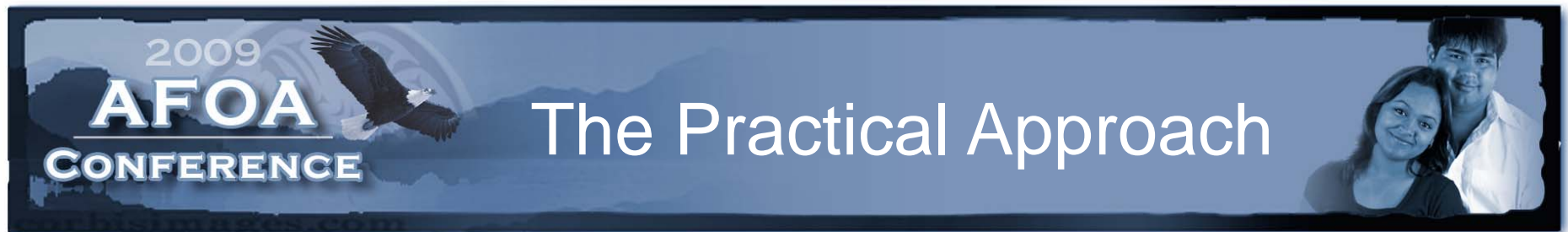
It's an On-Going Process!





Step 1 - Identify Your Band's Pension Objectives

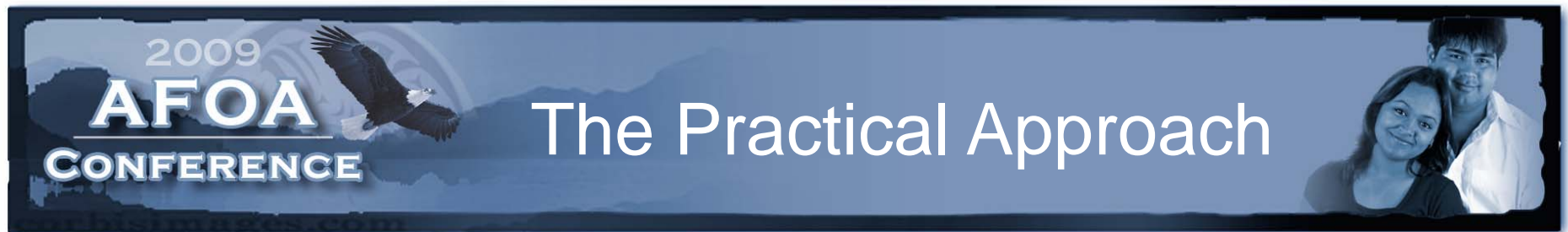
- A pension objective is the “raison d’être” for the plan
- Should be tailored to your own situation
- Define your Band’s pension objective(s) in a **single** sentence



Step 2 – Review Your Current Governance System

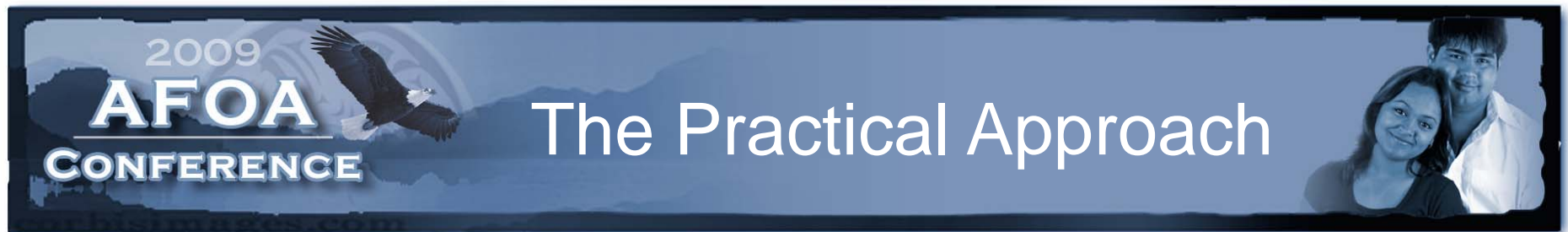
- Sketch out your existing decision making structure and fill in names, or positions, of “players” including both internal and external service providers

- Sketch out your existing:
 - ▶ Contribution remittance handling system;
 - ▶ Investment selection process; and
 - ▶ Asset distribution checks and balances



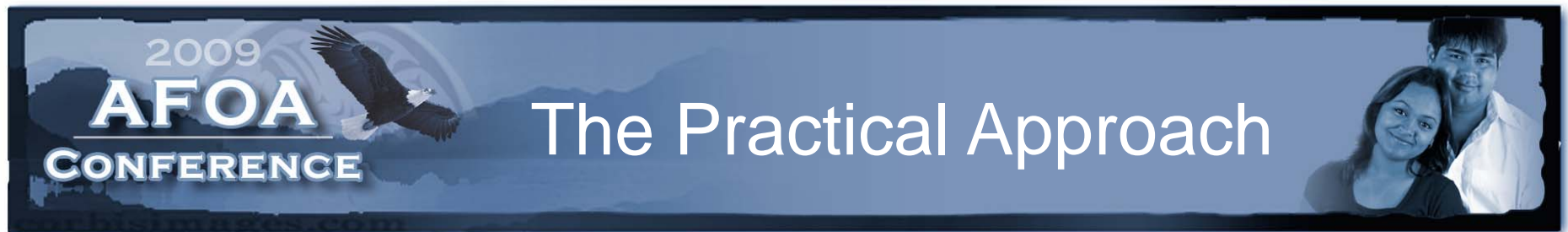
Step 2 – Review Your Current System (cont'd)

- Do you have existing written policies and procedures for the following:
 - ▶ New Employees and New Plan Members
 - ▶ Selection of Investments by Plan Members
 - ▶ Annual Plan Member Statements
 - ▶ Record Keeping and Data Maintenance
 - ▶ 'PA' and 'PAR' reporting
 - ▶ Annual INAC and OSFI filings
 - ▶ Member privacy and privacy legislation
 - ▶ Member maternity or Workers' Compensation leave



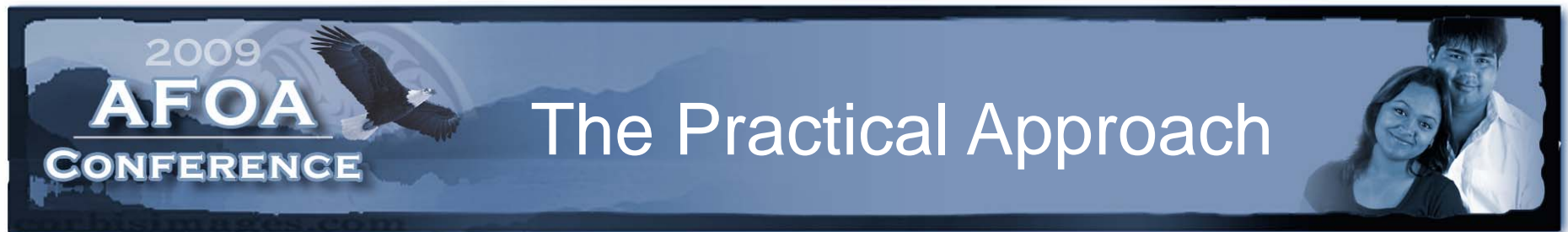
Step 2 – Review Your Current System (cont'd)

- Do you have policies or procedures for the following issues or events?
 - ▶ Statement of Investment Policies & Procedures (SIP&P)
 - ▶ Investment vehicle selection
 - ▶ Marriage or common law relationship breakdown
 - ▶ Monitoring and oversight of service providers
 - ▶ Contribution deduction and remittance (funding)
 - ▶ Member retirement and pension commencement
 - ▶ Member death/termination and payments out



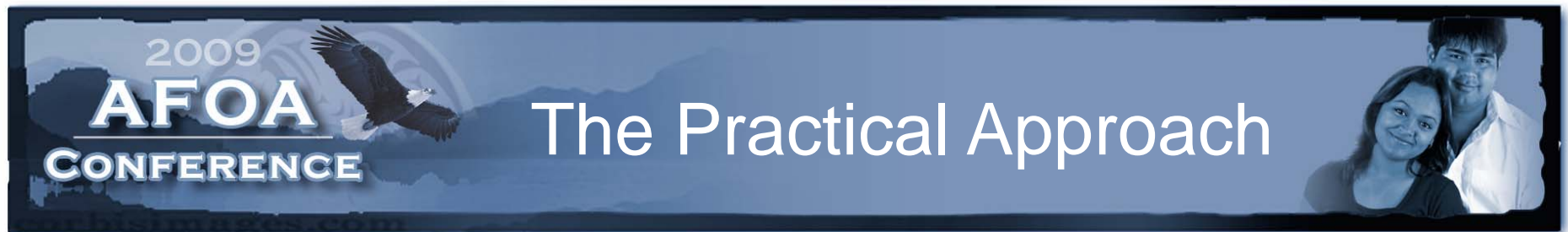
Step 3 – Identify Current Deficiencies

- Identify major deficiencies in current governance system
- Is your contribution remittance system adequate?
 - ▶ Are your asset distribution checks and balances in place?
 - ▶ Is your investment selection process adequate?
 - ▶ List immediate changes to be made to safeguard assets
- Identify missing policies and procedures, or ones that need to be updated
- Identify obligations that are not allocated to service providers



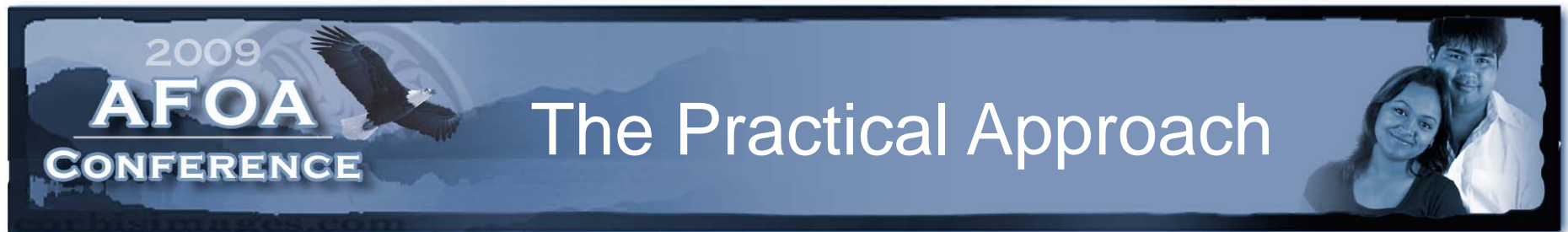
Step 4 – Prioritize Your Reforms

- Start with deficiencies relating to handling of assets, remittances, distributions and investments
* **these are very important**
- Rank all other deficiencies by decreasing order of importance
- Prioritize policies, or procedures, that need to be developed, or revised, and outline their main components - set realistic timeframes



Step 5 – Implement the Reforms

- Initially address deficiencies relating to the handling of assets, remittances, distributions and investments
- Allocate obligations not currently handled to internal, or external, service providers and ensure that all assignments, or relationships, are properly documented
- Redraft policies and procedures identified in Step 2 using the priorities and components identified in Step 4

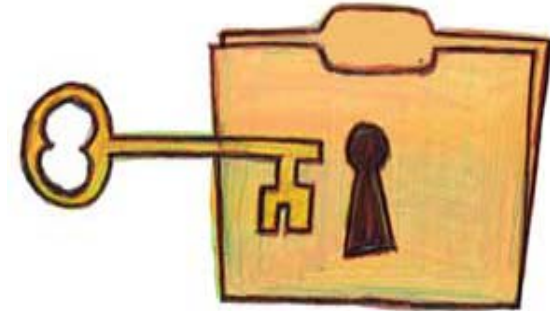


Step 6 – Review the Reformed Governance System

- Repeat **STEP 2** for your reformed Governance System
- Identify additional reforms to be made to the Governance System and set a timeframe for implementing these additional reforms



■ Act Now



- ▶ Before it is too late
- ▶ Before your plan members retire on less pension than they deserve
- ▶ Before the pension promise disappears
- ▶ To ensure compliance and avoid prosecution
- ▶ To avoid problems and law suits

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Questions????

