

TRUSTS AND LIMITED PARTNERSHIPS COMPARED

Mattagami First Nation - Trust Workshop

Prepared by



OUTLINE

- Governance
- Accountability
- Liability
- Longevity
- Tax considerations

GOVERNANCE OF TRUST VS. LP

Community Trusts	Limited Partnerships
Trustees generally appointed or elected. Who elects/appoints the trustees is set out in deed, but FN can control appointments thru deed.	General Partner runs LP. The GP's directors appointed or elected by shareholder(s). FN may or may not control the GP.
Community Trustees selected for knowledge of community needs	Directors selected for business skills
Trustees may have longer terms than just 1 year	Directors more regularly replaceable (yearly)
Rules of procedure for trustees may/may not be spelled out in trust	Directors and shareholders (of GP) meetings set out in legislation

ACCOUNTABILITY

Community Trusts	Limited Partnerships
<p>Accountability to all beneficiaries including all FN members – more information flowing to beneficiaries compared to limited partners in a limited partnership.</p>	<p>GP is accountable to the shareholder(s) and limited partner(s) but LPs are passive. C and C may only get accounting and pship book access. LP agmt may provide for more accountability.</p>
<p>Expectations of trustees can be high- difficult to satisfy beneficiaries with so many choices on where to spend income.</p>	<p>Expectations of C and C more limited to financial success of business ventures. More easily measured.</p>
<p>Reporting at community AGMs as well as to C and C are usual</p>	<p>Reporting to shareholders of GP and to Limited Partner as per LP agmt</p>

LIABILITY

Community Trusts	Limited Partnerships
Trustees have fiduciary duties to beneficiaries	Directors of GP have fiduciary duty to corporation and shareholders
Once trust provides money to a beneficiary or for a project, trust is not liable for the beneficiary's use of the \$ or the project it funded	The business ventures of the p-ship are managed by the GP so the GP is liable for the operations of the business including employer, environmental. Limited partnership's assets are liable in case p-ship is sued.
First Nation has no liability as beneficiary. Trustees have liability to beneficiaries as fiduciaries.	Limited liability of FN as limited partner extends to capital contributed to the limited partnership. Cannot operate business

LONGEVITY

Community Trusts	Limited Partnerships
<p>Trust deed can provide for trust to be wound up within certain number of years.</p> <p>In ON, the law allows one to “wait and see” whether an interest declared in a trust will offend the rule against perpetuities (a rule that prevents a trust from lasting forever)</p>	<p>Can be for a fixed term or for a specific undertaking or can be terminated by notice of intention to dissolve. Check the partnership agreement!</p> <p>Dissolution by a partner is also possible under various situations. e.g. a partner allows their share of property to be charged for that partner’s separate debts, bankruptcy of a partner.</p>



TAXATION

Community Trusts	Limited Partnership
<p>Trust is taxable. For s. 75(2) reversionary trusts, can minimize tax payable by making compound income/interest paid or payable to the beneficiaries of the trust</p>	<p>FN as limited partner, if a s. 149(1)(c) entity, allows the income earned by the FN limited partner to be tax exempt</p>