Family Trust Governance
An Often Overlooked Necessity

Cindy Radu, FCA, LLM, TEP, IGD.D, FEA – Partner, BDO Canada LLP
Michael J Perkins, TEP – Partner, Perkins Fahey Rosenblum
Objectives

• Overview of key concepts
• Review a case study to Illustrate common outcomes with traditional approaches to estates practice
• Explore role of trusts as a critical governance structure to facilitate integrated multi-generational estate planning and help families achieve better outcomes
‘Would you tell me, please, which way I ought to go from here?’

‘That depends a good deal on where You want to get to,’ said the Cat.

‘I don’t much care where,’ said Alice.

‘Then it doesn’t much matter which way you go,’ said the Cat.
Why We Get “Stuck”

Advisor/client focus in succession planning — disconnect

• Advisors — technical (e.g. tax and legal), siloed and transactional
• Client — me and my family

Common results under traditional approach

• Documents, agreements, plans are not understood
• Unintended/undesirable outcomes
• Potential for conflict
Family Business Or Family Enterprise

Adapted from: Cunningham, 2015
A Broader Definition Of Wealth — “FISH”

• Financial - assets in family enterprise
• Intellectual - are you bringing info in and disseminating it
• Social - how do family members interact with each other and society at large
• Human - are all family members thriving emotionally and physically
3 Circle Model and Trusts

A cohesive ownership group with a common vision

FAMILY

The personal well-being of all family members

OWNERSHIP

A profitable and successful business

BUSINESS

Image adapted from the 3-circle model by Tagiuri & Davis
FISH Family Case

Well intended but...
The FISH Family
The FISH Testamentary Trust

SETTLOR
Dad

TRUSTEES
Sisters

BENEFICIARIES
Sisters & “Issue”

OPCO
What Was Dad Trying To Accomplish?

- Maintain control during lifetime, and pass control to 3 sisters equally upon death
- Implement tax efficiencies
- Keep family assets together in blood-line (2nd marriage)
- “Legacy” - G4 (and future generations) to benefit from what G1 started
- Maintain or increase value of the business
- Other

Well intended, but...
FISH Family Business — Surprise!

At the time of dad’s death:

- No governance systems
- No management succession plan
- A key non-family employee announced intent to retire in 5 years
- The three sisters became directors
- No strategic plan and significant strategic business decisions looming
- Employees kept in the dark
- No insurance on dad’s life
WHERE’S THE TRUST?

- FAMILY
- OWNERSHIP
- BUSINESS
Landscape of a Trust – “Trustscape”

SETTLOR
Protector

TRUST

TRUSTEES
Advisors

BENEFICIARIES
Committees
Trust Governance

• Trusts have a significant and overlooked role in family enterprise governance

• Trust governance: communication and decision making tool for trust property and for the beneficiaries

• Often left to the informal operation of a trustee

• May not produce results envisaged by the trust founder

• Trustscape overwhelming and prohibitively expensive

• Is there an alternative?
Trust Advisory Committee

- Bespoke hybrid of protector, distribution committee, investment committee and office of the beneficiary
- Non-fiduciary role, similar to advisory board
- Align interests of beneficiaries and founders with the trust
- Work in collaboration with other advisors to the trust
Trust Advisory Committee Job Description

• Helping trustees and beneficiaries understand purposes for the trust as expressed by settlor
• Purposefully explore how “F” can support “ISH”
• Educate beneficiaries about their rights and trust administration
• Support beneficiaries in making distribution and loan requests
• Support trustees in making distributions to encourage behaviors
Trust Advisory Committee Job Description (continued)

- Help trustees understand how to manage conflicting fiduciary roles as trustees and directors
- Provide a forum where trustees and beneficiaries learn to work with professional advisors
- Provide a sounding board and cooling off resource
- Facilitate communication, develop healthy conflict resolution models
- Act as an independent voice in the selection of replacement trustees
MIGHT TRUST GOVERNANCE in the FISH CASE HAVE RESULTED IN BETTER “FISH” OUTCOMES?
Take Aways

• Don’t over look family trust governance
• Collaborative, integrated, bespoke approach
• Involve family members who will be impacted by the estate planning process
• Prepare rising generations for future roles
• Maximize potential for financial, intellectual, social and human wealth
• Create great stewards of family wealth across generations
Cindy Radu, FCA, LLM, TEP, ICD.D, FEA
Partner, Business Transition Services (Western Canada)
BDO Canada LLP

As a designated Family Enterprise Advisor, Cindy helps individuals, family enterprises, business owners and family offices navigate the complexities and opportunities that come with wealth. Cindy draws on over 25 years of legal, fiduciary, trust and governance experience in professional services firms, financial institutions and family offices in her practice. She uses her skills to provide an objective perspective and facilitate understanding of how complex family, business and ownership structures can impact family dynamics and family wealth continuity.

Direct: (403) 213-5428
Mobile: (587) 227-9798
cradu@bdo.ca
Michael Perkins, TEP
Partner, Perkins Fahey Rosenblum, Australia

Michael is a Partner at the boutique private client firm of Perkins Fahey Rosenblum, which is focused on helping its clients achieve their objectives for their Family, Business, Wealth and Succession. Michael and his co-author Robert Monahan originated the Estate Planning Framework that places social and community contribution as an initial strategic choice of client’s undertaking estate planning. This approach has been taught at universities for over a decade and is the model that Michael applies in his professional practice. Mentor and General Counsel to a broad range of closely held businesses and families, Michael draws on over 30 years experience. He is a member of the Academic Community of the Society of Trust & Estate Practitioners (STEP).