



# Creation and Management of Trusts and Companies: Case Study



## Creation of a private trust

Current to July 2021

### The Facts



A woman contacted the mid-sized law firm you work at seeking legal advice on creating a trust. She found the law firm through an internet search. The woman was from a country that poses a geographic risk. She provided a valid visa as proof of identification.

She asked you to prepare a trust to handle an inheritance she received back in her home country. The trust was to be funded via wire transfer of the inheritance into your firm's trust account in Canada. She asked you for a legal opinion on tax issues and filing requirements in relation to the trust.






The client wanted to be the trustee with her adult children, one of whom lives in Canada, named as the beneficiaries. She did not have a Canadian residence or bank account. The client also wanted an introduction to a chartered accountant and a banker in Canada.

The type of trust requested by the client was a normal structure familiar to most legal representatives with experience with trusts. The goal of the client appeared to be asset management for the benefit of her children. While the tax consequences may have been complex, the plan itself was relatively typical.

**NOTE:** While the legal services described in this case study are outside of the paralegal scope of practice, the red flags and best practice recommendations apply, with appropriate modifications, to the provision of legal services by paralegals.

## Red Flags



-  Client is not known to you and the source of the connection (i.e., internet search) does not add any comfort
-  Client comes from a high-risk country. These are countries that have been identified by competent authorities as posing a high risk for money laundering based on, among other things, prevalence of corruption and financial crime, and weakness of anti-money laundering laws and measures
-  The funds are to be wired from outside of the country into your firm's trust account
-  Client does not have a bank account in the jurisdiction
-  Client requires introduction to multiple professionals (e.g., certified accountant and banker), indicating lack of connection with the jurisdiction

## What Should You Do?



Although the plan for the trust is not unusual, several factors give cause for concern and suggest a potential money laundering risk. There is also no compelling reason for the funds to flow through your firm's trust account.

In such circumstances, you should:

- Advise the client to open a Canadian bank account and not accept the funds directly into your trust account.
- Make inquiries into the source of funds, including requesting supporting documentation. Lawyers and paralegals are required to obtain from a client information about the source of funds being received, paid, or transferred when providing legal services involving a financial transaction that is not exempt from the client verification requirements set out in [By-Law 7.1](#).
- If after further inquiries, you are not satisfied on an objective basis that the transactions are legitimate, you must decline to act.

## Supports and Resources



- **Practice Management Helpline:** Lawyers or paralegals who have questions about their professional obligations relating to client identification and verification, fraud, money laundering, terrorist financing, or other illegal activity may wish to contact the [Practice Management Helpline](#).

