

THE CANADIAN REFUGEE SPONSORSHIP IMMIGRATION PROGRAM: A LEGAL LIABILITY AND INSURANCE PERSPECTIVE

**FOR CONSTITUENT GROUP (CG)
AND CO-SPONSOR ORGANIZATIONS,
INCLUDING CHURCHES**

**If your church or charity is
sponsoring refugees, including
under the auspices of a
Sponsorship Agreement Holder
organization, remember...**

- ♦ Refugees are deemed “vulnerable persons” and therefore make sure to uphold your abuse prevention policies, procedures and full screening of volunteers, just as you would with any other program, ministry or activity involving children, youth or vulnerable adults
- ♦ If you are coordinating the transportation of refugee families during the resettlement process:
 - ensure that volunteer drivers have valid licenses
 - minimum 5 years driving experience with safe driving records and
 - at least \$2,000,000 third party liability insurance protection
- ♦ Bear in mind that ALL liability insurance policies contain a Terrorism Exclusion, which excludes coverage for any legal liability arising from an organization’s actual or alleged negligence pertaining to bodily injuries or property damage arising from acts of terrorism however caused, directly or indirectly, in whole or in part.

Canadian not-for-profit and charitable organizations have been instrumental in assisting and sponsoring refugees to get to Canada for many decades. The Private Sponsorship of Refugees (PSR) Program was established in 1979 through an act of the Federal Government. A key objective of the PSR Program was to increase Canada’s capacity to resettle refugees by engaging additional stakeholders, including through Sponsorship Agreement Holder (SAH) organizations who were experienced and capable of providing needed support services in local communities. As authorized and approved by Citizen and Immigration Canada (CIC), SAH organizations have a legal responsibility for each named refugee and for establishing programs that provide and direct financial and resettlement support for such persons entering Canada as refugees. In turn, these organizations have also been authorized by CIC to appoint Constituency Groups (CG) who have authority to act on behalf of the SAH organizations under the terms of an Agreement between them.

Sponsorship Agreement Holders and their Constituency Groups are one of three ways that Canadian organizations and Canadians can participate in refugee sponsorship, including:

1. Groups of Five (G-5s) composed of individual Canadians citizens
2. Sponsorship Agreement Holders (SAHs) and their Constituency Groups (CGs)
3. Community Sponsorship by organizations, associations or corporations

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Of the three methods of sponsorship, the SAHs or CGs are the most common way that local churches, religious organizations and other charities and non-profits have become involved in sponsoring refugees. The SAH assumes the overall responsibility and legal liability for the management of the sponsorships under their agreement with CIC and each SAH sets its own criteria for recognizing Constituent Groups, who in turn sponsor individual refugees and refugee families under their agreement with the SAH.

Although refugee resettlement sponsored and supported by charitable organizations and local churches is not new, the current refugees crisis in Syrian presents new challenges based on the size, scale and nature of the crisis and the refugee population. Another recent development is that the Canadian Refugee Sponsorship Immigration Program (i.e. the Program) now includes the Blended Visa Office Referred (VOR) Initiative. It was launched in 2013, is designed for refugee applicants identified by the United Nations High Commissioner for Refugees (UNHCR) and operates by refugee candidates being submitted to Canadian visa offices abroad making them travel-ready, in order to fast-track the resettlement of refugees in Canada through a cost sharing arrangement between CIC and the SAH. Under the Blended VOR Initiative, the focus is on Syrian and Iraqi refugees, although certain other nationalities also qualify.

The Refugee Sponsorship Immigration Program (including the Blended VOR Initiative) is an immensely worthwhile way for Canadians to get involved, especially in light of the current refugee crisis from Syria. However it also presents substantial legal risks. Following is a partial list of insurable and potentially uninsurable legal liability risks to churches and charitable organizations participating in the program, whether as Sponsorship Agreement Holders or as Constituent Groups and Co-Sponsors:

- Abuse, molestation and harassment claims caused to children, youth and vulnerable adults; whether such injury is caused by Program volunteers and other individuals in the volunteer households to Sponsored Refugees; or caused by Sponsored Refugees to Program volunteers or other third parties in Canada
- Abuse, molestation and harassment claims caused as the result of an SAH and/or its CG not doing proper screening and supervision of its volunteers including members of the volunteer’s household over the age of 18,

by obtaining a Criminal Record Check i.e. specifically Vulnerable Sector Screening including a search of the pardoned sex offender database and local police indices. Note: CIC has specifically identified refugees as Vulnerable Persons and as such, the duty of care is higher for organizations and volunteers working with Sponsored Refugees and refugee families, just the same as for any other Vulnerable Persons or Minors in the care of such organizations or groups.

- Bodily Injuries suffered in automobiles transporting Sponsored Refugees to and from various appointments, job interviews, government assistance programs, grocery shopping and a myriad of other examples intended as practical assistance under this program. Sponsored Refugees have no primary auto insurance or accident benefits coverage available to them as new landed immigrants or citizens unless and until they own and insure an automobile, thus making both the Constituent Group vehicle owner more exposed to first party Third Party Liability and Accident Benefit insurance claims, and the Constituent Group and Sponsorship Agreement Holder much more exposed to Non-Owned Automobile claims and lawsuits, as the result of an auto accident
- Bodily Injuries caused by program recipients to any third party during the settlement process, particularly with respect to the SAH or CG vouching for the program recipient in a job placement, residential rental application and a myriad of other circumstances in which the Program is intended to assist Sponsored Refugees in hands-on and practical ways
- Bodily Injuries suffered by Program volunteers while assisting Sponsored Refugees with everything from moving them in and out of a household, cleaning, food preparation, home repairs and maintenance, etc.
- Mental anguish or mental injury suffered by Sponsored Refugees who have been through horrific wartime trauma and conditions that we in Canada can only imagine and who may be suffering some form of post-traumatic stress disorder (PTSD) which is exacerbated through the resettlement process, by additional stress and lack of diagnosis, appropriate treatment or referral, that causes the individual to do harm to themselves and others, including family, Program volunteers or other innocent Third Parties
- Personal Injury, mental anguish or discrimination suffered by refugees of different faiths relating to

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proselytizing to vulnerable persons by SAH, CG or Co-Sponsor Organization volunteers

- The possibility that a radicalized Sponsored Refugee and/or refugee household member commits a terrorist act causing injuries, fatalities or significant property damage to others during the course of the settlement process. The potential is staggering in terms of dollars and cents in a lawsuit. This scenario is not inconceivable or unrealistic, given the sheer numbers of refugees being contemplated (i.e. 25,000 to 50,000) and the difficulty in obtaining reliable background information in the vetting process for refugee candidates in difficult locations and conditions, such as war torn countries like Syria and Iraq. Keep in mind that a large and valuable part of refugee resettlement is the contribution by Program organizations and volunteers in vouching for Sponsored Refugees in a job placement, residential rental application, child care and in connecting with other community services and organizations for support. Who will innocent third party Canadians, or their survivors, look to for financial compensation if they are victims of a terrorist act committed by a Sponsored Refugee? Who will property owners look to whose buildings have suffered millions of dollars of damage or destruction by a bomb or explosive device? Keep in mind that Property Insurance policies covering buildings and contents issued by insurance companies in Canada and the United States contain a Terrorism Exclusion for any property damage caused in whole or in part by an act of terrorism, however caused.

Following is a checklist of insurance considerations that Constituent Groups and Community Sponsorship Organizations (including Churches) should keep in mind with respect to their participation in the Refugee Sponsorship Immigration Program:

- a) Inquire with your insurance provider to make them aware of your participation in the sponsorship of refugees to Canada to determine whether it is covered, if any additional premium applies and whether they have any risk management requirements.
- b) Make sure to follow your organization's abuse prevention policies, procedures, screening and oversight of your staff and volunteers in a position of trust and as required by your insurance provider with respect to sponsored refugees, just as you would with any other programs and ministries you have for minors and vulnerable persons. Otherwise an actual or alleged abuse claim as a result of not upholding those standards may not be insurable.

REMEMBER that sponsored refugees are deemed to be vulnerable persons during the resettlement process, just the same as any other vulnerable person in your organization's care such as children, youth and vulnerable adults.

The same standards required by your organization's abuse prevention plan will be required of your participation in refugee sponsorship and care.

- c) Make sure that you have a minimum of \$5,000,000 Commercial General Liability coverage per occurrence, including for Bodily Injury, Third Party Property Damage, Personal Injury, Mental Anguish, Counselling, Occurrence-Form Abuse coverage and Non-Owned Automobile Liability protection, including for all sponsored operations on and off premises.
- d) Make sure that you have No-Fault Group Accident coverage for your volunteers for injuries they may suffer on or off premises working with refugees, including weekly indemnity and medical and dental expense reimbursement.
- e) Make sure you have Directors and Officers Liability coverage for your board members in order to cover any insurable actual or alleged negligent act, error, omission or breach of fiduciary duty with respect to the administration and oversight of the program, including distribution of government funding and your organization's charitable receipting practices.
- f) Inquire with your insurance provider to understand the potential implications to your organization and directors of the Terrorism Exclusion contained in ALL Commercial General Liability policies, and refer to the note at the end of this article.

A NOTE ABOUT TERRORISM

Terrorism Exclusions have been contained in every Commercial General Liability policy issued in Canada and the United States since 2002, in the aftermath of the events of 9/11. Although it is still debated within professional legal and insurance circles as to exactly how and when this exclusion can be enforced, it is a very broad exclusion and so it is important for your organization's leaders to familiarize themselves with the content and implications of this exclusion as you contemplate the legal risk and risk management associated with acting as an SAH, CG or Community Sponsor. The possibility that a Sponsored Refugee who slips under the radar who is, or becomes, radicalized to the extent that they commit a terrorist act in Canada causing significant bodily injury, loss of life and/or property damage to innocent third parties is very real, especially considering the sheer number of Sponsored Refugees anticipated from the Syria in 2015 and 2016 (i.e. 25,000 and possibly as many as 50,000). Innocent victims of a terrorist act (and their surviving families) would most likely include the CG and/or SAH as defendant party in a lawsuit seeking financial damages on the basis of their sponsorship for that refugee, including vouching for their character in employment opportunities, housing and in connecting with other individuals, groups and support services in their community. They could also potentially be held negligent on the grounds that they did not warn police or government authorities where there were signs present that a reasonable and prudent organization or volunteer representing that organizations could and should have recognized and known that the individual was a danger to commit such acts. The Canadian government under this Program has not provided any offer of indemnity or relief from such potential legal liability, even though it is CIC and CSIS who are jointly responsible for vetting refugee candidates. Although this is outside our area of expertise and should be referred for a professional legal opinion, the concern from past claims experience and liability suits involving both the Federal Government and private organizations as joint defendant parties in major lawsuits, is that the government has been able to successfully

defend itself and rely on limited liability or immunity to civil damages, including in cross-claims by other defendant parties. Although insurers are free to choose to expand or reduce the scope of their coverage by modifying insuring agreements, conditions, exclusions, definitions and endorsements, a Terrorism Exclusion is included in ALL CGL policies issued by ALL insurers in Canada.

Although the social, legal and insurance implications of the current refugee crisis and Canadian Refugee Sponsorship Immigration Program are still evolving and not all of the implications are yet fully known or understood, we feel strongly about getting information out on a timely basis to sponsoring organizations and their directors so that they can take steps to keep both Program Volunteers and Sponsored Refugees safe, and to keep their organizations and board members protected and out of court.

As insurance providers to over 7,000 churches and Christian charities across Canada, many who are already participating as Sponsorship Agreement Holders, Constituent Groups or Co-Sponsor organizations, we believe it is our responsibility to provide balanced, constructive and meaningful information and guidance to our client organizations, directors and program and ministry leaders. If you are insured with Robertson Hall Insurance Inc. through Church and Charity Protection Plus, please feel free to contact our office if you need further clarification regarding the ways to keep your organization insurable and to better understand potentially uninsurable aspects of the Canadian Refugee Sponsorship Immigration Program.

Sincerely yours,