

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

FOR SPONSORSHIP AGREEMENT HOLDER (SAH) ORGANIZATIONS

If your organization has an agreement with Citizen and Immigration Canada to sponsor refugees and you form, appoint, train, coordinate and support local Constituent Groups and Sponsors to do the work of resettlement, remember...

- ◆ Constituent Groups and Sponsors you form or appoint are your legal agents and their negligence can create legal liability against your organization. Therefore it is important to obtain proof of their insurance, including:
 - i) A Certificate of Commercial General Liability Insurance confirming:
 - not less than \$5,000,000 coverage per occurrence including Non-Owned Automobile Liability
 - \$2,000,000 Occurrence Form Abuse Liability coverage
 - \$2,000,000 Directors and Officers Liability coverage and
 - Your SAH organization named as Additional Insured on the Certificate, and;
 - ii) A signed hold-harmless and indemnification agreement in favour of your SAH organization for any legal liability against you and your directors arising out of the negligence of the Constituent Group or Sponsor and its members with respect to their participation under their agreement with you.
- ◆ 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 form or appoint informal Constituent Groups or Sponsors composed of individuals, versus an organization, it may not be possible to screen and manage their activities as required by your organization’s approved abuse prevention plan. An actual or alleged abuse claim arising directly from a failure to meet such standards may be uninsurable. And unfortunately it is not generally possible to transfer risk to individuals for their negligence as any personal liability coverage they may have (i.e. Homeowners or Tenants Insurance) will exclude any negligence they have arising out of physical or sexual abuse, molestation, harassment and intentional or criminal acts
- ◆ 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 Constituent 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 Constituent Groups (CGs)
3. Community Sponsorship by organizations, associations or corporations

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

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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 if hosting or providing care for refugee family members), 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 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 Sponsorship Agreement Holders (SAH) 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 receiving 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.

FOR SPONSORSHIP AGREEMENT HOLDERS ONLY

While it could be argued that Sponsorship Agreement Holder organizations are capable of managing programs that it directs and controls through its own hired, appointed, screened and supervised staff and volunteers, this will most definitely not be the case when they "outsource" the actual operation of the program to arm's length third party Constituent Groups (CG). This risk can be managed "if" a CG is or Co-Sponsor is organized formally, have their own liability insurance and under the terms of an Agreement can provide the SAH with:

- i) A Certificate of Commercial General Liability Insurance confirming not less than \$5,000,000 coverage per occurrence including Non-Owned Automobile Liability, \$2,000,000 Occurrence Form Abuse Liability coverage, \$2,000,000 Directors and Officers Liability coverage and the SAH organization is named as Additional Insured, and;
- ii) A signed hold-harmless and indemnification agreement in favour of the SAH for any legal liability against the SAH arising out of the negligence of the Constituent Group or Co-Sponsor and its Members with respect to their participation under the Program.

Assuming that the above Agreement and documentation is in place at a minimum, this would be an effective transfer of much of the risk to the party actually most directly interacting with refugee candidates and able to manage the potential risks (i.e. the CG). Check with your lawyer for a formal legal opinion in order to effectively limit your organization's and directors' and officers'

potential legal liability from the negligence of third party Constituent Groups.

Constituent Groups appointed by Sponsorship Agreement Holders in the past have primarily been formal organizations with risk management policies and procedures (including abuse prevention policies), and with assets and valid and collectible liability insurance policies to pay for potential civil liability suits, damages and awards or settlements. Formal, organized Constituent Groups such as churches and other charities may be insured with a variety of insurance companies, however keep in mind that those insurers may or may not have an interest in covering the liability exposure for this type of refugee sponsorship program and/or may or may not provide a complete scope of insurance protection if they do, including abuse liability coverage; hence the importance for any SAH organization not to assume the scope of a CG organization's coverage, and to follow through with the requirement to obtain a certificate of their insurance, (as noted in i) above).

One of the emerging trends in response to the magnitude of the current refugee crisis is the sheer demand for refugee resettlement sponsorship, and in turn, the outpouring generosity and heightened interest level that individual Canadians have in supporting those refugees with their time and financial resources. Because of this, there is a much larger percentage of CG groups who are not formal organizations; eligible Constituent Groups can and now often do include groups of individual concerned Canadian citizens acting as Members of a Constituent Group operating

under an Agreement with the SAH. Other than the personal assets and insurance of the Members, these informal CGs have no collective assets, resources or valid and collectible liability insurance, and therefore will be not be a party to whom an SAH organization can meaningfully or practically transfer legal risk. If an issue was ever to arise from bodily injury (including abuse, molestation, harassment, discrimination and mental anguish), personal injury (libel, slander, defamation or invasion of privacy) or property damage caused by, or to, such an unorganized uninsured Constituent Group and their volunteer Members, the Sponsorship Agreement Holder organization would undoubtedly be the deep pocket source of recovery in a civil lawsuit.

Although the requirement for Members of an informal Constituent Group to give proof that they have Homeowner's or Tenant's Package policies with Personal Liability protection is worthwhile, it also must be recognized that it is of limited value. This is because ALL Personal Liability Insurance policies now contain a standard Abuse Exclusion for any and all actual or alleged sexual, physical, emotional and psychological abuse, molestation and harassment, and for failure to take steps to prevent such abuse, molestation and harassment. This is the same Principle as in qualifying organization's insurance policy, wherein the entity and directors can be covered for their legal liability, including vicarious legal liability, arising out of actual or alleged abuse committed by an employee, volunteer, etc., but the individual who committed the act cannot be covered.

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Personal policies also include a standard exclusion for legal liability arising out of intentional or criminal acts committed by, at the direction of or with the knowledge or consent of any Named Insureds in the household. Finally, they contain an exclusion for any liability on the part of the policyholder and their household members relating directly or indirectly to Terrorism or Terrorist Acts. Therefore such personal liability coverage provides no relief or solution in transferring risk from an SAH to uninsured Constituent Groups or their Members in the event of a claim/lawsuit involving any of these types of actual or alleged acts, negligence or failure to act by Constituent Group Members.

Although your SAH organization may have qualified for Abuse Liability coverage based on its Abuse Prevention Plan for its usual ministries, programs and activities, and upon which your insurer relied for

such approval; it is important to check with your insurance provider to determine whether such coverage will apply to actual or alleged abuse arising out of the Refugee Sponsorship Immigration Program. For reasons noted above it will be more complicated and problematic to remain eligible for Abuse Liability coverage, at least with respect to actual or alleged Abuse, Molestation and Harassment arising out of the acts or negligence of Constituent Groups. This is because the abuse prevention policies, procedures and protocols maintained by an SAH for its own supervised programs, ministries and activities most likely cannot by definition be followed and upheld with respect to the activities of arms-length Constituent Groups and their Members. As noted above, although it might be possible to "transfer" risk to church and charitable organization Constituent Groups

who contractually agree to hold harmless and indemnify the SAH for the negligent actions of its staff and volunteers and who provide proof of their Commercial General Liability protection with the SAH named as Additional Insured; this will not be the case with informal Constituent Groups. Due to the lack of oversight and supervision that an SAH can practically or meaningfully exert over CGs and CG Members working with vulnerable persons, an actual or alleged abuse claim arising out of the acts or negligence of a Constituent Group and its Members may potentially NOT be covered under the Commercial General Liability insurance policy carried by the Sponsorship Agreement Holder, even if such policy includes Abuse coverage for its directly supervised and risk managed programs, ministries and activities. ■

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. The link below is the Commercial General Liability policy format currently used by most Canadian property casualty insurance companies for businesses, not-for-profits and charities. 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. For your reference, a legal analysis of the standard current IBC Terrorism Exclusion form is contained on pages 100-104 of the Dolden Wallace review in the following link...

<http://www.dolden.com/content/files/1272476284132-the-new-ibc-commercial-general-liability-policy-december-2006.pdf>

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.