
PROTECTING CHARITIES AND NOT-FOR-PROFITS PARTICIPATING IN REFUGEE SPONSORSHIP PROGRAMS

*By Sean S. Carter and Terrance S. Carter**

A. INTRODUCTION

Charities and not-for-profits involved in refugee sponsorship (“Refugee Support Organizations”), particularly those who are a refugee Sponsorship Agreement Holder with the federal government (“SAH”), are facing an influx of needs and requests that has not been seen in Canada in decades. In the months since the new Liberal government’s initiative began, SAHs and Refugee Support Organizations have constituted the “front line” facing the recent surge of requests for aid and refugee sponsorship. In particular, SAHs and the federal government are struggling to meet the real and significant need that exists to help facilitate refugees’ sponsorship, passage, and integration into Canada. For the refugees and their families, many of whom are fleeing from Syria and other conflict areas, this journey is one of the most dramatic and life altering experiences any individual may endure. To a lesser extent, but by no means less important, both SAHs and Refugee Support Organizations are having to either start “fresh” or exponentially increase a previously small refugee sponsorship program in order to address the current influx of refugees in Canada.

As a part of the fabric of our Canadian identity, welcoming newcomers to Canada through refugee or immigration programs is an integral part to creating the “mosaic” of Canadian society. To some extent,

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what has changed in recent years is the process by which refugees enter the country — a process which now relies more heavily on private sponsorship. Refugee Support Organizations and SAHs must quickly consider, and come to terms with, the realities of what steps need to be taken in order to protect their refugee sponsorship programs, those involved in the programs (including the refugees), and ensure that these programs can expand in order to continue to serve this fundamental outreach.

B. THE NEED FOR APPROPRIATE DUE DILIGENCE

What is not clear to many Refugee Support Organizations and SAHs, is what specific steps need to be taken to ensure that their internal programs and policies may sufficiently deal with the influx of refugee populations, while ensuring that not-for-profits and charities can continue to do their essential work in this regard.

There are several different scenarios by which an individual may enter Canada as a refugee, but the most common avenue is the one by which not-for-profits or charities are involved as either an SAH or working directly under the auspices of an SAH. When a charity or not-for-profit enters into the agreement with the federal government to become an SAH, there are significant and numerous responsibilities that are taken on by the individual SAH. Given the seriousness of the responsibilities and the vulnerability of the population being served, an SAH, usually for the period of a year, has a plethora of responsibilities that it undertakes. Charities and not-for-profits need to be aware of how to meet those responsibilities while limiting, in the best way possible, the liabilities of the program through effective policies and due diligence.

SAHs and Refugee Support Organizations are facing the reality of bearing the responsibility for a multitude of aspects pertaining to the lives of vulnerable refugee populations, and the resulting liability that could flow through inadvertent mismanagement or hastily constructed programs that cannot effectively handle the burgeoning number of refugees or address their individual concerns. These charities and not-for-profits are dealing with a fundamentally vulnerable population, one in which individuals are potentially suffering from post-traumatic stress symptoms. Further, these refugees are a population very vulnerable to fraud, as has been noted by law enforcement. In addition, SAH and Refugee Support Organizations are being approached by outside individuals (i.e. outside of their membership or

community) to assist in bringing family and friends to Canada as refugees, a situation which holds its own increased liabilities if proper due diligence procedures are not established and adequately followed.

C. OTHER LEGAL ISSUES

The potential liabilities are numerous and specific to individual cases and the particular level of involvement of the SAH or Refugee Support Organization. SAHs may have particular liabilities and responsibilities, including being liable to reimburse government agencies for any social assistance, whether inadvertently applied for or otherwise, during the term of the SAH agreement. Often, responsibilities of SAHs involve finding safe homes for refugees to live in, ensuring adequate living necessities are covered (potentially including, for instance, Halal food), and providing support in every aspect of their lives and aiding in their integration into Canadian society. It is important to note that this must be accomplished while simultaneously implementing policies that will protect any personal information that is collected about these individuals. In addition, many SAHs, and even sometimes Refugee Support Organizations hold money in trust from families and support groups overseas. These international transfers of assets, often from conflict zones, could raise issues and liabilities including, but not limited to, anti-corruption, privacy issues and anti-terrorism.

In the end, charities and not-for-profits need to be empowered in their good work in order to effectively assist refugees, while protecting their organizations and programs, so they can continue this essential work. Many potential liabilities and threats can be dealt with through appropriate due diligence procedures and carefully crafted programs and policies. One of the most serious issues is that many charities and not-for-profits are not aware of the necessity for effective due diligence and the potential liabilities, including but not limited to: the duty to protect charitable assets; protecting the organization's charitable status (as applicable); avoiding personal liability of the directors and officers; and the essential need for SAHs and Refugee Support Organizations to be able to continue, unimpeded, in their work during this historically unique time.

Charities, in particular, must be aware of the importance of acting within their purposes. Intention, aside, if supporting refugees is not contemplated in the organization's purposes, participating in such programs could create serious liability issues, such as potential breach of charitable purpose. Additionally, Canadian legislation dealing with anti-terrorism has a very broad scope and it is important for charities and not-for-

profits to implement policies that will reduce liability in this regard. Screening is particularly important for organizations that deal with individuals from zones of conflict such as Syria, as holding a SAH does not necessarily protect against such liability. These are only some examples of potential issues and are by no means a comprehensive list of potential issues, responsibilities, and liabilities that may arise.

D. INSURANCE ISSUES

Other than the issues identified above, there are numerous considerations relating to liability and insurance that are critical for charities and not-for-profits to know. The attached link to an article written by Kenneth Hall of Robertson Hall Insurance (posted with permission), entitled "[The Canadian Refugee Sponsorship Immigration Program: A Legal Liability and Insurance Perspective](#)", provides an excellent overview of the potential issues from the perspective of an insurance provider with extensive knowledge in this area.

E. CONCLUSION

Due diligence is necessary in order for a charity or not-for-profit to do an effective job in supporting refugees in general, but particularly now. It is important for these organizations to work toward developing appropriate policies and procedures, to speak to their insurance brokers concerning insurance and to work with their legal counsel to obtain legal advice on risk and compliance issues and how to effectively protect against from liability while managing those issues.