



Concerns re: IRPR regulatory change for automated document cancellation

The Canadian Council for Refugees is requesting an immediate pause on the finalization of the proposed regulatory change announced in the Canada Gazette on April 9, 2022 ([Canada Gazette, Part I, Volume 156, Number 15: Regulations Amending the Immigration and Refugee Protection Regulations](#)).

The objective of the proposed amendments is to “require that immigration documents be automatically cancelled whenever a removal order is issued against an inadmissible foreign national”.

CCR is concerned that the CBSA has not thought through the implications that this proposed change may have for impacted people. There are implications related to loss of income, loss of employment, loss of study opportunities and tuition fees, as well as significant concerns about loss of status for Temporary Resident Permit (TRP) holders.

The first time that this change came to the attention of CCR was in October 2022, when CBSA was reporting on the gender-based analysis plus (GBA+) analysis that was conducted as part of the study of the proposal.

We have since closely read the Regulatory Impact Analysis Statement on the proposed change published in April 2022.

Here is a summary of our concerns:

- 1. The cancellation of work permits and study permits will impose costs on people who file refugee claims and may act as a deterrent to seek protection in Canada:** CBSA has made an assumption that there would be no cost impact on refugee claimants who have their work or study permits cancelled. That is simply not the case. Anticipated costs include:
 - Costs to people whose work permits are cancelled** (not only refugee claimants): lost wages, lost employment positions, needing to seek support or advice to reapply, and the possibility of working without authorization if someone does not realize that their permit has been cancelled. People may also lose housing, including families with children, pushing them into already overcapacity municipal shelter systems.

- **Costs to study permit holders:** students will have their studies interrupted and will likely lose significant amounts of money that they have paid as international student tuition.

It simply does not make sense that the CBSA is making it harder for people to retain and get work permits after IRCC put so much effort into making it easier. IRCC has recognized the value of facilitating work. CBSA and IRCC priorities appear to be misaligned. Put plainly, if a person cannot be removed from Canada, they should be allowed to work here legally without interruptions.

2. **The cancellation of TRPs must include the exercise of discretion:** The stated protections for people with TRPs because of domestic violence or human trafficking are insufficient. An automatic cancellation that *could be* remedied is not enough protection for someone who has left a situation of trafficking or gender-based violence. In fact, without work permits and status documents, many victims of domestic violence return to their abusers in order to regain some stability in Canada. If there is a reason why TRPs should be maintained or re-issued, then automatic cancellation of them becomes an unnecessary burden, and the policy changes have clear negative impacts that disproportionately affect women. Manual cancellations of TRPs is an essential safeguard.

The Act currently allows the Minister to cancel TRPs. Yet, the Act still *requires discretion*, whereas automatic cancellation of TRPs is a blunt mechanism ill-suited for vulnerable people on TRPs. CCR believes that regulations allowing for the automatic cancellation of a TRP would be *ultra vires* in light of s. 24 of the Act. These changes would also put many in situations of risks and hardship.

There are many other valid humanitarian reasons that people are issued TRPs to stay in Canada, while potentially also being found inadmissible for a variety of reasons. It may be that someone is here for custody proceedings, but is issued a removal order for minor criminal convictions (or even for an existing inadmissibility that was contemplated before the granting of the TRP). Automatic cancellation of a TRP would create a hardship for them as they would need to seek assistance to have their TRP restored, and would create more bureaucratic work for CBSA and IRCC, rather than gaining efficiencies. TRP cancellation needs to be discretionary to give proper assessment to each individual's case. Given that TRP cancellation is a reviewable decision, it needs to remain a *decision*, not an automated process, which would go contrary to the understanding of s. 24 to date.

3. **The cost savings analysis is questionable:** The change in policy will affect people who hold permits and who, otherwise, have the ability to apply for work permits under reg 206 (these include protected persons, refugee claimants, people from moratorium countries and

potentially others). It is clear that CBSA is viewing this automation as gaining bureaucratic efficiency and consistency. However, a cost savings of \$3.82 million over 10 years is not sufficient rationale for a regulatory change that will have a significant negative impact on users, employers and provincial social services. Furthermore, it is unclear whether CBSA's costs analysis includes appreciation of:

- **Increased reliance on welfare:** the fact that many people would end up relying on social assistance because their work permits were cancelled.
- **Costs to Canadian businesses:** lost workers, new worker recruitment, and the possibility of continuing to employ someone without realizing that they no longer have a work authorization. Canada is in a labour shortage: it makes no sense to remove workers, even temporarily, from the labour force.
- **Costs to non-refugee claimants** (eg. Protected persons before the Immigration Appeal Division (IAD), applicants for the Pre-Removal Risk Assessment (PRRA)): non-claimants are not fee exempt and will have to pay for new work permits
- **Other legal and associated costs:**
 - the cost of re-issuing permits
 - potential judicial reviews of cancellation decision
 - the creation of program guidance to address specific classes of TRP holders, such as those related to human trafficking and family violence

Possible Scenarios for consideration:

A. Refugee claimant loss of study permit

X is a student in Canada who has expressed her opinions against the treatment of women in Iran on social media. She has been notified by her family that the police has inquired about her whereabouts because of her posts. Upon her return to Iran, she would be arrested. She files a refugee claim in Canada. Under the proposed amendments, her study permit would be invalidated, and she would bear personal costs and hardship while she awaits the issuance of a new permit. She would likely lose money and a semester of schooling and will need to apply for a new permit unnecessarily.

B. Refugee claimant loss of employment

D works as an engineer in Canada for a company under a Labour Market Impact Assessment (LMIA) work permit. He files a refugee claim in Canada following his opposition to the war in Ukraine. Under the proposed amendments, D's work permit would be cancelled. He could lose his position and be forced to rely on social assistance in Canada, as he waits for a new work permit (under reg 206) and seeks new employment.

C. Protected Person before the Immigration Appeal Division (IAD)

F is a Protected Person who was issued a removal order by the Immigration Division (ID) following their (potentially erroneous) assessment of criminal equivalency. F appealed the decision of the ID, yet under the proposed regulations, his work permit will be cancelled while he awaits a decision. He and his family will rely on social assistance until a new work permit is issued to him and he can secure new employment. This, in turn, would impact the person's children in Canada as well.

D. Cancellation of a work permit for a person from a moratorium country

W is a holder of a work permit in Canada and a person from a moratorium country. He was found inadmissible and was issued a removal order that is unenforceable (because his country of origin is subject to an Administrative deferral of removals).

His work permit, under the proposed regulations, will be cancelled although he will remain in Canada for the foreseeable future and is not removable. He will need to apply for a new work permit and will likely rely on social assistance during the processing times.

Note: The common issue in these four scenarios is the fact that all of these people are eligible to receive a work permit or a study permit, yet their existing authorizations will be cancelled for bureaucratic purposes. Canada will not benefit from the cancellation of these permits, yet their cancellation would have significant impact on these individuals.

E. TRP cancelled without regards to the person's need to be in Canada

R is a person who is inadmissible to Canada because she overstayed her visitor authorization. She was issued a TRP by IRCC because she was a victim of domestic violence by her ex (and intended sponsor). She also needs to remain here during a custody process concerning her Canadian child. R attended a learning institution in order to obtain credentials that would allow her to become a PSW in Canada. She was not aware she needed a study permit. She then applied for a work permit so that she may work here as a PSW under her TRP to support her

child and benefit Canada's healthcare system. CBSA issues a removal order against R for studying without a study permit. Her TRP is automatically cancelled, under the proposed amendments. While R may apply for a new TRP, she faces many months of processing before she will receive a permit and legally work in Canada.

R will potentially have to undergo a deferral and stay process. The cancellation of the TRP is done without discretion and without regard to R's circumstances.

Because of her precarious situation, R decides to return to live with her abuser in order to try and remain in Canada through a sponsorship process. She is in heightened risk of further abuse.

F. TRP cancelled without discretion for an existing inadmissibility

B is a person who is inadmissible to Canada for unauthorized work. He was issued a TRP by IRCC in order to remain here for medical treatments. CBSA issues a removal order against B for the same inadmissibility for which the TRP was issued. The existing TRP is automatically cancelled, under the proposed amendments, and B now has to engage with a deferral and stay process. The cancellation of the TRP is done without discretion and without regard to B's circumstances. The continuity of B's TRPs will be disrupted, and he will not be able to apply for permanent resident status after three years of receiving TRPs for medical reasons in Canada, as would otherwise be the case.

Consultation

CCR is also extremely concerned about the inadequate public consultation. The CCR has spoken to all 8 organizations that CBSA claimed to have invited to provide comments in advance of the publication in the Canada Gazette. Only the Canadian Bar Association and the Federation of Law Societies of Canada have any record of an invitation. We have seen that invitations were sent at the beginning of summer 2019, when people start to go on vacation. CBSA gave a very short consultation window, again over the summer. CBSA should have made much greater efforts to gain input on this proposal, particularly from the CCR, given our discussions with the CBSA on this issue over many years.

The CCR has repeatedly brought up our concerns about the cancellation of work and study permits for people whose removal order becomes enforceable. Thus, we are perplexed as to why CBSA would not have made a greater effort to consult us, including by mentioning the proposed change and consultation invitation in our regular meetings.

The Canadian Association of Refugee Lawyers, the British Columbia Civil Liberties Association, the Canadian Association of Professional Immigration Consultants, the Canadian Bar Association, and the Association québécoise des avocats et avocates en droit d'immigration have all indicated to us that they also have serious concerns about the proposed change and that they would like the opportunity to consult.

We urge to CBSA to look at your internal consultation procedures to ensure that this does not happen with future proposed changes.

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