



Canadian Association of
Professional Immigration Consultants

L'Association Canadienne des
Conseillers Professionnels en Immigration

CAPIC's Recommendations for the Proposed IRPR Amendment of Temporary Resident Document Cancellation

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CAPIC reviewed Canada Gazette, Part I, Volume 158, Number 24: Regulations Amending the Immigration and Refugee Protection Regulations ([Cancellation of Immigration Documents](#)) and conducted extensive research on the topic.

Based on the initiatives taken, CAPIC submits this submission in lieu of the expected online comments to afford more room for statutory and regulatory analysis. The submission consists of comments on four sections: Issues, Objective, Consultation of Regulatory Development, and Proposed Regulatory Text.

CAPIC has concerns about the unintended consequences brought by the legal effect of cancellation of temporary resident documents on the grounds that the document was issued based on an administrative error, namely, the proposed

- paragraph 12.07(c) for electronic travel authorization cancellation (eTA),
- paragraph 180.1(g) for temporary resident visa cancellation (TRV),
- sections 209.01 for work permit cancellation, and
- section 222.1 for study permit cancellation.

Background

This Amendment intends to address the issue of inconsistencies in authorities within the *Immigration and Refugee Protection Regulations, SOR/2002-227 (IRPR)* concerning the cancellation of temporary resident documents on the grounds related to eligibility, admissibility, and operational administration. The issue results in inefficiency and inconsistency in decision-making and creates program integrity challenges.

The intended objective is to facilitate entry of foreign nationals while the health, safety, and security of Canadians are protected. To cancel temporary resident documents under consistent authorities, the Amendment expects to improve both processing efficiencies and safety and security at the border and inside Canada.

The concerns that may hinder the intended objective expressed by CAPIC are based on the following legal analysis.

1. Legal authorities

IRPR is enabled by the *Immigration and Refugee Protection Act*, SC 2001, c. 27 (IRPA). Its amendments should be within the framework of IRPA.

(1) Cancellation authorities prescribed by IRPA

IRPA adopts “revoke” and “cancel” for discrete purposes. The former is used in IRPA for the same effect as “cancel” used in IRPR. The latter is for conditions, removal order stay, and interlocutory documents, i.e., cancellation of an invitation to apply (ITA) in subsection 10.2(5).

The provisions that adopt “revoke” are as follows:

- Subsections 30(1.41) and (1.42): Work permit revocation based on public considerations specified in Ministerial Instructions (MIs).
- Subsection 30(1.42): Work permit revocation based on other lawful authority.
- Paragraph 30(1.43) (a) and: Labour market impact assessment (LMIA) revocation concerning a work permit application based on public considerations specified in MIs.
- Subsection 30(1.44): LMIA revocation based on other lawful authority prescribed by subsection 30(1.43).
- Paragraph 32(f): Enabling authority for making regulations concerning issuing, renewing, or revoking travel documents or immigration documents indicating status.

The provisions that adopt “cancel” are as follows:

- Subsection 10.2(5): The cancellation of an ITA prescribed in subsection 10.1(1), namely, an Express Entry ITA, if it was issued in error.
- Subsection 24(1): The issuance of a temporary resident permit (TRP) that may be cancelled at any time.
- Paragraph 47(c): Loss of temporary resident status as the legal effect of a TRP cancellation.
- Paragraphs 26(1)(d): Enabling provision for making regulations for imposing, varying, and cancelling conditions for matters governed by sections 18 to 25.2, namely, provisions stipulating entering and remaining in Canada.
- Paragraphs 32(d) and 32(d.1): Enabling provisions for making regulations for imposing, varying, and cancelling conditions for matters governed by sections 27 to 31, namely, provisions stipulating rights and obligations of permanent and temporary residents, etc.
- Paragraph 53(a): Enabling provisions for making regulations for imposing and cancelling conditions concerning loss of status and removal.

- Paragraph 68(2)(b) to (d): Imposing, varying, and cancelling conditions and cancelling stay of removal order by the Immigration Appeal Division.
- Subsection 68(4): Cancelling stay of removal order by operation of law.
- Subsection 114(2): Cancelling stay of removal order by Minister.

CAPIC noticed the different effects of provisions of IRPA using “revoke” and “cancel.” The former has a direct impact on immigration status or entry to Canada for foreign nationals, and the latter has the same impact only when the person concerned is initially inadmissible, ineligible, being determined inadmissible, being offered an immigration opportunity (in the case of ITA), or no adverse impact (in the case of cancelling removal order conditions).

Furthermore, “revoke” is not used for administrative error correction in IRPA. “Cancel” is used for such a purpose in subsection 10(5) about an ITA. The issuance of an ITA does not grant any status, but the opportunity of applying for permanent residence. The impact of such cancellation has little legal effect.

Because paragraph 32(f) enables regulations to make provisions respecting the circumstances that a status document may or must be revoked, despite the wording adopted differently, such authority bestowed on IRPR is clear. However, the above analysis indicates that IRPA is prudent in dealing with status documents. Even though IRPA leaves it open for the regulations to specify the circumstances for a status document revocation, which is identical to cancellation in the Amendment, it is hard to conclude that administrative error correction is among the circumstances given the spirit of IRPA.

(2) Cancellation authorities prescribed by IRPR

IRPR adopts cancellation for conditions, removal order stays, and temporary resident documents, namely, eTA, TRV, work permit, and study permit.

It adopts “revoke” when immigration documents concerning permanent resident status, designation loss, or legal changes such as adoption or conviction.

The current temporary resident document cancellations prescribed by IRPR are as follows:

- Paragraph 12.05(1)(b): The invalidity of an electronic travel authorization (eTA) on cancellation.
- Section 12.07: Officer’s authority to cancel an eTA according to section 12.06.
- Subsection 63(a): The invalidity of a temporary resident permit on cancellation according to subsection 24(1) of IRPA or section 243.1.

- Section 209: The invalidity of a work permit upon cancellation according to section 243.2.
- Section 222: The invalidity of a study permit upon cancellation according to section 243.2
- Section 243.1: The cancellation of a temporary resident visa (TRV), an eTA, and a TRP.
- Section 243.2: The cancellation of a work permit and study permit.

Subsection 63(a), sections 209 and 222 were amended at the same time when sections 243.1 and 243.2 were introduced by *Regulations Amending the Immigration and Refugee Protection Regulations*, [SOR/2024-11](#), which came into force on March 15, 2024.

The regulatory history shows that the cancellation of status documents is a recent approach and cancellation on the grounds that the documents were issues based on an administrative error is a new approach.

2. The legal effect of temporary resident immigration document cancellation

The issuance of a temporary resident document is after an examination confirming the applicant is eligible and not inadmissible according to sections 11(1) and 11(1.01) of IRPA and section 179 of IRPR.

The admission of temporary residents pursuant to subsection 22(1) of IRPA confirms that the foreign national meets the obligations set out in paragraph 20(1)(b) of IRPA, namely, he/she has established that he/she holds a visa or other document and will leave Canada by the end of the authorized stay.

Given the Objective specified, the Amendment targets foreign nationals at the border and in Canada. The cancellation of a temporary resident immigration document has a significant legal impact on these document holders. If they are at the stage of seeking entry, their entry will be denied. If they are in Canada, the effect is the loss of temporary resident status, and thus the foreign national must leave Canada. In either circumstance, the cancellation will result in disruption to their lives, especially if they are international students, foreign workers, or super visa holders whose authorized stays are relatively long compared to visitors.

3. The issuance by administrative error analysis

Issuance of an immigration document out of an administrative error is either caused by misrepresentation from the applicant or by mismanagement from the immigration authority. If the proposed Amendment concerning this is to address the former, IRPA already has an efficient mechanism to deal with it. If it is to

address the latter, we may have to explore the answer to this question: Would cancellation be the proper solution to address the issue?

(1) The legal effect of administrative-error-related matters in IRPA

Subsection 40(1)(a) of IRPA addresses administrative errors that are induced or could be induced by misrepresentation. Misrepresentation is one of the grounds for inadmissibility, which will bar a foreign national's entry to Canada for five years. Deliberate misrepresentation is a criminal offence as per paragraph 127(a) of IRPA. Also, counselling misrepresentation that may result in an administrative error is a criminal offence under section 126 of IRPA.

A person who contravenes sections 126 or 127 of IRPA is liable to a fine or imprisonment according to section 128 of IRPA.

IRPA is clear about administrative errors arising from the actions of applicants. The premise of IRPA's mechanism dealing with administrative errors is clear, which is to protect the integrity of the Canadian immigration system. Its provisions are sufficient to tackle administrative errors induced by applicants' doings.

(2) The implication from the combination effect of the above-mentioned IRPA provisions and the proposed administrative-error-related cancellation

With an effective mechanism supplied by IRPA, it is hard for us to see the rationale of the proposed cancellation concerning tackling administrative errors. If CAPIC presumes that it is to address such an issue caused by problematic performance on the immigration authority's side, then we have doubts whether it would be a solution. We fail to see how inefficiency and other issues caused by administrative performance can be dismissed or improved by cancelling applicants who are just passive recipients of erroneously made decisions.

4. The potential unintended consequences

Based on our analysis, the cancellation on the grounds of the issuance of documents based on an administrative error may have the following unintended consequences:

(1) More inefficiency

If cancellation on such grounds is to address administrative errors on the immigration authority's end without the document holders' fault, it may cause further inefficiency. Having document holders bear the consequences of

decision-makers' errors may erode accountability. Without accountability, more errors would be expected.

(2) More overstays and fraudulent refugee claims

Foreign nationals, without legal status in Canada, are expected to leave Canada unless they are refugee claimants with pending refugee claims. If they fail to comply, they should be removed by the Canada Border Services Agency (CBSA). According to 2020 Spring Reports of the Auditor General of Canada to the Parliament of Canada Report 1—[Immigration Removals](#), the majority of individuals who were subject to enforceable removal orders were not removed (see 1.47).

The federal government re-imposed the TRV requirement for Mexico citizens with some exemptions. The [cause](#) was the high unsuccessful rate of refugee claims from Mexican citizens. The number of international students filing for refugee protection is also [on the rise](#). It reveals a trend of foreign nationals utilizing all potential paths to remain in Canada regardless of what they should do.

Without an adequate mechanism to address efficient removals, the cancellation of temporary resident documents may bring more issues that plague the integrity of the immigration system.

(3) More judicial review applications on the grounds of legitimate expectation

When an applicant was issued his/her applied immigration document after the first round of examination and shows up at the border, it is hard for a CBSA officer to convince them that they should accept the cancellation of the documents they hold with the reasoning that it was issued out of an administrative error. It would be harder for a temporary resident in Canada who has passed the port of entry examination and has legally stayed in Canada for a while to accept such an error without doubts.

Immigration matters have been heavily litigated before the Federal Court according to the Court's [statistics](#). The legitimate expectation, which is an element of fundamental justice, is an issue being raised before the Federal Court numerous times. Cancellation without fault on the persons-concerned side may have the risk of triggering more judicial review applications.

(4) Charter concerns

After the coming into force of a statute or regulation, its provisions can be struck down if a competent court declares that it is inoperative with the [Canadian Charter of Rights and Freedoms](#) (the Charter). We would like to post a question for consideration: If examining the provisions of cancellation on administrative errors without the document holders' fault from the perspective of the Federal Court, would they stand the applicable legal tests concerning the Charter?

Recommendations

Based on the above analysis, CAPIC provides recommendations as follows. While the first and second recommendations are forward-looking for future public consultation, the third one is for the Amendment per se.

1. **Objective:** Provide a more elaborate legal rationale about how the proposed amendment can achieve the intended objective and to address the issue identified, which will allow a more meaningful public consultation.
2. **Regulatory development—Consultation:** Consult industrial stakeholders when developing regulatory amendments, which will afford a thorough analysis to assist with regulatory development.
3. **Proposed regulatory text:** Conduct a thorough legal examination on the impact of the cancellation on the grounds of administrative errors to avoid potential unintended consequences—make changes if necessary.

About CAPIC

The Canadian Association of Professional Immigration Consultants (CAPIC) is the professional organization representing the interests of Canadian Immigration Consultants. The organization advocates for competency, ethical conduct, and consumer protection in the immigration consulting industry. CAPIC's mission is to lead, connect, protect, and develop the profession, serving the best interests of its nearly 5000 members. It is the only association recognized by the Government of Canada as the voice of Canadian immigration and citizenship consultants. CAPIC is a major stakeholder consulting with federal and provincial governments and their respective departments on legislation, policy, and program improvements and changes.

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