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Via email: [Caroline.Fobes@cic.gc.ca](mailto:Caroline.Fobes@cic.gc.ca)

Caroline Fobes  
Executive Director and Senior General Counsel  
Immigration, Refugees and Citizenship  
365 Laurier Avenue West  
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Dear Caroline Fobes:

**Re: Recommendations to Clarify Temporary Resident Status for Visitors**

We write on behalf of the Immigration Law Section of the Canadian Bar Association (CBA Section) to suggest how the *Immigration and Refugee Protection Regulations (IRPR)* ought to be interpreted and applied by Immigration, Refugees and Citizenship Canada (IRCC) and Canada Border Services Agency (CBSA) with respect to the validity of Visitor Records.

The CBA is a national association of 37,000 members, including lawyers, notaries, academics and students across Canada, with a mandate to seek improvements in the law and the administration of justice. The CBA Section has approximately 1,200 members across Canada practising in all areas of immigration and refugee law.

**Background**

The impetus for this letter is a series of exchanges with the Immigration Representatives Mailbox (ImmREPS) which suggested that Visitor Records may become invalid on departure from Canada. This conclusion resulted from the interpretation that IRPR 183(4)(a) determines the end of the authorized period of stay for holders of Visitor Records.

The difficulty with the ImmReps interpretation is that many visitors will re-enter Canada with a previously-issued Visitor Record that they believe has not yet expired. They presume they have status as a visitor until the noted date of expiry. However, CBA Section members have noted situations when visitors applied from within Canada to extend their visitor status, to be advised that their status expired six months after their most recent entry to Canada because no new Visitor Record was issued, and that they must apply for restoration (assuming they are within the time to do so).

It is not always clear how the situation transpires at the port of entry. A likely scenario is that the visitor provided a copy of the previously issued Visitor Record but nothing was entered into the

system to denote that they were admitted on the basis of that document, and some time later an in-land officer decides the visitor no longer has status.

## **Applicable IRPR Sections**

**183 ...**

### ***Authorized period of stay***

*(2) Subject to subsections (3) to (5), the period authorized for the stay of a temporary resident is six months or any other period that is fixed by an officer on the basis of*

*(a) the temporary resident's means of support in Canada;*

*(b) the period for which the temporary resident applies to stay; and*

*(c) the expiry of the temporary resident's passport or other travel document.*

### ***Authorized period ends***

*(4) The period authorized for a temporary resident's stay ends on the earliest of*

*(a) the day on which the temporary resident leaves Canada without obtaining prior authorization to re-enter Canada;*

*(b) the day on which their permit becomes invalid, in the case of a temporary resident who has been issued either a work permit or a study permit;*

*(b.1) the day on which the second of their permits becomes invalid, in the case of a temporary resident who has been issued a work permit and a study permit;*

*(c) the day on which any temporary resident permit issued to the temporary resident is no longer valid under section 63;*

*(c.1) in the case of a person who is required by section 10.01 of the Act to provide their biometric information, the day on which the period of 10 years following the latest day on which the person provided their biometric information under section 10.01 of the Act ends; or*

*(d) the day on which the period authorized under subsection (2) ends, if paragraphs (a) to (c) do not apply.*

**185** *An officer may impose, vary or cancel the following specific conditions on a temporary resident:*

*(a) the period authorized for their stay*

## **Recommendation**

IRPR sections 183 and 185 ought to be read together and interpreted to conclude that the period of authorized stay on a Visitor Record continues to apply on re-entry to Canada. This interpretation will ensure consistent application of the law by IRCC and CBSA and predictability for immigration representatives and applicants. We recommend that the applicable operational manuals be amended to reference our suggested interpretation, to ensure consistency.

The default position from IRCC and CBSA should be that a Visitor Record remains valid on departure from Canada and if a person is readmitted to Canada on a Visitor Record, the period of authorized stay continues to be that stated on the Visitor Record produced at the time of readmission. The end of the period of authorized stay for a person readmitted to Canada on a Visitor Record should be determined by IRPR 183(4)(d). Moreover, once a person holding a Visitor

Record is readmitted to Canada, it should be deemed that the Border Services Officer (BSO) exercised their discretion under IRPR 183(2)(b) to fix the period of authorized stay as that indicated on the Visitor Record presented at the time of re-entry. It should not be necessary for notes to be entered into the system since it is neither practical to expect all officers to do so nor for all visitors to insist that it be done.

The CBA Section also recommends that if the BSO decides to deviate from the default interpretation on re-entry and exercises their discretion under IRPR 185(a), they must issue a passport stamp with a mandatory departure date or a new Visitor Record to clearly denote that the previous Visitor Record is no longer valid and a new period of authorized stay applies. Absent a new Visitor Record or passport stamp with mandatory departure date, the visitor should be able to rely on the period of authorized stay indicated in the Visitor Record produced at the time of their re-entry.

### **Basis for Recommendation**

IMMReps has taken the position that Visitor Records are automatically invalidated on departure from Canada. However, IMMReps has also stated that BSOs have discretion to proceed in a number of ways when presented with a Visitor Record at the time of re-entry (each with different legal consequences) including overriding a Visitor Record's alleged automatic invalidation and facilitating re-admission on the basis of same.

The difficulty is that in practice, BSOs do not always issue a new Visitor Record or passport stamp when an individual presents a Visitor Record at the time of re-entry. In many cases, individuals with Visitor Records have limited interactions with BSOs since they are presenting what appears to be a valid immigration document that denotes a pre-determined expiry date.

If an applicant presents a Visitor Record and is readmitted to Canada without a passport stamp indicating a mandatory departure date or a new Visitor Record, there is no reason for them to assume that a shorter period of authorized stay has been applied. Indeed, by presenting their previously issued Visitor Record to a BSO on re-entry to Canada, they are in essence applying for the period initially authorized for their stay and would rightfully assume that the BSO is exercising discretion under IRPR 183(2)(b) to approve this request if they are readmitted without a new Visitor Record or passport stamp indicating a different mandatory departure date.

Distinguishing between the validity of Work/Study Permits and Visitor Records is not only likely to create confusion, it is logically inconsistent. It is generally presumed by officers, lawyers and affected temporary residents that Work Permits and Study Permits can be relied on for status when re-entering Canada. A very narrow interpretation of IRPR 183(4) would mean that a Work Permit expires when a temporary resident departs Canada since there was no prior authorization to re-enter as referenced in IRPR 183(4)(a). This interpretation is untenable given the practicalities. There is no justification to interpret the duration of Visitor Records differently.

Moreover, in many cases Visitor Records are issued to facilitate study or work. Examples include the minor child of a foreign worker who is issued a Visitor Record to attend primary or secondary level studies, or the Work Permit exempt foreign national coming to provide professional services under a 15/30-day Work Permit exemption.

Interpreting an immigration document that appears valid on its face to be automatically invalidated on departure, without clear and consistent mechanisms to communicate this to immigration applicants, is bound to create confusion, unintentional non-compliance and inconsistencies in the application of the law. A more realistic and practical interpretation of the applicable *Regulations* is that a Visitor Record remains valid on departure from Canada and the period of authorized stay

continues *unless* a new period of authorized stay is established by a new Visitor Record or passport stamp at the time of re-entry,

Consistent interpretation and predictability in the law is essential to ensure that immigration applicants are able to comply and that immigration representatives can properly advise their clients.

### **Conclusion**

The CBA Section appreciates the opportunity to comment on this important topic. We would be pleased to discuss our recommendations, offer additional insights, and assist with the development and implementation of relevant policies and regulatory amendments.

Yours truly,

*(original letter signed by Véronique Morissette for Lisa Middlemiss)*

Lisa Middlemiss  
Chair, CBA Immigration Law Section

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