To: Legislative Council Office, Government of Nova Scotia

And To: The Standing Committee on Public Bills, Government of Nova Scotia

Re: Submission in respect of Bill 36 – *Free Trade and Mobility within Canada Act*

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A Bold Approach to Internal Trade Barriers: Nova Scotia's Mutual Recognition Legislation

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Executive Summary

National alarm over Trump's tariffs has reminded Canadians that we don't trade well with each other within our own borders. We self-sabotage ourselves with domestic trade obstacles that hinder economic growth and security. Right now, Canada's interprovincial trade barriers are a patchwork of conflicting laws and regulations that impose undue restraint on goods, services and labour seeking to cross an internal frontier. Everything from high-visibility safety apparel to electrical codes to healthcare professionals. These barriers are harmful to Canadian growth and prosperity: by one estimate they add between 7.8 and 14.5 per cent to the price of goods and services.[2] Over the past thirty years, the chief means of imposing trade

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[2] Alvarez, Jorge, Mr Ivo Krznar, and Trevor Tombe. *Internal trade in Canada: case for liberalization*. International Monetary Fund, 2019.

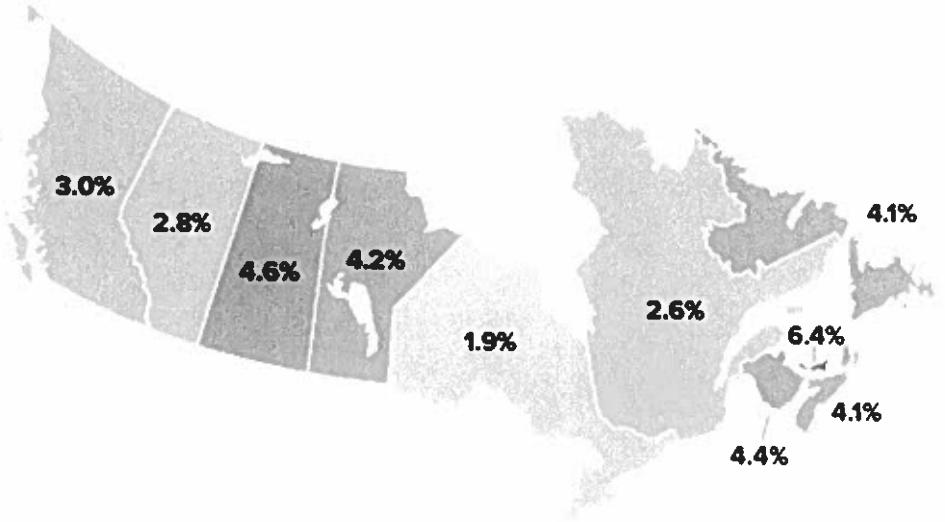
discipline has been through the ecosystem of domestic Canadian trade agreements. These include the pan-national *Canadian Free Trade Agreement* (CFTA) and western Canada's *New West Partnership Trade Agreement* (NWPTA) amongst several others. These agreements offer various tools to reduce trade barriers but on in particular has commanded the attention of the nation: mutual recognition.

Mutual recognition (MR) briefly defined is an arrangement where two or more governments agree to accept each other's standards, regulations or laws in respect of goods, labour and services without the need for additional testing or compliance checks. This approach stands in contrast to that of harmonization, which requires uniform rules. Governments find MR attractive relative to harmonization as they can preserve their own standards and then choose to recognize those of others, thereby retaining greater local autonomy and policy flexibility. Mutual recognition was recognized as a solution for internal trade barriers as early as the 1995 AIT; from 2019 to 2022, then-Alberta Premier Jason Kenney elevated its profile significantly, and it has since gained even greater traction domestically. This trajectory has led to Nova Scotia's Bill 36, a landmark in nation-building that not only strengthens the province's own prosperity but also sets a bold precedent for Canada's economic union. With the potential to reshape the country's economic landscape more profoundly than almost any measure since Confederation, the nation is watching closely.

Within the context of Canadian interprovincial trade history from pre-Confederation to the present, enshrining broad-based mutual recognition by way of provincial legislation in the manner advanced by Nova Scotia would represent a massive advancement for freer internal trade. There is clear economic evidence showing that Canadian provinces and territories would

benefit even if they adopted unilateral mutual recognition.[3] This is especially the case for Nova Scotia. As seen in Figure 1 below, a unilateral 10% reduction in trade barriers could boost provincial GDP by 4.1%, underscoring the tangible benefits of this initiative.[4]

FIGURE 1: Economic gains from a 10 per cent unilateral reduction in trade costs



Note: This figure displays the change in each province's real GDP following a 10 per cent reduction in the cost of importing goods and services from other parts of Canada

Reproduced from: Trevor Tombe, "Breaking Barriers: How provinces can drive Canada's prosperity by unlocking trade and labour mobility." Macdonald-Laurier Institute, February 2025.

Nova Scotia/Canada is not the first jurisdiction to experiment with internal mutual recognition legislation: it finds robust precedent in both Australia and the European Union. With

[3] Tombe, Trevor. 2025. "Breaking Barriers: How Provinces can drive Canada's prosperity by unlocking trade and labour mobility." Macdonald-Laurier Institute, February 2025. See also Manucha, Ryan and Trevor Tombe. 2022. "Liberalizing Internal Trade Through Mutual Recognition: A Legal and Economic Analysis." Macdonald-Laurier Institute, September 2022.

[4] Tombe, Trevor. 2025. "Internal Trade Barriers in Canada: Challenges and Opportunities." Macdonald-Laurier Institute, February 2025.

a combined seven decades of experience, these polities offer Nova Scotia (and its similarly-inclined partners in mutual recognition, e.g. Ontario and British Columbia) valuable lessons on effectuating mutual recognition via law. Learnings from these models can inform how to build upon the foundation established by Nova Scotia's precedent-setting proposed legislation. As the "first mover," Nova Scotia has the unique advantage of shaping the framework of the legislation but also the responsibility to craft a well-considered and effective policy.

Ascendant economic isolationism around the world, particularly by our southerly trading partner, opens a window to contemplate ambitious reforms to tackle domestic trade barriers. And learning from experiments to legislate mutual recognition abroad is key to its successful implementation in Canada.

Unlocking Prosperity with Insights from Abroad

While negotiating in draughty halls in Charlottetown and Quebec City, Canada's Fathers of Confederation watched the US Civil War as a cautionary tale. They took lessons from this conflagration that pitted neighbours against one another, as well as independence movements across the globe from the French Revolution onwards, and incorporated them into the *Constitution Act, 1867*. Thanks in part to teachings accrued from the trial and error of others, Canada has one of the most durable, vibrant and longest-living democracies in the world.

Nova Scotia, and Canada more generally, is once again well positioned to reap insights from abroad to strengthen its economic union. Against the backdrop of rising economic integration both south of the border and across the Western world, provinces and territories embracing mutual recognition would mark a significant step forward for their own prosperity—and for Canada's as a whole. Short of Confederation itself, there are few policy approaches that could be more effective at liberalizing trade amongst the provinces and territories. With a combined seven decades of experience between Australia and the European Union to draw from, Nova Scotia and other Canadian governments can learn from two instances of effectuating mutual recognition via legislation and/or regulation. Importantly, by studying two different experiences, it is possible to extrapolate system-level insights to inform a wholly-Canadian approach to mutual recognition legislation.

The Timeliness of Nova Scotian Leadership

Canada's interprovincial trade barriers stem from conflicting laws and regulations that make it hard for goods, services and labour to cross a domestic border. Everything from high-

visibility safety apparel to electrical codes to healthcare professionals. These barriers are harmful to Canadian growth and prosperity: by one estimate they add between 7.8 and 14.5 per cent to the price of goods and services.[5] They contribute to the housing and healthcare crises endured across the country, hinder individual freedom of movement, dampen competitive intensity and make it that much harder for small businesses to flourish.

Internal Trade Barrier Example: Interprovincial Trucking

Varying trucking regulations across provinces add 8.3 percent to freight rates, causing $500m in direct economic losses. Full barrier removal could increase Canada's real GDP by over $1.6 billion.

Illustrative examples of barriers:

- Differing driver qualifications for long combination vehicles
- Variation in trailer registration validity periods
- Varying caps on the maximum sizes of tow trucks
- Non-unified oversize/overweight permitting processes
- Differing weight allowances for self-steer quad semi-trailers depending on tire size

Source: Manucha, Ryan and Trevor Tombe. 2024. "Roadblocks Ahead: Internal Barriers to Trade in Canada's Truck Transportation Sector". Macdonald-Laurier Institute, May 2024.

[5] Alvarez, Jorge, Mr Ivo Krznar, and Trevor Tombe. *Internal trade in Canada: case for liberalization*. International Monetary Fund, 2019.

Internal trade reform typically comes during critical windows of opportunity. Canada, Australia and the European Union, seized upon these crucial moments successfully in the past. Coalescing factors suggest that now is another promising chance for reform.

In Australia, the uptake of mutual recognition legislation in 1992 came during a period when Australia's economy was under increasing strain from the forces of globalization.[6] In the late 1980s and early 1990s, state policy leaders across the country shared economic competitiveness as a top priority.[7] Subnational governments were aligned on the need for internal market reform, and cooperative Commonwealth leadership was generally well-received.

In the EU, a lack of progress on internal market harmonization inspired the European Commission to pivot to a new strategy in the mid-1980s based on mutual recognition.[8] Business group interest, pan-European pressure for greater liberalization and ambitious political leadership during the period played significant roles.[9]

In Canada, reform by way of the CFTA's predecessor, the 1995 *Agreement on Internal Trade*, was a product of concurrent factors. Failed attempts at constitutional amendment, high awareness of the utility of free trade agreements, and a looming Quebec secession referendum collectively propelled a pan-Canadian intergovernmental trade agreement.[10]

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[6] Brown, Douglas. *Market Rules: Economic Union Reform and Intergovernmental Policy-Making In Australia And Canada*. McGill-Queen's Press-MQUP, 2003, at 40.
[7] Brown, 196.
[8] Janssens, Christine. *The Principle of Mutual Recognition in EU Law*. OUP Oxford, 2013, at 57.
[9] Moravcsik, Andrew. "Negotiating the Single European Act: national interests and conventional statecraft in the European Community." *International organization* 45, no. 1 (1991): 19-56.
[10] Manucha, Ryan. *Booze, Cigarettes, and Constitutional Dust-Ups: Canada's Quest for Interprovincial Free Trade*. McGill-Queen's Press-MQUP, 2022.

Another rare window for reform has opened because of post-pandemic shocks to the economy and supply chains, affordability challenges across the country, lackluster growth, growing global economic instability, the ascendancy of isolationism amongst global trading powers and a protectionist Trump administration in the US. Together these factors make economic union reform efforts exceptionally opportune.

Impetus for a Legislative Approach to Mutual Recognition

Canada has nearly thirty years of experience with a pan-Canadian domestic trade agreement, and nearly eight with the Regulatory Reconciliation and Cooperation Table (RCT). The RCT is a venue that was invented in 2017 when the CFTA replaced its predecessor (the AIT). It serves as a vital forum for Canada's governments to resolve the multitude of regulatory divergences that are the root cause of most trade barriers in contemporary Canada, and can be credited for some wins such as the 2019 reconciliation of construction codes which is set to produce annual savings of $1B per year starting in 2028.[11] However, actors and observers alike yearned for greater progress, paving the way for the addition of the infamous Item 30[12] to the RCT's work plan in 2021-2022. Item 30 is a bold attempt to move the needle by prioritizing mutual recognition. When initially added, Item 30 explicitly targeted a December 31, 2024 deadline for an agreement on widespread mutual recognition for goods and services.[13] (That

[11] Regulatory Reconciliation and Cooperation Table. *Reconciliation Agreement on Construction Codes*. (2019). Retrieved at https://rct-tccr.ca/wp-content/uploads/2023/07/Construction-Codes-RA-2019.pdf.

[12] Item 30 as articulated on the RCT work plan calls for "the identification and mutual recognition of regulatory measures, such that any good or service that may legally be sold or provided in the jurisdiction of one Party may legally be sold or provided in the jurisdiction of all other Parties, without further material requirements, unless specifically listed as an exclusion."

[13] Specifically, the goal under the 2021-2022 RCT Work Plan was a full reconciliation agreement on goods and services that utilized mutual recognition.

date has since been amended to December 31, 2025: still a remote possibility). Despite its lofty ambition, Item 30's addition loudly signaled a shift towards mutual recognition as the key means of reducing trade barriers. Unsurprisingly to many, progress on implementing Item 30 under the CFTA has largely stalled. Advancing broad-based mutual recognition now appears to depend on a coalition of willing First Ministers, aided by the Committee on Internal Trade (a body of cabinet-level appointees).

How did Item 30 stall?: The constraints of institutional setup. As a voluntary intergovernmental political agreement, the CFTA's mandate to drive synchronized regulatory reform across as many as 14 governments on any particular issue encounters strong headwinds. Moreover, its capabilities as a consensus-based institution largely dependent on political direction must not be overestimated. CFTA/RCT reform efforts are also easily mired in other obstacles: regulatory inertia and turf protection, ever-present dependency on political intervention to overcome conflicting stakeholder interests, and limited goodwill amongst provincial governments. It should not be lost, however, that resistance to change may be grounded in legitimate objections. For instance: it is a fact that heavy trucks impact highways differently during springtime thaw depending on a province's local soil conditions. In such cases, robust inter-regulator exchange ensures that well-founded concerns are addressed and safeguarded, while exposing illegitimate or unsubstantiated claims.

But structure is not the only hindrance to mutual recognition's widespread rollout under the CFTA. It is now increasingly the case that officials of junior rank occupy (in title or in practice) the role of RCT Representative ("RCT Rep"). It was originally envisioned that RCT Reps would be at a Deputy Minister or Director level, as such individuals would not only have

significant negotiation and project management experience, but also have the requisite professional/social linkages within their home governments to undertake whole-of-government reform exercises. For something as far reaching as Item 30, the problem of junior government officials occupying RCT Rep seats is magnified. Without the authority or connections to achieve progress on politically sensitive regulatory matters, the hope for mutual recognition on a broad scale is diminished. Certainly, the CFTA & RCT are important institutions and should remain a component of the nation's approach to internal trade liberalization, including through harmonization and regulatory cooperation. But its voluntary, non-binding nature and other structural limitations must be understood, and alternatives (like legislation) at least considered.

On the bright side, the addition of Item 30 (mutual recognition) to the RCT's work plan suggests Canada has awakened to the same realization that Europe came to in the late 1970s, and that Australia came to in the mid 1980s: harmonization of regulations and standards is exceptionally challenging whereas mutual recognition offers a much more promising path towards successful outcomes. Mutual recognition offers an attractive middle ground between strict territorialism and universalist harmonization.[14] Driving licenses offer an elegant illustration of mutual recognition's advantages. A duly licensed Quebec soccer dad can shuttle his kid to a tournament in Ontario in his sedan all without him needing to take a driver's test upon crossing the border, or Ontario forcing Quebec to match its credentialing system. However, the heavy lifting of expedient and scalable implementation remains.

Personal championing by a First Minister is arguably the only way to make broad-based mutual recognition a reality. It is thus unsurprising that, given the strong calls for meaningful

[14] Berman, Paul Schiff. 2007. "Global Legal Pluralism." *Southern California Law Review* 80, 6: 1155–1238.

internal trade liberalization in the face of ascendant US economic nationalism when paired with the analysis above, Nova Scotia's Premier Tim Houston tabled conditional mutual recognition legislation rather than pursue a CFTA-based solution. The provincial bill provides for the recognition of goods, workers and services of another province or territory that enacts similar mutual recognition legislation. Both Ontario and British Columbia have given early indication that they will follow suit. The extent to which other provinces and territories join on remains to be seen. **As the "first mover," Nova Scotia has the unique advantage of shaping the framework of the legislation but also the responsibility to craft a well-considered and effective policy.**

Nova Scotia's mutual recognition bill is exceptionally short, and effectively conveys the Premier's policy direction in favour of broad-based mutual recognition. Its simplicity is powerful in communicating a higher bar for free internal trade. However, to actually achieve its intended purpose, Nova Scotia (along with companion provinces and territories that enact similar laws) will undoubtedly need to add structure and substance. The bill in its concise form heralds significant change to the current way of doing business, necessitating greater detailed provisions to resolve ambiguities and address the complexities of implementation. To solve for this shortcoming, lawmakers can leverage insights from the European Union and Australia.

Origins and Legal Bases for Mutual Recognition in Europe and Australia

EU politicians increasingly looked to MR during a period when it was struggling to achieve unanimity in rules and regulations.[15] By the 1980s, the EU launched a new legislative strategy that combined MR with minimum harmonization. The principle of MR had emerged as a cornerstone of Europe's internal market a few years earlier, ever since the European Court of Justice (ECJ) *Cassis de Dijon* ruling in 1979.[16] ECJ case law provides that MR's legal basis is grounded in one of the EU's constating instruments: the Treaty on the Functioning of the European Union (TFEU). Specifically, the TFEU's free movement provisions validate and justify MR legislation.[17] Over time, the EU has introduced specific legislation ("directives") as well as regulations to operationalize MR effort.[18]

A review of the empirical economic literature reveals that MRAs yield material benefits: they increase the value of exports by between 15% to 40% and increase the probability that a firm exports new products to new markets by up to 50%.[19] A 2019 research study found significant positive impacts stemming from the EU's single market. The authors estimated annual real income benefits of approximately 987 billion euros for 2017 alone. And without a

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[15] Janssens, 36.
[16] Ibid, 79.
[17] Ibid, 36-40.
[18] Three important examples guiding this paper's insights: (i) Directive 2005/36/EC on the recognition of professional qualifications, (ii) Directive 2006/123/EC on services in the internal market, and (iii) Regulation 2019/151 on the Recognition of Goods Lawfully Marketed in Another EU Country.
[19] See Cernat, Lucian (2022) : How important are mutual recognition agreements for trade facilitation?, ECIPE Policy Brief, No. 10/2022, European Centre for International Political Economy (ECIPE), Brussels (citing Chen, M. X. and Mattoo, A. (2008). Regionalism in standards: good or bad for trade? Canadian Journal of Economics 41 (3), Baller, S. (2007). Trade effects of regional standards liberalisation: a heterogeneous firms approach. World Bank, and Prayer, T. (2021). The effect of MRAs on firm-product-level international trade. ITFA working paper).

single market, income per capital would decline 6.43%.[20] Though the 2019 study did not isolate the impact of mutual recognition instruments on their own, these laws and regulations serve as fundamental underpinnings to the single market arrangement.

One criticism of mutual recognition that has surfaced in the EU - and which is relevant to Nova Scotia and Canada - is that it undermines local autonomy, as a government's monopoly on power is to some degree weakened if it is required to recognize the laws/regulations of another. However, as was seen in the European experience, well-designed mutual recognition schemes allow room for derogation on grounds with legitimate justification, which attenuates this concern.

Australia directly borrowed the idea of MR from Europe.[21] The larger states, particularly New South Wales, successfully argued that issue-by-issue regulatory standardization (which Australia's federal government had initially preferred) would prove less successful as turf wars would play out during negotiations of each and every regulatory domain.[22] Following broad consensus to shift gears away from harmonization and in favour of MR, Australia's federal government (the "Commonwealth") demonstrated a preference to leave it to the states to reach an acceptable MR scheme on their own.[23] As a result, the legislative MR approach was driven by the states, and New South Wales in particular. (In the Canadian context, this would be like Ontario driving mutual recognition). Australia eventually settled on legislating mutual

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[20] European Parliament. *The Principle of Mutual Recognition in the Internal Market and the EU Legislative Framework for Its Application to Goods*. European Parliamentary Research Service, 2019. https://www.europarl.europa.eu/RegData/etudes/IDAN/2019/631063/IPOL_IDA(2019)631063_EN.pdf.

[21] Painter, Martin. "The Council of Australian Governments and intergovernmental relations: a case of cooperative federalism." *Publius: The Journal of Federalism* 26, no. 2 (1996): 101-120, 112.

[22] Brown, 212.

[23] Painter, 112

recognition by way of a 1992 intergovernmental agreement[24] coupled with enacting federal legislation[25] (or corresponding state legislation for those states that chose not to refer requisite authority to the Commonwealth under paragraph xxxvii of the Australian constitution). The procedural history of Australia's mutual recognition framework offers valuable insights for Nova Scotian & Canadian readers. Initially, Australia's governments had settled on an interstate mutual recognition agreement under which states referred requisite powers to the Commonwealth, thereby enabling the Commonwealth to enact federal legislation giving effect to MR. New South Wales and Queensland referred these powers, allowing the Commonwealth to pass the *Mutual Recognition Act* 1992. However, near the finish line, Victoria, South Australia and Western Australia chose not to refer their requisite powers to the federal government. These other states and territories simply adopted the legislation passed by the Commonwealth.[26]

A number of gains can be attributed to Australia's mutual recognition arrangement. Within the first two years, over fifteen-thousand Australians had used the scheme to move to another state with their labour qualifications. And within the first five years, the scheme had contributed to the development of national competency standards for over 20 occupations, further easing frictions of the internal labour market.[27]

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[24] Agreement between the Commonwealth of Australia, the state of New South Wales, the state of Victoria, the state of Queensland, the state of Western Australia, the state of South Australia, the state of Tasmania, the Australian Capital Territory and the Northern Territory of Australia, relating to mutual recognition, dated May 11, 1992.

[25] Australian Mutual Recognition Act 1992 (Cth). No. 198, 1992. Compilation No. 8, dated 18 October 2023.

[26] French, Robert S. "The referral of state powers." *University of Western Australia Law Review* 31.1 (2003): 19-34.

[27] Industry Commission Office of Regulation Review. "Impact of Mutual Recognition on Regulations in Australia: A Preliminary Assessment." Commonwealth of Australia, January 1997. Available at < https://www.pc.gov.au/research/supporting/mutual-recognition/mutrec.pdf>.

Claims of economic actors engaging in regulatory arbitrage in Australia highlight another potential critique of mutual recognition that could also apply to Canada. For example, the government of New South Wales (NSW) raised concerns that those incapable of satisfying competency standards for security personnel under the NSW criteria were first obtaining their credentials in Queensland (where the standards were allegedly less stringent) and subsequently registering in NSW pursuant to the mutual recognition scheme.[28] Such a situation is unsurprising, but underscores the need for sustained trust amongst conformity assessment bodies and their regulators.

Canada currently implements mutual recognition not through legislation, but rather via the CFTA. The agreement's predecessor, the AIT, laid the groundwork for resolving trade barriers through mutual recognition as early as 1995. To-date, no RCT Work Plan Item has been resolved via mutual recognition. Some have suggested that the 2018 reconciliation agreement for pressure equipment is a mutual recognition agreement. However, looking to the text of that agreement, reconciliation was actually achieved via harmonization (Canadian governments opting into a federal standard). Still the CFTA with its proviso for MR has nonetheless spawned MR efforts. For instance, in 2001, Canada's provincial and territorial regulatory bodies for professional psychologists struck a Mutual Recognition Agreement (which could have gone farther in automaticity and exhaustively setting out the procedures for granting registration to applicant professionals licensed in another province/territory). Like Australia, Canada drew inspiration from European reform initiatives, as evidenced in a 1991 set of proposals for reform

[28] Australia, Productivity Commission [APC]. 2015. Mutual Recognition Schemes. Productivity Commission Research Report (September). Government of Australia, Productivity Commission. Available at https://www.pc.gov.au/inquiries/completed/mutual-recognition-schemes/report.

in the lead-up to the Charlottetown Accord. The document, *Shaping Canada's Future Together: Proposals*, discussed then-recent reforms in Europe that were facilitating the free movement of goods, persons, services and capital (even borrowing EU terminology, the "four freedoms"). The federal government went on to propose revising the Constitution's section 121 common market clause in order to curb restrictions to the four freedoms. When the Charlottetown Accord failed, this document served as a crucial basis for the *Agreement on Internal Trade*.[29]

MR Law is Consistent with Canadian Federalism and Respectful of Subnational Differences

Mutual recognition is a compromise between two extremes. At one end of the spectrum is strict territorialism, and at the other is universalist harmonization.[30] MR offers a middle ground, wherein provinces and territories preserve their own standards while recognizing those of others. It threads the needle of (i) respect for provincial autonomy and public policy differences, and (ii) the "inculcat[ion] of tolerance, dialogue and mutual accommodation"[31] amongst Canada's governments. This is owing to the very essence of MR, and procedural MR in particular: governments are not asked to adopt the standards or certifications of another jurisdiction, they are merely asked to accept those of other jurisdictions. In a likeness to the *Constitution Act, 1867* with its division of powers at sections 91 and 92, mutual recognition does not demand a "hierarchy of substantive norms"[32] but rather, offers a means to manage the multiplicity of overlapping legal systems.

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[29] Brown, 140-141.
[30] Berman, Paul Schiff. "Global Legal Pluralism" Southern California Law Review 80, no. 6 (2007): 1155, at 1195.
[31] Berman, 1236.
[32] Berman, 1166.

Nine components of Nova Scotia's Mutual Recognition Legislation

Drawing from the legislative approaches to mutual recognition in the EU and Australia, the following key elements and obligations should be incorporated into Nova Scotia's MR legislation.

The law should do the following:

1. Handle separately (i) goods, (ii) occupations and (iii) services.

Both Australia and the EU handle MR for goods, occupations and services separately. There are unique considerations for each of these three domains that merit different handling. Australia's MR law and intergovernmental agreement tackle both goods and occupations within the same instrument, though in different sections. The EU has brought into force separate instruments to manage MR for goods, services and occupations. It is possible to use the same literal instrument, as in the case of Australia, but the law must account for the fact that these items of commerce each have fundamentally different characteristics.

Recommendation 1a: A single law for MR of goods, occupations and services, but which accounts for the unique characteristics and considerations of these three items of commerce.

With respect to goods, the EU's tool of self-drafted Mutual Recognition Devices (MRDs) is a creative and compelling option should Nova Scotia's trading partners be unable to align on pure automaticity for all goods. MRDs are drafted by producers and set out that the goods

comply with the rules of another EU country, where they are already being sold. Regulators are still always permitted to assess goods coming from another jurisdiction notwithstanding the MRD's existence. However, the MRD establishes a presumption of compliance and an easy means of validating compliance claims. The concept of the MRD is an attractive means to implement MR for goods if negotiations warrant such a device, as it creates a standard operating procedure, and enshrines a presumption that certificates and tests of another jurisdiction are acceptable.

Recommendation 1b: Nova Scotian MR legislation could adopt the device of the MRD to operationalize MR for goods if pure automaticity is too difficult to negotiate with its domestic trading partners. Such a tool would still leave space for regulatory assessments and offer an easy means for validating compliance claims, but also foster a tradition that certifications and tests of another jurisdiction are to be accepted.

With respect to occupations, the Australian scheme of deemed registration following notification to local registration authorities is a compelling model for Nova Scotia. It places the burden on local regulators to establish that an individual cannot carry out an occupation, rather than the other way around. In essence, it imposes a 30-day limit for a regulator to object to a worker's carrying out an occupation, thereby providing timeliness in decision-making and general certainty to both workers and firms. Moreover, the scheme requires a regulator to articulate reasons for rejection, and supply notice of its decision to counterpart regulators

across the country, thereby ensuring transparency and raising the likelihood that rejections are based on reasonable grounds.

Recommendation 1c: Nova Scotia MR legislation should adopt Australia's scheme of deemed registration to implement MR for occupations.

With respect to services, the EU model of requiring regulators to accept the documentation of another member state as proving a requirement satisfied is a compelling model for Nova Scotia. It creates the presumption that the certification and testing of another regulator is sufficient.

Recommendation 1d: Nova Scotian MR legislation should adopt the EU's model of requiring acceptance of documentation (and hence, the certification and testing) of another government's regulator.

2. Rely more heavily on procedural, as opposed to substantive, mutual recognition;

MR legislation can use one or both of substantive and procedural mutual recognition to unlock economic integration and facilitate trade. **Substantive MR** entails recognizing the equivalency of standards or regulations (for example, Province A recognizing the safety standards for electrical appliances of Province B as equivalent to its own, and vice versa). There is a greater focus on the intrinsic/substantive content of the good, service or credential.

Substantive mutual recognition generally leads to deeper economic integration owing to the primacy placed on equivalency, but is harder to achieve, and is more feasible where a degree of regulatory alignment and trust already exists. **Procedural MR** entails accepting the controlling and testing procedures of another jurisdiction (for example, driving licenses, or licenses to practice medicine; the focus is not on establishing Province B credentials as equivalent, but rather, whether holders have undergone the licensing procedure of Province B). Procedural MR is less about establishing equivalency, and more about simply accepting the processes or procedures of another jurisdiction.

Nova Scotian MR legislation should lean more heavily on **procedural MR** in the likeness of the EU instruments. Substantive MR requires sufficient inter-regulator trust and regulatory alignment, which is less likely to exist immediately following the implementation of domestic mutual recognition legislation as regulators will require time to gain greater familiarity with mutual recognition as well as the regulations of counterpart regulators. A concrete, illustrative example of EU procedural MR: EU mutual recognition law for trade in services requires as default that regulators give effect to those documents of another member state that prove a requirement as satisfied.[33] The Australian model chiefly relies on substantive mutual recognition, but this was made possible because all Australian governments recognized the need for, and willingly adopted, MR legislation.

[33] Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market, [2006] OJ L 376/36.

Recommendation 2: Nova Scotian MR legislation should make greater use of procedural (as opposed to substantive) MR, focusing less on establishing equivalency between standards and regulations, and focusing more on accepting controlling or testing procedures of another jurisdiction.

3. Constrain the ability for government agents to flout the intention of the law by exhaustively prescribing procedure and protocol;

Properly drafted MR legislation will prevent a government's officials from skirting the purpose of the law. It will also be sufficiently prescriptive to ensure that economic actors can easily benefit from the law's intended purpose. For example, the EU's directive on MR of services requires that Member States provide single points of contact for foreign service providers to liaise with, thereby streamlining communications. It also requires that procedures and formalities for a foreign entity to supply services are to be easily completed via electronic means. Similarly, the EU's regulation on MR for goods requires member states to establish Product Contact Points who supply information and facilitate knowledge-sharing to economic operators. Australia's MR law is similarly thorough in providing that in-person attendance cannot be required in order to secure mutual recognition. In the absence of such provisions, a Member State could devise an administrative scheme that flouts the effective functioning of MR. Furthermore, Australia's MR law illustrates how legislation should be tailored for the nuances of regulatory domains so as to prevent member governments from circumventing its purpose. A concrete example of this is how its MR law is drafted to manage occupational mutual recognition where the activities under the same occupation in two states do not wholly overlap.

Recommendation 3: Nova Scotian MR legislation should set out detailed, streamlined procedures (as just a few examples: time limits to respond to inquiries, prohibitions on the requirement of in-person attendance, enumerated grounds to reject MR, procedures when refusing to provide MR) to ensure transparency, adherence to the law's purpose, and that intended benefits flow from its operation.

4. Incorporate trust building mechanisms;

A policy of mutual recognition fosters inter-regulator trust building, which will yield future payoffs. If one jurisdiction is to accept the technical regulations, conformity assessment procedures and/or the decisions of conformity assessment bodies of another, it must have faith in both the standards themselves as well as the application of the standards. This faith may take time to develop following the commencement of mutual recognition policy. New Brunswick regulators may take time to gain comfort that Manitoban long-combination vehicle truck drivers do not impose undue risk while driving in the province. Once that trust is clinched, however, it pays dividends. Trust building only comes from the repeated interaction of regulatory authorities, and is best fostered with explicit mechanisms in mutual recognition legislation itself.

There are three important types of trust-building mechanisms that Nova Scotian MR law should include. The first is a defined process (that includes time caps for responses) for regulators to engage with one another to undertake confirmatory due diligence. The second is inter-regulator notification, especially where a regulator rejects or attaches supplementary

conditions to the operation of MR. The third is obligation to provide reasons for rejection/curtailment of MR.

Mechanisms that build trust amongst regulators are found in both EU and Australian MR laws. The EU's directive on the recognition of professional qualifications, for example, establishes a mechanism for regulators to exchange information about individuals seeking to work in another Member State. As another example, Member States must notify other Member States as well as the Commission if they are attaching conditions to the entry of a professional. As yet another example, the EU regulation for MR of goods establishes a process whereby regulators are able to contact counterpart regulators in other member states to verify facts. That same regulation also sets out what the decision of a local regulatory must contain in order to support the rejection/curtailment of MR. Similarly in Australian MR law, where a tribunal upholds the finding of a local regulatory authority that two occupations are not equivalent, that local regulatory authority must then notify its counterparts in other Australian states. Specific mechanisms mandating engagement amongst regulatory bodies are a forcing function for the trust creation process. Trust in and understanding of foreign regulatory schemes does not happen overnight, and gradually builds over time.

Recommendation 4: Nova Scotian MR law should include trust-building mechanisms, and three in particular. The first is a defined process for regulators to engage with one another to undertake confirmatory due diligence. The second is inter-regulator notification, particularly

where a regulator rejects or attaches supplementary conditions to the operation of MR. The third is an obligation to supply reasons where MR is rejected or curtailed by a regulator.

5. Incorporate an appellate review mechanism, penalties and political override;

In the likeness of the Australian legislative approach, Nova Scotia's MR legislation should place appellate review responsibilities with the CFTA dispute resolution mechanism. The reasons for doing so are several. First, the panelist appointment process dispels the perception that the federal government could pose an overbearing role in dispute outcomes. In CFTA disputes, the claimant and defense each appoint their own panelist, and then those two appointees together select a third. Second, to-date thirteen internal trade disputes have yielded a panel decision, and this emergent body of case law has propelled the mechanism's credibility and capacity.[34] Third, the relative trade law expertise of CFTA panelists (as is called for under the CFTA) may be more efficacious for the overall system. Finally, fourth, and perhaps most importantly, given heightened political sensitivities regarding MR application, this could better allow for a release valve in the form of veto power over dispute panel decisions by intergovernmental assemblies of relevant ministers, as is provided for in Australia's MR scheme.

A government's toolbox to enforce compliance is wide ranging from public disclosure ("naming and shaming") on one end to uncapped and judicially enforceable financial penalties on the other. A penalty scheme that is consistent with (if not identical to) the one provided for

[34] These thirteen cases were brought under the CFTA's predecessor, the 1995 Agreement on Internal Trade (AIT). No case has yet advanced to the release of a CFTA panel report.

under the CFTA, namely, capped financial penalties for continued breach of MR obligations, is workable.

Recommendation 5: Nova Scotian MR law should provide for an appellate mechanism to review the MR decisions of regulators, with the possibility of override by political bodies. Compliance should be enforced in a manner consistent with, if not identical to, the CFTA: capped financial penalties for continued breach of MR obligations.

6. Provide a mechanism whereby governments can refer matters for harmonization/common standards.

Market integration cannot be left to mutual recognition alone. Harmonization remains a useful tool to effectuate MR, and a mechanism to escalate matters for standardization should be integrated into MR legislation. Importantly, even minimal harmonization helps augment levels of trust amongst regulators. In Europe, for example, harmonization has been integral to the success of MR for driving licenses.[35] In particular, standardization on the definition of a secure document and a common period of validity were crucial.[36] As another example, the EU's directive on services includes a mechanism to advance specific, narrowed matters for standardization, to enable mutual recognition of entire services and their providers. In Australia, the legislative MR approach incorporates a mechanism that can escalate certain goods standards for national standardization. (One example: all laws/economic goods which parties

[35] Janssens, 62.

[36] Renew Europe, December 7, 2003. https://www.reneweuropegroup.eu/news/2023-12-07/european-driving-license-renew-europe-welcomes-a-major-step-forward-for-road-safety

place on the temporary exemption list are subject to national standardization review). This threat of harmonization is a useful tool to help break deadlock and propel mutual recognition. Nova Scotia's law could take the Australian approach, whereby a vote of 2/3 of provinces and territories is used to decide on the uptake of the standard. Incorporating a population requirement as part of the 2/3 threshold would deviate not only from trade agreement norms, but also from an underlying principle of the CFTA which places governments on equal footing.

Recommendation 6: Nova Scotian MR law to include a mechanism whereby governments can refer matters for harmonization/common standards. Moreover, any measures which parties place on a temporary exemption list should be assessed for standardization. A vote of 2/3 majority of provinces and territories participating in Nova Scotia's MR arrangement to decide on the uptake of the standard.

7. Provide surgically-crafted off-ramps from automatic mutual recognition;

MR instruments can provide for varying degrees of automatic recognition. Nova Scotian MR law should provide for high automaticity for MR in goods, and slightly attenuated automaticity for occupations and services.

Generally, Australian MR instruments reveal greater automaticity of MR than do those of the EU. However, both exhibit far greater automaticity for goods than for occupations and services. In Australia, MR for goods is highly automatic; there are almost no additional requirements in order to sell goods into another Australian state. Similarly, in the EU, there is a presumption that economic operators can supply goods lawfully marketed in another EU state

(Mutual Recognition Declarations are held on file by economic operators, and competent authorities may select to run an economic operator's goods through an assessment). Nova Scotia should adopt a highly automatic device for goods MR.

Australian and EU instruments both exhibit slightly attenuated automaticity for occupations and services. In order to carry on an occupation in a new state/territory, Australian governments require workers to supply notice to local registration authorities which then have a 30-day window to review the individual. Similarly, the EU directive on professional qualifications permits member states to require notice in advance of a worker carrying on their profession; member states then have a time-limited window to conduct a review of the individual. Similarly, in the EU directive on MR for services, EU member states are permitted an opportunity to determine if service providers have satisfied national requirements. EU instruments exhibit lesser automaticity than Australia's in light of the proliferation of allowances to member states to inspect and verify the validity of documents prior to extending MR. EU legislators would appear to have a greater fear of pure automaticity than do Australian legislators. One reason, arguably, is the greater heterogeneity of EU member states as compared to Australian subnational governments.

Recommendation 7: Nova Scotian MR law should have high MR automaticity for goods, and attenuated automaticity for occupations and services.

8. Permit immunities/safe harbours from MR and use them as "carrots";

MR legislation can provide for many types of exceptions or exemptions (of greater or lesser strength) from the operation of mutual recognition obligations. An exception refers to a situation that is excluded from a general rule/principle. An exemption refers to the immunity from application of a rule. In simpler terms: an exception is a situation that doesn't follow a rule, while an exemption is permission to not follow a rule. These two devices can be helpful to get all parties to the table from the outset. They also engender consistency between Nova Scotia's MR law and Canadian federalism's permissiveness for decentralized rule-making in light of local concerns.

The strongest type of safe harbour from MR is a total exception, seen in both the EU and Australia. An exception explicitly delineates areas where the legislation absolutely does not apply. For instance, labour law and cultural laws are wholly excluded from the EU MR directive on services. As another example, laws regulating the manner of the sale of goods are removed from the scope of Australia's MR law.

An attenuated safe harbour exhibited in MR instruments are exemptions on justifiable grounds. MR legislation in the EU and Australia allow for derogations from mutual recognition where the laws are in pursuit of a legitimate objective (with the EU test going farther in requiring the limitations also be proportionate). Such laws are typically in respect of health, safety or the environment.

The MR instruments studied exhibit other creative approaches to exceptions/exemptions that balance economic liberalization with caution, enabling member governments to get behind MR schemes. For example, Australia's MR law permits permanent exemptions, but requires full consensus of all member governments for matters to be added to

the list. Examples of this class include fireworks, firearms, gaming machines and pornographic materials. A similar unanimity requirement for Canada would be consistent with the consensus-based underpinnings of the CFTA. As another example of an interest-balancing device, in the EU's MR legislation on services, an exhaustive list of services (including transport, financial, private security) is excepted from the directive, but the legislation requires the periodic review of these matters excepted from the directive's scope every three years. Yet another example is how Australia's MR law handles temporary exemptions from MR for particular goods: temporary exemptions are capped at 12 months, and must be on grounds of health, safety, or the environment.

Recommendation 8: Nova Scotian MR law should contain exception & exemption provisions, and reserve their availability to Canadian governments that participate in the MR scheme. Permanent exemptions should require unanimity amongst governments participating in Nova Scotia's MR arrangement, and temporary exceptions should be subject to review and must be on clearly articulated and justifiable grounds.

9. Require recurring (i.e. every two or three years) reporting to sustain momentum, transparency, trust-building, alignment and solution innovation.

Trust is quintessential to the success of mutual recognition. Regular reports help establish and build trust amongst regulators. As an example, the EU directive on professional qualifications requires that Member States submit a report every two years regarding decisions

on the equivalency of professional qualifications. And every five years, the Commission shall report on the implementation of the directive. The reporting function in the Australian MR intergovernmental agreement is more attenuated, permitting governments to request reports from ministerial councils managing certain goods or occupations as to progress and implementation.

Recommendation 9: Nova Scotian MR law should require each participating Canadian government to designate a body with the responsibility of reporting on the functioning of the MR scheme.

Trade-Offs and Limitations

Both loss of local autonomy and regulatory arbitrage were identified earlier as potential drawbacks to mutual recognition legislation. On the former, a government's exclusive control over legislative and regulatory power is weakened when a government is required to recognize laws and regulations of another government. However, not only is this less of a concern for subnational jurisdictions within a federal state, but mutual recognition frameworks typically include safety valves in the form of exceptions that permit derogation from recognition where there are legitimate and justifiable grounds. As for regulatory arbitrage, which could trigger a "race to the bottom" across a host of regulatory domains (e.g. environment or labour) this risk is also mitigated by a well-drafted mutual recognition law. Such a law can include off-ramps, allowing home regulators to restrict mutual recognition for valid reasons.

Setting aside the tension between the economic union and provincial autonomy is a broader question about whether free internal trade is even desirable. Such sentiment is found in discourse regarding global trade. The gains from freer trade may not be enjoyed broadly within Canada. However, Canada is not confronted with a binary choice between economic fragmentation and uniform regulation. Canada would certainly crumble with 13 autarkies, just as it would if rigid uniform rules were required from coast to coast. Mutual recognition is a compelling approach as it offers a balance between local control and national economic growth.

It should also be noted that mutual recognition is not a cure-all for every regulatory inconsistency giving rise to an internal trade barrier. For example, truck carriers struggle to transport oversized loads partly due to the absence of common bridge height standards. Mutually recognizing larger truck sizes does not magically raise bridge heights. In such situations, true harmonization (such as on standardized infrastructure specifications) would be necessary.

Conclusion

A bold first-mover in Canada, Nova Scotia has the opportunity to shape not only its own economic future but also set a powerful precedent for the country. Lessons from the EU and Australia reveal that well-designed mutual recognition laws can drive efficiency, competition, and investment. By embracing this approach, Nova Scotia is not just leading—it is positioning

itself for significant economic gains. Even a modest 10% reduction in trade barriers could boost provincial GDP by up to 4.1%, underscoring the tangible benefits of this initiative.[37]

The Australian model with its greater emphasis on substantive mutual recognition would offer greater economic integration. However, strategic use of procedural MR (in the likeness of the EU directives) where there is inadequate trust or regulatory alignment can offer additional means to reach consensus. Other tactical devices that should be included in MR legislation include a diverse set of exemption measures, (limited) allowances for non-automaticity/preconditions, and escalation mechanisms to pursue harmonization. Finally, MR legislation should be understood with the medium-term in mind. The building of trust and understanding not only with the principles and mechanics of MR, but also the substance and procedure of foreign regulatory systems, is paramount for sustainable success and internal trade reform.

[37] Tombe, Trevor. 2025. "Breaking Barriers: How Provinces can drive Canada's prosperity by unlocking trade and labour mobility." Macdonald-Laurier Institute, February 2025.