

Mutual Recognition: A Primer

June 2025



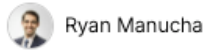
“You can spend decades studying the differences between two regulatory regimes, but nothing replaces learning by doing.”

Kalypso Nicolaidis, leading global expert on
Mutual Recognition

Monumental Significance



AUTHOR(S)



SOURCE

National Newswatch

POSTED

May 9, 2025

Nova Scotia leading the way on reducing interprovincial trade barriers

“Short of the Canadian Pacific Railway or Confederation itself, there is little that has carried as much potential for internal trade as mutual recognition. And thanks to landmark legislation in Nova Scotia, mutual recognition could very shortly become reality.”

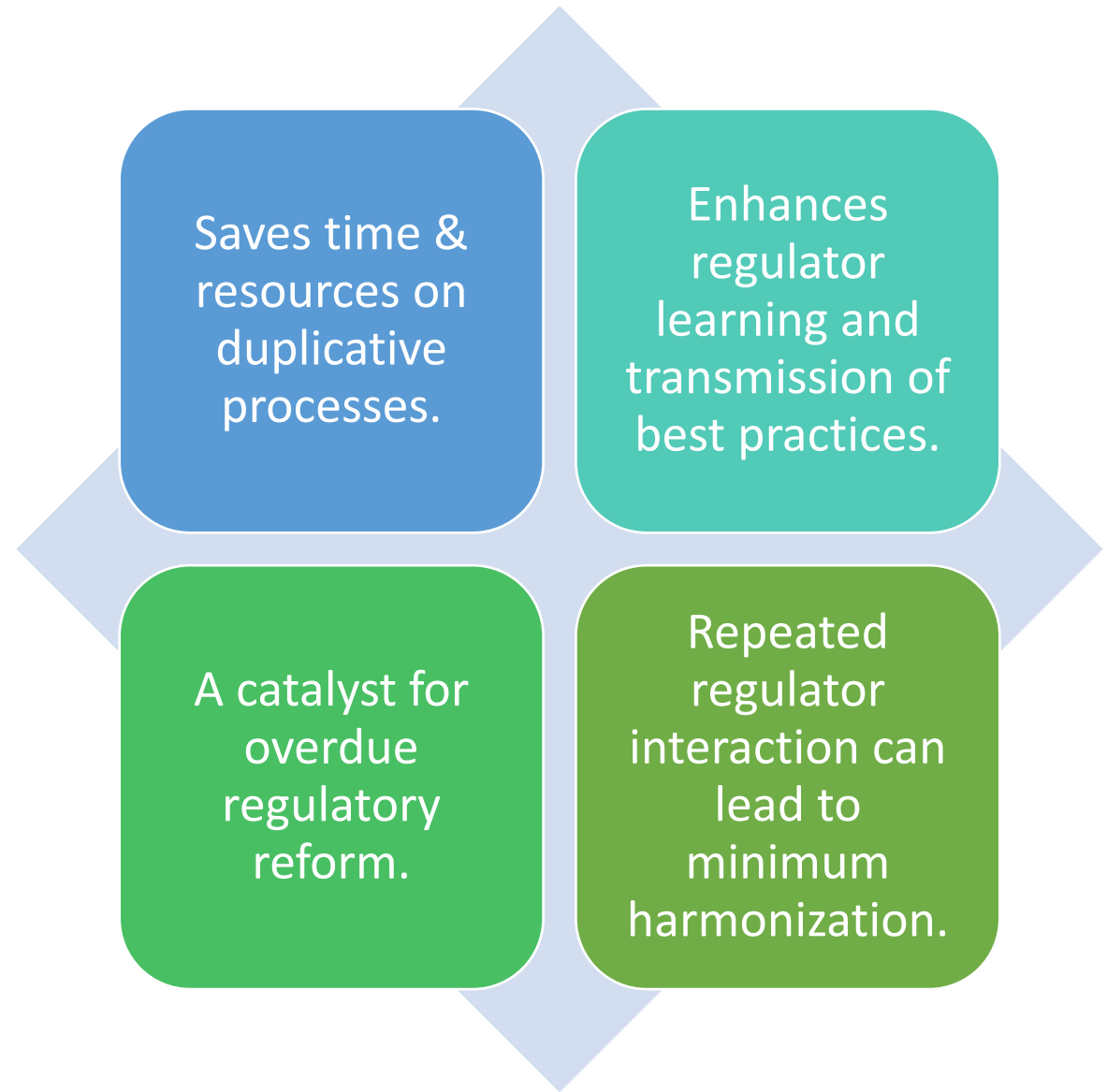


Intuition: Drivers Licenses



A large blue and white sign for Ontario. The sign is shaped like a shield and is mounted on a concrete base. It features the text "Welcome To / Bienvenue en" at the top, "ONTARIO" in large letters in the center, and "More to discover / Tant à découvrir" at the bottom. The sign is set against a background of green trees and a blue sky with white clouds.

Benefits of Mutual Recognition



Mutual Recognition requires Mutual Trust



MR more likely to flourish if regulators are familiar with other-province standards, and trust the review & monitoring of the counterpart regulator.



MR requires information exchange and cooperation procedures

MR is more a **culture**, less a **policy**



A **culture** which stands for stimulating healthy commercial competition without sacrificing **justified** concerns of health, safety and consumer protection



Start from the premise that provinces/territories have the same **justified** concerns

MR emphasizes a measure's **objective**, not its technical specifications

- Cannot deny market access on the basis of technical provisions if the imported item of commerce still **suitably and satisfactorily** fulfills the legitimate objective of your measure



MR is a Living Commitment

Methods of
training &
production evolve

New professions
are introduced

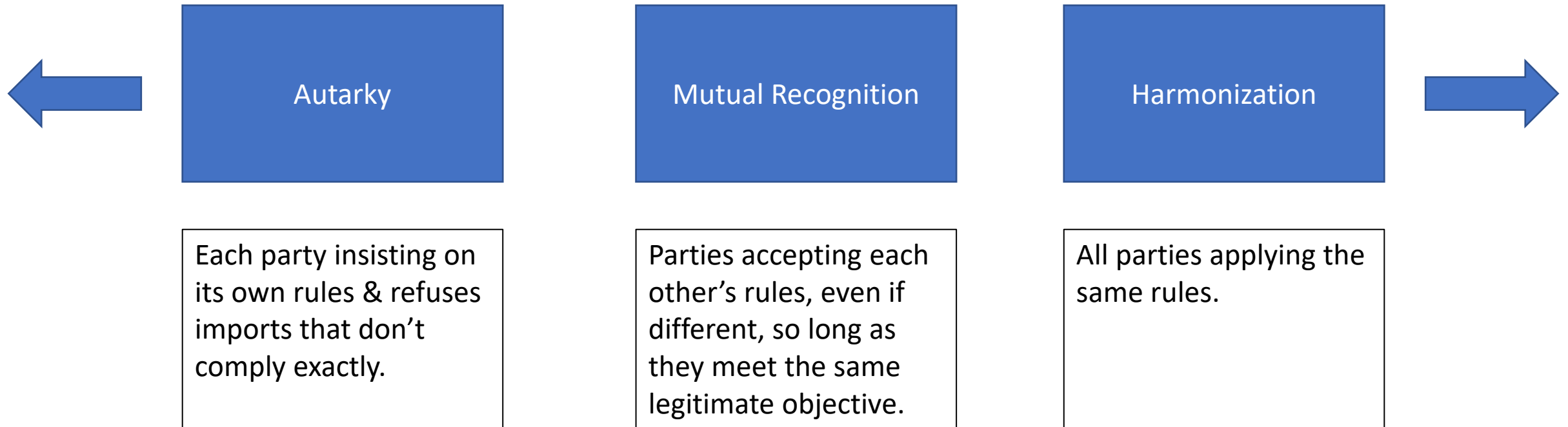
Three Key Ingredients to MR Success

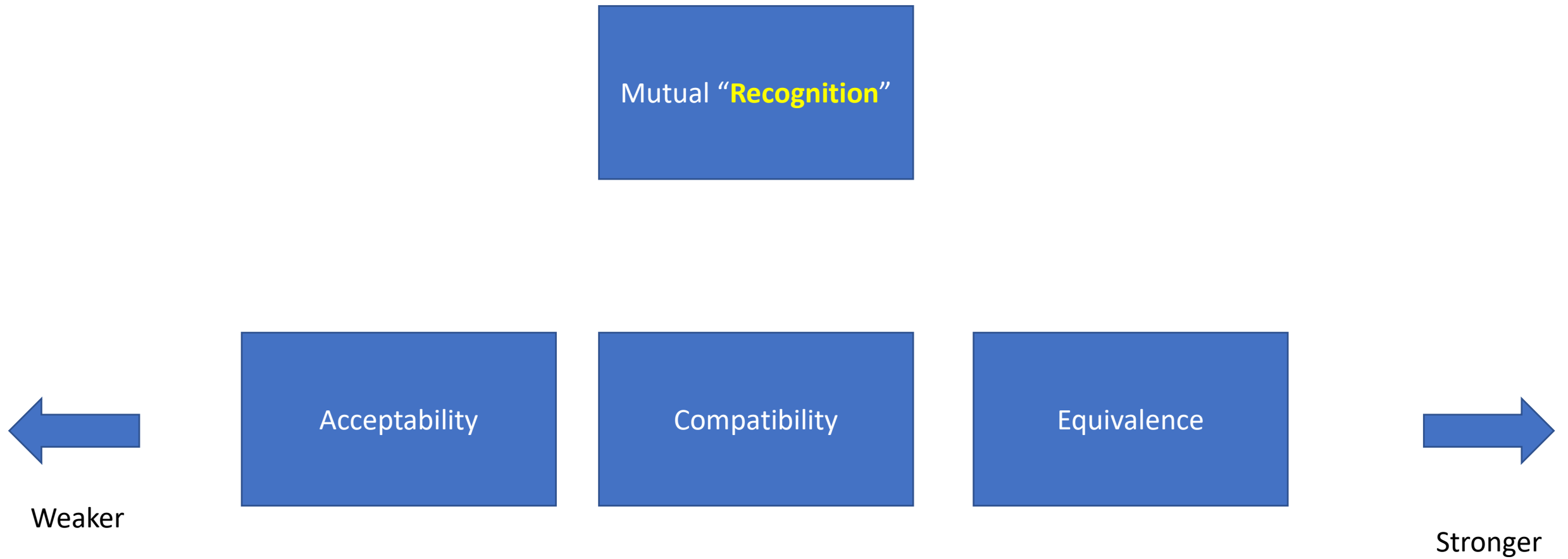
Businesses & workers well-informed about the rights implied by mutual recognition.

Inter-regulator trust in standards and enforcement.

Incentives for provinces/territories to think in the national interest.

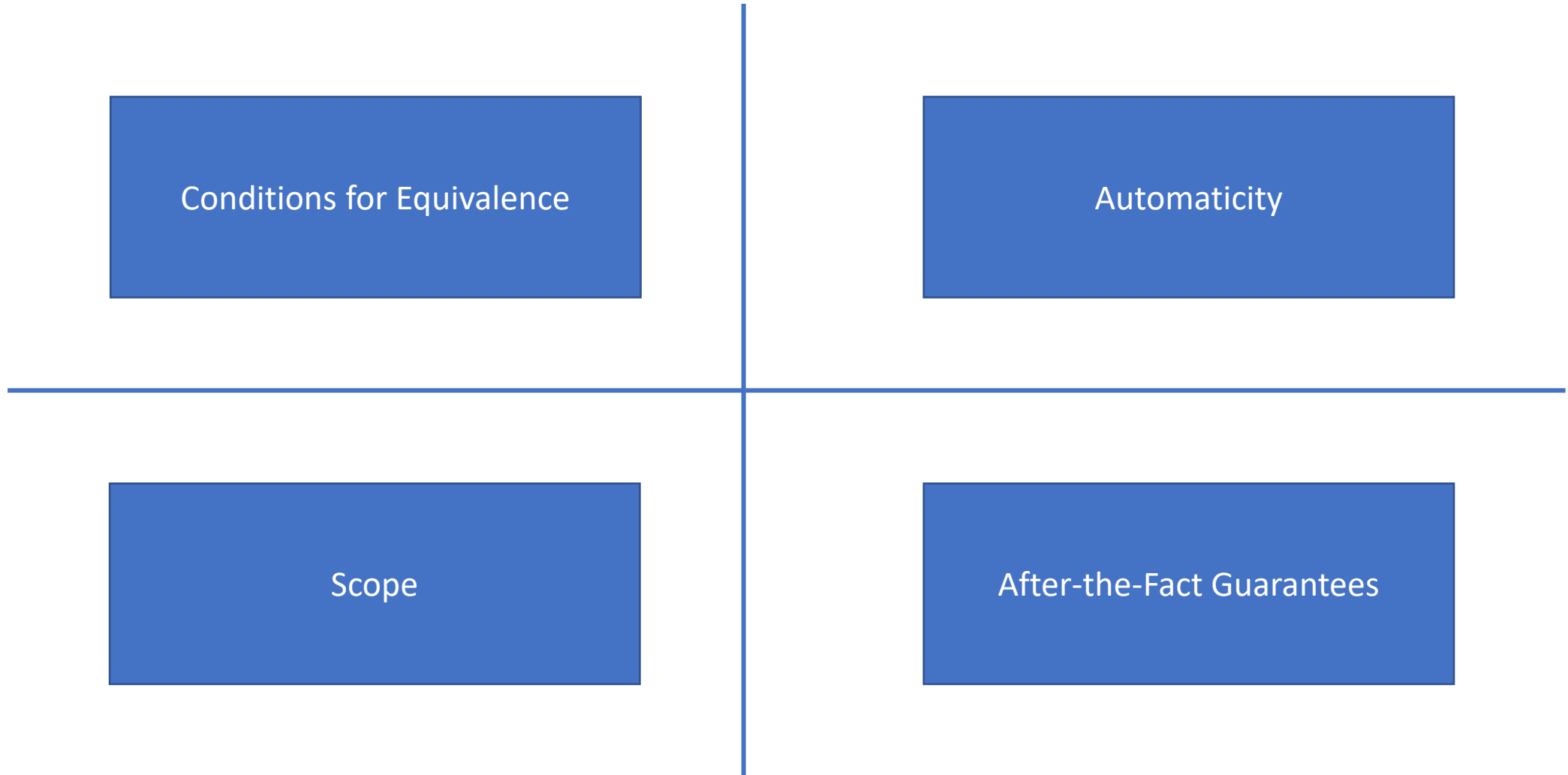
Mutual Recognition balances (i) respect for provincial autonomy and public policy differences and (ii) liberalized trade





Even the concept of "Recognition" exists along a continuum

4 Main Levers to “Manage” or “Fine-Tune” Mutual Recognition to Achieve Compromise



1. Conditions for “Equivalence”

Step 1: Select the function

Option A: Underlying Qualifications - **“Did you learn the right stuff in the right place?”**

Option B: The Licensing/Certification Itself - **“Are you legally allowed to do this job?”**

Step 2: Determine Level of Equivalence

Option A: Substantive Requirements - **“Looking under the hood”**

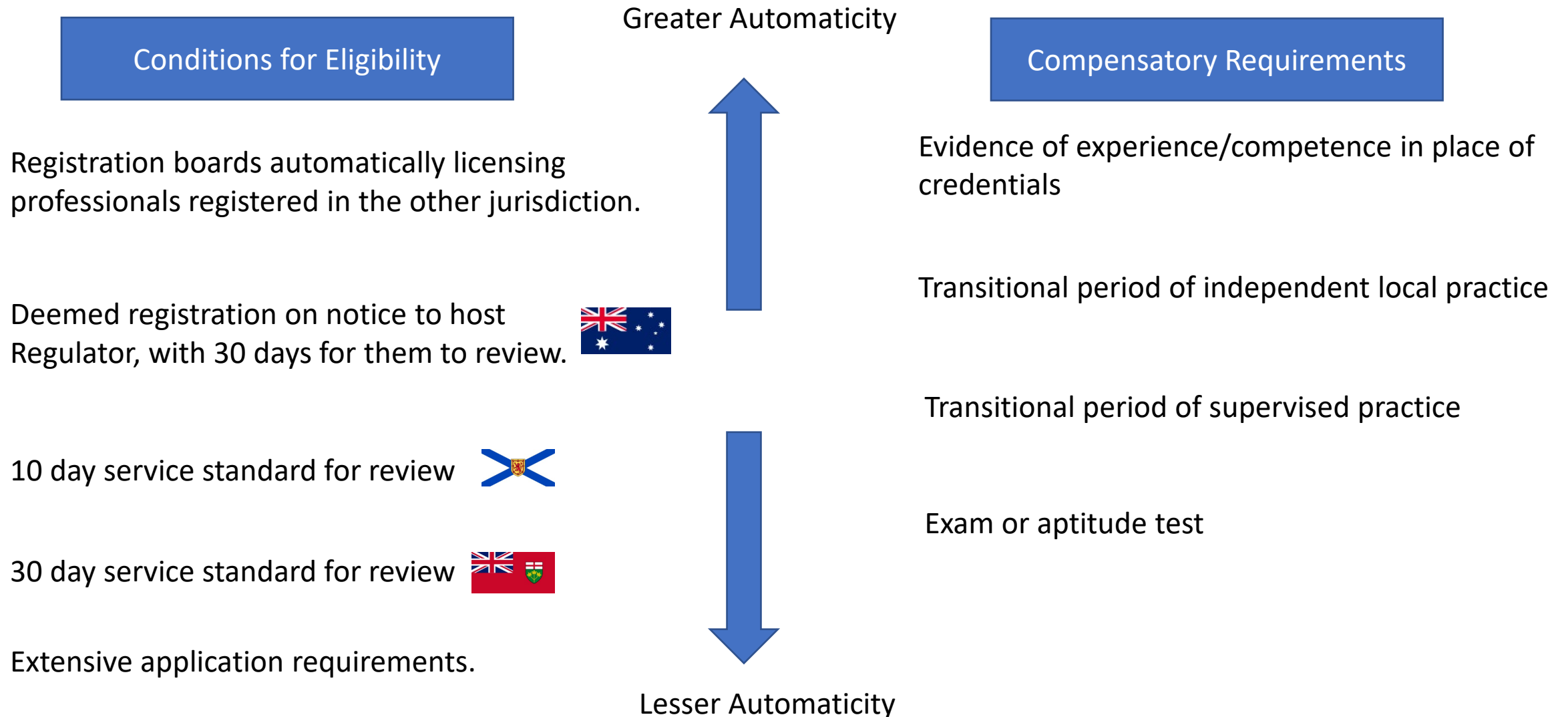
Option B: Procedural Requirements – **“Looking for existence of the stamp on the car”**

2. Scope: Moderating Access

Ways in which scope of access can be curtailed to get MR across the line –

1. Granting right to practice without right to use corresponding local professional title.
2. Curtailing scope of permissible activities.
3. Distinguishing between temporary and permanent access.
4. (If consumer protection is a concern) On the basis of consumer sophistication & capacity to discriminate amongst service providers.

3. Automaticity: A Continuum for 2 Key Variables



4. After-the-Fact Guarantees

- Mechanisms to enhance mutual confidence & compensate for loss of control.

| Mutual Monitoring | Collaboration | Reversibility |
|--|---|--|
| <ul style="list-style-type: none">- Transparency obligations- Exchange of information requirements- Rights of regulatory oversight- Ability to continuously assess each other | <ul style="list-style-type: none">- Development of cooperative regulatory networks.- Structured method to upgrade standards- A means to provide technical assistance. | <ul style="list-style-type: none">- Trial periods- Periodic reviews- Process to temporarily or permanently unwind in case of breach. |

Hindrances to MR: what to look out for



Authorization / registration requirements



Multiplicity of licenses owing to nature of the business



Long duration prior to approval



Local employment requirements

No Aspect is Too Small

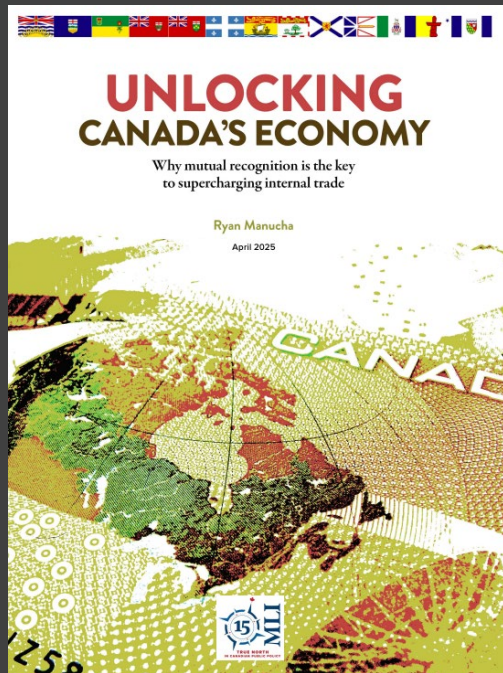


SMEs have limited bandwidth to navigate frictions.



Interprovincial services by nature involve temporary work, and hypervigilance of treatment of temporarily 'posted' workers required.

Insights from Abroad



- Combined seven decades of experience with MR between Australia and the EU
 - They dealt with these same issues.
-
- MRAs increase value of exports by between 15 and 40 percent.
 - Increase the probability that a firm exports new products to new markets by up to 50 percent.
 - The positive impact of MRAs on export values grows over time as firms and conformity assessment bodies learn how to take advantage of and adapt to MRAs. Product-level export values increase by 14.5%, 24.5% and 30.5% after 1, 2 and 3 years respectively.
 - On average it takes 2 years for deep trade agreements to increase trade flows.
 - Over 15k Australians used the internal MRA to move within first 2 years
 - 20 occupations went to national licensing standards within first 5 years in Australia

Australia

- Late 1980s-90s, AUS economic competitiveness a top concern.
- Leadership by the AUS states, particularly New South Wales.



- 15,000+ Australians used the scheme to move to a different state within first 2 years.
- Within 5 years, scheme contributed to the development of national competency standards in 20 occupations.

Insights from EU & Australia for Canada


| Insight | Translation to Canada |
|--|--|
| Incorporate trust-building mechanisms. | <ul style="list-style-type: none">• Defined process for regulators to undertake confirmatory due diligence• Inter-regulator notification requirements when denying MR or imposing compensatory requirement for MR• Obligation to supply reasons if a regulator denies or curtails MR |
| Include procedures to escalate measures for minimum harmonization. | <ul style="list-style-type: none">• Lodging new matters for harmonization with the CFTA's RCT. |
| Provide surgical off-ramps from automatic mutual recognition as necessary. | <ul style="list-style-type: none">• Be accepting of diminished automaticity, though less so for goods. |
| Disciplined use of exceptions. | <ul style="list-style-type: none">• Require active renewal of party-specific exceptions at 12-month cadences. |
| Data gathering & reporting on the functioning of MR legislation. | <ul style="list-style-type: none">• Inter-party reporting, e.g. number of workers engaging the MR scheme to port qualifications from one province to another, by occupation. |

Reflections on the EU's Experience with Mutual Recognition

| Finding | Recommendation for Nova Scotia / Canada |
|---|---|
| Lack of understanding about mutual recognition amongst all stakeholders. | -Better training. -Insertion of mutual recognition clauses inside of draft regulations. |
| Inadequate notification obligations and procedures. | -Inter-regulator notification requirements/procedures for new draft regulations or technical standards. |
| Lack of timely answers to inquiries from market participants regarding the operation of mutual recognition. | -Defined service standards and regulator response deadlines. |
| Unsatisfactory levels of inter-regulator cooperation | -Obligations to revert to counterpart regulators. |
| Insufficient efforts towards minimum harmonization | -Mechanisms to develop harmonized measures. |
| Untapped capacity of intergovernmental bodies to break deadlock | -Assigning mandates to extant or new bodies. |

See generally: Janssens, Christine. *The Principle of Mutual Recognition in EU Law*. OUP Oxford, 2013.

MR Critique #1: “Race to Bottom”

- But:
 - Reaffirms importance of reason-giving
 - If done correctly, the opposite happens: mutual learnings and sharing of best practices raises standards.
 - **March to the Top**
 -  EU Insight: Professionals from low-standard countries facing higher compensation requirements acting to upgrade the reputation of home-country systems

MR Critique #2: “Brain Drain”

- But:
 - Section 6 mobility rights under the *Charter of Rights and Freedoms*.
 - It would be a symptom of a deeper problem, rather than attributable to MR.
 - Better allows for return migration and circulation of talent.
 - Worse problem in creating professional stagnation or disincentivizing entry into profession altogether.