

An Act to establish the Federal Regulatory Harmonization Agency and to facilitate the removal of barriers to the free movement of goods, services, capital and workers across Canada

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Preamble

Whereas the decentralization of legislative authority within a federal structure can give rise to non-tariff barriers to trade;

Whereas mutual recognition and harmonization of standards can overcome obstacles to an integrated national market;

And whereas federal legislation may establish standards for the provision of goods and services, and the employment of workers, across provinces, which may be adopted by provinces through their own legislation;

Now, therefore, His Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

SHORT TITLE

Short Title

1. This Act may be cited as the *Regulatory Harmonization Act*.

INTERPRETATION

Definitions

2. The following definitions apply in this Act.¹

“Agency”

“Agency”² means the agency established under section 4.

Minister

“Minister” means the Minister of _____.

APPLICATION

Binding on His Majesty

3. This Act is binding on His Majesty in right of Canada or a province.

¹ Any additional definitions will be added during the course of drafting of the Act, as needed.

² For this draft, “Agency” has been used. Other possibilities can be considered.

ESTABLISHMENT AND PURPOSES OF AGENCY

Agency

4. There is hereby established an agency, to be known as the Federal Regulatory Harmonization Agency,³ consisting of 7⁴ commissioners,⁵ including a Chief Commissioner.

Mandate

5. The purposes of the Agency are to
- (a) to promote free trade and labour mobility;
 - (b) facilitate the removal of barriers to the interprovincial movement of goods and provision of services and to the movement of labour within Canada;⁶
 - (c) establish harmonized national standards for the provision of goods, services or capital, or the employment of workers, between provinces and to encourage provinces to adopt those standards;
 - (d) determine whether standards established by one province are equivalent to those established by another province or by the Agency;
 - (e) provide for the timely resolution of disputes in relation to the application of standards;
 - (f) publish studies on barriers to the free movement of goods, services, capital or workers across Canada; and
 - (g) make recommendations to the government of a province or territory on changes to its legislation needed to facilitate the removal of barriers to the free movement of goods, services, capital, or workers across Canada.⁷

ORGANIZATION OF AGENCY

Capacity, rights and powers

6. The Agency has the capacity, rights, powers and privileges of a natural person, including the capacity to
- (a) enter into contracts;
 - (b) acquire, hold and dispose of property;
 - (c) raise, invest or borrow money; and⁸

³ Name chosen as a provisional measure and can be easily changed.

⁴ The number can be adjusted.

⁵ Other possibilities would be “director” or “member.”

⁶ Wording parallels s. 4 of the *Free Trade and Labour Mobility in Canada Act*.

⁷ The True North paper (at p. 47) speaks of a power to “impose mutual recognition,” but it is not clear how this would be done.

(d) sue and be sued.⁹

When agent of His Majesty

7. The Agency is an not agent of His Majesty.

Appointment of Chief Commissioner

8. (1) On the recommendation of the Minister, the Governor in Council shall appoint a Chief Commissioner and six additional commissioners to hold office during good behaviour for a term not exceeding five years, subject to removal by the Governor in Council at any time for cause.

Staggered terms

(2) In determining the term of appointment of commissioners, the Governor in Council shall endeavour to ensure that the terms of no more than two commissioners expire in any one calendar year.

Qualifications

(3) Commissioners shall be men and women from across Canada who have the capacity to enable the Agency to fulfil its mandate.¹⁰

Status

9. The Chief Commissioner shall hold office on a full-time basis, while the other commissioners shall hold office on a part-time basis.

Reappointment

10. A commissioner may be reappointed for a second or subsequent term of office.

Remuneration

11. (1) Commissioners shall be paid the remuneration determined by the Governor in Council.

Expenses

(2) A commissioner shall be reimbursed for reasonable travel and other expenses incurred in performing duties while absent from his or her ordinary place of residence.

Head office

12. The head office of the Agency shall be in the National Capital Region described in the schedule to the *National Capital Act*.

⁸ Borrowed from a precedent, but not clear whether this would be needed.

⁹ Borrowed from a precedent, but not clear whether this would be needed.

¹⁰ This doesn't really say much, other than permitting a possible challenge to a manifestly unqualified appointment.

Employees

13. (1) The Agency may employ any persons, and engage the services of any agents, advisers or consultants, that it considers necessary for the proper conduct of its business.

Salaries and benefits

(2) Persons hired under subsection (1) shall be paid the salaries and benefits fixed by the Agency.

Status of employees

14. (1) A person employed or engaged under section 13 is not considered to be employed in the federal public administration.

Status of commissioners

(2) Subject to subsection (3), the *Public Service Superannuation Act* does not apply to commissioners of the Agency.

Status of commissioners

(3) The *Public Service Superannuation Act* continues to apply to a commissioner of the Agency if the commissioner is employed in the federal public administration at the time of his or her appointment.

FINANCIAL MANAGEMENT AND CONTROL

Application of *Financial Administration Act*

15. Sections 91, 93, 99, and 100 and subsection 105(1) of *Financial Administration Act* do not apply to the Agency.¹¹

MISCELLANEOUS

Limit of liability

16. No civil proceedings lie against – and no person has a right to receive any compensation, damages, indemnity or other relief from – a commissioner or employee of the Agency, for anything done, or omitted to be done, in the exercise in good faith of any power, or in the performance in good faith of any duty, of the commissioner or employee in accordance with this Act or regulations made under it.

REGULATIONS

¹¹ A provision of this sort is required on account of s. 87 of the *Financial Administration Act*, which states that “Except as otherwise expressly provided, in the event of any inconsistency between the provisions of this Part and the provisions of any other Act of Parliament, the provisions of this Part prevail.” Leaving aside the opening words “Except as otherwise expressly provided” for the moment, the section states that where another statute conflicts with the *FAA*, the *FAA* provisions override those of the other statute. The opening words provide the possibility of an exception to this, however, so long as the other statute has “expressly provided” that the *FAA* is not to apply. That is the purpose of this section.

Regulations

17. The Agency [“with the approval of the Governor in Council”] may make regulations to
- (a) facilitate the removal of barriers to the interprovincial movement of goods and provision of services and to the movement of labour within Canada;
 - (b) establish national harmonized standards for the provision of goods, services or capital, or the employment of workers, for incorporation by provinces;¹²
 - (c) establish procedures for the resolution of disputes in relation to the application or equivalency of standards and for giving effect to resulting decisions;¹³ and
 - (d) carry out the purposes and provisions of this Act.

Conflict of regulations with other federal laws

18. The provisions of this Act and the regulations made under it prevail over the provisions of any other Act of Parliament or of a territory, and any regulations made under any other Act of Parliament or of a territory, to the extent of any conflict between them.¹⁴

COMING INTO FORCE

Order in Council

19. The provisions of this Act come into force on a day or days to be fixed by order of the Governor in Council.¹⁵

¹² This is a power to establish standards but doesn't make them binding on a province. The binding effect would flow from provincial legislation that adopts the standard.

¹³ Query whether such a dispute would be one as to whether a provincial law or standard actually constituted a barrier to trade? If so, it's not clear how a federal agency could give effect to such a decision, other than by informing the province in question of its findings and recommending that it make the appropriate changes.

¹⁴ Wording parallels s. 3 of the *Free Trade and Labour Mobility in Canada Act*.

¹⁵ We would have to determine whether any transitional provisions or consequential amendments to other statutes are needed, once details have been worked out.