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PERSPECTIVE

Québec Moves Forward with Regulation of Autonomous Vehicles

On March 27, 2018, we issued a special bulletin dealing with the "Tempe Incident" providing insights into the regulatory environment across Canada and the need for a change. Building on that publication, this month's article delves specifically into the Québec regulatory framework and the question of whether these accidents will have an impact on the new legislation intended to facilitate the use of autonomous vehicles on public roads in Québec.

Québec, having recently adopted the Act to amend the Highway Safety Code and other provisions[2] (hereinafter the "Act to amend the HSC" or the "Act"), has moved forward with the regulation of autonomous vehicles on its roads with the adoption of Bill no 165, which received Royal Assent on April 18, 2018.

As part of these recent changes, Québec is now in a position to authorize pilot projects for testing autonomous vehicles on Québec roads. As well, as of May 18, 2018, level 3 autonomous vehicles will be excluded from the statutory prohibition of driving autonomous vehicles on Québec roads.

The Highway Safety Code

The Québec Highway Safety Code (hereinafter HSC)[3] governs the use of vehicles, pedestrian traffic, and road safety.

In December 2017, a long-awaited bill to amend the HSC and other provisions was presented to the Québec National Assembly[4]. Having been the object of special consultations and public hearings during the last few months, it was adopted by the Québec National Assembly on April 17, 2018, with some provisions coming into force on April 18, whereas others will come into force on May 18, 2018.

First, the Act provides for the definition of "autonomous vehicle" that reads as follows:

> "Autonomous vehicle": means a road vehicle equipped with an automated driving system that can operate a vehicle at driving automation level 3, 4 or 5 of the SAE International's Standard J3016;"[5]

This definition refers to the most commonly used standard SAE J3016. This standard establishes the degree of automation of autonomous vehicles on a scale of 0 to 5. Level 5 corresponds to the highest degree of automation requiring no human intervention[6]. The Act also includes the new section 492.8, which codifies the prohibition of driving autonomous vehicles on the Québec highway system with the exception of autonomous vehicles at driving automation level 3 of the SAE International's Standard J3016 eligible for sale in Canada[7]. Finally, the Act introduces section 633.1, which regulates and authorizes the implementation of pilot projects for autonomous vehicles:

> "Section 633.1 of the Code is amended
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> (1) by replacing the second paragraph by the following paragraphs:
>
> relevant to this Code. For the purposes of road safety, the Minister may in particular develop new rules on traffic or vehicle use. The Minister shall set the rules and conditions for the implementation of a pilot project. The Minister may also, as part of a pilot project, authorize any person or body to use a vehicle in compliance with the standards and rules prescribed by the Minister. The provisions of a pilot project prevail over any inconsistent provision of this Code and its regulations.
>
> As regards pilot projects relating to autonomous vehicles, the Minister may also provide for an exemption from the insurance contribution associated with the authorization to operate a vehicle and set the minimum required amount of liability insurance guaranteeing compensation for property damage caused by an automobile. The Minister may also require the manufacturer or distributor to reimburse the Société for compensation that it will be required to pay in the event of an automobile accident. Those special rules prevail over the rules prescribed by the *Automobile Insurance Act* (chapter A-25) and its regulations."[8]

Allowing the testing of autonomous vehicles on Québec roads is certainly a step in the right direction. However, given the speed at which new technologies are advancing in this area and following the Report, which contains several recommendations, a legal vacuum remains around several important issues, including security, insurance and liability.

Automobile Insurance Act

Although the Act also includes certain amendments to the *Québec Automobile Insurance Act* (QAIA)[9], none of them concern autonomous vehicles. This may well be something that the Government of Québec may have to consider in terms of future amendments to the QAIA to clarify the legal responsibility of drivers and manufacturers when it comes to autonomous driving.

Indeed, as stipulated in the recently introduced section 633.1 of the HSC[10], the Minister may require the manufacturer or distributor to reimburse the "Société" for damages in the event of an automobile accident in the context of the pilot project. That said, it is not clear what enforcement power the Minister has in enforcing this provision.

In Québec, one of the foundations of the Automobile Insurance Plan is the no-fault compensation system that applies to any bodily injury sustained in an accident involving a motor vehicle[11]. This regime does not take into account the responsibility of the driver involved in such an accident and that is why it is not possible for the victim to institute proceedings against the person responsible for such a road accident. The government is solely responsible for compensating such a victim.

However, in the event of property damage, the at-fault driver remains liable for the damage he or she causes, subject to the exceptions provided for in paragraph 108 of the QAIA. This is the reason why the QAIA requires all vehicle owners to subscribe to a liability insurance policy[12].

What must be remembered in light of the new section 633.1 of the HSC, which takes precedence over the QAIA, is that in the event of an accident caused by an autonomous vehicle as part of a pilot project, the Government of Québec has decided to give the Minister the option of holding the manufacturer of the vehicle liable for any resulting damage. However, we believe that the guidelines surrounding this section will have to be defined and that while this new provision opens the door to hold manufacturers liable, proof of their liability will have to be made in court.

Conclusion

While the recent legislative changes are a step in the right direction, there are still many aspects such as security, cyber security, privacy, infrastructure, insurance and liability that are not governed by the current Québec legislative framework. We hope that the recent release of the Report will encourage the Québec government to review its legislation and to make other changes to the HSC and the QAIA with respect to autonomous driving on a proactive basis. It remains to be seen what impact these changes will have on safety, insurance and liability.

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[1] Standing Senate Committee on Transport and Communications, "Driving Change: Technology and the Future of the Automated Vehicle", Ottawa, (29 January 2018) [Report]

[2] LQ 2018, c 7

[3] CQLR, c C-24.2.

[4] Bill 165, An Act to amend the Highway Safety Code and other provisions, 1st Sess, 41st Leg, 2017 [Bill].

[5] LQ 2018, c 7, s. 4

[6] The Society of Automotive Engineers (SAE) defined in 2014 a common language and a standard (J3016) for classifying autonomous vehicles. Level 0 refers to 100% driver-controlled driving while Level 5 is the highest degree of automation that requires no human intervention. See an article by Kevin LaRoche and Robert Love from BLG, Autonomous Vehicles, 2016. Read more.

[7] LQ 2018, c 7, s. 492.8.

[8] LQ 2018, c 7, s. 633.1

[9] CQLR c A-25 [QAIA].

[10] LQ 2018, c 7, s. 633.1

[11] QAIA, supra note 9, s 5.

[12] Ibid, s 84.

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