Ontario Expands its Automated Vehicles Regulatory Framework

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On January 1, 2019, Ontario introduced important amendments to its automated vehicles (AVs) pilot project regulatory framework. The amendments support Ontario's ambition to be a leading jurisdiction in the advancement, deployment, and adoption of automated driving technology. We highlighted some of these amendments below.

1. Opening the Way to Public Use of SAE Level 3 AVs

The original regulatory framework allowed for testing of certain AVs under a 10-year pilot project. In its first iteration, all motor vehicles with driving automation Levels1 0, 1 or 2 were exempt from the pilot program.2 Any higher level of automation (Levels 3, 4, and 5) were prohibited from being operated on Ontario roads, except for testing as set out in the regulation. The amendments now extend this exemption to "properly maintained" AVs in "good working order" originally manufactured to operate at Level 3 or manufactured to operate at Level 2 and modified by the original equipment manufacturer to operate at Level 3.3 The implication of this amendment is that Level 3 vehicles would be exempted from the pilot testing program and therefore not be prohibited from being driven on Ontario's public roads. This would effectively open the way to public registration and use of Level 3 automated vehicles on Ontario roads.

2. Permitting Driverless Testing of Level 4 and 5 Automated Vehicles

The amendments permit testing, with the registrar's approval, of Level 4 and 5 vehicles without drivers.4 This brings Ontario's testing regulations in line with leading AV testing jurisdictions in North America (including the world's leading testing jurisdiction, California).5 No changes have been made as to who may apply for approval to test vehicles under the pilot program.6 However, the regulations regarding the information and documentation required for testing approval have been significantly modified, with the enumerated list of information and documents replaced by a framework in which an application must include "any information or document relevant to the applicant, the vehicles, the testing or the drivers that the Registrar may request".7

3. Permitting Testing of Co-operative Truck Platooning

The amendments provide for the testing of truck platoons.8 Co-operative truck platooning involves the use of AV technology to coordinate a number of trucks closely following one another where the “vehicles steer, accelerate, and brake co-operatively and synchronously”.9 Any testing of truck platooning will require approval by the registrar under the pilot program regulations.10

Trucking is likely to be one of the first significant commercial applications of AV technology and we expect a rapidly evolving legal landscape of updated laws, regulations, policy and emerging case law. Corporations active in this space will need to work closely with legal counsel to stay abreast of risks and requirements.

Summary

The recent amendments illustrate that Ontario continues to be a leading Canadian jurisdiction that is both pro-testing and pro-deployment of AVs. Once Level 3 vehicles are available for public purchase, there is no legal prohibition for their use on Ontario roads.

1 The levels of driving automation are the following: Level 0 (no automation); Level 1 (driver assistance); Level 2 (partial automation); Level 3 (conditional automation); Level 4 (high automation); Level 5 (full automation). This six-level taxonomy has been developed by the Society of Automotive Engineers (SAE) and has been adopted by the Ontario pilot program testing regulation from its inception (s. 1(2)).

2 *Pilot Project – Automated Vehicles*, O Reg 306/15 as modified by O Reg 517/18 at s. 2(2) [AV Regulation] (See: https://canlii.ca/t/53hvt)

3 *Ibid* at s. 2(2) and s. 2(3).

4 *AV Regulation, supra* note 2 at s. 13(1).

5 *Manufacturer’s Permit to Test Autonomous Vehicles That Do Not Require a Driver,* 13 CCR § 227.38.

6 *AV Regulation, supra* note 2 at s. 7.

7 *Ibid* at s. 8.

8 *AV Regulation, supra* note 2 at s. 12.1.

9 *AV Regulation, supra* note 2 at s. 1 (1).

10 *Ibid*, at s. 2(2).

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