Autonomous cars in Quebec: the legal uncertainty is clarified at last

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With the enactment on April 17th 2018 of Bill 165, *An Act to amend the Highway Safety Code and other provisions*[1], the driving of autonomous vehicles in Quebec is finally regulated, although a number of uncertainties remain.

Indeed, the driving of autonomous vehicles of automation level 3, such as Tesla's model X equipped with an improved guidance system, is now permitted in Quebec. While driving vehicles of levels 4 and 5 is not allowed for the moment, we can anticipate that it will be permitted as part of a pilot project implemented by the government, since it has expressed its desire for Quebec to become a recognized leader in certain segments of the electric and smart vehicle industry.[2]

As a reminder, there are six levels of automation for cars:

Level 0 – no automation;
Level 1 – driver assistance;
Level 2 – partial automation, which provides automatic assistance and acceleration/braking functions but requires that the human driver retain control over all dynamic driving tasks;
Level 3 – conditional automation, in which dynamic driving tasks are performed by the control system but the human driver must remain available at all times;
Level 4 – high automation, when a vehicle's control system provides total control of all driving tasks, even in critical safety situations; and
Level 5 – full automation, when a vehicle performs all driving tasks alone, without the possibility of human intervention.

THE "OLD" HIGHWAY SAFETY CODE

Until recently, the *Highway Safety Code*[3] (hereinafter the "**Code**") contained no definition of an autonomous vehicle. It defined a road vehicle as "a motor vehicle that can be driven on a highway" and a motor vehicle as "a motorized road vehicle primarily adapted for the transportation of persons or property".[4] Those broad definitions, and the fact that there was no specific definition of an autonomous vehicle, created a legal uncertainty. Were autonomous vehicles allowed on roads in Quebec? What would happen in the event of an accident involving an autonomous vehicle?

The Transportation Ministry recognized this legal vagueness and introduced amendments to the Code relating to autonomous vehicles, among other things.

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THE “NEW” HIGHWAY SAFETY CODE

The Code now defines an autonomous vehicle as “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]).

The Code prohibits driving autonomous vehicles on roads in Quebec, other than vehicles at automation level 3, when they are authorized for sale in Canada.[6] However, the Ministry may implement pilot projects relating to autonomous vehicles, “to study, test or innovate”.[7] Pilot projects will last for five years and 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”[8].

On the question of liability in the event of an accident involving an autonomous vehicle, a pilot project may “require the manufacturer or distributor to reimburse the Société [de l’assurance automobile du Québec] for compensation that it will be required to pay in the event of an automobile accident”[9].

IMPLICATIONS AND UNCERTAINTIES

While Transportation Minister André Fortin maintains that Bill 165 is forward-looking and is confident that it will further improve Quebec’s road safety record,[10] uncertainties still surround the conditions that will be placed on projects involving cars of automation levels 4 and 5.

Also, the obligations of the drivers and manufacturers of autonomous vehicles towards liability insurance will have to be clarified.

A more specific framework for autonomous vehicle manufacturers’ liability will necessarily have to be put in place.

The Quebec government will have no choice but to keep doubling its efforts to ensure that pilot projects are proposed if it is to catch up to Ontario, which has had an autonomous vehicle pilot project in place since 2016.[11]

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1. Bill 165, *An Act to amend the Highway Safety Code and other provisions;* The sanction date of the Bill and the entry into force of the new dispositions are not yet known.
2. Gouvernement du Québec, ministère de l’Économie, de la Science et de l’Innovation, “*Le gouvernement du Québec soutient la Grappe industrielle des véhicules électriques et intelligents*”, Montréal, April 13, 2018, online.
3. *Highway Safety Code*, RLRQ, c C-24.2.
4. *Highway Safety Code,* RLRQ, c C-24.2, art 4.
5. Bill 165, *An Act to amend the Highway Safety Code and other provisions,* s. 4.
6. Bill 165, *An Act to amend the Highway Safety Code and other provisions,* s. 125 (addition of section 492.8 to the *Highway Safety Code*).
7. Bill 165, *An Act to amend the Highway Safety Code and other provisions,* s. 164 (amendment of section 633.1 of the *Highway Safety Code*).
8. Bill 165, *An Act to amend the Highway Safety Code and other provisions,* s. 164 (amendment of section 633.1 of the *Highway Safety Code*).
9. Bill 165, *An Act to amend the Highway Safety Code and other provisions,* s. 164 (amendment of section 633.1 of the *Highway Safety Code*).
10. Journal des débats of the National Assembly, Vol. 44, No. 327, April 17, 2018, online.
11. *Pilot Project - Automated Vehicles, O Reg 306/15.*

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