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Plugged In: An Overview of Legal Issues with Respect to Canada's Transition to Electric Vehicles

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On December 19, 2023, the federal government announced plans to introduce electric-vehicle (EV) sales mandate regulations, requiring auto-manufacturers to gradually increase the proportion of EVs they produce.[1] Transitioning the Canadian automotive industry to achieve EV sales of 20% of all vehicles sold in Canada in 2026, and 100% by 2035, will affect consumers, companies, and governments across the country.[2]

The rapid transition to EVs will involve the following legal issues that auto-manufacturers, companies and consumers will need to navigate:

- The need for provinces to increase power grid capacity and improve transmission infrastructure to facilitate greater ease of interconnection;
- Potential real estate considerations and lease agreements for land to install EV chargers;
- Applying for permitting licenses and electrical utility agreements to install and maintain the required network of EV chargers;
- Complying with existing vehicle regulations under the *Motor Vehicle Safety Act* (MVSA)

Building Electricity Generation and Transmission Infrastructure

Canada's federal regulatory agency for energy projects, the Canada Energy Regulator (CER), estimates that electricity usage will more than double from 2021 to 2050, with the anticipated widespread deployment of EVs being a significant contributor to the increased demand.[3]

More power generation and transmission lines will be required to meet the anticipated demand. Depending on the scope and location of new power generation or transmission line projects, a range of regulatory and environmental approvals from federal and/or provincial governments could be required, as well as consultation with Indigenous peoples. Certain types of major projects may also trigger federal approvals.[4] When contained within provinces however, the approval of new power generation and transmission projects fall under provincial jurisdiction, for example:

- In BC, the industry is highly centralized with the *British Columbia Hydro and Power Authority* granted exclusive right to generate and transmit power, and the *Utilities Commission* the authority to regulate

all energy utilities within the province.[5] Over the course of the next ten years, the BC government has committed $10 billion to building new transmission lines, upgrading generating facilities and expanding or building new electrical substations in anticipation of increased demand.[6]

- In Alberta, the province has competitive generation and retail markets for electricity, relying on several arms-length agencies including the *Alberta Electric System Operator* (AESO), the *Market Surveillance Administrator,* and the *Alberta Utilities Commission*.[7] The AESO recently identified prospective transmission line enhancements as priority projects to address greater electricity demand.[8] Alberta is the only province in Canada with a deregulated wholesale power generation, which means that the electricity hourly price determines the revenue for generators and no guarantee of enough revenue for their fixed costs.
- Ontario also has competitive generation and retail markets for electricity, with the *Ontario Energy Board* being responsible for licensing electric generation and transmission companies.[9] The Ontario government is preparing for the impending increased demand for electricity by establishing the Electrification and Energy Transition Panel[10] and by investing in new zero-emission electricity generation, long duration storage, and new transmission lines in northeast and eastern Ontario.[11] Although Ontario has a competitive generation market, it does not have a fully deregulated power generation, and its market is referred to as a "hybrid market," meaning most generation have been procured by way of long-term, government-back contracts.

EV Charging

In order to facilitate the full-scale transition to EVs, existing charging infrastructure will need to be significantly improved, as a network of charging stations will need to be built not only in urban areas but across the country. The federal government has invested $680 million, and committed to investing over $1.2 billion into the Zero Emission Vehicle Infrastructure Program in attempt to facilitate construction of 84,500 EV charging stations by 2029.[12] The federal government has also announced that auto-manufacturers subject to the *Canadian Clean Fuel Regulations* can generate credits for installing EV charging stations.[13] Companies who score well below the required carbon intensity reduction can sell excess credits to other companies who may not have achieved target.[14]

Before an EV charging station can be installed however, several legal issues will first need to be considered:

- Determining a location requires consideration of potential real estate matters, as installing an EV charger on land owned by someone else will require negotiating a lease agreement for the right to use the land.
- A license and permit are required, and the application process for each can be highly complex and vary by province and city. EV charging stations are subject to both the *Accessible Canada Act*[15] and the *Electricity and Gas Inspection Act*.[16]
- Electrical utility access agreement will be required with the applicable need to be negotiated with the

provinces utilities commission or corresponding authority to allow for connection to the power grid.

EV Manufacturing

EVs are subject to the same regulations under the MVSA as gas-powered vehicles. These safety regulations are enforced by Transport Canada to reduce the risk of death, injury, and damage to property and the environment. The MVSA and its regulations cover vehicles, as well as tires and child car seats.[17]

- Motor vehicles and motor vehicle equipment must comply with all applicable Canadian Motor Vehicle Safety Standards (CMVSS). For EVs, one such applicable standard is CMVSS 141: Minimum Sound Requirements for Hybrid and Electric Vehicles.[18]
- Transport Canada authorization certifying compliance with their full list of safety requirements is required for anyone to manufacture vehicles in Canada, act as a dealer or agent in Canada or import vehicles into Canada.[19]
- Transport Canada maintains a Registrar of Imported Vehicles (RIV) which comply with safety standards for sales in Canada. If a company becomes aware of safety defects or non-compliance of their products intended for sale in Canada, it is required to notify Transport Canada and all affected dealers and owners.[20]

Dealerships

The rapid transition to EVs in the Canadian market will have impacts for automotive dealers, who have expressed concerns about the lack of national charging infrastructure.[21] Companies considering establishing new dealerships in Canada should consider applicable requirements. Unlike in some states in the United States, such as Texas,[22] South Carolina,[23] or Wisconsin[24] where there are specific auto-dealer laws prohibiting direct sale from auto-manufacturers to consumers, there are no such dealership specific laws in Canada. However, as a separate matter, it is important to be aware of provincial franchise laws as they can and often do, and sometimes surprisingly so for foreign manufacturers, apply to branded retail dealerships. In such cases, the relationship between manufacturer and dealer, including pre-contractual disclosure obligations, would be subject to provincial franchise laws.

Regardless of a dealerships size or location, all dealerships be it large franchises or small independently owned dealerships, will need to negotiate sales and service agreement(s) with auto-manufacturers before they can sell their vehicles. If disputes arise, the National Automobile Dealer Arbitration Program (NADAP) is an independent mechanism that can be used to resolve disputes in a timely and cost-efficient manner.[25] Market participants in Canada should be aware of NADAP, its implication on automotive industry agreements, and options available to them to manage disputes.

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Conclusion

The auto-industry in Canada is beginning a period of rapid transition in order to achieve the federal target of EVs comprising 100% of vehicle sales by 2035. Key legal considerations that will determine the success of this transition include the approval of new electricity generation and transmission infrastructure, facilitating widespread deployment of EV charging stations and satisfying applicable EV manufacturing regulations and dealership practices.

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[1] Mia Rabson, "Canada lays out plan to phase out sales of gas-powered cars, trucks by 2035", *CBC News* (19 December 2023).

[2] *Ibid*.

[3] Canada Energy Regulator, "Canada's Energy Future 2023" (2023) at 8.

[4] For example under the *Impact Assessment Act*, SC 2019, c 28, s 1 and/or the *Canadian Energy Regulator Act*, SC 2019, c 28, s 10.

[5] *Hydro and Power Authority Act*, RSBC 1996, c 212 and *Utilities Commission Act*, RSBC 1996, c 473.

[6] Ministry of Energy, Mines and Low Carbon Innovation, News Release, "Premier announces new actions to build electricity system, create jobs" (16 January 2024).

[7] Ministry of Affordability and Utilities, "Alberta electricity overview" (last visited 6 February 2024).

[8] Alberta Electric System Operator, "AESO 2022 - Long-term Transmission Plan" (2022) at 3.

[9] Ontario Energy Board, "Overview of energy sector" (last visited 6 February 2024).

[10] Ontario, "Electrification and Energy Transition Panel" (19 January 2024).

[11] Ontario Newsroom, "Province launches plan to power Ontario's growth" (10 July 2023).

[12] Natural Resources Canada, "Zero Emission Vehicle Infrastructure Program" (8 January 2024).

[13] *Clean Fuel Regulations*, SOR/2022-140.

[14] Canadian Fuels Association, "What are the Clean Fuels Regulations?" (last visited 6 February 2024).

[15] *Accessible Canada Act*, SC 2019, c 10.

[16] *Electricity and Gas Inspection Act*, RSC 1985, c E-4.

[17] *Motor Vehicle Safety Act*, SC 1993, c 16, at s 5(1) and Schedule I s 2 [MVSA].

[18] Regulations Amending the Motor Vehicle Safety Regulations (Minimum Sound Requirements for Hybrid and Electric Vehicles): SOR/2022-254, (2022) C Gaz II, 4903.

[19] MVSA, *supra* note 22 at s 5(1).

[20] MVSA, *supra* note 22 at s 10.1(1).

[21] Canadian Automobile Dealers Association, "CADA calls attention to shortfalls in Federal EV mandate" (5 February 2024).

[22] Tex Occ Code § 2301.476.

[23] SC Stat § 56-15-10.

[24] Wis Stat § 218.0121.

[25] Global Automakers of Canada, "National Automobile Dealer Arbitration Program" (last visited 6 February 2024).

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