

## New Ontario Regulations Give Autonomous Vehicles the Green Light

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**February 5, 2019**

On January 1, 2019, the regulatory framework of Ontario's Automated Vehicles Pilot Program (AVPM) was expanded to include the testing and sale of autonomous vehicles (AVs).<sup>1</sup> Our product liability team previously reported on the status of AVs and has been keeping a close watch on the progression of this industry.<sup>2</sup> The following provides a summary of the recent expansion to the regulations regarding AVs in Ontario.

### **Purchase and Sale of Society of Automotive Engineers Level 3 Vehicles**

Members of the public will now be able to purchase and drive vehicles originally manufactured as Society of Automotive Engineers (SAE) Level 3 vehicles. SAE Level 3 vehicles are classified as being able to manage most safety-critical driving functions while requiring the driver to be ready to take control of the vehicle at anytime. They fall under the statutory category of "conditional automation."<sup>3</sup> When the AVPM was introduced in 2016, SAE Level 3 vehicle use was restricted to testing by pilot program participants.<sup>4</sup>

### **Testing of Driverless AVs**

The testing of driverless AVs on Ontario roads by approved pilot participants will now be permitted.<sup>5</sup> Participants eligible to become pilot participants include auto manufacturers, technology companies, academic and research institutions and manufacturers of parts, systems, equipment or components for automated driving systems. Driverless AVs on public roadways will require full human oversight by someone capable of intervening in the operation of the vehicle if necessary.

Notably, pilot participants will be legally required to:

- a) accept liability where there is an at-fault collision caused by the technology;
- b) insure participating vehicles under a contract of automobile insurance with \$5 million liability coverage for vehicles with capacities of less than 8 and \$8 million for vehicles with capacities of greater than 8;
- c) alert local authorities of the time and location where testing will occur; and
- d) obtain prior approval from the Ministry of Transportation before conducting testing on provincial highways.

Additionally, the *Highway Traffic Act* rules of the road and penalties will apply to the operation of all AVs, as well as the responsibilities of the driver vehicle/owner, unless specifically exempted in the pilot regulation.

## Key Takeaway Principles

AV technology is steadily advancing and on the road to becoming a transportation reality in Ontario. The expansion of these regulations shows that Ontario is not only committed to the advancement of this technology but the safety of its citizens. These advancements will no doubt change the landscape of personal injury and product liability actions arising from motor vehicle accidents involving AVs. Specifically, what have traditionally been actions between individual drivers for negligence will now inevitably involve complex product liability issues for AV manufacturers.

As the *Highway Traffic Act* currently stands, only a driver can be held liable for the loss or damage sustained by a person through negligence.<sup>6</sup> This means that absent any legislative changes, defendants will need to issue third party claims against manufacturers where the facts give rise to a product malfunction. Single vehicle accidents caused by technology malfunctions, will also give rise to product liability claims against manufacturers. Our product liability team will continue to provide regular updates regarding advancements regarding AVs.

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<sup>1</sup> See the new proposed regulations here: <http://www.mto.gov.on.ca/english/vehicles/automated-vehicles.shtml>

<sup>2</sup> See our previous update here and here.

<sup>3</sup> *Pilot Project - Automated Vehicles*, O Reg 306/15 at s. 1(2)

<sup>4</sup> *Pilot Project – Automated Vehicles*, O Reg 306/15 (past version) at s. 2(2)

<sup>5</sup> *Pilot Project - Automated Vehicles*, O Reg 306/15 at s. 13.1(1).

<sup>6</sup> *Highway Traffic Act*, RSO 1990, c H.8 at s. 192.