

# Taxis versus Uber: Expropriation through Technology?

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Does someone own the *value* of their property? Is a taxi permit property? Quebec taxi drivers—represented by lead plaintiff Damas Metellus—are now asking the Superior Court of Quebec to answer these questions in a class action lawsuit filed against Uber and the Quebec government. The drivers claim that Uber and the government have conspired to illegally expropriate the value of their taxi permits.<sup>1</sup>

The trouble started when Uber arrived in San Francisco in 2011. Originally marketed as a carpooling app, Uber users simply download the app, provide their banking information, select their destination, and click “confirm.” In a matter of minutes, an Uber driver picks them up. Being so easy to use, Uber quickly took hold in metropolitan areas around the world as a transportation service similar to taxis. There was just one problem: Uber didn’t quite fit into the definition of a taxi, so it fell outside many existing transportation laws.

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1. Three class actions were merged into one on 1 May 2019: *Jean-Paul c. Uber Technologies Inc.*, 2017 QCCS 164 for loss of income, *Limousines Sélect v Quebec (AG)*, QCCS [discontinued on 20 Feb 2020] for the value of limousine permits, and *Damas Metellus c. Quebec (PG)*, 2018 QCCS App 500/162, Peacock CJ [Metellus, Authorizing Judgment]. The most recent description of the class action proceedings can be found in the Superior Court’s Registry of Class Actions. Just posting the link to it did not work. To reach it, the reader has to click the link, select “Registry,” then “Consulting the Registry.” Next, she must type the keyword “taxi,” scroll down, and select “DAMAS METELLUS” (last visited 8 January 2021), online: *Superior Court of Quebec* <<https://www.registredesactionscollectives.quebec/>>.

Soon after Uber came to Quebec in 2014, the province enacted laws effectively making Uber's activities illegal. After seizing the vehicles of suspected Uber drivers, the province would then suspend their drivers' licences for one week. Nonetheless, Uber encouraged its drivers to continue working. The company would even pay the fines that drivers received for conducting business illegally. Taxi drivers in Quebec have protested Uber since the very beginning and competition between the two has been fierce. There have even been allegations of violence between taxi permit holders and Uber drivers.<sup>2</sup>

Faced with this upheaval, by October 2016, the government of Quebec had to act. It created a pilot project for Uber drivers that, until 2019, allowed the company to operate outside of the *Act respecting transportation services by taxi*.<sup>3</sup> The pilot project required security checks for Uber drivers and mechanical inspections for their vehicles, and it charged the drivers around \$11,000 per year for a permit to operate.

In late 2019, the province passed a new law called *An Act respecting remunerated passenger transportation by automobile*, the infamous Bill 17.<sup>4</sup> The law applies broadly to the transportation industry and no longer sets taxis apart from other forms of transportation services like limousines and ride-hailing applications like Lyft and Uber. The new law has confirmed Uber's business model, solidifying the competitive relationship between taxi drivers and ride-hailing services. It has taxi drivers fearing for their jobs; one taxi representative has gone so far as to call the new law "an act of war."<sup>5</sup>

2. As well as several anecdotes of Uber drivers that haven't made the news, see e.g. Gary Ng, "Montreal Taxi Drivers Egg Uber Cars, Offices in First 'Friendly Warning'" (2016), online: *iPhone in Canada* <[www.iphoneincanada.ca/news/montreal-taxis-egg-uber/](http://www.iphoneincanada.ca/news/montreal-taxis-egg-uber/)>. Some incidents like this have made the news in France as well (see Jean-Michel Gradt "Les taxis contre Uber : quand la violence s'en mêle" (23 June 2015), online: *Les Echos* <[www.lesechos.fr/2015/06/les-taxis-contre-uber-quand-la-violence-sen-mele-266752](http://www.lesechos.fr/2015/06/les-taxis-contre-uber-quand-la-violence-sen-mele-266752)>).
3. RSQ 2001, c 15.
4. CQLR c T-11.2.
5. Abdallah Homsy, representative of Quebec City taxi drivers (see John MacFarlane, "Quebec Taxi Industry calls Government Reform 'An Act of War'" (21 March 2019), online: *CBC News* <[www.cbc.ca/news/canada/montreal/taxi-reforms-reactions-1.5065471](http://www.cbc.ca/news/canada/montreal/taxi-reforms-reactions-1.5065471)>).

When Uber came to Quebec in 2014, taxi permits were valued at over \$200,000 each.<sup>6</sup> Faced with competition from Uber, the resale value of the permits plummeted to under \$150,000 in 2017, according to Quebec's Ministry of Transport.<sup>7</sup> This decrease is the basis of the taxi drivers' class action.<sup>8</sup> It has led to economic hardship for taxi drivers who bought the permit hoping that the value would increase based on the legal framework that existed at the time.<sup>9</sup> They considered it an investment. One local taxi driver, who also drives for Uber, says that "many [taxi drivers] wanted to retire by selling the permit, but now the value has gone down."<sup>10</sup> He says that for many of the 22,000 drivers that are now part of the class action, the permit "was their only investment."<sup>11</sup>

6. The Commission de Transports du Québec published a helpful table showing the evolution of how much the permits cost (see "Manifestation de chauffeurs de taxi jeudi à Québec" (10 January 2018), online: *CBC Radio Canada* <ici.radio-canada.ca/nouvelle/1077325/manifestation-chauffeurs-taxi-quebec>).
7. See *ibid.*
8. See e.g. the originating application in their class action: *Damas Metellus c Québec (PG)*, 2019 QCCS No 500-06-000811-162, Silvana Conte CJ at paras 49, 65–68 [*Metellus*, Originating Application]. See also *Metellus*, Authorizing Judgement, *supra* note 1 at 4, 31, 141.
9. Interestingly, Uber claims to have extended an olive branch to taxi drivers by letting them use the application while driving their taxi (see Uber Canada, "Uber Plans to Expand Ridesharing Services across Quebec" (26 August 2020), online: <www.uber.com/en-CA/newsroom/uber-plans-to-expand-ridesharing-services-across-quebec/>). It remains to be seen whether taxi drivers will take Uber up on its offer.
10. Comment from Sara Tadayyon's interview of a family friend (1 March 2020) generously translated from Farsi by her [Sara's Interview].
11. *Ibid.* Although it's not stated explicitly in the *Act respecting transportation services by taxi*, the old law does not intend to create a property right in the taxi permits. They belong to the government. The language of the law's preamble and the conditions imposed on permits in sections 1–15 of the law are entirely incompatible with definition of ownership in article 947 of the *Civil Code*, which is the "right to use, enjoy and dispose of property fully and freely." This is probably why the drivers argue that they owned their customers' goodwill and not the permits themselves (see *Metellus*, Authorizing Judgment, *supra* note 1 at paras 118–19). For more on the 22,000 drivers who claim to have lost money on this investment and have joined the class action, see Pierre Saint-Arnaud, "Taxi-Drivers steer Quebec, Uber toward Court, Seeking \$1.5 Billion" (15 October 2019), online: *Montreal Gazette* <montrealgazette.com/news/local-news/taxi-drivers-steer-quebec-uber-toward-court-seeking-1-5-billion>).

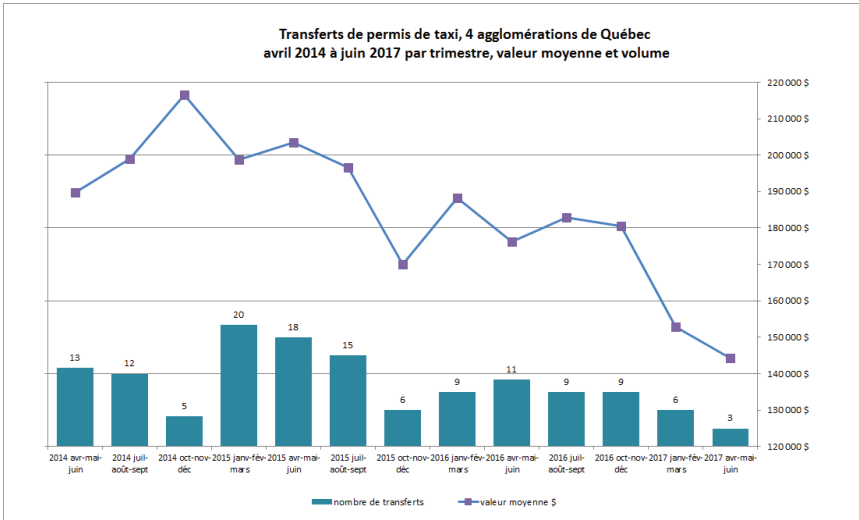


Photo : Commission de Transports du Québec (note 6)

The government of Quebec recognizes the hardship that the new law has caused. It plans to give taxi and limousine drivers \$800 million to offset the loss of their permits' value, which amounts to around \$70,000 per person according to the provincial government's impact analysis.<sup>12</sup> The government claims that the compensation package is meant to "help [taxi drivers] transition to a modernized industry."<sup>13</sup> But, in the class action headed by lead plaintiff Damas Metellus, the drivers argue that the compensation package is an admission of legal responsibility for their losses.<sup>14</sup> The taxi drivers insist that the government has a legal obligation to give them an additional \$700 million. For the Superior Court of Quebec, financial loss on this scale as a result of government action merits serious attention and, just maybe, might amount to illegal expropriation.

12. If we divide the \$800 million by the 7,801 active permits in Quebec in 2019 (see Ministère des Transports, "Analyse d'impact réglementaire" (9 April 2019) at 8, online (pdf): *Gouvernement de Québec* <[www.transports.gouv.qc.ca/fr/ministere/acces-information-renseignements-personnels/documents-reglement-diffusion/Documents/projet-loi-17-analyse-impact.pdf](http://www.transports.gouv.qc.ca/fr/ministere/acces-information-renseignements-personnels/documents-reglement-diffusion/Documents/projet-loi-17-analyse-impact.pdf)>) [Impact Analysis].

13. *Metellus*, Originating Application, *supra* note 8 at para 53.

14. See *ibid* at para 55.

## EXPROPRIATION AND WHAT THE DRIVERS HAVE TO SHOW

Generally, whatever the State gives, it can take away.<sup>15</sup> When the government takes someone's private property, it's called "expropriation." It's illegal for any government in Canada to expropriate private property without compensating the owner for it.<sup>16</sup> Article 952 of the *Civil Code* states this for Quebec and a long series of cases does so in Canadian common law.<sup>17</sup> What's more, the government can't limit someone's right to enjoy her property to the point that she can no longer use it.<sup>18</sup> That would be tantamount to taking it. In cases where it appears that the government has prevented all reasonable uses of someone's property and has not compensated that person, most courts in Canada will find that there has been some kind of illegal expropriation.

The Quebec Court of Appeal has said that to base a claim of expropriation on article 952 of the *Civil Code*, the plaintiff has to show that the government has done more than enact a law that economically harms her in some way.<sup>19</sup> For this reason, Metellus and the other taxi drivers are not arguing that the government took the licenses per se, nor are they arguing that it took the value of those licenses directly. Those would be hard arguments to make because, with few exceptions, licenses and permits usually aren't thought to be property.<sup>20</sup> Taxi permits, like other kinds of licenses, are generally a right to do something rather than a right of ownership.

Instead, the drivers argue that by letting Uber operate illegally between 2014 and 2016, and then by not subjecting Uber to the same

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15. See e.g. Bruce Ziff, *Principles of Property Law*, 7th ed, (Toronto: Thomson Reuters, 2018) at 100.

16. See *Expropriation Act*, CQLR c E-24, s 58 [*Expropriation Act*]. See also *Ouimette c Canada (PG)*, 2002 CanLII 30452 at paras 109, 114, 115 [*Ouimette*].

17. For some recent cases on expropriation issues, see e.g. Carolina Campos & Tristan Neill, "Expropriation Law: A Year in Review" (28 January 2020), online: *Gowling WLG* <[gowlingwlg.com/en/insights-resources/articles/2020/expropriation-law-a-year-in-review/](http://gowlingwlg.com/en/insights-resources/articles/2020/expropriation-law-a-year-in-review/)>. See also the cases cited and distinguished in *Canadian Pacific Railway Co v Vancouver (City)*, 2006 SCC 5.

18. See *Wallot c Québec (Ville de)*, 2011 QCCA at para 42 [*Wallot*].

19. See *Ouimette*, *supra* note 16 at para 135.

20. Though they can be in exceptional cases (see e.g. Ziff, *supra* note 15 at 355).

law that applied to them after 2016, the Quebec government expropriated the “goodwill” of their customers.<sup>21</sup> And the drivers might be right: the transportation industry has changed a lot since Uber arrived. Many people use Uber more than taxis these days. One local taxi driver says that, although the elderly “still like to use the old-fashioned way [meaning taxis], now most people go with technology [and thus with Uber].”<sup>22</sup>

Can the taxi drivers claim to own something as diffuse as customer goodwill? What is customer goodwill?

The argument that a government can expropriate customer goodwill for its own benefit has succeeded in Canada before. In *Manitoba Fisheries*, the Supreme Court of Canada took customer goodwill to mean “the attractive force” that comes with a good reputation in an industry, one that “brings in custom” and “is something generated by effort that adds to the value of the business.”<sup>23</sup> In that case, the government of Manitoba introduced a law that gave it the exclusive right to carry on business exporting fish for commercial purposes. This law prohibited Manitoba Fisheries Ltd., a private company, from buying and selling fish caught in the province, which effectively ended its business. Although customer goodwill was an intangible form of property, the Supreme Court of Canada held that Manitoba Fisheries Ltd. *owned* the goodwill of their customers, and that the government of Manitoba had illegally expropriated it.<sup>24</sup>

Yet, there are important differences between the taxi drivers’ class action and what happened in *Manitoba Fisheries*. In *Manitoba Fisheries*, the government essentially *closed down* the business of a private company without compensation, effectively using a Crown corporation to monopolize an entire industry. But in the case of the taxi drivers, the province is doing the opposite: it’s *opening up* the taxi monopoly

21. See *Metellus*, Authorizing Judgment, *supra* note 1 at paras 11, 32, 118, 135. See also *Metellus*, Originating Application, *supra* note 8 at paras 49, 55, 65–68. This draws on the language in *Manitoba Fisheries Ltd v The Queen*, [1979] 1 SCR 101 at 108.

22. Sara’s Interview, *supra* note 10. The drivers argue this in *Metellus*, Originating Application, *supra* note 8 at para 51.

23. Definition cited in *Manitoba Fisheries*, *supra* note 21 at 108. See *Metellus*, Authorizing Judgment, *supra* note 1 at paras 9, 130.

24. See *Manitoba Fisheries*, *supra* note 21 at 118.

on the transportation industry to competition from ride-hailing services like Lyft and Uber. And it has provided compensation. Although the point of controlling fish distribution in *Manitoba Fisheries* was probably also to improve the service, courts in Quebec might not be so quick to penalize the Quebec government for a move that might already be improving the quality of transportation services offered to consumers.<sup>25</sup>

So *Manitoba Fisheries* shows us that customer goodwill can be property and that it can be illegally expropriated. But did the drivers really have their customers' goodwill within the meaning of *Manitoba Fisheries*?

In 2017, the Canadian Broadcasting Corporation reported that six hundred sixty-three complaints against taxi drivers had been filed with the Montreal Taxi Bureau between January and September alone. Many passengers remember unpleasant experiences of dirty cabs, rude drivers, expensive fares, and "drivers who took the long way home."<sup>26</sup> Although Uber drivers are not immune from criticism, either,<sup>27</sup> this casts some doubt on the idea that taxis had a good reputation with customers that amounted to customer goodwill. Rather than the attractive force of the taxis themselves, one could argue that the customer goodwill to which the drivers lay claim came more from the lack of choice for the consumer. The consumer having few alternatives might be why taxis got away with giving poor service at high prices for so many years, but why people still chose to use them.

Although the circumstances in *Manitoba Fisheries* were quite different, the taxi drivers rely heavily on this decision in the judgment authorizing their class action. They claim that the government

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25. A local driver admits that competition from Uber "has already caused the taxi industry to improve," saying that "taxi prices have already come down a lot" since Uber has been on the market (Sara's Interview, *supra* note 10). In part he thinks that this is because "everyone has their own apps, you don't need to memorize numbers, and it's consistent across the country" (*ibid*).

26. iHeart Radio "Not Fare: How Taxi Licenses Collapsed in Value, Destroying Lives and Livelihoods" (13 January 2019) at 00h:03m:19s, online (podcast): *Background Briefing* <[www.iheart.com/podcast/256-background-briefing-abc-rn-30966041/episode/not-fare-how-taxi-licences-collapsed-31519677/](http://www.iheart.com/podcast/256-background-briefing-abc-rn-30966041/episode/not-fare-how-taxi-licences-collapsed-31519677/)>.

27. See Associated Press, "Uber Reports more than 3,000 Sexual Assaults during U.S. Rides in 2018" (5 December 2019), online: *Global News* <[globalnews.ca/news/6261375/uber-sexual-assaults/](http://globalnews.ca/news/6261375/uber-sexual-assaults/)>.



expropriated the goodwill of their customers to make money off of the pilot project it set up for Uber.<sup>28</sup> But it might be a stretch to say that the taxi drivers actually *had* the goodwill of their customers when many customers defaulted to Uber almost as soon as it came on the market. And given that the service offered by taxis has improved since the government let Uber operate in Quebec—even according to industry representatives—the drivers might have to show that the government expropriated something other than customer goodwill.<sup>29</sup>

*Manitoba Fisheries* has been interpreted restrictively since it was decided in 1979.<sup>30</sup> However, the taxi drivers might be able to argue that goodwill is only one kind of intangible property that can be expropriated. There might be others. For example, they could say that they purchased their licenses at such high prices assuming that the legal framework would remain unchanged. Maybe they could argue that they owned an interest in that existing legal framework. They could argue that, by tearing asunder the licensing regime that taxi drivers thought would continue, the government expropriated their interest in the regime.

## THE OBSTACLES FACING THE DRIVERS

To show how, exactly, the government illegally expropriated the value of their permits, Metellus and the other drivers will have to overcome three main legal obstacles.

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28. See *Metellus*, Authorizing Judgment, *supra* note 1 (“[m]r. Metellus argues that in the minimum, the State gave itself a benefit after the pilot project since by constructively transferring goodwill to Uber’s taxi drivers under the pilot project, it was gaining the additional fees that it was charging Uber and those drivers under the pilot project” at paras 20, 135). See also *Metellus*, Originating Application, *supra* note 8 at 59.

29. President of *Champlain Taxi*, George Boussios, concedes that the customer may benefit from lower wait times with Uber (see “Quebec adopts Taxi Reforms despite Stiff Opposition from Industry” (11 October 2019), online: *CBC News* <[www.cbc.ca/news/canada/montreal/bill-17-adopted-quebec-taxi-industry-1.5317535](http://www.cbc.ca/news/canada/montreal/bill-17-adopted-quebec-taxi-industry-1.5317535)>).

30. See Yaëll Emerich, *Conceptualising Property Law: Integrating Common Law and Civil Law Traditions* (Cheltenham (UK): Edward Elgar Publishing, 2018) at 149, n 104.



### *Positive versus Negative Obligations*

The first obstacle that they have to overcome is proving that the government had a duty to enforce its laws against Uber before setting up the pilot project in 2016. The taxi drivers argue that before the Ministry of Transport set up the separate licensing regime for Uber, the company was operating illegally. They say that the government was refusing to enforce its own law by allowing Uber drivers to operate without a taxi permit. But a court isn't likely to accept this argument, because it would be imposing a positive obligation on the government to enforce its laws in a particular way. Courts have been reluctant to hold the government liable for exercising its discretion.<sup>31</sup>

*Manitoba Fisheries* is clear that a government cannot just swoop in and take a company's clients or their goodwill without adequately compensating the loss. But in *Manitoba Fisheries*, *Canadian Pacific*, and some other lower-court decisions, the courts intervened to protect private property *from* government action. They did not intervene to force the government to act, and they have been reluctant to do so.<sup>32</sup> In this case, it's unlikely that a court will find that a government had a positive duty to uphold the value of the taxi permits or the drivers' business model, even if it has already opted to compensate them for their losses.

### *Regulation versus Illegal Expropriation*

The second obstacle for Metellus and the taxi drivers to overcome is that, if they can avoid it, courts will not make the government liable for the consequences of the laws that it enacts or how it chooses to

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31. To take just one example, a similar argument is being made that the government has a positive duty to curb climate change, but it has yet to succeed (see e.g. *Environnement Jeunesse c Procureur général du Canada*, 2019 QCCS 2885 2885 ("it is not the role of a court to comment on the wisdom of how the executive branch exercises its discretion or to substitute its opinion for that of the government" [translated by author] at para 63)). See also *ibid* at para 56.

32. See e.g. *Just v British Columbia*, [1989] 2 SCR 1228, 64 DLR (4th) 689 [cited to SCR] ("the Crown ... must be free to govern and make true policy decisions without becoming subject to tort liability as a result of those decisions" at 1239). See also *Sula c Duvernay (Ville de)*, (1970) CA 234 (the government effectively expropriated a man's building); *Wallot*, *supra* note 18 at paras 51, 53 (where plaintiffs alleged that the city expropriated their waterfront property).

apply them. The Supreme Court of Canada in particular has avoided compensating any kind of government expropriation unless another law specifically sets out a compensation scheme for it. Even then, the Supreme Court and the Quebec Court of Appeal have both said that article 952 of the *Civil Code*, the anti-expropriation article, is not meant to fill any gaps left by the province's lawmakers.<sup>33</sup>

To avoid this, courts now try to distinguish government regulation from illegal government expropriation. The government is allowed to regulate and to expropriate peoples' property, *as long as they compensate them for it*.<sup>34</sup> The distinction between regulation and illegal expropriation has played out in a case before the Ontario Court of Appeal. In *Granite Power v. Ontario*, Granite Power was a utility company that had a monopoly selling electricity to a small town. When the government shifted its policy toward a more open market, it wrested the town's electricity from the control of Granite Power. As a result, Granite Power claimed that the province "expropriated its business undertaking without compensation."<sup>35</sup> In the end, the Ontario Court of Appeal found that this was not a case of illegal expropriation, but of regulation. The government was simply doing its job and pursuing valid policy objectives.

The judge in *Granite Power* distinguished the case from *Manitoba Fisheries*. He noted that in *Manitoba Fisheries*, the government's law had more direct effects: it "put the plaintiff out of business, forced its customers to do business with the Crown, and thus enabled the Crown to acquire the plaintiff's proprietary interest in goodwill."<sup>36</sup> Although *Granite Power* took place in Ontario, Metellus and the other taxi drivers face a similar difficulty in applying *Manitoba Fisheries* to their situation in Quebec. They will still have to show that the new law harmonizing transportation services in Quebec has done more than simply loosen their grip on the transportation industry like Ontario's law did to electricity in *Granite Power*. For the taxi drivers to apply *Manitoba Fisheries* to their case, they have to show that the new law has effectively put them out of business.

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33. See *Ouimette*, *supra* note 16 at para 126.

34. See *Expropriation Act*, *supra* note 16, s 52. See also art 952 CCQ.

35. 2004 CanLII 44786 at para 27.

36. *Ibid* at para 28.

The Quebec Court of Appeal deals with a similar issue in a case called *Ouimette*. In *Ouimette*, the court said that even though the plaintiffs' property value went down after the province built a dam near their houses, they had failed to show that "their [property] rights had been infringed more than the normal inconvenience" that comes with the government changing its policy.<sup>37</sup> The court said that "when the infringement of a property right is less direct or more diffuse ... the right to indemnity must *clearly* be granted by the legislature."<sup>38</sup> If the loss is indirect or diffuse and the government doesn't specifically say that someone deserves to be compensated for it, then that person cannot win her case simply because the "value of her property decreased."<sup>39</sup> For Metellus and the other drivers, it might be challenging to show how the loss of customer goodwill was anything more than an unfortunate consequence of the government changing its policy.

### *Article 952 and Public Utility*

The third obstacle facing the taxi drivers is the second part of article 952 of the *Civil Code*, the "public utility" component.<sup>40</sup> This article says that the government cannot expropriate someone's private

37. *Ouimette*, *supra* note 16 at para 135 [translated by author].

38. *Ibid* at paras 123, 126 [emphasis added; translated by author].

39. *Ibid* at para 127 [translated by author].

40. On the one hand, some authors and cases suggest that Quebec civil law should not make reference to common law jurisprudence on expropriation. See for example *Desrosiers c Canada*, (1920) 60 SCR 105, 1920 CanLII 77 [cited to SCR] ("[l]e droit civil constitue un système complet par lui-même" at 126); *Farber v Royal Trust Co*, [1997] 1 SCR 846, 145 DLR (4th) 1 [cited to SCR] ("[t]he civil law is a complete system in itself; care must be taken not to adopt principles from other legal systems" at para 31); Jean-Louis Badouin, "Le Code civil du Québec: crise de croissance ou crise de vieillesse?" (1966) 44 R du B can 391. On the other hand, other authors argue that Quebec civil law is too closed off to change or outside influence, far more than other civil law jurisdictions. See for example *Lamontagne c Distribution financière Sun Life (Canada) inc*, 2018 QCCS 6 (where Justice Hamilton creatively avoids the applicable *Civil Code* articles, preferring instead what courts in Ontario do at paras 101–107); *Droit de la famille – 132495*, 2013 QCCA 1586 ("ces conditions [d'un test de common law] sont remplies sont en l'espèce à supposer, bien entendu qu'elles s'appliquent en droit civil, question à laquelle je réponds affirmativement" at para 57); Daniel Jutras, "Cartographie de la mixité : La common law et la complétude du droit civil au Québec" 88 Rev du B can 247 ("[c]e statut particulier (et négatif) conféré aux sources de common law est injustifiable" at 248). Addressing this debate is beyond the scope of this paper. The authors simply want to comment on the arguments made by the

property unless that someone is adequately compensated and the public benefits in some way.<sup>41</sup> In other words, if the taxi drivers can show (i) that they own their clients' goodwill and (ii) that the government taking it serves no public utility, then the drivers will have demonstrated that there has been illegal expropriation under article 952 of the *Civil Code*.

The notion of public utility has been expanding in recent years.<sup>42</sup> Before, the only "public utility" was private land that was made public.<sup>43</sup> But now, *public utility* has come to mean something akin to "useful to some segment of the population."<sup>44</sup> Even if a private company benefits in some way from government expropriation, the expropriation can still be in the public interest and thus legal under article 952.<sup>45</sup> In that vein, the taxi drivers claim that the government took something that was theirs—their clients' goodwill—but that it did so for its own benefit and *not* for some public utility.<sup>46</sup> They seem to treat the government and the public as two different things, as if something that is good for the government is necessarily not good for the public.

However, in a representative democracy, the government of Quebec is supposed to represent the public. So, in theory, a government with more money will be able to provide more services to its citizens. But,

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taxi drivers, and their arguments depend heavily on the common law idea of customer goodwill that was recognized in *Manitoba Fisheries*.

41. The drivers argue this point in *Metellus*, Authorizing Judgment, *supra* note 1 ("[w]hether the Plaintiff [Metellus] can prove [on the merits] that this is, in effect, an expropriation, and one that merits indemnification per *Tener*, article 6 of the Quebec *Charter* and article 952 C.C.Q. is ... an arguable position" at para 136).
42. See Emerich, *supra* note 30 at 156–57.
43. See Jacques Forgues & Jacques Prémont, *Loi sur l'expropriation annoté*, 2nd ed (Cowansville, QC: Éditions Yvon Blais, 2012) at 13.
44. See e.g. *Apôtres de l'amour infini c Brébeuf (Municipalité de)*, 2008 QCCA 554 at para 85 [*Apôtres*].
45. See *ibid* ("le fait qu'un projet soit initié par une entreprise privée est sans pertience, dans la mesure où il est ... dans l'intérêt public" at para 90).
46. See *Metellus*, Authorizing Judgment, *supra* note 1 at paras 13, 119. See especially *ibid* ("Mr. Metellus argues that in the minimum, the State gave itself a benefit after the pilot project since by constructively transferring goodwill to Uber's taxi drivers under the pilot project, it was gaining the additional fees" at para 135).

regardless of whether it represents itself or the public, the government *may actually have lost money* by setting up the pilot project for Uber in this case. When it created the pilot project in 2016, Quebec's Ministry of Transport charged Uber just over \$1 million for a maximum of three hundred permits per year, meaning each permit—which was the functional equivalent of a taxi permit—cost Uber up to \$11,000 per driver.<sup>47</sup>

It appears it might have been in the government's financial interest to charge Uber drivers the \$180,000 that a taxi permit cost at the time, rather than letting them operate outside the law or setting up a separate regime that brought in only \$11,000 per driver. The taxi drivers bear a heavy burden of proof as they try to show how the government made *more* money from Uber's pilot project than it would have by subjecting Uber drivers to the same licensing regime as the taxi drivers.<sup>48</sup> At the very least, these numbers suggest that the government didn't line its own pockets by letting Uber operate in Quebec. In any case, the drivers will have to do more than allege that the government made money to prove that letting Uber operate served no public utility.

But the drivers' argument suffers from an even deeper flaw. The flaw is that they conflate common law taking with civil law expropriation. In common law provinces, when the government takes property or something like it, this suggests illegal expropriation.<sup>49</sup> In Quebec, article 952 makes no mention of the government getting something.<sup>50</sup> So if the government takes private property in common law provinces, this suggests illegal expropriation. But in Quebec, it's of no use for the drivers to argue that the government got something from letting Uber operate in the province.<sup>51</sup> While that might suggest illegal expropriation in common law provinces, it doesn't matter in Quebec, as long as the expropriation serves some public utility.

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47. See *ibid* at para 20.

48. For the taxi drivers' arguments on this point, see *ibid* at paras 20, 129, 135, 152.

49. See *R v Tener*, (1985), 17 DLR (4th) 1 ("[b]y depriving the holder of the profit [à prendre] of his interest ... the owner of the fee has effectively removed the encumbrance from its land. It would ... be quite unconscionable to say that this cannot constitute an expropriation" at 552).

50. See *Apôtres*, *supra* note 44 at paras 85, 90.

51. See art 952 CCQ.

Article 952 of the *Civil Code* says that the government can only expropriate private property when it has compensated the owner and when it's for a public utility. The government has compensated the parties in this case, although the amount is disputed.<sup>52</sup> So the public utility part is what is at issue. But as prices for transportation services drop and the quality of those services arguably improves, it's going to be harder and harder for the taxi drivers to show that the public has not benefitted in some way from the government's decision to allow Uber to operate. This all means that, even if the drivers are able to prove that the Quebec government benefitted financially in some way from allowing Uber in the province, a Quebec court is unlikely to care, as long as the public is better off. And it might well be.<sup>53</sup> In any event, it will be challenging for the taxi drivers to show that letting Uber operate in Quebec serves no public utility.

## LOOKING TO THE FUTURE: SELF-DRIVING CARS

As if the arrival of ride-sharing apps did not already disrupt the transportation industry enough, Uber has also begun developing self-driving cars in partnership with companies like Volvo. Uber even has plans to introduce Uber Air, which is a helicopter-like vehicle that is designed to travel short distances within cities. These developments are in line with Uber's goal to become a "one-stop shop for the movement of people and powering local commerce around the world."<sup>54</sup> Zoox is another robo-taxi startup, which is taking on giants

52. See sources for *supra* notes 9–12 and various other news articles on this subject.

53. See e.g. comments made by Boussios, in *supra* note 29, by the people interviewed in *supra* note 22, and by a taxi and Uber driver in Sara's interview, in which he agreed that Uber has already caused taxi prices to go down (*supra* note 10). A number of consumers use Uber by default instead of taxis. Others say that they like having a choice between the two services, or that they like having competition in the transportation market. Peer-reviewed literature comparing Uber and Taxis in other jurisdictions is starting to emerge, as well, for example in England (Walter Skok & Samantha Baker, "Evaluating the Impact of Uber on London's Taxi Service: A Critical Review of the Literature" (2018) 26:1 Knowledge and Process Management 3).

54. Sean O'Kane, "Uber's CEO thinks Eats is a Secret Weapon in Ride-Hailing Wars" (30 May 2019), online: *The Verge* <[www.theverge.com/2019/5/30/18646470/uber-eats-ride-hailing-promotions-dara-khosrowshahi](http://www.theverge.com/2019/5/30/18646470/uber-eats-ride-hailing-promotions-dara-khosrowshahi)>. O'Kane and Andrew J Hawkins have a series of great articles on all of these topics in *The Verge* (last visited 8 January 2021), online: *The Verge* <[www.theverge.com/transportation](http://www.theverge.com/transportation)>.



like Uber and Google. While these technologies seem far-fetched right now, Uber has said that it plans to launch these services in 2023 in parts of the United States. In light of these plans, the transportation sector will likely change quite a bit in the foreseeable future.<sup>55</sup>

The law is often slow to catch up with technology. Currently, laws assume that there is a human being in the driver's seat of taxis. Although some local drivers think that these changes "won't happen in the near future," self-driving vehicles might eventually pose new legal problems, especially since transportation infrastructure is designed for human vision, not at all for computers.<sup>56</sup> The most obvious question is whether self-driving cars will require special permits to serve customers. Of course provincial governments must ensure that these cars meet the safety and knowledge requirements of their traffic laws. But whether they will require special self-driving taxi permits is unclear. If the taxi drivers' class action against the government of Quebec is any indication, these cutting-edge technologies might pose several new legal challenges.<sup>57</sup>

Currently, self-driving cars are not allowed on public roads in Quebec. However, "amendments to the *Highway Safety Code* in 2018 ... opened the door to pilot projects to test new modes of transportation and to regulate the operation of this new type of vehicle."<sup>58</sup> This shows that the province is preparing itself for the introduction of autonomous vehicles on public roads. If they are legalized and the government allows robo-taxis on the streets, similar questions about illegal expropriation might arise. Could current taxi, Uber, and Lyft employees claim that the government has expropriated the goodwill of their

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55. See Lauren Helper, "7 Companies Steering the Self-Driving Car Craze" (3 May 2017), online: *Green Biz* <[www.greenbiz.com/article/7-companies-steering-self-driving-car-craze](http://www.greenbiz.com/article/7-companies-steering-self-driving-car-craze)>.

56. Sara's Interview, *supra* note 10.

57. For its part, the government of Quebec seems relatively open to new ridesharing technologies, if the new *Act respecting transportation services by automobile* is any indication (see e.g. CBC News, "Uber arrives in Gatineau as Quebec Lawmakers pave the Way" (26 August 2020), online: <[www.cbc.ca/news/canada/ottawa/uber-expanding-across-quebec-gatineau-1.5701079](http://www.cbc.ca/news/canada/ottawa/uber-expanding-across-quebec-gatineau-1.5701079)>).

58. See Gouvernement du Québec, "Modes of Transportation in an Autonomous Vehicle" (last visited 8 January 2021), online: *Société de l'assurance automobile Québec* <[saaq.gouv.qc.ca/en/road-safety/modes-transportation/autonomous-vehicles/](http://saaq.gouv.qc.ca/en/road-safety/modes-transportation/autonomous-vehicles/)>.



customers by allowing companies like Google, Volvo, or Zoox to transport people in self-driving cars?

It would certainly be strange to see taxi and Uber drivers as plaintiffs in a class action. But if the Superior Court of Quebec finds that the province expropriated something from taxi drivers in *Metellus v. Quebec*, be it customer goodwill or something else, it will create an interesting precedent for these new technologies. Should the court rule in favor of the taxi drivers, companies looking to innovate and the government that allows them to do so might be met with class-action lawsuits from proponents of the old ones. This could end up hurting consumers by discouraging technological advancements that could reduce prices and increase quality and efficiency.



In cases like *Metellus v. Quebec*, it's difficult to separate the economic and political questions from the legal ones. Competition from ride-hailing services like Uber has devastated the value of taxi permits. Many taxi drivers saw these permits as an investment for their families when they purchased them. They think that they are worth much more than the \$800 million that the government of Quebec has given them to offset their loss. The taxi drivers' best argument is that the government illegally expropriated the goodwill of their customers. But their case is not a strong one.

They face several barriers to making their argument in court. Chief among them is that courts may hesitate to punish a government for evolving with the times and trying to help consumers by encouraging competition. Arguably, Uber has already improved the transportation industry by decreasing prices and wait times for consumers. As technology evolves, self-driving cars are on the horizon and they might do the same for the consumers of tomorrow. Ruling against the government in *Metellus* for accommodating Uber could influence how governments react to new technologies like self-driving cars. Hopefully, the courts will find a way to compensate the taxi drivers without setting a precedent that limits innovation and creativity.