

# The Sensor: Legal Insights into Autonomous Vehicles

JULY ISSUE 2018

## Automated Vehicles May Revolutionize Mobility but Perhaps not Auto Insurance

While auto insurance is compulsory in all provinces across Canada, in Ontario, it became compulsory some thirty-eight years ago<sup>1</sup> and little has since changed, with the current statutory framework requiring that all operators carry insurance.

In the United Kingdom, however, a similar requirement was first instituted over 88 years ago and is currently being updated to address the use of autonomous vehicles. This is being done through the [Automated and Electric Vehicles Act 2018](#) (the “Act”), which received royal assent on July 19, 2018. In addition to providing a regulatory framework for the deployment of automated and electric vehicles, the Act extends auto insurance coverage to the operator of an automated vehicle even when the vehicle is in automated mode. This particular model of insurance coverage is sometimes referred to as a “one-policy” approach, meaning that there is only one policy to respond to an accident whether the vehicle is being operated by a human driver or by itself, i.e., in fully automated mode.

The Act provides for an interesting insurance model, worthy of consideration by governments, insurers, manufacturers, and other key stakeholders in the Canadian context. The [House of Lords Hansard](#) Debates during Second Reading captured the intent behind this proposed insurance regulatory framework as follows:

*“To ensure the safe arrival of automated vehicles, we will need a compulsory motor insurance framework that is fit for purpose to support consumers and businesses involved in accidents. The Bill provides that framework. Currently, as the driver’s use of the vehicle, rather than the vehicle itself, is insured, collisions involving automated vehicles that occur when the driver is legitimately disengaged from the driving task may not be covered. Having consulted widely and worked closely with parliamentary colleagues, the automotive industry and the insurance industry, the Government [is](sic) creating a new compulsory insurance framework within the Bill that covers motorists both when they are driving and when the driver has legitimately handed control to the vehicle. This framework will place a first-instance liability on insurers so that they can pay out to victims and, where they can, recover costs from the liable party”.*

Section 2 of the Act specifies that the insurer is liable for damages where “an accident is caused by an automated vehicle when driving itself, when the vehicle is insured at the time of the accident, and where an insured person or third party suffers damage as a result of the accident”. The Act defines “a vehicle driving itself” as a vehicle that “is operating in a mode in which it is not being controlled and does not need to be monitored, by an individual”. The Act further provides that coverage may not extend in cases where accidents are caused “by the direct result of” unauthorized software alterations or by a failure to perform “safety-critical software updates” that “the insured knows, or ought reasonably to know, are safety-critical”. The Act also limits coverage in cases where the accident is caused by the insured’s own negligence of allowing the vehicle to drive itself when it was not appropriate to do so.

---

<sup>1</sup>Compulsory Automobile Insurance Act, 1979, S.O. 1979, c. 87 (proclaimed in 1980).

After settlement with the injured party (including a judgment), the insurer can then seek recovery against anyone else who may be liable, such as the autonomous vehicle manufacturer.

Overall, the *Act* effectively ensures that the auto insurance framework remains the main recovery pathway for individuals, as opposed to recovery under the realm of product liability laws as against manufacturers. Despite the transformative changes of automated vehicles, it seems that this legislation also ensures that it is business as usual for auto insurers in the U.K., at least until autonomous vehicles reach a critical level of adoption which may then demand a further regulatory update.

The U.K. “one-policy” solution appears to present an answer – or at least offers a reprieve - to the doom and gloom projections of people like [Warren Buffet](#) who recently opined that self-driving cars will hurt the insurance industry. While there are some key differences between the auto insurance regime in Canada and that in the U.K. (for example, there are no policy limits in the U.K.), this U.K. legislation may present Ontario and other Canadian provinces and territories (each of which governs its own insurance and liability laws) with a model for re-thinking the current insurance regulatory framework for automobiles by attempting to balance multiple stakeholder interests in preparing for the deployment of autonomous vehicles. If that is the case, the U.K. model demonstrates the importance of proactive collaboration with the government by auto insurers and manufacturers to achieve workable regulatory solutions.

**Authors:**

[Robert Love](#)

[Edona Vila](#)

Your feedback is appreciated. Please email us at [AVs@blg.com](mailto:AVs@blg.com) with suggestions or comments.

In today's world, anticipating and adapting to technological innovation is a business imperative. At BLG, we are committed to ensuring our clients are prepared for the ensuing legal implications once innovation takes hold. Key among these are the implications arising from the adoption and use of autonomous and connected vehicle technologies. Monthly articles provided in *The Sensor: Legal Insights into Autonomous Vehicles* explore how autonomous vehicles are impacting industry sectors across the board and are written with the objective of helping to ensure our clients are well-positioned to deal with the related legal and regulatory challenges.

## About BLG

Borden Ladner Gervais LLP (BLG) is a leading, national, full-service Canadian law firm focusing on business law, commercial litigation and arbitration, and intellectual property solutions for our clients. BLG is one of the country's largest law firms with more than 700 lawyers, intellectual property agents and other professionals in five cities across Canada. We assist clients with their legal needs, from major litigation to financing to trademark and patent registration.

[blg.com/av](http://blg.com/av)

## BLG Offices

### Calgary

Centennial Place, East Tower  
520 3rd Avenue S.W.  
Calgary, AB, Canada  
T2P 0R3

T +1.403.232.9500  
F +1.403.266.1395

### Montréal

1000 De La Gauchetière Street West  
Suite 900  
Montréal, QC, Canada  
H3B 5H4

T +1.514.954.2555  
F +1.514.879.9015

### Ottawa

World Exchange Plaza  
100 Queen Street  
Ottawa, ON, Canada  
K1P 1J9

T +1.613.237.5160  
F +1.613.230.8842

### Toronto

Bay Adelaide Centre, East Tower  
22 Adelaide Street West  
Toronto, ON, Canada  
M5H 4E3

T 416.367.6000  
F 416.367.6749

### Vancouver

1200 Waterfront Centre  
200 Burrard Street  
Vancouver, BC, Canada  
V7X 1T2

T 604.687.5744  
F 604.687.1415

The information contained herein is of a general nature and is not intended to constitute legal advice, a complete statement of the law, or an opinion on any subject. No one should act upon it or refrain from acting without a thorough examination of the law after the facts of a specific situation are considered. You are urged to consult your legal adviser in cases of specific questions or concerns. BLG does not warrant or guarantee the accuracy, currency or completeness of this publication. No part of this publication may be reproduced without prior written permission of Borden Ladner Gervais LLP. If this publication was sent to you by BLG and you do not wish to receive further publications from BLG, you may ask to remove your contact information from our mailing lists by emailing [unsubscribe@blg.com](mailto:unsubscribe@blg.com) or manage your subscription preferences at [blg.com/MyPreferences](http://blg.com/MyPreferences). If you feel you have received this message in error please contact [communications@blg.com](mailto:communications@blg.com). BLG's privacy policy for publications may be found at [blg.com/en/privacy](http://blg.com/en/privacy).

© 2018 Borden Ladner Gervais LLP. Borden Ladner Gervais LLP is an Ontario Limited Liability Partnership.

Lawyers | Patent & Trademark Agents | Borden Ladner Gervais LLP is an Ontario Limited Liability Partnership