

The Sensor: Legal Insights into Autonomous Vehicles

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The Legal Crystal Ball: Autonomous Vehicles Developments to Watch for In 2019

The past five years have been marked by tremendous advancements in the autonomous vehicles industry. The testing and deployment of autonomous vehicles has been heavily concentrated in G20 economies. Many countries, or groups of countries, including the United States, China, the United Kingdom, the European Union, Australia, and Japan continue to jostle for leadership in the autonomous vehicles space. An even greater number of original equipment manufacturers, technology companies and countless start-ups are developing, testing and deploying autonomous vehicle technology across these countries with an eye on the huge profits to be made (the autonomous vehicle market is projected to be worth seven trillion dollars in 2050).

It is anticipated that in 2019, legislation and regulation will be playing catch-up with a constantly changing industry, trying to balance the need to protect the public, safeguard data security and privacy safety standards and create regulatory certainty while allowing for innovation to grow in this highly competitive industry. We explore below some of the key developments that will likely dominate the legal landscape of autonomous vehicles in 2019.

A move toward more regulation

Globally, only a limited number of jurisdictions, heavily concentrated in North America, Asia Pacific and Europe, have introduced legislation or regulation for the classification, testing and deployment of autonomous vehicles. In Canada, we expect to see increased discussions around regulations as testing continues in Ontario and Quebec. Following the introduction of testing guidelines from Transport Canada and the Canadian Council of Motor Transport Administrators in 2018, it would appear that at least some regulation may be welcomed to assist in the safe development and deployment of AVs on Canadian roads.

In fact, Ontario has already announced an update to its autonomous vehicles testing pilot program, effective January 1, 2019. The Ministry of Transportation has announced the complement of such regulatory updates as follows:

“Automated vehicles equipped with SAE Level 3 technology that are available for public purchase in Canada can be driven on Ontario roads. These vehicles will no longer be restricted to registered pilot participants. Vehicles with aftermarket SAE Level 3 technology (technology that has been added to a vehicle after sale, not by an Original Equipment Manufacturer) will remain restricted to the pilot program and will not be permitted for public use.

A human driver is required at all times to take back the driving task when alerted to do so by the vehicle. Drivers will need to be in full care and control of vehicles with SAE Level 3 technology and all existing laws (such as distracted, careless and impaired driving laws) will continue to apply to drivers of these vehicles. Drivers are responsible for the safe operation of these vehicles at all times.”

The amendments under the Pilot Project-Automated Vehicles, O Reg 306/15 regulations illustrate that Ontario is paving the way for a more rapid adoption and use of, at least, Level 3 vehicles in Ontario.

A need to address insurance solutions

The introduction of autonomous vehicles is forcing insurers and governments in many jurisdictions to reconsider their approach to automobile liability. Leading the way, Germany and the United Kingdom have already introduced specific insurance legislation, with Japan planning to do so in 2019. Canada has yet to move in a similar direction, although in the fall of 2018, the Insurance Bureau of Canada endorsed the adoption of the UK approach in proposing a single insurance policy covering human error and automated technology malfunction (including cybersecurity breaches). If a similar model is to be considered or introduced in Canada in 2019, it is likely that, as in the UK, a proactive collaboration with the government by auto insurers and manufacturers will be key to achieving workable regulatory insurance solutions.

Keeping up with privacy and cyber security

Data will continue to be a central concern with the anticipated commercial rollout of fully autonomous vehicles. The amount of data generated by a self-driving vehicle is astounding (its data volume every second is equivalent to that generated by 10,000 internet users) and much of that needs to be stored, sorted and worked through. This places enormous demands on data infrastructure and corporations, raising security and privacy concerns – what kind of data is being recorded and who is using it? Moreover, how is it shared as autonomous vehicles communicate with other vehicles (V2V) with infrastructure (V2I) and more broadly (V2X)?

In 2018, the federal privacy commissioner highlighted to the industry that the privacy watchdog is concerned about the data generated by connected and autonomous vehicles. Speaking before the Standing Committee on Transport, Infrastructure and Communities (“TRAN”), the commissioner spoke about the need for more transparency with consumers about the data flowing in connected and autonomous vehicles, as well as the importance of improving the consent around that data.

While it is anticipated that privacy and cybersecurity issues will continue to influence the legal landscape of autonomous vehicles, 2019 may see a push to create pan-Canadian autonomous vehicles standards or best practice guidelines on privacy and cybersecurity, as suggested by TRAN in early 2018.

Potential for Autonomous Vehicles Litigation

Litigation involving autonomous vehicles is another area that should demand close monitoring. Given the state of the technology, we may begin to see litigation arising out of parties asserting intellectual property rights over autonomous vehicle technology. Certainly, wide testing and deployment of more autonomous vehicles may also give rise to circumstances of technology failures or driver errors causing motor vehicle accidents involving pedestrians or drivers/passengers of non-autonomous vehicles currently on our roads. While there may be some push from some defendants to resolve such disputes at the outset (especially those involved in the commercial testing of autonomous vehicles) these early cases may provide a glimpse of the types of issues facing those deciding to proceed to trial on the merits.

Concluding Remarks

While the development of autonomous vehicles has proven difficult to predict, the foregoing is an attempt to identify top-of-mind legal issues that may dominate the autonomous vehicle industry throughout 2019. One thing is for certain, as companies move closer to commercially available autonomous vehicles and infrastructure evolves to allow for the rollout of this technology, care should be exercised in considering legal issues from the outset so to inoculate against liability risks down the road.

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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.

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