

The Sensor: Legal Insights into Autonomous Vehicles

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Automotive and Insurance Industries Consider Hot Issues Faced by the Autonomous Vehicle Sector

On September 17, 2018, the Canadian Automobile Insurance Rate Regulators Association hosted the “Preparing for and Insuring Tomorrow’s Mobility Summit” in Calgary, Alberta (the “Summit”). The event brought together speakers from regulatory agencies and stakeholders from the automotive and insurance industries to discuss various technological and regulatory issues related to the use and regulation of fully autonomous vehicles in Canada. This article summarizes some of the issues and viewpoints raised by speakers and participants in this industry forum.

The Status of Autonomous Vehicle Technology

It is clear that autonomous vehicle availability is on the horizon. There was discussion at the Summit that with the adoption of autonomous vehicles, society’s views and values regarding the use and ownership of vehicles, and of transportation generally, will change.

Presentations from automobile manufacturers indicate that, from a technological standpoint, autonomous vehicles (Level 4 on the SAE International Levels of Driving Automation) could be ready for use by end consumers within the next five years, with one manufacturer stating that they hope to have a Level 4 autonomous vehicle available for purchase by 2021. Testing of Level 4 autonomous vehicles is underway in a number of jurisdictions in the United States, Europe and Canada. The State of California has recently passed legislation allowing for the testing of Level 5 fully autonomous vehicles, provided that there is a direct communication link with a remote operator, among other conditions.

More specifically, it was suggested that manufacturers may face a potential repositioning from their traditional role as manufacturers to “mobility providers” given the expected high cost of early generation autonomous vehicles, and shifting demographics which are becoming more urban and increasingly favouring ride-sharing over personal vehicle ownership. Many automobile manufacturers already operate in the ride sharing space, and autonomous vehicles represent an opportunity for further growth in these areas.

Developing a Suitable Regulatory Regime for Autonomous Vehicles

In light of the pending availability of autonomous vehicles, the current regulatory and insurance regime across jurisdictions in Canada, which is focused on single-owner, single-use (i.e. personal or commercial) insurance, with insurance rates based heavily on a driver’s personal history, and liability focused on the driver’s conduct, may also face a disruptive shift.

At the Summit, the “one-policy” approach was discussed as a potential option for insuring autonomous vehicles in Canada. In the United Kingdom, the recently-enacted Automated and Electric Vehicles Act legislated the “one-policy” approach for autonomous vehicles in that jurisdiction. Under this approach, only one policy of insurance

would respond to an accident regardless of whether a vehicle is in autonomous mode or being operated by a driver. The insurer would be liable for damages to the injured party, with the right to subrogate against any other party, including the autonomous vehicle manufacturer (See: our [July issue](#) for a review of this recent UK legislation).

The “one-policy” approach was endorsed by speakers at the Summit as a means of ensuring that injured parties are compensated in a timely manner without having to resort to commencing costly and complex product liability litigation against autonomous vehicle manufacturers. Whether the one-policy approach will remain suitable if the predicted trends in vehicle ownership and usership come to pass is unclear, though for the interim, it appears to provide a viable insurance option for the initial roll-out of autonomous vehicles.

With that, if the one-policy approach were adopted in Canada, there still remain a number of issues, including whether conventional insurers or manufacturers would act as insurers for autonomous vehicles. Although conventional insurers may appear better suited to provide “one-policy” insurance as they are already subject to government regulation and oversight, and are experienced in handling, adjusting and settling claims, there are issues with respect to data and information sharing and whether autonomous vehicle manufacturers should be involved in claims handling and the settlement of claims.

Conventional insurers would also need to contend with the issue of rate setting, which will be challenging given that autonomous vehicles may be put to multiple uses and subject to ride or ownership sharing, there will be little to no data upon which to assess the risk of a collision involving an autonomous vehicle, and that the cost of repairing autonomous vehicles remains largely unknown.

Overall, the Summit highlighted both the opportunities and challenges posed by the introduction of autonomous vehicles on Canadian roads. As autonomous vehicles become available in the coming years, to ensure their successful deployment, panelists at the Summit made it clear that regulators, manufacturers, insurers, legal experts and other stakeholders will all need to work together to develop a practical, straightforward, and fair regulatory regime.

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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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