January 31, 2019

PERSPECTIVE

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

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

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.

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.

Your feedback is appreciated. Please email us at AVs@blg.com with your comments or suggestions.

By: Robert L. Love, Edona C. Vila

Services: International Trade & Investment, Cybersecurity, Privacy & Data Protection, Autonomous Vehicles, Government & Public Sector, Transportation

Key Contacts

Robert L. Love
Partner

Toronto

RLove@blg.com

416.367.6132

Edona C. Vila
Partner

Toronto

EVila@blg.com

416.367.6554

Table of contents

2023 Series

- Autonomous vehicle laws in Canada: Provincial & territorial regulatory review - January

2022 Series

Autonomous vehicles: Key 2022 industry hotspots – April

Autonomous vehicle laws in the States: Congress offers hope for national regulatory framework – June

Autonomous vehicles: cross jurisdictional regulatory perspectives update – October

2021 Series

Autonomous vehicles: Moving forward in 2021 – January

Full steam ahead: Recent developments in maritime autonomous technology – February

Next-gen spotlight: 5G, autonomous vehicles and connected devices – March

Raising financing during turbulent times: Debt capital options for tech companies – April

Construction and autonomous vehicles: Considerations for increased adoption – May

Autonomy on the roads: Intelligent Transportation Systems – June

Autonomous vehicles in mining operations: Key legal considerations – July

Autonomous technology in Calgary: Reducing emergency vehicle travel times – August

Autonomous vehicles: Cross jurisdictional regulatory perspectives – September

Transport Canada: 2021 Guidelines for Testing Automated Driving Systems in Canada – October

Autonomous vehicles: Canada's readiness for the future – November

Autonomous vehicle laws in Canada: Provincial & territorial regulatory landscape – December

2020 Series

Driving change: The year ahead in autonomous vehicles – January

Mobility-as-a-service & smart infrastructure: A new risk paradigm – February

The future of farming: Autonomous agriculture – March

Autonomous transportation in the time of COVID-19 – April

Driverless vehicles: Two years of autonomy on Québec roads – May

A review of Canada's vehicle cybersecurity guidance – June

Highlights of the connected and autonomous vehicles report by ICTC and CAVCOE – July

Raising financing during turbulent times: The takeaways – August

Raising financing during turbulent times: Exploring for capital in the public markets – September

Advanced driving assistance systems: Three issues impacting litigation and safe adoption – October

Autonomous vehicles and big data: Managing the personal information deluge – November

Payments on wheels: Self-driving vehicles and the future of financial services – December

2019 Series

The Legal Crystal Ball: Autonomous Vehicles Development to Watch For in 2019 – January

Autonomous Vehicles and Export Controls – February

The State of Insurance and Autonomous Vehicles in Ontario – March

Collective Bargaining and the Implementation of Autonomous Vehicles Technologies – April

Building a Privacy-Compliant Autonomous Vehicles Business – May

The State of Autonomous Vehicles in Alberta – June

Unfamiliar Waters: Navigating Autonomous Vessels' Potential and Perils – July

The Lay of the Land: Obtaining a License for Testing Autonomous Vehicles in Ontario – August

The State of Autonomous Vehicles in Saskatchewan – September

Lingua Vehiculum: The Competition for Connected Car Communication – October

Autonomous Vehicles and Equipment in Construction – November

The Future of Mobility: The 2020 Autonomous Vehicles Readiness Matrix Legal Summit – December

2018 Series

Current Industry Developments – February

Managing Cybersecurity Risks – March

Québec Regulation Update – April

The Connected City – May

Are Patent Wars Coming for AVs? – June

Automated Vehicles May Revolutionize Mobility but Perhaps not Auto Insurance – July

Cleared for Take-off: Autonomous Technology and Aviation Litigation – August

The Ultimate Mobility Synergy: Autonomous Vehicles and Electric Vehicles – September

Automotive and Insurance Industries Consider Hot Issues Faced by the Autonomous Vehicles Sector – October

Insuring Automated Vehicles: The Insurance Bureau of Canada Recommends "Single Insurance Policy" – November

Autonomous and Connected Vehicles – "Ideal" for a Class Action? – December