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

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Introduction

On Feb. 2, 2022, the United States Congress House Committee on Transportation & Infrastructure held a hearing on “The Road Ahead for Automated Vehicles” (the Subcommittee Hearing) to investigate the impact of autonomous vehicle (AV) deployment on mobility, infrastructure, safety, workforce, and other economic and societal implications or benefits.

It was the first time the Transportation & Infrastructure Committee had held a hearing on AV deployment since 2013. The Subcommittee heard from witnesses representing labour, industry, academic, local, and state interests. In this article, we summarize the Subcommittee Hearing and provide takeaways on the implications for Canada’s approach to AV deployment.

The call for a national regulatory framework

Similar to the approach taken by Canada, the regulatory environment for the deployment of AVs in the United States has largely been handled at the state level. Most states have implemented regulatory schemes for testing autonomous vehicles. California is a notable example of a state with a comprehensive AV testing framework.

Legislators and witnesses at the Subcommittee Hearing emphasized that the absence of a national regulatory framework has hampered the progression of AV efforts in the U.S. When pressed about a timeline for when the public could expect to see a widespread rollout of AVs, witnesses noted that any scaling of AV deployment would depend on the implementation of a national regulatory framework.

The co-chair of the subcommittee, Congressman Peter Defazio, agreed that federal guidelines are needed, emphasizing that a state-by-state approach to AV regulation is not sufficient in a broader roll-out of AVs across the U.S. Industry representatives stressed that any national regulatory framework will need to:

- Enhance consumer and public trust in the technology; and
- Raise interim caps on the amount of AVs on the road to maximize their deployment across the country.

Vehicle crash data sharing

During the hearing, committee members frequently raised concerns about the safety of AVs. House members said they would like to see continued momentum and rollout of AV pilot projects in cities in order to increase the amount of safety information available to legislators. They emphasized that vehicle crash data from AVs currently being tested on American roads is a crucial component to widespread AV rollout. Members identified that federal regulations may be required to ensure that information from crashes is shared with the government, the insurance industry and the public.

Standing General Order 2021-01 from the National Highway Traffic Safety Administrator (the NHTSA) requires that AV manufacturers submit to them information on crashes. Information gathered under this order is not shared with the public or insurers. House members identified that a potential next step for legislators is to ensure information collected under this order be shared more broadly within government, particularly with the Transportation & Infrastructure Subcommittee.

Public trust: The distinction between AVs and driver-assisted tech

House members and witnesses stated that a successful AV rollout depends on gaining the public's trust in the technology. Industry witnesses identified that poor understanding of the difference between AVs and driver-assisted technology is contributing to safety issues and lack of trust from the public.

During the hearing, industry witnesses attempted to clarify the distinction between AVs and driver-assisted technology. These witnesses conveyed a concern that the public's current perception may not fully appreciate the distinction between driver-assisted technology, which requires a fully licensed and fully aware individual be behind the wheel at all times, and a true AV.

As such, witnesses emphasized that many AV collisions and concerns with AV vehicles stemmed from distracted drivers believing they could leave the task of driving completely to their car. While true AVs raise their own safety concerns, they do not require a human operator and thus are not plagued by these issues. Witnesses asked House members to use caution when using crash data from driver-assisted technologies while discussing AV safety.

Witnesses and members agreed that better consumer education is needed to help the public understand the difference between AVs and driver-assisted technologies. However, there were no concrete steps discussed to improve the public's understanding of AVs.

AV impacts on jobs

Aside from safety discussions, the most frequent topic of conversation was the impact AVs could have on transportation industry jobs. Legislators asked union representatives how to protect transportation jobs as AVs are introduced into the trucking industry.

The subcommittee considered two potential legislative actions during the hearing: providing alternative job training for truckers who may be replaced by AVs, and mandating that the introduction of AV technology by corporations be a collective bargaining issue which must be discussed with unions. Union representatives cautioned about the effectiveness and value of alternative job training, but there seemed to be rough consensus that the federal government may be required to assist in this area in the future.

Considerations for Canada

As Canada moves forward with shaping its AV regulatory environment, provincial and federal lawmakers should monitor the legislative and regulatory choices made by their colleagues in the U.S., especially as they relate to how AVs will impact cross-border shipping.

American legislative moves with respect to AV safety, public trust or jobs will likely impact the broader AV market and need to be seriously considered by all levels of government in Canada.

Education is a key point raised by the subcommittee that Canadian legislators should consider. In order to generate confidence, public trust, and increased use of AV technology, the public, both in the U.S. and Canada, needs impartial information on the advantages, and more importantly, the limits of AV technology.

As the institutions tasked with balancing the benefits of AV technology against its disruptive risks, governments and regulators are well positioned to take the lead on educating the public about AV technology with information that is both educational and impartial. As such, Canadian legislators and regulators should observe and consider the approaches their American colleagues take with respect to public education initiatives.

Calls for a national regulatory framework in the U.S. present interesting considerations in Canada. The relationship and legislative roles of the provinces and the federal government are different from their American counterparts. However, the underlying message from the subcommittee is compelling: co-operation between governments will be key to embracing AV technology while mitigating risk and the potential for legislative gaps. Transport Canada has released guidelines for testing automated driving systems in Canada, but there is no movement yet towards creating a national framework for the rollout of AVs on Canada's public roads.

There are uniquely Canadian considerations that our legislators will have to solve creatively and without the assistance of lessons from other jurisdictions. For instance, given Canada's size, it may be impractical to deploy AV technology until there are more robust 5G networks across the country. Moreover, with respect to trucking, Canada's colder climate may make it more difficult to completely embrace autonomous trucking fleets, as AV technology may not work in low-visibility environments caused by snow and rain.

BLG's Autonomous Vehicles group

If you have any questions or would like to learn more about anticipated changes in the autonomous vehicles industry, please reach out to your BLG lawyer or any of the key contacts listed below.

By

Marin Leci, Jared Armstrong, Raphael Jacob

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BLG Offices

Calgary

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

T 403.232.9500
F 403.266.1395

Ottawa

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

T 613.237.5160
F 613.230.8842

Vancouver

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

T 604.687.5744
F 604.687.1415

Montréal

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

T 514.954.2555
F 514.879.9015

Toronto

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

T 416.367.6000
F 416.367.6749

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