



Auto Insurance for Automated Vehicles – Coming Sooner than You Think

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Most Canadians tend to think of automated vehicles as something that will occur in the distant future. The reality is that vehicles with low degrees of automation technology are already on Canadian roads, with more vehicles being tested in various cities around the world. Vehicles with fully automated capabilities will be coming to Canada's roads sooner than most people think.

In anticipation, vehicle manufacturers, technology providers, and the insurance industry have recognized the need to ensure that consumers are properly protected. To this end, the Insurance Bureau of Canada (IBC) collected input over the past few years from property and casualty insurers, lawyers and industry stakeholders to develop a proposed policy framework – [Auto Insurance for Automated Vehicles: Preparing for the Future of Mobility](#) – setting out recommendations for amendments to the current Ontario automobile insurance regime.¹ The good news for auto insurers is that autonomous vehicles will not replace traditional vehicles overnight, so there is time for the insurance industry to consider the multi-faceted issues that it will face.

While vehicles that are completely driverless are still being tested and won't be available for another three to five years, there are currently vehicles on the road that incorporate some form automation, but with human control. It is during this transition period when autonomous and traditional vehicles will co-exist that the greatest potential for uncertainty between insurers, injured persons and lawyers will be present.

The current state of auto insurance in Ontario is predicated upon the presumption that human error is the primary cause of motor vehicle accidents. This presumption is reflected in the legislative framework, the victim compensation regime and standard language of the Ontario Automobile Policy. Unfortunately, the current framework will be unable to adequately respond to the legal challenges that accompany the increasing levels of automated technology and the fact that all resulting collisions will be caused by product malfunction rather than human error. With respect, the IBC highlights that this "shift in responsibility" from humans to automated technology means that injured persons will have to proceed through product liability litigation to be compensated, which is a much longer and more complex process than traditional motor vehicle liability litigation.

In response, changes to Ontario's auto policies and legislative regime are needed to ensure that those who are injured in motor vehicle accidents caused by autonomous vehicles are compensated fairly and quickly. To address these issues, the IBC proposes the following:

1. **A single insurance policy covering both driver negligence and automated technology.** The at-fault vehicle's insurer would compensate those injured if the automated vehicle caused a collision, regardless of whether the human operator or automated technology was in control of the vehicle.
2. **A data-sharing arrangement with vehicle manufacturers, vehicle owners, and/or insurers.** The purpose of such arrangement is to help determine the cause of a collision; specifically, whether the vehicle was in manual or automated mode at the time of the collision and the vehicle operator's interaction with the automated technology. Effectively, the "black box" of an automated vehicle.

¹ [IBC position paper link](#)

Single Insurance Policy

A single insurance policy has already been introduced in the United Kingdom to address the above issues. Namely, that injured individuals need a clear route to securing fair compensation in a timely manner and to ensure that there is adequate coverage for innocent third parties and/or drivers where an accident is entirely caused by the failure of technology. The Automated and Electric Vehicles Act was enacted and obtained royal assent on July 19, 2018.²

The IBC suggests that under one insurance policy, an automated vehicle owner can have the peace of mind that they will have insurance coverage regardless of whether an accident was caused by human error or machine error. The single insurance policy system facilitates the liability claims process by aligning the claims process for both automated and conventional vehicles such that an injured person would pursue a claim directly against the automated vehicle's insurer. However, if the collision was caused by malfunction, an insurer would have the right to subrogate against the responsible party, such as a manufacturer or technology provider if the claim surpassed a monetary deductible. This proposed single insurance policy would also compensate those injured in a collision caused by a cyber breach of the vehicle's technology. However, there is one caveat. If the error or cyber breach was due to the vehicle owner's failure to maintain safety-critical software, as required by a manufacturer, or circumventing/modifying the technology, the proposed single insurance policy would only pay up to the mandatory minimum limit. Although such a limit has yet to be determined by the legislature, it would likely be similar to the current mandatory minimum of \$200,000 under Ontario's Insurance Act.

Data-Sharing Arrangement

A vehicle with automation technology will have numerous components providing real-time data regarding its functional status at any given time. The IBC's proposed data-sharing arrangement would require that vehicle data be made available to vehicle owners and/or insurers to assist in determining the cause of a collision, as well as whether the vehicle was in autonomous mode at the material time and the vehicle operator's interaction with the technology.

What's Next?

Now that a proposed framework to address liability has been put forward, insurers and government stakeholders can turn their minds to prepare for the presence of automated vehicles on Canadian roads from a regulatory perspective. Innovation and entrepreneurship in the arena of automated vehicles are vast, and both regulators and insurers simply cannot anticipate all challenges that will potentially arise. That being said, it can be anticipated that automated vehicles will require key industries to adapt in a timely manner. With respect, the IBC noted that Transport Canada will need to update vehicle safety standards, but the auto repair and salvage industry have yet to weigh in. Further, stakeholders will need to consider the impact that automated vehicles will have on parking enforcement, curb-side traffic congestion, taxation, and how to effectively address the shift in consumer preference and the concept of vehicle ownership.

Also, please see our article, [The Wild West of Autonomous Vehicles and Insurance Defence Litigation](#) by insurance litigation partner Seth Kornblum.

² <https://services.parliament.uk/bills/2017-19/automatedandelectricvehicles.html>



Gloria Shu's practice at Beard Winter LLP includes a variety of areas spanning insurance litigation, corporate law and family law. Gloria is a member of the Insurance Bureau of Canada's legal advisory panel on automated vehicles.

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