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# Commercial drones and privacy: Navigating today's regulatory challenges

December 3, 2024

Grow | Protect | Operate | Finance

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# *Canadian Aviation Regulations*

## Overview

- Civil aviation is governed by the *Canadian Aviation Regulations* and the *Aeronautics Act* and regulated by Transport Canada.
- Drone pilot bears the responsibility of having the necessary approvals and adhering to legislative requirements.
- Foreign pilots must obtain the requisite Canadian license.

# ***Canadian Aviation Regulations***

Rules: Basic and advanced operations

For Basic Drone Operations, pilots must:

- Have a pilot certificate; and
- Carry their pilot certificate and proof of registration at all times when flying.

For Advanced Drone Operations, pilots must:

- Have a pilot certificate following the completion of the advanced operations test;
- At all times, carry their pilot certificate and proof of registration; and
- Ensure their drone meets all regulation-required safety and assurance standards.

# *Canadian Aviation Regulations*

Rules: Basic and advanced operations

Key considerations for drone operators include:

- The weight of the drone;
- Pilot licensing;
- The characteristics of the airspace;
- Insurance.

Failure to adhere to applicable law may result in fines of up to \$1,000 for individuals, and \$5,000 for organizations.

# Industry applications for drones

- Inspections (energy, mining, construction)
- Forestry
- Delivery
- Media and entertainment

# Privacy law and drones

## Overview of applicable regulations

- PIPEDA requires consent to the collection, use, and disclosure of personal information, including facial detection.
- Drone operations that involve collection of personal information are subject to the same privacy law requirements as with any other data collection practice.
- The OPC has taken the position that personal information does not need to be recorded to be considered “collected” and is subject to PIPEDA.
- BC, Alberta and Quebec have substantially similar privacy statutory requirements.

# Privacy law and drones

## Common law and statutory privacy torts

- Common law torts may apply to the use of drones including intrusion upon seclusion.
- Common law tort test:
  1. The defendant's conduct must be intentional or reckless;
  2. The defendant must have invaded, without lawful jurisdiction, the plaintiff's private affairs or concerns; and
  3. A reasonable person would regard the invasion as highly offensive causing distress, humiliation or anguish.
- BC, Manitoba, Newfoundland and Saskatchewan have statutory privacy torts.



# Privacy law and drones

## Best practices for organizations

- Collection of personal information by drones should be as limited as possible in the circumstances.
- Organizations should have a written policy that, among other things:
  - Establishes privacy-specific criteria that must be met prior to use.
  - Limit collection of images and video to only what is necessary.
  - Minimize the collection of personal information such as using blurring technology.
  - Ensure training on applicable privacy laws.

# Privacy law and drones

## Employment related privacy considerations

- Employee privacy policy should clearly define the purpose of collection, the type of data collected (audio, visual, etc.), and limit collection where applicable.
- Inform employees of the use of drones, especially if they will be recorded.
- Ensure data collected by drones is encrypted both in transit and at rest.
- Avoid continuous surveillance and use drones only during designated hours.
- Establish clear retention and destruction policies.
- Conduct a Privacy Impact Assessment prior to deployment of drones.

# Emerging regulatory trends

Proposed regulations amending the *Canadian Aviation Regulations*

- Amendments would include, among other things:
  - Allow drones weighing up to 150 kg to be flown within a visual line-of-sight (“**VLOS**”);
  - Regulate routine Beyond Visual Line of Sight (“BVLOS”) operations with drones up to 150 kg over sparsely populated areas, at low altitudes, and in uncontrolled airspace;
  - Remove Special Flight Certificate (SFOC) for VLOS operations up to 150 kg and low risk BVLOS; and
  - Introduce new pilot certification requirements, new technical standards, and new operational procedures.

# Emerging regulatory trends

New operational procedures and new requirements for individuals and organizations

Extended EVLOS operations:

- Drone must remain within a certain distance from the pilot
- A second person must scan the airspace and notify the pilot of conflicting air traffic and hazards

Operating Medium-sized drones within VLOS

- Applies to drones between 25 kg and 150 kg
- Medium-sized drone operations fall within “advanced operations” unless the drone is more than 500 ft away from any person not involved in the operation

Operating lower-risk BVLOS

- Proposed amendments allow for lower-risk BVLOS operations without a SFOC.

# Thank you



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