

By **Richard Elia**
B. Comm., LL.B., LL.M.(ADR), ACCI,
Elia Associates

and **Patricia Elia**
B.Comm. LL.B., Alder Trained Coach
Elia Associates



Drones: Not Everything Fun is Safe

As Drone Use Becomes More Widespread,
Individuals, Condominiums and Businesses
Should be Aware of the Legal Ramifications



With the impending settlement of Mars, the rise of drones and their use commercially and recreationally on Earth seems like a natural progression in the evolution of humans, especially where large structures such as oil rig platforms, bridges and sports stadiums exist in countries such as the United States, China and Canada but... condominiums really?? Drones were first used by the military as unmanned aerial vehicles and later by the international civil aviation organization as remotely piloted aircraft systems. Drones come in various shapes and sizes and can be piloted remotely through complex systems which operate at high altitudes and over long distances. Drones are used commercially for surveillance, construction, agriculture, resourcing exploration, meteorology, mapping and photography. Drones can also be used in condos for building component and equipment replacement and building inspection for repairs and maintenance.

Indeed drones can and have been em-

ployed in a wide variety of ways, including for organ donation, package delivery, movie production, racing sports and hunting. Consumer drones have video and photographic capabilities. The smallest drone currently available in the Canadian market is 55 grams, equipped with photographic technology, and syncs with iPhones; in contrast, the United States Navy has created a drone the size of a Boeing 747. Canada is looking at large drones to transport food to the remote north. As drone use becomes more widespread, individuals, condominiums and businesses should be aware of the legal ramifications and who has the rights to be associated with drones. We have certainly had some interesting discussions on drone technologies.

Richard: Drones are a heck of a lot of fun! I really want one! Better yet, I think I will build one!

Patricia: What on earth do you possibly need a drone for?

Richard: Aside from the fun aspect, they are a step towards improved performance and efficiency, so let people have their fill. They have the potential to be valuable tools for businesses of all types and sizes, including those who service the condominium industry. The ability to invest in and access drones, pilots and analysis software and, from there, create or enhance business opportunities is becoming more and more of a reality both in terms of technology and in cost, so I think it is also inevitable. Why wouldn't a savvy business integrate use of drones into its business plan? The more cost effective the better. Why would a reserve fund study planner not use a drone to do the site inspection if a condominium happens to be multiple stories high and shaped like Marilyn Monroe? Arguably, any type of building inspection above the ground floor would be made easier. A

drone can record real time performance or failure and access areas that are more difficult and/or dangerous for human beings. It seems to me you would have more accurate performance audits and reserve fund studies every three years if you had a drone. It seems like a very logical application to allow for the continuous and rigorous inspection of certain components of multi-storey buildings or even townhomes where the complexes are of a significant size and space. Can you imagine a property manager being able to do an inspection of the 2nd floor window caulking or a roof anchor review with the roofer in a townhouse complex without leaving his or her office? Come on, drones mean efficiency and making more money.

Patricia: But at what price? Not everything fun is safe. While I agree that drones are highly utilitarian and fun, there is a line between being toys and not being toys. As robots, drones can collect, store and use data and perform functions which may present dangers to urban populations. Cars are great inventions, but you still need to put limits on the use of cars because people inevitably want to challenge boundaries. I agree that the invasion of the drones is inevitable. So perhaps we need to understand what we are dealing with and then think ahead to manage the risks that drones present to condominiums. What do you think the risks are?

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Richard: The way I see it, the key risks of drones are: privacy breaches, injury to property and persons and the commission of torts (wrongdoing) such as trespass, nuisance and negligence. I can see where the lawyers would go if a 55 pound drone just dropped out of the sky onto a sidewalk in downtown Toronto - it would probably be much like the conflicts we have about falling glass, if not worse. So how do we avoid the dispute and manage the conflict if we cannot make them failsafe?

Patricia: I think that you avoid the dispute and manage the risk by thinking ahead. I would put the risks in two broad categories: those within the control of the condominium and those outside of the scope of the condominium's influence. I also think it is hard to assess the full risk of something while it is still relatively new and unexplored. Even federal legislators are not yet as up to speed as they need to be in managing risk created by drones to air traffic, which has material risks for passenger aircraft. However, Transport Canada has put in place a variety of pieces of helpful information on Flying Your Drone Safely and Legally, Getting Permission to fly your Drone and Reporting a Drone Incident [<https://www.tc.gc.ca/eng/civilaviation/drone-safety.html>]. Generally, current regulations limit Unmanned Air Vehicle ("UAV") use in Canada. A UAV is defined as a power driven aircraft, other than a model aircraft, that is designed to fly without a human operator on board. A "model aircraft" means an aircraft, the total weight of which does not exceed 35 kg (77.2 pounds), that is mechanically driven or launched into flight for recreational purposes and that is not designed to carry persons or other living creatures. A UAV may not be flown without a special operations certificate or an operator's certificate. Failure to be licenced may include fines or jail time where an aircraft is put at risk, flying occurs in no fly zones or anyone's safety is risked. Special Flight Op-


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erations Certificates contain conditions on where and how to fly, including maximum altitudes, minimum distances from people and property and coordinate requirements with air traffic services.

Exemptions exist under the Aeronautics Act, section 5.9(2) for non-recreational UAVs. <http://www.tc.gc.ca/civilaviation/regserv/affairs/exemptions/docs/en/2880.htm>

Richard: Patricia, you need to be realistic – drones are being sold at the mall and many have very advanced digital cameras attached and yet most will be considered “model aircrafts” and people can build them themselves. At the same time, I do understand that with the increased popularity of drones and the pushing of boundaries, Transport Canada is developing new regulations to address the safety requirements, growing popularity, and economic importance of UAVs. Transport Canada’s proposed changes include new flight rules, aircraft marking and registration requirements, knowledge testing, minimum age limits and pilot permits for certain UAV operations. Transport Canada published a Notice of Proposed Amendment in May 2015 to highlight these changes.

More rules! The only way that humans advance is by trial and error, and humans like to find the easy way to do things. Practically, what we really need to do is identify the risks and manage the risks in a reasonable fashion.

Patricia: I think that is what the rules are trying to anticipate. In speaking with one very intelligent, well-educated drone builder and enthusiast, Mr. Sultmanis, he told me that the biggest problem is pilot error. People do not understand their drone’s performance parameters well enough. Hence the need for knowledge testing, new flight rules and pilot permits. Further, the only way to attribute liability will most likely be to tie it back to the pilot subject to manufacturer’s defect and insist on mandatory insurance. In the exemptions under the Aeronautic Act, a quick read shows the government has taken a lot of time to ensure that pilots need to be really aware of the environments they are flying in.

Richard: Okay, so regulation is neces-

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sary to ensure reasonableness and balance interests in privacy, personal safety and safety of property. My expectation is that the federal government, because of air space and aviation regulation, will set the bar for the overall consistent management of the rules governing the performance of drones. However, I can see that provincial and municipal regulators, together with condominiums, may put in place parameters around drone use. For example, mu-

nicipalities could put in place “no fly zones” for drones or put in specific parameters via geo fencing. Further, our condominiums may address these issues in their rules and in their contracts with suppliers where their suppliers use drones. The latter issue is dealt with by making the contractor responsible for ensuring that where a drone is used, that adequate training, licencing and insurance exist as a covenant in the agreement to hold the condominium harmless.

In the rules, condominiums could limit the use of or even prohibit drones (including model aircraft) on the property. A possible exception would relate to the use of drones in relation to operation, maintenance and repair of the property. Alternatively, a condominium may require that all drone and model aircraft operators in the building be made aware of Transport Canada safety rules and operate within the same. The rules could address the fact that no drone operator shall interfere with another resident/owner’s right of quiet enjoyment and should not present a physical threat. The rules may also address the fact that any photography, storage of data and use of any collected data from within a unit is strictly prohibited. The challenge remains enforcing such rules and managing the behaviour of individuals. Practically, damages for breaches of privacy in such cases belong to the individual. Thus, a condo-



Drones

Listen to Patricia Elia discuss drones with Sue Langlois in a CV+ podcast based on this article at www.condopodcasts.com

minium may address this issue generally within its privacy policies. In addition, the condominium may also set up “no fly zone” parameters, i.e. inside the building, within 30 feet of the building and over common element spaces such as playgrounds, pools and areas where the risk of injury because of drone or pilot failure increases. Drones for recreational purposes should be managed to ensure that the condominium has acted reasonably. Condominiums have to be proactive together with perhaps their municipalities on ensuring that no fly zones are very clearly delineated to community participants and their guests. Further, there could be fly safe areas where drones may be operated, which comply with federal aviation requirements. Obligations under the condominium declaration should be reviewed to determine and ensure that the obligations for any injury caused by the drone operator are borne by the unit owner.

Further, condominiums may ultimately have to insist on having drone registries to understand who has a drone and who is accountable. Very similar to our dog reg-

istries, we like to know who has got a dog on the leash or who is flying a drone. This is really the only way to ensure people take responsibility for their acts or omissions. However, this may be taken care of with further regulation of drone use and pilot licensing and training.

Patricia: On privacy, do drones really present a privacy threat greater than from people on scaffolds or boson chairs, or platforms that scale down the sides of buildings for window washing purposes and intrude upon the private moments of people in their units? I think a condominium should have a communication programme to make people aware of drone use, the limits on the same, how the same can negatively impact neighbours and how everyone should minimize interference with each other.

Richard: But what about those drones that are not being operated by residents or unit owners of the condominium just flying around taking pictures?

Patricia: This brings up a really good point. People who are looking inside the condos may not be people who reside there

or have ownership rights. So how does the condominium enforce? Under the Criminal Code, there are criminal sanctions for “peeping Toms” but such sanctions only work if you can catch the person who is doing it. This is why registries of drone operators both for recreation and for commercial purposes should be mandatory. As drones become more common, it is important to manage even those people who recreationally use drones.

Here is the conundrum we currently are thinking about: Amazon’s announcement of its proposed drone delivery program and the recent claim that the technology is ready and that they plan to use “Amazon Prime Air” drones to deliver packages to consumers in 30 minutes or less once the legislature catches up. It is probably only a matter of time before condominium owners can have packages delivered by drone technology. The question will be how will customers pick up their packages? Off the landing pad on the roof or from their balcony or the concierge? The parameters of human creativity are limitless and so (for better or worse) are the way lawyers see the risks. **CV**



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