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Drone law in Canada – new rules and current regulatory environment

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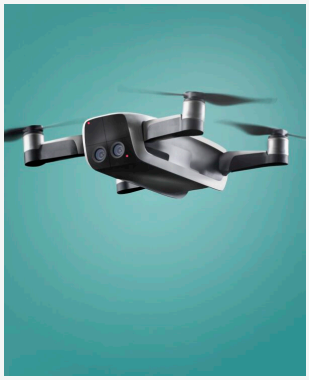

Related Expertise

- Drones
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Key Takeaways

- Drones are increasingly popular in various sectors, performing tasks like delivery and aerial photography.
- Canada has a comprehensive regulatory framework for drones, requiring pilot certificates and registration with Transport Canada
- Pilots conducting drone operations must adhere to specific requirements, including safety standards and operational limitations.

Whether referred to as unmanned aerial vehicles (UAVs) or remotely piloted aircraft systems (RPAS), drone aircraft are rapidly growing in popularity and commercial relevance. Drones can be operated by remote control, via smartphone applications, or autonomously, allowing access to remote or difficult-to-reach locations with minimal manpower, cost, time, and effort.

Individuals, commercial enterprises, and governments increasingly rely on drones to perform a wide range of activities, including

- aerial photography
- express shipping and delivery
- precision agriculture and crop monitoring
- unmanned cargo transport
- cinematography and videography
- topographic mapping and analysis
- 3D modelling and rendering
- infrastructure inspection and regulatory compliance

Current regulatory landscape

Canada has one of the most comprehensive and structured drone regulatory frameworks in the world set out in the Canadian Aviation Regulations (CARs). This regulatory framework is continuously evolving with recent updates affecting pilot certification, operator obligations, beyond visual line of sight operations, and safety assurance requirements. This Osler Update summarizes the current state of Canada's drone regulatory framework below.

General rules for flying a drone

Some baseline rules apply to most drone operations in Canada. For example, drones weighing less than 250 grams (microdrones) do not require registration or a pilot certificate, but must still be flown by following applicable safety requirements. Drones weighing 250 grams or more must be registered with Transport Canada and marked with their registration number.

Pilots flying drones weighing 250 grams or more must hold a valid drone pilot certificate.

Drones must not be flown higher than 400 feet above ground level, unless authorized by Transport Canada. They must not be flown near emergency response operations or special events, unless authorized by Transport Canada. As well, drones must not be flown within 5.6 kilometres of an airport or 1.9 kilometres of a heliport, unless authorized by Transport Canada.

Numerous additional rules apply depending on the specific type of drone operation that is being conducted, such as flying an autonomous drone or flying multiple drones controlled by a single controller.

Categories of drone operations

Following recent regulatory updates, Transport Canada now recognizes three primary categories of drone operations: basic, advanced, and Level 1 complex. These categories are determined primarily by proximity to bystanders, airspace classification and whether the drone remains within the pilot's visual line of sight (VLOS).

Basic drone operations

An operation qualifies as basic if all of the following conditions are met

- the drone is flown within visual line of sight of the pilot
- the drone remains at least 30 metres horizontally from bystanders
- the drone is flown only in uncontrolled airspace
- the drone weighs no more than 25 kilograms

If the conditions above are not met, then the drone operations may be considered advanced or complex, each of which have their own set of unique criteria that must be met.

Requirements for basic operations

Pilots conducting basic operations must hold a Basic Operations Pilot Certificate and carry proof of their pilot certificate and drone registration while flying.

Advanced drone operations

Any operation that does not meet *all* of the basic operation conditions may fall into the advanced category, provided that it meets the applicable criteria for advanced operations set out in CARs.

Requirements for advanced operations

Pilots conducting advanced operations must

- hold an Advanced Operations Pilot Certificate, including completion of a flight review
- carry proof of pilot certification and drone registration while flying
- operate a drone that meets applicable safety assurance standards and declaration requirements for advanced operations and conduct a site survey and maintain records of hazards and obstacles (such as buildings and power lines)

Recent regulatory updates have expanded the scope of permitted advanced operations, allowing qualified pilots to conduct sheltered operations, extended visual line-of-sight (EVLOS) operations, and visual line-of-sight operations with medium drones.

Level 1 complex drone operations (BVLOS)

Level 1 complex operations represent the most significant regulatory change from the recent regulatory updates and permit certain beyond visual line-of-sight (BVLOS) operations over unpopulated or sparsely populated areas. BVLOS operations are not permitted under the basic or advanced categories.

Requirements for Level 1 complex operations

Pilots conducting Level 1 complex operations must

- hold and carry a Level 1 Complex Pilot Certificate and proof of drone registration and hold a Remotely Piloted Aircraft Systems Operator Certificate (RPOC) (described below
- operate a drone that meets all applicable safety assurance standards and declaration requirements for Level 1 complex operations
- remain within the operational limitations of the drone and approved operating area

BVLOS operations conducted under the Level 1 complex framework must also take place in uncontrolled airspace, be conducted at or below 400 feet above ground level and remain at least 9.3 kilometres from the centre of aerodromes listed in the *Canadian Flight Supplement* or *Water Aerodrome Supplement*.

RPAS Operator Certificate (RPOC)

The RPOC is a new organizational-level requirement introduced by Transport Canada for individuals and organizations conducting BVLOS operations. Applicants must use Transport Canada's Drone Management Portal (DMP) to declare compliance with the RPOC requirements set out in the CARs. While the specific requirements vary depending on organizational size and operational complexity, applicants generally must have an accountable executive, a designated person responsible for maintenance, a formal training program, and documented flight operations procedures and a safety risk management process.

Special Flight Operations Certificates (SFOCs)

Drone operations that fall outside the basic, advanced or Level 1 complex categories generally require a Special Flight Operations Certificate (SFOC). These operations may include situations where

- the pilot is not a Canadian resident
- the drone is flown at an advertised event
- a large drone (over 150 kilograms) is operated
- the drone is flown above 400 feet in uncontrolled airspace
- more than five drones are operated simultaneously within VLOS
- more than one drone is operated BVLOS at the same time
- BVLOS operations occur in controlled airspace or more densely populated areas
- operations are conducted in adverse weather conditions.

An SFOC is also required for microdrone operations at special events.

Drone declaration requirements

Under the updated regulations, all drones weighing 250 grams or more must be registered through the DMP.

In addition, drones used for advanced or Level 1 complex operations must meet the RPAS Safety Assurance declaration requirements using one of the two declaration processes described below.

Self-declaration process

This process is intended to be used by drone manufacturers to declare that their drones meet the technical requirements in CARs. The declaration is meant for manufacturers who are interested in having their drones used for operations where medium-sized drones are flown in controlled or uncontrolled airspace away from people, and BVLOS is conducted in sparsely populated areas, below 400 feet, in uncontrolled airspace.

Pre-validated declaration (PVD) process

This process is intended to be used by drone manufacturers or service providers who are interested in having their drones used for operations where medium-sized drones are flown

near or over people in VLOS operations and BVLOS is conducted in sparsely populated areas.

The PVD process involves Transport Canada review and acceptance of a compliance plan before the declaration is made. Manufacturers or service providers using the PVD process must also comply with annual reporting obligations.

General legal considerations

Before engaging in commercial drone applications, there are many regulatory requirements that must be addressed in addition to the rules and regulations noted above. These requirements include maintaining up-to-date records, adhering to payload restrictions, complying with local by-laws, and following applicable privacy regulations. As many drones retain information or may interfere with the enjoyment of private property, it is important for drone users to consider how to comply with applicable privacy legislation and how to avoid committing privacy-related torts.

Penalties and enforcement

Non-compliance with Canadian drone regulations can result in significant administrative penalties:

For individuals

- up to $1,000 for flying without a pilot certificate
- up to $3,000 for flying in unauthorized airspace or creating safety risks
- up to $5,000 for operating an unregistered or unmarked drone

For corporations

- up to $5,000 for flying without a pilot certificate
- up to $15,000 for flying in unauthorized airspace or creating safety risks
- up to $25,000 for operating an unregistered or unmarked drone