

DRONE USE TAKING OFF - SO TOO, DRONE INSURANCE

22 June 2017

Unmanned aerial vehicles (UAVs), commonly known as drones, are becoming commonplace not only in military applications, but also in commercial and recreational applications throughout the world. This presents an issue in terms of "how much" and "what type" of insurance will be required to adequately address the potential risks associated with UAV use.

Currently, primary commercial applications for UAVs are in the agricultural, law enforcement, news coverage, sporting event, movie-making and resource exploration fields. UAV use in Canada is regulated federally, under the Canadian Aviation Regulations, SOR/96-433, (the "Regulations") under the Aeronautics Act, R.S.C., 1985, c. A-2. In accordance with the Regulations, a Special Flight Operation Certificate (SFOC) must be obtained from Transport Canada in connection with any UAV used for commercial or research purposes and weighing more than 35 kilograms. In addition, Section 6.06.02(8) of the Regulations requires that a commercial operator must carry at least \$100,000 of liability insurance. Operators would be wise to note that liability limits of only \$100,000 are almost certainly inadequate to cover the damages that could arise from a serious accident caused through the use of a UAV.

Businesses making use of UAVs in their operations should be aware that there likely would be no coverage under their commercial general liability insurance in connection with the use of a UAV, as most CGL policies specifically exclude losses arising in connection with the use of aircraft. Several insurers currently offer "drone insurance", tailored to the specific use and operation of UAVs. These policies typically include third party liability coverage and hull coverage (covering damage to the UAV itself). Third party liability coverage typically includes property damage and bodily injury, as well as personal injury, such as defamation, violation of privacy and copyright infringement, which may come into play in connection with video and other data collected by the UAV. Cyber liability coverage

should also be considered, depending on the use of the drone. To date there is no caselaw in Canada considering coverage issues in connection with UAVs.

It will remain to be seen whether conventional property and casualty insurers also consider expanding their traditional coverages to take advantage of this evolving area. Underwriters of insurance for UAVs are faced with a dilemma similar to that experienced recently by underwriters of cyber insurance – a lack of statistical evidence with which to assess and price the risk. For larger commercial applications, experience generated from the underwriting of aviation insurance may provide significant guidance. Otherwise, the exercise may be something like the act of learning to fly itself. As Douglas Adams so keenly observed, “The knack to flying lies in learning how to throw yourself at the ground and miss”.

NOT LEGAL ADVICE. Information made available on this website in any form is for information purposes only. It is not, and should not be taken as, legal advice. You should not rely on, or take or fail to take any action based upon this information. Never disregard professional legal advice or delay in seeking legal advice because of something you have read on this website. Gowling WLG professionals will be pleased to discuss resolutions to specific legal concerns you may have.

Belinda A. Bain

Partner - National Lead – Insurance &
Professional Liability Practice Group
(Canada), Toronto

 Email

belinda.bain@gowlingwlg.com

 Phone

+1 416-369-6174

 vCard

Belinda A. Bain