



AVOIDING CELL SITE LIABILITY

Due Diligence Key to Protecting Properties

By Roy Bennett

RADIOFREQUENCIES (RF) are silently growing on cell sites. Recent Industry Canada spectrum auctions are freeing up space for carriers, while sites can host more than one carrier sharing infrastructure for microwave and radio transmissions.

Across Canada, CISCO projects annual cell data growth of 42% each year to 2020.

For property owners that represents an opportunity for revenue growth, but also a risk of liability.

In particular, the spectre of class action suits for alleged RF-related injuries looms. Looking at the growing instances of so-called patent trolls filing claims in Canada, property owners may be reasonably wary.

"For RF trolls, filing class actions can be automated; for property owners defending class actions can be expensive and personal," says Ryan Wagner, Edmonton manager of Antenna Management Corp. "RF trolls will be looking for substantial settlements. The last thing property owners want are public RF injury claims on their

properties. Everyone gets nervous. Properties values may be reduced.”

Owners may not know the RF power radiating from their properties. If a site fails to comply with Health Canada guidelines, known as Safety Code 6, it could become a point of interest with prospective filers of class action suits.

“The responsibility for RF safety is likely to involve the property owner,” Wagner advises.

Through Safety Code 6, Canada has established some of the world's most stringent restrictions on exposure to radiofrequencies. Notably, the allowable exposure level for the general public is five times less than for trained workers, certified to handle RF-emitting equipment. It's important for property owners to be aware of these requirements and perform due diligence.

Under Safety Code 6, the "general public" covers everyone lacking RF certification. Even if rooftop access is locked and controlled, building staff, contractors and anyone who could potentially enter a cell site area must be made aware of the risks. Health effects can occur within one metre of an antenna and in a much larger area surrounding a dish.

Property owners should keep logs of certification, licenses, insurance and WCB registration of workers given rooftop access. Signage, fencing and Safety Code 6 warnings must be posted on the site.

Sites can host multiple cell carriers with multiple upgrades. Some carriers share the same antennas (transceivers) magnifying RF emissions. Under their public telecom operating licenses, cell carriers are usually required to provide a certified Safety Code 6 report, but Industry Canada has administered this largely through the honour system.

Situations can become problematic for owners if they cannot account for who is working on their rooftops or what work is being done. Leases typically define areas for operations but not numbers of licensed antennas or total RF power, which creates risks of running afoul of Safety Code 6 and opens up opportunities for suit-seekers.

There is no public repository for safety reports and often limited means to chart if a site has been or is in compliance. Claims may hinge on whether the site has been certified RF-safe. Cell carriers often use software to estimate RF safety, but direct on-site measurements by a qualified RF engineer are rarely conducted. At certain RF levels, Health Canada also requires visits to sites so it's important that this occur.

SAFETY CODE 6 DELINEATES RISK

Health Canada dismissed a range of concerns as unproven and unscientific when it updated its guide for allowable radiation levels from wireless communications last year. However, it slightly adjusted recommended thresholds for human exposure to radiofrequency (RF) electromagnetic energy in some frequency ranges to further guard against the risks of heat-related tissue damage and/or undue nerve stimulation.

The revisions to Safety Code 6 – which Canadian provinces, municipalities and other government agencies, including Industry Canada, have long used as a guidance document for regulating telecommunications towers, microcells and various equipment such as cell phones, Wi-Fi and smart meters that emit electromagnetic energy – were adopted after input from an eight-member expert scientific review panel and public consultation.

The 2015 version of the code calls for what Health Canada typifies as "larger safety margins" based on recent research and 2010 guidelines from the International Commission on Non-Ionizing Radiation Protection (ICNIRP). Designated exposure limits in the previous circa-2009 version of the code were already set above levels scientifically observed to trigger thermal or nerve response.

The Code rejects theories that link electromagnetic energy to various detrimental symptoms and environmental intolerances.

"At present, there is no scientific basis for the occurrence of acute, chronic and/or cumulative adverse health risks from RF field exposure at levels below the limits outlined in Safety Code 6," it states. "The hypotheses of other proposed adverse health effects occurring at levels below the exposure limits outlined in Safety Code 6 suffer from a lack of evidence of causality, biological plausibility and reproducibility and do not provide a credible foundation for making science-based recommendations for limiting human exposure to low-intensity RF fields."

Nevertheless, Health Canada's expert scientific review panel suggested there could be other appropriate mechanisms outside Safety Code 6 to explore phenomena labelled as idiopathic environmental intolerance attributed to electromagnetic fields (IEI-EMF) or electromagnetic hypersensitivity.

"During the public consultation, the Panel heard from numerous individuals who felt they are sensitive to low levels of RF energy in the environment from a variety of sources," it recounted in its report. "This Panel feels strongly that these individuals need compassion and assistance in overcoming their symptoms."

– REMI Network



Photo courtesy of Antenna Management Corp.

Property owners need to consider who is liable for an RF injury claim and whether they can demonstrate they've taken steps to ensure safety. Cell carriers will have insurance, but it may not cover RF injury claims, costs or settlements. Property owners should obtain an annual certificate from the service provider's insurer confirming they are a "named insured" and RF injury coverage has not been waived.

Property owners should check their own property insurance for RF coverage, and verify insurance coverage, WCB registration and required certifications for all on-site workers. They should also check annually to ensure there have been no changes to coverage.

Almost every lease is unique in its specifications for RF safety and liability.

Some leases have property owners indemnifying the cell carriers for legal actions and claims. Owners are advised to get legal reviews of their leases on each renewal as sites and rules change.

"The best protection for property owners is proving that the site always meets Safety Code 6 specifications. Obtaining regular updates on antenna additions, increased power and Safety Code 6 levels are critical," Wagner maintains. "Keeping a safe site is prudent. Be sure reports are properly credentialed. Without proactive Safety Code 6 management, it might be difficult to defend an RF injury claim." ■■

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