



New Zealand Canoeing 04.1

Greetings..

The warm season is over, hopefully it has as been as busy for paddlers out there as it has been for the NZRCA Exec in the evenings after paddling. We've been busy, mostly on the conservation scene, and have been quietly gearing up for battle.

The current battle is over Ngaawaparua / Fuljames, the NZRCA is going to mediation with Meridian Energy in June to fight for regular releases and an end to the artificially high peak generation flows which are eroding the river bed. This is mediated by an Environment Court Commissioner. If either side is not happy with the result then we end up in the Environment Court itself before a judge and two commissioners.

The major environmental event of the last few months is the cancelling of Project Aqua. The jury is still out on what that means to paddlers. Medium term I think it is not good as there are a host of small hydro schemes going back on the drawing boards. Hopefully long term it helps to wake the country up to look more at energy efficiency instead of forever trying to grow demand.

One huge step in the right direction is the imminent establishment of The New Zealand Rivers Conservation Trust, a charitable trust which has tax-free status and stands separate from the NZRCA. This means river conservation can go on even if NZRCA is ever bankrupted by a court case. President Robin Rutter-Baumann has been doing a great job driving this one.

The trust may need seed funds soon if NZRCA, Huka Falls CC or anyone else has to fight Mighty River Power actually in court. If the time comes, details will be on the website www.rivers.org.nz.

Happy Paddling

Tony, editor@rivers.org.nz



Save that wave ! Mark Robertson on the Fuljames wave, Worlds 1999

Winter 2004 Contents

About NZ Canoeing	2
Executive & Officers	2
Newssplashes	3
Releases	3
Conservation	4
Wise Up to the White Stuff	5
Criminal Nuisance Prosecutions	8
Membership Form	11

About *New Zealand Canoeing*

New Zealand Canoeing is the official newsletter of the New Zealand Recreational Canoeing Association (NZRCA) Inc. *NZ Canoeing* is published quarterly and distributed free to around 1,000 members of the NZRCA throughout New Zealand/Aotearoa.

The views expressed in *New Zealand Canoeing* are those of the individual authors and do not necessarily represent those of the Executive of the New Zealand Recreational Canoeing Association.

NZ Canoeing welcomes advertising from organisations associated with recreational canoeing. Please contact us for our advertising rates, and find out how to show your products and services to kayakers around NZ.

Thanks to contributors and advertisers and the myriad of e-mail correspondents for their contributions to this issue of *NZ Canoeing*. May the rivers flow for you!

Contributions of articles, trip reports, classified advertisements, and letters for publication are gratefully received.

Please send items to:

The Editor
PO Box 284
Wellington
editor@rivers.org.nz

The deadline for material for the next newsletter is 1 August 2004.

All map references are to NZMS Infomap 260 Topographical series.

Unless otherwise noted all material in *NZ Canoeing* is © NZRCA.

All rights reserved.

NZRCA Executive & Officers

as elected at the NZRCA AGM

Patron

Hugh Canard
Christchurch
patron@rivers.org.nz

President

Robin Rutter-Baumann
Christchurch
Ph: 025 2121-621
president@rivers.org.nz

Vice-President

Mike Birch
Taupo
vice-president@rivers.org.nz

Treasurer

Rob Wells
Dunedin
treasurer@rivers.org.nz

South Island Conservation

Maree Baker
Dunedin
conservation@rivers.org.nz

North Island Conservation

Duncan Catanach
Wellington
niconservation@rivers.org.nz

Safety

Glenn Murdoch
Dunedin
safety@rivers.org.nz

Education

Steffan Lamont
Christchurch
education@rivers.org.nz

Access

Graeme McIntyre
Palmerston North
access@rivers.org.nz

NZ Canoeing Editor & Communications

Tony Ward-Holmes
Christchurch
Ph: (03) 384-5575
editor@rivers.org.nz
communications@rivers.org.nz

Membership

Alan Bell
Wellington
Ph: 04 570 0232
membership@rivers.org.nz

Webmaster

Jonathan Hunt
London
webmaster@rivers.org.nz

Administration

Anne Smith
Wellington
admin@rivers.org.nz

A big thanks to outgoing admin officer
Belinda Green, and welcome to new
admin officer Anne Smith and education
officer Steffan Lamont

Notification of Annual General Meeting

The NZRCA AGM for 2004 will be held on Saturday 24 July 2004 in Dunedin starting at 10am. The precise venue will be announced on www.rivers.org.nz

All members are invited to attend and are requested to inform the administration officer in writing no later than 5pm on Thursday 24 June 2004 of any "motions or remits". A copy of the agenda and notified motions and remits will be available to all members via the NZRCA website (www.rivers.org.nz) from 1 July 2004. Any member wishing to receive a written copy of this should contact the administration officer.

Nominations for the Executive officers positions close on 10 July 2004 and should be made in writing to the administration officer.

At the AGM there will be an award made to the Canoeist of the Year. If you know of an individual (or team) who has made an outstanding achievement or contribution in the area of recreational canoeing then please nominate them by writing to the administration officer before 10 July 2004.

For more information of CoTY, AGM and officers positions visit www.rivers.org.nz/nzrca

The administration officer is contactable via NZRCA, PO Box 284, Wellington or admin@rivers.org.nz.

Mohaka Water Conservation Order

Some very welcome news is the gazetting of a Water Conservation Order on the Mohaka river. This is something that NZRCA has been working on since 1987 with Fish and Game!

"The order will protect the outstanding characteristics and features of the upper part of the river above the State Highway 5 bridge as well as the Mokonui Gorge and tributaries of the Mohaka River," Minister for the Environment Marian Hobbs said. "These include the outstanding trout fishery, and white water canoeing and rafting opportunities.

Parties who made written submissions in support of the Mohaka WCO include Hawkes Bay CC, Kaimai CC, Kupe CC, Huka Falls CC, Nelson CC, Ruahine WWC, University of Canterbury CC and Victoria University CC. Parties who appeared at the Mohaka WCO hearing in July 1989 included Hugh Canard (NZCA) and Mike Savory (NZRCA, Kupe CC) and several members of Hawkes Bay CC.

This case had taken an unusually long time but it is heartening that these things do eventually come to fruition. Well done and thanks to all involved.

Clarence WCO

OCKC (Otago Canoe and Kayak Club) and friends have started a project to apply for a WCO on the Clarence river. Suffice to say, there aren't too many rivers in the country like this mega-classic: multi-day, good moderate whitewater, wedged between two 2,500m mountain ranges. As part of this project they have just filmed a Clarence descent, the premier for this is in late May in Dunedin.

Orari

The Orari River in South Canterbury is currently subject to proposals for irrigation. The proposals affect the lower gorge, a section used frequently as an educational venue.

The Orari River Protection Group has been set up to protect and retain the Orari River in its natural state. It includes recreational users, local landowners, and conservationists. Anyone is welcome to join. For more information regarding the Orari River Protection Group, or the dam proposals, contact Debs Martin: debsmartin@paradise.net.nz

Death on the Crooked

In March, English visitor Eleanor Rutter died in a sieve on the Upper Crooked. The West Coast whitewater SAR team recovered her body the next day in a very smooth operation. The non-whitewater SAR operation was not so smooth, however the Police have accepted advice on how to deal with some of the issues encountered.

The NZRCA issued a press release, offering condolences to those affected and noting that the long walk-in late in the day may have contributed to the incident.

Paddlers need to allow sufficient time to complete their days kayaking, allowing time for incidents and carefully scouting of rapids on hard and unfamiliar white water.

Releases

The spring Mangahao Release is October 30.

There are a series of releases on the Waikaretaheke: Sunday 6 June, 1 Aug, 5 Sept, Sat & Sun 2 & 3 Oct..

Meridian cancelled the last Tekapo slalom release on the afternoon before the release. There was nothing NZRCA could do about it as the lake was over-full and Meridian had to spill down the main river channel. The slalom course channel cannot be opened at the resulting flow.

To avoid being caught out by such changes, always make sure you check the NZRCA website www.rivers.org.nz for the latest release information.

The "Events and Releases" page has the official information, and the NZRCA webmasters post urgent changes in the news on the home page. It is a good idea to check the main "Access, Touring and Hazards" forum as well. Anyone can post to the forums so it is a great way to immediately publicise any changes to events or river conditions.

Conservation

Muzz Baker & Dnucan Catanach

Project Aqua canned

Meridian Energy announced that it was no longer going to pursue its proposal to construct six power stations in conjunction with a major canal on the Lower Waitaki River. NZRCA had lodged a submission in respect of the proposal. Project Aqua did not threaten any significant whitewater resource, however would have had a dramatic effect on the major braided river of the lower Waitaki.

While the lower Waitaki is of less significance for whitewater paddlers, the canning of Project Aqua leaves the status of the proposed Resource Management (Waitaki Catchment) Amendment Bill, which is of more importance to whitewater kayakers, in the balance.

This bill, if it goes through would create a water allocation framework for the entire Waitaki catchment, including any current and proposed resource consents for drawing water from Lake Tekapo and Pukaki. Of particular concern to the NZRCA are a number of resource consents that would allow up to a quarter of the average inflow into Lake Tekapo to be drawn for irrigation purposes. According to the current agreement between Meridian Energy and the Tekapo Whitewater Trust, whitewater releases for the Tekapo River are based on certain minimum lake levels being met. It is likely that these minimum levels will

be less frequently met if the significant additional drawings proposed in these resource consents are approved.

NZRCA will keep a watching brief on this as it is important that our hard-fought agreement with Meridian Energy is not jeopardised.

Clutha and Hawea Rivers

The NZRCA has lodged an appeal on Contact Energy's resource consents for the Clutha Hydro Electric Power Scheme. We are about to recommence negotiations with Contact to hopefully settle this, and obtain a commitment to compensate for the permanent loss of rapids such as Sargoods Weir, the Gap and the Bannockburn rapids.

Rangitata

In May, a small group of devoted Rangitata fans and business owners will return to the Environment Court to give evidence convincing Judge Jackson that it deserves the protection of a Water Conservation Order. Following our case will be those in "opposition" to such an order, which are primarily irrigation companies who see the opportunity to profit from further abstraction from the river. The Court will hopefully issue its decision by the end of June.

Gowan River

The Gowan, which flows into the Buller, is currently protected by the Buller Water Conservation Order. However this protection is now under threat. Sometime this year the Minister for the Environment will appoint a Special Tribunal to hear submissions and evidence on whether or not the Gowan should remain protected. If you want to help out with this issue please contact us.

Waikato River

Re-negotiations with Mighty River Power with the help of an Environment Court Commissioner are due to recommence over the next couple of months, to see if we can come to a suitable arrangement with the power company, guaranteeing a decent flow regime on Ngawaaparua Rapid.

"Rock A" - Rangitaiki River

In 2003, Environment Bay of Plenty (EnvBOP), in response to MSA reports on two rafting fatalities on the Rangitaiki River, mooted modifying the riverbed to reduce the rock sieve hazard - "Rock A".

NZRCA sent a submission to EnvBOP in 2003 with our views at this time. Early in 2004, a report was prepared for EnvBOP on the management of the hazard. Apparently the attempted plugging of the sieve failed and they now propose moving "Rock A" from the main flow with an excavator from river right.

This report was never sent to NZRCA, just forwarded by a concerned paddler. NZRCA has again submitted that Rock A should not be moved, and asking why there has been no consultation by EnvBOP.

**SCARIEST moment
of your life....**

Whose gear do you want to be wearing?

.....

**IF YOU WANT TO ENJOY YOUR
KAYAKING AS MUCH AS WE DO
THEN GET YOURSELF SOME
DAY TWO KAYAK GEAR.**

**PHONE 07 345 7647
FOR YOUR NEAREST STORE**

**NEW ZEALAND
Day Two™**

Product testing @ Huka Falls

Wise Up to the White Stuff 1

This article (and two more in future newsletters) are from Matt Barker, Sport and Recreation Lecturer at AUT. It's quite a contrast thinking about safety rather than liability. That just leaves the practical aspects.. and any time is good to take advantage of the NZRCA river rescue and safety course subsidies.. Ed

This is the first of a series of articles looking at white water safety and rescue. In this article safety issues will be discussed. Future articles will discuss the principles of white water rescue and the latest equipment and techniques that can be used when your safety has gone wrong.

Many kayakers see white water as threatening, dangerous or as an unsafe environment. The facts are that white water can be as safe as any other branch of canoe sport as long as participants enter into it with an appropriate attitude, which must be based upon **"prevention is better than cure"**. The development of this is underpinned by a set of core safety principles, these are;

Principle of Mutual Support

Principle of Line of Sight

Principle of Calculated Risk

Principle of Clear Communication

Principle of Visibility

Principle of Prevention


Principle of Mutual Support:

It is vitally important that **all** group members see themselves as part of a mutually supportive team, not as a group of individuals or as a group being led. If group members are expecting to be part of a team then they will naturally be looking for opportunities to safeguard other members and not sit in eddies thinking to themselves "Thank god I survived!" but more like, **"That was tough! Where should I be now? How can I help the rest of the team?"** Even just knowing you have a team around you can lead to safer paddling. With greater





Check your options carefully.. (err, and get some booties)

Attention Kayak Club Members
this is the ideal "safe start" to kayaking for 2004

River Safety Regular Price \$285 Club Price \$245 including NZRCA subsidy \$200
A two-day course designed to teach you the skills necessary to assist someone while you are still in your boat. Along with some basic rope skills this course is all about being safe on the river. Some of the techniques you will learn include:



- Components of an efficient Rescue
- Rescue Organisation
- Boat based rescues, Deck carries
- "All in" rescues
- Strong swimmer rescues
- Swimming on to strainers
- Combat swimming with victim, boat and paddle
- River crossing Techniques
- Simple boat retrieval methods



River Rescue Regular Price \$295 Club Price \$255 including NZRCA subsidy \$105
Run over two days this course is designed for those people who are leading kayaking trips and/or those who would like to paddle more adventurous rivers. This course covers:


- Knots, Pulley systems, Z-drags
- Improvised harnesses
- Improvised Abseiling on River Rescue gear
- Pre Protection of rapids
- Rescues from Holes with boat and throwbags
- Vertical Pins and Vertical Horals

(Please note the River Safety course is a prerequisite for attending this course)



Courses are run on a regular basis. View the course calendar at www.rapids.co.nz
For groups of 6 or more we will run the course at any time to suit your needs.

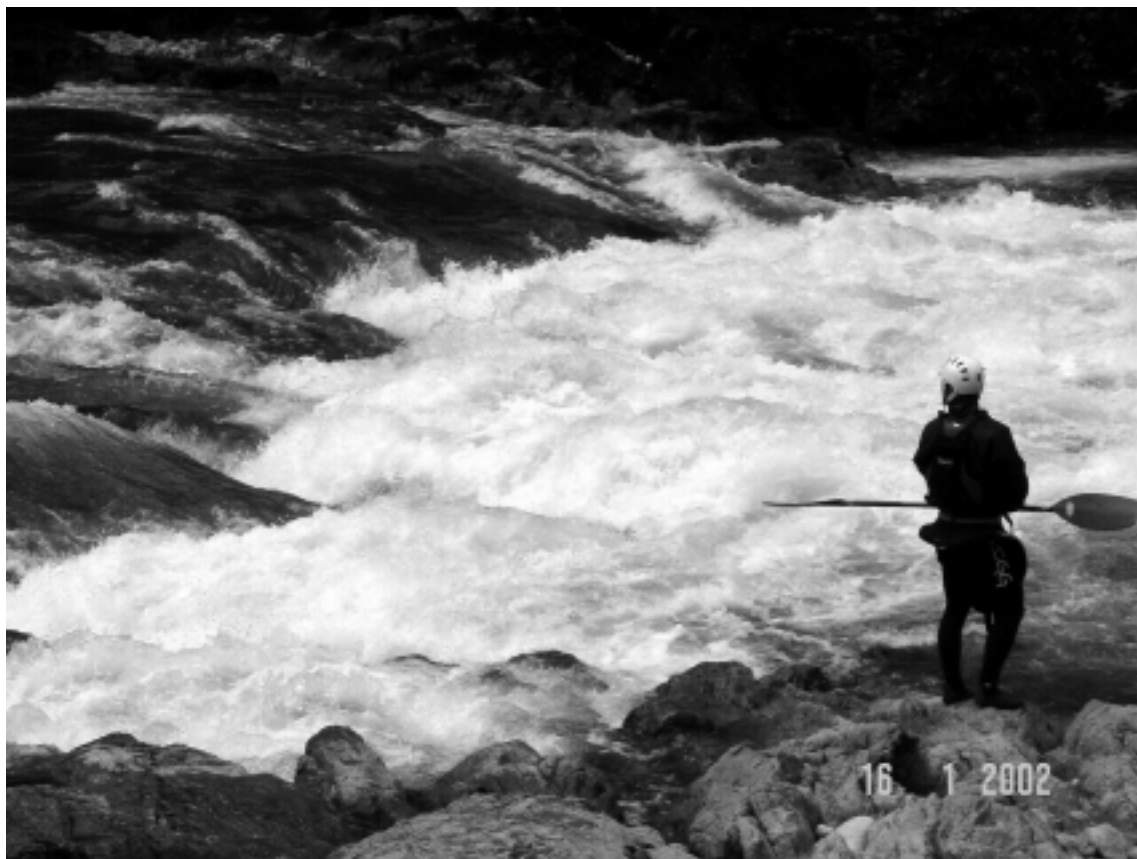
These courses are subsidised by NZRCA with money received from Water Safety NZ. Individuals and club members attending approved River Safety or River Rescue courses can apply for the subsidy on completion of the course. The subsidy is on a per head basis \$45 for River Safety and \$80 for River Rescue. Funding is on a first come, first served basis.

Bookings Essential 0800 35 34 35 info@rapids.co.nz
www.rapids.co.nz

mutual support a person's anxiety levels can be dramatically reduced leading to more controlled and efficient paddling. This allows the kayaker to meet the demands the water places on them and not get out of control, miss eddies or safe lines.

Principle of Line of Sight:

There are two parts to this principle, the first is ensuring you can see safe clear water from where you are, to all the way to where you want to get. **Never run anything blind**, never run a drop that you haven't seen the bottom of, never drop into an eddy that you can't be sure is clear and safe, but most importantly don't go past the last eddy that you can back yourself to make. You will never find yourself in the position of being committed to or having to run anything that you hadn't planned on. The second part is line of sight between group members, **be in view of at least one other team member at all times**. It is only by being in clear view that the team knows exactly what is going on and where team members are at all times so that they can react accordingly if things do not go to plan.



It will be there tomorrow, make sure you are too.

environment. Colours that seem to contrast in most conditions are **yellow, orange and red**, but when we look around a gear shop we see a predominance of green, blue and black. Some manufacturers are slowly coming to the party with their new ranges and it is up to you to make wise choices. Bright paint or reflective tape on paddles and helmets can be used to good effect, if you are on a tight budget. I would like to see the silver reflective shoulder straps replaced with

Principle of Calculated Risk:

Always weigh up the risks involved and the likely benefits in all situations. Don't rush into any situation without carefully pondering it first. Listen to your inner feelings. We all have off days, don't push your luck when everything is not perfect. As long as it continues to rain in New Zealand and the power companies stay away, the rivers will continue to flow and there will always be a next time, just make sure you are around to enjoy it.

Principle of Clear Communication:

It is of vital importance that all team members understand all signals and that mistakes are not made with translation. A good way to ensure that messages have been understood is to confirm all communications before any action is taken. Ensure that all members of the team can communicate to the whole of the team at any given time. There may have to be a chain of communication when the river bends or an obstacle obscures line of sight to all members of the team, signals can then be relayed from one to the other. This is linked to the principle of line of sight so that signals and other communications can be passed to all members at all times.

Principle of Visibility

Personal visibility is vitally important and so is the visibility of your equipment if you want team members to know where you are, or be rescued, or to get your gear back. In terms of personal visibility in the water the helmet, buoyancy aid and paddle jacket should all contrast with the aquatic

reflective orange so that it can be easily identified day and night. Good visibility can make the difference between a minor and a major incident.

Principle of Prevention: Make the best use of manpower and equipment to try to prevent situations from starting or developing and ensure "clean rope" as much as possible. The loose end of the throw bag should have no knots or handles on it, it is then said to be 'clean' and therefore allows the end of the rope to run through hitches and belays, plus it will not jam between boulders on the side of the river or in the riverbed. My first practical demonstration of this was when my party came across a kayak apparently auto surfing upside down in the middle of a river, a throw bag had been clipped by the bag end to the inside of the kayak and the occupant had taken a swim, some rope had worked its way out of the bag and the handle had subsequently jammed in the riverbed pulling the rest of the rope out and holding the kayak in the flow, where it was found wildly thrashing from side to side. What if the kayak was a person around whom the throw rope had become entangled.

The core principles of safety if used on every trip would mean that kayakers would seldom have an accident. Unfortunately we can all be guilty of pushing our frontiers or underestimating our skill to challenge balance and sometimes things just plainly go wrong. Future articles will build on this introductory one to equip every level of kayaker with the tools to enjoy safe and rewarding paddling, even when things have gone awry.

STANDING TALL



NICK WIMSETT CURRENT NZ FREESTYLE CHAMPION

BLISS-STICK
KAYAKS
www.bliss-stick.com
0800 BLISS STICK

Criminal Nuisance Prosecutions in Recreation: Cause for Concern?

Here's some food for thought. The NZRCA is always working on the first of Dr Lynch's recommendations (see end). We are now working with NZOLA and other organisations on a strategy for the second... Ed

Dr Pip Lynch, Senior Lecturer, Outdoor Education, Lincoln University.

What counts as a crime is defined by legislation and by the courts, and the range of events considered criminal has recently been widening into the recreation domain. Section 145 of the Crimes Act 1961 states, under the heading "Criminal Nuisance", that "Every one commits criminal nuisance who does any unlawful act or omits to discharge any legal duty, such act or omission being one which he knew would endanger the lives, safety, or health of the public, or the life, safety, or health of any individual" (Crimes Act 1961). Recent prosecutions under this section of the Act are of interest to recreation leaders and managers, but perhaps less so for the guidance they give than for the uncertainty they create. In this article I will refer to four recent cases (three prosecutions, and one police investigation that did not lead to a prosecution) and outline my reasons for considering the most recent prosecution (the Le Race case) to be particularly worrisome.

The Le Race Case.

Le Race is an annual, commercially organised, 100km cycling event that is pitched at suitably fit competitive and non-competitive adult cyclists who ride all or part of the way from Christchurch to Akaroa on Banks Peninsula (Le Race brochure, 2002). During the third Le Race, on March 31, 2001, a 31 year old female cyclist collided with an on-coming car and was fatally injured (Booker, 2002). The event organiser was convicted of criminal nuisance and fined \$10,000.

The 'nuisance' with which the event organiser was charged was that, while she was in charge of a dangerous thing (that is, the cycling event), she failed to

take reasonable precautions against endangering human life, an omission she allegedly knew to could be harmful to the public or any individual

I am concerned about three aspects of this case. First, I am concerned that it signals a willingness by the police to prosecute in situations where there are no standard common practices to guide recreation organisers. To my knowledge, previous convictions for criminal nuisance arising from duties whilst in charge of dangerous things (i.e. recreation events) have focused on breaches of official safety requirements or commonly accepted modes of operation. These cases have involved tangible 'things', such as safety barriers and safety harnesses. In Le Race, there is no official requirement or standard common practice involved and the focus is on the safety briefings given to participants and how those briefings were, or could have been, interpreted by participants.

My second concern is with the issue of allocation of responsibility between the parties involved in recreational activities. Generally speaking, recreation and event organisers can and should be held primarily responsible for the activities they run but there are some things over which they may have little or no control. Who should take responsibility for the consequences of recreation that cannot be controlled by the organiser? This issue demands careful attention from all who have interests in recreation.

The final issue concerns the guidance that the recreation community can gain from the Le Race case. Fatalities in recreation are always a concern and deserve careful scrutiny, but it is not clear in this case that the public interest was best served by a criminal prosecution.

I hope that this article will stimulate wide public debate that results, eventually, in both greater safety for recreation participants and greater clarity for

recreation administrators in how to ensure that safety without irrevocably compromising the recreational values of the activities they offer.

Significant Departure

The Le Race case represents a significant departure from other recent cases involving serious injuries in recreational activities. In the Queenstown motor-race case (Molloy, 2001), the volunteer officials were found to have failed to ensure that safety barriers were effective. A rally car came off the track and struck spectators, two of whom died and two of whom were injured. The volunteers were charged with manslaughter, criminal nuisance and injury by unlawful act. (The charges were later dropped and a new charge of criminal nuisance was laid against the national body, Motorsport New Zealand, who pleaded guilty). An important aspect of this case was that Motorsport New Zealand had issued a venue licence for the race to Queenstown Classic Car Club, although, as later revealed, the Club had not complied with the new safety requirements of the national body (Molloy, 2001). In this case, there had been a clear failure to meet an official safety requirement.

In the Queenstown parapenting case, the parapente instructor failed to ensure that the client's harness was secured; the client fell at least 10m and was seriously injured (Booker, 2001). The instructor was charged with criminal nuisance. Again, the case involved a clear departure from standard safety procedures. Parapenting, parachuting, rockclimbing and mountaineering are all examples of activities in which checking the harness is a well-established safety routine.

By contrast, a double fatality resulting from a school trip did not lead to a prosecution. In October 2001, two primary school pupils died as a result of a canoeing accident on the Clarence River. A Maritime Safety Authority



Clarity of instructions to participants is definitely important in event organisation, but there are degrees of clarity and degrees of ambiguity. What the Le Case case leaves in doubt is just where the line can now be drawn on just how clear and unambiguous instructions have to be. *Ex post facto* judgement is insufficient. Event organisers need reassurance in advance that their documentation will stand the test of the law. As the law in New Zealand stands at present, criminal nuisance can arise from ordinary errors of judgement. In Britain, Canada and Australia, gross negligence is required. Recreation event organisers have good reasons

to be worried.

Whose Responsibility?

Regardless of the way in which the Le Race safety briefings were worded, it appears that recreation organisers are expected to take responsibility for all possible consequences that may harm participants. While it is reasonable to expect high degrees of safety management in organised recreational events, I have to ask if participants themselves should not be expected to shoulder at least some of the responsibility for the consequences of participation. Where instructions for participation and safety information are provided, should participants be expected to be familiar with, and abide by, those instructions and that information? If the answer to this question is 'No', then we need to radically rethink the way recreation activities are organised and run.

In situations where the recreation organiser cannot have full control over the recreation activity, and where the recreational values of the activity would be reduced if external control were possible, should not participants carry some of the responsibility for consequences? Mountain biking, ice skating and snow sports are examples of activities in which the participant's

investigation found that there was insufficient skill and experience in the client group for the grade of river tackled, and that the *effective*¹ instructor: pupil ratio was not met. (Maritime Safety Authority, 2001), however, no charges were laid. A police spokesperson is reported to have stated that the 'procedural shortcomings and policy deficiencies' identified during the police investigation were not sufficient to attract criminal liability" (Conway, 2002). The fact that this case did not attract a prosecution makes it more difficult to understand why the Le Race case was taken to court.

What You Say and How You Say It.

In Le Race, the prosecution argued that the safety instructions given to participants prior to the event were ambiguous. The event organiser had issued safety warnings in the literature given to all participants (and verbally on the day (Anon, 2002b)).² The event brochure listed the rules of the race, including the following: "Competitors must follow the course set in this programme and must abide by the road rules at all times" (Le Race brochure, 2001). The race pack information sheet reinforced this message. Its first paragraph dealt with the start procedure and told cyclists to stay on the left hand

side of the road during the first part of the race on a major inner-city road. It also stated: "On the rest of the course you must obey the road code. Do NOT go over the centre line" (Le Race race pack information sheet, 2001; original emphasis).

The third section of the information sheet was headed 'Safety First' and said, among other things, "Obey the road rules", "Look out for each other and be considerate of other traffic" (Le Race race pack information sheet, 2001). In between the first and third sections of the information sheet, there was a section on 'Sneaky Cyclists'—riders who had not officially entered the event. This section referred to "an official road closure" to weed out unofficial cyclists (Le Race race pack information sheet, 2001), and it was this reference that the prosecution claimed was criminally ambiguous (Clarkson, 2002), despite the clear statements in the preceding and following paragraphs. At the time of the accident, the deceased was said to have been cycling "within a metre to the right of the centre line" on the road (Clarkson, 2002) and was approaching a right-hand corner (Booker, 2002). The suggestion made for her cycling behaviour was that she understood the road to be closed.

actions cannot be externally controlled without serious disruption to recreational values such as sensation-seeking and self-expression. At what point should at least some responsibility shift from recreation managers onto recreation participants?

It is reasonable to accept that the greater the degree of organisation in recreation, the greater the responsibility that ought to land on the shoulders of the organisers. If the organisers are volunteers, though, they may be unwilling to accept that burden of responsibility, especially if they fear potential exposure to criminal proceedings as a result. One implication of this is that recreation organisations will have to ensure that volunteer organisers and staff are well trained for the tasks they have agreed to undertake.

Another solution is professionalisation of recreation management and recreation leadership. There is already a trend in this direction and it may be strengthened by the threat of legal action in cases of accidental injury. Professionalisation can aid safety management, but it also usually brings with it increases in costs of participation, and therefore increases in inequality of access to recreational opportunities. Is this what we want for New Zealand society?

In situations where recreational events are not highly organised,

allocating responsibility for consequences may be particularly troublesome. For example, tramping, mountaineering and kayaking clubs often run trips to various locations throughout the year, each trip led by an experienced member of the club. In some cases, the entire trip is 'controlled' by the leader, and in others the 'leader' arranges transport only, leaving all other arrangements up to individual participants. In these situations, who should be held responsible for adverse consequences?

Prosecutions in the Public Interest?

According to McGonigle (1996), there is little public scrutiny of police decisions to prosecute, but there has been some critical commentary on prosecutions in recreation since the Queenstown motor-sport case. As Molloy (2001) asks, should the police be actively testing the limits of criminal liability for sport and recreation in the way they are? In her own words: "Should sport officials and administrators be protected from liability unless there is a gross and/or intentional breach of safety standards?" (Molloy, 2001).

The Le Race conviction has resulted in many recreational events either being cancelled or curtailed, at least

Very brave (not the paddlers... the organisers !)



temporarily. This means that some popular recreation opportunities for New Zealanders have been reduced. While it is in the public interest to prevent serious accidents from occurring, I have to ask if criminal prosecutions are the best means to achieve this in cases like Le Race? Is it in the public interest to curb physical recreational activities such as cycling, running, and mountain biking?

An alternative course of action, in cases where there are no defined safety standards is for investigative bodies other than the police to use their influence to get safety standards or guidelines established, and then for the police to prosecute those who fail to conform to the standards and guidelines. This would provide better guidance for recreation organisations and give them an opportunity to adopt the standards before being challenged by the law.

The Le Race conviction carried a warning for all who organise recreational events. I suggest that two important courses of action should be taken up. The first is to work towards ensuring higher standards of safety management in recreation, without compromising recreational opportunities. The second is to press for a review of the legislation relating to criminal nuisance.

Readers are welcome to send comments on this article to Dr Lynch at lynchp@lincoln.ac.nz.

References

- Anon (2002b) "Video shows safety talk". *The Press*, 29.8.2002, Page A5.
 Booker, J. (2001) "Pilot May Face Jail Term". *The Press*, 25.9.2001, P1.
 Booker, J. (2002) "Cycle Race Director 'Threatened'", *The Press*, 12.4.2002.
 Clarkson, D. (2002) "High Interest in Case", *The Press*, 28.8.2002, pA9.
 Conway, M. (2002) "No Police Action on Drownings", *The Press*, 13.8.2002.
 Crimes Act 1961. (See also: www.legislation.govt.nz)
 Le Race race pack information sheet, 2001. In the author's possession.
 Le Race brochure, 2001. In the author's possession.
 Maritime Safety Authority (2001) Report No. 01 2766, "Vessel Name: Lynne Cee". Maritime Safety Authority website (www.msa.org.nz).
 McGonigle, S. (1996) "Public Accountability for Police Prosecutions". *Auckland University Law Review*, 8(1).
 Molloy, T. (2001) "Criminal Liability for Sporting Accidents". *The ANSLA Commentator* (Australia and New Zealand Sport Law Association), November.

¹ The adult:pupil ratio, per se, was appropriate, but two of the adults had insufficient skill and experience to be considered 'effective' instructors on the water. As a result, the standard instructor: pupil ratio was not met.

² All participants signed an entry form saying that they agree "to abide by the event rules and conditions" (Le Race brochure, 2001).



Individual Membership Form

New Zealand Recreational Canoeing Association
 PO Box 284 Wellington
 E-mail: nzrca@rivers.org.nz
 Website: www.rivers.org.nz

Personal Details

Name	
Ph (day)	Ph (a/h)
Address	
E-mail	
Fax	
Occupation	
Club	
Your membership details are managed by the NZRCA in accordance with the Incorporated Societies Act (1908) and the Privacy Act (1993).	

For NZRCA Use Only

Membership ID				
---------------	--	--	--	--

Receipt #				
-----------	--	--	--	--

Response Date						
---------------	--	--	--	--	--	--

Deposited						
-----------	--	--	--	--	--	--

Individual Membership \$ 30.00

Includes three issues of *NZ Canoeing* and a Water Safety Subsidy of \$60 per person per year for River Safety, or for River Rescue Courses. Note that Club and Associate members pay different fees, see the website: www.rivers.org.nz for details of other membership classes.

Donation \$.00

Additional support for our work in Conservation, Access, Safety and Education is gratefully appreciated.

Total \$.00

Tick to receive a receipt

☐

Make cheques out to "NZRCA" and send to PO Box 284 Wellington. **Welcome!**

New Zealand Recreational Canoeing Association Inc.

Our purpose is to preserve New Zealand's whitewater resources and to enhance opportunities to enjoy them safely.

PO Box 284 Wellington • Ph 025 21 21 621 • nzrca@rivers.org.nz • www.rivers.org.nz

Support the advertisers in NZ Canoeing

These are people committed to saving your rivers

To advertise in NZ Canoeing, contact Tony on editor@rivers.org.nz