

**Special Interest Articles:**

- Transport Canada's Marine Liability Act and River Rafting Regulations
- Land use planning and policy affecting commercial wilderness operators
- Wilderness Tourism Licensing Act up for review

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**WTAY Executive and Board of Directors 2002/03**

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## The Marine Liability Act & You

Charles McLaren, Vice-President

For constant readers of the WTAY electronic newsletters and bulletins, the Marine Liability Act (MLA) will be a familiar topic. The last update was in May of 2002. Just because we've been quiet since then doesn't mean that this juggernaut isn't rolling rapidly towards your business.

Here's an update of the situation. The MLA is an Act of federal parliament, passed into law in 2001 without consultation with the tourism industry. It overrides local legislation. Intended to bring Canada into line with international shipping conventions, the MLA has an unreasonably broad scope that encompasses all watercraft from kayaks to oil tankers.

If you operate watercraft of any type for commercial purposes, the Act includes you. Canoes, rafts, fishing boats and any small craft except air cushion vehicles, operated other than for personal pleasure, are lumped in with freighters, ferries, and passenger liners. No consideration is given for the different circumstances these boats

operate in, or the expectations of the guests.

The MLA establishes a number of important principles such as the basis of fault, the amount of compensation for damages or injury, the conditions of passenger use, and others. As this Act is tied to a variety of international agreements, Canada is bound to change these factors when the international agreements are modified. This means that someone in Panama may have an impact on your business, and that the change will come with little warning for the little guy.

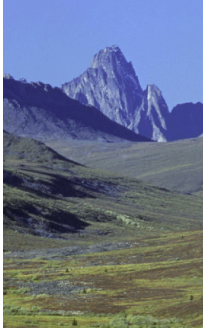
Let's talk specifics. But in doing so, keep in mind that Transport Canada brings lawyers to the table, and keep saying that the courts will decide where meanings are unclear. We can't afford a bunch of lawyers, so opinions in this article are the best we can do with a confusing and complex issue.

First, almost all guided water-based activities are covered. There may be

*(continued on page 4 – See MLA)*

## Neil's Note

Neil Hartling, President



Your board and executive have recently completed a one-day workshop, analyzing the strengths and challenges of the WTAY and setting the course for the upcoming year. All agreed that it was successful and left with a renewed sense of accomplishment for what we have achieved to date and what we are capable of.

At the workshop we reviewed the accomplishments over the last 3 years (since Ro began keeping track). The lists are impressive! From humble beginnings more than a decade ago, we have gained significant ground for the industry in the Yukon.

Our continuing strong membership is evidence that our sector continues to grow and we have mostly weathered the market destabilization of 9/11 and global economic trauma.

Our success at further securing the wilderness marketing funds for the Yukon, is testimony to our profile of trust and competence with the agencies with which we work.

Of course none of this would be happening without the hard work and collective wisdom of our board. I applaud each one of this year's board members for service well done! Our new office Manager Maxine Mattinson and Marketing Coordinator, Dennis Zimmermann are proving to be "top shelf"!

One thing that has become increasingly clear is that, as we grow as an industry, we encounter more hurdles and the old "targets" on our backs only get bigger.

The stereotypical image of the wilderness tourism outfitter who lives at the end of a trail in a cabin and follows a

doctrine of "live and let live" and so is never bothered by villain or bureaucrat simply does not exist. If you have a viable, sustainable outdoor business in this day and age you will have to be prepared to defend yourself. And the really grim reality is that many of these threats are not surmountable by individuals alone. In many cases the agencies that inflict the damage do so under a misleading cloak of sanctimony, claiming to be acting in someone's best interest, although we have seen how sometimes it is in no one's. Indeed, we need the strength of this association more than ever.

As a group we have power. We have pooled skills, knowledge, judgment and expertise. We don't have to take the threats lying down and in fact, as we get wiser, we can spot some issues before they grow and we can put them to rest proactively.

You may know that the WTAY is but one of the Industry groups I participate in. I will tell you that, for the money, they are among the most useful investments in my chest of management tools. They allow me to leverage opportunities and strengths to keep my company viable and efficient. This is to say nothing of the education I have received learning from the people it has connected me with.

It was clear at the end of the workshop that we have our work cut out for us. Along with lingering old challenges, there are a number of new threats on the horizon. Your board will be working hard on these issues in the upcoming year. I encourage you to attend board meetings to find out what is on the table and contribute your thoughts to the process.

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*"Indeed, we need the strength of this association more than ever... As a group we have power."*

# Environment Committee Issues

Blaine Walden, Chair, Environment Committee

## Oil & Gas

The WTAY committee members will be meeting with representatives from Energy, Mines and Resources and Tourism to start developing “Best Practices” for the developers of the oil and gas industry. These Best Practices will be used to give tourism operators some security that negative affects of oil and gas exploration and development will be minimized.

There has been a great deal of research done in this field so it should not be too difficult to identify what would work in the Yukon. Credit needs to go to Energy, Mines and Resources for their willingness to be proactive and work with the tourism industry on this important issue.

## Land Use Planning

Land use planning is continuing in the Yukon as it is a requirement under the Umbrella Final Agreement. WTAY supports this process and sees it as a way to give tourism some security that high tourism use areas will be identified and documented.

Land use planning will be an ongoing and lengthy initiative and has yet to be proven as far as effectiveness. To date WTAY has participated in the North Yukon land use planning process and is looking forward to submitting our concerns for consideration and inclusion as other regional plans are developed.

## Fishing Promotion

The department of Environment in cooperation with tourism is developing a publication on fishing opportunities in the Yukon. The purpose is to encourage visitors to take more advantage of fishing in the territory. WTAY supports this initiative and has participated in a public workshop in addition to ongoing dialogue with the Environment department. We did have some concerns about conservation of stocks and will reflect this. Distribution of the publication is slated for the spring of 2003. While working on this promotion it became clear there is potential for other co-operative programs between Environment, Tourism and the tourism industry whether it be our Wilderness Tourism Licensing Act, wildlife viewing, habitat protection or parks development. Co-operating with all YTG departments and stakeholders is a definite advantage and results in a better process or product.

## Resource Mapping

The department of Tourism, in co-operation with WTAY, is developing a series of maps that will document areas of use by wilderness tourism.

It is critical for tourism operators to have areas identified and recognized for our industry to have any sense of security that we'll be considered in land use issues and planning.

This is just one more tool that gives our industry a sense of certainty.



Photo by Blaine Walden

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## MLA Regulations Consultation coming to Whitehorse

(continued from page 1)

*Public consultation  
with Transport  
Canada on the MLA  
regulations  
regarding  
compulsory  
insurance is on  
Thursday, January*



*Participation of all  
members is vital.  
It's up to you.*

some fine distinctions, but the courts will decide those. Current thinking holds that the operator may be liable for situations where he/she has little or no control, or where guests have disobeyed instructions. To check if your situation is included, refer to the WTAY Update of May 21, 2002 and the variety of Transport Canada bulletins that are online.

Next, the MLA eliminates the use of waivers for water activity. Adventure tourism in a boat may no longer be based on the guest acknowledging a reasonable level of risk. Related dry land activities may still be covered with a waiver. Some of the implications are obvious, while others will take awhile to reach industry.

Transport Canada holds that waivers are ineffective, so prohibiting them is no real change. Perhaps that's true for shipping; but in adventure tourism they are a proven instrument that is useful both to inform your guests, and after an incident if necessary. Under the Act, no fault can now be admitted. Therefore, the client is right; your business is wrong. This is one example of many that indicate Transport Canada doesn't understand what they've done to an entire industry.

The MLA also sets limits of liability for loss of life or personal injury. The current limit is about \$350,000 per person, per incident. The aggregate amount of liability is about \$4,000,000, or the individual limit multiplied by the number of persons involved, whichever is greater. As an example, if your tour boat holds 20 guests, that's \$7,000,000.

Taken on it's own, this provision may actually be beneficial given the small number of guests on a trip that WTAY members normally deal with. The difficulties arise with the unknowns. As noted above, this amount is tied to international law and may change with little notice.

Also, in some cases, the MLA makes you guilty until proven innocent. If your guests

are injured or killed or experience property damage in a collision, shipwreck or the like, you are presumed to be at fault or negligent. Under the new law, you're 'it!' in the game of liability tag

We won't go into further details like the boat inspection requirements or other aspects that make this law inappropriate for our industry. Instead, we'll focus on the immediate financial threat that's coming.

The MLA makes provision for compulsory insurance, and over the past year Transport Canada has been consulting on how much that should be. The draft report is ready for release, so we're about to get a first look at what operators will have to carry for insurance. The WTAY has made strong presentations that the liability amount should mirror our existing Wilderness Tourism Licensing Act, at \$1,000,000. After that, we believe it should be up to each operator to determine how much risk they feel comfortable with.

Most of you know how much premiums have been increasing due to other world events such as the stock market and 9/11. If the liability amount is raised, this will only increase that trend, if insurers are willing to carry you at all.

Transport Canada is about to set compulsory insurance levels through regulations attached to the Act. They are holding the only public consultation on the regulations in Whitehorse on January 23, 2003 at the High Country Inn. You are encouraged to attend if you want some say in this matter.

The WTAY has been working hard on this issue, in conjunction with BTC of the Yukon Government, and other provincial and national organizations. Quite frankly, we're not certain how successful we'll be in rectifying some of these issues. If we're to have a chance, the participation of all members is vital. It's up to you.

# Proposed Transport Canada Rafting Regulations

Charles McLaren

The ancient Greeks had a pantheon of gods, each appropriate to a purpose. Being less civilized, the best our society can manage is a pantheon of laws and regulations. Most of these regulations are handed down from Ottawa, and may or may not be suitable for local conditions.

The latest of these to affect the wilderness tourism industry is the River Running Standards. The WTAY has generally supported a reasonable regulatory regime for rafting, and was embarking on our own process territorially at the time the first draft from Transport Canada was released. We decided to stop our own process and see what the federal government would do.

Floated as a draft in June of 2000, the initial River Rafting Standards were apparently written from the point of view of a day trip on the Ottawa River. Much of the document was inappropriate for multi-day trips in wilderness conditions.

Little more was heard regarding these regulations until this fall. Having resurfaced, Transport Canada undertook consultations, and appears to be listening. Our colleagues in B.C. and elsewhere have made reasonable presentations, and some of their input has been incorporated into the latest draft standards. For a full document, go online to [www.tc.gc.ca/marinesafety/ces/rafting/rafting-standards.htm](http://www.tc.gc.ca/marinesafety/ces/rafting/rafting-standards.htm).

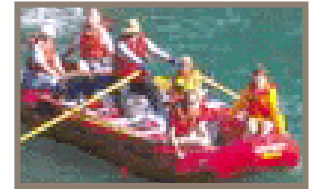
Most provisions are those normally taken by responsible operators. There are additional salient points, such as the requirement for a commercial raft to be clearly marked on both sides with the company name and number.

Every boat will have to carry a first aid kit, not just one kit per trip. However, the kit requirements are fairly low. Every raft must carry a copy of the rescue plan, and on Grade 3+ rivers, all participants must have a regulated PFD, helmet, and wetsuit (when the sum of air and water temperature is less than 37 C). Any incident involving loss of life or incapacitating injury must be reported to Transport Canada in the prescribed fashion.

Onerous provisions that seem to have been corrected in the most recent draft include the guide “ensuring the safety” of the trip, which cannot be done. In addition, the prior draft required that guides on Grade 3+ trips were to have run 5 familiarization trips within 24 months on the same river as the trip would be on. For operators running perhaps one or two trips per year on a river, this could not be complied with. The current version requires the guide to have completed 5 trips under company or association supervision on a similar river to that of the trip.

Although this current standard may not be precisely what the WTAY would have written, it seems to be in the process of becoming a workable document. Put it in the ‘watch and input’ category, and remember that you will have to comply with the letter of the law once this document is finalized.

Speaking of a pantheon of regulations, members are advised to visit [www.tc.gc.ca](http://www.tc.gc.ca) to review other regulations that impact their water operations, such as boat registrations, small vessel requirements, and others. Happy surfing! It’s winter!



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*River Rafting  
Regulations to be  
discussed at  
Transport Canada  
consultation on  
Thursday, Jan. 23  
1:00 p.m. at the  
High Country Inn*

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We're on the Web!

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## Commercial Wilderness Lands Policy

Blaine Walden

The federal department of lands has drafted the interim Big Game Outfitters land policy and plans to have it in place in 2003. The policy is to deal with the Big Game Outfitters' existing land applications and non-compliance sites.

The next step will be to begin work on the Commercial Wilderness Land Policy. There have been attempts in the past years to develop a lands policy for tourism operators but for a number of reasons there has been little success. There now seems to be a commitment from government to once again start on

this policy. WTAY believes this commitment is long overdue. Land for other industries and developments has been available leaving our industry at a huge disadvantage.

We believe the land policy must be well thought out and responsible as to its affects on other stakeholders, our industry and conservation of the wilderness resource. To this end WTAY has struck a committee to start research into what we would like to see included and to continue the lobbying for the timely development of this important policy.

## Wilderness Tourism Act

Blaine Walden

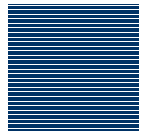
Our Wilderness Tourism Licensing Act has just finished its third year and has shown to be a great benefit to our industry. It has given us hard data on numbers and types of activities. It has been very valuable in showing the positive economic impacts of our industry.

The registrar has agreed to work with

WTAY to develop a report that compiles the data that's been collected to date. This report should be available in 2003.

The licensing committee has also agreed to look at where we are with this act and where we are going to go with it. Members will be contacted as to their concerns and suggestions.

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