

RECREATIONAL SAFETY IN THE SPOTLIGHT

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The certifier of an amusement device was the subject of a Disciplinary Hearing earlier this year. While the complaint was dismissed, the Disciplinary Committee (DC) ordered the decision be published by the Registration Authority (without identifying the parties involved), given the considerable interest in the outcome and the need for the decision not to be misinterpreted.

The decision concerned the way in which the certifying engineer conducted his engineering and shouldn't be taken as an endorsement of the conditions set in the certification. The applicable legislation is the Machinery Act 1950, the Amusement Devices Regulations 1978 and the Health and Safety in Employment Act 1992. The Committee found that no standards or codes of practice are mandated when certifying amusement devices.

A Chartered Professional Engineer is required to certify any amusement device subject to the Amusement Devices Regulations. In this case, that device was a concession go-kart capable of speeds of up to 100 kilometres per hour.

The complainant alleged that in this case the certification provided that the device could operate without the need for either seatbelts or rollover protection and that this risked people's health and safety. The Ministry of Business, Innovation and Employment advised the Committee that under Rule 8 of the Amusement Devices Regulations, it's empowered to include conditions and requirements additional to those specified in the engineer's certificate. It also advised that if it had added conditions regarding seatbelts, a new precedent would've been set.

The DC heard differing opinions from experienced professionals on whether seatbelt and rollover protection should be required for leisure karts operating on an outdoor track at high speeds.

During the hearing, a lack of reliable statistics relating to adverse incidents was highlighted. Evidence including whether a driver might be trapped or thrown clear was largely anecdotal. The certifying engineer presented evidence on hazard identification and risk analysis, claiming adherence to the European CIK-FIA guidelines in his certification.

The Committee heard that the risk assessment document the certifying engineer attached to the certificate didn't follow any accepted process or published standard, nor did it include a comprehensive consideration of the hazards associated with the amusement device. The engineer retorted that the submitted risk assessment didn't represent the full extent of the work undertaken to identify hazards and analyse, evaluate and treat risk.

The DC found there was no breach of the Code of Ethical Conduct and that engineering services weren't performed in a negligent or incompetent manner.

The Committee believed that the complainant was right to raise this matter as an inquiry, that it was a valid complaint and that it was very appropriate it be subject to a Disciplinary Hearing. It accepted, after some debate, that the certifying engineer had taken reasonable steps to safeguard people's health and safety, but

noted a number of concerns for certifiers of amusement devices and made recommendations for improvement for the certifying engineer.

Concerns included:

- The lack of mandated standards issued by the regulator
- That a formalised risk assessment is not current practice for engineers certifying amusement devices
- The lack of formal peer review processes for complex and higher hazard rides
- Deficiencies in record keeping
- The lack of follow-up of similar recommendations made by a DC in November 2010.

Recommendations included:

- Reviewing the certifying engineer's recommendations
- That a risk assessment be documented for the amusement device concerned following an accepted standard and using an appropriate risk matrix when it's next certified
- Engaging with trusted peers and seeking peer review when certifying operations new to New Zealand or that involve complex issues
- Maintaining comprehensive records.