

# In Court

## Don't let your guard down

By Joydeep Hor

The NSW DET was fined \$105,000 for an OHS breach after a high school student was injured while using an unguarded circular saw.

A recent decision of the NSW Industrial Relations Commission has highlighted the seriousness of risks posed by unguarded machinery in school environments – for example, in woodwork and industrial arts – and the consequent need for schools to implement careful practices.

On 23 May 1997, a Year 12 student at Kingscliff High School attended the school's industrial arts classroom to work on his Design and Technology project, a dressing table. On the advice of an experienced woodwork teacher, the student started to construct rails to hold drawers for the dressing table. For this purpose, he selected a piece of wood and proceeded to use a circular saw bench.

After the student had fed the timber through the saw, an off-cut fell to the floor and the remaining section of wood stayed on the bench. When he reached forward to recover the off-cut, the piece of wood made contact with the moving blade and deflected his hand into the path of the unguarded blade. The student sustained severe lacerations to his left thumb and to the first, second and third fingers of his left hand.

At the time of the accident, the blade hood guard was sitting on the saw bench.

The teacher had not inspected the saw to ensure that the guard was properly fitted and adjusted before the student used it.

It was not common practice in the classroom to inspect machinery immediately prior to students using it.

Following the accident, the school adopted various remedial measures, prohibiting student use of the saw without direct supervision and ensuring that all electrically powered machines were inspected each day before the commencement of lessons.

### The decision

The school pleaded guilty to a breach of sec 16 of the *Occupational Health and Safety Act 1983* (NSW), under which employers must ensure that persons not in their employment (including students) “are not exposed to risks to their health or safety arising from the conduct of the employer’s undertaking while they are at the employer’s place of work”.

*Justice Walton of the Commission noted “the presence of unguarded machinery constitutes one of the most pernicious and infamous dangers to the health and safety of persons in the workplace”.*

In assessing the appropriate penalty, he found that the offence was extremely serious, as demonstrated by the serious nature of the injuries. This was exacerbated by the fact that inherently dangerous machinery was being used by vulnerable and inexperienced young people and also by the obvious availability of simple “remedial” measures.

Justice Walton found that the guard was in place shortly beforehand and that staff did not actually foresee the risk occasioned by its removal.

However, *the inadequate levels of supervision in the classroom* meant that the risk of unsafe machinery being used was readily foreseeable.

The safety training and instruction provided to students was “manifestly deficient” and teaching staff demonstrated major gaps in their understanding of the procedures necessary for safe operation of the saw.

Justice Walton found that even when the guard was in place, a significant risk to safety existed. This was relevant to sentencing even though the accident occurred when the guard had been removed.

The judge imposed a fine of \$105,000 against the Crown. One of the relevant factors keeping the penalty at this level was the remedial action the school showed it took.

## Implications

Unguarded machinery poses one of the most serious risks to safety in schools.

As Justice Walton pointed out, teachers and school management at all levels must be particularly vigilant to ensure that unguarded machinery is not used.

Deficient operating practices may be taken into account in assessing penalties even when such practices are not the direct cause of an accident.

Schools should ensure that they:

- perform regular and thorough inspections of machinery
- provide formal and specific training in relation to the use of machinery
- properly supervise young people
- keep in mind that even experienced staff (and students) may not be fully aware of the procedures necessary for the safe operation of certain machinery.

Schools’ OHS responsibilities are particularly grave as young people are present. Risks to safety are made more serious by their inexperience and vulnerability.

**Critically, in addition to WorkCover, individual students can also bring their own legal actions against “negligent” schools.**

*Workcover Authority (Inspector Ankucic) v Crown in the Right of the State of NSW*  
(Department of Education and Training) 6 December 2001.