

**Presentation to HR Nicholls Society Conference
17th April 2010 Melbourne**

Acceptance Speech: Charles Copeman Medal 2010

Graeme Kirk

Mr Chairman, Ladies and Gentlemen,

There come moments in our lives when our emotions take the better of us. As I stand here to receive a truly great honour, The Copeman Medal, I have to fight off an overwhelming torrent of emotions.

I am deeply humbled, ladies and gentlemen, by the generosity of your welcome and also may I thank the Board for bestowing this great honour on me. My battle over the last 9 years has been about common sense and fair play—namely, the lack of it.

I realised that neither of these (which seem only natural to most people) appeared to prevail in the minds of the NSW Government when they framed their legislation or the Workcover inspectors who are charged with these extraordinary powers, or the judiciary which mete out judgment upon a fate that is already determined. Yet the charade goes on.

The absence of common sense and fair play seems to be an ongoing theme, not only in my battle, but in the battles fought by Charles Copeman and many other champions of the rights of real working people as they attempt to run a competitive enterprise. Once I started to see how the powers of the NSW *Industrial Relations Act* could and were being used—with the presumption of guilt as a given and the jackboot tactics of Workcover officers trampling over the real story—I consoled myself in the belief that a court would be fair and impartial.

This was to be a great disappointment. The Industrial Court was anything but fair, despite seeing, hearing and being presented with the facts. It chose to revert to the standard line in the legislation: “Failed to supply a safe workplace”. What does that mean? In their eyes it means that one must take full responsibility from the time someone walks out the door in the morning till they get back into bed at night. Regardless of any act of lunacy a worker may choose to commit between those hours the legislation would like you to be sitting alongside them holding their hand for the duration of the working day. If a worker chooses to act in a totally irrational or irresponsible way 10 metres or 10 kilometres out of your sight, you have “Failed to supply a safe workplace”.

The Industrial Court proved a total waste of time and money. I walked away thinking about a book I had read many years before, called *Atlas Shrugged*, which tells the story of government doing what it thinks best and justifying everything as being in the best interests of the state. I then decided that I could not lie down and accept this, that there must be justice somewhere in

Australia. And I was going to do my best to get it—not just for me—but for anyone who has been wronged by these crazy laws.

So against all the best advice, and bearing in mind that I only had my private cheque book, not a corporate one, I embarked on my cause. This eventually led all the way to the Full Bench of the High Court of Australia. Along the way I had two trips to the Supreme Court of NSW. I also had to go back before the Industrial Court. But each of those hurdles and each negative decision simply hardened my resolve to seek justice.

This, combined with what I believe was political and union pressure, made the whole process very frustrating. The unions don't want to see change, as in many cases they receive 50% of the fines that are levied. Nevertheless, off we went to apply for leave to appeal to the High Court. When this was granted it was the first time I felt that someone was listening. We then worked very hard to put a case together for our three days before the full bench in Canberra.

I think this is when I realized what is actually involved in taking a case to the High Court. A lot of preparation and a lot of money.

But if you were to ask me if I would do it all over again, I would—because the High Court restored my faith in the Australian tradition of a 'fair go'. One quick quotation from the Bench in reply to a request from the Solicitor-General of NSW, Mr Sexton, Senior Council representing NSW will show what I mean. He asked that the High Court considered sending me back to have another appeal hearing in the NSW Industrial Court. The reply from the Bench was: "What? Send Mr Kirk back for another bloody nose?"

Before I close, I would like to thank my legal team, especially Gary Hatcher, who carried a wonderful argument. But most importantly I need to thank my wife, Kay, who somehow went along with me in my quest for justice.

And it's nice to receive this recognition. But I really hope this decision will bring about change and will make Julia Gillard sit up and use some common sense when she finally frames her new Australia-wide Workcover laws. And not adopt the NSW model!

Thanks for listening to my rambling story. Thanks for the Medal. And special thanks for the good work undertaken by the men and women who make up the HR Nicholls Society. Without them, reforming Australia's industrial relations would be a much harder task. Keep up the good work!