

Speech delivered by Anna Katzmann SC
at the swearing in of Rachel Pepper
as a judge of the NSW Land & Environment Court,
in the Banco Court, Queens Square, on 1 May 2009

May it please the court.

On behalf of the NSW Bar I warmly congratulate your Honour on your appointment. It is a fitting tribute to your prodigious talents and your commitment to the rule of law. Having wreaked havoc in Fiji, where, with Bret Walker SC, you appeared for the deposed prime minister Laisenia Qarase against the coup leader, Commodore Bainimarama the Land and Environment Court must seem like a very safe haven. It will be a long time, I am sure, before we see a Pepper's resort within cooee of Suva.

"If you need me, let me know", you informed the Attorney, "I'm still free", and so it was that your Honour's return from Fiji was

quickly followed by the announcement of this appointment. As the man with whom your Honour is deeply in love, Benny Andersson - or more accurately his offsider, Björn Ulvaeus - put it: "The winner takes it all".

I had hoped that the announcement of your appointment on 1 April was merely an April Fool's Day joke for, as Oscar Wilde might have said, to lose one bar councillor is a misfortune, but to lose three looks like criminal negligence. Our loss, your Honour, is a profound one. Your contribution to the work of the Association over many years, especially on the Equal Opportunity Committee and as a member of the Council's Executive, has been invaluable. We will miss you a great deal. It is a tribute both to your support for the Bar and to your commitment to human rights that, despite your elevation, you have offered to remain on the Equal Opportunity Committee.

The daughter of English and Italian migrants, your Honour was born in Hamilton, Ontario, a place which you, yourself, somewhat

irreverently refer to as “the armpit of Canada” - a city made famous by its steelworks, an old Studebaker factory and more recently, the Canadian Football Hall of Fame. At the age of 15 you were uprooted from a climate where the yearly average maximum temperature is 12 degrees celsius and transported to the comparatively balmy climate of Perth. There, you attended Swanbourne Senior High School, whose claim to fame was its proximity to (what is euphemistically described in official publications as) a “clothing optional” beach.

You have for some time aspired to hold judicial office. However, it was not always thus. As a child you yearned to be a doctor and practised making incisions on teddy bears. After completing high school, you rejected the advice of your year 12 history teacher to study law, which you were convinced would be far too boring, and returned to Canada, intent on studying medicine. But after a halfhearted attempt at a pre-med science degree at the University of British Columbia, and fed up with spending another summer wrapped in woollens, your Honour returned to Australia, this

time to study arts (majoring in French) and law, graduating with first class honours in law.

You chose to study at the ANU, lured by the misconception that the national capital would be an exciting, cosmopolitan place. Reality struck when you first stepped off the bus in downtown Civic. You burst into tears.

Your Honour was admitted as a solicitor in 1995, and you began your legal career at the firm of Allen Allen & Hemsley but you were gone in less than a year, to take up the position of associate to Hon Michael McHugh, then a justice of the High Court. When you completed your term you spent six months as a research officer at Clayton Utz before joining the staff of the Law Faculty first at the University of New South Wales and then UTS where you lectured consecutively in legal research and writing and discrimination law.

In August 1997 you bit the bullet and came to the bar. You read on 7 Wentworth Chambers with Justin Gleeson and John Marshall.

In 2002 you purchased a room on 12 Wentworth/Selborne where you spent seven happy years. I know that the members of those chambers without exception, though delighting in your success, are extremely sorry to see you go.

Your practice was diverse from the start. You accepted briefs in commercial law, equity and professional negligence, but there was a heavy emphasis on public law, particularly constitutional, administrative and discrimination law, as well as local government, environment and planning. You also branched out into criminal law, most recently working with Peter Hastings QC in the inquiry into the murder conviction of Phuong Ngo. In the finest traditions of the profession, you took on a significant amount of pro-bono work.

From time to time your work took you to the High Court. Usually you were led, but on occasions you enjoyed a speaking part. On one such occasion, when dumped by the Solicitor General for NSW, you thought you could get away with relying on the written

submissions but you were stopped in your tracks by Kirby J, who cheekily asked what you had to say about the position in Canada. Despite your assistance, however, the Canadian position never even made it to the footnotes in the judgment.

A large proportion of your Honour's work at the bar involved appearing before a wide range of specialist tribunals, inquiries and inquests. This has caused some to describe your practice as 'disastrous' – not because you were unsuccessful – far from it. Rather, it is because disasters, both natural and man-made, have either preceded or followed your Honour's appearance.

In one such case, the coronial inquiry into the sinking of the small vessel *Malu Sara*, held under trying conditions on Thursday Island, there were logistical difficulties involved with a light plane, certain items of luggage were delayed and your Honour was forced to appear before the inquest in a brightly coloured Hawaiian shirt.

But it is not all work and no play for your Honour.

The unfortunate passengers of the *Malu Sara* were found to have drowned, and their bodies 'consumed by aggressive marine life' – abundant in that area. It is testimony to your Honour's courage that during a break in the hearing you indulged one of your favourite pastimes - fishing - in a small vessel, no less. People who fish are notorious for embellishing their stories about the one that got away, but it seems that your Honour actually landed a catch; a magnificent tuna, possibly several feet long, which was cooked that night.

Your Honour is also a very good footballer. You were the striker in the Code Blue team in the Gladesville League, taking penalty corners with Beckham-like skill. Fans would shout – 'you can't crack the Code'.

Once again, your Honour, the New South Wales Bar congratulates you on your appointment. I hope you have the time of your life.

May it please the court.

