

Employing the right strategy – *Law News* talks to barrister Catherine Stewart

ADLSI member and Auckland barrister Catherine Stewart has recently achieved success at the 2013 New Zealand Law Awards. *Law News* spoke to her about what this achievement has meant to her, her experiences of stepping out on her own as a barrister, what drives her in her chosen practice area of employment law, and, after so much success in such a short space of time, where to from here.

The 2013 New Zealand Law Awards were held on Thursday 7 November at Auckland's War Memorial Museum. Attended by over 300 members of the legal community, the Law Awards recognise excellence in a range of categories such as law firm of the year, employer of choice, community service, along with awards for various speciality areas of law.

What makes the Law Awards such a significant accolade is that they are entirely based on voting by clients, barristers, mediators, in-house legal teams and others about levels of client service provided. Catherine Stewart was among those honoured in this year's line-up taking out the "Venator Employment Law" award.

Although she has specialised in employment law and litigation for 20 years, she was both surprised and thrilled to win the "Employment Law" award: "I was delighted to firstly be nominated, then to find that I was in the finalists, and then finally to win the award, it was fantastic."

As one of Ms Stewart's clients put it during the voting rounds: "Catherine is, put very simply, an absolutely brilliant lawyer and a true asset to your industry". Ms Stewart recognises the real mark of confidence from her clients signified by the award: "I was honoured that they thought that about me and that they took the time to vote."

Nor was that the only success for Ms Stewart. She was also recognised as first runner-up for the "Team Factors Barrister of the Year" award, coming in second to Kate Davenport QC who received the top honour in this category. The recognition in the barrister category, which she described as "another huge honour", is particularly noteworthy as Ms Stewart has only been out on her own as a barrister for the past 18 months, having previously practised law in law firms including at partnership level.

Ms Stewart says her decision to take the path of stepping out on her own was "a natural progression". While it was in many ways a "leap into the unknown", for her "it's been a great step". She feels fortunate to have had very interesting instructions come her way: "The opportunities that have opened up since I've gone out on my own have been fantastic, and I have picked up work through a huge variety of sources."

Ms Stewart says she is also pleased with the amount of work she has received since joining the bar, which has reached the point where she has now employed a full time junior barrister.

Despite now working independently, Ms Stewart is quick to praise the support she has received from others at the bar: "I have to say, the collegiality of the bar is fantastic. Although I am a sole operator,



"Often it's not about the only technical aspect of a case, it's also about the bigger picture, the strategy – what does the client really want to achieve – is it really a win in court, or is it about the principle? It is critical to be able to identify with [the client] what their best outcomes are – sometimes those outcomes might be personal, or sometimes they might be commercial, like establishing precedent."

Catherine Stewart

I haven't felt as if I am totally on my own, because there is a very collegial bar, which I enjoy."

Amongst her noteworthy achievements in the employment arena are her successful appearances in several high profile cases before the Employment Court and Court of Appeal, including a landmark case on stress in the workplace, and another important decision on freedom of association, for which she was appointed *amica curiae*.

Ms Stewart prefers to have a balance of instructions from employers and employees: "I do both and I

find that really good - I can act for both sides of the fence, I think that makes me a better barrister ... I have a good portfolio on each side." "It also gives you a variety of instructions ... and you can relate to both types of situations, and you can understand where each is coming from," she says.

Ms Stewart's particular passions in her chosen area of practice are threefold: the chance to be involved in new legal developments; exercising the skill of logical advocacy; and the people themselves.

Breaking new ground is a definite draw card for her and keeps her employment practice interesting and intellectually stimulating. "I like novel areas of law and there are plenty of those in employment law because the legislation is changing regularly – there are always new issues that come up that need to be tested in the court, to develop precedent," she notes. "Appearing as counsel in cases that have helped shaped the law is something to be proud of, and in employment law there is plenty of that. It is dynamic – a moving feast."

Ms Stewart is also passionate about the art of arguing a case well. She was initially drawn to the law by a love of writing, speaking, drama and debating, and says: "I'm a person who loves advocacy. I've always been drawn to the idea of being able to argue a case through logic and rhetoric. Advocacy is a very powerful tool and I enjoy that aspect of the work that I do."

Although mediation is definitely a primary tool, with many cases settling, if not at mediation, then either before or subsequent to that process, the ability to argue a case effectively in court is still a very necessary and often-used skill.

"There will always be a reasonable percentage that don't [settle]. Mostly by the time you have got to the court stage, parties are pretty firmly entrenched. Sometimes it is in the parties' interests for there not to be an agreed resolution ... there are issues that need to be determined judicially," she says.

In particular, from both an employer's and an employee's point of view, there might be precedents that are worthwhile establishing, or points of principle that need to be made to enable resolution and forward-motion through to the other side of a difficult situation.

But, as our discussion progresses, it becomes clear that Ms Stewart's true passion is at once simpler and more complicated than that – the people themselves.

"Employment law is about people and the complex situations that they find themselves embroiled in, and that's very human. The expertise that I have can assist and guide people through these situations to find resolution, and that can make a real difference in people's lives – in their livelihood and their identity. At its heart, employment law is about people and that's where my passion is."

Given that people going through stressful and sometimes emotional situations are at the centre of her work, Ms Stewart notes it can be a balancing

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act between providing the rational advice that is needed, and being a listening ear.

Indeed empathy is one of the key qualities her clients have commended her on, and she recognises that people having the opportunity to express their feelings is an important part of the process, and can help clarify what the appropriate next steps or ultimate objectives should be.

"Often it's not only about the technical aspect of their case, it's also about the bigger picture, the strategy for them – what do they really want to achieve out of this, is it really a win in court, is it about the principle, or is it really about moving on? You have to analyse those things with the client from a strategic point of view before you make a decision about whether we are going to fight this all the way. It is critical to be able to identify with [the client] what their best outcomes are – sometimes those outcomes might be personal, or sometimes they might be commercial, like establishing precedent."

Ms Stewart considers this aspect of her work both a privilege and a responsibility: "It's quite

humbling to have people share their stories ... I find it a privilege to be able to step in and work through those issues with them."

So, where to from here for Catherine Stewart, after a busy 18 months, capped off with such éclat? "More of the same, just enjoying and progressing the work I have got ... very much carrying on doing what I am doing and what I love doing." No doubt the ongoing legislative changes and case law developments in the employment law arena will provide her with plenty of issues to grapple with, and no chance to rest on her laurels – something she seems unlikely to do in any case!

Catherine Stewart is a barrister practising in Auckland and specialising in all areas of employment law. She is a member of ADLSI, a regular presenter and writer on topical employment law issues, and is also the exclusive employment law member for New Zealand of the Women's Law Network, a worldwide organisation of leading female lawyers providing expertise across all areas of law. 

+ ADLSI memorial service

Remembering colleagues who have passed on

On 20 November 2013, ADLSI held its annual memorial service to remember members and past members of the legal profession who have passed away over the last year.

ADLSI members were joined by colleagues, family members and friends in a time of remembrance and recognition of the lives and achievements of those who have passed on.

Amongst those honoured this year were: Justice Sir Robert Chambers, KNZM, QC; Laurence Cooney; Maurice Coughlan; and Annalee Paton.

ADLSI wishes to thank all those who attended. We extend our ongoing sympathy to all those who have lost a loved one. 

+ Notice from the Editor

Contributions welcomed

As a former legal practitioner, I remember enjoying the arrival of *Law News* on my desk on a Friday morning, as a publication that was relevant and accessible.

Many weeks it served as reading material during my morning coffee break (when I got one!), and often particularly relevant pieces were actually

torn out for later re-perusal. Now, as the Editor of *Law News*, my mandate is to produce a newsletter that our members and readers actually want to read in similar fashion.

I therefore encourage you to let me know your thoughts on what you would like to see within these pages. I would also welcome topical

contributions from practitioners and judicial or academic writers, whether in the form of opinion pieces that may engender healthy debate, or updates on developments in your particular area of law.

Please send any ideas, submission and Letters to the Editor to me at lisa.clark@adls.org.nz. 

+ Fair trading

Rubbish bag company fined heavily for misleading environmental claims

Eco-Pal Ltd (Eco-Pal), a manufacturer of plastic rubbish bags, has been sentenced in the Auckland District Court for environmental claims it made that breached the *Fair Trading Act 1986* (FTA).

Eco-Pal has been found guilty of 15 breaches of the FTA and fined \$60,000 for claiming on its bags and its website that its rubbish bags were oxo-biodegradable, biodegradable, suitable for domestic composting and for claims giving the impression of environmental friendliness. A critical aspect of the company's advertising found to have been liable to mislead was the slogan "Here today ... gone tomorrow".

Eco-Pal sold a range of bags that contained the additive d2W that it claimed made the bags "oxo-biodegradable".

The bags were marketed on the basis that there was an environmental benefit in using the oxo-biodegradable plastic bags over conventional plastic bags. Eco-Pal's marketing gave the

impression that its products would degrade over a reasonably short time, including when disposed of in a landfill, and were suitable for domestic composting. However the claims were liable to mislead as, while it is technically true that oxo-biodegradable plastic bags can break down in the right conditions, this will not occur within a short timeframe and in a landfill it has a minimal chance of occurring at all. Further, the bags were unsuitable for domestic composting.

In August this year, Pacrite Industries Limited was fined \$30,000 after pleading guilty to ten charges in relation to claims about the oxo-biodegradability and environmental friendliness of its plastic rubbish bags, marketed as "Greensac" or "The Green One". Pacrite no longer sells those bags.

In sentencing, Judge Hinton said Eco-Pal's behaviour amounted to serious offending. "There is a sure appetite for environmentally friendly products, especially those that have an everyday or frequent use. There are very good policy reasons to penalise traders who disappoint customers

and take economic advantage of competitors. Well intentioned shoppers were prejudiced on a reasonably substantial scale."

Commerce Commission Consumer Manager, Stuart Wallace, said the Commission was pleased that companies who make inaccurate environmental claims are being held accountable for the failures in their advertising.

"Environmental issues are of significant importance to New Zealanders. Advertising such as this will cause more people to buy these products in the belief they are benefiting the environment when, in fact, there is little or no benefit whatsoever."

"Eco-Pal is the second company convicted of this type of behaviour in the last few months.

"Businesses must ensure that consumers are able to rely on environmental claims and are not misled by inaccurate claims," said Mr Wallace.

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