

# Dempster plans appeal against lawyers' conveyancing monopoly

Lester Dempster, the cut-price conveyancing agent challenging the lawyers' monopoly on handling property transactions, will take his case back to the High Court.

He will seek a declaratory judgment on whether only qualified lawyers should be granted land brokers' licences under the Land Transfer Act.

Dempster was last week banned from handling the legal aspects of property deals because he is not a lawyer. He says his clients will be the losers.

Dempster Consultants' charge-out rate for conveyancing work is around \$90 an hour. The average lawyer charges \$150 to \$200 an hour.

The Auckland District Law Society moved to protect the lawyers' monopoly by seeking the injunction against Dempster and his company. It followed a large number of complaints - all from lawyers.

Dempster has twice tried to get a land broker's licence. He was rejected because he has no legal qualifications.

"I will seek a declaratory judgment on the inability of the Registrar-General of Land, who is a lawyer, to

By FIONA ROTHERHAM

issue land broker's licences to people other than qualified lawyers," Dempster says.

When granting the injunction, Justice Blanchard said the legislature had recognised practical skills may be sufficient to qualify a person to undertake conveyancing procedure under the Land Transfer Act. But it is well known there are no current holders of such licences in New Zealand.

"It seems many years ago those who were in charge of the registration process decided to discourage people from applying to become land brokers. The scale of charges provides pitiful remuneration for the work, and has not been revised for many decades."

Under the provisions of the Law Practitioners' Act, conveyancing work is restricted to lawyers or those acting under their supervision. The society claimed Dempster was misleading the public by holding himself out to be a qualified lawyer.

The court found he had acted as a solicitor but had not misled the public as he never attempted to conceal he

wasn't a lawyer.

Dempster was an assistant land registrar in the Land Transfer Office for many years.

Justice Blanchard said Dempster may have greater skills in relation to land transfer documentation than many conveyancing solicitors.

His company will be allowed to carry out some land transfer work for which legal qualifications are not needed.

In court, society lawyer Stuart Ennor said the case was not about the continued protection of lawyers in domestic conveyancing.

But Dempster, who represented himself in court, argues that's exactly what it is.

"This is just another nail in the coffin for those who stand up to a monopoly. There was no argument I didn't have the experience, ability and professionalism to carry out the work, but I'm not allowed to do so unless supervised by a lawyer. My clients all knew I wasn't a lawyer and didn't care."

The law society has already taken action to stop another paralegal doing work lawyers don't particularly want

to do - getting up in the middle of the night to advise the drunk and disorderly of their rights (see *The Independent*, 23 September, page 4).

Dempster says he's been singled out by the law society after being in practice for nine years, in order to send a message to others working in the same area.

Society president Ian Haynes says Dempster ignored several warnings in recent years about breaching the Act.

"In the past he had given some cause for belief that he would not continue when in fact his practice has grown. Against that background the society had no alternative than to take it to court," Haynes says.

The issue was one of public protection, Haynes says. Lawyers had a fidelity fund, a professional code of ethics and rigorous investigation into any complaints.

The future of the lawyers' fidelity fund is under review.

Dempster has been ordered by the court to change the wording on his business letterhead, including striking out the words legal agent.

This could affect many of the search agents operating around the

country who use the term legal agent, Dempster says.

"If I have to change it then so should everyone else."

Dempster is a member of the Australian Institute of Conveyancers - a group of non-lawyers practising in Australia and recognised by the state governments.

In most Australian states non-lawyer conveyancing is a statutory right. In South and Western Australia 70% of conveyancing work is done by specialist non-lawyers according to a 1992 Trade Practices Commission report.

That paper, backed up by a final report released in March this year, found that non-lawyers should be allowed to do conveyancing work in all states. The current regulation of entry to the conveyancing market should also be made less restrictive through certification rather than licensing.

The report recommended the dropping of restrictions on advertising of conveyancing fees and removing a set scale of fees, both moves adopted in New Zealand in recent years. ■