Public Notice
The applicant submitted that it had complied with the public notice provisions as set out in the MRA. In their submission, the incorrect number in the heading was an administrative error that would not mislead a reader given that the correct details were present in the body of the advertisement.

Koppenol P held that the advertisement may mislead and therefore the Mining Registrar's direction to readvertise should not be rescinded.

Substantial Compliance
In the alternative, the applicant submitted that if the advertisement was not compliant then this failure should be excused in accordance with the substantial compliance provision contained in s 392 of the MRA. The applicant argued that the reasoning of Kiefel J in *Queensland v Central Queensland Land Council Aboriginal Corporation*[1] supported this contention. Koppenol P did not consider it necessary to address this issue as the notice had been held to be misleading and it therefore could not be considered as substantially complying with the Act.

VALIDITY OF REFERRAL OF APPLICATION TO TRIBUNAL*

Re SMC Gold Ltd & Ors ([2003] QLRT 151 (Koppenol P))

Mining lease application – Native title – Whether statutory negotiation has occurred

Background
A mining lease application was referred to the Tribunal pursuant to s 669 of the MRA. The section provides that a proposed application may be referred to the Tribunal where the pre-referral period has ended but no negotiated settlement has yet been reached. At issue was whether the Tribunal had jurisdiction to hear the application.

Negotiations in Good Faith
In order for the Tribunal to hear the matter, the MRA requires that the parties have undertaken "negotiations in good faith". The native title parties submitted that there had been no such negotiation and therefore they requested that this issue be decided as a preliminary question.

Preliminary Question
President Koppenol noted that there is a difference between "negotiation" and "negotiation in good faith", the latter inferring some subjective honesty of purpose or intention and sincerity. The native title parties submitted that there had not been any communications, discussions or conferences with a view to reaching a negotiated agreement and therefore the referral process had not been complied with.

The Tribunal noted the High Court's approach[1] to determining the suitability of preliminary questions and followed the National Native Title Tribunal in *Walley v State of Western Australia*[2] where a dispute about whether there had been negotiations in good faith was suitable for determination as a preliminary question.

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1 (2002) 195 ALR 106.

* Richard Brockett, Research Officer to the Presiding Members, Queensland Land and Resources Tribunal.

1 *Bass v Permanent Trustee Co Ltd* (1999) 198 CLR 334, 348-9.

2 (1996) 67 FCR 366, 378 C-D.

The matter was therefore set down for preliminary hearing to determine whether in fact there had been any "negotiation(s) in good faith" so that the Tribunal's jurisdiction could validly be enlivened.

ACCESS TO MINING LEASE*

McDowall v Reynolds ([2003] QLRT 169 (Kingham DP))

Mining lease – Validity – Boundaries – Interference with access to mining lease

Background
The parties to this application had been involved in prolonged and convoluted litigation over a period of 40 years concerning the mining lease. The original mining lease had expired and the lessee was seeking to have it renewed.

Validity of Lease
The landowner submitted that there had never been any legally valid lease granted to the miner therefore the miner's application regarding access to the mining lease should be dismissed. In the alternative, that various statutory amendments had since invalidated the lease. It was held that a valid lease had been granted and that neither the statutory amendments nor any administrative errors had invalidated the original mining lease.

Interference with Access
The MRA empowers the mining lessee with the right to ingress and egress from the tenement by the right of way specified in the mining title. The landowner argued that the miner had no right of access as it was not included in the mining title. However, Kingham DP held that the miner did in fact possess such a right pursuant to a right of way granted in the plan of the tenement.

The miner alleged that his access to the lease area had been personally interfered with but Kingham DP held that the onus of proving this had not been established and therefore dismissed this claim. However, the landowner did construct a drain under the only road by which the mine could be accessed and therefore had in fact restricted the miner's access to the lease.

In response to this interference, Kingham DP ordered that the land owner be prevented from restricting access and carry out such repairs to the road as were necessary to enable access by the miner.

COMPETING APPLICATIONS FOR MINING TENURES*

Re Clark & Ors ([2004] QLRT 17 (Kingham DP))

Application for mining lease and environmental authority – Existing application for exploration permit – Consent – Mining Registrar's powers – Costs – Special circumstances

Background
These applications for a mining lease and an environmental authority were referred to the Tribunal by the Mining Registrar. However, prior to the application, Titan Minerals Pty Ltd (Titan) had lodged its own application for an exploration permit in respect of the same mineral.

∗ Richard Brockett, Research Officer to the Presiding Members, Queensland Land and Resources Tribunal.

* Matt Black, BA, Research Officer to the Presiding Members, Land and Resources Tribunal. The full text of these cases can be accessed via the LRT's website: www.lrt.qld.gov.au.