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.

The *Mineral Resources Act 1989* (MRA) provides that where there are conflicting applications, the "mining registrar must not deal with the later application until the earlier application is finally decided" or until "the earlier applicant's consent to the later application is lodged with the mining registrar" (s 249(5), (6)). The later applicant is required to obtain the earlier applicant's written consent in order to proceed (s 249(2)).

Referral by Mining Registrar

Kingham DP held that the applications were referred by the Mining Registrar prematurely because there were competing applications for tenures for the same mineral. The Mining Registrar acted on the applicant's assurance that consent from Titan would be forthcoming, but Kingham DP held that s 249 of the MRA "prevents the Mining Registrar from exercising any of his statutory powers with respect to the application, including its referral to the Tribunal" unless the earlier application is finally decided or consent of the earlier applicant is lodged.

Costs

In the absence of special circumstances, parties in the Tribunal are required to bear their own costs (s 51(1), *Land and Resources Tribunal Act 1999*). The respondents sought an order for costs, and Kingham DP accepted that, if Titan's consent did not materialise, "special circumstances" would exist to justify an order for costs against the applicants. Kingham DP explained that those special circumstances are that the applicants were aware of the need for Titan's consent and had assured the Mining Registrar that consent would be obtained. Without that assurance, the Mining Registrar would not have referred the case to the Tribunal.

Decision

Kingham DP referred the applications for a mining lease and an environmental authority back to the Mining Registrar. In respect of each application, it was ordered that if the Minister rejects the mining lease because Titan's consent is not obtained, the applicants must pay the respondents' costs of and incidental to the applications.

APPLICATION FOR DETERMINATION THAT NATIVE TITLE EXTINGUISHED[*]

De Lacey v Juunjuwarra People and State of Queensland ([2004] QLRT 20 (Koppenol P and Kingham DP))

Exploration permit application – Registered native title claim – Effect of compulsory acquisition law – Whether tribunal has jurisdiction to determine if native title extinguished

Background

The applicant sought a determination of whether the Tribunal had jurisdiction to decide if native title over certain land had been extinguished. The applicant had a pending application for grant of a high impact exploration permit. The respondent Juunjuwarra People had a National Native Title Tribunal-registered claim over the land concerned.

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[*] 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.