Decision
Smith DP dismissed the application on the grounds that there was no serious question to be tried and that, in the alternative, the balance of convenience did not favour the applicants. Furthermore, costs were awarded against the applicant as their case, whilst not frivolous or vexatious, was not sufficiently supported in law to have been continued if proper legal advice had been sought.

NATIVE TITLE ISSUES DECISION*

Re Rusin & Ors ([2003] QLRT 130 (Koppenol P and Smith DP))

Application for mining lease – Agreement between native title parties and miner – Contract conditions

Background
A mining lease had been granted but subsequently native title claims were lodged over the lease area. Accordingly, the Tribunal was required to make a native title issues decision pursuant to s 734(4)(c) of the MRA in which it must either grant the mining lease, grant it subject to conditions, or refuse the grant.

Native Title
In order to make the relevant decision, the Tribunal has held that it requires the submission of logically probative evidence to demonstrate how the grant of the proposed mining lease will affect native title. As in previous native title issues decision, the Tribunal was presented with little or no evidence.

Agreement Between the Parties

The native title parties and the applicant had previously agreed that the lease should be granted subject to conditions. This agreement was signed by all but one of the native title parties. The Tribunal is empowered by s 675(1)(b)(ii) to grant a lease subject to conditions and it concluded that the evidence of agreement between the parties was sufficient for it to impose the agreed conditions on the grant of the mining lease.

REVIEW OF MINING REGISTRAR'S DIRECTION

Re Wallace and State of Queensland ([2003] QLRT 137 (Koppenol P))

Discretion to readvertise public notice – Heading of notice incorrect – Notice misleading

Background
The applicant had inserted in the requisite newspapers notices outlining the proposed mining leases. The notice in one of the newspapers contained an incorrect mining lease number in the heading of the notice. The correct mining lease number was stated in the body of the advertisement. The Mining Registrar directed that the applicant correct the notice and undertake the relevant statutory procedures again. The applicant applied to have the direction rescinded pursuant to s 406 of the MRA.

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

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.