Tribunal.[2] The original decision had recommended the grant a mining lease for the purpose of mining sapphire, zircon and corundum.

Arguments
Counsel for the appellants presented argument on two points. Firstly, that the Deputy President had erred in concluding that the area was mineralised for the purposes of s 269, MRA. The basis of their submission was that this finding by the Deputy President was grounded solely on the presumption that as the land was located within Restricted Area 1 that it was mineralised. Further, the applicant submitted that the MRA should be construed so that the term "mineralised" should reflect only a level of potential development which could be described as "economic".

Secondly, that the Deputy President was incorrect in law in recommending the grant of the mining lease over an area smaller than that applied for without receiving submissions from the parties as to which particular area should be recommended.

Decision
Koppenol P dismissed the application. With respect to the first ground of appeal, he held that the Deputy President had clearly taken into account other evidence demonstrating that the area was mineralised. Furthermore, the proper interpretation of the statute did not require that mineralisation should be characterised as being "economic" in nature. Therefore, whilst the presumption in favour of mineralisation had been a part of the Deputy President's reasoning, it was not the sole basis and therefore the argument was rejected.

With respect to the second ground of appeal, Koppenol P noted that the parties had been presented with opportunities at trial to present submissions with respect to the nature of the potential grant. The President held that this did provide the parties with the opportunity to present submissions and argument which the appellant now complained had been denied to them. Their failure to exercise that right could not be held to be an error on the part of the Deputy President.

APPLICATION TO HAVE PROCEEDINGS DISMISSED REFUSED*

McDowall v Reynolds ([2003] QLRT 74, Kingham DP)

Background
The respondent applied to the Tribunal to have the originating claim by the applicant dismissed. In the originating application, the applicant had applied to the Tribunal to restrain the respondent from preventing him from accessing and working on the mining lease and exercising his rights under s 235, MRA. In assessing the application to dismiss, the Deputy President considered the grounds that each of the parties could rely on at trial.

Argument
Of central importance to the applicant's claim was the validity of his lease over the land. The original application for the mining lease was made pursuant to the *Mining on Private Land Act* 1909. This was repealed, prior to the application being determined, by the *Mining Act* 1968 which commenced on 1 January 1972. The mining lease was granted in May 1974. The *Mining Leases Validation Act* 1981 deemed valid mining leases applied for under the *Mining on Private Land Act* valid as long as they complied with the *Mining Act* 1968. Therefore, given the lease's validity under the *Validation Act* it remained so with the change of statutory regimes. Kingham DP proceeded on the assumption of the lease's legality.

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2 [2003] QLRT 55.

* Richard Brockett.

The issue then was whether the applicant had a right of access to the land, and because this had been denied by the respondent, whether any compensation or damages was payable. The applicant in his statement of claim had relied upon s 58A of the *Mining Act* 1968 to ground his right of access. However, Kingham DP found that this was only relevant to mining tenements over Crown land and as such had no application. In the alternative, it was held that subject to the presentation of appropriate evidence the applicant may succeed pursuant to s 126 of the *Mining Act* 1968.

The final point of contention between the parties related to the ownership of the land in question. There was evidence of some ambiguity on this point and it had been the subject of applications for declarations by the Supreme Court. However, these had been dismissed for want of prosecution. Regardless of the uncertain state of affairs, the Tribunal proceeded on the premise that the respondent was at all material times the owner and registered proprietor of the land.

Decision
Kingham DP was unable to conclude that the applicant's claim was "manifestly groundless" or that to allow it to proceed "would involve useless expense."[3] In the alternative, the respondent had not proved a complete legal defence to the claim. Therefore, the application to dismiss the proceedings was refused and the matter was set down for trial.

MINING LEASE COMPENSATION PAYABLE FOR INTERIM PERIOD*

Re Benney v Vella ([2003] QLRT 80, Smith DP)

Background
The miner held a mining lease which was due to expire. Prior to the expiration, he applied for a renewal of the lease and continued to mine the area. However, in the interim period between the end of the term of the mining lease and the determination of the renewal, the miner withdrew his application for renewal.

Issue
The issue presented by the applicant was whether, at law, they were entitled to a determination of compensation for that interim period. The miner admitted that there existed some moral obligation to pay compensation but did not accept that this extended to any legal obligation.

Smith DP held that s 281 MRA did not place any duty on the miner to compensate the land owner. However, s 283B provides that a compensation agreement made pursuant to ss 279 or 280 should be reviewed if there has been "a material change in circumstances". Referring to Lockhart J in *Alliance Petroleum Australia Pty Ltd & Ors*,[1] Smith DP held that the extension of the term of the lease was a material change which required a review of the compensation payable.

However, as the application relied solely upon s 281 it had to be refused.

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3 *General Steel Industries v Commissioner for Railways (NSW)* (1964) 112 CLR 125 per Barwick CJ at 138.

* Richard Brockett.

1 BC9705137 - 14/10/97.