



# *Pincus Matz*

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## Civil Litigation

Protecting your rights and interests

Litigation is the process of taking legal action to enforce or defend one's legal rights. Litigation may take the form of either Action or Motion proceedings and your attorney should advise you on the appropriate course of action.

SERIOUS ABOUT LAW - PASSIONATE ABOUT PEOPLE

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# Civil Litigation Process

## **ACTION / MOTION PROCEEDINGS**

After consultation the founding papers are prepared by your attorney and taken to court to be issued.

A court file is opened and a case number is allocated.

The founding papers are then served on the other party who is entitled to defend/oppose the matter.

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## **UNDEFENDED/UNOPPOSED MATTERS**

No Notice of Intention to Defend/Oppose is filed

### **1. Judgment by Default**

Should the Defendant/Respondent fail to defend/oppose the proceedings, an application may be made to Court for judgment to be granted in favour of the Plaintiff/Applicant.

### **2. Settlement**

Proceedings may be postponed at any stage for the parties to reach a settlement. Settlement allows the parties to circumvent the expensive and lengthy court process, and to resolve the dispute by agreement.

### **3. Interlocutory Applications**

Both Action and Motion proceedings may be halted at any stage for interlocutory application to be heard.

Interlocutory applications deal with a procedural aspect of the matter, and not with the merits thereof.

## **DEFENDED ACTIONS**

Notice of Intention to Defend is filed

### **1. Exchange of Pleadings**

If the Action is defended the parties are required to enter into an exchange of pleadings.

Both parties are entitled to be heard and this process ensures that each party is given a fair opportunity to place his/her version of events before the Court.

### **2. Pre-Trial**

At this stage the parties exchange documents and other information they intend to use during trial.

The parties also agree on the issues in dispute in order to facilitate and expedite the trial process.

### **3. Trial**

Argument is heard and evidence is led by the parties. The parties play an active role in proceedings, providing evidence by way of oral testimony.

### **4. Judgment**

## **OPPOSED MOTIONS**

Notice of Intention to Oppose is filed

### **1. Exchange of Pleadings**

If the Motion is opposed, the parties are required to enter into an exchange of pleadings.

Both parties are entitled to be heard and this process ensures that each party is provided a fair opportunity to place his/her version of events before the Court.

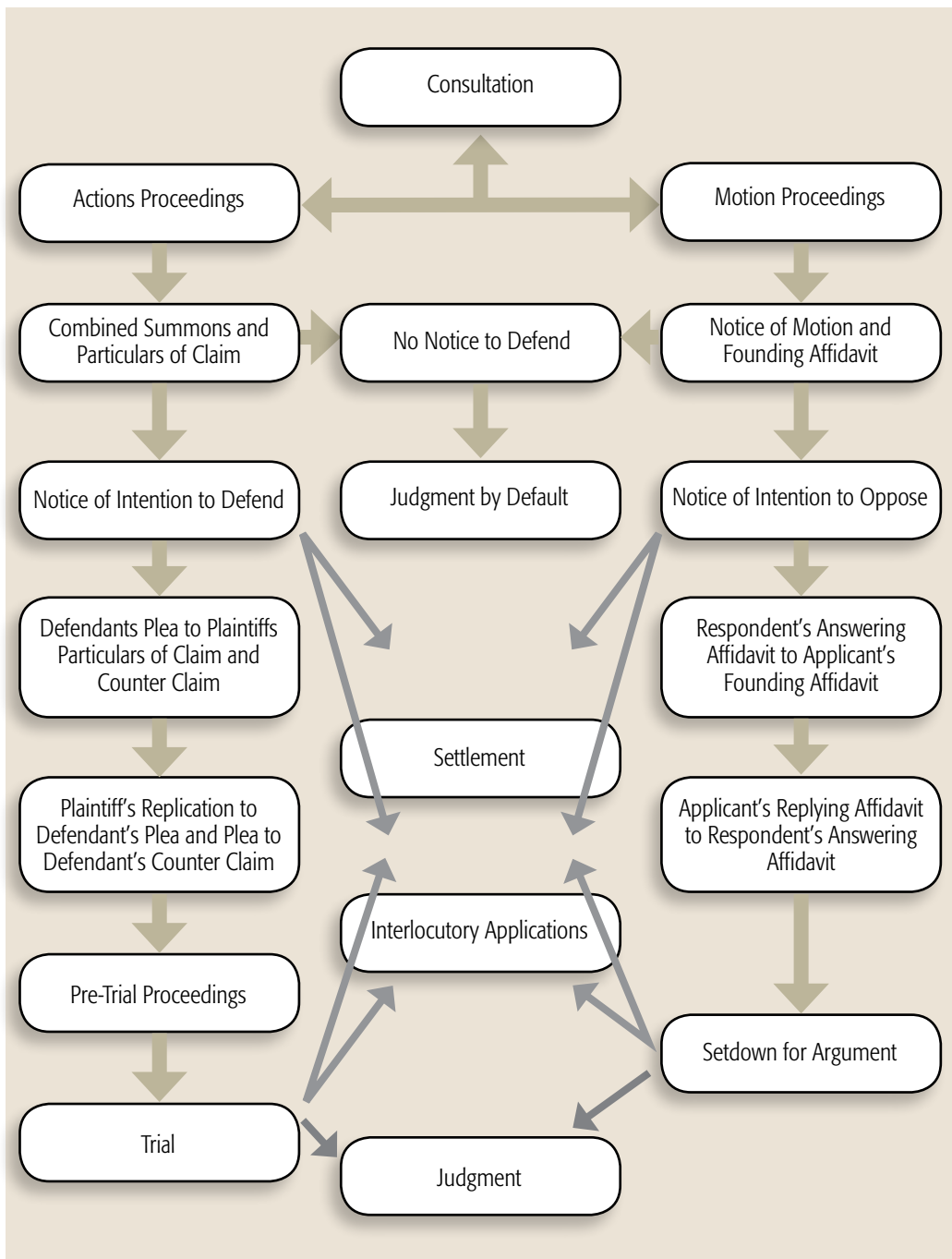
### **2. Set down for Argument**

Once the exchange of pleadings has been completed, the legal representatives of the parties are required to argue the merits of their client's case in Court.

All the evidence is placed before the Court by way of the affidavits filed during the exchange of pleadings.

### **3. Judgment**

The merits of the matter are decided upon and a final decision is made in accordance with the law.



**ACTION PROCEEDINGS:** The parties are known as the Plaintiff and the Defendant. An Action is brought on Summons and the Particulars of Claim sets out the cause of action of the Plaintiff's claim.

**MOTION PROCEEDINGS:** The parties are known as the Applicant and the Respondent. A Motion is brought on Notice of Motion and the Applicant's Founding affidavit sets out the basis for the relief sought.