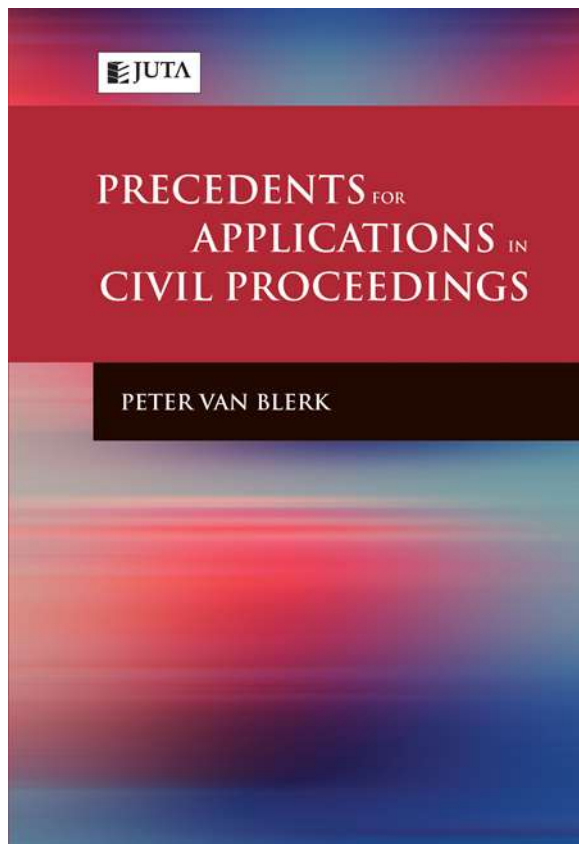


## **Book Review**



### **Precedents for Applications in Civil Proceedings**

by Peter van Blerk

(772 pages)

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***"Then rising with Aurora's light,  
The Muse invoked, sit down to write;  
Blot out, correct, insert, refine,  
Enlarge, diminish, interline."***

– Jonathan Swift (1667-1745).

The ability of lawyers to draft and craft affidavits in application proceedings is fundamental to a civil litigation practice. Not only must a cause of action or defence be presented, but also the supporting factual evidence. There is no oral testimony at the hearing, or opportunity to cross-examine.

The skills required to gather and marshal the relevant facts, to set them out logically and precisely, ensuring that they satisfy what the law requires for the case being made, are essential to successful applications. Some drafters let the narrative flow seamlessly, following a timeline, to reach the conclusion sought. Others use building blocks to separately construct each leg of their case. There

is no definitive formula, but the goal is always to make a persuasive, compelling, fully substantiated argument for the relief sought.

The use of applications in civil proceedings has increased considerably in recent years. Most of the work is done in the attorney's office or the advocate's chambers, with far less time spent in the hearing itself in court, compared to the trial of an action, where the evidence has to be produced and tested by means of often laborious oral evidence. Parties to the dispute also have the opportunity in applications to fully evaluate the respective strengths of the opposing papers. This can not only limit the issues, but promote compromise and settlement. Legal costs may be significantly curtailed when proceeding by way of application where possible.

This welcome publication *Precedents for Applications in Civil Proceedings* is sure to serve as an invaluable guide for attorneys and advocates, no matter what their level of experience, to develop their skills in all aspects of legal drafting.

The reader is introduced to guidelines in formulating application papers, founding, answering and replying affidavits, and the general approach which should be followed in drafting. Advice is given on an extensive range of interlocutory, incidental and procedural applications, and even more importantly, interdicts, reviews, appeal applications, urgent applications, and applications for declaratory orders.

In each chapter, examples of the applications and affidavits in question are set out, more than 100 examples all told, on more than 50 subjects. These include business rescue, consumer credit, ejectment from property, invasion of privacy, restraints of trade, family law, and removal of trustees.

The author Peter van Blerk BCom LLB is a senior counsel, formerly practising at the Johannesburg Bar, where he set up the advocacy training programme. He has acted as a Judge of the High Court. He is the author of two editions of *Legal Drafting: Civil Proceedings* (Juta). He is also a Barrister and Solicitor of the High Court of New Zealand.

The book also benefits from specialised contributions from two other advocates at the Johannesburg Bar, Gavin Marriott BSc LLB, who prepared the chapters on copyright and trademarks, and assisted in the chapter on unlawful competition, and Kevin Iles BSc (Hons) LLB LLM, who prepared the chapters on constitutional litigation, administrative law and class actions.

The text is supported by pertinent footnotes, and the book is well indexed with tables of relevant cases, applicable statutes, regulations and rules.

This work is a comprehensive compendium which should be an indispensable tool not only for vocational training for all legal practitioners, but also as a resource of primary reference when conducting proceedings by way of application. The professional experience, academic knowledge and practical approach of the author, contributors and publisher Juta are evident throughout and the format followed, with numbered paragraphs, highlighted passages, italics and shaded examples, make the contents instantly accessible to pressurised practitioners with agitated clients breathing down their necks.

An undoubted further advantage which use of this toolkit offers is to keep the application papers concise, crisp and to the point. Ultimately it is the judicial officer reading and hearing the application who will have to make a decision, and experience has shown many times that the party who can say what needs to be said briefly needs to say no more to succeed.

*Review by Louis Rood BA LLB (UCT), Consultant at Fairbridges Wertheim Becker Attorneys.*