REPORTABLE

CASE NO: 384/2000

In the matter between

MAX HAMATA	First Appellant
FREEDOM OF EXPRESSION INSTITUTE	Second Appellant
and	
CHAIRPERSON, PENINSULA TECHNIKON INTERNAL DISCIPLINARY COMMITTEE	First Respondent
CHAIRPERSON, PENINSULA TECHNIKON COUNCIL DISCIPLINARY COMMITTEE	Second Respondent
CHAIRPERSON, PENINSULA TECHNIKON COUNCIL	Third Respondent
PENINSULA TECHNIKON	Fourth Respondent

CORAM: **HEFER AP, HOWIE, MARAIS, NAVSA *et* NUGENT JJA**

DATE HEARD: 28 FEBRUARY 2002

DATE DELIVERED: 9 SEPTEMBER 2002

JUDGMENT

MARAIS JA/

MARAIS JA: [1] The only parties who have sought to have the provisional orders as to costs varied are the respondents. In their submission, each of the parties should be ordered to pay their own costs, both in the Court *a quo* and on appeal. The contention is founded upon two propositions: first, that the appellants succeeded on a point not raised by them in either court; secondly, that instead of confining their attack to the point upon which they succeeded, they traversed unnecessarily a number of issues which resulted in the incurring of considerable extra expense in conducting the litigation.

[2] As to the first proposition, it is not accurate. The failure of the IDC to exercise a discretion to allow outside legal representation was raised pertinently in the founding affidavit at paragraph 27.3. It also formed the basis of the declaratory order sought in the first part of prayer 3 of the notice of motion. Moreover, in paragraph 30 of the heads of argument in the Court *a quo* the appellants argued: "The rule relating to the IDC does not expressly permit outside legal representation; but nor does it expressly prohibit it. It is silent on the subject. The IDC, however, interpreted it as entailing an absolute prohibition on representation by an attorney. In construing the provision in this way, it is submitted that the IDC, and the other committees, again misconstrued the nature of the discretion conferred by the regulation." The Court *a quo* considered and rejected the argument. This Court took a different view.

[3] As to the second proposition, the considerations which apply in a trial action when a timeously taken exception to a pleading would have averted the trial cannot be applied indiscriminately to motion proceedings. In motion proceedings the applicant is obliged to set out in its entirety his, her or its case in the notice of motion and accompanying affidavits. The piecemeal advancing of contentions in a series of motion proceedings successively launched as the forerunner of each fails, is potentially productive of litigatory tyranny and is not to be encouraged. In any event, if there is indeed a separable issue which could

be decisive of the case, it is open to any of the parties to motion proceedings to apply for the separate adjudication of the issue. The respondents made no such application .

[4] Finally, this is not a case in which all the other grounds of attack raised in the motion proceedings have been found to be entirely devoid of merit. In my view, no good cause for the variation of the existing orders as to costs has been shown and the orders are hereby made final.

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R M MARAIS
JUDGE OF APPEAL

HEFER AP)
HOWIE JA)
MARAIS JA) CONCUR
NAVSA JA)
NUGENT AJA)