

**Die reg van die homoseksuele ouer om beheer en toesig oor 'n kind te verkry in die lig van die bepalings van die Grondwet / The rights of the homosexual parent to vest custody over a child**

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**Summary**

The problematic nature of the right of a homosexual parent to vest custody over a child is biarticulated: the nature and extent of custody disputes as well as the issues of discrimination based on sexual orientation are relevant. Homosexual orientation is emotional and controversial, all the more when it is accompanied by custody disputes. In this context the constitutional protection given to human rights and the constitutional provisions containing constitutional values are of paramount importance. The contents of these provisions have direct consequences for custody disputes and homosexual parenthood. In the pre-constitutional dispensation, the court gave judgement in *Van Rooyen v Van Rooyen* 1994 2 SA 325 (W) on the awarding of access rights to a homosexual parent. With regard to the provisions of the Constitution of the Republic of South Africa 108 of 1996 and trends in relevant foreign law, the decision in the *Van Rooyen* case is subjected to criticism. Since the commencement of the Constitution of the Republic of South Africa 200 of 1993, no South African court has given judgement on this issue. The aim of this contribution is to set out an autochthonous frame of reference considering the provisions of the Constitution, case law and comparative foreign law in an attempt to resolve the issue under discussion.