

**SECTION 294 OF THE *CHILDREN'S ACT*: DO ROOTS REALLY MATTER?****C van Niekerk\*****SUMMARY**

Section 294 of the *Children's Act* 38 of 2005 currently only permits commissioning parents to engage in surrogacy arrangements in instances where they are able to provide a genetic link to their future offspring. This provision then excludes other infertile individuals, who due to the cause of their infertility are unable to provide genetic material, from engaging in surrogacy as a means of becoming parents, often at times when adoption as an alternative is not available to them.

This article critically analyses section 294 and the issues it raises. In particular, it considers the constitutionality of section 294 and the remedies available to infertile parties who cannot meet the genetic link requirement. This article further considers the importance of genetic links in acquiring a child and the alternatives thereto, and concludes by proposing a way forward.

**KEYWORDS:** Surrogacy, surrogate motherhood agreement, intention to parent, genetic link, commissioning parents, infertile.

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