

**THE RIGHT OF THE CHILD TO CARE AND CONSTITUTIONAL DAMAGES FOR
THE LOSS OF PARENTAL CARE: SOME THOUGHTS ON *M v MINISTER OF
POLICE AND MINISTER OF POLICE v MBOWENI***

JA Robinson*

R Prinsloo**

SUMMARY

In the *a quo* judgment in *M v Minister of Police* a radical new approach was followed in respect of claims for loss of parental care. The issue before court was whether a child whose parent has died as a result of the wrongful conduct of the South African Police Services may sue for damages arising from the child's constitutional right to parental care in terms of section 28(1)(b). The question which the Court had to answer was whether a claim for damages may be instituted on the grounds that children are as a result of the wrongful death of their father deprived of their constitutionally entrenched right to parental care.

This contribution reflects on the reasoning of the different courts and the relevance of same for the debate regarding the care of children in terms of section 28(1)(b) of the *Constitution* and section 1 of the *Children's Act* 38 of 2005.

KEYWORDS: parental care; *Children's Act* 38 of 2005; constitutional damages; appropriate relief.

* JA Robinson. B Iur LLB (PU for CHE) LLM (NWU) LLD (PU for CHE). Professor in the Faculty of Law, North-West University (Potchefstroom). Email: robbie.robinson@nwu.ac.za.

** R Prinsloo. B Proc (PU for CHE) LLM (NWU). Lecturer Vaal University of Technology (Vanderbijlpark). Email: ronelle.prinsloo@gmail.com.