



## Christian Lawyers Association of South Africa & Ors. v. Minister of Health & Ors.

Christian Lawyers Assoc. of S. Afr. & Ors. v. Minister of Health & Ors., High Court of South Africa, Transvaal Provincial Division, 50 BMLR 241, July 10, 1998. (S. Afr.).

**Country:** South Africa

**Region:** Africa

**Year:** 1998

**Court:** High Court of South Africa-Former Transvaal Provincial Division

### Facts

Plaintiffs brought on a constitutional challenge to the recently enacted Choice of Termination of Pregnancy Act of 1996, alleging that the Act violated Section 11 of the South African Constitution, which provides that everyone has the right to life. The Choice of Termination Act allowed abortion during the first trimester regardless of the reason and abortion at later stages of the pregnancy based on broad grounds. Plaintiffs alleged that "everyone" included the fetus. Defendants countered that fetuses do not bear rights of Section 11, and it is the right of the woman to choose to terminate her pregnancy that is protected by the Constitution.

### Decision and Reasoning

The Court dismissed the application, holding that the South African Constitution does not afford the fetus a legal personality or protection. Particularly, the court interpreted Section 28 that specifically provides for the rights of a child as implicitly not extending those rights to protect the fetus. Therefore, the Court reasoned the Constitution did not intend to extend the right under Section 11 either. Further, extending the term "everyone" to include fetuses would enlarge other rights that clearly cannot apply to fetuses, and create rights that would have anomalous consequences for the rights of women.

### Decision Excerpts

Moreover, if s 11 were to be interpreted as affording constitutional protection to the life of a foetus far-reaching and anomalous consequences would ensue. The life of the foetus would enjoy the same protection as that of the mother. Abortion would be constitutionally prohibited even though the pregnancy constitutes a serious threat to the life of the mother. The prohibition would apply even if the pregnancy resulted from rape or incest, or if there were a likelihood that the child to be born would suffer from severe physical or mental abnormality. If the plaintiff's contentions are correct then the termination of a woman's pregnancy would no longer constitute the crime of abortion, but that of murder. In my view, the drafters of the Constitution could not have contemplated such far-reaching results without expressing themselves in no uncertain terms. For the above reasons I consider that under the Constitution the foetus is not a legal persona.