

From prohibition to protection: Rethinking the ethics of non-medical preimplantation sex selection

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In 2012, South African (SA) regulations imposed a blanket prohibition on non-medical preimplantation sex selection. A decade later, the Pretoria High Court declared the prohibition unconstitutional on the basis that it unjustifiably infringed reproductive autonomy under the Constitution. This article critically analyses the ethical reasoning underpinning the court's decision, using the judgment as an organising framework. It evaluates the key normative concerns traditionally raised in debates about sex selection – including demographic imbalance, sex stereotyping, child welfare, and the moral status of the embryo – and situates these within relevant empirical evidence and ethical scholarship. The analysis demonstrates that although ethical objections to sex selection merit careful engagement, they lack the evidentiary grounding required to justify limiting constitutionally protected reproductive freedoms. Permitting non-medical preimplantation sex selection is therefore not an ethical anomaly but a principled extension of SA's rights-based approach to reproductive decision-making. The article further notes that the March 2025 revised edition of Booklet 8, issued by the Health Professions Council of South Africa, has removed the previous prohibition on non-medical sex selection, bringing professional ethical guidance into alignment with the constitutional framework established by the High Court.

Keywords. Assisted reproduction, bioethics, constitutional rights, preimplantation sex selection, reproductive autonomy.

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In 2012, South Africa (SA) introduced a regulatory ban on non-medical preimplantation sex selection, thereby restricting the use of reproductive technologies for selecting the sex of an embryo in the absence of a clinical indication. This legal prohibition was contained in two separate sets of regulations made under the National Health Act 61 of 2003:^[1] Regulation 13 of the Regulations Relating to the Artificial Fertilisation of Persons,^[2] and Regulation 6 of the Regulations Relating to the Use of Human Biological Material.^[3] Both provisions imposed a blanket prohibition on preimplantation and prenatal sex selection, except for serious sex-linked or sex-limited genetic conditions.

A decade later, in the case of *Surrogacy Advisory Group v Minister of Health*,^[4] the Pretoria High Court declared these provisions unconstitutional, concluding that the categorical ban on non-medical preimplantation sex selection unjustifiably limited reproductive autonomy and failed to satisfy the proportionality standard required by section 36 of the Constitution.^[5] Before the court's decision, a constitutional critique of the ban had already been advanced in legal scholarship, arguing that the prohibition infringed fundamental rights, particularly reproductive autonomy and the freedom to make decisions about family life.^[6] That analysis recognised the legitimate interest of the state in regulating reproductive technologies, but questioned whether a total prohibition was justifiable in the absence of evidence of harm. The High Court ultimately reached the same conclusion, but did so through a detailed judicial evaluation of competing legal-ethical concerns.

This article critically examines the ethical reasoning of the court, using the judgment as the primary organising framework. Rather than

appraising the judgment solely on legal grounds, the analysis focuses on the normative dimensions of the court's reasoning – particularly the ethical themes that were identified, tested and weighed. These include the value of reproductive autonomy, concerns about demographic imbalance, sex stereotyping, slippery slope arguments, the welfare of the future child, and objections to instrumental use of embryos. Each theme is assessed in the light of the latest empirical evidence and normative scholarship, including cross-jurisdictional data on the use and ethical framing of non-medical preimplantation sex selection.

The article proceeds by first summarising the court's ethical reasoning. It then analyses each of the relevant themes in turn, integrating contemporary empirical and normative perspectives. It concludes that the judgment lays a principled foundation for the regulation of future reproductive technologies within a rights-based framework.

Overview of the court's ethical reasoning

In declaring the prohibition on non-medical preimplantation sex selection unconstitutional, the Pretoria High Court in *Surrogacy Advisory Group v Minister of Health*^[4] employed an explicitly ethical mode of reasoning. It considered a wide array of ethical arguments both for and against permitting non-medical preimplantation sex selection, many of which were informed by expert evidence (paragraphs 91 - 111). The court weighed these arguments and concluded that the blanket prohibition of sex selection was unconstitutional because it infringed reproductive autonomy and privacy rights without justification (paragraphs 159 - 165, 168).

The court distinguished between three broad sets of ethical concerns: the interests of women (such as whether sex selection perpetuates discrimination), the interests of children (including the psychological effects of being 'chosen'), and the interests of society (particularly the implications for gender ratios and the risk of a slippery slope toward genetic enhancement) (paragraphs 98 - 109). It systematically evaluated these concerns before concluding that the blanket prohibition infringes constitutional rights without adequate justification (paragraphs 109 - 111, 159 - 165, 168).

Importantly, the court noted that the state, represented by the Minister of Health, had not provided sufficient evidence or rationale to justify the prohibition as a necessary limitation on constitutional rights (paragraphs 70 - 73, 159, 165).

Ultimately, the court held that while the ethical concerns raised are serious and must inform regulatory choices, a total ban on non-medical preimplantation sex selection is unconstitutional as it infringes the rights to bodily and psychological integrity and privacy. It issued a declaration of invalidity, suspended for 12 months, to provide the Minister of Health an opportunity to remedy the unconstitutionality (paragraphs 195, 201). As no amendment followed within the suspension period, the declaration of invalidity automatically took effect a year later.

Ethical themes in the judgment

The Pretoria High Court's judgment in the case of *Surrogacy Advisory Group v Minister of Health*^[4] engaged directly with a range of ethical concerns traditionally associated with preimplantation sex selection. Rather than treating these as abstract moral issues, the court considered their application within the SA context and weighed them against the constitutionally protected interest in reproductive autonomy. This section examines each of the central ethical themes addressed by the court, contextualising them with contemporary empirical findings and recent normative scholarship.

Reproductive autonomy

Reproductive autonomy was a central theme in the court's reasoning. The court recognised that decisions related to assisted reproductive technologies, including selecting the sex of one's child for non-medical reasons, constitute deeply personal reproductive choices protected under the Constitution's rights to bodily and psychological integrity and privacy (paragraphs 85 - 87, 159 - 160, 165). It affirmed that reproductive autonomy encompasses not only the decision whether to have children, but also the conditions under which one becomes a parent and the nature of the familial relationships one seeks to establish (paragraph 85). As noted in earlier scholarship, the decision has far-reaching implications, establishing that constitutional rights must evolve in step with new reproductive technology, which is in principle protected under the ambit of reproductive autonomy.^[7]

In assessing whether limiting this autonomy was justified, the court considered whether the state had provided adequate rationale for the infringement and found that the categorical ban on non-medical preimplantation sex selection lacked any justification (paragraphs 159 - 160, 165). It determined that the ban restricted fundamental rights to reproductive autonomy and privacy, with no evidence or policy rationale provided by the state to support overriding these rights. The court noted that any limitation of a fundamental right requires sufficient justification, including reasons why the limitation

is reasonable, and there was no indication that a total prohibition was necessary to achieve the state's ethical objectives (paragraphs 70 - 73, 159, 165).

This reasoning is reinforced by the inconsistency in SA's broader reproductive legal framework, as noted by the court. The Choice on Termination of Pregnancy Act 92 of 1996^[8] permits a woman to terminate a pregnancy for any reason during the first trimester, which includes termination based on the sex of the fetus. Yet, the regulatory framework prohibits non-medical sex selection at the earlier, preimplantation stage. As the court explained, this inconsistency creates a paradoxical situation that increases physical and psychological risks for women (paragraphs 139, 159). The prohibition forces prospective parents to proceed with embryo transfer without knowledge of the embryo's sex, wait several weeks for non-invasive prenatal testing, and – if the sex is undesired – consider the far more invasive and emotionally fraught process of termination (paragraphs 139 - 140). This outcome delays family planning and imposes unnecessary physical and psychological burdens. The court concluded that such a scheme unjustifiably infringes the constitutional rights to bodily and psychological integrity and privacy, undermining the values of reproductive autonomy inherent in SA's legal framework (paragraphs 139 - 140, 159 - 160).

A similar argument has been advanced in the international literature, where it has been observed that permitting abortion for any reason while prohibiting earlier, less invasive embryo selection is conceptually incoherent. Swann^[9] argues that preimplantation genetic testing, including for sex, falls squarely within the domain of constitutionally protected reproductive decision-making and should not be restricted on the basis of moralistic distinctions between medical and non-medical motivations.

Interestingly, a survey of fertility patients in the USA showed that most respondents supported sex selection for non-medical purposes, regardless of race, income, or insurance status.^[10] The American Society for Reproductive Medicine's 2022 ethics opinion on sex selection for non-medical purposes^[11] is broadly aligned with patient sentiment, permitting non-medical preimplantation sex selection to support a range of motivations, including family balancing – the idea that if parents already have a child of one sex, that they can then 'balance' their family with a child of the other sex. However, enquiring about intended parents' personal motivations might be acceptable in the USA, where there is no constitutional legal right to reproductive autonomy,^[12] whereas the right to reproductive autonomy is enumerated in the SA Constitution (section 12(2)(a)).^[5] It is trite that one does not need to justify exercising a right.

Family balancing in particular is ethically problematic when elevated to the status of a 'permissible' motivation to control access to non-medical preimplantation sex selection, as it creates an arbitrary threshold for reproductive autonomy: it permits or denies access to the same reproductive act based solely on the existing composition of one's family.^[6] Such reasoning fails to engage with the core principle of autonomy and leads to inconsistent outcomes – e.g. permitting parents with daughters to select for a boy while denying the same right to first-time parents who desire a son. It wrongly implies that the legitimacy of reproductive choices derives from past family structure rather than future intention. This concern is further reinforced by the fact that selectively legitimising certain motivations for sex selection – such as family balancing – while dismissing

others amounts to moral gatekeeping that is difficult to defend in liberal societies. Attempts to police reproductive motivations risk entrenching paternalism and denying individuals meaningful control over their family-making decisions.

Taken together, the court's position, grounded in constitutional rights and supported by current empirical and normative evidence, affirms that reproductive autonomy should be respected unless compelling evidence of harm exists – a principle that Thaldar and Shoji^[13] refer to as procreative *non-maleficence*, to distinguish it from Savulescu's^[14] principle of procreative *beneficence*. In a legal environment that permits non-medical sex-selective abortion, prohibiting sex selection at the preimplantation stage is both ethically incoherent and constitutionally indefensible.

Risk of sex ratio imbalance and societal harm

A frequently cited objection to non-medical preimplantation sex selection is the fear that it could lead to skewed sex ratios at birth, thereby contributing to social instability and reinforcing gender inequality. The court addressed this concern under the broader ethical category of societal interest (paragraphs 98 - 100, 105). The court noted, however, that the state provided no evidence to substantiate the claim that permitting non-medical preimplantation sex selection would result in demographic harm in SA (paragraphs 159, 165).

Importantly, prior to the 2012 regulations, non-medical preimplantation sex selection was unregulated and therefore legally permissible (paragraph 92). The state failed to provide any justification, including evidence of demographic distortions or population-level harms from that period, to support the prohibition (paragraphs 159, 165). This absence of justification undermined the rationale for the prohibition. As the court emphasised, constitutional limitations on rights require sufficient factual and policy rationale, not mere speculation, to be valid (paragraphs 70 - 73, 159, 165).

Findings from demographic research further weaken the claim that permitting non-medical preimplantation sex selection would threaten South Africa's sex ratio or generate broader social harms. Analysis of nationally representative 2016 Demographic and Health Survey (DHS) data demonstrates that South Africans – across racial, ethnic, and socio-economic groups – exhibit remarkably balanced sex preferences, with only minimal aggregate bias toward either boys or girls and a substantial majority expressing indifference or a desire for equal numbers of sons and daughters.^[15] Women generally show almost no sex preference, while a substantial minority of men display a preference for boys.^[15] Among Black African respondents, preferences are virtually balanced, consistent with the broader Southern African pattern and in stark contrast to the pronounced son preference observed in parts of Asia.^[15] Cultural and ethnic variations exist, with White respondents displaying a somewhat greater preference for boys, though small subgroup sizes warrant cautious interpretation.^[15]

Research from the U.S., where non-medical preimplantation sex selection is permitted, presents conflicting evidence. National data indicate male-biased sex ratios among births following preimplantation genetic testing (PGT), with particularly pronounced skewing in cycles performed specifically for sex selection.^[16] However, a single-centre study in the U.S. found unexpectedly high female ratios that did not significantly increase with permitted sex selection,^[17] suggesting considerable institutional variation.

While family balancing motivations appear common, prior research has documented ethnic variation in preferences, with some U.S. patients of East Asian, South Asian, or Middle Eastern origin showing preference for males.^[18]

Context is thus critical. In countries like India and China, entrenched son preference and systemic sex-selective abortion have created justifiable concerns about demographic imbalance.^[19,20] In such settings, regulatory intervention may be warranted. But South Africa presents no comparable risk. There is no history of sex-selective abortion, and as discussed above, the available data indicate that South Africans exhibit remarkably balanced parental sex preferences, with only minimal aggregate bias.^[15]

Taken together, these considerations demonstrate that the fear of societal harm from sex ratio imbalance lacks both empirical and contextual grounding in SA. The state's inability to show otherwise was decisive in the court's analysis and reinforces the conclusion that reproductive autonomy should not be limited based on hypothetical demographic risks.

Sex stereotyping and sexism

A further ethical concern raised in both the legal proceedings and the broader literature is that permitting non-medical preimplantation sex selection could reinforce sex-based stereotypes or contribute to broader patterns of sexism. The court acknowledged this concern, noting in paragraph 157 that 'sex selection is ... inherently sexist' and 'relies on stereotypes of what it means to be a girl or boychild'. However, the court noted the lack of evidence that sex selection was exacerbating stereotyping or sexism in SA, with the psychological expert evidence indicating other motivations, most commonly family balancing, rather than a marked sex bias (paragraphs 100 - 101).

Concerns about sex stereotyping often rest on the assumption that choosing the sex of a child reflects a discriminatory valuation – for example, the belief that boys are more capable or desirable than girls. While such motivations may be relevant in settings where son preference is entrenched,^[20] the empirical literature indicates that this is not the case in more liberal, egalitarian societies. Where sex selection is permitted, the most common motivation is not hierarchical but complementary: the desire for sex balance within a family unit.^[18] This aspiration – for instance, to raise both a boy and a girl – is not necessarily discriminatory and may instead reflect a preference for diversity in family experience.

More broadly, motivations for sex selection are diverse and context specific. Parents may seek to achieve family balancing by raising a child of the unrepresented gender, accommodate cultural expectations, or fulfil personal aspirations associated with parenting a child of a particular sex.^[21,22] Some parents also express a desire for specific gendered parenting experiences – for example, a father raising a son or a mother raising a daughter.^[23] These motivations often reflect individualised forms of reproductive agency shaped by emotional, relational and cultural circumstances, rather than ideological commitments to sex essentialism.

This diversity of motivations casts doubts on the court's characterisation of sex selection as 'inherently sexist'. While it correctly observes that sex selection involves choices based on the sex of the child, equating such decisions with sexism imposes a moral judgement that is not warranted by either the evidence or constitutional principle. The term 'sexist' ordinarily implies unjust or

discriminatory treatment based on sex. But not all sex-based choices are morally blameworthy or oppressive – particularly when exercised within the private sphere of reproductive autonomy. For instance, a heterosexual woman choosing to marry a man, or a lesbian woman preferring to raise a daughter, both involve sex-based differentiation. Yet these are ethically neutral exercises of personal freedom. A more accurate description of such choices would be ‘sex-contingent’ or ‘sex-based’ preferences, which acknowledges the role of sex in decision-making without imputing discriminatory intent. In this light, the court’s moral vocabulary risks conflating differentiation with discrimination and fails to respect the nuanced and often benign motivations that underpin reproductive choice.

This is not to say that concerns about stereotyping and symbolism should be dismissed outright. Symbolic harms – such as the potential reinforcement of gender norms – are not ethically irrelevant. However, their abstract and conjectural nature requires that they be carefully balanced against concrete constitutional rights. In the absence of empirical evidence that sex selection in SA is producing such harms, symbolic concerns alone do not meet the threshold required to justify coercive legal restrictions. The literature highlights concerns that sex selection may skew sex ratios and reinforce societal oppression of girls and women in some contexts, though empirical evidence of such effects in liberal societies remains debated.^[16]

In sum, while concerns about sex stereotyping and symbolism should be acknowledged, they cannot be presumed to justify prohibition in the absence of context-specific evidence. In SA, where no such evidence exists and where the motivations for sex selection are diverse and often non-discriminatory, these concerns remain ethically insufficient to override reproductive freedom.

Designer babies

The court acknowledged the ethical concern about a ‘slippery slope’ towards ‘designer babies’ – allowing non-medical preimplantation sex selection could lead to selecting traits such as eye colour, intelligence, or athletic ability (paragraph 106). However, the court found this concern insufficient to justify restricting constitutional rights to reproductive autonomy and privacy (paragraphs 158 - 159, 165). Instead, the court embraced SA’s constitutional value of pluralism, agreeing with the applicant that the state should not impose a single moral viewpoint on contentious issues like sex selection (paragraph 150). It drew a parallel with the Choice Act,^[8] which permits first-trimester abortions for any reason, potentially including fetal sex, affirming that non-medical preimplantation sex selection similarly falls within protected reproductive choice (paragraphs 154 - 157). By prioritising individual autonomy over speculative fears, the court reinforced a framework where morally complex reproductive decisions belong to individuals, not the state.

The rhetorical use of ‘designer babies’ warrants further scrutiny. It is often deployed to provoke discomfort with the idea of parental choice in reproduction or to imply that such children are valued primarily for their traits. Yet if the label is taken to mean any child whose characteristics were selected by parents, then it applies to a wide range of accepted reproductive practices. In SA, intended parents routinely choose sperm or egg donors based on attributes such as race, appearance, education and personality. These choices are lawful and widely accepted. This point was persuasively elaborated by the minority of the Constitutional Court in *AB v Minister of*

Social Development (paragraphs 149 - 152).^[24] (The majority did not address the concept of ‘designer babies.’) The minority questioned what ‘designer children’ even means, noting the term’s conceptual vagueness (paragraph 149), and cited expert evidence discrediting its scientific credibility (paragraph 150 - 151). They further observed that if gamete selection constitutes ‘designing’, then existing practices – such as choosing gamete donors – already allow design, yet are legally permitted (paragraph 152).

Importantly, SA law does not require medical necessity for the use of donor gametes. Moreover, intended parents may select donors based purely on personal preference. More specifically, the Regulations Relating to the Artificial Fertilisation of Persons^[2] effectively give the ‘recipient’ – that is, the woman who intends to carry the pregnancy – the right to determine the characteristics that the gamete donor(s) must have. Regulation 14(1)(a)(iii) requires the recording of the recipient’s wishes regarding the population group, religion, and ‘any other wish’ concerning the donor, while regulation 11(c)(i) places a corresponding legal duty on the responsible clinician to ensure that these wishes are respected. In this light, sex selection is simply one among many permissible reproductive options at the disposal of intended parents. Singling it out as ethically exceptional ‘designing’ would be inconsistent with the broader legal and normative framework governing reproductive decision-making.^[6]

Best interests of the child

An ethical concern that featured in the court’s reasoning, and that has drawn sustained attention in the literature, is whether non-medical preimplantation sex selection may be contrary to the best interests of the future child (paragraph 108). The court noted that it is inherently uncertain how a child, once aware that he or she was selected based on sex, might interpret that fact. On the one hand, the child may feel affirmed or uniquely valued. On the other hand, the awareness could give rise to psychological pressure – such as a perceived obligation to meet parental expectations, or even guilt over the knowledge that other embryos were not chosen. As the court observed, these emotional responses ‘can go either way’ (paragraph 108). However, given this uncertainty, the court did not take the concern any further, and it had no material impact on the court’s reasoning.

Noteworthy is that empirical research found that the decision to pursue sex selection reflects thoughtful and positive motivations – such as the desire to diversify parenting experiences, honour cultural traditions, or find emotional healing after the loss of a child.^[21,22] These motivations are not coercive or objectifying, but instead reflect a complex and relational vision of family formation.

It is also necessary to consider intentionality in assisted reproduction more broadly. Every child born through IVF, donor conception or surrogacy results from deliberate decisions by intended parents – decisions that often shape the traits of the future child. Gamete donors are chosen based on race, physical features, and education; decisions are made about the number and timing of embryo transfers. These actions express preference, but they do not negate unconditional love or parental commitment. To isolate sex selection as uniquely ethically fraught is conceptually inconsistent.

Moreover, a prohibition on sex selection may paradoxically undermine the best interests of the future child. If parents are prevented from selecting the sex of the child at the preimplantation stage, a child born contrary to that preference may face subtle but

meaningful challenges to acceptance or psychological well-being. It is generally better for a child to be born into a context where the child is fully wanted.^[6] Enabling sex selection before implantation allows intended parents to align reproductive decisions with their preferences in a considered and ethical manner – thereby fostering a more stable, affirming family environment. In this way, permitting preimplantation sex selection can serve the future child's welfare better than prohibiting it.

Some scholars and professional bodies suggest that counselling may help prospective parents reflect on their motivations and manage expectations.^[11,18] Such interventions may be valuable in clinical settings, but they do not justify legal restriction and should not be compulsory. They represent a mode of ethical engagement, not grounds for coercive regulation.

In conclusion, while concerns about conditional acceptance and child welfare are not trivial, they are not supported by empirical evidence. The literature suggests that children born following non-medical preimplantation sex selection are welcomed, valued and loved. Far from violating the best interests of the child, preimplantation sex selection may, in some cases, better protect those interests by allowing more thoughtful and emotionally congruent reproductive choices.

Moral status of the embryo

A recurring ethical objection to non-medical preimplantation sex selection is that it treats embryos as instruments of parental preference, thereby failing to respect their moral status. The court acknowledged that selecting embryos based on sex raises moral questions about the embryo's status relative to its potential to develop into an autonomous child (paragraph 109). However, it emphasised SA law's position that embryos lack legal personality until born alive, as established by common law and constitutional jurisprudence (paragraphs 110, 154). Citing cases like *Christian Lawyers Association of South Africa v Minister of Health*^[25] (paragraph 106), the court noted that legal protection increases as an embryo develops into a fetus, but preimplantation embryos have minimal protection (paragraph 110). Consequently, the court deemed the moral status of the embryo irrelevant to the constitutional question before it, focusing instead on the rights of individuals to reproductive autonomy and privacy (paragraphs 158 - 159, 165).

To elaborate on the court's description of the position of *in vitro* embryos in the law: in *Ex Parte KAF*,^[26] the Johannesburg High Court affirmed that embryos cannot be equated with the future child; instead, they are 'the biological material that may give rise to a child' (paragraph 14). This position is further entrenched by regulation 18(2) of the Regulations Relating to the Artificial Fertilisation of Persons,^[2] which provides that ownership of the *in vitro* embryo vests in the 'recipient'. This makes the embryo the object of proprietary rights in SA law – not an entity with legal personality.^[27,28]

An important ethical consideration in favour of allowing non-medical sex selection at the preimplantation stage is that it avoids the need to destroy an embryo already developing in a woman's body. Embryos not selected for transfer can be cryopreserved, donated, or simply left unused, allowing their biological integrity to be preserved. By contrast, when sex selection is deferred until after implantation, the only available option for avoiding the birth of a child of the undesired sex is termination. This, by definition, involves the destruction of a developing embryo or fetus. For many women, there is a significant moral difference between discarding a day 5 *in*

vitro blastocyst and aborting an embryo at 2 or 3 months. As Zhang *et al.*^[29] observe, women undergoing IVF frequently express a strong desire to avoid pregnancy termination and support preserving or handling unused embryos through options such as freezing indefinitely, donating to another family, or donating to research. Preimplantation sex selection therefore offers a route that may be more compatible with respecting the psychological integrity of these women – and the moral and religious values that many of them bring to reproductive decision-making.

Conclusion

The ethical analysis of non-medical preimplantation sex selection must be situated within the legal framework established by the Pretoria High Court in *Surrogacy Advisory Group v Minister of Health*.^[4] In declaring the regulatory prohibition unconstitutional, the court rigorously examined competing ethical considerations, including reproductive autonomy, child welfare, societal interests, and concerns about reinforcing sexism or stereotypes. The court systematically evaluated these considerations, discussing the interests of women, society and the child (paragraphs 98 - 110), but prioritised the constitutional right to reproductive autonomy. It concluded that the decision to select the sex of one's future child falls within the ambit of protected reproductive choices under section 12(2)(a) of the Constitution,^[5] particularly given the state's failure to provide empirical evidence to justify the prohibition and its inconsistency with the Choice Act^[8] (paragraphs 158 - 159).

The outcome of *Surrogacy Advisory Group v Minister of Health*^[4] affirms that access to non-medical preimplantation sex selection is a legal right, not a discretionary privilege, ethical exception, or professional courtesy. This right is grounded in the constitutional guarantees of bodily and psychological integrity and privacy, underpinned by the foundational value of human dignity (paragraphs 158 - 159, 165). By declaring the prohibition unconstitutional, the court established that individuals, not regulators or healthcare providers, hold the authority to make such reproductive choices.

In this context, the position of the Health Professions Council of South Africa is notable. Historically, Booklet 8: Guidelines on Reproductive Health Management included a prohibition on non-medical preimplantation sex selection, mirroring the now-invalidated regulatory stance. The revised March 2025 edition of Booklet 8^[30] has removed this prohibition entirely. This revision aligns professional ethical guidance with the constitutional framework articulated in *Surrogacy Advisory Group v Minister of Health*,^[4] and represents a constructive evolution towards a coherent, rights-based approach to assisted reproduction in SA.

Ultimately, the court affirmed that moral and cultural disagreements about reproductive technologies cannot justify overriding individual constitutional rights. Quoting the applicant's submission, the court held (paragraph 150) that 'in South Africa we adhere to the constitutional value of pluralism, entailing that the state acknowledges that there is a diversity of opinions on moral issues and that the state should refrain from enforcing one opinion on everyone'. This means that respect for reproductive autonomy in the context of assisted reproduction is not a matter of ethical discretion, but a constitutional imperative.

Declaration. The author served as counsel in several of the cases cited in this article, including *AB v Minister of Social Development*, *Ex Parte KAF*, and *Surrogacy Advisory Group v Minister of Health*.

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