

## **Prevention of Benefit from Homicide**

Following on from its 2014 issues paper [LRC IP 7-2014 Issues Paper on review of section 120 of the Succession Act 1965 and Admissibility of criminal convictions in civil proceedings](#), the Law Reform Commission, published [LRC 114-2015 Report on Prevention of Benefit from Homicide](#) in 2015. In this report, the Commission recommends comprehensive legislative reform to implement the general principle that a person should be prevented from benefitting from his or her wrongdoing, especially an act of homicide, and that no cause of action should arise from one's own wrongful act. This is to ensure that the principles are applied not only under succession law but also to prevent an offender benefitting in any other context, whether under a joint tenancy or, for example, a life insurance policy or a pension. The Report contains a draft Bill to implement the recommendations in the Report.

The Report recommends that the current law should be reformed, including where it applies to a joint tenant who kills his or her spouse who was also a joint tenant at the time of death, which arose in the High Court in 2011 in *Cawley v Lillis*.

### *Key recommendations in the Report*

Among the 24 recommendations in the Report are these:

1. Comprehensive legislation should be enacted to prevent a person benefitting from committing murder, attempted murder or manslaughter. This legislation would apply not only to the succession and inheritance setting currently dealt with in the Succession Act 1965 but would also prevent the offender benefitting from any property interest of the victim, including under a life insurance policy, a pension or a joint tenancy.
2. In a case involving property held in a joint tenancy, the Report recommends that the offender should be precluded from obtaining the benefit of the right of survivorship; that the legal and beneficial interests in the property held under the joint tenancy between the victim and the offender should be deemed severed from the date when any homicide offence was committed; and that it is to be presumed (subject to the next recommendation) that the victim holds at least half of the interest in the property.
3. The Report also recommends that the actual amount and value to be held by the offender may be decided by a court to be at such a level as the court considers just and equitable, having regard to the fact that the right of survivorship was accelerated by the homicide and to all other relevant circumstances.
4. The Report recommends that the new legislation should continue to apply to the three most-recognised types of homicide (murder, attempted murder and manslaughter), but should not apply to other offences that lead to death, such as dangerous driving causing death.
5. The Commission also recommends that where the offender has committed manslaughter a court should be empowered to modify or disapply completely the rule that prevents the offender from benefitting, but only if the court is satisfied that this is required in the interests of justice.

6. The Report emphasises that the recommended legislation involves civil liability only. As a result, while most cases will arise after a person has been convicted of murder, attempted murder or manslaughter, this will not always be the case. The Report therefore recommends that the legislation can apply where either there has been no criminal prosecution or conviction of the offender, including where this is because the offender has died before being convicted or because the offence occurred outside the State. The legislation would also apply where a person has been found either unfit to be tried or not guilty by reason of insanity under the *Criminal Justice (Insanity) Act 2006*.

7. The Report recommends that, in any court proceedings under the proposed legislation, the court will, other than in exceptional circumstances, order that the costs of the proceedings are to be paid by the offender. This is because such proceedings only arise because of the wrongful act of the offender.

8. In connection with related probate proceedings, the Report recommends that where a person has died in circumstances that give rise to a criminal investigation in respect of which a prosecution for murder or manslaughter is pending, an interested person (such as next-of-kin) may enter a caveat in the probate office concerning the estate of the deceased; and that, while that caveat is in force, there must be no transfer of any estate or interest affected by the caveat.

9. The Report also recommends that a person who is convicted of murder or manslaughter should be presumed to be not entitled to extract a grant of probate or letters of administration intestate in the estate of the victim. This presumption should be rebuttable, in order to provide for those circumstances in which the court in its discretion orders that the rule should not be applied, as recommended in the Report, in cases of manslaughter.