

# Civil Liability (Amendment) (Prevention of Benefits from Homicide) Bill 2017

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*March 25<sup>th</sup>, 2019*

## Overview

Section 120 of the Succession Act 1965, provides that a person who is guilty of the murder, attempted murder or manslaughter of another person, such as his or her spouse, is prohibited from taking any share in the estate of that other person.

The scope and application of the rule in section 120 has given rise to difficulties in practice, which I believe run counter to the intention of the original legislation.

It is a well understood principle that a person should not benefit from his or her wrongdoing, especially in the case of homicide.

A number of situations have arisen which have shown that this does not occur in practice within the existing Succession Act.

## Cawley v Lillis

The decision of the High Court (Laffoy J) in Cawley v Lillis concerned property held in a joint tenancy. Because property held in a joint tenancy does not form part of the estate of a deceased person, including a homicide victim, the rule in section 120 does not apply in such a case.

Section 4(c) of the Succession Act 1965 provides that when a joint tenant dies, his or her legal estate in the assets held in the joint tenancy ceases if there is another surviving joint tenant.

As a result of section 4(c), section 120 of the 1965 Act does not apply to the legal right held in a joint tenancy because the deceased's legal interest in the property ceases on his or her death.

If there are two or more joint owners, the person guilty of murder, attempted murder or manslaughter becomes the full legal owner of that property under the right of survivorship.

In Cawley, Laffoy therefore applied general principles in determining the outcome of the case, and added that this area of the law should be reviewed.

At the end of her judgment in the Cawley case, Laffoy J commented that "ideally, there should be legislation in place which prescribes the destination of co-owned property in the event of the unlawful killing of one of the co-owners by another co-owner."

## Hawe Family

This matter again arose in the case of the Hawe family. Under the Succession Act 1965, the Hawe family alone are entitled to all the proceeds of the estate.

At the inquest, it was learned that Alan Hawe transferred funds and arranged his affairs so his family would be the sole financial beneficiaries of his estate.

## **Law Reform Commission Review**

Following the conclusion of the Lillis case, the Law Reform Commission was tasked with conducting such a review.

The report, which was completed in 2015, considered the following:

- the development of the public policy principles that a person should not benefit from his or her wrongdoing, in particular where this involves committing homicide, and should not be allowed to bring civil proceedings arising from such wrongdoing;
- the application of the principles to joint tenancies, the specific issue that arose in *Cawley v Lillis*;
- the application of the principles to all types of property, including life insurance and pensions;
- whether the application of the principles should be limited to murder, attempted murder and manslaughter;
- whether the application of the principles should be mandatory, as is the case under section 120 of the 1965 Act, or subject to a discretion to modify or disapply them in some manslaughter cases;
- the civil nature of proceedings involving the principles, including the fact that neither a prosecution nor conviction is required for them to apply; and
- procedural matters, including the awarding of costs, and related issues in probate proceedings.

The Report made recommendations for reform that apply to the succession and inheritance setting currently dealt with in section 120 of the 1965 Act, but which also extend the public policy principles to all property interests of victims of murder, attempted murder or manslaughter.

The LRC provided a draft Bill alongside their report.

In the two years following the LRC report, no action was taken on the Bill.

As a result, Fianna Fáil decided to introduce it.

## **Main Provisions of the Bill**

The Bill provides a mechanism whereby an “interested person” may apply to the court for an order precluding an offender from taking any share in the property or estate of the victim

An “interested person” is:

A person who is entitled to an interest in any property of victim;

- The executor/personal representative of the estate of the victim;
- A beneficiary under the will of the victim/a person who is entitled on intestacy to a share in the estate of the victim;
- A person claiming through the offender;

- “any other person who may have an interest in the outcome of such proceedings”

Proceedings brought under this Bill are civil proceedings and evidence is established on the “balance of probabilities” as opposed to “beyond all reasonable doubt”

#### **Person who commits homicide not to benefit (Section 46B)**

A person who is convicted of the murder, attempted murder or manslaughter or another shall be precluded from taking any share in the property or estate of the victim

This does not apply to someone who aids, abets, counsels or procures the offence of murder, attempted murder or manslaughter

#### **Joint tenancy (Section 46C)**

Section 46C specifically provides that where the victim and the offender held property in a joint tenancy, the offender is precluded from obtaining the benefit of the right of survivorship (i.e. the deceased’s share does not automatically transfer to the surviving offender). The offender shall remain entitled to his/her share in the property.

The Court is empowered to assess the amount and value of the offender’s interest in the property

#### **Court discretion (Section 46D)**

Where the offender has committed manslaughter, the Court retains a discretion to modify or dis-apply 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”

This discretion would allow a court (for example) to take account of a case where a spouse has been convicted of manslaughter and there may have been mitigating circumstances (for example – a long history of domestic violence leading up to the offence)

#### **Civil nature of proceedings (Section 46E)**

Proceedings brought under this Bill are civil and 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 provisions in the Bill can apply where either there has been no criminal prosecution or conviction of the offender. This means that the provisions can apply if (for example) the offender has died before being convicted or if the offence occurred outside the State.