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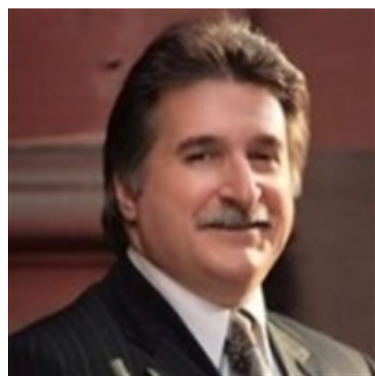
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# Man who killed parents entitled to partial inheritance



By [Charles Ticker](#)

A [recent story](#) from New South Wales in Australia describes the struggle a woman had to stop her brother from inheriting from their parents after he killed them.

The woman's brother was involved in an argument with their parents in 2014. The argument was over a bottle of wine. The parents wanted their son to replace a bottle he consumed without asking. The son, 46 at the time and living with his parents, became angry and shot both of his parents dead.

The matter proceeded to court with a New South Wales Supreme Court Justice ultimately finding that while the man shot his parents dead he was experiencing a schizophrenic delusion.

As a result of this finding, the man would have been entitled to receive an inheritance from his parents. This is because in New South Wales a person who kills someone unlawfully (in this case a son killing his parents) but is found not guilty due to mental illness does not automatically forfeit the right to receive an inheritance.

The woman opposed her brother receiving anything from their parents. Ultimately, she was successful in having her brother forfeit his right to a full inheritance. Nonetheless, she was ordered to put in trust for her brother \$50,000 from each of her parents' estates. Additionally, estate funds were to be used to pay his legal fees.

The woman has petitioned the attorney general of New South Wales, asking that a "not guilty" verdict no longer be given to a person who kills while impaired by mental illness. The New South Wales government is apparently working to change the verdict to "to clearly indicate the defendant engaged in the conduct in question, although, because of their mental illness or cognitive impairment, they cannot be held criminally responsible."

## The forfeiture rule in Ontario

The forfeiture rule in Ontario is summarized in [this decision of the Court of Appeal for Ontario](#). In this case, the applicant was a beneficiary of his wife's insurance policy. He was charged with second-degree murder for killing his wife. During the court proceeding, it was determined that he suffered from a mental disorder. As a result, he was found not criminally responsible. The life insurance proceeds were paid into court and the applicant moved to have the proceeds paid to him. His initial application was dismissed because the court found that the public policy rule that one cannot benefit from his own criminal act (the forfeiture rule) applied.

The appeal was allowed as the Court of Appeal for Ontario affirmed that where a person has been found not criminally responsible for killing as a result of a mental disorder the forfeiture rule did not apply.

## Application to estate matters

The decision in [the case](#) affirmed that the exception to the forfeiture rule also applied in estate matters:



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"17. ... On the other hand, there is at least one decision from the Supreme Court of Canada that seems to hold that the rule does not apply where the person was insane at the time of the killing. In [\[this case\]](#), the deceased husband died in the course of a fire set by his wife. It does not appear that the wife was ever tried for the killing. At the time of the proceedings, she was being held at the Provincial Hospital for the Insane. The issue in [\[the case\]](#) was whether the wife was entitled to share in the estate of her deceased husband. The application judge had held that she could on the basis that she would have been found insane as defined in former s. 16 of the Criminal Code, R.S.C. 1985, c. C-46.

19. The court allowed the wife's appeal and dismissed the cross-appeal with the result that the wife was entitled to a share of her husband's estate in view of the application judge's finding of fact that she was insane."

According to the forfeiture rule in Ontario, a person like the man in New South Wales will likely inherit from his parents.

Although the forfeiture rule may allow someone like him to inherit, it ensures that people who do not lack capacity when they commit their serious crimes are punished accordingly and deprived from any benefit received as a result of their crimes.

This is settled law in Ontario.

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