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**By**

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# The Differences Between Attempted Complicity and Inchoate Assisting and Encouraging—A Reply to Professor Bohlander

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☞ Complicity; Encouraging or assisting crime

## Summary:

*This article explores a recent comment piece by Professor Michael Bohlander in which he contends that there is a clash between the new assisting and encouraging provisions (Pt 2 of the Serious Crime Act 2007) and Criminal Attempts Act 1981 s.1(4)(b) which excludes liability for attempted complicity. It will be argued that Bohlander's recommendation that the latter should be repealed is unsound both in terms of the viability and the desirability of allowing an offence of attempted complicity. The only exception to this, also explored in the article, is the potential for an offence of attempting to procure a no-fault offence.*

This article is a reply to a recent comment piece written by Professor Michael Bohlander entitled “The conflict between the Serious Crime Act 2007 and section 1(4)(b) Criminal Attempts Act 1981 — a missed repeal?”<sup>1</sup> In this comment Bohlander highlights an apparent clash between the new inchoate offences of assisting and encouraging,<sup>2</sup> and the maintenance of Criminal Attempts Act 1981 (CAA) s.1(4)(b) that expressly excludes liability for attempted complicity. For Bohlander, “speaking nontechnically”,<sup>3</sup> the new assisting and encouraging provisions have effectively created offences of “attempted abetting” and “attempted aiding”.<sup>4</sup> Therefore, with s.1(4)(b) of the CAA now “devoid of substance”,<sup>5</sup> and in order to avoid creating “confusion”<sup>6</sup> in the application of the new offences, Bohlander recommends that s.1(4)(b) of the CAA should be implicitly or expressly repealed.<sup>7</sup>

\* I am grateful to Professor Jeremy Horder, Professor Robert Cryer and Ms Phoebe Roy for their useful comments and criticisms on a draft of this article. I am also grateful for comments provided by the Review's anonymous referees.

<sup>1</sup> M. Bohlander, “The Conflict between the Serious Crime Act 2007 and section 1(4)(b) Criminal Attempts Act 1981 — a missed repeal” [2010] Crim. L.R. 483.

<sup>2</sup> Serious Crime Act 2007, Pt 2.

<sup>3</sup> See Bohlander, “The Conflict between the Serious Crime Act 2007” [2010] Crim. L.R. 483.

<sup>4</sup> See Bohlander, “The Conflict between the Serious Crime Act 2007” [2010] Crim. L.R. 483.

<sup>5</sup> Bohlander, “The Conflict between the Serious Crime Act 2007” [2010] Crim. L.R. 488.

<sup>6</sup> Bohlander, “The Conflict between the Serious Crime Act 2007” [2010] Crim. L.R. 488.

<sup>7</sup> Bohlander, “The Conflict between the Serious Crime Act 2007” [2010] Crim. L.R. 488.

At first glance, Bohlander's thesis is attractive. In each case, the actions of D involve the assisting or encouraging of a principal offence, and whether this falls to be analysed within the Serious Crime Act or as a form of attempted complicity appears to be no more than a matter of taste. However, the identification of a parallel between one element of the *actus reus* of each (potential) offence is not a sufficient basis upon which to contend that the exclusion of one form of liability by s.1(4)(b) of the CAA creates a clash (conceptual or otherwise) with the other.<sup>8</sup> In this article, it will be maintained that there is no such clash within the current law, and that if s.1(4)(b) of the CAA were to be repealed, it would create unnecessary confusion and complication within an already complex area of the law. This position will be explored in two separate, but mutually supportive, sections. The first discussion will focus on the viability of attempted complicity as an offence within English law, and the second, on its unhappy coexistence with inchoate assisting and encouraging even if a principled basis could be found. Finally, having rejected the central argument of Bohlander's comment, the third part of this article will explore how his thesis could be re-employed to tackle a related problem concerning the causing of no-fault offences.

### Attempting to aid and abet: viability

To hold that the exclusion of attempted complicity (s.1(4)(b) of the CAA) clashes with the new inchoate offences of assisting and encouraging, it must first be established that this species of attempt represents a potentially viable form of liability. For Bohlander, the challenge may appear easy to satisfy. After all, if the broad range of behaviours proscribed by the new inchoate offences of assisting and encouraging effectively encompass the offences of attempted aiding and abetting, then the viability of the latter can be derived from the former. However, the essential premise to this, the idea that the potential complicity offences are already contained within the broader inchoate offences of assisting and encouraging, must surely be doubted.

Complicity offences are unique within the criminal law. Rather than simply focusing on the actions of D as we do with the inchoate offences of assisting and encouraging, for D to be liable as a secondary party it is necessary to further demonstrate that P has completed the principal offence.<sup>9</sup> This is because, strictly speaking, aiding and abetting is not an offence known to English law: when P completes the principal offence D will be liable to be tried, indicted and punished for that offence as a principal offender.<sup>10</sup> This is important because when we are considering the potential offence of attempted complicity, it must be kept in mind that s.1(1) of the CAA only applies to D who attempts to commit a *criminal offence*. Although we talk of attempted complicity, complicity does not represent a stand-alone offence.<sup>11</sup> Therefore D will be charged with attempting the principal offence (as a secondary party).<sup>12</sup>

<sup>8</sup> For Bohlander, the Serious Crime Act 2007 and Criminal Attempts Act 1981 s.1(4)(b) represent a conceptual clash "at the very least". Bohlander, "The Conflict between the Serious Crime Act 2007" [2010] Crim. L.R. 488.

<sup>9</sup> See, generally, The Law Commission, *Participating in Crime* (2007), Law Com. No. 305.

<sup>10</sup> Accessories and Abettors Act 1861 s.8.

<sup>11</sup> The only exceptions to this are bespoke complicity-type offences created by statute, for example, aiding and abetting suicide contrary to the Suicide Act 1961 s.2.

<sup>12</sup> *Dunnington* [1984] Q.B. 472; (1984) 78 Cr. App. R. 171.

This observation becomes particularly important when we consider the proximity of D's attempt to the commission of the principal offence. For Bohlander, mirroring the inchoate offences of assisting and encouraging, D's liability for attempted complicity should be triggered as soon as he or she completes the act of aiding or abetting.<sup>13</sup> For example, D provides P with a gun and urges him to use it to murder V. P accepts the weapon, but is intercepted by the police shortly afterwards. Despite the fact that P does not go on to murder V, under Bohlander's scheme D will be liable for attempting to aid and abet him to do so, and therefore liable for the offence of attempted murder. However, unlike the application of the Serious Crime Act offences that charge D with assisting and encouraging murder, the idea that D should be charged with attempted murder is highly problematic. D may have gone beyond mere preparation towards the completion of his or her final acts, or even completed those acts as in the example, but there remains a considerable amount to be done before the principal offence is committed. The idea that D's acts go beyond mere preparation towards the offence of murder stretches the language of attempts beyond acceptable limits. Further, even if this were deemed acceptable, Smith has highlighted the "manifestly absurd" result that while D will be charged and labelled as an attempted murderer, the principal offender (P) will not reach that stage of liability until he has practically drawn the gun upon V.<sup>14</sup> Indeed, it is an absurdity that is even more pronounced when one considers that P, as in the example, may never go on to attempt the principal offence at all.

In an effort to avoid these problems, it is interesting to note that the Law Commission appear to offer an alternative interpretation to attempted complicity, an alternative that is partially relied upon by Bohlander. Regarding s.1(4)(b) of the CAA, the Commission states that,

"... it does prevent D being convicted of attempting to commit an offence *that has been committed by P* if, despite trying to encourage or assist P, D's conduct does not in fact do so ...."<sup>15</sup>

To employ a common example, let us imagine that D leaves a ladder outside the house of V with the intention of aiding P to burgle the premises. P, unaware of the assistance, burgles V's house without using the ladder. D cannot be liable for burglary because he or she has not aided the principal offence. However, according to the Commission's formulation, in the absence of s.1(4)(b) of the CAA D *would* be liable for his or her attempt to aid the burglary (and therefore for attempted burglary). In contrast to the model of attempted complicity explored above, the Commission's requirement that the principal offence should be completed is thus able to avoid the absurdity of D being liable for an attempt where P is not: for D to be liable for the attempted burglary, P must have completed the full offence. However, although this particular criticism is avoided, the Commission's formulation is no more viable than its predecessor. This is because, although the principal offence is committed, there remains the problem of a considerable gap

<sup>13</sup> Bohlander, "The Conflict between the Serious Crime Act 2007" [2010] Crim. L.R. 485.

<sup>14</sup> J.C. Smith, "Secondary Participants and Inchoate Offences" in C. Tapper, *Crime, Proof and Punishment: Essays in Memory of Sir Rupert Cross* (London: Butterworth, 1981), pp.21 and 37.

<sup>15</sup> The Law Commission, *Inchoate Liability for Assisting and Encouraging Crime* (2006), p.22, fn.2. Although the Commission's formulation of attempted complicity offers an interesting alternative, it is important to note that the discussion is contained within a single footnote and is not featured in any recommendations. With this in mind, there is every chance that the Commission would not maintain this approach.

(involving a host of autonomous *and informed* choices on the part of P) between D's acts and the completion of the principal offence. Not only does this raise the issue of proximity within attempt, but as the principal offence must be completed before D can be liable, it also creates a further problem relating to the point at which D's acts are labelled as an attempt. The law of attempt requires the identification of a particular point at which D's conduct goes beyond mere preparation; the point at which he or she has completed an attempt. As Smith notes, for an attempt offence in line with the Commission's formulation to require the identification of that point in the actions of D, but then to require us to wait to see if P goes on to complete the principal offence before we can label D's actions as an attempt, would be "inconsistent with principle."<sup>16</sup>

Having rejected the Commission's formulation on its own terms, we may also question whether it is a position that can be logically held as an alternative to its predecessor. If D in the previous example had been successful in his or her attempt to aid P to commit burglary, that is if P had used the ladder, it is acceptable for his or her liability to increase at the point P completes the principal offence: D's actions have contributed to the principal offence and so his or her increased liability can be derived from its completion.<sup>17</sup> However, where D fails in his or her attempts to aid or abet P, the nexus through which he or she may derive further blame is lost. Whether P goes on to complete the principal offence has literally nothing to do with D, and so it would be entirely arbitrary to base D's liability for attempt upon it.

Perhaps due to recognition of this criticism, Bohlander does not fully endorse the Commission's formulation. Indeed, as Bohlander seeks to demonstrate that an offence of attempted complicity exists within the new inchoate offences of assisting and encouraging, it is not open to him to adopt an approach that bases D's liability upon the future actions of P. Rather, Bohlander extrapolates from the Commission's discussion that having acknowledged that attempted complicity could have a role, the Commission's quotation (set out above) "must, of course, be extended to cover situations where D does an act meant to assist P but where P does *not* pass the threshold to an attempt at all."<sup>18</sup> Whilst we may disagree that this is what the Commission had intended at the time of writing,<sup>19</sup> Bohlander's point that the Commission's formulation cannot function as a viable alternative (on the basis of the previous discussion) must be accepted. However, a return to the original formulation is not an escape from criticism, but rather a return to a previously unsustainable position. Therefore, this too must be rejected.

<sup>16</sup> J.C. Smith, "Secondary participants and inchoate offences" in C. Tapper, *Crime, Proof and Punishment: Essays in Memory of Sir Rupert Cross* (London: Butterworth, 1981), pp.21 and 38.

<sup>17</sup> Although secondary liability does not require the prosecution to demonstrate that D's assistance contributed to the completion of the principal offence, the (rebuttable) presumption that there has been some such effect remains a necessary element of the offence. See Law Commission, *Participating in Crime* (2007), Law Com. No. 305, para.3.24.

<sup>18</sup> Bohlander, "The Conflict between the Serious Crime Act 2007" [2010] Crim. L.R. 485 (author's emphasis).

<sup>19</sup> Not only does the Commission expressly include the completion of the principal offence within their discussion of attempted complicity, the fact that it is italicised (see quotation above) is a further indication that they believed the offence would be limited in this way.

The construction of attempted complicity would therefore involve significant damage to the principles underpinning attempts liability. Indeed, the same appears to be true across the spectrum of inchoate offences.<sup>20</sup> Thus, without a sound basis for the offence, its exclusion under s.1(4)(b) of the CAA cannot amount to a clash with the new Serious Crime Act offences.

### Attempting to aid and abet: usefulness

Although it has been demonstrated that attempted complicity is not viable within English law, Bohlander's claim that the operation of this kind of parallel offence would remove confusion from the law also requires attention. This is because, although overlapping offences are by no means uncommon in criminal law, and may offer certain benefits,<sup>21</sup> an attempted complicity offence of the kind envisaged by Bohlander would lead to several problems. By way of illustration, it will suffice to set out three of these.

The first problem is added complexity. The new inchoate offences of assisting and encouraging, replacing the common law offence of incitement, have been created in order to rationalise this area of the law.<sup>22</sup> As soon as D completes his or her acts of assistance or encouragement, he or she will be liable for the inchoate offence. Then, if P goes on to complete the principal offence assisted or encouraged, D's liability will be increased to that of a secondary party.<sup>23</sup> In this way, despite problems of complex drafting,<sup>24</sup> a logical and straightforward divide is created between the two phases of liability, encompassing both acts of encouragement and (for the first time) assistance. Although Bohlander seems to suggest that attempted complicity would simply be subsumed within the inchoate phase, this cannot be the case. Even putting aside the discussion of actus reus in the previous section, the mens rea requirements of attempt (requiring intention as to the act *and result* elements of the principal offence<sup>25</sup>) are more restrictive even than the intention-based assisting and encouraging offence (requiring intention only for the act element of the principal offence<sup>26</sup>). In this manner, attempted complicity would become a complicating factor, existing in between the two phases of liability without any clear purpose.

The second problem area relates to withdrawal, another unique feature of secondary liability. Under the current two phase structure, having completed acts of assisting or encouraging (becoming liable for the inchoate offence), D may still avoid becoming complicit in the future offending of P if he or she fully withdraws that assistance or encouragement before the principal offence is completed.<sup>27</sup> In this vein, it would be very strange for a court to hold that although D successfully managed to withdraw his or her assistance or encouragement before P completed

<sup>20</sup> For a discussion of similar problems in relation to conspiracy to aid and abet and incitement to aid and abet, see J.C. Smith, "Secondary participants and inchoate offences" in C. Tapper, *Crime, Proof and Punishment: Essays in Memory of Sir Rupert Cross* (London: Butterworth, 1981), p.21 and D. Ormerod, "Conspiracy: Conspiracy to Aid and Abet an Offence by Another Person Not Party to that Agreement" [2009] Crim. L.R. 37.

<sup>21</sup> Overlapping offences can be useful to avoid unwanted gaps between different crimes.

<sup>22</sup> Law Commission, *Inchoate Liability for Assisting and Encouraging Crime* (2006), Pt 1.

<sup>23</sup> We are assuming in each case, of course, that D has the required mens rea and lacks a valid defence.

<sup>24</sup> See, for example, D. Ormerod, *Smith and Hogan: Criminal law*, 12th edn (Oxford: Oxford University Press, 2008), pp.446–454.

<sup>25</sup> See CAAs.1(1) and *Khan* [1990] 1 W.L.R. 813; [1990] 2 All E.R. 783 CA (Civ Div).

<sup>26</sup> Serious Crime Act 2007 s.44 and s.47.

<sup>27</sup> See Smith, "Withdrawal and complicity" [2001] Crim. L.R. 769.

the principal offence, a process that is likely to involve the specific renouncing of the criminal enterprise directly to P, that D still attempted to aid and abet (and therefore attempted the principal offence). It is this kind of counter-intuitive result that is likely to cause further confusion in an already complex area.

The third problem relates to the availability of the defence of acting reasonably within the Serious Crime Act.<sup>28</sup> In order to control the expansion of inchoate liability brought about by the new assisting and encouraging provisions, the Law Commission recommended the creation of specific defences. The reasonableness defence will apply to D, for example, where he or she assists or encourages P to commit a minor offence in order to prevent the commission of a more serious one, for example, where D encourages P to damage V's car in order to prevent him from attacking V personally.<sup>29</sup> As the defence only applies to the inchoate assisting and encouraging provisions however, it would not apply to the parallel offence of attempted complicity envisaged by Bohlander. Therefore, to the extent that the defence is necessary to maintain acceptable limits of criminal law, the offence of attempted complicity would involve an unacceptable expansion of liability.<sup>30</sup>

On the basis of this discussion, it must therefore be concluded that *even if* it were possible to frame a viable offence of attempted complicity in the manner envisaged by Bohlander, such a reform should still be resisted. Far from removing a source of confusion, the repeal of s.1(4)(b) of the CAA would result in further unnecessary complexity and expansion of liability.

### Attempting to procure a no-fault offence

Within Bohlander's brief comment, he focuses almost exclusively upon attempted aiding and abetting. However, s.1(4)(a) of the CAA also excludes attempt liability from the related form of complicity; procuring. Unlike aiding and abetting, when D procures P to complete a principal offence he or she must be shown to have caused that offence to come about.<sup>31</sup> To employ a classic example of procuring a no-fault offence, D laces the non-alcoholic drink of P with alcohol knowing that P will later drive home. P, unaware of this, eventually drives home and is charged with driving with excess alcohol.<sup>32</sup> As with aiding and abetting, the procuring of a no-fault offence also leads to D's liability for the principal offence (as a secondary party). However, unlike aiding and abetting, this form of complicity does not appear to be well supported by the inchoate offences of assisting and encouraging in the event that P does not complete the principal offence. It is this point, explored below, that may lead to the reconsideration of Bohlander's thesis in this limited capacity.

The problem arises from the Law Commission's recommendations on inchoate assisting and encouraging, the basis of the Serious Crime Act offences. This is because, to be liable for inchoate assisting and encouraging, the Commission

<sup>28</sup> Serious Crime Act 2007 s.50.

<sup>29</sup> See the discussion in Law Commission, *Inchoate Liability for Assisting and Encouraging Crime* (2006), Pt 6. The two defences recommended by the Commission are effectively combined in Parliament's preference for a single reasonableness defence.

<sup>30</sup> This point also undermines any contention that attempted complicity, once created, would remain unused (and thus cause less damage).

<sup>31</sup> *Attorney General's Reference (No.1 of 1975)* [1975] Q.B. 773; [1975] 2 All E.R. 684.

<sup>32</sup> Contrary to the Road Traffic Act 1988 s.5(1).

require D to perform acts “capable of encouraging or assisting the doing of a criminal act in relation to a principal offence.”<sup>33</sup> However, in cases of procuring a no-fault offence such as the one outlined above, D’s act of lacing P’s drink with alcohol does not assist or encourage P to complete the act element of driving with excess alcohol (driving). Rather, it provides the circumstance (excess alcohol) necessary for the principal offence to be committed. Therefore, a standard reading of the Commission’s policy (adopted in the Serious Crime Act) would indicate that D in our example above will not be liable for inchoate assisting or encouraging.

In order to avoid this unattractive conclusion, the Commission are forced to create a major exception to their general policy, stating that in these “rare” occasions “‘criminal act’ will need to be interpreted to mean a composite act comprising a combination of conduct and circumstance elements.”<sup>34</sup> However, this approach is problematic. It is unfortunate that having set out an already complex policy, we are now told (and in the Report alone<sup>35</sup>) that *sometimes* this policy will have to be interpreted to mean something entirely different. This is an exception that we could perhaps accept, were it not also the case that this rare exception is so difficult to identify. In relation to the drink spiking example where P does not go on to complete the principal offence, we are told that:

“[t]he essence of the wrongdoing targeted by the offence of driving with excess alcohol is not the driving but driving *in excess of the prescribed limit*. In [the example] it is that circumstance that D is intending to bring about. D’s conduct is highly culpable and, in principle, he or she ought to be criminally liable.”<sup>36</sup>

Therefore, the Commission seem to be indicating that although D’s assisting and encouraging will usually have to focus on the act element of the principal offence alone, this is because most offences (for example, murder and criminal damage) are built upon a culpable act element. However, in exceptional cases such as the one above, where P’s wrongdoing can only be understood as a composite of act (driving) and circumstance (being over the prescribed limit), the assisting or encouraging of either element will suffice for this part of D’s *actus reus*.

The problem with the Commission’s method of separation, however, is that it risks allowing many more offences (including fault based offences) within this exceptional category than would be intended. The Commission are likely to accept the inclusion of most driving and other regulatory style offences. However, many core criminal offences also include potentially innocent act elements. For example, sexual penetration within the offence of rape is not a *prima facie* wrong; its wrong is constituted by the circumstance of V’s lack of consent. Likewise, the act element of theft (D’s taking of property) is only wrong because that property does not belong to D. In fact, it is even possible to contend that murder does not *necessarily* contain a *prima facie* wrong within the act element. The act of shooting, for example, is not necessarily harmful and may be a perfectly acceptable hobby.

<sup>33</sup> Law Commission, *Inchoate Liability for Assisting and Encouraging Crime* (2006), Law Com. No. 300 cl.1(1)(a). This was (arguably) broadened slightly to a requirement that D’s act should be “capable of encouraging or assisting the commission of an offence”. The Serious Crime Act 2007 s.44(1)(a).

<sup>34</sup> Law Commission, *Inchoate Liability for Assisting and Encouraging Crime* (2006), Law Com. No. 300, para.5.26.

<sup>35</sup> Without guidance within the legislation, it is difficult to predict whether the courts will apply the exception in the manner envisaged by the Commission.

<sup>36</sup> Law Commission, *Inchoate Liability for Assisting and Encouraging Crime* (2006), Law Com. No. 300, para.5.26.

Thus, if D intentionally shoots and kills V, it is not the act of shooting alone that establishes the wrong, it is the act of shooting *a human being* (circumstance element). Therefore, the Commission's previously rare example now becomes very common indeed, potentially including every offence with a circumstance element. D will come within the inchoate offences whenever he or she completes an act capable of assisting or encouraging the act or circumstance elements of any principal offence—a result vastly beyond the Commission's intentions.

It is interesting to note that this problem has not been translated into the Law Commission's recommendations concerning complicity.<sup>37</sup> In this more recent Report, instead of maintaining the pretence that D's actions assist or encourage P in the drink spiking example, the Commission recommend the creation of a separate offence of causing a no-fault offence.<sup>38</sup> Indeed, they go so far as to say that,

“it is inappropriate to describe D's conduct in causing P to commit a no-fault offence as encouraging or assisting P to commit the offence.”<sup>39</sup>

As the problems set out above demonstrate, they are quite right in this comment. However, in making it, the Commission are undermining their policy on inchoate assisting and encouraging and the Serious Crime Act; if it is inappropriate to label D's actions as assisting or encouraging then there can be no application of those inchoate offences.

Following this somewhat complicated plot, we are left with two possible conclusions (neither one desirable). Either there *is* inchoate liability for the drink spiker under the Serious Crime Act, but this is achieved at the expense of the coherence of those offences, or there is *no* inchoate liability, and we must wait to see if the principal offence is committed before penalising D.

With this particular difficulty in mind, Bohlander's attempted complicity offence may be able to serve a genuine (if limited) purpose. By removing the effects of s.1(4)(b) of the CAA as they apply to procuring, a D who spikes the drink of P could become immediately liable for attempting to procure a no-fault offence regardless of whether P goes on to commit the principal offence. Not only would this solution avoid the specific problems with applying inchoate assisting and encouraging discussed above, but since the offence of procuring does not involve the element of informed choice on the part of P, it is arguable that an attempt label would also be most appropriate.<sup>40</sup>

The one problem with this solution that still remains is the potential for D to be labelled as having attempted the principal offence before P. It may be that as P is generally non-culpable in these situations (criminal only because the offence is strict), that the effect of the criticism is mitigated.<sup>41</sup> However, it is worth noting that as the Law Commission have recommended that the causing of a no-fault offence should become a principal offence in its own right, if this recommendation

<sup>37</sup> Law Commission, *Participating in Crime* (2007), Law Com. No. 305. The recommendations in this report have not yet been taken forward by the Government.

<sup>38</sup> Law Commission, *Participating in Crime* (2007), Law Com. No. 305, Pt 4 and cl.5 of the draft Bill appended.

<sup>39</sup> Law Commission, *Participating in Crime* (2007), Law Com. No. 305, para.4.29.

<sup>40</sup> For a similar conclusion regarding the viability of attempted procuring, see J.C. Smith, “Secondary participants and inchoate offences” in C. Tapper, *Crime, Proof and Punishment: Essays in Memory of Sir Rupert Cross* (London: Butterworth, 1981), p.21, pp.41–43.

<sup>41</sup> It is certainly not one that concerns Smith when reaching the same conclusion.

were to be taken forward, it could undermine the criticism altogether: D's label will reflect his or her attempt to cause a no-fault offence (the new offence) and not an attempt to commit the principal offence.

## **Conclusion**

Bohlander's comment provides an interesting take on a highly complex area of the criminal law. However, the arguments expressed within the comment, and to some extent within the evidence gleaned from the Law Commission, demonstrate the dangers of generalisation and nontechnical analysis. Although the new inchoate offences of assisting and encouraging may appear similar to potential offences of attempted complicity, such a similarity does not extend below a surface appearance. As this article has sought to demonstrate, by allowing offences of attempted complicity (repealing s.1(4)(b) of the CAA) we would risk not only the integrity and viability of the offence itself, but also the coherence of those offences with which it would co-exist.

The one exception to this, perhaps, would be the limited offence of attempting to procure a no-fault offence. However, this would be tailored to remedy a specific gap identified within the current law.