

Family Law Section Essay Competition

Overdue Justice: Ashley's Law and Victim Support in Family Law in New Zealand

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Family Law across the western world is desperate for much-needed change. Here in Aotearoa New Zealand ("NZ"), no-fault dissolution of marriage has been the standard since 1980, when the Family Proceedings Act 1980 introduced "irreconcilable breakdown" as the sole basis for dissolution of marriage (divorce) within this country.¹ Ashley's Law is an overdue addition to family law in NZ, and will be especially helpful to victims of family violence and require a rapid exit from their abusers. As it currently stands throughout much of the world, victims often find themselves waiting months if not years for dissolution of marriage to be granted legally. As of October 2025, victims of family violence in NZ will have new grounds for expediting dissolution of marriage from their abusers, and will be able to move on with dissolution after family violence.²

The current dissolution of marriage legislation in NZ is over four decades old, and offers only one type of dissolution. To meet the standards for "irreconcilable breakdown," an applicant must prove that the couple has been living apart and separated for at least two years.³ Fault has no relevance in proving the "breakdown" of a marriage, and there are no options for shortening the required period of time. Proof of living apart can take many forms, from sworn or affirmed affidavits from the parties to separation agreements to independent evidence (such as affidavits from independent witnesses who know both individuals). If a joint application is put together by the parties applying for a dissolution of marriage, the matter is quite simple, and the dissolution of marriage will be granted after the requisite period of two years of separation has passed.⁴ However, if either party is not operating in good faith, especially if family violence is present, the process can become daunting for the victim.

This difficulty can begin with the cost of filing the application for dissolution of marriage, which the applicant would bear solely when they are trying to dissolve a marriage from an adversarial

¹ Megan Cook "Divorce and separation" TeAra govt.nz The Encyclopedia of New Zealand
<<https://teara.govt.nz/en/divorce-and-separation/print>>

² Family Proceedings (Dissolution of Marriage or Civil Union for Family Violence) Amendment Act 2024, s 2.

³ Family Proceedings Act 1980, s 39.

⁴ Family Proceedings Act 1980, s 37 and "Divorce: Getting a "Dissolution" Order" Community Law<
<https://communitylaw.org.nz/community-law-manual/chapter-12-relationships-and-break-ups/divorce-getting-a-dissolution-order/applying-for-a-dissolution/>>

spouse. The current fees are \$242⁵ and cannot be covered by Legal Aid, therefore the very individual who might be trying to exit a difficult situation must pay this significant amount of money in order to secure the process. This is only one example of the burden of financial, logistical, and emotional cost being placed on the person applying for dissolution of marriage. When that person is a woman fleeing a situation of domestic violence, these costs become untenable, and exacerbate the distress within these circumstances.⁶ Furthermore, the requirement to serve the other spouse a copy of the application (and accompanying documents) can be extraordinarily difficult, such as when the other person's location is unknown, or they are not safe for the applicant to approach. Again, when all of these requirements are placed on a woman in a difficult situation, the standards become exceedingly burdensome to fulfil.

Ashley Jones ("Ms Jones") is precisely the type of applicant who needed a better process than the one outlined above, and it is this individual whose name the new law will bear. Her situation was such that the dissolution of marriage proceedings could not be completed because she had a protection order in place, and was not in touch with her abusive ex-husband.⁷ Not only did Ms Jones have to wait the required two years in order to dissolve the marriage, her own protection order precluded her from reaching out to serve her ex-husband, or to provide the court with information on his whereabouts, which she did not know. Instead of being granted the dissolution after the waiting period, Ms Jones faced a delay of almost a full additional year because her abuser could not be contacted nor found. In her own words, "That was a further 2 years 10 months of mental and emotional anguish on top of everything else that didn't need to happen."⁸ Ms Jones's case provides a snapshot of how the legal system can be used to re-victimise victims who have been through family violence, despite their attempts to take the full responsibility required of them to leave. Not only do victims have to stay legally tied to their abusers in these proceedings, they also bear multiple costs including financial, chronological, and emotional, in order to satisfy standards that can sometimes not be met. In Ms Jones's case, even acquiring all of the documents and proof was not enough, and she faced a highly capricious situation where the court turned down her application because she had – in alignment with her own protection order – lost track of her abuser's whereabouts.⁹

⁵ "Separation& Divorce" (1 July 2025) justice.govt.nz <<https://www.justice.govt.nz/family/separation-divorce/apply-for-a-divorce/divorce-forms-and-fees/>>

⁶ Amy Williams "Fears women can't afford to leave abusive relationships amid cost of living crisis" (2 August 2024) RNZ<www.nzherald.co.nz/nz/fears-women-cant-afford-to-leave-abusive-relationships-amid-cost-of-living-crisis/WOFRIRDPS5CXLFK7BGOL3ZSZAQ/>

⁷ Bridie Witton "Ashley's Law: Parliament agrees to change divorce law for abuse victims" (24 August 2025) Stuff <www.stuff.co.nz/politics/350453191/ashleys-law-parliament-agrees-change-divorce-law-abuse-victims>

⁸ "Family Proceedings (Dissolution of Marriage or Civil Union for Family Violence) Amendment Bill — Third Reading" (16 October 2024) New Zealand Parliament <www.parliament.nz/en/pb/hansard-debates/rhr/combined/HansDeb_20241016_20241016_28>

⁹ Ashley Jones "My marriage is finally over. My fight against New Zealand's archaic divorce law goes on" (30 November 2022) The Spinoff <<https://thespinoff.co.nz/society/30-11-2022/my-marriage-is-finally-over-my-fight-against-this-archaic-divorce-law-goes-on>>

Ms Jones recognised that her situation was caused by a problem in NZ's legal system and, instead of simply moving on with her life, she fought to change what was wrong. She started by putting together a petition which, unfortunately, she was unable to bring to the House.¹⁰ Alongside two other women (Charlotte Abrial and Adele, whose surname could not be provided because of safety concerns), Ms Jones was finally able to make her case before Chris Bishop, MP for Lower Hutt, in 2024, and put together new legislation that was supported by all parties.¹¹ Across parties, MPs emphasised the necessity for the amendment to the law, particularly in facilitating the separation of victims from their abusers; it was also embraced as a way for NZ to demonstrate solidarity with victims of family violence. Royal assent was received in October of 2024, alongside universal support from MPs, and the law itself will be enacted as of October 2025, when all preparations across the profession and the courts have been made.

In addressing the needs of victims, Ashley's Law is an amendment that features a layering of existing legal mechanisms with the dissolution standards of the past. Specifically, in addition to the previous 'no fault' criteria listed above, the applicant can apply for the expedited dissolution based on being a 'protected person'.¹² To qualify as a 'protected person,' the applicant must have a final protection order under the Family Violence Act 2018, or it could have been issued through sections 123B or 123G of the Sentencing Act 2002. Registered foreign protection orders would also count in categorising someone as a 'protected person.'¹³ Under Ashley's Law, a copy of a protection order (or a registered foreign protection order) can be used to qualify an applicant as a 'protected person,' which will then provide the additional ground for dissolution of marriage to that person. The qualifications for being a 'protected person' are robust, given that the law specifies that even discharged protection orders under section 109 of the Family Violence Act 2018 or de-registered foreign protection orders under section 223 of the Family Violence Act 2018 are considered sufficient for an applicant under Ashley's Law.¹⁴ This means that the amendment will be broad enough to cover victims of violence that have been recognised and then acknowledged as terminated; this means that a history of family violence is enough to satisfy the standard for an applicant to be considered a 'protected person.' In practice, this will mean that NZ's dissolution laws will recognise that any violence, once acknowledged by the court, is sufficient to warrant an expedited dissolution of marriage. This will be highly protective for the victims as it will mobilise previous legal work they have done, and support their healing and recovery from a situation recognised as dangerous by granting the dissolution quickly.

¹⁰ "Family Proceedings (Dissolution of Marriage or Civil Union for Family Violence) Amendment Bill — Third Reading" (16 October 2024) < www.parliament.nz/en/pb/hansard-debates/rhr/combined/HansDeb_20241016_20241016_28 >

¹¹ Above at n 9.

¹² Family Violence Act 2018, s 8.

¹³ Family Proceedings (Dissolution of Marriage or Civil Union for Family Violence) Amendment Act 2024, s 39A.

¹⁴ Family Proceedings (Dissolution of Marriage or Civil Union for Family Violence) Amendment Act 2024, s 39A (8).

The legal effects of applying Ashley's Law must also be considered in terms of division of relationship property. The terms of any agreement or settlement made before or during a marriage could be revisited and varied by the court to remedy the resulting disparity in what a party would have received under a nuptial settlement if the marriage had continued, compared to what they will receive after its dissolution of marriage.¹⁵ A claim could not be brought under Section 182 of the Family Proceedings Act 1980 until the marriage was dissolved; therefore, a victim under the Family Proceedings Act 1980 would have to wait at least two years to begin the process of seeking a remedy under section 182 of the Family Proceedings Act 1980 without Ashley's law. Even then, a case would likely have been required to be built in order for the victim to prove to the court that an unfairness was present after the dissolution; this can be devastating for victims of family violence, who often exit the situation with few or no resources. Ashley's Law would bring forward the entire timeline, achieving the dissolution based on the proven record of family violence, and therefore set the situation in motion for the victim to apply for a court review of the settlement, and to formulate orders to remedy the circumstances in which it was made. Section 24(1) of the Property (Relationships) Act 1976 asserts time limits are in place under the Act; specifically, the parties have one year after a final dissolution to apply to the court. Although this expedites the situation for many survivors of family violence, it still stretches the overall timeline to three years, unless Ashley's Law is used to enact the dissolution earlier. This would therefore give better effect to the expediency requirement of Section 24(1) of the Property (Relationships) Act 1976, allowing the earlier law to be applied with even more efficiency for the victims of family violence.

There is no doubt that Ashley's Law is needed in NZ. In addition to the outdated dissolution issues mentioned above, there is also startling evidence that this country is home to more family violence than in many other places within the OECD.¹⁶ Unfortunately, one in three women in NZ will experience abuse within their family relationships, which is substantially higher than in other countries.¹⁷ Furthermore, there is mounting evidence that this family violence occurs at a higher rate in Māori populations, with rates almost tripling for Māori wāhine.¹⁸ NZ's Te Tiriti o Waitangi obligations are legally binding, and therefore we have a strong mandate to offer Māori wāhine support and the legal structure and framework to achieve the safety, mana, and equitable outcomes required.¹⁹ Because Māori wāhine are overrepresented in family violence, the National Strategy to Eliminate Family Violence and Sexual Violence was launched in December of 2021. However, the fact remained that, like many women, Māori wāhine could not exit their marriages

¹⁵ Family Proceedings Act 1980, s 182.

¹⁶ Anna Leask "Family violence study: 'Startling' number of women at risk of death by abuser" (14 May 2024) NZ Herald < www.nzherald.co.nz/nz/family-violence-study-startling-number-of-women-at-risk-of-death-by-abuser/CBW2JL4LC5EY7EDPISWVEHPNI/ >

¹⁷ Above n 15.

¹⁸ "Data and research" Ministry for Women <www.women.govt.nz/womens-safety/data-and-research>

¹⁹ "Te Aorerekura

National Strategy to Eliminate Family Violence and Sexual Violence" (20 August 2025) The Centre for Family Violence and Sexual Violence Prevention <<https://tepunaaonui.govt.nz/national-strategy>>

legally with the expediency that would have preserved their agency within the situation. This is directly counter to the Te Tiriti Principles of Protection and Partnership; the Crown is obligated to protect all Māori under the auspices of the Treaty, and is furthermore required to ensure their right to self-determination.²⁰ Ashley's Law will guarantee not just the protection of Māori wāhine from unsafe partners, but will also allow them to legally sever their ties with their abusers, and move on with their lives. Furthermore, working closely with Māori communities, iwi, and whanau to ensure a break from intimate partner and family violence employing Ashley's Law will bring us closer to more equitable outcomes, and provide a legal backstop to many ongoing problems faced by Māori wāhine.

Additionally, Ashley's Law will allow NZ to set itself apart from the rest of the English-speaking world, and not for the first time. The United Kingdom does not have a fast-track option for dissolving marriage, regardless of having quite recently changed their divorce laws; Australia requires the one-year period of separation to be in place regardless of family violence; and Canada does have recourse for expedited dissolution, but the burden of proof is difficult to meet, and does not stop at a protection order. There is a strong case to be made that NZ's longstanding history of feminism, dating back to when this country offered women the vote in 1893, will be continued with Ashley's Law. Instead of requiring victims to suffer lengthy dissolution periods, NZ will deploy existing protective mechanisms in order to safeguard women (and other victims) from the ongoing risk of violence and abuse many suffer whilst waiting for dissolution to take effect. This is a remarkably non-paternalistic way for NZ to support women, especially, who are the most frequent victims of family violence. It also potentially re-introduces the notion of fault within dissolution of marriage, which could set a highly interesting legal precedent to be explored.

Previous to the Family Proceedings Act 1980, a dissolution of marriage could only be granted within NZ on an at-fault basis, as proven by the applicant.²¹ The previous Act required that adultery, cruelty, desertion for two years, drunkenness, etc, be proven as fault in order for a dissolution to be granted.²² This put the undue burden of proof on the applicant for dissolution, who was often a woman seeking to exit an abusive situation. It also ensured that a dissolution of marriage became a moral failing of the couple, which was legally recognised by the fault-based dissolution. The Family Proceedings Act 1980, on the other hand, offered only one, no-fault mechanism to dissolve a marriage, which is 'irreconcilable breakdown,' meaning a separation of more than two years. This has been purposefully put in place in order to remove the moral weight of at-fault dissolution of marriage; Ashley's Law might return the implication (if not the legal fact) of fault by implying that one party within the family relationship behaved violently

²⁰ Above n 18 and Janine Hayward "Flowing from the Treaty's Words": The Principles of the Treaty of Waitangi" (2004) < www.waitangitribunal.govt.nz/assets/Uploads/Hayward-The-Waitangi-Tribunal-Chapter-3-Flowing-from-the-Treatys-Words.pdf >

²¹ Matrimonial Proceedings Act 1963

²² Matrimonial Proceedings Act 1963, s 10 and 20.

enough to warrant the other party obtaining 'protected person' status. Although fault does not occur under Ashley's Law, per se, a moral weight is certainly attached to a protection order, which serves as legal recognition that the protected party has been harmed. This might set precedence for a future expansion of the moral weight of dissolution, with violent and abusive behaviour being recognised legally as a mechanism for dissolution of marriage. This could be a recalibration of justice that the Family Proceedings Act 1980 law simply could not bring forward; recognition of suffering within marriage was lost at that point, and Ashley's Law might allow victims to be recognised faster and with less difficulty, and add a moral as well as legal weight to their plight.

Overall, Ashley's Law is a necessary adjustment to the process of dissolution of marriage within NZ. It might be considered overdue, whilst at the same time offering a highly innovative mechanism among similar countries, whose dissolution (divorce) proceedings remain out-of-date. Introduced by a woman who was suffering because of the delay in her dissolution of marriage, Ashley's Law makes it so that previously recognised marital breakdown based on family violence can be the grounds to expedite a permanent end to that family structure. This will be highly protective for victims of family violence, especially for Māori wāhine, who remain tragically over-represented in the statistics. Furthermore, Ashley's Law adds moral and legal weight to the reality of family violence, which is unfortunately widespread, and implies that the perpetrators are at fault for the breakdown of the marriage. In the highly pragmatic words of National's Chris Bishop who backed Ms Jones, this amendment means that victims "can get on with their lives."²³

²³ Bridie Witton "Ashley's Law: Parliament agrees to change divorce law for abuse victims" (24 August 2025) Stuff <www.stuff.co.nz/politics/350453191/ashleys-law-parliament-agrees-change-divorce-law-abuse-victims>