

**IN THE CORONERS COURT  
AT CHRISTCHURCH**

**I TE KŌTI KAITIROTIRO MATEWHAWHATI  
KI TĀMAKI MAKĀURAU**

**CSU-2019-CCH-00165 to**

**CSU-2019-CCH-00214**

**CSU-2019-CCH-00326**

**UNDER**

**THE CORONERS ACT 2006**

**IN THE MATTER OF**

An inquiry into the deaths of

**Kaheld Mwafak Alhaj-Mustafa  
Mohammad Omar Faruk  
Ansi Karippakulam Alibava  
Mucaad Aden Ibrahim  
Husna Ahmed  
Ramiz Arifbhal Vora  
Muse Nur Awale  
Hamza Kaled Alhaj-Mustafa  
Muhammad Zeshan Raza  
Karam Bibi  
Ghulam Hussain  
Linda Susan Armstrong  
Musa Vali Suleman Patel  
Mohamad Moosid Mohamedhosen  
Mohammed Imran Khan  
Ashraf El-Moursy Ragheb  
Ali Mah'd Abdullah Elmadani  
Matiullah Safi  
Mounir Guirgis Soliman  
Maheboob Allarakha Khokhar  
Abdukadir Elmi  
Syed Jahandad Ali  
Kamel (Moh'd Kamal) Kamel Darwish  
Ahmed Gamal Eldin Abdel-Ghany  
Amjad Kasem Hamid  
Zakaria Bhuiya  
Abdelfattah Qasem  
Ata Mohammad Ata Elayyan**

Mohsen Mohammed Al.-Harbi  
Muhammad Haziq Bin Mohd-Tarmizi  
Hussein Mohamed Kahlil Moustafa  
Arif Mohemdali Vohra  
Hussein Al-Umari  
Naeem Rashid  
Talha Naeem  
Muhammad Suhail Shahid  
Ashraf Ali (Razak)  
Haroon Mahmood  
Lilik Abdul Hamid  
Sayyad Ahmad Milne  
Farhaj Ahsan  
Muhammad Abdus Samad  
Ashraf Ali  
Junaid Ismail  
MD Mojammel Hog  
Tariq Rashid Omar  
Ozair Kadir  
Osama Adnan Yousef Abukwaik  
Haji Mohemmed Daoud Nabi  
Zekeriya Tuyan

---

**MEMORANDUM OF COUNSEL FOR ZUHAIR DARWISH (BROTHER OF DECEASED)**

**Dated 8 February 2022**

---

---

**This document is prepared by:**

---

Counsel Assisting:  
Anne Toohey  
Canterbury Chambers  
Level 11, 62 Worcester Boulevard  
PO Box 9344  
Tower Junction  
Christchurch 8013  
Tel: (03) 260 3101  
Mobile: (021) 248 0820  
Email: anne@annetoohy.co.nz

---

**MAY IT PLEASE YOUR HONOUR:**

**Introduction**

1. These submissions are filed on behalf of Zuhair Darwish who is the brother of the deceased Kamel Darwish (Kamel), who died in the Masjid an-Nur on 15 March 2019. Mr Zuhair Darwish has Interested Party status.
2. Counsel filed submissions on 18 August 2022, indicating the issues from Mr Darwish's perspective:
  - (a) Pursuant to s 57(2)(c): what was the time that Kamel died? The timing of death recorded by Police is inconsistent with Kamel's cell phone usage.
  - (b) Pursuant to s 57(2)(e): what were the circumstances of Kamel's death (given the anomaly and unexplained use of his phone after the estimated time of death)?
  - (c) Pursuant to s 57(3) and s 57A(2): for the purpose of making recommendations for the purpose of reducing the chances of future deaths occurring in similar circumstances:
    - i. What was the background to the Individual and the lead up to the shooting?
    - ii. What was the Police response into the Masjid al-Nur, particularly in relation to Kamel Darwish?
3. In light of the Minute of Judge Marshall of 28 October 2021, and the Minute of your Honour of 2 December 2021, these submissions are intended to expand on the submissions of 18 August 2021.

**Indication of issues provisionally in scope**

4. Mr Darwish supports the provisional indication that issues 19 – 26 and 28- 30 are included within scope.
5. On 15 March 2019, Mr Zuhair Darwish arrived at the Masjid shortly after the attack, as he planned to meet his brother there. He attempted to phone him a number of times after the attack. Kamel's phone continued to be answered, but there was no noise except static.
6. The Police have confirmed that Kamel's phone was used after the estimated time of death

across a range of functions. Full submissions in relation to this point were filed in August 2021. The Police are unable to explain this, except to say that it may be a malfunction of the phone after it was damaged by an STG constable. There is no expert opinion to support this view.

7. Kamel's body was not removed from the Masjid until 16 March 2021.
8. There is an obvious anomaly in the timing of the messages that were sent and the Police estimate of the time of death.
9. The issues of the emergency response, including the behaviour of the Police to Mr Darwish when he attempted to go into the Masjid to provide assistance to his brother (**issue 24**), the delay in medical response (**issue 19, 23, 25, 26 and 29**) and the time of Kamel's death, is very much in issue from Mr Darwish's perspective.
10. Counsel relies on earlier submissions filed in relation to this aspect, should argument be necessary.
11. St John has provided submissions indicating reliance on the opinion of Dr Hick of 7 October 2021, commending the rapidity with which victims were triaged, treated and moved for transport, and noting that none of the deaths of victims who were alive on Police arrival could have been averted.
12. Counsel made a request for the information provided to Dr Hick upon which his opinion was based, which remains outstanding. It is submitted that the opinion of Dr Hick may be modified following evidence at an Inquest, or alternatively following further engagement in relation to the issues during the Inquiry process. For this reason his opinion needs to be regarded as provisional, and should not be regarded as determinative, or serve to provide a basis for refinement of the proposed scope of issues.

#### **Overlap with Royal Commission of Inquiry (RCOI)**

13. Mr Darwish is particularly concerned in relation to the background of the Individual and the lead up to the shooting.
14. The provisional indication of Judge Marshall is that these issues are outside of scope given the RCOI Terms of Reference and inquiry.
15. There are three grounds on which it is submitted these issues can and should be considered

in this jurisdiction:

- The RCOI hearing did not amount to a ‘rights-compliant’ investigation because the hearing was conducted in private and the families of the Shaheed were precluded from participating.
- It is possible for the inquiry to consider within scope those issues that do not involve failures in the State’s protective duties – being the Individual’s movements, travel outside of New Zealand and potential training outside of New Zealand. This would enable a rights-compliant inquiry into the right to life protected under s 8 of the New Zealand Bill of Rights Act (NZBORA).
- In a previous inquest where there has been a Royal Commission of Inquiry (the inquest following the collapse of the CTV building in the Canterbury Earthquakes)<sup>1</sup>, the hearing of the Royal Commission took place in public, and the evidence was not suppressed. Coroner Matenga was able to take into account the findings as to the causes of the building failure. In this case, the division of responsibility for various areas of investigation is not as clear.

16. It is acknowledged that the RCOI recommendations have been made after consideration of most of the issues of interest to the families of the Shaheed in relation to the terrorist attack.

17. However the families of the Shaheed did not have an opportunity to fully participate in the RCOI process or in the findings. Core Participant Status pursuant to s 17 of the Inquiries Act 2013 was declined for all families of the Shaheed, on the basis that the family members did not have the appropriate security clearance. The opportunities for participation were extremely limited.

18. The RCOI hearing in relation to this matter was conducted in private<sup>2</sup>, and all evidence received was suppressed.

19. It is therefore apparent that despite prior investigations, in two necessary respects a “rights-

---

<sup>1</sup> *Re Cvetanova and others*, Coroner Matenga 25 March 2014

<sup>2</sup> RCOI Report at Part 1, Chapter 4.1, [1]-[7].

compliant” investigation as envisaged by Ellis J in *Wallace v Attorney-General*<sup>3</sup> has not occurred. That is that the proceedings were not conducted in public and did not provide an opportunity for the family of the deceased to be involved.

20. The Coronial jurisdiction expressly recognises the rights of immediate family as interested parties, to participate in inquiries and inquests. It is submitted those rights should be informed by the broader context of the New Zealand Bill of Rights Act 1990. Counsel is aware that the Human Rights Commission is providing submissions to your Honour in this respect.
21. The RCOI’s focus on the State Sector agencies and counter-terrorism resources by such agencies has been an important part of governmental response to the March 15 event, with corresponding recommendations.<sup>4</sup> However, those issues are not the focus of the Interested Parties counsel represents. They are concerned with the Individual’s movements, travel outside of New Zealand and potential training outside of New Zealand.
22. This attack was serious on an international scale. It is an unprecedented scenario in New Zealand. The public interest in the lack of duplication with the RCOI process must be balanced against the utility of that process for the purpose and function of the coronial inquiry. Prior to the enactment of the Coroners Act 2006, the Law Commission report noted that Coroner’s constitutional status is fundamentally different to that of administrative or government agencies.<sup>5</sup>
23. It is submitted that issues 2, 3, 5 and 8 should be within the scope of the inquiry.

**The Individual should not have Interested Party status.**

24. If the final scope excludes those matters pertaining to the Individual’s training and international travel prior to 15 March 2019, it is submitted that the Individual should not have Interested Party status, for the reasons expressed in the Memorandum filed by Mr Zarifeh on behalf of the Police.

---

<sup>3</sup> *Wallace v Attorney-General* [2021] NZHC 1963 at [388], citing *Jordan v United Kingdom* [2001] ECHR 3327 at [103], referred to by Judge Marshall in the Minute of 28 October 2021 at [50]-[53].

<sup>4</sup> Royal Commission of Inquiry into the Attack on Christchurch Mosques on 15 March 2019 Order 2019, and Schedule to the Order in Council setting out Terms of Reference.

<sup>5</sup> *Law Commission Coroners* (NZLC R62, 2000) at [97].

**Issues proposed to be dealt with in the nature of an information request response**

25. In the Minute of 2 December, your Honour indicated that the challenges that a number of Interested Parties encounter, especially those unrepresented, in being able to receive and access information relevant to the inquiry in timely manner, is a significant concern. Counsel reiterates that this remains a significant concern. Requests for information are not being responded to substantively, or in a timely manner, despite representation. Counsel can indicate that most of the information requests made on behalf of clients have not been provided.
26. An example is the request counsel made on 26 November for the information provided to Dr Hick in order for him to reach his opinion. Coronial Services indicated on 30 November that the documents were being prepared. Counsel made further inquiry on 31 January 2022. On 8 February Coronial Services indicated the requests would not be responded to until after the Scope hearing. The difficulty is that at least one party seeks to rely on the Hick report to limit or modify the scope.
27. Therefore the indication by Judge Marshall that issues be dealt with in the first instance by information requests, has not to date been able to occur.
28. Counsel may seek to be heard orally in relation to this issue, should reliance be placed on material that the Interested Parties have not been provided, at the Scope Hearing.

Dated this 8<sup>th</sup> day of February 2022



---

**A M Toohey**

Counsel for Zuhair Darwish