

**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 AYA AL-UMARI (SISTER OF DECEASED)

Dated 8 February 2022

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MAY IT PLEASE YOUR HONOUR:

Introduction

1. These submissions are filed on behalf of Aya Al-Umari, who is the sister of the deceased Hussein Al-Umari, who died in the Masjid an-Nur on 15 March 2019. Ms Al-Umari has Interested Party status.
2. Counsel filed submissions on 18 August 2022, indicating the issues from Ms Al-Umari's perspective:
 - (a) Pursuant to s 57(2)(e): what were the circumstances of Hussein Al-Umari's death (given the information that he was engaged in trying to disable the Individual at the time of his death)?
 - (b) 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:
 - What was the background to the Individual and the lead up to the shooting?
 - How can death in like circumstances be prevented in the future?
3. In light of the Minute of Judge Marshall of 28 October 2021, these submissions are intended to reiterate and expand on the submissions of 18 August 2021.

Indication of issues provisionally in scope

4. Ms Al-Umari supports the provisional indication that issues 19 – 26 and 28- 30 are included within scope.
5. It is important to Ms Al-Umari that her family are able to present evidence to your Honour, to support a finding that Mr Al-Umari died in an act of bravery. He was actively approaching the Individual to disable him, to save the lives of others in the Masjid. This has not been determined and is not apparent from the Police prosecution process or the RCOI findings. Your Honour has indicated this as provisionally within scope as **issue 19**.
6. Counsel relies on earlier submissions filed in relation to this aspect, should argument be necessary.

7. 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.
8. 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.
9. The issue of the emergency response, and whether some of the deaths could be prevented, is very much a live issue.

Overlap with Royal Commission of Inquiry (RCOI)

10. Ms Al-Umari is particularly concerned in relation to:
 - Conflicting findings of the RCOI, being that the Individual was able to take advantage of New Zealand's semi-lax firearms laws, and a contrasting finding that there was no plausible way the Individual could have been detected.
 - Secondly the RCOI report did not list Afghanistan as a country the Individual visited, although information from the Individual's sister indicates he was there and that on his return he was a changed person. Given the Individual's visits to Iran and Afghanistan, and the accuracy of his shooting of Mr Al-Umari (let alone the other Shaheed), it seems likely he had undergone training to kill people overseas.
11. The provisional indication of Judge Marshall is that these issues (identified as **issue 3**) are outside of scope given the RCOI Terms of Reference and inquiry.
12. 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)¹, 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.

13. 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.

14. However the families of the Shaheed did not have an opportunity to fully participate in the RCOI process or in the findings. Ms Al-Umari was part of a Reference Group. The purpose of the group was effectively community engagement. Ms Al-Umari sought Core Participant Status pursuant to s 17 of the Inquiries Act 2013 to enable her to participate in the evidence gathering of the RCOI, to test that evidence and to be able to have input into the RCOI's recommendations. This 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.

15. The RCOI hearing in relation to this matter was conducted in private², and all evidence received was suppressed.

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

¹ *Re Cvetanova and others*, Coroner Matenga 25 March 2014

² RCOI Report at Part 1, Chapter 4.1, [1]-[7].

compliant” investigation as envisaged by Ellis J in *Wallace v Attorney-General*³ 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.

17. 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.
18. 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.⁴ 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.
19. 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.⁵
20. It is submitted that Issue 3 should be within the scope of the inquiry.

The Individual should not have Interested Party status.

21. 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.

³ *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].

⁴ 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.

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

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

22. 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.
23. 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.
24. 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.
25. 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 8th day of February 2022



A M Toohey

Counsel for Aya Al-Umari