

**IN THE CORONER'S COURT
IN CHRISTCHURCH
(IN-CHAMBERS)**

**I TE KŌTI KAITIROTIRO MATEWHAWHATI
KI TE ŌTAUTAHI
[I TE TARI]**

**CSU-2019-CCH-000165 to
CSU-2019-CCH-000214;
CSU-2019-CCH-000326**

UNDER

THE CORONERS ACT 2006

AND

IN THE MATTER OF

**An inquiry into the deaths of
51 people in relation to the 15
March 2019 Christchurch
Masajidain Attacks**

MEMORANDUM OF COUNSEL FOR MRS EL-SHAZLY AND HER FAMILY

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MAY IT PLEASE THE CORONER,

1. This submission is filed on behalf of Mrs Salwa Hossein El-Shazly, who was bullet injured in the Linwood Islamic Centre on 15 March 2019, and her husband, Mr Imam Ibrahim Abdelhalim and her son, Mustafa Abdelhalim, who were both present in the Linwood Mosque on 15 March 2019. Mrs El-Shazly, Mr Imam Abdelhalim and Mr Mustafa Abdelhalim have Interested Party Status (collectively, “Interested Parties”).
2. Counsel apologises for being late in presenting this submission, and Counsel appreciates the time of the Coroner for granting an extension. Due to a family health condition, Counsel was unable to work on this matter between 28 February and 4 March 2022.
3. Counsel has read your Minute on General Information Disclosure No. 1, and will review the information as set out in paragraph 20 of the Minute. Counsel will review the provided evidence and obtain full instructions from the Interested Parties and will provide a submission accordingly.
4. Counsel has also reviewed your Minute on the Procedure for Accessing and Viewing the Manifesto Document and Video Footage. Based on instructions of the Interested Parties, Counsel may request specific information in line with the provisions that were outlined in the Minute.
5. The Interested Parties intend to support the application for the Human Rights Commission to be granted leave to intervene. The Interested Parties believe the Human Rights Commission has a crucial role to play in the inquiry. Counsel submits that human right issues need to be completely considered including ensuring that there is a rights compliant investigation into the 51 deaths. The Interested Parties submit that the Royal Commission of Inquiry (RCOI) was not a rights complaint investigation.

Submission on issues to be within scope

6. The Interested Parties agree with the issues that have been considered as falling within the scope of the inquiry as set out in Appendix A of the Scope Minute of Judge Marshall.

Submission on one issue which is not within the Scope: National Security Check

7. Counsel draws your attention to one issue that is not In Scope of the Minute of Judge Marshall. However, this issue can be considered to naturally align with an In Scope issue.¹ Counsel submits that the following issue be advanced that it ought to be in-scope. The issue is about conducting National Security Check (NSC) on all non-New Zealand citizens and residents who are travelling to New Zealand in the future. This issue is related to future circumstances and it is in line with ss 57(3) and 57A(2) of the Coroners Act 2006 (“the Act”) for the purpose of making recommendations for reducing the chances of future deaths occurring in similar circumstances.
8. The report of the RCOI refers to the entitlement of the terrorist to travel to New Zealand because he was an Australian citizen.² Furthermore, on arrival in New Zealand, Australian citizens are eligible for a resident visa based on the Trans-Tasman Travel Arrangement. Australian citizens do not need to apply for pre-departure visas.³
9. The New Zealand immigration law is designed in a way that it does not require certain nationalities to undergo the NSC process. In addition to Australian citizens, visitors from the 61 visa waiver countries could also apply for their visitor visa and entry permission together when they arrived in New Zealand by filling an arrival card and presenting it at the border. They are also did not have to apply for pre-departure visas, nor NSC is required for them.⁴
10. Counsel notes that the above law and policies allow certain nationalities to not undergo the NSC, however, this law needs to be changed. Pursuant to ss 57(2)(d) and (e) and 57(3) of the Act, in the view of Counsel, it is relevant to recommend substantial changes in that regard.

¹ Paragraph 4 of your Minute on Interim Non-Publication Order No. 1.

² The RCOI, Volume 1, page 11, paragraph 13.

³ Section 8 of the Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010.

⁴ The full list is provided in Schedule 2 of the Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010.

11. The question that might be asked is that if the terrorist, as an Australian citizen, was required to undergo the NSC, could the relevant agency identify him and prevent the mass murder?

12. The full extent of the NSC is unknown to Counsel. As far as Counsel understands, NSC is conducted by the Immigration New Zealand (“INZ”) in collaboration with the New Zealand Security Intelligence service (“NZSIS”). For certain visa applicants, they are required to complete a form, titled as National Security Check, INZ 1209 form (“annexed and marked A”). This form consists the following information which a visa applicant must complete: General Information; Previous Visa/Permits; Employment; Education and Military History. This form authorises INZ to make any necessary enquiries about information on the form and to share the information with other government agencies (including overseas agencies) to the extent necessary to make decisions about the immigration status of the visa applicant.⁵ The INZ Operation Manual, which contains the immigration instructions that either permanent or temporary visa applicants must follow, does not contain any information about NSC.⁶

13. Counsel, in his capacity as a solicitor, advises on immigration matters, and based on the experience of his clients, Counsel understands that this process is predominantly compulsory for visa applicants who have citizenships from countries that are considered as “high-risk countries”. The list is designed by the NZSIS. In the experience of Counsel, for the majority of visa applicants who have Islamic backgrounds, or who are travelling from certain Muslim countries, NSC is compulsory. Counsel, in his personal capacity, was required to undergo the NZS process for both his student visa and resident visa applications. The Interested Parties who migrated from Egypt to New Zealand in the early 1990s under the general skilled migrant category, also were required to go through the same process.

⁵ Page 6 of Annexed “A”.

⁶ The full online version of the Operation Manual is available in here: <https://www.immigration.govt.nz/opsmanual/#35439.htm>. An example of a permanent visa is a resident visa, and work or tourist visas are temporary visas.

14. The report of the RCOI confirms the above experiences:⁷

Immigration New Zealand rely on national security instructions to determine if a visa applicant requires a National Security Check before their visa application can be processed. The national security instructions include a list of countries or territories of possible security concern, including those known for extremism. This list is primarily focused on people who have connections with African, Asian and Middle Eastern countries. If a National Security Check is required, this is carried out by the New Zealand Security Intelligence Service.

15. The RCOI indicates that the NZSIS “is currently [November 2020] undertaking a review of the National Security Check process for visa and other immigration applications.”⁸ Pursuant to s 57(3) of the Act:

- What progress has been made since November 2020, when the RCOI report was published, in relation to the NSC review?
- On what aspects the NZS process for visa and other immigration applications are changing?
- For what nationalities, the NSC will become compulsory?
- For what type of visas, the NSC will become compulsory?

16. Under General Information Request, Counsel inquired from both INZ and NZSIS the above questions and the full extent of the NSC process. Given the sensitivity of the information, Counsel may not be given appropriate information. As a result, Counsel requests the Coroner to inquire the above questions from both INZ and NZSIS. Counsel requests the Coroner to treat those information in the same way as other information were treated and explained in the Minute on General Information Disclosure No. 1, and only with certain restrictions, which are appropriate in the view of the Coroner, those information to be available to Interested Parties and/or other interested parties and their Counsel.

Dated at Christchurch this 11th day of March 2022

Amir Bastani

Dr Amir Bastani

Counsel for El-Shazly and her family

⁷ The RCOI, Volume 3, part 3, page 507 [16]. For the same line of thinking, please see also the RCOI, Volume 3, part 8, page 507, [54]-[59].

⁸ The RCOI, Volume 3, part 3, page 507, paragraph 16. Addition is added.