

**IN THE CORONERS COURT
AT AUCKLAND**

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

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

UNDER

THE CORONERS ACT 2006

IN THE MATTER OF

**An inquiry into the deaths of
Khaled Mwafak Alhaj-Mustafa
And 50 others**

Memorandum of Counsel for Brenton Tarrant:

Issues for the Inquiry

2 November 2021

**Judicial Officer: Judge Deborah Marshall,
then Coroner Windley**

Counsel: Dr Tony Ellis/Graeme Edgeler

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May it Please Your Honour

1. I have recently been instructed to act, together with Graeme Edgeler, Barrister as my junior, for Mr Brenton Tarrant in respect to a number of matters in respect of the *Royal Commission of Inquiry into the terrorist attack on Christchurch masjidain*, and also this inquiry.
2. I have read your publicly available minute of 28 October 2021, regarding the Christchurch Mosque attacks inquiry for the 51 dead, inviting submissions from persons of interest.
3. I am unable to fully comprehend it at the moment, as I have only just been instructed, and the two appendices to the minute are of some length, and will require considerable time to reflect upon.
4. Nevertheless, it is not premature to file this memorandum, as will become apparent from reading it: it is necessary and serious legal and procedural matters may arise, of which you as Coroner should have early notice.
5. Mr Tarrant is as an interested party in this inquiry.
6. It is regrettable that he was not earlier advised of the start of the process. As he is held in virtually 24-hour solitary confinement in the PERU (Persons of Exception Risk-Unit 11 of Auckland Prison) there are issues arising as to his receiving information, and he has only limited access to daily news.
7. In terms of the s 9 interpretation section, Mr Tarrant fits the definition that he is:
 - (c) a person whose conduct is, in the view of the responsible coroner, likely to be called into question during the course of any inquiry in relation to the death or suspected death; and
8. Mr Tarrant instructs that the significant references to the Royal Commission, which he has to date been refused a copy of, make giving detailed instructions impossible, and may require a stay of the inquiry whilst that is sorted out in the High Court.
9. He further instructs that your Honour's reference to his guilt:

[9] The Individual pleaded guilty to all charges. On 27 August 2020, the Individual was sentenced to life imprisonment without parole on the 51 charges of murder. He was sentenced to concurrent terms of 12 years imprisonment on the charges of attempted murder, and to life imprisonment on the charge of committing a terrorist act.

[10] The families and friends of the deceased have been deeply affected by the deaths and the nature of the deaths. Many other people were injured as a result of the Individual's actions. Of the injured, many have suffered life-changing physical and mental injuries.

needs to be seen in the light, that he instructs his guilty pleas were obtained by "duress", or perhaps a breach of s 9 of the NZBORA:

9 Right not to be subjected to torture or cruel treatment

Everyone has the right not to be subjected to torture or to cruel, degrading, or disproportionately severe treatment or punishment.

10. By this, he means he was subject to inhuman or degrading treatment whilst on remand, which prevented a fair trial.
11. Counsel is conscious of the major distress such an exercise of his right to appeal may have on the "victims" families, and many parts of society.
12. Nevertheless, carrying out client's instructions is every barrister's duty, and whilst this case is likely to be the pinnacle of professional difficulty, every accused or convicted person is entitled to exercise his right of access to the Court.

Improper description of Mr Tarrant as "the individual"

13. I note that you describe Mr Tarrant, as "the Individual", in your minute of 28 October 2021. This is a serious breach of human rights. This behaviour is deeply offensive, and unlawful. See:¹

10.2 The Personal Name as a Sign of Humanity

"No mortal remains nameless," stated Homer in the Odyssey – and it seems that he was indeed right when he alleged that no human being was without a name. For, not only is it so that, according to current knowledge, the personal name is a solid component of all natural languages, it is also the case that we know of no

¹ Kaufmann, P., Kuch, H., Neuhäuser, C., & Webster, E. Humiliation, degradation, dehumanization : Human dignity violated (*Library of ethics and applied philosophy*; v. 24). Dordrecht; New York: Springer. (2011).

culture in which people are not bestowed with a name. It appears as though the personal name plays a decisive role for our human existence....

The personal name vouches for the fact that we recognize someone to be a member of the human community. **The name itself conveys a fundamental belonging to this species; in other words, having a name means that one is recognized as human.**

[**Bold** added]

14. Mr Tarrant is no longer a suspect, but a convicted criminal in detention, despite his horrific crimes that part of his legal life is over. He has been tried and sentenced, and is entitled to be treated as a *human*.
15. He is also entitled to be treated with respect and dignity, despite his crimes, s 23(5) NZBORA provides:

(5) Everyone deprived of liberty shall be treated with humanity and with respect for the inherent dignity of the person.
16. It is not the least bit dignified, to be stripped of you name, it is an inherent part of your identity, and shows no respect for Mr Tarrant.
17. It is very important that Mr Tarrant is not dehumanized especially by judicial officers:²

10.3 The Politics of the Personal Name

The misrecognition of the personal name played an influential role in the German history of antisemitism. In this case, the Jewish name was used in a unique way as a means of enforcing the politics of social exclusion. The initial use of nicknames or derogatory names, which can be regarded as seemingly harmless and belonging to ordinary teasing practices, gradually developed into a systematically controlled policy which culminated in the complete disappropriation of the name.

18. Making comparisons with antisemitic behaviour may seem strong, but it undoubtedly deserved in the current circumstances.
19. This is a poor start to a coronial inquiry, attempting to render Mr Tarrant a non-person. It is not equal protection and equal treatment before the law, well-respected common law norms.
20. This response does not come from "**the Individual**". Obviously, it comes from

² Ibid.

Mr Tarrant.

21. Whilst, the Prime Minister, in a Ministerial statement on 19 March 2019, said:

There is one person at the centre of this terror attack against our Muslim community in New Zealand. A 28-year-old man, an Australian citizen, has been charged with one count of murder; other charges will follow. He will face the full force of the law in New Zealand. The families of the fallen will have justice. He sought many things from his act of terror, but one was notoriety, and that is why you will never hear me mention his name. He is a terrorist, he is a criminal, he is an extremist, but he will, when I speak, be nameless, and to others I implore you speak the names of those who were lost rather than the name of the man who took them. He may have sought notoriety but we in New Zealand will give him nothing—not even his name.

22. Politics are fine for the Prime Minister, especially in times of national tragedy, but the Chief Coroner is a judicial officer, and there is no place for a judicial officer to engage in politics, especially politics that demean.

23. Mander J, in his extensive sentencing notes, properly refers to Mr Tarrant by name. So should the Chief Coroner, and Coroner Windley.

24. Every judicial officer by definition, is independent of the Executive Branch, and should not be swayed by any Prime Ministerial, or other executive action. If the Chief Coroner was, this has compromised her independence.

25. The decision to call Mr Tarrant “**the Individual**” was made unlawfully, without hearing from Mr Tarrant, in breach of natural justice, and without reasons, and should cease immediately. An apology would be appropriate.

26. This is at least also a breach of s 23(5) NZBORA, and of s 27, and the common law right to natural justice, and reasons.

27. The International Covenant on Civil and Political Rights, provides at Article 16:

Article 16

Everyone shall have the right to recognition everywhere as a person before the law.

28. Arguably, the Chief Coroner’s actions are also in breach of that article.

29. For example, in May and Daly.³ the authors muse that:

Despite having no specific universally agreed-upon definition, dignity come to stand for the essential principle **that every human being has equal and inherent worth that others are bound to respect.** The recognition of human dignity has become **central to the very notion of a “just rule of law,”** as the American Bar Association has said...

Dignity is now recognized as foundational in International and Regional human rights instruments **so much so that it led it to be an element of customary law,** binding nations whether or not they accede to dignity-based treaties. **And it is an indispensable constitutionalism throughout the world.**

[**Bold** added]

30. Justice Aharon Barak, for the Israeli Supreme Court, has described it this way:

These situations can be classified, for convenience, into categories and types, such as the right to a dignified human existence; the right to physical and emotional integrity; **the right to a name** [and other] derivative constitutional rights norms.⁴

[**Bold** added]

31. The German Constitutional Court has been described as categorising dignity interests in the following way:

integrity of the human body, psychic integrity of the human personality, '**elementary equality**, living conditions worthy of human beings [and, most recently,] the free and equal participation in public power.

[**Bold** added]

32. May and Daly continue, saying dignity jurisprudence is entrenched in the constitutionalism of India, and its neighbours, including Pakistan, Bangladesh, and Nepal, and that it is growing in Ireland, and the United States, and recent cases from Botswana, Malawi, and Nigeria show the concept taking hold in constitutional systems in Africa outside of South Africa, and cases from Taiwan, and the Philippines show it taking root in Asia Pacific as well. While the range of cases and their globally diverse settings might suggest that the right to dignity means too much to be useful, **many of the cases coalesce around a central meaning that recognizes the inherent**

³ May, J., Daly, E., & Edward Elgar Publishing publisher. Advanced introduction to human dignity and law (Elgar advanced introductions). Cheltenham, UK: *Edward Elgar Publishing Limited*, (2020).

⁴ *Adalah, etal v. Minister of Interior, et al*, HCJ 7052/03, Supreme Court, 14 May 2006.

and equal worth of each individual.

[**Bold** added]

33. In terms of investigations, such as an inquiry, as here:

The rules pertaining to investigations are important to a democratic state. They reflect its character. An illegal investigation harms the suspect's human dignity. It equally harms society's fabric.⁵

34. The simple solution here is to offer an apology, to avoid a diverting excursion into judicially reviewing the offensive terminology.

Fixture

35. I have a pre-existing fixture that has been postponed several times on the 15 and 16 December 2021, in the Wellington District Court, presided over by an Auckland Judge, as my client is a well-known local lawyer, so I will be unavailable on those days.

36. As Mr Tarrant was not advised of the start of the inquiry process, he had not been heard on the fixture date, until I advised him.

37. I am obviously not clear as yet, whether I would seek an adjournment.

38. [REDACTED]

39. A teleconference might be useful to convene if that does not present too many logistical difficulties.



**DR TONY ELLIS
COUNSEL FOR BRENTON TARRANT
2 November 2021**

To: The Chief Coroner at Auckland

⁵ *Public Committee Against Torture v. Israel*, HCJ 5100/94.

And to: coronial.response@justice.govt.nz
The other interested parties as yet unknown