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Families turn to court in bid to silence mosque shooter

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By Catherine Hutton

The coronial inquest investigating the Christchurch mosque shootings is a safe space for victims' families and one where the terrorist should have no voice.

That is the view of survivors and families of some of the 51 victims, who have taken their fight to stop the terrorist from being cross-examined at the second phase of the inquest to the Court of Appeal in Wellington.

The shooter has already provided a lengthy statement to the inquest, followed by a shorter supplementary one, but the issue is whether he should be called as a witness and cross-examined.



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Deputy Chief Coroner Brigitte Windley had sought to call him, a move which angered families and survivors, who unsuccessfully appealed to the High Court.

Yesterday, the survivors and families asked the Court of Appeal to grant their request, arguing the High Court erred when it issued its ruling.

In doing so, they also sought an order setting aside Coroner Windley's decision to call the terrorist as a witness.

Yesterday's hearing was four days shy of the seventh anniversary of the shooting at Al Noor Mosque and Linwood Islamic Centre in March 2019.

Nikki Pender, lawyer for Tariq Samad Muhammad, whose father was killed in the attacks, who is representing some of the victims' families, submitted it was hard to imagine a case where a judicial review would be taken to stop a witness appearing at a coroner's inquest.

"But this is an exceptional case, and these are extraordinary circumstances," she told the court's three-person panel.

She suggested the coroner erred by failing to take into account the exceptionality of calling a person such as the terrorist as a witness, whom she described as "like no other witness".

In deciding to call the shooter as a witness, he had been treated like any other witness; that bar was too low, hence the decision was flawed, she said.

The terrorist murdered 51 people by invading and violating two mosques while people were in prayer, and in doing so he had violated a safe space.

She said, in contrast, with the unique jurisprudence of the coroner's court and this particular inquest, the therapeutic jurisprudence that operated was very visible, with support services readily available.

Each phase of the inquest started with a karakia and a recital from the Koran read by an imam, followed by the reading of a roll call of victims' names.

Ms Pender told the court it was more than just creating a safe space; it was about honouring the deceased and putting them at the centre of the process.

Therefore, any decision to call the shooter as a witness had to take into account the significance of this on the jurisdiction and the safe space that had been created.

She accepted that while witnesses were called to assist the coroner, she questioned the value of calling the terrorist, saying his ideology and actions that day were diametrically opposed to stopping mass shootings in the future.

Christchurch barrister Kerry Cook, who was appointed as the counsel assisting to contradict, told the court the coroner and the High Court had determined that the shooter's evidence was relevant, necessary and required to prevent future tragedies.

He also suggested to the court that oral questioning was the best way of examining the shooter's claims, drawing out nuances and inconsistencies that might not be apparent in written submissions.

In terms of the argument that the terrorist's evidence would duplicate what he had told the royal commission, Mr Cook submitted that their objectives were different.

The public nature of the coronial inquiry was a different process from that followed by the royal commission, and focused on possible lessons that could be learned.

He suggested the coroner's decision was hers to make, and the decision was not unreasonable.

"In this particular case, in terms of context, statute and common law and the factual basis, this was a decision open to the coroner to make," he said.

A counsel assisting the court, Sarah Jerebine, KC, pointed to the relevant legislation, which she said showed the coroner had not only the jurisdiction but also the discretion to make the decision she had.

Ms Jerebine said that in making her decision, the coroner had weighed up all the available information, as well as the interests of justice, purpose and any information she thought would be useful.

The second phase of the inquest is examining how the terrorist came to obtain the guns used in the massacre. The court heard that part of the inquiry had now paused, pending the outcome of this case and the gunman's recent appeal against his conviction.

He is serving life imprisonment without parole at present.

Justices Jillian Mallon, Sarah Katz and Matthew Palmer reserved their decision in that case, indicating they planned to release it as soon as possible.

• Catherine Hutton is an Open Justice reporter, based in Wellington. She has worked as a journalist at the Waikato Times and RNZ. Most recently she was working as a media adviser at the Ministry of Justice.