JustCommunity

The Criminal Justice Court Process in Q v T:

Victim Sentiments, Reflections, Recommendations

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CONTENTS

Tēnā koutou katoa & Greetings of Salām!

1. Foreword

1.1. This interim report examines systemic shortcomings in the Criminal Justice court process with particular reference to their consequences on Christchurch attack victims in the case of Q v T.

1.2. The report has, by virtue of its being based on raw, immediate feedback from over 100 victims present at the June 14 hearing, an inherent tone of urgency. It is an unsanitised inspection of the current state of the system with respect to a particularly vulnerable community, and with that vulnerability being uniquely multi-faceted.

1.3. Despite the confronting content of the report, we hope that its release and related awareness work will be a bridge, specifically between the victims and a system of criminal justice that is relatively isolated from its various communities, particularly from the victim community. That isolation and compartmentalisation has consequences every day but, in a case such as this, the impact is profound.

1.4. As that system now, after some 150 years, turns to seriously consider its consequences upon its native peoples, it is coming to acknowledge ways in which it has not catered to the cultural needs and circumstances of Aotearoa. The system remains disconnected from a range of diverse communities and that disconnect has been brought to bear in an acute way on victims of severe trauma from a vulnerable community.

1.5. This report is not intended as an attack on any system, and several better qualified and better resourced inquiries are ongoing, as well as many such inquiries and reports completed in recent decades, looking into the inherent failings of the system. The report is also not intended as an attack on Christchurch or its regional or local systems, facilitates and institutions. The role of this report is to make observations noted by the victims, which are often the direct result of either the nature of our system and/or its regional manifestation(s) in Christchurch.

1.6. In many ways, this case is testing our system's ability to provide for a different community.

1.7. This report arose as a result of observations made by the authors at the 14 June Hearing of Q v T and from the sentiments of victims during and after the briefing sessions at the hearing. It is not confined to those immediate observations and has incorporated updates, including progress from the Ministry of Justice on the court process and observations from the 15 August hearing.

2. Report audience

2.1. This report is offered to any agencies which may have contributed in the areas of concern or which may be able to offer contributions to the improvement of the justice system. We acknowledge that implementing an appropriate legal process in the case of the Christchurch attacks is a team effort, calling on various critical parts of the legal system. This does not necessarily mean that the changes required to adapt the justice system are exceptional or remarkable; many of these hopes and expectations for responsivity and adaptability have been sought for a long time. In this case, the victims and the wider Muslim community find themselves making a familiar, antiquated request: for a system that is inclusive and acknowledging of those it serves and affects.

2.2. The Muslim community values the constitutional structure which professes an ability to provide for a pluralistic, diverse community, and as such, promises to provide for the need of different communities. Muslims value how the application of long-standing, well-known, and well-respected legal principles is reflected in a relatively stable, peaceful country. It is a country to which so many Muslims have been happy to migrate. However, the real measure of a critical legal service has not been truly tested until now, when the Muslim community was unexpectedly and suddenly hit by the darkest single incident to have occurred to any migrant community in Aotearoa New Zealand.

2.3. It is neither expected nor requested that the trial be transferred to a Muslim community setting such as the nearest equivalent to a Marae – in this case, perhaps, a Masjid (mosque) – or that Muslims should somehow be directly involved in the substantive aspects of the trial process such that the neutrality and other sacred protections of the legal system would be undermined. In fact, many members of the Muslim community have expressed their support of due process for the defendant so that no further complications arise at the conclusion of the trial.

2.4. It is accepted and held to be fortunate that we have a legal system that acts on behalf of the public — but that is where the issues lie. By that we mean whether the process has any familiarity with those it is acting on behalf of: a marginalised community from whom all of the victims happen to have come.[1] This issue of marginalisation raises an additional, significant – and seemingly never discussed – issue: our assumptions that the trauma of March 15 is the only element of trauma to be considered. Many members of this community have lived through traumatising situations unknown to many in the host community.

2.5. The dominant “pakeha” community grew up in a significantly ordered existence with reasonable certainty that systems of law and governance operate with order and answerability. This has not been the case in the lives of many members of the Muslim community here. The mitigation of stress and

[1] It is entirely consistent with Islamic principles that the state remains the arbiter in criminal matters.

trauma will therefore demand a layered approach with a heightened sense of empathy.

2.6. The authors aim to address significant concerns with the current criminal justice system and its impacts, specifically on the victims, who play a vital role in the process. They are the ones who experience a substantive amount of sentiment as a result of the process.

2.7. Our aim is to provide recommendations to assist the Ministry of Justice ("MOJ"). Those recommendations include assisting MOJ with learning outcomes and an opportunity to reflect on and review our current system. That assistance extends to the urgent need to adapt the process to become more inclusive, acknowledging, and respectful to the victim community in order to avoid further re-traumatisation and harm against the victims.

2.8. We hope that MOJ and relevant agencies carefully consider The Report and work alongside the community in taking crucial, imperative, and critical steps to accommodate a community that has been severely hurt. This hurt should not be compounded by shortcomings in the system.

3. Introduction

3.1. The philosophy of the cultural homogeneity of the legal system has existed in our system since its establishment. It has operated with indifference or active resistance to any non-Western culture which might be seen to bring to a logical, unemotional system the taint of emotion, or even humanity. Accordingly, the legal system's seeking to establish "a constitutionally homogenised population, one that reflected Anglo-settler values, rather than a pluralistic one with sources of political authority apart from the state"[2] is seen by victims — in some cases, explicitly — to merely be a legitimised continuation of the accused's intention to remove anything other than a homogenous Anglo-settler population from their community. These features are common and have been noted in the Royal Commission of Inquiry's process which has exacerbated the victims' predicament.[3]

3.2. Regarding the obvious questions of what solutions may be realistically provided, that depends on having the political and the judicial will to make meaningful, careful alterations to the court process that neither leaves any ground of concern or even perceived concern from the Defendant but also does not leave an already deeply alienated group, disenfranchised.

3.3. The continued global significance of the Christchurch attacks should be noted: the attacks have been allegedly cited in a number of subsequent international attacks, xenophobic manifestos (including the selling of the Defendant's manifesto itself internationally),[4] and have, in a sense, become the standard frame of reference by which other attacks are executed or upon which they are based.

3.4. The specific examples of trauma discovered and spoken of at the 14 June hearing were simply holes through which the pressure of being *othered* escalated. While there are some readily available remedies to some of those specific sources of trauma, there will continue to be those holes and gaps as we work towards a new standard of inclusivity within our justice system. At its core is the pressure of being othered, which is essentially what is causing and contributing to the ongoing trauma. This pressure of being othered must be reduced.

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[2] Paul McHugh, Aboriginal Societies and the Common Law: A History of Sovereignty, Status, and Self-Determination (Oxford University Press, New York, 2004), at 49.

[3] It has by now been well-identified through a range of critiques that the constitution of the Royal Commission and legal assisters are perceived to be culturally inadequate and inappropriate in order to be able to understand and address the key issues facing the victim community.

[4] Anneke Smith "Accused Christchurch mosque shooter's manifesto printed, distributed by neo-Nazi" (22 August 2019) Radio New Zealand https://www.rnz.co.nz/news/national/397162/accused-christchurch-mosque-shooter-s-manifesto-printed-distributed-by-neo-nazi.

4. Executive Summary

4.1. This report considers the sentiments which were conveyed by attack victims, mainly immediately after the 14 June hearing, but also subsequently, such as two hours later at Friday prayers at Al-Noor Mosque.

4.2. The objectives of this report are two-fold. First, it is to provide authentic feedback from victims and legal professionals in order to identify the most appropriate ways to move forward while mitigating as much as possible the risk of further traumatisation for victims and the community. It is also to consider how our current justice system must significantly adapt to the diverse cultural needs of victims in order to ensure that the rights and interests of all those involved (both defendants and victims) are protected.

4.3. The second objective is one that looks at the larger picture of our current justice system and invites the advisory experts and panels who have been appointed to review our criminal justice system, to analyse and assess this report in order to adapt the system into one which is inclusive of all New Zealanders and their diverse needs. This report hopes to contribute to a critical current conversation, one of a monocultural legal system which is neither designed for nor suited to victims with ethnic or cultural backgrounds that differ from those of the dominant culture whose values shaped the system.

4.4. Our first recipients of this report are those directly involved with the criminal justice system such as the Ministry of Justice, Te Uepu Hapai i te Ora, the Chief Justice, and the Chief Victims' Advisor. However, the report is also for all those who are willing to invest in the reformation of this justice system, and to those whose roles fall in between administrative policy and judicial oversight.

4.5. It is true that the court process is not known to be a process that is easily adaptable or progressive and this therefore provides additional challenges within the court context. However, in many ways the response by the court process is also a reflection of the wider societal inability to respond appropriately to the events of March 15; an issue that is underpinned by an associated inability to realise, acknowledge and address the issues that are brought to the fore.

4.6. This report offers insights into consequences of the process on the victims, and avenues for mitigating those consequences which have emerged as unduly harmful to victims and their whānau. While it does not, indeed cannot, foresee all possible future sources of harm, it does make wider observations from the experience of the 14 June hearing and through this experiential learning and education, expects to help mitigate any future sources of potential harm arising.

4.7. This report, above all, highlights approaches and recommends fundamental components such as preparing witnesses for potentially traumatising circumstances, through culturally appropriate briefings (prior to the court

dates) and an opportunity for victims to be heard on issues of critical importance to them.

4.8. Please note, that the issues raised in this report are not directed at one particular agency. This matter and the plight of the victims is being handled by a number of different agencies including Police, the Crown, the Ministry, and the Judiciary. There are different aspects that can be improved by different agencies which also includes and extends to the New Zealand Muslim community who, in a post-9/11 climate, should by now have had in place a professional cultural response team of some kind.[5]

4.9. The authors once again emphasise that ensuring due process and a fair trial for an offender/ defendant need not be compromised in order to ensure victims are included and acknowledged. The defendant's rights and victims' rights are equally important in the criminal justice system and both can coexist within the process.

4.10. We would also like to acknowledge the Ministry of Justice's inclusion of the authors in the Hearing on 14 June in order to assist the victims and Christchurch Muslim Community with providing information and support regarding the trial. We also would like to acknowledge an important step taken by the Ministry in creating a new and crucial role for Independent Counsel Assisting specifically to represent victims in Court. The appointment of Counsel and the description/scope of the role has not yet been confirmed or made public; however, we hope that our recommendations and feedback are taken into consideration and that this new role contributes positively to the victims and as well as the process moving forward.

[5] It is noted that no structured cultural training programs have been provided to the government agencies and any cultural training has been offered in an ad hoc manner. This is despite 18 years of post-9/11 liaison with multiple government and non-government including the Office of Ethnic Affairs under its Bridge-building program. It should noted that similarly systemic levels of ignorance about Tikanga Māori are prevalent today to the extent of denial of its being suppressed — which (denial) is itself evidence of the "racism within the system" — Julia Whaipooti (in response to the suggestion from a senior criminal law practitioner that there was no racism within the legal system), Criminal Bar Association Conference, 3 August 2019.

5. Context

5.1. This report discusses the impact of the criminal court process ("the process") on the 15 March 2019 Christchurch terror attacks victims ("the victims") to date, in particular, the immediate impact of the court hearing event on 14 June 2019.[6]

Background to our involvement

5.2. Our[7] involvement stems from a request by a member of the Christchurch community and Ministry of Justice employee to assist with the Christchurch High Court's handling of the court process in the matter of Q v T. JustCommunity initially provided brief cultural awareness training for staff on 24 May 2019. The authors then provided an information session for victims attending the 14 June hearing both before and after the hearing, albeit on the same day. This was to provide a bridge between an Anglo-Saxon court system seen to be trying an Anglo-accused on terrorism, murder and attempted murder against a diverse and multicultural victim community.

5.3. This involvement was at relatively short notice. Like those involved at the time we were trying somehow to mitigate trauma. We witnessed, at the first hearing for example (which saw the defendant grinning and performing a symbol connected to the White Supremacy movement),[8] that there was not, by anyone, a full appreciation of many complex dynamics present at a court hearing that was attended by, in the case of the 14 June hearing, 100 or so victims of diverse nationalities, experiences, and circumstances.Accordingly, this report has, like many, the benefit of hindsight, while acknowledging, on behalf of the victims, that all agencies had nearly three months of regular intensive contact with the victims to become acquainted with at least some aspects of the novelty of the 15 March circumstances.

5.4. We note that many concerns raised in the report are not new but are well known wider issues within an admittedly extraordinary set of case circumstances.

5.5. The wider context of the 14 June court hearing is a complex one, and includes other layers of victim powerlessness: it is doubtful as to whether the victims' needs relating to their ability to make sense of other prominent processes and procedures, such as the Royal Commission of Inquiry's process or matters of significance, were being met in a way befitting their emotional and cultural needs. These ongoing issues will continue to affect the

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[6] In the matter of The Queen v Brenton Harrison Tarrant.

[7] Aarif Rasheed and Shaymaa Arif, supported by members of JustCommunity's Cultural Advisory Group.

[8] "New Zealand mosque attack suspect Brenton Tarrant grins in court" (16 March 2019) Al Jazeera https://www.aljazeera.com/news/2019/03/zealand-terrorist-attack-suspect-grins-court-190316011147796.html

context in which the court process — including the unwitting (yet predictable) effect of court events — impacts on the victims.[9]

5.6. This broader context (yet no less consequential) is that of the criminal justice system itself. The recent first report of Te Uepū Hāpai i te Ora (Safe and Effective Justice Advisory Group) was released just five days before the 14 June hearing, and began:[10]

> "The conversations we had constantly reiterated the view for urgent transformation to our criminal justice system.
>
> ...
>
> "Among these conversations the overwhelming emotion we encountered is one of grief – because so many people feel the system has not dealt with them fairly, compassionately or with respect; associated with this grief is often anger."

5.7. This criminal justice landscape is the system in which an extremely vulnerable and even less understood victim community finds itself seeking to be acknowledged and heard.

5.8. As quoted by the recent first report of Te Uepū Hāpai i te Ora:[11]

> Victims have to face this tidal wave of people who are operating inside silos without looking at the needs and past of people holistically.

Appreciating the gravity of this process

5.9. The March 15 attacks represent an unprecedented contemporary human atrocity in New Zealand. The rationale and circumstances of the attacks lend a further level of gravity and trauma; including where and when (at the mosque during worship on the holy day) and by whom the attacks were committed — a self-proclaimed upholder of white-supremacy who declared his actions were to defend white culture from "white genocide".[12]

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[9] See for example: Joris De Bres (Former Race Relations Commissioner) "Why I refuse to appear before the inquiry into the Christchurch mosque attacks", The Spinoff (New Zealand, 23 July 2019). Available at: https://thespinoff.co.nz/politics/23-07-2019/why-i-refuse-to-appear-before-the-inquiry-into-the-christchurch-mosque-attack/

[10] Te Uepū Hāpai i te Ora – the Safe and Effective Justice Advisory Group He Waka Roimata — A Vessel of Tears, (Safe and Effective Justice Advisory Group, June 2019).

[11] Te Uepū Hāpai i te Ora – the Safe and Effective Justice Advisory Group He Waka Roimata — A Vessel of Tears, (Safe and Effective Justice Advisory Group, June 2019) at 57.

[12] The defendant Tarrant describes himself as an "ethno-nationalist". He made a global call to action against the white culture being 'replaced' through a process he calls, in his "The Great Replacement" manifesto, 'white genocide.'

5.10. Given the long-reported[13] status of criminal justice and court process issues (and confirmation by Court Victim Advisors at a court debrief meeting that the sentiments of the victims are very much those of all victims), this report is in some ways a specifically exacerbated manifestation of long-reported criminal justice process issues.

5.11. If one overlays the sheer gravity of human loss and suffering, and then the particular context and rationale for the attack, upon the existing ailing landscape of the New Zealand criminal justice system, a sense emerges of the gravity of the "grief" and "anger"**,** and thus an appreciation of the victims' sentiments in this particular case. The experience of this at the 14 June hearing was profound.

The necessity of a criminal justice review

5.12. While some aspects of the specific circumstances of June 14 may not themselves have been readily predictable, what is predictable is the working of the system and the damage that resulted. It was the inherent aspects of a system that were overtly and remarkably foreign to, and disconnected from, the victims, which caused deep trauma.

5.13. While matters such as initially scheduling the trial in Ramadan are easily identifiable examples, the problem is rooted in the lack of prioritisation of the active involvement and participation by victims. This carries a tendency to neglect/eschew their consultation in the process and to relegate them to passive observer status. There is the related need to maintain a passivity or calmness consonant with a monocultural view of proceedings.

5.14. A communication process that is community-led and culturally informed would be a step towards regarding the victims' input as relevant.

5.15. The defensiveness of the system, its lack of awareness of key matters and its avoidance of seeking and following expert-based practices, are systemic issues which prevent proper acknowledgment of the victims. This is despite the goodwill of a few members of staff who showed themselves to be aware of the obvious need to provide additional services in this case.

5.16. While pre-briefings may, like CVA work, help mitigate trauma, until the system is able to relieve itself of seeing such peoples as offering no valuable contribution, let alone as being a possible taint on its system, the trauma of that contempt will, for the victims, remain patent and impossible to ignore.

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[13] Including (emphasis):

1. Moana Jackson He Whaipānga Hou, The Māori in the criminal justice system (Department of Justice, February **1987**). Available at https://www.ncjrs.gov/pdffiles1/Digitization/108675NCJRS.pdf
2. PUAO-TE-ATA TU (Day Break): THE REPORT OF THE MINISTERIAL ADVISORY COMMITTEE ON A Māori PERSPECTIVE FOR THE DEPARTMENT OF SOCIAL WELFARE (Department of Social Welfare, **1988**).
3. C Roper Prison review: Te Ara Hou - The New Way / Ministerial Committee of Inquiry into Prisons System (Crown, **1989**).

5.17. Peripheral and adaptable core court processes will need to be less resistant to adaptability or reform even where those changes are not directly aligned with historic objectives and in the absence of extrinsic pressures to adapt or reform, such as overwhelming evidence for expediency or resource efficiency. To avoid the status quo remaining as harmful as it has been to Christchurch victims, there will need to be a fresh approach to extrinsic factors requiring change.

5.18. Court processes have consequences, intended and unintended, and conscious and subconscious. In a court process of this gravity, the hearing and its aftermath are reminders of the profound ways in which such consequences are visited on victims generally. But in this extraordinary case — one that is without precedent in New Zealand's contemporary history — those consequences have been visited upon the victims in manifold ways.

5.19. Court systems have been remarkably resistant to change, even when the need for change is self-evident. Critically important courts across the country remain merely as "pilot" courts, for example, despite longstanding and overwhelming evidence of not only their immeasurable benefit but their imperative need, for example in the establishment of Alcohol and Other Drug (pilot) courts.[14]

5.20. A court system that uses and recognises experts within cases but has not taken heed of expert advice as to its own structure in vital areas such as psychology, health, and culture, has prevented itself from becoming an informed, prepared, and engaged system of justice that mitigates systemic harm and institutionalised systemic racism.

5.21. The criminal justice system at an operational level is a myriad of interrelated complexities which are beyond the scope of this report. The architecture of the system at a higher structural level imports and entails cultural and religious factors that have remained at the expense of others, however. This report is not a philosophical analysis of all of the interrelated issues around the disconnection between a colonialist legal system and non-white minority populations, nor indeed related issues (Pasifika communities share similar rates of e.g. conviction — half of middle-aged Pasifika men in Aotearoa, like Māori, have a conviction.[15]

5.22. The authors themselves were struck by the acute (no doubt trauma-induced) level of awareness amongst the victims of the underlying rationale for the attacks and its connectedness to "the system" that, like the attacker, regards them as inferior. This may be because they largely already come from regions affected by colonisation and many are not, for example, born in Aotearoa New

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[14] "Formative Evaluation for the Alcohol and other Drug Treatment Court Pilot" (31 March 2019) Ministry of Justice <https://www.justice.govt.nz/assets/Documents/Publications/alcohol-and-other-drug-treatment-court-formative-evaluation.pdf>

[15] Te Uepū Hāpai i te Ora – the Safe and Effective Justice Advisory Group He Waka Roimata — A Vessel of Tears, (Safe and Effective Justice Advisory Group, June 2019).

Zealand. These factors have no doubt contributed to severe culture shock in addition to the already severe trauma experienced from losing loved ones in a heinous attack.

5.23. Given the unprecedented nature and scale of impact on the victims in this case, all of the foregoing points to a powerful need to examine a range of assumptions about process and participants; an examination that should question the degree to which prior practice in the treatment of victims and witnesses is adequate to the specific task at hand in this trial.

6. Report background

6.1. A report of this nature had not, prior to 14 June, been anticipated. It was envisaged that services required would be provided to victims and that discussions on progress would continue in the usual way, such as through court staff debriefing meetings — as occurred after the 14 June hearing. However, it was apparent, as flagged at the 14 June debrief meeting, that the gravity of pain expressed by the victims was far more intense than had been anticipated.

6.2. It was found that the needs of the victims with respect to court processes, and pastoral and culturally appropriate psychological care in the context of the court process, was far more unmet than it was generally assumed to be, if one were to base assumptions on the high-level political (and significant media) attention to Christchurch and the victims.

6.3. However, the emotional state of the victims and the cultural competency of the support they were receiving in relation to issues of great significance such as the court process and other matters, was found to be far more serious and raw, considering the time which has lapsed since the date of the attacks. This also raises the question as to whether services so far provided to victims have been assessed by any appropriate group. This would include groups that were culturally informed.

6.4. In addition to being expectedly distressed and sensitive to the various traumatic experiences of the 14 June hearing, the victims were found to be relatively uninformed and not briefed on fundamental aspects of the process and, in consequence, deeply traumatised by what transpired, and how it transpired.

6.5. As a result of ignored complaints and concerns of xenophobic and Islamophobic attacks and not feeling safe over the course of many years, the Muslim community has felt under siege and unprotected by the system, with police having ignored a number of requests of the community to defend them. The frustration of not being heard and a lack of accountability as well as a system that allows for accountability for this is also part of the emotional landscape.

6.6. Accordingly, this document was commenced as an attempt to capture and process the gravity and kernel of that sentiment, and to couple that with remedial recommendations.

6.7. We should mention here that the victims' expressions of unbearable re-traumatisation took time to be absorbed, reflected on, distilled, and finally expressed in the form of this report.

6.8. This brief report includes a tabulated summary of victim sentiments, reflections, and recommendations.

7. Report findings

7.1. The section briefly comments on the limitations of this report findings owing to the limited time, resources and related applicable constraints. This report was conceived as a result of the June 14 hearing, and has been the source of ongoing feedback to the Ministry of Justice since. The urgent need for an interim report to be finalised has been a key limitation, given the lack of opportunity to discuss concerns in detail with victims.

7.2. Nevertheless, this report finds that critical cultural and fundamental post-trauma needs of the victims have not been met, and the provision of these needs continues to be compromised through an inherent disconnection between the victims and the court process. This report alludes to, but for lack of time and resource does not at this time delve into, the conceptual and philosophical underpinnings of the cultural and civilisational disconnection. This report captures some of the sentiments speaking to this disconnection.

7.2. The report calls for urgent measures to include and acknowledge the victims, acknowledge and respond proportionately to the gravity of this matter, and for urgent reconsideration of the court process and the role of victims in it, in light of challenges which are not conceptually new but have a different — and urgent — application in this particular case.

7.3. Appendix A encapsulates victim sentiments, cultural reflections, and recommendations.

7.4. There are a number of findings relating to both the court process and the other surrounding and relevant issues touched upon in this report, that will benefit from upcoming interaction between the authors and the victims. It is noted that the victims have read and approved this report, but with greater opportunity to discuss these issues, would likely have had more to contribute to the report and its findings.

7.5. In sum, it is critical to note that the candid observations and recommendations ("findings") of this report are the result of a relatively brief process and duration — since June 14 — and what has been a period of re-traumatisation at many levels for the victims. Subsequent and more specific "findings" are expected to be made as the court process and related post-attack processes such as the Royal Commission of Inquiry process continues. Nevertheless, it is the opinion of the authors that the findings in this report intersect across a sufficient number systemic issues to provide its audience with clear areas of concern requiring urgent addressing.

8. The 15/3 attacks — a complex and ongoing trauma

Gravity and complexity of the context

8.1. The following context may serve as a reminder of the landscape of trauma facing the victims. The surviving victims and their families have been subject to indescribable human suffering. They were attacked while extremely vulnerable by virtue of the reason they were attacked: their being Muslims. In normal human circumstances, the traumatic loss of human life would lead to severe trauma which would vary between individuals.

8.2. The context of this trauma is the motivation for the attack and its being the culmination of a pattern of hate and discrimination that is unique to this group, one that has a background which must not be ignored if these communities are to be understood and considered in this process. This “inevitable” outcome of increasing anti-Muslim extremism and the rise of violent and radical white supremacy in Aotearoa has imprinted a deep sense of powerlessness that was very much operative at the time of the attacks on defenceless worshippers.

8.3. This powerlessness is exacerbated by a non-responsive court process that is associated with the culture from which the attacker arose, namely one which is at a cultural and civilisational level seen as opposed or distrustful to the identity culture and faith of the victims.[16] The wariness of victim differences (in culture, ideology etc.) by actors in the process, yet reluctance or inability to engage with and embrace significant or relevant aspects of the victims’ cultural needs is a reflection of the distance between "the System" and the victims.

Consequences on cultural advisory of victims

8.4. The authors had, perhaps hopefully, set out to brief the victims on the integrity, credibility and reliability of the common law legal tradition and thereby endorse the court process, without the opportunity of previously attending any prior governmental meetings with the victims or awareness of the adequacy of those meetings.[17] Our attempted reassurances fell on ears that were deafened by their powerlessness to save their family members and themselves from the attack, and were now feeling similarly powerless in a

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[16] "A monist system assumes that the dominant norms are inherently fair and valid. Any powers exercised by the state or its agents to maintain those values are also assumed to be fair and valid. If the powers are discretionary in nature, there seems to be a further assumption that the discretion is inculcated with fairness and validity. Those who exercise this discretion do so on behalf of society: they are seen to apply judgements which reflect the concerns of the conforming public.”
Moana Jackson *He Whaipānga Hou, The Māori in the criminal justice system* (Department of Justice, February 1987) at 31. https://www.ncjrs.gov/pdffiles1/Digitization/108675NCJRS.pdf

[17] A pre-briefing meeting with victims prior to the court date was unable to be arranged.

formal court process in which they again feel like victims to a system focused on someone who is far more akin to it than they are.[18]

8.5. This distance has extended to basic communication processes whereby the victims have not been told what they can expect throughout the court process, in a way that is culturally appropriate and relevant to them. It is well known that it is necessary for victims to be prepared for difficult court processes through being amply briefed, including adequate time and opportunity to prepare and brace themselves, about the possible outcomes. Knowing and being prepared for what to expect mitigates harm through increasing the victim's ability to process the experience no matter how difficult it might be. This requires victims to be engaged and included in decision-making such as consultation for future trial dates.

8.6. The victims' inability to make sense of what is happening in the process or to appreciate its workings greatly impairs their ability to cope with and heal from this trauma. Discussion about the defendant's access to the attack video and manifesto should have been forewarned, as should have the entry of 91 not guilty pleas to the charges. As it turned out, the victims processed this trauma without warning and with the smirk of the defendant as this was done.

[18] The authors had commenced with the common hopefulness that the current system with all of its procedural superiority would compensate for any (hopefully minor) cultural incompetencies.

9. A monocultural, re-traumatising court setting

9.1. Outside of the court in wider society there is a prevailing notion and discourse of both biculturalism (with respect to the Crown and the Treaty of Waitangi) and multiculturalism (incorporating all minority groups) in our pluralist society — one which has been well-demonstrated as having a significant "Muslim acceptance gap"[19]

9.2. Yet the adaptability (or lack thereof) was patently apparent in the inability and/or unwillingness of the court process to make fundamental adaptations to the process in acknowledging the victims, resulting in immediate and significant re-traumatisation of the victims.[20]

9.2. The inclusion of strong victim sentiment in this report is acknowledged, sentiment which is an expression of helplessness in not being heard, acknowledged or given any meaningful ability to control or understand or make sense of the court process.

A system failing the vulnerable

9.3. The majority sentiment from victims of crime, for many years now, has been that their experiences within the Justice System often left them feeling disappointed. In February of this year, the "Strengthening the Criminal Justice System for Victims survey"[21] was developed and began receiving responses on the experiences of victims in the criminal justice system.

9.4. 620 people responded with the following results gathered from the survey:[22]

> 63 per cent of respondents reported that their overall experience of the criminal justice system was either poor or very poor
>
> 83 per cent of respondents either disagreed or strongly disagreed that the criminal justice system is safe for victims
>
> 77 per cent of respondents either disagreed or strongly disagreed that victims' views, concerns and needs are listened to throughout the justice process
>
> 79 per cent of respondents either disagreed or strongly disagreed that victims have enough information and support (not including family and friends) throughout the justice process.

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[19] Appendix B: Muslim Cultural Acceptance Gap in New Zealand

[20] Basic adaptations were discussed immediately in de-brief meetings such as facilitation of cultural and linguistic communication (including interpretation services and how this could work), flexible seating configurations, briefing meetings with cultural advisors and core process actors including Crown lawyers — who on many issues speak for the victims (although formally behalf of the Crown) — and, critically, the inclusion of Muslim and Muslim-familiar staff amongst court staff, the crown, Police, victim advisors, Victim Support etc. who are able to substantively represent the interests and sentiments of the victims in a culturally competent and meaningful manner.

[21] "Victims of crime find NZ's criminal justice system to be 'unsafe', report finds" (7 August 2019) TVNZ https://www.tvnz.co.nz/one-news/new-zealand/victims-crime-find-nzs-criminal-justice-system-unsafe-report-finds.

[22] "Victims of crime find NZ's criminal justice system to be 'unsafe', report finds" (7 August 2019) TVNZ https://www.tvnz.co.nz/one-news/new-zealand/victims-crime-find-nzs-criminal-justice-system-unsafe-report-finds.

9.5. The retraumatisation of victims within the criminal justice system is unfortunately not surprising and has been familiar for many victims. It is a process within which victims from diverse backgrounds have often felt excluded, ignored, and retraumatised.

9.6. It was noted by Christian friends of the community attending the 15 August hearing that there was a notable absence of faces familiar to the community such as from other faith communities, refugee or migrant service organisations, or other organisations or communities familiar to the local mosques and Muslim community.

Ordinary requests for extraordinary case

9.7. It is worth noting that the majority of the recommendations made in this report merely reflect the need to implement well-known principles, including those articulated by the victim's rights regime; they are not extraordinary requests. While some recommendations may appear to be novel or outside what is ordinarily done, these may not necessarily be a challenge to any legal or other procedural principle, as much as it is a challenge to the ability of the court to meet fundamental challenges in new, but substantively uncontroversial, ways. The report identifies many of the rights which have been breached, and have long been advocated for by the victims of all kinds, and more recently by the Chief Victims' Advisor.

9.8. The Chief Victims Advisor's website sets out the government's responsibility to victims by clearly stating:[23]

9.8.1. The government has a responsibility to understand the effect of the criminal justice system on victims, and to do what it can to respond, and to influence others.

9.9. This is a powerful declaration of responsibility: the Court should acknowledge that the current criminal justice system is perhaps not only not fit to function appropriately in a bicultural Aotearoa, but also in a multicultural Aotearoa. Once the issue is identified that the system is not working for a victim (and in this case a community of victims), the important and urgent next step is how the system can adapt to protect victims while also ensuring a fair trial for the defendant.

9.10. The Chief Victims Advisor also outlines the Victims Code which sets out how victims are to be treated and what their rights are throughout the court process. The eight principles are:[24]

1. Safety: Services should be provided in a way that **minimises any potential harm** to you and your family/whānau, and puts your safety first.

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[23] Chief Victims Advisor "Government agencies have responsibilities to victims" (updated 11 November 2016) Ministry of Justice. Available at: https://chiefvictimsadvisor.justice.govt.nz/rights-and-system/government-responsibilities/

[24] Chief Victims Advisor "Victims Code" (updated 5 October 2016) Victims Information. Available at: http://www.victimsinfo.govt.nz/assets/Publications/Victims-Code.pdf.

2. Respect: Providers should treat you with **courtesy and compassion. They should respect your cultural, religious, ethnic and social needs, values and beliefs.**
3. Dignity and privacy: Providers should treat you with **dignity** and protect your privacy.
4. Fair treatment: providers should **respond appropriately to your needs**, and should provide their services in a timely and straightforward way.
5. Informed choice: providers should **properly understand your situation and tell you the different ways you can get help.** They should honestly and accurately answer your questions about their services. This includes how long you can receive them.
6. Quality services: Providers should make sure you, your whānau or family, receive quality services. Quality services include services that **meet your particular needs, such as culturally appropriate services.** If you are dealing with more than one provider, they should work together.
7. **Communication:** Providers should give you information in a way that is easy to understand. You and your provider should communicate with each other openly, honestly and effectively.
8. **Feedback:** Providers should let you know how you can give feedback or make a complaint. It should be easy for you to do this.

(emphasis added)

Impact of emotive or alien forms of expression

9.11. The authors acknowledge that the ability of a court environment to cope with such highly visible sentiment is varied. A local advisor was able to observe at a hearing debrief meeting that the expression of sentiment by victims tended to be unsettling for a Western-based cultural environment.[25] This observation helped understand the perceived need to adjust the expression of emotion to one appropriate by Western standards. This, the Victim Advisor reflected, meant a tendency to try to suppress or sanitise sentiments of the victims, and their composure through the hearing would then be viewed as a success, and conversely the expression of emotion at any time would be viewed with regret and as some kind of failure in the management of the victims.

9.12. We are grateful for the honesty and transparency from the Court Victim Advisor, which has allowed us to gain a better understanding and insight of the court process.

9.13. Basic cross-cultural awareness can also assist understanding these variations and constraints: while Anglo culture may prefer non-expressive values especially in a formal court setting, or prefer people not to reveal what they are thinking or feeling. Gesturing or strong facial expression is not as discouraged in, for example, Arab and Sub-Saharan cultures. Statements are not likely to be read in a monotone voice but rather be reflective of expressive cultural values. These cultures prefer affective, expressive communications, and the sharing of feelings.

[25] The absence of diversity was equally apparent in the courtroom and the large debriefing meeting afterwards. This reflection was invaluable and represents an emerging consciousness of bias.

9.14. Such reminders, of which there were several, continued to raise the issue of the appropriateness of an Anglo-Saxon court process that is distinctly removed from the cultures it is primarily serving in this case. The setting of a formal courtroom environment appears to emphasise a pronounced sense of disconnect from anything that the court process does not distinctly itself look like.

9.15. An overwhelming sentiment of the victims after observing the court process at some length, was that the court process is not concerned about them as victims, but is concerned with running its usual course primarily for those it is accustomed to serving, without regard for who the victims happen to be or their attendant needs. They felt it was "business as usual". The court process has not been able to convey to the victims that its duty to the public is through its duty to the victims — as those whom the process is there to serve directly and without whom there would be no complaint or crime.

The significance of informed inclusion

9.16. These realities underlie the need for the system serving victims to be well-equipped and well-resourced with those who can relate substantively to the victims in the course of their courthouse duties. This will require leadership and facilitation. While there is no serious doubt as to the sincerity or genuineness of all involved, that genuineness is yet to extend to any substantive adaptation of the court process to accommodate the victims' cultural needs, most of which are critical to the viability and credibility of the court process as one that is responsive to and aware of, the victims it is serving. In colloquial terms, we might suggest that this is a case of justice not only being done, but "justice being seen to be done."

9.17. Those who have worked in the area of court reform will be weary of the historical struggle of the court process to respond to the needs of cultural groups outside the milieu in which it (the common law system) was originally formed. What minimum standards the court process must ultimately be able to realistically or reasonably provide to victims in the way of inclusion, must be the concern of a multi-disciplinary group; and a core task of a court advisory group must be how the victims can make sense of the court process and develop a crucial sense of inclusion in it, using some cross-cultural tools.

9.18. There is a clear sentiment amongst the community that the process and its actors appear anxious to ensure that they or the process are not tainted by an alien culture or by the emotive expectations of victims unfamiliar with the nuances of a superior legal and cultural system. In fact, this pain and struggle was clearly evident with some victims expressing their frustrations and sadness to the media following the 14 June hearing.[26]

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[26] Katie Todd "Court appearance: Mosque attack survivors' and families' painful day" (14 June 2019) Radio New Zealand https://www.rnz.co.nz/news/national/392086/court-appearance-mosque-attack-survivors-and-families-painful-day.

9.19. The accommodation of basic language needs. During one specific instance (further explained in the recommendation table), a mother who lost her son in one of the attacks became visibly upset during the post-hearing debrief with survivors and the community. The mother asked questions in her native language, Arabic, on two occasions before expressing her disappointment and frustration at the lack of basic interpreting services to respect the very culture that has been so violently targeted and attacked. The mother expressed her frustration in English, making it clear that although she was fluent in English, the least the system can do is accommodate basic language needs to respect the victims and their whānau. It became clear that the victims have become, as a result of the attacks, extremely and deeply aware of the rationale and motivation behind the attacks against them and the implications of that, including a process that further dismisses the victim community's cultural diversity and cultural needs. It also appears to them that the court sees no value or relevance in any such diversity or needs.

9.20. Actors in the court process have tended to want to ensure that neutrality and impartiality are preserved — and be seen, particularly by other parties than the victims, as well as other observers, to be preserved. However, the detachment from the victims' needs to an extent that they have reinforced the court's lack of cultural neutrality, and have reiterated the process' unwillingness to accommodate those needs.

10. The opportunity to grieve, reflect, heal

10.1. The victims were found to be in a severely affected state on the day of the hearing. It is not known when they had last received any briefings on the legal process (or other processes such as the Commission of Inquiry) but there appears to be an urgent need for the victims to be provided professional, independent, culturally-competent advice on processes and procedures.[27]

10.2. It is not clear whether any account has been taken in setting these timelines of key cultural realities of the community, some of which have been explained by Islamic teachers including through the media, such as the 'Iddah' (or Waiting) period — a critical observance of a period of "waiting" before embarkation on further significant life matters, in order to facilitate healing and recovery for female victims following the death of their spouse:[28]

> In traditional Muslim societies, families and communities would visit her frequently and help with the care of her dependants and have this transition time to discuss and arrange for the next stage in her life.
>
> The waiting period allows a fair time for a woman to grieve, mourn, reflect until she regains her balance and strength. Not mixing with strangers means that she is surrounded by supportive male members of her family and close females who will be protective and nurturing.

10.3. It is important to consider the lack of resources within the Muslim community to create safe spaces and spaces for dialogue and understanding: they possess limited resources to provide for themselves essential services during this extremely difficult and tragic time. It is challenging for the community to bring forward resources to provide for themselves, or to identify essential services during this extremely difficult and tragic time, and therefore it is essential for community and government to work together in order to achieve the best results for victims and their families.

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[27] The Commission of Inquiry had an initial deadline for its written submission process on 31 July. This inquiry process was reasonably expected, amongst its other stipulated functions, as a process for the victims to convey their grief, especially in the absence of any other formal process that will provide victims with a mechanism for culturally appropriate (oral) expression of their grief. Yet, the Inquiry is yet to advise victims whether or not there will be any opportunity for oral testimony, despite other remedial developments such as extension of the written submission process. (As with most major concerns, this concern has been expressed by community members, directly, indirectly, and even in the media. On 12 July, for example, the Commission website added a short message to its Home Page inviting "the families and victims of those affected by the attacks on 15 March 2019 to meet if they wish to."

[28] "Iddah: Giving Muslim women time to grieve and reflect" Radio New Zealand, 12 April 2019 Available at: https://www.rnz.co.nz/news/national/386943/iddah-giving-muslim-women-time-to-grieve-and-reflect.

11. Summary of issues and recommendations

11.1. We felt it fortunate to be able to assist with some cultural awareness training for Court staff on 24 May and with the information briefing session for victims at the 14 June hearing.

11.2. However, the particular context of the Christchurch attacks provides additional intensity and complexity which cannot, as in the case of Māori, be deferred for decades of repeated themes of reports and recommendations, but rather needs to be confronted in the context of ongoing processes.

11.3. What we learned from this short but profound interaction with the victims revealed a complex, sobering, but not unpredictable, situation not unlike those faced by other disadvantaged groups who are disproportionately affected by the court system — who are subject to, but not substantively a part of, the justice system. The Christchurch shooting and the 14 June hearing especially demonstrate the need to urgently address such institutional malfeasance.

11.4. This discovery confirmed what, on reflection, have been longstanding concerns familiar to all those reflecting on the system from multiple perspectives (such as from the perspective of Māori, or of victims) but which have now been expressed in their own deeply traumatic context. This report has sought to allude to this context and these specific concerns.

Context of ongoing process

11.5. Given the nature and severity of sentiment arising out of the 14 June hearing, it has been necessary to absorb, process and reflect on those sentiments, and provide a coherent constructive summary of recommendations based on the issues underlying much, if not all, of those sentiments.

11.6. The presence of support from the community is essential to the well-being and welfare of those affected, particularly to provide specific awareness and context to the process. The lack of cultural awareness and communication, particularly in a situation of such gravity, is self-evident. This has left all parties handicapped without the ability to communicate on critical issues affecting the success of the Court process.

11.7. This can only be addressed by an expert-led study of all relevant aspects of the process and incorporation of all necessary cultural and psychological adaptations.

11.8. Due to the immensity of the work required of relatively few numbers of Muslim professionals, there has continued to be an absence of timely progress with victim representation, advocacy and basic cross-cultural communication. It is obviously crucial that this is mitigated, namely by governmental agencies working closely with community members and professionals.

11.9. Court appearances continued for some time to be set down on Fridays,[29] and perhaps the most obvious manifestation of non-communication with the victims, was the adjournment of the trial from February 2020 to May – falling squarely in the holy month of Ramadan.

11.10. Trial date: the authors are aware that the date of the 2020 trial has since been reviewed and subsequently been changed from 4 May to 2 June, with the rationale of avoiding Ramadan[30]. However, the underlying issue of cultural awareness in even an issue as simple as this, remains: 2 June is only a week after Eid. As for most people including for Christmas, major festivals are often a "season" or period of days, rather than one specific day. This is more so for Muslims who must plan celebrations around work commitments, and thus are accustomed to relegating such celebrations over a few weekends. In this case, the victims would need some time not only to enjoy Eid like ordinary Muslims in the days following Eid, but would be looking forward to enjoying a semblance of joy that is central to Eid. They would have already been engaged with trial preparation prior.

11.11. Allowing the victims an uninterrupted month of Ramadan and a fortnight to celebrate Eid would be a minimum requirement from any perspective of spirituality, well-being and trauma-recovery.

11.12. Further examples of cultural ignorance relating to hearings, are evident on multiple occasions, including:

1. The 14 June hearing was held on a Friday which is a Holy day for Muslims[31].
2. Further, on the hearing of 14 June, Judge Mander stated that the case review hearing would take place on 16 August 2019 (a Friday), before changing the date to 15 August 2019 on the minute provided by the Judge.
3. The third hearing held on 15 August fell during a time which is most significant for Muslims and where many members of the victim

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[29] The Minute of the Court in Q v T issued on 14 June 2019 states the next court date as Thursday 15 August. However, throughout the court hearing, the next court date provided was Friday 16 August, despite this reminder being provided just prior to the court hearing upon the request of one of the victims present. Refer: Appendix, Sentiment/Reflection 1. This matter was therefore raised by victims again after the 14 June hearing, and at all subsequent de-briefing opportunities since.

[30] Sam Hurley "Judge changes date of Christchurch terror trial to avoid Ramadan clash" New Zealand Herald (12 September 2019) https://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=12267221

31 A member of the victim community had made a comment about this stating that the accused had already stolen a Friday from the Muslim community and now he was stealing more Fridays because of the hearings.

community were not in the country for the hearing as they were performing Hajj[32].

4. Changing the location of the 2020 trial: Many victims have once again found themselves in the dark when the issue of changing the location of the hearing to outside of Christchurch suddenly surfaced last month. Victims feel like they have not been consulted in regard to this significant change of circumstances which has further added to the anxiety, stress, and trauma which the community and all those involved directly with the trial are still experiencing.

11.13. Many lives have already been significantly impacted by the Christchurch terrorist attacks, with many livelihoods being compromised. The sudden change of location will require crucial aspects to be taken into serious consideration to ensure that victims are able to be fully engaged, included, and supported during the entirety of the trial process, should they decide to.

11.14. Considerations include (but are not limited to):

1. Flights: for victims and families to access and attend the entirety of the trial in person;
2. Accommodation: for all victims in selected location for the entirety of the trial;
3. Financial compensation and support: for victims and family members needing to take time off to attend the trial.
4. It is expected that most trial participants will attend the entire trial in the new location as the community will be supporting one another during this difficult and stressful time. Victims and family members must be reassured that they will be supported and included in this process and must be informed of any changes or updates throughout the process.

A deeply re-traumatising process.

11.15. The analogy readily provided by various Christian observers is a court setting where hearings for Christian victims fall on Sundays and scheduling the main trial at Christmas. What may be added to this analogy is that these victims were indeed attacked for the very identity that is now being undermined by the Court process and which is thereby directly obstructing their opportunity for grieving and healing. Thus, the process is re-traumatising. This latter point is very deeply felt by victims to a degree that certainly the authors did not appreciate prior to experiencing interactions at Court with the victims.

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[32] "The Hajj, sometimes spelt Haj, is the annual pilgrimage to Mecca that Muslims are expected to make at least once in their lifetime. The word Hajj is an Arabic word, meaning 'to intend a journey'.
Hajj is the fifth pillar of Islam – the others are shahadah (declaration of faith); salat (daily prayer); zakat (giving of alms); sawm (fasting in Ramadan)."
"What is Hajj?" Islamic Help https://www.islamichelp.org.uk/what-we-do/seasonal/qurbani/what-is-hajj/

11.16. There remains an absence of processes that may lead to the court process acquiring cultural expertise through, for example, Court victim advisors, Court staff, security officers and other peripheral staff who have adequate familiarity with the relevant communities. This can begin to occur through adequate ongoing professional cultural competency development, integration of Muslim or Muslim-familiar staff members available from around the country, and the involvement of senior participants such that meaningful adaptation is possible.

11.17. The attached reflections and recommendations[33] were initially drafted simply in response to the specific concerns raised by victims on 14 June. We subsequently realised that not all victims were able to individually speak directly with the authors. The overwhelming sentiment was one of deep pain, a feeling of not being acknowledged let alone empathised with, and overall, an aggravating of the unhealed wounds of 15 March.

11.18. The authors have since confirmed the approval of this report by the victims.

11.19. It was intended that the victims would be reassured by the cultural advisors of the rationale of the court process and its different stages, employing universally recognisable principles of fairness, justice, permanence, integrity of process etc to explain the purpose of various court procedures. However, while this reassurance was provided repeatedly, across both the briefing speeches, and a number of different answers provided to questions, this effort to send the victims away reassured of the integrity of the court process was detracted from by the very real concerns raised by the victims. There was a painful dissonance between the rhetoric and action of the court process, between how the court process sees itself and how it is seen by the victims. The glaring absence of fundamental aspects such as acknowledgement of the victims and their identity undermined the earnest efforts made to familiarise and reassure the victims who attended court.

The court process being considered afresh.

11.20. No court or legal process that is disconnected from the complainants and aloof to their needs can, in a situation of this gravity, be considered viable. This requires a number of considerations that would not transgress the fair trial rights of the accused, but which would keep the process viable and afoot from the perspective of the complainants.

[33] Appendix A: Appendix A: Victim Sentiment, Cultural Reflections, and Recommendations

11.21. Common law criminal procedure and the accommodating of cultural needs are not mutually exclusive, albeit somewhat historically estranged through the racial supremacy of its current Pākehā-centred paradigm.[34]

11.22. It should be well known that the Islamic legal system has long safeguarded the rights of the individuals including those standing trial. The minimum standards of criminal procedure that must be available to the Defendant are not foreign but in fact a long-standing foundation of Islamic law.[35]

11.23. The recommendations in this report or the appendix are not seen by the victims to be special compensatory treatment, but rather necessary accommodation to ensure their ability to participate in the process, on a principled conceptual basis.

11.24. Protocols that endorse humane principles and basic standards of inclusion, consideration, and respect need to be agreed to, affirming the value of all our lives and the protection of our freedoms.

11.25. Although many recommendations could (or should) have either been unnecessary through their being avoided or should have been implemented from the outset, the continuing need for the mitigation of harm upon the victims by the process entails that immediate recommendations be addressed now before the victims suffer further harm as a result of an otherwise continually monocultural system.

11.26. A precursory recommendation is the development of a working group to develop mechanisms in the court process directed towards harm reduction. This group is to be made up of Muslim lawyers, senior human rights lawyers, senior judiciary and judicial staff, law experts, and input from Muslim mental health professionals, in order to plan a sustainable way forward. This would appear to be an ideal opportunity to help the system adapt to the needs of an unfamiliar culture and identity and one that has been a long time coming. We allude, of course, in this case to the fact that this need for adaptation has been especially true for Māori.

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[34] Moana Jackson's 1987 report on Māori and the Criminal Justice System explains the predicament of being in a predominantly Pākeha justice system:

"Its roots lie in an ***ethnocentric*** belief that assimilation is the path to true 'progress' and a Victorian equation of 'civilisation' with technological advance. It leads to judgements, about what behaviour is acceptable, being made according to the dominant Pakeha values. Reasons for non-normative behaviour by members of the minority culture, the Māori, are sought in instances of non-assimilation, or in specific cultural mores of the Māori, they are not sought in the cultural norms of the Pakeha which are impacting upon Māori people." at para 27.
(emphasis added).

He Whaipānga Hou, The Māori in the criminal justice system (Department of Justice, February 1987) https://www.ncjrs.gov/pdffiles1/Digitization/108675NCJRS.pdf.

[35] Individuals are rights-bearers whose rights cannot be infringed without due process of law - as part of the legal doctrines set forth by pre-modern Muslim jurists describing the rules governing the conduct of the state and judiciary. Mohammed H. Fadel *Public Reason as a Strategy for Principled Reconciliation: The Case of Islamic Law and International Human Rights Law* Chicago Journal of International Law (Summer 2007, Vol 8:1)

11.27. Establishment of a cultural advisory group: It is clear from the volume and significance of concerns raised in recent months (as well as those not raised publicly, such as those in this report) that a mechanism for dialogue involving victims, community-literate and culturally-informed advisors, and agencies frequently dealing with victims such as Police, Ministry of Social Development, or others would ensure the victims are receiving advice relevant to significant traumatic events, such as court appearances, deadlines for Commission of Inquiry, etc.

11.28. We recommend that the court adopts a consulting process with an experienced Judge who can act independently as an adviser to the presiding Judge on Q v T. The adviser can be vital in assisting and should be actively involved in advising the presiding judge on matters such as court settings, dates of hearing, and should be actively involved with voicing victims experiences with the criminal justice system and ways in which to mitigate any further harm. Our immediate recommendation would be Justice Joseph Williams, a Supreme Court Judge who has immense knowledge and wisdom in crucial issues such as tino rangatiratanga, criminal justice, and the importance of embracing and incorporating tikanga within the New Zealand Justice system.

11.29. The involvement of Muslim mental health professionals and others from different ethnicities is of particular importance as victims have had to deal with ongoing retraumatisation throughout the past four months, this retraumatisation also stemming from their experiences through the court process. A number of Muslim health professionals are currently employed by government agencies, holding psycho-educational workshops for victims and their family members on coping with tragedy and grief. Muslim health professionals should be considered as real assets and their involvement with hearings can significantly assist victims during hearings as well as in formal meetings with police (i.e. police collecting victim impact statements) in terms of reducing symptoms of fear, anxiety, and PTSD. The authors are more than happy to refer and recommend professionals to the Ministry of Justice and Police.

Involvement from Muslim professionals

11.30. As noted in *He Waka Roimata* "cultural practices will not work if appropriated by people who do not understand them…[and] need to be developed and implemented by those who have sound understanding of the wider tikanga associated with them."[36]

11.31. Core features of Islamic Law not alien to Common Law: The starting point for engaging with Muslim victims need not be one of distance. There are many features of the common law that are longstanding core principles of Islamic

[36] Te Uepū Hāpai i te Ora – the Safe and Effective Justice Advisory Group *He Waka Roimata - A Vessel of Tears* (June 2019) at page 27.

law. These include many of the critical fundamental aspects of the criminal jury trial — present in Islamic Law long before the Common Law existed.[37]

11.32. While most peoples who have lived closer to their traditions, including those with the cultural backgrounds of the victims, are from inherently relational collectives of people who will fundamentally require human relationships to experience and mutually acknowledge healing, the concepts, including individualist concepts of legal responsibility, are in fact rooted in the faith of the victims.[38]

11.33. It is crucial to note that while the professional resources in the Muslim community are limited, the community has on several occasions used their limited resources to create spaces and offered services to allow for cross-cultural understanding over the years to the wider community. In fact, JustCommunity has been offering cultural training since 2009, including to the legal sector, and while Public Defence Service Lawyers/law clerks have previously attended, Ministry of Justice staff have not; that is until Court Victim Advisors partook in some training post 15 March terrorist attacks. We suggest that this is a significant lacking that is being highlighted by this trial.

11.34. The offer of cultural training that was not taken up. Cultural ignorance has been longstanding and habituated, and perpetuated. In 2018, JustCommunity also offered cultural training to the Institute of Judicial Studies to contribute to the long overdue aim of reducing cultural ignorance within the legal sphere and among legal professionals. However, this offer was not acknowledged or taken up.

11.35. The necessity of cross-cultural training in the bicultural/multicultural context of New Zealand. There is a responsibility when it comes to each professional working within a system dealing with highly vulnerable and sensitive circumstances (such as the criminal justice system), to engage with essential workshops aimed at reducing cultural ignorance and increasing the inclusion of those belonging to marginalised communities. Just as in the obligations of lawyers to complete certain Continuing Professional Development hours annually, so the obligation should be demanded for cross-cultural understanding between a system that caters to a monocultural society and excludes all else.

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[37] John A. Makdisi *The Islamic Origins of the Common Law* (North Carolina Law Review, 1999). Available at: http://scholarship.law.unc.edu/nclr/vol77/iss5/2

[38] John A. Makdisi *The Islamic Origins of the Common Law* (North Carolina Law Review, 1999) at pages 1700, 1703, 1704, 1706.

12. Developments as of August 2019

Independent Assisting Counsel who can represent victims – we await an appointment.

12.1. In August, the Ministry of Justice indicated that a new strategy is underway to create and develop a role of Independent Assisting Counsel who can represent victims and advocate for significant matters concerning them. As of the date of the publication of this report, the authors have made suggestions on possible representation and have communicated with the Ministry of Justice on the cruciality of seeking feedback from victims regarding this matter; however, we are not yet fully aware of who has been appointed.

12.2. On 15 August 2019, the Ministry of Justice provided a letter to the authors in response to Reuters which was referenced in an article:[39]

> In consultation with the judiciary, the Ministry has made cultural awareness training available to all Christchurch court staff including security, brought in additional Court Victims Advisors, Victim Support and Cultural Advisors to support the victims throughout the court process, arranged for documentation about the court process and judge's minutes to be translated into relevant languages. For example, the court's minute from the 14 June 2019 hearing was translated into Arabic (a copy is attached). The Ministry has also arranged to have private rooms and a prayer room available to victims.

12.5. It is worth noting that cultural awareness training must be provided on a minimum monthly basis to Court Victim Advisors and other staff members taking into consideration the severity and exceptional circumstances of this case. Once again it is also crucial to invite Muslim mental health professionals, many of whom have been in direct contact with victims of the Christchurch Terrorist Attacks, and have run workshops since March assisting victims.

12.6. On 16 September 2019, the JustCommunity received a formal request to act on behalf of 77 victims and their family members in all matters relating to the Christchurch criminal proceedings. We will be filing a memorandum this week, informing the Courts of this change.

12.7. The translation of the judge's minute into Arabic was a result of the authors' feedback to the Ministry during a debrief following the 14 June 2019 hearing, which is an example of why inclusion of community-based advisors is necessary,[40] as relevant and significant feedback and suggestions are contributed.

12.8. We are also aware of a "Cultural information about Islam" pamphlet which was designed by the Courts of New Zealand and circulated amongst its staff. We are unaware of when this pamphlet was created; however, it is

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[39] Charlotte Greenfield "Criticism mounts of New Zealand mosque shooting response" (14 August 2019) Reuters https://www.reuters.com/article/us-newzealand-shooting-criticism/criticism-mounts-of-new-zealand-mosque-shooting-response-idUSKCN1V40V0

[40] Please note that the author highlighted the same issue during the first hui for the Royal Commission of Inquiry in Christchurch in July, whereby subsequently the terms of reference were translated into a few languages- some four months after the initial announcement of the Inquiry.

important to note that much of the information in the pamphlet was drawn from the Internet without explanation. A small summary publication is being drafted to assist. Information from the Internet should be treated with caution, especially when local knowledge and local expertise is available.

12.9. Context and situation are crucial. It is important to realise that knowledge of the teachings of the Islamic faith and an understanding of the Muslim community cannot be assumed to be valid merely by the adapting of information from online academic sources. Various challenges exist for modern academics writing about a usually culturally distant tradition. The appropriation of Islamic tradition, values and culture through for example a historicist approach to a distant culture, often misses many aspects of that tradition that those part of it hold to be significant.

12.10. Accordingly, unstructured cultural discovery of the Islamic faith must be closely guided by experts in the field.

13. Questions ahead

13.1. How can the process be less traumatising? A fundamental question remains as to whether and how the process can, within its legal foundations, adapt itself to be less traumatising to the victims and the community.

13.2. The community has now seen decisions made by the court process based on usual factors which the court process deems within its daily business, such as trial adjournment. This has led to significant problems of credibility and the prevailing situation is such that in order to move forward and ensure the process is a just one, the court process must undertake a radical rethink to its approach in such significant circumstances.

13.3. Cultural and spiritual acknowledgment similar to acknowledging Tikanga Māori. The court process must approach the process afresh based on cultural and spiritual advice. Limiting this aspect to victim advisors simply concerns the victims and the community that the process itself is disconnecting or not acknowledging of the Muslim community. Examples of combatting those major issues of working with the current system can include cultural and spiritual acknowledgment and following principles and systems similar to processes that acknowledge Tikanga Māori.

13.4. A spiritually and legally literate advisory group for the court process needs to be urgently established, in order to provide cogent, literate advice. Initial proposals include reconsidering the setting and venue of the court process with a view to being in a more indigenous and therefore culturally inclusive environment.

13.5. It is critical that senior judiciary members, including those who can lend expertise in how collectivist cultures and peoples are able to relate to a legal and court process, are a central part of the conversation around an urgent, and even radical, reconsideration of the court process, its setting, its environment and its ongoing re-traumatising impact on victims.

13.6. We look forward to engaging with the issues raised in this report and providing prompt feedback to the victims. It is acknowledged that this report has taken time to compile; much of this is owed to the intensity and gravity of the emotions expressed by the victims, and the need to understand those emotions in the context of the attacks, the court process, and a pragmatic way forward.

13.7. Cultural advice providers need to be able to discuss such concerns and themselves be heard. There is increasing awareness of the English legal system brought to New Zealand being unwilling to adapt[41] to local

[41] 'LAW, HISTORY OF', from An Encyclopaedia of New Zealand, edited by A. H. McLintock, originally published in 1966. Te Ara - the Encyclopedia of New Zealand URL: http://www.TeAra.govt.nz/en/1966/law-history-of (accessed 22 Jul 2019).

conditions, and of its destructive consequences upon indigenous peoples, cultural minorities, victims and other sectors of the population to date[42].

13.8. An awareness of historical context is recommended, particularly where it concerns the local history of place. As a planned settlement, Christchurch, broadly speaking, symptomises the colonial process whereby one society sought to replace another in situ. That an attack specifically targeting a community on racial grounds and motivated by the desire to eliminate and expel this group took place in such a context should be cause for reflection on the recursive dimension of this colonial process, and the consequences of collective amnesia.

13.9. Some feel that ultimately, they live in a city that in some ways epitomises the alleged historical clash of Islam with the West, and note prominent institutional examples such as the Canterbury Crusaders. These local contexts must be known to the court and such sentiments in such cases cannot be ignored in light of the alleged crime and this local context in which the trial for that crime is taking place. Having raised the example of the Crusaders rugby franchise, it may be instructive to note the active, mature and reflective internal dialogue that is taking place within the management of the Crusaders organisation and, outside, by that management together with some representatives of the local Muslim community. The example of dialogue that is prepared to examine assumptions that are underlying, deeply rooted and that have not been reflected on is a useful one.

[42] It is therefore no surprise that, during which many not dissimilar reports and recommendations have surfaced, the first report of the Te Uepū Hāpai i the Ora (Safe and Effective Justice Advisory Group).

14. Conclusion

14.1. Is it “business as usual”? While the community has in many ways expressed gratitude over the past four months to the Government and relevant agencies who have responded post-15 March, there are emerging significant cross-cultural gaps preventing key priorities and needs from being considered and understood. This has led to a lack of appreciation of the ways in which the gravity of the attacks are felt by the victims of the terrorist attacks and the community. The resulting sentiment within victim groups is that for the court or official process, it remains “business as usual”.

14.2. The victims appear to be losing faith in the system and the notion that the justice system is in a process of catching up to the cultural and other requirements after an unimaginably grave tragedy is not convincing; rather they feel that they have simply been disregarded, and that their most critical needs have not been met, not out of any resourcing or cultural support issue, but simply because they, being who they are, are not a sufficient priority to require any adaptation or adjustment of the standard process, and that a process is simply running its usual apathetic course without regarding victims or their identities, their backgrounds and their needs.

14.3. While there has been a passive acceptance of the legal system in a country that is generally attractive to peoples of diverse backgrounds looking forward to settling in a peaceful land, they now may be coming to dramatically realise that that peace has come at the expense of both indigenous and other *tauiwi* groups e.g. Pasikifa, Asian or other cultures being included in the constitutional structures of the system, first and foremost the legal system. That has been traumatically brought home to them by the reality of the attacks, the fact that such a devastating attack was able to be carried out despite the overwhelming and overbearing levels of security and surveillance — tending to confirm that the priority was for the public to be kept safe from Muslims, and that their (the Muslims') safety was not a priority.

14.4. This is of course the prevailing reality of 18 years of post-9/11 rhetoric, which itself was “essentially an extension of the fear and vilification of not only Muslims but everyone perceived to be Muslims that’s been taking place for centuries.”[43]

14.5. The view of the authors is a little grimmer, still: there appears to be a certain avoidance with the victim group that is not always seen in other cases; there is a sense of weariness of the victims in this case that there isn’t in other cases.

14.8. It should be noted that this report does not purport to present an exhaustive view of the victims. Not all victims in attendance of the hearing chose or were able to speak. Some chose to wait for their turn to speak to the writers.

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[43] Khaled Beydoun, law professor at the University of Detroit who also works with University of California Berkeley’s Islamophobia Research and Documentation Project. Accessible at: https://www.vox.com/2016/9/9/12856912/islamophobia-september-11-oversimplified

Others were spoken with afterwards outside the court, and others at Friday prayers following the hearing. Nonetheless, the sentiments were overwhelmingly that this was a process that they had no say in, yet continued to affect them profoundly. It is well known that collectivist cultures have very different trauma-acknowledgement needs to the one that our court system is designed to cater for.[44]

14.9. Attacks, brutality, and the belief in racial superiority. There has been no opportunity for this report to study the awareness amongst victims of the colonial context of New Zealand, its legal system and the psychological impact of this. However, insights into the psychological impact of this long-standing reality connecting to systemic Islamophobia have been provided, such as across the April 2019 edition of the New Zealand Journal of Psychology.[45] Moana Jackson had by then also explained how such attacks have a *whakapapa* as does colonisation – a genealogy, premised on brutality, and an enduring belief in racial superiority.[46]

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[44] Sunya Khawaja and Nigar G. Khawaja "Coping with loss and bereavement: An Islamic perspective" (2019) 48 New Zealand Journal of Psychology 10. Available at (https://www.psychology.org.nz/wp-content/uploads/Khawaja-10-12.pdf)

[45] See for example: Waikaremoana Waitoki “This is not us”: But actually it is" (2019) 48 University of Waikato, NZ Journal of Psychology 140.

[46] "It’s particularly important to acknowledge the links between the past and present in this perplexing time because the massacres in Christchurch and the ideologies of racism and white supremacy which underpinned them did not come about in some non-contextual vacuum. They are instead a manifestation of the particular history of colonisation and its founding presumption that the so-called white people in Europe were inherently superior to everyone else."

Moana Jackson "The Connection Between White Supremacy and Colonisation" (24 March 2019) E-Tangata Online Magazine. Accessible at: https://e-tangata.co.nz/comment-and-analysis/the-connection-between-white-supremacy/.

15. Hope

15.1. The issues in this report are raised alongside maintaining every hope for the conservation of New Zealand's legal tradition which has maintained relative peace and prosperity in Aotearoa, but with a corresponding hope for the maintenance of law and peace under a system and processes that are able to be lived and experienced by contemporary socio-economic, racial, and cultural strata of this jurisdiction.

15.2. It is sufficient to quote once more from the Executive Summary of *He Waka Roimata* in order to emphasise the ***approach*** to rethinking the process — that it must be focused, not insularly or from within the paradigm of the existing system, but on the "people who have been harmed in their wider social context" — and that in this rich collection of tradition and cultures are to be found both readily available ***solutions*** and ones that can be developed:

> Successful transformation of the criminal justice system will require a deliberate focus on people who have been harmed, people who offend and their whānau and families in their wider social context. It will also require reform throughout the whole system and a long-term commitment to change.
>
> We are convinced from what we have heard that solutions already exist and that people from all sectors of society wish to be actively engaged in building a justice system that all people can be collectively proud of. We are now developing some options for reform for our final report that we believe will help transform the criminal justice system to meet this goal.

15.3. It has been noted that similarly urgent and optimistic recommendations have been made over thirty years ago[47], raising the ability of the system to change. It may be hoped that in spite of the apparent inability of the system to transform, adaptability within a specific unprecedented case of harm and cultural need such as the Christchurch attacks will provide an impetus for incremental change.

15.4. It is in the light of long-lasting deficits and renewed trauma to the attack victims that there remains a need for urgent transformation of the system within the context of this case, such that it transforms the inclusivity of

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[47] "To redress the imbalances will require concerted action from all agencies involved-central and local government, the business community, Māoridom and the community at large. We make recommendations for a comprehensive approach accordingly. Our problems of cultural imperialism, deprivation and alienation mean that we cannot afford to wait longer. The problem is with us here and now.

Further there is ample evidence of interest, concern and energy in the community. We and our people hope that its strengths, diversity and ingenuity will combine with the Department in mutual goodwill to herald a new dawn:
PUAO-TE-ATA-TU."

PUAO-TE-ATA-TU, (Day Break) THE REPORT OF THE MINISTERIAL ADVISORY COMMITTEE ON A Māori PERSPECTIVE FOR THE DEPARTMENT OF SOCIAL WELFARE, 1/09/1988.

victims to one that is meaningful. The process should be one that is generally mitigatory of the harm that is inherent in our adversarial and non-victim-centred system but which cannot be changed in time for this particular hearing. In other words, matters of systemic infrastructure that cannot be replaced in time for this process and the trial should be remedied and mitigated with measures that at the very least acknowledge those to the victims and where possible mitigate those directly or indirectly.

15.5. We hope that this report will be received in the spirit that it is intended. The authors, having been aware of many of the background issues for some time, have felt it necessary that the sentiments of the victims be the subject of an urgent, candid conversation involving all necessary parties in the justice system.

15.6. Our hope is that the system will promptly adopt solutions to mitigate further harm and make the process an inclusive one for victims as they navigate a monocultural system. If we are able to make significant changes now, we will be able to cater for victims in the future.

May every good outcome emerge from these concerns and your careful consideration of them!

Tēnei te mihi nui kia koutou katoa

Aarif Rasheed | Shaymaa Arif

JustCommunity, Auckland.

September 2019.

Appendix A: Victim Sentiment, Cultural Reflections, and Recommendations

Victim Sentiment	*Cultural Reflections*	*Recommendations*
(1) Dialogue and Communication **The lack of dialogue and communication with victims and their families was very evident on the day of the hearing, when many family members, post-hearing, had many deep concerns, questions, and were visibly upset about the lack of acknowledgement of victims and the community in the court process. The emotions, distress and frustration were remarkably intense.** **Though in hindsight this may not have been entirely unexpected, given the gravity of the case, there was some expectation that the victims had been liaised with, informed, and assured to some degree, about either the court or legal process generally, prior, by Police or some other official agency or party that have been designated for each family.** **Those impacted have expressed very clearly that many have felt that they have not been included in the process by official parties involved such as Crown Counsel, the Judge, Police, etc. and many of the victims and their families feel they are an afterthought in the process. This is also the case in the independent Royal Commission Inquiry.** **This lack of discussion and dialogue between key parties in the process and the victims, resulted in considerable and emotional frustrations on the day of the hearing. This resulted in various channels of frustrations expressed, both before the hearing, and after the hearing.** **The overall intensity of sentiment also reflected the rawness of the situation and that victims were provided the space to be able to ask lingering questions and air these matters and concerns for the first time.** **Further frustration regarding the lack of dialogue was in response to the victims not being consulted with regarding the next hearing date, which the Judge stated would be held on 16 August 2019 (another Friday).** **The lack of consultation with victims proved distressing for victims and community members who felt like another Friday (as the attacks occurred on a Friday and the hearing of 14 June was also held on a Friday) was being once again taken away from them when it is considered a Holy Day and the most important day of the week for Muslims.**	It is crucial for key parties in the court process to provide for meaningful contact between the victims and the process. This requires recognition of the situation (both of the victims and the inherent inability of the court process to engage with victims) and requires a deliberate attempt to provide for such engagement, which is a vital role of Court Victim Advisors, for example. Lack of communication/ dialogue with victims and their families: the terror attacks on the Christchurch Mosques occurred four months ago, and there has been very limited communication with victims regarding the next steps, i.e. expectations for hearings, what events and decisions will be made during hearings, general information regarding the Court systems and processes (capital punishment, explanation of why we do not have it New Zealand, general court processes, victims roles, etc.) There has been a complete lack of acknowledgement regarding the various cultural differences, including the legal process, among the victims. Victims have a right to understand the process and to understand who they can turn to should they have any further questions throughout the legal process. The official parties, especially the Crown, have failed to appropriately involve the victims in the court process. As a collective (both government and community agencies), there must to be a conscious concerted effort to mitigate the emotional strain on victims. While there are many aspects in the criminal trial process that do not directly require or entail the involvement of the victims, good practice in this case requires them to be updated and informed at the very least, if not consulted throughout the process. For the 14 June 2019 meeting, it is reasonable to assume that Crown counsel possessed all information regarding what	1. Criminal Justice Cultural Advisory Group: In order to have the community, the government, and specialists working with one another to ensure appropriate protocols are followed and respected, an Advisory Group is key. This Advisory Group will be convened by professionals who are spiritually and legally literate and will play a vital role in providing crucial advice to the Court regarding important issues such as the setting of the court process, issues impacting victims, etc. 2. Harm-reduction meetings: We recommend meetings with the community in order to mitigate the lack of information provided and the general absence of adequate dialogue and culturally-competent discussion over the last four months. It is critical for victims and whānau to constantly be included in conversations and be and feel heard. Our suggestion would be periodic meetings, together with additional meetings with family members ahead of specific court hearings, commencing with the upcoming August 15th (as amended from August 16th) hearing. 3. We recommend that in the lead up to the October 2019 hearing, weekly or fortnightly meetings are held with victims and their families to clarify the process and what changes to the process they may reasonably expect. This is also to address specific issues such as access to the objectionable material, which remains a sensitive matter to those involved. Relevant agencies, or preferably a multi-

	would take place during the hearing, however this information was not passed on to the police for them to pass on to the victims and family members. Integrated victim-led responses are urgently needed to restore faith and credibility in the court process. Communication and conversing with victims are necessary in order to proceed fairly during these exceptional circumstances. Further, although the minute issued by Judge Mander ("the Minute") on 14 June 2019 at [17] stated that the case review hearing would take place on 15 August 2019 (a Thursday), this was not stated in the actual oral hearing on 14 June. Judge Mander stated on multiple occasions that the case review hearing would take place on 16 August 2019 (a Friday). Towards the end of the hearing on 14 June, the Judge once again reminded the defendant that he was remanded until Friday 16th August. The outcome of this resulted in the victims feeling like they had not been heard, including the pleas they conveyed (which were passed on to the Court registrar) before the hearing of 14 June, which had been passed on to the Court. While the date that appears in the Minute has been adjusted and changed to 15 August, the damage was already done, such actions cannot be overlooked.	agency group including cultural and legal professionals holding meetings as soon as possible in order to avoid any continued uncertainty, distress and re-traumatisation for victims. Meetings need to cater for the various ethnic/ linguistic groups. This is to afford basic acknowledgement of their needs and to allow for effective dialogue with members of the community incorporating appropriate linguistic and literacy support. 4. JustCommunity meeting with the victims in coordination with existing community well-being specialists who are now providing well-being services in Christchurch. A meeting(s) for victims and families informing them of the process, varied and complex roles of those involved (i.e. crown lawyers, defence, etc.) and possible improvements to the process, requires psychological and pastoral support. Continued meetings supported by well-being experts in the lead-up to the 2020 trial, will assist preparation and mitigate innumerable possible sources of trauma. The outcomes from all such meetings must feed into a senior judicial and executive team in order to ensure that victim needs are responded to and met where reasonably possible. 5. A full plan for the implementation of a victim-community engagement process by the court process must be culturally informed, advised and monitored in a constructive and collaborative manner.
(2) Fundamental Service Provision **The lack of interpretation services and respect to Muslim tikanga during the hearing also caused frustration for some of those who attended.**	The necessity of interpreting services: it is necessary to provide interpreting services as the hearing is taking place, where those attending the hearing have the option to listen in their own language. This is out of respect to their cultural and linguistic needs, and an effort to make them feel	6. Awareness of Muslim Tikanga. There is a prevailing ignorance that could be fatal to any proper engagement process without it being addressed through cultural-legal advice. Steps taken to afford respect and

Again, there was a sense of victims feeling the significance which the absence of such services had on them. For example, the mother of one of the victims who had lost her son in the attacks, expressed her disappointment that although she was fluent in English, interpretation services were clearly needed and should have been provided out of respect. The significance of such services was crucial as the foundation of the attacks was a motive to erase cultures linked to "immigration" and any culture that is considered "non-white", and therefore the community was visibly upset that little consideration and respect for the cultures that were attacked were present.	comfortable, given the exceptional circumstances. The interpreting services can be provided via wireless headsets, where interpreters are present in a specified booth and the interpretation is immediately transmitted to the listeners (i.e. those attending). Given the nature of the attacks on the victims' identities, victims were very sensitive to their identity being ignored and this connected them directly to the trauma of the attacks. The absence of any real meaningful effort to provide this basic service, was to the victims' indicative of their status in this society as represented by this official process. We advise that had there been clear and effective dialogue with the community, this would have been identified weeks, if not months, before the hearing.	acknowledgment of the Muslim community need to be consultative, informed, and genuinely substantive – even if peripheral or merely procedural in nature. 7. Basic spiritual practices that do not unduly impact on the court process are essential. An opening prayer being recited to open and close court hearings would be of significant emotional assistance. It is noted that Maori court processes are already familiar with such practices. 8. Respecting human tikanga entails including the languages of those present during the process (including interpretation services), and the development of pastoral and cultural advisors and counsellors from each ethnic community. This requires the immediate development of community training programs in order to make the essential requirement of community-led processes a possible reality. [JustCommunity has already organised a Chaplaincy Training Program for 8-11 August in Christchurch.] [Languages required for upcoming hearings include: Te Reo, Arabic, Farsi, Somali, Turkish, Bengali, and Hindi.] 9. The support of culturally appropriate pastoral and emotional experts are indispensable for institutions running processes as profound as this process. The facilitation of provision of pastoral, spiritual and psychological services (including at meetings) in order to offer support to victims, whānau, and other community members present is essential. These professionals (including Muslim chaplains) can provide critical sustained advice and guidance to existing

		court staff including Victim Advisors.
(3) Cognisant of Human Sensitivities **A particular incident brought up was that some police officers were heard and seen laughing outside the hearing, which was considered offensive and insensitive by some community members who attended.** **Viewing government officials behave this way can be extremely triggering and can cause re-traumatisation, particularly as many victims and family members have already been feeling like the process is not centred nor acknowledging to victims and the Muslim community.**	All those assisting, supporting and playing a role in this court process, must be extra mindful of their behaviour and make an extra effort to be sensitive as hearing days are generally days where victims and family members are at their most vulnerable, and require all the support they can receive, which includes feeling like they are in a safe environment. It is critical to remember that each of us is in attendance at the hearing for the victims and those impacted. Therefore, supporting them and protecting them is the priority for all involved and in attendance. The victims as far as is apparent, do not appear to be seeking any special or compensatory treatment from the process; they are not asking for anything from the process or system which should not ordinarily be considered out of mere cultural appropriateness or catering by the process to the needs of its subjects.	10. Cultural training: We recommend that there be appropriately proportional resources put into cultural training for security, police, court victim advisors, etc. in preparation for meetings with victims and the community as well as future hearings. It is essential for all those present at the court, particularly those in an authoritative position, to be mindful of their behaviour and any behaviour that may be construed as insensitive. 11. Cultural pre-briefings would be helpful for all staff involved in order to be reminded and remain cognisant of issues effecting the victims as of that day, and provide both grounding for the event and update for evolving situations. In addition to ongoing appropriate-level training, court event-based briefings prior to significant meetings and events should be held and any directions issued in the form of memoranda, in order for busy professionals, support workers and agencies involved (from police to security) to align in with the cultural needs and human realities of the grieving process.
(4) Integration of Community Professionals **Community members have previously and continue to have trust issues with the police and other governmental agencies as many continue to feel that little was done to address the Muslim communities' concerns regarding islamophobia prior to 15 March 2019.** **This means that many community members are reluctant to share and provide information when the conversations and meetings are run by the police.**	There has been a mixed interaction between victims and police which has an ongoing impact across different contexts, including the Court process. This underscores the need for both community-based liaison with the victims.	12. Meeting coordination: meetings run by community advocates and ethnic liaison officers whose purpose is primarily if not exclusively victim-focused, is critical. All meetings must incorporate and understand the concerns and needs of the victim community. It should also be of assistance to agencies who thus far have been left to try and coordinate directly with the victims with both inadequate cultural guidance, as well as various differing and

		even partly conflicting official duties and priorities. 13. Integration of Muslim staff members: Reasonable efforts to include Muslim staff in the process must be seriously considered. This should extend to court security officers (if and when visibly required), victim advisors, court and registry staff etc. These are for obvious familiarity and cultural competency reasons, and for which training is not a lengthy process. This again requires an acceptance of the enormity of the circumstances and a reasonably robust effort towards catering for case needs.
(5) Acknowledgement of Victims by the Key Parties in the Court Process **A sister of the one of the victims, who had travelled from the UK, stated that there was a very obvious disconnect from Crown counsel in which they did not acknowledge nor address the victims and their families. The family had stated that they were approached and consoled by random members of the public since their arrival to New Zealand, but were made to feel invisible by the people who were representing their loved ones and their families.**	Although it was explained and clarified by MOJ that the prosecutors are there representing the Crown, there remains a gap which needs to be address- that of disconnect. While it is acknowledged that counsel are representing the State in a civil matter, we are reminded that these are exceptional circumstances and additional efforts from all those involved, must be made.	14. We recommend that the Crown acknowledge victims and their families before hearing. 15. The Chief Justice and other senior judicial advisors including those with particular cultural competency (such as Justice Joe Williams) play an advisory role in restructuring the process to be adapt to the critical needs of victims and to mitigate re-traumatization. 16. We recommend Crown Counsel remain an active part of the victim-court liaison process. We recommend that the Crown Solicitor, Solicitor General and Chief Justice be advised of the substantive nature of adaptations requested and required by the process, particularly given the lack of adaptations to date, and the significance of some of those now seen to be required (once discussed and confirmed). This was also mentioned in recommendation 2.
	Miscellaneous recommendations: 17. Further recommendations and details of existing recommendations can be provided once proper consultation with the victims and their whanau has commenced.	

	18. Suppression of information: During the in-chambers portion of the hearing, certain information, especially regarding objectionable material, was prohibited from being published. Victims and whānau are yet to appreciate why such information is being suppressed: some have expressed that they feel their struggle and suffering is being supressed when information is prohibited from being published. This inability to make sense of what suppression of court material (and other material – such as the manifesto) is continuing to exacerbate their feeling of their trauma needing to be suppressed and connects to their feeling of overall suppression and minimisation of their predicament. 19. This prevents the victims' trauma from being acknowledged by their wider community (due to significant suppression of material), from whom such acknowledgement and collective support is critical for victims' healing.

Understanding the Muslim Acceptance Gap in New Zealand

For Ministry of Justice
25 September 2019

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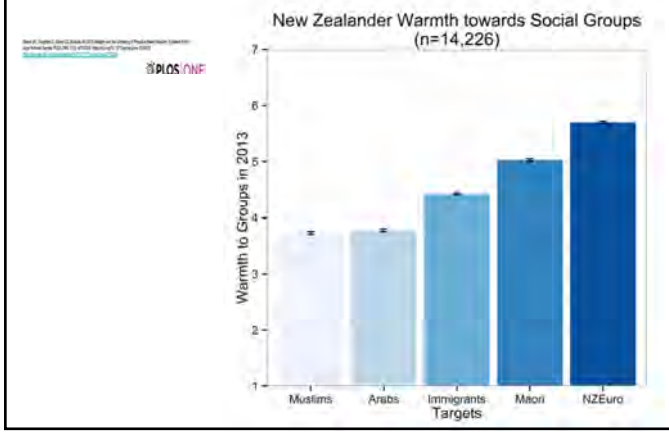
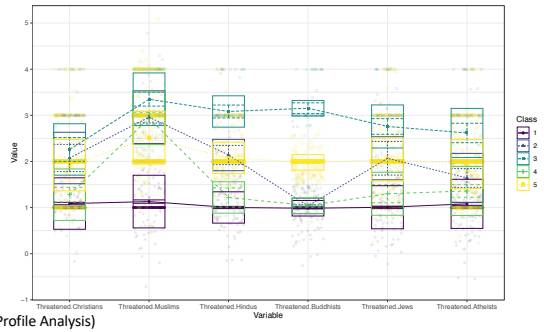
In New Zealand, there is a Muslim acceptance Gap



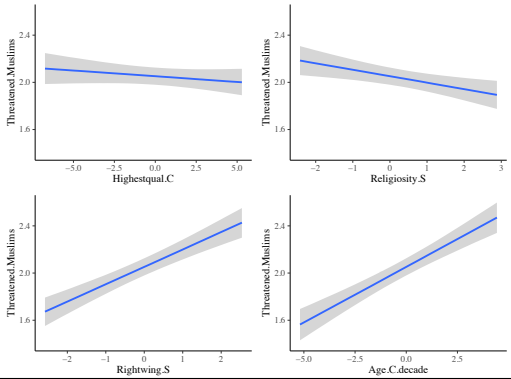
43% of the population can be classified as accepting.
The remaining sub-groups perceive Muslims to be somewhat threatening.

Pr. Class 1 = .43
Pr. Class 2 = .09
Pr. Class 3 = .05
Pr. Class 4 = .11
Pr. Class 5 = .33



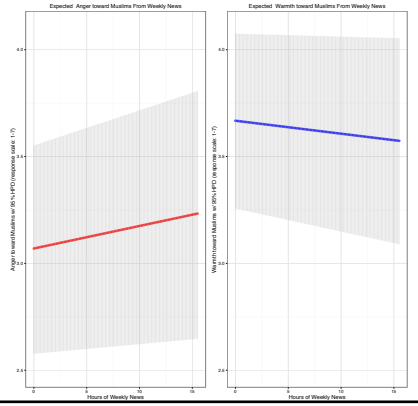
ISSP data (*N*=1334, year: 2018, Latent Profile Analysis)

Highly religious people, younger people, and people who are not rightwing are less threated by Muslims (ISSP data, 2018)



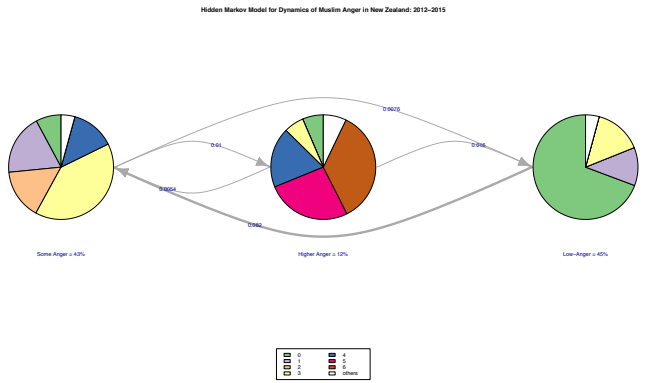
There is a Muslim PR problem: watching/reading news associated with reduced warmth/greater anger to Muslims(2013)

MARSDEN FUND
TE PŪTEA RANGAHAU A MARSDEN



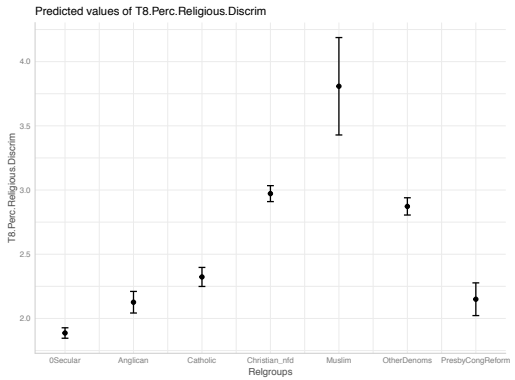
Over time, we find increasing movement from Low Anger → Moderate Anger towards Muslims

NZAVS data, years 2012-2015.



Muslims and other religious groups perceive discrimination:

"I feel that I am often discriminated against because of my religious/spiritual beliefs."



Possible suggestions for addressing the Muslim Acceptance Gap?

- Consider instituting a national moment of silence every 15 March to honor freedom of religious (and non-religious) expression.
- Consider developing religious literacy training for Justice, the Police and other government agencies. The Muslim community can help with these educational efforts.