

Australian Federal Police disclose 1,500 pages of documents in Julian Moti case

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Hearings continued Thursday and Friday in the Queensland Supreme Court on former Solomon Islands' attorney general Julian Moti's application for a permanent stay of proceedings in the efforts by Australian prosecutors to try him on charges relating to rape allegations in Vanuatu in 1998. Moti's counsel is attempting to establish that the investigation and attempted prosecution represent a politically driven abuse of judicial process.

The case initially derived from Australian officials' concern to prevent Moti becoming attorney general of the Solomon Islands. The academic and legal practitioner was regarded as an opponent of Australian interests in the South Pacific and especially Canberra's neo-colonial operation in the Solomons, the Regional Assistance Mission to Solomon Islands (RAMSI). His arrest in September 2006 came amid a provocative Australian government campaign aimed at destabilising and ousting the elected Solomons' government of Prime Minister Manasseh Sogavare. Shortly after the parliamentary removal of Sogavare's government in December 2007, the new pro-Australian regime sacked Moti as attorney general. The lawyer was then forcibly transferred to Australia, where he was arrested on the contentious grounds of the extraterritorial Child Sex Tourism Act.

No additional witness testimony was taken during the last two days of Supreme Court hearings. Instead, presiding Judge Debra Mullins heard a defence application for a two week adjournment.

On Thursday morning, Moti's counsel Jim Kennan SC explained that in the previous 48 hours, the Australian Federal Police (AFP) had handed over more than 1,500 pages of documents. These included internal AFP memos, emails, and notes and diaries of key police officers. Kennan insisted that this material should have been disclosed in July or earlier; he described the AFP's actions as "beyond the pale" and said that defence might add as an additional ground in its stay of proceedings application, the failure of the police to fulfil their disclosure obligations.

Kennan noted that one of the latest AFP documents related to Solomons' Police Commissioner Peter Marshall. Marshall had been cross examined the day before—prior to defence counsel learning about the matters referred to in the additional document. As a result, Kennan concluded, defence's rights were "infringed". The SC also argued that since the recently disclosed material was heavily redacted, time was needed to consider defence's right to argue for its unedited release.

Kennan insisted that the right of his client to a fair hearing, with adequate time to prepare for cross examination of the prosecution's witnesses, required an adjournment.

AFP agent Peter Bond is the next witness due to give evidence. He may

prove to be the key witness in the case, since he was centrally involved in the events leading up to Moti's allegedly unlawful deportation from the Solomon Islands on December 27, 2007. One of the central grounds of Moti's stay application is that the Australian government was complicit in his allegedly illegal deportation. Some of the contradictory testimony from different witnesses heard by the court relates to Bond's actions in the lead up to, and on the day of, Moti's extraction from the Solomons. (See: "Contradictory witness testimonies in Julian Moti hearing")

John Agius, for the Commonwealth Director of Public Prosecutions (CDPP), argued that Bond should be quickly cross examined, as he had been called back from his current post in Pakistan for this purpose, and "there's been quite a lot of terrorist activity in Islamabad and it heavily impacts upon his job".

Kennan responded that the convenience of witnesses could not be pressed upon defence's right to a fair hearing. He added that the AFP deliberately withheld the documents until the last moment, knowing that by doing so it risked triggering an adjournment. To force the hearings to continue, Kennan concluded, would fail public policy by encouraging improper disclosure in other future cases, and hand a "forensic victory" to the prosecution after it had held up the documents' release.

Supreme Court Judge Debra Mullins agreed with the defence that there had not been proper disclosure of AFP material. She said: "I'm really disappointed that the Commonwealth doesn't fulfil disclosure obligations in a timely way."

No decision was reached, however, on the question of a two week adjournment. Judge Mullins raised concerns that delaying proceedings would force the trial date, currently set for early November, to be pushed back to the middle of next year. Defence responded by noting that court case management could not be allowed to outweigh the proper determination of the issues raised in the stay application.

When hearings resumed Friday morning, Moti's counsel continued to argue for a two week adjournment, insisting that the AFP's late disclosure represented a "grave breach of procedural fairness". Kennan reiterated that defence had not been given sufficient time to go through all of the material line by line, adding that the documents included more than 200 pages of handwritten notes. Defence found that at least one of these pages was potentially important to its cross examination of Peter Bond. This was a note written by AFP officer Sally Macdonald on the day of Moti's deportation: "Called Bond in Honiara, who just came out of a briefing. All systems are go. Seats are booked, tickets are ready."

This document is potentially highly significant from the standpoint of defence's argument that Australian officials instigated or assisted the

deportation, which Moti's defence argues was in fact a "disguised extradition". Kennan noted that had he and his colleagues *not* applied for an adjournment the day before, their cross examination of Bond would have begun without any knowledge of Macdonald's reference to the discussion with the AFP agent about arrangements for Moti's flight out of Honiara.

The court has not yet determined who booked and paid for the flights of Moti and the two Solomon Islands' police and immigration officers who accompanied him to Australia. Prosecutor Agius was adamant that Macdonald's note represented a reference to information received from Solomons' officials. He said that Australian personnel played no role in the flight arrangements and that no documents existed suggesting otherwise. But, as Judge Mullins intimated, the defence is not in a good position to accept this assurance given the AFP's late disclosure.

Kennan said it was evident that additional, undisclosed, documents existed that should also be handed over. These include Bond's police notes prior to mid-December 2007. Moti's counsel noted that Bond was in Honiara from January 2005 and was involved in previous discussions in relation to the Australian investigation into the Vanuatu sex charges, especially from 2006 when extradition was first mooted. Kennan referred to one document, dated November 12, 2006, which reported Bond's advice that Australian officials "should be prepared to move quickly" on extradition, "should there be a change in government".

Around the same time, Kennan said, then Solomon Islands' solicitor general (and Australian national) Nathan Moshinsky had issued advice on potential legal problems in relation to Moti's extradition. Judge Mullins queried the significance of these documents, saying that the 2006 extradition effort was "part of the historical record", but not relevant to the stay of application.

Kennan insisted that the material was relevant, as it helped establish the Australian government's consciousness of the legal problems involved in extradition procedure. What you had in December 2007, he argued, was "extradition disguised as deportation". Deportation provides fewer opportunities than extradition for legal contest and appeal, and for this reason, defence argued, became the Australian government's preferred method of getting Moti out of the Solomons. According to Kennan, this amounted to what is referred to in international law as "disguised extradition"—due to the role of Australian authorities in allegedly making all the necessary arrangements, including arranging travel documents for the accused and his police and immigration supervisors. Moti's counsel has cited several international legal precedents in support of their argument that "disguised extradition" represents abuse of process.

Prosecutor Agius repeatedly argued against any adjournment of Bond's cross examination, accusing the defence team of attempting a "filibuster". He said that it had been given enough time to examine the AFP documents.

Judge Mullins postponed a decision on the adjournment application until Monday. She instructed Moti's counsel to nevertheless prepare to begin their cross examination of Bond that morning; other witnesses, Sally Macdonald and former acting Australian High Commissioner to the Solomon Islands Heidi Bootle, will be scheduled after then.

Yesterday's proceedings concluded with Judge Mullins hearing defence's application for access to some redacted parts of material previously released by the AFP and CDPP. Defence counsel Dyson Hore-Lacey SC asked for the redacted names of Solomon Islands' ministers,

officials, advisors contained in several documents which confirm that the only reason the AFP investigated the Vanuatu charges against Moti was because Australian officials wanted to prevent him becoming attorney general.

Hore-Lacey referred to a memo written by then Australian High Commissioner Patrick Cole, dated December 1, 2004, that "early progress in our own AFP investigations would clearly help" to make a case against Moti. Defence counsel also asked for an unredacted version of another note by Cole, dated December 21, 2004, which read in part: "efforts to prevent the appointment would be enormously strengthened if [redacted] were able to refer to specific investigative or prosecutorial action being taken against Moti in Vanuatu or other jurisdictions."

Hore-Lacey also raised an AFP case note, written on January 14, 2005, which stated: "The Head of Mission (HOM) [Patrick Cole] wanted to be able to use these allegations as the *premis* [sic] for preventing Moti becoming the new Attorney General within the Solomon Islands Government. Such was the pressure that an Inter Departmental Committee meeting was held at DFAT on 10 December 2004 between representatives of AFP Pacific Desk, AFP Legal, AFP TSETT [Transnational Sexual Exploitation and Trafficking Team], AGDs [attorney general's department] and Solomon Islands Desk DFAT."

The document said the AFP officers involved intended to send a cable to Cole, notifying him that an investigation would be confidential, and that "such allegations could not be used to influence political appointments". Hore-Lacey told the court: "We would say they *were* used in this way. This is what drove the investigation."

Judge Mullins replied by saying that even if that were the case, it did not amount to a bad prosecution or an abuse of process; even if a government official thought an investigation was good for "extraneous reasons", so long as there was a material basis for an investigation there was no problem.

She did not address, however, defence's argument that the nature of the investigation and charges themselves was invalid—because the Child Sex Tourism Act prohibits double jeopardy prosecutions. In the hearings last month, Hore-Lacey referred to a statement by the Australian federal justice minister in 1994, explaining that the purpose of the extra-territorial legislation was intended to allow the prosecution of those who evade the courts in the countries in which they committed their crimes. This obviously does not apply to Moti, whose case was discharged after a Vanuatu magistrate reviewed the lack of evidence and decided there was no basis for a trial to proceed.

Judge Mullins declined all of the defence requests for the redacted parts of the documents to be made known, arguing that their sensitivity was due to the "public interest" in not prejudicing relations between the Australian and Solomon Islands' governments.



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