

Moti defence counsel challenges Australian Federal Police witness

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Australian Federal Police agent Peter Bond was cross examined yesterday in the Queensland Supreme Court case brought by former Solomon Islands' attorney general Julian Moti. The international and constitutional lawyer is applying for a permanent stay of proceedings in relation to extraterritorial rape charges—previously discharged by a Vanuatu magistrate in 1998—on the grounds that the investigation and prosecution represents a politically motivated abuse of judicial process.

Bond is a key witness in the hearings, having played an important role at the time of Moti's forced removal from the Solomons in December 2007. This came shortly after Moti was ousted from his position as attorney general, following the bringing down of the Solomon Islands government of Prime Minister Manasseh Sogavare. The government's demise was the result of a protracted destabilisation campaign mounted by Canberra after Sogavare was identified, shortly after coming to power in May 2006, as a threat to Australia's neo-colonial occupation force, the Regional Assistance Mission to Solomon Islands (RAMSI). Initially deployed in July 2003, RAMSI was, and is, regarded by the entire Australian political establishment as critical to its strategic and economic interests in the South Pacific.

Moti was long viewed as an opponent of Australia's agenda in the region. The Australian Federal Police (AFP) investigation into the Vanuatu charges only commenced in late 2004 because of a request from then Australian High Commissioner in Solomon Islands, Patrick Cole, who wanted some means of blocking Moti's pending appointment as attorney general. The AFP investigation intensified in mid-2006 when the constitutional lawyer was again being considered for the senior legal post in the Solomons.

The current stay application has largely focussed on the events surrounding Moti's extraction from the Solomons and arrest in Queensland on December 27, 2007. Defence has alleged that what occurred was not a deportation but rather a "disguised extradition", involving the Australian government's knowledge of, and complicity with, illegal activities. Moti was deported despite an order issued by a Solomon Islands' magistrate explicitly forbidding such action. Moreover, Moti's legal right under the Solomons' immigration act to appeal within seven days of the issuing of the deportation order was violated when he was arrested and bundled onto a plane to Australia, immediately after the deportation notice was served.

Peter Bond was the AFP's senior liaison officer in Honiara at the time of these events and was closely involved in the events surrounding the deportation. Much of yesterday's cross examination dealt with his concern for the legality of what occurred. Bond was present at a meeting held on December 25, two days prior to Moti's expulsion, involving Solomon Islands' government ministers, immigration officials, and

Gabriel Suri, a private solicitor who was later appointed attorney general. Bond also had a discussion with Suri just hours before the deportation, accepting his legal opinion that it was lawful to proceed, and then relaying this advice to the Solomons' deputy police commissioner, Peter Marshall.

In court yesterday, Bond admitted knowing of Moti's legal right to appeal the deportation notice seven days after it was served. But he said that he nevertheless accepted Suri's assurance that the appeal could be made from Australia. Bond was unable to explain the contradiction between his deference to Suri on this question and his own understanding—explicitly stated in a document he co-signed with another AFP officer and sent to acting High Commissioner Heidi Bootle on December 24, three days before the deportation. The document read: "Moti has seven days in which to appeal to the High Court *before* being deported in this manner." (Emphasis added.)

Moti's counsel Dyson Hore-Lacey described as "absolute nonsense" the idea that an officer with Bond's experience could believe that someone being deported could possibly appeal that action from the country to which they were being deported.

He also noted Bond's police diary entry made after his discussion with Suri on the 27th, which stated that the solicitor said that the new government intended to pass legislation to make it impossible for Moti to return to the Solomons once he was removed. In other words, both Suri and Bond knew that no appeal by Moti to the deportation made in Australia could possibly be successful, even if it could somehow be initiated. Bond admitted that at no point did he seek an independent legal assessment of Suri's opinion.

Hore-Lacey also challenged Bond's repeated references to Suri as the Solomons' "acting attorney general", noting that he was in fact a private solicitor. Suri was not appointed acting attorney general until January or February 2008. Bond replied by saying that he could only accept what he was told by government ministers regarding Suri's status.

This position lacks all credibility, however, given the level of involvement of Bond and other Australian police and officials in the campaign to prevent Moti from being appointed attorney general in 2006 and 2007. The AFP agent would have been intimately familiar with the legal processes required for an individual to become the lawful attorney general, and would have known that an individual could not assume the role simply on the say-so of government ministers.

Much of Bond's testimony was characterised by a failure to remember key conversations and events.

Asked about the evidence provided by Solomons' police officer Selwyn

Akao—that he spoke with Bond shortly before Moti’s deportation and that he was told, “Do it quickly because the plane will be waiting”—Bond told the court that “I don’t recall saying that”. Asked if he categorically denied saying it, the Australian police officer again replied by saying he did not recall it.

Bond was also asked about the testimony of Wilson Rano, Moti’s lawyer in 2007, who said he saw Bond pass what he believed were travel documents to Peter Marshall at the airport just before Moti was flown out. Bond said he “can’t recall” whether he gave Marshall any documents. Asked if he would deny doing so, the AFP agent again replied, “Can’t recall.”

Bond’s cross examination is expected to conclude today. The process has been adversely affected by the AFP’s late disclosure of more than 1,500 pages of documents including internal memos, case notes, emails, and police officers’ diaries. Defence last week applied for a two week adjournment to allow sufficient time to prepare its cross examination of Bond and other prosecution witnesses. Justice Debra Mullins decided to postpone her decision on the adjournment application until after Bond’s cross examination had concluded—effectively leaving defence just two days to examine and cross reference the largely unorganised and unpaginated disclosed documents.

Defence counsel Jim Kennan has previously raised that the judge’s concern to process the case quickly and stick to the existing schedule for both the stay application and subsequent trial could not be allowed to outweigh Moti’s right to a fair hearing. Kennan raised the same issue yesterday when he said that if hearings did continue this week, defence would need one or two days to prepare its summation after the cross examinations were finalised. Justice Mullins replied: “That’s not how we do things in Queensland.” She indicated that defence would have to be ready to immediately present its summation, suggesting that the hearings could conclude on or before this Friday.

There are, however, many outstanding questions regarding the AFP and prosecution’s conduct in the course of the hearings.

Why the AFP released so much material so late, and in such a disorganised manner, has not been satisfactorily explained. In the normal course of events, it should have been done months ago; prosecutor John Agius’s claim that the delay was due to the time taken to find and assess the documents is simply not credible. The question can be raised—why, if the AFP and Commonwealth Director of Public Prosecutions (CDPP) are so confident in their case and in the conduct of Australian officials in the Solomons in 2006-2007, was there not full and proper disclosure of all the relevant documents? Why has defence confronted so many obstructions and obstacles? Is there a connection between the content of the prosecution case—that is, the legal veracity and credibility of the charges against Moti—and the form in which the case has been presented and conducted?

Further questions also emerge out of John Agius’s behaviour in court last Friday, when he raised aspects of the criminal allegations against Moti.

Addressing a query from the judge regarding how long he thought a trial would take, Agius said the CDPP had evidence of Moti’s alleged relationship with the girl, including that Moti had used his credit card to pay for a termination of her pregnancy. This declaration, which was entirely superfluous to the judge’s question, reinforced the serious character of Moti’s crimes as Justice Mullins was in the process of ruling

on legal matters related to the appeal for a permanent stay, particularly the application for an adjournment. Agius’s statement also provided an attractive diversion for the media. Predictably, the Associated Press article, subsequently published in various newspapers, focussed on the abortion claim and excluded any serious presentation of the substantive issues relating to the AFP’s disclosure of documents. Another possible effect of the highly prejudicial and selective media coverage will be to create problems in selecting an unbiased jury in the event that the permanent stay application is refused.

While Agius’s remarks went unchallenged in court, several points should be made. Firstly, Moti denies all the charges. His current application is premised on the fact that they were only revived, having failed in a Vanuatu court, as part of an Australian-orchestrated political campaign to remove him from the Solomons. Secondly, part of defence’s grounds for the stay application is that Moti’s attempted prosecution on the basis of Australia’s Child Sex Tourism Act is improper because the legislation was designed to allow the prosecution of those who evade the courts in countries where the alleged crimes are committed. Moreover, the law’s explicit double jeopardy provisions ought to apply, given that a Vanuatu magistrate assessed the evidence in 1998 and decided a trial could not proceed, a decision subsequently not appealed by Vanuatu prosecutors.

Thirdly, another of the stay application’s central grounds concerns Australian authorities’ payments to the girl’s family. While the exact figure since 2006 is yet to be determined, the alleged victim and her family have received more than \$100,000 in the last 12 months alone. This is an extraordinary sum, far larger than any reasonable witness costs or living expenses in Vanuatu. Defence has previously argued: “It is clear from the material now disclosed that had the Commonwealth not been making payments to the alleged victim and her family there would be no prosecution.”

There is also evidence contained in documents disclosed to the court regarding threats made by the alleged victim to the AFP. In an SMS mobile phone message to AFP officer Sally MacDonald in January last year, the alleged victim referred to certain conditions being met. The SMS then continued: “pressuring me and negotiating [sic] otherwise will only encourage me to denounce that I may have been used as a tool by the Australian Government for political and neo colonial reasons [...] The aim of all this was to put in the Government of your choice in the Solomons”.

Hearings continue this afternoon, with the adjournment issue also to be decided. If the judge declines this application and proceeds with the hearings, prosecution witnesses Heidi Bootle, the former acting Australian High Commissioner in Honiara, and AFP officer Sally Macdonald are expected to be cross examined next. Solomons’ Police Commissioner Peter Marshall will also reappear in court, to be cross examined in relation to an AFP document only discovered after his earlier cross examination.



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