

Australian government prosecutors suffer significant blow in Moti case

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The Australian Federal Police (AFP) and Commonwealth Director of Public Prosecutions yesterday suffered a significant setback in their attempt to pursue former Solomon Islands' attorney general Julian Moti on statutory rape charges. Justice Debra Mullins of the Queensland Supreme Court adjourned pre-trial proceedings until November 3 and postponed any potential trial until next year.

The decision, made on day seven of the hearings, followed the release of yet more AFP documents that should have been released as early as March. Justice Mullins concluded that the AFP and CDPP's failure to disclose all the relevant documents on time, as they are legally obliged to do, meant that defence's cross examination of the prosecution's witnesses could not proceed as scheduled.

The allegations against Moti relate to alleged sexual offences committed against a 13-year-old girl in Vanuatu in 1998. Moti, a constitutional lawyer, is arguing for a permanent stay of proceedings, alleging that the case represents a politically motivated abuse of judicial process.

The AFP investigation into the 1998 charges—which were discharged after the Vanuatu magistrate decided there was no evidential basis for a trial—commenced in late 2004 at the behest of Australia's High Commissioner in Solomon Islands, Patrick Cole. Cole and the Australian authorities regarded Moti as a danger to Australia's interests in the country and were attempting to prevent his appointment as attorney general. The investigation stepped up in mid-2006 when Moti was again considered for the position. Moti served as attorney general for six months in 2007, but was sacked in December that year after a protracted regime change campaign, orchestrated by Canberra, succeeded in ousting Manasseh Sogavare's government. Sogavare, like Moti, was identified as a threat to the Australian neo-colonial occupation force, the Regional Assistance Mission to Solomon Islands (RAMSI).

Moti's counsel applied last Friday for a two-week adjournment of the stay application proceedings in order to allow a proper examination of the 1,500 pages of AFP documents—including internal memos, case notes, police diaries and other material—that had been disclosed in the previous 48 hours. The AFP and CDPP were supposed to voluntarily present these documents well before the hearings commenced. However, last week, Justice Mullins reserved her decision on the adjournment application and instructed defence lawyers to begin cross examination of the prosecution's key witness, Peter Bond, the AFP liaison officer in Honiara in 2006-2007. (See:

“Moti defence counsel challenges Australian Federal Police witness”)

This quickly proved untenable when hearings resumed yesterday. Just ten minutes before Bond returned to the witness stand, the AFP disclosed significant additional documents. Part of these comprised 270 pages of handwritten police notes by different AFP agents, including Peter Bond's entries for October and November 2006.

Shortly after cross examination began, defence asked Justice Mullins to make a decision on the two-week adjournment application. Moti's counsel Jim Kennan told the court that defence counsel should not be asked to proceed with Bond's cross examination given the further late disclosure of documents. He noted that there was other potentially important material, cited in the documents they had just received, that was yet to be released.

Kennan explained that only one copy of each disclosed document had been made available. “Our client is entitled to read it and give us instructions,” he said. Defence also argued that its entire case could depend on “a line or a page in the end” and they therefore had to be allowed time to study the new material. “This is not a situation of our making,” Kennan told the court. “We believe we have reached the end of the road as a matter of fairness to our client.”

Justice Mullins agreed. She began by reviewing the chronology of the case, noting that Moti first filed his stay application last February, amended it in May, and included particularised grounds. She was critical of the initial presentation of these tendered grounds (declaring that they were not “presented in coherent or orthodox form”) but nevertheless insisted that it should have been clear to the CDPP that the case involved the issue of Australian government collusion or connivance with Moti's deportation from the Solomons. The documents required for disclosure should therefore also have been clear.

The judge continued: “Although the Commonwealth appears to have put a lot of energy into opposing the subpoenas, it did not put the same energy into looking at what documents needed to be disclosed in order for the Commonwealth to comply with its disclosure obligation under section 590AB of the [Criminal] Code.”

It became apparent during Bond's testimony, Justice Mullins continued, “that all that Mr Kennan had foreshadowed [in his adjournment application Friday] by way of difficulty for the defence in preparing for the cross-examination of the Commonwealth

witnesses was borne out". She noted that an "efficient and comprehensive cross examination" of Bond "was hampered by the disadvantage under which the defence lawyers were working because of the late disclosure". The judge concluded by saying that "the issue of fairness" was central.

During yesterday's proceedings the prosecution provided no explanation for the AFP and CDPP's actions. No plausible reason has been given as to why centrally relevant documents to the prosecution witnesses' cross examination were not disclosed in a proper manner, consistent with the Commonwealth's legal obligations. The *World Socialist Web Site* has previously raised the question—why, if the prosecutors and police are so confident in their case, and in the conduct of the Australian government in Solomon Islands in 2007, have so many obstacles been placed before the defence in its attempt to examine the relevant material? Is there a connection between the form in which the case has proceeded and the content of the charges themselves—charges which the defence argues represent a politically motivated abuse of judicial process?

These questions are especially acute given the nature of the latest disclosed documents. Bond's diary entries from October and November 2006 include mention of extensive discussions involving Australian police, Department of Foreign Affairs (DFAT) and High Commission officials on the question of the possibility of the Solomons' government deporting Moti after he had arrived from Papua New Guinea, where he was first arrested.

Bond's police diary entry for October 13, 2006 stated that Australia's acting High Commissioner Heidi Bootle "has been tasked to meet PM Sogavare today to find out about Moti deportation. Will be telling Sogavare [that] Australia is keen to ensure Moti returns to Australia." His diary entry for November 23 reads: "In the view of [DFAT official] Mr [Chris] Elstoft, although the Prime Minister has no current intention of agreeing to Moti's deportation or extradition to Australia, the Prime Minister's position may change as the necessity to improve relations between the two countries becomes increasingly evident... Mr Elstoft intends to continue to pursue this matter with the Solomon Islands government."

These and other entries throw into further doubt one of the CDPP's central arguments—that Australian officials played no role in helping arrange Moti's deportation or in pressuring the Solomons' government to do so. One of defence's grounds for the stay application is that the December 2007 deportation was a "disguised extradition", allegedly involving Australian government knowledge of and complicity in unlawful activities. If there were anyone within the AFP or CDPP who may have preferred not to disclose Bond's complete diary, this is understandable given the way in which it would appear to bolster the defence case that Australian officials in December 2007 had considerable familiarity with the benefits of deporting, rather than extraditing, Moti.

Addressing the judge, John Agius of the CDPP insisted that the events of 2006 were "utterly irrelevant" to proceedings. He later declared: "This has all been part of a strategy [by the defence] in our case to put this trial off and to put as much pressure on the complainant [i.e., the alleged victim] as possible." This extraordinary statement was made despite the fact that the delay in proceedings was

the fault of the Commonwealth, not the defence.

After failing to persuade the judge to continue with the stay application hearings, Agius argued that the potential trial, which had been scheduled to begin in the first week of November, should be delayed by just one week. He asserted that the issues in the case were "very confined" and "black and white".

Defence counsel Dyson Hore-Lacey challenged Agius's statement, saying the case "was not a simple matter". He noted that the AFP had spent over \$100,000 on the alleged victim and her family, including for business ventures, home help and Centrelink payments. The whole family, he told the court, had spent time in Australia and "have requested to be relocated in the south of France". The alleged victim had also threatened to withdraw on at least seven occasions, Hore-Lacey explained, "just about all of them in the context of money being withheld".

Defence counsel continued: "There is admitted perjury that she has committed in the initial committal proceeding, evidence of this in the notes. There have been queries to Vanuatu about whether she could be charged with that... She has [also] made false accusations which she has withdrawn of sexual assault against her father, [involving] herself and her sisters, which were withdrawn."

Hore-Lacey added that delaying the trial by just one week would force Moti to simultaneously prepare his case in the stay application as well as for a trial which would only go ahead if the stay case proved unsuccessful. "[I]n fairness," he concluded, "the applicant is entitled to wait for a decision until he pays what could be an enormous amount of money for somebody to prepare the defence of the action for trial."

Justice Mullins rejected Agius's request for a one-week trial delay, saying this was "unfeasible" given the new stay application hearing dates. The trial was de-listed, with a new date, likely to be mid-2010, to be determined next month.



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