

Julian Moti case: Enormous sums paid by Australian police to alleged victim's family

Patrick O'Connor
6 November 2009

The Queensland Supreme Court yesterday concluded cross examination of witnesses in the permanent stay of proceedings application brought by former Solomon Islands' attorney general Julian Moti. The international and constitutional lawyer is arguing that the attempt by Australian authorities to prosecute him on statutory rape charges relating to allegations that were discharged by a Vanuatu magistrate in 1998 represents a politically motivated abuse of judicial process. Hearings over the past two days have been dominated by two key issues that go to the heart of the defence argument—Australian complicity and collusion with Moti's allegedly unlawful removal from the Solomons in December 2007, and the staggering amounts of money paid to members of the alleged victim's family following numerous threats to withdraw their cooperation with the attempted prosecution.

Behind the case lies Moti's involvement in Solomon Islands' politics. Soon after the Australian-dominated Regional Assistance Mission to Solomon Islands (RAMSI) intervened in mid-2003, Moti came to be regarded as a potential political threat to the occupying force and to broader Australian interests in the impoverished country. When Moti was about to be appointed Solomons' attorney general in late 2004, High Commissioner Patrick Cole requested that the Australian Federal Police (AFP) open an investigation into the Vanuatu charges. The request coincided with Cole's active efforts to prevent Moti taking up the post.

Giving evidence yesterday, AFP agent Sally Macdonald acknowledged that the investigation into the 1998 allegations was not launched because of any complaint received from the alleged victim, her family, or anyone else in Vanuatu. Macdonald was the main police officer in close contact with the alleged victim.

Defence raised the issue of witness payments by noting that the average wage in Vanuatu is between \$200 and \$250 a month. Macdonald then confirmed AFP documents showing that the alleged victim receives \$3,485 per month, her brother \$1,290, father \$480, and mother \$1,470. In other words, the Australian police have been paying the family \$6,725 a month, or about \$80,000 annually. Macdonald told the court that the sums covered rental, food, medical, education, counselling, transport, and other costs. Moti's counsel pointed out that some of the money also went towards the family's troubled business ventures in Vanuatu.

Defence counsel Dyson Hore-Lacey SC noted that the alleged victim and her family had threatened to withdraw from the case on about ten occasions, each in the context of requests for more money and assistance. The threats were made over a considerable period, from 2006 to 2009. On one occasion, the alleged victim demanded to be relocated to the south of France, where she hoped to be able to claim welfare payments. One threat to withdraw cooperation with the case was made just three days prior to Moti's removal from the Solomons in December 2007. Another occurred

in January 2008, when she sent an sms mobile phone message to Macdonald demanding that her entire family be moved to Australia. She then declared: "Pressuring me in 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."

Defence also raised an email sent on December 24, 2007—three days before Moti's arrest in Australia—by David Adsett, the director of the Commonwealth Director of Public Prosecutions (CDPP) in Brisbane, to a colleague. It read: "It is important that only expenses associated with her [i.e., the alleged victim] being a witness are paid, e.g. witness expenses for loss of income for when she travels to and is present in Australia to give evidence, and there is a rational, reasonable basis for any expenses paid to her."

Hore-Lacey suggested that the payments to the family "went well outside those guidelines". After Macdonald attempted to evade the issue by referring to actions based on legal opinion received by the AFP, Justice Mullins directed the witness to answer the question. Macdonald then replied: "I believe that they are actually expenses for maintaining the witness... To ensure that the witness can live to attend court at the end for the trial."

Macdonald subsequently stressed that she was not involved in calculating the witness payments.

Later in the proceedings, when cross examined by the CDPP's John Agius, Macdonald said that there were no established guidelines for witness payments in cases under the Child Sex Tourism provisions of the Crimes Act. As a result, she continued, in the Moti case the AFP followed guidelines concerning victims of prostitution trafficking, i.e., the smuggling of women into Australia for forced prostitution. In these incidents, the court heard, the women involved were provided with assistance greater than witness expenses alone; Centrelink benefits were arranged and payments made for English lessons and other education and vocational training aimed at ensuring the victims were not forced back into prostitution. However, when asked by Justice Debra Mullins whether the guidelines concerning prostitution trafficking covered payments to alleged victims' families, Macdonald replied, "I don't believe so." Defence further put to Macdonald that there was no parallel between prostitution trafficking and alleged victim's case.

Also giving evidence was prosecution witness Heidi Bootle, who was the acting Australian High Commissioner in Honiara in December 2007. Bootle worked closely with the AFP's senior liaison officer in Solomon Islands, Peter Bond, in the lead up to and during Moti's extraction to

Australia.

Bootle was asked about a cable she prepared with Bond and another colleague and which was sent to Canberra following a meeting held on December 24, 2007, three days prior to Moti's removal. It read in part: "On our reading of the Deportation Act, Moti has seven days in which to appeal to the High Court before being deported in this manner." The cable attached a copy of the Solomons' Deportation Act. When cross examined, Bootle insisted that she was not a lawyer and had merely included in her cables every possibility and issue she could think of concerning potential deportation. Defence countered that one did not need to be a lawyer to read the unambiguous provisions within the Deportation Act, which mandate a seven-day appeal period prior to the execution of any deportation.

A central issue in Moti's stay application is the Australian authorities' alleged concurrence and collusion with the deportation. His counsel contends that the deportation was, in reality, a "disguised extradition" and, as such, amounted to an abuse of process.

Several high-level legal precedents establish that courts may refuse to try a person if he or she was forcibly returned to the jurisdiction through means other than extradition, in which the government was a knowing party. In the 1993 British House of Lords judgment in *R v Horseferry Road Magistrates' Court, ex p Bennett*, for example, the judges stated: "When it is shown that the law enforcement agency responsible for bringing a prosecution has only been enabled to do so by participating in violations of international law and of laws of another state in order to secure the presence of the accused within the territorial jurisdiction of the court, I think that respect for the rule of law demands that the court take cognisance of that circumstance... Since the prosecution could never have been brought if the defendant had not been illegally abducted, the whole proceeding is tainted."

Authorities in Canberra were well aware of these matters at the time of Moti's removal from the Solomons. During Wednesday's hearing, defence drew the court's attention to a cable sent to the Honiara High Commission on December 11, 2007. It advised: "Deportation could be found by a court to amount to an abuse of process if Australian authorities acted deliberately to circumvent requirements of domestic laws ... governing extradition or Australian authorities participated in an unauthorised act, an unlawful removal of a criminal suspect from one jurisdiction to another."

Prior to Moti's removal on December 27, 2007, and despite her awareness of what were, at the very least, highly contentious legal grounds for his pending deportation, Bootle oversaw the issuing of entry visas into Australia for the two Solomons' officials accompanying Moti on the flight to Brisbane. The Australian government also tasked her with drawing up Moti's "confirmation of identity" papers; this was done in the Honiara High Commission without Moti's knowledge or consent. Bootle confirmed that one of her colleagues then provided the documentation to AFP agent Peter Bond.

On the morning of December 27, Bootle closely monitored the situation outside Moti's residence, where a number of his friends and supporters remonstrated with police about the illegality of what they were doing. After receiving an update from Bond, Bootle wrote an email to the Australian Department of Foreign Affairs (DFAT) deputy secretary David Ritchie and a number of other people, including Tim George, then head of RAMSI, and Patrick Cole, the previously expelled High Commissioner, who was then serving in Canberra as acting first assistant secretary of

DFAT's Pacific division. Bootle's email read: "Local police have gone all limp despite previous stated intentions to push him on the plane regardless. They don't seem to be prepared to remove him forcibly so they are still at the house."

Bootle was also asked about an email sent on 17 December 2007 by then High Commissioner Peter Hooton and cc'd to her. It stated: "A Sikua-led government seems likely to deport Julian Moti as soon as they can... A determined government could still have Moti on a plane pretty quickly. I know this is not necessarily our preferred outcome but I would still hope we can avoid making a fuss. We all want him gone after all, and would be a shame to risk an early misunderstanding with the new government."

Defence noted that Bootle's sworn affidavit clearly stated that the first time she learned of the government's intention to deport Moti was on December 22. Challenged about the contradiction between this and the contents of the email she had received five days earlier, Bootle replied, "it depends which way you look at it, but ... my recollection is the government hadn't been—the cabinet hadn't been sworn in [by December 17] so things were a bit unclear."

When cross examined by the prosecution, Bootle repeatedly emphasised her great respect for Solomon Islands' sovereignty and insisted that it would have been inappropriate interference for her or any of her colleagues to have attempted to dissuade Solomons' officials from proceeding with Moti's deportation. Similarly, she insisted, withholding travel documents into Australia for Moti and the two Solomons' officials would have amounted to "interference", thus violating the principle that it was a matter for the country's authorities alone to determine who resided in a country.

Justice Mullins told defence that "one of the issues that I'm really going to have to grapple with" is whether the Australian government could have had "any obligation or responsibility to convey that opinion [on potential unlawfulness] in relation to the proposed deportation by the Solomon Islands' government... It seems to me this is the issue that raises questions of sovereignty".

While raising a number of relevant legal precedents, Moti's counsel failed to answer the implicit premise of the judge's ruminations and of Bootle's extraordinary assertions—that the actions of the Solomon Islands' government were those of a truly "sovereign" entity. In reality, RAMSI has made Solomons' sovereignty little more than a legal fiction. Since July 2003, Canberra has enjoyed effective control of the country's entire state apparatus, with Australian personnel installed throughout the judiciary, police and prisons, public service, finance department, and other bodies. RAMSI is responsible to no-one in the Solomon Islands; its personnel are immune from the country's laws and are exempt from all immigration controls, as well as the country's taxation system. The question of the Australian government's violation of Solomons' sovereignty dates, not from December 2007 and its alleged interference with Moti's deportation process, but from the events leading up to Moti's removal. In mid-2006, the Howard government launched a sustained campaign aimed at destabilising and ultimately unseating the government of Prime Minister Manasseh Sogavare, after it, like Moti himself, came to be regarded as a threat to RAMSI. In December 2007, just a week before Moti's removal from the country, Sogavare was replaced by Derek Sikua.

Not a single aspect of the Moti affair can be understood apart from its relationship to Canberra's repeated and brazen trampling over the sovereignty of its South Pacific neighbours. What, after all, was the

conscious campaign launched by the Australian authorities to prevent Moti from becoming Solomons attorney-general, and then to have him removed from the post after being appointed by the Sogavare government, if not a violation of the tiny country's national sovereignty?

Closing submissions from both defence and prosecution are expected to be heard today. Justice Mullins has allowed a further 14 days for additional submissions following the disclosure of DFAT documents that were successfully subpoenaed by defence earlier this week, but have not yet been made available.



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