

# Julian Moti defence counsel attacks Australian government's "politically driven prosecution"

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In pre-trial hearings underway in Queensland's Supreme Court, defence counsel for former Solomon Islands' attorney general Julian Moti yesterday condemned Australian authorities for "bringing the administration of justice into disrepute" and described the case as "oppressive behaviour [and] politically driven prosecution". Moti is applying for a permanent stay of proceedings of the Australian government's attempt to prosecute him on alleged sexual assault charges that were discharged by a Vanuatu magistrate in 1998. The grounds for the permanent stay are that the case represents a politically motivated abuse of judicial process.

Hearings on the stay application have been marked by the repeated and extraordinary failure of the Commonwealth Director of Public Prosecutions (CDPP) and the Australian Federal Police (AFP) to fulfil their legal obligations to disclose all relevant documents to the defence in a timely manner. Internal memos, case notes, emails, cables, police diaries, and other documents relating to the grounds of Moti's stay application should have been revealed as early as March this year, and certainly after May, when Moti's counsel submitted particularised grounds for his stay application.

Instead, the CDPP and AFP have repeatedly disclosed important material either shortly before or during defence counsel's cross examination of key witnesses. On October 20, presiding Justice Debra Mullins was forced to adjourn proceedings for two weeks after the cross examination of AFP agent Peter Bond became untenable due to late disclosure. (See: "Australian government prosecutors suffer significant blow in Moti case")

When day eight of the hearings began yesterday, Moti's counsel Jim Kennan SC told the court that yet more disclosed documents—including emails sent from and to Peter Bond, mostly in 2006—had only been provided the previous day. The material, he explained, was "highly important to our case". Later in the day, defence added that the Australian Government Solicitor had just handed over another folder of documents. Kennan also said that according to the AFP, several police diaries could not be found and some of Bond's diaries might be in a storage facility in Islamabad, Pakistan and could not be accessed.

As well, Kennan raised the issue of the AFP's payment of substantial amounts of money to the alleged victim and her family. The sums, Moti's counsel declared, involved "bringing the administration of justice into disrepute" and "scandalising a process". The police, Kennan continued, initially took a different view of the appropriate level of witness payments, but then increased the payments in response to threats from the alleged victim that she would withdraw from the case. In one such incident, the alleged victim wrote in a mobile phone sms text message to AFP agent Sally Macdonald that she would publicly declare that she was being "used as a tool by the Australian Government for political and neo

colonial reasons" and that the "aim of all this was to put in the Government of your choice in the Solomons".

Kennan added that on another occasion the alleged victim threatened to go to the Australian Broadcasting Corporation and tell them "this is all political, you've used me"; additional payments were forthcoming within weeks. All this, defence concluded, was "beyond the pale" in terms of the Financial Management Act governing appropriate witness payments.

These revelations, and the continuing problems with document disclosure, raise once again the question as to whether a connection exists between the conduct of the CDPP and AFP in the stay application hearings and the legal and political content of their case against Moti. If the Australian government prosecutors and the federal police are so confident in the legal propriety of their prosecution of Moti and of the behaviour of Australian authorities in Solomon Islands in 2006 and 2007, why do they appear to be so reluctant to disclose all the relevant documents? What does their conduct of the case indicate about their attitude to Moti's legal right to a fair hearing?

The origins of the AFP investigation date back to late 2004, when then Australian High Commissioner in Solomon Islands, Patrick Cole, asked the police to

look into the Vanuatu charges, concurrent with his efforts to persuade the Solomons' government not to appoint Moti as attorney general. Moti had long been identified as an opponent of Australian neo-colonial operations in the South Pacific and as a potential threat to the Regional Assistance Mission to Solomon Islands (RAMSI), the Australian-dominated occupying force first deployed in 2003. The entire political establishment continues to regard RAMSI as the lynchpin of its efforts to maintain Canberra's strategic hegemony in the South Pacific.

The AFP investigation intensified in mid-2006, once again before a pending appointment of Moti as attorney general, this time under the government of Prime Minister Manasseh Sogavare. Shortly after coming to office in May 2006, Sogavare became the subject of a sustained regime change campaign driven by Canberra. In the midst of this campaign, Moti was arrested in Papua New Guinea in September, then granted political asylum by the Solomons' government, and finally assumed the post of attorney general, which he occupied for six months in 2007. The Sogavare government was ousted in December 2007. Immediately after, Moti was forcibly removed to Australia.

No doubt to the consternation of the Australian government, the stay application hearings are beginning to lift the lid on some of the activities of various Australian officials in Solomon Islands in 2006 and 2007. While the CDPP's John Agius has opposed any review of these activities by Moti's defence counsel, on the basis that the stay application constitutes an abuse of process, his objections have not been sustained. At the start of the hearings, Agius pressed the judge to issue a ruling based

solely on legal argument, without any examination of what actually occurred in the Solomons. After this failed, the CDPP yesterday issued a formal objection to any tendering of evidence or cross examination of witnesses in relation to the events of 2006, insisting that the court be restricted to hearing evidence only in relation to Moti's removal from the Solomons in December 2007.

Defence has argued that the Moti's removal was in fact a "disguised extradition" involving the knowledge and collusion of the Australian government in unlawful behaviour. On the contrary, the CDPP argued, the events of 2006, including the discussions involving Australian police and diplomatic officials about Moti's potential deportation from the Solomons in October of that year, were "entirely different [and] factually unconnected" to the 2007 deportation.

Defence challenged the CDPP's position, noting that there was a "continuum" between the two attempted deportations. Moti's counsel Dyson Hore-Lacey added that the issue involved the credibility of key prosecution witness AFP agent Peter Bond, who had previously told the court that the Australian government never had any interest in deporting Moti. "His diary notes [from 2006] indicate otherwise," Hore-Lacey said.

While formally withholding judgement on Agius's objection, Justice Mullins suggested to Agius that the attempt to strike out as irrelevant the events of 2006 "sounds more like a submission that you'll be making ultimately", that is, at the close of proceedings. She accepted tendered evidence relating to Canberra's October 2006 deportation enquiries, saying that the Australian government's knowledge of the propriety and legality of the deportation considerations by Solomon Islands' authorities in 2006 was a "relevant issue", and that it was clear from Bond's evidence that there was a "continuum" in terms of monitoring when Moti might have been brought back to Australia. There was no vacuum in 2007, the judge concluded, with regard to Australia's knowledge of deportation proceedings.

Justice Mullins also referred to the earlier testimony of AFP agent Peter Bond, when he told the court that in October 2006 he had merely recorded advice tendered regarding Moti's deportation without encouraging such action. "It sort of strains belief that Mr Bond would be copiously recording everything that he's told in October 2006 and feeding it back to Australia and it just sits in a file and nobody analyses it," the judge said. "It just struck me, when I listened to Mr Bond's evidence, that he—he was almost a scribe taking down all this information that he was provided and passed it on, and that's it... I thought that's a bit odd."

Justice Mullins made these remarks as she ruled on subpoena applications to the Department of Foreign Affairs and Trade (DFAT), the attorney general's department, and the Australian Secret Intelligence Service (ASIS) issued by defence for documents relating to the 2006 events. She set aside the subpoena to ASIS, but concluded that there was a "legitimate forensic purpose" in defence's application for further documents from DFAT and the attorney general's department. While narrowing the scope and modifying some of the terms of the subpoenas to the two bodies, she approved the applications, noting that 2006 was "not so removed in time or connection with the events that occurred in December 2007 as to make the attitude or position of the Australian government irrelevant" to those events.

This ruling marks the first time that Moti's defence has successfully subpoenaed Australian officials for suppressed documents.

Yesterday's proceedings concluded with Moti's defence counsel continuing its cross examination of Peter Bond, who participated via telephone link from Dubai.

In his earlier cross examination, Bond had told the court that on December 24, 2007, he had a meeting with the new Solomon Islands government's permanent secretary Jeffrey Wickham. Wickham, Bond testified, had told him that Moti's legal right under the Solomon Islands Deportation Act to appeal a deportation order within seven days did not

apply, because a Solomons' court had allegedly already heard and dismissed the appeal. The AFP agent testified that he had accepted Wickham's opinion as a valid view. The documents provided to defence on Monday, however, included an email sent by Bond shortly after his meeting with Wickham, in which he wrote: "I think it's too early to celebrate just yet. The Act clearly sets out that the deportee has seven days to appeal the order. The view of the PS [permanent secretary] in the sit rep [situation report] that he had his appeal on Saturday is not correct as it was not an appeal against the deportation order as such."

Dyson Hore-Lacey described the content of this email as "totally at odds" with Bond's previous evidence and suggested to the federal agent that it was a "calculated lie that you told at court last time". Bond denied this, but was unable to explain the contradiction between the email and his earlier testimony.

Hore-Lacey also raised another recently disclosed document from October 2006 in which Bond said that the removal of Moti through deportation was "in danger of not being an option", and warned: "The situation is now critical. Should circumstances result in Moti's release from custody and he assumes the position of attorney general, the consequences will be disastrous for Australians, Australian interests, and RAMSI."

This document leaves no doubt of the Australian government's calculations in 2006 and again calls into serious question the prosecution's argument that Canberra had no involvement in Moti's subsequent deportation, either directly or via pressure on the Solomons' government. It is simply not credible to maintain that Australian police and diplomatic officials expected "disastrous consequences" for RAMSI in particular and "Australian interests" in general, if Moti remained in the Solomons, while at the same time refraining from doing everything within their power to ensure his removal.

Bond's cross examination continues today. Solomons' Police Commissioner and New Zealand national Peter Marshall is also due to reappear before the court, because, since his testimony on October 14, further relevant documents have been disclosed by the AFP and CDPP.



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