

# Australian court hears prosecution appeal against Julian Moti verdict

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Public prosecutors yesterday asked the Queensland Court of Appeal to overturn the legal victory recorded by former Solomon Islands Attorney General Julian Moti late last year when the Australian government's attempt to prosecute him on politically motivated statutory rape charges was blocked by the Queensland Supreme Court. The three judges on the Court of Appeal will later deliver their verdict on the issues raised during the one-day hearing.

Last December, Supreme Court Justice Debra Mullins ordered a permanent stay of proceedings on Moti's prosecution, on the basis that unprecedented Australian Federal Police (AFP) payments to the family of the alleged victim amounted to an abuse of judicial process. Mullins ruled that the payments brought "the administration of justice into disrepute" and were "an affront to the public conscience". The Commonwealth Director of Public Prosecutions, on behalf of the attorney general, is seeking to overturn this ruling in order to proceed with its prosecution of Moti.

The appeal marks another chapter in the Australian government's extraordinary vendetta against the international and constitutional lawyer. Since 2006, immense public resources have been devoted to pursuing Moti, who is regarded by the official establishment as a threat to its strategic interests in the Solomon Islands and South Pacific, and to destroying his legal career. As the current appeal process demonstrates, the replacement of the former Howard government with Prime Minister Kevin Rudd's Labor government has made no difference whatsoever to the pursuit of this campaign.

The charges originated in an attempted blackmail against Moti in Vanuatu in 1997-98. A Vanuatu magistrate dismissed them as "unjust and oppressive", a decision not appealed by prosecutors. The allegations were then resuscitated in 2004, not by the alleged "victim" but by Patrick Cole, the Australian High Commissioner to the Solomon Islands, who was seeking to prevent Moti from being appointed as the Solomons' attorney general. On the basis of his Melanesian nationalist leanings, his detailed knowledge of Pacific politics and his legal expertise Moti was identified as a potential threat to Canberra's flagship neo-colonial operation in the South Pacific, the Regional Assistance Mission to Solomon Islands (RAMSI).

Canberra's pursuit intensified from mid-2006, when Moti was again proposed as the country's attorney general, and culminated in December 2007, when he was extracted from the Solomons in what the Fijian-born Australian citizen has alleged was an illegal "disguised extradition". On arriving in Australia, Moti was arrested on the dubious legal basis of Australia's extra-territorial child sex tourism legislation. He defeated the attempted prosecution when the Queensland Supreme Court issued a permanent stay of proceedings last December.

On May 28, four days before the appeal hearing, an interesting article was released by the Associated Press, comprising an interview with the alleged victim's parents. "I'm finished with this," her father said. "As far as I am concerned, I want to see Moti walk out. Simply because of the way the Australians went about all this... If I had my time again, I would tell them to piss off."

The mother added: "They (AFP) told us this was about justice for our daughter but over time different things came about, it was politics. I didn't want to do this at the start but AFP assured us they had all the proof, they assured my daughter they had the proof, but this was rubbish, a lie..."

The article also revealed that the family was continuing to receive AFP money. "The family, originally from Tahiti, along with Vanuatu officials in the capital Port Vila confirmed the AFP pays about \$1000 a month for the family rent, which is an additional cost not disclosed in court," it stated. "For the past three years an Australian High Commission representative has paid the family's yearly immigration visas to be in Vanuatu, worth in total \$3000, plus Australia continues to pay living expenses."

Another article in the *Courier Mail* reported that the family had received \$33,600 during the past five months. These ongoing payments were not directly raised in yesterday's hearing. The appeal was focussed on the payments that constituted the specific ground on which Justice Mullins had granted the stay.

John Agius, for the Commonwealth Director of Public Prosecutions (CDPP), argued that the payments did not bring the integrity of the legal system into disrepute. He insisted that the level of witness support ought to be a matter for the executive, the government, rather than the judiciary. Agius attempted to blur over the distinction between subsistence and sustenance payments—that is, between minimal welfare support and the maintenance of witnesses' lifestyles. He said that the latter was frequently arranged for those in witness protection programs and others whose work and lives were disrupted by their involvement in the legal system. Agius also argued that the AFP and CDPP could have issued the so-called witnesses in the Moti case with Australian criminal justice visas, which would have required the family to be paid accommodation and living expenses anyway.

The CDPP's presentation raised a number of serious questions.

Firstly, the evidence tendered to the Queensland Supreme Court last year made clear that the AFP payments were not merely sustenance payments, funding the maintenance of the family's lifestyle. Rather the

money apparently saw the family significantly improve their living conditions; they used AFP funds to pay off debts, hire a servant, and develop a business, among other things. The alleged victim and her family received more than \$150,000—compared to the Vanuatu minimum wage, which was just \$240 a month, or \$2,880 a year. Moreover, unlike those in witness protection programs, the evidence indicated that the family continued to live normally in Vanuatu, suffering no significant disruption from their involvement in the Moti case.

Moti's counsel, Jim Kennan SC, stressed that the payments were outside any established witness payment guidelines, and that whereas the AFP had initially restricted payments to compensation for expenses that were directly related to the family's involvement in the case, it began to increase them when the family made threats—on 10 different occasions—to withdraw unless more money was forthcoming. He said there was no lawful basis for these “unethical” payments. “The bottom line was that the AFP was prepared to pay whatever was necessary,” Kennan said. “The purpose of the courts is not to sanction breaches of the rule of law and improper behaviour by the executive.”

Agius argued that even if the AFP payments were found to amount to an abuse of judicial process, Moti should still be placed on trial. He said the “balancing act”—weighing the seriousness of the payments against the “strong public interest” in a trial—ought to allow the prosecution to proceed and that this would not indicate the court's agreement with the AFP's actions. In a highly improper move, the prosecutor then detailed the purported evidence that had been assembled against Moti for the trial and described one of the alleged sex acts. None of this was relevant to an appeal against a stay of proceedings ruling. It was instead designed to both impress upon the three judges the seriousness of the charges and to publicly blacken Moti's name.

Moti has always protested his innocence. Jim Kennan informed the court that the alleged victim had previously levelled rape charges against her father only to later deny and withdraw the allegations. He also raised that the AFP had made enquiries in Vanuatu about the possibility that she could face perjury charges there given contradictions in her statements from 1997 to 2006. Kennan cited a January 2008 sms mobile phone message sent by the woman to an AFP officer which demanded that her entire family be moved to Australia before stating: “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.”

Moti's counsel urged the Court of Appeal to uphold the permanent stay decision. He argued that the decision was justified not only on the basis of the AFP's payments to the family but also on the other grounds that Moti's counsel had elaborated before the Supreme Court but which were rejected by Justice Mullins. The judge's highly conscious ruling rejected the argument that Moti's prosecution was politically motivated and that there had been Australian government collusion and connivance in his December 2007 deportation proceedings from the Solomons.

Agius attempted to block any re-examination of these issues, insisting that Moti's counsel ought to be permitted to reply only to the issue of witness payments. Kennan rejected this and reargued the various grounds, which also included that Moti's attempted prosecution violated double jeopardy given the 1998-1999 Vanuatu courts' discharge of the case. In addition, he argued that the extraordinary failure of the CDPP and AFP to fulfil their obligations to provide a full and timely disclosure of all relevant internal and classified memos, cables, and other documents,

constituted another ground to confirm the permanent stay ruling.

One of these documents, for example, is an AFP memo authored by Brett Jackson, senior police coordinator in the Pacific, and dated September 19, 2006. The memo passes on a request from an AFP agent in Honiara that: “consideration is given to the AFP going public on the MOTI investigation and making a ‘Media Release’ to the effect that MOTI is now being sought by the AFP in relation to child sex offences. It is considered that this strategy will stop PM Sogavare appointing MOTI as AG given the negative publicity it will generate in the Solomon Islands.”

The document establishes the politically motivated character of the AFP investigation. While Supreme Court Justice Mullins acknowledged during the initial hearing that the charges against Moti may have been brought by High Commissioner Patrick Cole for political purposes, she maintained that the AFP investigation was entirely free of such considerations. The September 19, 2006 AFP memo, in conjunction with many other documents, directly contradicts this position.

Kennan concluded his submission by arguing that the combination of the grounds for a permanent stay finding amounted to an “abuse of process by way of oppression, a very high level of oppression”. The case represented “the high water mark of vexation and oppression when one looks at what the executive has levelled against [Moti],” he continued. Again stressing the political character of the prosecution, the barrister noted that many internal foreign affairs and AFP cables were widely distributed to the most senior government and intelligence figures in 2006 and 2007. “There was a very, very high level, unparalleled, of executive knowledge of what was going on in this case,” Kennan told the court.

*The author recommends:*

Australian government prosecutors appeal Julian Moti verdict  
[26 February 2010]

Political lessons of the Julian Moti affair  
[23 December 2009]

Australian government frame-up of Julian Moti collapses as court throws out charges  
[17 December 2009]



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