

# Australian government resumes vendetta against Julian Moti after appeals court reinstates charges

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Former Solomon Islands' Attorney General Julian Moti is once again threatened with trial on politically motivated statutory rape allegations, following a decision last month by the Queensland Supreme Court of Appeal to overturn an earlier court ruling that the charges be dismissed. The ruling marks the resumption of an extraordinary vendetta, waged by the Australian government against an individual regarded as a threat to its financial and strategic interests in the South Pacific.

The allegations were first levelled against Moti, a constitutional lawyer and Australian citizen who has always maintained his innocence, in Vanuatu in 1997-98. A Vanuatu magistrate dismissed the charges as "unjust and oppressive", a decision not appealed by prosecutors. They were 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. The charges were subsequently used as a means of removing Moti from the Pacific, and destroying his reputation and professional capacity during the provocative regime change campaign waged by the Australian government in 2006-07 against Solomons' Prime Minister Manasseh Sogavare in order to defend its key regional neo-colonial operation, the Regional Assistance Mission to Solomon Islands (RAMSI).

In December last year, Queensland Supreme Court Justice Debra Mullins ordered a permanent stay of proceedings on Moti's prosecution, on the grounds that unprecedented Australian Federal Police (AFP) payments to the family of the alleged victim had brought "the administration of justice into disrepute" and were "an affront to the public conscience".

Mullins's order was immediately appealed by the Commonwealth Director of Public Prosecutions (CDPP), and the three-member Court of Appeal reviewed the case in June. The appeal courts' verdict, delivered by Justice Cate Holmes, rested on the discovery of "two crucial errors" in the Supreme Court decision. According to Holmes, "the questioned payments were not designed to, and did not, procure evidence from the prosecution witnesses [and] the payments made, while beyond existing guidelines, were not illegal".

On this basis, Holmes concluded, there was no abuse of judicial process warranting the issue of a permanent stay of proceedings. At the same time, the court sought to place itself at some distance

from the AFP's actions, noting that the case may have involved "conduct of questionable wisdom" and stressing that "the fact that a court does not give a stay does not, contrary to the submission of the respondent, amount to approval of what has been done by the prosecuting authorities".

The stated grounds for the appeal decision are highly dubious. On the question of whether the AFP-CDPP payments induced evidence from the prosecution witnesses, Holmes argued that the sequence of events was the critical factor. The Australian authorities paid the alleged victim the enormous sums of money, under their "witness management" system, only after she had given a statement to the AFP in June 2006. This was presented as proof of the bone fides of her evidence. Completely ignored was whether the alleged victim had been advised by the AFP, prior to giving the statement, that she could expect future payments in the lead up to a trial.

Moreover, there are significant discrepancies between the alleged victim's statements in 2006 and those given to Vanuatu police in 1997-98. In the 2006 account, various anomalies and false positions that appeared in the initial statements (for example, her claim that she was first raped on a date when Moti could prove he was not in Vanuatu) were not mentioned. Extensive new testimony was also added, concerning the woman's alleged suffering and hardship. The question can legitimately be raised: was she advised that she could expect a large payout via a civil damages suit against Moti in the event of a criminal prosecution?

On another level, the appeal court's emphasis on whether the cash handouts served to "procure *evidence* from the prosecution witnesses" is a diversion from the incontestable fact that the payments served no other purpose than to procure *testimony* from the so-called witnesses, without which the case would have immediately collapsed. As the appeals court acknowledged, the alleged victim's parents and her brother received nearly \$82,000 between February 2008 and November 2009, while living in Vanuatu, where the minimum wage is equivalent to just \$2,880 a year. Contrary to AFP claims that these were "subsistence" payments, the family used the money to deal with matters ranging from settling old debts and promoting new business ventures, to hiring a household servant.

The payments—which continue to this day—were steadily increased by the AFP in the face of up to ten threats by the alleged

victim and her family to withdraw from the case. One of these threats included a January 2008 sms mobile phone message sent by the woman to an AFP officer. The message warned she may “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”.

The appeal court’s finding that the payments were “beyond existing guidelines” but not illegal, effectively issues the AFP and government prosecutors with *carte blanche* authority to engage in any conduct prior to trial, however improper, provided that it does not break specific laws.

The court acknowledged a “lack of transparency” by the AFP on its payments, but asserted that the appropriate “remedy” was not a stay of proceedings, but the formulation of clearer orders and guidelines. Justice Holmes also rejected the Queensland Supreme Court’s earlier finding that the AFP payments established a dangerous precedent.

“It is difficult to see how the creation of expectations, whether at large or in the witnesses paid in this case, could amount to an abuse of process, so long as those expectations were not of benefiting from the giving of false evidence,” Holmes declared. “Others might, indeed, look to the support given to the complainant’s family and see some advantage in becoming witnesses in similar prosecutions; but I do not think one can properly speculate that false complaints would result.”

Why not? The court provided no explanation for its assertion. There is, in fact, little doubt that if Moti is successfully brought to trial, a definite precedent will have been set, providing a clear incentive for impoverished and/or desperate people living in the South Pacific and other regions to level false accusations against Australian nationals—above all those identified as opponents of the government—in the hope that the AFP will provide them and their family with a relatively substantial income for several years.

A further objection against the huge payments was raised earlier this week by Australian Lawyers Alliance director Greg Barns, who told the Associated Press that instead of paying for expenses supposedly related to having the family of the alleged victim testify in Australia, a video link could easily have been established. “The use of technology (video link) by the AFP is a far superior option,” he said. “The AFP’s track record in recent years—the Bali Nine, Moti and Haneef—is troubling... It [the cash payments in the Moti case] shows a preparedness to take shortcuts and to pursue matters in a way that does not take sufficient account of the rights of the accused.”

The Queensland Court of Appeal, having rejected the stay of proceedings on the basis of the AFP payments, merely affirmed the Supreme Court’s earlier dismissal of the many other grounds for throwing out the charges that Moti’s counsel had raised in the initial hearings. The judgement awarding the permanent stay was, as the *World Socialist Web Site* noted at the time, “marked by a series of glaring contradictions and inconsistencies” driven by the need to reject the voluminous evidence indicating the politically motivated character of the police investigation and subsequent prosecution.

The Court of Appeal was divided on the question of whether Moti’s counsel even had the right to re-argue the grounds that

Mullins had rejected. But all three justices nevertheless concluded that none of these additional grounds warranted the dismissal of the charges.

Along with their profoundly political character, Moti’s barristers argued that the charges amounted to double jeopardy because they had already been considered by the Vanuatu legal system in 1997-98. They also insisted that the CDPP’s unexplained failure to provide the required documentation, including revealing internal AFP memos and Department of Foreign Affairs cables in a proper and timely manner, undermined the possibility of a fair trial. Finally, they argued that the Australian government’s collusion with Moti’s deportation proceedings from the Solomons in December 2007 amounted to an unlawful “disguised extradition”.

Justice Holmes dismissed all of these grounds in summary manner, largely relying on the spurious arguments detailed in the earlier judgment by Mullins. She simply asserted, for example, that “the charges were not brought for an improper purpose” and “there was no evidence of any impropriety in the Australian Federal Police’s approach to investigating and charging the applicant, whatever might have been the motivation of those at the High Commission in referring the complaint to the Australian Federal Police”.

On the contrary—there is significant evidence pointing to the AFP’s political calculations that is yet to be explained by the courts. An internal police memo tendered to the court, for example, dated September 19, 2006 and authored by senior AFP coordinator in the Pacific, Brett Jackson, includes a request from agent Peter Bond 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 memo makes crystal clear that, just as High Commissioner Patrick Cole wanted an AFP investigation opened in 2004 in order to help block Moti’s appointment as attorney general, so senior figures in the AFP had precisely the same political objective in mind in 2006, just three months after the first statement was taken from the alleged victim.

The Court of Appeal decision has paved the way for a trial to commence early next year. Moti, however, is in the process of seeking special leave to appeal to the High Court to make a final determination of the validity of the charges. In the meantime, he is forced to report to local police once a week as part of his onerous bail conditions.



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