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'Witness K' and lawyer Bernard Collaery charged with breaching intelligence act over East Timor spying revelations

By defence reporter Andrew Greene and Lucy Sweeney

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A Canberra lawyer whose client exposed a secret Australian spying operation in East Timor has described the prosecution against them both as an attack on freedom of speech.

On Thursday, using parliamentary privilege, independent MP Andrew Wilkie revealed the Commonwealth Director of Public Prosecutions recently filed criminal charges against Bernard Collaery and his client, a former spy known only as "Witness K".

Witness K had raised concerns about a covert Australian Secret Intelligence Service (ASIS) operation he ran to bug East Timor's cabinet in 2004 during negotiations about an oil and gas treaty.

Mr Collaery, who once served as ACT attorney-general, described the move as a personal attack on him and his client, who cannot be named, and said it was a sad day for Australia.

"Today is an attack on our absent constitutional guarantee of freedom of expression, it's an attack on the legal profession, it's a personal attack on a patriot Australian who can't speak here today, Witness K," Mr Collaery said.

"It's an attack on myself for acting as a lawyer within my professional rules and it's a sad moment in the history of a country I love and I have served.

Key points:

- Lawyer Bernard Collaery and his client, a former ASIS spy, will be charged over revealing information about ASIS
 - The information related to an Australian spying operation in East Timor, where cabinet rooms were bugged
 - Mr Collaery says the charges are an attack on Witness K and on freedom of speech
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"I will survive these rats who are pursuing me at the moment."

A statement from Attorney-General Christian Porter's office confirmed the charges to be laid against Mr Collaery and "a former staff member of ASIS" and noted he would not provide further detail once matters were before the court.

"I would also encourage any member with an interest in this case to be conscious of the fact that the priority must be to allow judicial processes to be conducted without commentary which could impact on the fairness and regularity of those proceedings," the statement said.

A directions hearing has been set down for July 25 in the ACT Magistrates Court.

How did a former spy and a Canberra lawyer end up here?

After the spying operation came to light in 2012, East Timor notified Australia that it was taking the case to the Permanent Court of Arbitration in The Hague.

Mr Collaery was East Timor's legal adviser at the time, and also had on his books the agent who ran the bugging operation, now known as Witness K.

In 2013, Witness K was all set to give evidence about the bugging operation at The Hague when ASIO raided his home and seized his passport.

Mr Collaery's place of work was also raided.

Mr Collaery said on Thursday that he had acted in the interests of his clients — both Witness K and the sovereign government of East Timor — with "eminent legal advice", but that the government of the day had used a procedural piece of anti-terrorism legislation signed into law in 2004 to raid his chambers and Witness K's home.

"I doubt that any judicial officer in Canberra would have signed that search warrant. And they knew that, so they used the terrorist power to raid my chambers," he said.

"They're still using the terrorist powers and I have no doubt that they will mouth off this notion of national security in the proceedings.

"There is no charge of breaching national security against myself or Witness K. Witness K has never, will never make any public comment."

The Federal Government agreed in 2015 to return the documents it seized during the raids on Mr Collaery's chambers.

"They were forced to return the papers and it was an overwhelming rebuke to the Australian Government and we've been subjected to harassment and surveillance ever since," Mr Collaery said on Thursday.

Mr Collaery made clear that there were no charges against Witness K for any involvement in the spying operation, but that the charge on Thursday related to conspiring to reveal the operation to the public.

"There's one thing I want to make abundantly clear: Witness K was not a whistleblower. He went with his complaint to the inspector-general of intelligence security, received approval and I received approval to act," Mr Collaery said.

"He and I are charged with exactly the same offence of conspiracy to breach section 39, that is to give information out about ASIO.

"Arguably that includes giving out information about unlawful conduct. The whistleblower protections are not available to secret service personnel.

"I'm not sure if informing you that I'm a defendant is a breach of these new laws."

Mr Collaery said he stood by his actions and would fight against the prosecution against him.

"When you do a difficult murder trial, sometimes you'll be tapped on the shoulder when you're having coffee and someone will say: 'How could you represent someone?'" he said.

"In 30 years nobody has ever rebuked me for representing the Timorese."

A penalty of up to two years' imprisonment is possible for breaches of section 39 of the Intelligence Services Act.

Wilkie says prosecution is an 'insane' development

On Thursday, Mr Wilkie told Parliament the charges showed the Federal Government wanted to turn the former intelligence officer and his lawyer into "political prisoners".

"That's what happens in a pre-police state, where instead of a royal commission they lock up people who more likely deserve the Order of Australia," Mr Wilkie said.

Mr Wilkie said the timing of the charges was particularly curious given Australia signed a deal for a new maritime border with East Timor in March.

"This is obviously an insane development in its own right, but an insane development made all the more curious by Australia's recent commitment



PHOTO: Canberra lawyer Bernard Collaery said the charges amount to an attack on freedom of speech. (ABC News: Nick Haggarty)

Oil, spies and a diplomatic bungle



Lateline reveals new details about how Australia spied on one of its poorest neighbours in negotiations over an oil and gas field in the Timor Sea worth an estimated \$40 billion.

to a new treaty with East Timor," Mr Wilkie said.

"It seems that with the diplomacy out of the way, it's time to bury the bodies."

Mr Wilkie further alleged under parliamentary privilege that the previous Howard government and subsequent governments had tried to "cover up" the East Timor operation since 2004.

"The bottom line is that spying on East Timor was indeed illegal and unscrupulous. Although it was the Howard government's initiative, the crime has subsequently been covered up by all governments since," he said.

The Commonwealth DPP has confirmed criminal proceedings against Mr Collaery and Witness K have commenced, but has declined to comment further as the matter is "before the court".

