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Witness K case: Labor pressured to promise to drop prosecution of spy and lawyer

Opposition urged to 'do the right thing' if it wins election as Andrew Wilkie describes spy's prosecution as 'bastardry'



Witness K's lawyer, Bernard Collaery, right, with Andrew Wilkie, centre. Wilkie says the prosecution is 'an act of complete and utter bastardry'. Photograph: Mike Bowers for the Guardian

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Minor parties and independents have called on Labor to promise to drop the prosecution of former spy Witness K and his lawyer, Bernard Collaery, for blowing the whistle on Australia's spying on Timor-Leste.

The independent MP Andrew Wilkie and the Greens senator Nick McKim made the call at a rally outside the Australian Capital Territory magistrates court ahead of the first directions hearing on Wednesday.

The court heard that commonwealth prosecutors and lawyers for Witness K and Collaery were still attempting to come to an agreement about disclosure of national security information in the case, which was adjourned until 29 October.

Outside the court, Wilkie said the prosecution was "an act of complete and utter bastardry"

designed to send a message to other witnesses to crimes by the state not to speak up.

He argued the prosecution was political, citing the fact that the attorney general, Christian Porter, had “acted on only a recommendation from [the commonwealth director of public prosecutions] and has ordered this prosecution”.

Both Wilkie and McKim argued the attorney general could stop the case at any time, a power that exists in section 71 of the Judiciary Act.

“There is no doubt that the attorney general has the power right now to cancel these charges and to allow Mr Collaery and Witness K to go free,” McKim said.

“We need to understand Labor’s position, so that if Labor does win the election ... we will know whether Labor will do the right thing ... and instruct the DPP to withdraw these charges.”

The Centre Alliance MP Rebekha Sharkie also targeted the opposition for failing to attend the rally, telling a small but passionate crowd of GetUp volunteers that “one party is missing” and arguing that “Labor needs to come out and support Witness K and Bernard Collaery”.

Federal Labor has not expressed a view on the government’s decision to allow the prosecution, launched in June, although the New South Wales branch has moved to condemn it as “entirely inappropriate”.

The shadow attorney general, Mark Dreyfus, told Guardian Australia: “The charges are serious and it is important to let the judicial process take its course.

“It would be inappropriate to comment on the specific case while that process is underway.”

Earlier, at the rally, Wilkie told the crowd that Australia’s decision to bug the Timor-Leste cabinet room was a crime. He said it was “dreadfully improper” to spy on our neighbour, the poorest country in south-east Asia, to get a negotiating advantage.

McKim said the saga was “book-ended by to acts of bastardry”: the “deliberate attempt to defraud” Timor-Leste out of its oil and gas revenue and, secondly, the decision to charge Witness K and Collaery, who he said “should be congratulated for their bravery” in blowing the whistle on Australia’s spying.

In court the counsel for Collaery, Christopher Ward SC, said his client wanted the case conducted “as much in open court as possible”.

He said it was “likely or at least possible” that the commonwealth would need to apply for a court order about the handling of national security information because the parties may not agree between themselves.

Counsel for Witness K, Haydn Carmichael, said it was “not in issue” that information that would undermine the anonymity of his client was secret and should not be disclosed.

But he warned that commonwealth agencies’ classification of information was “not determinative” and the court would have to form its own view whether disclosure would be likely to prejudice national security and should therefore be prevented.