

Witness K: ex-judge condemns prosecution of Timor-Leste bugging whistleblower

Anthony Whealy says it is 'disturbing' for Australia to prosecute former spy and lawyer in secret



Australian lawyer Bernard Collaery with Timor-Leste's Jose Luis Gutierrez at the international court of justice in 2014. Collaery is being prosecuted for his role in revealing Australia bugged its neighbour's cabinet. Photograph: Nicolas Delaunay/AFP/Getty Images

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The former New South Wales supreme court justice Anthony Whealy has warned it would be “disturbing” to prosecute a former spy and his lawyer in secret over their role in revealing Australia’s bugging of Timor-Leste’s cabinet.

Solicitor Bernard Collaery and his client, the intelligence officer known only as Witness K, are facing criminal charges for bringing to light Australia’s bugging of Timor-Leste’s cabinet rooms during sensitive negotiations over a \$40bn oil and gas treaty in 2004.

The spy operation was designed to give Australia an upper hand and derive a commercial benefit at the expense of the Timor-Leste government, and Witness K, a senior and long-serving intelligence officer, believed it was unlawful.

Whealy, now the chair of Transparency International, said the plight of Collaery and Witness K was “deeply disturbing”, particularly at a time when the federal government was seeking to advance whistleblower protections and promising its new espionage and foreign interference laws would be used sparingly.

“By any standards, the information revealed by these two men needed to be conveyed, and indeed needed to be in the public domain,” Whealy told Guardian Australia. “On its face, the bugging by Australian interests of a foreign power’s cabinet room, if that is what happened, was detestable.

“It is equally disturbing that, at this stage, the threat looms that proceedings against the pair will occur in a closed courtroom, with its doors and windows barred by a potential suppression order.

“This is Australia ... not Russia.”

The summons for Witness K and Collaery, seen by Guardian Australia, alleges the spy unlawfully communicated intelligence secrets to his lawyer.

The summons alleges Collaery communicated this information to the ABC journalists Marian Wilkinson, Peter Lloyd, Conor Duffy, Emma Alberici and producer Peter Cronau.

The News Corp journalist Leo Shanahan, the first to break the story on the bugging operation, is not named in the summons.

Whealy is the second senior retired judge to raise such concerns.

Last week the former Victorian court of appeals judge Stephen Charles expressed alarm about the prosecution and said Australia’s behaviour in the entire episode demonstrated the need for a federal anti-corruption commission.

“I think it shines a light on the level of ethics and morality of parliament in Canberra that above all demonstrates we need a national integrity commission,” he told Fairfax Media. “A lot of people in legal circles are horrified by the government’s behaviour.”

Witness K first raised concerns about the bugging operation internally, with the inspector-general of intelligence and security. Collaery said the inspector general gave Witness K approval to disclose the information.

Prof Clinton Fernandes, an international studies expert at the University of New South Wales and former defence intelligence officer, said the prosecution appeared deliberately timed to take place after the signing of the oil and gas treaty in March and the conclusion of a parliamentary inquiry in May.

“It was always on the agenda, it was just that they were just waiting to get the diplomacy out of the way,” he told Guardian Australia.

Fernandes said the lack of any whistleblower protections for intelligence officers was problematic. He has authored a paper urging greater parliamentary oversight of intelligence agencies. Fernandes said Australia’s scrutiny of intelligence agencies compared poorly with the United States model.

“In the United States, the Senate and House intelligence committees have full access to intelligence and they are briefed regularly on sensitive and non-sensitive intelligence operations,” he said.

“By contrast, the parliamentary joint committee on intelligence and security here is only empowered to examine the administration and financing of the agencies. They are not allowed to examine any operation, past, present, or proposed.”

The attorney general, Christian Porter, last week said he had approved the prosecution but said the decision was made independently by the commonwealth director of public prosecutions.