

‘It is a disgraceful prosecution’: Geoffrey Robertson condemns Australian government for secret trials of Bernard Collaery and Witness K

Naomi Neilson – *Lawyers Weekly* - 05 May 2021

<https://www.lawyersweekly.com.au/biglaw/31299-it-is-a-disgraceful-prosecution-geoffrey-robertson-condemns-australian-government-for-secret-trials-of-bernard-collaery-and-witness-k>

Leading and prominent human rights lawyer Geoffrey Robertson has criticised the federal government on its “monstrous” decision to prosecute Bernard Collaery and Witness K entirely behind closed doors for doing nothing more than telling the truth while those responsible for the Timor-Leste bugging continue to go free.

The controversial decision by former attorney-general Christian Porter to allow the prosecutions of Bernard Collaery and Witness K to go ahead – and in secrecy – has drawn criticisms from major legal bodies and professionals that have condemned the Morrison government for using the trial to get [“payback” for its embarrassment](#).

Commenting on the secret trials ahead of his live and onstage show, Geoffrey Robertson said that if Australia permits this trial and any more to go ahead behind closed doors, it would be “very damaging” to the fundamental principles of open justice.

“I think it’s a disgraceful prosecution,” Mr Robertson told Lawyers Weekly. “The Australian government behaved outrageously in bugging the lawyers who were advising the Timor-Leste government in an arbitration and instead of taking action against those Australians who authorised that – allegedly Alexander Downer and ASIO – ASIO is taking action against those who exposed them.”

Mr Collaery and former Australian Secret Intelligence Service (ASIS) officer known as Witness K have been accused of conspiring to leak information that embarrassed the Australian government and threatened a lucrative international deal. They disclosed that ASIS had bugged Timor-Leste’s ministerial conference room to spy on its negotiations for oil and gas rights amid legal tensions.

Then-foreign minister Alexander Downer instructed ASIS to undertake surveillance activity in order to ascertain the Timorese government’s position as to the location of the maritime boundary and its impact on the distribution of potential oil riches. When Mr Downer obtained a consultancy with the company responsible for exploiting the oil and gas reserves, Witness K approached the Inspector-General of Intelligence.

In recent submissions to the Independent National Security Legislation Monitor (INSLM), the Human Rights Law Centre (HRLC) senior lawyer Kieran Pender called for a major reform of the *National Security Information Act 2004* to ensure that trials – [like that of Witness J](#) – are not held in complete secrecy.

“[Open justice] is an essential accountability mechanism and ensures public confidence in the justice system. While in limited circumstances narrow expectations might be justifiable, we

should never have a situation where a person is charged, prosecuted and sent to prison entirely in secret,” Mr Pender submitted.

Mr Robertson said the decision to pursue Mr Collaery and Witness K rather than Mr Downer and the intelligence agency was “monstrous” and he hopes the jury acquits them both with a note in its verdict demanding the prosecutions of the right parties. He added that it was up to lawyers to revealing the details of the trial.

“Australian lawyers have been rather quiet about it. That’s perhaps because of contempt of court laws, but this trial itself is a contempt of court. It seems to me that the legal profession should insist on unveiling it because a trial in secret, in my view, is no trial at all,” Mr Robertson said and mirrored 19th-century philosopher Jeremy Bentham’s principle that “publicity is the very soul of justice”.

“[Publicity] keeps the judge trying while under trial. The basis of open justice principles is being breached deliberately by this government.”

On the question of whether whistleblowers should be protected under human rights laws, Mr Robertson referred to the landmark *Goodwin v United Kingdom* case, of which he acted for the applicant. Trainee journalist Bill Goodwin received sensitive information regarding the financial state of a company that appeared to have come from a confidential corporate plan, one copy of which had gone missing.

The court found that injunctions to prevent the publication of the information could be considered “necessary in a democratic society” but disclosure of the source of said information was unnecessary. It also noted the importance of protecting sources for press freedom and reasoned disclosures could produce a chilling effect in society.

“The European court of human rights held that it was part of the right of free speech to protect whistleblowers and to enable journalists to protect their sources,” Mr Robertson said. “This is the leading case in source protection – so there is a basis in international human rights laws for whistleblower protections.”

Anonymous

Maybe A-G Porter has received his karmic reward by being toppled in the Canberra putsch?

This government and its lack of accountability is chilling, full stop.

greg

If it looks like corruption and stinks to high heaven - what damage does this do to Australia's international reputation?

Anonymous

This interview with Mr Robertson should be onforward to Mr Downer