

Secrecy on East Timor spy case undermines trust in the court system

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Editorial

The ACT Court of Appeal has struck an important blow for transparency and the public's right to know in a judgment on Tuesday in the case of Bernard Collaery, the lawyer who blew the whistle on Australia's illegal spying operation against East Timor.

Mr Collaery and his client, the former Australian Secret Intelligence Agency officer known as Witness K, revealed to East Timor that Australia had planted bugging devices in its offices in 2004 during sensitive negotiations over multibillion-dollar undersea oil fields.

The information allowed East Timor to bring a case in 2013 at the Permanent Court of Arbitration in The Hague, which tried to overturn the deal on the basis that Australia cheated. Mr Collaery is also charged with leaking the news to the media at about the same time.

Australia eventually renegotiated the deal and East Timor dropped the case in The Hague without a public hearing.

The Australian government then decided to prosecute Mr Collaery and Witness K. It has charged Mr Collaery with five counts of leaking classified information and conspiring with Witness K.

Unlike Witness K, who pleaded guilty in June and received a short suspended sentence, Mr Collaery is fighting the case because he insists the Australian public has a right to know exactly what was done in our name.

The federal government, on the other hand, has fought in the interests of national security to have most of the details suppressed forever and the jury sworn to secrecy.

While the single judge hearing the case agreed with the government and suppressed the evidence, Mr Collaery appealed that ruling and asked to have less sensitive evidence heard in open court. The three judges of the full ACT Supreme Court have now found in his favour and a judgment summary released on Tuesday makes some important points.

The judges said they doubted that there was a serious risk to national security from releasing information about events as much as 17 years ago. On the other hand, they said there was a "very real risk of damage to public confidence in the administration of justice if the evidence could not be publicly disclosed".

When courts are open, they said, "it deterred political prosecutions, allowed the public to scrutinise the actions of prosecutors, and permitted the public to properly assess the conduct of the accused person".

Of course, in cases like this it might be necessary to keep secret some evidence to protect our intelligence networks.

But the judges have rightly said that courts should not simply take the federal government's word. Sometimes governments try to suppress information not because there is a serious threat to national security but simply to avoid domestic political embarrassment.

The Collaery case, which concerns events during the Howard government, is certainly a case where the politicians might want to keep things quiet. The judge in the Witness K trial said the ASIO agent was motivated by "justice" and preserving the international order.

The most frightening part of the Court of Appeal's statement is its concern about "political prosecutions". It raises the spectre that Australia's legal system could be used by vindictive politicians to attack their enemies. It sounds more like China than Australia.

The Collaery case has several more rounds to go but the *Herald* believes, in the interests of our judiciary and our democracy, he must have his day in an open court where as much of the evidence as possible is put on the record.