

# THE RIGHT TO A FAIR TRIAL

## THE PERSECUTION OF WITNESS K AND BERNARD COLLAERY

### WHAT DO WE BELIEVE?

There are minimum standards for a fair trial.

All people should be equal before the courts.

A defendant is entitled to be informed promptly of the charges and the evidence to be used against him or her.

A defendant is entitled to be given access to the detailed evidence and background to the charges.

The defendant is entitled to be tried 'without undue delay'.

Trials should be public except where there are clearly recognised matters of national security at risk.



*Bernard Collaery*

### WHAT ARE THE ISSUES?

**The Australian government spied** on Timor-Leste in 2004 during negotiations about the sharing of the resources of the Timor Sea.

**The spy now known as "Witness K"** found out that officials who ordered the spying were lobbying for Woodside, the oil company involved. He complained to the spy agency and was advised to get a lawyer. He chose Bernard Collaery.

**When the Timorese government was advised of the spying,** they withdrew from the Treaty and began negotiations for the 2018 border.

**Two months after the border was finalised,** Witness K and Collaery were charged with making known state secrets.

**They had not received the brief of evidence** against them by April 2019, ten months after charges were laid.

**National Security Legislation** is being used to ensure secrecy. Magistrate's preliminary hearings have been postponed and delayed, and times and venues have been concealed. There is as yet no set date for the trial.

**The current prosecution of Witness K and Bernard Collaery does not meet the internationally accepted standards for a fair trial.**

### WHAT ARE THE EFFECTS?

**The right to a fair trial** is being denied Witness K and Bernard Collaery.

**National Security legislation** is being used to cover-up the economic espionage on Timor-Leste, which was illegal and fraudulent.

The prosecution **conceals the actions of those who ordered the illegal spying.**

The prosecution depicts **those who told the truth as criminals.**

The prosecution **weakens the rule of law.** It **establishes a precedent** which could affect future truth-tellers.

**The prosecution signals to the intelligence community** that reporting abuse of law threatens their reputation and livelihood.

The prosecution exposes Australia to **international condemnation.** It **erodes the Australian image** as a fair, law-abiding, honest and non-corruptible regional power.

The whole episode has **soured the relationship** with Timor-Leste.

Two Australian men of integrity are being **treated as criminals,** adversely affecting them, their families and wider circles, and their livelihood.

"If the material is so significant a danger to national security if disclosed, then the result should be that the proceedings are abandoned," retired Judge Anthony Whealy said.

## WHAT DO WE WANT?

**The immediate discontinuance of the prosecution** of Witness K and Bernard Collaery.

**An Australian government apology and reparations** to the two men.

**An investigation** into the illegal and fraudulent espionage against Timor-Leste in 2004 .

**An inquiry** into the relationship between ASIS activities in 2004 in Timor-Leste and the ongoing investigation into the Bali bombings at the same time.

**Greater media interest** in the Witness K case.

## WHAT CAN WE DO POLITICALLY?

**Call for the immediate discontinuance of the case.**

**Lobby Parliamentarians.**

**Write to the Attorney-General,**  
PO Box 6022  
Parliament House  
Canberra ACT 2600

**Contact media:**

Newspapers  
Radio stations  
Television stations

## WHAT CAN WE DO PERSONALLY?

**Find out more about the case.**

**The Guardian, Crikey, and The Saturday Paper** run articles.

**Use social media to let others know of this outrageous affair.**

**Contact family and friends.**

*“This is Australian politics' biggest scandal, and the most powerful people in the country are ensuring you know as little about it as possible.”*



*Canberra demonstration at first Magistrate's hearing 12 September 2018*

“Labor used to be the party that was sceptical of Australia's intelligence agencies. It's time for MPs to speak out on their party's collusion with the cover-up of the Witness K scandal — even if it means admitting Labor's own culpability in the affair.”

“Attorney-General Christian Porter has issued non-disclosure certificates to prevent the alleged secret information being revealed on the basis it is likely to prejudice national security. This tactic is central to the government's desire to prosecute K and Collaery out of sight of the media and the public. It obscures the question of the culpability of John Howard, Alexander Downer, David Irvine and a range of security officials in the illegal bugging of the East Timorese cabinet — and the feckless removal of counter-terrorism resources from Indonesia at a time of terrorist attacks against Australian targets there to enable it. But it also affords considerable procedural opportunities for Porter's lawyers to delay proceedings further.” (Bernard Keane) [Read more.](#)



**A Project of Catholic Social Justice,  
Welfare and Educational Agencies**

14 Yerrick Rd Lakemba NSW 2195.  
[susan.connelly@sosj.org.au](mailto:susan.connelly@sosj.org.au)

*Your voice strengthens our voice*