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Espionage and open democracy

EDITORIAL

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Obscured from public scrutiny, there is a drama being played out in a Canberra courtroom that raises important questions about open justice, protection for whistleblowers and the right of the public to be informed by an unfettered and independent media. Seven years after this newspaper reported claims that Australian intelligence had bugged East Timor's cabinet room during negotiations over a division of resource spoils in the Timor Sea, Canberra lawyer Bernard Collaery, who represented a whistleblower, faces trial on national security charges to do with public exposure of these events.

Also under national security law, Attorney-General Christian Porter has issued a non-disclosure certificate, the stated purpose of which is to prevent sensitive intelligence from being revealed during court proceedings. In a pre-trial hearing the ACT Supreme Court is considering how much of the case against Collaery will be open to scrutiny by the media — and therefore the public.

By definition, it is difficult to make any categorical judgment about whether this secrecy is warranted but clearly there are vital principles at stake, starting with the presumption that justice should be seen to be done. The national security law invoked by Mr Porter dates from 2004 and reflects the undeniable need to enable counter-terror and intelligence agencies to work effectively so the safety of the public can be protected, without which civil liberties are at a discount. It would be intolerable if prosecution of terrorists itself were to jeopardise national security. But this setting aside of open justice, this suppression of media reporting and public knowledge of events of potential importance, must be used only when absolutely necessary.

The effective operation of national security legislation — and of agencies charged with security and policing — depends in no small part on public confidence, trust and co-operation. If Australians come to believe that the government is using these laws for a purpose other than genuine reasons of national security, then it is not only the credibility of politicians that suffers but also the cause of national security itself. And that weakens the country in the fight against bad actors who would threaten our values and our citizens.

Right now Australia is coming under increasingly unfriendly pressure from the global heavyweight that is the People's Republic of China. The case against Mr Collaery, on one view, is an awkward historical footnote in our diplomatic and trade relationship with East Timor, a relative minnow. As former Victorian premier Steve Bracks suggested in this newspaper on Monday, it is far from obvious how this past controversy raises such pressing issues of national security that it warrants the intervention of the commonwealth's first law officer.

Mr Bracks speculates that the prosecution of Witness K and Mr Collaery is an attempt by the Coalition government to shield from embarrassment John Howard, prime minister at the time of the espionage operation, and his foreign minister, Alexander Downer. We can't know, but Mr Bracks overlooks the tendency of government, regardless of which parties or personalities are in power, to vigorously defend what its functionaries have done in the past. Sometimes this is an attempt to gloss over mere embarrassment, sometimes it is a serious cover-up. In the Collaery case, Mr Porter's use of this extraordinary power of "non-disclosure" seems to lack a compelling rationale in national security.

This is not to say that acts of espionage can be weighed according to simple moral rules. Pragmatic decisions and robust actions may be required to protect vital interests of state and to safeguard the public. Spies, like police, sometimes have to do unpleasant work so the rest of us can continue to live peaceful lives in which we are not confronted with such dilemmas.