

Porter's Collaery cover-up gets legal blessing, but is Labor starting to do its job?

Bernard Keane, Crikey.com Jun 29, 2020

As the government scores a win in its shameful secret prosecution of Bernard Collaery, it seems like Labor is finally starting to wake up.

It seems as though Attorney-General Christian Porter will be successful in maintaining his cover-up of the Howard government's crime of bugging the cabinet room of Timor-Leste in 2004 to benefit political donor Woodside, with an ACT magistrate granting Porter's application that parts of the prosecution of Bernard Collaery be held behind closed doors for national security reasons.

That also means that, in a Kafkaesque absurdity, Porter will be allowed to use documents against Collaery that Collaery and his legal team are prohibited from seeing.

ACT Supreme Court magistrate David Mossop ruled in Porter's favour on Friday after several days of secret hearings that some media outlets have shied away from reporting. Former foreign minister Gareth Evans, former chief of the defence force Chris Barrie and former ambassador to Indonesia John McCarthy all gave evidence as part of Collaery's case against Porter's application. Despite arguments from national security apologists such as Dennis Richardson that the non-disclosure certificate application process is fair, Mossop had only limited choice. Under s. 31 of the [National Security Information Act](#), the magistrate is compelled to "give greatest weight" to the claims made by the attorney-general.

John Howard, Alexander Downer and then-ASIS head David Irvine are the most immediate beneficiaries of the ruling, given their potential embarrassment about details emerging of their ordering ASIS to bug the Timorese. Even under provisions that allow ASIS to break the law in pursuit of national security goals, the Timor-Leste bugging was clearly a criminal act.

The illegal operation also, tragically, diverted counter-terrorism resources away from stopping Islamist terrorists attacks against Australian interests in Indonesia in 2004, to supporting the commercial interests of Woodside in negotiations over resource access under the Timor Sea.

For former politicians who relentlessly exploited fears of terrorism for partisan gain, exposure of the details of how the Howard government ordered ASIS to devote its attention to commercial espionage rather than fighting terrorism threatened to be deeply humiliating. That threat has been averted by Porter's cover-up under the pretence that national security could be affected.

The decision did, however, finally dislodge a statement on the prosecution of Collaery and Witness K from Labor shadow-attorney-general Mark Dreyfus. He would, he said in a statement on Friday, seek "an urgent briefing" because "Labor strongly supports the principle of open justice".

Dreyfus who [played his own role in the scandal](#) when attorney-general in 2013 went a little further: "For reasons that still remain unclear, Christian Porter personally authorised the prosecution of Witness K and Mr Collaery. After today's decision by the ACT Supreme Court, it is more important than ever that Mr Porter provide a detailed explanation as to why these prosecutions are in the public interest."

In Dreyfus' view, "the unexplained decision to prosecute Witness K and Mr Collaery is part of a broader shift towards more secrecy and less accountability in government".

It's a statement of the obvious, but a welcome one from Labor given it has steadfastly refused to say anything about Porter's vexatious pursuit of Witness K and Collaery, or Porter's deliberate tactic of dragging out the prosecution to the point of being criticised by magistrates presumably with the intent of wrecking Collaery's legal career. Until now, only Labor MPs Graham Perrett and Alicia Payne Collaery's federal MP have spoken out against the prosecution.

The question still remains for Labor, however: will it permit Christian Porter to continue to cover up the crime of the Howard government? A crime undertaken for base commercial reasons to help a political donor (one that is also a generous benefactor of Labor). A crime that was not merely sordid in itself, but which diverted resources away from preventing terrorist attacks aimed at Australia.

It's Australia's biggest scandal. Labor's reluctance to do its job is a matter of profound shame. Is it finally waking up?