



COMMONWEALTH OF AUSTRALIA

PARLIAMENTARY DEBATES



THE SENATE

PROOF

QUESTIONS WITHOUT NOTICE

National Security

QUESTION

Thursday, 17 June 2021

BY AUTHORITY OF THE SENATE

QUESTION

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Questioner Patrick, Sen Rex
Speaker

Source Senate
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Responder Cash, Sen Michaelia
Question No.

National Security

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Senator PATRICK (South Australia) (14:31): My question is to the Attorney-General, and relates to whistleblowers. The Prosecution Policy of the Commonwealth provides a two-stage test that must be satisfied before a prosecution is commenced. There must be sufficient evidence to prosecute the case and it must be evident from the facts of the case and all of the surrounding circumstances that the prosecution would be in the public interest. When asked about the impact of the prosecution of Bernard Collaery and witness K on the relationship between Australia and East Timor at estimates, the acting CDPP said that it would be, 'a step beyond the scope of the matters that we normally consider'.

So it's clear that hasn't been considered properly. Attorney-General, can you please provide this chamber with an explanation as to why it is in the public interest to prosecute Bernard Collaery and witness K for calling out unlawful activity?

Senator CASH (Western Australia—Attorney-General, Minister for Industrial Relations and Deputy Leader of the Government in the Senate) (14:32): I thank Senator Patrick for the question. This matter is currently before the court. In fact it is in the court today, so I will be very cautious in the comments that I make to Senator Patrick.

Senator Patrick, you did ask questions at Senate estimates and you were provided with the responses that you have referred to. What I can now say in relation to your question is this: the Commonwealth Director of Public Prosecutions considered the brief of evidence and made an independent decision that a prosecution was the appropriate course of action in relation to this case. As you have stated, this was done in accordance with the Prosecution Policy of the Commonwealth that requires the CDPP be satisfied that the prosecution would be in the public interest.

Mr Collaery was charged with an offence of conspiracy to communicate Australian Secret Intelligence Service information, contrary to section 11.5 of the Criminal Code Act 1995 and section 39 of the Intelligence Services Act 2001, with further offences of communicating Australian Secret Intelligence Service information, contrary to section 39 of the Intelligence Services Act 2001. You would also be aware that witness K has been charged with an offence of conspiracy to communicate Australian Secret Intelligence Service information, contrary to section 11.5 of the Criminal Code Act 1995 and section 39 of the Intelligence Services Act 2001.

As I said, this is an independent decision that the CDPP made in terms of— (*Time expired*)

The PRESIDENT: Senator Patrick, a supplementary question.

Senator PATRICK (South Australia) (14:34): I understand witness K has actually pleaded guilty in the ACT Magistrates Court to conspiring to reveal classified information. Clearly the government has worn witness K down over the years—including the removal of his passport in 2013 so that he could not leave this country. He of course took that matter to the AAT. What's the current status of his passport? Will he have his passport returned to him?

Senator CASH (Western Australia—Attorney-General, Minister for Industrial Relations and Deputy Leader of the Government in the Senate) (14:35): In the first instance, Senator Patrick, you have provided commentary in relation to this matter. That is merely your commentary. The government does not agree with what you've stated. In relation to the issue of the passport, that is a matter, Mr President, more appropriately dealt with by the Department of Foreign Affairs and Trade, and my understanding is that they would not normally comment on the status of a person's or an Australian's passport.

The PRESIDENT: Senator Patrick, a final supplementary question.

Senator PATRICK (South Australia) (14:35): So we've got the government prosecuting whistleblower David McBride after he revealed war crimes in Afghanistan, which of course have been the subject of the Brereton report. There's no question what he claimed did occur. We also know of Richard Boyle, who called out the improper use of garnishee notices. He blew the whistle and he is being prosecuted. What is the public interest in prosecuting these whistleblowers?

Senator CASH (Western Australia—Attorney-General, Minister for Industrial Relations and Deputy Leader of the Government in the Senate) (14:36): As I have already stated in my answer to Senator Patrick's first question, these matters are all currently before the court. What I will say, though, in relation to the two further matters that Senator Patrick has raised is that the prosecutions, as you are aware Senator Patrick—you asked questions at estimates—have been brought because the Commonwealth Director of Public Prosecutions made an independent decision that the prosecutions are in accordance with the Prosecution Policy of the Commonwealth.