

Statement regarding decision in s27 Hearing in R v Collaery

Canberra, Australian Capital Territory

26 June 2020

This hearing was all about whether Bernard Collaery will get an open trial - or a secret trial.

The Commonwealth asserts that it has never confirmed or denied whether there was an espionage operation in East Timor.

However, any trial of Mr Collaery requires the Commonwealth to confirm or deny the truth of what was publicly alleged by him in the media interviews for which he is being prosecuted.

It's very disappointing that the trial will not be more open and that essential elements of the case will not be heard in public.

Open justice is an essential part of our legal system, the rights of defendants and our democracy.

This case should be heard in public. Highly regarded people with the highest levels of experience in foreign affairs and security agree.

The view that national security needs this trial to be secret is hotly contested, even in Canberra.

The court heard evidence in support of Mr Collaery from Gareth Evans, former foreign minister, Admiral Chris Barrie, former Chief of the Defence Forces, John McCarthy, former diplomat and ambassador to Indonesia and the US, and had evidence from Anthony Whealy, a former judge and expert in national security laws. Both Xanana Gusmao and Jose Ramos Horta gave affidavits supporting Mr Collaery.

Yet that strong evidence was not enough in the face of our restrictive laws that place a premium on secrecy over all other considerations.

Laws designed to protect Australians from terrorism, should not be used to close courts in this kind of case.

What a shame it would be for all Australians if laws that were meant to defend and protect us, ended up eroding the very things we mean to defend and protect.

We will be looking at bringing an appeal.

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