

Secrecy challenge by Witness K lawyer Bernard Collaery will itself be held in secret

ACT court closes hearing of appeal by lawyer representing whistleblower due to requirements of National Security Information Act



ACT court began appeal hearing of Bernard Collaery, lawyer for whistleblower Witness K, but closed the court to the public within five minutes. Photograph: Mike Bowers/The Guardian

Paul Karp – *The Guardian* - 17 May 2021

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[A legal challenge to the secrecy of information](#) involved in the prosecution of a lawyer for representing whistleblower Witness K will itself be held in secret.

On Monday, the ACT court of appeal began a two-day hearing of Bernard Collaery's appeal but closed the court to the public within five minutes due to the requirements of the National Security Information Act.

Independent human rights lawyers and Labor have criticised the secrecy involved in the case, [as well as its cost](#).

The commonwealth is prosecuting Witness K and Collaery, his former lawyer, for [disclosing information about the bugging of Timor-Leste government](#) buildings in 2004, an operation that gave Australia the upper hand in talks to carve up resources in the Timor Sea.

Witness K has [signalled an intention to plead guilty](#) but Collaery is fighting the charges. Details of the case and evidence are shrouded in secrecy due because the government has deemed them secret under the NSI Act.

The ACT supreme court initially upheld the secrecy of that information, which Collaery has now appealed.



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On Monday the ACT chief justice, Helen Murrell, noted the appeal would begin with an application to lead further evidence and then asked parties' views on closing the court to the public.

Bret Walker, counsel for Collaery, noted that he was not applying to do so but was “afraid” closing the court was required by the NSI Act, adding that he “[regrets] the appearance of that”.

The court remained closed through the rest of Monday’s hearing and – like the appeal at first instance – will not be reopened to the public.

Kieran Pender, a senior lawyer at the Human Rights Law Centre, said “the prosecution of Bernard Collaery, and the secrecy surrounding it, is wrong and undemocratic”.

“We should be protecting whistleblowers, not punishing them,” he said.

“Shrouding this case in secrecy only exacerbates the injustice being done. The NSI Act is broken and must be amended to better protect the public interest in transparency.”

Pender said the attorney general’s decision on secret information would enable the government “to admit in court that it spied on [Timor-Leste](#), while refusing to admit that publicly”.

“The NSI Act makes a mockery of open justice, a vital democratic principle.”



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Throughout the case, Collaery submitted a series of subpoenas to intelligence and defence agencies and corporations, including the multinational giant Woodside, which stands to profit significantly from the deal eventually struck by Australia and [Timor-Leste](#).

The commonwealth has resisted the release of documents, citing a public interest immunity claim, which includes a claim that releasing them would harm Australia’s international relations.

Before the court hearing Labor’s three Canberra-based MPs and senator Katy Gallagher released a statement objecting to the treatment of Collaery and Witness K.

They called on the government to “explain why it is in the public interest to proceed with these prosecutions”.

“From trying to effectively prevent Mr Collaery from choosing his own legal counsel to closed courts and delaying tactics, the Morrison government has gone to absurd lengths to pursue these prosecutions,” they said.

“The new attorney general must do what her predecessor failed to do: explain to the Australian people why it is in the public interest to proceed with these prosecutions, which have already cost taxpayers almost \$4 million.”

The Labor leader, Anthony Albanese, has previously said “prosecution of a whistleblower, for what’s a shameful part of Australia’s history, is simply wrong”.

Crossbench parliamentarians including Rex Patrick, the Greens and Andrew Wilkie have [called for the government to drop the prosecutions altogether.](#)