

Question of closed hearing in East Timor bugging case waits on attorney-general

Alexandra Back *Canberra Times/Brisbane Times* 9 November 2018

They said the law that provides for closed court hearings would bar Mr Collaery's lawyers, who do not presently have the appropriate security clearances, from being present during the hearing.

They had also been ambushed, only finding out about federal prosecutors' notice of the claim on the brief the evening before Wednesday's hearing.

Witness K and Mr Collaery are accused of conspiring to provide information about the Australian Secret Intelligence Service after Witness K spoke up about Australia's spying on East Timor during negotiations over an oil and gas treaty.

The then-ASIS officer Witness K had gone to the Inspector-General of Intelligence and Security with his complaint about the illegal bugging operation, and received approval to engage Mr Collaery to represent him.

Prosecutors have given notice that the case against the pair brings into play the National Security Information Act, which was passed in 2004 in the context of terrorism.

The law requires that the court make orders before any trial which protect how sensitive information is handled during the case.

However, the Commonwealth and the defence have clashed over how the orders should be decided.

The defence applied to the court last month to hold open hearings to consider the questions of national security and work towards a set of agreed orders.

But late on Tuesday afternoon, before court on Wednesday, prosecutors sprung on the defence that they had notified the attorney-general that the entire brief of evidence could reveal sensitive information.

The notice cryptically described the information likely to prejudice national security as the information contained in the brief.

The operation of the law means the attorney-general determines whether or not the brief is likely to prejudice national security, and if he finds it does, he can issue a non-disclosure certificate over it.

Such a certificate would mean the hearing would be held in closed court.

The ACT Magistrates Court heard this week that Witness K and Mr Collaery are yet to receive the brief of evidence against them and Mr Collaery cannot instruct his lawyers.

On Friday Chief Magistrate Lorraine Walker found that the federal prosecutors' notice to the attorney-general overtook the section that provided for the alternative open hearing.

She ordered the defence applications be stayed until Mr Porter either gives the non-disclosure certificate over the brief or gives notice he does not intend to.

In a statement outside court, Centre Alliance Senator Rex Patrick expressed concern about the government's ability to accurately assess what is or is not likely to prejudice national security.