

How the Witness K/Collaery case is being delayed into oblivion

Bernard Keane Crikey Insider March 25, 2019

This is Australian politics' biggest scandal, and the most powerful people in the country are ensuring you know as little about it as possible.



Bernard Collaery.
(Image: AAP/Rod McGuirk)

There's been minimal coverage (outside reports in the Canberra Times) of the government's campaign of harassment and intimidation of Witness K and Bernard Collaery this year. And that's exactly the way the government likes it.

It appears that Attorney-General Christian Porter is doing everything possible to slow the prosecution of K and Collaery down. With a slower prosecution there's a greater chance the media and public will lose interest, and a larger toll for Collaery too; while he's being prosecuted in the same courts he practiced law, it's impossible for Collaery to fully resume his career.

At this stage, hearings feature not just a barrister for the Commonwealth Director of Public Prosecutions the Liberal Party's hand-picked ex-trade union royal commission lawyer Sarah McNaughton but a barrister for Porter himself. At the hearing in Canberra on February 28, Tim Begbie, for Porter, dominated proceedings. Why, in an era of an allegedly independent DPP, does Porter get to play a key role in a criminal trial? Because McNaughton brought him into it by claiming the brief of evidence against K and Collaery would disclose national security information. In response, Porter has issued non-disclosure certificates to prevent the alleged secret information being revealed on the basis it is likely to prejudice national security.

This tactic is central to the government's desire to prosecute K and Collaery out of sight of the media and the public. It obscures the question of the culpability of John Howard, Alexander Downer, David Irvine and a range of security officials in the illegal bugging of the East Timorese cabinet and the feckless removal of counter-terrorism resources from Indonesia at a time of terrorist attacks against Australian targets there to enable it. But it also affords considerable procedural opportunities for Porter's lawyers to delay proceedings further.

So at February's hearing in the ACT Magistrates Court which was entirely preliminary and procedural in nature, as most hearings in this case are likely to be this year Porter's lawyers wanted the court to impose a set of orders for which, at the last minute, they proposed an entirely new category of documents that would be subject to the non-disclosure certificate.

Originally Porter's lawyers had wanted orders made regarding "any evidence to be relied upon in a closed court, including statements from any witnesses to be called". But at the very last minute they decided they wanted to go beyond evidence given in closed court and have orders made about additional documents that Collaery and K and their lawyers would not even be allowed to see.

Think about that. Is this Attorney-General Christian Porter's idea of justice? The CDPP is prosecuting someone for a jailable offence on the basis of evidence which includes what Collaery's barrister Christopher Ward described as a "super-closed category of evidence" that they are not permitted to ever look at. The best they would get from Porter was an "indication of the matters to be addressed" in those documents.

This effort to railroad K and Collaery using evidence they're never allowed to see isn't the first time Porter and co have tried to slow things down. Literally the day before the hearing, Porter banned Collaery from receiving the classified brief of evidence against him. Collaery, bear in mind, has been handling some of the most sensitive legal matters in the national security and intelligence community in Australia since before young Christian Porter was parading for Cleo. The idea that somehow Collaery, of all people, could not be trusted with the brief of evidence against him is not merely absurd, but deeply offensive.

Moreover, Collaery is prohibited by national security legislation from disclosing certain information to his legal team and has specifically requested the Commonwealth to use an arrangement available under the National Security Information Act to enable him to instruct his team properly.

Reckon the Commonwealth moved quickly on that? It has so dragged its heels that even magistrate Lorraine Walker, who so far has appeared entirely unfazed by the Kafkaesque tactics used by the Commonwealth, jacked up. Begbie tried to explain away Porter's slow-walking of the arrangement. "I can't give your honour a date," Begbie pleaded. "We'd be talking weeks, not months, if that kind of indication is of any use."

It wasn't. "Things do seem to take a very long time with the Commonwealth, Mr Begbie," Walker replied. "This matter has already taken far longer than really it ought, and perhaps there are reasons for that that I don't fully comprehend, but I think a finger needs to be pulled out to make it happen as quickly as possible."

That's the presiding magistrate confirming that Porter and co are unnecessarily delaying this prosecution. And all this has seemingly been done without Porter's team keeping the DPP in the loop the DPP's barrister actually joined Collaery and KK's legal teams in asking for an amendment to Begbie's proposed orders during the hearing.

One final thing to illustrate just how systematic these efforts appear to be: the Secretary of the Attorney-General's Department, which is instructing Begbie, is Chris Moraitis. Moraitis, therefore, has a key role in the Commonwealth's attempts to cover up ASIS' crime in Dili, the prosecution of K and Collaery (for which the DPP needed Porter's consent) and its efforts to delay the prosecution as much as possible.

Let's go back 15 years. Which DFAT officer was the senior legal adviser who helped then-foreign minister Downer negotiate the notorious CMATS treaty with Dili, the one for which Australia's negotiating position was informed by ASIS' bug in the East Timorese cabinet room?

Why, hello Chris Moraitis.



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The Minister for Foreign Affairs Mr Alexander Downer and his East Timorese counterpart Dr José Ramos-Horta sign the Treaty on Certain Maritime Arrangements in the Timor Sea on 12 January 2006. The Prime Minister Mr John Howard and then East Timorese Prime Minister Mr Mari Alkatiri observe the signing, which concluded an intensive series of eight negotiating sessions held in Canberra, Sydney, Darwin and Dili from April 2004 to November 2005. The department's Senior Legal Adviser, Chris Moraitis (far left) looks on. Photo: AUSPIC/ Howard Moffat

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