



Bernard Collaery has won an appeal against non-disclosure orders sought by the attorney-general Credit: AAP

Collaery wins appeal against trial secrecy

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Lawyer Bernard Collaery has succeeded in a bid to overturn secrecy shrouding parts of his trial for allegedly unlawfully sharing information about an Australian spy operation.

He is accused of unlawfully sharing classified information about the 2004 bugging operation of negotiations to carve up lucrative oil and gas reserves in the Timor Sea.

The ACT Court of Appeal on Wednesday allowed Collaery's appeal against non-disclosure orders sought by the attorney-general.

Collaery, who was not in court, said he was "elated about winning this thing".

"We've had a win, but it's been a very gruelling struggle. And the win is on open justice," he told AAP.

"Although my profession sometimes doesn't get the golden award in the public eye, this is one of those days where I'm proud to be a member of the legal profession."

In their ruling, Chief Justice Helen Murrell, and Justices John Burns and Michael Wigney, stressed the importance of the open hearing of criminal trials.

They accepted the public disclosure of the information the government wanted secret would involve a risk of prejudice to national security.

"However, the court doubted that a significant risk of prejudice to national security would materialise," a summary of their judgment said.

"On the other hand, there was a very real risk of damage to public confidence in the administration of justice if the evidence could not be publicly disclosed."

Collaery accepted some sensitive information should not be disclosed and sought public disclosure of only information relating to the truth of six specific matters.

The Court of Appeal ordered the matter return to the first judge to consider the admissibility of further affidavits held by the attorney-general yet to be considered and that have not been provided to Collaery.

The initial judge earlier decided the non-disclosure orders were appropriate because they would not have a substantial adverse effect on Collaery's right to a fair hearing.

He faces five charges alleging breaches of the Intelligence Services Act by communicating information to various ABC journalists that was prepared by or on behalf of the Australian Secret Intelligence Service.

Collaery is accused of conspiring with his former client, an ex-spy known as Witness K, to communicate information to the Timor-Leste government that was prepared by or on behalf of ASIS.

Witness K was in April handed a three-month suspended sentence in the ACT Magistrates Court and ordered to be of good behaviour for 12 months.

He admitted conspiring to reveal classified information.

The Australian Bar Association in July called on the government to reconsider the prosecution of Collaery, a former ACT deputy chief minister and attorney-general.

A spokesman for Attorney-General Michaelia Cash noted the court's decision.

"The commonwealth is carefully considering the judgment," the spokesman said.

"As these proceedings still remain before the court, it would not be appropriate to comment further."