

Witness K's lawyer wins transparency ruling as court cites need to deter 'political prosecutions'

Bernard Collaery has secrecy ruling overturned ahead of trial over his alleged role in exposing Timor-Leste bugging scandal

By Christopher Knaus – *The Guardian* – 06 October 2021

Witness K's former lawyer Bernard Collaery has successfully overturned a ruling shrouding parts of his trial in secrecy, after an appeal court found that open justice helped to deter "political prosecutions".

Last year, the [Australian Capital Territory supreme court](#) ruled that parts of the trial against Collaery – a barrister charged for his alleged role in exposing a controversial bugging operation targeting Timor-Leste – would be held in secret.

At the time, Collaery's lawyers said the ruling would hide "essential elements of the trial" from public view and criticised the government for using "laws designed to protect Australians from terrorism" to reduce open justice.

They appealed to the ACT court of appeal, which on Wednesday accepted that disclosing sensitive information in the case posed some risk to national security. But it said there was doubt that a "significant risk of prejudice to national security would materialise".

"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," the court said in a judgment summary.

"The court emphasised that the open hearing of criminal trials was important because it deterred political prosecutions, allowed the public to scrutinise the actions of prosecutors, and permitted the public to properly assess the conduct of the accused person."

The matter will now be remitted back to the primary judge in the ACT supreme court, who will consider further evidence from the attorney general Michaelia Cash.

"Subject to any impact these affidavits may have, there may be public disclosure of information relating to the truth of the identified matters," the court of appeal said.

Collaery is facing trial for allegedly communicating protected intelligence information and conspiring with his client, the former Australian Secret Intelligence Service officer Witness K, to do so.

Witness K's actions helped to [reveal that Australia had bugged Timor-Leste](#), an ally and impoverished nation, during crucial 2004 talks to split oil and gas reserves in the Timor Sea. The talks were crucial for the future of Timor-Leste.

Collaery and Witness K were planning to help Timor-Leste to take a case against Australia to the international courts in the Hague, when Collaery's office and Witness K's home [were raided](#).

Australia and Timor-Leste subsequently renegotiated and reached a new deal on the Timor Sea. Once that was concluded, [Australia charged the pair](#) and brought them before the ACT courts.

The [secrecy in the Collaery case](#) is triggered by the use of the National Security Information Act (NSI Act), which was introduced in 2004 to better control how sensitive information is dealt with by the courts. The NSI act was invoked by the former attorney general Christian Porter.

The powers were introduced in the years following the 9/11 attacks in the US, largely in reaction to a botched prosecution of a defence intelligence officer. That case collapsed due to problems with the court handling sensitive information.

The purpose of the powers is to allow a court to hear sensitive cases without inadvertently disclosing highly classified and sensitive information, but transparency campaigners have warned they are failing to strike a proper balance between the need for open justice.