

The Coalition is still hounding Bernard Collaery. Is this in the public interest?

Three years on and the Morrison government continues to drag out its unconscionable prosecution of the Canberra lawyer.

By Bernard Keane in Crikey.com, Nov. 9, 2021

The Morrison government never misses an opportunity to delay and draw out its persecution of Bernard Collaery, now into its third year without the specific charges against the Canberra lawyer being tested in court.

Attorney-General Michaelia Cash has inherited the malicious and cruel approach of her predecessor Christian Porter to the pursuit of a man who helped expose the crimes of the Howard government.

That's why, tomorrow morning, Cash will again attempt to use secret, judge-only evidence against Collaery in an effort to sway the trial judge in his prosecution, despite the [ACT Court of Appeal](#) overturning the trial judge's decision to keep secret other evidence offered by Porter. If the judge accepts the additional secret evidence, it will necessitate another appeal against the decision.

Meanwhile, in another Kafkaesque instalment of the saga, Cash is demanding that the court's reasoning for its decision to reject the secrecy demands itself be kept secret, with a hearing last week to prevent the court from releasing its full judgment pending an appeal to the High Court.

There is little doubt about what the secret judge-only evidence is that Porter and Cash have tried to use against Collaery without him even being allowed to see it: an admission that John Howard and Alexander Downer ordered ASIS, then under the direction of David Irvine, to spy on the Timor-Leste cabinet, potentially in breach of Australian law given the purpose of the spying was entirely unrelated to Australia's national interest, and purely about accommodating fossil-fuel giant Woodside.

Downer and the-then secretary of Foreign Affairs and Trade, Ashton Calvert, both later took positions with Woodside.

Throughout every stage of the prosecution of Collaery, Porter, and now Cash, have delayed and drawn out proceedings in order to damage the 77-year-old lawyer as much as possible, wrecking his Canberra legal practice — he now handles only relatively minor matters, and recently appeared before the ACT chief justice both as defendant and counsel in one week.

Three times, Porter has been chided by magistrates for delaying proceedings in the more than three years since charges were brought against Collaery and former ASIS officer Witness K.

The reason the Commonwealth has played such an active role in proceedings is that Porter sought to prevent any embarrassment to Howard, Downer and other Coalition figures and senior bureaucrats involved in the sordid betrayal of Timor-Leste — including current Liberal MP Dave Sharma, who was Downer's legal adviser at the time the spying occurred.

As a consequence, Porter has sought to use the provisions of the *National Security Information Act* to keep Collaery's trial out of public view, and to convict him using secret judge-only evidence Collaery is not permitted to see, challenge or subject to scrutiny — until the ACT Court of Appeal dealt Porter's plans a blow.

Throughout this persistent abuse of both due process and the requirement that the attorney-general ensures that the Commonwealth is a model litigant, the Commonwealth Director of Public Prosecutions (CDPP) Sarah McNaughton — hand-picked by the Coalition after her role at the ill-fated Dyson Heydon royal commission — has stood silent while the trial has been stretched out by McNaughton's employer first by 12 months, then two years, and now three, while never saying anything about the abuse of process or delays to the trial.

After three years and the short, suspended sentence given to K when he pleaded guilty, it is nonsensical that the CDPP still believes the prosecution is in the public interest.

What's particularly ironic about Cash attempting yet again to use secret evidence to jail Collaery is that it comes just days after Prime Minister Scott Morrison's own office leaked national security information — texts from the president of France relating to the Naval Group submarine contract — to friendly journalists to attempt to manage the political problem created by Emmanuel Macron revealing the truth about Morrison's mendacity.

As has long been the case with national security prosecutions, governments only go after leaks that embarrass them — not the ones that serve their own interests.

In this case, the embarrassment is that of Howard and Downer. But as the Collaery trial drags through its third year, the embarrassment is increasingly that of Morrison, his various attorneys-general, and McNaughton, for letting this disgusting farce continue.