

With truth on trial, the Attorney-General's High Court bid for secrecy is dangerous

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In early October, the ACT Court of Appeal refused to allow the trial of whistleblower Bernard Collaery to go ahead in secret, behind closed courtroom doors. A one-page summary said secret trials erode public confidence in the court and open the door to political prosecutions. It was an immensely important decision, rebuking the federal Attorney-General's efforts to shroud this case in secrecy.

Despite the judgment's importance, the Australian public is yet to see it. Immediately after the decision was delivered, the Attorney-General's lawyers applied to have large parts of it redacted. In other words, the government wants a judgment that said no to secrecy to itself be secret.

Recall that Collaery is a Canberra lawyer – a former ACT attorney-general no less – who was officially approved to give legal advice to an intelligence officer, Witness K, early last decade. K had been part of the operation in 2004 to plant listening devices in the cabinet office of newly independent Timor-Leste, to give Australia an improper upper hand in negotiations over oil and gas in the Timor Sea. In 2018, Collaery and his client were charged with secrecy offences, effectively alleging the pair had passed on information about the spying to Timor (and, in Collaery's case, the media). K [pleaded guilty](#) earlier this year to one charge and received a suspended sentence; Collaery fights on.

Last month, the Chief Justice of the ACT, Helen Murrell, was minutes away from publishing the decision saying no to a secret trial, having made what she considered to be the appropriate level of redactions to balance the interests of national security and open justice. But they were not sufficient for Attorney-General Michaelia Cash. In court, her lawyers asked that Murrell delay publication of the judgment so they could consider appealing to the High Court.

The Chief Justice described the request as “rather unusual” and encouraged the government to decide swiftly, given the public interest in the matter. Instead, the Attorney-General waited until 4pm on the final day of the appeal window – late last Friday – to file proceedings in the High Court. The Morrison government has escalated their secrecy efforts in this case to new, absurd heights. It is an unprecedented and consequential development.

[Labor announces inquiry into East Timor bugging operation if elected](#)

The Attorney-General's efforts are troubling – even dangerous – for three reasons. First, the government is dragging on a prosecution that has already taken three years, with no end in sight. Whistleblowers should be protected, not punished – and certainly not prosecuted in secret.

The right thing to do would be for the Morrison government to direct the Commonwealth Director of Public Prosecutions to discontinue the proceedings. At the very least, it should end the ceaseless pursuit of secrecy. If the government is so hell-bent on putting Collaery on trial, we deserve to know why. Publicity is the soul of justice for a reason.

Second, the Attorney-General's appeal risks undermining confidence in our justice system. The Court of Appeal said no to a secret trial because public confidence in the independence and impartiality of our judiciary matters. In other words, the court is trying to protect itself. By escalating the latest secrecy fight to our highest court, the government is aiding and abetting the ongoing, cumulative threat that secrecy poses to judicial integrity.