

Court of Appeal rules in favour of Witness K lawyer Bernard Collaery's bid for open trial

ABC News, 6 October 2021. By Elizabeth Byrne

Key points:

- Lawyer Bernard Collaery is fighting charges over the alleged release of classified information
- He also wants information that doesn't risk national security to be made public
- On Wednesday, the appeals court agreed a secret trial could risk public confidence in the courts

Lawyer Bernard Collaery has won the latest round in his bid for an open trial as he fights charges alleging he revealed classified information.

Mr Collaery is facing five charges of revealing national security information to ABC journalists, and of conspiring with his co-accused Witness K — his former client and ex-spy — to reveal secret information to the East Timor government.

The secret information relates specifically to allegations that Australia bugged East Timor's government building in 2004 to gain advantage in crucial oil and gas negotiations.

But Mr Collaery is fighting the charges and wants an open trial.

Last year Justice David Mossop rejected Mr Collaery's call for some of the material to be used as evidence in the trial, [finding that some of the information should remain classified](#).



Supporters of lawyer Bernard Collaery and 'Witness K' have staged multiple protests against a secret trial. (AAP: Lukas Coch)

Secrecy could damage public confidence in justice system, says Chief Justice

The ACT Court of Appeal said the release of the material had been narrowed down to six specific matters.

On Wednesday, Mr Collaery won his appeal against those matters being kept secret, which would have seen his trial largely conducted behind closed doors.

The court said it accepted the disclosure of the material could involve a risk of prejudice to national security, but it doubted that would materialise.

In delivering the outcome the ACT's Chief Justice Helen Murrell said that risk was outweighed by other concerns.

"There was a very real risk of damage to public confidence in the administration of justice if the evidence could not be publicly disclosed," Chief Justice Murrell said.

"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."

But there is still a risk of some material not being made public.

There is some evidence being referred to as "court-only matters", deemed so secret they haven't even been shared with Mr Collaery and his lawyers.

The court ordered the case be returned to Justice Mossop for him to assess whether this "judge-only evidence" is admissible.



Mr Collaery says a balance needs to be struck between national security and open justice.
(ABC News: Nick Haggarty)

Mr Collaery waited outside the court for the result on Wednesday.

"I regret we have to go this far to achieve an appropriate balance between open justice, national security and the personal interests of those who become caught in that issue," he said.

"National security is always a balance. But it has to be true national security, not issues of embarrassment or publicity — that's the real issue.

"The case has been remitted back to the court on a single issue of whether there can be judge-only evidence."

Each of the lawyers left the court with the full, un-redacted decision in a sealed bag, pending any issues to be raised with the court before it is formally published.