

Bernard Collaery hails ‘victory for justice’ as court overturns bid to keep evidence hidden at trial

Witness K lawyer says he is grateful to legal profession who supported him pro bono while government pursues million-dollar case

By *Christopher Knaus in the Guardian*, 6 Oct 2021

Former Witness K lawyer Bernard Collaery says a ruling that lifts secrecy over significant parts of his trial is a “victory for justice” and a testament to the legal profession, which has banded together to support him through his prosecution.

The [ACT court of appeal on Wednesday](#) overturned a ruling that would have hidden evidence during Collaery’s trial from the public, saying there was a “very real risk of damage to public confidence” if it could not be publicly disclosed.

In handing down its ruling, the court cited the importance of open justice in preventing “political prosecutions”, allowing scrutiny of prosecutors, and giving the public the ability to assess an accused’s conduct.

Some evidence will still be kept secret and the matter has been remitted back to the ACT supreme court to consider further arguments from the federal attorney general, Michaelia Cash, whose government has used the National Security Information Act (NSI Act) in a bid to keep parts of the case from public view.

Collaery told the Guardian the court of appeal ruling was a “victory overall for justice” and paid tribute to his lawyers, Gilbert and Tobin, and the rest of Australia’s legal fraternity for supporting him.

“For the commonwealth to spend millions on this pursuit, you can imagine the sacrifice the lawyers supporting me have made, not just in money they could have earned, because they’re pro-bono, but in time away from their families,” he said.

“As I’m approaching the end of my career, this is the one thing that’s lifted my spirits so much, the way the legal profession has moved in on this, and retired members of the judiciary. Today is a celebration of my profession.”

Collaery is facing five charges of disclosing protected intelligence information to ABC journalists and of conspiring with his former client, ex-Australian Secret Intelligence Service officer Witness K, to communicate information to the [Timor-Leste](#) government.

Witness K’s actions helped expose a 2004 Australian bugging operation against an impoverished ally, Timor-Leste, which was [designed to give Canberra the upper hand](#) during sensitive negotiations to split oil and gas resources in the Timor Sea. A collection of oil and gas companies, led by Australian corporate Woodside, was hoping to exploit the natural resources in the Timor Sea.

The operation diverted intelligence resources during a period of heightened terror threat after the Bali bombings.

Collaery and Witness K had their homes raided by Australia's domestic spy agency in 2013 as they were preparing to help Timor-Leste lodge a case in the international courts, alleging Australia's spy operation meant it had negotiated in bad faith.

Witness K's passport was taken and he was prevented from leaving to give evidence.

The proceedings at The Hague were never finalised but eventually a new deal over the Timor Sea resources was struck, giving a far better outcome to Timor-Leste.

The Australian government then signed off on prosecution of Collaery and Witness K. The former attorney general Christian Porter subsequently invoked the NSI Act to keep significant parts of Collaery's trial secret.

Labor's shadow attorney general, Mark Dreyfus, said on Wednesday that the court of appeal's judgment was a "humiliating rebuff to the Morrison government".

"Labor strongly supports the principle of open justice and believes Mr Collaery, like any other Australian, has a fundamental right to a fair trial," he said.

"For reasons that still remain unclear, the former attorney general Christian Porter personally authorised the prosecution of Mr Collaery. After today's decision the current attorney general must now provide a detailed explanation as to why this prosecution remains in the public interest."

Human Rights Law Centre senior lawyer Kieran Pender said the case represented a rare win for an accused against the use of the NSI Act, which typically weigh in favour of secrecy.

"Because the NSI Act tilts the scales towards secrecy, defendants have typically failed to overcome the high bar in making the case for open justice," he said. "But before the court, Collaery has done just that."

Pender joined Labor in calling for a reconsideration of the prosecution, and separate cases against former military lawyer David McBride and tax office employee Richard Boyle, both of whom blew the whistle.

"There is no public interest in prosecuting whistleblowers – the CDPP can and should drop these cases," he said.