

## Judge asks: will Collaery case ever end?

By Dominic Giannini, AAP . 10 November 2021

A judge has questioned whether the prosecution of former Witness K lawyer Bernard Collaery will ever end after a push to change secret evidence.

The prosecution is seeking to update the secret evidence of three people to correct any inaccuracies which may have arisen in the 20 months since it was given.

Mr Collaery and his lawyers have not been able to review the evidence.

Arguing on behalf of the attorney-general, Tim Begby said the affidavits should be updated to ensure there was "accurate evidence before the court".

Mr Begby also called for special counsel to be appointed on behalf of Mr Collaery and his lawyers to review the documents to ensure national security was protected and Mr Collaery's interests were still able to be represented.

Justice David Mossop questioned whether there is any prospect of completing the prosecution of Mr Collaery, given the process to update the evidence could take in excess of a year given any appeals.

Justice Mossop said he was "thinking out loud" when pondering if the evidence and the case would be "stuck in a perpetual vortex of being updated".

He also queried whether his decision was constrained by the ruling of the appeal's court, which overturned his decision to have the case heard in secret.

"As I see it, no matter what I think the Court of Appeal has told me what is correct," he said.

Mr Collaery's lawyer, Christopher Ward, raised concerns updating to the evidence would constitute new evidence being presented to the court and risked giving the prosecution carte blanche to relitigate the matter which had been ruled on in the Court of Appeal.

Dr Ward said any evidence that was no longer correct, or any witness who was no longer able to appear before the court, should simply be struck out and not rewritten.

Speaking after the hearing, Mr Collaery accused the government of "shamefully mocking open justice" for trying to rely on a new category of secret evidence.

"This takes the Commonwealth's hypocritical obsession with secrecy to new heights when one considers recent events," he said.

"I strongly object to the court being given and relying upon evidence we cannot see."

Both Mr Collaery and Dr Ward have called for access to the secret evidence.

Human Rights Law Centre senior lawyer Kieran Pender said secret trials and evidence undermine the public's confidence in the justice system and enable political prosecutions.

"Secret evidence, that even the person on trial cannot see, has no place in our legal system," he said.

Mr Collaery is accused of unlawfully sharing classified information about the alleged bugging operation of the East Timor prime minister by Australian officials in 2004.

His former client, an ex-spy known as Witness K, has been handed a three-month suspended sentence and ordered to be of good behaviour for 12 months after he admitted conspiring to reveal classified information.