

NATIONAL ACT COURTS

East Timor spy scandal: Jury could hear Collaery, Witness K case

By [Alexandra Back](#)

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A jury could hear the controversial prosecution of a former spy known as "Witness K" and his lawyer who are both accused of revealing information about the Australian government spying on East Timor, a court has been told.

But before the question of any committal or possible jury trial could be decided, on Thursday a preliminary hearing in the case to be heard in secret was set down for August.



Canberra lawyer Bernard Collaery. ALEX ELLINGHAUSEN

Tim Begbie, for the Commonwealth, said that since the matter was last in court Attorney-General Christian Porter had issued certificates under the National Security Information Act over the brief of evidence.

He said that, in broad terms, the certificates permitted the brief of evidence to be disclosed subject to certain restricted circumstances such as where it can be viewed.

He said there was also an unclassified version of the brief.

Because the Attorney-General has issued those certificates, the matter is headed for a closed court preliminary hearing in the ACT Magistrates Court to consider how sensitive material will be dealt with.

Mr Begbie passed to the court a set of proposed orders leading up to the hearing.

The preliminary hearing was set down for August 6, 7, and 8 this year.

But also raised in the course of Thursday's mention in the ACT Magistrates Court was the possibility of a

committal to the ACT's higher court, which both lawyers for Witness K and Canberra lawyer Bernard Collaery flagged.

Mr Collaery's barrister, Christopher Ward SC, said they were considering the question of a jury trial but were not yet in a position to decide because they had not been able to sit with their client and review the evidence.

He said it was only yesterday the defence was informed of the Attorney-General's amendment to the certificates that would preclude Mr Collaery having his own copy of the brief of evidence.

He said that further to that, Mr Collaery had been unable to instruct his lawyers because those instructions may in turn reveal sensitive information.

The defence was waiting on the Commonwealth to clear the way for Mr Collaery to make those disclosures to his defence team.

Lawyers for Mr Collaery and Witness K also opposed the Commonwealth's last-minute inclusion of a new "super-closed" category of evidence in the proposed orders.

Dr Ward said the category of evidence for the upcoming hearing would not be seen by anyone except the court.

He said its inclusion in the proposed orders had come out of the blue only days ago, accusing the Commonwealth of a pattern of late disclosures.

He called the proposed order a "landmine".

Barrister Haydn Carmichael, for Witness K, said the measures proposed by the Commonwealth were not consistent with a fair trial nor the principles of natural justice.

But Mr Begbie said the process was conventional in matters where public interest immunity was claimed over the material.

He also agreed, when questioned by Chief Magistrate Lorraine Walker, that the orders left open the possibility of the court finding immunity did not exist.

Mr Ward countered, saying there was "nothing entirely conventional" about what was occurring.

Lawyers for Witness K and Mr Collaery are fighting for as much of the case to be held in open court as possible.

Mr Ward also raised with the court the fact Mr Collaery and Witness K were not appearing on the public court lists and that the court room had a closed court sign lit up outside.

But the reason for the absence of the two from the public lists appeared to be a mystery, as the Chief Magistrate said it was not a result of any order from her.

National security laws give the court little room to move once the Attorney-General issues a certificate over material, and require the preliminary hearing be held in a closed court.

At the end of Thursday's hearing, Ms Walker made the orders handed up by the Commonwealth and set the preliminary hearing down for August.

The case is about allegations the Australian government was spying on East Timor in 2004 while the two countries were negotiating a lucrative oil and gas treaty.

Witness K, a spy who worked on the operation, took his complaint to the Inspector General of Intelligence Security, and with approval engaged Mr Collaery as his representative.

Mr Collaery and Witness K are accused of conspiring to provide information about the Australian Secret Intelligence Service, an offence that at the time carried a maximum of two years imprisonment.

Alexandra Back is a reporter with The Canberra Times