

'Amicus' bid dismissed in spying case

Alexandra Back, Canberra Times. October 17, 2019

A court has dismissed a private citizen's bid to be heard in the case of a lawyer charged over an Australian bugging scandal in East Timor.

On Thursday in the ACT Supreme Court, Ernst Willheim, as a private citizen, made an application to be heard as *amicus curiae*, or friend of the court, in the upcoming case.

He said he would make submissions on the principles of open justice, and considerations to which the court should have regard in relation to questions of harm to national security.

He also wanted possible constitutional issues raised by the prospect of a jury trial held in secret to be addressed in the court.

Mr Willheim, a visiting fellow at the ANU School of Law, said public confidence in the administration of justice was particularly important in this case, as it related to the disclosure of illegal acts by the Australian government.

Justice David Mossop told Mr Willheim he was acutely conscious of having matters dealt with in public. He said two parties were model litigants and that while one would prefer more of the hearing to be closed, he expected Mr Collaery would advocate for a high degree of openness.

The Attorney-General opposed the application. Counsel for the attorney, Tim Begbie, referred to authorities that said it was entirely in the court's discretion whether to grant the application.

He said Mr Collaery, the Attorney-General and federal prosecutors would all be represented at the upcoming hearing with experienced senior counsel, and the contested hearing would specifically consider questions of open justice and a fair trial.

It would be difficult to see where the gap for an *amicus* would lie, Mr Begbie said.

He also said it would be quite extraordinary for the court to entertain a non-party raising constitutional issues in a case where the parties had not done so themselves.

Ken Archer, a barrister for Mr Collaery, said he did not oppose the application but that granting it was at the court's discretion.

Justice David Mossop dismissed the application and reserved his reasons until 4pm on Thursday. He excused the parties from returning to court to avoid expending further time or money on the matter and said the reasons would be published online.

Mr Collaery's co-accused is his former client and ASIS spy Witness K, who has indicated he will plead guilty to the charge.

It was Witness K who oversaw the bugging operation on the political offices of the East Timorese while Australia was negotiating with the country over the distribution of oil and gas reserves.

Witness K took his complaint the Inspector-General of Intelligence Services, who approved Mr Collaery to act for him in his dealings with the intelligence service.