

Judge raises concerns about AG's proposed orders in East Timor spying case

Alexandra Back, Canberra Times. 2 October 2019

A set of proposed orders in the case of a lawyer charged over the exposure of an Australian bugging operation on the nation of East Timor could expose court staff to criminal penalties of up to 10 years jail, a court heard Wednesday.



Canberra lawyer Bernard Collaery. Picture: Jamila Toderas

The proposed orders, which must be made before the case progresses, will dictate how sensitive information is handled during an upcoming preliminary hearing. In particular, there are affidavits marked top secret with which the defence is yet to be served.

Bernard Collaery is accused of conspiring with his client, the former spy "Witness K", to breach a section of the Intelligence Services Act which makes punishable the revealing of information of any kind about the Australian Secret Intelligence Service.

Mr Collaery will fight the allegations at trial. Witness K has indicated he will plead guilty.

At a mention in the ACT Supreme Court on Wednesday, Justice David Mossop noted some of the orders would require court staff to enter into an arrangement with ASIS about the handling of information that would expose them to 10 years' jail if it was breached.

Tim Begbie, counsel for the attorney-general, told the judge that the proposed orders were often made in similar cases and the purpose was to protect sensitive information, not to expose staff to criminal penalties.

The orders would work with national security information laws and other existing regimes preventing disclosure of sensitive information.

Justice Mossop also said the proposed orders were not clear in setting out who could handle what information and under which particular regime preventing disclosure they fell. For example, if he asked his associate to photocopy a draft judgement.

Dr Christopher Ward SC, for Mr Collaery, indicated the defence would agree to the orders proposed by the attorney-general on an interim basis, to allow evidence to be served on them, but shared the judge's concerns about ASIS arrangements.

Justice Mossop ordered the attorney-general's representatives to file a marked-up copy of the proposed orders before the case returns for another mention next week.