

Christian Porter and a secret trial have destroyed my practice, Witness K lawyer Bernard Collaery says

7:30 / By Adam Harvey

Posted Tue 16 Jun 2020 at 1:33am, updated Tue 16 Jun 2020 at 1:53am



Bernard Collaery is being prosecuted for revealing national secrets, but he can't defend himself in public. (ABC News: Jerry Rickard)

Bernard Collaery's once-thriving Canberra law practice now operates from the front room of his home.

His barrister's wig and robe gather dust by the door, and his cosy workplace is infused with the smells of woodsmoke and cooking from the adjoining kitchen.

The 75-year-old lawyer, who's been a fixture of high-profile trials and inquests in the ACT for decades, says he can no longer perform his duties due to a secretive prosecution championed by the Federal Government.

"Our democracy is fragile at the moment," Mr Collaery told 7:30.

"Publicity is the soul of justice.

"It's not a coincidence that journalists, the media, lawyers are being attacked at the moment."

But being a "conservative" when it comes to law, he feels he can't practise his profession.

"I've got a lot of forced spare time," he said.

"I can't do jury work.

Key points:

- Bernard Collaery is being tried in secret for revealing national secrets
- He blames federal Attorney-General Christian Porter for pursuing the prosecution
- Mr Collaery says an open trial is important for democratic transparency

"I don't think someone charged with an offence, a conspiracy, can be at the bar table preaching about the law."

He blames Federal Attorney-General Christian Porter for ruining his career.

'A salutary warning to other lawyers'



Bernard Collaery and Witness K were both charged with revealing national secrets. (ABC News)

Bernard Collaery is being prosecuted for revealing national secrets — specifically, that Australia bugged East Timor's government building in 2004 to gain advantage in crucial oil and gas negotiations.

He faces two years in jail, but the details of the case against him, and the details of his defence, cannot be reported.

In court in Canberra earlier this month, Mr Porter used his national security powers to have the hearing held behind closed doors.

Mr Collaery said Christian Porter has chosen to pursue the prosecution.

"In a really deep sense, I think it was pretty ordinary of this young attorney to do that to me," said Mr Collaery of Mr Porter.

He is also highly critical of the secrecy provisions.

"I want to defend myself in public," he said.

"That's the hallmark of our democracy, a public trial.

"There's never been an issue of techniques being disclosed, there's never been an issue of identities being disclosed. If they were issues, there might be other charges.

"I'm charged with conspiring with Witness K, my client, who I interviewed in the same way I have for 40, nearly 50 years.

"It means I conspired with every client I ever had, and I conspired to give what I believe was lawful advice.

"It's a great warning to my profession, an enormous salutary warning to other lawyers who might receive information from privileged sources and have to make difficult decisions as I did."

Christian Porter declined to be interviewed for this article. But he recently told the ABC's Insiders program that the secrecy sought for this trial was perfectly normal.

"There are court cases all the time where some matters are not made public," he said.

"This is an argument about what matters may be heard inside the court, and what matters may be heard publicly.

"That, in itself, is not terribly unusual. That may be the names of witnesses, for their protection, or a whole range of other matters."

'No real national security basis for supressing evidence'



Former NSW Supreme Court judge Anthony Whealy says the trial should be held in public. (ABC News)

Mr Collaery's fight to have his trial held in public has now been backed by top legal figures and a former Australian Defence Force chief.

Former NSW Supreme Court judge Anthony Whealy was asked to give evidence at pre-trial hearing of the Collaery case.

He says there is no need to hold the trial in secret.

"When you get to the central issue, which is whether the bugging of the East Timorese premises should be kept secret, I'm firmly of the view that, in truth, there are no real national security bases for supressing that evidence and keeping it away from the public," he said.

"These events took place in 2004 and have been discussed many, many times in the press.

"It's impossible to conclude other than [that] the horse has bolted in this case. Whatever damage may have been done to Australia's reputation was done years ago.

"I personally think that by acknowledging that it took place and apologising for it, I think Australia's reputation would be enhanced considerably."



Former Defence chief Chris Barrie says legal transparency is a democratic building block. (ABC News: Jerry Rickard)

Former ADF chief Chris Barrie has also argued for an open trial.

"I went to the court to argue in favour that any proceedings take place in an open court," he said.

"I did that because I believe that transparency in our court proceedings is a fundamental building block of our democracy. I believe that the community is entitled to know what goes on in our courts.

"We live in a region where there are plenty of courts that are not open, but I wouldn't like to live in any of those countries."

Mr Collaery understands that governments do things that often fall into a grey area.

"I'm no bleeding heart," he said.

"Our agencies can do all manner of things, clearly I've been in support of that for many, many years.

"There are times when you draw the line."