

Part of Witness K lawyer Bernard Collaery's trial will be heard in secret, judge rules

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Protesters and Bernard Collaery's lawyer Christopher Flynn outside court

Some of the trial of Witness K lawyer Bernard Collaery will take place in secret after a ruling in Canberra today.

Mr Collaery and Witness K, a former senior spy, are charged with revealing national secrets — specifically, allegations that Australia bugged East Timor's government building in 2004 to gain advantage in crucial oil and gas negotiations.

On Friday afternoon, ACT Supreme Court justice David Mossop ruled in the government's favour, finding the material identified by the Attorney-General as sensitive should remain classified in Mr Collaery's future trial.

Justice Mossop's judgement came at the end of a closed court hearing, where [lawyers argued over what evidence in the trial should be treated as classified](#).

The judgement upheld the national security certificate issued by Attorney-General Christian Porter to keep the material classified.

'This case should be heard in public'

The National Security Information Act requires that if the parties cannot agree on what is of national security importance and what is not, a court must decide.

Mr Collaery's lawyers had used the hearing to convince Justice Mossop that much of the material the government was trying to keep secret was not actually of national security significance.

Key points:

- Mr Collaery's lawyer Christopher Flynn maintains that the trial should be heard entirely in public
- The judgement came at the end of a closed court hearing, where lawyers argued over what evidence in the trial should be treated as classified
- The prosecution case is costing taxpayers more than \$2 million so far



Bernard Collaery and his client Witness K are charged with conspiring to reveal classified information. *(ABC News: Nick Haggarty)*

Outside court Mr Collaery's lawyer Christopher Flynn described the decision as favouring "restrictive laws".

"Open justice is an essential part of our legal system, the rights of defendants and of our democracy," Mr Flynn said.

"This case should be heard in public. Highly regarded people, with the highest levels of experience in foreign policy and security agree.

"The view that national security needs this trial to be heard in secret is highly contested, even here in Canberra."

Mr Flynn said "laws designed to protect Australia from terrorism should not be used to close courts in this kind of case".

"What a shame it would be for Australians if laws that were meant to defend and protect us ended up eroding the very things that we mean to protect and defend," he said.

He said he would be appealing an aspect of the judgement this afternoon.

Mr Collaery had called on several former senior Australian officials to support his case, including former foreign affairs minister Gareth Evans and the former chief of defence Chris Barrie.

The hearing, initially delayed by the COVID-19 pandemic — in part because some of the government witnesses were engaged in the response — ran for a week.

Prosecution case to cost taxpayers more than \$2m so far

Plans for the trial have continued despite the delay by the hearing.

Disputes have arisen between the parties over subpoenaed material, including documents from government agencies like the Department of Defence and ASIO.

Government lawyers told the court they had not produced the material yet because, during the lock down, it was not

possible to go in person to search for materials.

And when Mr Collaery's lawyers subpoenaed documents from oil and gas giant Woodside, lawyers for the Attorney-General demanded the Government see them first to vet the material in case it contained national security information.



Mr Porter revealed the cost of the prosecution case so far is more than \$2 million. (ABC News: Matt Roberts)

Meanwhile, the cost to taxpayers of the prosecution case has been revealed as topping more than \$2 million so far.

Mr Porter responded to a question on notice from South Australian Senator Rex Patrick, revealing the staggering legal bills the Commonwealth has racked up in pursuing Mr Collaery and Witness K.

"As at 3 June 2020, external legal costs incurred by the Commonwealth in the prosecutions of Witness K and Mr Bernard Collaery total approximately \$2,063,442.86," Mr Porter said.

Labor calls on Porter to explain public interest behind case

Shadow Attorney-General Mark Dreyfus said Federal Labor was seeking an urgent briefing from the Government about Friday's decision.

"Mr Collaery, like any other Australian, has a right to a fair trial and Labor will continue to follow these proceedings very closely to ensure that Mr Collaery is not denied that fundamental right,"
Mr Dreyfus said.

"For reasons that still remain unclear, Christian Porter personally authorised the prosecution of Witness K and Mr Collaery.

"After [this] decision by the ACT Supreme Court, it is more important than ever that Mr Porter provide a detailed explanation as to why these prosecutions are in the public interest."