

Witness K lawyer Bernard Collaery to appeal against secrecy in Timor-Leste bugging trial

Collaery has until 24 July to lodge appeal against ruling that suppresses crucial parts of his trial

By *Christopher Knaus* in The Guardian, 10 July 2020

Bernard Collaery has signalled he will appeal against a ruling that shrouds crucial parts of his trial in secrecy.

Collaery is facing trial for allegedly conspiring with his former client, intelligence officer Witness K, to expose an Australian [bugging operation against Timor-Leste](#) during negotiations to carve up oil and gas resources in the Timor Sea.

Late last month, the [court ruled that it would hold parts](#) of Collaery's trial in secret after an intervention by the attorney general, Christian Porter, who invoked powers in the National Security Information Act used to keep sensitive material out of the public eye.

The ruling meant “essential elements” of the case would be held behind closed doors, according to Collaery's lawyers.

On Friday, the Australian Capital Territory supreme court heard that Collaery was preparing to appeal against the decision. His legal team told the court it was “highly likely” that an appeal would be lodged, which must happen before 24 July.

It is yet another twist in what is the already protracted proceedings. The Guardian [previously revealed](#) that the prosecution of Collaery and Witness K had so far cost the government \$2m well before even reaching trial.

Collaery has submitted a series of subpoenas to various intelligence and defence agencies and corporations involved in the affair, including the multinational giant Woodside, which profited significantly from the deal eventually struck by Australia and Timor-Leste.

The court heard on Friday that the federal government was resisting the release of documents, including by making a claim of public interest immunity. The public interest immunity claim includes an argument that releasing such documents would harm Australia's international relations.

Christopher Ward SC said that argument would be contested, and questioned how such a claim could be made when the very substance of the case concerned international relations.

He also criticised the commonwealth's request for further delays to allow it to prepare evidence to support its claims of public interest immunity. He said the government had known of the subpoenas since March and had plenty of time to prepare its public interest immunity claims, and yet was now seeking further time.

“It is inconceivable that a period until 14 August could be plausibly required by the commonwealth,” he said.

Justice David Mossop rejected the criticisms and gave the commonwealth the time it was seeking.

The secrecy in Collaery’s trial is being enforced through the National Security Information Act, which was introduced in 2004 in the heightened national security environment following the 11 September terrorist attacks to better control how sensitive information was dealt with by the courts.

The main trigger for the laws was the earlier collapse of a separate prosecution of a defence intelligence organisation officer due to the court’s difficulty in handling sensitive material.

After Mossop delivered his ruling on the National Security Information Act matters last month, Collaery’s lawyer, Gilbert and Tobin partner Christopher Flynn, speaking outside of court, said the ruling would cause “essential elements of the trial” to be closed to the public.

“This hearing was all about whether Bernard Collaery will get an open trial or a secret trial,” Flynn said outside court.

“It is very disappointing that the trial will not be more open and that essential elements of this case will not now be heard in public.”

Collaery and Witness K have been charged with conspiring to communicate protected Australian Secret Intelligence Service information. Collaery has also been charged with communicating protected ASIS information.

The offences carry jail terms.