

'Strong argument' transparency should trump national security, judge in Bernard Collaery case says

By Christopher Knaus in The Guardian, 23 September 2022

You'll remember that the current government abandoned the prosecution of Bernard Collaery earlier this year.

But, despite that, the Labor government is still in court, fighting to impose secrecy on one key aspect of the case.

The ACT courts are currently hearing a dispute over its plans to release a key judgment without redactions. The judgment – a key ruling lifting orders that would have hidden much of Collaery's trial from the public – was handed down in 2021.

But the court of appeal has never been able to release its full reasons for making the decision, because the Coalition government intervened, seeking to have them redacted on national security grounds.

That approach has been maintained by the new government, which is continuing to argue that the key ruling be redacted on national security grounds.

The dispute came before Chief Justice Lucy McCallum in the ACT supreme court on Friday.

According to AAP, McCallum said the case came down to "a tension between transparency and secrecy". She told lawyers for the attorney general, Mark Dreyfus:

You say that national security trumps transparency but there's a pretty strong argument the other way.

Ultimately, the administration of justice must be transparent.

McCallum has reserved her decision on whether to release the judgment unredacted.

The Human Rights Law Centre senior lawyer Kieran Pender urged the government to drop its push for secrecy.

It was a landmark win for open justice. But that judgment saying no to a secret trial has still not seen the light of day. Rather than fighting to keep parts of the judgment secret, the new government should end this absurd pursuit of secrecy.



Bernard Collaery listens to Timor-Leste President José Ramos Horta speak at the National Press Club in Canberra earlier this month. Photograph: Mick Tsikas/AAP