

## **A timeline of how the vexatious prosecution of Bernard Collaery cost taxpayers \$5 million**

The lawyer's prosecution for allegedly helping Witness K expose Australia's bugging of East Timor's cabinet has been a protracted, expensive affair.

By Charlie Lewis in Crikey.com 17 February 2023



*Former ACT attorney-general Bernard Collaery (Image: AAP/Mick Tsikas)*

This week it was revealed that the Morrison government's pursuit of lawyer Bernard Collaery and his client, ex-intelligence officer Witness K, cost the Commonwealth \$5,510,829. Collaery was tried over his alleged role in helping K expose Australia's bugging of East Timor's cabinet in 2004.

Let's look at the timeline.

May-September 2018: It was in 2014 that then attorney-general George Brandis first demanded the prosecution of K and Collaery, but things really ramped up under his successor Christian Porter, in 2018. The prosecution was consistently delayed throughout the year, as the government attempted to have the case heard in camera (privately before a judge). This delayed the case for weeks as the parties negotiated, and even at this point, Collaery's lawyers complained of "deliberately late" advice they were receiving from the Crown.

February 2019: Porter's lawyer Tim Begbie attempted to make a last-minute application to change the court orders they had previously asked for. The changes propose an entirely new category of documents that would be subject to a non-disclosure certificate, essentially allowing the prosecution to use evidence against Collaery that he and his team (and the jury) would not be allowed to see. Magistrate Lorraine Walker noted:

"Things do seem to take a very long time with the Commonwealth, Mr Begbie. This matter has already taken far longer than really it ought, and perhaps there are reasons for that that I don't fully comprehend, but I think a finger needs to be pulled out to make it happen as quickly as possible."

November 2019: Having agreed to a trial opening of December 11, Porter's lawyers again insisted that the date be delayed, ostensibly so the legal team could better respond to a submission by Collaery's team arguing against those secrecy orders. They were successful, and the trial date was pushed into 2020.

June 2020: The pre-trial hearing commenced. ACT Supreme Court magistrate David Mossop ruled in favour of Porter's team, meaning evidence could be used against Collaery that he and the public would not be allowed to know.

February 2021: Porter's team earned a third dressing down from a third separate judge for delays, this time from Magistrate Josh Burns. This came after Porter and his team tried to prevent Bret Walker SC from joining Collaery's team, initially refusing to provide him with permission to join the case under national security provisions.

March 2021: Michaelia Cash officially took over the role of attorney-general from Porter.

May 2021: Collaery faced court, challenging the court order that would require large parts of his trial to be held in secret. It was the 50th scheduled court hearing in the government's long-running pursuit of the senior lawyer.

June 2021: Witness K, the now-elderly intelligence officer, after nearly three years of the trial, having had his passport seized and enduring periods of "effective house arrest", pleaded guilty. He received a three-month suspended sentence.

October 2021: The Supreme Court overturned Mossop's ruling that secret evidence could be used. The government appealed.

November 2021: Cash's team asked that the court's reasoning for its decision to reject the secrecy demands itself be kept secret. There was a hearing dedicated to attempting to prevent the court from releasing its full judgment, pending an appeal to the High Court.

December 2021: Lawyers for Cash, effectively ignoring their defeat in October, again attempted to introduce evidence against Collaery that he and his lawyers would not be able to see.

July 2022: More than four years and over \$5 million dollars of taxpayer money after the prosecution against Collaery commenced, the newly elected attorney-general, Mark Dreyfus, called it to a close. His trial was still yet to begin.