

Witness K, Bernard Collaery could have hearings split, court hears

<https://www.canberratimes.com.au/story/6300134/former-spy-witness-k-and-his-lawyer-could-face-split-hearings-court-hears/?cs=14264>

Alexandra Back – *The Canberra Times* – 30 July 2019

The case of a former spy and his lawyer who exposed an Australian bugging operation against the tiny nation of East Timor could be split and heard in two separate jurisdictions, a court has heard.

The spy known only as Witness K and his lawyer Bernard Collaery are accused of conspiring to breach intelligence laws by revealing information about Australia's secret intelligence service. They plan to defend the allegations.

Ken Archer, the barrister for Mr Collaery, told the ACT Magistrates Court on Tuesday that his client had a firm view about how he wanted the case to proceed, and that was by indictment and committal to the ACT Supreme Court.

The prosecution has consented to that course.

That would mean the preliminary hearing to determine national security orders listed for next week would be unnecessary, Mr Archer said, and it could instead be relisted in the higher court at a later date.

However, in a parting that could see the two cases heard separately, Robert Richter QC, the barrister appearing for Witness K, said it was "desired" that his client's matter remain in the summary jurisdiction of the ACT Magistrates Court and that the question may soon be resolved with prosecutors by consent.

Mr Richter also said they were hopeful of coming to an agreement with the Commonwealth on a set of agreed national security orders.

Chief Magistrate Lorraine Walker adjourned the case until August 6 for another mention. She urged the parties that if the hearing due to start that day was to be vacated that the court be informed as soon as possible.

Witness K and Mr Collaery were charged last year with conspiring to breach s39 of the Intelligence Services Act, which make punishable the revealing of information of any kind about the Australian Secret Intelligence Service.

The case has since crawled through the ACT Magistrates Court making little progress, while defence lawyers and the Commonwealth arm wrestled over a set of orders that will govern how sensitive information will be handled during the trial. Mr Collaery's lawyers have refused to agree to a trial being held in closed court.

The offence at the relevant time carried a maximum penalty of two years in prison.

The controversial prosecution is about allegations the Australian government spied on East Timor during negotiations with its impoverished neighbour over a lucrative oil and gas treaty.

Much of those details are already public, having been aired in federal parliament and reported in the media.

In 2012, ASIS installed listening devices inside East Timor's ministerial rooms and cabinet offices under the cover of a foreign aid program while Australia was negotiating with the country about oil and gas fields. The East Timorese signed a treaty with Australia in 2006.

Witness K complained to the Inspector-General of Intelligence and Security about the operation. Witness K sought and received permission to engage Mr Collaery as his ASIS-approved lawyer.

Mr Collaery found the espionage operation was unlawful, and represented gaining an advantage through improper methods when the the Commonwealth was under a legal obligation to act in good faith when negotiating, a view since publicly backed by a number of senior judges and members of the legal profession.

The East Timorese took Australia to the Permanent Court of Arbitration, and the original treaty was eventually renegotiated. Soon before Witness K was due to give evidence in a confidential hearing, ASIO raided the home and offices of Mr Collaery.

In May 2018, the Commonwealth Director of Public Prosecutions Sarah McNaughton, with the approval of the federal Attorney-General Christian Porter, filed charges against Witness K and Mr Collaery.

Mr Collaery's charges also relate to his conversations about the raid with a number of ABC journalists.