

“The Canberra lawyer on official secrets charges continues to fight to have his hearing held in open court”

Transcript of *ABC Media Watch*, Broadcast and published on Monday 24 May 2021

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But now to the latest trials of Bernard Collaery, the Canberra lawyer on official secrets charges who could face two years in jail if he is convicted.

Last June, as a Canberra court was considering — in secret — whether his case should be heard in secret, the 76-year-old former ACT attorney-general told Media Watch:

BERNARD COLLAERY: I just sat there in court thinking, on occasion, are we in Moscow?

- Interview with Bernard Collaery, 13 June, 2020

Last week Collaery was back in court in Canberra to appeal that decision — that his trial should be held in secret.

And a crowd of supporters was there to cheer him on:

BERNARD COLLAERY: Thank you so much for coming. It lifts my spirits.

- ABC News raw camera tape, 17 May, 2021

So how did he go? Well, I think you know the answer. The appeal was held in secret too.

And while the judges haven't yet made a decision, neither Collaery nor his lawyers can tell us what happened in court. So we don't know what arguments were put forward by the government or even what it wants to keep secret.

Crazy, eh?

But we do know that Collaery's alleged offences hark back to a spying operation in East Timor 17 years ago and involve an ex-ASIS officer called Witness K, who has already pleaded guilty.

As the ABC's Adam Harvey explained on 7.30 last June:

ADAM HARVEY: Bernard Collaery's sin? To reveal that Australia bugged East Timor's government offices in 2004 to gain advantage in crucial oil and gas negotiations worth billions of dollars. Collaery had been told about the spying by his client, an ASIS officer known as Witness K.

- 7.30, ABC, 17 June, 2020

And, amazingly, we can show you a copy of the summons against Collaery, which was not delivered until 14 years later.

It charges that in 2013 Collaery and Witness K disclosed secret information to East Timor to aid its case against Australia in the Permanent Court of Arbitration in the Hague.

But it also reveals that four out of the five charges concern interviews Collaery gave to the ABC after his Canberra office was raided by the security services on 3rd of December that year.

Shortly after that six-hour raid by the AFP and ASIS, Collaery told ABC Radio's Peter Lloyd in great detail about what had happened at his offices and what documents had been taken.

That night he told Lateline's Emma Alberici about the secret bugging operation and how it had been done, including how bugs were placed in the wall by spies posing as Australian aid workers.

Next day he told ABC 7.30's Conor Duffy who at ASIS had ordered the operation.

And three months later, on Four Corners, he told Marian Wilkinson and Peter Cronau he wanted a judicial inquiry into the spying op, which was authorised by Alexander Downer and George Brandis.

Now, none of those ABC journalists has yet been charged with any offence.

And, amazingly, more than seven years later, their interviews are still up on the ABC website.

And that is extraordinary, given that the government claims they reveal matters of national security and that Collaery's trial over these matters needs to be held in secret too.

Collaery has said repeatedly he has no intention of naming any spies or detailing their methods, telling Media Watch last year he agrees those things should be secret:

BERNARD COLLAERY: If it becomes relevant, the identity of any of the players, techniques, dates, times, places, any of that matter can be suppressed ...

- Interview with Bernard Collaery, 13 June, 2020

But what Collaery believes should be public is the story of Australia's alleged illegal spying operation, against a friendly nation for commercial advantage, where Collaery claims the revelations would not damage national security but would embarrass some politicians:

PAUL BARRY: ... who would be embarrassed if it were to be made public?

BERNARD COLLAERY: I'm not able to traverse that because of the restrictions I'm under, under the national NSI Act. I can't answer that, of course, I would dearly love to.

- Interview with Bernard Collaery, 13 June, 2020

So, how will it play out?

Well, that is now a matter for three judges in Canberra, who are expected to hand down a decision in the next couple of months.

If Collaery wins, the trial may or may not go ahead in public. If he loses, Collaery will appeal to the High Court, causing further delay.

Collaery's already 76 and, since those 2013 raids, his life has been in limbo, leaving him angry and confused.

Last year he told Media Watch:

BERNARD COLLAERY: ... it's a bad dream. It's ruined my practice and everything I've worked for. It'd be different if I felt that I'd done something wrong. It's sheer, unadulterated, vindictive injustice, as far as I'm concerned.

- Interview with Bernard Collaery, 13 June, 2020

And one piece of good news in all of this — when the judges reach their decision on whether the trial should be held in open court, it will be made public.