

Guardian, 9 January 2019

Witness K case: prosecutors dump brief of evidence on last working day of legal year

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Commonwealth prosecutors have been accused of acting unfairly in the [Witness K case](#) after dumping their brief of evidence on defence lawyers about 6pm on the last working day of the legal year.

Bernard Collaery, a barrister, and his former spy client, Witness K, are being prosecuted for their role in exposing a secret Australian government mission to spy on [Timor-Leste](#) during lucrative oil and gas negotiations in 2004.

Collaery's lawyers had been awaiting the brief of evidence against their client for months, and had previously warned its absence meant Collaery and Witness K faced serious charges without being given any detail of the specific allegations.

The evidence against Collaery was delivered after 6pm on Friday 21 December.

The legal year proper ends in the Australian Capital Territory after the last sitting day, 20 December. The ACT magistrates court, where the Collaery case is being heard, does [not sit between December 20 and 9 January 2019](#), aside from bail and emergency care hearings.

The handling of the brief has prompted crossbench senator Rex Patrick, a staunch supporter of Collaery, to accuse commonwealth prosecutors of breaching their obligations to act fairly.

Patrick said Collaery's lawyers were required to respond to the brief within seven days – a claim denied by the federal government.

“The commonwealth and its lawyers are bound to maintain the highest standards of probity and fair dealing with litigants,” Patrick told Guardian Australia. “Serving documents on the last working day of the year that, by order of a court, must be responded to within seven days does not meet the high standards and fairness test.”

Patrick said he would be raising the matter with the attorney general.

Commonwealth prosecutors are required by policy to conduct criminal cases “in a manner which ensures fairness to defendants in the conduct of criminal proceedings”.

The Attorney General's Department confirmed federal police had delivered the brief out-of-hours on 21 December. But it said the brief needed to be “safe-handed from Canberra”, requiring a federal police officer to fly it to Sydney and deliver it to Collaery's lawyers personally. It denied that Collaery's lawyers were required to respond in seven days.

“Mr Collaery’s solicitors sought to vary the relevant court orders to allow the parties more time to come to agreement on the timetable for a hearing about the protection of national security information in the brief, rather than the seven-day limit mandated by the original court orders. The commonwealth did not oppose this.

“There is not, and has never been, a requirement for Mr Collaery to file a brief in reply within 7 days of being served with the prosecution brief,” the department said in a statement.

“The brief of evidence was served on Mr Collaery’s solicitors shortly after the attorney general issued a non-disclosure certificate under section 26 of the National Security Information (Criminal and Civil Proceedings) Act 2004.”

The commonwealth director of public prosecutions (CDPP) confirmed there had never been a seven-day requirement for Collaery to respond.

Collaery and Witness K face five years behind bars if convicted for disclosing information about the bugging operation.

Witness K, a senior officer with the Australian senior intelligence service (Asis), was involved in the covert mission, conducted as Australia and Timor-Leste negotiated to carve up resources in the Timor Sea.

Their prosecution has prompted widespread condemnation. Human Rights Watch said it could have a “chilling effect” on officials who wanted to speak out on government corruption or wrongdoing.

The main target of Australia’s spy operation, the former US diplomat and Timor-Leste’s chief negotiator, Peter Galbraith, has criticised the “pointless” prosecution of the pair.

“It’s just vindictive and pointless, it’s time to move on,” Galbraith told Guardian Australia.

Collaery has previously said the pair acted through proper channels to raise concerns about the operation. Witness K sought approval from the inspector general of intelligence services to speak to his lawyer, Collaery, about the concerns.

Dates for the hearing have been tentatively set down in mid-February.