

# Dreyfus to rethink trial of Bernard Collaery

Michael Pelly – *Australian Financial Review* – 26 May 2022

<https://www.afr.com/policy/foreign-affairs/dreyfus-to-rethink-trial-of-bernard-collaery-20220524-p5ao1q>

A review of the prosecution of former ACT attorney-general Bernard Collaery over his role in exposing a 2004 espionage mission against East Timor tops a long to-do list for incoming attorney-general Mark Dreyfus.

Mr Dreyfus laid out his dismay at [the treatment of Mr Collaery](#) during the election campaign, and the fact that former attorney-general Christian Porter had authorised the prosecution.

In his only media statement this week, Mr Dreyfus said: “If I am fortunate enough to be appointed attorney-general in the Albanese Labor government, I would seek an early briefing from my department on a number of matters relating to the prosecution of Mr Collaery.”

Mr Dreyfus has also been charged with developing [a federal integrity commission, and says he will consider a federal judicial commission](#). He will play a central role in the [Indigenous Voice referendum](#) and in the implementation of the Respect@Work report by Sex Discrimination Commissioner Kate Jenkins.

He has vowed [a “less hostile” approach to class actions](#), media freedom laws and a rethink on social media “trolling” legislation.

The brief he will seek on Mr Collaery’s case in the ACT Supreme Court would likely include advice on whether he could withdraw the authorisation. It would also cover Mr Porter’s issue of a certificate under the National Security Information Act aimed at keeping parts of the case secret.

The former is considered unlikely, both for legal and political reasons – as is Mr Dreyfus issuing a formal direction to the Commonwealth Director of Public Prosecutions, Sarah McNaughton, SC.

## Secrecy certificate

However, there is an expectation that Mr Dreyfus may consider altering the matters that can be disclosed in open court by issuing a new certificate. This would run against previous advice of security agencies, and may even lead to a reconsideration on whether to proceed.

Mr Collaery was charged in 2018 with allegedly helping Witness K, a former intelligence officer with the Australian Secret Intelligence Service (ASIS), to disclose protected intelligence information about the bugging of East Timorese government offices in 2004, ahead of negotiations on a new oil-gas treaty over the resource-rich Timor Sea.

It came five years after ASIO raids on their homes and soon after Australia and East Timor signed a new treaty.

Witness K pleaded guilty and was given a three-month suspended sentence in June 2021. The offences carry a maximum penalty of two years' imprisonment.

Over the past four years, there have been numerous fights – extending to the High Court – over what information is to be kept secret. The next round is before Justice David Mossop in late August. A trial is set down for October.

Mr Dreyfus [told the Australian Bar Association last month](#) that the “very manner in which the government has sought to conduct the prosecution appears to me to be an affront to the rule of law”.

He said there had been “some 50 preliminary hearings to date, with well over \$4 million spent by the Commonwealth alone”.

“The Morrison government has also sought to have the trial conducted in secrecy, but was rebuffed last year by the ACT Court of Appeal which held that the trial should be held predominantly in open court to avoid damaging public confidence in the administration of justice.”

Mr Dreyfus said he was “yet to hear a cogent explanation of how the public interest is served by the ongoing attempts to prosecute Mr Collaery, a former attorney-general of the ACT, who is now well over 70, in relation to an allegation of disclosure of events alleged to have occurred almost 20 years ago”.

On May 16, Justice Mossop set aside four subpoenas served by Mr Collaery on ASIS, the Department of Foreign Affairs and Trade, the Office of National Intelligence and the Department of the Prime Minister and Cabinet.

He rejected Mr Collaery's argument that the confidentiality provisions ceased to operate if there had been unlawful conduct by security agencies. The trial is likely to be confined to whether there was publication of protected intelligence information.

This week, Katy Gallagher was sworn in as interim attorney-general, but Mr Dreyfus is expected to be named in the role and sworn in on Wednesday.