

Bernard Collaery: Attorney-General Mark Dreyfus orders case dropped

Tom McIlroy, Michael Pelly in Australian Financial Review, 7 July 2022

Legal groups and whistleblower advocates have commended Attorney-General Mark Dreyfus for ordering the prosecution of lawyer Bernard Collaery over national security leaks be dropped, ending a four-year saga sparked by Australia's efforts to spy on the government of East Timor.

The former ACT attorney-general was set to face trial in Canberra later this year, after being charged in 2018 with offences under the National Security Information Act for allegedly seeking to help his client, the intelligence operative known as Witness K.

Witness K, a former Australian Secret Intelligence Service officer, was handed a three-month suspended sentence over the leaking of sensitive information about Australia's bugging operations during negotiations over resources revenue from oil and gas in the Timor Sea.

Mr Collaery opted to fight the charges. A trial date had been set for October.

In a statement issued through his lawyer, Gilbert + Tobin partner Kate Harrison, Mr Collaery said the decision meant he could move forward with his life and legal practice.

"I am very pleased that the new attorney-general has looked at this prosecution and all it has involved and taken steps to bring the case to an end," he said.

"I want to thank all of the people across Australia who have supported me and worked so hard to assist me throughout this case.

"I am in awe of the depth of support in our community for ethical values. I also want to thank those close to me who gave me inner strength."

Mr Dreyfus called the case "exceptional".

"It is my view that the prosecution of Mr Collaery should end," he said.

"This decision to discontinue the prosecution was informed by the government's commitment to protecting Australia's national interest, including our national security and Australia's relationships with our close neighbours."

Shortly after the May federal election, Mr Dreyfus expressed dismay at former attorney-general Christian Porter's decision to authorise the prosecution in the first case.

Mr Dreyfus [told the Australian Bar Association](#) in April 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".

Legal costs

Labor was under pressure from crossbenchers, legal groups and human rights organisations to end the prosecution. The former Morrison government had spent more than \$4.4 million on external legal costs in the case.

In 2020, Mr Collaery used an interview with *The Australian Financial Review* to liken the charges to something from Stalinist Russia, [saying they showed fragility in Australia's democracy](#).

But shadow attorney-general Julian Leeser said Mr Dreyfus had to explain why he had overruled the Commonwealth Director of Public Prosecutions.

“This action sends a dangerous message to those who would seek to do harm to Australia by dealing in government secrets and shows Labor can't be trusted to manage our national security,” he said.

Kieran Pender, a senior lawyer at the Human Rights Law Centre, said it was an important day for Australian democracy.

“Bernard Collaery should never have been prosecuted. The attorney-general has done the right thing and should be applauded for that.

“Whistleblowers should be protected, not punished – it's as simple as that. From war crimes in Afghanistan to misogyny in Parliament House, there are many important stories that would never have been told were it not for the courageous actions of those who spoke up.

”The attorney-general's decision is also a testament to the enduring work of lawyers, barristers, civil society organisations and activists who have fought this unjust prosecution, inside and outside the court-room for more than four years.”

Mr Pender called on Mr Dreyfus to make a similar intervention in the ongoing prosecutions of whistleblowers David McBride and Richard Boyle.

Mr McBride spoke out over alleged war crimes by Australian soldiers in Afghanistan, while Mr Boyle revealed unethical practices at the Australian Taxation Office.

Independent MP Andrew Wilkie said the Collaery prosecution should never have happened.

“The fact that Mr Collaery was being prosecuted in the first place was a grave injustice and an outrageous attack on the legal profession, particularly considering he was simply a lawyer doing his job.”

Law Council president Tass Liveris said the end of the case highlighted the need for review and reform of official secrecy offences and national security information laws.

“Secrecy offences must be reviewed to ensure there are adequate protections for whistleblowers and their legal advisers who are concerned about potential matters of illegality.”