

# Dreyfus ends prosecution of lawyer over alleged leaking about Australian spying in against Timor-Leste

By Michelle Grattan, Univ. of Canberra in The Conversation, 7 July 2022

The Albanese government has acted quickly to abandon the prosecution of Bernard Collaery, who was charged in relation to the leaking of information about Australia's alleged spying in Timor-Leste.

Attorney-General Mark Dreyfus said that in taking this decision "I have had careful regard to our national security interest and the proper administration of justice.

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

He said the "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."

Collaery, 77, is a former ACT attorney-general.

He was the lawyer of the whistleblower known as Witness K, a former Australian Secret Intelligence Service (ASIS) officer.

Witness K received a suspended sentence in 2021 after pleading guilty to conspiring with Collaery to reveal information about the alleged spying.

Collaery was due to face trial in October on charges alleging breaches of the Intelligence Services Act.

The alleged Australian government spying was at the time of 2004 negotiations between the two countries over oil and gas reserves in the Timor Sea. The Australian Secret Intelligence Service – Australia's foreign spy service – allegedly had listening devices in East Timor's cabinet room in Dili.

Dreyfus told a news conference on Thursday this was "an exceptional case. Governments must protect secrets and our government remains steadfast in our commitment to keep Australians safe by keeping secrets out of the wrong hands.

"The long-standing practice of government has been to neither confirm nor deny claims made about intelligence matters and I will strictly adhere to that practice."

He said prosecutions involved "a balancing of interests. The balance of interests can change over time and this is such a case.

"The consent of a former attorney-general was required to commence the prosecution of Mr Collaery. Having had regard to our national security, our national interest and the administration of justice, today I have determined that the prosecution should end."

The proceedings against Collaery have been surrounded by secrecy, with the former government arguing they should be heard largely in private.

Collaery's home and office were raided in 2013.

At the time he was representing East Timor in The Hague in its action against Australia.

Independent Andrew Wilkie, welcoming Dreyfus's action, said: "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.

"The Australian government is the real villain in this case, having made the appalling decision to spy on East Timor which is one of the poorest countries in south-east Asia.

"While someone should be answering to a court, it certainly should never have been the ASIS whistle-blower and his lawyer."

Crossbencher Rebekha Sharkie said: "Since I stood on the steps of the Canberra Magistrates Court in September 2018, I have been calling for the prosecution of Bernard Collaery to be abandoned."

She said the decision "to pursue this politically-motivated prosecution is an embarrassment to the rule of law in Australia".

"At no point during this wretched affair has there been a clear and persuasive argument for why pursuing this case is in the public interest."