

Gilbert + Tobin Welcomes End to Collaery Proceedings

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As the lawyers representing Bernard Collaery in his four-year fight to defend himself against serious national security charges brought against him by the Commonwealth, Gilbert + Tobin welcomes the decision by the Hon Mark Dreyfus QC MP, Attorney-General, to exercise his powers under s.71 of the *Judiciary Act* 1903 to bring the prosecution of Mr Collaery to an end.

Today's decision is a win for the open and fair administration of justice.

Mr Collaery was charged in 2018 with four counts of unlawful communication of Australian Secret Intelligence Service information in media interviews, and one count of conspiracy, in connection with the alleged release of information to the Government of Timor-Leste.

In response to the decision to discontinue the prosecution, Bernard Collaery said, *"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. This is a good decision for the administration of justice in Australia.*

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.

I am deeply grateful for the inspirational and arduous work of the partners and staff of Gilbert + Tobin lawyers, and my dedicated team of barristers, all on a pro bono basis. Their resolute professionalism and humanity has restored my faith in the rule of law. This decision will allow me to move forward with my life and legal practice."

Dr Kate Harrison, Gilbert +Tobin Partner, said, "It has been a privilege for Gilbert + Tobin to act for Mr Collaery in this important case. The case raised important issues about the degree of secrecy permitted by our courts under current legislation to allow cases involving national security matters to be dealt with behind completely closed doors, even where they involve important issues of public interest. The approach threatens the capacity of a defendant to receive a fair trial."

Chris Flynn, former Gilbert +Tobin Partner, commented, "The Attorney-General should be commended for taking a principled stance against this political prosecution. There is no discernible public interest or national benefit to the Commonwealth pursuing this criminal case."

Since it commenced in 2018 the case has involved 10 separate hearings in the ACT Supreme Court, with 13 judgments on significant legal issues, including the level of secrecy that should apply to Mr Collaery's criminal trial.

The case has also gone to the ACT Court of Appeal and is the subject of an appeal to the High Court of Australia.

The decision marks the end of a long and complex case which at the point of discontinuation, remains a long way from completion in court. The ACT Supreme Court was scheduled to receive further secret evidence from the Commonwealth, in a hearing from which Collaery and his legal team were to be excluded. An appeal on the legitimate forensic purpose of subpoenas filed by Mr Collaery was pending, as was a hearing on public interest immunity issues in the Brief of Evidence. A Commonwealth High Court appeal over redactions in a Court of Appeal judgment is also outstanding. Mr Collaery's trial was scheduled to begin in October and run for four to five weeks.

The cost of the proceedings in public funds has been extensive. It has been reported that by March 2022, the Commonwealth had spent \$4.42 million on external legal costs associated with the prosecutions of Witness K and Bernard Collaery.

Bernard Collaery and Gilbert + Tobin thank everyone who has supported Mr Collaery throughout the prosecution, including those who gave evidence for Mr Collaery in the proceedings:

- His Excellency President Jose Ramos-Horta of Timor-Leste;
- Former President of Timor-Leste, His Excellency Kay Rala Xanana Gusmao;
- Former Foreign Minister, Hon. Gareth Evans AC QC;
- Former Chief of the Australian Defence Forces, Admiral Christopher Barrie AC RAN;
- Former diplomat and Australian Ambassador to the USA and Indonesia, John Philip McCarthy AO;
- Former NSW Court of Appeal Judge, Hon. Anthony Whealy SC; and
- Author and expert on Timor-Leste, Kim McGrath.

Legal Team

- Mr Collaery's legal team acted for him on a pro bono basis. Counsel for Mr Collaery included:
- Phillip Boulten SC, Dr Chris Ward SC, Rose Khalilizadeh, and until his recent appointment as the ACT Coroner, Ken Archer, all of whom have acted and appeared for Mr Collaery at multiple hearings since 2018;
- Bret Walker SC, who joined the team of counsel appearing for Mr Collaery in recent appeal hearings;
- Other counsel including Benjamin Dighton, and Stephen Robinson; and
- David Jackson SC and Luke Livingston SC also assisted on the matter.

Gilbert + Tobin have worked on the case since 2018. That team has included Kate Harrison, Chris Flynn, Georgia Fennell, Harry Meixner, Laura Lombardo, Emmily Spormann, Tristan Cutcliffe, Marcus Thomson, Stephanie Wee, Ziggy Liszukiewicz, and Lisa Giardini.

About Gilbert + Tobin

Gilbert + Tobin is a leading Australian law firm, advising clients on their most significant corporate transactions, regulatory matters and disputes. We provide commercial and innovative legal solutions for ASX 100 leading companies, major infrastructure and services providers as well as government and public authorities across Australia and around the world.

Gilbert + Tobin was named Law Firm of the year for Corporate Law and Mergers & Acquisitions Law in Best Lawyers 2022, Financial Times Innovative Lawyers Awards APAC 2022: Most Innovative Change Maker, Law Firm of the Year in the 2021 Australasian Law Awards and Transaction Team of the Year at The Australian Law Awards 2021.

MEDIA CONTACT

Andreas Duffy

Marketing & Communications Manager

Contact Andreas

+61 429 501 976