

# Bernard Collaery case is a rare whistleblower win, but why was he prosecuted?



Photo: AAP

Bernard Collaery had been facing five charges related to breaching the Intelligence Services Act.



James Robertson Political Editor The New Daily 10:00pm, Jul 7, 2022

Attorney-General Mark Dreyfus has dropped the prosecution of Bernard Collaery, the lawyer accused of revealing Australia had spied on Timor-Leste for profit.

The case has come to represent the treatment of whistleblowers.

Mr Collaery first had his home raided in 2013 after he was accused of conspiring to leak classified information bringing to light Australia's intelligence gathering in Timor-Leste, whose people he previously represented.

In a long-delayed prosecution after that initial raid, he had faced some 50 hearings in a Canberra court over the matter over four years.

"Today, I have determined this prosecution should end," Mr Dreyfus said on Thursday.

Five charges related to breaching the Intelligence Services Act will now be dropped after Mr Dreyfus decided the prosecution should end, not long before an October trial that could have landed Mr Collaery in jail.

## Veiled in secrecy

"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," Mr Collaery said in a statement.

"I am in awe of the depth of support in our community for ethical values."

The 77-year-old Mr Collaery was formerly the ACT attorney-general and the lawyer representing the former spy known for legal reasons only as 'Witness K'.

Mr Collaery had been facing charges in the ACT Supreme Court for allegedly revealing the activities of Australian intelligence services in Timor-Leste in 2004.

"In taking this decision I have had careful regard to our national security, our national interest and the proper administration of justice," Mr Dreyfus said.

"This is 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."

Australian Secret Intelligence Service spies were accused of bugging Timor-Leste's cabinet in order to give Australia a commercial advantage when negotiating the rights to oil and gas reserves in underwater territory between the nations known as the Timor Gap.

The former prime minister of Timor-Leste, Mari Alkatiri, said the newly independent nation had been deprived of \$1 million a day in revenue due to the espionage.

"Timor-Leste cannot be deprived of its rights or territory because of a crime," he said in 2014.

Since the information was revealed the government has pursued the prosecution of Witness K, a former intelligence officer, and his lawyer, Mr Collaery, for allegedly acting as whistleblowers.

### **Porter's prosecution**

Former attorney-general Christian Porter gave consent for the prosecutions in 2018; Mr Dreyfus had been lobbied to discontinue them after lobbying from human rights groups.

Witness K was last June given a three-month suspended sentence in an ACT court and ordered to be of good behaviour for 12 months after pleading guilty to the charges.

Mr Collaery, by contrast, sought to defend the charges against him, much of which had been heard in closed hearings.

A veil of secrecy over the case had prevented Mr Collaery from accessing documentation that might have helped him in mounting a defence to the charges and allowed the Office of the Attorney-General to block the release of information critical to any defence of the charges.

“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,” said Andrew Wilkie, an independent MP.

Mr Wilkie, himself a **former intelligence whistleblower**, has called for legal protections for whistleblowers to be urgently strengthened.

Mr Dreyfus has been lobbied to exercise his powers of discretion to drop prosecutions when in the public interest for two other cases: David McBride, the former army lawyer who allegedly revealed instances of war crimes in Afghanistan, and **Richard Boyle, who went public with concerns about debt collection techniques** employed by the tax office.

Mr Dreyfus is yet to give any indication he is open to acting similarly in either case and described Mr Collaery’s case as “exceptional”.

**A 2017 inquiry by the Parliament** found an independent body should hear complaints by federal government whistleblowers and pay compensation to those who suffered as a result of revealing information in the public interest.