

# Bernard Collaery's leaking charges over East Timor operation dropped on Mark Dreyfus' orders

By Lisa Visentin in the Sydney Morning Herald, 7 July 2022

Attorney-General Mark Dreyfus has ordered the Commonwealth to drop the prosecution of lawyer Bernard Collaery, four years after he was charged with leaking classified information about Australia's alleged spying operation in East Timor.

Dreyfus announced at a press conference in Sydney on Thursday the Commonwealth would discontinue its case against Collaery, a former ACT attorney-general, who was facing the prospect of jail.



Bernard Collaery chose to fight the charges after Witness K received a three-month suspended sentence.  
*Credit: Alex Ellinghausen*

"Having regard to our national security, our national interest and the proper administration of justice, today I have determined that this prosecution should end," he said.

Collaery's trial had been due to start in the ACT Supreme Court on October 24 after years of delays.

In a statement released through his lawyers, Collaery said the decision would allow him to move on with his life, as he praised the depth of community support he had received from across the country and the close friends "who gave me inner strength".

"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," he said.

"This decision will allow me to move forward with my life and legal practice."

Collaery was facing five charges under the Intelligence Services Act related to leaking classified information and conspiring with his client, an ex-spy known only as Witness K, to reveal [information about Australia's bugging operation of East Timor's government](#) during commercial negotiations in 2004 to carve up the oil and gas resources in the Timor Sea. Their actions helped the East Timor government build a case against Australia at The Hague, which led to Canberra re-negotiating the deal.

Describing the Collaery case as "exceptional", Dreyfus said his decision was informed by the government's commitment to its "relationship with our neighbours".

"All prosecutions involve a balancing of interests. The balance of interests can change over time. This is such a case," Dreyfus said.

Dreyfus said the decision did not represent a move away from the practice of protecting government secrets, but the Coalition condemned the intervention as setting a dangerous precedent.

"Governments must protect secrets, and this government remains steadfast in our commitment to keep Australians safe by keeping secrets out of the wrong hands," Dreyfus said. "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."



Attorney-general Mark Dreyfus said the decision did not represent a move away from the practice of protecting government secrets. *Credit: Alex Ellinghausen*

Dreyfus discontinued the prosecution under section 71 of the Judiciary Act, overturning the authorisation given in 2018 by then-attorney-general Christian Porter for the Commonwealth Director of Public Prosecutions to pursue charges against Collaery and Witness K.

Shadow attorney-general Julian Leeser said Dreyfus' intervention in the case undermined the work of Australia's national security agencies.

"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.

Collaery's case was mired in legal battles over the degree of secrecy that should be applied to his criminal trial and involved 10 separate hearings in the ACT Supreme Court. After the Court of Appeal ruled in October that Collaery's trial be held in open court, the Morrison government launched a High Court bid to keep the chief justice's full judgement from reaching the public domain.

Dr Kate Harrison, partner at Gilbert +Tobin, the law firm which represented Collaery pro bono, said the case had shone a light on the degree of secrecy enabled by Australia's national security laws, which allowed cases to be heard behind closed doors.

"The approach threatens the capacity of a defendant to receive a fair trial," Harrison said in a statement.

Gilbert +Tobin said Collaery's legal team were to be excluded from another upcoming hearing in which the court was to receive further secret evidence from the Commonwealth.

In June 2020, Witness K was handed a three-month suspended sentence after [pleading guilty, but Collaery decided to fight the charges](#) against him.

Following the election of the Albanese government, human rights and whistleblower advocates renewed their calls for ministerial consent for the prosecution to be withdrawn.

A number of crossbench members of parliament also urged Dreyfus to intervene in the case, including Greens senator Nick McKim, ACT senator David Pocock, Kooyong MP Monique Ryan and Goldstein MP Zoe Daniel.

Kieran Pender, a senior lawyer with the Human Rights Law Centre, said the decision heralded 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," Pender said.

He urged Dreyfus to also intervene in the prosecutions of former military lawyer [David McBride](#), who leaked documents to journalists exposing alleged war crimes by Australian soldiers in Afghanistan, and [Richard Boyle](#), who blew the whistle on unethical practices at the Australian Taxation Office.

"Whistleblowers make Australia a better place. The ongoing prosecutions of David McBride and Richard Boyle are not in the public interest. Those cases should also be dropped, as a matter of urgency," Pender said.

Dreyfus refused to comment on the McBride and Boyle cases.

"I'm not going to comment on other cases I may or may not have received briefings about. Mr Collaery's case was an exceptional case," he said.