

Justice for Bernard Collaery must be the beginning of decisive action on whistleblowers

Kieran Pender in The Guardian, 8 July 2022

It was easy to feel hopeless, watching from the sidelines as a brave whistleblower went through hell.

For four years now, Bernard Collaery has been in legal battle with the Australian government – dozens of judgments, scores of hearings, [millions of dollars](#) and a trial approaching. All for doing the right thing, for allegedly speaking up about government wrongdoing. And what wrongdoing it was: Australia's espionage against an impoverished, war-torn neighbour, to [cheat it of billions of dollars](#) in the extraction of oil and gas from underneath the Timor Sea.

Collaery was up against the full might of the federal government, with its countless lawyers and barristers, an endless legal budget and secrecy laws tilted in its favour. What hope did we have that justice would prevail?

I thought about this every time I walked through the entrance of the ACT supreme court, past the hardy souls who gathered, hearing after hearing, to show solidarity for Collaery and disgust at the actions of the government. Led by Kathryn Kelly and Sister Susan Connelly, this group – the Alliance Against Political Prosecutions – remained upbeat.

Their message was simple and plastered on banners and on a repurposed fire truck parked outside the court: drop the prosecution. They raged against the deterioration of transparency and accountability in this country and insisted that Australia could – no, must – be better than this.

Time after time, as this opaque legal saga played out in the supreme court, the court of appeal and the high court, these tenacious citizens fronted up and offered something remarkable: hope.

For the Human Rights Law Centre, I would attend almost every court date. Entering the building each time felt like a lottery – would I be permitted into court today, or would the secrecy shrouding this case win out?

Sometimes I, and the small contingent of journalists covering the case, would be allowed to attend for a few minutes, before being shepherded out as Collaery's lawyers begrudgingly conceded that national security law gave the judge little choice but to expel us. Other times, security guards outside the courtroom door informed us that our presence was unwelcome before we had even had a chance to enter.

Occasionally we would be permitted to remain in the court room. Sunlight would peak through the windows behind presiding judge David Mossop, and an opaque case would become a little clearer.

But overwhelmingly, the charade made a mockery of open justice.

The government fought every battle and conceded nothing. At its most absurd, when the court of appeal declined to order a secret trial, the government went all the way to the high court, not on a substantive matter of legal principle, but to keep that judgment itself secret. It also threw secret evidence at the case – evidence that not even Collaery, the defendant, could see, as Mossop weighed up the level of secrecy to apply to the trial.

The bureaucratic machine was perpetrating injustice, and it seemed unstoppable. Legions of government lawyers deployed against a solitary whistleblower.

But at every turn, they were met by the tireless lawyers in Collaery's corner. Led by Dr Kate Harrison of Gilbert + Tobin and Christopher Flynn of White and Case, plus some of the country's best barristers, including Bret Walker SC, Phillip Boulten SC and Dr Christopher Ward SC, this formidable legal team meant that Collaery was not alone. When it mattered, heavyweights of the legal profession stood with one of their own.

And now, at last, relief. Because of the efforts of Collaery's lawyers, because of the scrutiny applied by the media (particularly this publication), because of the advocacy from civil society, and because of persistence of those who stood outside the court and called for this to stop, suddenly, it has. An unjust case has ended. Justice has prevailed.

The attorney general, [Mark Dreyfus](#), should be applauded. He made the right decision. But this must be the beginning, not the end, of decisive action from the new government. Two other whistleblowers remain on trial – Richard Boyle, who spoke up about wrongdoing at the tax office, and David McBride, who blew the whistle on potential war crimes committed by Australian forces in Afghanistan. Having intervened to stop the Collaery prosecution, Dreyfus should now do the same in the other two cases.

The attorney general must also ensure this never happens again. The Public Interest Disclosure Act should be amended to ensure it better protects whistleblowers. Prosecutorial guidelines should be revised to emphasise the public interest in transparency and that cases against journalists and whistleblowers undermine democracy.

The national anti-corruption commission, a landmark promise of the Albanese government, must include a [whistleblower protection commissioner within it](#).

Dreyfus should order an independent review of the Collaery prosecution, and that of the lawyer's client, Witness K, who was [given a suspended sentence last year](#). Consideration should be given to expunging the conviction of Witness K or otherwise seeking to make amends for the suffering the past government inflicted on these two courageous men.

Finally, an apology to [Timor-Leste](#) for Australia's wrongdoing is long overdue.

Thursday was a good day for Australian democracy. Much remains to be done, but for a moment, we can pause and reflect: through collective effort, we achieved positive change. Australia is a better place today because thousands of us spoke up – at rallies, in the media, in letters to our elected representatives – and said that we would not stand for injustice.

Collectively, we said that whistleblowers should be protected, not punished.

At last, that message was heard.

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