

## **G+T's reflections on representing Bernard Collaery**

*Jerome Doraisamy, 20 July 2022*

Following the dropping of charges against former ACT attorney-general Bernard Collaery, Lawyers Weekly spoke with BigLaw firm Gilbert + Tobin about its representation of Mr Collaery and why such work is so important.

Earlier in July, federal Attorney-General Mark Dreyfus ordered that the prosecution of Mr Collaery be discontinued, under section 71 of the *Judiciary Act 1903*.

“In taking this decision, I have had careful regard to our national security, our national interest and the proper administration of justice. It is my view that the prosecution of Mr Collaery should end,” the A-G said.

“I have therefore decided to exercise my power under s71 of the *Judiciary Act* not to proceed with the prosecution of Mr Collaery.”

The decision to discontinue the prosecution, the A-G said in a joint statement with Foreign Affairs Minister Penny Wong, was informed by the Albanese government's commitment to protecting Australia's national interest, including our national security and Australia's relationships with our close neighbours.

Mr Collaery has twice appeared on The Lawyers Weekly Show to discuss his plight, including discussing [why he was facing conspiracy charges](#) and [broader threats to the rule of law](#).

In a statement issued via [Gilbert + Tobin](#), Mr Collaery said at that time: “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.”

### **G+T's representation of Bernard Collaery**

In conversation with Lawyers Weekly, G+T partner Kate Harrison (pictured) said that she and fellow partner Chris Flynn took on Mr Collaery's defence in 2018 and led a team of solicitors who worked on the matter up until recently.

G+T has a “long history” of providing pro bono services, she explained, and was the first firm in Australia to employ a full-time solicitor to work solely on pro bono matters.

Ms Harrison originally joined the firm to take on that role, back in 1996.

“The firm now has two pro bono partners and pro bono special counsel, Laura Lombardo, who was actively involved on the Collaery case towards the end of the matter. The pro bono team now numbers 13 people. The firm also has a long commitment to addressing issues of public interest and important in public and constitutional law, and has provided support to the Gilbert + Tobin Centre of Public Law at UNSW for over 20 years,” she explained.

“Acting for Bernard Collaery was closely aligned with these areas in which the firm has been active for many years.”

The Collaery case was, Ms Harrison reflected, “far more protracted than anticipated and raised many more complex issues than expected”.

“The amount of work involved has been substantial, with over 50 court appearances in the ACT Supreme Court, as well as appearances in the ACT Court of Appeal and the High Court. We worked closely with a team of counsel, who also put many hours of work into the case. Phillip Boulten, Dr Chris Ward, Ken Archer and Rose Khalilzadeh appeared in court many times, Bret Walker led the appeals in the ACT Supreme Court and the High Court, and other counsel involved included David Jackson, Ben Dighton, and Stephen Robinson. All acted pro bono,” she recalled.

“The national security restrictions on dealing with documents and on discussing some aspects of the case meant the team have spent many hours together, holed up in a wide variety of windowless rooms, painfully separated for long hours from all electronic devices.”

When asked what lessons have emerged from these proceedings, if any, for legal practitioners across the country, Ms Harrison said that the case reinforces how important pro bono legal work is to fill gaps in representation to ensure access to justice in challenging circumstances.

“The case also highlights concerns about the difficulty of mounting a challenge to claims national security requires a court to be closed. It raises questions as to how proceedings under the *National Security Information (Criminal and Civil Proceedings) Act 2004* are conducted, and whether the current legislation establishes either the right balance or an effective process for making these decisions,” she added.

More broadly, the case highlights the importance of open, transparent justice in Australian democracy.

“Conducting trials in secret is contrary to the basic principles of a fair and just judicial process, and undermines public confidence in the administration of justice. Claims for secrecy on national security grounds, and on any other grounds, should be subject to rigorous assessment like any claim that a court should be closed,” Ms Harrison submitted.

“This case, however, shows just how difficult it is to challenge such claims under the current legislation.”

Ultimately, the firm was “pleased to have the opportunity to assist Bernard Collaery”, Ms Harrison concluded, and wants to acknowledge the strength and character he has maintained throughout the prosecution.