



Time to reconsider prosecution of Bernard Collaery

With the announcement that Christian Porter will be replaced as Commonwealth Attorney-General, the ACT Bar Association calls on incoming Attorney, The Hon. Michaelia Cash to review the prosecution of former ACT Attorney-General Bernard Collaery.

Bernard Collaery who, for more than 30 years, had advised the East Timor Resistance movement and leading figures involved in the push for independence, represented Witness K in a legal case brought by the Timor-Leste Government against the Australian Government before the Permanent Court of Arbitration in The Hague in the Netherlands. Witness K was accused of disclosing secret information related to an operation conducted by Australia's foreign intelligence agency, ASIS, to bug the office of Timor-Leste's prime minister during oil and gas treaty negotiations in 2004.

In December 2013, ASIO and the AFP raided the homes of Witness K and Bernard Collaery. Almost 4½ years passed before, on 30 May 2018, both were charged under section 39 of the *Intelligence Services Act 2001*.

The maximum penalty for this offence is 2 years imprisonment – the same maximum penalty for failing to pay for a restaurant meal.

Because of the nature of the allegations, the charges brought against Bernard Collaery can only be pursued with the consent of the Attorney-General. Consent to prosecute was first sought from then Attorney-General George Brandis in September 2015. Having obtained advice from two Commonwealth DPPs and the Solicitor-General Mr Stephen Donaghue SC, by the time Mr Brandis was replaced by Mr Porter in December 2017, no consent was forthcoming.

Mr Bret Walker SC, the former independent monitor of Australia's national security legislation, and now representing Mr Collaery, told ABC Four Corners in 2019 "*I imagine the former attorney, Senator Brandis, didn't find this a straightforward case to say yes to. That's a very long time for something to be sitting on an attorney's desk. I imagine it was not for want of thinking about it, that that time elapsed.*"

However, within a few months of taking over the portfolio, Christian Porter gave his consent to prosecute the matter in what was criticised by many, including independent MP Andrew Wilkie and former Victorian Premier Steve Bracks, as a political decision.

The ongoing prosecution of Bernard Collaery has drawn criticism from many quarters, including retired judicial officers and academics.

The prosecution itself has been marked by further controversy with the secret nature of the proceedings and the suppression of much of the evidence that might be given in the case.

In June 2020, Justice David Mossop of the ACT Supreme Court ruled that material identified by the Attorney-General Christian Porter should be suppressed under the provisions of the *National Security Information Act*. That ruling was based upon a secret certificate issued by Christian Porter certifying the material as prejudicial to national security. How, and in what respect, that material is said to be sensitive is itself suppressed.

Bernard Collaery is a 76-year-old man who came to Australia as a boy. He has spent his entire adult life serving the people of Australia. He has served as a First Secretary in the Australian Embassy in France, as the first Attorney-General of the Australian Capital Territory Legislative Assembly and has had a long and honorable career both in politics and in private practice as a lawyer. Bernard Collaery has over decades helped, either for free or at greatly reduced charges, many clients.

There is an available perception that Bernard Collaery is being prosecuted by the Government for his involvement in acting for a man who brought to light allegations of improper and illegal behaviour by the Government.

It is difficult to identify any public, as opposed to political, interest in continuing this prosecution. It is now eight years since the AFP raided Mr Collaery's home, and 17 years since the alleged bugging operation. In the interim, the Commonwealth Government has now spent in excess of \$3 million pursuing Mr Collaery for his role in acting for Witness K.

With the swearing in of our new Attorney-General Michaelia Cash, an opportunity arises to review the prosecution and, to withdraw consent for it to continue.

The Bar Association of the Australian Capital Territory earnestly calls on the incoming Attorney to undertake such a review.

<https://www.abc.net.au/news/2019-08-26/brandis-hadmisgivings-about-prosecuting-witness-k-and-collaery/11449758>

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