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CHAMBERS

Felicity Gerry KC

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## **FELICITY GERRY KC**

**Year of Call: 1994, SILK: 2014**

### **PROFILE**

**Experienced International Queen's Counsel in high demand, specialising in homicide, terrorism, war crimes and modern slavery law.**

### **DEFENCE CRIME**

Felicity excels in cases domestically and overseas involving difficult points of law, high profile, difficult or vulnerable clients and often a combination of all these factors, generally in the context of international, organised, and transnational crime.

Felicity is ranked in Chambers and Partners 2022 and has a wealth of experience handling unusual, sensitive, or controversial matters.

She has extensive defence experience including acting in landmark trials and appeals in Homicide, Terrorism, Fraud, War Crimes, Modern slavery/human trafficking, and Sexual offending.

Her cases have significantly contributed to the development of domestic and international criminal law giving exceptional insight to the law in complex and sensitive areas which draw on her PhD and other academic experience as a Professor of Legal Practice.

Felicity is esteemed and in high demand, working with leading law firms on high profile cases in the UK and overseas and she welcomes a challenge.

She was Solicitor's Journal Legal Personality of the Year 2016 and Australian Barrister of the Year 2020.

**Recent feedback: *"The Defence battled with Prosecution for over 7 weeks to secure an acquittal. Felicity Gerry KC was outstanding in her performance throughout and certainly is one of the best in the country"*.**

### **SEXUAL OFFENDING**

Felicity has over 25 years' experience of cases involving allegations of sexual offending at every level of seriousness, often involving high profile clients. This includes rape in homicide, intimate partner allegations, multi complainant cases and cases involving child witnesses. She is a co-author of *The Sexual Offences Handbook* (3<sup>rd</sup> Edition forthcoming) and has provided training, and published numerous articles, on the law in this area. She has been involved in the development of advocacy toolkits for questioning vulnerable witnesses and vulnerable



defendants and has the skills and experience to deal with these sensitive cases. She is generally instructed to defend in complex recent and historic allegations, including those which involve deception, complex scientific evidence and digital material which gives rise to disclosure issues.

Sample cases include the following:

- *R v PBC* 2021 high profile allegation of sexual assault outside the Royal Thames Yacht Club. Reporting restriction throughout trial on any links to Prince Andrew and Jeffrey Epstein
- 2020 Advisory opinion on Petition to the Privy Council on proposed sexual offending legislation.
- *R v C* 2019 Leading for the defence in trial on multiple counts of sexual assault involving child protection records' disclosure.
- *R v Rowe* 2018 Led for the defence (trial and appeal) in the first prosecution for alleged intentional infection with HIV. Contested issues over intention. Evidence included complex expert opinion on phylogenetics.
- *R v P* 2016 Defence acquittal on allegations of marital rape involving significant unused material relating to a 2 -decade marriage and nearly a decade of separation and divorce proceedings.
- *R v Maung* 2016 – Trial and Appeal - Defence acquittal on retrial after successful appeal on behalf of a doctor accused of sexual assault on a patient.

### **APPELLATE**

Felicity is commonly called upon to advise and appear in complex appeals generally in her core areas of practice – homicide, fraud, terrorism and war crimes.

She has led appeals at the highest level including the UK Supreme Court, the Australian High Court and the Hong Kong Court of Final Appeal. She was leading counsel in *R v Jogee* [2016] UKSC 8 which corrected an error of law in joint enterprise. She also led appeals in *R v Lewis* [2017] EWCA Crim 1734 which clarified the law on joint principalship and in *R v Rebelo (No1)* [2019] EWCA Crim 633 which clarified the law on manslaughter and intervening acts.

She recently led the Intervention on behalf of JUSTICE in *R (on the application of Begum) (Appellant) v Special Immigration Appeals Commission (Respondent) R (on the application of Begum) (Respondent) v Secretary of State for the Home Department (Appellant) Begum (Respondent) v Secretary of State for the Home Department (Appellant)* [2021] UKSC 7. The intervention detailed the ancient common law of allegiance and its application to trafficked persons.

Other Interesting Appeals



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- Leading Amicus Curiae Submission in the International Criminal Court in The Hague (Dominic Ongwen appeal).
- *Moukhaiber* 2021 Terrorism appeal on framing of indictments.
- *Craig Minogue* ‘bombing’ whole life sentencing appeal HCA[2019]:
- Leading Amicus Curiae Submission in the High Court of Australia on behalf of ICJV on whether the rule of law can be implied into the Australian Constitution.
- *R v Rebelo* (No1) [2019] Manslaughter by diet pill – Appeal reviewing the law on Unlawful Act and Gross Negligence Manslaughter.
- *R v Johnson; R v Henry* European Court of Human Rights [2019]: Applications for permission in ‘joint enterprise’ murder – human rights issues include access to justice, racial and disability discrimination.
- ICTY Appeals Chamber [2018]: Leading Amicus Curiae Submission on interpretation of JCEIII liability leading a group of counsel and academics.
- *R v Honeysett* [2018] VSC: Appeal against sentence addressing jurisprudence on Koori conversation in sentencing.
- *R v Lewis* [2017] EWCA Crim 1734: Leading a response to an unsuccessful prosecution appeal against a terminating ruling in a murder by fire alleged by joint principalship.
- *Van Beelen v The Queen* [2017] HCA 48 Appeal to the High Court of Australia on the statutory definition of “substantial miscarriage of justice” and the admissibility of fresh evidence in an alleged ‘cold case’ murder.
- *R v Spiliotis* [2016] SASCFC 6: Application for special leave to High Court of Australia in joint enterprise murder on issues of accessorial liability.

## **MODERN SLAVERY / HUMAN TRAFFICKING**

Felicity has a particular expertise in Modern Slavery law, including with a corporate overlap and is regularly instructed in appeals on behalf of trafficked persons who commit crime. She has provided training to the Commonwealth Parliamentary Association as part of The Modern Slavery Project which is a two year multilateral project providing practical advice and support to Commonwealth legislatures in the pursuit of combatting modern slavery. She is a contributor to Modern Slavery and Human Trafficking Law and Practice (Bloomsbury)

### **Recent trials and appeals**

*R v AAH and others* 2022 Human trafficking appeal before a ‘special court’.

*R v Y* 2022 Human trafficking appeal.

Dominic Ongwen appeal at the international Criminal Court (amicus curiae on law relating to former child soldiers)

In the matter of *Mary Jane Veloso* 2015 Assisting in death penalty reprieve from execution for transnational drug trafficking



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**Currently instructed in several human trafficking appeals.**

### **HOMICIDE**

Felicity has a particular interest in homicide law including murder and manslaughter especially multi-defendant cases applying the law on complicity: She was leading counsel in *R v Jogee* [2016] UKSC 8 which corrected an error of law in joint enterprise. She led similar appeals in Hong Kong and Australia. She also led appeals in *R v Lewis* [2017] EWCA Crim 1734 which clarified the law on joint principalship and in *R v Rebelo (No1)* [2019] EWCA Crim 633 which clarified the law on manslaughter and intervening acts. She led a successful mercy petition on behalf of a young Aboriginal man who was convicted of a murder when he was not physically present and has filed similar petitions for conditional pardons in the UK on behalf of an autistic prisoner and a black youth both affected by the errors of law in joint enterprise.

### **Recent trials and appeals**

*R v. Tsaty and others 2021*: multi-handed conspiracy to murder and firearms offences in a gang related drive by shooting where issues of ‘County Lines’ exploitation were dealt with in judicial directions – acquitted on murder and manslaughter.

*R v. X (a child) and others 2021*: multi-handed murder trial where the jury were directed to acquit on murder at the close of the prosecution case. Convicted of manslaughter. Currently on appeal on whether the jury should have been told client was autistic and scope of good character direction for a vulnerable child.

*R v. Hodgkiss 2021*: Alleged murder by targeted driving where issues of necessity were dealt with in judicial directions – acquitted on murder and manslaughter. Convicted of death by careless driving and immediately released.

*R v. Fiaz and others 2021*: multi-handed murder trial where issues of conditional intent were dealt with in judicial directions – currently on appeal.

*R v. Hindle and another 2020*: Murder trial where issues of drug induced intoxication were dealt with in judicial directions – currently on appeal.

*R v. Cumberbatch and others 2020*: multi-handed murder trial where issues of overwhelming supervening acts were dealt with in judicial directions – acquitted on murder and manslaughter.

*R v Grunyt-Meyer and others 2018* multi-handed murder trial where issues of withdrawal and householder self defence were dealt with in judicial directions – acquitted on murder.

**Currently instructed in several applications to the CCRC and petitions for mercy for wrongly convicted prisoners. She also leads the posthumous petition for a pardon for Christine Keeler.**



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## **TERRORISM**

Felicity is a specialist in appellate and trial advocacy for serious and complex national, transnational, and international individual and corporate crime. She particularly specialises in leading for the defence team in terrorism trials including alleged conspiracies and completed acts. She recently appeared in 3 long terrorism trials in Australia and has a particular expertise in the use of technology and cybercrime in this context. She has appeared and advised in several cases that have involved analysis and advice on terrorism and extremist legislation including relating to repatriation of citizens in Syrian camps, the taking of a child to Syria and trials under the Serious Organised Crime and Police Act 2005 labelled 'domestic extremism'. As Professor of Legal Practice, she has also lectured in Terrorism law, and provided training in the Bangladesh Judiciary Management Project on Terrorism and Money Laundering. She has published a chapter in the Fourth volume in the European Integration and Democracy Series, devoted to Trans-Atlantic Data Privacy Relations as a Challenge for Democracy: 'Terrorism and Paedophilia on the internet: A Global and Balanced Cyber-Rights Response is Required to Combat Cybercrime, not Knee-Jerk Regulation'.

### **Recent terrorism or terrorism related trials and appeals**

*R (on the application of Begum) (Appellant) v Special Immigration Appeals Commission (Respondent) R (on the application of Begum) (Respondent) v Secretary of State for the Home Department (Appellant) Begum (Respondent) v Secretary of State for the Home Department (Appellant)* [2021] UKSC 7 (Intervention on behalf of JUSTICE)

*R v Moukhaiber and others* 2019-2020 multi-handed terrorism trial and appeal.

*R v Abbas and others* 2019 - 2021 Multi-handed terrorism trial with vulnerable defendant with issues over the application of the victim's rule in conspiracy.

*R v Galea* 2020 terrorism trial on preparatory and publication offences.

## **PROFESSIONAL DISCIPLINE**

Largely Felicity's disciplinary law practice concerns lawyers and medical professionals. She is discreet in consultation and has appeared in a range of matters sensitive to the individual professional.

## **JUDICIAL REVIEW**

Felicity has retained an admin law / judicial review leading practice largely related to issues connected to criminal law including decisions relating to the treatment of long-term prisoners and decisions by the CCRC.



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### **PUBLIC LAW AND HUMAN RIGHTS**

Felicity's cases and advisory work often involve an international or human rights element, including genocide, war crimes, torture terrorism, homicide, biosecurity, illegal logging, human trafficking, and other major domestic and international crime.

Since taking silk she has been called upon to advise on strategic /creative litigation in PNG and Myanmar and the Cook Islands in relation to actions / class actions for human rights abuses as against government / military / corporates, particularly where there are connections to other jurisdictions where such litigation might be commenced with reference to business and human rights / modern slavery.

### **PRISON LAW AND PAROLE**

Largely Felicity's prison law practice relates to advice on applications to the CCRC and judicial review

### **INTERNATIONAL CRIMINAL LAW**

Felicity is admitted to the lists of counsel in the International Criminal Court (ICC) and the Kosovo Specialist Chambers (KSC in the Hague. She has also had ad hoc admission in Hong Kong and Gibraltar.

She is a Specialist in appellate and trial advocacy for serious and complex national, transnational, and international individual and corporate crime. Recently leading an amicus curiae observation in the international Criminal Court in The Hague in the Dominic Ongwen appeal.

Regularly called upon to handle serious, complex, and sensitive matters often with an international element. Her cases and advisory work often involve an international or human rights issues, including genocide, torture, terrorism, biosecurity, illegal logging, modern slavery and other major international crime. She has assisted in death penalty cases in Indonesia, particularly on the intersection between drug trafficking and human trafficking and assisted in the reprieve from execution of Filipina Mary Jane Veloso. Her international advisory work has included a study on proposed reintroduction of the death penalty in the Philippines, advice on the interpretation of the Penal Code in Montserrat relating to child exploitation and interpretation of sexual offences legislation in Guernsey as well as other Privy Council matters. She brings her expertise in joint criminal enterprise to international proceedings, recently publishing in the International Bar Association War Crimes Committee newsletter on JCEIII liability in the KSC. She contributes to Annotated Leading Cases of International Criminal Tribunals, the Research Handbook on Feminist Engagement in International Law, Human Trafficking and Modern Slavery Law and Practice and is the Editor of ANZSIL Perspective. She has lectured at SOAS on special arrangements for vulnerable witnesses in the International Courts. In 2012 she published a joint paper for Lexis Nexis on male rape in conflict zones and in 2014 published in the International Bar Association ICC



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Moot Court Manual on command responsibility. In addition, Felicity holds a Bachelor of Laws, a Master of Laws in International Governance and a Graduate Certificate in University Teaching and Learning (GCUTL). She is also Professor of Legal Practice at Deakin University, Melbourne where she is unit chair in the undergraduate and JD programs teaching Contemporary International Legal Challenges – including War Crimes, Modern Slavery, Terrorism and Climate Change Law and she is involved in the clinical programs.

### AWARDS

- 2020:** Shortlisted for the International Bar Association Pro Bono Award
- 2020:** Lawyers Weekly Barrister of the Year.
- 2019:** Nominated for Victorian Bar Pro Bono Award for Zak Grieve mercy petition
- 2018:** Deans Medal for Master of Laws in International Governance
- 2016:** NT Human Rights Award for Justice (organizations and groups) as a member of the Making Justice Work Coalition
- 2016:** Legal Personality of the Year: UK Solicitors Journal 160<sup>th</sup> Anniversary Awards
- 2015:** CDU Ryan Family Award for commitment to excellence, outstanding results in research and innovative teaching approaches. It was recognized that “Felicity has played key roles in the development of international partnerships and has contributed to important outcomes in the region”.

### DIRECTORIES

- Chambers and Partners 2022: "*Produces succinct and cogent submissions and is always looking to push the law forward.*"
- Legal 500 for 2021: Leading Individual: '*Felicity thinks outside the box and is not afraid to push the envelope. She is at the forefront of the development of criminal law. She is a true inspiration to junior lawyers. She is a leader in her field. Clients feel she will fight their corner at every stage of a case.*'
- Doyle's Guide 2020 Recommended Silk.
- Who's Who 2016 to 2020
- Appears in complex appeal Cases – Legal 500
- Well respected for national and international appellate issues - Legal 500
- Fearless and independent minded – Legal 500



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- A vastly experienced advocate noted for her experience in serious sexual cases, homicides and frauds - Chambers and Partners
- Fearless and effective advocate – Legal 500
- Featured in Chambers and Partners women silks for 2014
- Tenacious in court – Legal 500
- An expert in the field of sex offences – Legal 500

#### **MEMBERSHIPS:**

- ANZSIL – Council member and Editor of *Perspective*.
- Association Defence Counsel in International Criminal Courts – Disciplinary Committee
- International Executive Committee Member, International Commission of Jurists, Victoria.
- Member Liberty Victoria
- Member of a Research Group for interdisciplinary research on mathematics and law
- Member of International Bar Association.
- Member of Commonwealth Lawyers Association.
- Ambassador
- Ambassador for *The Advocates Gateway* preparing toolkits for advocacy with vulnerable people (formerly on Management Committee).
- Member of *Everywoman Everywhere* Coalition.
- Member of UK *Criminal Appeal Lawyers Association*.
- Member of ANZLHS
- Member AWB, AWL and Women in Crime.
- South Eastern Circuit;
- Midland Circuit
- Criminal Bar Associations in England and Wales and Australia;