



Felicity Gerry QC

Year of Call:

Year of Silk: 2015



Felicity Gerry QC is admitted in England and Australia and has had ad hoc admission in Hong Kong and Gibraltar. She specializes in serious and complex crime, often with an international element and increasingly with a corporate overlap, particularly in the context of fraud, money laundering, forced labour, slavery and servitude. She led the defence team in *R v Jogee*, the ground breaking murder appeal in the UK Supreme Court which held that the form of accessory liability known as 'joint enterprise' was an erroneous tangent of law. The BBC described the judgment as 'a moment of genuine legal history'. She appeared in the Court of Final Appeal in Hong Kong (*Chan Kam-shing* 2016) and the High Court of Australia (*Van Beelan* 2017). She was Solicitors Journal Legal Personality of the Year for 2016 and is noted in the Legal 500 in 2017 for her work in 'complex appeal cases, in the 2016 edition as 'well respected for national and international appellate issues' and previously in Chambers and Partners as 'A vastly experienced advocate noted for her experience in serious sexual cases, homicides and frauds'. She is a member of International Bar Association and the Commonwealth Lawyers Association.

Felicity is also a Member of the Parameterize Complexity Research Unit for interdisciplinary research on mathematics and law at Charles Darwin University (CDU) where her research and publications focus the fields of women & law, technology & law and reforming justice systems, particularly in the context of vulnerability and disability. This includes *The Sexual Offences Handbook* (2ndED 2014) and *Human Trafficking Emerging Legal Issues and Applications* (2017) and the Fourth volume in the European Integration and Democracy Series, devoted to Trans-Atlantic Data Privacy Relations as a Challenge for Democracy (2017). She has led a four year project on women in prison for Halsbury's Law Exchange (part of the Lexis Nexis group) and leads a small Indigenous Justice Exoneration Project.

Felicity also coordinates / lectures part time in the School of Law at CDU at undergraduate and masters level across Transnational Law, International Criminal Law, Science and Law, Criminology and Feminist Legal Theory in the 'Law, Justice and the State' unit. Felicity has provided training to the Commonwealth Parliamentary Association as part of the 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 also an affiliated Member of the Research group on Fundamental Rights and Constitutionalism at the Vrije Universiteit, Brussel and an Adjunct Fellow at the University of Western Sydney where she has lectured in Terrorism, Cybercrime and Sexual Offending and provided training in the Bangladesh Judiciary Management Project on Terrorism and Money Laundering.

Felicity is a Member of the Legal Practitioners Disciplinary Tribunal in the Northern Territory of Australia and Vice President of CLANT. Internationally she contributes to Annotated Leading Cases of International Criminal Tribunals (ALC) and contributed to the ICC Moot Court Manual for the IBA. She chaired the televised G20 Gender Equality forum at ANU in Canberra which prepared the report for the Sherpas to the G20 leaders and has appeared in the BAFTA nominated FGM documentary *The Cruel Cut*, ABC Foreign Correspondent's documentary *Saving Mary Jane*, BBC 3 Series 'Sex on

the Edge', Channel 5 Documentaries on the April Jones and Sarah Payne child murders and on all major news channels including ABC, BBC News, Sky News, Russia Today and Al Jazeera.

Awards

2016 NT Human Rights Award for Justice (organisations and groups) as a member of the Making Justice Work Coalition.

2016 Legal Personality of the Year: UK Solicitors Journal 160th Anniversary awards.

2015 CDU Ryan Family Award for commitment to excellence, outstanding results in research and innovative teaching approaches. It was recognised that "Felicity has played key roles in the development of international partnerships and has contributed to important outcomes in the region".

Memberships and other positions of responsibility

Current

- Legal member of the Legal Practitioners Disciplinary Tribunal in the Northern Territory of Australia.
- Vice President, Criminal Lawyers Association of the Northern Territory of Australia.
- Member of JUSTICE working group on vulnerability in Justice Systems.
- Member of the Parameterise Complexity Research Unit for interdisciplinary research on mathematics and law
- Affiliated Member of Research group on Fundamental Rights and Constitutionalism at the Vrije Universiteit Brussel.
- Member of International Bar Association.
- Member of Commonwealth Lawyers Association.
- Member of the International Section of the Law Council of Australia.
- Member of 2017 International Conference Committee (2015 Chair) for The Advocates Gateway and member of the Management Committee preparing toolkits for advocacy with vulnerable people.
- Member of Female Fraud Forum.
- Member of Everywoman Everywhere Coalition.
- Ambassador for Enough Abuse UK.
- Member of Expert Reflection Group (Trafficking as a Criminal Enterprise).
- Member of European Migration Research Platform
- Member of UK Criminal Appeal Lawyers Association.
- Professional Board Member, Computer Law & Security Review (Elsevier) (CLSR).
- Associate Editor and Reviewer: International Journal of Issues in Legal Scholarship (ILS).
- Board Member Halsbury's Law Exchange – a politically independent legal think tank engaged in writing articles and contributing to policy papers.
- Board Member (formerly Chair) Corrugated Iron Youth Arts, Darwin, Australia.

Past

- Member of UK All Party Parliamentary Group on Rape and Sexual Violence.
- Panel member of Baroness Stern's Rape and serious sexual offences UK Parliamentary group.
- Part of team providing legal advice and assistance for the 2012 London Olympic and Paralympic Games. Specialisms: Sexual offending and defamation.

- 2013 Bar Council South Eastern Circuit Representative.
- 2012 Bar Council for England and Wales Public Affairs Committee.
- 2000 to 2004 Midland Circuit Committee Leicester Representative.
- First woman to write comment piece for CL&JW in its (then) 175 year history.

Homicide and Corporate Manslaughter

Felicity has appeared in difficult trials involving murder and other homicide including baby shaking. In addition to her successful 'joint enterprise' appeal, Felicity has a keen understanding of scientific issues including DNA, biometrics and other technology. This includes the science of abusive head trauma, neurological and physiological evidence and bite marks to children. She has dealt with recent and cold cases involving timing of death via stomach contents and she is a leading expert in cases involving automatism and mental health defences with a forthcoming book chapter on defences and vulnerability. She has lectured for the OU on corporate manslaughter and published papers on corporate responsibility and deferred prosecution agreements and teaches a unit on 'Science and Law'.

Sample cases include the following:

R v Van Beelan 2017 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.

Chan Kam-shing (Hong Kong) 2016 – Appeal to Court of Final Appeal in Hong Kong in alleged joint enterprise murder.

R v Jogee [2016] UKSC 8 – Successful appeal to the UK Supreme Court (formerly the House of Lords) which sat for the first time, at the same time as the Judicial Committee of the Privy Council. Alleged joint enterprise murder. Correcting the law on foundational liability for secondary parties. Court of Appeal Report at R v Jogee [2013] EWCA Crim 1433. Felicity also appeared as leading counsel at the retrial when Mr Jogee was acquitted of murder. He was convicted of manslaughter receiving a determinate rather than a life sentence.

R v Spiliotis 2016 – Application for special leave to High Court of Australia in joint enterprise murder on issues of accessorial liability. On appeal from R v Spiliotis [2016] SASFC 6

R v Grieve 2016 – alleged accessory to murder.

Operation Lambourne 2013 - Murder/manslaughter/ rape trial. A complex circumstantial evidence case involving expert pathology, biomedical science, toxicology, DNA.

Fraud and Financial Crime

Felicity has appeared in trials involving international boiler room fraud, money laundering and other financial crime dealing with trial, confiscation and appellate issues. She is an expert in national and international cybercrime and cyber rights issues and has reported for the American Bar Association on the draft cybercrime law for Cambodia. She has appeared in cases and lectured on cybercrime / cyber rights on issues such as:

- Illegal and harmful contents e.g. focussing on online hate speech, racial vilification, child pornography etc.
- Criminal procedural law e.g. allowing search and seizure of computers and data, cross-border flows of information between law enforcement agencies, mutual legal assistance and extradition of suspects; and
- Security law e.g. recognising that computer systems support national critical infrastructure to such an extent that cyber-attacks may constitute security threats or even acts of war, especially if backed by nation states.

Sample cases include the following:

R v M 2017 Leading for the defence in a long trial involving multi-handed alleged Category A money laundering conspiracy. Publicity Restriction.

In the matter of L (EU) 2014 - Advising a Swiss Bank on a conflict between a £multi-million international restraint order and an international freezing injunction in civil litigation involving restraint of assets and international freezing orders arising from a long-running investigation for bribery, money laundering and abuse of office against a Latvian oligarch.

R v Slack 2013; **R v Mills** 2014 linked cases involving a £multi-million international boiler room fraud operated from Thailand.

Terrorism

Felicity is an Adjunct Fellow at the University of Western Sydney where she has lectured in Terrorism, Cybercrime and Sexual Offending and provided training in the Bangladesh Judiciary Management Project on Terrorism and Money Laundering. She has appeared and advised in a number of cases that have involved analysis and advice on terrorism and extremist legislation including relating to the taking of a child to Syria and trials under the Serious Organised Crime and Police Act 2005. 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' .

Sample cases include the following:

R v X 2015 advice under the anti-Terrorism legislation regarding judicial review of a decision to refuse bail.

R v P 2009 Conspiracy to steal and cause criminal damage involving evidence from NETCU. Case labelled as 'domestic extremism'.

R v VWT and others 2008: First prosecution under s145 SOCPA 2005: Interference with contractual relationships so as to harm animal research organisation. Case labelled as 'domestic extremism'.

Organised Crime

Felicity has a long history of dealing with cases involving national and transnational organised crime more recently in relation to cybercrime such as computer misuse and computer-related crimes (see fraud and financial crime entry). More recently she has assisted in death penalty cases in Indonesia, particularly on the intersection between drug trafficking and human trafficking and recently assisted in the reprieve from execution of Filipina Mary Jane Veloso. 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

Sample organised crime cases include the following:

In the matter of **Mary Jane Veloso** (Philippines and Indonesia) 2015 – death row prisoner given a reprieve in Jakarta, Indonesia – assisting on legal issues relating to human trafficking law and referral mechanisms.

In the matter of **Lindsay Sandiford** (Indonesia) 2015 – death row prisoner in Bali, Indonesia seeking to appeal to the Indonesian Supreme Court – assisting on judicial review processes in the UK for funding purposes and on legal issues relating to a further appeal in Indonesia.

In the Matter of **Tony DeMalmanche** (Indonesia) 2015– assisting on issues in relation to the intersection of law between drug trafficking and human trafficking in Bali, Indonesia

R v X 2013: Defence of an immigration solicitor accused of falsifying immigration papers for the purposes of human trafficking.

R v Munaf Surti 2008: Defence of 3 month conspiracy to import illegal immigrants from India via South Africa for what would now be called indentured servitude. Her client was the only one of 26 defendants to be acquitted.

R v LB 2006: Multiple count indictment of various offences of rape, people trafficking and causing / inciting / controlling prostitution for gain. Defence of a woman who was accused of joining a Lithuanian criminal gang operating to import young women to the UK from Lithuania and force them into prostitution.

Regulatory and Disciplinary Proceedings

Felicity is a Member of the Legal Practitioners Disciplinary Tribunal in the Northern Territory of Australia. She has a long history of representing professionals in disciplinary proceedings and still retains some civil practice:

Sample cases as follows:

Litigation - UK

In the matter of X 2015– advising on a high profile proposed claim for defamation.

Medical Practitioners Tribunal Service (MPTS) v O 2014: Disciplinary proceedings against clinical psychiatrist

X v Y 2014 - Settled proposed civil proceedings against a music teacher and radio presenter for alleged historic sexual abuse.

R v X Club 2014 - Advised on proposed civil proceedings against a Football League club in relation to alleged historic abuse by a coach.

B v D Local Authority 2014 - Leading in issued civil proceedings against a local authority for negligently failing to protect a child from sexual abuse.

Litigation – Australia

Law Society v W 2016 defence of allegation of unlawful engaging in legal practice.

J v Minister for Lands and Planning 2016 - In the matter of Kulaluk community land, an appeal under the Heritage Act

V v Z 2016 – Application to Anti-discrimination Commission in relation to sexual harassment and termination of employment.

Australian Health Practitioner Regulation Agency (AHPRA) v H 2016 – Variation / removal of restrictive conditions on surgical practice.

M v AHPRA 2016 - Instructed to act for a psychologist in relation to a prohibition.

General Crime

Felicity appeared in all types of general criminal cases over the years but particularly specialises in cases involving sexual allegations. She is co-author of The Sexual Offences Handbook which contains all the law, practice and procedure in England and Wales from 1957 to date. She has appeared in numerous trials and appeals relating to rape, gang rape, historic sexual offending and human trafficking. She has significant experience and expertise in the admissibility of evidence of propensity, tendency and coincidence and has published numerous peer reviewed and other articles on the proper approach to cases of this type. She understands the technological issues in relation to child abuse material and appeared in the guideline case in relation to mens rea in importation cases. She is on the Management Committee of The UK Advocates Gateway that produces toolkits for advocacy with vulnerable people and has contributed to a book on Vulnerability in Justice Systems.

Sample cases include:

R v H 2017 – Defence in alleged historic sexual offending by funeral director.

R v S 2017 – Advising in relation to allegations of possession and distribution of indecent images

R v P (Gibraltar) 2017 – Defence of sexual allegations involving advocacy relating to a 4 year old child.

R v Maung 2016 - Successful defence of a Dr accused of sexually assaulting a patient (on a retrial) after a successful appeal against conviction.

R v P 2016 - Successful defence of allegations of marital rape involving significant unused material relating to a two decade marriage and nearly a decade of separation and divorce proceedings.

R v Raynor 2015 - defence of former GB Rugby League player acquitted on allegations of rape and wounding.

R v Munkara 2015 – Defence of indigenous male accused of sexual offending. Voir Dire on adducing evidence from a vulnerable indigenous complainant and admissibility of indigenous defendant’s police interview reported at *The Queen v BM* [2015] NTSC 73

R v W 2014 - successful appeal conviction in relation to allegations of historic sexual abuse where judicial directions were held to have been inadequate on the burden and standard of proof.

R v C 2014 - Defence of alleged gang rape involving issues of extradition where the prosecution offered no evidence on the second day of the trial and the court awarded over £33,000 in wasted costs to the defendant who was a foreign national.

R v T and others 2013: Multi-handed defence of multiple allegations of child sexual abuse. This is just one example of numerous cases of this type that Felicity has appeared in over the last 22 years.

Extradition and Mutual Assistance:

Felicity has dealt with numerous cases involving international evidence. She has lectured in extradition and mutual assistance. She has published Peer reviewed articles on jurisdiction including.

- Svantesson, D., & Gerry, F. (2015). *Access to extraterritorial evidence: The Microsoft cloud case and beyond*. *Computer Law & Security Review*, [2016] 31(4), 478-489.
- Gerry, F., Berova, N., *Treating data like the sale of goods: Lessons for the internet from OECD and CISG and sacking Google as the regulator* [2014] 30 CLSR Issue 5.

Sample cases include:

R v Metcalf 2006: Defence of expert ornithologist accused of purchasing clutches eggs from threatened species, fraudulent evasion of CITES prohibition on importation of bird eggs and skins, and selling owls, falcons and other protected species where the issue was whether they were pre or post regulation specimens. The case involved complex legal issues on the application of CITES regulations and domestic legislation in the context of a private collection. The case also concerned the law on destruction of ancient monuments.

R v OS 2005: Murder where defendant absconded abroad with evidence from and legal argument in relation to Nigerian NDLEA, extradition and deportation.

Appeals & CCRC:

Felicity specialises in appellate work, particularly in the context of homicide and sexual offending. She is particular well known for leading the defence team in *R v Jogee*, the ground breaking appeal in the UK Supreme Court which held that the form of accessory liability known as ‘joint enterprise’ was an erroneous tangent of law and various appeals involving alleged sexual offending:

See also - entries under Homicide, Organised Crime and General Crime

Sample cases include:

R v Jogee [2016] UKSC 8 – Successful appeal to the UK Supreme Court (formerly the House of Lords) which sat for the first time, at the same time as the Judicial Committee of the Privy Council. Alleged joint enterprise murder. Correcting the law on foundational liability for secondary parties. Court of Appeal Report at *R v Jogee* [2013] EWCA Crim 1433.

R v X 2015 – successful appeal on behalf of a doctor accused of sexual assault on issues relating to the recall of a witness at trial.

R v Steen [2014] EWCA Crim 1390- Defence Appeal against conviction for importation, downloading and possession of indecent images of children dealing with mens rea in such cases where it was held that judicial directions were insufficient. Convictions quashed.

In the Appeal of Clifton 2014 - rape of a pre-pubescent child where the hearsay provisions were used to rely on pre-recorded video and audio of the child's complaints and to admit drawings and notes made by the child as well as adducing complex expert evidence in relation to indecent images and other data..

R v Cox [2012] 2 Cr App R 6 - Appeal relating to an adapted trial for a vulnerable defendant which is now used in the training materials for the judicial college and the Advocacy Training Council.

Public Law:

Felicity has experience of public law issues including making submissions to Government Committees in England and Australia and to the European Commission Department of Justice on issues relating to international commercial surrogacy, the death penalty, human trafficking, FGM and the treatment of vulnerable suspects.

See entry under international criminal law

Sample cases include:

The Queen on the application of Aiden Henderson v Secretary of State for Justice [2015] EWHC 130 (Admin) Judicial review of primary legislation removing recovery of private costs of acquitted defendants

In the matter of Afusat Saliu 2014 application to the European Court of Human Rights for interim measures to prevent deportation where the applicant and children are at risk of forced marriage and female genital mutilation.

In the matter of X 2013 Judicial review of decision to charge 13 year old boy with rape of a 12 year old boy where potential context was sexual exploration. Prosecution offered no evidence.

International Criminal Law

Felicity works internationally. She contributes to Annotated Leading Cases of International Criminal Tribunals (ALC) and contributed to the ICC Moot Court Manual for the IBA. She specialises in serious and complex crime often with an international element. She is admitted in Australia where she has appeals in the High Court of Australia on extended joint common enterprise and in a cold case murder on fresh evidence relating to an unqualified pathologist. She also has ad hoc admission for an appeal in Hong Kong on accessory liability. She has assisted in death penalty cases in Indonesia, particularly on the intersection between drug trafficking and human trafficking and recently assisted in the reprieve from execution of Filipina Mary Jane Veloso. Her international advisory work has included advice on the interpretation of the Penal Code in Montserrat relating to child exploitation. She brings her expertise in joint enterprise to international proceedings and 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 Moot Court Manual on command responsibility. She has contributed to a forthcoming book on women in international law.

She has contributed to the following:

- 2017 Amicus Curiae Brief Radovan Karadžić Appeals Chamber.
- 2017 Inquiry into establishing a Modern Slavery Act in Australia: submission and evidence on behalf of Civil Liberties Australia
- 2016 submission to Australian senate inquiry into indefinite detention of people with cognitive and psychiatric impairment
- 2016 submission to the Australian Human Rights Commission on the ratification of the Optional Protocol of the Convention Against Torture (OPCAT)
- 2015 submission to the Joint Standing Committee on Foreign Affairs, Defence and Trade on Australia's Advocacy for Abolition of the Death Penalty.
- 2016 submissions to the Australian Parliamentary Inquiry into Human Trafficking.
- 2014 working party submission for the Bar Human Rights Committee (BHRC) written evidence to the UK Parliamentary Inquiry into Female Genital Mutilation (12 February 2014). This led to significant changes in the law in the UK
- 2014 Working party submission for the Bar Human Rights Committee (BHRC) written evidence to the UK Parliamentary Joint Committee on Human Rights Inquiry into Violence Against Women and Girls (VAWG)

Felicity brings her academic experience to International Legal issues: She has led research projects on Youth Justice in Alice Springs after the international news on alleged brutality in youth detention in the NT of Australia, two projects for Lexis Nexis on 'Women in Prison', an 'Indigenous Justice and Exoneration Project', a collaborative project with Menzies School of Health Research and CDU School of Health on 'Women's Health and the Law. She piloted an "Innocence" style project and completed a grant funded project on human trafficking in ASEAN. She is also the expert on an EU Commission innovation grant on rights of children with mental disabilities. She is part of an expert group on procedural rights for Fair Trials International.