

# **KYLE KIRKUP**

University of Ottawa Faculty of Law (Common Law Section)

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## **CURRENT POSITION**

**Assistant Professor (tenure-track), July 2016-present, Faculty of Law (Common Law Section), University of Ottawa**

Courses: *Introduction to Public and Constitutional Law* (2016-2017; 2017-2018; 2019-2020; 2020-2021); *Advanced Constitutional Law and Legal Rights* (Winter 2017; Winter 2018; Winter 2019; Winter 2020; Winter 2021); Faculty Advisor, *Ottawa Law Review* (2017-2018; 2018-2019; 2019-2020); *Criminal Law and Procedure* (2018-2019)

Awards: *Public Engagement – Media Relations* (2016)

## **EDUCATION**

**Doctor of Juridical Science (SJD), 2012-2017, Faculty of Law, University of Toronto**

Dissertation: *Sex Crimes: Queer Engagements with the Criminal Law from the Street to the Prison*

Committee: Brenda Cossman (co-supervisor), Mariana Valverde (co-supervisor), Hamish Stewart, Simon Stern (internal), and Debra Parkes (external, Peter A. Allard School of Law)

Awards: 2013 Trudeau Scholar, Pierre Elliott Trudeau Foundation (\$180,000); Joseph-Armand Bombardier Canada Graduate Scholar, SSHRC (\$105,000); University of Toronto Faculty of Law Fellowship (\$5000); Hallam Award (highest standing in *Theory and Methods in Sexual Diversity Studies*) (\$1000); Junior Fellow, Centre for Criminology & Sociolegal Studies, University of Toronto (2013-2016)

**Master of Laws (LLM), 2011-2012, Yale Law School, Yale University**

Awards: Yale University Scholarship (\$33,105); Conditional Academic Grant (\$17,500)

**Juris Doctor (JD), *cum laude*, 2006-2009, Faculty of Law (Common Law Section), University of Ottawa**

Awards: Osgoode Society Prize for Canadian Legal History (top ten graduating students); Regional Senior Justice Prize (highest standing in *Moot Court*); CCH Canadian Limited Prize (outstanding contribution to the *Ottawa Law Review*); Gilbert Ngieme Prize (highest standing in *International Law and Developing Countries*); University of Ottawa Merit Scholarship (\$500); Gowling Lafleur Henderson LLP Entrance Scholarship (\$6,500)

**Bachelor of Humanities (BHum), highest honours, 2002-2006, Carleton University**

Awards: Senate Medal (top 3% of graduating students); Faculty Scholarship (\$14,000); Lee Valley Entrance Scholarship (\$500)

## **CLERKSHIP**

The Honourable Madam Justice Louise Charron, Supreme Court of Canada, 2010-2011

## **RESEARCH INTERESTS**

Criminal law, constitutional law, gender and sexuality law, human rights law, family law, prison law

## REFEREED ARTICLES

“The Gross Indecency of Criminalizing HIV Non-Disclosure” (2020) 73:3 *University of Toronto Law Journal* 263-282

“The Aftermath of Human Rights Protections: Gender Identity, Gender Expression, and the Socio-Legal Regulation of Schools” (2020) 35:2 *Canadian Journal of Law and Society* [with Lee Airton, Allison McMillan & Jacob DesRochers]

“What is ‘gender expression’? How a new and nebulous human rights construct is taking shape in Ontario school board policy documents” (2019) 42:4 *Canadian Journal of Education* 1154-1182 [with Lee Airton, Allison McMillan & Jacob DesRochers]

“Assessing the Influence of the *Ottawa Law Review* at the Supreme Court of Canada: 1966-2017” (2019) 50:3 *Ottawa Law Review* 55-117 [with Yan Campagnolo]

“The Origins of Gender Identity and Gender Expression in Anglo-American Legal Discourse” (2018) 68 *University of Toronto Law Journal* 80-117

“Releasing Stigma: Police, Journalists, and Crimes of HIV Non-Disclosure in Canada” (2015) 46:1 *Ottawa Law Review* 127-160

“The Everyday Practice of Canadian Criminal Law: The ‘as of right’ jurisprudence of Justice Louise Charron” (2014) 65 *Supreme Court Law Review* 55-77

Reprinted in Graham Mayeda & Peter Oliver, eds. *Principles and Pragmatism: Justice Louise Charron’s Contributions to Canadian Law* (Markham, ON: LexisNexis, 2014)

“Locating the Trans Legal Subject in Canadian Law: XY v Ontario” (2013) 33 *Windsor Review of Legal and Social Issues* 96-140 [with Jena McGill]

“Indocile Bodies: Gender Identity and Strip Searches in Canadian Criminal Law” (2009) 24 *Canadian Journal of Law and Society* 107-125

## REFEREED BOOK CHAPTERS

“Competing Masculinities and Political Campaigns” in Angelia Wagner & Joanna Everitt, eds. *Gendered Mediation: Identity and Image Making in Canadian Politics* (Vancouver: UBC Press, 2019), pp. 45-65 [with Jerald Sabin].

- Nominated for the Jill Vickers Award for best paper on gender and politics, Canadian Political Science Association (2016)

“Gender Dysphoria and the Medical Gaze in Anglo-American Carceral Regimes” in Jennifer M. Kilty & Erin DeJ, eds. *Containing Madness: Gender and ‘Psy’ in Institutional Contexts* (London, UK: Palgrave Macmillan, 2018), pp. 145-165.

“After Marriage Equality: Courting Queer and Trans Rights” in Emmett Macfarlane, ed. *Policy Change, Courts, and the Canadian Constitution* (Toronto: University of Toronto Press, 2018), pp. 378-394.

## NON-REFEREED ARTICLES

“Interlocking Systems of Oppression: Disability, Gender, and Race in the Context of Transgender Legal Claims” (2009) 4:2 *Journal of Race, Gender and Ethnicity* 72-77 [conference proceedings]

## **BOOK REVIEWS**

Review of Ummni Khan, *Vicarious Kinks: S/M in the Socio-Legal Imaginary* (2015-2016) 53 *Osgoode Hall Law Journal* 387

## **WORKS IN PROGRESS**

*Law and Order Queers: Respectability, Victimhood, and the Carceral State* [under contract, UBC Press, 280 pp.]

“Law’s Sexual Infections”

“On the Basis of Sex? Expanding the Caselaw Archive for Litigating Gender Expression Discrimination” [with Lee Airton & Hardie Rath-Wilson]

“A Queer Embrace: Canadian Political Identity and LGBTQ Rights” [with Jerald Sabin]

“Queer Theory in an Age of Legal Risk” [invited chapter, Brenda Cossman & Joseph Fischel, eds]

“Who Do You Think I Am? Constructing the Beneficiary of Gender-Based Human Rights Protections in K-12 Education” [with Lee Airton, Allison McMillan & Jacob DesRochers]

## **REPORTS**

Principal Investigator, *Relations Between Police and LGBTQ2S+ Communities*, commissioned by the Independent Civilian Review into Missing Person Investigations (Chair: The Honourable Justice J. Gloria Epstein, 2020), pp. 1-61.

Principal Investigator, *Best Practices in Policing and LGBTQ Communities in Ontario*, commissioned by the Ontario Association of Chiefs of Police (November 2013), pp. 1-80.

## **RESEARCH FUNDING**

2020-2021: “Gender expression is for everyone: A trickle-up approach to systemic human rights-related changes in Ontario schools” [Lee Airton, Co-PI] (\$57,807)

2018-2021: “‘Gender expression’ under construction: How school boards are shaping Ontario’s newest human rights category” [Lee Airton, Co-PI]

Funding: SSHRC Insight Development Grant (\$66,568); University of Ottawa, Faculty of Law, Seed Grant (\$10,000); Queen’s University, Faculty of Education, Seed Grant (\$5,000); SSHRC SIG Explore Grant, Queen’s University (\$6,932)

2017: Foundation for Legal Research, “Transgender Human Rights Law: Past, Present, Future” (\$9720)

2017: University of Ottawa Faculty of Law (Common Law Section) Emerging Researcher Fellowship Program, “Law and Order Queers: Respectability: Victimhood, and the Carceral State” (\$1800)

## **GRADUATE SUPERVISION**

Supervisor, “The Right to be Tried in a Reasonable Time After *R. v. Jordan*” (Jamie Rivard, LLM candidate, University of Ottawa Faculty of Law, September 2019-present)

Committee Member, “Constituting the search of persons: A sensori-legal study of the search of persons at the Toronto Police Service” (Monika Lemke, PhD candidate, York University, Socio-Legal Studies, September 2020-present)

Supervisor, “Evolving Family Law Towards a Prospective System” (James Alexander, LLM candidate, University of Ottawa Faculty of Law, September 2019-August 2020)

Committee Member, “Transnormative Times? Exploring law reform, queer rights and trans activism in Canada” (Elise Wohlbold, PhD, Carleton University, Department of Law and Legal Studies, September 2016-2020)

External Reviewer, “Covered in Blue: Police Culture and LGBT Police Officers in the Province of Ontario” (Joe L. Couto, Masters of Arts, Professional Communications, Royal Roads University, 2014)

## **EXPERT TESTIMONY**

House of Commons Standing Committee on Justice and Human Rights, *Criminalization of Non-Disclosure of HIV Status*, April 9, 2019, online: <https://www.ourcommons.ca/DocumentViewer/en/42-1/JUST/meeting-142/notice>

Standing Senate Committee on Human Rights, *Respect for the human rights of federally-sentenced persons in the federal correctional system (Panel focus: Transgender people in federal prisons)*, January 30, 2019, online: <https://sencanada.ca/en/Content/Sen/Committee/421/RIDR/54518-e>

House of Commons Standing Committee on Justice and Human Rights, *Bill C-36, An Act to amend the Criminal Code in response to the Supreme Court of Canada decision in Attorney General of Canada v. Bedford and to make consequential amendments to other Acts*, July 10, 2014, online: <http://www.cpac.ca/en/programs/in-committee-house-of-commons/episodes/34169041/>

## **SELECTED PRESENTATIONS**

“On the Basis of Sex, Gender Identity, and Gender Expression” Canadian Law and Society’s 2020 *Annual Meeting*, London, ON, June 2020 [with Lee Airton & Hardie Rath-Wilson; abstract accepted, cancelled due to COVID-19].

“The Gross Indecency of Criminalizing HIV Non-Disclosure” Canadian Law and Society’s 2019 *Annual Meeting*, Vancouver, BC, June 4, 2019

“The Aftermath of Human Rights Protections: Gender Identity, Gender Expression, and the Socio-Legal Regulation of School Boards”, American Law and Society’s 2019 *Annual Meeting*, Washington, DC, May 31, 2019

“The Gross Indecency of Criminalizing HIV Non-Disclosure” Association for the Study of Law, Culture, and the Humanities’ *Annual Meeting – Plenary Session*, Ottawa, ON, March 23, 2019

“From Criminality to Respectability: Familial Recognition, Victimhood, and the Carceral State”, Carleton University Department of Law and Legal Studies’ *JurisTalk Speaker Series*, Ottawa, ON, February 28, 2019

“The Origins of Gender Identity and Gender Expression in Anglo-American Legal Discourse”, University of Victoria’s *Department of Political Science Speaker Series*, Victoria, BC, November 7, 2018

“The Origins of Gender Identity and Gender Expression in Anglo-American Legal Discourse”, University of Ottawa Public Law Group’s *Speaker Series*, Ottawa, ON, December 1, 2017

“The Criminalization of Queer and Trans Communities in Canada”, Windsor Law’s *Access to Justice Panel*, Windsor, ON, October 13, 2017

“R. v. Comeau” *The Supreme Court of Canada’s Upcoming Term: Cases to Watch*, Ottawa, ON, October 17, 2017

"A Queer Embrace: Canadian Political Identity and LGBTQ Rights", Canadian Political Science Association's *Annual Conference*, Toronto, ON, May 31, 2017 [with Jerald Sabin]

"After Marriage Equality: Courting Queer and Trans Rights" University of Ottawa Public Law Group's *Works in Progress*, Ottawa, ON, December 2, 2016

"HIV Non-Disclosure on Trial" *The Criminalization of HIV Non-Disclosure uOttawa Outlaws Panel*, Ottawa, ON, November 9, 2016

"Oland v Her Majesty the Queen" *The Supreme Court of Canada's Upcoming Term: Cases to Watch*, Ottawa, ON, October 12, 2016

"After Marriage Equality: Courting Queer and Trans Rights" *Courts and Policymaking Conference*, Stratford, ON, October 9, 2016

"Law and Order Queers: Respectability, Victimhood, and the Carceral State" American Law and Society's *2016 Annual Meeting*, New Orleans, LA, June 3, 2016

"Competing Masculinities and Political Campaigns" Canadian Political Science Association's *2016 Annual Meeting*, Calgary, AB, June 2, 2016

"Law and Order Queers: Respectability, Victimhood, and the Carceral State" Canadian Law and Society's *2016 Annual Meeting*, Calgary, AB, May 28, 2016

"Spotlight on LGBTQ Rights in the Canadian Military, Conflict Zones, and in Refugee Claims" Canadian Bar Association's *Sexual Orientation & Gender Identity Section Meeting*, April 29, 2016

"The Legal Regulation of Trans People in Canadian Prisons" Western University Faculty of Law's *Outlaws Panel*, London, ON, March 22, 2016

"Releasing Stigma: Police, Journalists, and Crimes of HIV Non-Disclosure" Sexual Diversity Studies Union's *Speaker Series*, Toronto, ON, March 3, 2016

"Releasing Stigma: Police, Journalists, and Crimes of HIV Non-Disclosure in the Capital" Canadian Law and Society's *2015 Annual Meeting*, Ottawa, ON, June 5, 2015

"Transgender Governance from the School to the Prison" American Law and Society's *2015 Annual Meeting*, Seattle, WA, May 29, 2015

"Constituting the Bad Gay Man in Provocation and Hate Crime Jurisprudence" University of Toronto Faculty of Law's *Faculty Workshop*, Toronto, ON, March 30, 2015

"The Legal Regulation of Trans People in Canadian Prisons" University of Ottawa Faculty of Law's *Trans Legal Issues Panel*, Ottawa, ON, March 12, 2015

"Engaging with Surrogates' Choices: Tracing and Proscribing Viable Mothers in Law" University of Toronto Faculty of Law's *Health Law Seminar Series: Angela Campbell*, Toronto, ON, January 15, 2015 [commentator]

"Two Frames of the Criminal Law" Mark S. Bonham Centre for Sexual Diversity Studies' *BDSM, Consent, and the Law*, Toronto, ON, November 13, 2014, online: [https://www.youtube.com/watch?v=FbhA3\\_o08EY](https://www.youtube.com/watch?v=FbhA3_o08EY)

"Releasing Stigma: Police, Journalists, and Crimes of HIV Non-Disclosure in Canada" University of Victoria Faculty of Law's *Seminar Series*, Victoria, BC, October 20, 2014

"Releasing Stigma: Police, Journalists, and Crimes of HIV Non-Disclosure in Canada" UBC Faculty of Law's *Faculty Colloquium*, Vancouver, BC, October 15, 2014

"The Criminalization of LGBTQ Communities" Trudeau Foundation's *Imagining the Future of LGBTQ Human Rights*, Montreal, QC, October 6, 2014

"Women in Prison (Liberty and Lockdown)" Osgoode Hall Law School and Canadian Civil Liberties Association's *Gendering Civil Liberties Symposium*, Toronto, ON, September 20, 2014 [moderator]

"Encounters with Administrative Violence: Gender Identity and Sex Segregation in Canadian Prisons" Canadian Law and Society Association's *Law's Encounters: Co-existing and Contradictory Norms and Systems*, Winnipeg, MB, June 6, 2014

"The Legal Regulation of Trans People in Canadian Prisons" Canadian Bar Association Sexual Orientation & Gender Identity Conference and Constitutional, Civil Liberties & Human Rights' *From Accommodation to Integration: Sex and Gender Diversity in Public Institutions*, Toronto, ON, June 3, 2014

"Carceral Queers: Criminal Law from the Street to the Prison" University of Toronto Centre for Criminology & Sociolegal Studies' *Graduate Workshop*, Toronto, ON, May 2, 2014

"Resisting Normativity" Mark S. Bonham Centre for Sexual Diversity Studies' *Research Colloquium*, Toronto, ON, March 28, 2014 [moderator]

"HIV Non-Disclosure from the Street to the Prison" University of Toronto Faculty of Law's *Still Here: Homo/Transphobia in Law and Culture*, Toronto, ON, February 27, 2014

"La violence administrative en fonction de l'identité de genre et la ségrégation des sexes" [Administrative Violence, gender identity and sex segregation], Entretiens Jacques Cartier's *L'emprisonnement : enjeux systémiques, psychologiques et juridiques* [Imprisonment: systemic, psychological, and legal issues], Lyon, France, November 27, 2013

"The Everyday Practice of Canadian Criminal Law: The criminal 'as of right' jurisprudence of Justice Louise Charron" University of Ottawa Faculty of Law's *Symposium Celebrating the Contributions of Justice Louise Charron*, Ottawa, ON, March 23, 2013

"Bodies of Law: Trans Legal Subjects, Reproductive Justice, and the Imposition of Corroboration Requirements" The Institute for Feminist Legal Studies at Osgoode Hall Law School's *Reproduction Roundtable*, Toronto, ON, October 26, 2012

"Crime and Punishment" Yale Law School's *2011 Doctoral Scholarship Conference*, New Haven, CT, December 2, 2011 [commentator]

"Interlocking Systems of Oppression: Disability, Gender, and Race in the Context of Transgender Legal Claims" Cornell University's *TransRhetorics Conference*, Ithaca, NY, March 6, 2009

"Interlocking Systems of Oppression: Disability, Gender, and Race in the Context of Transgender Legal Claims" Jacob T. Fuchsberg Law Center at Touro College's *Transgender Law: Challenging the Boundaries of Law and Gender Conference*, Central Islip, NY, February 20, 2009

## **TEACHING**

### **University of Ottawa Faculty of Law, Assistant Professor**

Courses: *Introduction to Public and Constitutional Law* (2016-2017; 2017-2018; 2019-2020; 2020-2021); *Advanced Constitutional Law and Legal Rights* (Winter 2017; Winter 2018; Winter 2019; Winter 2020; Winter 2021); *Ottawa Law Review* (2017-2018; 2018-2019; 2019-2020); *Criminal Law and Procedure* (2018-2019)

### **Western Law, January Intensive Instructor**

Course: *Current Issues in Advanced Constitutional Law* (January 2016)

Award: 2016 University Students' Council Teaching Honour Roll

### **Carleton University, Department of Law and Legal Studies, Instructor**

Course: *Sentencing* (Summer 2010)

### **University of Toronto, Teaching Assistant**

Courses: *Sexuality and Law* (2014); *Socio-Legal Studies* (2013; 2014; 2015); *Criminal Law* (2012; 2016)

### **University of Ottawa Faculty of Law, Course Tutor**

Courses: *Public Law and Legislation*: 2008; *Constitutional Law I*: 2019

## **MEDIA APPEARANCES (SELECTED)**

*The Globe and Mail, The Toronto Star, Global News, National Post, TVO's The Agenda, BBC Canada, CTV Your Morning, Xtra!, The McGill Law Journal Podcast, CBA National Magazine, Postmedia News, Torontoist, University of Toronto News, CBC's Metro Morning, and CBC's Ontario Morning*

## **OTHER PUBLICATIONS**

"Canadian Human Rights Act", *The Canadian Encyclopedia*, May 3, 2018

"Passage of Transgender Rights Bill a Strong Step Forward", *Ottawa Citizen*, June 26, 2017

"Defending the Court Challenges Program", *Policy Options*, February 22, 2017 [with Carissima Mathen]

"Courting Controversy: Substantive Equality and the New Court Challenges Program", *Slaw.ca*, April 25, 2016 [with Jennifer Klinck]

"Beginning of the end for solitary confinement in Canada?", *TVO*, March 18, 2016

"How Ontario's prisons pioneered sensitivity to transgender inmates", *TVO*, January 26, 2016

"Pride in Their Own Words: Kyle Kirkup", *Torontoist*, June 24, 2015

"It's unstoppable: Same-sex marriage is coming to the U.S.", *The Globe and Mail*, April 28, 2015 [with Brenda Cossman]

"Solitary Confinement: An abuse by any other name", *National Post*, March 31, 2015

"Ontario's welcome move on rights shows reality of trans people in prisons", *The Globe and Mail*, January 26, 2015

"Stop criminalizing sex work", *The Winnipeg Free Press*, December 9, 2014

"The legal inquiry into Justice Lori Douglas must end", *The Globe and Mail*, October 22, 2014

"New prostitution laws, same old harms to sex workers", *The Globe and Mail*, June 4, 2014

"With sex-work ruling, Supreme Court can be on the right side of history", *The Globe and Mail*, December 17, 2013

"Transforming Sentencing? Gender Identity, Prisons, and Canadian Criminal Law", *Blogging for Equality*, October 7, 2013

“When should unprotected sex trigger the heavy hand of criminal law?”, *The Globe and Mail*, October 3, 2013

## **PROFESSIONAL QUALIFICATIONS AND EXPERIENCE**

**Bar Admission:** Law Society of Upper Canada, 2010

**Office of the Correctional Investigator, Ottawa, ON**

Consultant, Correctional Service of Canada’s *Policy changes related to gender identity and expression*, May 2017

**Ontario Human Rights Commission, Toronto, ON**

Expert Witness, *Waterman v. Toronto Police Service & Ontario Ministry of Community Safety and Correctional Services*, April 2015-November 2016

**McCarthy Tétrault LLP, Toronto, ON**

Articling Student, August 2009-June 2010

Summer Law Student, May-August 2008

**University of Ottawa, Faculty of Law, Ottawa, ON**

Research Assistant, May 2007-June 2009

## **PUBLIC SERVICE**

**MAX: Ottawa’s Health Connection for Guys into Guys, Ottawa, ON**

Board of Directors, August 2016-September 2020

**Egale Canada, Toronto, ON**

Legal Issues Committee, September 2012-September 2019

**The WorldPride Human Rights Conference 2014, Toronto, ON**

Conference Coordinator, University of Toronto, December 2012-June 2014

## **MANUSCRIPT REVIEW (SELECTED)**

*University of Toronto Law Journal, Osgoode Hall Law Journal, The Journal of Homosexuality, Canadian Journal of Law and Society, Canadian Journal of Family Law, McGill Journal of Law and Health; Manitoba Law Journal, Canadian Journal of Women and the Law, Palgrave Macmillan Press, and Windsor Review of Legal and Social Issues*

## **LANGUAGES**

**English:** Fluent in reading, listening, and speaking

**French:** Advanced in reading, advanced in listening, and intermediate in speaking  
[University of Ottawa bilingualism requirement met at time of appointment in 2016]