

# DIS/POSSESSING GENDER: ANTI-BLACKNESS, DEBILITATION AND TRANS DISTRESS IN *KAVANAGH V. CANADA*

**JOSHUA FALEK, PHD IN GENDER, FEMINIST, AND WOMEN'S STUDIES**

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## **Tell us about your field, your professional experiences before starting your current studies?**

Currently, I am housed in the gender, feminist and women's studies department. My research sits at the intersection of trans studies and Black studies, with a particular focus on affect theory. Before this degree, I completed a Master of Arts in Women's and Gender Studies at the University of Toronto, where I wrote about multiculturalism and nonbinary identity. I also completed a Master of Arts in Social and Political Thought at York where I studied Jewish uses of Blackface in Toronto. Between undergrad and grad school, I worked as the manager of a bookstore for several years in a small town outside of Montreal --- it was gorgeous, but the commute was killer.

## **Tell us about your dissertation and how it relates to the study of Canada.**

My research illuminates how anti-Blackness structures the legal recognition of incarcerated trans people in Canada. In my dissertation, I employ Sylvia Kavanagh's Canadian Human Rights tribunal case (2001) as a material example of how carceral logics are produced from the legacies of racial slavery.<sup>1</sup> Scholars have primarily focused on the tribunal's decision rather than its reasoning.<sup>2</sup> Filling that gap, I use archival research completed at the Transgender Archives at the University of Victoria to examine how the affect of distress arose in this case to

differentiate and racialize divergent forms of suffering.

Kavanagh filed three human rights complaints against Correctional Service of Canada because she was barred from accessing gender affirming medicine and placed in a men's prison. I study how Kavanagh's distress was mediated by racialized grammars of suffering, both in its production and in its mis/recognition; I am curious about whose pain matters in a legal setting and how this question is informed by Canadian histories of racial slavery and settler colonialism.

## **How did you come to choose this research topic?**

Originally, this case was to be one of several chapters. My committee repeatedly told me that I was doing too much, and they were SO right. Once I got to the archives and I started doing this research, I found a wealth of material that quickly took over the project. Suddenly, Kavanagh's case became the entire project.

## **What are the key takeaways you want others to come away with?**

- 1)** The Canadian legal recognition of trans subjectivity is racialized and is inextricable from anti-Blackness and settler colonialism.
- 2)** Tracing affect, and in particular, distress, clarifies whose pain is valued and where it is valued.

**3)** Incarcerated trans people face myriad forms of violence, which would not be resolved through something like a “trans prison.” Instead, much of this violence is constitutive of the prison industrial complex itself. To establish any real sense of gender self-determination, the entirety of the Correctional Service of Canada would need to be abolished.

**Tell us about the challenges that you as a researcher are experiencing or had to overcome to do this work.**

One of the biggest challenges that I had to overcome was determining the focus of my work. My writing is rarely linear; it spirals or jumps around. It is challenging enough to write a paper, and it has been extraordinarily difficult to keep things straight when writing a dissertation.

**Tell us about what you enjoy the most about the work you do.**

What I enjoy most about what I do is contextualizing what appears to be abstract or incongruous moments into larger narratives. Understanding things historically or genealogically provides them with a different meaning and offers a sense of clarity.

I would not say I always enjoy it, but I do find archival work to be particularly fruitful. Not so much the digging through papers or taking 20,000 photos on my phone, but there is so much that one can find in a stack of manila envelopes.

During my master’s degree, I was looking for examples of Jewish drag and costumes in Toronto during the holiday of Purim, but alongside that I found a lot of blackface. This discovery completely transformed the direction of that project and was what oriented me toward Black studies. For this project, I did not expect to see the type of vitriol and hatred for

Kavanagh in doctors’ letters or other documents. You can feel just how depraved they believed her to be and how much that influences what they propose as the best prognosis for her.

In one example, a quite transmisogynist doctor tells the tribunal that Kavanagh’s request to be moved to a women’s prison is actually indicative of the fact that she may not be trans at all. Instead, he implies that trans women would never contest being in a men’s prison because it would offer them opportunities for sexual relations with heterosexual men. Kavanagh had repeatedly told this doctor—amongst others—that she had been sexually assaulted, both in prison and prior to her incarceration. So, this doctor basically implied that her contesting being regularly assaulted was a reason to constrict her gender self-determination.

This was an extraordinarily violent action that the tribunal decision hints at, but is far clearer in the medical reports found in the archives. It reveals so much about the ways in which sexual violence was and is used as a punitive form of carceral violence to suppress complaints from trans women (and others).

**What advice do you have for those starting their academic journey?**

This is not a paid advertisement, but download Scrivener. Again, I receive no profits from this, but that writing software has saved me so many times. It provides a whole new level of organization that gives order to my writing in a way I never found possible through other word processors.

**What are the next steps in your research?**

At this point, I am working on the final chapter to write, which is actually the first chapter of my dissertation. It is a brief legal history of how transness was understood through the lens of disability in Canadian courts between the mid-

20th century and early 21st century. So, my next steps are to return to my notes from these cases and start providing some sense to them.

## Notes

1. Kavanagh v. Canada (Attorney General), 2001 CanLII 8496 (CHRT), <<https://canlii.ca/t/1g946>>.
2. Smith, Allison. "Stories of Os: Transgender Women, Monstrous Bodies, and the Canadian Prison System." *Dalhousie Journal of Legal Studies* 23 (2014): 149-71.