

VIV(R)E LA RECHERCHE EN DROIT
Un droit qui punit ou un droit qui construit
La recherche en droit pour des solutions durables aux problèmes sociaux

ENGLISH TRANSCRIPT

[Logo: uOttawa, Faculté de droit | Faculty of Law, Section de droit civil | Civil Law Section]

[Series title]

**LIVING
RESEARCH IN LAW**

[Subtitles]

**Access to justice
Knowledge Mobilization**

**Access to Knowledge
Justice Mobilization**

[Text]

The everyday operation of institutions can produce unjust effects

Marie-Eve Sylvestre:

[In front of camera]

If you go to your local courthouse on a good Monday morning and you watch the day's court appearances, you would see a selection of poor people, often homeless, and often with alcohol problems, or perhaps even mental health issues, pleading guilty to extremely minor offences related to acts of survival in the streets, and you would be very surprised to see the degree to which our justice system is criminalizing poverty, and social problems, compared to violent offences and offences that violate the rights of individuals.

[Video title]

A law that punishes or a law that progresses
Research in law for sustainable solutions to social problems

Marie-Eve Sylvestre [Professor, Faculty of law, Civil Law Section]:

[In front of camera]

My name is Marie-Eve Sylvestre. I am a professor in the Civil Law Section, and holder of the University of Ottawa Research Chair in Criminal Law and Policy and the Regulation of Marginalized People. What motivates me: firstly, injustice, but also denouncing the ways in which the law can create and perpetuate social inequalities, and trying to find lasting solutions to social problems and how the law can contribute to them.

[*Subtitle*]

Martine

Marie-Eve Sylvestre:

[*In front of camera, with text below appearing beside her*]

When we first meet her in 2014, Martine is a young woman in her mid-thirties who is homeless. A part-time sex worker, she is undergoing treatment to reduce her opioid addiction and she is living with HIV. In 2008, Martine had been arrested for the first time for communicating for the purpose of engaging in prostitution; she is arrested immediately by a police officer who detains her. She appears in court the next day. At this appearance, the Crown opposes her release. She is returned to police custody for three more days for further investigation. By this time, Martine has spent four days in pre-trial detention in an overcrowded prison, where most of the detainees have not yet been sentenced to any crime. Additionally, it has been four days since Martine last used drugs, so she is in great pain and she is presenting several symptoms of involuntary withdrawal. In these circumstances, it is under duress and in a state of survival that Martine accepts the conditions of release imposed on her by the Crown Attorney, which include a prohibition on the consumption of alcohol and drugs, and, notably, a prohibition on being within a perimeter covering the entire south-central district and the Hochelaga-Maisonneuve district of Montreal.

Adverse effects produced by the penal system

inhumane detention

pre-trial punishments

indifference to suffering

decisions made under pressure

unreasonable conditions

decisions that displace

[*Image of a map of Montreal showing the restricted zone and the location of social services*]

Marie-Eve Sylvestre:

[*In front of camera, with text below appearing beside her*]

Martine is not able and does not have the necessary competencies to oppose the conditions; to say, for example, that she is not able to stop consuming so quickly, or that she needs to frequent the area to get

groceries, to continue her HIV treatment, to benefit from social services, and that she lives in the heart of her district.

insensitivity to basic needs

a law suffocates

destruction of social life

[Text]

The Criminal Code and the Canadian Charter stipulate that an arrested person who appears in court must be released unconditionally before trial.

Exceptionally, reasonable and realistic conditions may be imposed to ensure the presence of the accused at trial or to protect the safety of the public.

In practice, however, more than 95% of people who appear before the court are conditionally released, and these conditions are often unreasonable and arbitrarily imposed on individuals who, before trial, are still presumed innocent by law.

For example: the prohibition of being in a park or in a neighbourhood perimeter that is frequented by such individuals often leads to a breach of conditions = offence against the administration of justice = return to detention and to the court

Marie-Eve Sylvestre:

[In front of camera]

Forced to return to the restricted area two months later, Martine is found to be in violation of her conditions in the heart of her neighbourhood. She is arrested, detained, and released under the condition that she can no longer be anywhere on the entire Island of Montreal.

[Image of a larger map of Montreal showing the larger restricted zone]

Marie-Eve Sylvestre:

[In front of camera, with text below appearing beside her]

Throughout this period, Martine is afraid, she feels stressed, she plays a game of cat and mouse with the police. She is constantly being monitored, she must leave her home, she is forced to go to places she does not know to support herself and find clients. She can no longer follow her HIV treatments in the same way since they are not available outside the Island of Montreal. When asked to comment on the situation, Martine tells us, simply, "They are about to ask me to walk on my hands."

conditions that represent a danger to survival

resentment and incomprehension

Marie-Eve Sylvestre :

[In front of camera, then as voice-over as the text below is displayed on screen]

From violation to violation and from failure to appear to failure to appear, Martine will have committed a total of seven infractions against the administration of justice for two main offences, and will have spent 85 days in detention.

A vicious circle, a cycle that spins

Marie-Eve Sylvestre:

[In front of camera]

Martine's story is far from exceptional. This is just one of many examples of unfair and discriminatory practices within the criminal justice system. That is why I do the research I do.

[Subtitle]

Research in law gives us a better understanding of the complexity of these issues and allows us to build bridges between different perspectives

Marie-Eve Sylvestre:

[In front of camera]

I subscribe to a knowledge-finding process that works for and with marginalized people who are directly concerned by the problems that are being exposed, and I meet with the judicial actors – be it the judges, the prosecutors, the police – to show them the results of the research – this systemic portrait that they lose sight of in daily life when they are called upon to treat files on an individual basis – in the hope of helping them to modify their practices.

[Subtitle]

Why is research in law important?

Marie-Eve Sylvestre:

[In front of camera, with text below appearing beside her]

My research is important because, unfortunately, the criminal justice system is often the first, if not the only system to be called upon to respond to social problems in our society, and it is often very poorly equipped to do so. The project with the Health and Social Services Commission allowed us to document the extent to which First Nations in Quebec were overrepresented in the criminal justice system. There was overuse of imprisonment in their case. We are talking about five to six times more prosecutions for people in First Nations communities than outside the province, and we demonstrated how the judicial debt they accumulated and their return to imprisonment and incarceration were counterproductive to their rehabilitation and the steps they were taking.

Research allows us to see:

the limits of the system

the overrepresentation of Indigenous peoples in the criminal justice system

the overuse of imprisonment

instances of judicial debt
the inaptitude of the penal responses

[*Subtitle*]

Social innovation necessitates working directly with other disciplines and different methodologies

Marie-Eve Sylvestre:

[In front of camera]

To carry out my work, I rely on an interdisciplinary alliance with researchers from other disciplines, such as criminology, social work and geography. I borrow from different methodologies, including mixed methods of both legal analysis and qualitative and quantitative methodologies; since we are trying to highlight systemic practices, we frequently need statistics to be able to demonstrate that.

[*Subtitle*]

Social innovation necessitates a broad understanding of environments of practice and the overall functioning of the system

Marie-Eve Sylvestre:

[In front of camera as examples of research articles are displayed beside her]

I conceive my research in a very local way – a way that is rooted in practice settings, and as part of my research, we do case studies on different urban areas, such as Montreal, Quebec City, Val d'Or, as examples from Quebec, but also Vancouver and other cities, including Ottawa. And there is an advantage of being able to compare, so it's basically – first, we get a deep understanding of local practices, and then we can see the emergence of major trends in the administration of justice, in judicial practices that have local roots, but that have implications that are, I would say, national and more global.

[*Subtitle*]

Social innovation necessitates working directly with communities by using methodologies that allow us to incorporate their voices

Marie-Eve Sylvestre:

[In front of camera]

So, the research project with the Atikamekw Nation has allowed us to showcase traditional conflict resolution practices and knowledge. These have allowed us to demonstrate the full strength of the Atikamekw Nation, specifically in terms of how to deal with issues of violence in communities, as well as the harm done by the judicialization of social problems within communities.

[*Subtitle*]

Impacts of the research

Marie-Eve Sylvestre:

[In front of camera]

Over the past 15 years, our research has contributed directly to law reform in Quebec and Canada, for example with respect to the judicialization of homelessness, by leading to a moratorium on imprisonment for non-payment of fines in three Quebec cities, but also by changing the sentencing practices for Indigenous people, for example.

Marie-Eve Sylvestre:

[In front of camera, with text below appearing beside her]

So, what I would hope for for the future of research on the regulation of marginalized people is nothing less than the implementation of large-scale projects that allow us to reflect on durable solutions to social problems, that will put an end to incarceration for non-payment of fines, in particular, but also to punitive practices, and that will promote dejudicialization, decriminalization and sustainable and preventive community responses to social problems.

Research opens new horizons towards

Large-scale inquiries

Spaces for reflection

Sustainable solutions to social problems

The end of the incarceration of poverty

Dejudicialization and decriminalization

Community responses

Preventative responses

[Subtitle and text]

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