

**LAWFEMME:**  
**CFLS NEWS**

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**FORUM ON THE CRIMINALIZATION OF  
YOUNG WOMEN**  
Student Research, July 2002

In July, the Centre for Feminist Legal Studies hosted a forum in which four UBC women law students presented research on the treatment of girls in different areas of the justice system. In attendance were forum editor Professor Christine Boyle, Professor Susan Boyd, Professor Marilyn MacCrimmon, visiting professor Sharon Cowan, and

Annabel Webb, an advocate with Justice for Girls.

**CHARGES**

Sara Fairbridge (Law II) discussed the offences with which girls are being charged, and brought up some of the research problems encountered: reported cases tended to be for serious or violent crimes, while the vast majority of charges,

and unreported judgments, were for lesser offences.

**STATEMENTS**

Kat Kinch (Law II) looked at the statutory requirements of police when obtaining a confession from a girl suspect. The common law

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**JUSTICE FOR GIRLS:**

**Advocating for Street-Involved Girls**

**By Patricia Cochran, Law II**

Justice for Girls is a non-profit organization promoting justice, equality and support for low income and street-involved teenage girls who have experienced violence. This fall, Patricia Cochran (Law II) and Kat Kinch (Law II) are collaborating with Justice for Girls to conduct a feminist analysis of the new Youth Criminal Justice Act. Combining statutory interpretation

with the extensive experience and knowledge of researchers at Justice for Girls, we are attempting to create a position paper that will highlight the impact of the new Act on young women. For example, under the new Act, there is a presumption that girls as young as 14 will be sentenced as adults if they are convicted of an indictable offence for which an adult could be sentenced to two years in prison (s. 62).

In a context in which health and welfare services for young women are inadequate or non-existent both in and outside of the corrections system, this measure has the potential to impose the harshest punishments on those who are most vulnerable. Through a feminist analysis of the new Act, we hope to bring the safety and well-being of young women to the forefront of the debate.

**CFLS NEWSLETTER:**

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## THE POVERTY AND HUMAN RIGHTS PROJECT: Activity Update

SUBMITTED BY PATRICIA COCHRAN

Investigation of recent changes in British Columbia has revealed that many of the government's actions have important implications for women's rights and for Canada's compliance with its obligations under CEDAW.

The Poverty and Human Rights Project is an initiative of the Canadian Human Rights Reporter in collaboration with the Centre for Feminist Legal Studies. The Project is dedicated to producing research, analysis and discussion of poverty as a human rights issue. One strategy to promote the rights of people living in poverty is through international human rights instruments. To this end, researchers for the project have spent the past several months analyzing British Columbia's compliance with the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) in light of recent changes to B.C.'s social service and judicial systems. Canada's compliance with CEDAW will be evaluated in January of 2003, and non-governmental

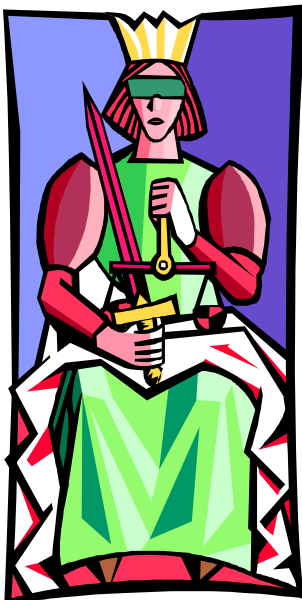
organizations have the opportunity to present their views and information. The Poverty and Human Rights Project will present its analysis in this forum.

Investigation of recent changes in British Columbia has revealed that many of the government's actions have important implications for women's rights and for Canada's compliance with its obligations under CEDAW. For example, Article 3 of CEDAW states:

"States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men."

In B.C., under the new social assistance system, employable single parents on social assistance will be expected to seek work once their youngest child turns three (formerly seven). This new policy is in violation of Article 3 of CEDAW, because it will discriminatorily worsen the position of thousands of women based on the uneven and gendered distribution of poverty and child care work. Further, recent government measures will make it even more difficult for single mothers to obtain paid employment due to dramatic reductions in eligibility for child care subsidies.

Examples such as this show the importance of raising women's poverty as a human rights issue and call for Canada to make a stronger commitment to its international human rights obligations.



### SECOND INTERNATIONAL CONFERENCE ON GENDER, SEXUALITY AND LAW

Three UBC feminist faculty members attended this conference at Keele University in England, June 28-30, 2002. Annie Rochette presented her paper on international environmental law: "On the way to Johannesburg: Some Ecofeminist Thoughts".

Susan Boyd and Claire Young presented their paper "Images of Feminism: Child Custody Law Reform Debates of the Late 20<sup>th</sup> Century". They also participated in a roundtable discussion "In Memory of Marlee Kline", which explored and celebrated the work and leg-

acy of UBC law professor Marlee Kline, who died in November 2001, in relation to both teaching and research. Several former students of Marlee's participated in the roundtable discussion.

## TO SERVE AND PROTECT: PIVOT LEGAL SOCIETY RELEASES REPORT ON POLICING IN THE DOWNTOWN EASTSIDE

The following is excerpted from [www.pivotlegal.org](http://www.pivotlegal.org):

Entitled *To Serve and Protect*, a report prepared by Pivot Legal Society examines whether the Vancouver Police Department (VPD) meets the high standard of conduct expected of our police force. It presents the results of a nine-month research program in which sworn legal statements regarding interactions with the VPD were obtained from 50 separate individuals. These statements, carefully documented and sworn by lawyers, present the direct personal experiences and observations of each individual.

### Summary of the Report's Findings:

The results of this research are both startling and disturbing. Each of the 50 statements report conduct by Vancouver police that meets the legal definition of abuse of authority. The statements contain descriptions of torture, beatings, unlawful detention, illegal strip searches, illegal entry into homes, abusive language and the threatened use of "starlight tours" where the police transport people out of town without ever laying a charge. ...

The full picture includes further sworn reports of incidents in which members of the VPD illegally confiscated money and possessions

without charges, used profane and abusive language, and unlawfully entered homes without a warrant or reason to believe that a crime was being committed.

It is important to emphasize that in the vast majority of reported incidents a criminal charge was never laid against any of the police victims. The police actions, therefore, took place entirely outside the formal criminal justice system and beyond the scrutiny of the courts.

The conclusions reached in this report are corroborated by research conducted by two additional independent agencies. In 2001, the Vancouver Injection Drug Users Study (VIDUS) and the Prostitution Alternatives Counseling Education Society (PACE) each surveyed intravenous drug users and sex trade workers in Vancouver regarding their interactions with police. Significant numbers of participants in each survey reported experiences of police abuse of authority. In the VIDUS study, 64% of participants reported being "jacked up", or arbitrarily detained and searched, by police, and one in six reported being physically harmed.

It must be pointed out that many, but not all, of the victims of these incidents are residents of the Downtown

Eastside, Canada's poorest postal code and a neighbourhood mired in a terrible public health emergency. Poverty is not a crime, and the fundamental rights stated in the Charter of Rights and Freedoms are granted to everyone in Canada regardless of socio-economic status, disability or place of residence. In Canada, everyone is entitled to both the benefit and the burden of the law. The selective infliction of punishment on the most impoverished and marginalized members of our society corrodes that important democratic value, and fosters a system of police enforcement dependent on whim and prejudice, not the rule of law.

The implications of a police force relying routinely on illegal acts to impose their authority reaches far beyond the individual victims and affect us collectively as a society. When any member of the police considers themselves to be above the law, it only corrodes society's faith in the integrity of the police force but also the moral authority of the police themselves.

Note: Pivot Legal Society is calling for a public inquiry, improved monitoring of enforcement actions, and effective access to a complaints process. The complete report and affidavits are available at [www.pivotlegal.org](http://www.pivotlegal.org)

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CFLS Coordinator Katrina Pacey was one of the coordinators of the PIVOT Affidavit Program. She also assisted the lawyers in collecting the affidavits, and was an author on the report.

## CATHERINE DAUVERGNE: INTERVIEW WITH A LEGAL SCHOLAR

By Cheryl Conibear

One of Catherine Dauvergne's major areas of research currently is studying illegal migration and globalization in the Asia Pacific.

Dr. Catherine Dauvergne is a new addition to the Faculty of Law at UBC. She is holds the Canada Research Chair in Migration Law, and conducts extensive research and writing in immigration and refugee law, and other public law areas. Dauvergne comes to the Faculty from teaching at the Faculty of Law at the University of Sydney in Australia. I spoke with Catherine in October to ask her about her research and teaching, the experiences that have shaped her interests, and her views on how her personal feminism engages with her work as a legal scholar.

Catherine is charming, brilliant, hilarious, and thought-provoking all at once and effortlessly. She spoke with equal passion and insight about humanitarianism and migration, her daughter's feelings about having to leave her home, and inappropriate information sources relied upon by refugee tribunals to refuse to grant refugee status to gay and lesbian applicants. Interviewing Catherine seemed like having tea with a friend, and I found myself asking her for career advice and research tips before realizing I was there to find out about her. But I did focus, and Catherine told me about some interesting parts of her life.

### Her Story

After completing an Honours B.A. and an M.A. in political science from Carleton University, Catherine came to Vancouver where she did her LL.B. at UBC Law School. On graduation, she clerked for Chief Justice Lamer at the Supreme Court of Canada. In 1995 Catherine moved to Australia to continue her education, attaining a Ph.D. in Law from Australian National University. Her thesis topic was "Border Law: Migration and Identity in Immigrant Nations." Catherine then taught at the University of Sydney's Faculty of Law, teaching in public law and legal theory areas. In the summer of 2002, Catherine, along with her partner and their three small children, moved here to Vancouver to begin her new position at UBC. After a harrowing move across the world, including many lost belongings, a moving company's much-belated delivery and children who remain incredulous about the wisdom of moving at all, Catherine is pleased and relieved to be living and working in Vancouver.

### Her Work

Catherine's recent legal research and writing focuses mainly on migration law, including, for example, im-

migration and refugee law and the implications of globalisation on the regulation of migration. She is the author of a number of articles in leading refereed journals internationally.

One of Catherine's major projects is a project studying illegal migration and globalization in the Asia Pacific. It considers how "globalization has been analyzed largely as an economic phenomenon with a strong technological component. Accounts of the phenomenon of globalization point to increases in the movement of capital and knowledge over the past two decades, while the movement of people has not proceeded at the same pace. However, there is little analysis of how the movement of people contributes to our understanding of the globalization phenomenon." Catherine is examining how restricting people's movement through migration, refugee and nationality laws fits within the phenomenon of globalization. She is using case studies of migration law in the Asia Pacific region because of "extensive population movement and the diversity of associated legal regimes." Catherine's goal with the project is to contribute to

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## Catherine Dauvergne continued

the understanding of the continuing vitality of nation-states, to the role of the law in supporting state sovereignty, and to an understanding of how poorer and richer states interact through increasing globalization. Eventually, Catherine plans to publish the results of this work in a book.

Catherine is also working on an ongoing collaborative research project with Jenni Millbank, a legal scholar at the University of Sydney's Faculty of Law. Their work focuses on analysing refugee tribunal handling of claims on the basis of sexual orientation in Canada and Australia. The project brings together two of their disparate, yet intersecting, areas of interest in a timely and significant study.

### Feminism

When asked how feminism intersects with her work and her life, Catherine Dauvergne answers simply that she is a feminist, and that feminism informs everything she does. She explains that feminist legal theory was well-established when she went to law school and therefore, while her work does not always focus specifically on issues of interest to women or to feminists, it is founded in part upon feminist theory and feminist methodologies. Her examination of the relationship between nation and identity, for example, comes out of the feminist tradition of critical legal scholarship. Further, she notes that she is attentive to gender and to feminist concerns in her

work. In her analysis of the refugee tribunal handling of claims based on sexual orientation, for example, she notes the many differences in the issues currently and historically facing gay male refugee claimants as compared to lesbian refugee claimants. That her critical analysis includes a consideration of the implications of gender is a part of all of her thought as a legal scholar and a feminist.

Catherine Dauvergne is a warm and fascinating woman, and certainly a wonderful addition to the UBC Faculty of Law as well as Vancouver's feminist legal community generally.

## *Child Custody, Law and Women's Work* A Book by Professor Susan Boyd

Professor Susan Boyd's book *Child Custody, Law, and Women's Work* was published recently by Oxford University Press Canada. The book will be launched the evening of Tuesday, November 26<sup>th</sup>, 2002, 7:30 p.m., at Women in Print, 3566 West 4<sup>th</sup> Avenue (near Dunbar St.). All are welcome.

### Summary:

Reform of child custody law has been a controversial

topic in Canada since the mid-1980s. In *Child Custody, Law, and Women's Work* Susan Boyd argues that debates over child custody issues are rooted in gender-based dynamics within the family and society. She examines how custody law has evolved over the past two centuries, with a focus on the relationship between the law and gender relations—in particular, the power relations between women and men in the heterosexual

family; the dominant ideologies about motherhood, fatherhood, and family; and the differential value attributed to men's and women's work, in both private and public spheres. Boyd questions the extent to which reform of child custody law on its own can lead to effective social transformation of parenting. She suggests that custody law reform must take account of mothers' continuing disproportionate responsibility for children.

Join Professor Susan Boyd to launch her book *Child Custody, Law and Women's Work*, Tuesday November 26, 7:30 p.m., at Women in Print.



## FORUM ON THE CRIMINALIZATION OF YOUNG WOMEN Continued

definition used for duress in the Young Offenders Act was found to be particularly problematic in the case of *R. v. O.N.E.*

### TRANSFERS TO ADULT COURT

Patricia Cochran (Law II) dealt with applications for transfer to adult court, drawing out the factors used by a court to determine an accused's maturity, and asking about the gendered im-

plications of the factors given weight.

### SENTENCING

Rebecca Smyth (Law III) examined the trends in sentencing young women, with special attention to the issue of fetal alcohol syndrome. She dealt with the sentencing decisions and with the availability of specialized programs in the corrections system.

### OUTCOME

Following the forum, the students revisited their research and completed written drafts with the knowledgeable editing assistance of Christine Boyle. The written forum has been submitted to the Canadian Journal of Women and the Law.

## FACULTY OF LAW NOTES OF INTEREST

### MARLEE G. KLINE ESSAY PRIZE WINNER: JAMALA MACRAE

In the spring of 2002, the Centre for Feminist Legal Studies awarded the first annual Marlee G. Kline Essay Prize. The winner of the Prize was Jamala MacRae, a law student then in her second year at UBC Law School. Jamala's winning paper was written for a seminar, Topics in Constitutional Law, taught by practitioner

Dr. Gwen Brodsky.

The Marlee G. Kline Essay Prize was created in 2002 by the CFLS to honour Professor Kline's contributions to feminist research and analysis. In 1989, Professor Kline wrote:

"The various intersections between gender, race, class, sexual orientation, and other

differentiating characteristics, affect *how* and *when* all women experience sexism."

The award will be given to one LL.B. student each academic year for an essay addressing the themes identified in Professor Kline's quotation in relation to a topic dealing with law or legal regulation.

The winner of the  
Teaching Excellence  
Award is  
nominated and  
selected by  
law students at  
UBC Law School

### PROFESSOR CLAIRE YOUNG WINS TEACHING EXCELLENCE AWARD

Congratulations to Professor Claire Young, who was the winner of the 2001-2002 Teaching Excellence Award. Every academic year, law students at UBC Law School nominate members of the Faculty of Law for the annual Teaching Excellence Award. Candidates who

accept the nomination provide a personal statement, copies of course syllabi and other supporting documents. The candidates are then reviewed along with statements from the student nominators and statistical data from the professors' previous three years of stu-

dent course evaluations. The winner of the award is chosen by a committee comprised of students with some guidance from faculty. The winner of the Teaching Excellence award receives a Killam Award \$5,000 cash prize from the University of British Columbia.

**THE CENTRE FOR FEMINIST LEGAL STUDIES  
LECTURE SERIES  
SPRING 2002 SCHEDULE**

<b>Dr. Gwen Brodsky</b> Practitioner and Adjunct Professor, University of British Columbia	“Poverty and Human Rights”	Thursday, January 9
<b>Dr. Wendy Chan</b> Assistant Professor, SFU School of Criminology	“Undocumented Migrants and Bill C-11: The Criminalization of Race”	Thursday, January 16
<b>Dr. Melina Buckley</b> Lawyer	“Remedying Women’s Inequality: Time to Think Big”	Thursday, January 23
<b>Judy Parrack</b> B.C. Human Rights Tribunal	Topic TBA	Thursday, January 30
<b>Dr. Ljiljana Biukovic</b> Professor of Law, University of British Columbia	“New Rules for the Club: The EU Response to the International Problem of Human Trafficking in the Candidate Countries”	Thursday, February 6
<b>Libby Davies</b> NDP Member of Parliament	“Federal Criminalization of Sex Workers”	Thursday, February 13
<b>Carol Rosset</b> Lawyer, LSS	Topic TBA	Thursday, February 27

All lectures in  
the CFLS Lec-  
ture Series are  
held at the UBC  
Faculty of Law  
Room 157,  
12:30 to 2 pm

Katrina Pacey  
is the Student  
Coordinator  
of the CFLS  
Lecture Series.

**CASCADIAN FEMINIST LAW PROFESSORS**

A new group called Cascadian Feminist Law Professors, which includes law professors from UBC, SFU, the University of Victoria, Seattle University, and the University of Washington, met for the first time at Seattle University’s

Faculty of Law in May 2002, to discuss research, teaching, and other shared interests. The second meeting was hosted by UBC’s Faculty of Law November 1<sup>st</sup> and 2<sup>nd</sup>, 2002.

**A new group of feminist law professors meet to discuss research, teaching and other shared interests.**

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<b>Address</b>
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**Don't Forget the  
Centre for Feminist Legal Studies  
Book Launch & Celebration  
January 30, 2003  
6:30 pm**

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You may become a Friend of the Centre for \$25, which will entitle you to notices of Centre events, copies of our newsletter, and access to the resource centre and library.

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Thanks!

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