

LawFemme: CFLS News

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Chat with New Feminist Faculty— Professor Cristie Ford

By: Tracy Knight, Law III

Bright and early on Tuesday morning I walked into Cristie's office fifteen minutes late, slightly frazzled, and completely ignorant of her notable accomplishments spanning the eight years that she has been a legal professional. Cristie, however, is gracious and humble while sharing some of her amazing experiences and insights.

Cristie joins the UBC faculty of law this year from Columbia University in New York. Having completed her LL.M. in 2000, she practiced at Davis Polk & Wardwell, a large downtown New York firm. Sensational and famous cases that land on our headline news are reality and everyday work for lawyers at Davis Polk. Cristie mentions some cases that she worked on including securities litigation, white collar defence, cases involving stock front-runners, the Arthur Anderson case (Enron), and Global Research Analysts Settlement (2003). The firm also worked on the Martha Stewart / ImClone case. Wow!

Along with working amidst these high-profile cases at Davis, however, Cristie also spent time on pro bono work, most of which were political asylum cases. Fascinated, I sat and listened to an overview of a client's case: A feminist organization contacted Cristie to help a young woman from Togo, Africa. This woman was the second wife of a well-known government official, who, after some political instability, became a tar-

get of violence. When her husband was granted asylum he brought his first wife over to the U.S. to join him. However, since the U.S. does not recognize polygamy, the second wife and her four children were prevented from entering the country and left to fend for themselves in an extremely hostile and dangerous environment. Cristie took the case and through a separate proceeding was able to obtain asylum for her client. She smiles as she concludes with "they are doing well; she is a very lovely person."

The asylum cases that Cristie worked on also provided an incredible opportunity for her Columbia law students. Cristie, while practicing, taught a Columbia Asylum Workshop. She mentored and supervised law students, helping them research, write briefs, and work through cases. Throughout our discussion, Cristie expresses her appreciation and belief in mentorship. It seems this class may have provided a way for her to take part in mentorship – no doubt benefiting her very fortunate students.

Our discussion moved on to different experiences, particularly those that have shaped her feminist convictions. Her perceptions have been moulded through legal practice, clients' experiences, her research, and by watching dynamics of roles in corporate structures. For instance, she states "there aren't a lot of women practising securities litigation at the senior associate and partner level."

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Chat with Cristie Ford Continued....

Some of the obstacles are easily recognized: no provision for part-time work; difficulty inspiring confidence in clients who are scared and want the experienced grey-haired male partner to take their cases. However, Cristie's scholarly activity allowed her to reflect upon some of the more intricate aspects of "organizational dysfunction" and how the ways of doing things in complex work environments are unjust to marginalized people, including women. She explained to me that there is a connection between corporate organization and individual's vulnerability. For example, marginalized people are easy targets as scapegoats for organizational mishaps.

Another interest that contributes to Cristie's continually developing feminist commitment is public decision-making theory. Her positive belief in deliberative processes was clear when she commented, "it helps people get along when they have to make decisions together and it becomes necessary to find common ground." However, challenges arise within deliberation when differences of power are not accounted for. "People are often marginalized and silenced." Her writing seeks to discuss how these deliberation



Professor Cristie Ford

processes affect women.

I had a lovely time sitting in Cristie's office, hearing about her successes. After three years of practice, Cristie returned to Columbia as an Associate in Law – a 2-year program designed to give teaching experience and allow time for research and scholarly activity.

Currently, Cristie is a J.S.D. candidate. This winter, Cristie will also add mother to her list of honours, which means further adjustment.

"New York was great, but the lifestyle in Vancouver is amazing." If time permits, outdoor activity is on the agenda. Excitement accompanies this life transition: working with a new faculty, meeting and mentoring more students, and seeing Dean Bobinski's vision formulate into a reality. I look forward with enthusiasm to learning more about Professor Cristie Ford, reading some of her work, and watching her grapple with feminist issues

in business law.

Professor Cristie Ford will be teaching Administrative Law and Securities this year and can be found in office 229 of the Curtis Building.

2005 MARLEE KLINE LECTURE IN SOCIAL JUSTICE: PROFESSOR DIDI HERMAN

The annual Marlee Kline Lecture in Social Justice will be held Monday, October 24, 2005 at the Faculty of Law, University of British Columbia.

The lecture will be given by Dr. Didi Herman, Professor of Law and Social Change at Kent University, England. Her topic is: "'An Unfortunate Coincidence': Jews and Jewishness in English Courts."

The Lecture will begin in the early evening and will be followed by a reception.

This Lecture honours the memory of Marlee Gayle Kline, a member of the UBC Faculty of Law from 1989. Professor Kline died in 2001 after a lengthy and determined struggle with leukemia. Her work on feminist legal theory and critical race theory, child welfare law and policy, law's continued colonialism, and restructuring of the social welfare state is internationally acclaimed. This lectureship not only recognizes Professor Kline's rich contribution to the law school community but also reflects her belief in the central role social justice concerns must play in legal education and law.

NAWL and West Coast LEAF (2005) Conference: Women's Rights & Freedoms – 20 Years (In) Equality

By: Audrey Chan, Law III

The first time I thought seriously about the *Canadian Charter of Rights and Freedoms* was when I saw a copy of the *Charter* hung lopsided on a classroom wall, implying the on-going “imbalance” and inequalities that still existed despite its existence. So it was, I think, providential that on the 20th anniversary of section 15 of the *Charter*, I was lucky enough to attend the NAWL and West Coast LEAF Conference, which inspired, challenged, and provoked.

To celebrate the 20th anniversary of the equality requirements in the *Charter*, West Coast Legal Education and Action Fund (West Coast LEAF) and the National Association of Women and the Law (NAWL) hosted a national conference in Vancouver from April 28 to May 1, 2005 at the Hilton Vancouver Metrotown Hotel. The focus of the Conference, entitled *Women's Rights & Freedoms – 20 Years (In) Equality*, was section 15 of the *Charter*, which forms a part of the *Constitution of Canada*, and prohibits discrimination by any level of government on the basis of race, national or ethnic origin, colour, religion, gender, age, disability, sexual orientation, and other grounds. The Conference provided opportunities to reflect on as well as celebrate the struggles and achievements by women. It brought together hundreds of delegates from across Canada.

A glance at the conference program reveals much about the high calibre of conference presenters, the wide

range of issues to which activists and participants in the women's movement have contributed and committed, and the innovativeness of women. During the three days over 44 workshops were offered covering everything from women in the workplace; violence against women; Aboriginal women and the *Charter*; poverty and housing; systemic equality; same sex marriage; rights of women with disabilities; discrimination; the criminalization of girls and women; to reproductive rights; law reform and more.

Section 15 of the *Charter* prohibits discrimination by any level of government on the basis of race, national or ethnic origin, colour, religion, gender, age, disability, sexual orientation, and other grounds.

In addition, the conference featured: an opening reception honouring women judges in B.C.; a rousing address by Shelagh Day at the opening ceremony; 3 plenary sessions (History of Equality Rights; Still an Equality Deficit; Women's Court Releases Decisions, which discussed some of the key Supreme Court of Canada judgments); as well as various lunch-time “feminist performances.” The Gala Dinner featured a keynote address by Judge Corrine Sparks, who became the first African-Canadian female to serve on the judiciary in Canada when she was appointed to the Nova Scotia Family Court in 1987.

As a first-time conference attendee, I also found the “action workshop” a very useful and practical way to conclude the conference. The action workshops allowed conference participants to develop strategies on

various current topics in a timely way to ensure women's equality rights are furthered.

Thanks to the thoughtfulness of the conference organizers (who appreciated the plight of cash-strapped students like myself!), I was able to attend the conference free of charge by volunteering in various roles. And I felt very fortunate to have had the opportunity! It would be hard to summarize the wealth of information and wisdom I gathered from workshop presenters and fellow conference participants; but at the very least, the conference inspired, challenged, and provoked me. As a student who still has much to learn about the history and continuing struggles for women's substantive equality, it was inspiring for me to come together with the great number of (mainly) women of diverse backgrounds, perspectives and experiences during the conference, and to listen to and share their stories and insights. Sometimes, what they said challenged my identity and assumptions. So many times during the conference, I found myself confronting the limitations of my own awareness.

It would be hard to summarize the wealth of information and wisdom I gathered from workshop presenters and fellow conference participants; but at the very least, the conference inspired, challenged, and provoked me.

The conference was also extremely thought-provoking in other ways. In particular, the spoken poetry and readings rendered by Ros Salvador, Proma Tagore and Robin Taylor were a very powerful experience for me. Among other topics, their poetry allowed them to share their experiences and thoughts on race and racism - a

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NAWL and West Coast LEAF Conference Continued...

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topic which, as an ethnic and immigrant young Canadian woman, I certainly appreciated an opportunity to reflect on.

It has been 10 years since I began to gain consciousness of the social inequalities that exist in our lives and it has been 20 years since the ideal that “*every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination...*” has been enforced within the Canadian Constitution. One of the questions that permeated my thoughts during the conference was: why do the inequalities still exist and what are the inequalities that “we” have yet to uncover? I would not have expected the conference to provide me with a definitive answer to that question; yet, in the end, the conference made more meaningful the following quote that I encountered during one of my classes this year:

The multiple consciousness I urge lawyers to attain is not a random ability to see all points of view, but a deliberate choice to see the world from the standpoint of the oppressed. That world is accessible to all of us. We should know it in its concrete particulars. We should know of our sister carrying buckets of water up five flights of stairs in a welfare hotel, our sister trembling at 3 a.m. in a shelter for battered women.... The jurisprudence of outsiders teaches that the details and the emotions they evoke are relevant and important as we set out on a road to justice. These details are accessible to all of us, of all genders and colours. We can choose to know the lives of others by reading, studying, listening, and venturing into different places. (M. Matsuda, “When the First Quail Calls: Multiple Consciousness as Jurisprudential Method” (1989) 11 Women’s Rights L. Rep. 7 at 9).

Social Sciences Research Network: Women and Gender Law

The Centre for Feminist Legal Studies has been working with the social sciences research network (SSRN) to set up a Women and Gender Law Abstracts journal on that network. SSRN (see www.ssrn.com) is an electronic service that allows scholars to post both published works and works-in-progress. Hopefully, the new Women and Gender Law Abstracts journal will provide feminists with a new electronic forum for feminist work, and will promote the work of women scholars. The advisory board of the new journal includes scholars from Canada, the U.S., the U.K. and Australia.

THANK YOU!!

The Centre would like to express our gratitude for the generous donations to our Resource Library from Professor Emeritus Marilyn MacCrimmon and Associate Dean Christine Boyle. The CFLS Library is a resource available to students, faculty, and community members.

The CFLS Resource Centre Database can be accessed online:

<http://faculty.law.ubc.ca/cfls/framesets/centre%20home-frameset.htm>

Centre for Feminist Legal Studies



UBC Feminist Legal Studies invites you to:

CELEBRATE WOMEN IN LAW

**COME AND MEET OLD FRIENDS
MAKE NEW FRIENDS!**

Join UBC Feminist Legal Studies in celebrating six decades of women in the law at the University of British Columbia Faculty of Law.

Find out about the diverse and exciting projects of the Centre for Feminist Legal Studies and the Women's Caucus. Meet the next generation of women in law and renew your connection with the Women's Community at UBC!

University of British Columbia Faculty of Law

Friday, September 30th

3:30p.m.-5:00p.m.

Contact the CFLS to RSVP or for more information:

(604) 822-6523

or at

cfls@law.ubc.ca

Professor Catherine Dauvergne will discuss her Status of Women Canada Project, Gendering Asylum. This two-year interdisciplinary project provides a gender based analysis of Canada's immigration legislation.

Professor Margot Young will talk about her work as a member of the Social Rights Accountability Project. More specifically, she will discuss efforts to present an NGO equality perspective at United Nations periodic reviews of Canada's compliance under various international human rights agreements.

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Find out about the CFLS and Women's Caucus, annual events, as well as receive an electronic version of *LawFemme*, the CFLS Newsletter, by letting us know how to contact you.

Just email us with your name, email address, phone number and mailing address at cfls@law.ubc.ca!

We look forward to seeing you!



For more information on the event, or Feminist Legal Studies, please contact us at:

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Double Discrimination: The Effects of the *Health and Social Services Delivery Improvement Act* on Immigrant Women

By: Kylie Walman, Law III

The *Health and Social Services Delivery Improvement Act* (“Act”) was passed by the British Columbia Provincial Government as Bill 29 in January 2002 and has affected many immigrant women working in the health care sector. Not three months after being passed, a lawsuit was filed on behalf of six bargaining associations and individual employees, challenging the Act’s constitutional validity.

The Act applies to collective agreements between the provincial government and various health sector bargaining associations and concerns non-clinical services. The effect of the legislation is to circumvent those agreements by allowing the government, through the Health Employers Association of British Columbia, to unilaterally impose conditions upon future and existing agreements. Of primary concern is the legislation’s provision allowing out-sourcing of service delivery. An essential component of collective agreements in the health sector is the prohibition on contracting out of services, provided by the various union employees, thereby protecting guaranteed wages. In allowing private out-sourcing the government has rendered these provisions and consequent wage agreements, irrelevant.

At the British Columbia Supreme Court, the plaintiffs argued that the Act violated ss. 2(d), 7 and 15(1) of the *Canadian Charter of Rights and Freedoms*. According to the plaintiffs the Act infringed their freedom to join, establish and

maintain a union, contrary to s.2(d) and infringed their right to security of the person in allowing termination of employees outside of the collective agreements and not in accordance with fundamental justice.

With regard to the argument on s.15(1), the plaintiffs argued that those primarily affected by the Act are women, due to the fact that the services targeted are provided by female-dominated sectors.

With regard to the argument on s.15(1), the plaintiffs argued that those primarily affected by the Act are women, due to the fact that the services targeted are provided by female-dominated sectors. Garson J. upheld the constitutionality of the Act and held that there was no distinction between the plaintiffs and the comparator group, other health sector employees, performing clinical services. In his decision, Garson J. stated: “the distinction was between different sectors within the broader public sector. It was not based upon the personal characteristics of the employees within these sectors.”

At the Court of Appeal, the plaintiffs argued that Garson J. erred in his decision on ss. 2(d) and 15(1) of the Charter. The appeal was dismissed and leave to appeal to the Supreme Court of Canada, on both constitutional issues, was granted in April of this year.

Although the argument on freedom of association will likely be the focus at the Supreme Court of Canada, due to the importance of providing clarity in this contentious area of law, the equality issue will be imperative in shedding light on the devaluation of

women’s work in the health care system. At both the BC Supreme Court and the Court of Appeal it was recognized that the Act targets only the most female dominated sectors of the public service in which: 85% of Health Employees’ Unions members are women and 90% of BCGEU workers in the Community sub-sector are women.

Women in the health services sector have worked very hard to gain the benefits of unionized employment and negotiated contractual agreements. These agreements provide a guarantee of pay equity and job security. In legislating its own ability to void provisions of these agreements, the government of B.C. has essentially stated that these women do not deserve the protection of their negotiated agreements. In their statement of claim, the plaintiffs noted that, “[t]he legislation sends a clear message to health care workers – you are not worthy of the benefit of the agreement you have negotiated. You do not deserve your wages, adjusted by pay equity and you do not deserve employment security.” Therefore, the plaintiffs argue that the Act, in providing less protection to the collective agreements of this sector of health

“The legislation sends a clear message to health care workers – you are not worthy of the benefit of the agreement you have negotiated. You do not deserve your wages, adjusted by pay equity and you do not deserve employment security.”

care workers, perpetuates the stereotype that the services provided are “women’s work” and thereby less worthy of value and protection.

Women remain disadvantaged in the work force, and the ability of governments to unilaterally change contractual agreements of unions representing primarily women workers is a signal that alleviation of this inequality is not a priority for our govern-

ment. A further aspect of the equality issue, within this context, concerns the large number of immigrant women within these unions and the intersection between inequality of women in health services and within Canada's immigration system.

Approximately 27% of the health care sector's members are immigrants and many of these are Filipino women who have come to Canada through Citizenship and Immigration Canada's Live-In Caregiver Program. According to a study done by the Philippine Women Centre of B.C., over 2000 Filipinos leave their country everyday to find work abroad and over 50% of those are women. Moreover, a great percentage of these women have been trained in the Philippines as nurses. However, due to Canada's stringent requirements to immigrate as a skilled worker, most notably the requirement to have a certain amount of available funds upon entering the country, these women choose instead to apply for the live-in caregiver program.

Many of the women entering the program view it as a fairly easy route to attaining permanent resident status and going back to their chosen profession. However, due to a lack of regulation, the program is fraught with abuse. Many women suffer sexual and physical abuse at the hands of their employers, are forced to work illegal hours without compensation and are taken advantage of by employment agencies. Moreover, it can be very difficult for women to fulfill the 24 month requirement within three years, particularly if they have found themselves in an abusive employment situation that they were forced to leave. If these women are not able to quickly find a new employer they

may not be able to fulfill the requirement and will be forced to leave the country.

For those who do successfully complete the program and become permanent residents, many are still unable to pursue employment as nurses due to strict accreditation requirements set up by the Registered Nurses Association of British Columbia (RNABC). It is a lengthy

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and costly process for these women to gain the necessary qualifications to practise as nurses in B.C. Under the live-in caregiver program, employers are only required to pay minimum wage and it generally costs upwards of \$13,000 to fulfill the RNABC requirements. Moreover, as noted in the study conducted by the Philippine Women Centre of B.C., "most are here to support their families back home – so most of their pay goes there. Its an impossible cycle – the longer they remain at their jobs as Live-In Caregivers the more difficult it becomes to get accredited, but it's impossible to get accredited while being a live-in caregiver." Therefore, many women are unable to go from the live-in caregiver program to nursing positions and turn instead to jobs in the health services sector. This is an attractive option due to the benefits of union membership, including pay equity and job security. However, with the introduction of the *Act*, these women are losing all that they have gained through successful completion of the live-in caregiver program. With the loss of pay equity are moved further away from the ability to pursue their chosen profession.

"Its an impossible cycle – the longer they remain at their jobs as Live-In Caregivers the more difficult it becomes to get accredited, but it's impossible to get accredited while being a live-in caregiver."

Jim Quail, a lawyer at the British

Columbia Public Interest Advocacy Centre ("BC PIAC"), hopes to demonstrate this intersection and the significant effects of the *Act* on immigrant women within the health services sector, to the Supreme Court of Canada. BC PIAC is representing three women's organizations in applications to intervene at the Supreme Court of Canada, in support of the plaintiff unions. Participation of these organizations would provide the court with first hand examples of the experiences of women who have been discriminated against and whose work has been devalued by both the Canadian government, through the live-in caregiver program, and subsequently the government of B.C. through the *Act*.

Although the live-in caregiver program itself would not be considered by the Supreme Court of Canada, recognition of this intersection is crucial to an understanding of the level of disadvantage and marginalization of immigrant women within the health services sector, due to the *Act*. For women who completed the live-in caregiver program and secured a position within the health services sector, the *Act* reiterates the view that their work and skills are not important or valuable and they are simply a cheap source of labour. Moreover, the loss of guaranteed wages makes it more difficult for women to seek higher education or accreditation, thereby perpetuating their status in low wage jobs.

The case will be heard by the Supreme Court of Canada sometime in 2006 and a decision regarding the application

for leave to intervene will likely be handed down at the end of this year.

International Human Rights: Canada's Commitments Under the ICESCR and ICCPR

By: Lisa Phillips, Law II

As a signatory to the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR), the Government of Canada has committed itself to ensuring that all Canadians are able to fully enjoy the rights guaranteed under the Covenants.

This commitment binds all levels of government in Canada.

Some of the rights enumerated in ICESCR include the right to work freely chosen; fair wages and equal remuneration of work of equal value; the right to form trade unions; the right to social security; the right to be free from hunger; the right to education; and, the right to participate in cultural life. Article 2 of ICESCR provides that all of these rights are to be exercised without "discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status".

Under ICCPR, guaranteed rights include the right to self-determination; the right to life; the right to be free of cruel, inhuman or degrading treatment or punishment; the right to mobility; the right to be a person under the law; the right to freedom of thought, conscience, and religion; the right of peaceful assembly; and, the right to vote and run for office. Again, all signatories to the Covenant undertake to ensure full access to these rights without discrimination.

Associate Professor Margot Young, in concert with the Poverty and Human Rights Centre and under the auspices of the SSHRC-funded Social Rights Accountability Project, has been working on reports detailing aspects of Canada's failure to meet its obligations under ICESCR and ICCPR.

As with other United Nations human rights treaties, signatories (States Parties) are required to report periodically on their record of compliance. These reports are reviewed and

assessed by human rights committees established under the treaties. In 2005 and 2006, the United Nations Human Rights Committee and the Committee on Economic, Social and Cultural Rights will assess Canada's compliance with the rights guaranteed under ICESCR and ICCPR.

Associate Professor Margot Young, in concert with the Poverty and Human Rights Centre and under the auspices of the SSHRC-funded Social Rights Accountability Project, has been working on reports detailing aspects of Canada's failure to meet its obligations under ICESCR and ICCPR. As a research assistant, I provided research and drafting assistance for the reports. These NGO reports will be submitted alongside the federal government's and the provincial governments' reports in an effort to make certain that the most pressing human rights issues in Canada do not go unreported or underreported by the governments.

Some of the issues that the reports highlight include:

- The failure of provincial governments to ensure the adequate provision of civil legal aid
- The lack of national standards for Canada's social programs
- The tightening of eligibility requirements for Employment In-

surance

- The ability of the provincial governments to claw back the National Child Benefit Supplement from families who receive social assistance
- The inadequacy of social assistance rates Canada-wide
- Women's persistent economic inequality
- The government's inaction with respect to over 500 missing/murdered Aboriginal women

Separate reports were also drafted to detail the Government of British Columbia's observance of the key rights under both of these Covenants. The following government actions are documented:

- Reduced access to civil legal aid and courthouse closures
- The elimination of the British Columbia Human Rights Committee
- The elimination of the stand-alone Ministry of Women's Equality
- The repeal of the pay equity provisions in the British Columbia *Human Rights Code* that prohibited paying women less than men for work of equal value
- Social assistance rates cut and eligibility rules tightened
- Changes to the *Employment Standards Act*, such as the introduction of the six dollar "training wage" and the minimum two hour shift (reduced from four hours)

Government representatives travel to Geneva for a one day interview with the Committee. Members of

the NGOs represented by the reports along with some or all of the reports' authors will be present to lobby and emphasize the issues outlined in the reports. The Committees will later publish a list of recommendations and concerns about the government's actions and will review the progress Canada has made with respect to ensuring the full implementation of Covenant rights.

As one of the world's wealthiest nations, Canada ought to be held to the highest standard in its commitment to human rights and in particular, the eradication of poverty. Monitoring committees, such as those created by ICESCR and ICCPR, are effective ways to pressure federal and provincial governments to ensure that all Canadians enjoy fundamental human rights without discrimination.

2005-2006 CFLS LECTURE SERIES

**The CFLS Speaker Series is held each Thursday from 12:30-1:30 in Curtis Room 157
Bring your lunch—Everyone is welcome!**

September 22, 2005 :

Annabel Webb, Justice for Girls

“The Criminalization of Teenage Girls in B.C.”

September 29, 2005:

No Lecture, but please join us at the Centre's **Annual Open House** for to meet feminist faculty and students!

October 6, 2005:

Sandra Jakab, BC Securities Commission

“Forward Agenda - Women supporting Women in the Legal Profession”

October 13, 2005:

Alison Brewin will be discussing **West Coast LEAF** and their current work.

October 24, 2005: The Annual Marlee Kline Lecture in Social Justice

Professor Didi Herman

“‘An Unfortunate Coincidence’: Jews and Jewishness in English Courts.”

October 27, 2005:

Professor Janis Sarra, UBC Faculty of Law

“Race, Gender and Corporations”

November 3, 2005:

Fatima Jaffer

“Vancouver Custody and Access Support and Advocacy Association – Bill C-22 (Divorce Act)”

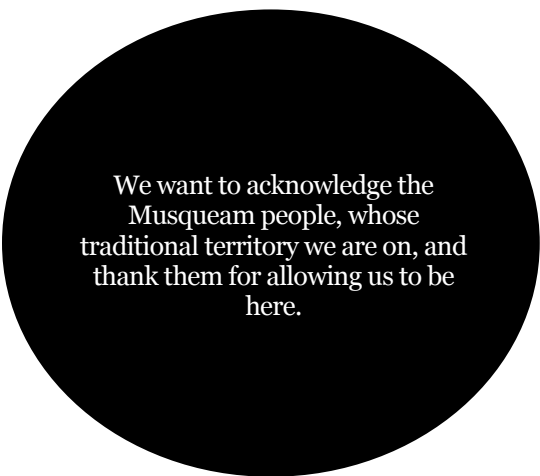
November 10, 2005:

Professor **Yolanda Cano Galán**, a visiting scholar from Universidad Rey Juan Carlos in Madrid (Spain), will be discussing her international research.

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