

Feminist Judgments

From Theory
to Practice

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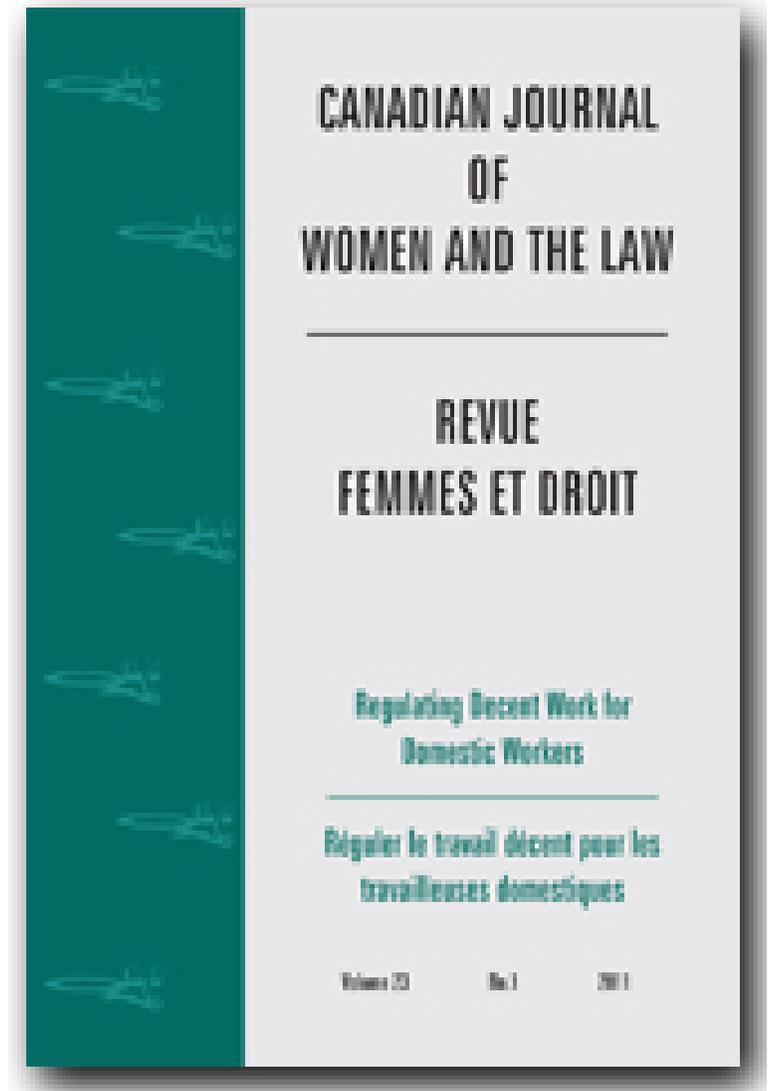
THE FEMINIST JUDGMENT PROJECTS

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Genesis

Women's Court of Canada

- Women's Legal Education and Action Fund (LEAF)
- Section 15 of the Canadian Charter of Rights and Freedoms
- *Canadian Journal of Women and the Law*, Vol 18(1) (2006); Vol 30(2) (2018)



Expansion



Method

- Focus on written judgments
- Imagine an additional / alternative judge on the same court, at the same time, subject to the same rules and practices
- Outcomes
 - A different result
 - The same result with different reasoning



[2019] UKSC 41
On appeals from: [2019] EWHC 2381 (QB)
and [2019] CSIH 49

JUDGMENT

**R (on the application of Miller) (Appellant) v The
Prime Minister (Respondent)
Cherry and others (Respondents) v Advocate
General for Scotland (Appellant) (Scotland)**

before

**Lady Hale, President
Lord Reed, Deputy President
Lord Kerr
Lord Wilson
Lord Carnwath
Lord Hodge
Lady Black
Lord Lloyd-Jones
Lady Arden
Lord Kitchin
Lord Sales**

JUDGMENT GIVEN ON

24 September 2019

Heard on 17, 18 and 19 September 2019

Motivations

- Limited (visible) influence of feminist legal scholarship on courts
- Implement feminist legal analysis into law
- Implement feminist legal reforms – domestic law and international conventions
- Correct masculine biases, include women's lived experience in law
 - The victim of (sexual) violence, harassment or discrimination
 - The housewife, home-maker, bearer of children, mother
 - The schoolgirl, the woman worker, the welfare recipient
 - The lesbian, disabled woman, racial minority woman, immigrant woman...
- Justice and empowerment for women, disrupt power structures that subordinate women



Spaces for feminism in judgments

- Context for the case
- Understanding the facts – telling the story
- Application of the law
- Interpretation / extension / revision of the law
- Commenting on the law
- Exercising discretion
- Addressing the parties
 - Care, kindness, empathy, validation
 - Avoiding minimisation, holding to account
- Criminal sentences, civil remedies



Other opportunities for gender-sensitive judging

- Managing the courtroom and the process of giving evidence
- Admission or exclusion of evidence
- Assessment of credibility
- Feminist problem-solving approach
- Acknowledging and engaging with emotion
- Seeking further information to reach a fair/just result

