Introducing the Women's Court of Canada

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The Beginning ...

8:00 PM, 27 February 2004—the end of a long day. Ten feminist equality/*Charter*[1] activists, lawyers, and academics are sitting around a long table eating pasta and drinking red wine in an Italian restaurant in downtown Toronto. We have spent the day together talking about section 15 of the *Charter*—recent cases, recent losses. We have been pushing ourselves and our thinking, strengthening and developing our equality analysis, trying to respond to the challenges of intersectionality and of ''competing rights.'' We have been strategizing about how to move forward with our ideas. Over the course of the day, we have had moments of exhilaration, moments of intense debate and discussion, and some break-through eureka moments. It has been an exciting, productive day full of possibilities. Yet despite all of these positives, the day has been overshadowed by an overriding sense of gloom brought on by what we all see as grievous judicial backsliding on equality. At the end of the day, we are pretty subdued. We are feeling disheartened, angry, frustrated. Women's equality is painfully far from being a reality—too many women live in poverty, unable to feed and house themselves and their children adequately; lesbians are merely tolerated, mostly regarded as a deviant lifestyle, sometimes targeted for hate and violence; women with disabilities are
still denied basic access to transportation, employment, and autonomy; racialized women are stigmatized and marginalized, and, in the post 9/11 political climate, some are perceived as potential terrorists; Aboriginal women are disappearing—raped, murdered, and discarded. The issues are urgent; there is much equality work to be done. But, politicians and Supreme Court of Canada judges alike seem to think that women have largely attained equality and that other issues (balanced budgets and national security) should take priority over equality. We are losing equality ground; we are in danger of losing our equality footing.

Equality has experienced some terrible setbacks in recent Supreme Court of Canada decisions.[2] The impact has been devastating, not only for the claimants and the

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1. *Canadian Charter of Rights and Freedoms*, Part 1 of the *Constitution Act* 1982, being Schedule B to the *Canada Act*, 1982 (U.K.), 1982, c. 11.
2. For some searing examples see *Gosselin* v. *Quebec* (*Attorney-General*), [2002] 4 S.C.R. 429 [*Gosselin*]; *Newfoundland (Treasury Board) v. Newfoundland and Labrador Association of Public and Private Employees (N.A.P.E.*), [2004] 3 S.C.R. 381 [*NAPE]; Hodge v. Canada*

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issues before the Court, but also for equality jurisprudence and advocacy more generally. Although the rhetoric of substantive equality continues, the promise of genuine substantive equality is fading and the voices of equality advocates are being muted. More and more frequently, the courts are denying intervenor status to women's and social justice groups. They think they have heard what we have to say, even though, as new and complex equality issues continue to surface in these troubling times, we are bursting with new ideas and new directions to explore in the pursuit of equality. When we are allowed in, our arguments before the court are too often dismissed or ignored.

There is a burning need for action. Yet, given the legal hierarchy—which is the power structure within which those of us at the restaurant table have chosen to fight for equality—it is hard to know where to gain the entry we are being denied and how to have our ideas accorded the serious attention they warrant. This was the conversation around the dinner table. We were in that kind of disheartened state that can spiral down into despondency or that can spark into action and energy. As we momentarily teetered on the brink of hopelessness, someone burst out with: ''So why don't we show them how it could have been done, what substantive equality would look like in those cases? Why don't we rewrite these decisions that are so wrong?'' The spark was ignited, and the Women's Court of Canada was created.

Our Predecessors

The Women's Court of Canada follows in an admirable tradition of Canadian women refusing to take a decision of the Supreme Court of Canada as the final word. We have a long history of determined and creative women seeking redress beyond the Supreme Court of Canada. When we have been shut out of one forum, we have sought out another venue in which to make our argument and press for equality. In 1929, in the famous *Persons* case, Canadian women had to appeal to the Privy Council in England for a declaration that women count as ''persons,'' eligible for appointment to the Senate[3]—persons being an ambiguous term according to the Supreme Court of Canada.[4] In 1930, Canadian Elizabeth Bethune Campbell, a woman with no formal education or legal training, argued her own case before the Privy Council—the first woman ever to appear before them.[5] Campbell took on Ontario's legal establishment over her mother's will and was finally successful

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(*Minister of Resources and Development*), [2004] 3 S.C.R. 357; *and Auton (Guardian ad litem of) v. British Columbia (Attorney General),* [2004] 3 S.C.R. 657.

3. *Edwards v. A.G. for Canada,* [1930] A.C. 124.

4. *Re Section 24 of British North America Act,* 1867, [1928] S.C.R. 2763

5.Constance Backhouse and Nancy Backhouse, *The Heiress versus the Establishment* (Vancouver: UBC Press, 2004).

before this last court of appeal. Two years later, a second Canadian woman appeared before the Privy Council to argue her own case, a plagiarism lawsuit against H.G. Wells.[6] Distrustful of the Supreme Court of Canada after their refusal to recognize women as legal persons only three years earlier, Florence Deeks appealed directly to the Privy Council from the Ontario Court of Appeal. However, unlike her predecessors, Deeks was not successful in her appeal. In 1981, Sandra Lovelace trumped the Supreme Court of Canada in her successful action before the United Nations Human Rights Committee, challenging Canada's revocation of the Indian status of First Nations women who married men who did not have Indian status.[7] Whereas the Supreme Court of Canada in *Attorney-General of Canada v. Lavell, Isaac v. Bedard*[8] had held that this egregious dispossession of First Nations women's rights and identities did not constitute sex discrimination, the Human Rights Committee found Canada in breach of the International Covenant on Civil and Political Rights.

The legacy of women's insistent pursuit of justice beyond the highest court in Canada lives on. Since 1974, the National Association of Women and the Law has been an unrelenting women's voice, speaking to issues of law reform and demanding legislative change in response to Supreme Court of Canada decisions that have failed women; the DisAbled Women's Network continues to reiterate, inside and outside courtrooms, that disability inequality is gendered; the Native Women's Association of Canada perseveres in its thirty-year struggle to improve the social, economic, cultural, and political well-being of Aboriginal women in Canada, simultaneously invoking the law and challenging the law; and the Canadian Feminist Alliance for International Action now regularly appears before United Nations bodies in order to make Canada's obligations under international human rights treaties better known, and alive, for governments, courts, and women.

When women were left out of the negotiations and word-smithing that led to the enactment of the *Charter*, women mobilized and protested to ensure that women were included in the most comprehensive equality language possible—language that was intended to foreclose the narrow equality-limiting decisions delivered by the Supreme Court of Canada in pre-*Charter* days under the *Canadian Bill of Rights*.[9] In order to try to make the courts hold true to this promise of *Charter* equality for which women had fought so hard, the Women's Legal Education and Action Fund rose

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6. A.B. McKillop, *The Spinster and the Prophet* (Toronto: Macfarlane Walter and Ross, 2001).
7. *Lovelace v. Canada, Communication* no. R.6/24, UN Doc. 40(A/36/40) at 166 (1981).
8. *Attorney-General of Canada v. Lavell, Isaac v. Bedard* (1973), 38 D.L.R. (3d) 481.
9. Only two sex discrimination cases under the *Canadian Bill of Rights*, R.S.C.1970, Appendix III, have gone before the Supreme Court of Canada—*Lavell and Bedard*, *supra* note 8, and *Bliss v. Attorney-General of Canada*, [1979] 1 S.C.R. 183. The claims of the female plaintiffs in both cases were resoundingly rejected in sexist language and sexist reasoning, which compounded the injustice. In its first section 15 decision, in *Andrews v. Law Society of British Columbia*, [1989] 1.S.C.R. 143, the Supreme Court of Canada did indeed accept that the language of section 15 is inconsistent with the approach of *Lavell and Bliss*. However, in later cases, the Court has reverted to reasoning and language that resonate with the *pre-Charter* cases.

up as a feminist voice to pursue women's equality in the courts. Along with other social justice groups, women have helped to shape the early *Charter* equality jurisprudence through the innovative conceptualization of substantive equality.

The Women's Court of Canada is a new addition in this ongoing stratagem of women finding alternate routes to enable us to raise our voices when we come up against judicial interpretation that fails to accord women the full and equal rights of personhood. We have recently celebrated the twentieth anniversary of section 15 of the *Charter*. It is an ideal time to look again at the potential and the limitations of the equality guarantee, to search for new ways to promote equality and for new domains within which to test out our ideas.

This issue of the *Canadian Journal of Women and the Law* contains the release of the first six decisions of the Women's Court of Canada—*Symes v. Canada, Native Women's Association of Canada v. Canada, Eaton v. Brant County Board of Education, Law v. Canada (Minister of Employment and Immigration), Gosselin v. Quebec (Attorney-General, and Newfoundland (Treasury Board) v. Newfoundland and Labrador Association of Public and Private Employees.*[10] These cases are the starting point for the Women's Court because these are the decisions that the current members of the court felt compelled to (re)write. Other Women's Court judges would have chosen to rewrite other decisions (from the Supreme Court of Canada); some future judges of the Women's Court will pick up where we have left off; others will choose to rewrite decisions from other courts or tribunals; and some will write decisions on cases that they feel should have been brought before the courts for redress but were not. New judges will use their decisions to push the boundaries of our legal system and the *Charter* and to make them more amenable and accessible to a wider and deeper array of claims for social justice. Sadly, there are many, many cases and situations demanding consideration or reconsideration by the Women's Court.

However, what follows are not simply six separate legal decisions. These decisions are an attempt to work out what a constitutional theory of equality should look like. In the context of the *Charter*, this attempt involves not only section 15, the specific equality rights section, but also other sections of the *Charter* including section 7 and other sections of the Constitution including sections 35 and 37. As well, a constitutional theory of equality necessarily involves theorizing about the meaning and practice of democracy and, explicitly under section 1 of our *Charter*, exploring the role of equality and the significance of the protection of the rights of subordinated peoples ''in a free and democratic society.'' We have not limited ourselves to taking on only cases that have been litigated as sex equality cases. Instead, we aim to uncover the gender issues present in cases analyzed on other grounds as well as to develop our various accounts of equality in a way that both does justice to sex equality and lays a foundation for a comprehensive approach to the constitutional remedying of all forms of inequality.

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10. *Symes v. Canada*, [1993] 4 S.C.R. 695; *Native Women's Association of Canada v. Canada*, [1994] 3 S.C.R. 62; Eaton v. Brant County Board of Education, [1997] 1 S.C.R. 241; *Law v. Canada*, [1999] 1 S.C.R. 497; *Gosselin, supra* note 2; and NAPE, *supra note* 2.

In the common law tradition, we do this theorizing on a case-by-case basis, in the belief that equality is not some abstract theoretical concept to be imposed from above. We are not looking for some magic equality formula that will fix everything—indeed, many of the first decisions of the Women's Court critique the Supreme Court of Canada's formulaic approach to equality in *Law v. Canada.*[11] We see equality as an organic, aspirational concept that needs to be developed and brought to life through its ongoing application to specific inequalities. As opposed to the rigid limitations of formal equality, substantive equality has the flexibility and depth to address new mutations and shifting manifestations of inequality as well as deeply entrenched systemic inequalities. We believe that a genuine substantive equality analysis has the potential to make a significant difference in the vast array of inequalities that Canadian women experience on a daily basis.

We write these decisions in response to the pressing equality issues that women have brought to the courts for redress and been denied; we write these decisions to build a vision of an equal society in which such inequalities are unimaginable. These six decisions are about the meaning of equality and about the role that legal decisions can play in furthering substantive equality.

Women's Court of Canada

The Women's Court of Canada is a spontaneous project born of the moment and the place that we were in and are in. As such, it is fluid and indeterminate. It will grow and change, and perhaps morph into something quite different, depending on who joins the court and what is going on in the legal arena. At present, the court has seventeen members—those who were present at the founding dinner and rallied around the idea, plus a few others we asked to join us to help with the specific cases we were working on. We are self-appointed volunteer members of a court we have fantasized into being. We are lawyers, academics, and human rights activists. We are a loose and growing collection of equality thinkers from across the country that has joined together to rewrite Canadian equality jurisprudence. We are a collection of women, rather than a collectivity. We have
no membership screening process beyond a feminist commitment to substantive equality and the desire to participate. We did not advertise or try to bring on board the multitude of fabulous feminist *Charter* activists who did not happen to be at our dinner. We seized the moment and the momentum it created, and we went ahead. We are keen to expand and to pass on this fledgling in the hope that it will soar in new directions.

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11. *Law*, *supra note* 10.

In our early discussions, we raised the possibility of doing a women's court as satire or spoof. Interestingly, none of us was really drawn to this idea. We all very seriously wanted to see what we could do in the challenging arena of judging, to see how we would respond to the demands of writing a legal decision that reflected our best hopes for equality. That we have styled ourselves the Women's Court of Canada reflects a commitment to articulate how equality can be taken seriously in section 15 jurisprudence and to demonstrate that a formalistic turn in the doctrine was not inevitable, that equality can be given more substance while observing recognized forms of legal argument. In a very real sense, we wanted to explore the capacity and the limitations of the courts to further equality and social justice and to prove to ourselves as well as to others that our idealism could also be realistic. Accordingly, we decided to write these decisions within the existing parameters of the law, applying traditional legal language and principles. We are offering alternative decisions on cases that were before the Supreme Court of Canada, following the same rules and law as the Court but applying different equality analyses and coming to different conclusions.

A successor Women's Court might try to envision a very different legal system from the existing one and explore what judicial decisions might look like in that context. We are a bit aghast at ourselves as a Women's Court issuing thirty-five page decisions written in technical legal language.[12] Future Women's Court judges may opt to be bolder and more visionary. However, we chose to stay very much in the here and now and work with the tools that are currently available to courts. The decisions that follow are decisions that could have been written by the Supreme Court of Canada at the time the case was decided by them. We have occasionally relied on current information and data rather than on what was available at the time but not if the updated
information might affect the analysis or the decision. Beyond this basic premise, to the extent that we had ''court rules,'' we developed them as we wrote in response to specific issues raised by the authors

Our status as a court is somewhat amorphous. We set ourselves up as a review court rather than as an appeal court in order to avoid the technicalities of an appeal. We took some liberties and allowed some deviations in the form of the decisions and in the procedure for the review. Where these occur, they are acknowledged and explained in the author's comment on her decision. One frustration that was shared by almost all of the judges was the limited information provided by the record that was before them. The gaps in the evidentiary record may have been there from the outset, but, without access to the original record, it is impossible to know where the shortcoming lies. This is one of the tricky aspects of adjudication. While the initial decision may well be based on a full panoply of evidence, once that first decision is made, the description of the evidence is necessarily filtered through that decision in the process of writing the reasons. Once the record enters the appeal process, it becomes increasingly difficult to see where evidentiary misinterpretations might have occurred. Each level of court sifts through the facts and decides which ones are relevant in light of the decision reached. Evidence continues to be discarded or recharacterized as the case winds its way through the appeal process. When a reviewing judge wants to redirect the analysis, there may be
factual gaps that are difficult, if not impossible, to fill. All Canadian courts, including the Supreme

12. We are presently seeking funding to translate these decisions into brief and accessible synopses in both French and English.

Court of Canada, have the power to appoint counsel *oramicus curiae* to address affected interests not represented by the parties before the court. In addition, the Supreme Court of Canada may choose to receive further evidence on any question of fact.[13] Our experience in writing these decisions tells us that the Court should invoke these powers more often in order to assist the justices in more fully understanding the equality issues before them in their social context and to help in fashioning an appropriate remedy.

The decisions contained in this issue of the journal are issued by the Women's Court of Canada and written by the judge or judges whose names are attached to them. In this first round of decisions, we do not have formal dissents or concurrences, but it is important to note that the decisions that follow are not unanimous decisions of the court. Each judgment was written by an individual author or team of authors and is the responsibility of its author(s). Other members of the group have provided feedback on each draft, and at least two external reviewers for each decision have provided extensive comments. But the judgments are not pronouncements of the group as a whole. They are the decisions of the individual judge or judges. Our aim was to let equality theorists and advocates show the concrete results of the application of what they each consider to be the best account of equality. There was disagreement among us over a number of these decisions—relating to the analysis presented, the specific issues in the decision, even about whether a case warranted review. We do not all agree with one another about the theory of equality or its best doctrinal shape, but we respect each other's views enough to think that this collection of judgments will provide a rich and illuminating store of argument and analysis.

One of our points in writing these decisions is to demonstrate that the Supreme Court of Canada decision in each of these cases is but one of many decisions that could have been written. The same of course applies to the decisions of the Women's Court of Canada. We hope that future judges of the Women's Court, as well as others, will review our decisions and challenge, extend, or revise our equality analysis. Any one of the decisions included here could be the subject of a number of different review decisions, each offering a different analytic approach or assessment of the evidence or interpretation of section 15 and other relevant provisions. In fact, after we embarked on this project, we discovered that a similar tack has been taken with respect to at least two critically important decisions from the Supreme Court of the United States—*Brown v. Board of Education and Roe v. Wade.* A book has been published on each of these decisions in which leading constitutional scholars were asked to rewrite the decision as a decision that could have been written at the time of the original but informed by knowledge of subsequent US history.[14] This approach in which a single case is rewritten by a number of different authors is another interesting way to explore the same issues and questions that sparked our project and the decisions that the Women's Court has produced. A number, if not all, of the decisions included in this round would lend themselves well to multiple alternative rewrites.

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13. Supreme Court Act, R.S.C. 1985, c. S-26, s.62(3).
14. Jack Balkin, ed., *What* Brown v. Board of Education *Should Have Said* (New York: New York University Press, 2002); and Jack Balkin, ed., *What Roe v. Wade Should Have Said* (New York: New York University Press, 2005). The book of rewritten decisions on *Roe v. Wade*, 410 U.S. 113 (1973) (the US Supreme Court decision striking down state antiabortion laws) is different from the one on *Brown v. Board of Education*, 347 U.S. 483 (1954) (the US Supreme Court decision that held that racially segregated public schools were

unconstitutional) in a very significant way that is most troubling. Both books provide a fascinating range of constitutional interpretations but, whereas all of the authors of the *Brown* decisions share common underlying principles, as well as the goals of furthering racial equality and eliminating systemic racism, the same is not true for the multiple authors of the *Roe* decision. The original decision in *Brown* is described as being revered, while the original decision in *Roe* is described as being controversial. Derrick Bell wrote the only dissenting decision in the *Brown* book, but his dissent is a powerful indictment of racism. In the *Roe* book, women's equality in relation to the issue of abortion is not accorded the same primacy and respect. Jack Balkin, the instigator and producer of both books, sought a ''balance'' between supporters and critics of the *Roe* decision and of the principles underlying the decision. Two of the four critics of *Roe* base their rewrite decisions overtly on pro-life, antichoice principles, with Michael Stokes Paulsen even including ten pages of classic anti-choice fetal development photographs. This attempt at ''balance'' shifts the book from an exploration of the potential for the Constitution to support and promote women's equality into a debate over women's constitutional right to equality. As such, the *Roe* book both reflects and contributes to the fragility of our equality gains on the reproductive front.

First Decisions of the Court

When we went around the restaurant table with the question: ‘‘So what decision would you write if you could?’’ the responses were immediate and impassioned. Each of these decisions in this volume was written by someone who desperately wanted the opportunity to respond to the specific decision she undertook to (re)write. In some cases, the original author invited colleagues to join her in the rewriting project. In a brief comment on the rewritten decision, each of the contributing judges has explained why this was the decision she wanted to write.[15] And, as reflected in these explanations, the authors' relationship to the case varies greatly. Some have no personal connection to the case—it is the issue at stake and/or some aspect of the decision itself that drove her take up her pen. Other authors are closely connected to the case. For some of these decisions, it is the lawyer who acted for the claimant or for an intervenor who has taken on the task of writing the decision that she thinks the court should and could have produced. In one case, the claimant herself participated in crafting the decision. Here we have clearly stepped outside legal bounds. However, these decisions are offered not for the specific decision reached but rather for the equality analysis on which this decision must be firmly grounded. Thus, investment in the specific outcome is secondary. It is the investment in a compelling substantive equality analysis that drives all of the decisions that follow. To this extent, all of the decisions are biased—biased in favour of equality, biased in favour of ensuring that the *Charter* lives up to its potential as a tool for substantive equality.

It was a difficult transition for all of the judges of the Women's Court to move from the role of advocate and critic to that of judge and decision writer. To a woman, every one of the Woman's Court judges found it harder, sometimes much, much harder, to write the decision than we envisioned, and it was an even slower and more laborious process than we anticipated. It required a great deal of discipline and hard thinking. As we learned through this experience, there are important differences between advocacy and decision making. Writing a decision is very different from writing a factum, where you only have to present your argument. Writing a decision is very different from writing a case comment, where you have much more latitude to focus on what is clear for you and what most interests you. The practitioners among us talked a lot about what they learned about equality litigation and advocacy from being on the other side of the bench. We pushed ourselves and each other not to duck the issues but to really grapple with the hard questions presented by each case—to actually make the tough decisions and to provide a full legal rationale. This was the challenge and the responsibility that we sought in setting ourselves up as the Women's Court of Canada. We wanted to go beyond critique to offer a fully articulated alternative. We wanted to see if, within the limits of a judicial decision, we could say what we wanted to say, what we believe should be said, what must be said. In this process, we are no longer offering a perspective or an argument or even an analysis; we are giving a judgment.

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15. The comments by the author(s) of each decision precede the decision.

All of us as judges struggled with the question of remedy—how to craft a remedy that really addressed the inequality before us, without going beyond what would be considered the limits of a court's jurisdiction to effect social change. The challenge of pushing the law and, at the same time, staying within the limits of the law was one issue that each judge had to work through. All of the judges had to decide how expansively or how narrowly they would frame their decision. It was tempting to pronounce fundamental equality principles intended to direct future courts and future decisions. And section 15 is clearly in need of some firm grounding in equality-enhancing values and principles. It has been floundering in uncertainty and contradictory judicial readings since the first Supreme Court of Canada decision on section 15 in *Andrews v. Law Society of British Columbia.*[16] However, the future is uncertain, and there are always unintended consequences of even the most carefully constructed generality. History has shown that in the long term, an incremental approach can sometimes be more effective. And it was important to the Women's Court judges not to lose sight of the claimants and the issues and circumstances that brought them before the court. None of us wanted to forego the practical, if limited, improvements that could be made in women's lives in the name of the loftier ideals of equality. We were all conscious of not sacrificing the immediate and the real for the sake of the symbolic.[17]

A key concern for all of us as we adopted the judge's mantle was our treatment of the claimants who had the courage, imagination, and faith to bring their lives and their experiences of inequality to the courts for examination, for understanding, and for redress. The claimants tend to disappear from the case as it progresses through the appeal process. Their experiences are characterized as legal issues to be debated and fought over, while they themselves are often rendered invisible. Those claimants who manage to remain visibly present in the decisions of upper courts are often criticized and denigrated under the court's scrutiny. *Charter* cases are giving rise to a pyre of disposable people whose characters and lives have been picked apart by the court and found to be unworthy. It is a dehumanizing and disrespectful process, made even more so when conducted in the name of equality and dignity. Equality and inequality are about people and their lived experiences. We wanted, where possible, to re-introduce the claimants as being central to their own cases. And we wanted to be sure that we treated the claimants with respect and understanding. The court has accorded centrality to dignity and respect as defining features of equality. This must be reflected in the judgments themselves and in the court's treatment of those brave souls who bring their claim to equality before them.

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16. *Andrews*, *supra* note 9.
17. This is a tension that Mari Matsuda eloquently talked about in her keynote address to a women of colour conference in 1989. ''When the First Quail Calls: Multiple Consciousness as Jurisprudential Method'' (1989) 11 Women's Rights Law Reporter 7.

Continuing On

Jack Balkin refers to the rewritten decisions as making explicit what is an ongoing process of rereading and reinterpreting key judicial decisions. He goes on to say:

> What is true of Brown is even more true of the Constitution itself. If we Americans truly love our Constitution, we will continually rewrite it, marking it up like a beloved but well-used volume—the more beloved because its margins are so full of scribblings and its pages so bent from constant recourse and reference. The Constitution that stays pristine on the page is the Constitution that shrivels and dies. Only the Constitution that is constantly reread and constantly rewritten lives.[18]

We feel the same way about our *Charter*, which is why we have set up the Women's Court of Canada and why we are reviewing and rewriting decisions of the Supreme Court of Canada that we think have lost sight of the goal of substantive equality. In this enterprise, we are not just rewriting the decisions; we are also, in effect, rewriting the *Charter*, trying to give it new meaning and new direction. We want to explore what it might be possible to achieve within the law and whether the barrier to substantive equality is the law itself or the lack of equality vision in those who are charged with interpreting and applying the law. The *Charter* reflects our most deeply held values and aspirations as Canadians. The job that we have assigned the Supreme Court of Canada in interpreting and applying those values is a hugely onerous one. We have placed a great responsibility on and trust in them. It is critically important that their interpretations be subjected to debate, discussion, review, and revision. We think this ongoing process of engagement and writing and rewriting is critically important to democracy, to our fundamental values, and to equality.

This issue of the *Canadian Journal of Women and the Law* is the inauguration of the Women's Court of Canada. We look forward to the court's growth and development and to the innovative ideas and approaches that new judges will bring to this project. We hope that some of our decisions will spark rewrites of their own and that, in addition to rewrites of other Supreme Court of Canada decisions, people will have other ''judicial'' projects that they want to undertake through the Women's Court. In the process of decision re-writing, we have been drawn to the adage that ''the decisions of the Supreme Court are not final because they are authoritative; they are authoritative because they are final.'' The Women's Court is disrupting this finality in the hope, not of offering a finality of its own, but rather of bringing our experience and knowledge to bear on the cases we review, with the goal of opening up the dialogue and offering alternative and, we believe, more substantive visions of equality.

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18. Balkin, supra note 14 at 72.