



DisAbled Women's Network (DAWN) Canada
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**Speaking Notes before the Standing Committee on the Status of
Women (FEWO)
in view of its study of Bill C-337, An Act to amend the Judges Act and
the Criminal Code related to sexual assault
April 13, 2017**

Hello, everyone.

Thank you.

[English]

I would again like to acknowledge the Algonquin people.

I was invited here to speak to the proposed Bill C-337, and I'm confident that others who will come before you will focus their remarks on the content and the substance of that bill, which as we know is about the important need to have a judiciary that is well informed in the area of sexual assault.

With limited time, we have instead chosen to focus on the Supreme Court decision that we believe makes it clear why judicial training is essential. We will also suggest that a thorough review of the content of this training is required to ensure that it has a fully developed curriculum to include the range of accommodation required to support all women.

On February 10, 2012, the Supreme Court of Canada released its judgment in the case of Regina v. D.A.I. LEAF and the DisAbled Women's Network of Canada intervened in that appeal. Through this Supreme Court of Canada decision, Chief Justice McLachlin, writing for the majority, described sexual assault as an evil and acknowledged that women with mental disabilities are targeted for this offence at alarming rates. The court

confirmed the importance of hearing the voices of women with mental disabilities in the court. The court acknowledged that the testimony of women with mental disabilities is essential to stopping sexual abuse and ensuring that sexual offenders are brought to justice.

The legal question before the court was how to interpret subsection 16(3) of the Canada Evidence Act, which permits witnesses who can communicate the evidence but are unable to understand an oath or affirmation to testify unsworn on a promise to tell the truth. Lower courts have developed a practice requiring mentally disabled witnesses to explain the meaning of abstract concepts like promise, truth, and falsehood. No other category of witness—not even convicted perjurers—is subjected to such a pre-testimonial inquiry.

The Supreme Court of Canada ruling clarifies that persons with mental disabilities are not required to meet a more onerous test than any other witnesses before they are even allowed to take the stand. If a witness can communicate her experiences and if she can describe what happened to her, she can testify after saying she promises to tell the truth.

The Supreme Court judgment noted that in the past, mentally disabled victims of sexual offences had frequently been precluded from testifying, not on the ground that they could not relate what happened but on the ground that they lacked the capacity to articulate in abstract terms the difference between the truth and a lie.

Women with intellectual and cognitive disabilities, including women with brain injuries—frequently acquired as a result of violence—experience staggering rates of sexual assault and are seen as easy targets. Abusers believe that disabled women are powerless to complain or will not be believed even if they do complain. The Supreme Court, in rendering this

decision, acknowledged this reality and confirmed that their testimony is essential to any realistic prospect of prosecution.

The Supreme Court majority recognized that the testimony of women with mental disabilities promotes the truth-seeking function of the criminal process, particularly given the undeniably high rates of sexual assault and the interests of society in the reporting and prosecution of abuse. As the Supreme Court itself said, excluding evidence would effectively “immunize an entire category of offenders from criminal responsibility”, with devastating harm to the abused women and to society as a whole.

The Supreme Court of Canada decision also notes that the questioning of mentally disabled adults may require accommodation of each individual's particular needs, so that their evidence is best communicated in court. This aspect of this ruling is in step with international law in other international jurisdictions. The U.K., for example, is currently far ahead of Canada in terms of providing for witness intermediaries who assist persons with communication or mental disabilities in accessing the justice system at all stages, from reporting to police to giving evidence in court. Creating and supporting a roster of witness intermediaries in Canada is a logical next step for the federal government.

The decision is also consistent with Canada's international human rights commitments. The UN Convention on the Rights of Persons with Disabilities points to the need for our country to uphold its promise under article 13, where we are to have equal access to justice, and under article 16, which commits state parties to ensure that instances of exploitation, violence, and abuse against persons with disabilities are identified, investigated, and where appropriate, prosecuted.

In Canada and around the world, this decision is regarded as a major victory for women and all people with disabilities, and provides opportunities for appeals across jurisdictions around the globe.