

EASILY MISSED

Silent no more

Confronting ableism in the justice system by Hillary Di Menna

IN MAY 2011, a 19-year-old woman told her teacher she and her mother's male partner played something called the "hugging game." The woman, who is intellectually disabled, is at the developmental level of a three- to six-year-old.

Fearing sexual assault, the teacher reported what she heard to the school principal and the police. The case went to trial, where it unravelled: the judge asked the woman questions that were confusing, and the accused's defence lawyers questioned the victim's competency. The woman was barred from testifying, and her mother's partner was found not guilty. Almost a year later, on February 10, 2012 a Canadian court case called *R. v. D.A.I.* set a worldwide precedent when it deemed victims with mental-based disabilities should be allowed to testify—just like any other witness.

Upon hearing the news, the DisAbled Women's Network of Canada (DAWN) and the Women's Legal Education and Action Fund (LEAF), petitioned for the woman's case to be reheard—and believed. They demanded proper accommodations, such as using simpler language and not forcing a victim to give detailed definitions to broad terms like "truth" and "oath," something those without mentalbased disabilities are not asked to do. Those living with mental-based disabilities, such as intellectual disabilities, mental health disabilities, and brain injuries, are especially vulnerable to physical and sexual abuse, and face systemic discrimination throughout the justice system, even after the *D.A.I.* case. "The justice system hasn't caught up with the evolving definitions of mental illness," says Bonnie Brayton, DAWN's national executive director. "Much more should be done with a decision like the *D.A.I.* case."

DAWN has since submitted recommendations to the Department of Justice Canada for the development of a victims bill of rights. Recommendations include using clear and direct language in written and oral communications, and informing victims of their rights from the onset.

While continuing to push for a fairer system, DAWN promotes its We Can Tell and We Will Tell campaign, educating those with disabilities about their resources and rights. Victims have been sharing their own stories with photos, email, and social media. While the perpetrators and accused have been simply left to speak, says Brayton, women with disabilities have been ignored, not believed and not valued—

all thanks, she adds, to “prejudice, ableism and a deep ignorance within the justice system.” It’s time for that to change.