

# Welcome to our Learning Network & Knowledge Hub Webinar

## Legal Advocacy to End Discrimination Against Women with Disabilities

**Date & Time:** August 17, 2021 | 1:00 - 2:30 PM EASTERN TIME

- All attendees are muted during the webinar.
- Cameras are also turned off for all participants.
- If you are experiencing issues, please type into the chat box.
- Each presenter will present for about 15 minutes followed by a moderated discussion.
- If you have a question for the webinar speakers, please type into the Q&A box and we will spend 20 mins near the end on Questions and Answers.
- There will be an evaluation link in the chat box at the end of the webinar, please fill out the form as your feedback will guide our future webinars.
- Presentation slides are posted on our website, there will be a link in the chat box.
- The webinar recording will be posted on our website within the next few days:

<http://www.vawlearningnetwork.ca/ln-kh-webinars>

**Western**  Centre for Research & Education on  
Violence Against Women & Children





Please think about the traditional lands you are currently situated on and join us in acknowledging and thanking the generations of Indigenous peoples who have cared for these Lands and in celebrating the continued strength and spirit of Indigenous Peoples. The ongoing work to make the promise of truth and reconciliation real in our communities and in particular to bring justice for murdered and missing Indigenous women and girls across the country should inform our discussions in this webinar and beyond.



**Bonnie Brayton**

A recognized leader in both the feminist and disability movements, **Bonnie Brayton** has been the National Executive Director of the DisAbled Women's Network (DAWN) Canada since May 2007. In this role, she has proven herself as a formidable advocate for women with disabilities here in Canada and internationally. During her tenure with DAWN Canada, Ms. Brayton has worked diligently to highlight key issues that impact the lives of women and girls with disabilities.

From 2016 to 2019, Ms. Brayton served as a member of Minister's Advisory Council on Gender-Based Violence (WAGE) and was reappointed to a two-year term. Earlier in 2020, Bonnie was appointed by The Honourable Carla Qualtrough to Covid-19 Disability Advisory Group (CDAG) and will continue to serve as part of the DAG. Bonnie was also appointed to be part of Gender and Trade Advisory Group. Ms. Brayton lives in Montreal with her partner Delmar Medford. She has two adult daughters, Leah and Virginia.

# **"Legal Advocacy to End Discrimination Against Women with Disabilities"**

Bonnie Brayton, National Executive  
Director



Content Warning: Sexual Abuse and Violence



**DAWN** Canada

DAWN Canada is working on unceded  
Kanien'kehá:ka territory.



DAWN Canada is an intersectional feminist disability organization whose mission for 35 years has been to end the poverty, discrimination, violence and isolation experienced by women living with disabilities and Deaf women through leadership, partnership and networking. Today we are honoured to be with three of our most valued partners.



**LEAF**  
**FAEJ**

WOMEN'S LEGAL  
EDUCATION & ACTION FUND  
FONDS D'ACTION ET D'ÉDUCATION  
JURIDIQUE POUR LES FEMMES



Working with the LEAF, ARCH and the Learning Centre is just one example of how we affect change. We thank all the participants for taking the time to participate in this webinar.

Meaningful change will only come when legal advocacy for gender based violence is fully engaged in intersectional practice.

The Honourable Justice Beverley McLachlin wrote, in the 2014 Judge's Handbook (citing *Eldridge v. British Columbia*)

*“The Constitution and a variety of statutes enshrine a strong commitment to equality before and under the law and equal protection and benefit of the law without discrimination. This is not a commitment to identical treatment but rather “...to the equal worth and human dignity of all persons” and “...a desire to rectify and prevent discrimination against particular groups suffering social, political and legal disadvantage in our society.”*



## RESEARCH

we work with community-based researchers and academic partners to shift the discussion around how research and community development can and should be done using the intersectional approach.

## EDUCATION

We develop curriculum tools to deepen knowledge and skill in the practice of inclusion on the part of instructors, students and service providers in a variety of settings.

## POLICY

We continue to challenge and engage policy-makers in the review and development of policies so that they are informed by community-defined needs.

## ADVOCACY

We are committed to ensuring that the voices of women with disabilities and Deaf women are represented at decision-making tables in the areas that matter to us most, including violence prevention, health equity, and access to justice.



CONVENTION  
ON THE RIGHTS  
OF PERSONS  
WITH DISABILITIES

The UN Convention on the Rights of Persons with **Disabilities** (**UNCRPD**) recognizes that **'disability is an evolving concept'**

[Convention on the Rights of Persons with Disabilities \(CRPD\) | United Nations Enable](#)

## What happens when you have overlapping identities?

Women with disabilities who experience violence as children are almost **two times as likely** as those who had not experienced physical abuse to be victimized in the last 12 months.

In general, women with disabilities who identify as lesbian, gay or bisexual **experience 2.3 times higher rates of violence** than among heterosexual women with disabilities.

Women who experience mental health related disabilities and those with cognitive disabilities experience **disproportionately high rates** of sexual assault.



Photo: [Disabled and Here](#)

The Canadian Human Rights Commission's  
2017 Annual Report to Parliament



# People first



## **More than half of all discrimination complaints in Canada are made on the grounds of disability**

According to the Canadian Human Rights Commission (CHRC) 2017 Annual Report, 59% of human rights complaints are on the grounds of disability.<sup>1</sup>

64% of these complaints are employment-related.<sup>2</sup>

1,2 The Canadian Human Rights Commission (2017) People First: 2017 Annual Report to Parliament. Available [here](#).

## Why we need a systemic response to addressing disability rights

Evidence shows that discrimination on the basis of disability is a systemic problem

The available data is not disaggregated, so we do not know how gender or other intersectional identities influence experiences of exclusion and discrimination

Addressing disability rights requires a systemic response, rather than relying on individual complainants.<sup>1</sup>

<sup>1</sup> Pooran, B. D., & Wilkie, C. (2005). Failing to Achieve Equality: Disability Rights in Australia, Canada, and the United States. *JL & Soc. Pol'y*, 20, 1. (page 33).



DAWN Canada is particularly glad to note that the [amendments](#) to the Accessible Canada Act made by the Senate respond thoughtfully to gender, sexual orientation, and race (particularly Black and Indigenous) referencing the specific marginalization(s) that create additional barriers for some Canadians with disabilities more than others.



## R. V. D.A.I (2012) Decision

- D.A.I with an intellectual disability reported her step-father to sexually assault her
- Did not believe she could understand an “oath” or a “promise” to tell the truth, so case was dropped
- DAWN and LEAF stepped in
- On February 10, 2012, a decision was made

“We Can Tell  
And We Will  
Tell”  
DAI video



## R. V. Slatter (2020) Decision

*"We are witnessing a massive erosion of substantive equality rights for people with disabilities....When the courts side with the 'experts' and not the rights-holder we are down the wrong side of the slippery slope."*  
Bonnie Brayton – National Executive Director  
at DAWN



According to just one search in CanLII, R. V. D.A.I. had been referenced 176 times for *promise to tell the truth, mental disabilities, solemn affirmation, and communicate the evidence.*

R. V. Slatter decision was made in November 2020 and already has cases citing it as a source

<https://www.canlii.org/en/#search/id=R.%20v.%20D.A.I>

<https://www.canlii.org/en/#search/id=R.%20v.%20Slatter&resultIndex=2>



# Thank you/ Merci

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**Rosel Kim** is a staff lawyer at the Women’s Legal Education and Action Fund (LEAF), who lives and works in Tkaronto. As a staff lawyer at LEAF, she contributes to the development and management of LEAF’s cases and drafts LEAF’s law reform submissions. She has written about technology-facilitated gender-based violence, race, and identity for the *Toronto Star*, *CBA National*, and *Puritan Magazine*, among others. Rosel is a frequent speaker on gender equality issues. She serves on the Board of the Korean Legal Clinic, which aims to improve access to justice for Korean Canadians by providing culturally and linguistically appropriate legal services, education, and resources with partner organizations.

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# **Legal Advocacy to End Discrimination Against Women with Disabilities**

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**ROSEL KIM**

**STAFF LAWYER, WOMEN'S LEGAL EDUCATION AND ACTION FUND (LEAF)**

**AUGUST 2021**

# Outline

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1. Introduction
2. Discussion of *R. v. D.A.I.*
3. Discussion of *R. v. Slatter*
4. Points for consideration

# Introduction

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- **Content warning:** sexual assault
- **LEAF's mission:** LEAF seeks to advance gender equality by challenging laws, policies, and practices that discriminate against equality guarantees enshrined in the *Canadian Charter of Rights and Freedoms*, most notably sections 15 and 28.
- Role of the intervener in litigation

# ***R. v. D.A.I. (2012)***

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- **Facts:** K.B., an adult with an intellectual disability, reported to her teacher that her stepfather (D.A.I.) played “games” with her that involved him touching her sexually. She gave a videotaped statement to the police.
- At trial, D.A.I. challenged K.B.’s competence to testify.
- The trial judge concluded K.B. did not show an understanding of her duty to tell the truth. He also excluded her out-of-court statements to police and her teacher, finding them to be unreliable and holding that admitting them would impact D.A.I.’s right to a fair trial. Consequently, D.A.I. was acquitted.
- The Ontario Court of Appeal upheld the acquittal.

# LEAF-DAWN Intervention in *D.A.I.*

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- “If the lower court decision is upheld, it is only adults with mental disabilities whose evidence is deemed too untrustworthy to even be heard by a court unless they can answer abstract questions about ‘truth’ and ‘promise’. It is only this already disadvantaged category of witness that must prove their reliability before they can even take the stand.” (para 8, LEAF-DAWN [factum](#))
- “Sexual assault proceedings have been pervaded by discriminatory and irrelevant attacks on credibility which have disproportionately affected women who experience multiple inequalities.” (para 13, LEAF-DAWN factum)

# SCC judgment in *D.A.I.*

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- The majority of the Supreme Court of Canada held that complainants with disabilities who could communicate their evidence only needed to promise to tell the truth to be able to testify, not demonstrate an understanding of a duty to tell the truth.
- “To set the bar too high for the testimonial competence of adults with mental disabilities is to permit violators to sexually abuse them with near impunity.”  
(para 67, [R. v. D.A.I.](#))
- As a result, the majority allowed the Crown’s appeal and ordered a new trial for D.A.I.

# ***R. v. Slatter (2020)***

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- **Facts:** J.M., a woman labelled with an intellectual disability, disclosed sexual assault. At trial, defence counsel argued that J.M.'s evidence was unreliable, because her disability made her suggestible (as in, her answers were easily influenced by others). The trial judge did not accept these submissions, and convicted the accused of sexually assaulting the complainant.
- The accused (Slatter) appealed to the Court of Appeal and argued, in part, that the judge had failed to adequately explain why he found the complainant reliable.
- The majority of the Court of Appeal of Ontario overturned the conviction and ordered a new trial, finding that the judge's reasons were not sufficient.

# LEAF-DAWN-ARCH Intervention in *Slatter*

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“Women with disabilities experience intersectional inequality on the basis of disability, sex, gender, and other immutable characteristics. The importance of drawing conclusions based on the actual capacities and individual circumstances of women with disabilities, as opposed to generalizations about their disabilities, cannot be overstated. Substantive equality demands the former and rejects the latter.” (para 13, LEAF-DAWN-ARCH [factum](#))

# SCC judgment in *Slatter*

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“We would simply underline that when assessing the credibility and reliability of testimony given by an individual who has an intellectual or developmental disability, courts should be wary of preferring expert evidence that attributes general characteristics to that individual, rather than focusing on the individual’s veracity and their actual capacities as demonstrated by their ability to perceive, recall and recount the events in issue, in light of the totality of the evidence.”

(Full judgment available [here](#))

# Points for Consideration

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- Institutional ableism
- Women with disabilities more likely to experience physical or sexual assault by an intimate partner; more than half of women with disabilities have been physically or sexually assaulted in their lifetime (Statistics Canada, “[Intimate partner violence: Experiences of women with disabilities in Canada, 2018](#)”)
- The importance of terminology – i.e., person *labelled* with an intellectual disability

# Thank you!

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# Legal Advocacy to End Discrimination Against Women with Disabilities

Kerri Joffe  
Staff Lawyer

*Learning Network – Centre for Research  
& Education on Violence against Women  
& Children*

Live Webcast  
August 17, 2021



**Kerri Joffe** is a human rights lawyer at ARCH Disability Law Centre. She has been involved in disability rights litigation at various tribunals and courts, including the Supreme Court of Canada. Kerri has presented law reform and policy submissions about disability law issues to legislative committees, governments, administrative bodies, and the United Nations Committee on the Rights of Persons with Disabilities. She has delivered extensive public legal education to diverse disability communities and has guest lectured on disability rights issues. Before joining ARCH, Kerri worked on housing rights, social assistance programs, immigration, and refugee issues, human trafficking, and as a law clerk to Superior Court judges. Kerri holds degrees in law and social work from McGill University.



## About ARCH Disability Law Centre

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- Specialty legal aid clinic that advances and defends equality rights of persons with disabilities in Ontario.
- Legal services to persons with disabilities in Ontario: summary legal advice, representation in test case litigation, public legal education, law reform, community development
- National and international disability rights work
- Governed by volunteer Board of Directors; majority of directors identify as having a disability.
- Primarily funded by Legal Aid Ontario.



## About ARCH Disability Law Centre

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- Intersectional approach: address heightened disadvantage and discrimination experienced by persons with disabilities as a result of discrimination based on gender, race, age, language, place of origin, economic status, sexual orientation, and others.
- Systemic: focus on using legal advocacy to remove and prevent systemic barriers and discrimination
- Cross disability: respect diversity within disability communities, work with coalitions of disability communities



## Examples from Litigation

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- *R v Slatter*, 2020 SCC 36
  - Supreme Court affirmed broadly applicable legal principle: "Over-reliance on generalities can perpetuate harmful myths and stereotypes about individuals with disabilities, which is inimical to the truth-seeking process, and creates additional barriers for those seeking access to justice"
- *Child and Family Services of York Region v H.C.*, 2009 OSCDC
  - Ontario Divisional Court: Overturned court order that Children's Aid Society must provide a worker familiar with American Sign Language to a Deaf mother



## Example from Law Reform

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- *Accessible Canada Act* : federal accessibility legislation passed in 2019
- Section 6: This Act is to be carried out in recognition of, and in accordance with, the following principles: **(e)** laws, policies, programs, services and structures must take into account the disabilities of persons, the different ways that persons interact with their environments and the multiple and intersecting forms of marginalization and discrimination faced by persons;



## Example from Community Advocacy

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- United Nations Committee on the Rights of Persons with Disabilities: reviews Canada's implementation of *Convention on the Rights of Persons with Disabilities*
- Disability community Parallel Report: highlights discrimination and violence against women with disabilities as critical human rights issue
- 2017 UN Committee recommendations to Canada include:
  - (a) Ensuring that the federal strategy against gender-based violence includes lines of action and specific programmes and benchmarks to address all forms of violence against women and girls with disabilities;

# Thank you!

Please complete our Workshop Survey:

<https://www.surveygizmo.com/s3/5166548/PLE-Workshop-Survey>



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