

Bev Jacobs

What should a community member do if their loved one is missing?

My first suggestion is to trust your instinct, trust your gut: if you really believe that they are missing, contact everyone. Everyone that you know: your community, your family, your leadership, the police – everyone! And get it out there to everyone as soon as possible as soon as you are able to, as soon as you are able to get to the place where you feel comfortable because I know a lot of times that if somebody has gone missing sometimes there's a little bit of hesitation or maybe you are hoping that they are going to come home any second but once you sense that instinct, that gut instinct that you know that they're, you know that they've been gone too long and you haven't heard from them and you know that you hear from them all the time.

So as soon as you know as soon as you feel that, then contact everybody that you know and if you're on Facebook to get it out on social media or even get it to people that you know are on social media. Those are the immediate things that can be done. And also making sure that you contact the police immediately and push it if the police are going to tell you that you know well maybe they'll be home or they want to run away then that's crazy then you make sure that you push them so that they get it out there as well because that's their job.

Can you talk about posters?

Postering yup! I mean that too is getting the pictures out of your loved one. All kinds of different pictures so that people are aware of what they look like and being able to put them out in different places whether you are in an urban centre or on reserve or in a community that's where people are going to help I think this issue is pretty... a lot of people are aware now and I think that as soon as you get it out there, people are willing to help and being able to get those posters out – having the resources to get pictures printed out, finding people who are able to get that done right away and get them out all over.

I think if people do choose to have a press conference, again, that's also part of what can be done – getting the voice out there in the public and in to the media and being aware that sometimes when you are making a decision to go public then it is very public and people may say things, do things that you may not agree with and I think just taking a stand and keep, like I said, keep pushing it.

It's hard, it's really hard because it's all so very emotional and being aware of what media is looking for. Sometimes it can be very sensationalized and that's all they are looking for and being aware that your voice is very strong so I think as long as you are able to maintain and having people around that support you. Also, a big part of media is training. I mean, I myself had to go through training to learn how to speak to the public through media so being aware of how to answer questions – what it is staying on point being aware of what it is that you want the people in the public to be aware of and I think the biggest thing when someone has gone missing is getting your loved one's pictures out there.

And also a message to them as well because they may be missing you know some times they are found so I think it's really important that your message is also to them to let them know that they are loved and that you really want them to come home and you want to talk to them, reach them out immediately so I think that's really important too.

What do you advise if the loved one is found dead?

That's probably the most emotional time when there loved one is found. I think the first thing is to make sure that the supports are there. Whatever supports are needed whether it's that spiritual help, ceremonial help whatever it is that helps them through that process and when there is a murder then it becomes a whole other system that's involved. And that whole other system that's involved is that criminal legal system and when there's an accused person, depending on who the accused person is, is probably the most difficult to have to deal with.

It also impacts not just your immediate family it does impact the whole community and so that's where it gets really complicated, really, all those emotions come in, you know the anger and the hurt knowing that someone has taken the life of your loved one. And when you do have to go through that process and you know that person has been charged and that whole other system takes over basically because what happens is that accused person actually has more rights than anyone because there's a whole legal process that allows them to have a whole charter of rights and freedoms that protects them from the system.

So policing's involved, the crown attorneys are involved, evidence is collected and that's probably part of the process that's the most devastating is when they do collect all that evidence because that's when the gory ugly details of their murder is being told in court. And being prepared for that I think is the most important because when it does end up going to the courts and the murder trial is the first time that you'll ever hear those ugly gory details and I think being prepared for that will

help. So again having supports there all the way through that process is the most important, having people around that can explain the system, having people around that can explain the language because within that legal system there's a whole other language that's being presented in the courts and a lot of times you may not be aware of what they are actually talking about and so hopefully what I can help you with is to explain that process.

The whole Canadian criminal legal system is a whole, is a whole process in its itself. It is very colonial it was based on patriarchal colonial values it was never part of Indigenous, it was never part of Indigenous thought, about how we deal with conflict. So it's a whole other process that our people are forced into – we really don't have any other option at the moment to address these horrific crimes that are occurring so when an accused is charged first the police have to do their job like I said earlier about collecting evidence. So the police are the front line in the criminal legal system so they're the ones that have to collect all that evidence and because the principles of criminal laws are that the crown has to prove its case beyond a reasonable doubt that's where the police come in and gather all that evidence and they have to present it to the crown to make sure that their case is proven beyond a reasonable doubt and then it becomes the crown's decision whether or not what crimes they are going to be charged with so there's a whole federal criminal code and the cc is where all of the offences, federal offences are laid out so crimes like manslaughter, first degree murder, second degree murder, assaults, those are all federal crimes they're codified in the criminal code so that's where the crown has to make a decision whether they are going to charge someone with manslaughter or whether they'll charge them with 2nd or 1st degree based on the evidence that the police bring forward. And that's also when it becomes very difficult because we know as family members whether someone actually makes a decision to kill someone. And because of that colonial system, they make a distinction between 1st and 2nd degree murder and it's all about intent and whether it was planned ahead of time is what makes the difference between 1st and 2nd degree murder and so if they find that and they think that it wasn't planned then that's when they charge them with 2nd degree murder and I think that's where it becomes very difficult because then that's when also there's a process of sentencing and there's differences between how an accused is sentenced if they are convicted of 1st and 2nd degree murder and really it's more about how much time they can spend in jail before they can apply for parole so I think the maximum is 25 years so the difference between 1st and 2nd degree murder and the sentence is how much time they spend in jail before they can apply for parole so the maximum for 1st degree murder is 25 years sorry the maximum for 2nd degree murder is a maximum of 15 years before they can apply for parole they can get life so a person can get life a life sentence for 2nd degree murder but they

can apply for parole after 15 years. And if they are convicted of 1st degree murder they can be charged for life in prison but can apply for parole after 25 years so there is really only a difference of 10 years between 2nd and 1st degree murder so that too causes some difficulties for families when they hear that he may be out in 15 years but again it is the process internally once they are convicted for life there's a whole other process again once they are convicted and in jail they have to go through parole boards and parole board hearings so that's later so what I want to explain is the actual criminal legal trial. So like I said the police are on the front line, they gather the evidence, the crown makes a decision of whether it's manslaughter, 1st degree or 2nd degree murder and then the accused is charged they have first a bail hearing to determine whether he can get bail or not. So that's the first hearing so someone could come forward and offer bail for the accused and he may get out so again that's up to the judge to determine whether or not he does receive bail and I would say in most instances they don't get bail and so they are serving their time right from the time they get charged right until their actual trial and a lot of times because the accused is able to use the system there's first appearances, there's adjournments, there's a whole other system. The system itself because of the way that it works and because the accused is actually - one of the principles of criminal law is that they're innocent until they're proven guilty so they're in jail and they're innocent that's how the system works until the crown is able to prove beyond a reasonable doubt that they're guilty so that's what all of the whole process identifies is that game - I call it a game - it's a game between the crown and the defence lawyer to determine whether or not he's innocent until the crown is able to prove him guilty beyond a reasonable doubt and what does that mean? A reasonable doubt if there is any doubt what so ever that he may be innocent then he's acquitted so the crown really has to work hard to make sure that the evidence that they are bringing forward is enough to ensure his guilt so that's what makes it difficult and also part of that process is that the crown doesn't represent the victim. The crown represents society so when you see the wording R versus the accused's last name so R represents Regina, is the word they use but it represents the crown, the queen, so they represent the queen and society in general. They do not represent victims of crime, they do not represent families of victims so they do not represent you. And that's also part of the difficulty in the process is that families are left out really. Once in a while I think when you have really good crown attorneys and they're able to develop a good relationship with the families, I mean that's what families can demand, to have that relationship with the crown but again the crown will tell you that they do not represent you and that they have to do their job in representing all of society and so that too is part of the problem because what happens is that if you are a victim of crime and you are the victim the only way that your evidence ever

gets into the court is through the evidentiary rules. And that is a whole other process and rules of evidence that are presented.

So when I say there's different processes and I said there's first appearances, there's adjournments, there's pre-trials and then getting to the trial so that could take years by the time you actually get to trial. And during the trial again like I said earlier it's the first time ever hearing the ugly gory horrible details of how your loved one was murdered. So being prepared right up to that point is needed and having people to support you in the court room during those days is really important and I know that there's victim services that are supposed to be available for families but I don't always think that they understand the trauma that families are going through and I don't think that they always understand that families don't understand the language in the court room and hopefully that will change as we're going through this process now that people are becoming aware that victim services needs to change when it comes to murder trials. And so that again is where assistance is needed from people that are aware of what is being presented in the court because sometimes they have little mini trials in a trial and they ask you to leave. And a lot of times families are asked to leave and it's because the crown, the defence lawyers have to do a little mini trial to determine whether the evidence is admissible.

So let's say the accused had a confession so basically the charter of rights and freedoms says that you have a right to be to not be self-incriminating. So it means that that you have a right if somebody forces you to tell you what happened, that's where evidence in the court where the crown and the lawyers have to make a decision whether or not that evidence can actually be brought into the trial. And there's other things that happen and mostly it's those evidentiary rules that determine what can actually be brought into the trial and if they determine in that little mini trial that a confession isn't constitutional then they can say, a judge can determine that it's not applicable and they won't use it.

And so again that confusion when we hear that someone has confessed and then they end up in the court room and that confession is thrown out. So that causes a lot of confusion and a lot of anger because then all of a sudden it's not applicable and it's not used. So that happens a lot during the criminal trial and then the judge is also determining whether or not the accused has because of the charter and because of the offences can determine whether or not just have a judge hearing it or whether they choose a jury and I think again there's a whole other process for when a jury is brought in.

So when a jury is brought in that's a whole other process. And the whole other process is determining the jury members so both the accused lawyer and the crown when people are summoned to be jury members they also have to determine whether or not jury members are biased and they could already have an opinion of the case even before coming and being a jury member and that again is a whole

other process before the actual trial to determine who the jury members are and again there's case law, there's law that's been determined that even juries can be biased and there should be indigenous jury members that are part of the jury. A lot of the times that doesn't happen because it's supposed to be a jury of your peers and that's how the system works or supposed to work but a lot of times it's not working but again that's for the accused.

It's up to the accused and the accused's lawyer to determine whether or not they just want the judge to determine or if they want a jury. It's totally up to the accused to determine that so once they trial is over and either the judge or the jury is making a determination of guilty or not guilty they're not part of the process is they have to look at the law and part of that process is applying the facts to the law it really has nothing to do with emotion. It has nothing to do with spirituality, it has nothing to do with the spirit of your loved one whose life has been taken. It's a game. Too me it's a word game about a whole legal system that is not only not working for us as Indigenous people but it's not working as a system for all peoples. So again it becomes part of the struggle so if a judge comes back or a jury comes back and determines that accused is not guilty because the judge hasn't proven its case beyond a reasonable doubt that there was doubt in his innocence: his or her innocence and he's acquitted and he comes back into the community and according to that system it's over. If they determine that he's guilty then there's a whole other process of a sentencing hearing.

And the sentencing hearing this time is a whole other process and again that process allows for the accused to have certain determinations of what's presented during a sentencing hearing and there's a case that was called Gladue. And Gladue allows for the history of the accused to be presented to the judge to determine their sentencing and what is required and then that's when the judge determines how many years whether it's first, well there would have already been a charge with either 2nd or 1st degree murder but the judge would determine how many they would have to spend in jail and that they could apply for parole. So that's the end once the sentencing hearing once the judge determines whether they're guilty or not guilty. So actually the Gladue case that came to the Supreme Court of Canada stated that an accused person who has been sentenced has an opportunity to present their history, their life history into their sentencing process and it does apply, in the criminal code it says that it applies to all peoples but especially Aboriginal people because of the history of colonization and the history of residential schools and the child welfare system that may have an impact on an accused person because a lot of times even the accused person may also be a victim of some kind.

And so that's part of the struggle if they too are victims of violence of some kind it does have an impact on the determination of their sentencing on what they hear and

what is reported because now we do have Gladue reporters that write up those reports for accused persons and so then you think that's the end of it they either guilty or not guilty but sometimes it's not the end of it because the way the process works it's always appealable. So everything happens, so the whole trial happens in a provincial court or a territorial court: so at the provincial level that's where all of the evidence is brought in. All of the arguments of the lawyers on both sides – a very adversarial process, adversarial meaning there's the fight between the two. And so if an accused is found guilty and he could be spending time in jail for years he could still win an appeal. An appeal is up to the next level so it goes from provincial court up to the provincial court of appeals and then all the way to the supreme court of Canada. So that could take years as well. So if it is appealed and it can be appealed by the accused and if he wins he or she wins, it could end up going back to trial again and the process allows that to happen and that is in my opinion, one of the worst processes within that system for families is having to go through that process over and over again. So a whole new trial is ordered or could be ordered by the judge in the appeal so then they go back again the crown and the lawyers, defence lawyers going through a whole other trial process and if it is appealed to the supreme court of Canada then the families aren't represented at all. I mean the families aren't represented in any part of that process. There's no new evidence brought in there's no new information it's all just paper. If there is new evidence the crown would have to start all over again at the provincial level and if somebody is charged and they have already gone through a process then they can't be charged with the same offence again so even if there is new evidence the crown would have to determine the charges that would be laid which would have to be different from the first ones that they have already been through. And again that's part of the difficulty with that criminal legal process. I don't call it a criminal justice system. It's not justice. It's not justice for any victims of crime to have to go through a system that does not take into account their emotional or spiritual well-being. And the losses and the traumas that they have to go through I think that's part of the difficulty with that system but the more that people are aware of how it works the more I think people, families, especially, can be made aware, right from the beginning, that sometimes the real justice for them may not get answered in that process. And so it's the healing that has to take place away from that system. It's not going to, it's really not going to help heal. It may help if they are charged and they are convicted. It may help in knowing that they are having to pay, maybe, for what they've done. But it's still doesn't help with the fact that they continue on with their life and the loss of your family member is still gone. So that the trauma are still there. So that healing has to come directly from families and those that help them through that process.

In order to help you, to help families that are going through that system, is to make demands of having the supports available: whether it is counselling, grief and loss counselling, that can help to understand that their loved ones are gone and having the resources. I know that trials can take a long time and I think most family members attend those hearings every day and you know take time away from their work, take time to go there every day. So those resources should be made available to families and making those demands to government, to the crown, to whomever is available. And I know that there's supposed to be family liaison units that are supposed to be brought to victim services. I don't know if that's working yet or if it's even been implemented but that was one of the announcements by the minister of justice to bring those liaison units into victim services – inquire about that, find out whether they actually exist and if it doesn't exist then get us activist out there to help you to make those demands. And to make sure that assistance is there for you.

There's also the criminal injuries compensation board, so get those activist to help you getting those advocates to help you make those applications. I know a lot of times family members – a lot of times family members may not feel comfortable asking for those kinds of resources. So basically what it is is an application to the criminal compensation board to request money, compensation, as victims of crime. There are resources that are set aside specifically for victims of crime within that board so requesting those resources to help you through the system because you do have and I know family members do go to court every day and there's nothing wrong with asking for that compensation. Family members, victims of crime can ask for, can request for those resources. As far as I know I'm actually just coordinating one now I'd have to double check (whether only biological family can apply) I'm pretty sure you'd have to be a close family member to apply for that compensation.

I'm pretty sure that it is close family, immediate family that can apply for the criminal injuries compensation. It is a national system.

One of the most important pieces to this that I have seen over the years is that a lot of families try to do this on their own. And I really think that community has to be involved – part of being indigenous is that we come from a community and that we come from a strong links between each other as families as community. So I really believe that community should also respond in a good way to support all families who are going through this and a lot of time community doesn't know how to help. They don't know because it impacts the whole community and it can traumatize a whole community and so again asking the leadership to help, going right to the leadership and asking for assistance whether it is helping our own Indigenous way – we have always had a process of helping, so it's implementing that as well so feeling

that you're feeling that you may be helping or feeling that you are I can't think of the word sometimes feeling that you're interfering in other people's lives may be or that but I think that when you're in trauma and you have loss especially a violent loss like murder that I think a lot of community members wouldn't hesitate to support in any way whatsoever. And I think that sometimes it's difficult for us to ask for help but I think it's really important that we do get past that and ask for the help that's needed by whatever the resources that there are in community: there are mental health resources, there's health services, there's elders, there's traditional leadership, there's traditional medicine, there's all of those resources that could be brought together to help you in any way possible, whatever that help is.

My message to families is to stay strong it is a really emotional process to have to go through: a very spiritual process. Make sure that you have those supports at all times. You know in all of this all these years and meeting with families and knowing what families have had to go through and it then happening in my own family I know exactly how it feels when someone goes missing. I know having to go through a murder trial. I know what it feels like to have to again go through another murder trial. So my love, my love and my feelings for you in having to go through such a traumatic experience, you know, there really is no words to describe what that feels like other than to know that I love you very much and you can get through it. You'll get through. It will be hard but the spirits of those loved ones are right there with us they're there to help us through this so never, never forget that they're right there with you and they're there to help us – nia: weh.