

*Sunday September 2, 2012*

## **Negligence should have consequences**

By Jim Taylor

Suppose I put a noose around someone's neck, and helped him hang himself. I would be prosecuted for assisting a suicide. But if my bank totally destroyed someone's life savings, so that in despair he put a noose around his own neck and hanged himself, I would probably get a bonus.

Similarly, if I smash someone's skull with a rock, I'll be charged with murder. But if I send an employee into an unsafe situation where a rock crushes his head, I will probably get away not much more than a reprimand or a fine..

And if I suffocate someone with a pillow, I'll be prosecuted for murder. But if I send an employee into a setting where he asphyxiates, I won't.

The first example is hypothetical; the next two are tragically real.

Sam Fitzpatrick, a logger, was crushed by a falling boulder at a worksite on Toba Inlet in 2009. An inspector from WorkSafe BC, the province's workers' compensation board, said the accident reflected "reckless and grossly negligent" decision-making by company management.

The previous year, Tracy Phan's father and four other workers were sent to clear a clogged pipe at a mushroom farm near Vancouver. When the pipe leaked deadly hydrogen sulfide into a small shed, Phan and two others suffocated.

As the Vancouver Sun reported, WorkSafe "identified a litany of violations that contributed to the deaths."

The farm's owners pleaded guilty to breaking a range of occupational health and safety laws. But no one went to jail. Even the \$350,000 fine was never fully paid; the farm declared bankruptcy.

## **Responsibility starts at the top**

The subject of employer responsibility finally got attention last week. A group of bereaved families and the B.C. Federation of Labour met with the province's justice and labour ministers, Shirley Bond and Margaret MacDiarmid, to discuss what Federation President Jim Sinclair described as "lax enforcement of Criminal Code provisions targeting negligent employers."

"You shouldn't be able to walk away, close up your company, not pay the fine and suffer no consequences when you're grossly negligent in killing workers," Sinclair told reporters after the meeting with the provincial ministers.

"If you're negligent, there should be consequences."

Canada's Criminal Code does include provisions for prosecuting management. The law passed parliament in 2004, in what was known as the "Westray Bill" after 26 miners died in the Westray Mine disaster in Nova Scotia.

No one was convicted of negligence in that event. But a public inquiry found Westray management ultimately responsible for conditions at the mine; administrators tolerated poor safety practices and outdated mining laws.

In fairness, senior Westray management did not directly murder any miners. Nor did senior executives at BP personally kill 11 workers when their Deepwater Horizon drilling platform exploded and burned in the Gulf of Mexico two summers ago. Just as Hitler did not personally gas any Jews in Auschwitz.

But the Nuremberg trials clearly established the principle that Hitler, as senior executive, was held responsible.

In the same way, it could be argued, BP's cost-cutting culture led to the explosion on the Deepwater Horizon, regardless of who actually made the decision to bypass safety measures.

## **Not a licence to kill**

Section 217.1 of the Criminal Code permits prosecution of an employer or supervisor who fails to "take reasonable steps to prevent bodily harm to that person, or any other person."

Unfortunately, it took more than a decade after the Westray tragedy to get that law enacted. During that decade, an estimated 8,000 more workers lost their lives. Statistics Canada tallied 1,014 workplace fatalities during the one year of 2010. The province of B.C. alone had 190 work-related deaths in 2011. But since the “Westray Bill” passed, I understand that only two cases have gone to court; only one resulted in a conviction.

An executive office should not be a licence to kill.

Managers need to be accountable for decisions they make – and for the corporate culture that encourages others to make unwise decisions.

They are not dealing just with balance sheets and investors. They’re dealing with individual lives.

“My mother was a human being, not an animal,” Harsharan Singh Bal said after his mother died in a car crash. Her employer had packed 17 farm workers into a van, without seatbelts. An RCMP investigation recommended 33 criminal charges against the van’s operators.

They got a \$2000 fine.

Federal Public Safety Minister Vic Toews introduced a “tough on crime” bill. It focuses entirely on personal crimes. It doesn’t give equal emphasis to corporate crimes.

Workers whose negligence causes death face consequences. Management negligence still wins a “get out of jail free” card.

Last week’s presentation by the B.C. Federation of Labour stated, in part, “Until corporate criminal negligence is taken seriously; until corporate representatives are sentenced to jail time due to their criminal negligence, preventable and tragic deaths and serious injuries will continue to occur.”

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## YOUR TURN

Since there was nothing to write about in last week’s column, I’m not surprised that I only got one letter.

Jim McKean wrote, “Well done you! Even when you are retired you take a holiday. It’s something that some who are in your place should do but don’t. I constantly hear from my retired friends who say that they are busier now than when they worked. Now I know that there is something not quite right in their lives. Taking time for reflection and relaxation with no agenda is important.

“Now all I have to do is live up to what I preach. Hope your time away from writing was therapeutic.”

Indeed it was, Jim. I can’t say I got away from writing – I’m always writing, even if it happens only within my head – but I got a break from that constant search for suitable subject matter. I could simply enjoy the scenery, and the company, without wondering whether this (or that) could turn into a column!

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## PSALM PARAPHRASES

I have started including a psalm paraphrase for the coming Sunday with my Soft Edges column, on Wednesdays. Why not on Sunday, you ask? Well, partly because psalms seem to me to fit better with the general mood of Soft Edges, which is more likely to deal directly with faith-related matters than these Sharp Edges columns. And partly because Soft Edges is about 250 words shorter than Sharp Edges, and so including the paraphrase on Wednesday won’t make the e-mailing quite as long.

That does mean that if you want to receive the paraphrase, and are not on the Soft Edges mailing list, you’ll need to subscribe. No charge, just send me a message, [jimt@quixotic.ca](mailto:jimt@quixotic.ca). Or you can subscribe automatically by sending a blank e-mail to [softedges-subscribe@quixotic.ca](mailto:softedges-subscribe@quixotic.ca).

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## TECHNICAL STUFF

This column comes to you using the electronic facilities of Woodlakebooks.com.

If you want to comment on something, send a message directly to me, at [jimt@quixotic.ca](mailto:jimt@quixotic.ca).

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You can access several years of archived columns at <http://edges.Canadahomepage.net>.

I write a second column each Wednesday, called Soft Edges, which deals somewhat more gently with issues of life and faith. To sign up for Soft Edges, write to me directly, at the address above, or send a note to [softedges-subscribe@quixotic.ca](mailto:softedges-subscribe@quixotic.ca)

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## PROMOTION STUFF...

If you know someone else who might like to receive this column regularly via e-mail, send a request to [jimt@quixotic.ca](mailto:jimt@quixotic.ca). Or, if you wish, forward them a copy of this column. But please put your name on it, so they don't think I'm sending out spam.

For other sources worth pursuing, try

- David Keating's "SeemslikeGod" page, [www.seemslikegod.org](http://www.seemslikegod.org);
- Alan Reynold's weekly musings, punningly titled "Reynolds Rap" -- [reynoldsrap@shaw.ca](mailto:reynoldsrap@shaw.ca)
- Isobel Gibson's thoughtful and well-written blog, [isabel@traditionaliconoclast.com](mailto:isabel@traditionaliconoclast.com)
- Wayne Irwin's "Churchweb Canada," an inexpensive service for any congregation wanting to develop a web presence, with free consultation. <http://www.churchwebcanada.ca>
- Alva Wood's satiric stories about incompetent bureaucrats and prejudiced attitudes in a small town are not particularly religious, but they are fun; write [alvawood@gmail.com](mailto:alvawood@gmail.com) to get onto her mailing list.

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