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## **MY TRAVELS IN CHINA THOUGHTS ON THE CHINESE LEGAL SYSTEM**

I have visited China three times in the last year, spending 8 weeks there. I have seen it from the inside first with my bilingual business partner and then with my new wife who immigrated from China 10 years ago but is still much more Chinese than Canadian. I have had many conversations with Chinese businessmen, lawyers and bureaucrats. I have also met many common people. I traveled extensively in many parts of China. One of my best insights has been through my new in-laws who are upper middle class members of the party establishment in Jaingmen, a city of about 500,000 near Guangzhou.

It is interesting how different things look from the inside. When I first came to China 8 years ago I was quite apprehensive about their system and has a standard Canadian point of view. I thought their legal system was bad, all I knew was that there were few human rights there and many executions. Now, after five trips here, I see this as a police state but a very inefficient one, the vast majority of people go about their business uninhibited by the state.

Undoubtedly those advocating changes in government are treated harshly, China does not even pretend to be a democracy and certain sects such as Falong Gong and Evangelical Christians are suppressed. I do not understand why the state feels threatened by them. In China it appears that if you don't make waves, you will be left alone.

Their criminal justice system has an earned reputation for harshness but perhaps it is the best they can afford. My information is mostly secondhand and anecdotal, however, as I understand it, their system works very efficiently and serves as a real general deterrent. When a serious crime, say murder, occurs, the police investigate by questioning the neighbours. The neighbours usually have a good idea who they think did it. Perhaps it was that nasty, no good, antisocial, miserable Mr. Wong living all alone at the end of the street. Next step is arresting Mr. Wong who is then taken away and mysteriously has signed a full confession by the next morning, undoubtedly as a result of torture or the threat of it. Mr. Wong is tried by a three person panel, one judge and two lay assessors, the next week. He has a lawyer, but the lawyer has a very limited function, and is to assist the Court in ensuring all the evidence is presented. His real job is speaking to sentence. After a short trial Mr. Wong is convicted, primarily on the strength of his confession. At least 99% of all criminal trials result in convictions. He is taken away and kept in custody for approximately one week, during which time a pre-sentence report is produced to assist the judges in sentencing. In addition to this report, the judges hear sentence submissions from the prosecution and the defence. The main issue will be whether the sentence

should be death or a long prison term, only in very rare cases is any other sentence possible. I understand approximately 8,000 people are executed each year. Assuming the crime is murder, almost certainly Mr. Wong will be given the death sentence. He has a right of appeal, which will be heard summarily within a week and dismissed. Less than 1% of such appeals are allowed. The sentence will be carried out within another week. Most such sentences are executed in private, but in select high profile cases execution is by firing squad at the local football stadium before a packed crowd to reinforce the deterrent effect.

In the result, everyone is happy, except Mr. Wong. The victim's family and friends are satisfied that justice has been done and someone has paid for the crime. They have their vengeance. The police are happy they have solved another crime. Apparently they solve, or at least obtain a conviction, in 99% of serious crimes. The system is happy, a clear message has been sent, crime doesn't pay. Others will think carefully before they commit such a crime since they will be caught and punished severely. As a result, China is a very safe place with a low crime rate and a very small police presence. The village or neighbourhood is happy as not only has the criminal been punished, but they are now rid of a anti-social, disruptive influence, Mr. Wong.

There is a flaw of course and that is Mr. Wong may very well not be guilty. I imagine that not more than one-half the people convicted are guilty. But does it matter? Not in the Chinese system, where individual rights are not important. As Canadian police are prone to thinking, if he didn't this job he did lot of others we didn't catch him for. The deterrent effect is the same whether or not Mr. Wong is guilty as long as the public think he was. Only two people know for sure, Mr. Wong, who is dead, and the real perpetrator who is sure to say nothing since I don't think the Chinese would have any qualms about convicting a second person for the crime. So, in summary, the system works very well as long as you aren't Mr. Wong or, I should say, one of the Wongs.

I am not defending their system since it obviously convicts and executes many innocent people, however, given the complete failure of our system to punish, rehabilitate, deter or protect the public, it has its advantages.

I should also add that as a result of their zero tolerance policy and harsh penalties, there is no illegal drug problem in China. I understand that possession of any illegal drug, even marijuana, in any amount is punishable by death.

I have fewer observations respecting their civil law system. I have been told the law is bad, there is no law, and have been led to believe their civil legal system is completely corrupt with the strongest litigant, being the one with the best connections, winning. I suspect there is a lot of direct or indirect bribery involved. Also, I was told by a lawyer practicing real estate law that you could sue the government but you would never win because the judges who sit in panels of three are all party hacks and do not want to lose their jobs. The general

impression is that their civil law is vastly inferior to our own, it is not trusted, not considered fair and suspected of corruption. It is, in fact, a major hindrance to foreign investment, particularly by small investors, as they believe they will have no protection from commercial predators.

In summary, their criminal justice system works for them, delivering results and deterring crime at the cost of reducing personal rights and freedoms to levels we find unacceptable. Their civil legal system is a basket case, they are not happy with it but I believe that the chances of reform are negligible. It delivers the wrong results and sends the wrong message: that might is right and that only with important friends and contacts and plenty of bribe money can you do business in China. I think most Chinese desperately try to avoid any contact with the civil legal system, believing it is unfair and corrupt and, perhaps, that is the system's only real contribution as it encourages people to find other ways to settle their differences.

**For further information, please contact Garth Evans at  
(604) 685-5235, or at  
garth@beg-law.com**