

Concepts and Precepts: Canadian Tribunals, Human Rights and Falun Gong

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This article analyzes five Canadian tribunal cases brought forward by Falun Gong practitioners against their perpetrators. Falun Gong is a peaceful spiritually based meditative practice highly persecuted and propagandized against by the Chinese Communist Party. The human rights atrocities faced by Falun Gong practitioners have justified the concern of the international community since the persecution in China in 1999. The persecution of Falun Gong initiated in China has also impacted Canada, as discrimination and marginalization of the community are brought into local Canadian contexts. In examining the five tribunal cases, the authors find the Canadian tribunals have failed to come to grips with a global persecutory campaign emanating from a foreign repressive state. The Canadian legal system needs to be aware of the global scope of persecution against vulnerable groups like Falun Gong, in order to elicit more responsive action to international human rights justice issues.

Les auteurs analysent cinq causes canadiennes apportées par les pratiquants du Falun Gong contre leurs persécuteurs. Le Falun Gong est une pratique méditative pacifique et spirituelle sujette à une propagande négative diffusée par le Parti communiste chinois qui persécute les adeptes du Falun Gong. Les violations des droits de la personne auxquelles font face les pratiquants du Falun Gong ont soulevé les inquiétudes de la communauté internationale depuis leur persécution en Chine en 1999. La persécution du Falun Gong initiée en Chine a aussi eu un impact au Canada puisque la discrimination et la marginalisation de cette communauté se manifestent localement. Les auteurs concluent que les tribunaux canadiens n'ont pas suffisamment réagi à cette campagne de persécution globale lancée par un état répressif étranger. Le système légal canadien doit prendre connaissance de la portée globale de la persécution envers des groupes vulnérables tels que le Falun Gong, afin de répondre adéquatement aux questions internationales impliquant les droits de la personne.

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I. Introduction

From its onset in 1999, the Chinese Communist Party's (CCP) persecution of the spiritually-based meditative practice of Falun Gong has justified the concern from the international community. The CCP has, through the Chinese government, implemented a global persecutory campaign against Falun Gong practitioners, yet Canadian tribunals have failed to come to grips with this campaign when addressing human rights issues in Canada.

The absence of the rule of law and the oppression of human rights make it impossible for those who have suffered from unlawful incarceration and torture to seek redress within China. Some Falun Gong practitioners who came to Canada as immigrants, or as refugees in the post-1999 period, have sought justice for the atrocities inflicted upon them. The dominant CCP discourse of demonization and defamation of Falun Gong is replicated in Canada by mainstream Chinese-Canadian media. There are those who have acted upon this discourse and thus have engaged in discriminatory behaviour against Falun Gong practitioners. These practitioners, in response, have brought complaints before Canadian human rights tribunals and Canadian courts.

The authors of this article critically analyze five Canadian tribunal proceedings initiated by Falun Gong practitioners against various officials of the CCP and others who have discriminated against the Falun Gong community in Canada. The first two proceedings, the Jiang Zemin¹ and Bo Xilai² cases, illustrate the CCP's extrajudicial apparatus that is employed to persecute Falun Gong. This apparatus can be traced to the top leadership of the CCP. The third and fourth proceedings, the Alberta Consulate³ and Crescent Chau⁴ cases, illustrate how the oppression of Falun Gong extends to Canada through replication of the CCP's discriminatory discourse, which consists of demonizing and defaming both the practice of Falun Gong itself as well as its practitioners. The final proceeding, the Chinese Seniors Association⁵ case, exemplifies the discrimination faced by Falun Gong practitioners in Canada on the basis of their beliefs.

¹ *Zhang v Jiang* (2006), ONSC No 04-CV-278915CM2 [*Jiang Zemin*].

² *Jin v Bo* (2010), ONCA No C52398 [*Bo Xilai*].

³ *Chen v Attorney General of Alberta*, 2007 ABQB 267, 66 Admin LR (4th) 100 [*Alberta Consulate case*].

⁴ *Zhang v Chau*, 2008 QCCA 961, [2008] R.R.A. 523 [*Crescent Chau case*].

⁵ *Huang v 1233065 Ontario* (2011), CHRR Doc. 11-1325, 2011 HRTD 825 [the Chinese Senior's Association case].

Protection against discrimination and coercion on the basis of one's beliefs is a fundamental human right.⁶ Canada prides itself in upholding global justice. The Falun Gong cases have revealed gaps in the judicial system in dealing effectively with oppression that is systematically instigated by a foreign state. The Canadian legal system has so far failed to show awareness of the global scope of the CCP's persecution against the Falun Gong. In order to deal effectively with the CCP's persecution of Falun Gong practitioners in Canada, Canadian tribunals need to appreciate the nature of the persecution as well as how such persecution has a local impact within Canadian jurisdictions. By achieving this awareness the Canadian legal system will not only ensure a more effective adjudication of the discrimination issues within Canada, but it will also send a message to the global community that there must be accountability for the mass atrocities committed against the Falun Gong throughout the world.

II. Background

A. What is Falun Gong?

Falun Gong (also known as Falun Dafa) is a spiritual cultivation discipline that facilitates the transcendence of body, mind, and spirit. Accompanied by five gentle meditative exercises, practitioners uphold the principles of truthfulness, compassion, and forbearance.⁷ Rooted in ancient Buddhist and Taoist philosophies, Falun Gong was founded by Li Hong Zhi, who began the teaching in 1992. Practitioners attempt to raise their moral character by practicing Falun Gong's three basic above-mentioned principles in their daily lives. As a result, over time they attain improved health and a state of inner peace.⁸ Western scholars regard Falun Gong as a new religious movement, though practitioners are only loosely organized.⁹ Falun Gong practitioners do not have a political agenda.¹⁰ Once the persecution began in 1999, many practitioners

⁶ Bryan Edelman & James T Richardson, "Imposed Limitations on Freedom of Religion in China and the Margin of Appreciation Doctrine: A Legal Analysis of the Crackdown on the Falun Gong and Other 'Evil Cults'" (2005) 47:2 J of Church and State 243 at 248.

⁷ "Overview of Falun Gong" (30 April 2008), online: Falun Dafa Information Centre. <<http://www.faluninfo.net/topic/22>>.

⁸ *Ibid.*

⁹ Maria H Chang, *Falun Gong: The End of Days* (New Haven: Yale University Press, 2004) at 30; David Ownby, *Falun Gong and the Future of China* (New York: Oxford University Press, 2008) at 134.

¹⁰ Ownby, *ibid* at 170 (Ownby explains that the perceived definition of "political" in mainland China "refers narrowly to relations with party authorities and not more broadly to the use of power in the public arena", and that the Falun Gong practitioners were merely demanding proper respect for their practice in their peaceful appeals); See also Hu Ping, "The Falun Gong Phenomenon" in Sharon Hom

sought to dispel the anti-Falun Gong rhetoric and make public the persecution that they personally suffered. To this day there are on-going efforts to make the public aware of Falun Gong human rights concerns.¹³

The practice of Falun Gong occurs without coercion, pressure, or even suasion.¹⁴ Falun Gong is not a belief system that is proselytized¹⁵ and Falun Gong practitioners live normal lives. Despite the CCP's charges to the contrary, there is no evidence that Falun Gong resembles a cult.¹⁶ Professor Ownby has conducted extensive empirical research on Falun Gong communities in North America. The following is his findings:

My impression after spending considerable time with Chinese-Canadian practitioners is of innocence. These people have discovered what is to them the truth of the universe. They have arrived freely at this discovery, and, if they change their mind, they are free to go on to something else. The Falungong community seems to be supportive but not constraining - aside from the peer pressure that exists in many group situations; there is no visible power structure to chastise a misbehaving practitioner, nor do practitioners tell one another what to do or what to believe. Indeed, Li Hongzhi expressly forbids this kind of 'preaching'.¹⁷

Research on Falun Gong practitioners finds that "Falun Gong is not a strange aberration, [nor] a 'heterodox cult' to which lost souls unwittingly fall victim. Seen from the proper perspective, that of the history of cultivation

& Stacy Mosher, eds, *Challenging China: Struggle and Hope in an Era of Change*, (New York: New Press in conjunction with Human Rights in China, 2007) 226.

¹³ Since the persecution took place in 1999, Falun Gong practitioners established the Clearwisdom website to document cases made known to them through secured internet ways released from practitioners in China, online: Falun Dafa Clearwisdom.net <<http://www.clearwisdom.net>>. The Falun Dafa Information Centre and Falun Gong Human Rights Working Group have been set up to present human rights issues of the persecution of Falun Gong, online: Falun Dafa Information Center <<http://faluninfo.net>>; Falun Gong Human Rights Working Group <<http://www.falunhr.org>>. The Falun Dafa Information Centre becomes the official information source on the persecution of Falun Gong. A magazine named Compassion is published annually with scholarly articles analyzing the persecution.

¹⁴ David Matas & David Kilgour, *Bloody Harvest: The Killing of Falun Gong for Their Organs* (Hamilton: Seraphim Editions, 2009) at 19.

¹⁵ Ownby, *supra* note 11 at 140.

¹⁶ In his empirical work with Falun Gong in North America, Ownby found that "there is little in their [Falun Gong] practice in Canada and the United States that supports the idea that the group is a 'cult' in the general sense of the word. The Chinese government's case against Falungong as a 'cult' is not particularly convincing and will not be convincing until the government allows third-party verification of its allegations of Falungong abuses in China. China has essentially reacted out of fear of Falungong's ability to mobilize its followers, an ability demonstrated in late April 1999, when some 10,000 Falungong practitioners came seemingly out of nowhere to surround Communist Party headquarters in Beijing." David Ownby, "Falungong and Canada's China Policy" (2001) 56:2 *International Journal* 183. Edelman and Richardson also echoed that "China's war against cults should be viewed with skepticism, and anti-cult legislation defined as a limitation on religious freedom." Edelman & Richardson, *supra* note 8 at 262. In Ownby's testimony of Daiming Huang's case, he opined that Falun Gong ought to be described as a "religion" or "creed" in Western terms. *Supra* note 7 at 23.

¹⁷ Ownby, *International Journal*, *supra* note 16.

and redemptive societies [in China], the practice of Falun Gong is completely comprehensible".¹⁸

Scholars typically view Falun Gong as having been a non-political group at its beginning, but tend to recognize that it has since undergone change and has become political.¹⁹ James Tong sees this change as having been driven by a self-defence instinct that developed as a result of the group having been demonized and inhumanly tortured.²⁰ The brutal suppression of Falun Gong was mainly due to its persistent popularity,²¹ and some practitioners even originated from the inner core and upper echelon of the CCP.²² The CCP, and in particular President Jiang Zemin, perceived a series of related Falun Gong rallies as the most serious political challenge to the regime since the Tiananmen student movement in 1989, even though pro-government critics of Falun Gong fall short of painting the group as subversive or dangerously out of control.²³ Scholars considered the widespread crackdown on Falun Gong to be reminiscent of the Cultural Revolution.²⁴ According to David Ownby, Falun Gong had no choice but to become political once the campaign of suppression began.²⁵

The pursuit of human rights is not inherently a political pursuit, but this does not preclude using political means to seek justice and redress for human rights atrocities. Unfortunately, the human rights agenda is often undermined by being labelled as political. In the process of seeking justice and redress, the victims cannot avoid being involved in political processes, such as when they ask for government action to help stop the persecution or when they launch protests to bring public awareness to the persecution.

The persecution of Falun Gong was politicized at the start of 1999.²⁶ The critical turning point at which Falun Gong practitioners involuntarily became involved in politics occurred when the Chinese Communist regime started to defame and persecute the group in the late 1990s. The teaching of Falun Gong

¹⁸ Ownby, *supra* note 11 at 127. See also ch 2, on "redemptive societies" in Chinese history.

¹⁹ James W Tong, *Revenge of the Forbidden City: The Suppression of the Falun Gong in China, 1999-2005* (New York: Oxford University Press, 2009) at 29.

²⁰ *Ibid.*

²¹ Chang, *supra* note 11 at 29.

²² *Ibid* at 5.

²³ Ownby, *supra* note 9 at 170.

²⁴ Chang, *supra* note 11 at 10.

²⁵ Ownby, *supra* note 11 at 170 & 221. Ownby explained the perceived definition of 'political' in mainland China, and the Falun Gong practitioners were merely demanding proper respect for their practice in their peaceful appeals.

²⁶ *Supra* note 4 (Affidavit of Clive Ansley at para 51). See also Sujian Guo, "The Party-State Relationship in Post-Mao China" (2001) 37:3 *China Report* 301; Bruce J Dickson, "The Future of China's Party-State" (2007) 106:701 *Current History* 243.

have been consistent since its origin in 1992²⁷ and the founder of Falun Gong, Li Hongzhi, denounced Falun Gong practitioners' involvement in a political movement prior to the persecution.²⁸ After the persecution of Falun Gong in China, he stated explicitly in his writings that "[the] cultivator's motive is to stop the persecution, and not to 'get political' for the sake of gaining human political power".²⁹

In response to the massive human rights violations, Falun Gong practitioners within and outside of China use a variety of means, including the setup of media networks and the invention of software to break through the internet blockage and censorship, in order to ensure that first-hand information concerning the persecution of Falun Gong is communicated to the outside world.³⁰ For example, the Epoch Times recently completed a structural analysis detailing the nature and history of the CCP which was published in a book entitled, "Nine Commentaries On The Communist Party".³¹ The purpose of the analysis was to expose, among other things, the persistent persecutory mechanisms of the CCP that have been utilised to enforce the CCP's rule of China and are responsible for an estimated 60-80 million unnatural deaths in campaigns including the Cultural Revolution and the Great Leap Forward. The Nine Commentaries has elicited over 100 million withdrawals from the CCP by Chinese citizens and others around the world who have lived through communism.³² These are examples of the self-initiated efforts of Falun Gong practitioners around the world to stop the persecution of Falun Gong. Their

²⁷ Li Hongzhi's book *Zhuan Falun*, published in 1995 sets out the fundamental precepts of Falun Gong. The same essence of practice had been taught in earlier lectures which he had delivered.

²⁸ Li Hongzhi, "'Cultivation practice is not political' in Essentials for Further Advancement" (3 September 1996), online: Falun Dafa <<http://www.falundafa.org/book/eng/jjyz49.htm>>.

²⁹ Li Hongzhi, "Further Remarks on 'Politics'" (21 February 2007), online: Clearwisdom <<http://www.clearwisdom.net/html/articles/2007/2/21/82932.html>>.

³⁰ Ownby, *supra* note 11 at 200-211.

³¹ The Epoch Times, *Nine Commentaries On The Communist Party*, (Taiwan: Yih Chyun Book Corp, 2004) at 193-199.

³² Since the publication of this series, 100 million people have pledged to renounce their ties with the CCP. Helena Zhu, "100 Million Chinese Cut Ties With the Communist Party" *The Epoch Times* 27 August 2011), online: The Epoch Times <<http://www.theepochtimes.com/n2/china-news/100-million-chinese-cut-ties-with-the-communist-party-60078.html>>. This effort was initiated to help awaken those who have been manipulated into trusting in the CCP and hating Falun Gong to the reality of what the CCP is and what it has done to the Chinese people. Falun Gong practitioners feel that once the CCP's true nature is exposed to the world, the persecution will not be sustained (Personal communication from Joel Chipkar, spokesperson for Falun Dafa Association of Canada, to Maria Cheung, December 2011). See Jung Chang & Jon Halliday, *Mao, the Unknown Story*, (New York: Anchor Books, 2005). The authors state in their opening, "Mao Tse-Tung, who for decades held absolute power over the lives of one-quarter of the world's population, was responsible for well over 70 million deaths in peacetime, more than any other twentieth century leader."

goal is to stop the oppression and persecution and not to achieve political power or control.³³

B. Party Control of the State

It is impossible to understand the nature of Falun Gong persecution unless one is aware of the relationship between the CCP and the Government of China. In most cases, conceptually speaking, a political party and the organs of state are different; however, in China, the CCP cannot be separated or distinguished from government.³⁴ The CCP is, formally speaking, only a political party. It is not officially considered to be government or part of the state apparatus;³⁵ however, the CCP enjoys a monopoly of control over the Chinese government and utilizes the government for its purposes, including the oppression of its perceived principal rival, the Falun Gong movement.³⁶

The CCP's control over the state originates from the parallel structures that it has installed. The organization of the CCP mirrors that of the Chinese government. For every state function there is an instructing CCP official or set of officials. The party structure holds sway over the state structure. The administration of the parallel party and state structures consists of different persons for each department or authority, except for the position at the top; the head of state is also the head of the CCP. Lower down the chain of command of the two parallel structures, state officials have functions within the CCP; however, with the exception of the head of state, state officials do not self-instruct.³⁷ All organizations are subject to the rule of the CCP.

³³ *Supra* note 28. Chipkar aptly notes that "[t]he reason Falun Gong is seen as political is due to the label of 'political' being branded on Falun Gong by the CCP in an attempt to alienate and persecute Falun Gong at the start of the persecution. For 60 years, the CCP has been brainwashing Chinese people to believe that if anyone attacks the CCP, or criticizes the CCP, then they are against China and against the Chinese people. This in turn had created hyper-patriotic Chinese, who turn around and attack anybody whom the Regime labels as political, or anti-China. For example, in China, as Amnesty International tries to bring light to the suffering of Chinese citizens, it is seen as an "anti-China force" by the very people Amnesty International tries to help, because the CCP has labelled it political and anti-China." (Personal communication from Joel Chipkar to Maria Cheung, spokesperson for Falun Dafa Association of Canada [nd]). See also WebworldNews, "Falun Gong [Falun Dafa] - Misconceptions - Interview Part 2 of 2" online: youtube <<http://www.youtube.com/watch?v=Kd-RxBbQ8eg>>.

³⁴ Guo, *supra* note 26.

³⁵ *Supra* note 4 (Factum of the Appellant [FOA] at para 12).

³⁶ *Ibid* at para 12.

³⁷ *Ibid* (Evidence, Affidavit of Clive Ansley, 10 May 2009 at para 46). Mr. Ansley taught Chinese law at the University of Windsor, the University of British Columbia, and the Faculty of Law at Shanghai's Fudan University, where he still holds the title of Advising Professor. He has done extensive academic study of Chinese law and its systems. He is well-acquainted with the Chinese legal system, and spent 14 years living and working as a foreign lawyer in China, opening the first foreign law office in Shanghai in 1984. Mr. Ansley has presented information on the current state of the Chinese legal system to high-ranking Canadian officials, including Chief Justice Beverley McLachlin. He has provided evidence as an expert

Organizations are prohibited if they do not register with, and report to, the relevant governmental authorities. This requirement applies to professional organizations, social clubs, sports clubs, youth groups, religious groups, and any group whose members hold meetings.³⁸

Because of the total control exercised by the CCP over the Chinese government, the party and state are essentially one and the same from a functional point of view. At every level of government it is the CCP officials who hold true power and the government officials merely act under their direction.³⁹ Through control of the state apparatus, the CCP has conducted its anti-human rights agenda, both nationally and internationally.⁴⁰ For instance, when Jiang Zemin was president of China, he was the head of the party-state chain of command as well as the CCP, and in these capacities he directed, controlled, supervised, authorized and condoned the campaign against Falun Gong practitioners.⁴¹ Lower in the chain of command are provincial party and state officials. Bo Xilai, as former head of Liaoning Province, oversaw law enforcement and prison management, the operation of detention facilities and labour camps, and actions of the police and prison officials.⁴² Under Bo's direct mastermind, many atrocities occurred.⁴³

C. The 610 Office

The CCP created the 610 Office to instruct the state apparatus on the persecution of those who practiced Falun Gong.⁴⁴ The Office takes its name from the date on which it was formed to prepare for the ban of the practice of Falun Gong in China: June 10, 1999. The 610 Office is an action arm or implementation apparatus of the CCP Political & Judicial Committee and is

witness on the Chinese legal system to a number of Canadian and foreign courts and tribunals.

³⁸ *Ibid* at para 47; B Michael Frolic, "State-Led Civil Society" in Timothy Brook & B Michael Frolic, eds, *Civil Society in China*, (Armonk, NY: ME Sharpe, 1997) 46 at 57.

³⁹ Guo, *supra* note 26 at 301; *supra* note 4, Affidavit of Clive Ansley at para 51.

⁴⁰ *Supra* note 4; Chang *supra* note 11 at 10-16, 125.

⁴¹ *Supra* note 3 (Evidence, Statement of claim at para 21).

⁴² *Supra* note 4 (Evidence, FOA at para 34); see the diagram of the chain of command documented by World Organization Investigating the Persecution of Falun Gong (WOIPFG), "Schematic of the '610 Office' Network" (22 Aug. 2004), online: WOIPFG <http://www.zhuichaguoji.org/en/sites/zhuichaguoji.org/en/files/record/2004/08/33-en_33.pdf>. See also Chang, *supra* note 11 at 29, where she wrote that women are particularly singled out for torture in forced labour camps. In a Liaoning labour camp, it was alleged that "women were stripped naked and thrown to prison cells with violent male criminals who were encouraged to rape and abuse them."

⁴³ *Ibid* (Evidence, FOA at para 12).

⁴⁴ Chang, *supra* note 11; *supra* note 4 (FOA at para 30).

under the Committee's control. The Office is the vehicle through which the Committee carries out its directive to eradicate Falun Gong.⁴⁵

The responsibilities of the 610 Office include coordination, information collection and strategy analysis.⁴⁶ Regional and local 610 Offices have been established beneath the Central Committee's 610 Office at both the provincial and municipal level. The 610 Office was created by Jiang Zemin in his capacity as head of the CCP. It is solely a party structure and has no formal legal basis.⁴⁷ In fact, the party gives the 610 Office authority to ignore or violate the law. For example, the CCP decrees that "when any Falun Gong practitioner dies during interrogation, there is to be no punishment for the interrogators."⁴⁸

The Central Political & Judicial Committee of the Party issues orders that are carried out by subordinate levels down to the level of neighbourhood offices and township governments.⁴⁹ As a result, the 610 Office directs every level of the government to join in persecuting Falun Gong. Large sums of money are spent to encourage Chinese citizens to spy on Falun Gong practitioners in their communities and report them to police. In 2003 the Central Committee and 610 Office provided funding to all community administrative offices to hire security staff whose sole responsibility was to monitor Falun Gong practitioners in the community and distribute reward notices for reporting practitioners to the police. Citizens in both rural and urban areas across China receive between 500 to 1,000 yuan (USD \$60-120) for their reports.⁵⁰ The 610

⁴⁵ *Supra* note 3 (Statement of Claim at para 26); WOIPFG, "Investigative Report on the '610 Office'" (1 February, 2011), online: World Organization Investigating the Persecution of Falun Gong <<http://www.zhuichaguoji.org/en/node/197>>.

⁴⁶ WOIPFG, *ibid*; *supra* note 4 (FOA at para 30).

⁴⁷ *Supra* note 4 (Evidence, Appeal Book, Affidavit of Guoting Guo, 4 June 2007 at paras 38, 39). Mr. Guoting Guo was a law professor at Wuhan University and at the Shanghai Maritime University. He has authored books and articles on Chinese and international law. He practiced law at all levels of the Chinese Court system for 21 years until 2005 and has been recognized in international publications as the number one maritime lawyer in China. Mr. Guo defended Falun Gong practitioners from 2003 to 2005. As a result, Mr. Guo's licence to practice law was suspended. He was placed under house arrest, until he was allowed to leave China. Mr. Guo's first person experience illustrated that lawyers themselves may be persecuted for doing their job in defending clients who practice Falun Gong.

⁴⁸ *Ibid* (Evidence, Appeal Book, Affidavit of Guoting Guo, 4 June 2007 at para 36); (Affidavit of Clive Ansley at para 72).

⁴⁹ *Ibid* (Evidence, Affidavit of Han Guangsheng at para 39). Han Guangsheng had held the positions of Deputy Chief of Shenyang City Public Security Bureau (1982-1996), and Chief of Shenyang City Judicial Bureau (1996-2001). Mr. Han concurrently held the positions of being an Honourary Chairman of Shenyang City Lawyers' Association, and Secretary General of the CCP Committee of Shenyang City Judicial Bureau. Han's various leading positions, held at the time when the persecution of Falun Gong started, granted him insight into interrelations between the agencies in regards to the coordinated efforts at persecution.

⁵⁰ WOIPFG, "Investigative Report: How Jiang Zemin's Regime Appropriated China's Capital and Foreign Investment Funds to Persecute Falun Gong" (7 May 2005), online: WOIPFG <<http://www.zhuichaguoji.org/en/node/146>>.

Office is both the embodiment of, and the enabling force behind, a unique form of persecution that, today, exists only in China. The manner in which the persecution is perpetrated is little understood in foreign judicial contexts. Understanding the apparatus of persecution at its source in China is necessary in order to understand how the persecution spreads beyond its borders.

D. Persecution of Falun Gong

The official People's Republic of China discourse of the early 1990s supported Falun Gong as a form of qigong, a meditative practice, and endorsed certain aspects of the practice, including qigong's teachings of understanding and energy healing.⁵¹ Falun Gong, the practice of which entails certain physical exercise, was encouraged by the more practical in the CCP because of the cost savings that such an exercise regime generated for the health system.⁵² Nevertheless, by the mid-1990s, with the considerable growth of the Falun Gong community to 70-100 million practitioners, the ideological guardians of the CCP asserted control.⁵³ Since Falun Gong practitioners had dissolved their formal structure as a registered society in 1996,⁵⁴ instances of intentional defamation and harassment against Falun Gong and its practitioners were increasingly instigated by state-sanctioned organizations. Examples of this anti-Falun Gong attitude and behaviour included incitement to hatred via the state's media, the banning of Falun Gong book publication, and harassment of practitioners from 1996 to 1999.⁵⁵ Dominant CCP discourse changed dramatically following the peaceful appeal of approximately 10,000 Falun Gong practitioners in Beijing who gathered to petition against incipient persecution.⁵⁶ Although this mass appeal was constitutional and was, in fact, not an organized act, the state-controlled media in China nonetheless identified the event as a political act.⁵⁷ The CCP banned the practice of Falun Gong on June 10, 1999. Various state organs followed suit in July 1999.⁵⁸

⁵¹ David Ownby, "A History for Falun Gong: Popular Religion and the Chinese State Since the Ming Dynasty" (2003) 6:2 *Nova Religio* 223.

⁵² Chang, *supra* note 11 at 3-4.

⁵³ *Supra* note 9.

⁵⁴ Ownby, *supra* note 11 at 167.

⁵⁵ "Falun Gong: Timeline" (May 17 2008), online: Falun Dafa Information Centre <<http://www.faluninfo.net/topic/24/>>. See also Ownby, *supra* note 11 at 167-69.

⁵⁶ Chang, *supra* note 11, ch 1, 4.

⁵⁷ Bryan Edelman & James T Richardson, "Falun Gong and the Law: Development of Legal Social Control in China" (2003) 6:2 *Nova Religio* 312 at 313. See also Chang, *supra* note 11 at 11.

⁵⁸ Falun Dafa Information Centre, *supra* note 13.

Since the crackdown on Falun Gong began, the CCP, supported by its single-voice media machinery, has used language such as "evil cult", "anti-science", and "undermining national security" to describe Falun Gong.⁵⁹ Falun Gong has been and is continuing to be demonized and defamed on a national and international scale.⁶⁰ The CCP and its state-controlled media use their power to create and dispense "knowledge" that both obscures or denies, for everyone else, the real first-hand interactional knowledge of Falun Gong and its practitioners, and also silences the voices of the practitioners themselves. Falun Gong practitioners are portrayed and objectified by the media in very derogatory terms that alienate them from the larger community. The regime accuses practitioners of Falun Gong of being political and of having ulterior motives when they attempt to convey the reality of their oppression.⁶¹ Devious use of language such as 'evil cult' plays an important role in this domination of power relations.⁶² The Falun Gong community is politicized and criminalized by the government, while marginalized and silenced by the general public. The CCP succeeds in an exclusionary persecution by using discursive dividing practices that "involves a system of differentiation" to objectify Falun Gong practitioners by using derogatory descriptions which alienate them from the larger community.⁶³ By portraying Falun Gong as dangerous, the regime undermines public support for the group. Under state-induced fear, employers, family members, and the community exert pressure on Falun Gong practitioners to give up their practice, even though they can witness its physical and mental benefits. The general public is afraid to talk about Falun Gong; the entire topic has become taboo.⁶⁴

Since the banning, Falun Gong practitioners have been arrested and told to recant and denounce their beliefs. If they refuse, practitioners are tortured in order to force them to do so. According to a United Nations report, Falun Gong practitioners accounted for two thirds of the victims of torture in China in 2005.⁶⁵

⁵⁹ Chang, *supra* 11, ch 4. In Edelman & Richardson, *supra* note 8 at 66, the authors postulate that "the Chinese Communist Party has also become more sensitive to international criticisms concerning China's human rights record. In this context, the anti-cult movement and its ideology have served as useful tools, helping efforts by the party to try to maintain a delicate balance and create the illusion that the rule-of-law has been upheld, even as actions in violation of international customary law are being taken against the Falun Gong."

⁶⁰ Chang, *supra* note 11 at 16-19.

⁶¹ *Ibid.*

⁶² Ownby, *supra* note 11 at 176.

⁶³ Michel Foucault, *The Archaeology of Knowledge and the Discourse of Language*, translated by AM Sheridan Smith (New York: Pantheon Books, 1972) at 50. See also L. Graham, "Discourse Analysis and the Critical Use of Foucault" (Paper delivered at the Australian Association for Research in Education Annual Conference, 27 November-1 December 2005), [unpublished]. The author expands the concept of discursive dividing practice.

⁶⁴ Ownby, *supra* note 11.

⁶⁵ Manfred Nowak, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or*

An estimated 450,000 to one million Falun Gong practitioners are held at any given time in forced labour camps or long-term detention facilities.⁶⁶ Torture of Falun Gong practitioners includes severe beatings, deprivation of food, sleep, hygiene, rape and forced injection of nerve-damaging psychiatric drugs.⁶⁷ The Falun Gong community has documented over 3,400 deaths that resulted from such torture.⁶⁸ In addition to these instances of torture and death arising out of the persecution of Falun Gong practitioners, there have been reports that, beginning in 2001, there have been cases where practitioners' vital organs were harvested for transplants.⁶⁹

The CCP's discursive dividing practices have confused many people who want to understand the persecution of Falun Gong. Reliability of information sources has been identified as a problem in the study of Falun Gong. The principle reason for this is the lack of transparency of Chinese government documents, most of which are regarded as state secrets.⁷⁰ Internet censorship and social media blockage are used to suppress the voices of citizens in order to achieve harmony. The Canadian Embassy in Beijing recently experienced this censorship when it posted the Canadian Federal Court ruling on the extradition of Lai Changxing, a high profile Chinese fugitive accused of masterminding a massive smuggling ring in China in the 1990s. The Embassy posted the ruling using a local social media tool named Weibo; the posting was taken off within minutes.⁷¹

It is not uncommon to find polarized documentation between the reports of official Chinese sources and those of Falun Gong. This gap poses difficulties for scholars and journalists and results in conflicting interpretations. Recent research on Falun Gong found that the reports of the Chinese government are mostly inconsistent and adversarial.⁷² One of the greatest discrepancies

⁶⁶ *punishment, Mission to China*, UNECOSOCOR, 66th Sess, UN Doc E/CN.4/2006/6/Add.6 (2006) at para. 42.

⁶⁷ Falun Dafa Information Centre, 2010 Annual Report of Falun Gong, online: Falun Dafa Information Centre <<http://faluninfo.net/article/909/?cid=162>>. See also Chang, *supra* note 11 at 24-25. In the year 2004 when Chang's book was published, the estimation was 100,000 Falun Gong practitioners were either arrested or jailed. Among these, 1000 were confined to mental hospitals and 20,000 were sent to labour camps without trial.

⁶⁸ Human Rights Watch and Geneva Initiative on Psychiatry, *Dangerous minds: Political psychiatry in China today and its origins in the Mao era*, (United States of America: Human Rights Watch, August 2002), online: Human Rights Watch <<http://www.hrw.org/en/reports/2002/08/13/dangerous-minds>>.

⁶⁹ "Gruesome death toll - 3427 confirmed dead: Tens of Thousands More to be Confirmed" (23 March 2011), online: Clearwisdom <http://clearwisdom.net/emh/special_column/death_cases/index.html>.

⁷⁰ *Supra* note 14.

⁷¹ *Supra* note 19 at 26.

⁷² Mark Mackinnon, "Canadian embassy's posting on Lai Changxing taken off Chinese site" (August 5, 2011), online: The Globe and Mail <<http://www.theglobeandmail.com/news/world/asia-pacific/canadian-embassys-posting-on-lai-changxing-taken-off-chinese-site/article2121704/>>.

⁷³ *Supra* note 19 at 27-29; Ownby, *supra* note 11 at 163 & 195.

lies in the government coercion and suppression of the Falun Gong practice in China.⁷³ The Chinese government has consistently refused to allow third party verification of abuses and tortures claimed by Falun Gong practitioners.⁷⁴ David Ownby finds that Falun Gong sources are more convincing and credible - while acknowledging the difficulty with verifying the sources.⁷⁵ James Tong questioned the reliability of Falun Gong sources claiming that some of the third party reports from Falun Gong cannot be easily verified.⁷⁶ The better position to take is that the reports of the Falun Gong are to be preferred to that of the CCP. According to prominent authors such as Ownby, Edelman and Richardson, Falun Gong practitioners have no political goals other than ending the persecution against them, but the CCP instigates the persecution in order to stifle its perceived opposition. It is, therefore, clear where the benefit of the doubt should lie when it comes to polarized, opposing accounts of the persecution. The Falun Gong practitioners have little to gain from falsifying accounts of persecution while the CCP has everything to gain by denying them. Moreover, this pattern of persecutory propaganda has been seen before - in Nazi Germany. It is logical that such a regime would cover up mass human rights violations with the use of propaganda as the foremost strategy to justify and camouflage its crimes.⁷⁷ Likewise, in the case of Falun Gong, the brutal nature of the Chinese regime's treatment of Falun Gong practitioners can be supported only through demonizing and defaming discourses on Falun Gong.

E. The Extension of the Persecution of Falun Gong into Canada

The suppression of Falun Gong does not stop at the boundaries of Mainland China. Mainstream overseas Chinese media and websites replicate the dominant and official Chinese discourse, thus perpetuating and extending the persecution of Falun Gong in countries such as Canada, where this has been frequently documented.⁷⁸ There have been many reports of harassment, intimidation, hate incitement, and physical assault against Falun Gong practitioners and their supporters, the most extreme incident involving

⁷³ Ownby, *ibid* at 163; Ownby's testimony, *supra* note 16 at 30.

⁷⁴ Ownby, *ibid* at 162.

⁷⁵ *Ibid* at 162-163 & 195.

⁷⁶ *Supra* note 19 at 28.

⁷⁷ Ownby, *supra* note 11; Maria H. Chang, *supra* note 11 at 128. Chang points out that 99% of trials in China bring a guilty verdict. Most trials are closed to the public, with some being held in secret. The judicial process was prejudiced against Falun Gong practitioners from the outset, and they are unfairly tried.

⁷⁸ "Summary and sample list of Chinese officials' violations of civil rights, laws, and sovereignty in Canada" (28 Oct 2003), online: Clearwisdom, <<http://www.clearwisdom.net/html/articles/2003/9/28/40779.html>>.

a practitioner held at gunpoint.⁷⁹ Chinese consulates spread defamatory materials to the Canadian public and politicians and exert pressure on officials, politicians, businesses and communities to withdraw support from Falun Gong practitioners.⁸⁰ Repeated incidents have caused concern over personal and national security in Canada. Chinese media in Canada convey anti-Falun Gong sentiment with its persistent defamation and distorted portrayal of Falun Gong which may mislead the Canadian public and disguise the persecution.

Mainstream overseas Chinese media and websites closely connected to Mainland China also replicate this official discourse.⁸¹ Although people have free access to information in Canada, new Chinese immigrants usually rely on the Chinese media because of its language and their familiarity with its style. Many Chinese immigrants who have come from China have been indoctrinated to believe that the non-Chinese media is hostile to China and they are, therefore, not open to alternative sources of information.⁸² This makes it ever more likely that the anti-Falun Gong rhetoric will be heard and absorbed by Chinese immigrants even after they have arrived in Canada.

Another factor which enables the persecution of Falun Gong beyond China's borders is fear of the consequences which might follow opposition to the persecution. Communist government-induced fear is prevalent among Chinese immigrants. Even though they may not support the persecution, many remain silent because they fear repercussions to themselves, their families and relatives back home in China. Gillis reports that Chinese-Canadians from persecuted minority groups in China, such as Falun Gong, say they are monitored and intimidated by Chinese spies and live in fear of the possible effects of voicing their concerns:

Several Chinese expatriates who had last week recounted harrowing tales of threats and intimidation asked not to be identified in *Macleans*' for fear of reprisals against relatives they left behind. Others worried about their own safety...Nearly all agreed that Canadians need to be better informed about the espionage going on inside their own borders.⁸³

⁷⁹ "Falun Gong protester attacked" (4 August, 2007) *The Vancouver Sun*, online: The Vancouver Sun, <<http://www.canada.com/vancouvernews/news/westcoastnews/story.html?id=481ddcec-01d9-417f-86bc-a704e7dcaf06>>.

⁸⁰ Doug Beazley, "Chinese accused of slander" *The Edmonton Sun* (24 June, 2005), online: The Edmonton Sun <<http://www.edmonton.com/articles/17547/?place=canada§ion=falun-gong>>.

⁸¹ *Supra* note 6 (Factum of the Appellant at 1.8). The *La Presse* in Quebec published a series of libellous attacks on Falun Gong practitioners in November & December, 2001, and February, 2002.

⁸² M Cheung & M Lo, "Spirituality, Human Rights and Social Work: Falun Gong as an Example" (Paper delivered at the Human Rights in a Diverse Community, Social Work National Conference, 23-25 May 2008), [unpublished].

⁸³ Charlie Gillis, "Beijing is Always Watching" *Macleans* (14 May 2007), online: *Macleans.ca* <http://www.macleans.ca/article.jsp?content=20070514_105173_105173>.

The extension of the persecution of Falun Gong beyond the Chinese border is not only experienced by practitioners in Canada. The persecution is extended outside China via the Chinese Consulate in different countries. One recent example of such interference by the Chinese Consulate occurred in Indonesia. The Chinese embassy in Jakarta sent a stern letter to Indonesia's government demanding that a radio station run by the Falun Gong community be shut down because some of its broadcasts were hostile towards the CCP.⁸⁴

The Falun Gong practitioners' experiences of interference from the Chinese Communist regime have been confirmed by Chen Yonglin, the highest ranking official who had defected from the Chinese embassy in Australia. In his affidavit to the Supreme Court of British Columbia, Mr. Chen revealed that the Chinese regime's mandate for all Chinese embassies and consulates worldwide is to control the Chinese media in order to influence public opinion. He said, "[t]he control of the overseas Chinese community has been a consistent strategic objective of the Chinese Communist Party so as to penetrate into the mainstream of the host country. It's not just in Australia. It is done this way in other countries like the U.S. and Canada, too"⁸⁵ He remarked that, "the 'War on Falun Gong' constitutes more than half the total work of the typical Chinese mission."⁸⁶ Opposing Falun Gong is the top priority of all Chinese Embassies and Consulates today."⁸⁷ He further stated, "Standard practice requires that a senior diplomatic official, often the Consul General himself, must always write letters to the political figures responsible, and to local newspapers, opposing every public event or move hosted by Falun Gong practitioners in the host country."⁸⁸

F. The Need For Redress

The crackdown on Falun Gong has violated the rule of law in China.⁸⁹ The persecution of Falun Gong in China violates the Universal Declaration of

⁸⁴ Andrew Higgins, "China seeks to silence dissent overseas" (14 July 2011) *The Washington Post*, online: The Washington Post <http://www.washingtonpost.com/world/asia-pacific/china-pressures-indonesia-to-silence-dissent-from-falun-gong-followers/2011/07/14/gIQAwxNxl_story.html>.

⁸⁵ *Vancouver (City) v Zhang*, 2009 BCSC 84 (Evidence, Affidavit of Chen Yonglin, 20 June 2008 at para 19). Before Chen's defection, he was the consul for political affairs in the Chinese consulate in Australia, who was responsible for monitoring Chinese political dissidents, and in particular, Falun Gong practitioners.

⁸⁶ *Ibid* at para 29.

⁸⁷ *Ibid* at para 30.

⁸⁸ *Ibid* at para 24.

⁸⁹ Edelman & Richardson, *supra* note 8. See also Ronald C Keith & Zhiqiu Lin, "The 'Falun Gong Problem': Politics and the Struggle for the Rule of Law in China" (2003) 175 *The China Quarterly* 623 at 624.

Human Rights articles on torture⁹⁰, due process of law⁹¹, freedom of religion and belief⁹² and freedom of assembly and association.⁹³ The banning of Falun Gong contradicts the Constitution of China, which states that "[c]itizens of the People's Republic of China enjoy freedom of speech, of the press, of assembly, of association, of procession and of demonstration."⁹⁴ The Constitution also states:

[Chinese citizens] enjoy freedom of religious belief. No state organ, public organization or individual may compel citizens to believe in, or not to believe in, any religion; nor may they discriminate against citizens who believe in, or do not believe in, any religion.⁹⁵

However, this is qualified with some exceptions by the passage which immediately follows it:

The state protects normal religious activities. No one may make use of religion to engage in activities that disrupt public order, impair the health of citizens or interfere with the educational system of the state. Religious bodies and religious affairs are not subject to any foreign domination.

There is no evidence to justify the application of any of these exceptions to the practice of Falun Gong.⁹⁶

The United Nations Special Rapporteur on freedom of religion or belief, Asma Jahangir, in December 2006, wrote:

[T]he Special Rapporteur follows the approach of interpreting the scope of application for freedom of religion or belief in a large sense, bearing in mind that manifestations of this freedom may be subject to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others. Rosalyn Higgins, who is currently President of the International Court of Justice and was a member of the Human Rights Committee when its general comment No. 22 was drafted,

⁹⁰ General Assembly of United Nations, *Universal Declaration of Human Rights*, GA Res 217 (III), UNGAOR 3d Sess, Supp No 13, UN Doc A/810 (1948).

⁹¹ *Ibid*, arts 9-11.

⁹² *Ibid*, art 18.

⁹³ *Ibid*, art 20. See also Janice Casil, "Falun Gong and China's Human Rights Violations" (2004) 16:2 Peace Review 225 at 226.

⁹⁴ *Xianfa* [Constitution of the People's Republic of China] art 35 (1982).

⁹⁵ *Ibid*, art 36.

⁹⁶ *Ibid*. Falun Gong practitioners have been law-abiding citizens and the practice of Falun Gong is indigenous to Chinese traditional beliefs. There was no foreign influence at the outset of the persecution. Substantial data has been reported on the health benefits of Falun Gong before and after the persecution of Falun Gong. See e.g. He Mai, *Falun Gong and Health Benefits - Part I* (5 March 2011), online: Falun Dafa Clearwisdom <<http://clearwisdom.net/html/articles/2011/3/5/123614.html>>; He Mai, *Falun Gong and Health Benefits - Part II* (8 March 2011), online: Falun Dafa Clearwisdom <<http://www.clearwisdom.net/html/articles/2011/3/8/123681.html>>; 1998 Health Survey of Harbin Falun Gong Practitioners (24 June 2011), online: Falun Dafa Clearwisdom <<http://clearwisdom.net/html/articles/2011/6/24/126228.html>>.

[R]esolutely opposed the idea that States could have complete latitude to decide what was and what was not a genuine religious belief. The contents of a religion should be defined by the worshippers themselves; as for manifestations, article 18, paragraph 3 [the exceptions clause], existed to prevent them from violating the rights of others.

A similar statement was made by Abdelfattah Amor in his 1997 report to the Commission on Human Rights. There, the second mandate-holder emphasized that, apart from the legal courses available against harmful activities, "it is not the business of the State or any other group or community to act as the guardian of people's consciences and encourage, impose or censure any religious belief or conviction."⁹⁷

Chinese courts provide no effective remedy for arbitrary detention and torture. Falun Gong practitioners who have come to Canada after 1999 have sought justice in Canada for the atrocities inflicted on them in China, as shown in the cases discussed below. The extension into Canada, through local mainstream Chinese media, of the CCP demonization and defamation tactics employed against the practice of Falun Gong in China, has led to discrimination against Falun Gong practitioners in Canada. These practitioners have brought a few of the worst cases of discrimination to Canadian human rights tribunals and courts. Smith underscores the importance of adopting a "standpoint" with the oppressed group. She recognizes the role of text (literature) in transmitting and objectifying dominant knowledge that the dominant power creates in order to justify its rule and to authorize people's activities and lives.⁹⁸ In the case of Falun Gong, the abuse and torture of the Falun Gong community by the Chinese Communist regime is well established. In view of the power imbalance between the Chinese authorities and the Falun Gong discourses, the authors analyse Falun Gong practitioners' legal cases using the standpoint theory of Dorothy Smith, which seeks to present the voices of "subjects speaking for themselves", thus allowing agency to remain with the subjects under study.⁹⁹ The case materials open a window of opportunity for outsiders to understand the mechanism of the persecution of Falun Gong by China.

The following cases illuminate how the Canadian courts have failed to understand the international context of Falun Gong oppression and the Chinese party-state methods of persecution. The result has been a failure to respond adequately both to international human rights violations and violations that take place in Canada.

⁹⁷ Asma Jahangir, *Report of the Special Rapporteur on Freedom of Religion or Belief*, UNHRCOR, 4th Sess, UN Doc A/HRC/4/21, (2006) at para 46.

⁹⁸ Dorothy E Smith, *Institutional Ethnography: A Sociology for People* (Toronto: Altamira Press, 2005) at xi.

⁹⁹ Dorothy E Smith, "From the 14th floor to the Sidewalk: Writing Sociology at Ground Level" (2008) 78:3 Sociological Inquiry 417 at 419.

III. Case Analysis

A. The Jiang Zemin and Bo Xilai Cases

In 2004, Falun Gong practitioner Professor Kunlun Zhang, with others, commenced an action in the Ontario Supreme Court against former Chinese head of state Jiang Zemin. Falun Gong practitioner Rong Jin, in 2007, commenced an action against Bo Xilai, former Minister of Commerce in the Government of China and former head of Liaoning Province. Both plaintiffs are dual nationals of Canada and China who had suffered from, according to their pleadings, "forced and unlawful confinement, assault and battery, economic interference, physical and psychological torture, defamation, severe mental and emotional distress" for the sole reason that they practiced Falun Gong.¹⁰⁰

Detailed documentation showed how Jiang Zemin and Bo Xilai were linked to the persecution of the plaintiffs. The court case submissions explained that the CCP is the driving force behind the persecution of Falun Gong, stating:

The main structure through which the campaign of terror was carried out was the CCP, which being a political party is not officially the government or part of government/state apparatus, but which in reality controls much of government and was used to control all or virtually all aspects of government and state apparatus in this campaign.¹⁰¹

The plaintiffs Zhang and Jin urged that Jiang and Bo should be denied state immunity in Canada on the basis that Jiang and Bo abused their official positions in a manner that violated international law.¹⁰² In both cases, the courts have allowed the All China Lawyers Association (ACLA) to intervene in the proceedings. Every lawyer in the People's Republic of China must be a member of the ACLA,¹⁰³ which functions as a means of CCP control over its member lawyers.¹⁰⁴ The ACLA and its affiliated local Lawyers Associations are controlled by the Ministry of Justice, which, in turn, is controlled by the CCP.¹⁰⁵ The president of the ACLA and all of its executive members are CCP

¹⁰⁰ *Supra* note 3 (Evidence, Statement of Claim at para 11, the Jiang Zemin case). In neither this case nor the Bo Xilai case was the lawsuit contested, except on the issue of state immunity. The pleadings therein are deemed to be true. Both cases are still pending.

¹⁰¹ *Supra* note 4 (Evidence, Statement of Claim at para 23).

¹⁰² *Ibid* (Evidence, Statement of Claim at para 24).

¹⁰³ *Supra* note 1 (Evidence, Affidavit of Xu Jiali, 2 March 2007 at para 8).

¹⁰⁴ *Supra* note 2 (Evidence, Affidavit of Clive Ansley, 19 May 2009 at para 74).

¹⁰⁵ *Ibid* (Evidence, Affidavit of Guoting Guo at para 21), (Affidavit of Clive Ansley at para 33), (Affidavit of Han at para 5).

members.¹⁰⁶ The ACLA functions as an intermediary between the CCP and individual lawyers. Through the ACLA, the CCP has issued guiding opinions to all lawyers putting restrictions on which groups lawyers can and cannot represent.¹⁰⁷ Thus the ACLA is an instrument of the CCP in the suppression of Falun Gong, as it directs its members not to take on Falun Gong cases and punishes human rights lawyers who disobey its directives.¹⁰⁸

Neither Jiang nor Bo contested the cases against them. The government of a foreign country, by statute, is entitled to appear in Court to raise the issue of state immunity, but in this case the Government of China chose not to so. Instead, the ACLA sought and was granted intervener status in both cases to argue state immunity. The reasoning of the courts was that the issue of state immunity had to be addressed and that the Court would benefit from hearing the argument from both sides of the issue. If the Government of China itself could argue state immunity, the courts saw no reason why an organization that held the same views as the government could not also do so. Counsel for Jin argued that to permit the ACLA to intervene would subject her to the spectre of her torturers' disguised, but real, involvement in her action.¹⁰⁹ The insertion of the ACLA into the proceedings inserted the CCP.¹¹⁰ Counsel for Jin argued that justice would not be seen to be done and an injustice would result by granting intervener status to the ACLA - which was complicit and even instrumental in the discrimination of Falun Gong. Moreover, Canadian justice would be brought into disrepute by allowing the ACLA to intervene because is the ACLA is an active participant in the persecution occurring in China, specifically, the obstruction of the rule of law and the denial of access to justice for Falun Gong practitioners in China.¹¹¹ The ACLA is instrumental in instructing and pressuring lawyers not to represent clients who are practitioners of Falun Gong and disbars lawyers who do in fact take on such clients;¹¹² therefore, counsel argued that the Court should not, in pursuit of the rule of law, grant intervener status to a party which has been active in thwarting the rule of law elsewhere. This argument should be even more persuasive considering the fact that the rule of law, which has been thwarted by the party seeking intervener status, also forms the subject matter of the very proceeding in which the party wishes to intervene. As was argued in

¹⁰⁶ *Ibid* (Evidence, Affidavit of Clive Ansley at para 49).

¹⁰⁷ *Ibid* (Evidence, Affidavit of Clive Ansley, 16 October 2009 at paras 30-35, 64).

¹⁰⁸ *Ibid* (Evidence, Affidavit of Guoting Guo at para 24).

¹⁰⁹ *Ibid*, (FOA at para 94).

¹¹⁰ *Ibid*, (FOA at para 92).

¹¹¹ *Ibid*, (FOA at para 91).

¹¹² *Ibid*, (FOA at paras 33, 34, 68).

the *Bo Xilai* case, “the interest of the ACLA is not genuinely public but is, rather, tainted by its complicity in the persecution that is the foundation of this lawsuit.”¹¹³

The Courts dismissed this submission on the basis that determining the complicity of the ACLA in acts of persecution in China would be too “costly and complex”.¹¹⁴ The Court, thus, underscored one of our key arguments in this article – the pressing need to address the general lack of awareness of the persecutory system employed by the CCP against Falun Gong in China. It is troubling to see that a persecutory agent would utilize its intervener status in Canadian courts to prevent victims from seeking a remedy for the persecution from which they have suffered. It is even more unsettling that intervener status was achieved because the Canadian courts are unaware of the complicity of the ACLA in the persecution of Falun Gong practitioners and the court’s conclusion that making a determination in that regard would take too much time and effort.

An accused person’s access to justice is hindered if representation is denied. Indeed, even a person charged with heinous offences is entitled to counsel. That, however, does not mean that the accused is entitled to counsel who has committed the most heinous offences. Counsel is held to a certain standard of conduct to which the accused is not. Denying counsel, who has committed (or been complicit with) heinous acts, the right to represent an accused charged with similar acts is not a denial of the accused’s right to counsel, nor of the right of the accused to defend him/herself. Much the same can be said of an intervener – not merely counsel for the intervener. Just as counsel must be distinguished from the client, an intervener must be distinguished from a party whose position the intervener adopts. The doctrine that an intervener must come to court with clean hands reflects this principle. The fact that the Chinese government/Communist Party is guilty of numerous crimes does not mean that the Courts can or should allow an organization that is complicit in those crimes to intervene on its behalf. As of this date, the *Jiang Zemin* and *Boxilai* cases remain pending. The sole decision that has been made is to allow the ACLA to intervene.

¹¹³ *Ibid.*, (FOA at para 103).

¹¹⁴ *Rong Jin v Bo Xilai* 2010 ONSC 3524 at para 20.

B. The Alberta Consulate Case

While attending a conference at the University of Alberta in Edmonton in 2004, Huixia Chen, Chuyan Huang, Patrick Turc and Beryl Guo, observed Jianye Cao and Junyi Wu, two members of the Chinese consulate, distributing anti-Falun Gong literature. They complained to the police that the dissemination of this literature amounted to a hate crime against Falun Gong.¹¹⁵

Given that the *Criminal Code* provides that “[e]veryone who, by communicating statements, other than in private conversation, wilfully promotes hatred against any identifiable group is guilty...of an offence”,¹¹⁶ after a lengthy investigation of the *Alberta Consulate* incident, the Edmonton Police, recommended prosecution for the wilful promotion of hatred.¹¹⁷ The Police Occurrence Report of the incident examines four publications distributed by Alberta consulate officials: a press release entitled, “The Cult Nature of Falun Gong”; a booklet of fabricated case studies entitled, “The Truth, Cases of Falun Gong Victims”; a pamphlet entitled, “What is Falun Gong?”; and a booklet entitled, “Poppies of Modern Society, Stories of Falun Gong”. The publications portray Falun Gong practitioners as people who regard family and kinship as evil. One publication asserts that suicide by self-immolation or by jumping off buildings or mountains, as well as the murder of family members and friends, is the direct result of the practice of Falun Gong. The publication claims that Falun Gong practitioners see no value in life and regard it as a good deed to harm others.

Despite the recommendation to prosecute made by the Edmonton Police, the case was never adjudicated. In order to proceed with the prosecution of any hate crime in Canada, the consent of the Attorney General of the province must be obtained,¹¹⁸ and in this case the Attorney General refused consent.¹¹⁹ The Attorney General, through his agent William Pinckney, who was the Assistant Director for Special Prosecutions, contrasted the anti-Falun Gong material with material used in earlier prosecutions in Canada that resulted in convictions, noting their dissimilarity to the anti-Falun Gong material.¹²⁰ Mr. Pinckney referenced the cases of *Harding*, *Andrews*, and *Keegstra*,¹²¹ all involving

¹¹⁵ *Supra* note 5 (Respondent’s Brief, 12 January 2007 at para 1).

¹¹⁶ *Criminal Code*, RSC 1985, c C-46 s 319(2).

¹¹⁷ This report has a section entitled “How the literature constitutes hate propaganda”. That section goes on for seven pages and can be viewed in its entirety on the internet as appendix 8 to the report of David Matas and David Kilgour “Bloody Harvest”, *supra* note 14.

¹¹⁸ *Ibid.*

¹¹⁹ *Supra* note 5 (Memorandum of the Applicants, 26 August 2006 at para 37).

¹²⁰ *Supra* note 5 (Memorandum of the Applicants, 26 August 2006 at para 3).

¹²¹ *R v Harding*, [2001] 52 OR (3d) 714, 80 CRR (2d) 73; *R v Andrews*, [1990] 3 SCR 870, 77 DLR (4th) 128; *R v*

Nazi propaganda, suggesting that the impugned words and statements in those cases – which were found to constitute incitement of hatred – were different than those used in the Anti-Falun Gong material and thus did not amount to an incitement of hatred.

The complainants challenged the decision of the Attorney General not to consent to prosecution in the Alberta Court of Queen's Bench. In his submission to the Court, counsel for the complainants noted that in *Andrews*, the courts made the connection between Nazi propaganda and the mistreatment of Jews in Nazi Germany.¹²² In the Ontario Court of Appeal, Cory J wrote:

The repetition of the loathsome messages of Nazi propaganda led in cruel and rapid succession from the breaking of the shop windows of Jewish merchants to the dispossession of the Jews from their property and their professions, to the establishment of concentration camps and gas chambers. The genocidal horrors of the Holocaust were made possible by the deliberate incitement of hatred against the Jewish and other minority peoples.¹²³

Counsel for the complainants submitted to the Court that the Attorney General of Alberta failed to recognize the causal role of anti-Falun Gong propaganda in China and the effect it has on the persecution of Falun Gong.¹²⁴ Counsel noted the following:

By requiring that the form of discourse directed against the Falun Gong, in order to be prosecutable as incitement [of] hatred, must be similar to the discourse directed against other identifiable groups which has already led to convictions, the respondent is imposing a linguistic [straightjacket] on the legal remedies available to the applicants.¹²⁵

Counsel for the complainants further argued that a "cookie cutter mold" was applied to determine what constitutes incitement of hatred.¹²⁶ In fact, the anti-Falun Gong material distributed by the two consulate members has strong similarities to the propaganda that has actually incited hate within China. Since this sort of material has "generated hatred sometime in the past somewhere else in the world [it] is compelling evidence that the material would likely expose a person to hatred in Canada."¹²⁷ Counsel for the Attorney General argued in response:

There is no evidence of a direct causal link between the two, i.e. that the circulation of the literature is what caused persecution in China. Assuming that people have been persecuted there, it is more likely that the literature has been circulated at the same

Keegstra, [1990] 3 SCR 697, 11 WCB (2d) 352.

¹²² *Supra* note 5 (Memorandum of the Applicants, 26 August 2006 at paras 23-25).

¹²³ *R v Andrews* (1988), 65 OR (2d) 161 at 28.

¹²⁴ *Supra* note 5 (Memorandum of Applicants at para 24).

¹²⁵ *Ibid* (Memorandum of Applicants at para 32).

¹²⁶ *Ibid* (Memorandum of Applicants at para 33).

¹²⁷ *Ibid* (Memorandum of Applicants at para 19).

time. In other words, if there has been [oppression], then it has been carried out by the Chinese government, and not been caused by the literature itself.¹²⁸

The application of the complainants was dismissed. The Court held that the decision of Mr. Pinckney for the Attorney General would stand on the basis that the courts would not interfere with the exercise of the discretion of the Attorney General.¹²⁹

We dispute the position of the Attorney General. The persecution of Falun Gong is sustained by the spread of anti-Falun Gong sentiment made possible through propaganda.¹³⁰ State-controlled media use their power to create and dispense what they want people to believe; this false information covers up or obscures the truth known to many by virtue of their own positive life experiences of Falun Gong. Falun Gong practitioners are portrayed and objectified by the media in derogatory terms, alienating them from the larger community. The Falun Gong community is criminalized by the government, leading both to marginalization and silent acquiescence on the part of the general public. One report identified "defamatory propaganda disseminated by the State-run media [as] the cornerstone of the persecution".¹³¹ The CCP destroys all Falun Gong materials and denies the public access to them.¹³² The public, deprived of accessing this material about Falun Gong, can then be subjected to the CCP's anti-Falun Gong propaganda and media without challenge or rebuttal.¹³³

C. The Crescent Chau Case

CCP-State propaganda directed against the Falun Gong is disseminated not only by official Chinese organs such as Chinese consulates, it is also spread by local Chinese-Canadian media. In November and December 2001 and February 2002, the Montréal-based newspaper *La Presse Chinoise* published a series of defamatory attacks against Falun Gong.¹³⁴ The articles included scurrilous accusations that "Canadian practitioners of Falun Gong are guilty of money-laundering for the underworld, murder, forcing women [into] prostitution, bestiality [...] and sucking blood from practitioners of the

¹²⁸ *Supra* note 5 (Respondent's brief at para 53).

¹²⁹ *Supra* note 5 (Argument, Counsel for the Attorney General).

¹³⁰ Chang, *supra* note 11 at 11-20, 125.

¹³¹ WOIPFG, "Report on Chinese Media Involvement in Persecuting Falun Gong" (10 January 2004) at 1, online: Clearwisdom.net <<http://clearwisdom.net/emh/articles/2004/9/1/51968.html>>.

¹³² *Ibid*.

¹³³ *Ibid*.

¹³⁴ *Supra* note 6 (FOA at 1.8).

opposite sex.”¹³⁵ The articles had a negative effect on personal relationships between Falun Gong practitioners, both Chinese immigrants and Canadian-born, and other members of the Chinese community. Those who suffered persecution in mainland China were made to recall and relive the painful experiences of marginalization and defamation caused by propaganda spread by the CCP.

A common effect of the libellous material can be seen in statements like this one made by Zhan Yu Fang, a practitioner of Falun Gong:

She testified that she was a [Falun Gong] practitioner, living in Montréal, and that she had a lot of family and friends in Montréal who knew she was a Falun Gong practitioner. The articles caused her a lot of moral suffering. People asked her questions about bestiality and a lot of her friends distanced themselves from her after the publication. She noticed increased hostility towards her after the articles.¹³⁶

A number of practitioners, including Zhan Yu Fang, sued the newspaper for libel. The Québec Court of Appeal recognized that what the newspaper distributed was defamatory¹³⁷ and that the newspaper's statements against Falun Gong were unfounded. There was no attempt in Court, on the part of the newspaper, to produce evidence that would support the statements made.¹³⁸ The Court held that:

[t]he authors engaged in defamation when, without proof, they accused certain persons of criminal and perverse acts. In particular, see the allegations no 1 (money laundering, relations with criminals or murderers); no 4 (women forced into prostitution; no 5 (bestiality); ... no 7 (vampirism); no. 13 (violence and cruelty).¹³⁹

However, as Gatley explains, an action in defamation based on the defamation of a class of individuals is not sustainable:

Where the words complained of reflect on a body or class of persons generally, such as lawyers, clergyman, publicans, or the like, no particular member of the body or class can maintain an action. 'If' said Willes J in *Eastwood v. Holmes* 'a man wrote that all lawyers were thieves, no particular lawyer could sue him unless there was something to point to the particular individual....'¹⁴⁰

Gatley continues:

The crucial question in these cases in which an individual plaintiff sues in respect of defamation of a class or group of individuals is whether on their true construction the defamatory words were published of and concerning the individual plaintiff.

¹³⁵ *Ibid* at 1.9.

¹³⁶ *Ibid* at para 3.24.

¹³⁷ *Supra* note 6 at para 13.

¹³⁸ *Supra* note 6 (FOA at para 1.13).

¹³⁹ *Supra* note 6 at para 13.

¹⁴⁰ John Clement Carpenter Gatley *et al*, *Gatley on Libel and Slander*, 8th ed by Philip Lewis (London: Sweet & Maxwell, 1981) at 126.

Unless this can be answered in the affirmative, he has no cause of action. The true question always is: was the individual or were the individuals bringing the action personally pointed to by the words complained of?¹⁴¹

The Court of Appeal dismissed the lawsuit on the basis that one cannot defame a group. The law of defamation applies to individuals only and so the newspaper would not be liable for its defamatory allegations. The Québec Superior Court, in contrast, gave credence to the defamation, holding that the Court was not able “to come to the conclusion that the contents of the impugned particles... are false, grossly inaccurate, published to incite hatred and derision in Canada or persecution in the People's Republic of China.”¹⁴² Even though this component of the reasons was eventually overruled by the Québec Court of Appeal, the fact that a Québec Superior Court judge would give credence to CCP propaganda against the Falun Gong is troubling.

D. The Chinese Seniors Association Case

Daiming Huang, an elderly Chinese-Canadian woman, brought a complaint to the Ontario Human Rights Tribunal against the Ottawa Chinese Seniors Association (OCSA).¹⁴³ The Association consists mainly of seniors who are new immigrants from China. Ms. Huang claimed she was the object of discriminatory remarks from the Association leadership and was forced to withdraw her membership, which excluded her from all services provided by the Association.¹⁴⁴ She claimed that her membership had been revoked because of her belief in Falun Gong and because propaganda had been disseminated to the Association by the Chinese government which reported that Falun Gong is an evil cult.¹⁴⁵ In response to the complaint, the Association denied that Ms. Huang's membership was revoked, and claimed that Ms. Huang voluntarily withdrew from the association.

Association member Xin Dingjian filed an affidavit with the Tribunal noting that Chinese Ambassador Mei Ping hosted a session of the Federation of the Ottawa Chinese Community Organizations at which a resolution to ban Falun Gong in Canada was announced.¹⁴⁶ At the Tribunal hearing, Xin testified that anti-Falun Gong materials had been displayed at the Chinese Community Centre and that members of the Association's Council had made negative accusations about Falun Gong. Xin observed that, at an Association

¹⁴¹ *Ibid* at 127.

¹⁴² *Zhang v Chau*, [2005] QJ No 17828 at para 41.

¹⁴³ *Supra* note 7 at para 1.

¹⁴⁴ *Ibid* at para 5.

¹⁴⁵ *Ibid* at paras 110-116.

¹⁴⁶ *Ibid* (Evidence, Affidavit of Xin Dingjian at para 5).

event before the revocation of Huang's membership, a petition against Falun Gong was circulated to members.¹⁴⁷

In an affidavit filed with the Tribunal, Association member Xiao Junqiang also stated that he overheard the Consul General of the Chinese Embassy telling OCSA's Chair that "people who practised Falun Gong cannot be allowed to participate in activities of the Chinese Seniors Association. The Association should also not allow persons who practice Falun Gong to join the Association."¹⁴⁸

On December 29, 2001, at a New Year's celebration, Ms. Huang distributed informative Falun Gong flyers to five people at her table in response to questions about her good health and appearance. Ms. Huang testified that the secretary of the Seniors Association informed her that the Association's Council had decided to exclude Falun Gong practitioners from its membership. Her membership was unilaterally terminated by the Seniors Association because of her spiritual practice of Falun Gong.¹⁴⁹ After her membership in the Association was revoked Ms. Huang asked for an award in the amount of \$100,000, in part because:

d. there is a link between the Chinese party-state and the Association's decision to revoke her membership. There is also clear solidarity between the Association and the Chinese government;

e. the discrimination in this case is particularly serious because the world-wide persecution of Falun Gong makes the complainant more vulnerable and puts her in greater anguish; and

f. the matter is of global significance and should send a message to Chinese government to cease persecution.¹⁵⁰

On April 27, 2011, the Tribunal ruled in Daiming Huang's favour, having found that the Association and its leadership violated the Ontario *Human Rights Code*.¹⁵¹ The Tribunal ordered that "the corporate respondent shall pay the complainant \$15,000 for the injury to her dignity, feelings and self-respect arising from the infringement of her rights under the *Code*."¹⁵²

Although ruling in favour of Huang, the Tribunal failed to address the persecution of Falun Gong in a global context and the behaviour of the Chinese Seniors Association insofar as it acted as a persecutory agent of the CCP-State within Canada. The Judge disregarded the testimony of Xiao Junqiang regarding

¹⁴⁷ *Ibid* (Evidence, Affidavit of Xin Dingjian at para 21).

¹⁴⁸ *Ibid* (Evidence, Representations of the Complainant, testimony of Xiao Junqiang at para 49).

¹⁴⁹ *Ibid* (Evidence, Representations of the complainant, testimony of Xiao Junqiang at para 46).

¹⁵⁰ *Ibid* at para 120.

¹⁵¹ RSO 1990, c H-19.

¹⁵² *Supra* note 7 at para 142.

the Consul General of the Chinese Embassy on the basis that it "[did] not stand up to examination in terms of reasonableness or consistency with the other evidence and the circumstances."¹⁵³ This conclusion could have been reached only by someone ignorant of the pattern of CCP-State persecution of Falun Gong abroad.

Even though Ms. Huang succeeded before the Tribunal, we ask if justice has been served. An evaluation of the legal system's adequacy should not be based solely on the outcome, but rather on the process as a whole. Because it made no finding on the global pattern of persecution, the decision achieved less than it could have in response to the persecution of Falun Gong in Canada and throughout the world.

IV. Institutional Constraints

The failure of courts and tribunals to come to grips with the Falun Gong phenomenon cannot be attributed to inadequate pleadings or insufficient evidence. Rather, Falun Gong litigants are running up against institutional constraint. Courts and tribunals in Canada, whether specialized or general, rely on the parties to set out relevant information. Canadian courts and tribunals are, for the most part, adversarial and not investigative. In a Canadian context, the courts and tribunals may not know the contextual details which led to the dispute, but they are expected to be, and indeed are, familiar with the Canadian context in which the dispute is embedded.

The matter is different when the dispute has a foreign context. In that situation, the whole cultural framework is different. There is a tendency for Canadian courts and tribunals to extrapolate and to assume that, unless shown otherwise, the norms and patterns of behaviour that exist in other countries are the same as those in Canada. For China, with a culture very different from that of Canada, that assumption is often mistaken. The problem posed by the Falun Gong cases is that Falun Gong is not just one island of difference in a sea of sameness. Rather, the Falun Gong phenomenon, originating in China, occurs in an environment that is very different from the Canadian environment.

In order to better understand and adjudicate the issues before them, Canadian courts and tribunals could give a contextual analysis that explains the Falun Gong repression, much as we attempt in this article. This sort of analysis, however, goes against the tendency of courts and tribunals to restrict themselves to the disputes before them and to avoid broad sweeping statements that are unnecessary to the resolution of the particular disputes. Indeed, counsel is often discouraged from raising broad, general, contextual

¹⁵³ *Ibid* at para 70.

issues.¹⁵⁴ This practice of exclusively considering the particular dispute at hand makes sense where the broader context is Canadian; however, where the broader context lies outside Canada and is culturally distinct, this restriction prevents courts and tribunals from fully understanding the dispute.

In sitting on judicial review of refugee determinations, the Federal Court has commented on this problem stating that considerable caution is required when assessing the norms and patterns of different cultures.¹⁵⁵ This caution needs to be applied generally to all tribunals and courts in Canada and not solely to the Refugee Protection Division of the Immigration and Refugee Board. With regard to Falun Gong cases, Canadian courts and tribunals must exercise greater cultural sensitivity and awareness and exhibit greater openness to broad, general contextual information than they have shown thus far.

There is a variety of solutions to the failures identified here. One lies in the selection process of judges and tribunal members that gives weight to their background, experience, and knowledge in non-Canadian cultures and political systems. Another is training and continuing education in the differing nature of legal problems that arise in the context of addressing claims of oppression occurring outside Canada, but adjudicated within Canada. A third is a shift that allows and encourages counsel to address larger contextual issues, and also allows the courts and tribunals themselves to address these issues.

V. Conclusion

The persecution of Falun Gong has been ongoing for twelve years. The persecution is sustained by the promotion of Mainland Chinese oppressive discourse through the withholding and masking of critical information and knowledge. In Mainland China, the general public is not only fed anti-Falun Gong propaganda, but also false and distorted information about the extent of persecutory actions taken against Falun Gong. The fear generated by the denigration of Falun Gong, coupled with the punitive measures utilized by Chinese authorities to combat any dissidence, serves to silence the general public on the topic of Falun Gong and perpetuates the oppressive status quo. The Chinese Party-State, using its local and international media, capitalizes on this fear, both in China and abroad, in order to carry out its persecution of Falun Gong practitioners. As a result, Falun Gong practitioners continue to be

¹⁵⁴ See eg *Kruger v The Queen*, [1978] 1 SCR 104 at pages 108 and 109.

¹⁵⁵ See *Giron v Canada (Minister of Employment and Immigration)*, [1992] 143 NR 238 (FCA).

the targets of torture, libel, discriminatory actions, and marginalization by the Chinese community, both in China and Canada.

Not since the days of Nazi Germany have we seen a political party use a country's governmental system in its entirety, at home and abroad, to execute an agenda of persecution in the way that the CCP now uses the Chinese government to execute its agenda of persecution against the Falun Gong community worldwide. It is true that there are many modern day instances of persecution of other groups, but the Falun Gong phenomenon is distinct in several important ways. For example, in recent years the Libyan and Syrian governments have suppressed their democracy-prone dissidents;¹⁵⁶ however, their targets are political in nature, rather than based on identity in spiritual beliefs and the suppression has not been extended beyond their borders. In contrast, the Chinese Communist Party-State persecution of Falun Gong pervades all levels of government in China and extends beyond national borders. The persecution of this minority group is perpetrated on an international scale thwarting those who seek justice. The employment of this system at the international level has extended the persecution of Falun Gong practitioners into Western countries such as Canada. Canadian tribunals have been ineffective in responding to the systemic international persecution of Falun Gong emanating from China. To remedy this situation, the Canadian legal system needs to develop the capacity to understand the various persecutory mechanisms of another sovereign state.

Justice requires knowledge. It is impossible for the uninformed to be just. Specialized tribunals, in particular, should have specialized knowledge. Human rights tribunals should have a greater awareness and understanding of human rights issues. Where tribunals do not have this knowledge, they should not, under any circumstances, prevent the parties from presenting evidence that would allow Tribunals to be better informed. In the case of courts of general jurisdiction, judges cannot be expected to have specialized knowledge; however, they can be expected to allow the parties to present the evidence necessary to reach an informed decision, and not to repeat bigotry as fact.

Lack of knowledge of the CCP-State's global oppression of Falun Gong has meant that efforts by Falun Gong victims in Canada to seek justice have been thwarted outright or have gone astray. We have seen specialized human rights tribunals that did not have the requisite specialized knowledge, general jurisdiction courts that prevented Falun Gong litigants from presenting the evidence necessary for the court to make an informed decision and, even

¹⁵⁶ Matthew Weaver, *Syria, Libya and Middle East unrest*, online: The Guardian <<http://www.guardian.co.uk/news/blog/2011/may/06/syria-libya-middle-east-unrest-live>>.

worse, a general jurisdiction court that repeated incitement of hatred and discrimination as fact.

The *Jiang Zemin* and *Bo Xilai* decisions, both of which allowed the intervention of the ACLA, did not lead to the dismissal of the claims of the plaintiffs, yet there is something very wrong in the courts allowing those who prevented justice to victims in China to intervene in the proceedings and attempt to prevent justice for victims in Canada. This decision was made because the courts deemed that discerning information about the ACLA involved an effort that would have been too costly and complex. Allowing such an intervention means that the courts are willing to turn a blind eye to the complicity of the interveners in the persecution. Once the courts are willing to do this, the confidence that they will mete out justice is correspondingly diminished.

The Court of Appeal in the *Crescent Chau* case made it clear that Falun Gong practitioners were libelled. At first instance, the Court responded to the libel action by giving credence to the libel. Though the Court of Appeal overturned it, the reasoning of the Superior Court in that case is most disturbing because it endorsed the libel. That fault was not cured by the reversal of the decision by the Court of Appeal. Taking bigotry seriously is not a type of error of fact or law which courts may sometimes make and which are corrected on appeal. It is beyond the pale; the sort of behaviour in which no judge should engage.

In the *Alberta Consulate* case, the Attorney General refused consent to prosecute because the incitement of hatred against the Falun Gong seemed unlike the incitement of hatred with which the Attorney General was familiar. There was no justice to be had here as the decision of the Attorney General's representative was more than interlocutory – it ground the case to a halt.

In the *Chinese Seniors Association* case, the tribunal failed to find that the discrimination against Daiming Huang was directed by the Chinese embassy because that direction was inconsistent with what the (relatively uninformed) tribunal member otherwise knew. Although the claimant was successful, when the right result is achieved for the wrong reasons, justice is only partial.

In every one of the cases presented, Canadian courts and tribunals, through lack of knowledge and information, have taken the side of the perpetrators against that of the victims. When that happens, the perpetrators gain ground and their conduct is legitimized, the victims lose, and justice suffers. The further result is that either the suffering of the victims becomes more acute, or it is not alleviated to the extent that it could and should have been.

What happens in court has a significant impact outside of court and beyond the judgment. A sound judgment – the right result for the right reason – informs the public, sets an example and a precedent. If the courts could be made aware of the CCP's global oppression of the Falun Gong, sound

judgments would result and the public would gain a greater understanding of the issues. A poor judgment – the wrong result for the wrong reason – misleads the public. Those who discriminate out of ignorance will continue to do so.

Hate propaganda succeeds not just because of those it convinces, but also because of those it confuses. Incitement of hatred mobilizes some people to discrimination and, worse, it also immobilizes others, leading to indifference and inaction. Every opportunity Canadian courts miss to stand against the CCP's global oppression of the Falun Gong becomes a licence for that oppression. No human rights violation is self-contained. Unless it is stopped, it spreads. The CCP's oppression of Falun Gong has impacted the Canadian justice system by weakening it, making it less credible, and showing it to be ill-informed and gullible. In order to maintain its integrity, the Canadian legal system has to become more familiar with the global nature of the CCP's oppression of Falun Gong and its practitioners.

Cultural Restoration in International Law: Pathways to Indigenous Self-Determination

Jeff Corntassel¹

How are land-based and water-based cultural harms addressed and remedied for Indigenous peoples? Under existing international legal norms, states and other non-state entities have a duty to provide redress for the harms of colonialism and occupation, and this obligation extends to the recognition and protection of Indigenous territories as well as regenerating subsistence living through land-based and water-based cultural practices. What role do international treaties and the UN Declaration on the Rights of Indigenous Peoples play in terms of promoting comprehensive restorative justice for Indigenous communities? Given that the rights discourse can take Indigenous peoples only so far in this struggle for the reclamation and regeneration of Indigenous traditional lifestyles, what are some strategies that other Indigenous peoples have utilized to promote sustainable self-determination? Overall, findings from this research offer theoretical and applied understandings for regenerating indigenous nationhood and restoring sustainable relationships on indigenous homelands.

Comment, pour les peuples autochtones, peut-on aborder et remédier aux dommages culturels terrestres et aquatiques? Selon les normes juridiques internationales, les états et les entités non-étatiques doivent remédier aux dommages causés par le colonialisme et l'occupation en reconnaissant et en protégeant les territoires autochtones ainsi qu'en rétablissant l'autosuffisance à travers des pratiques culturelles terrestres et aquatiques. Quel rôle les traités internationaux et la Déclaration des Nations Unies sur les droits des peuples autochtones jouent-ils pour promouvoir une forme de justice réparatrice complète auprès des communautés autochtones? Puisque, à lui seul, le discours des droits ne pourra gagner le combat pour la réclamation et la régénération des styles de vie traditionnels des peuples autochtones, quelles stratégies les peuples autochtones ont-ils utilisées pour promouvoir l'auto-détermination durable? Somme toute, les résultats de cette recherche offrent des idées théoriques et appliquées pour rétablir le sens de nation autochtone et pour restaurer des relations durables sur les terres autochtones.

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