

**MR CLIVE ANSLEY
EMAIL RESPONSE**

Noting that the tribunal wished to ensure that Mr Ansley's previous evidence was up to date

(Note: redacted due to security concerns)

28 APRIL, 2019

I would note at the outset that the entire current "legal system", consisting of "courts", prosecutors, defence lawyers, Lawyers' Association", and extensive legislation (statutes and regulations) has existed only since July 1, 1979. So it has a history of less than four decades.

Throughout those four decades, the foreign picture of the system and the motivations of the Chinese Party/State operating it have been vague and muddy at best, and grossly distorted at worst. This has been encouraged by western politicians who for many years promoted the idea that China was sincerely building a country based on Rule of Law and was diligently working to implement and improve all the components of the new legal system.

The theme was "Rome wasn't built in a day"; "yes, torture continues to exist, but the authorities are doing their utmost to bring that to an end. Yes, trial procedures are deficient in some areas, but the government, and the judiciary, are making improvements every day. Yes, trials may be unfair but China will soon ratify the International Covenant on Civil and Political Rights (ICCPR), which includes the minimum requirements for a fair trial." That ratification has been promised by China's spokespersons in the West for the last 24 years. Those promises are no longer forthcoming and the current unambiguous declarations by Xi Jinping that China will never accept Constitutionalism, Division of Powers, and Judicial Independence, underline the disappearance of ICCPR ratification from the current dialogue.

For all these reasons, particularly the unfamiliarity of almost all western audiences with the Chinese legal system and its historical roots, I always tend to address the subject in terms of its recent historical development. Perhaps that is because my first discipline was history.

Nevertheless, I have kept my research on, and monitoring of, legal developments in China up to date. I am retained frequently to provide expert opinions on the Chinese criminal "justice" system for courts in various countries and in particular before immigration tribunals considering refugee applications by, or the staying of deportation orders against, Chinese fugitives in western countries who are the objects of repatriation requests from China. I have provided two such extensive opinions to Canadian immigration tribunals over the past month (one was submitted just yesterday and one will be presented *viva voce* next Thursday.) I shall be appearing in a refugee hearing in June for a full day of *viva voce* evidence, and will be providing expert opinion in a BC Supreme Court case in the fall.

In all these cases, it is true that I try to "start at the beginning", with material dating back to the inception of the current system in 1979; however I always bring my written reports up to date by citing recent criminal cases and/or statements by Chinese leaders. Also, the cases for which I am retained themselves provide a regular flow of new information. In all instances, I am provided with the evidence against the fugitive which has been provided by the Chinese authorities and tendered to the tribunal by counsel for the western government concerned, as well as the narrative/affidavit of the fugitive/refugee applicant. This in turn frequently requires further research on my part.

I do not travel to China nowadays for a specific reason. [REDACTED]

[REDACTED] I got a very quick response saying essentially: "You lived here for fourteen years, and learned nothing? You would be

dead within a week.” He went on to speculate that I would be hit in a crosswalk while crossing the street, by a hit and run driver who would never be identified. I thought he might be exaggerating, but decided not to test the theory.

In the forefront of my mind were two Canadian human rights activists who were actually kidnapped from third countries by Chinese police and who have been serving life sentences in Chinese prisons with no Consular access for many years now. I also had to consider the case of Tao Mi, a Shanghai woman who provided politically explosive evidence to me in my office there. She gave her evidence as a Protected Witness in a case then being litigated in Canada. Canadian government lawyers and other government representatives had provided formal undertakings that Chinese witnesses in that matter would be treated as Protected Witnesses and that under no circumstances would her identity be disclosed to any Chinese authorities. The Canadian MOJ lawyer and Citizenship and Immigration officers then proceeded to turn her affidavit over to the Chinese police and have her arrested by the Chinese police and brought to the Canadian Consulate-General in Shanghai where she was interrogated on videotape for several hours by an RCMP officer in the presence of a Chinese police officer. She had told me over and over that if the Chinese police ever found out she had talked to me, “I am dead”. Apparently, that was no exaggeration in her case and she was never seen again.

It is for these historical reasons that I have since conducted my current research on Chinese law from a distance. I keep current in several ways. We regularly check Chinese legal websites, such as the Supreme Court site, university law school sites, Chinese legal journals, and newspapers.

I also benefit, of course from the research and publications of other scholars and specialists on Chinese law which are of great assistance for all of us in keeping current.

Further, I maintain contact with [REDACTED]

[REDACTED] I have, for example had two conversations with former very prominent Chinese Rights lawyers and a former prosecutor, just since Christmas.

[REDACTED]

I hope the foregoing is a good start in answering the Tribunal’s concern. I would add just two comments.

First, it is important to note that the legal system and its procedures have not changed significantly since 1979. It is true that there have been significant changes to the Criminal Code and the Code of Criminal Code. These changes have been discussed, analyzed and debated at great length in some quarters, but it is vital to recognize that almost none have resulted in any significant changes to practice and procedure. Changes to the statute are introduced for two basic reasons. One is to provide official justification for practices which have been in effect for years already.

For example, in the years shortly before and shortly after 2010, the Party/State began disappearing lawyers and dissidents. They would just be abducted from their homes or grabbed off the street and never heard from again until brought to trial on some bogus state security charge. That went on for years. But in 2015 amendments to the 2012 revision of the CPL, the Party/State responded to domestic and international critics who pointed out that there was no legal basis whatever to these disappearances. The Party/State remedied that shortcoming by simply making it “legal”! It inserted a new article providing for “Residential Surveillance”. As with so much content of Chinese statutes, there is little relationship between the title of the new article and its application. Though the wording provides for the possibility of residential detention, it also provides for the possibility of detention in a

designated place, unknown to the detainee's relatives, friends, or legal counsel. That is actually the purpose for which the new clause was drafted. It is not "residential" and it has nothing to do with "surveillance" in the normal meaning of that word. It simply makes forced disappearances legal.

Secondly, some revisions to the codes have been for the purpose of simply assuaging the critics who have assailed the Chinese statutes for missing cornerstones of a fair legal system. One example has been the "presumption of innocence". The 1979 CPL was criticized for years on this ground. In the first revision of the CPL in 1996, Article 12 was introduced and widely heralded as a clear statement of the presumption. But Article 12 set out only the tautology that "no one is guilty until judged guilty by a Chinese Court", which of course did not affect burden of proof. After more years of criticism, China more recently inserted another clause which requires that the procuratorate must prove its case. It is claimed by some that the two amendments taken together constitute the presumption of innocence. Perhaps so, in terms of a simple grammatical reading of these articles. But I have yet to read a judgement from any Chinese court which addresses either the presumption of innocence or any standard of proof which the prosecutor is required to discharge.

Many western commentators have been misled by falling into the trap of focusing on the careful parsing of wording in the revised and amended codes. There can be no understanding of Chinese legal realities without a clear understanding of the fact that statutes do not govern legal procedures. Because China has never accepted "Rule of Law", except as an undefined shibboleth, law itself does not stand as the ultimate authority, above the various actors in the legal and political systems. The courts, which seldom demonstrate much awareness of the statutes under which they operate, are charged with applying those statutes. But most importantly, the courts are under the direct and total control of the Chinese Communist Party and that has never changed.

The Chinese Communist Party stands completely above all courts, judges, and statutes. This renders Chinese statutes largely irrelevant to the practice of Chinese "courts".

It is possible to have a legal system completely led and dominated by a single political party; it is also possible to have a completely independent legal system. Most assuredly, it is not possible to have both!

I make the last statement not for the purpose of regurgitating evidence which I probably already included in my submission. Rather, my purpose is to underline the reasons why the historical (1979 to 2019), and the current, state of the Chinese legal system do not differ greatly.

The written Criminal Law and Criminal Procedure Law have become much more sophisticated over the past four decades and have provided for significant improvements. But in practice, contrary to widely held impressions internationally, the Chinese legal system has been marching backwards for a long time and is today substantially more repressive than it was twenty years ago.

In summary, I do keep my research current. But historical examples are for the most part also valid today because we are dealing with a *faux* system which exists only for the purpose of maintaining and protecting the total political monopoly of the CCP.

I hope the tribunal will forgive me if I have elaborated at too great length. But if there are examples of specific items or issues raising concerns about out-dated evidence, please let the members know that I shall be happy to address those specifics.

Best

CMA