

## Statement by Department of Justice

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The Department of Justice (DoJ) today (August 17) issues the following statement in respect of the Court of Appeal case concerning Joshua Wong, Alex Chow and Nathan Law (CAAR 4/2016):

The Government of the Hong Kong Special Administrative Region (HKSAR) all along respects the freedom of speech, and the right to demonstration, assembly, etc. However, one must also respect the law when exercising such rights, and should not over-step the boundary allowed under the law.

The above-named three defendants in this case were convicted not because they exercised their civil liberties, but because their conduct during the protest contravened the law. The HKSAR courts have all along handled cases (including public order event cases) independently, justly and professionally. The court found the three defendants guilty on the basis of evidence presented during a fair trial as well as the applicable law. Although the defendants at one stage sought to appeal against their convictions, they have since withdrawn their appeals against conviction.

Under the HKSAR's legal system, both the prosecution and the convicted defendant can seek an appeal of sentence to a higher court. An appeal of this nature by DoJ proceeds, with leave of the Court of Appeal, by way of an application for review of sentence in accordance with sections 81A and 81B of the Criminal Procedure Ordinance, and will be considered by the Court of Appeal. However, under section 81C of the said Ordinance, if the defendants have already lodged an appeal against conviction, the Court of Appeal shall not review the sentence unless the appeal against conviction has been withdrawn or disposed of.

In the present case, DoJ was granted leave by the Court

of Appeal on October 12, 2016 to review the defendants' sentence. However, since the defendants had lodged appeals against their convictions in August 2016, DoJ's application for review could not be heard until after the defendants' appeals against conviction have been dealt with. The defendants' appeals against conviction were scheduled for May 22, 2017. The court directed the defendants to file written submissions on or before April 20, 2017. The defendants eventually did not file any written submissions and withdrew their appeals the day before the said deadline (i.e. April 19, 2017).

After the defendants withdrew their appeals against conviction, DoJ applied to fix a date for the hearing of its review of sentence. The review was heard by the Court of Appeal on August 9, 2017, and today the Court of Appeal delivered the judgment (Judgment). The Court of Appeal's Judgment clarifies the relevant legal principles and sentencing standards, and can provide guidance to future cases of similar nature.

DoJ notices that certain people in the community allege that the prosecution in this case was politically motivated, or that this case is a case of political persecution. Such kind of allegations are utterly groundless, and choose to ignore the existence of objective evidence. In all criminal cases (including this one), DoJ deals with them in accordance with the Prosecution Code, the applicable law and relevant evidence. Further, the state of judicial independence in the HKSAR cannot be doubted. It can be seen from the reasoning contained in the Judgment that the Court of Appeal dealt with this case solely from the legal perspective, and that there cannot be any suggestion of political motivation whatsoever. In this regard, DoJ draws the public's attention to paragraph 171 of the Judgment (which is in Chinese (Note) and which reads as follows):

"最後，本席重申，答辯人等不能說他們是因為行使集會、示威

或言論自由而被定罪和判刑。.....他們之所以被定罪和判刑，是因為他們僭越了法律的界線，以嚴重違法的手段，自己強行非法進入或煽惑他人，當中包括年輕人及學生，強行非法進入政總前地——一個當時他們和其他示威者在法律上都沒有權利可以進入的地方，而干犯了參與非法集結或煽惑他人參與非法集結。答辯人等也不能說，上訴法庭對他們處以的刑罰，壓縮了他們可依法行使示威、集會或言論自由的空間。只要他們在法律的界線內行事，法律會全面、充份地保障他們示威、集會和言論自由；但一旦他們僭越了法律的界線而違法，法律制裁他們並不是剝奪或打壓他們的示威、集會和言論自由，因為法律從來都絕不容許他們以違法的手段來行使那些自由。"

**Note: The entire Judgment of the Court of Appeal is in Chinese. No official English translation is available at the time when this press release is issued.**

**Ends/Thursday, August 17, 2017**