

Statement by the Department of Justice

The Department of Justice (DoJ) today (February 6) issues the following statement in respect of the Court of Final Appeal (CFA) case concerning Joshua Wong, Nathan Law and Alex Chow (FACC Nos. 8, 9 and 10 of 2017):

Executive summary

The three defendants were charged because of their acts, not their beliefs, in forcing their way into the the Forecourt of the Central Government Offices (Forecourt), resulting in the injuries of 10 persons. The Secretary for Justice's review of sentence was instituted in October 2016, long before the defendants have finished serving their community service orders. The DoJ welcomes the CFA's decision in:

(1) finding that the Court of Appeal was right to send the message that unlawful assemblies involving violence, even a relatively low degree, will not be condoned and may justifiably attract sentences of immediate imprisonment in the future; and

(2) explaining that little weight will be given to the mitigation that the offending act was committed in the

exercise of constitutional rights or acts of civil disobedience because the fact of a conviction will necessarily mean the offender has crossed the line separating the lawful exercise of his constitutional rights from unlawful activity subject to sanctions and constraints.

Background

On September 26, 2014, the organisations to which each of the defendants, Joshua Wong, Nathan Law and Alex Chow, belonged held a notified assembly at an area at Tim Mei Avenue outside the Forecourt. Two applications dated September 8 and 15, 2014 made by the said organisation for holding the assembly inside the Forecourt were rejected. Since September 10, 2014, fences were constructed surrounding the Forecourt. On September 26, 2014, both gates of the fence at the Forecourt were closed for security reasons, and security guards were on duty both inside and outside the gates.

The notified assembly was scheduled to end at 10pm on September 26, 2014. At around 10.24pm, Joshua Wong at the stage appealed to the public and said "Now, here we call on you, we hope you all enter the Civic Square together with us now". He passed the stage to Nathan Law who continued to appeal to the public to enter

the Forecourt. Joshua Wong then rushed to the Forecourt, passed the gate and then climbed over the fence and jumped into the Forecourt. About one minute later, Alex Chow climbed over the fence and down into the Forecourt and joined the other participants without being apprehended by the Police. At the same time, several hundred participants of the assembly either climbed over the fence or tried to force open the closed gates of the Forecourt. They ignored the security guards and the Police who tried to stop them and forced their way into the Forecourt. In the process, 10 security guards were injured as a result of the violence involved in the incident, with one of them suffering from bone fracture requiring the taking of sick leave for a number of days.

The defendants were convicted after trial of either taking part in or inciting others to take part in the unlawful assembly. They were convicted not because they exercised their civil liberties, but because of their disorderly, intimidating, or provocative conduct at the time which constituted the offence of unlawful assembly (or in the case of Nathan Law, inciting others to do so) and contravened the law. The incident involved violence and no society which truly respects the rule of law would allow the use of violence.

Having convicted the defendants after trial, the Magistrate sentenced Joshua Wong and Nathan Law to 80 and 120 hours of community service order respectively, and Alex Chow to three weeks' imprisonment suspended for one year in order not to disrupt Alex Chow's plan to study abroad.

The application for review of sentences was not instituted after the defendants had served their original sentences. The appeal of the sentences by the Secretary for Justice proceeds by way of an application for review of sentence in accordance with sections 81A and 81B of the Criminal Procedure Ordinance. Leave of such review is required and the court shall not review the sentence unless the appeal against conviction has been withdrawn or disposed of.

The defendants appealed but the appeals were withdrawn on April 19, 2017. Thereafter, the review of sentences before the Court of Appeal was fixed for a hearing on August 9, 2017.

DoJ welcomes the CFA's judgment that it was right for the Court of Appeal to send the message that unlawful assemblies involving violence, even a relatively low degree, will not be condoned and may justifiably attract sentences

of immediate imprisonment in the future, given the gravamen of the offence involving the instigation of a risk and fear of a breach of the peace by virtue of the number of protesters involved.

DoJ also notes that the CFA, after repeating what were said in *Chow Nok Hang* (2013) 16 HKCFAR 837 at paragraph 39, explained that a submission in mitigation of the offence of unlawful assembly that the act was committed in the exercise of the constitutional rights to freedom of expression and freedom of assembly will be unlikely to carry any significant weight because the fact of a conviction will necessarily mean that the offender has crossed the line separating the lawful exercise of his constitutional rights from unlawful activity subject to sanctions and constraints. This is all the more so when the facts of the offending involve violence, in particular on the part of the offender himself, since there is no constitutional justification for violent unlawful behaviour. Similar considerations apply to the contention that it is a mitigating factor that the offence was committed by way of an act of civil disobedience.

It can also be seen from paragraph 5 of and the reasoning contained in the judgment of the CFA that the Court dealt with this case solely from the legal

perspective. Hence, suggestions that the application for review was politically motivated were totally groundless and misconceived.

Ends/Tuesday, February 6, 2018