Summary of Judicial Decision

HKSAR v Yeung Suet-ying Clarisse (楊雪盈) & Others
CACC 253, 263 and 268/2024; [2026] HKCA 284; [2026] 3 HKLRD 300

Decision	**:**	**Applications for leave to appeal against conviction and/or sentence refused; Appeals dismissed. Secretary for Justice's appeal by way of case stated dismissed.**
Dates of Hearing	**:**	**14–17 July 2025**
Date of Judgment	**:**	**23 February 2026**

Background

1. In the proceedings below, 47 defendants were charged with one count of conspiracy to commit subversion, contrary to NSL 22(1)(3) and ss.159A and 159C of the Crimes Ordinance (Cap.200).

2. 31 defendants pleaded guilty. The remaining 16 defendants, except D16 and D46, were convicted after trial. Sentences imposed on the 45 convicted defendants ranged from 4 years and 2 months to 10 years' imprisonment.

3. It is alleged that the defendants and the co-conspirators agreed, prior to the promulgation of the NSL and continuing thereafter, to pursue a scheme (the "Scheme") which involved (i) obtaining a controlling majority in the LegCo to indiscriminately refuse to pass any Government budgets or public expenditure; (ii) compelling the Chief Executive ("CE") to dissolve the LegCo under BL 50 so as to paralyze Government operations; and (iii) ultimately causing the CE to resign under BL 52 entailed by LegCo's dissolution and the new LegCo's refusal to pass the original budget. The course of conduct pursued under the Scheme sought to utilize the mechanism in BL 50–52 to achieve the subversive outcomes stipulated in NSL 22(1)(3). It was the Prosecution case that in pursuance of the Scheme, all the Applicants (save D5) ran as candidates in a Primary Election for determining a list of candidates to stand for the LegCo Election, whereas D5 launched a campaign to support and promote the Scheme.

4. The proceedings before the Court of Appeal ("CA") involved (i) applications by 10 applicants (D5, D8, D14, D17, D36, D37, D38, D41, D47, and D10 out of time) for leave to appeal conviction and sentence, (ii) application by D33 for leave to appeal against conviction, (iii) application

by D27 for leave to appeal against sentence (collectively the "Applicants"), and (iv) an appeal by way of case stated by the Secretary for Justice ("SJ") against D16's acquittal.

Issue in dispute

5. On appeal against conviction, the CA distilled 5 common grounds touching upon the essential elements of an offence under NSL 22.

6. 1st & 2nd Common Grounds: Whether the phrase "other unlawful means" in NSL 22 was restricted by the *ejusdem generis rule* to means involving "force or threat of force", or confined strictly to criminal acts.

7. 3rd Common Ground: Whether a defendant's genuine and honest belief that the adopted means was lawful constitutes a defence under NSL 22.

8. 4th & 5th Common Grounds: Whether an agreement to indiscriminately veto budgets to force the Government to accede to political demands or to force the CE to resign under BL 50–52 constitutes an abuse of power / breach of constitutional duty under BL 73(2) (thus amounting to "unlawful means"), and whether the non-intervention principle applies to insulate LegCo members' actions from judicial scrutiny.

9. The Applicants' remaining individual grounds for appeal against conviction fell into three categories: (i) errors in factual findings; (ii) excessive judicial intervention; and (iii) the misclassification of D5's statements as "mixed statements" rather than *res gestae* evidence.

10. In respect of sentence, the issue was whether the penalty bands under NSL 22 apply to sentencing for conspiracy to commit a NSL 22 offence, and whether the general sentencing process for conspiracy applies.

11. Regarding the appeal by way of case stated, the issue was whether the Trial Court's findings on D16's acquittal were perverse.

Department of Justice's Summary of the Court's rulings

(full text of the CA's judgment at https://legalref.judiciary.hk/lrs/common/search/search_result_detail_frame.jsp?DIS=177571&QS=%2B%7C%28cacc%2C253%2F2024%29&TP=JU)

12. To secure a conviction of the offence of subversion under NSL 22, the prosecution must prove that the accused: (i) organizes, plans, commits or

participates in one of the four prohibited acts; (ii) by force or threat of force or other unlawful means; (iii) with a view to subverting the State power. The first two elements together constitute the *actus reus* of the offence. The third element stipulates the requisite *mens rea* to complete the offence, which is a specific intent to subvert the State power. (paragraphs 44-45)

13. Three primary legislative purposes emerge from the legislative materials of the NSL, which inform the construction of NSL 22 (paragraphs 55-61):

- Upholding the "One Country, Two Systems" policy and the constitutional order in the HKSAR as established by the Constitution and the BL is a fundamental aspect of safeguarding national security in the HKSAR;
- The NSL must effectively prevent, stop and punish all acts and activities endangering national security. The NSL must cover all acts and activities endangering national security, whether involving force or otherwise; giving effect to this legislative purpose, NSL 3(3) and NSL 8 embrace all acts and activities endangering national security, without differentiating between those that involve force and those that do not, or limiting the duty to suppress, prevent or punish such acts or activities to the former only; and
- The NSL must seek to prevent, stop and punish all acts and activities endangering the constitutional order in the HKSAR, whether involving force or otherwise.

14. Regarding the 1st & 2nd Common Grounds concerning the meaning of "other unlawful means" under NSL 22, the CA held that on a proper construction of NSL 22 and giving effect to the primary legislative purposes, NSL 22 covers all unlawful means other than force or threat of force, and is not confined to criminal acts.

15. As to the 3rd Common Ground, the CA held that in terms of evidence, a genuine and honest belief held by the accused that the means adopted was lawful may be relevant to the issue if he had the specific intent to subvert, but in the present case, once the Trial Court was satisfied that a defendant would be acting contrary to the BL with an intention to subvert in pursuing the course of conduct in question, the argument of mistaken belief fell away, as one could not have genuinely believed that the BL would allow a LegCo member, when purportedly exercising his constitutional powers and functions, to carry out any subversive act.

(paragraphs 88-89, 91 and 178).

16. In relation to the 4th and 5th Common Grounds, the CA held that LegCo members, having taken the oath under BL 104, were under a constitutional duty to uphold the Basic Law and the constitutional order of the HKSAR. Since the Scheme was conceived, advocated and pursued as a "constitutional weapon of mass destruction" for the purpose of forcing the CE to resign and toppling the constitutional order, it was an unlawful means under NSL 22, and the Course of Conduct, which sought to implement the Scheme by using the mechanism in BL 50-52 to achieve the subversive consequences stipulated in NSL 22(1)(3), was a prohibited act within the meaning of that provision. The non-intervention principle did not apply. An accused would have the specific subversive intent if he intended to trigger the BL 50–52 mechanism with the purpose of seriously interfering in the constitutional order amounted to subversive intent (paragraphs 101–171).

17. Regarding the individual grounds advanced, the CA detected no error in the Trial Court's factual findings and inferences. The complaints alleging excessive judicial intervention were not established. D5's statements in question did not constitute *res gestae* evidence as there was no unusual or startling or dramatic triggering event for them. Although they were misclassified by the Trial Court as "mixed statements", there had been no prejudice to D5 (paragraphs 173–296).

18. On sentences, the CA held that the penalty bands under NSL 22 applied to sentencing for conspiracy to commit a NSL 22 offence, and that the general sentencing process for conspiracy applied. The basic starting point of 7 years' imprisonment for all the Applicants was proper. The enhancements for D5 (6 months) and D37 (12 months) were justified (paragraphs 298–322).

19. The CA further held that "impossibility of the Scheme" was not valid mitigation, and "mistake as to law" was not a valid mitigating factor on the facts. Exploiting the system in the way as the defendants did intending to bring about potentially devasting consequences for the HKSAR, even under the mistaken belief that it was lawful, deserves little by way of mitigation, if at all. Any discount given by the Trial Court on that basis was gratuitous. Discounts of 2 to 3 months for past community service were the upper limit given the seriousness of the offence. Withholding discount on account of recidivism was justified.

Wholly consecutive sentences for D27 and D37 in respect of their conspiracy and separate riot convictions were proper (paragraphs 323–344).

20. Regarding the appeal by way of case stated, the CA held that the Trial Court was entitled to have a reasonable doubt as to whether D16 was a party to the conspiracy or had the subversive intent, despite he intentionally positioned himself in such a way to gain political leverage. The Trial Court's findings were not perverse and the appeal by way of case stated was dismissed (paragraphs 345–371).

Prosecutions Division
Department of Justice
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