

## Case Summary (English Translation)

**HKSAR v Wong Kin-chung**  
**(John Joseph also known as Wong Kin-chung) (黃健聰)**

CACC 92/2024; [2025] HKCA 349; [2026] 1 HKC 186  
(Court of Appeal)

(Full text of the Court’s judgment in Chinese at  
[https://legalref.judiciary.hk/lrs/common/ju/ju\\_frame.jsp?DIS=167964&currpage=T](https://legalref.judiciary.hk/lrs/common/ju/ju_frame.jsp?DIS=167964&currpage=T))

Before: Hon Poon CJHC, Pang JA and Anthea Pang JA in Court

Date of Hearing: 21 February 2025

Date of Judgment: 15 April 2025

*Sentencing – NSL offences – conspiracy to incite the commission by other persons of the offence of secession – NSL must operate in tandem with local criminal laws pursuant to the convergence principle – tiered sentencing bands under NSL 21 applied to conspiracy offences under ss. 159A and 159C of Crimes Ordinance (“CO”) – s. 159C must operate within the sentencing framework laid down under NSL 21 to align the penalties for conspiracy offences with those for the relevant substantive offences in terms of the “maximum penalty requirement” and the “proportionality requirement” – two penalty ranges prescribed under NSL 21(2) in respect of “circumstances of a serious nature” and “circumstances of a minor nature”, including their lower limits were mandatory – both incitement and conspiracy were inchoate offences – minimum sentences consistently applied to incitement and conspiracy*

*Sentencing – NSL offences – conspiracy to incite the commission by other persons of the offence of secession – case took place after “Anti-Extradition Law Amendment Bill Movement” when the risks to national security and the rule of law were very high – committed the offence over a long period of 28 months – posts in question were published in a persistent and planned manner through multiple social*

*media platforms which were widely used by members of the public – posts advocated using violent means to overthrow the Chinese government and the HKSAR government – sought help from foreign or external forces to achieve “Hong Kong independence” – goals impossible to put into practice irrelevant – overall culpability as having “circumstances of a serious nature” – insignificant role played by individual co-conspirators not a mitigating factor – extent of applicant’s participation not insignificant given the overall circumstances*

## **Background**

1. The applicant was charged with one count of “conspiracy to incite the commission by other persons of the offence of secession”, contrary to NSL 20 and 21 and ss. 159A and 159C of the CO (Cap. 200). He pleaded guilty before a District Judge (“the trial judge”) and was sentenced to 60 months’ imprisonment.
2. Aggrieved by the sentence, the applicant applied to the Court of Appeal for leave to appeal against sentence. His three grounds of appeal were as follows:
  - (a) The trial judge erred in applying the tiered sentencing bands under NSL 21 to conspiracy offences under ss. 159A and 159C of the CO, which led to the erroneous application of the minimum sentence and deprived the applicant of the discount to which he was entitled for a guilty plea;
  - (b) The trial judge erred in defining the case as having “circumstances...of a serious nature”, and the starting point of six and a half years’ imprisonment was manifestly excessive; and
  - (c) The trial judge failed to consider or adequately consider the role played by the applicant in the conspiracy.

## **Major provision(s) and issue(s) under consideration**

- NSL 20, 21
- CO (Cap. 200) ss. 159A and 159C

3. The appeal in this case mainly centred around whether the tiered sentencing bands under NSL 21 applied to conspiracy offences under ss. 159A and 159C of the CO (i.e. the first ground of appeal).

### **Summary of the Court's judgment**

#### ***(a) Whether the tiered sentencing bands under NSL 21 applied to conspiracy offences under the CO***

4. The applicant contended that the relevant tiered sentencing bands did not apply because the law drafters deliberately chose to exclude the term “conspiracy” from NSL 20 or NSL 21. However, the Court of Appeal held that although neither of the Articles explicitly refer to conspiracy, this did not mean that the legislative intent was to exclude the offence of conspiracy. The NSL must operate in tandem with local criminal laws pursuant to the convergence principle. The sentencing for conspiracy to incite others to commit the crimes under NSL 20 must also operate within the sentencing framework laid down under NSL 21. (paras. 17-19, 21-23 and 26)

5. The Court of Appeal stated that the legislative intent was for the NSL to operate in tandem with the laws of the HKSAR, seeking convergence, compatibility and complementarity with local laws to form a comprehensive criminal law mechanism to deal with crimes endangering national security under the NSL, with local laws operating in normal fashion unless they were expressly or by necessary implication displaced by inconsistent provisions of the NSL: see *HKSAR v Lui Sai Yu* [2023] HKCFA 26. According to this convergence principle, although the offence of conspiracy is not expressly mentioned in NSL 20 or NSL 21, the provisions on conspiracy under the local laws, namely, s. 159A of the CO, and the relevant principles shall apply. In the event of inconsistencies with any provision(s) of the NSL, the relevant NSL provision(s) shall prevail. In terms of sentencing, the local sentencing provisions for conspiracy offences, namely, s. 159C of the CO, and the relevant principles shall operate within the sentencing framework laid down under NSL 21 to achieve convergence, compatibility and complementarity between the two. (paras. 21-22 and 24-25)

6. Regarding s. 159C of the CO, the Court of Appeal noted that the legislative purpose of the section was to align the penalties for conspiracy offences with those for the relevant substantive offences. Regarding the sentencing for conspiracy to commit the “relevant offence”, s. 159C sets out two criteria, namely (i) the sentence must be commensurate with the gravity of the “relevant offence” (the “proportionality requirement”); and (ii) the sentence must be subject to the maximum term for the “relevant offence”; where s. 159C(3) applies, the maximum term shall be imprisonment for life (the “maximum penalty requirement”). (paras. 29-30)

7. Where NSL 21 applies to an offence of conspiracy to commit incitement to secession, the sentence shall be within the prescribed range of the applicable band and shall not fall below the lower limit of the applicable band, unless NSL 33 applies. Otherwise, the sentence would be disproportionate to the gravity of the offence and run contrary to the legislative purpose of the Article. (paras. 37)

8. According to the CFA’s analysis in *Lui Sai Yu*, the Court of Appeal reiterated that the two penalty ranges prescribed under NSL 21(2) in respect of “circumstances of a serious nature” and “circumstances of a minor nature”, including their lower limits, were within the mandatory sentencing framework, and that the court might exercise discretion only within the applicable range by applying local sentencing principles; otherwise it would run contrary to the legislative purpose of NSL 21, which was tied to the seriousness of the offence. (paras. 31-34 and 36-37)

9. The Court of Appeal further observed that where s. 159C of the CO applied within the NSL framework, the court is required to identify the specified “relevant offence” and the sentencing framework for that offence as prescribed by the NSL to determine a sentence that satisfies both the “proportionality requirement” and the “maximum penalty requirement”. (para. 38)

10. Regarding conspiracy to incite the commission of an offence contrary to NSL 20, the “relevant offence” referenced in s. 159C of the

CO is inciting the commission of an offence contrary to NSL 20. With respect to this offence, NSL 21 has already established the sentencing bands and ranges which are commensurate with the gravity of the offence and they are mandatory. To satisfy the “proportionality requirement” and the “maximum penalty requirement”, the sentence for conspiracy to incite the commission of an offence contrary to NSL 20 shall comply with the provisions of NSL 21 and be within its prescribed sentencing framework, and it shall not fall below the lower limit of the applicable band, unless NSL 33 applies. The sentence shall not exceed the maximum penalty either. With s. 159C of the CO operating within the framework of NSL 21 in this manner, the CA observed that it helps achieve convergence, compatibility and complementarity between the two. (paras. 38-39)

11. The above sentencing principle ensures that the sentence for conspiracy to incite the commission of an offence contrary to NSL 20 aligns with the sentence for an offence of incitement under NSL 21 and that for a conspiracy offence under NSL 30. Both incitement and conspiracy under NSL 21 are inchoate offences, and their applicable sentencing frameworks shall be consistent. Besides, NSL 30 provides that conspiracy to commit an offence with a foreign country or external elements under NSL 20 is punishable in accordance with the prescribed sentencing framework of the Article. In other words, both conspiracy and substantive offences are subject to the same sentencing framework. As it is likewise a conspiracy offence, it is entirely reasonable that the sentence for conspiracy to incite others to commit an offence under NSL 20, instituted under s. 159A of the CO, shall also be imposed in accordance with the provision for an offence of incitement under NSL 21. (para. 40)

12. The applicant contended that the legislative intent of s. 159C of the CO was solely to align the maximum sentences for conspiracy with those for substantive offences, without anything to do with minimum sentences, and cited a line of English Court of Appeal cases on the English Firearms Act 1968 to support his contention that statutory minimum sentences were not binding on conspiracy offences. The Court of Appeal found such contention untenable. Minimum sentences

are rarely laid down in the local laws; this does not mean that the prescribed statutory minimum sentences can be disregarded where s. 159C applies within the sentencing framework of the NSL. The contention also disregarded the “proportionality requirement” under s. 159C. If the contention holds true, the prescribed ranges under NSL 21 would only concern starting points and as a result, even if NSL 33 is inapplicable, the applicant could still receive a discount for a timely plea of guilty and the final sentence might fall below the statutory minimum. This contention has already been rejected by the CFA. in *Lui Sai Yu*. Besides, given that incitement to commit an offence under NSL 20 and conspiracy to incite the commission of the same offence are both inchoate offences, it would be unreasonable and illogical for their sentencing provisions to be inconsistent. Particularly, when the circumstances of the offence of conspiracy to incite are more serious than those of the offence of incitement, it makes no sense in principle if sentencing for the former is subject to the statutory minimum while that of the latter is not. The Court of Appeal further rejected the contention that s. 159C operates “in tandem with” the provisions of NSL 21, as though s. 159C could be enforced outside the sentencing framework of NSL 21. The CA held that the correct application of the convergence principle requires s. 159C to operate within the sentencing framework of NSL 21 to achieve convergence, compatibility, and complementarity between the two sets of provisions. (paras. 41-43)

13. Regarding the sentence for a conspiracy offence, the lower courts in *HKSAR v Choi Wing Kit* [2023] 5 HKC 170 and *HKSAR v Ng Gordon Ching Hang & 46 Others* [2024] HKCFI 3298 were of the view that the sentencing ranges, including the lower limits, for the “relevant offences” specified in s. 159C of the CO, as laid down in the NSL, were not mandatory but for reference only. With regard to the said viewpoint, the Court of Appeal noted that the lower courts had failed to thoroughly discuss or fully consider the convergence principle mentioned above or how s. 159C of the CO should operate within the relevant sentencing frameworks of the NSL. Based on these discussions, the Court of Appeal did not agree with the lower courts’ viewpoint. (para. 44)

***(b) Whether the circumstances in the present case were “of a serious nature” and whether the starting point was manifestly excessive***

14. The Court of Appeal assessed whether the circumstances in the present case were “of a serious nature” based on the considerations set out in *Lui Sai Yu* by the CFA and those in *Ma Chun Man* by the Court of Appeal.

15. In this regard, the Court of Appeal noted that the applicant committed the offence over a long period of 28 months. After the “Anti-Extradition Law Amendment Bill Movement” when the risks to national security and the rule of law were very high, he still publicly published the posts in question in a persistent and planned manner through six social media platforms which were widely used by members of the public and had thousands of followers. And, in the posts, he advocated using violent means to overthrow the Chinese government and the HKSAR government, made proposals such as organising a demonstration, initiating a petition to the White House demanding that the Hong Kong Policy Act and the Sino-British Joint Declaration be terminated and that the United States and NATO send troops to occupy the HKSAR, and launching crowdfunding to raise “military funds”, and even sought help from foreign or external forces to achieve “Hong Kong independence”. The applicant not only conspired with others, but already took certain substantive actions to incite others to commit secession. Under the management of the applicant, the platforms in question not only failed to remove the previous posts after the NSL came into effect, they even proceeded with publishing 35 more posts to persistently carry out acts of incitement. That was blatant defiance of the law and it exacerbated the risks of stirring up secessionism and other unlawful acts. Notwithstanding the slim chances of success for part of the proposals, his overall culpability remained gravely serious. (paras. 45-51 and 54-56)

16. The primary objective of the offence of incitement is to prevent crime. Generally speaking, whether the remarks in question have been put into practice and how the public have reacted to them are irrelevant;

the offender's culpability may remain considerably serious. Conversely, if the remarks in question had attracted many people's attention, or even garnered support from a lot of people, his culpability would even be more serious. (para. 53)

17. Having regard to the overall circumstances of the case, the court held that the trial judge's finding that the circumstances in the present case were of a serious nature is correct and the starting point of six and a half years' imprisonment adopted by the trial judge was not manifestly excessive. (para. 57)

***(c) Whether the trial judge in sentencing adequately considered the role played by the applicant in the conspiracy***

18. As regards the applicant's argument that the trial judge had failed to adequately consider his role in the conspiracy, the Court of Appeal stated that in handling a conspiracy offence, an element of the offence was the agreement to commit the crime, not the "overt acts" by individuals: see *HKSAR v Tse Tak Lai* [2021] HKCA 909. Generally speaking, the insignificant role played by individual co-conspirators was not a mitigating factor. On the contrary, if they played an active, affirmative and extensive role, their culpability will be aggravated. In the reasons for sentence, the trial judge repeatedly referred to and analysed the applicant's account of his personal role and the extent of his participation in the cautioned statement, and finally found that the applicant "basically denied any involvement in the alleged acts". This showed the trial judge had given full consideration to the applicant's account but did not accept it. Moreover, as the applicant was the sole defendant in the present case, the extent of his participation was far from insignificant given the context with overall circumstances of a serious nature. Therefore, the relevant complaint was untenable. (paras. 58-60)

19. As a result, the Court of Appeal held that none of the applicant's three grounds of appeal were tenable, and that having regard to the applicable sentencing principles and the overall circumstances of the case, the trial judge's imposition of a sentence of five years'

imprisonment on the applicant was neither wrong in principle nor manifestly excessive. Accordingly, the applicant's application for leave to appeal against sentence was refused. (paras. 61-62)

***Endnote – HKSAR v Wong Kin-chung (John Joseph also known as Wong Kin-chung), CACC 92/2024, [2025] HKCA 813 (The Court of Appeal of the High Court) (Full text of the Court's judgment in Chinese*** **at:**  
[https://legalref.judiciary.hk/lrs/common/ju/ju\\_frame.jsp?DIS=172136&currpage=T](https://legalref.judiciary.hk/lrs/common/ju/ju_frame.jsp?DIS=172136&currpage=T))

20. On 7 May 2025, the applicant sought to have the Court of Appeal certify in accordance with s. 32 of the Hong Kong Court of Final Appeal Ordinance (Cap. 484) that a point of law of great and general importance was involved in the present case, so as to apply to the CFA for leave to appeal. (para. 1)

21. The point of law contended by the applicant to be of great and general importance was: “does the stipulation under NSL 21 that ‘the person shall be sentenced to fixed term imprisonment of not less than five years...’ if the circumstances of the offence committed are of a serious nature apply to the conspiracy offence under s. 159A of the CO?” The above argument merely affected a defendant who was charged with conspiracy to commit an NSL offence during the period between the commencement date of the NSL and the effective date of the SNSO, because s. 109 of the SNSO clearly provided that the penalties under the NSL also applied to offences including conspiracy. (paras. 2-3)

22. The applicant's grounds could be distilled into two points. First, the Legislative Council enacted s. 109 of the SNSO with the aim of plugging the legal loophole by expressly “changing” the prior rule, namely that the minimum sentence under NSL 21 did not apply to the conspiracy offence arising from the relevant prescribed offences. Second, NSL 20 and 21 were different from NSL 29 and 30 in that the latter expressly created the offence of “conspiracy”, which demonstrated the NPCSC's intent to leave sentencing for conspiracy offences arising

from those under the former two provisions to be dealt with by the local law under s. 159C of the CO that merely stipulated the maximum sentence thereby allowing courts discretion in sentencing. (para. 5)

23. The Court of Appeal held that s. 109 of the SNSO beginning with “to avoid doubt” plainly served the legislative purpose of clarifying that the penalties under the NSL applied to the offences of conspiracy, incitement or attempt arising from the relevant prescribed offences, rather than being intended to plug any purported loophole. Moreover, the Court of Appeal had previously stated that the penalty regime under NSL 21 equally applied to the conspiracy offence; the loophole alleged by the applicant did not exist. Therefore, Ground 1 was untenable. (paras. 7-8)

24. The applicant’s Ground 2 concerned the issue of convergence between the NSL and the CO. The Court of Appeal had detailed in the earlier judgment its explanation for finding his contention untenable. As the applicant failed to raise any new argument to support that the ground was by any means reasonably arguable, Ground 2 was likewise untenable. (para. 9)

25. For the reasons above, even if the arguments raised by the applicant involved a point of law of importance, the Court of Appeal refused to grant the relevant certificate since the grounds advanced by him were not reasonably arguable at all. (para. 10)

26. The applicant thus applied to the CFA for leave to appeal. Having considered the applicant’s application for leave to appeal and his written submissions filed pursuant to the summons issued by the Registrar, the Appeal Committee of the CFA ordered that the applicant’s application for leave to appeal be dismissed under r. 7(2) of the Hong Kong Court of Final Appeal Rules (Cap. 484A), on the ground that it discloses no reasonable grounds for leave to appeal.