

LC: Opening remarks by CS for proposed resolution under Basic Law and Court of Final Appeal Ordinance

Following is the opening remarks (translated from Chinese) made by the Chief Secretary for Administration, Mr Matthew Cheung Kin-chung, for the proposed resolution under Article 73(7) of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China and section 7A of the Hong Kong Court of Final Appeal Ordinance (Cap. 484) in the Legislative Council today (May 30):

Mr President,

I move that the motion under my name, as printed in the Agenda, be passed, that this Council endorses the appointments of the Honourable Mr Justice Andrew Cheung Kui-nung (Mr Justice Cheung) as a Permanent Judge, the Honourable Mr Justice Robert Tang Ching (Mr Justice Tang) as a non-permanent Hong Kong judge (HKNPJ), the Right Honourable the Baroness Brenda Hale of Richmond (Baroness Hale) and the Right Honourable Beverley McLachlin, P.C. (Ms McLachlin) as non-permanent judges from other common law jurisdictions (CLNPJs) to the Court of Final Appeal (CFA).

Constitutional and statutory framework

The CFA is the final appellate court in Hong Kong, hearing both civil and criminal appeals. It consists of the Chief Justice (CJ) and the permanent judges. Non-permanent judges may be invited to sit and they may come from Hong Kong or other common law jurisdictions. When hearing and determining appeals, the CFA is constituted by five judges, comprising the CJ, three permanent judges, and one HKNPJ or one CLNPJ.

Pursuant to Article 88 of the Basic Law and the Judicial Officers Recommendation Commission Ordinance (Cap. 92), judges of the courts of the Hong Kong Special Administrative Region shall be appointed by the Chief Executive (CE) on the recommendation of the Judicial Officers Recommendation Commission (JORC). Pursuant to Article 92 of the Basic Law, judges of the Hong Kong Special Administrative Region shall be chosen on the basis of their judicial and professional qualities and may be recruited from other common law jurisdictions. In addition, Article 90 of the Basic Law provides that in the case of the appointment of judges of the CFA, the CE shall obtain the endorsement of the Legislative Council (LegCo).

The current appointments

With regard to the current appointment exercise, Mr Justice Tang will retire as a Permanent Judge of the CFA on October 25, 2018. The JORC has recommended to the CE to appoint Mr Justice Cheung, Chief Judge of the High

Court to fill the vacancy. Mr Justice Cheung was a pre-eminent counsel when he joined the Judiciary in 2001 and was appointed the Chief Judge of the High Court in 2011. He has dealt with many high profile cases in the Court of Appeal particularly in the areas of administrative and constitutional law. He is a judge of high standing and reputation. His judgments have made a profound impact on Hong Kong jurisprudence. His term as a Permanent Judge of the CFA is set to take effect on October 25, 2018.

As for non-permanent judges, at present, there are 15 non-permanent judges, comprising three HKNPJs and 12 CLNPJs. Considering the heavy caseload of the CFA and in order to provide more flexibility in judicial deployment, there is a need to increase the number of both HKNPJs and CLNPJs.

The JORC noted that Mr Justice Tang will become eligible for appointment as a HKNPJ upon his retirement as a Permanent Judge of the CFA. Appointed as a Permanent Judge of the CFA in 2012, Mr Justice Tang is a judge of the highest quality and utmost integrity. He is versatile with experience in handling appeals in both civil and criminal matters. He would be a remarkable new member to the list of HKNPJs and would continue, in that new capacity, to make valuable contribution to the CFA. Accordingly, the JORC has recommended to the CE his appointment as a HKNPJ for a term of three years with effect from October 25, 2018.

At the same time, the JORC has recommended the appointments of Baroness Hale and Ms McLachlin as CLNPJs. Baroness Hale was appointed to take office as President of the Supreme Court of the United Kingdom in September 2017. Ms McLachlin served as the Chief Justice of the Supreme Court of Canada from January 7, 2000 until she retired from the office on December 15, 2017. They are judges of eminent standing and reputation, and would be invaluable additions to the list of CLNPJs. If appointed, Baroness Hale and Ms McLachlin will be the first female judges to the CFA. As the CE said in announcing the proposed appointments, "their appointment is a historic moment in Hong Kong". Subject to the endorsement of this Council, the appointments of the two CLNPJs shall take effect in July 2018 for a term of three years.

The CE is pleased to accept the recommendations of the JORC on the appointments of the abovementioned four judges as judges of the CFA.

In accordance with the procedures previously endorsed by the House Committee of LegCo, the Government issued papers on March 21, 2018 to inform the House Committee that the CE had accepted the recommendations of the JORC on the appointments. The curriculum vitae of the four judges were also enclosed in the papers. Representatives from the Government and the Secretary to the JORC attended the meeting of the Subcommittee on Proposed Senior Judicial Appointments on April 27, 2018 and answered Members' questions. I would like to thank Dr Honourable Priscilla Leung Mei-fun, Chairman of the Subcommittee, and other Members of the Subcommittee for their support of the proposed appointments.

President, I invite Members to endorse the appointments. Thank you.

