

立法會
Legislative Council

LC Paper No. CB(3) 742/02-03

Ref. : CB(3)/M/OR

Tel : 2869 9205

Date : 16 June 2003

From : Clerk to the Legislative Council

To : All Members of the Legislative Council

Council meeting of 2 July 2003

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

I forward for Members' consideration a proposed resolution which the Chief Secretary for Administration will move at the Council meeting of 2 July 2003 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. The President has directed that "it be printed in the terms in which it was handed in" on the Agenda of the Council.

2. The speech, in the English version, which the Chief Secretary for Administration will deliver when moving the proposed resolution, is also attached. The Chinese version of the speech will be issued as soon as it is available.

(Ray CHAN)
for Clerk to the Legislative Council

Encl.

BASIC LAW OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION
OF THE PEOPLE'S REPUBLIC OF CHINA

AND

HONG KONG COURT OF FINAL APPEAL ORDINANCE

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))

RESOLVED that the appointment of -

- (a) the Right Honourable The Lord Woolf of Barnes;
 - (b) the Right Honourable The Lord Scott of Foscote; and
 - (c) the Right Honourable Sir Ivor Richardson,
- as judges of the Hong Kong Court of Final Appeal from other
common law jurisdictions pursuant to section 9 of the Hong
Kong Court of Final Appeal Ordinance be endorsed.

Speech by the Chief Secretary for Administration
The Honourable Donald TSANG, GBM, JP
in the Legislative Council on 2 July 2003

Resolution under Article 73(7) of the Basic Law and
Section 7A of the Hong Kong Court of Final Appeal Ordinance
Appointment of Non-permanent Judges to the Court of Final Appeal

Madam President,

I move that this Council endorses the appointment of The Right Honourable The Lord Woolf of Barnes, The Right Honourable The Lord Scott of Foscote and The Right Honourable Sir Ivor Richardson to the Court of Final Appeal (CFA) as non-permanent judges.

2. I should first thank the Honourable Margaret Ng, Chairman of the LegCo Panel on Administration of Justice and Legal Services, and Panel Members for formulating a set of modified procedure for this Council to endorse the appointment of judges under Article 73(7) of the Basic Law. According to such procedures as endorsed by the House Committee, the Administration informed the House Committee on 2 May 2003 that the Chief Executive had accepted the recommendation of the Judicial Officers Recommendation Commission (JORC) on these three appointments.

3. On 27 May, representatives from the Administration and the Secretary to the JORC attended a meeting of the Subcommittee formed by the House Committee of this Council to examine these appointments. They answered Members' questions and furnished additional information.

The Current Appointment Exercise

4. Article 92 of the Basic Law stipulates that 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. Under section 12(4) of the Hong Kong Court of Final Appeal Ordinance, a person shall be eligible to be appointed as a non-permanent judge from another common law jurisdiction if he is (a) a judge or retired judge of a court of unlimited jurisdiction in either civil or criminal matters in another common law jurisdiction; (b) a person who is ordinarily resident outside Hong Kong; and (c) a person who has never been a judge of the High Court, a District Court or a permanent magistrate in Hong Kong.

5. The total number of persons holding the office as non-permanent judges at any one time is capped at 30 under section 10 of the Hong Kong Court of Final Appeal Ordinance. At present, there are 20 non-permanent judges comprising 12 from Hong Kong and 8 from other common law jurisdictions. The CFA has been functioning well. Apart from a few appeals, the Chief Justice has so far usually drawn the "5th judge", i.e. the judge other than the Chief Justice and the three Permanent

Judges, from the list of non-permanent judges from other common law jurisdictions for every appeal. That being so, and having regard to the operational needs of the Court, the Chief Justice considers that it will be conducive to the smooth functioning of the Court for these three appointments to be made.

6. In accordance with Article 88 of the Basic Law, the JORC has recommended to the Chief Executive the appointment of The Right Honourable The Lord Woolf of Barnes, The Right Honourable The Lord Scott of Foscote and The Right Honourable Sir Ivor Richardson as non-permanent judges from other common law jurisdictions to the CFA.

The Appointees

7. The Right Honourable the Lord Woolf of Barnes is the Lord Chief Justice of England and Wales since 2000. He was called to the Bar at the Inner Temple in 1954 and practised until 1979, when he became a Judge of the Queen's Bench Division of the High Court of Justice. Between 1992 and 1996, he was a Lord of Appeal in Ordinary; and between 1996 to 2000, he was Master of the Rolls. His 24-year judicial experience has covered all areas of the law and in particular, public and administrative law and criminal law.

8. The Right Honourable The Lord Scott of Foscote is a Lord of Appeal in Ordinary, serving as a member of the United Kingdom's highest appellate court since 2000. He was called to the Bar at the Inner Temple in 1959 and became a Judge of the High Court of Justice of the Chancery Division in 1983. From 1991 to 1994, he was a Lord Justice of Appeal. Between 1995 and 2000, he was Vice-Chancellor of the Supreme Court and head of Civil Justice. His judicial experience has covered all legal fields including, in particular, trusts, company law property and tax.

9. The Right Honourable Sir Ivor Richardson is the immediate past President of the Court of Appeal of New Zealand. He served as a judge for 25 years since 1977. He was appointed to the Privy Council in 1978 and sat in appeals to the Judicial Committee of the Privy Council. His judicial experience has covered all areas of law.

10. The three judges have eminent international standing and reputation, and their appointment will be a great asset to the CFA of Hong Kong in upholding the rule of law and the independence of the Judiciary.

Acceptance of the Recommendations

11. The Chief Executive is happy to accept these recommendations of the JORC, and subject to the endorsement of the Legislative Council, will make the appointments.

12. Once Members graciously endorse these appointments, we propose that the appointments take effect within July 2003, on completion of the remaining constitutional procedures. I formally invite Members to endorse the appointments.