

立法會
Legislative Council

LC Paper No. CB(3) 479/05-06

Ref : CB(3)/M/OR

Tel : 2869 9270

Date : 13 April 2006

From : Clerk to the Legislative Council

To : All Members of the Legislative Council

Council meeting of 3 May 2006

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 3 May 2006 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 both English and Chinese versions, which the Chief Secretary for Administration will deliver when moving the proposed resolution, is also attached.

(Mrs Betty LEUNG)
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) Mr Michael McHugh; and
- (b) the Right Honourable Thomas Munro Gault,
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 (Cap. 484) be endorsed.

**Speech by the Chief Secretary for Administration
in the Legislative Council on 3 May 2006**

**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 the appointment of Mr Michael McHugh and the Right Honourable Thomas Munro Gault to the Court of Final Appeal as non-permanent judges be endorsed by this Council.

2. In accordance with the procedures agreed by the House Committee in 2003 on the appointment of judges, the Administration informed the House Committee on 6 January that the Chief Executive had accepted the recommendation of the Judicial Officers Recommendation Commission (JORC) on the two appointments.

3. On 16 February, representatives from the Administration and the Secretary to the JORC attended a meeting of the Subcommittee formed by the House Committee to examine the appointment. The latter endorsed the Subcommittee's report on 31 March 2006.

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 Judge 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 17 non-permanent judges comprising eight from Hong Kong and nine from other common law jurisdictions.

6. When hearing and determining appeals, the Court of Final Appeal is constituted by five judges. They are the Chief Justice, three permanent judges and one non-permanent judge who is either a Hong Kong judge or judge from other common law jurisdictions. The Chief Justice has usually invited non-permanent judges from other common law jurisdictions to sit as the “fifth” judge. The Chief Justice considers that the proposed appointment will give the Court greater flexibility in dealing with the caseload of the Court.

7. In accordance with Article 88 of the Basic Law, the JORC has recommended to the Chief Executive the appointment of Mr Michael McHugh and the Right Honourable Thomas Munro Gault as non-permanent judges from other common law jurisdictions to the CFA.

The Appointees

8. Mr Michael McHugh was called to the New South Wales Bar in 1961 and was appointed Queen's Counsel in 1973. He has served as a Judge in Australia for almost 21 years since 1984. He has been a Justice of the High Court from 1989 until his retirement in 2005. He has served as Acting Chief Justice of Australia on a number of occasions during the absence of the Chief Justice. His judicial experience has covered all areas of law.

9. The Right Honourable Thomas Munro Gault was appointed a judge of the High Court of New Zealand in 1987, the Court of Appeal of New Zealand in 1991, and a member of the Privy Council in 1992, and became President of the Court of Appeal of New Zealand in 2002. He was appointed to the Supreme Court of New Zealand in 2004 upon its establishment, and has just retired from that Court in April this year. He was also appointed a judge of the Supreme Court of Fiji in 2002 and has sat in that Court from time to time. His judicial experience has also covered all areas of law.

10. The two judges have eminent international standing and reputation, and their appointment will be a great asset to the Court of Final Appeal of Hong Kong.

Acceptance of the Recommendations

11. The Chief Executive is pleased to have accepted the recommendations of the JORC. Subject to the endorsement of the Legislative Council, we aim to give effect to the appointment in mid 2006 and will report to the Standing Committee of the National People's Congress for the record in compliance with Article 90 of the Basic Law. I now invite Members to endorse the appointment.