

立法會
Legislative Council

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From : Clerk to the Legislative Council

To : All Members of the Legislative Council

Council meeting of 8 June 2011

**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 8 June 2011 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 Chinese and English, which the Chief Secretary for Administration will deliver when moving the proposed resolution is also attached.

(Mrs Justina LAM)
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 Collins of Mapesbury;
and
- (b) the Right Honourable The Lord Clarke of Stone-cum-Ebony,

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
at the meeting of the Legislative Council on 8 June 2011**

**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

Mr President,

I move that the motion under my name, as printed on the Agenda, be passed, that this Council endorses the appointment of the Right Honourable the Lord Collins of Mapesbury and the Right Honourable the Lord Clarke of Stone-cum-Ebony as non-permanent judges from other common law jurisdictions to the Court of Final Appeal.

Constitutional and statutory framework

2. The Court of Final Appeal is the final appellate court in Hong Kong, hearing both civil and criminal appeals. It consists of the Chief Justice and the permanent judges. Non-permanent judges may be invited to sit and they may come from Hong Kong or from other common law jurisdictions. At present, there are 17 non-permanent judges. Six of them are non-permanent Hong Kong judges and 11 are non-permanent common law judges.

3. When hearing and determining appeals, the Court of Final Appeal is constituted by five judges, comprising the Chief Justice, three

permanent judges, and one non-permanent Hong Kong judge or one non-permanent common law judge.

4. 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 on the recommendation of the Judicial Officers Recommendation Commission (JORC). In addition, Article 90 of the Basic Law provides that in the case of the appointment of judges of the Court of Final Appeal, the Chief Executive shall obtain the endorsement of the Legislative Council.

The current appointment

5. As it was anticipated that two non-permanent common law judges would unlikely be available to sit in the near future, and taking into consideration that other non-permanent common law judges have various professional and personal commitments, there is a need to expand the number of non-permanent common law judges to provide greater flexibility for dealing with the caseload of Court of Final Appeal and to ensure its effective operation. JORC has recommended to the Chief Executive the appointment of Lord Collins and Lord Clarke as non-permanent common law judges to the Court of Final Appeal.

6. The curriculum vitae of the two judges were set out in the Administration's paper to the Legislative Council issued on 11 April 2011. Lord Collins was appointed to the Court of Appeal of the United Kingdom in 2007 and he became a Justice of the new Supreme Court of the United Kingdom in October 2009. Lord Clarke was appointed to the Court of

Appeal of the United Kingdom in 1998. He became a Justice of the new Supreme Court of the United Kingdom in October 2009.

7. The two judges have eminent standing and reputation in the legal sector. The Chief Executive is pleased to accept the recommendation of JORC on their appointments as non-permanent common law judges to the Court of Final Appeal. Subject to the endorsement of this Council, the appointment would take effect in June 2011.

8. In accordance with the procedures previously endorsed by the House Committee, the Administration informed the House Committee on 11 April 2011 that the Chief Executive had accepted the recommendations of the JORC on these appointments. Representatives from the Administration and the Secretary to JORC attended the meeting of the Subcommittee on Proposed Senior Judicial Appointments set up under the House Committee on 21 April 2011 and answered Members' questions. The appointments were supported by the Subcommittee.

9. I invite Members to endorse the appointments.