

**SPEECH OF THE CHAIRMAN OF THE BAR COUNCIL**  
**OF THE HONG KONG BAR ASSOCIATION**  
**ON THE OCCASION OF THE FAREWELL SITTING TO MARK THE RETIREMENT OF**  
**THE CHIEF JUSTICE**  
**16TH JULY 2010**

**二零一零年七月十六日香港大律師公會執行委員會主席**  
**送別終審法院首席法官李國能的發言**

1. Apparently, on other occasions when I have made a brief speech at the invitation of the Chief Justice, I have perhaps used more than the few minutes he allotted to me. That may explain why on this occasion when I was invited by letter to make a brief speech, the word “brief” was capitalised, in bold and underlined. 嘗有幾次，首席法官邀請我作幾分鐘的簡短演說，我超出了時限，今次，當我收到邀請函時，特地在“簡短”兩字，用大楷、粗體及劃上簡線，提醒我必需簡短。
2. So I promise to be brief – however long it takes me. 所以，我答應，今次會盡量簡短，不論對我來說有多長。
3. It is sometimes said that the secret of life is timing. Certainly, I consider it a wonderful accident of timing that I should have the honour to represent the Bar at this occasion. 有很多人說，生命之奧妙在於能掌握時間。當然，我很榮幸可以於此時此刻，代表香港大律師公會，出席是次開庭。
4. Tickets for the seats for this Farewell Sitting were the hottest in town, and were snapped up quicker than for a new Andrew Lloyd-Webber musical. The queue to get into the Court this morning was longer than the queue of mainland tourists outside the most exclusive luggage retailer in Central. 出席是次歡送會的入場票，全城熱賣，好比Andrew Lloyd-

Webber的新音樂劇，早被搶購一空，今日排隊進場的人龍，比起內地旅客於皮具名店門前排隊的還要長。

5. The Bar is represented today by a selection of its members, covering differing areas of practice. There are not just those at the senior end of the profession, but a wide range of seniority from many sets of Chambers, including the two most junior members recently admitted to practice. 今日，代表香港大律師公會出席的成員，執業範疇各有不同，不只有資深的，還有兩位剛獲認許執業的新晉大律師。
6. This is fitting to mark the retirement of a man whose lasting impression may be that of having been Chief Justice, but who before that also had an illustrious career at the Bar, and who served the profession well, including as the Hon Sec of the Bar Association (incidentally in the year of a Chairman who later became a member of the Court of Final Appeal, over which he presided). 今日，李國能首席法官榮休，標誌著他在法律專業的成就。人們對李國能先生的最深刻印象是「首席法官」，然而，他亦曾在大律師公會擔任過名譽秘書，順帶一提，當年的大律師公會主席，後亦獲委任為他領導的終審法院的法官。
7. It is, of course, no secret that Hong Kong has benefited enormously from the accident of timing that allowed the then Andrew Li QC to become the first Chief Justice of Hong Kong in the new era following the resumption of Chinese sovereignty. 李國能先生在九七年中國對香港恢復行使主權之時，成為香港在新時代的首位首席法官。毫無疑問，他為香港作了極大貢獻。
8. If we did not know it then, we now know what an inspired appointment it was. 也許，當時我們不知道，這是何等卓越的任命。
9. It is not just those of us in the law who think that way. In February this year 2010, the Chief Justice achieved the highest score ever recorded in a University of Hong Kong public

opinion poll. His approval ratings would be the envy of any President, Prime Minister or Chief Executive, or indeed – to be closer to my home – any member of the Bar turned politician. 不只是法律界人士對李國能首席法官有如此看法，根據2010年2月香港大學民意調查，市民對李首席法官的支持度是有史以來最高。足以令外國總統、首相、特首、甚至身為大律師的政界人士，為之羨慕。

10. According to an entry on Wikipedia – you can see where I do much of my legal research – after his appointment to the post, the Chief Justice “developed a moderate jurisprudence and was a consensus builder in the Court of Final Appeal”. I am not entirely sure what that means, but perhaps – against some concerns expressed at the time – it is a reference to the air of equanimity, the sense of continuity, and the degree of unity in the judgments of the members of the new Court of Final Appeal. 我常查閱的Wikipedia網上百科全書，關於李國能首席法官的一條，指他出任首席法官後，“發展出一套溫和的司法理念和在終審法院結成共識過程中具關鍵作用。”我雖然未完全了解其意思，也許是代表新終審法院的判決表達的沉著，持續性及團結一致。
11. The word “moderate” cannot, of course, be a reference to the quality of the Chief Justice’s or the Court’s judgments – except, perhaps, in those cases where I have been on the losing side. CFA judgments are widely respected and now routinely quoted as highly persuasive authority in other Courts around the common law world. 在我來說，特別在我敗訴時，“溫和”一詞並非表示首席法官或法院的裁決的質素。終審法院判決已成為具權威性的案例，在世界各地普通法域的法院被廣泛引用。
12. Part – but only part – of that quality comes from the added dimension brought to the Court by the overseas Non-Permanent Judges. One of the Chief Justice’s great successes has been his ability to attract such judicial talent to Hong Kong. 來自海外的非常任法官，是香港完備的司法制度的其中一個特色，李國能先生成功吸引外地的法律精英加入香港司法體系，帶來新思維。

13. But his ability to attract judicial talent also runs to other Courts, and I have previously expressed the view that one of the most enduring legacies of his tenure will be that he has instilled in practitioners at the Bar the idea that they should genuinely consider a career on the Bench. 然而，李首席法官亦對本港法律專材灌輸回饋的理念，我曾經向李先生表示他任內最令人津津樂道的，便是鼓勵大律師去當法官。
14. I think in 1968 the Chief Justice was studying in Europe, during a time of some unrest, and whilst I do not mean to suggest that he was to be seen running through the streets of Paris storming police barricades with the other students, it may be from that time that he subconsciously picked up the then common refrain: ‘We need to be realistic, so let us think the impossible’. 想起1968年，當時李先生還在歐洲唸書，正值當地發生騷亂期間。我不是說當時他在巴黎街頭跟其他學生一樣，沖擊警察防線。而是說或者他當時有意無意地吸收了那時人人不斷重覆的一句話：「我們必需腳踏實地，一起想那不可能發生的事情。」
15. Some might have thought it near impossible in 1997 to imagine persuading large numbers of strong and senior lawyers to leave the professions (and their attendant incomes) to go on the bench. But the ranks of the judiciary have indeed been swelled by the most suitable legal practitioners, all persuaded by him to become Judges. 1997年前，有些人或會認為若要大量資深法律界人士，離開原有的專業去當法官，似乎不太可能。然而今天，李首席法官已成功地說服最適合的法律專業人才，在香港的司法體系內，擔任不同的崗位。
16. This is all part of the long-term view that the Chief Justice has taken in his stewardship of the judiciary, and part of his long-range planning. Even the reason for his early retirement was to promote an orderly succession to a new Chief Justice who could be involved in the shaping of the judiciary in the coming years. 這是李國能首席法官任內的長遠計劃。雖然李首席法官提早榮休，目的是為了扶植接班人，令接班人可以參予未來數年的司法改革。

17. Indeed, the Chief Justice is one of those who would agree that adventure and happenstance are just the result of bad planning. Of course, plans are merely good intentions unless they are immediately translated into hard work. It was Oscar Wilde who said that, “Good resolutions are simply cheques that men draw on a bank where they have no account”. 其實，李國能先生亦認同，差劣的規劃常會導致無謂風險及突發事情。當然，計劃必須要坐言起行，否則只會是良好的意願。王爾德說過：「有效的解決方案好比銀行支票，若未在那銀行開立賬戶，哪有錢可用。」
18. Indeed, strategic planning alone is worthless, unless there is a first a strategic vision. Anyone who has seen the Chief Justice at work would never dare to suggest he does not have strategic vision. I bet he is a master at chess, though I do not know, for I have never dared to challenge him. 單單只有策略性計劃其實作用不太，大前提是必需有願景。從來未有人膽敢向李國能先生說他沒有願景。我敢打賭他必是個棋藝高手，雖然我並不知道，但我從不敢挑戰他。
19. In the Chief Justice’s case, the vision of a home grown Hong Kong judiciary of high quality, assisted at the highest level by internationally respected jurists, has become a reality. 李國能首席法官的願景是做就高質量的香港土生土長的司法界。這願景在國際法學家們的協助下，業已成實。
20. Also, in the development of law and its practice in Hong Kong – marked, for example, by greater transparency, the push for procedural reform and the increased drive to alternative consensual dispute resolution such as mediation – the Chief Justice has combined the need for modernity without losing sight of the significance of historical continuity. That continuity is perhaps of particular importance to Hong Kong. 再者，李首席法官在法律及實務發展方面，彰顯了高透明度，並致力推動司法改革及爭議解決替代方法，例如調解 - 李首席法官成功地揉合了現實所需，但又不會忽略歷史的延續性。延續性對香港尤其重要。

21. Lest it be thought that there are those of a different political hue not far from here who might take a different view, it might be remembered that it was Karl Marx who said – albeit perhaps not altogether approvingly – that the law is the infrastructure destined to preserve the status quo. The continuation of a legal and justice system in Hong Kong, strongly rooted in the rule of law and an independent judiciary, is a vital element in retaining local and international confidence in Hong Kong as a place to live and work and trade. 香港與鄰近地區，也許政治觀點不同。馬克思曾經說過：「儘管截然不同，法律是維持現狀的基礎。」香港司法體系的延續建基於法治和獨立的司法機關，令國際和全港市民對香港維持信心，在這片土地繼續生活、工作和營商。
22. By my count, by 31st August 2010, the Chief Justice will have been in post for 4,810 days. I wonder if it is simply a coincidence that the digits of that number, 4-8-1-0, add up to 13, the number of complete years of his tenure. 我算一算，到2010年八月三十一日，李國能首席法官已就任四千八百一十日，將4，8，1，0 加起來，是十三，恰巧李先生已就任了十三年。
23. The number 13 is interesting, conjuring up for many the aura of bad luck, though for a busy man looking forward to retirement I doubt it sounds that unlucky. The bad luck may be thought to come from the increase of one over twelve (the usual dozen) or of two over eleven (the usual soccer team, unless you are ill-disciplined and from Holland). But, in honour of the number, I have been careful to fit this speech onto 13 pages (even if not into 13 minutes). 十三，一個頗有趣的數字，或會令人想起不吉利的事情。看來對這位忙碌的先生來說，十三其實並不差。有人說它差，或許它比一打多出了一，一隊足球隊又多出兩位（除非你是荷蘭隊，有球員被趕出場）。今次，我刻意地寫了十三頁講稿，即使不是用十三分鐘講。
24. So, although the Chief Justice now retires after 13 years in post, that number 13 is not an unlucky number for Hong Kong. On the contrary, Hong Kong can count itself extremely

fortunate to have had in post such a man. 李國能任職首席法官十三年，對香港來說，十三並不差，相反地，應該是十分幸運，因李先生為香港服務了十三年。

25. But, in case I should appear to be about to move into hagiography, may I say a few words about the man, the human being, as we see him from the Bar. 現在我想跟大家說說故事，我們大律師公會的成員怎樣看李先生 - 這個人。
26. The first Duke of Wellington said, “There are three kinds of lies: lies, damned lies, and statistics”. If you have been to any of the annual New Silk ceremonies, for example, you will know that the Chief Justice would not agree. 英國威靈頓公爵說過：「世界上有三種謊話：普通的謊話、拙劣的謊話和統計數字。」假如你出席過授與資深大律師的典禮，你便知道李國能首席法官不會同意這個說法。
27. The Chief Justice has a keen eye for the numbers, and clearly delights in making numerical proportional comparisons, by reference to both percentages and fractions. Listeners at the speeches at the annual Opening of the Legal Year may also recall the odd statistic thrown out by the Chief Justice. 李首席法官一向精於數字，他喜歡用百分比及份數去作數據的比較。出席每法律年度開始典禮的人都會記得李首席法官總愛拋出一堆統計數字。
28. It is not limited to those occasions. I have done my own research, and as a result I can say that in the numerous speeches that the Chief Justice has made during his tenure, on a vast range of topics, he has referred to statistical matters in 38.7% of them; that is to say, that in almost four out of ten speeches the Chief Justice has relied upon a statistical analysis or presentation for his facts and argument. 其實不只限於上述場合，我作了一個統計，發現李先生在任內所發表過的演說，包括不同的議題，其中38.7%提供過統計數據，即差不多十次中有四次。李先生喜用統計來分析或表達事實和論証。
29. It may also be of interest to know that as of last Friday, the CFA had delivered 1,052 decisions. In the official CFA law reports to 2009, there are 366 of them. Of those, the

Chief Justice was a member of the Court in 219 cases, that is 59.8%, and he delivered the leading or a full judgment in 71 cases, that is 19.2% (or almost one fifth) of the total, or 33.7% (over one third) of those cases in which he sat. 另一件有趣的統計，直至上星期五，終審法院一共作出了1,052個決定，根據到2009年的終審法院法律彙報，有366宗判決，李國能首席法官參與審理其中219宗(即59.8%)，當中有71宗由他去撰寫主要或完備判詞，佔總數的19.2% (或差不多五分一) 或者是他審理的案件的33.7% (或差不多三分一)。

30. At the Bar, we recognize that the role of Chief Justice is not an easy job. So, I hope I will be forgiven for quoting again from a paper written by former Australian High Court Judge Justice Michael Kirby. The paper is entitled 'Judicial Stress', although for those of us in practice at the Bar we know that, for a Judge, 'stress' is not something you get, 'stress' is something you give. 我們作為大律師，承認當首席法官並不容易，請容我引用一位澳洲的前高院法官Justice Michael Kirby一篇以 '審判的壓力' 為題的文章，我們作為大律師都知道，'壓力' 不是別人給你，而是由你給別人的。

31. In a passage relating to senior judges, Justice Kirby said:

在Kirby法官的文章有一段有關資深法官，內容說道：

“The skills that were required of Chief Justices in earlier times have radically changed in the last two decades. At least, to some extent, Chief Judges are now expected to keep abreast of Court management, social change, legal trends, judicial philosophy, law reform, macro economics, the law reviews, world events, cultural occasions, legal conferences and suitable charities.” 「當首席法官所需的技能，近廿年來有了具大的轉變，至少，在某程度上，首席法官需要與時並進，熟悉法庭管理、社會變化、法律趨向、司法哲學、法律改革、宏觀經濟、法律評論、世界時事、與文化有關之活動、法律會談和合適的慈善事業。」



32. In Hong Kong, a Chief Justice would be expected also to keep abreast of horse racing form, share price movement and stock exchange market fluctuations, the price of an ounce of gold, property prices per square foot, and perhaps even some of the intricacies of ‘feng shui’. 在香港，首席法官還需了解賽馬形式、股價動向、股票交易市場的波動、黃金價格和樓市呎價、甚至風水。
33. So, if it were ever to be suggested that the Chief Justice is out of touch with the people of Hong Kong, that would not be fair. It is not true; and the same can be said of his successor. 所以，在香港若說首席法官高高在上，不接觸群眾，這說法並不恰當，繼任的首席法官亦會繼續與社會保持聯繫。
34. The Chief Justice’s role is not simply to decide some cases and to act as some figurehead. He must lead by example. He must set the tone for the administration of justice in Hong Kong and those who practice the law. He has done this. 首席法官不僅只是判決案件和作為權力象徵，他必需以身作則，為司法和法律專業人員確立典範。李國能首席法官的確做到了！
35. If the question is asked upon what do professional ethics ultimately rest, the answer that may be given (as it was by one former Master of the Temple) is that they derive from a simple and direct moral intuition. This intuition was once recognized and expressed by Sir Edward Grey, who as Foreign Secretary was asked how he could see through the maze of difficult international situations. “I see my way clear”, he replied, “because I have always believed that to do the right thing is the right thing to do”. 有人問，專業操守的基礎是甚麼？有一位前聖殿法學院長說過：「人們簡單直接的道德直覺便是。」前外相愛德華爵士被問及如何看透複雜的國際形勢，他答道：「我看清自己的前路，因為我一直相信要做正確的事。」
36. This expression of conscience – the glue that binds together a trained intellect, specialised knowledge and accumulated experience – enables professional men and women to be

faithful stewards of that which is committed to their charge and helpful servants of those who so deeply trust in them. 良知讓受過專業訓練的人才加上累積的經驗，能令他們對自己的任命有承諾，忠誠地服務信賴他們的人。

37. The Chief Justice has indeed been a faithful steward and has amply rewarded those who put their trust in him. 李國能首席法官，一直忠實服務香港並贏得各方的信賴。

38. There is much speculation as to what the Chief Justice might do after his retirement from the Bench. We know, of course, that he cannot come back to the Bar. In light of the fact that the Chief Justice has been stressing the importance of free legal advice or pro bono work, I revealed a couple of months ago that the Chief Justice had applied to be the new administrator of the Bar's pro bono service – which he would of course be doing pro bono. That turns out to be incorrect (apparently mainly for the reason that I had made it up). 外界對李首席法官退休後的動向作多方面揣測。我們知道，他當然不會重投大律師行列。他曾表示免費的法律諮詢服務或法律工作，十分重要。我在數月前曾透露李先生有意出任大律師公會公益事務的行政幹事。其實這並不屬實（明顯地我只是編造些理由罷）。

39. Instead, it would seem that the Chief Justice has moved into the world of technology, or e-business. In recent weeks, I (and I suspect other members of the Bar) have been receiving a series of emails, which I confess I had originally thought were 'spam'. Each one has the heading 'Jump start your career' or 'Get the power' and the inbox shows the sender to be 'CJ Online'. 或者，李國能首席法官將會轉投高科技或電子商務行業，近幾星期，公會內的多位大律師收到一連串由 'CJ Online'（即 '首席法官在線'）的電郵，標題是 '立即拓展新事業' 或 '爭取權勢'，我承認最初我只當是垃圾電郵罷了。

40. If you do not believe me, I have brought proof. I rather like the chosen tagline: 'Protect. Serve. Succeed'. Plainly, the Chief Justice intends to put his powers of persuasion, honed by talking barristers into becoming judges, to good use in his new venture as an e-headhunter and inspirational speaker. Perhaps he will become wealthy from his technology

business, or in modern parlance, become a ‘millioner’. 如果你不相信，我可以拿出證據。我很喜歡這個宣傳口號：‘保護，服務，實現目標’。顯然地，李首席法官打算用他的說服大律師成為法官的技巧，經營新業務，成立電子獵頭公司或成為一個令人感動的演講者。他或會賺很多的錢，成為‘millioner’。

41. That the Chief Justice might move into the world of high technology should come as no surprise, for I am told by his assistants that the Chief Justice has become increasingly tech-savvy. So much so, that he apparently specialises in what is called ‘percussive maintenance’ – the fine art of whacking an electronic device, such as a computer, to get it working properly. 假若李首席法官投入高科技世界，我一點都不會感意外。他的助理告訴我，他愈來愈精通高科技，顯然地，他專注於他所謂的‘敲擊保養’電子器材，例如電腦，這樣可使它運作正常。
42. The other thing that the Chief Justice will be able to do with his spare time is increase his research into the eating establishments of Hong Kong. Reliable sources tell me that his particular area of interest is the ‘dai pai dong’, and as with all else he keeps meticulous records. 另外，李首席法官會在空閒時，深入研究香港的食肆。據可靠消息來源提供，他特別對‘大排檔’有興趣，並會將所有的資料細緻地存檔。
43. On a confidential basis, I have been shown a copy of one such record which identifies that in the last 12 months alone he has visited a total of 41 such establishments, on which occasions 68.3% of the meals he had were in the ‘good’ or ‘excellent’ categories, and only 12.9% were in the category ‘disappointing’. 有人偷偷地向我展示李先生在過去12個月內曾到過的食肆，一共有41間，其中68.3%被他評為‘好’或‘極好’，有12.9%被他評為‘令人失望’。
44. Justice is not fragile in Hong Kong, but it requires constant vigilance – such vigilance is the duty of all those in the legal profession, but perhaps particularly the duty of the judiciary and

its head, the Chief Justice. 公義在香港根深柢固，但我們仍需時刻保持警覺。所有法律專業人員必須謹守公義，也許，特別是作為司法界的首領 - 首席法官 - 必需信守的重任。

45. As was once said by another Chief Justice:

以前曾有一位首席法官說過：

“Justice is like oxygen: there is no reason to notice it if you have it in abundance. However, as you constrict the flow, it becomes more and more important until the point is reached where nothing else matters at all.” 「公義好比氧氣，若充足便不易為人察覺。但假如你阻礙流通，它會變得愈來愈重要，直至到達極點，其他的事根本已毫不重要。」

46. Under the Chief Justice’s tenure, we have breathed rather easily. 在李國能首席法官任內，我們呼吸自如。

47. On behalf of all members of the Bar, I wish the Chief Justice a long, happy and productive retirement. 我代表香港大律師公會全人，祝願李國能首席法官有一個悠長、快樂又豐饒的退休生活！

高浩文資深大律師  
香港大律師公會主席  
二零一零年七月十六日