

OPTIONS IN LAW REVISION — EMERGING PROBLEMS AND EMERGING TRENDS: THE HONG KONG EXPERIENCE

A paper by the Government of HONG KONG

INTRODUCTION

In an article in the Hong Kong Law Journal some years ago, Professor Bartholomew of the University of Singapore wrote that the object of law revision was -

"to make available to the public and to the legal profession an up-to-date, comprehensive, concise and readily available statement of the written law of the country".

2. Professor Bartholomew referred to this object, so defined, as an ideal. It is unattainable because the legislative process will not stop for revision and because, as the legislative activities of modern countries increase, so does the burden of editing, publishing, consolidating and revising the growing volume of statutes.

3. Many and varied paths are followed throughout the Commonwealth in pursuit of the ideal. With the advent of computerized typesetting and data storage, rapid updating and reprinting of texts are possible, and many jurisdictions are moving to a loose leaf system, or a variation of such a system, for some or all of their legislation.

4. Once a decision is made to depart from the traditional decennial, bound Revised Editions, or from the issue of periodic reprinted consolidations, it becomes a question of degree, and of striking a balance between conflicting interests, namely printing expense, up-to-dateness, updating effort, and the need for certainty and confidence in the text.

5. Some jurisdictions maintain a loose leaf service which is not authoritative i.e. it is in addition to the authoritative bound Revised Edition and annual supplements. Others produce a loose leaf edition of principal legislation only, or of subsidiary legislation only. It would seem to be a very brave (or foolhardy) step to embark on a loose leaf edition for all legislation, particularly an authoritative edition.

6. This paper discusses options in the Hong Kong context.

BACKGROUND

7. Between the years 1887 and 1965 Hong Kong produced 6 bound Revised Editions of the statutes. In 1962 a decision was made to publish a permanent Revised Edition which would thereafter be revised annually. After much research and argument, a system of loose booklets, that is, bound self-contained booklets of each piece of legislation, both primary and secondary, was preferred to a system of loose leaf pages. Annual volumes of all legislation appearing in the Gazette were to continue, but the booklets, once published, would become the authoritative version of the law contained therein.

8. A similar system was already operating in Kenya and one or two other African jurisdictions, and booklets are, of course, the basis of the United Kingdom "Statutes in Force" service, so there is no claim to originality on that score.

The Present Process of Consolidation and Revision

9. The permanent Revised Edition came into force in 1965 and since then the statutes have been selectively revised and consolidated on an annual basis. New booklets containing new laws are inserted, and repealed laws removed. Where laws are substantially amended, the booklet is replaced with a new one, containing the law both consolidated and revised. Minor amendments to the laws, not justifying the reprint of a booklet, are gathered together in a volume of minor amendments, also annually revised. Booklets which have been replaced and extracted are bound in separate annual volumes of Extracts, which are able to form a basis for historical research of the Revised Edition.

10. There is also a separate noter-up service. At 2 or 3 week intervals through the year, the gazetted amendments to laws are issued in a form for cutting and pasting into the booklets. A subscriber who follows the instructions faithfully, can maintain an authoritative statute book which is no more than 2 to 3 months out of date. This surely approaches the ideal - but at ever increasing effort and expenses.

Advantages and Disadvantages of Booklets

11. The main advantages of the booklet system over a loose leaf system are, first, that booklets can be removed as a whole for use in court, and sold individually to the public; secondly that there is no conceptual difficulty in accepting a bound booklet as an authoritative version of a law, while there is great difficulty in accepting a collection of loose leaves as authoritative; thirdly there are not the difficult current-page indexing, pagination and layout problems; fourthly historical research of the Revised Edition is possible through the extracted booklets, whereas it is virtually impossible with extracted pages. Of course it is possible to research a measure through the successive annual volumes of the Gazettes, but this is outside the Revised Edition.

12. More difficult to ascertain are relative costs. On the one hand loose leaf generates more printing where there are successive amendments to the same provisions, and for the page-by-page incorporation of each minor or consequential amendment. In the booklet system these are collected together on minor amendments sheets in one volume. On the other hand, a new booklet often involves reprinting many unamended pages.

13. On balance it is thought that loose leaf would be more expensive in terms of printing costs. As against that there would be savings in updating time by comparison with the noter-up service. This is mentioned again below.

Size of the Revised Edition

14. Perhaps, all other things being equal, there is not much between the systems where the volume of legislation is relatively small and compact (say 10 to 15 thousand pages). But what if it is much more?

15. Hong Kong's Revised Edition began in 1965 with 14 volumes. In 1986 there are 26 volumes, comprising some 18,000 pages. By 1992 or thereabouts some 60 volumes are expected. The main cause of this rapid expansion is that Hong Kong is embarking on a project to

translate all existing statutes into Chinese and to draft all future laws bilingually in English and Chinese. The result will be a Revised Edition of twice its present size. Some 40,000 pages.

16. How can either booklet service or a loose leaf service be maintained with regular updating for an Edition of that size, bearing in mind that every amendment must be made to the text in each language?

17. The noter up service for the booklet system is issued bi-weekly, about 2 to 3 months behind the publication of the amendments in the Gazette. Let us assume that loose leaf replacement pages are similarly delivered on a bi-monthly basis.

18. On the one hand, the cut-and-paste noter up service is already, and will increasingly be, extremely expensive in terms of time and labour. There are at present some 240 sets which are noted up in the Attorney-General's Chambers alone. One clerk working full time can maintain 8 sets, so that the full time services of 30 clerks are required solely for this purpose. A 60 volume edition would require a small army. Not only that, but the task is tedious in the extreme. Even the legendary diligence of the Hong Kong office workers flags at the prospect of yet another day with the scissors and paste. Their complaints are echoed strongly by the staff of Hong Kong's Judiciary, and in the large law firms. There are more than 1,200 other subscriptions to the noted up service in Hong Kong.

19. On the other hand, it is suggested that a bi-monthly replacement pages service, each issue having 1,000 to 2,000 sheets, would be impossibly unwieldy. There are large potential problems of page indexing and confusion if an issue is delayed and is subsequently overtaken by another issue with the replacement pages themselves replaced. This could lead to a disastrous loss of confidence in what is, after all, the 'authoritative' Edition. Many jurisdictions with even a limited loose leaf service do not take this risk and provide the service as a supplement, without authoritative status, to the bound Edition with annual supplements.

A Possible Solution for Hong Kong

20. Is there a way around this seeming impasse? The noter up service is essential to practising lawyers because the Revised Edition is revised and consolidated annually. Due to the printing delay caused by printing of the annual revision at one time (some 4,000 pages in 1985), the revised booklets are not now available until the middle of the year following. Thus a law enacted in January 1986 would not appear in booklet form until mid-1987.

21. The situation could be considerably eased by a more frequent consolidation, or even a continuous consolidation and revision of the booklets and minor amendments volume (which is already loose leaf). As and when laws are substantially amended new booklets could be released, perhaps on a quarterly basis. Where amendments were few, replacement loose leaf pages would be issued for the minor amendments volumes.

22. Of course, it is less convenient to consult both the main volume and the minor amendments volume for the current (or near current) law. A possible edition or alternative is a colour-coded card or page insert for each booklet drawing attention to the latest amendments and current status of the law contained in it.

23. This possible refinement of the booklet system is now being examined.

Employment of Computer Technology in Revision and Consolidation

24. It is considered that Hong Kong's loose booklet system with annual revisions is particularly well suited to a jurisdiction where -

- (a) the volume of legislation in the Edition and enacted annually is fairly modest; and
- (b) the legislation is enacted in one or two principal legislative sessions during the year.

25. When these conditions exist, the efficient replacement of booklets can be achieved without the aid of sophisticated computerized typesetting and data storage. Until recently Hong Kong has not had these facilities. Furthermore, the noter up service is not so vital, and may be reduced in frequency or dispensed with altogether.

26. Hong Kong's position now and in the future is quite different, with bilingual statutes swelling the statute book and weekly sittings of the legislature for 10 months of the year.

27. It is not feasible to move to a continuous consolidation and revision system, whether by page or booklet, without the aid of modern computer technology. Draft legislation must be entered on word processors/computer terminals in the draftsman's office and transmitted whether by disk or direct line, to computer typesetting equipment at the printer's plant. The advantages are in the speed and accuracy of updating. Re-keying is avoided and proof-reading is thereby reduced. Rapid reprinting of text is possible. The Government Printer in Hong Kong has now computerized typesetting for both English and Chinese. Full text storage of the bilingual laws will, however, require a further large computer memory. It is hoped to have the necessary equipment within the next 2 to 3 years.

28. It is relatively short step from text storage to the availability of on-line terminals in offices and libraries displaying the up-to-date text of any law. A back-up database is in any event required for printing purposes. It is thought that this text, maintained by the Law Draftsman's office, could be available for the purpose. What can be monitored on screens can also be printed out in hard copy, but the uses of a partial, unauthorized text would necessarily be limited.

29. The existence of a full text database raises the further exciting possibility of installing a programme for the search and retrieval of selected information from the statutes. Such programmes are available and in use, on a large scale, in the United States, Canada and Europe, but the Hong Kong Government has not so far been convinced that the benefits for a relatively small number of potential users exceeds the considerable cost of setting up and maintaining the programme. The situation will however, be kept under review.

CONCLUSIONS

30. Instant accessibility to the current statutes, at least in electronic form, is now more than an ideal for Hong Kong. In common with other smaller jurisdictions, however, it may well have remained out of reach for many years. Only the decision to enact legislation bilingually has, in a sense, provided for it.

31. In any event the lawyer's world is still a world of books and it is to the printed volumes in their sturdy binders that the lawyer will instinctively turn to find what is hoped, if not confidently, to be the current law. We are obliged to continue the search for improved techniques of revising and consolidating the printed texts. On this note we await with interest the sessions of this year's Commonwealth Law Minister's Meeting which is expected to devote some time to a discussion of this topic.