Access to statute law in New Zealand

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This paper is about the compilation and revision of Acts of Parliament. The need for a new compilation and a revision of Acts of Parliament using computer technology is discussed, the way in which selected other jurisdictions keep their statute law up to date is reviewed, and the way in which New Zealand has kept its statute book up to date is described.

I ARGUMENT

The argument of this paper is:

- that a new compilation of Acts of Parliament in force in New Zealand should be undertaken as soon as possible using computer technology;
- that a revision of Acts of Parliament in force in New Zealand should be undertaken, authorised by legislation; and
- that a Minister of the Crown should be made responsible for:
  - the computer database of legislation and associated software design;
  - issues of Crown copyright related to legislation and legislative materials; and
  - making legislation accessible to the general public.

II THE PROBLEM

A The Obligation

The duty to act in accordance with law requires for its observance that the law should be readily available in its most up to date form.[1] The obligation of

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1 This duty is expressed in various ways by different writers. Professor KW Patchett puts it this way:

fulfilling that duty, and of making the law as understandable as possible to those affected by it, is on the Government.

B Inaccessibility

Acts of Parliament are not easily accessible in New Zealand. They are spread through over 60 volumes of statutes. They appear in those volumes in chronological rather than alphabetical order. There is no subject matter index to help find Acts of Parliament and so it is difficult to know where to look in order to discover the law. Even when the name of an Act is known it may be difficult to locate.

When an Act is found it may already have been amended by later Acts. Assuming all amendments are located the reader must then piece together the original Act (or the latest compiled version) and subsequent amendments to find out the current state of the law. This can be a difficult and time consuming task. But consider that this task is not done just once; it must be done by each person who wants an up to date version of the Act. The same process may be repeated hundreds of times for *each* Act needed in an up to date form.

Even then the original Act, with the amendments, may be difficult to understand because it was written decades ago and contains outdated and unnecessary words and expressions. Even modern legislation contains much that is unnecessary. All this makes Acts of Parliament, the law that affects society more directly than any other, inaccessible.

C Inefficiency

A failure of the past and the present (in part through a lack of resources and suitable technology) is that once an Act is brought up to date (ie has been compiled) it is not kept up to date in an authoritative way.[2] Commercial publishers must be relied on to a large degree in order to find the current state of the law. Even so the books of statutes lining the walls of most libraries and legal offices are often well over a year out of date.

> If the legal system of a state insists upon the doctrine that ignorance of the law is no excuse, the state itself must provide the official statements of that law at costs within the easy reach of the citizen.
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> Council of Europe, Legal Affairs: Principles and Methods of Preparing Legal Rules, Proceedings of the Twelfth Colloquy on European Law, Strasbourg, 1983, Techniques of Legislative Drafting, 27 at 35.

2 Although excellent work has been done by the Government Print Office on the creation of a computer database for legislation it suffers from a lack of legal input in its development. The failure of the Parliamentary Counsel Office to become intimately involved in the database development is regrettable. At present, progress seems stalled; Bills are available through Kiwinet but strangely Acts are not. Financial and human resources are needed to push the project ahead.

New Zealand legislation is not available on a computer database. As a result the efficiency and accessibility which modern technology can bring is not available to either drafters or users of legislation. The inaccessibility of legislation and lack of help from modern technology results in inefficiency. It results in additional cost. It wastes time and money.

D Bulk and Cost of the Statute Book

Currently the sheer bulk of New Zealand statute law is formidable. It takes up about five metres of shelf space. Much of what is contained in those volumes of statutes is repealed, yet because at least some of each of the volumes contain unrepealed Acts all of them must be purchased to obtain a complete set of current public Acts of Parliament. Because so many volumes of Acts must be purchased the statute book is also expensive - over $4,000 to obtain an annotated set of volumes; even then the set will not include the most recent Acts. Sometimes the annual volume of statutes is not available for well over a year.[3]

New Zealand's statute book is large compared to other jurisdictions. A set of Canadian federal and provincial statutes would be contained in less than 20 volumes and cost much less than a set of New Zealand statutes. Even in the middle of the nineteenth century England's 600 years of statute law had been reduced to 40 volumes and plans were made to significantly reduce it further.[4] The present edition of the United Kingdom's *Statutes in Force* is based on a looseleaf system and so size comparison is difficult today. Nevertheless, on a conservative estimate New Zealand's statute book is about four times as large and probably twice as expensive as it need be.

E A Fresh Start

New Zealand is poised to choose between the systematic improvement to its statute law (which in the long term would be cost effective) or intermittent attempts to keep Acts of Parliament in an up to date form. It is time for a fresh start to make legislation[5] accessible on an ongoing basis.

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3 Pamphlet copies of Acts are usually available quite quickly after the Act is given Royal Assent. Reprints of compiled Acts are also available before reprint volumes in the 1979 Reprint series are published. (See "Guide to Government Information" published by the Government Print Office).

4 Comparisons can be difficult because of the size of volumes, print and contents. Even taking these matters into account New Zealand's statute book is far too bulky.

5 Legislation can take a number of different forms. This paper is principally concerned with public general Acts of Parliament, although many of the suggestions about public Acts apply equally to local and private Acts and to regulations.

A comprehensive approach is needed to bring Acts of Parliament up to date, keep them up to date, and to make them accessible by:

- a new compilation of Acts of Parliament in force in New Zealand in their latest form on a computer database;
- establishing an effective process of continual compilation as soon as amendments are made to an Act;
- a revision of existing Acts to modernise them and make them easier to understand without changing their original meaning; and
- establishing indices and computer software that will enable users of legislation to find what they want.

III A NEW COMPILATION OF ACTS OF PARLIAMENT

A What is a Compilation of an Act?

Compilation is the bringing together into one document of an original Act and all amendments made to it. A compilation results in an Act being available in an up to date form; it shows the state of the law on the date it is compiled.

B Compilation Today

Compilation is not new in New Zealand. In one form or another the compilation of Acts has gone on for over 100 years. In 1920 the Statutes Drafting and Compilation Act established a Compilation Department in what is now the Parliamentary Counsel Office. The Compilation Department undertook a complete compilation of public Acts of general application starting with volumes published in 1979. The intention of the compilers was to publish what are know as "reprint volumes"; volumes containing a "reprint" of the compiled Acts. The 1979 Reprint series was to be published annually:[6]

> reprinting steadily and progressively all public Acts of general application on our statute book. The publication of these volumes will soon make the 1957 Reprint redundant. Such publication will continue to the point where every public Act of general application is available in a form that is not more than 10 years old. Once that situation is reached it will be maintained ....

Ten years later the objective stated for the 1979 Reprint has not been achieved. The present system of compilation and publication has not kept pace with demand. Often parts of a Reprint volume are out of date when it is published, or soon after. A good example is contained in volume 21 of the 1979 Reprint series. That volume has the Official Information Act reprinted in it as the Act existed on 1 February

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6 Reprinted Statutes of New Zealand 1979, Foreword, Volume 1.

1988. On 30 June 1988 the Information Authority expired and along with it 14 pages of the Act (duly noted on pp 613, 625 of volume 21).

C *The Opportunity for Change*

New Zealand has an excellent opportunity to produce a much more accessible statute book. The opportunity largely arises from the decisions and actions already taken to established a computer database of Hansard, Bills and Acts.[7]

The Government Print Office and the Parliamentary or State Services Commission signed a contract in December 1987 to cover the three year development of the legislation database. It already includes Hansard and Bills introduced in the current Parliament and in due course will (hopefully) include the Acts passed in that time. The intention is eventually to include in the database *all* existing Acts. Public access to some of the database is already possible as a result of an arrangement between the Government Print Office and the National Library through Kiwinet.

D *How can the Situation be Improved?*

To enter all existing Acts of Parliament onto the database in the form in which they presently exist would not materially improve accessibility of legislation, nor would the result be a commercially viable commodity, because Acts would not, for the most part, be available in a compiled form. What is needed is a fresh approach to establish a database of compiled Acts designed with the needs of the reader foremost in mind. The profession and the public would then be provided with their most pressing need on a continuing basis - an up to date statement of the law readily available.

A major objective of a new compilation should be to put all Acts onto a computer database and to provide a published version of them (whether in electronic or printed form) which is reliable and kept up to date. This means that the compilation and database must be capable of use by a wide variety of people and should provide the following features:

- an up to date statement of the law (ie the original Act with amendments incorporated in or with it);
- a history of amendments to, and repeals of, Acts;
- wide capability of searching the database;

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7 The Law Commission has statutory responsibility in the area and a reference on legislation and its interpretation from the Minister of Justice. It has yet to make any significant public recommendations about the statute book.

- an index to the Acts as a whole, and to most individual Acts, and a subject matter index;

- a capacity to produce a printed version of what is seen on the screen or selected parts of the database;

- security for the basic text of Acts of Parliament stored on the database;

- a facility whereby copies of all or part of the database can be provided to readers in electronic form so that those users can manipulate the text of the copy provided or annotate the database copy for the subsequent use of clients; and

- a facility to provide:

  - annual volumes of the statutes (which, when read with earlier Acts, allows the law to be established as at any given past date);

  - a looseleaf service;

  - a computer service; and

  - computer disks containing particular Acts or groups of Acts.

In order to incorporate the features suggested, some modification of compilation and drafting practices would be required both to speed the work of compilation and keep the database up to date. Both the database and accessibility issues should be developed in co-operation with commercial publishers so that the end result is satisfactory to the widest possible number of interested persons.

E Modified Compilation Process

The work of compiling amending Acts with the principal Act should be limited to fundamentals, namely:

- changing the text of a principal Act in accordance with the instructions of an amending Act;

- making a historical record of the amendment; and

- making a note of transitional provisions after, or attaching them to, the principal Act.

The work of preparing and including skeletons of amending Acts in volumes of reprinted Acts and of annotating compiled Acts should be abandoned. Part of the present annotation work will become unnecessary with the capacity for computer searches of the database. Other annotation work might be a useful function for a

revision of Acts of Parliament. The immediate goal should be to produce a computer database of compiled Acts for public use as quickly as possible.

F Keeping the Legislation Database Up to Date

Once compiled Acts form a computer database, computer technology should lead to a largely automated system of inserting amendments into principal Acts or otherwise changing the principal Act to provide an up to date version of the Act on the database. This will involve both establishing forms of amending instructions for use in amending Acts suitable for application by computer technology, and drafters both using the standard forms of instruction and diligently following a system of textually amending Acts.

The "textual amendment system" is one in which the amending Act specifies what changes are to be made to the text of the original Act - for example, adding, deleting or replacing words or sections. The textual amendment system is distinguished from other forms of amendment which do not specifically change the text of the principal Act. Those other forms should be abandoned. Fortunately, for the most part, New Zealand has followed a textual amendment system, although not as diligently as it might have done.

G Accessibility

Computer technology will also assist in developing indices for use with Acts of Parliament as a whole and to many individual Acts. This will enable the present "Table of New Zealand Acts and Ordinances" published by the Compilation Department to be expanded and to encompass an index based on subject matter. No effort has been made to prepare comprehensive indices to legislation since 1931. The Table of New Zealand Acts and Ordinances published by the Compilation Department is sometimes over a year out of date and provides virtually no subject matter index. The lack of proper indices is a considerable block to accessible legislation. The problem should be addressed in connection with the compilation.

Computer technology, experience from other jurisdictions and experts in the construction of indices should combine to establish a comprehensive subject matter index and other indices to New Zealand legislation.[8]

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8 As long ago as 1879, in the *Interim Report of the Commissioners on the Reprint of Statutes*, the Commissioner had in mind to print statutes:

> alphabetically, according to their most appropriate headings, and to afford ample cross references, so that an ordinary intelligent person consulting the Statute Book may have no difficulty in finding what he wants.

Interim Report of the Commissioners on the Reprint of Statutes, 1879. New Zealand. Parliament. House of Representatives. Appendix to the journals, vol 2, H20:2. The most recent comprehensive index was prepared in connection with the 1931 Reprint of Statutes.

IV A REVISION OF ACTS OF PARLIAMENT

A *Compilation Not Enough*

A new compilation of Acts of Parliament would reduce the bulk of the statute book and provide some accessibility through computer technology. But compilation would not improve the way in which existing legislation is written because compilation requires that the Act "with all its blemishes and imperfections"[9] be reproduced *exactly* in the course of the compilation.

To improve the way in which New Zealand legislation is expressed a two-pronged approach is required. The first is consideration by the Parliamentary Counsel Office of how legislation can be written more clearly. The results of that consideration might well be included in a drafting manual to serve as the touchstone for both the form and expression of the law. The second prong of the approach is a revision of all existing Acts of Parliament to modernise them, make them more understandable and bring them up to the modern drafting standards established by the drafting manual.

B *The Need for a Revision*

When an Act of Parliament is passed or amended it is often done hastily. Decisions must be made and drafting completed under pressure. Often there is insufficient time to consider ways of making the text easier for readers to understand. A revision of Acts of Parliament provides an opportunity for mature reflection to establish a better organisation and to make appropriate modernisations and refinements such as those described later.

Even if there were sufficient time for mature reflection over the drafting of an Act, the style, format, punctuation or expression can become dated, inconsistent and unnecessarily difficult to understand. A revision can improve all those things in a consistent way across the whole statute book.

In the course of a revision all public Acts are examined. Inevitably some of them will be found to be outdated. Other Acts may be seen to encroach on the Treaty of Waitangi or human rights in ways which are questionable today. These issues can be brought to the attention of Government by the revisers in a systematic

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9 The Lord Chancellor in a debate on a Consolidation Bill in the House of Lords (HL Deb, Vol 155, ser 5, col 1172 May 27, 1948). F A R Bennion *Statute Law* (2 ed, Oyez Longman Publishing Limited, London, 1983) 76-77 writes of the UK consolidation difficulties as follows:

> One of the bugbears of consolidation has lain in the fact that legislative texts are frequently defective ... draftsmen often err. Their errors give rise to doubt, and in former times it was necessary to 'consolidate the doubt'.

Put into a New Zealand context, compilation requires a "compilation" rather than a consolidation of the doubt.

way. Equally important, a revision clears away the dead wood - the provisions that are repealed or spent. The result of a revision is a set of Acts that are currently in force, not muddled up with repealed provisions.

C *The Revision Process*

1 *The stages*

A revision of Acts of Parliament is a three stage process:

- an Act which authorises a revision to be undertaken;
- the preparation of draft revised Acts and submission of them to a Select Committee of the House of Representatives for examination; and
- an Act adopting the revised Acts and repealing the former Acts.[10]

2 *Stage 1 (authorisation)*

An Act of Parliament authorises revisers to propose improvements and modernisations to existing Acts, without substantively changing the original meaning of the Act. The improvements and modernisations might include, for example:

- replacing outdated words and expressions with modern words and expressions;
- omitting unnecessary words;
- reorganising an Act;
- improving convoluted sentence structure or overlong sentences;
- rewriting an Act in the present tense as far as possible;
- merging amendments with the principal Act when that has not previously been done;
- consolidating two Acts into one or creating new Acts from existing provisions;
- breaking up large blocks of type into separate sections or creating lists of paragraphs to make the text easier to understand;

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10 Not all revisions in the Commonwealth take the same form. The proposals here seem to be the most suitable for New Zealand.

- replacing sex-biased language with gender-neutral language;
- removing forms and replacing them with a regulation making power; and
- omitting repealed, impliedly repealed, transitional and other sections whose effect is spent.

These kinds of modernisations are to be distinguished from law reform, which involves a fundamental reappraisal of the policy of the law and subsequent recommendation. A revision accepts the legislation as it is, but improves and modernises the way in which it is written.

3 *Stage 2 (drafts or revised Acts)*

Revisers would prepare drafts of revised Acts. In manageable groups they would be presented to a Select Committee of the House of Representatives for examination. The examination would focus on consideration of the changes proposed in the text, not on the policy of the Act itself. The reason for this is that the original intention of Parliament is not changed. As a result substantive changes in the law do not arise - only the way in which the law is written. The Select Committee would satisfy itself that no substantial change was proposed in the revised Acts.

4 *Stage 3 (enactment of revised Acts)*

When the Select Committee is satisfied with the revised Acts it would notify the Minister of Justice who would introduce a Bill to repeal the original Acts, and enact the revised Acts as law.

5 *Organising the work*

The revisers would be responsible to an adequately funded and resourced body having the trust of Parliament. The body should have representatives from Parliament, the judiciary, the legal profession (including the Parliamentary Counsel Office) and the public, or direct links to them. The body itself should report directly to a Minister of the Crown.

6 *Research*

Opportunities for research into the way in which the law is expressed will arise during a revision. So much effort and money is expended in understanding legislation yet so little effort and so few resources are put into how best to express the original text. A revision can help to redress that imbalance. It will be apparent from the work in which the revisers will engage that the process will combine the expertise of a variety of disciplines, including legal, linguistic, computer, editorial and communication skills, all of which will be dedicated to a systematic approach to improving the clarity and accessibility of the statute law.

V EFFORTS TO MODERNIZE LEGISLATION ELSEWHERE

A *Comparative Experience*

1 *A new concept?*

The concept of attempting to consolidate and modernise legislation without changing its original meaning is not new, either to New Zealand or to other Commonwealth countries.

2 *United Kingdom*

The statute law of England has long been thought unsatisfactory. Efforts at some improvement were made in the sixteenth century[11] and in 1616 Sir Francis Bacon, then Attorney-General, submitted a memorandum "touching the compiling and amendment of the laws of England".[12] But it was not until the nineteenth century that an immense number of Acts were repealed and current United Kingdom legislation made more available by the publication of volumes of Acts currently in force. The work continues.[13]

The United Kingdom undertakes a considerable amount of consolidation of Acts under the Consolidation of Enactments (Procedure) Act 1949. The work is largely undertaken by Parliamentary Counsel under the auspices of the English and Scottish Law Commissions.[14]

Statute Law Revision Acts, more recently called Statute Law (Repeal) Acts, also prepared under English and Scottish Law Commission auspices, are regularly passed to repeal enactments which are regarded as spent, that have ceased to be in

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11 F Bennion, above n 9, 68 mentions that in 1549 the House of Commons proposed a digest of statute laws under titles and heads and put into good Latin. Oliver Cromwell is reported to have called the statute law a "tortuous and ungodly jumble": J F Burrows "Consolidation Acts" (1983) 2 Canta LR 1. And Cromwell appointed a committee to consider how the statutes "may be reduced into a compendious way and exact method for the more base and clear understanding of the people": F Bennion, above n 9, 68.

12 The proposal was in four parts - not to reprint already repealed statutes; repeal all sleeping statutes "not of use but yet snaring and in force"; mitigate the grievousness of some penalties; reducing the statutes to "one clear and uniform law".

13 For a brief account see D R Miers and AC Page *Legislation* (Sweet and Maxwell, London, 1982) 38. For a more comprehensive account see Lord Simon of Glaisdale and JVD Webb "Consolidation and Statute Law Revision" (1975) Public Law 285.

14 The English and Scottish Law Commissions took on the work of consolidation and revision when they were established in 1965. In 1947 a consolidation department was set up within the UK Parliamentary Counsel Office at the instigation of a former First Parliamentary Counsel, Sir Granville Ram. It was that initiative which led to the 1949 Act. The Law Commissions subsequently instituted a form of consolidation beyond "minor corrections and minor improvements" which was accepted by Parliament.

force without having been repealed, or that relate to matters no longer of practical utility.[15]

The Statute Law Committee (a body appointed by the Lord Chancellor) is responsible for publishing "Statutes in Force", comprising an edition of all the statutes currently in force in England and a comprehensive index to them.[16]

3 *Canada*

In Canada, a system of revising the whole of the statute book at fairly regular intervals has resulted in over 100 revisions in territorial, provincial and federal jurisdictions. Federally there is now a permanent Statute Revision Commission.

Typically, a provincial legislature authorizes Commissioners, normally Parliamentary Counsel (called "Legislative Counsel" in Canada), to undertake a revision of public general Acts. The Commissioners are authorised to omit obsolete provisions, alter numbering and arrangement, alter language and punctuation (without changing the meaning), reconcile seemingly inconsistent enactments and correct errors. Once complete the revision is tabled in the Legislative Assembly and comes into force (repealing the original Acts) on a date fixed by Proclamation. The Legislature does *not* specifically approve the revised Acts. Federally, a continuing revision of legislation is in effect with an approval process that involves Parliament.[17]

4 *Other Commonwealth countries*

"Statute law revision is a very important matter." So reads the "notes and forms" on revised editions of statutes prepared by Sir Alister Russell.[18] The book was originally prepared as a drafting manual for many former British colonies. Although the United Kingdom did not itself undertake a revision of its Acts, valuable advice was given on the subject by the British Colonial Office and followed by many Commonwealth countries.[19] As a result, many former British

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15 The English Law Commission in its 15th Annual Report 1979-80 (1981) Law Comm No 107 Appendix 5, says that nine Statute Law (Repeal) Acts have repealed over 2300 separate enactments, including 947 whole Acts.

16 For a critical view of UK consolidation and revision work see F Bennion, above n 9. An article by RFV Heuston "Lord Chancellors and Statute Law Reform" (1988) Statute Law Review 186 provides an interesting backdrop to the difficulties involved in motivating statute revision activity in England.

17 For a comprehensive description of revisions in three Canadian jurisdictions see N Larsen "Statute Revision and Consolidation: History, Process and Problems" (1987) 19 Ottawa LR 321. For a review of the first three Canadian federal revisions see M Ollivier (1948) 26 CBR 797. Federal revisions are governed by the Statute Revision Act (Canada).

18 A Russell *Legislative Drafting and Forms* (Butterworths, London, 4 Ed, 1938) 591.

19 F Bennion *The Constitutional Law of Ghana* (Butterworths, London, 1962) 284-289.

colonies maintain a system of periodically revising the whole of their current legislation.

H H Marshall reviews the history of various forms of revision in the Commonwealth in his article "Statute Law Revision in the Commonwealth".[20] But considerable care must be exercised when considering the experience of other jurisdictions because words familiar to New Zealanders are used in different ways in other jurisdictions.

For example, in England a consolidation Act is one which includes, in a single Act, the provisions on a certain subject contained in a number of statutes, those former statutes being repealed by the consolidation Act. And there are different categories of consolidation Bills in England.

In New Zealand consolidation Acts will often do much more than simply re-enact a series of measures scattered over a number of Acts; they will often incorporate substantial new provisions.[21]

In Canada a "consolidation" or "office consolidation" often just refers to an original Act into which has been incorporated all amendments made to it (a compilation in New Zealand terms). This type of consolidation is prepared for convenience only.

The word "reprint" is virtually unknown in Canada (where "reprints" are "office consolidations") but reprint has a particular meaning in New Zealand and a variety of meanings in Australia.[22] "Revision" has at least two meanings in England,[23] is well understood to have a particular meaning in Canada, but not well known in the same way in New Zealand.

When considering judicial decisions on "consolidation" and "revision" it is particularly important to keep in mind what those terms mean to the courts interpreting them - they may mean quite different things in other jurisdictions.

5 *New Zealand*

New Zealand pursued an active compilation and revision programme late last century and up until 1908. All the features of the early United Kingdom consolidation and Canadian revision systems were incorporated and work was actively pursued culminating in a revision of Acts enacted in 1908. Although another revision was contemplated within eight to ten years by the Commissioners appointed under the Reprint of Statutes Act 1895 (who were responsible for the

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20 (1964) 13 ICLQ 1407.

21 See JF Burrows, above n 11; DAS Ward "Current Problems in the Legislative Process" Symposium on Legislation (1976) at 541.

22 See above n 20. But a "revision" in Canadian terms is something quite different.

23 See the criticism by Marshall, above n 20, 1415-1420.

1908 revision) and mention is made of the "relative merits" of a revision compared with a reprint in the Foreword to the 1931 Reprint of Statutes, no other revision of New Zealand Acts has been undertaken.[24]

The textual amendment system of amending Acts, generally used in New Zealand, avoids many of the problems that the English consolidation systems seek to resolve. Textual amendment is a way of resolving conflicts, reconciling provisions that do not fit well together and harmonizing style when the new provision is enacted, not at some subsequent time. Even so it is not perfect; its success is dependent on finding, recognising and resolving the ambiguities, conflicts and difficulties.[25] This in turn is also dependent on sufficient time to do all the harmonising work that needs to be done.

B Principal Concerns about a Revision

1 *The concerns*

There are three principal concerns about a revision of Acts of Parliament. First, is the law going to be changed? Second, will Parliament be bypassed in the revision process? Third, how are revised Acts to be interpreted? Assuming New Zealand was to undertake a revision of its Acts of Parliament, those concerns must be addressed.[26]

2 *Answering the concerns*

Here is one way in which those concerns can be answered:

(1) Legislation would authorise a revision of Acts of Parliament and describe what changes to the text of Acts can and cannot be made by the revisers (those persons appointed to actually do the work). Parliament will then be clear about what it wants done in the course of the revision. In particular, no substantial change to the original meaning of an Act should be permitted.

(2) The body charged with undertaking the revision (to whom revisers would be responsible) must be composed of members satisfactory to the House of Representatives as a whole. A real sense of trust in the body conducting the revision must be established and maintained during the revision process.

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24 The Foreword to the 1931 Reprint records that a revision was considered but a compilation and reorganisation was preferred (page vii). Part VIII of this paper comments on the early compilation and revision work in New Zealand.

25 For some comments on the English and New Zealand views of the benefits of and objection to the textual amendment system see DAS Ward, above n 21.

26 Parts I-IV of this paper made the case for a revision of Acts of Parliament.

(3) The draft revised Acts should be submitted for scrutiny to a Select Committee. The Select Committee must accept that the scrutiny will focus on the changes proposed by the revisers and *not* on the underlying policy of the Act.

(4) Once the Select Committee is satisfied with the draft revised Acts, a Minister should introduce a Bill to enact them and repeal the Acts they replace. Parliament remains the body making the law.

There is no doubt, and this issue must be squarely faced, that undertaking a revision of Acts does change the original words of Parliament. It will be impossible for Parliament to deal with each revised Act in detail, indeed the whole object of the revision would be defeated if it attempted to do so, or if Parliament attempted to debate the policy behind the revised Act. Parliament must take on trust, to a considerable degree, that the revisers and the Select Committee have done their work competently.[27]

(5) The process by which revised Acts are passed and other Acts repealed should be clear from the outset of the revision process. With this in mind, the Act which first authorises the revision should include a model Act to be used later to adopt the revised Acts.

3 *Interpretation of revised Acts*

It should be clear how revised Acts are to be interpreted if there are differences in the text between an earlier Act and the revised Act. The revision is not intended to change the meaning of the law. It is intended to clarify it and make it more accessible. But in the course of the revision the words by which the law is expressed will often be changed.

In an article on consolidation Acts by Professor J F Burrows[28] the difficulties caused by consolidation Acts are described, but the law relating to consolidation Acts is not necessarily appropriate for Acts that are revised.

Canadian rules about interpretation of revised Acts vary. The Canadian federal rule is that revised statutes are not held to operate as new law, but are to be construed and have effect as a consolidation and as declaratory of the law for which the revised statutes are substituted.

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27 A House rule limiting debate on revised Acts might be desirable.

28 See above n 11.

Some provinces have more elaborate rules. Alberta, for example, states three propositions.[29] First the federal rule is stated, then two others:

(a) the various provisions of the revised statutes corresponding to and substituted for the enactments previously in force shall, when they are the same in effect as those of the previous enactments, operate retrospectively as well as prospectively and shall be deemed to have been passed respectively on the days on which the corresponding previous enactments came into force;

(b) if at any point the provisions of the revised statutes are not in effect the same then for all transactions, matters and things on and subsequent to the day the revised statutes came into force the provisions contained in them prevail, but with respect to all earlier transactions and things the provisions of the previous enactments prevail.

Ontario, on the other hand, has no equivalent provision in its Revised Statutes Act or Interpretation Act. Ontario builds provisions about interpreting revised statutes into its Interpretation Act, revision being treated in much the same way as consolidation. For example, section 19 of the Interpretation Act (Ontario) reads:

> 19 The Legislature shall not, by re-enacting, revising, consolidating or amending an Act, be deemed to have adopted the construction that has by judicial decision or otherwise been placed upon the language used in the Act or upon similar language.

New Zealand's treatment of the subject in 1908 was admirably simple. Section 3(b) of the Consolidated Statutes Enactment Act 1908 reads:

> 3 With respect to each of the said Acts the following provisions shall apply:
> (b) The Act shall be deemed to be a consolidation of the enactments mentioned in the Schedule thereto, or if there are more Schedules than one, then in the First Schedule thereto.

Each of the revised Acts in the 1908 revision then stated, in a schedule, those provisions which it "consolidated". The 1908 Act resulted in two court cases, neither of which gave the courts any difficulty in interpretation.[30]

The basic proposition is that a revision is not to change the substantive law. But if a change is made then the new law is to apply from the date the revised Act is passed. The effect of this approach is that the courts will be concerned only to apply the law as they find it, not be concerned with whether a change in the law

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29 Revised Statutes Act (1980) (Alberta).

30 The changes made in the course of the 1908 revision (clearly going beyond a "consolidation" in some cases) were considered in *Hughes* v *Hanna* (1910) 29 NZLR 16, esp 22 - 23 and *Minister of Customs* v *McParland* (1910) 29 NZLR 279, 285 - 289.

occurred as a result of the revision. This is essentially the approach taken by the courts as a result of the 1908 revision.[31]

As a starting point for discussion a draft bill follows which could form the basis of a revision of the statutes of New Zealand using a computer database of legislation.

VI LEGISLATION AUTHORIZING A REVISION

A Draft Bill

What follows is a preliminary draft Bill to authorize a revision. It touches on most of the major components needed to authorize a revision.

Some of the suggestions for revisers (replacing long titles with short titles and replacing forms with a regulation-making power, for example) are themselves deliberatively provocative. Whether or not all the suggestions are acceptable is irrelevant to the basic need to provide an improved statute law.[32]

B Legislation Revision Bill

1 *What is the purpose of the Act?*

The purpose of this Act is to make New Zealand legislation more accessible and understandable by authorising the compilation and revision of Acts of Parliament in force in New Zealand.

NOTE: As drafted, the title and section 1 refer to "legislation "; section 1, section 3, and the definition of "enactment", refer to existing Acts. The extent of the compilation and revision is a matter to be decided. In particular, should it include local and private Acts? Should it also include regulations? I think so.

2 *Who will do the work?*

The compilation and revision is to be undertaken by (body authorised).

NOTE: The relationship of the body to a Minister of the Crown should be stated.

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31 GW Bartholomew "Statute Law Revision" (1971) 1 HKLJ 274 at 281 comments on the issue generally.

32 In my view it would be beneficial if a revision were undertaken in accordance with a new Acts Interpretation Act. All new legislation (say from 1 January 1991) would follow the new Interpretation Act while all revised Acts would be revised with the new Interpretation Act applying to them.

3 *Compilation and revision authorised*

(1) The (body authorised) must compile and revise Acts of Parliament in force in New Zealand.

NOTE: I do not propose a revision of legislation to a particular date, but rather one that is ongoing.

(2) In its work of revision the (body authorised) may

(a) make any changes necessary to bring out more clearly what is considered to be its meaning;

(b) reconcile seemingly inconsistent enactments;

(c) change words so as to improve the expression of the law;

(d) change words, punctuation or layout to obtain uniformity;

(e) shorten overlong sentences and improve sentence structure;

(f) consolidate two or more enactments into one, divide an enactment into two or more enactments, move provisions from one enactment to another and create a draft revised Act from an enactment, or two or more enactments;

(g) omit and provide for the repeal of an enactment that is inoperative, obsolete, expired, spent or otherwise ineffective;

(h) omit, without providing for its repeal, an enactment of general application that is of a transitional nature or that refers only to a particular place, person or thing or that has no general application throughout New Zealand;

(i) omit enactments that have been repealed, have expired or have had their effect;

(j) alter the citation of an enactment or the numbering or arrangement or its provisions;

(k) add, change or omit a note, heading, title or marginal note to an enactment;

(l) establish one title for each Act;

(m) omit the long title and if appropriate incorporate the long title as a purpose section;

(n) omit the short title of Acts;

(o) omit enacting words;

(p) correct technical errors in an enactment;

(q) omit forms or other material contained in an Act that can more conveniently be contained in a regulation, and add to the draft revised Act authority for the forms or other material to be prescribed by regulation.

(3) In preparing drafts of revised Acts the (body authorised) must not make any substantial change to the meaning of an enactment.

NOTE:

(i) Subsection (2)(h) will need modification, assuming it is needed at all, if the revision covers private and local Acts. Alternatively it may be appropriate to allow private Acts to be included in the revision if they affect the rights of the public.

(ii) Subsection (2)(i) is probably unnecessary. If section 3(1) directs a compilation and revision of Acts "in force", authority to omit enactments that are repealed, have expired or have had their effect, seems unnecessary.

4 Examination of revised Acts

(1) The Minister of Justice must provide drafts of revised Acts prepared by the (body authorised) to a committee of the House of Representatives for examination and approval.

(2) When one or more of the drafts have been approved by the committee, the Minister of Justice must introduce a Bill substantially in accord with the model Bill in the Schedule, or to like effect.

NOTE: A revision approval process for regulations is not included.

5 Establishment of (body authorised)

(1) Establishment.

(2) Composition/funding/staff.

NOTE: The composition of the body should reflect the trust that Parliament must place on those undertaking the work of compilation and revision.[33]

6 Definition

In this Act "enactment" means an Act or a portion or provision of an Act.

NOTE: Amendments to the Statutes Drafting and Compilation Act 1920 have not been included. Amendments to the Acts Interpretation Act, Evidence Act and Regulations Act may be needed.

7 Schedule

NOTE: This schedule would set out model provisions for the Bill to enact revised Acts. It could include rules for interpreting revised Acts, or those provisions could be included in the Acts Interpretation Act.

VII MAKING LEGISLATION ACCESSIBLE

A The Obligation

There is an obligation on the Government to make the law readily available in its most up to date form. This means:

(1) that the law and other basic government documents should be available to the public in an authoritative form and as early as practicable; and

(2) that the law should place an obligation to that effect on the Government - a named Minister should have the responsibility.

With the responsibility goes the obligation to allocate or reallocate resources in order to meet the obligation.

One way of helping to make the law accessible is through a compilation and revision of the Acts of New Zealand. Equally important is the provision made for its printing, publication and distribution. For law to be effective it must be known, and for it to be known it must be widely available. It must also be available in an authoritative form.

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33 In the course of a revision many opportunities for research into the way in which the law can be better expressed will present themselves. Although outside the scope of this paper the body authorised to undertake the revision could be given a wider mandate over matters related to statute law. It could become, in Francis Bennion's words, a Keeper of the Statute Book. See *Statute Law: Renton and the Need for Reform* (Sweet and Maxwell, London, 1979) - written evidence to the Renton Committee by Francis Bennion.

Parliament has recognised the important responsibility placed on the Government to make legislation available (although not as fully as it might) in the Acts Interpretation Act 1924, sections 13 and 17; Evidence Act 1908, sections 28 - 30; and Regulations Act 1936, sections 3 and 5. As Sir Richard Wild CJ put it,[34] "People must be told what Parliament is doing and must be able to read the letter of the law".

All this is commonplace. If the Government Print Office is privatised, copyright in legislation must of course remain in the Crown and the Government should continue to have an obligation to make available to the public legislation (primary and subordinate) and other important state documents (such as proclamations and warrants published at the moment in the Gazette).

B Meeting the Obligation

There is then the important practical question of how those obligations are to be met. In many circumstances there may be good reason to use an outside printer to meet them. But the Government Print Office does of course have special knowledge and experience of particular categories of work, including the build-up of the legislation database. That base is of major importance not just for making the law accessible but also for making it understandable.

Some argue that the responsibility of making Acts available is not something with which the Government need be concerned. Commercial publishing houses can be relied on, some say, to produce an accurate text of the law; publishing the law is a matter that can be left to private enterprise. The objection to that argument is that it leaves no one responsible to publish *all* the Acts of New Zealand at a reasonable price - nor does it provide an authoritative text which can be relied on as an accurate statement of the law in legal proceedings.

Certainly commercial publishing houses provide a valuable service to their customers by providing annotated texts of such commercially saleable items as the income tax legislation, companies and securities legislation and legislation about family law. That is a necessary and desirable service and should not be interfered with.[35] But the core of *all* written law, the words of an Act and amendments to it, must be accessible as a whole. Accessibility cannot depend, must not depend, on whether publication of an Act is a commercially viable proposition. There are many Acts that have no commercial significance. They would never be commercially worth compiling with amendments and selling. Yet those Acts can affect legal rights and obligations as much as the "best sellers".

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34 *Victoria University of Wellington Students Association Inc* v *Shearer* [1973] 2 NZLR 21, 23. See also paras 80-89 of the Law Commission's Preliminary Paper on the Acts Interpretation Act 1924 (NZLC PP1).

35 In fact there should be more input by commercial publishers into database development with a view to commercial publishers having access to the authoritative text.

The basic requirement that there must be access to the law cannot be regarded in purely economic or commercial terms. With the proposed sale of the Government Print Office it is critical that the obligation to publish legislation be recognised and arrangements be made to fulfil the obligation. But more than this is needed if the public is to gain the advantage of compilation and revision of the Acts of New Zealand.

C Need for Greater Accessibility

Legislation can be published in a variety of ways. Office computers provide a new range of potential options for providing access to the law. Pamphlet copies and bound volumes of Acts will be needed for the forseeable future, but on-line access to a legislation database, computer disks containing all or some Acts and looseleaf publications[36] now seen in New Zealand and elsewhere are other ways in which legislation can be made more accessible.

Issues relating to Crown copyright are also connected. In order to provide a comprehensive approach to matters related to the publication of compiled and revised Acts, the Attorney-General should consider a co-ordinated and comprehensive approach to all issues related to accessibility, including Crown copyright issues relating to legislation and legislative materials.

As technology develops so should access to the law improve. The body authorised to prepare a revision of Acts of Parliament[37] can play an important role in not only bringing and keeping statute law up to date but in continuing to recommend ways in which accessibility can be improved.

VIII A SHORT DESCRIPTION OF PAST ATTEMPTS IN NEW ZEALAND TO KEEP ACTS OF PARLIAMENT AVAILABLE IN AN UP-TO-DATE FORM BY COMPILATION AND REVISION

A 1840 - 1885

In 1885, Wilfred Badger wrote in the Preface to a compilation of Acts he prepared:[38]

> The necessity for such a Work as this has long been felt, owing to the great inconvenience suffered by all classes of the community, in consequence of the Whole Law of the Colony being almost inaccessible even to Lawyers, and entirely so to the

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36 For some comments on the looseleaf system of legislation in Canada see MA Banks *Using a Law Library* (Carswell, Toronto, 4th ed, 1985).

37 See Part V B2 of this paper.

38 Preface to 1842-84 The Statutes of New Zealand: Being the Whole of the Law of New Zealand Public and General and a Reprint of 511 Ordinances & Acts of the above colony in force on January 1st 1885 by Wilfred Badger, iv. This appears to have been a private undertaking.

> great mass of the people, rendering an entire reprint of Existing Law alike necessary and expedient.

The state of the statute law prior to 1885 obviously left a lot to be desired. Mr Badger records that lawyers had "nothing better than loose copies of various years' Statutes, more or less incomplete" with amendments "often left unnoticed".

B 1878 - 1908

In 1878 Parliament had already recognised the difficulty of finding and keeping the law up to date when it passed the Reprint of Statutes Act. The Commission appointed under that Act was modelled after a "similar Commission appointed in England". The Commission appointed in New Zealand was to prepare:[39]

> ... a new edition of the Public General Statutes in force in this colony, omitting therefrom all enactments which have expired ... have had their effect, or have been expressly and specifically repealed or disallowed.

The "similar Commission" referred to by the Attorney-General during the second reading debate of the 1878 Bill was the Statute Law Committee established by the Lord Chancellor to supervise the preparation of an edition of Acts currently in force in the United Kingdom. That Committee also became responsible for producing an Index to the Statutes and a Chronological Table of Statutes. It retains similar responsibilities today.

The following year, 1878, the New Zealand Commissioners reported that:

> it might be desirable to consider the propriety of granting to it some extension of powers, in order to enable it to more effectively promote the ulterior object of consolidation.

The "ulterior object of consolidation" is of course to improve the expression of the law in the course of consolidation.[40] The 1878 New Zealand Commission was quick to recognise the need to improve the expression of the law and Parliament equally quickly responded. In contrast, the United Kingdom's consolidation and revision work slowed dramatically for decades until an Act authorising "corrections and minor improvements" in the course of consolidation was passed in 1949. The slow-down in consolidation work was due to a failure of parliamentarians in the United Kingdom to accept the "ulterior object of consolidation".

The additional powers suggested by the New Zealand Commission in 1878 included powers to consolidate provisions and correct errors. Parliament responded

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39 The Reprint of Statutes Act 1878, Preamble, also s 4.

40 More precisely: to reconcile provisions that do not fit well together; to harmonize the style of provisions from different Acts and to remove anomalies (see C Ilbert *Legislative Methods and Forms* (1901) 111 and J F Burrows, above n 11.

by repealing the 1878 Act and enacting in its place the Revision of Statutes Act 1879.

Sir Courtney Ilbert commented:[41]

> It will be seen that the powers entrusted to the New Zealand Commissioners for the revision and improvement of the statue law are much wider than any which were exercised by the authorities under whose directions Statute Law Revision Acts and editions of Revised Statutes have been prepared in England.

The 1879 Revision of Statutes Act authorised the preparation and publication of an edition of all the Public General Acts of New Zealand and directed the Commissioners appointed to undertake the work to:[42]

> 4(2) ... revise, correct, arrange and consolidate such Acts omitting all such enactments and parts thereof as are of a temporary character ...
>
> (3) ... omit mere formal and introductory words ... and ... make such alterations as may be necessary to reconcile the contradictions, supply the omissions, and amend the imperfections of the existing Acts.

The Act required reports and the preparation of revised Acts in order that they "may be enacted by the Legislature ... if the Legislature shall think fit".[43]

The 1880 Report of the Revision of Statutes Commission records that the Commission prepared 15 consolidated Bills "absorbing sixty-four Acts".[44] In the course of their work the Commission said:[45]

> ... we agreed upon general principles which ought to be ordinarily followed in making alterations, by omission, addition, or substitution, in the language of the Acts, so as to render their style as uniform as possible; and in doing so we have been guided to a great extent by the rules and suggestions to be found in Bentham's "Treatise on Nomography" (or the expression of law).

The 1880 Commission Report goes on to say:[46]

> The great object of all such rules is to make each particular enactment as easily intelligible as possible to every person who derives a benefit from it or is subjected to any charge by it.

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41 C Ilbert, above n 40.
42 Revision of Statutes Act 1879.
43 Above n 42, s 5.
44 *Report of the Revision of Statutes Commission, 1880*. New Zealand. Parliament. House of Representatives. Appendix to the journals, vol 1, A9:3.
45 Above n 44, 2.
46 Above n 45.

> To this end nothing is more conducive than that the provisions of every statute should be subdivided as much as possible, and arranged in such sequence as most easily to carry the mind of the reader from one enactment to another.

The 1880 Commission Report also indicated the Commissioners' preference for shortened sentences and for bringing:[47]

> ... the subject of an enactment as near to the predicate as possible, in order that the mind of the reader may not be kept unnecessarily in suspense.

The Commission finished its programme of consolidation in 1884 recording in its final report of 2 June 1884:[48]

> ... we have already prepared upwards of fifty Bills, which consolidated nearly two hundred and eighty Acts and ordinances of the colony.

C Work Towards the 1908 Revision (1895 - 1908)

A Reprint of the Statutes Act (repealing the Revision of Statutes Act 1879) was passed in 1895 authorising the appointment of Commissioners, but no appointments were made until 1903. This despite the fact that during the second reading debate on the Bill the Attorney-General said that a number of statutes were entirely out of print and were not obtainable.

In 1902 the Statutes Compilation Act was passed. This Act directed the Solicitor- General to prepare compilations of any Acts directed to be compiled by resolution of both Houses. The compiled Acts were then to be forwarded to the Clerk of Parliaments for presentation to Parliament. The compilation was to be enacted and the original Act and amendments repealed. The Act also authorised printing and publication of the compilation pending its enactment. Some valuable compilation work was done under the Act in 1904 and 1905 - the Education Acts Compilation Act 1904 was enacted, repealing 19 earlier Acts and similar compilations Acts were passed about "Divorce and Matrimonial Causes",[49] "Marriage Acts",[50] "Coal Mines Acts",[51] "Mining Acts"[52] and "Public Works Acts".[53] The Statutes Compilation Act does not seem to have been used after 1906.

While the compilation work was going on Commissioners were appointed under the Reprint of Statutes Act 1895, taking office in 1903. The Commissioners were

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47 Above n 45.

48 *Report of the Statutes Revision Commission, 1884*. New Zealand. Parliament. House of Representatives. Appendix to the journals, vol A6:1.

49 See Divorce and Matrimonial Causes Acts Compilation Act 1904.

50 See Marriage Acts Compilation Act 1904.

51 See Coal-mines Acts Compilation Act 1905.

52 See Mining Acts Compilation Act 1905.

53 See Public Works Acts Compilation Act 1905.

authorised to "... revise, correct, arrange, and consolidate ..."[54] the public general statutes in force.

Once appointed, the Commissioners under the 1895 Act considered how to proceed with the work of the revision. Their interim report in 1903 records a decision to undertake a:[55]

> comprehensive revision and consolidation of all the Acts, arranged in alphabetical order of titles, thus enabling Your Excellency to transmit them to Parliament for enactment as a complete whole.
>
> ... The statutes thus revised will form a simple basis for future legislation, and, if the process is repeated at reasonable intervals, say, of eight or ten years, the New Zealand statute-book will always be compendious and clear.

The Commissioners were clearly influenced (as their interim report records) by a similar undertaking in the State of Victoria some years earlier.

The Commissioners under the 1895 Act issued annual reports until their work was presented and enacted as the Consolidated Statutes Enactment Act 1908. In their reports the Commissioners made many recommendations for amendments and consolidation that were beyond their power to incorporate in the revision. Later reports record that some of their recommendations were acted on, others were not.

In their 4th Interim Report (1906) the Commissioners said:[56]

> Our functions are limited by statute to the general public Acts, but we venture to suggest that for uniformity of system the local and private Acts should be collected and printed in a supplementary volume. If this be done, all existing statute-books can be dropped.

The Commissioners went on to say the distinction between general public Acts on the one hand and local and private Acts on the other had not always been observed.

Other efforts were made in the years preceding the 1908 revision to get rid of obsolete legislation. In 1902 and again in 1907 "Statutes Repeal Acts" repealed over 700 public Acts, ordinances, and local Acts either in whole or in part. According to the preambles of the 1902 and 1907 Acts they "... have ceased to be in force ... or have ... become unnecessary ... ".

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54 Reprint of Statutes Act 1895, s 3(1).

55 *Interim Report of Commissioners under the Reprint of Statutes Act 1895, 1903.* New Zealand. Parliament. House of Representatives. Appendix to the journals, vol 1, 8A:1.

56 *Fourth ad interim Report of Commissioners under the Reprint of Statutes Act 1895, 1906.* New Zealand. Parliament. House of Representatives. Appendix to the journals, vol 1, A6:1.

The 1908 Consolidated Statutes Enactment Act was a significant achievement. Virtually the whole of the statute law of New Zealand was revised and re-enacted in five volumes. The Prime Minister, the Right Honourable Sir J G Ward, introduced the Bill and noted that 806 Acts were consolidated into 208 revised Acts.

D 1909 - 1931

Despite the enormous amount of energy and resources that went into the 1908 consolidation and revision of statutes, the work of compilation and revision was not continued and Acts of Parliament became increasingly inaccessible between 1908 and 1930.

The difficulties resulting from that inaccessibility appear to have been recognised, at least in part, in 1913, and later by the creation of a separate compilation function within the Parliamentary Counsel Office in 1920.[57]

The 1913 effort at keeping Acts accessible was through the Amendments Incorporation Act, which provided for the issue of compiled Acts as "Reprints" and for them to be judicially noticed. The Act was repealed by the Statutes Drafting and Compilation Act 1920.

In the course of the second reading debate on the Statutes Drafting and Compilation Bill the Attorney-General said that what was hoped for was "continuous compilation, and a practical end to the condition of the statute book since 1908." The Attorney-General envisaged that:

> Parliament will have to consider two sets, and two entirely and distinct and separate sets of laws - one presented by the Law Drafting Department under the direction of a Minister ... comprehending amendments to the existing law, and the other for the consideration of the Legislature, consisting of the consolidation and compilation of already existing law upon the various subjects.

The intention seems to have been to dedicate at least one person (the Compiler of Statutes) to the work of compiling and consolidating statues for subsequent enactment.

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57 Section 2 of the Statutes Drafting and Compilation Act 1920. The Law Drafting Office, later to become the Parliamentary Counsel Office, was established in 1920 as an office of Parliament. That office and its staff are responsible for the drafting of legislation and for the preparation of compilations. Sections 4 and 5 of the Statutes Drafting and Compilation Act 1920 prescribe respectively the Bill drafting and compilation duties of the Parliamentary Counsel Office.

The 1920 Act repealed the Statutes Compilation Act 1908[58] and the Amendments Incorporation Act 1913, which according to the Attorney-General "entirely failed in effect".

In 1932 a "Reprint" of all the Acts of New Zealand was published (commonly known as the 1931 Reprint). The 1931 Reprint commented on the state of the statute law:[59]

> ... that in the process of time many and frequent amendments (and amendments of amendments) should become necessary. It is not surprising, therefore, that it should now be found at times difficult to discover the right path through what one of the Judges in a recent case described as 'this thick growth of legislative jungle' ...

The Foreword to the 1931 Reprint also records that over a third of the volumes comprising the statute law of New Zealand were out of print. Consequently the need for a "... further consolidation and re-enactment ... or for their republication in a convenient form has for some time been apparent".[60]

The 1931 Reprint differed significantly from the 1908 consolidation and revision. It was not authorised by statute. Consequently, while the Reprint volumes incorporated amendments and omitted repealed Acts, there was no authority or attempt to revise the text of the Acts.[61]

The 1931 Reprint organised Acts by topic and annotated many of them by adding historical notes, references to cases and references to other legislation. It was a joint undertaking between the publishers and the Government which was "... something new in the history of Governments, and was not lightly entered into".[62] The intention of the publishers was to keep the Reprint up to date by the annual cumulative supplement to *Butterworth's Annotations of New Zealand Statutes.*

E 1932 - 1957

Despite the statutory responsibilities of the Compiler of Statutes, accessibility of Acts deteriorated again after 1931.

It was not until 1957 that a new general Reprint of the Acts of New Zealand was underway. The Foreword to the 1957 Reprint records:[63]

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58 The Statues Compilation Act 1908 was the successor to the 1902 Act under which compilations had been enacted in 1904 and 1905.

59 Foreword to the 1931 Reprint of Statutes, vii.

60 Above n 59.

61 The Foreword briefly mentions the "relative merits" of a consolidation and re-enactment and a reprint at vii-viii. A revision was clearly not favoured at the time.

62 Publishers' Announcement to the 1931 Reprint, ix, which also records the "Origination and History of the Scheme of the Reprint". The publisher was Butterworths.

63 Foreword to the Reprint of the Statutes of New Zealand 1908-1957, v.

> On account of the large number of new and amending statutes since passed, the Acts and their amendments are once again scattered over parts of a large number of volumes, and this reprint is necessary to enable practitioners to find in a clear and concise form the general statute law as at present in force.

The 1957 Reprint was not specifically authorised by statute. But amendments were incorporated in the principal Acts and repealed Acts omitted. Some modernisation was made to the text. Annotations to the text were continued but references to case law omitted.

The first volume of the 1957 Reprint was nearly two years out of date when it was published.

F 1979

A new Reprint series of public Acts of general application called "Reprinted Acts of New Zealand" was started in 1979.

The Foreword to the 1979 Reprint series says:[64]

> Volumes in this new series will be published annually with the intention of reprinting steadily and progressively all public Acts of general application on our statute book. The publication of these volumes will soon make the 1957 Reprint redundant. Such publication will continue to the point where every public Act of general application is available in a form that is not more than 10 years old. Once that situation is reached it will be maintained by a continuation of the cycle and the earlier volumes in this series will be replaced progressively. In addition, Acts in common use that have been heavily amended will be reprinted as the occasion requires.

The Introduction to the 1979 Reprint says in part:[65]

> *Arrangement*
>
> The principal Acts in each volume are arranged alphabetically. Each principal Act shows the date as at which it has been reprinted.
>
> Each principal Act has all its amending enactments incorporated with it.
>
> Each principal Act is preceded by an analysis setting out all cross headings and the heading of every section. Where there are any amending enactments there is an index before the analysis, with a page reference to each amending enactment (in chronological order).
> Each amending Act is reprinted after the principal Act, in chronological order. Sections making textual amendments are not reprinted in full, but notes indicate the

64 Foreword to the Reprinted Statutes of New Zealand (1979).
65 v-vi.

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amendments that they make. Amendments are shown in the text by bold square brackets.

Variations of Text

The text of the Acts reprinted has been modernised to accord with the existing style of the statute book, both as to spelling and generally. Thus references to the "Governor" in Acts passed before 1917 have been changed to "Governor-General"; and obvious grammatical or typographical errors in the statute book have been corrected, with appropriate notes.

The enacting words of each Act have been omitted.

Where section 21 of the Acts Interpretation Act 1924 applies, every reference to a repealed enactment is changed so as to refer to the corresponding enactment in force at the date of the reprint, the change being indicated by square brackets and referred to in a note to the section.

Annotations

There are no notes referring to case law, but there are notes after each section affected, which -

(a) Explain any textual amendments (referring to the amending enactment);

(b) Explain any substitution of the corresponding enactment for a repealed enactment; and

(c) Refer to other enactments affected by or affecting the section.

Regulations are not referred to except where they affect the text of an Act.

The 1979 Reprint series has resulted in the publication of 23 volumes to date. Approximately two volumes are published each year. In addition pamphlet copies of reprint Acts are available before the Reprint volumes are published. Information about their availability is noted under the heading "Recent Reprints" in the fortnightly publication "Guide to Government Information" published by the Government Print Office.