ANTHONY ANGELO AND LAW REFORM IN MAURITIUS

Sir Ivor Richardson*

Anthony Angelo was appointed to the Law School in the heady growth years of the late 1960s. His appointment provided the opportunity to develop comparative law studies, which he subsequently also pioneered on the side for Monash University. We were colleagues then at Victoria and have been friends for over 40 years.

He had graduated in languages and law from Victoria and was a member of the National Ballet. I well recall his return to New Zealand and Victoria in 1967 after studying in Italy and exploring legal systems in Europe. He had stopped over in Mauritius which was to gain its independence in 1968. As a mixed common law, civil law system it was a fertile field for a comparative lawyer. Under the United Kingdom as colonial administrator after the Napoleonic Wars, Mauritius had only partly replaced the civil law of the continuing French business community and by then also had a thriving large Indian majority (both Hindu and Moslem) as well as smaller French and English – and Chinese – minorities. There was a need to develop the legislation to meet the modern requirements of the new State.

If one digs deep enough in Google there is a bare reference to Anthony as "Consultant law draughtsman to Mauritius since 1966". That understatement obscures the reality of what it involved. The legislative materials were a scattered mess, some missing, others the subject of further amendments made without awareness of earlier changes. So the first step was to identify and publish all the statutory laws and regulations and tidy up the materials in an orderly sequence with appropriate legislative recognition. That was a pre-requisite to law reform. The second step was to review all the laws of the State and prepare and enact legislation to meet current needs.

Think of Anthony as a one man Law Reform Commission without the support of experienced law drafters. His solution was to establish a Law Revision Unit and train junior and medium range officials, not all experienced lawyers, in law drafting. The successful functioning of the Unit was largely due to his leadership and the support it engendered amongst those involved and in

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Government. The task involved numerous visits to Mauritius, one lasting for two years, and much work in between in New Zealand.

While much of the review and reform work could be carried through in that grass-roots way, some major subject areas required the assistance of outside specialists. Anthony and Edwin ("Bebe") Venchard, Solicitor-General and subsequently a legal entrepreneur in Mauritius, gained the support and funding of overseas experts for particular projects. And, with Anthony's continuing commitment and occasional visits to Wellington by Edwin Venchard, other members of the Faculty became involved to a greater or lesser extent. Anthony has also had a major continuing responsibility for ensuring the periodic re-publication of the legislation.

I can, perhaps, best portray Anthony's work in Mauritius reviewing and reforming the bulk of the statute book by drawing on my own experience in income tax reform. I will focus on the crucial related areas of legislative drafting and policy development because they raise the kinds of questions which Anthony had to explore subject by subject in the refashioning of the statute book for which he was responsible.

My involvement in Mauritius law reform was funded by the Commonwealth Secretariat on the initiative of Edwin Venchard whom I had met on an earlier family holiday visit. Anthony was well settled into the work program he had developed and already had a network of friends in the public and private sectors. I stayed in the upstairs flat he had at the Venchards' and enjoyed the Indian meals and conviviality of the family – and discussing the myriad theoretical and practical legal questions that were constantly running through Edwin Venchard's fertile mind.

Any redrafting should aim for clarity of expression. The structure and administration of taxes are hugely important to the funding of Government, to the functioning of the economy and for taxpayer compliance and social support. The State is always a key player but the design and administration of income tax have to reflect realities: that the resources available to the Commissioner for the assessment and collection of taxes are limited; that tax design and administration need to recognise the importance of promoting compliance, especially voluntary compliance by all taxpayers with the tax legislation; and that requires general agreement that their tax liabilities, and those of other taxpayers, are being determined fairly, impartially and according to law.

Many countries have found that their income tax legislation has become complex, detailed and difficult to understand. For example, the basic New Zealand income tax legislation dates back to 1916. While the 1916 structure ran to 43 pages and covered both land tax and income tax, the 1993 reprint of the 1976 Act and amendments confined to income tax took 2038 pages. Every year added numerous amendments, sometimes whole parts or subparts. Tax legislation attempts to deal with complexity and to provide certainty through the detailed expression of policies in the variety of circumstances in which they operate. But, as a result of the legislative drafting practices of the

times, the intent was often blurred in a torrent of convoluted language in sentences of an average length, measured by a 1992 New Zealand study, of 135 words.

As well, modern tax collecting involves three different but related functions. In the first place it is now a massive largely automated data processing operation, akin to a bank or insurance company. To run that side successfully requires a different focus and different skills by the tax agency than under the second function, adjudication (including dispute resolution) and enforcement, and the third function, policy development and review. The tax enforcement function ensures, so far as possible, that taxpayers comply with their obligations. Within this function the tax administration exercises an independent judgment in investigating and quantifying obligations of particular taxpayers and collecting their taxes. It also provides rulings and technical interpretation. The role is different from the other two functions and high level technical skill is particularly important. The third function, policy development and review, is the law reform arm. The difficulties there are compounded by the international implications affecting the tax take in New Zealand of the network of double tax treaties to which New Zealand is party and which are subject to regular programmes of re-negotiation and adjustment

The recently completed Rewrite of the New Zealand income tax legislation was a deliberate effort to improve the comprehensibility of the tax system. The purpose of the Rewrite was to produce structurally consistent legislation in user-friendly style and clear, plain language in order to reduce angst and costs to users, primarily taxpayers and their accounting and legal advisers, and administrators within the Inland Revenue. In practical terms it will contribute significantly to voluntary compliance with tax laws on which the tax system depends.

The Rewrite operation was the work of a small team of public and private sector drafters and tax policy analysts, overseen by a Ministerial Advisory Panel with representation from the Institute of Chartered Accountants, the New Zealand Law Society, Inland Revenue and Treasury. From 2004 the work also included consideration of any possible unintended consequences arising from differences in language between the 2004 Act (the early part of the Rewrite later incorporated in the 2007 Bill) and previous Acts. The Panel developed a website describing and recording progress on the Rewrite and on all potential unintended consequences as raised by external users of the 2004 Act or Departmental officers. Only 61 submissions were raised in four years. A key factor was that any necessary corrective legislation followed promptly. The Panel also built two quality checks into the Rewrite process: (a) providing private sector peer review by external experts of the draft Parts as they became available; and (b) obtaining a readability assessment of the legislation which was in turn peer reviewed. That assessment was based on linguistic testing for readability by all users of tax legislation, not confined to lawyers, accountants and Revenue officers. Both the Rewrite and the unintended consequences processes have been supported strongly by those who deal in tax law and administration all the time and the website has had well over 100,000 hits.

The Bill was the largest ever put before a New Zealand Parliament. As enacted, the Income Tax Act 2007 runs to 2,855 pages. Parts and subparts have their own purpose statements. The legislation

uses readers' aids such as calculation formulas, diagrams, flow charts and tables and provides internal guides to where other matters relating to the particular topic are dealt with.

I suggest there were two keys to the successful completion of the Rewrite. First, the need to improve income tax legislation was taken up and followed through with necessary funding by successive National and then Labour-led Governments and the relevant Ministers provided personal support for the project and encouraged cross-party support in Parliament. Second, the working partnership which developed between officials and the private sector, particularly the Law Society and the Institute of Chartered Accountants, carried through into the establishment and working of the Ministerial Panel.

Also contributing was the favourable experience both public and private sectors and Ministers had had of the Generic Tax Policy Development Process implemented on the recommendation of the Organisational Review in 1993. It provides for the sequential development of tax policy with external consultation over a series of steps and for explicit consideration of the costs and benefits of policy change. There is particular focus on trade-offs between compliance costs, administration costs and efficiency considerations. Post-enactment implementation includes appropriate publicity, education and training programs. Finally, the process incorporates post-implementation review of the legislation changes and the identification of remedial issues.

While tailored here to tax policy development, I suggest that a programmed approach of this kind should always be taken into account in law reform.

Against that background and those developments in New Zealand I return to the Mauritius experience (which, as happens, I discussed 30 years ago).[1] As an outsider with limited understanding of Mauritius society and of the way in which new legislation would work in practice I had to assess, as best I could: (1) the deficiencies of the existing legislation; (2) the essential features of an effective and workable income tax system for Mauritius with appropriate levels of detail and administrative processes; (3) the alternative approaches reasonably available in dealing with particular features and topics; and (4) the skill levels and resources reasonably available to taxpayers and tax administrators and the incentives and sanctions able to be utilised.

Having studied the existing legislation and learnt what I could about the history, economy and society, and the legal system, I found it helpful to have available current legislation of a number of countries for purposes of comparison. The first was the United Kingdom tax legislation – because the Mauritius legislation came from model revenue legislation drafted in the United Kingdom for colonial territories and to some extent reflected patterns in the United Kingdom legislation. Next, New Zealand and Australia – because in the 1970s their tax legislation was still not overly complex and I felt reasonably familiar with the structure and detail and with the problems with which they

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1 Ivor Richardson "Advising on Overseas Law Reform" (1978) 9 VUWLR 385.

had attempted to deal. The third group, Hong Kong, Singapore, Kenya, Cook Islands and Fiji – because they were then relatively small colonial or ex-colonial societies which might be expected to have somewhat similar problems in some respects and to offer some alternatives for consideration.

After preliminary discussions with the Minister of Finance and senior officials, and a close consideration of a large random selection of departmental files to provide some understanding of the local tax laws, their administration and compliance problems, time was allocated each day for consultation and drafting. Usually about six people met together, always including the Commissioner and one or two senior officials, supplemented by others depending on the topics being considered. We would go through a group of sections in the existing legislation, step by step, discussing the problems that had arisen under the legislation. Alternatives were outlined and discussed.

When a tentative pattern for the first draft of that portion of the proposed revision had been settled in principle, I would prepare a draft, sometimes with alternatives, which in turn was reviewed within the department and was freely subject to further discussion and rewriting. Further on as part of that process of continuing discussion, the drafts received consideration by officers in the Crown Law Office and elsewhere in Government as appropriate. Eventually after vetting by the law draftsmen to ensure that the text conformed with legislative drafting practice and local idiom, an agreed draft was finalised. It was submitted to the Minister of Finance with a detailed memorandum setting out the approach taken and the scheme of the draft legislation, the policy and significant machinery changes reflected in the draft and the reasons for the changes proposed.

There were numerous administrative process questions as well as many substantive and structural changes involved. The task was complicated by the application of civil law concepts rather than the common law in some areas. One consequential plus was the non-recognition of trusts, displaced by *sociétés*.

A tax system has to work and be administered at all levels of income earning. Thus, the legislation had to be sufficiently sophisticated to ensure that overseas companies and substantial local enterprises could not, by appropriate planning, escape what were considered to be their tax obligations. The new legislation also included what by overseas standards were quite orthodox counters to some quite unorthodox tax practices. At another level the requirement that proper records be kept may require special expression to facilitate checking by the revenue authorities. By way of example, in order to deal with the problems of securing minimum records from small shopkeepers with limited stock and modest turnover and to allow easy policing by officers of the department, the new legislation provided for the issue of written receipts, serially numbered, for goods sold or services performed in connection with the business and for the shopkeeper to retain a duplicate in each case.

The revision was government legislation. The nature and amount of any consultation in relation to draft legislation is, of course, a matter for the government concerned. Traditionally Ministers

have often not wanted outside consultation, at least until the legislation has been introduced into Parliament. The New Zealand Generic Tax Policy Development Process allows for exceptions but reflects the general desirability of earlier external consultation. As happens, Mauritius introduced the Bill without consultation over the details with interested groups. The new tax code was enacted in July 1974. Reflecting the less complex world of the 1970s it contained 140 sections and two schedules and ran to 80 pages.

I found the Mauritius project a rewarding experience. Working with Anthony in Mauritius and in the Faculty here was a particular pleasure. I am very conscious of the immense contribution he has made to Victoria for over 40 years and am glad to have the opportunity to join in this tribute to him.