

Hong Kong's bilingual legislative drafting and translation of legislation

By Tony Yen

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In Hong Kong, the building of a bilingual legal system started in 1987. Prior to that year, all legislation was drafted and enacted in the English language only. Since that year, all new legislation has been drafted and enacted in both Chinese and English. Also commencing that year was the program of translating all the existing legislation from English into Chinese. This was a mammoth exercise involving the translation into Chinese of over 22,000 pages of legislation, many of which were laws drafted and enacted long time ago.

In drafting new legislation in Chinese and in translating existing legislation into Chinese, the law drafters and translators are guided by the principles laid down in the laws. The relevant statutory provisions are contained in the Interpretation and General Clauses Ordinance which provides –

- “(1) The English language text and the Chinese language text of an Ordinance shall be equally authentic, and the Ordinance shall be construed accordingly.
- (2) The provisions of an Ordinance are presumed to have the same meaning in each authentic text.”.

These provision make it clear that both the Chinese and English texts of the legislation enjoy the same legal status. This also means that the legal effect of the two different languages texts should be the same. The logic underlying this is that, although there are two texts and two languages, the law is one. This has put an extremely onerous burden on our drafters and translators, for they must ensure, whether in drafting new bilingual legislation or in translating existing language from English into Chinese, that no one single provision of a bilingual legislation can be understood and construed in one text as having a different meaning from its meaning in the other. What matters to them most is that no one will succeed in persuading a court of law that the words they use in one language version bear a meaning different from the other language version. Because of this requirement of strict legal precision, bilingual drafting and law translation are much more difficult than drafting and translation for most other purposes.

Difficulties in bilingual legislative drafting and in law translation are many. Two main difficulties can be mentioned here. One is the lack of an equivalent Chinese expression to convey an English common law expression. The other one concerns the complex sentence structure of most of the English language statutory provisions.

English legal expressions originate in the English legal system and reflect the socio-cultural context in which that legal system evolved. The historical evolution of English law is an interaction of the philosophical, moral, ethical, linguistic and cultural values. Most of the English legal expressions are historical and they form their own uniqueness. It is not always possible to identify an existing Chinese expression that can accurately and fully convey the same ideas or concepts behind the English expression.

The lack of an equivalent Chinese expression to exactly convey the English expression has compelled a law translator to sometimes coin a new Chinese expression. These newly coined legal expressions have gradually in recent years crept into everyday usage in the local Chinese speaking community, especially in the legal circle. In effect, some of them have now become accepted Chinese expressions.

The other main difficulty, namely, the complex sentence structure of English legislation, poses an even bigger problem in the development of Hong Kong's bilingual legislation system.

Enormous differences exist between English and Chinese in grammar, syntax, style and structure. English legal sentences, especially those written long time ago, often have a run-on structure and contain numerous commas, but only one full-stop. English sentences also have an adjective clause modifying a subject. Either a conjunctive pronoun, such as "which", "who" or "whom" or a preposition coupled with a relative pronoun may introduce the adjective clause. The use of conjunctions and clauses makes English sentences long and complex and such long and complex sentences are quite commonly found in English laws, especially the more ancient ones.

In contrast, the Chinese language has a much simpler sentence structure and is usually expressed in terse statements. The rendering of complex English sentences into Chinese requires restructuring in the Chinese language: otherwise, the sentence is either incomprehensible or unclear to the reader.

A notorious example of unintelligible translation is section 31 of the Evidence Ordinance of the Laws of Hong Kong. The original English section contains 354 words, 32 commas and with only one full-stop. This sentence structure is extremely difficult to read and understand and, therefore, also extremely difficult to translate. The resultant Chinese translation version is very unintelligible. This has attracted many criticisms from readers of the Chinese text.

Many of the problems and difficulties illustrated earlier on were brought into focus in the preparation of the Chinese texts of Hong Kong's legislation. The difficulties are more easily felt in the case of the translation of the 22,000 pages of existing laws into Chinese than the case of drafting new bilingual laws. In translating existing laws, translators were mostly dealing with laws that were in existence long time ago and these laws were not drafted in plain, modern style. The translators were stuck with old legalese and could not change it or seek to improve the language before they commence the translation. On the other hand, the drafting of new bilingual laws commences always with the preparation of the English text first. Based on the English text, the Chinese text is then prepared. When difficulties are encountered in preparing the equivalent Chinese text, the draftsman of the English text is sometimes advised to make changes to the linguistic aspects of the English text to suit the preparation of the Chinese text. It is found that if the English text of a piece of new legislation is drafted in plain language, preparation of the Chinese text is often easier. As a result of this experience, Hong Kong's law drafters became aware of the need to prepare the English texts of the laws in modern, plain language.

Some 15 years ago, law drafters in the Department of Justice initiated a "language re-engineering" exercise. This was actually a gradual movement towards plain legal drafting. In drafting the English texts of new legislation, law drafters have been required to draft or write in a plainer and more modern manner. The slavish following of old fashioned precedents and the adoption of long, convoluted sentences are no longer encouraged. Also, law drafters constantly remind themselves to draft in a style that focuses on the need of the audiences of the legislation.

Since embarking on this language re-engineering exercise, it has been found that the preparation of Chinese texts of the laws has been easier, with the result that the Chinese texts of our more recent laws are also found easier to read and

understand.

It is clear that the conventional wordy, cumbersome and impersonal nature of statutory provisions and legal instruments has made our law less effective. It also hinders the way towards the building of a bilingual legal system. In practical terms and in the preparation of bilingual legal documents, it makes the job of a law translator difficult. Experience has shown that many of the criticisms against the Chinese texts of the laws were caused by the complex sentence structures of old fashioned legalese of the English texts of the laws. It is believed that the employment of plainer language in the original English texts will make a long way in improving the readability of both the English and Chinese texts of all bilingual legal documents.