

## Series of law reform ideas left to gather dust

Albert Wong , Dec 20, 2010

Model flats can be models of misinformation. Eva Cheng, Hong Kong's secretary for transport and housing, saw that for herself when she made a tour of mock-up flats last April.

Some of the demonstration flats she inspected lacked "certain external walls or partition walls", making the properties look bigger than they really were. "We think there is a need to enhance transparency and accuracy of information," she declared.

A sensible step forward for consumer protection - except that, for people with long memories, Cheng's words sounded regretfully familiar.

Almost 15 years ago, the city's Law Reform Commission said the very same thing. Ten of its sub-committee members spent two years of their spare time studying misleading sales practices for flats. Their 1995 report recommended that "if mock-up or sample flats are provided, the mock-up should be accurately representative of the actual unit in all aspects, including quality and dimensions", and the specifications should be certified and kept on record. The recommendation never became law.

And it is not the only legal reform idea to have gathered dust for years.

Since 1997, the commission has completed 27 reports - 22 have yet to be implemented. The government indicated it would realise seven of these in the future, but is hesitant to put four into practice and decided against acting on three others. The commission made no recommendations in one of the reports.

The result: even though anomalies and unfairness in our laws have been identified, the public has for years continued to suffer the consequences, while a solution sat on a government bureau shelf.

This is at odds with Hong Kong's image of itself as an efficient, executive-led government, where the fast pace of ideas evolving into policies and legislation are the envy of the world.

Covert surveillance is one example. The commission was asked to study the issue in the 1990s. It published a consultation paper in 1996. But nothing came of it for more than 10 years, when a high-profile judicial comment on the lack of regulation of wiretaps and covert surveillance prompted the government to act.

"The pace at which these reports are acted upon leaves much to be desired," Law Society president Wong Kwai-huen said. "A vibrant community such as what we enjoy in Hong Kong must be supported by laws that meet the changing needs of society."

Wong has seen a range of reform efforts - proposed by both the Law Reform Commission and Law Society - meet the same sluggishness. "We have painful experiences in taking forward our legislative proposals at a pace we would have reasonably expected," Wong said. "Proposals often take years, if not decades, to reach the Legislative Council."

Years ago, for example, the Law Society looked at limited liability for law firms. But today, that issue remains stalled in the discussion stage.

The Land Titles Ordinance is another case in point. Enacted in 2004 after 20 years of work, it is still not fully implemented. It is turning into the type of legal process it was supposed to eradicate: a Dickensian review of more papers after papers after papers, after which nothing is certain.

"We are now facing the problem that some of the members who have been serving on the committee will be reaching retirement soon," Wong said. "We may need to recruit new members - which will mean they have to read up on a long history of developments in the subject. The sheer volume of papers to be read may deter members from joining the committee."

Law Reform Commission secretary Stuart Stoker said the reports were not made in vain since they contributed to public debate of the issues. "The process of consultation ... is beneficial anyway, because it raises awareness about that aspect of the law and it engages the community in discussion."

But he stressed the reports were more than just academic exercises. "The commission and its sub-committees have obviously invested a lot of time in putting these reports together, and they believe they are sound recommendations ... So, for sure, the commission wants to see these reports implemented."

A Department of Justice spokesman said: "The current secretary for justice, as chairman of the commission, has specifically impressed upon the ... bureaus the importance of responding to commission reports and of speeding up their consideration ... This concern has been duly acknowledged by the responsible bureaus who agreed to provide a response to new commission reports as soon as practicable."

Many of the neglected reports are aimed at enhancing the protection of individuals, empowering them to redress injustices in areas such as consumer protection or invasion of privacy. Others seek to improve the administration of justice through a review of the criteria for jury service, and the handling of evidence in criminal proceedings. Some are meant to reform family law and child custody - and by neglecting these areas, family welfare experts argue, the happiness and well-being of children are being jeopardised.

"These areas of the law were chosen by some of the leading thinkers in our society," said lawmaker Audrey Eu Yuet-mee SC, noting that the commission is officially chaired by the secretary for justice and includes the chief justice, senior judges and lawyers. "But they do not do [these reports] just as an academic exercise. They come up with areas for law reform because they think this is an area of the law

that needs reforming," said Eu, a former commission sub-committee member who now campaigns for legal reforms as a Civic Party lawmaker.

The government's usual response - to form more committees and hold more discussions in spite of a perfectly well-researched report - was a "waste of public resources", she said.

Two months ago the chief executive announced a steering committee would be set up to research legislation to regulate the sale of residential property, focusing on sales practices, price lists, show flats and saleable area.

Those same areas were studied by the commission's 10-member sub-committee from 1992 to 1994. In the final report of April 1995, the sub-committee concluded that "the problems of inadequate and misleading sales information in the sale of uncompleted flats are many-fold".

It identified several misleading areas, such as the description of fittings and finishes, location and layout plans, the lack of a standardised definition of gross floor area and completion dates.

"To prevent market manipulation, we suggest that developers should be required to publish the number of flats reserved for internal sale and to state whether they are actually sold," the report said, concluding that only legislation would redress the loopholes and it should be enforced with heavy fines and even jail terms.

A consumer protection law expert involved in the government's new effort said: "If all the new steering committee did now was to implement that report 15 years ago, we would already be making some massive improvements".