

Observations on Manualized Assessment

INTRODUCTION

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- Observations from legal / taxpayer perspective on effectiveness of MIPS / EPG costing regime to achieve stabilized assessments

OVERVIEW OF “LEGISLATED” MANUALS FOR MAJOR INDUSTRIAL ASSESSMENT

- MIPS Manual is “legislation” (“other instrument under definition of “regulation” in BC *Interpretation Act*)
- MIPS prescribed by s.20 *Assessment Act* for costing of “industrial improvements”
- Dams portion of EPG Manual recently (2004) incorporated by reference in MIPS Manual for Class 4 dams / powerhouses etc.
- *Assessment Act* s.20 – neither a true replacement nor reproduction cost model. Direction under s.20 is to determine the cost to replace existing improvement with one of same size, shape and function using currently accepted construction methods and costs, but without regard to equivalence of utility
- Result: unique costing regime – manual must be coherent and complete to be effective for stakeholders

PRACTICAL ISSUES

- MIPS has legislative status, but lacks hallmarks of true legislation:
 - highly technical, clearly not product of legislative drafters
 - not subject to normal rigour of legislative drafting conventions (eg. to ensure internal consistency)
 - limited if any weight can be given to interpretations provided by BC Assessment Cost Services to specific costing issues arising in the course of Board hearings
 - Board not bound by previous decisions so unless issue been ruled on in stated case, stare decisis (predictability) lacking

RAMIFICATIONS

- often falls to Board (and Court) to “interpret” highly technical costing manuals as though “legislation” with less than perfect “tools”
- Board often faced with “expert” opinions from Assessor and taxpayer that (of necessity) venture far beyond the permissible scope of expert evidence in traditional litigation context, to “ultimate opinion” on how Board ought to interpret and apply specific manual provisions
- plainly helpful to Board to have technical expertise to draw upon to understand manual terminology, costing models, etc. but Board must ultimately interpret the plain words of the manual in the context of intent of s.20
- this can pose very challenging questions for Board, particularly where there are apparent “gaps” or “inconsistencies” between manual divisions, or between manuals
- result is that Board has of late been forced to create and modify “tests” to apply or fill gaps in costing provisions (eg. effective age criteria, criteria for searching between manual divisions to find “missing” costs)

ROOM FOR IMPROVEMENT?

- Manuals are highly technical and must address a vast array of different types of improvements and costing models, and will remain so
- how might “interpretation” issues be more efficiently addressed at first instance and before Board:
 - more rigour in the drafting process
 - published technical interpretation or “Q and A” “bulletins” incorporated into manual
 - “overlay” of interpretation rules gleaned from previous Board and Court decisions