



IAIA SEA Prague Conference

Federal SEA in Canada



**Stream A7- Legal and
policy frameworks for SEA
in Canada and the U.S.**





Introduction: Canada Session

■ Goals of the session

- Provide information on federal SEA in Canada, including challenges and opportunities
- Examine federal experiences in implementing SEA
- Review Canada's SEA performance

■ Session will have various presentations with question and answer periods

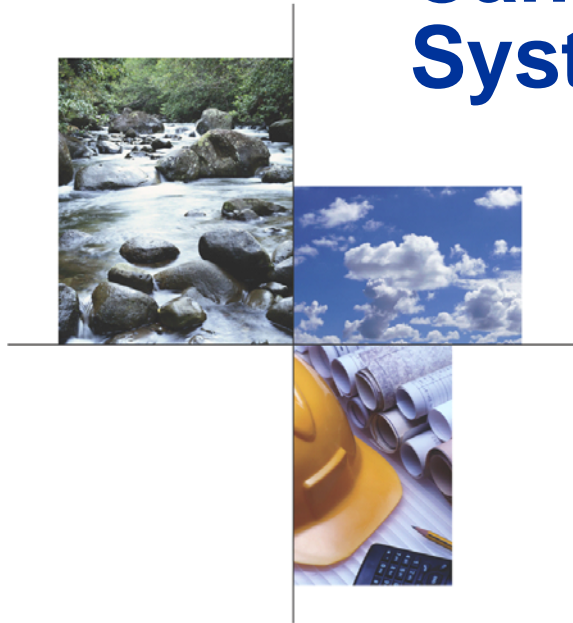




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Canadian Political System



Canada

Canadian Federal System

- Canadian Federation
 - 10 Provinces, 3 Territories, Federal Government
- Jurisdiction established by Canadian Constitution:
 - Federal: trade, commerce, defence, fisheries, international affairs, Aboriginal law; and
 - Provinces: management of public lands, municipal institutions, local works and undertakings, resource management (forestry, mineral resources, energy).
- Jurisdiction for environment is shared

Federal Parliamentary System

- Laws set by Legislature (House of Commons and Senate)
- Other policy instruments (regulations/plans) set by Governor-in-Council, Cabinet or Ministers
- Ministerial/Cabinet decision making governed by two basic principles:
 - Collective accountability
 - Confidentiality

What Decisions Does Cabinet Make?

- Cabinet makes decisions related to:
 - Legislative undertakings (prior to consideration in House of Commons)
 - Federal policies
 - Fiscal decisions
 - Federal plans and programs



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Implementation of SEA at the Federal Government Level



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Environmental Assessment in Canada

- The federal approach is two pronged:
 - **Project Assessment (EA):** to ensure environmental considerations are factored into project proposals requiring specified federal actions, implemented through the *Canadian Environmental Assessment Act*.
 - **Policy Assessment (SEA):** to ensure integration of environmental factors into the policy process at the federal level (also known as strategic environmental assessment), implemented through the *Cabinet Directive on the Environmental Assessment of Policy, Plan and Program Proposals*.

EA & SEA - Key Differences

EA

- Legislated
- Detailed analysis of site-specific effects
- Quantitative assessment of environmental impacts

SEA

- Not legislated
- Concerned with broader environmental issues and objectives
- Integrates economic, social and environmental considerations at policy level (more qualitative)

■ Both are based on the self-assessment model – the responsibility for implementation rests with each Minister



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Evolution of SEA in Canada



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Benchmarks

- Notable benchmarks include:
 - U.S. National Environmental Policy Act (1969)
 - Brundtland Commission Report
 - Agenda 21 (Chapter 8)
 - Canada's Green Plan
 - Development of the *Canadian Environmental Assessment Act, 1995*
 - European Union Directive on SEA

SEA in Canada

- **1984:** Environmental Assessment and Review Process Guidelines Order provides for assessment of programs
- **1990:** Cabinet directs departments to consider environment at strategic level of decision-making
- **1998:** Commissioner of the Environment and Sustainable Development concludes there is poor compliance with 1990 Directive
- **1999:** Revised Directive clarifies obligations and links EA to sustainable development strategies
- **2004:** Revised Directive requires improved transparency
- **2004:** Commissioner of Environment and Sustainable Development audit of SEA with recommendations



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Institutional Framework



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SEA Requirements

Ministers expect a SEA of a proposal to be conducted when the following two conditions are met:

- the proposal is submitted to an individual Minister or Cabinet for approval; and
- implementation of the proposal may result in important environmental effects, either positive or negative

SEAs are also encouraged when circumstances warrant (such as significant public concern)

Application of SEAs?

- SEAs would apply to the following types of initiatives:
 - Sectoral policies, plans and programs (e.g. relating to aquaculture, energy, or agriculture)
 - Regional or area-based policies, plans and programs (e.g. parks management plans or development plans)
 - Policies, plans and programs that cross sectors and areas of responsibility (e.g. trade, science, fiscal policy)



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Technical Guidelines for the Implementation of the Cabinet Directive on Strategic Environmental Assessment



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Purpose of the Guidelines

- Sets out the key principles for the implementation of the Cabinet Directive
- Outlines a process for the conduct of an SEA
- Defines key terms, and roles and responsibilities
- Special cases

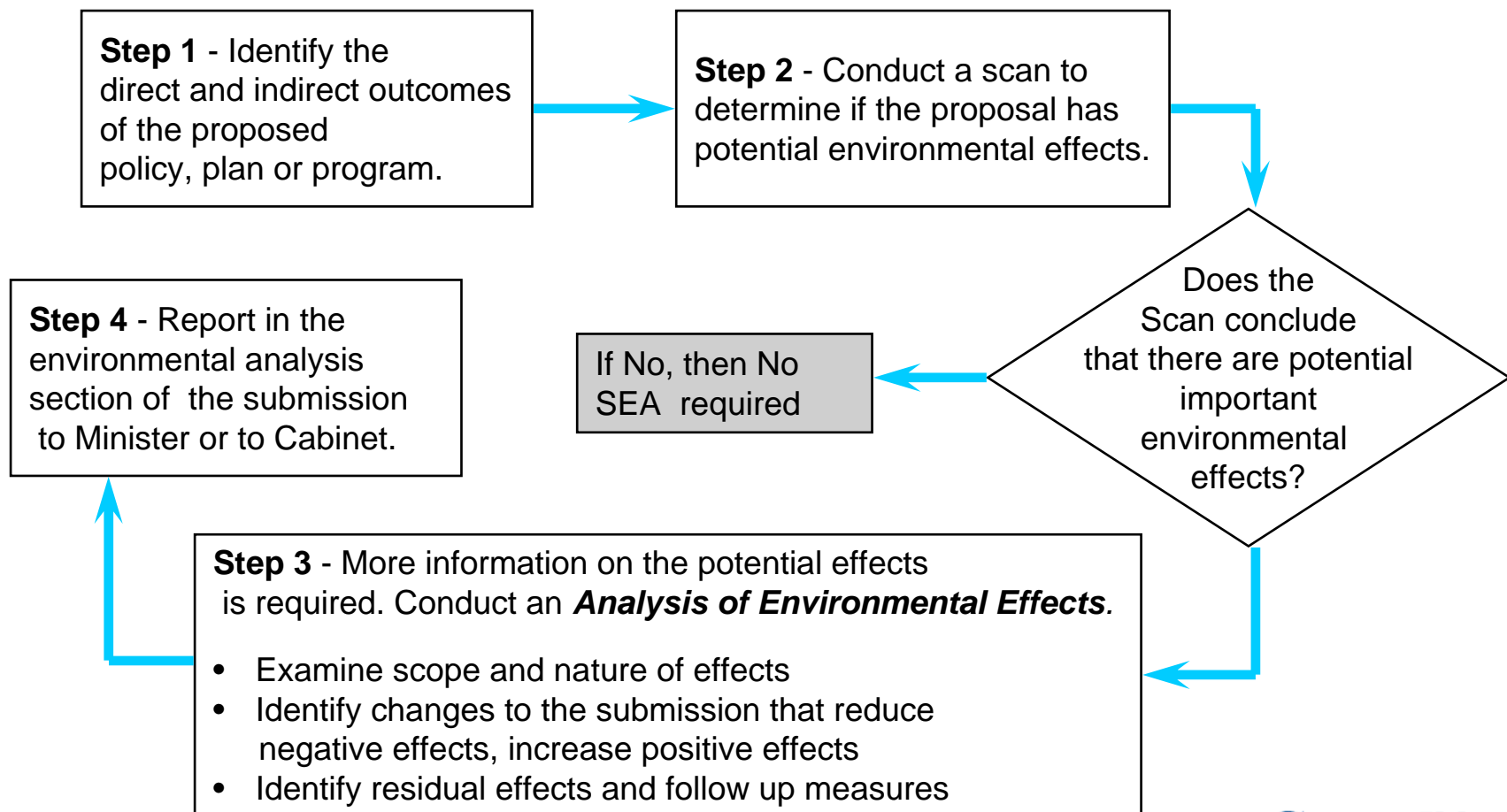
Principles

- Early integration
- Examination of alternatives
- Flexibility
- Self-assessment
- Appropriate level of analysis
- Accountability
- Use of existing mechanisms

Key Points

- Phased approach (scan, detailed analysis)
- The guidelines allow the development of framework techniques tailored to particular needs
 - E.g. Foreign Affairs Canada has developed a Framework for Conducting Environmental Assessment of Trade Negotiations in response to the Cabinet Directive. It is specialized and specific to trade negotiations.]
 - E.g. The Canadian International Development Agency has developed detailed guidelines for using SEA to assess its country development programs.

Process



Preliminary Scan

- Early in the development of the proposal, a determination is made whether important environmental considerations could arise from implementing the proposal.
- This involves:
 - Considering environmental effects at the general or conceptual level,
 - Thinking about direct and indirect outcomes,
 - Analyzing whether or not those outcomes might have any impacts on the environment.
- If yes – must complete detailed analysis, the SEA.

The SEA - Detailed Analysis

- The steps in a detailed analysis include:
 - Scoping
 - Identifying options
 - Determining environmental effects
 - Evaluating impacts
 - Mitigation/Enhancement
 - Determining follow-up requirements
 - Reporting

Public/Stakeholder
Engagement

Consultation

- Officials should consult with the public, Aboriginal people and stakeholders when necessary
- Use existing mechanisms
- Public consultation is not always necessary but is very important for proposals that are likely to be contentious from an environmental standpoint
- Ensure that consultation is well-documented and the information gathered is reflected in the SEA

Follow-up requirements

- When is follow-up necessary?
 - When SEA indicates a high probability of significant negative environmental consequences
 - When uncertainty is high
 - When new and untested tools, strategies, and technologies are being used
- Follow-up should monitor environmental effects of policies, plans and programs to ensure performance measures are applied, mitigation or enhancement are effective, and that environmental objectives are being met

Reporting Out

- Each step of the SEA should be well documented
- After analysis has been completed, recommendations and conclusions should be presented
- Public statements on environmental effects must be made when a detailed analysis is conducted
 - Demonstrates that environmental factors were integrated into the decision-making process.



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Recent Developments & Future Directions



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2004 Improvements

- Greater emphasis placed on enhancing positive environmental impacts.
- Reintroduction of the requirement to make public statements of environmental effects when a detailed analysis was conducted.



Evolving Practice

- Federal practice is evolving and improving
- Growing demand among departments to receive training on SEA
- Many departments and agencies have, or are developing, processes to support strategic environmental assessment
- The development of guidance materials (case studies, frequently asked questions, on-line training)

Evolving Practice (cont'd)

- Commissioner of the Environment and Sustainable Development's 2004 audit on SEA was an important reality check
- Need to improve management and accountability systems
- Need for greater transparency led to new public reporting requirement
- Focus has been on SEA process. Need to look at quality.
- Examine new areas for application of SEA, such as regional SEA.