

## STRATEGIC ENVIRONMENTAL ASSESSMENT IN THE GOVERNMENT OF CANADA: RECENT DEVELOPMENTS & FUTURE DIRECTIONS

Strategic environmental assessment (SEA) at the federal level has been under way in Canada for almost twenty years. The *1984 Environmental Assessment and Review Process Guidelines Order*<sup>1</sup>, an early approach to project-level assessment, provided some scope for environmental assessment of programs. A specific Cabinet Directive establishing process for policy and program assessment has been in place since 1990<sup>2</sup>. The purpose of this paper is to provide an overview of SEA in Canada and its evolution. This paper also presents the results of a recent SEA workshop hosted by the federal government.

*Our Common Future*, released in 1987 by the World Commission on Environment and Sustainable Development, identified improved decision making as a key element of sustainability:

*The ability to anticipate and prevent environmental damage requires that the ecological dimensions of policy be considered at the same time as the economic, trade, energy, agricultural, and other dimensions. They should be considered on the same agendas and in the same national and international institutions... This reorientation is one of the chief institutional challenges of the 1990s and beyond.*<sup>3</sup>

Subsequently, the concept of integrated decision making became a significant component of Canada's first comprehensive national environmental policy, *Canada's Green Plan*, which was tabled in Parliament in December 1990. This package of reforms led to changes in federal practices, such as the requirement for federal departments and agencies to prepare departmental sustainable development strategies, and the creation of Canada's environmental auditor general, the Commissioner of the Environment and Sustainable Development, in 1995.

Federal requirements for environmental planning and decision making have progressed considerably since that time. *The Cabinet Directive on the Environmental Assessment of Policy, Plan and Program Proposals* has evolved to meet the changing needs of government and provides clear direction to federal departments and agencies on the practice of SEA at the federal level<sup>4</sup>. Although challenges remain, this evolution represents progress.

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<sup>1</sup> Environmental Assessment and Review Process Guidelines Order, Federal Environmental Assessment and Review Office, Government of Canada, 1984.

<sup>2</sup> Cabinet Directive on the Environmental Assessment of Policy and Program Proposals, Federal Environmental Assessment and Review Office, Government of Canada, 1990.

<sup>3</sup> *Our Common Future*, Oxford University Press, 1987.

<sup>4</sup> Cabinet Directive on the Environmental Assessment of Policy, Plan and Program Proposals, Canadian Environmental Assessment Agency, Government of Canada, 2004.

Project assessment in Canada is conducted under the *Canadian Environmental Assessment Act*. The Act applies when there is federal involvement in a project proposal (as a proponent, a land-holder, a provider of funds, or as a decision-making authority).

The 1990 Cabinet Directive required federal departments to consider environmental factors of policy and program proposals. The Canadian Environmental Assessment Agency conducted a review of federal practice of policy and program assessment and published its findings in 1996<sup>5</sup>. The federal government also established an interdepartmental committee, chaired by the Canadian Environmental Assessment Agency, to provide advice on the implementation of the Directive, foster information exchange among departments and develop guidance material. The committee is still in place and continues to be actively involved in the evolution of Canada's process.

In 1998, Canada's Commissioner of the Environment and Sustainable Development audited Canada's environmental assessment process (both project and SEA). With respect to SEA, the conclusion was that performance was poor and implementation uneven<sup>6</sup>. The Agency's own review of SEA in 1996 had identified similar concerns. In a subsequent review of federal efforts to "green" federal policies and programs, completed in 1999, the Commissioner once again highlighted the importance of SEA in sustainable decision making, but also noted ongoing concerns with respect to comprehension and compliance<sup>7</sup>.

The results of this research led to the conclusion that requirements needed to be clarified and that better guidance was necessary. Following consultations among federal departments and agencies, the Government of Canada announced an amended requirement, the *1999 Cabinet Directive on the Environmental Assessment of Policy, Plan and Program Proposals* in June 1999. The expectations in the updated Directive were much clearer, and provided for a two-step process – a preliminary scan, followed by a detailed assessment if additional research was deemed necessary.

The Parliamentary Standing Committee on Environment and Sustainable Development, in a report tabled in June 2003, made recommendations that the Privy Council, in consultation with the Minister of the Environment, begin the process of developing a statutory framework for SEA.<sup>8</sup> The Government's response acknowledged the

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<sup>5</sup> Canadian Environmental Assessment Agency, *Review of the Implementation of the 1990 Directive on Environmental Assessment Process for Policy and Program Proposals*, January, 1996.

<sup>6</sup> Environmental Assessment – A Critical Tool for Sustainable Development, Chapter 8 – 1998 Report of the Commissioner of the Environment and Sustainable Development, Government of Canada, 1998.

<sup>7</sup> Greening Policies and Programs – Supporting Sustainable Development Decisions, Chapter 9 – 1999 Report of the Commissioner for Environment and Sustainable Development, 1999.

<sup>8</sup> Standing Committee on Environment and Sustainable Development, *Sustainable Development and Environmental Assessment: Beyond Bill C-9*, (Ottawa: Government of Canada, 2003), Available at <http://www.parl.gc.ca/InfoComDoc/37/2/ENVI/Studies/Reports/envirp02-e.htm> . Accessed on March 28, 2004.

Committee's recommendations and made immediate improvements with respect to transparency. As of January 1, 2004, federal departments and agencies must prepare public statements of environmental effects when detailed assessments have been conducted through SEAs. This will assure stakeholders and the public that environmental factors have been appropriately considered when decisions are made. The response also provided for a review of SEA by a multi-stakeholder committee that advises on regulatory issues related to environmental assessment. Finally, the response makes note that the Commissioner of the Environment and Sustainable Development is again auditing federal implementation of the Directive, with results to be published in September 2004. This audit is also likely to yield a number of recommendations to improve the practice of SEA in Canada.

### **The Institutional Framework**

In Canada, with the exception of the *Farm Income Protection Act*<sup>9</sup>, there are currently no legal requirements for SEA at the federal level. The Cabinet Directive, however, provides very clear guidance on when such assessments are to take place:

*Ministers expect a strategic environmental assessment of a policy, plan or program 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.*

*Departments and agencies are also encouraged to conduct strategic environmental assessments for other policy, plan or program proposals when circumstances warrant.*<sup>10</sup>

Unlike Canada's requirements for project assessment, the triggers for SEA are not tied to federal involvement, funding, permitting, or land. Rather, they are tied directly to the highest level of decision making and to the potential for "important" environmental effects. The process, although not legislated, is not discretionary.

Similar to project assessment in Canada, SEA is a self-assessment process. This means that the federal department or agency that is developing a policy, plan or program proposal is responsible for determining whether an assessment is necessary. That department or agency is also responsible for conducting the assessment, documenting it and reporting to decision-makers and the public. This is a key consideration with respect to accountability.

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<sup>9</sup> *Farm Income Protection Act*, Section 5(2), S.C. 1991, Chapter 22.

<sup>10</sup> Cabinet Directive on the Environmental Assessment of Policy, Plan and Program Proposals, Canadian Environmental Assessment Agency, Government of Canada, 2004.

The goal is to ensure that policies, plans and programs at the federal level that are likely to have environmental effects are thoroughly assessed before decisions are made. This approach provides for broader coverage than a specific listing of the types of decisions that ought to be assessed. As a result, the Directive captures most federal policy, plan or program proposals, from international development plans to legislative proposals.

The Privy Council Office (which is the secretariat for Cabinet and most of its committees), and the Treasury Board Secretariat (which specifically supports the business of the Treasury Board), support the decision-making process and, in addition to the Department of Finance, are referred to as the central agencies. These agencies coordinate policy development across government and set requirements for documents used to seek Cabinet decisions. The documents used to seek Cabinet decisions include Memoranda to Cabinet (policy and program decisions), Treasury Board submissions (fiscal decisions) and regulatory impact analysis statements (regulatory decisions). Strategic environmental assessment, where necessary, is integral to these decision-making tools.

The objectives of SEA at the federal level are clear. Cabinet has clearly identified them in the Directive and guidelines. By addressing potential environmental considerations of proposals early on, federal departments and agencies will be better able to:

- optimize positive environmental effects and minimize or mitigate negative environmental effects of a proposal;
- consider potential cumulative environmental effects of proposals;
- implement sustainable development strategies;
- save time and money by drawing attention to potential liabilities for environmental clean-up and other unforeseen concerns;
- streamline project-level environmental assessments by eliminating the need to address some issues at the project stage;
- promote accountability and credibility among the general public and stakeholders; and
- contribute to broader governmental policy commitments and obligations.<sup>11</sup>

Cabinet also identified several guiding principles that include:

1. Early integration
2. Examination of alternatives
3. Flexibility
4. Self-assessment
5. Appropriate levels of analysis
6. Accountability, and
7. Use of existing mechanisms<sup>12</sup>.

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<sup>11</sup> 1999 Cabinet Directive on the Environmental Assessment of Policy, Plan and Program Proposals, Canadian Environmental Assessment Agency, Government of Canada, 1999.

<sup>12</sup> Ibid.

These objectives and principles lay the foundation for SEA of federal policy, plan and program proposals. Simply put, federal departments and agencies should conduct assessments early in the policy process to inform the development of policy, plan and program proposals at all levels of decision making and ensure that recommended positions are consistent with the government's environmental and sustainable development priorities.

The guidelines for implementing the Cabinet Directive do not establish rigid requirements for SEA. Rather, departments are encouraged to work within the broad guidance provided in the Directive to adapt the process to suit their needs and make use of existing mechanisms.<sup>13</sup> Although not required to do so, some departments and agencies (such as Agriculture and Agri-Food Canada, Environment Canada and Transport Canada) have established their own internal policies to govern SEA. The Canadian Environmental Assessment Agency promotes the Directive, and provides information and advice on the conduct of strategic assessments.

Guidance documents used by federal policy and program officials to support preparation of materials for Cabinet consideration (Memorandum to Cabinet Drafters' Guide, Regulatory Impact Assessment Writers' Guide, and Guide to the Preparation of Treasury Board Submissions) make specific reference to requirements for SEAs.

### **Procedure and Guidance**

The basic elements of the SEA process in Canada are laid out in the guidelines for implementing the Directive. The first step in the process, as identified in the Guidelines, is to conduct a preliminary scan. This should occur as early as practical in the development of a proposal, and should determine whether important environmental considerations are likely to arise from implementation of a proposed policy, plan or program.

If the preliminary scan identifies the potential for important environmental effects, either positive or negative, or if there is a high level of uncertainty or risk associated with the outcome of a policy, plan or program, then a more detailed analysis of the environmental effects should be conducted. If the scan does not identify the potential for important environmental considerations, no additional analysis of environmental effects is required.

If additional analysis is required, the Directive states that SEAs should address the following considerations:

- the scope and nature of environmental effects;
- the need for mitigation;
- the scope and nature of residual effects;
- follow-up; and

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<sup>13</sup> Ibid.

- public and stakeholder concerns.

In practice, analysts should conduct a broad assessment of environmental impacts, and account for federal environmental priorities as identified in policy, legislation, bilateral and multilateral international environmental agreements, departmental sustainable development strategies, budget commitments and other high-level policy guidance.

The Directive advises that the level of effort used in SEAs should reflect the level of environmental effects anticipated from implementation of the proposed policy, plan or program. Although there are no specific requirements for public consultation during SEAs, a separate federal policy establishes guidelines and basic principles for public consultation during policy development.<sup>14</sup>

With respect to documentation, there is no requirement for separate reporting of SEAs. As mentioned previously, however, in January 2004, the Cabinet Directive was updated and now contains a requirement that departments and agencies publish public statements of environmental effects when detailed assessments are conducted. This will assure stakeholders and the public that environmental factors have been appropriately considered when decisions are made. Statements should be factored into existing reporting mechanisms.

Since the publication of the Directive and the guidelines in 1999, the Clerk of the Privy Council (the head of Canada's bureaucracy) and the President of the Canadian Environmental Assessment Agency have written to the heads of federal departments and agencies to inform them of their obligations under the Directive. The Agency has conducted over 40 face-to-face briefings with federal departments and agencies to raise awareness and provide process advice. A new round of marketing activities is under way since the amendments to the Directive took effect January 1, 2004.

## **Planning for Progress**

An overall assessment of the federal government's performance on SEA has not been conducted since the Commissioner for Environment and Sustainable Development's reports in 1998 and 1999. As mentioned previously, the Commissioner concluded that implementation had been uneven across departments. Further, evidence gathered by the Commissioner suggested that assessments were "more often broad than comprehensive".<sup>15</sup> An audit of federal implementation is once again under way and is expected to be released in Autumn 2004. Although there is an expectation that it will indicate some improvement, it is also likely that additional work will be necessary to realize SEA's full potential.

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<sup>14</sup> Consultation Guidelines for Managers in the Federal Public Service, Privy Council Office, Government of Canada, 1992

<sup>15</sup> Environmental Assessment – A Critical Tool for Sustainable Development, Chapter 8 – 1998 Report of the Commissioner of the Environment and Sustainable Development, Government of Canada, 1998.

In anticipation of the audit results, the federal community began the process of identifying, for itself, what best practices ought to be considered in assessments, and what performance indicators departments and agencies should apply to their assessments and within their own policy processes. A key mechanism used to conduct this research was a two-day long SEA workshop, hosted in Ottawa, the Nation's Capital, on March 22-23, 2004. The objectives of the session were to educate and solicit input on SEA as an aid to integrated decision making. Through a series of structured exchanges, 131 participants shared their views on best practices, and areas for further research. Notably, participants recognized the following as key indicators of best practices when conducting assessments:

- appropriate scoping/definitions;
- clear roles and responsibilities;
- regular internal reporting processes for SEA;
- intra- and inter-organizational cooperation;
- the need for established guidelines;
- integration into existing policy processes;
- allocation of appropriate resources for analysis;
- linkages among SEA and subsequent project-level assessments;
- departmental centres of expertise (where possible);
- the need for public and stakeholder engagement;
- linkages to existing environmental objectives and obligations; and
- appropriate level of detail/appropriate level of effort.

At the conclusion of the workshop, participants were asked to focus on three questions. The first related to key challenges that remained to be overcome in the implementation of the Directive and SEA at the federal level in Canada. The second asked workshop participants to reflect on the standards that ought to be used to evaluate assessments and assessment processes. The third asked participants to consider the critical factors required to ensure that SEAs are useful to decision makers.

With respect to question 1, participants stated that remaining challenges related to implementing are:

- lack of a clear understanding of its relationship to project level assessments;
- lack of awareness;
- making SEA meaningful to decision-makers;
- confusion about timing;
- absence in some organizations of clear guidelines; and
- lack of standardization.

With respect to the question about to standards to evaluate assessments and assessment processes, participants identified the following issues:

- need for systems to track SEAs in the policy process;
- systematic research methods;
- departmental Guidelines/Tools should be in place;
- guidance to ensure consistency;
- guidance to support decisions about level of effort;
- links to broader government environment priorities;
- reference to Environmental Criteria/Indicators; and
- cooperation among federal organizations and stakeholders.

With respect to question 3, the conditions that must be present to ensure quality SEA include:

- cooperation among stakeholders;
- realistic scoping;
- linkages to Government/departmental priorities;
- impartiality/objectivity;
- support from senior managers;
- linkages to risk management;
- clearly expressed rationales;
- guidance/support;
- early integration;
- sufficient resources to support research activities; and
- good rationale for the utility of SEA.

This information is now being used to make planning decisions for the coming months for work to improve the practice of SEA at the federal level in Canada. The Agency and other federal stakeholders will use the information generated to focus research and guidance work in those areas that are likely to yield significant improvements to the practice of SEA. It is hoped that this early work will also help to respond to issues raised in the Commissioner of the Environment and Sustainable Development's upcoming audit.

Key issues that the Agency is likely to address with the federal community in the near future include:

- improving the linkages among SEA and other federal management initiatives;
- improving information on the relationship of SEA to sustainable development;
- developing best practices, as identified by workshop participants, for internal SEA procedures and in respect of individual SEAs;
- improving information on the potential relationship of project environmental assessment to SEA;
- developing generic guidance on the conduct of preliminary scans under the two-step process established by the Directive;
- development of additional efforts to raise awareness of the Directive within government; and

- conducting research into the issue of timing and SEA, particularly in respect of the benefits of starting such analytical work early, and the potential benefit of post facto assessments.

Federal departments are also giving some thought to how the information generated by the workshop will allow them to refocus their efforts to implement SEA within their own organizations.

In conclusion, the practice of SEA continues to evolve in Canada. Formal proceedings from the SEA workshop will be available shortly. This information, in conjunction with the results of the Commissioner's audit, lays a solid foundation for the continued evolution of SEA in Canada and sets the stage for continued improvement.

## Appendix A

### Strategic Environmental Assessment Policy and Guidance Prepared by Canadian Federal Departments and Agencies (current as of April 2004)

Organization	Policy/Guidance
1. Environment Canada	Guidance on the Preparation of Strategic Environmental Assessments at Environment Canada
2. Industry Canada	Strategic Environmental Assessment Guideline and Questionnaire
3. Natural Resources Canada	Environmental Assessment Screening Manual (currently being updated)
4. Agriculture Canada	Guidelines for the Assessment of Policies and Plans at Agriculture
5. National Defence	Departmental Administrative Order and Directive 4003-2
6. Foreign Affairs and International Trade	Framework for the Environmental Assessment of Trade Agreements  Handbook for the EA of Trade Agreements
7. Canadian International Development Agency	Guide for Integrating Environmental Considerations in CIDA Policies and Programs (currently being redrafted)
8. Transport Canada	Strategic Environmental Assessment at Transport Canada  SEA Training
9. Public Works and Government Services	Strategic Environmental Assessment Guideline
10. Privy Council – Regulatory Affairs	Regulatory Impact Assessment Writers' Guide
11. Treasury Board Secretariat	A Guide to Drafting Treasury Board Submissions
12. Privy Council	Memoranda to Cabinet – Guidelines for Drafters
13. Fisheries and Oceans Canada	Strategic Environmental Assessment Guideline
14. Citizenship and Immigration	Strategic Environmental Assessment Guideline
15. Health Canada	Strategic Environmental Assessment Guideline
16. Parks Canada	Guidelines for the Strategic Environmental Assessment of Parks Management Plans
17. Indian Affairs and Northern Development Canada	Strategic Environmental Assessment Guideline

## **Appendix B**

### **Members of the Interdepartmental Sub-Committee on Strategic Environmental Assessment of the Senior Management Committee on Environmental Assessment (current as of April 2004)**

- 1. Agriculture Canada**
- 2. Canadian Environmental Assessment Agency**
- 3. Canadian International Development Agency**
- 4. Citizenship and Immigration**
- 5. Commissioner for the Environment and Sustainable Development**
- 6. Environment Canada**
- 7. Finance Canada**
- 8. Foreign Affairs and International Trade**
- 9. Health Canada**
- 10. Heritage Canada**
- 11. Indian Affairs and Northern Development (2 Representatives)**
- 12. Industry Canada**
- 13. National Defence**
- 14. Natural Resources Canada**
- 15. Policy Research Initiative**
- 16. Privy Council**
- 17. Public Works and Government Services Canada**
- 18. Transport Canada**
- 19. Treasury Board**