

Strategic Environmental Assessment (SEA) in Québec: a work in progress

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1. Introduction

While Canada was one of the first countries in the world to make SEA an official procedure in 1990 through the Cabinet Directive on the Environmental Assessment of Policy, Plan and Program Proposals (Government of Canada, 2004), the situation is different for its provinces which, in most cases, do not have yet an official and systematic SEA process in place. Indeed the Canadian SEA Directive targets policies, plans and programs at the federal level but does not apply to the provincial governments. For an overview of some SEA cases in the federal government and some Canadian provinces see Noble (2009).

Canada is a federation with distinct political jurisdictions: the federal government, ten provincial governments and three territorial governments in the far north (see Figure 1). Under the Constitution, the environment is a shared responsibility between the federal government and provincial/territorial governments. Each jurisdiction may thus enact laws and regulations concerning environmental issues, including the environmental impact assessment of projects (EIAs). This means, for instance that some projects can be subject to the federal environmental assessment process as well as to a provincial process : to avoid this situation, several bilateral agreements on cooperation mechanisms have been established to ensure that EIAs are coordinated and implemented in a timely and cost-efficient manner, while respecting the objectives and processes of each jurisdiction¹.

¹ See <http://www.ceaa-acee.gc.ca/default.asp?lang=En&n=34BB758F-1> for an overview of bilateral environmental assessment agreements.



Figure 1 : Canada, a federation with 10 independent provinces and 3 far north territories (map's source: TrailCanada.com²).

In the province of Québec, the second most populous province after Ontario (almost 8 million inhabitants) and the largest province in Canada by surface area (1 667 441 km²), discussions on the necessity to include SEA as an official governmental planning tool started at the end of the '80s but no systematic SEA process has yet been adopted by the Government. However, SEAs per se and various initiatives that can be assimilated to SEAs have been carried out so far or are currently being conducted.

This paper aims to give an overview of the practice of SEA in Québec, while highlighting the main outcomes of the SEAs carried out up to now and the added value of applying SEA to other strategic initiatives.

Section 2 explains the history of SEA in Québec. Section 3 gives a brief overview of the SEAs which have been carried out and which are now being conducted. Section 4 provides examples of additional policies, plans and programs that could benefit from an SEA in Québec. Finally, the conclusion focuses on key outcomes resulting from the application of SEA in Québec and provides perspectives for the future.

² <http://www.trailcanada.com/provinces/>

2. Giving an official status to SEA in Québec: where do we come from and where are we now?

In southern Québec, EIAs are mandatory since 1980 for major projects likely to have significant impacts on the environment. This obligation is clearly specified in section IV.1 of the *Environment Quality Act* (Government of Québec, 1980a) and in the *Regulation respecting environmental impact assessment and review* (Government of Québec, 1980b).

In 1988, less than ten years after the entry into force of the EIA procedure in Québec, the Ministry of Environment³ formed the Lacoste Committee to review it. The Committee's report (Gouvernement du Québec, 1988: 41-42) stressed the importance to extend environmental assessment to strategic initiatives (such as policies, plans and programs).

Based on these conclusions, the National Assembly of Québec approved Bill 61 which aimed to include SEA as part of the Environment Quality Act in 1992. However, the bill was not enacted and the revised law never came into force.

In June 1995, the Ministry of the Environment published a new proposal to reform the environmental assessment procedure and to include SEA as part of it. However, the reform project has never been adopted.

The Auditor General of Québec noted that the Ministry of the Environment had conducted preliminary work to develop a Québec policy on SEA, but that this policy had unfortunately not been implemented so far (Vérificateur général du Québec, 2004). Also, the Québec Association for Impact Assessment proposed unsuccessfully that the Government include SEA in Québec's Sustainable Development Strategy (Association québécoise pour l'évaluation d'impacts, 2006) and had recent talks with the governmental authorities on the subject of SEA.

Despite the fact that there is still no mandatory and systematic SEA process in Québec, various *ad hoc* SEAs have been and are being carried out. The following section provides more details on this matter.

3. Ad hoc SEAs carried out and in progress

SEA cases in Québec fall into two categories:

1) the strategic mandates that are given by the Minister of the Environment to the *Bureau of Public Hearings on the Environment* (Bureau d'Audiences Publiques sur l'Environnement - BAPE), an independent Board dedicated to informing and consulting the public with respect to projects or initiatives likely to have a major impact on the environment or on any other matter relating to the quality of the environment. In addition to being responsible for the public

³ The Québec Ministry of the Environment has often changed names over the past twenty years and is now known as the *Ministry of Sustainable Development, Environment and Parks* (Ministère du Développement durable de l'Environnement et des Parcs – MDDEP). To avoid confusion, in this article we will use the name Ministry of the Environment. General information on the Ministry can be found at http://www.mddep.gouv.qc.ca/index_en.asp.

information and consultation of projects subject to the EIA process (section IV.1 of the *Environmental Quality Act*), the BAPE can be given *ad hoc* mandates by the Minister of the Environment under section 6.3 of the *Environment Quality Act* which states the Bureau can be asked to investigate (through public consultation, public hearings, etc.) environmental matters submitted by the Minister of the Environment and report on its findings and analysis to the Minister⁴.

2) SEAs *per se*: the SEA program on offshore oil and gas exploration and development in the Gulf of Saint Lawrence and the shale gas SEA.

3.1 BAPE strategic mandates

Some of the BAPE's strategic mandates carried out since the end of the '80s can be assimilated to SEA. These strategic mandates have dealt with: hazardous waste management (1988-1990); the forest conservation strategy (1991); waste management (1996-1997); water management (1999-2000); hog production in a sustainable development perspective (2003); and the seismic surveys in the Estuary and Gulf of St. Lawrence (2004)⁵. These mandates are usually of a general scope in that they attempt to circumscribe the general problems related to the area under examination and collect the public's perceptions and suggestions with respect to the subject through an extensive public consultation process. They are rather long (from eight to almost two years) and costs may reach a few million dollars (Gauthier *et al.*, 2011).

BAPE's strategic mandates differ from classical SEA because they do not include a comparison of alternatives of policy options or specific proposals, and public consultation (hearings) occurs at an advanced stage of the planning process⁶. However, they do show several SEA characteristics. For example:

- The BAPE's findings and analysis are based on public information, enquiries and consultation;
- The BAPE's consultations are based on a background document which takes stock of environmental problems and issues to be addressed;
- A report is produced as a result of these consultations and is made public;
- The Minister of the Environment can make recommendations to the Government on how the BAPE's report should be followed-up, for instance through legislation, a policy, a strategy or an action plan in the area reported upon.

Recommendations from these mandates have influenced the policy formulation process in several key sectors. For instance, the Québec 1998-2008 Waste Management Policy (Ministère du Développement durable, de l'Environnement et des Parcs, 2002), revised in 2011⁷, is based to a large extent on BAPE recommendation following its hearings on: i) waste management pertaining to improving selective waste collection (recycling, composting, etc.); ii) the

⁴ More information on the BAPE is available at: <http://www.bape.gouv.qc.ca/sections/english/>

⁵ The BAPE's reports related to these mandates can be found online at: www.bape.gouv.qc.ca

⁶ The BAPE public hearings are held downstream after the development of policies, plans and programs and directly upstream from their adoption. The hearings then allow only for revision of major directions and come often too late to influence significantly the design and contents of the strategic initiative (Gauthier *et al.*, 2011: 57).

⁷ See the 2011 version of the Policy at http://www.mddep.gouv.qc.ca/matieres/pgmr/index_en.htm

responsibility of manufacturers with respect to products that they market; iii) regional waste management planning and iv) more stringent environmental standards for waste elimination. Another notable case is the Québec Water Policy which addresses various problems raised during the BAPE hearings on water management, namely, water exportation, groundwater exploitation, the privatization of water services, health issues, wastewater treatment, preservation of the St. Lawrence river watershed, the protection of aquatic habitats, water pricing, and the watershed-based management approach (Government of Québec, 2002). See Gauthier *et al.* (2011: 57) for more details on the outcomes of these mandates.

3.2 SEA program on offshore oil and gas exploration and development

Following the 2004 BAPE report on the seismic surveys in the Estuary and Gulf of St. Lawrence, the Québec Government set up in 2009 a special SEA program on the exploration and development in the St. Lawrence Gulf and Estuary⁸. In a press release, the *Ministry of Natural Resources and Wildlife* (Ministère des Ressources naturelles et de la Faune) underscored that SEA is as an ideal tool for sustainable development which complements very well EIAs of oil and gas development projects in the marine environment (Ministère des Ressources naturelles et de la Faune, 2010).

As shown below, positive expected outcomes have been attributed to the SEA program, including harmonization of environmental assessment procedures between federal and provincial governments.

The four part SEA program:

“will allow the drafting of recommendations aimed at harmonizing oil and gas exploration and development with, in particular, commercial fishing, maritime transportation, and tourism related to marine mammal observation and protection. Standardizing the practices applied in Québec and those applied in the Maritime Provinces (where hydrocarbon development is presently being carried out) will also make it possible to draft an environmental assessment procedure that is harmonized between the governments of Québec, the Maritime Provinces, and Canada.” (Ministère des Ressources naturelles et de la Faune, 2009a : 6).

The first SEA on this issue focused on the maritime Estuary and northwestern Gulf of Saint-Lawrence (an area of about 29 000 km²). Based on the results of the preliminary SEA report (AECOM Tecsalt Inc., 2010), the Québec Government decided in September 2010 not to allow oil exploration and exploitation in this area due to the complexity and fragility of the environment, and due to the risks that such activities may present for the tourism and commercial fishery industries upon which local communities depend to a large extent⁹. It should be noted that the government’s decision was made before any formal public consultations could be held on the matter. The report is however available on-line.

⁸ For further details on this SEA program see : <http://www.sea.gouv.qc.ca/index.asp>

⁹ See the press release by the *Ministry of Natural Resources and Wildlife* , www.mrn.gouv.qc.ca/presse/communiqués-energie-detail.jsp?id=8601

A second SEA was launched in March 2010 on the Chaleur Bay Basin, the Anticosti Basin (northern Gulf of St. Lawrence) and the Madeleine Basin (southern Gulf of St. Lawrence). In the Fall of 2011, the communities directly affected by the exploration and exploitation procedure will be consulted on their territory. Then, an online consultation targeting the general population of Québec will be conducted. The SEA report is expected to be finalized by the Fall of 2012.

3.3 Shale gas SEA

In 2010, the BAPE was mandated to enquire and hold public hearings on the sustainable development of the shale gas industry in Québec, a highly controversial issue. Although the issue is broad and complex, no background document was available for consultation early in the mandate. Moreover, the mandate was relatively short (about six months i.e. from September 7, 2010 to February 28, 2011). In its report, released on March 8 2011, the BAPE mentioned that several major issues had not found a satisfactory answer, particularly in regards to the risk of groundwater pollution. Therefore, it recommended that an SEA be carried out (BAPE, 2011).

The Government adhered to this recommendation and appointed a multi-stakeholder committee composed of representatives from the Government, local government, universities, the private sector, civil society and environmental NGOs to carry out the SEA. The Committee's mandate consists in following up on the four SEA objectives identified in the BAPE report: 1. assess the socioeconomic relevance of developing the resource with a view to maximize the State's revenues; 2. assess environmental impacts and risks and define acceptable thresholds and mitigation measures; 3. prepare regulations concerning the environmental assessment of gas projects; 4. assess the relevance of setting up scientific monitoring observatories in order to continuously acquire knowledge on the matter (Ministère du Développement durable, de l'Environnement et des Parcs, 2011).

The SEA Committee is presently preparing its work plan that will be submitted to public comment in September or October 2011. The SEA could last from 18 to 30 months and will include several moments where public input will be sought. During this period, further drillings will be authorized only in support to the development of scientific knowledge for the SEA.

As a further measure, the government set up the *Strategic assessments coordination bureau* (Bureau de coordination des évaluations stratégiques) in the Ministry of the Environment whose mandate is to provide technical, scientific and logistic support to the Shale gas SEA Committee and coordinate ministerial and government involvement in the SEA. Furthermore, the Bureau has a wider mandate pertaining to the development of policies and scientific guidelines for SEA implementation in Québec.

4. Strategic initiatives which could benefit from an SEA

In addition to the SEAs described above, the need for an SEA has often been pointed out for other strategic initiatives which raise social, economic and environmental issues. Amongst those, we find the development of the wind power industry and the Plan Nord, a development plan for Northern Québec.

4.1 SEA of the wind power industry – a missed opportunity?

The Québec government's goal is that wind farms totalizing 4 000 MW be installed by the private sector as well as local communities by the end of 2015. Over 30 projects have entered the EIA process so far and many additional projects will be subjected to this process in the coming years. As of April 2011, sixteen of these projects had been subjected to a public hearing by the BAPE under the provisions of the EIA process.

While these projects have their own specificities, they often raise environmental and social issues that overlap, and that go beyond the limits of one particular project (such as landscape protection, the harmonization of regulations and laws, cumulative impacts related to new electricity transmission lines, and the distribution of benefits among stakeholders).

Many BAPE reports underline the difficulty of analyzing wind power projects on a case by case basis. For example, in its report on a project in Carleton-sur-Mer (Gaspésie, Québec) the BAPE (2007: 46) highlighted that wind power projects impacts might go beyond municipal boundaries and that only a comprehensive strategy would facilitate the harmonious and coherent integration of projects in the environment. The BAPE also called for a broad consultation to support the Government in defining an integrated strategy for the development of the wind power industry in Québec.

Although the government chose not to proceed with an SEA on this matter, it should be noted that as a response to BAPE reports and public preoccupations to these wind projects the government did improve the overall framework for implementing wind farms in 2007¹⁰. However, some of the recent wind farm projects have been still met with strong public reactions and the relevance of an SEA remains.

4.2 SEA of the Plan Nord (the Northern Plan)

The Plan Nord is an initiative of the Québec Government to promote, in the coming decades, development of activities in the territory north of the 49th parallel (almost 1.2 million km²). This region includes the territories covered by the James Bay and Northern Québec Agreement and the Northeastern Québec Agreement signed in 1978 by Cree, Inuit and Naskapi aboriginal nations and the Canadian and the Québec governments. The Plan Nord also affects a large

¹⁰ See for instance the guidelines and orientation aimed at local government authorities prepared by the *Ministry of Municipal Affairs, Regions and Land Occupancy* (Ministère des Affaires municipales, des Régions et de l'Occupation du territoire) at: http://www.mamr.gouv.qc.ca/amenagement/amen_amen_eoli.asp, and the technical guidelines prepared by the *Ministry of Natural Resources and Wildlife* (at <http://www.mrnf.gouv.qc.ca/energie/eolien/index.jsp>).

portion of the administrative regions of Saguenay-Lac-Saint-Jean and the Côte-Nord, where communities of the Innu aboriginal nation reside (see Figure 2).

According to the Québec Government,

“The immense area covered by The Plan Nord offers outstanding potential for development. It contains extensive mineral and energy resources, as well as many different wealth-creating possibilities in the fields of forestry, farming, fishing and aquaculture, tourism, and wildlife development. The resources offer promising ways to support the economic and social development of local communities, and over the years the government has established strategies, policies and programs that act as levers for sustainable development in the regions covered by The Plan Nord”. (Ministère des Ressources naturelles et de la Faune, 2009b : 13).

The Government has given the *Ministry of Natural Resources and Wildlife* a mandate to coordinate planning and implementation of the Plan Nord. To that end, the Ministry chairs the Interdepartmental Committee on the Northern Plan comprising about a dozen government departments. In November 2009, the Ministry announced that it would develop the Plan Nord on a sector by sector basis: discussion tables were thus created to consider the issues and the action to be taken in sectors such as forestry, mining, energy, tourism and transportation¹¹.

In May 2011, the Government announced the contents of the Plan Nord. However, some groups expressed concerns, especially the First Nations who are worried about the governance issues surrounding natural resources management and about the mitigation of social, economic and environmental impacts.

Because of the extent of the territory covered by the Plan Nord and of the investments expected in particular in the mining, forestry, energy, tourism and transport sectors, it is clear that the Plan Nord will have significant impacts on the environment and on Native and non-Native communities in the territory, which accentuates the need for the Government to conduct an SEA.

In May 2010, the James Bay Advisory Committee on the Environment made public an opinion it transmitted to the Québec Government regarding the necessity to carry out an SEA for the Plan Nord (James Bay Advisory Committee on the Environment, 2010). This opinion was based on an SEA scoping document focusing on the transportation sector and commissioned by the Committee on this matter. This scoping document (Crowley *et al.*, 2010) aimed, *inter alia*, at making the government authorities aware of the advisability of conducting an SEA for the transportation sector in the James Bay territory and proposed a methodology to take into account major environmental and social issues arising from the opening up of the territory (such as cumulative impacts resulting from transport infrastructure development, climate change, natural habitats conservation, preservation of the Cree culture, diversification of economic activities, and public health). However, up to now, an SEA of the Plan Nord is not on the Government’s agenda and the contents of the scoping document have not been implemented.

¹¹ For further details, consult the Northern Plan website: <http://www.plannord.gouv.qc.ca/>

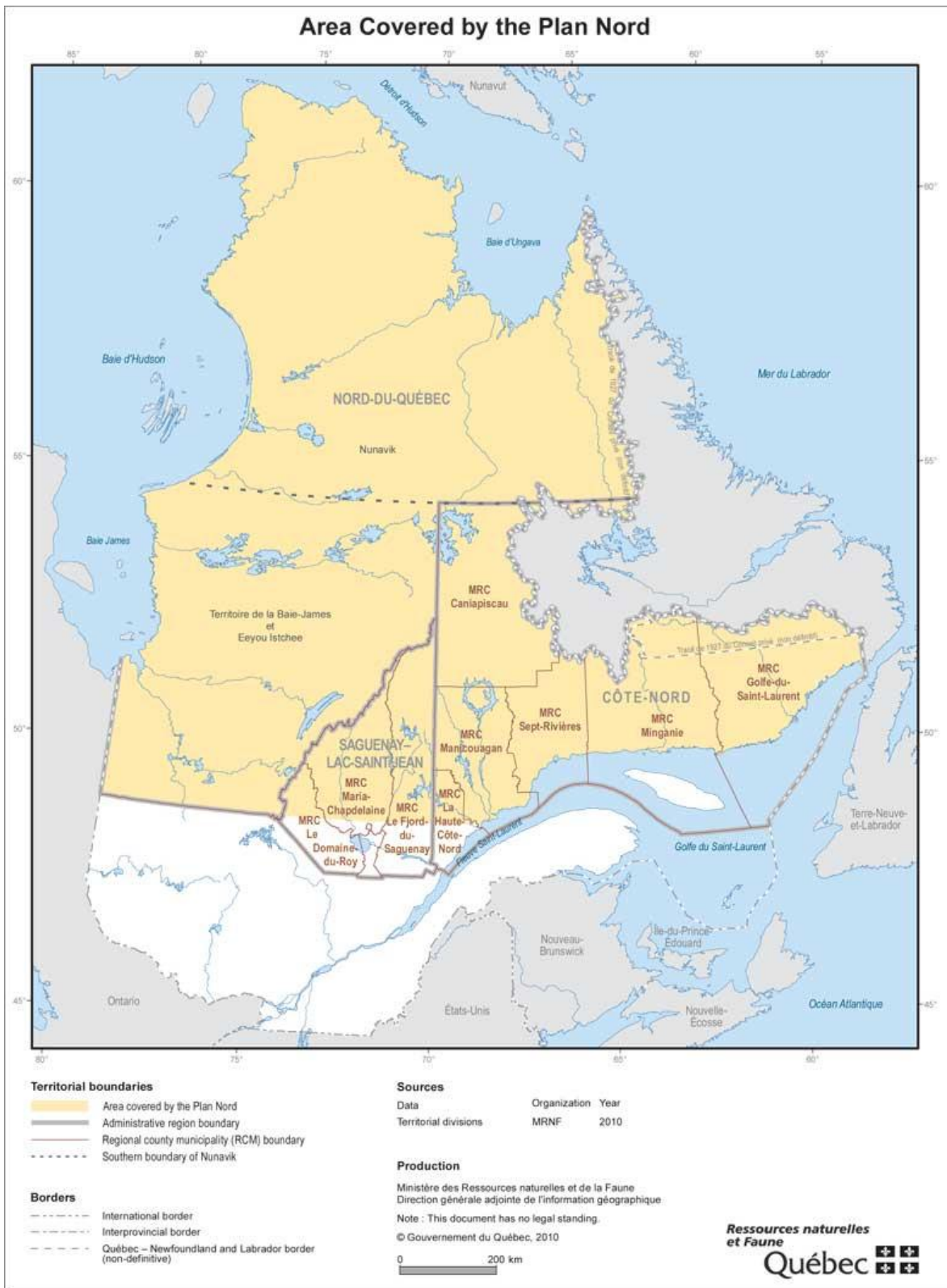


Figure 2: Area covered by the Plan Nord (Government of Québec, 2011).

5. Conclusion : lessons learned and some outlooks

As outlined in this paper, adoption of an official SEA process in Québec has been debated for a long time. Also, over the years many stakeholders have regularly called for its application to new political initiatives that could have significant social, economic and environmental impacts.

While there is still no official SEA system in place, SEA has nevertheless been carried out on a case by case basis since the end of the 1980's. These SEAs have led to various outcomes:

- Several major policies, waste management and water management for instance, have been shaped by recommendations in BAPE reports on strategic mandates that can be assimilated to SEAs;
- The two ongoing explicitly labeled SEAs (i.e. the SEA program on offshore oil and gas exploration and development, and the shale gas SEA) are attributable in large part to BAPE reports: it is clear that public debate in these cases has influenced the government's decision to proceed with an SEA;
- At the operational level, results from the first SEA on offshore oil and gas exploration and development in the St.Lawrence influenced the decision of the Government to not allow oil exploration and exploitation in the concerned area due to the significance of the impacts for the environment and for the local communities

Persistence in promoting SEA in Québec through various channels (public hearings, attempts at legislation modification, letters and memoranda to government authorities, etc.) and by explaining how SEA works (for instance, by proposing methodologies and demonstrating SEA opportunities and its added value to policy development) seems to have borne some fruit.

Recent developments such as the Offshore oil and gas SEA program, the Shale gas SEA and the setting up of the *Strategic assessments coordination bureau* (Bureau de coordination des évaluations stratégiques) are indicative of a certain government orientation that may lead toward a formalization of SEA. It is hoped that this reflexion will lead to a wider application of SEA, for instance to issues like wind-power development and the Plan Nord mentioned earlier.

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