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Overcoming Policy Blockages at Drafting Stage: A Client Perspective and the ECCC Model

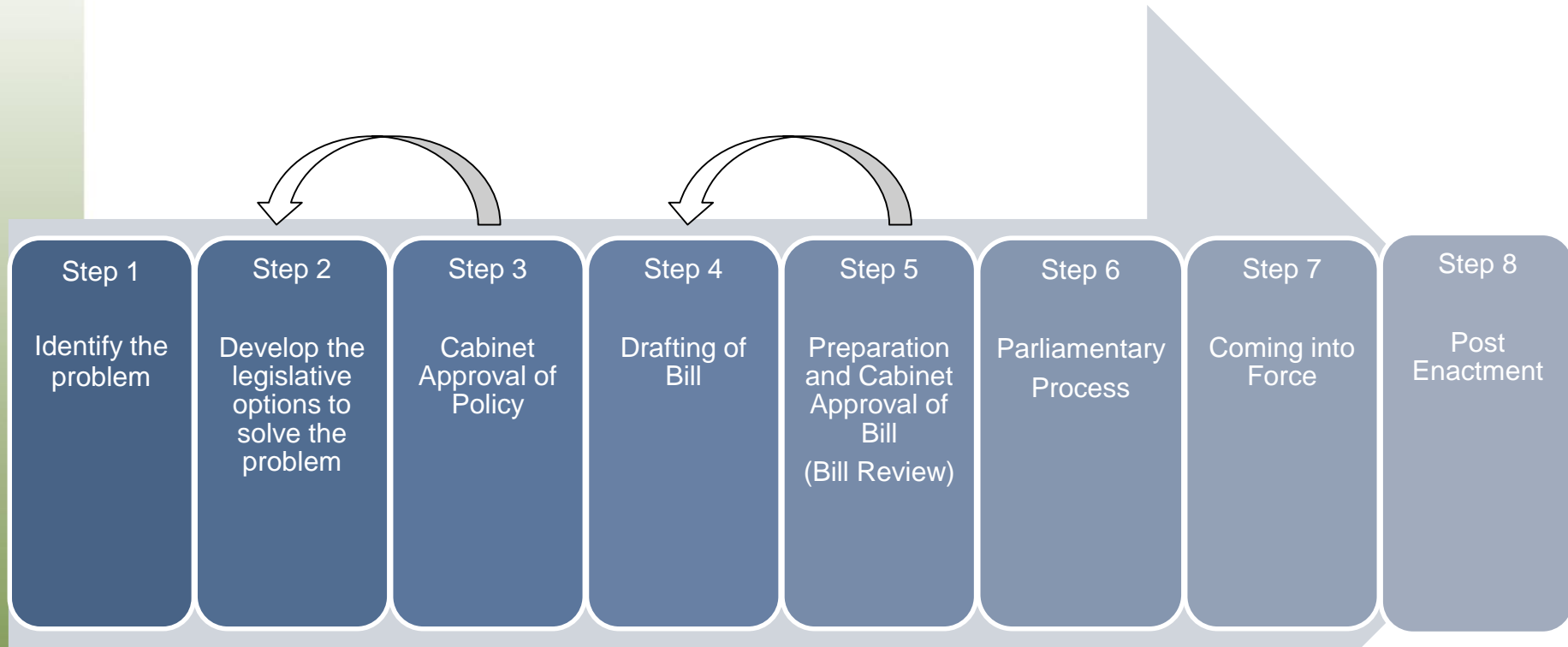
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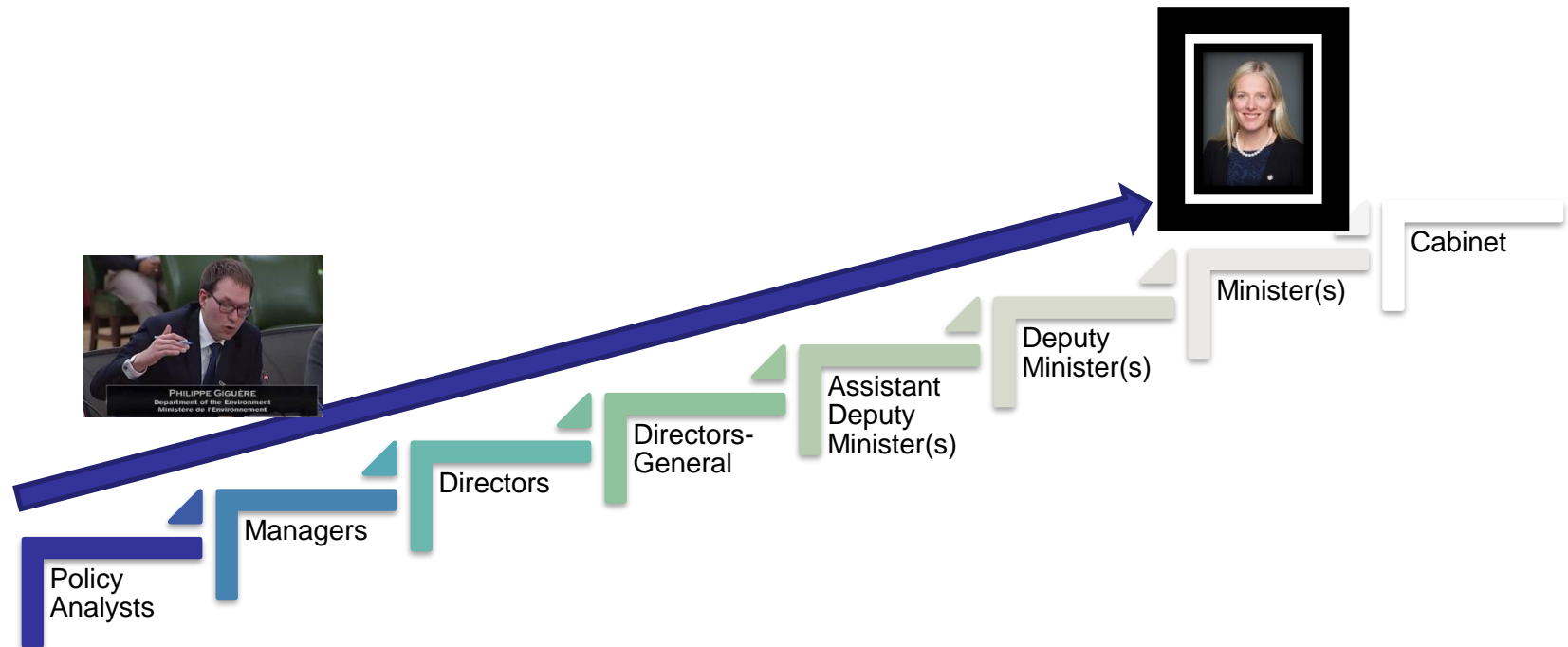
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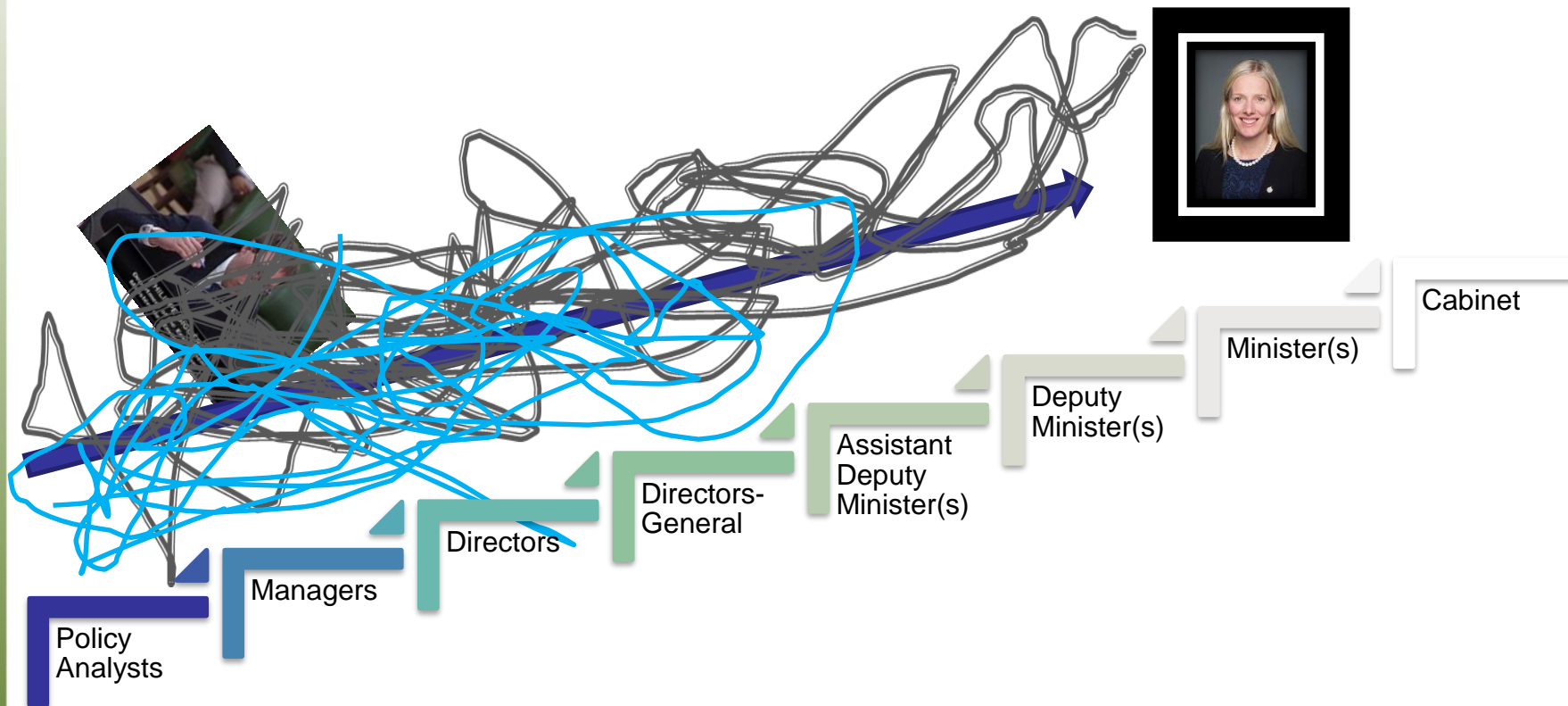
1) Context: Legislative Policy Steps



1) Context: Approving Legislative Policy (theory)



1) Context: Approving Legislative Policy (reality)



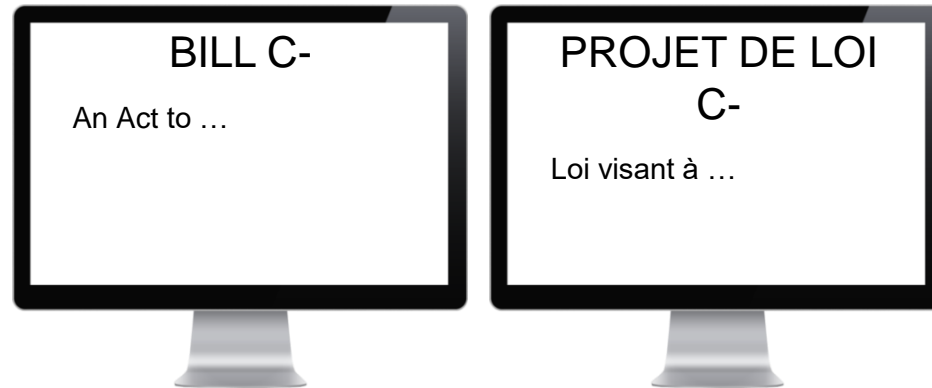
2) Potential Sources of Policy Blockages



3) Policy Blockages at Drafting Stage?



3) Policy Blockages at Drafting Stage?



New policy blockages created as a result of drafting:

- “Words fly away, writings remain” : official Bill text generates reactions
- Drafters’ and drafting experts’ involvement bring new perspective/interpretation
- Drafting guidelines or conventions may create new obstacles



4) Key Factors to Prevent or Minimize Impact of Policy Blockages at Drafting Stage



- Preparation
- Expertise & experience in legislative policy
- Broad view of the legislation under Minister's responsibility and ability to make linkages
- Relationships with key programs in the department (who's who)
- Implementing the "Fearless Advice, Loyal Implementation" moto
- Structure that provides rapid access to Senior Management for key decisions
- Corporate memory and review (lessons learned)



5) The ECCC Model: Legislative Governance Division

- Created in 2007 – with mandate for:
 - Focal point for environmental law reform (ECCC statutes, Private Members' Bills, Parliamentary Reviews)
 - Operational work (CEPA and SARA Registries, CEPA-NAC Secretariat, Five Statutory Annual Reports)
- Part of the Environmental Protection Branch of ECCC (« ECCC's Regulator »)
- Multidisciplinary team: professionals with legal training background + science and environmental policy expertise



5) The ECCC Model: Legislative Governance Division

- Delivery of broad legislative and policy requirements
- Guardians of legislative framework for conservation & environmental protection
 - Oversees legislative reform agenda for Minister
 - Think tank for getting ahead of the issues that may require a legislative tool (forward-looking research)
- Intermediary function between programs, legal services, drafters, other departments



6) Example: GGPPA

- *Greenhouse Gas Pollution Pricing Act (GGPPA)*
 - Part of Bill C-74, the *Budget Implementation Act*, 2018, no.1 which received Royal Assent on June 21, 2018
 - Establishes the legal framework for the federal carbon pricing system – the “backstop”
 - Purpose is to help reduce Canada’s greenhouse gas emissions by ensuring that a carbon price applies broadly throughout Canada and increases over time
 - Two complementary components:
 - a charge on fossil fuels (Part 1 / Minister of Finance)
 - a performance-based pricing system for industrial facilities also known as the output-based pricing system (Part 2 / Minister of ECC)
 - ECC also responsible for Part 3 (Provincial GHG Pricing Regimes in the Federal House) and Part 4 (Annual Report)



6) Example: Drafting of GGPPA

- Preparation & Corporate memory
 - Carbon pricing & forward-looking research started prior to 2015
 - Fall 2015: participated in discussion / analysis of party platform / early constitutional analysis / able to assemble information quickly relying on documented corporate memory
 - Drafting instructions
- Expertise & experience in legislative policy
 - Advice on instrument choice : existing statute, new statute, regulations
 - Unresolved policy issue vs time pressure: kept drafting moving to generate reactions/decisions
 - Regularly debriefed Programs, Enforcement Branch
 - Tracked drafting decisions/ DIs-Bill correspondence / held weekly working level meetings and Senior management briefings



6) Example: Drafting of GGPPA

- Broad view of legislation and ability to make linkages
 - Enforcement schemes in environmental legislation
 - Consistency with CEPA legislative policy
 - Procedural environmental rights : transparency and annual reporting
- Access to senior management
 - Regular briefing & kept track of decisions
- Relationship
 - Finance Canada, Natural Resources Canada
- Review & Lessons learned



6) Other examples

- *Environmental Enforcement Act, 2009*
 - Government Agenda in 2006: « Tough on Crime »
 - Opportunity to modernize enforcement schemes of nine federal environmental statutes
 - Research and analysis on environmental enforcement legislative policy (administrative monetary penalties, creative sentencing, etc) ready on time
- Private Member's Bills
 - « Support with amendments » scenarios requires quick action
- Tracking Other Government Departments Bills Initiatives
- Tracking and forward-looking for each of ECCE's statutes



Conclusion



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