

THE INTERNATIONAL JOINT COMMISSION: A KEY BINATIONAL ORGANIZATION



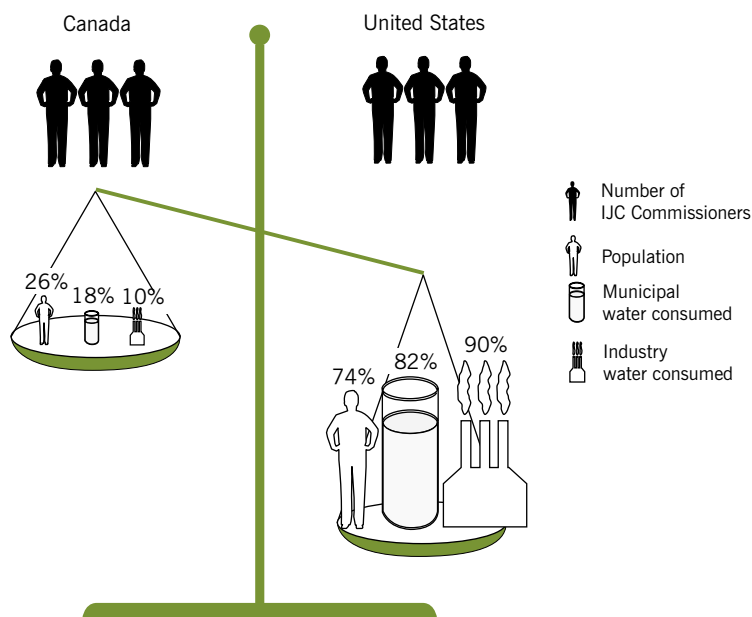
THE INTERNATIONAL JOINT COMMISSION: A KEY BINATIONAL ORGANIZATION

The issue

8.1 Established under the 1909 Boundary Waters Treaty between the United States and Canada, the International Joint Commission has an important role in protecting the shared waters of the Great Lakes. Three quarters of the population in the Great Lakes basin live on the American side. Americans account for 82 percent of the water taken from the lakes for household use and 90 percent of the water taken for industrial use.

8.2 Action by the U.S. is essential to the success of any cleanup efforts in the Great Lakes. The International Joint Commission holds both governments accountable for progress toward their commitments under the Great Lakes Water Quality Agreement. It is in Canada's interests to use the Commission and ensure that it can fulfil its role (Exhibit 8.1).

Exhibit 8.1 The International Joint Commission—Overseeing the Great Lakes



Source: Environment Canada Web site

The federal role

8.3 The Department of Foreign Affairs and International Trade is responsible for managing Canada's relations with the Commission and ensuring that Canada meets its obligations under the Boundary Waters Treaty. It shares the federal responsibility for the Great Lakes Water Quality

Agreement with the seven departments that participate in the Great Lakes program. Environment Canada is the lead department for that program.

8.4 The Great Lakes program serves to co-ordinate the federal government's efforts to meet its commitments under the Great Lakes Water Quality Agreement and respond to the recommendations made by the International Joint Commission in its biennial reports.

Our audit questions

8.5 Is the federal government meeting its commitments to the International Joint Commission under the Great Lakes Water Quality Agreement?

- Does it provide comprehensive and timely information the Commission needs to fulfil its responsibilities?
- Does it provide the Commission with appropriate technical and scientific expertise and the funds it needs to carry out its responsibilities effectively?

8.6 Does the federal government co-ordinate its activities in the International Joint Commission, the Commission for Environmental Co-operation (created under the North American Free Trade Agreement) and the Great Lakes Fishery Commission?

8.7 We did not audit the work of the International Joint Commission. We looked at the federal government's relationship with it, and the federal support for the Commission's activities in protecting the waters of the basin.

The story

8.8 The International Joint Commission is an independent body at arm's length from the governments of Canada and the United States. Its six commissioners, three from each country, are required to perform their duties impartially and in the mutual interests of both countries.

8.9 The Commission has two main responsibilities. It acts as a quasi-judicial body in approving projects that affect boundary waters and, in some cases, transboundary waters. And it makes non-binding recommendations on transboundary issues that both countries refer to it for study—known as its reference function. The Commission's February 2000 report on water uses, cited earlier in this chapter, is a component of the federal government's national strategy on bulk water removals. But the Commission conducts other important work. In 1999, for example, Canada and the United States agreed that it would study the impacts of changes in the water levels of Lake Ontario and the St. Lawrence River (see case study, Impacts of changes in water levels).

Providing information to the International Joint Commission

8.10 The Great Lakes Water Quality Agreement provides for the Commission to monitor and evaluate progress toward the objectives of the Agreement. Adding these responsibilities significantly expanded the Commission's role and established it as a "watchdog" over the public interest.

8.11 Under the Agreement, the federal government has to provide biennial progress reports to the Commission and respond to its requests for

information. Federal officials participate in boards and semi-annual meetings of the Commission and in State of the Lakes Ecosystem Conferences (SOLEC). The Commission uses the information these forums yield to evaluate and report biennially on both countries' progress toward their commitments under the Great Lakes Water Quality Agreement. The federal government is obliged to respond to recommendations in the Commissioner's biennial reports.

Impacts of changes in water levels

In October 1999 the International Joint Commission submitted a plan of study to the governments of Canada and the United States. The plan described the work required to review water levels and regulation of flow in the Lake Ontario and St. Lawrence River system.

These issues have received increased public attention in recent years because of the record-low water levels in Lake Ontario. The effects are felt downstream in the St. Lawrence River, and specifically in the Port of Montreal.

Water levels have an impact on social, economic, and environmental interests such as shipping, recreational boating, hydroelectric power generation, municipal water supplies, and riparian habitats. All of these affect the people who live and work along the shore.

According to the Commission, "The aim of the study is to determine whether it is possible to better benefit affected interests and the system as a whole in a manner that is consistent with the requirements of the Boundary Waters Treaty."

8.12 Canada has not provided enough information to the Commission.

The Great Lakes Water Quality Agreement specifies the reporting requirements for each of its 17 annexes. The Canadian government submitted its first two progress reports to the Commission in 1988 and 1990. The reports described in detail Canada's activities and progress. The information covered not only the annexes for which reports were required but all the annexes of the Agreement.

8.13 Since 1994, however, the reports of the Canada–Ontario Agreement have constituted the federal government's submission to the Commission. The past four reports have been less thorough than the first two in covering the annexes to the Agreement. They have not provided the Commission with enough information to assess Canada's progress under each annex. The 1999 progress report did feature an appendix that showed the links between the Great Lakes Water Quality Agreement annexes and the targets in the Canada–Ontario Agreement. Even with this useful cross-reference table, however, it is hard to tell where Canada has made progress and what targets it has yet to meet. This has a direct impact on the Commission's ability to perform its evaluation role.

8.14 Further, we found that even officials in the participating federal departments are not sure what activities are under way and how well Canada is keeping its commitments under the Water Quality Agreement.

8.15 The Commission has raised this problem with the federal government. And Environment Canada's management review of the Great Lakes program

acknowledged the need to improve progress reports so the Commission could better assess “how much has been achieved and what remains to be completed.”

8.16 Delays in answering requests for information. In the Water Quality Agreement, the federal government made a commitment to respond to the Commission’s direct requests for specific information. In most cases, we found that the government has taken a long time to respond to those requests; in some cases, it did not respond at all. For example, Foreign Affairs and International Trade replied promptly to a question about the impact of proposed reductions in federal research programs. However, the federal and provincial governments took almost three years to reply to a similar question about how federal and provincial budget cuts would affect their ability to meet their obligations under the Water Quality Agreement (Exhibit 8.2). Such delays could impair the Commission’s ability to protect the public interest.

Exhibit 8.2 Delays in explaining the impacts of budget cuts

October 1996	The Commission met with representatives of Canada and Ontario and asked how budget cuts would affect their ability to meet their obligations under the Great Lakes Water Quality Agreement. No response was provided.
March 1997	The Commission sent the two governments a letter repeating its request.
October 1997	At a semi-annual meeting with the Commission, a federal official said the information would be sent later that fall. It was not.
June 1998	In its 9th biennial report, the Commission reminded the federal and provincial governments that it had not received the information it wanted.
August 1999	The federal and provincial governments informed the Commission by letter that they were still committed to rehabilitate, protect, and conserve the Great Lakes basin ecosystem. The letter also said that while they would not meet some targets in the Canada–Ontario Agreement on schedule, they would meet the majority and would make significant progress toward others.

Providing technical expertise

8.17 Active participation of federal officials. To fulfil its quasi-judicial role and its reference function, the Commission relies on the expertise of federal officials, acting in their personal and professional capacities and not as representatives of their governments. Their participation is important, for several reasons. First, the information and expertise they provide enable the Commission to adequately consider Canadian concerns along the border. Second, in participating, federal officials benefit from U.S. scientific expertise and capability. Third, federal officials can help departments reach consensus and agreement on the Commission’s recommendations.

8.18 Over the years, officials of Environment Canada, Fisheries and Oceans, Transport Canada, Health Canada, and other federal departments have been active on the Commission's advisory boards, boards of control, and reference study teams.

8.19 Participation now at risk. Program Review led to large cuts in departmental programs and the loss of scientific and technical capabilities. Further, the February 2000 Budget announced significantly lower funding than the Great Lakes 2020 program had requested. This will likely limit the support that departments can provide to the Commission.

8.20 In our opinion, reduced federal involvement on boards and reference study teams could undermine the federal government's efforts to ensure that Canadian interests in the Great Lakes basin are protected and the ecosystem is managed effectively.

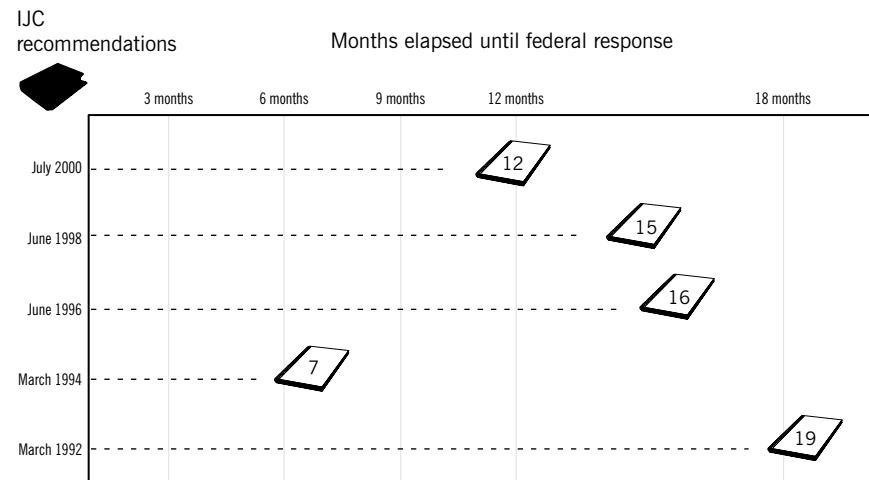
Limited consideration of the Commission's recommendations

8.21 Under the Great Lakes Water Quality Agreement, the federal government is required to consider the Commission's recommendations. The government has to respond formally to each recommendation, though it may decide what action it will take, if any.

8.22 We found that Environment Canada has consulted the appropriate federal and provincial agencies about the Commission's recommendations. However, the federal responses were not always comprehensive and were often delayed (Exhibit 8.3). We found no evidence that federal officials had considered the implications of accepting the recommendations, assessed the resources required to implement them, or evaluated their impact on existing federal objectives or federal programs.

8.23 Further, the government has not established formal follow-up procedures to ensure that it completes the actions it identifies in its response. Instead, follow-up is ad hoc and action is left to the person who prepares the response.

Exhibit 8.3 Delays in federal response to the International Joint Commission's recommendations



8.24 The lack of careful consideration and follow-up of the Commission's recommendations undermines the government's credibility and the Commission's ability to fulfil its mandate. And there are potential implications for the health of the Great Lakes when the federal government does not act quickly on identified threats to the environment or when it delays its response.

8.25 Four references to the Commission since 1997 directly concerned federal programs in the Great Lakes. We found that the federal government paid more attention to the recommendations in the Commission's reference reports than to those in its biennial reports. But we still saw similar weaknesses—delays, and no follow-up to ensure that the federal government did what it had said it would do in its response.

Funding the International Joint Commission

8.26 **Delays and uncertainty.** The Canadian and U.S. governments share the funding of the Commission. Foreign Affairs and International Trade is responsible for finding the money to fund Canada's share of reference studies, but it has no established way of doing this. Funds have been provided ad hoc, either by the Treasury Board or from the regular budgets of the federal departments involved. Those departments have covered part of the costs by providing professional services or in-kind support—such as office space—for the studies.

8.27 Program Review and budget cuts in federal departments have reduced their ability to fund reference studies. Federal officials, including senior management, must search for funds each time a new reference is approved—often after the reference is given to the Commission. There is no prior planning. Delays cause complications for the Canadian section of the Commission, particularly if the U.S. has provided funds and the U.S. section has begun its part of the study.

8.28 The growing number and importance of references to the Commission by the Canadian and U.S. governments since 1997 suggests that the federal government is renewing its commitment and using the Commission more frequently. Over the next five years, in addition to the \$12 million study of water levels, the governments expect to make seven new references with a total cost of roughly \$9 million. However, the current ad hoc approach to funding references puts at risk Canada's ability to defend its rights and meet its obligations under the Boundary Waters Treaty.

Ensuring a consistent federal approach

8.29 In addition to the International Joint Commission, there are two other important international institutions whose mandates cover the Great Lakes: the Great Lakes Fishery Commission and the Commission for Environmental Co-operation.

8.30 The Commission for Environmental Co-operation (created under the North American Free Trade Agreement) has authority to consider transboundary and border issues. So there is some potential for overlap between its activities and those of the International Joint Commission. Both

organizations, for instance, are active in controlling toxic chemicals. The International Joint Commission has several times brought its concern about overlap to the attention of federal officials in Foreign Affairs and International Trade as well as Environment Canada. The four-year review of the North American Agreement for Environmental Co-operation raised the same issue with the federal government in June 1998.

8.31 We found that co-operation between the two commissions has been limited to ad hoc activities—discussions between staff, for example, and some joint work on air quality problems. The federal government has not fostered systematic collaboration in scientific and technical activities such as data collection and inventories, which could benefit both commissions.

8.32 The International Joint Commission and the Great Lakes Fishery Commission have collaborated on invasive species, and they share information on a regular basis. However, there is no formal venue for tackling issues of common concern to both.

Conclusion

8.33 The federal government has not provided the International Joint Commission with enough information to properly assess Canada's progress under the Great Lakes Water Quality Agreement. It has delayed answering the Commission's requests for information and responding to its recommendations. The federal government does no formal follow-up to ensure that it will complete the actions it identifies in its responses to the Commission's recommendations.

8.34 Over the years, federal officials have provided technical expertise to the Commission's boards and study teams. However, the loss of scientific and technical capabilities as a result of budget cuts is putting this support at risk. Finally, the government has delayed its share of funding for the Commission's reference studies.

What we recommend

8.35 Our findings show that the federal government needs to provide better and more timely information to the International Joint Commission, follow up on its recommendations, and ensure that resources are adequate.

8.36 The federal government, through the Department of Foreign Affairs and International Trade and with the support of Environment Canada and all other federal departments participating in the Great Lakes ecosystem program, and other partners as required, should comprehensively review Canada's progress under the Great Lakes Water Quality Agreement and report this to the International Joint Commission as the Agreement requires.

8.37 The Department of Foreign Affairs and International Trade should establish a formal means to ensure the systematic consideration and follow-up of the Commission's recommendations.

8.38 Before the Department of Foreign Affairs and International Trade refers an issue to the Commission, it should ensure that the federal government can deliver the needed funds without delay.

(See Summary for departmental responses.)

Our audit objectives and main findings

Holding the federal government to account		
<p>1 Has the government fulfilled its commitments?</p>	<p>Commitments</p>	<p>Results</p>
	<p>Provide data and other information to the International Joint Commission (IJC) in progress reports; and respond to specific information requests.</p>	<p>In the last progress reports, the federal government did not provide the IJC with enough information to assess Canada's progress under the Great Lakes Water Quality Agreement.</p> <p>The government has delayed answering IJC requests for information.</p>
	<p>Provide technical and scientific expertise through representation on IJC advisory boards and boards of control.</p>	<p>Active participation of federal officials in past years is now at risk because of reductions in resources and scientific capacity.</p>
	<p>Consult on the recommendations contained in all IJC reports and consider actions as may be appropriate.</p>	<p>The government has given only limited consideration to IJC recommendations.</p> <p>Relevant federal officials were consulted on the recommendations, but federal responses were often delayed and not always comprehensive. There was no follow-up process to ensure that the actions proposed in the response were implemented.</p>
<p>Provide the funds to allow the IJC to carry out its responsibilities effectively.</p>	<p>Provision of funding for IJC references has been slow and uncertain.</p>	
Assessing the government's performance		
<p>2 Has the government applied good management practices?</p>	<p>Strengths</p>	<p>Weaknesses</p>
	<p>There have been discussions between the IJC and the Commission for Environmental Cooperation (CEC) and some joint work on air quality issues.</p> <p>The IJC and the Great Lakes Fishery Commission (GLFC) have collaborated on invasive species. There is good transfer of information between the two organizations.</p>	<p>There is no systematic collaboration between the IJC and CEC on scientific and technical work that could benefit both organizations.</p> <p>There is no formal venue for tackling issues of common concern to the IJC and GLFC.</p>