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**20TH ANNUAL GREAT LAKES WATER CONFERENCE: “WATER IN COURTS”**  
A VIRTUAL CONFERENCE ORGANIZED BY THE UNIVERSITY OF TOLEDO COLLEGE OF LAW  
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**CLE Materials**

Barking Up the Wrong Tree? Exploring Climate Litigation Against Governments and Carbon Majors Instead of Suing the IJC for High Water Levels in Lake Ontario

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The issue: in 2017 and 2019, a combination of heavy rains, melting snow and a sudden temperature increase led to devastating flooding across many areas throughout Lake Ontario and St Lawrence River, affecting residents of the Bay of Quinte Mohawks community, shoreline homeowners and businesses in both the US and the Canadian side. Those affected have blamed the flooding on the International Joint Commission (IJC)'s Plan 2014, a regulation plan for determining the flows in Lake Ontario and the St. Lawrence River, through the Moses-Saunders Dam and other control works located between Cornwall, Ontario and Massena, New York. NY has sued the IJC in New York State Supreme Court, and Canadian and US mayors and civil groups are exploring similar lawsuits against the IJC. It is however extremely hard to successfully sue an international organization such as the IJC in national courts. More importantly, there are questions whether water level controls in isolation can offer an adequate response to the increased risk of flooding in the Great Lakes, which science indicates will be exacerbated with climate change. Can climate litigation offer a better prospect to prod the US and Canadian governments to guide the IJC to create a comprehensive bilateral climate adaptation plan to the Great Lakes that includes a plan to prevent flooding, mitigate flooding impacts and compensate for losses and damages?

**Canadian and American news:**

- Garret Wilson, Mlive news: “As the Great Lakes surge to record heights, coastal areas face time of reckoning” (28 March 2020)  
<<https://www.newsbreak.com/new-york/massena/news/1534631888955/as-the-great-lakes-surge-to-record-heights-coastal-areas-face-a-time-of-reckoning>>
- Derek Baldwin Official says IJC won't pay for flood damages, The Intelligencer (4 December 2019)  
<<https://www.intelligencer.ca/news/local-news/official-says-ijc-wont-pay-for-flood-damages>>

- Thomas J. Prohaska “Lake Ontario homeowners on both sides of border want to sue IJC” The Buffalo News ( 28 Aug 2019)  
<[https://buffalonews.com/news/local/lake-ontario-homeowners-on-both-sides-of-border-want-to-sue-ijc/article\\_110adf4f-3aa6-5a99-9705-25698049882b.html](https://buffalonews.com/news/local/lake-ontario-homeowners-on-both-sides-of-border-want-to-sue-ijc/article_110adf4f-3aa6-5a99-9705-25698049882b.html)>
- Steve Orr, “NY sues IJC over flood damage on Lake Ontario shoreline”, Democrat and Chronicle (9 October 2019)  
<<https://www.democratandchronicle.com/story/news/2019/10/09/lake-ontario-water-level-state-sue-ijc-1-b-flooding-damage/3920613002/>>
- Brian Kelly, “Congressmen move to strip lawsuit immunity from Lake Ontario regulators” NNY360 News (2 Mar 2020)  
<[https://www.nny360.com/news/stlawrencecounty/congressmen-move-to-strip-lawsuit-immunity-from-lake-ontario-regulators/article\\_893cc3f2-96b5-5676-8e0a-3b214d07b3bf.html](https://www.nny360.com/news/stlawrencecounty/congressmen-move-to-strip-lawsuit-immunity-from-lake-ontario-regulators/article_893cc3f2-96b5-5676-8e0a-3b214d07b3bf.html)>
- Jennifer Basa “Thousand Islands resident files human rights claim against the IJC”, Global News (24 October 2019)  
<<https://globalnews.ca/news/6078630/thousand-islands-human-rights-ijc/>>

## Suing the IJC

### USA:

- Civil action filed by New York state against the International Joint Commission for damages related to Lake Ontario shoreline flooding in 2017 and 2019. The complaint was filed Oct. 9, 2019 in New York state Supreme Court.  
<<https://www.documentcloud.org/documents/6465241-New-York-State-DEC-v-IJC.html>>
- Jam v. International Finance Corp. [restricting immunity if action of international organization is of commercial nature but keeping immunity for other activities].  
<[https://www.supremecourt.gov/opinions/18pdf/17-1011\\_mkhn.pdf](https://www.supremecourt.gov/opinions/18pdf/17-1011_mkhn.pdf)>
- Nancy Perkins & Sally Pei, “Jam v. International Finance Corp.” AJIL case comment Issue 3 Volume: 23 (May 01, 2019)  
<<https://www.asil.org/insights/volume/23/issue/3/jam-v-international-finance-corp>>

### Canada:

- Foreign Missions and International Organizations Act (S.C. 1991, c. 41)  
<<https://laws-lois.justice.gc.ca/eng/acts/f-29.4/index.html>>
- International Joint Commission Immunity Order (CRC, c, 1315)  
<[https://laws-lois.justice.gc.ca/eng/regulations/C.R.C.,\\_c.\\_1315/page-1.html](https://laws-lois.justice.gc.ca/eng/regulations/C.R.C.,_c._1315/page-1.html)>
- Amaratunga v. Northwest Atlantic Fisheries Organization [2013] 3 SCR 866  
<<https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/13364/index.do> >

## From a tree view to the forest view: only a comprehensive Great Lakes bi-national climate adaptation plan may remedy the problem in the long run

- Report by Doug McNeil, Special Advisor to the Government of Ontario, on the 2019 flood events, including recommendations for improving flood resilience and enhancing public safety. <<https://www.ontario.ca/document/independent-review-2019-flood-events-ontario>>
- Great Lakes Water Quality Board Reports on the need for a bi-national climate adaptation plan: <<https://www.ijc.org/en/wqb/climate-change-and-adaptation-great-lakes> >

## What other potential avenues in Courts? Exploring Climate Litigation

- Ben Batros and Tessa Khan. "Thinking Strategically About Climate Litigation." Available at SSRN 3564313 (2020). <<https://www.openglobalrights.org/thinking-strategically-about-climate-litigation/>>
- Geetanjali Ganguly, Joana Setzer, and Veerle Heyvaert. "If at first you don't succeed: suing corporations for climate change." Oxford Journal of Legal Studies 38.4 (2018): 841-868. <<https://www.lse.ac.uk/granthaminstitute/publication/global-trends-in-climate-change-litigation-2020-snapshot/>>