

St. Marys seeks \$275M over scuttled quarry

Robert Benzie

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A Brazilian-owned corporation is alleging its bid to build a massive quarry outside Hamilton was scuttled by the Liberal government for political reasons.

St. Mary's Cement has served notice it plans to file a \$275-million arbitration claim against the federal government under the North American Free Trade Agreement, charging the province intervened last year to help Grits living nearby.

"This is a case about governance gone very wrong," St. Marys, the Canadian subsidiary of Brazil's Votorantim Cimentos, said in a 15-page claim.

Noting opponents of the quarry in the former town of Flamborough included residents who were former Liberal political aides, the company alleges it is the "victim of ... unfair behaviour.

"These prominent Liberal advisers were secretly able to convince ministers of the governing Ontario Liberal government and premier's and ministers' staff members to use unprecedented unilateral ministerial powers targeting only lands owned by SMC and interfering with SMC's vested property rights," it claims.

The allegations, which the provincial government denies, have yet to be proven in court.

The company actually filed its notice of intent with the federal government in May. That's about the same time St. Marys applied to Ontario's Superior Court of Justice for a judicial review of Ontario's decision to scuttle the proposed amabel dolostone quarry on a 158-hectare site in Carlisle.

Graham Flint, a homeowner near the proposed quarry and the spokesperson for a community group opposed to the development, said he's "in shock" over the latest twist in the seven-year quarry saga.

"If the province doesn't have the right to make land-use planning decisions, who the heck does?" he asked.

Flint said the company's claims of political collusion are "a huge insult" to agencies like the conservation authority, public health department and Environment Commissioner's office that weighed in on the development in the past.

St. Marys' officials declined to comment Thursday.

But Barry Appleton, counsel on the NAFTA application, said there is still time for "high-level consultation" between the company and various levels of government.



Graham Flint. Hamilton, April 13, 2010 - Graham Flint, spokesperson for Friends of Rural Communities stands at the corner of 11th Concession E and Millborough Line, site of proposed quarry. Gary Yokoyama/Hamilton Spectator file photo
Source: Hamilton Spectator file photo

If that doesn't happen, Appleton said the company can file an arbitration claim and trigger the formation of a three-member international panel to hear the case.

A hearing, which is often but not always public, could be heard in Canada or the U.S.

The panel can order compensation but doesn't have the authority to enforce changes in law, Appleton said.

In April 2010, then minister of municipal affairs and housing Jim Bradley invoked a rare minister's zoning order to prevent the planned quarrying of aggregate to make concrete.

It is believed that has only happened three times before — to stop the Adams mine garbage dump in Northern Ontario and to protect the Oak Ridges Moraine north of Toronto and Lake Erie's Marcy's Woods nature reserve.

Still, St. Marys appealed that decision to the Ontario Municipal Board. Four months ago, the government issued a declaration of provincial interest enabling Queen's Park to overrule the OMB.

Bradley, now minister of community safety, said Wednesday he acted "in the interest of the people of Ontario" due to the potential harm from the quarry to groundwater that feeds wells, wetlands and streams.

"Water supply was a very, very important component of this. The local municipalities were opposed to it. Local citizens were opposed to it and it was done on that basis. It was extremely unpopular locally," he said.

Rick Bartolucci, who succeeded Bradley as minister for municipal affairs, said the province would help the federal government fend off St. Marys' lawsuit.

"Any assistance they want from the government of Ontario, we're more than happy to give them that assistance. The reality is we've always acted in the best interests of the people in the area with the unanimous consent of the people in the area," said Bartolucci.

Local Liberal MPP Ted McMeekin (Ancaster-Dundas-Flamborough-Westdale) fought hard against the project, which could have seen more than 1,000 trucks a day hauling gravel from the site.

Last year, Environmental Commissioner Gord Miller praised the government for "a really significant decision" to stop the quarry.

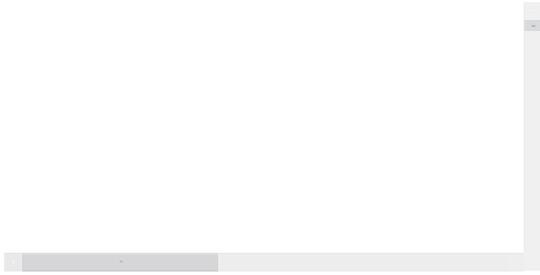
St. Marys president Richard Olsen said the firm had to take the "exceptional actions" of a NAFTA suit.

"We are confident that if the quarry application is assessed on its merits, it would be approved," Olsen said in a statement. "Beyond that, the quarry would deliver substantial benefits to the taxpayers of Ontario in building hospitals, schools and roads at reasonable cost, in an environmentally sustainable manner."

- with files from Matthew Van Dongen

Toronto Star

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