

OPP investigates Ontario Liberal government after document deletion complaint

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TORONTO — Ontario's Liberal government is facing another criminal investigation after a wind power company complained to police about the alleged destruction of documents in a lawsuit it filed against the province.

Trillium Power Wind Corp. has alleged in a lawsuit that government officials destroyed documents after the company sued in a case that stemmed from the government's cancellation of a Lake Ontario wind project.

OPP Det.-Supt. Dave Truax said police began an investigation in the last couple of weeks after Trillium made a complaint.

Truax would not say that the allegations are about destruction of documents, but that the probe is looking into elected officials and/or civil servants, and that there is a "co-mingling" of issues with Trillium's civil suit.

Trillium lawyer Morris Cooper alleges the documents were destroyed around the same time as emails are alleged to have been deleted in relation to the Liberals' cancellation of two gas plants.

In that case, former premier Dalton McGuinty's chief of staff and deputy chief of staff have been charged with breach of trust and mischief.

Premier Kathleen Wynne said the government was not aware of any Trillium-related investigation until Wednesday, but that it will cooperate fully.

A spokesman for Energy Minister Bob Chiarelli said the government takes its record-keeping obligations very seriously.

"We're committed to being open, accountable, and transparent," Dan Moulton wrote. "Under Premier Wynne, we have new rules in place, including mandatory record-keeping rules and staff training and a new Accountability Act, which prohibits the wilful deletion of records, and creates a penalty."

Trillium's lawsuit arose in 2011 after the province cancelled the company's wind project in Lake Ontario, about 28 kilometres from Kingston, Ont. At the same time, the government issued a moratorium on offshore wind farms, saying more scientific studies were needed.

The company alleges the government cannot back its claim that the decision to cancel the project was a "core policy" decision.

In the legislature Wednesday, Progressive Conservative Leader Patrick Brown accused the Liberals of issuing the moratorium and cancelling the project for political reasons.

"Why did the Liberal cabinet cancel the offshore wind projects?" he asked. "Is it because the current economic development and trade minister was worried about the offshore wind development near the Scarborough bluffs (in his riding)? Was it to save the Liberal seat in Kingston? Or was it because Trillium never donated to the Ontario Liberal Party?"

NDP Leader Andrea Horwath noted this is not the first, or even the second, criminal investigation this government has faced.

In addition to the Trillium and gas plants investigations, the OPP is looking into financial irregularities at the Ornge air ambulance service, and potential breaches of a bribery section of the Election Act related to a 2015 byelection in Sudbury, Ont. A Liberal fundraiser was charged in a criminal investigation over the same byelection allegations, but those charges were recently stayed.

Toronto criminal lawyer [Jacob Stilman](#) tells AdvocateDaily.com that, "We seem to be witnessing an increase in the number of police investigations of government activities. However, whereas the Senate investigations focused primarily on single individuals purportedly padding their own expense accounts — albeit with profound political implications — the investigations which are dogging the Liberal government in Ontario are much more significant from a political perspective.

"The gas plant investigation, and now the Trillium Power Wind case, target the very workings of the highest echelons of the cabinet, whether under the previous premier or the current one," says Stilman. "In that sense these investigations are really quite explosive politically. However, because the subject matter is less sexy than the Sen. Mike Duffy case, it is likely to gain less traction in the public mind, and might just be perceived as Queen's Park inside baseball."

Stilman notes that a civil case leading to a criminal investigation is something that isn't seen very often, but there is no reason why it should not happen.

"Just as a good piece of investigative journalism can result in a criminal investigation, a civil suit which unearths potential criminal wrongdoing can lead to charges as well. However, the police are often reluctant to get involved if a case is just 'about money,' and tend to defer to the civil process in most cases.

Stilman says the difference here is that the civil proceedings in the Trillium case, as well as in the gas plant situation, resulted in an alleged destruction of documents.

"When a government destroys information for a political purpose this is clearly a breach of trust, as well as an obstruction of justice," he notes. "It is important to bear in mind that 'obstruction of justice' includes an act which tampers with the integrity of any type of judicial proceeding — it need not be confined to witness or evidence tampering in purely criminal proceedings."

Stilman adds that these types of cases don't happen every day, but "perhaps they ought to more frequently."

He says there are examples historically but he notes the problem with charging elected politicians with criminal offences is that "they are usually insulated by the people around them and can plead ignorance of actual wrongdoing.

"Ultimately these politicians may pay a price politically when the winds of suspicion whirl about them, but are extraordinarily unlikely to have to face actual charges," says Stilman.

In its statement of claim, Trillium alleges that government workers assigned a code name in discussions of the wind project to hide communications.

Trillium alleges that through the litigation process it discovered emails to and from then-premier McGuinty's office that were not listed in records the government produced. The company alleges that destruction of evidence happened about a year after the lawsuit was launched.

None of Trillium's allegations has been proven in court.

In its statement of defence, the government denies there was a code name and says it was a coincidence that the moratorium and cancellations were issued just before Trillium's financing was set to close.

Energy Minister Bob Chiarelli defended the ongoing offshore wind moratorium.

"There are thousands of land-based wind turbines around the world backed by decades of science and experience," he said. "Offshore wind in fresh-water lakes is still in early stages of development worldwide, and that's why we still have a moratorium on offshore wind development."