Federal Court

Cour fédérale

Date: 20221123

Docket: T-1620-21

Citation: 2022 FC 1608

Ottawa, Ontario, November 23, 2022

PRESENT: The Honourable Madam Justice Strickland

BETWEEN:

DANIEL HILDEBRAND

Applicant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

[1] This is the judicial review of a decision of the Civilian Review and Complaints Commission for the Royal Canadian Mounted Police [CRCC] which found that the Royal Canadian Mounted Police [RCMP] reasonably investigated allegations of forgery raised by Daniel Hildebrand [Applicant].

Background

[2] This matter has a long procedural history, both pertaining to the Applicant's dispute with the County of Grand Prairie, Alberta [County] concerning development permit(s) for the Applicant's residential property, related allegations of forgery by the County's employees, and complaints by the Applicant with respect to the decision by the RCMP not to lay charges with respect to his forgery allegations.

[3] As a preliminary point, I note that the Applicant is self-represented. Much of his argument and his materials are concerned with his view that the County's treatment of the development permit(s) was in error. The Applicant has litigated related matters in the Court of Appeal of Alberta, the Court of Queen's Bench of Alberta (as it was then), and in the Provincial Court of Alberta. This application for judicial review is concerned only with the Final Report of the Chairperson of the CRCC dated March 9, 2020. The only issue before this Court is whether the CRCC reasonably found that the RCMP investigation of the Applicant's forgery allegations was reasonable. The merits of the County's decisions related to the operation of the development permit are not the subject of this judicial review. Accordingly, they will not be addressed in these reasons, other than to provide context.

[4] That said, the background to this matter can be summarized as follows.

Applicant's dispute with the County

[5] By notification letter dated April 4, 2007, the Applicant was advised by the County that his development plan application for the construction of a residential property had been approved, with conditions [2007 Original Permit]. On March 31, 2010, concerned about the Applicant's compliance with the permit conditions, the County issued a stop work order. On or about June 30, 2010, the Applicant applied for a permit renewal [2010 Renewal Application]. On July 23, 2010 the County advised the Applicant that his permit renewal application was refused for the following reasons:

> The basement of his house was below the 1:100 year flood line and subject to flooding thus bringing a liability issue to the County. The improvements made by the applicant onto County property must be removed and in doing so increases the risk of flooding to the landowner. Further, the County is of the opinion that the walkout basement could be closed and sealed or the house should be demolished and because the applicant has shown an unwillingness to provide these remedies on his own by refusing the development as proposed, the County can seek these remedies.

[6] The Applicant appealed to the Subdivision Appeal Board [SDAB] which then held a public hearing. The Applicant attended the hearing with his then counsel who made submissions on his behalf. On December 2, 2010, the SDAB issued its decision that the Applicant be granted a development permit, subject to specified conditions. These included that the walkout patio door in the basement of the residence be removed and replaced with a window above the 1:100 year (one in a hundred years) flood line to be constructed in compliance with the Alberta Building Code, that a variance be granted on a cantilevered overhang, and that exterior and interior work be completed within the subsequent 6-12 month period.

[7] The SDAB explained that the recommendation for the removal of the walkout patio door and replacement with a window was based on information that had previously been provided to the Applicant, prior to construction, and that he had chosen to make changes to the elevations which were established for the development, lot, and property. He had the opportunity to correct this at that time but choose not to do so.

[8] The SDAB decision was not appealed or made the subject of an application for judicial review.

[9] On June 10, 2013, the County issued a second stop work order on the basis that the property was not in compliance with bylaws as the SDAB December 2, 2010 development permit conditions had not been met [2013 Stop Work Order]. Accordingly, the Applicant's development was no longer valid. He was ordered to apply for and obtain a new permit and to cease and desist from his continued unauthorized entrance, and his conducting of excavation work on, adjacent public utilities lands.

[10] The County registered a Caveat in support of the 2013 Stop Work Order. In response, the Applicant filed a Notice to Take Proceedings on a Caveat. In turn, the County filed an Originating Application in the Court of Queen's Bench of Alberta. The case management judge in that matter dismissed the Applicant's application in its entirety, including his request for an order directing that the County provide a development permit pursuant to the SDAB decision. The Applicant appealed to the Court of Appeal of Alberta which found that the Applicant had

made out none of his arguments and dismissed his appeal (*Grande Prairie (County No. 1 v Hildebrand, 2018 ABCA 53* [*Hildebrand ABCA*]).

[11] In its decision, the Alberta Court of Appeal noted that on August 12, 2016, the Applicant had launched a civil action in the Court of Queen's Bench of Alberta against the County, County officials and numerous others alleging breach of statutory and other duties, defamation and various forms of misconduct and sought a permanent injunction and damages. A partial discontinuance in relation to the County, County officials and numerous other was filed, the status of the remainder of the action was unknown (*Hildebrand ABCA* at para 31).

[12] In 2020, the Applicant filed two actions against two employees of the County, Paula McDermott and Shelly Page, in the Provincial Court of Alberta. The Provincial Court noted that the claims asserted that the defendants arbitrarily altered the Applicant's legal documents without his knowledge or consent, that the correct information that he had provided was erased and whited out and new false information was inserted, creating a false document utilizing a photocopy of his signature from the original document, to his prejudice. Further, from his materials and oral argument, the Applicant had characterised the actions as forgery. The Provincial Court stated that, aside from the question of whether it had jurisdiction over the claim, the Applicant's Queen Bench Statement of Claim filed on August 12, 2016 contained what amounted to the same factual allegations as found in the two claims before it. The Provincial Court found that the Applicant knew of the complaint and sued in 2016. He chose to discontinue that action and was statute barred from bringing the new actions in Provincial Court.

Allegations of forgery

[13] In June 2013, the Applicant attended the Grande Prairie RCMP Detachment, alleging that his 2010 Renewal Application had been the subject of a criminal forgery. Constable Marchak of the RCMP was assigned to investigate the Applicant's forgery allegation. In October 2013, Constable Marchak advised the Applicant that charges would not be laid as the Applicant's dispute with the County was a civil matter.

[14] In June 2016, the Applicant met with RCMP Assistant Commissioner Ferguson regarding his forgery allegations, as well as new allegations of forgery. These new allegations concerned his 2007 Original Permit which the Applicant alleged was altered after and in response to the RCMP commencing its investigation in 2013. At this meeting, the Applicant gave Assistant Commissioner Ferguson a large binder of what the Applicant considered to be supporting documents. Assistant Commissioner Ferguson turned the binder over to Superintendent McKenna who tasked Constable Ludlow with conducting a review of any new information provided by the Applicant in relation to Constable Marchak's 2013 investigation.

[15] By letter dated September 19, 2016, Constable Ludlow advised the Applicant that he had completed his review and had concluded that no reasonable grounds existed to support a criminal charge of forgery or any related offence. Further, that it was clear that the ongoing critical issue was the 1:100 year flood line, which was not an issue that the police could resolve.

[16] On November 24, 2016, the Applicant filed a formal complaint with the CRCC alleging that: certain members of the RCMP failed to stop harassment and to charge certain individuals with harassment and forgery; failed to send his complaint to an outside investigation process which the Applicant had been told would be done; made conclusions based on false information; acted without regard to the facts; and, singled the Applicant out for unknown reasons.

[17] On November 14, 2017, the Applicant signed a Public Complaint – Part A Intake in which his allegations of neglect of duty against named officers were summarized as: (1) failed to assist in stopping and criminally charge perpetrators with harassment and forgery; (2) failed to fulfill a promise to obtain a search warrant for original forged documents; (3) made statements concerning the destruction of allegedly forged original documents; (4) conducted a negligent investigation; (5) provided the Applicant with a false interpretation of forgery; and (6) were deceitful in regard to document analysis and forensic services. By letter dated April 17, 2018, the RCMP informed the Applicant of its finding that the Applicant's November 24, 2016 complaint was unsubstantiated and provided detailed reasons for reaching this conclusion, responding to each of the six allegations of neglect of duty. The letter constituted a final report as required by s 45.64 of the *Royal Canadian Mounted Police Act,* RSC 1985, c R-10 [RCMP Report].

[18] On June 18, 2018, the Applicant requested that the CRCC review the RCMP Report, through a public complaint.

[19] The CRCC issued the Commission's Final Report on March 9, 2020 and determined that the RCMP's disposition of the Applicant's complaint was reasonable.

[20] The CRCC’s decision is the decision under review in this application for judicial review.

Relevant Legislation

Royal Canadian Mounted Police Act, RSC 1985, c R-10 [*RCMP Act*]

Definitions

2(1) In this Act,

……

Commission means the Civilian Review and Complaints Commission for the Royal Canadian Mounted Police established by subsection 45.29(1); (*Commission*)

…….

Commissioner means the Commissioner of the Royal Canadian Mounted Police; (*commissaire*)

Investigation of Complaints by the Force

Right to refuse or terminate investigation

Investigation by the Force

45.6 (1) Subject to subsection (2) and section 45.61, the Force shall investigate, in accordance with the rules made under section 45.62, any complaint made under this Part.

………

45.61 (1) The Commissioner may direct the Force to not commence or continue an investigation of a complaint, other than a complaint initiated under subsection 45.59(1), if, in the Commissioner’s opinion,

> (a) any of the reasons for which the Commission may refuse to deal with a complaint under paragraph 45.53(2)(a), (b) or (c) or subsection 45.53(3) applies; or
>
> (b) having regard to all the circumstances, it is not necessary or reasonably practicable to commence or continue an investigation of the complaint.

……

Report

45.64 As soon as feasible after the investigation of a complaint is completed, the Commissioner shall prepare and send to the complainant, the member or other person whose conduct is the subject matter of the complaint and the Commission a report setting out

(a) a summary of the complaint;

(b) the findings of the investigation;

(c) a summary of any action that has been or will be taken with respect to the disposition of the complaint; and

(d) the complainant's right to refer the complaint to the Commission for review, within 60 days after receiving the report, if the complainant is not satisfied with the disposition of the complaint.

Referral of Complaints to Commission

Referral to Commission

45.7 (1) A complainant who is not satisfied with a decision under section 45.61 or a report under section 45.64 may, within 60 days after being notified of the decision or receiving the report, refer the complaint in writing to the Commission for review.

…

Review by Commission

45.71 (1) The Commission shall review every complaint referred to it under section 45.7.

Commission satisfied

(2) If, after reviewing a complaint, the Commission is satisfied with the Commissioner's decision or report, the Commission shall prepare and send a report in writing to that effect to the Minister, the Commissioner, the complainant and the member or other person whose conduct is the subject matter of the complaint.

Decision Under Review

[21] The CRCC set out background facts and, in reaching its conclusion that the RCMP's disposition of the Applicant's complaint was reasonable, addressed each of the allegations made by the Applicant in his complaint.

[22] The CRCC concluded that:

1) Constable Marchak had interviewed the Applicant and two employees of the County and reviewed substantial documentation provided by the Applicant as well as the impugned permit application. He also researched the elements of the offence of forgery and consulted with a Crown Attorney. This, together with the exercise common of sense and discretion, indicated that Constable Marchak's investigation was reasonable considering the gravity of the alleged offence and the public interest. The CRCC found, given the circumstances, that Constable Marchak conducted a reasonable investigation into the Applicant's complaint and reached reasonable conclusions based on his investigation.

2) Assistant Commissioner Ferguson did not promise the Applicant that police would obtain a search warrant. Assistant Commissioner Ferguson had stated that it was not his practice, during meetings with members of the public, to make promises as to specific investigative steps that would be taken. His only comment to the Applicant was that he would pass along the information provided and have someone look into it. Further, the paralegal who attended the meeting with the Applicant gave a statement to the public complaint investigator that, while the Assistant Commissioner said that a

search warrant would be necessary to obtain documents in the possession of the County, he did not make a firm promise that the warrant would be obtained.

3) In 2016, Constable Ludlow conducted a reasonable review of the 2013 investigation and a reasonable investigation into the Applicant's new allegation. While the Applicant took issue with use of the term "review" rather than "investigation", Constable Ludlow's review went well beyond simply examining the Applicant's additional documents. In effect, it was a new investigation which was thorough, thoughtful and very well documented. Constable Ludlow had stated that most of the Applicant's concerns involved matters that had already been investigated by police, but he still took many substantive investigative steps. In that regard, he prepared a detailed report describing the facts of the case and the steps he had taken, which report and its findings the CRCC described. The CRCC found that Constable Ludlow's conclusions were based on a proper exercise of discretion and common sense, all available information and, evidence and advice from a Crown Attorney.

4) That it was reasonable in the circumstances for police not to obtain a search warrant as they had determined that there were no reasonable grounds to believe that a criminal offence had occurred or that obtaining the existing documents in possession of the County would reveal evidence of an offence.

5) Solicitors for the County had advised Constable Ludlow that the only existing copy of the Applicant's permit applications was a colour photocopy. The Applicant photographed the 2007 Original Permit and sent this to Constable Ludlow as well as a copy of the 2010 Renewal Application (which was already in the file). Constable

Ludlow consulted with forensic experts who advised him that ink dating is only reliable for samples less than 2 years old. Therefore, ink dating would not be possible even if the original documents were available, and no further information could be obtained from copies of the permits. Even if the Applicant's allegation that Superintendent McKenna told him, during a telephone conversation, that the original permit documents may no longer exist, that speculation was not incorrect and it was reasonable to say so.

6) Constable Ludlow was not deceitful towards the Applicant regarding document analysis and whether or not forensic examination of documents was conducted as part of the investigation. While he may have told the Applicant early in his review that document analysis was an option the police might explore, when he learned that only copies of the permits existed and that ink dating would be inconclusive, he concluded that there would be no investigative benefit from conducting forensic document analysis. Constable Ludlow was diligent and thorough in his investigation of these issues and sought the advice of experts when necessary and applied what he learned to the facts of this case.

7) On a balance of probabilities, Superintendent McKenna and Constable Ludlow did not provide a false interpretation of the offence of forgery. There was no evidence in any of the extensive file materials that Superintendent McKenna or Constable Ludlow misapprehended the criminal offence of forgery. Further, under any reasonable definition of the offence of forgery, the facts and evidence in this case did not support a reasonable belief that it occurred.

[23] The Applicant also alleged that the County employees' long history of negative interactions with him constituted harassment. However, by letter from the Applicant's then counsel, it was acknowledged an element of that offence, fearing for his safety, did not exist. Therefore, the CRCC was asked not to review the RCMP's conclusion regarding that allegation and did not do so.

Issues and Standard of Review

[24] The Applicant does not provide a coherent framing of the issues in his written representations. However, I agree with the Respondent that the sole issue on the merits of this matter is whether the decision of the CRCC was reasonable.

[25] In assessing the merits of an administrative decision maker, such as the CRCC, the presumptive standard of reasonableness applies (*Canada (Minister of Citizenship and Immigration) v Vavilov,* 2019 SCC 65 at paras 23, 25 [*Vavilov*]). In this matter, there are no circumstances that would warrant a departure from that presumption (*Vavilov* at para 53).

[26] Applying that standard on judicial review, the Court "must develop an understanding of the decision maker's reasoning process in order to determine whether the decision as a whole is reasonable. To make this determination, the reviewing court asks whether the decision bears the hallmarks of reasonableness – justification, transparency and intelligibility – and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision" (*Vavilov* at para 99).

Preliminary Issue

[27] The Respondent submits that the Applicant’s application, written representations, and his application record as a whole contain allegations of fact or documents that were not before the CRCC, are not supported by his affidavit evidence, and are irrelevant.

[28] Jurisprudence clearly establishes that, as a general rule, the evidentiary record before a Court on judicial review is restricted to the evidentiary record that was before the decision maker. Evidence that was not before the decision maker and that goes to the merits of the matter is, with certain limited exceptions, not admissible. The recognized exceptions to this general rule are an affidavit that: provides general background in circumstances where that information might assist the Court in understanding the issues relevant to the judicial review, but does not go further and provide evidence relevant to the merits of the matter decided by the administrative decision maker; brings to the attention of the reviewing Court procedural defects that cannot be found in the evidentiary record of the administrative decision maker so that the Court can fulfill its role of reviewing for procedural unfairness; or, highlights the complete absence of evidence before the administrative decision maker when it made a particular finding (*Namgis First Nation v Canada (Fisheries and Oceans)*, 2019 FCA 149 at paras 4, 7-10; *Association of Universities and Colleges of Canada v. Canadian Copyright Licensing Agency (Access Copyright),* 2012 FCA 22 at para 20; see also *Bernard v Canada (Revenue Agency)*, 2015 FCA 263 at paras 19-25; and *Delios v Canada (Attorney General)*, 2015 FCA 117 at para 45).

[29] The Respondent submits that the application record appears to add documents as attachments to the Applicants affidavit, dated December 7, 2021, which were not part of the affidavit as served, are largely irrelevant and do not fall under any of the above exceptions to the general rule that evidence that was not before the decision maker and that goes to the merits of the matter is not admissible.

[30] I observe that the Applicant's Record is a bit of a jumble. One of the problems with it is that it appears to mix together, without clear distinction, the Applicant's affidavit and its three referenced exhibits with other information. To illustrate, immediately following the affidavit, but before referenced exhibits A, B and C, are 73 pages of materials (pages 9-82) that the Respondent submits are not a part of the Applicant's affidavit as served on the Respondent but appear to be included as part of his affidavit as found in his application record. The table of contents for his application record also refers to other information, found in the application record after the exhibits, such as pages 83 to 641 of the application record, without clear indication of their source.

[31] It is perhaps most efficient to simply deal with each item challenged by the Respondent:

i. *Criminal Code* RSC 1985, c. C-46 [*Criminal Code*] sections pertaining to forgery (s 366(1)), obstruction of justice (s 139), and conspiracy (s 465(1)) and parties to an offence (s 21). Legislative provisions need not be submitted by way of exhibits to an applicant's affidavit and, in this case, the Applicant has mixed these in along with some case law which suggests that they were intended as legislative support for his

written submissions. That said, for purposes of this judicial review, the only relevant provision is s 366(1), pertaining to forgery.

ii. Letter from Kate Engel, of Engel Law, to Corporal Richard Browne of the RCMP – Grande Prairie Detachment, dated March 29, 2022. Ms. Engel states that her firm represents the Applicant in a limited capacity and that he requested that her letter be sent to assist him in "summarizing, organizing, and presenting additional information (and information that the RCMP already has) for your review in the course of your criminal investigation". This letter was not referenced as an exhibit to the Applicant's affidavit. There is also no evidence before me about an ongoing criminal investigation and, most significantly, this letter postdates the CRCC decision. Accordingly, it was not before the CRCC when it made its decision. The Applicant does not suggest that the letter falls within any of the exceptions to the general rule and, having reviewed the letter, it is clear that it goes well beyond general background information and re-argues the Applicant's position on the merits. Accordingly, it is not admissible.

iii. The documents found in the application record from pages 83-641 are described by the Applicant as "[m]issing evidence that was used by the RCMP but not provided to the CRCC Tabs 1-39" excepting tabs 33, 34, 37 and 39 which were not before the RCMP. I note that these documents are not exhibits to the Applicant's affidavit and the Applicant does not explain in his affidavit when or how the RCMP was provided with this evidence. In a second table of contents, the Applicant further describes these materials. In the absence of any explanation in the Applicant's affidavit as to when these documents were provided to the RCMP and, if they were, why they are relevant

to the CRCC decision under review, to the extent that they are not found in the certified tribunal record [CTR], they are inadmissible. I also note that the Applicant did not take issue with the sufficiency of the CTR.

iv. As to Tab 33, this appears to be a restrictive covenant between Sunnyside Lane Developments and the County dated February 15, 2019. The Applicant acknowledges that this document was not before the CRCC. On that basis, it is not admissible. I would also note that the relevance of this document is not apparent.

v. Tab 34 is comprised of two handwriting reports prepared by G.L. Pitney, Forensic Handwriting Examiner, Docu-Scan Disputed Document Examination Services, dated May 25, 2020 and June 11, 2020. This is new evidence which also post-dates the CRCC decision. As such, it is inadmissible.

vi. Tab 37 is an Order of the Court of Queen's Bench of Alberta (court file number 1404 00005) dated December 12, 2017, concerning the Originating Application filed by the County in January 2014, in which the Applicant is the named respondent. The Order grants the County its costs in the amount of $26,700 and disbursements in the amount of $15,000. A second Order in the same matter is also included, this one dated December 11, 2017; it dismisses the Applicant's amended application filed on March 23, 2017 and, among other things, finds the Caveat registered by the County to be valid, that the Applicant was in breach of the SDAB decision and the 2013 Stop Work Order which required him to comply with same, as well as the County's land use bylaw and the *Municipal Government Act,* RSA 2000, c M-26, by, among other things, removing all doors, windows or other openings which are at any point below

the 1:100 year flood level of 677.73 metres and providing certification of this from a professional engineer. Once the County was satisfied that the requirements of the Order were met, it was required to issue an as-built development permit with respect to the residence. Why these Orders were not provided to the RCMP and/or the CRCC is not explained and, frankly, it is unclear to me how they assist the Applicant in this matter.

vii. Tab 39 is a letter from Steven Hinkley, Chief Crown Prosecutor, Justice and Solicitor General, Government of Alberta, to Constable Marchak dated July 4, 2018. This letter is found in the CTR and was considered by the CRCC.

viii. The Affidavit of John Simpson affirmed October 23, 2014, filed in the Court of Queen's Bench of Alberta (Court File No 140400005). This is not an exhibit to the Applicant's affidavit. The Applicant describes this in his table of contents as "missing evidence". He does not indicate that this affidavit was provided to the RCMP and, if so, when. Nor does he challenge the CTR as deficient. As the document is not found in the CTR, it is inadmissible.

ix. Letter from Applicant's counsel, Engel Law, dated September 14, 2021, attached as Exhibit B of his affidavit. This letter is addressed to the Commissioner of the RCMP and requests that the previous criminal complaints be reinvestigated in light of new and substantial evidence. Specifically, it includes a lengthy affidavit of the Applicant sworn on June 30, 2020 and apparently filed in the Provincial Court of Alberta (Civil) matter brought against two employees of the County (which was found to be statute barred). The affidavit includes as exhibits the two handwriting reports prepared by

G.L. Pitney, Forensic Handwriting Examiner, Docu-Scan Disputed Document Examination Services, dated May 25, 2020 and June 11, 2020. This letter from Engel Law is new evidence which also post-dates the CRCC decision, and as such, it is inadmissible.

x. Exhibit C of the Applicant's affidavit also attaches the May 25, 2020 handwriting report. In his affidavit, the Applicant states that by her letter of September 14, 2021 his counsel had provided these reports with the intent that they would become part of the record. However, he and his counsel were subsequently informed that the decision had already been issued but this had not been communicated to them. He states that he attaches the report to his affidavit as he may bring an application in this proceeding to have the document "admitted as evidence in the record". I note that this hand writing report post-dates the April 17, 2018 RCMP Report and the March 9, 2020 CRCC decision. Further, and regardless of why the information was not before the CRCC, this Court cannot add evidence to the record that was not before the CRCC. To the extent that the Applicant is asserting that this Court can consider the new evidence on its merits, that is not the role of this Court on judicial review. Nor has the Applicant asserted that he has been denied procedural fairness because he and his counsel were not aware that the CRCC decision had already been issued when they made the further submission and that the new evidence was therefore not considered by the RCMP or CRCC. Nor is any reconsideration request before this Court. In these circumstances, the handwriting report is not admissible.

Was the Decision Reasonable?

Applicant's position

[32] The Applicant sets out in detail his version of the background facts concerning his dispute with the County and his allegation that the changes to his 2010 Renewal Application were forged and that a false 1:100 year flood line was imposed, as well as the background to his criminal complaints made to the RCMP on June 26, 2013 and June 22, 2016.

[33] The Applicant does not frame his submissions in the context of the reasonableness of the CRCC decision. However, he seeks a declaration quashing the CRCC's decision, setting it aside and referring it back for redetermination on, what I understand from his submissions, to be the following grounds:

- The RCMP did not provide the Crown Prosecutor with accurate information and omitted information that was critical. Given this, the RCMP investigators should not have relied on the Crown Prosecutor's opinion;

- Constable Ludlow's review of Constable Marchak's investigation did not look into the false information that was provided to the Crown;

- The CRCC was not provided with evidence by the RCMP that it had in its custody and was used in the investigation, and therefore, a proper investigation by the CRCC was not possible;

- The CRCC misunderstood the timeline and facts;

- The CRCC relied on the Crown Prosecutor's opinion that was related to the first investigation by the RCMP in 2013;

- It would be a conflict for Constable Marchak to oversee the reinvestigation of his first investigation – which is suggested by the date of the Crown Prosecutor's July 4, 2018 letter to Constable Marchak;
- The RCMP misinterpreted criminal forgery;
- No attempt was made to identify the individuals that forged the Applicant's documents;
- No attempt was made to obtain a search warrant;
- Constable Ludlow failed to "connect the dots between the [flood line] and the forgery";
- The RCMP took the County bylaw out of context and failed to consider the true meaning of a bylaw as a whole;
- The CRCC erred in: failing to recognize that there were no deficiencies in the Applicant's permit applications; failing to recognize that the County did not issue the Applicant a permit after the SDAB decision; failing to understand the timeline of events; failing to note that the application date was changed from June 28 to June 30, 2010; failing to recognize that the conversion from feet to meters was an incorrect conversion for the west side yard and was a pretext to get the new application to the Municipal Planning Commission [MPC] where the false flood line was introduced; failing to recognize how the changes that were made to the "proposed use of site" prejudiced the Applicant; and failing to recognize that while some of the changes made to the documents were changes from imperial measurement units the metric units, the conversion for the west side was incorrect and was not taken from the correct points on the Applicant's property; and
- Constable Ludlow did not question individuals that the Applicant suspected of forgery.

[34] The Applicant also makes lengthy submissions relating to purported errors in Constable Marchak's 2013 Memorandum to the Crown Prosecutors Office.

[35] The Applicant further submits that the most significant issue is "the fact that all the evidence that was used in the investigation by the RCMP was not provided to the CRCC and as a result, the CRCC made a [d]ecision on an incomplete record".

Respondent's position

[36] The Respondent submits that the Decision was cogent and thorough in its reasoning concerning the allegations made in the Applicant's public complaint. The decision addressed every complaint forwarded by the Applicant, regardless of the lack of any coherence or foundation for many of the issues raised. The decision was transparent, intelligible, and justified.

[37] The Respondent further submits that the Applicant's arguments amount to a line-by-line treasure hunt for immaterial errors and/or a request to reweigh evidence, and all of his allegations are irrelevant or unsubstantiated. Further, many of his allegations have already been raised in legal proceedings in the courts of Alberta, in which the Applicant was unsuccessful, and he is now attempting to re-litigate those matters.

[38] The Respondent also addresses each of the Applicant's individual submissions, as outlined both in his Notice of Application and his written submissions.

Analysis

[39] While the Applicant embarks on a microscopic analysis of the events and documents, I agree with the Respondent that much of this is simply not relevant or material to the matter before me. My task is to determine whether or not the CRCC's decision was reasonable.

[40] Accordingly, my focus will be on the allegations raised by the Applicant in his complaint to the CRCC and the CRCC's treatment of those allegations.

[41] However, as a preliminary matter, I note that the Applicant submits that the most significant issue arising in this application for judicial review is the fact that the entirety of the evidence that was before the RCMP was not provided to the CRCC. Therefore, the CRCC made the decision on an incomplete record. The basis of this assertion appears to be that the documents he includes in his application record (not attached to his affidavit as exhibits), and as discussed above, are largely not contained in the CTR. These appear to be the documents he alleges he submitted to the RCMP with respect to the 2013 and 2016 investigations.

[42] On this point, it must be recalled that the CRCC is not conducting a new investigation. It is determining whether the RCMP Report, declining to pursue forgery charges, was reasonable. In that regard, the CRCC prepared the CTR which contained the documents reviewed by the CRCC with respect to the Applicant's complaint made to it in regard to the RCMP Report. The CRCC's focus was on the reasonableness of the RCMP's section 45.6(1) investigation into the Applicant's complaint and the RCMP's decision rendered in that regard.

[43] In the absence of any specific allegations of how the CRCC's decision was rendered unreasonable by the absence of the materials the Applicant asserts that he provided to the RCMP, this submission cannot succeed.

[44] Returning now to the CRCC's treatment of allegations raised by the Applicant in his complaint to the CRCC, there the Applicant raised the following six allegations of neglect of duty:

1. Assistant Commissioner Ferguson, Superintendent McKenna, Constable Ludlow and Constable Marchak failed to assist in stopping the harassment of the Applicant and failed to charge the perpetrators, who are alleged to have also committed forgery;

2. Assistant Commissioner Ferguson promised to obtain a search warrant for the original forged documents and did not do so;

3. Superintendent McKenna told the Applicant that there would be no use in trying to obtain the original documents through a search warrant because they probably had been destroyed;

4. Assistant Commissioner Ferguson, Superintendent McKenna, and Constable Ludlow conducted a negligent investigation into the 2016 follow-up complaint of the 2013 complaint;

5. Constable Ludlow and Superintendent McKenna provided a false interpretation of forgery to the Applicant; and

6. Constable Ludlow was deceitful to the Applicant regarding document analysis and whether or not forensic services were engaged during the investigation.

[45] The CRCC's analysis starts with an outline of the law and RCMP policy.

[46] It sets out s 366(1) of the *Criminal Code* which deals with forgery:

> 366 (1) Every one commits forgery who makes a false document, knowing it to be false, with intent
>
> > (a) that it should in any way be used or acted on as genuine, to the prejudice of any one whether within Canada or not; or
> >
> > (b) that a person should be induced, by the belief that it is genuine, to do or to refrain from doing anything, whether within Canada or not.

[47] The CRCC states that when reviewing complaints concerning the perceived inadequacy of criminal investigations, the Commission considers the steps taken during the investigations. Further, that RCMP policy states that members "will, subject to available resources, priorities and exercise of appropriate discretions, conduct a *Criminal Code* investigation" (referring to the RCMP Operational Manual, chapter IV.1 "Criminal Code Offences" s C1). Further, that the RCMP must follow all reasonable leads and avail themselves of additional resources where required. And, while a criminal investigation must be reasonably thorough, that standard does not require perfection (referring to *Hill v Hamilton-Wentworth Police Service Board*, [2007] 3 SCR 129).

2013 allegation of forgery

[48] The CRCC acknowledged the Applicant's allegation that someone at the County altered his 2010 Renewal Application to his detriment, thereby committing the offence of forgery.

[49] The CRCC noted that Constable Marchak had: obtained a lengthy recorded statement from the Applicant in which the Applicant thoroughly set out the history of his dispute with the County and explained the extensive documentation he had provided; attended at the County office where he spoke to two County employees, John Simpson and Paula McDermott, who could not identify who made the changes or when but advised that County personnel sometimes assisted applicants in filling out forms and that alterations or the presence of more than one person's handwriting would not be out of the ordinary; reviewed the *Criminal Code* language regarding forgery and determined that the alterations did not create prejudice or inducement and appeared to have been made in good faith in the course of an administrative process; in response to a July 23, 2013 email from the Applicant requesting that additional charges be laid for "mischief, mischief in relation to data, defamatory libel, publishing, criminal harassment, extortion, intimidation, conspiracy, and obstruction of justice" against 11 persons who the Applicant was in contact with during the course of his dispute with the County, wrote to Crown Counsel expressing his view that the additional charges were unwarranted as the 11 people were acting in the course of their regular duties but sought an opinion concerning the forgery allegations given that it was clear that alterations had been made to the permit application by a person other than the Applicant; reviewed the opinion of the Chief Crown Prosecutor which confirmed that the necessary elements of forgery – a guilty act and a guilty mind – were not

present and the changes were of a minor administrative nature made without “nefarious intent”; found there was otherwise little to no public interest in pursuing such a prosecution; and, explained his conclusions to the Applicant by letter of October 22, 2013.

[50] This, along with the exercise of common sense and discretion, indicated that Constable Marchak’s investigation was reasonable considering the gravity of the alleged offence and the public interest. The CRCC found that Constable Marchak conducted a reasonable investigation into the Applicant’s complaint and reached reasonable conclusions based on that investigation.

[51] The Applicant’s primary submission underlying his application for judicial review is that Constable Marchak’s investigation was flawed because Constable Marchak gave the Crown Prosecutor false information. The Crown Prosecutor’s opinion was therefore ill-founded because it was based on this false information. Further, Constable Ludlow relied on Constable Marchak’s investigation and the opinion of the Crown Prosecutor without investigating the false information. And, finally, the CRCC did not conduct a proper investigation, as the 2013 investigation file was not before it and because it relied on Constable Marchak’s findings.

[52] The Applicant’s basic assertion is that there were three changes made to his 2010 Renewal Application that was submitted on June 28, 2010. First, that the date was changed from June 28 to June 30, 2010. Second, the hand written word “renewal” on the application was removed. And third, the Proposed Use of Site section was rewritten and changes were made to the measurements for proposed side yards.

[53] As to the date change, the Applicant does not indicate that he was prejudiced by this alteration.

[54] As to the removal of the word “renewal”, I note from a review of the CTR materials that the 2007 Original Permit was approved on April 5, 2007. However, when the March 31, 2010 stop work order was issued, construction on the house was not complete. The stop work order referenced Land Use Bylaw 2680, s 2(15)(h), which states that those portions of the development that are incomplete 24 months from the date of the approval shall be deemed to be no longer approved for development and the relevant sections of the development permit shall become void. Based on this, the County took the position that the development was no longer valid and that the Applicant needed to reapply for a new development permit.

[55] The Applicant disputed the need to apply for a new permit but ultimately submitted the 2010 Renewal Application, which was not approved and from which the handwritten word “renewal” was removed.

[56] It is significant to note that the CTR contains an RCMP Occurrence Report. This document contains detailed entries by all officers who were involved in the 2013 and 2016 investigations. Constable Marchak made entries for each of his many interactions with the Applicant and documenting his investigative steps. It is clear from his entries that he understood that the Applicant’s assertion was that the County “deceived” him into believing that his permit was no longer valid and the Applicant’s belief that the County had no authority to cancel the 2007 Original Permit. Further, Constable Marchak reviewed the subject bylaw and understood it

as validating the notion that a new development permit was required as the house was only 50% complete two years after the 2007 Original Permit was issued.

[57] The point being that nothing in the materials before me supports that removing the word "renewal" from the development plan submitted in 2010 – deliberately or otherwise – prejudiced the Applicant. Prior to applying for the renewal he was aware of, but did not agree with, the County's position that the 2007 Original Permit was no longer valid as construction on his house had exceed 24 months and, as it was not complete, that he had to apply for a new permit.

[58] What is significant, and as will be discussed further below, is that the County issued the stop work order *prior to* the submission of the 2010 Renewal Application because of the incomplete work as well as concerns about flooding. As to the latter point, the County also stated in the stop work order that it had come to its attention that changes had been made to the design of the house from the original permit and that the grades of the property would result in flooding of the dwelling.

[59] This leads to the Applicant's main assertion made to Constable Marchak and Constable Ludlow, and again when appearing before me, as to the altered permit.

[60] Specifically, the 2010 Renewal Application described the proposed use of site as:

> Private dwelling as built per plans enclosed from original permit application engineering plans from Focus Engineering and Schuenhage, Popek and Associates Ltd.

[61] This was changed to read:

> Single Family Dwelling with Attached Garage, Covered Deck and two Decks (1.16m x 4.28 m and 3.05m x 5.80m) and side yard variance from 3m to 1.36m

[62] The proposed property lines as submitted were:

> Front Yard: 50 feet Side Yard: 10 feet W 10 feet E Rear Yard:

[63] This was changed to read:

> Front Yard: 12.19m Side Yard 1.36m 3.02m Rear Yard: 21.50m

[64] In the Occurrence Report, Constable Marchak set out in detail his discussions and meeting with Paula McDermott and John Simpson at the County offices, as well as the submissions made at the SDAB public hearing and his document review. This makes it clear that the Applicant was advised by Beairsto-Lehmers-Ketchum Engineering Limited [BLK] on August 14, 2007 – before the foundation was laid – that the house elevations that the Applicant had altered from the approved development plan (3' lower) would result in flooding as it was below the 1:100 year flood line. The Applicant's counsel indicated at the SDAB that the Applicant was of the view that mitigation measures he had taken, such as building a berm, were sufficient as he had heard nothing further about the matter. His counsel also submitted that the house was a permitted use with a variance request on an eve. Constable Marchak's entries also note the SDAB granting of a development permit subject to the stated conditions.

[65] It is of note that Constable Marchak's entries in the Occurrence Report also describe the documents submitted by the Applicant and Constable Marchak's review of same. This included summaries of documents found in binders provided by the Applicant, many of which discuss the 1:100 year flood line.

[66] The nub of the Applicant's submission with respect to these alterations is the undated memorandum to the Crown Prosecutor from Constable Marchak [Memorandum]. In the Memorandum, Constable Marchak described his attendance at the County office on July 16, 2013 where he spoke with the two County employees. With respect to the 2010 Renewal Application, Constable Marchak stated that it was apparent that the document had been altered using whiteout, in three main ways:

i. The references to "renewal" and a permit number were removed;

ii. The dimensions contained within the "Proposed Setback from the Property Lines" area had been changed from measurements in feet to meters resulting in extremely minor discrepancies (e.g. 10 feet to 3.02m); and

iii. The "Proposed Use of Site" section was entirely rewritten (approximately 4 lines long).

[67] The Memorandum states that the Applicant had provided extensive documentation that detailed his ongoing dispute with the County and set out a brief chronology of this. It also noted that the Applicant disputed whether his residence complied with the 1:100 year flood line and that he had produced an engineering report supporting his view; had launched a professional

disciplinary complaint against the engineers that designed the subdivision; and, had made a request under the *Freedom of Information and Protection of Privacy Act*, RSA 2000 C F-25 for extensive documentation from the County.

[68] Constable Marchak stated that at that time he believed that the alterations made to the document did not prejudice the Applicant as the re-occurring issue with his home appeared to be related to the 1:100 year flood line – not any of the three areas of the form that were altered. However, as it was reasonably clear that the application was altered, he was requesting Crown Prosecutors' opinion.

[69] The Memorandum also states that it included a CD "with substantially all of the information that HILDEBRAND has sent to the RCMP concerning his complaint".

[70] The July 4, 2018 opinion from the Chief Crown Prosecutor lists the evidence reviewed in coming to the opinion, which includes the investigation reports of the member involved and emails from the Applicant. The Prosecutor found that, while there were obvious changes on the face of the document, to prove a criminal offence the Crown must prove both the *mens rea* and the *actus reus*. Based on the evidence before him, the Chief Crown Prosecutor stated that he was not in a position to prove that there was nefarious intent. Rather, the changes appeared to be for administrative convenience. As the requisite elements of the offense could not be proven, there would be no reasonable prospect of conviction. He concluded that, "In the absence of being able to establish any mens rea criminal charges would fail. There is no reasonable prospect of

conviction, and quite candidly I'm not sure there is any offence whatsoever. This is a matter that will have to be settled in the civil courts".

[71] The Applicant submits that Constable Marchak's Memorandum indicates that the changes to the figures reflect only minor conversion errors. He submits that while this may be so for the east side yard, Constable Marchak did not tell the Crown Prosecutor about the change to the west side yard from 10' to 1.36m. The Crown Prosecutor therefore failed to appreciate that this alteration was a deliberate change intended to force the 2010 Renewal Application to be refused so that a "false" 1:100 year flood line could be imposed. The Applicant also submits that a document was removed from his 2010 Renewal Application. That document was a copy of an October 4, 2005 letter from BLK to the County addressing the storm water management plan for the subdivision where the Applicant constructed his residence. It included various graphs which the Applicant submits identify the 1:100 year flood line as 674.368 m [2005 Flood Line]. He asserts that this was replaced with a June 10, 2010 letter from BLK identifying the 1:100 year flood line to be 677.76.

[72] I understand that it is the Applicant's view that his 2007 Original Permit did not expire because construction was not completed within 24 months. Further, that he did not need a variance and/or that the side yard measurement should have been taken from a different point of origin and that the change to the 2010 Renewal Application with respect to west side yard from 10' to 1.36 m was made with the intention of ensuring that his permit would not be granted, forcing his application to go before the MPC and affording John Simpson the opportunity to attach a false 1:100 year flood line.

[73] However, it is apparent from the Occurrence Report that the 1:100 year flood line was at issue well before the 2010 Renewal Application was submitted. Even if that flood line was the 2005 Flood Line – generated for the County – and again provided to the County as an attachment to the 2010 Renewal Application, and regardless of the subsequent considerable debate as to the appropriate flood line, as the CRCC found, Constable Marchak reasonably found that the changes to the 2010 Renewal Application did not cause the Applicant prejudice. This was because his problems stemmed from non-compliance with the 1:100 year flood line – which issue was in play prior to the submission of the 2010 Renewal Application.

[74] As to the west side yard variance, while the Applicant asserts that it was this alteration that caused his 2010 Renewal Application to go to the MPC, when subsequently appearing before the SDAB the Applicant's counsel acknowledged that a variance was needed and one was in fact granted by the SDAB. This is consistent with Constable Marchak's notes from his meeting with County representatives who advised him that the altered 2010 Renewal Application accurately represented what the Applicant had applied for, that the dimensions on the renewal played no role in the refusal of the 2010 Renewal Application and, that it was not unusual that a planning clerk would write on an application to assist an applicant.

[75] I am not persuaded that Constable Marchak provided false or incomplete information to the Crown Prosecutor as the Applicant submits. The Occurrence Report entries are highly detailed and comprehensive. The Memorandum indicates that the Prosecutor was provided with substantially all of the materials that the Applicant had submitted to Constable Marchak. While it is true that the Memorandum did not specifically avert to the west yard variance and the

Applicant's assertion that this was a deliberate false premise intended to force him to submit the 2010 Renewal Application – thereby allowing John Simpson to put the false 1:100 year flood line before the MPC – the Prosecutor found, based on his extensive review of all the supplied documentation and on the totality of the items presented to him, that he would not be able to prove nefarious intent beyond a reasonable doubt as it appears the changes were made for administrative convenience.

[76] Further, having reviewed the record that was before the CRCC, I am of the view that its finding that Constable Marchak's determination that the alterations made to the 2010 Renewal Application did not prejudice the Applicant because the re-occurring issue with his home appeared to be related to the 1:100 year flood line – and not any of the three areas of the application that were altered – was reasonable. The concerns with a 1:100 year flood line predated the submission of the 2010 Renewal Application, the side yard variance was subsequently acknowledged by the Applicant's counsel at the SDAB hearing as necessary, the changes to the 2010 Renewal Application were found to be made as part of the County officials' normal administrative duties, and the Chief Crown Prosecutor was of the view that nefarious intent was not established and that charges therefore should not be laid.

[77] While the Applicant does not agree, in my view, he has not established that the CRCC finding was unreasonable based on the record before it.

[78] The Applicant also submits that Chief Crown Prosecutor's opinion letter of July 4, 2018 is addressed to Constable Marchak while it was Constable Ludlow who conducted the 2016

review. He submits that this gives rise to a potential conflict of interest if Constable Marchak was overseeing the review of his original investigation. Based on the materials in the record, and having heard counsel for the Respondent on this point, it is reasonable to assume that the July 4, 2018 opinion is misdated and that it in fact responds to the undated Memorandum of Constable Marchak. Nor am I persuaded that the fact that Constable Marchak is identified as the lead officer in one entry in the Occurrence Report demonstrates that he was investigating himself, as the Applicant suggests. The record clearly demonstrates that Constable Marchak was the lead investigator in 2013 and that Constable Ludlow was the lead in 2016.

[79] The Applicant also submits that the CRCC erred in finding that this matter has been ongoing since 2007. He provides no evidence to support his position and, as seen from the record, concerns with a 1:100 year flood line and the Applicant building his house below the approved elevations were brought to his attention in 2007, before he laid the foundation.

Promise to obtain a search warrant

[80] With regard to the Applicant's allegations concerning a promised search warrant, the CRCC concluded that no such promise was made.

[81] The CRCC explained that the Applicant's allegation was not corroborated by the statement given by Assistant Commissioner Ferguson to the complaint investigator which was that it was not his practice to make promises regarding specific investigative steps that the police would take and that his only comment to the Applicant was that he would pass along the information provided and have someone look at it. Nor was the Applicant's allegation supported

by the statement of the paralegal that the Applicant brought with him to the meeting. She said that while Assistant Commissioner Ferguson said that a search warrant would be necessary to obtain documents in possession of the County, he did not make a firm promise that a warrant would be obtained.

[82] The Applicant does not appear to dispute the reasonableness of this conclusion. He does, however, dispute the decision not to obtain a search warrant, which I will discuss below.

[83] In my view, the paralegal's statement may not have been as clear as the CRCC suggests. However, Assistant Commissioner Ferguson was clear in his statement to the public complaints investigator that when he met with the Applicant, the Applicant had raised the issue of obtaining a search warrant. Assistant Commissioner Ferguson advised that this was a determination to be made by the RCMP officers investigating the complaint and he had never made a promise to obtain a search warrant. In my view, the CRCC was entitled to prefer the evidence of Assistant Commissioner Ferguson, and its finding that he did not promise that a search warrant would be obtained was reasonable.

Negligent review of 2016 complaint

[84] With regard to the Applicant's allegations of a negligent complaint review in 2016, the CRCC concluded that the investigation was reasonable.

[85] As to the role of Assistant Commissioner Ferguson, the CRCC noted that his sole involvement was a meeting with the Applicant, after which he provided the Applicant's

documents and concerns to Superintendent McKenna. Superintendent McKenna's involvement was limited to tasking Constable Ludlow with a review of the Applicant's allegations, overseeing Constable Ludlow's work, speaking numerous times on the phone with the Applicant and attending several meetings with him.

[86] As to Constable Ludlow, in his interview with the public complaints investigator, he stated that most of the Applicant's concerns involved matters that had already been investigated but, despite this, he examined the large volume of documents and information provided to him by the Applicant. Further, although the Applicant expressed his wish that the persons he identified as being involved with the County's development assessment process be questioned, the information provided by the Applicant, the passage of time and the determination that those individuals were simply acting within their administrative duties to make minor alterations to the permit applications did not suggest that there was any investigative value in the police approaching those persons. Further, Constable Marchak had spoken with two people in the County's office in 2013 and prepared reports which Constable Ludlow had reviewed.

[87] The CRCC found that Constable Ludlow thoroughly examined the large volume of materials provided by the Applicant; painstakingly reviewed and cross-referenced the Applicant's lengthy email messages with documents; prepared a detailed report describing his investigative steps; reviewed the extensive file containing Constable Marchak's investigation as well as the binder the Applicant gave to Assistant Commissioner Ferguson, an eight-page email message from the Applicant that set out his position in detail as well as 26 other email messages from the Applicant, some of which had numerous attachments; met with the Applicant twice and

obtained a detailed statement from him; contacted an external examiner pertaining to ink dating and, based on the advice received, determined that the 2007 and 2010 permit applications were not appropriate for testing; found that there was no information corroborating the Applicant's theory that the County altered the 2007 Original Application in 2013 or 2014; found that the Applicant was made aware of the County's central issue in 2007 but ignored warnings and poured his house foundation in contravention of the permit conditions; could find no link between the alterations to the permit applications and the issuance of conditions by the SDAB, which would be necessary to establish that the alterations had a detrimental effect on the Applicant; found that while there may have been deficiencies in the County's administrative process, there were no reasonable grounds to believe that a criminal act had occurred and, therefore, a search warrant could not be obtained; found that the vast scope of the Applicant's allegations and the variety of venues where he sought redress clouded the central fact of the permit conditions – which is not a matter for the police; noted that the Applicant's stated intent was to have the RCMP obtain documents for use in the Applicant's civil proceedings which the CRCC stated would constitute an attempt to advance the Applicant's private dispute through the criminal justice system at public expense which would be an abuse of process; and, confirmed with a Crown Attorney that the new information would not alter the previous Chief Crown Prosecutor's opinion.

[88] The CRCC found that Constable Ludlow's investigation was through, thoughtful, and very well documented. He rightly relied on information and documents collected by Constable Marchak in 2013, as there was no reason to believe these were inadequate or incorrect. The CRCC found that Constable Ludlow's conclusions were based on a proper exercise of his

discretion and common sense, all the available information and evidence, and advice from a Crown Attorney.

[89] The Applicant does not take issue with the reasonableness of these findings by the CRCC. Instead, he submits that Constable Ludlow did not investigate the false information provided to the Crown Prosecutor, referencing Constable Marchak's Memorandum to the Crown Prosecutor and the July 4, 2018 opinion received in response from the Crown Prosecutor. He submits that the false information provided to the Crown Prosecutor was not investigated or observed by Constable Ludlow. And, more generally, that the investigators relied on the Crown Prospector's opinion but should not have because it was based on inaccurate information.

[90] I have addressed that submission above.

[91] Further, it is of note that Constable Ludlow's role was not to reinvestigate the 2013 allegations of fraud. He was to review the new allegations (that sometime after the RCMP commenced its investigation in 2013, County employees altered the 2007 Original Application – including noting that a variance was required – to cover their tracks) and materials to determine if it affected the outcome of the initial investigation. In the absence of evidence of an error in Constable Marchak's investigation, as the CRCC found, Constable Ludlow was entitled to rely on those findings. Further, as noted by the CRCC, although when conducting his review Constable Ludlow did not think a second opinion from the Crown was necessary, he did communicate with a Crown Attorney who confirmed that the new information would not alter the initial opinion.

[92] The Applicant further submits that Constable Ludlow failed to "connect the dots between the [flood line] and the forgery". However, the record contains a File Review prepared by Constable Ludlow, which notes that within the initial investigation, the Applicant had alleged that changes had been made to the yard setback which resulted in numerous negative outcomes and amounted to the offence of forgery. Further, in reviewing all of the materials, it was clear to Constable Ludlow that the most disputed issue was and remained the 1:100 year flood line. Constable Ludlow noted that there was a large amount of documentation surrounding that issue. As to intent, Constable Ludlow noted that many claims made by the Applicant were speculative in nature. For example, he claimed that Mr. Simpson had email communications with the engineer John Lehners where they jointly collaborated to invent a 1:100 year flood line. However, a review of the referenced email did not support the allegation. Further, the Applicant claimed that six years after the changes to the 2010 Renewal Application, the County altered his 2007 Original Application, but with no way to determine when the alterations were made, there was no information to support that claim, which was purely speculative. Constable Ludlow also stated that throughout his review he had made a concerted effort to determine the extent of any link between the altered documents and the 1:100 year flood line issue, but had not been able to determine a link to suggest that the flood line issues were a result of any such alterations. This was especially so as the issue had been present since 2007 and the Applicant claimed that the alterations to the applications likely occurred several years later.

[93] I also note that in his letter to the Applicant dated September 19, 2016, Constable Ludlow explicitly acknowledges that the 1:100 year flood line was the critical issue that had been at the

forefront since 2007. And, while that continued to be the outstanding issue, it was not one that police could resolve, as a resolution was most likely to occur through civil proceedings.

[94] Finally, the Applicant submits that Constable Ludlow failed to question individuals that the Applicant suspected of forgery. However, as the CRCC notes, Constable Ludlow did not interview those individuals because he was of the opinion that there was no investigative value in the police approaching those persons allegedly involved in the forgery due to the passage of time and the determination that they were acting within their administrative duties to make minor alterations. Also, Constable Marchak had already spoken to two persons at the County office in 2013 and there was no reason to believe that the information collected by Constable Marchak was inadequate.

[95] I would also note that it is clear from Constable Ludlow's entries in the Occurrence Report that he was aware of the Applicant's concern about the change in the west side yard from 10' to 1.36m, that the Applicant alleged the change was made by John Simpson and, that the Applicant alleged that his house plans and some engineering documents had been removed from his 2010 Renewal Application. Further, when interviewed by the public complaints investigator, Constable Ludlow stated that even if the subject documents were forged, he would not have been in a position to say that the forgery affected the outcome (i.e. prejudiced the Applicant) because, ultimately, the information that he had reviewed showed that the issue that originally gave rise to the Applicant's problems – and continued to resurface over the years – was the 1:100 year flood line issue. That is, the changes made to the documents were not the reason why the County took the actions that it did (i.e. intent was not established).

[96] In my view, the Applicant has not established that the CRCC's finding that Constable Ludlow conducted a reasonable review during his 2016 investigation was unreasonable.

Failure to obtain a search warrant

[97] The CRCC referred to s 487 of the *Criminal Code* pursuant to which a search warrant may be issued by a judge or a justice of the peace who is satisfied on reasonable grounds that an offence has been or is suspected to have been committed. Further, the CRCC noted that the police had determined that there were no reasonable grounds to believe that a criminal offence had occurred and, that there were no reasonable grounds to believe that obtaining the existing documents in the possession of the County would reveal evidence of an offence. Accordingly, the CRCC found that it was reasonable in the circumstances for police not to attempt to obtain a search warrant for documents held by the County, given the absence of evidence of an offence.

[98] The Applicant takes issue with the decision not to obtain a search warrant. He asserts that Constable Ludlow's rationale was that he determined that alterations were made to copies "therefore forgery could not have occurred". This assertion is not supported by the record. When interviewed by the public complaints investigator, Constable Ludlow stated that there was no question that the 2007 Original Application had areas whited out and different writing and ink colour added. The pertinent question, however, was when those changes had been made.

[99] The Applicant also submits that the CRCC did not provide reasons why it found that it was not reasonable to obtain a search warrant. This assertion is also without merit as the CRCC did provide reasons which are set out above.

[100] In my view, the CRCC's finding pertaining to the failure to obtain a search warrant was reasonable.

Destruction of original documents

[101] It is not necessary to delve into a detailed analysis of the CRCC's reasons and findings pertaining to the Applicant's allegation that Superintendent McKenna told him that there would be no point in obtaining a search warrant because the original documents had probably already been destroyed by the County and the Applicant's assertion that there was no basis for that belief. This is because the Applicant does not appear to dispute the reasonableness of this aspect of the CRCC's decision. I do note, however, that, in my view, the CRCC's reasons here are transparent, intelligible and justified.

False interpretation of forgery

[102] The Applicant alleged that Superintendent McKenna and Constable Ludlow provided him with a false interpretation of the offence of forgery at a meeting in September 2016. While neither officer had a specific recollection of that meeting, Constable Ludlow reported to the public complaints investigator that there was no confusion in his mind regarding what would be required to move the investigation forward to the point of laying charges, as was confirmed by his communications with a Crown Attorney.

[103] The CRCC concluded that the Applicant's submissions revolved around his own definition of forgery and his contention that Constable Ludlow's review was deficient. The

CRCC found that there was no evidence in any of the extensive file materials that Superintendent McKenna or Constable Ludlow misapprehended the criminal offence of forgery. In any event, under any reasonable definition of forgery, the facts and evidence in the case did not support a reasonable belief that it occurred.

[104] I see no error in the CRCC finding that, on a balance of probabilities, Superintendent McKenna and Constable Ludlow did not provide a false interpretation of the offense of forgery to the Applicant.

Forensic document analysis

[105] The Applicant asserts that Constable Ludlow was deceitful regarding document analysis and whether or not forensic examination of documents was conducted in the investigation. The CRCC noted that Constable Ludlow indicated that he may have told the Applicant early in his review that document analysis was an option police may explore. However, as Constable Ludlow learned more about the file, specifically that only copies of the original permit applications still existed and that ink dating would be inconclusive for writing made more than two years before, he concluded that there would be no investigative benefit to conducting forensic document analysis. The CRCC noted that the record indicated that Constable Ludlow conducted reasonable inquiries of experts in the field of document analysis but, based on their advice that they could not provide him with an opinion as to the date the writing was made, he did not submit documents to them.

[106] I note that in his statement to the public complaints investigator, Constable Ludlow indicated that while he had originally understood that documents obtained in the 2013 investigation were originals, he later realized that the were in fact colour photocopies. This impacted the value of any forensic assessment.

[107] Further, Constable Ludlow first contacted the RCMP forensic lab but was advised that it no longer conducted forensic analyses of documents. He then contacted an approved third party in the summer of 2016 who advised that they could get back to him in September. They advised that ink dating was reliable for up to two years from when the notation was written. The Applicant was of the view that the changes were made in 2007 or 2013 and, in either event, the analysis window had closed. Constable Ludlow noted that had he been able to establish that the changes were made at a different time from when the documents were prepared, then this may have provided the start of a ground for seeking a search warrant. As to hand writing analysis, that was not greatly discussed because it was not in dispute that there were other people's handwriting on the document and Constable Marchak's interviews with the County employees had indicated that it was not unusual for someone to help an applicant with a document. The ink dating was the important investigative element. Who made the changes may have become relevant if it could have been established that the changes were made after the submission of the 2010 Renewal Application or to the 2007 Original Application after the RCMP commenced its investigation in 2013.

[108] The CRCC also addressed the Applicant's submissions regarding his own inquiries about handwriting analysis but stated that the issue of who made the alterations would be of little investigative use without being able to determine when they were made.

[109] In my view, the CRCC reasonably found that Constable Ludlow was not deceitful toward the Applicant regarding forensic analysis of the development applications and that, although limitations of document analysis are not everyday matters for general investigative officers, Constable Ludlow was diligent and thorough in his investigation of these issues.

[110] In my view, for all of the reasons set out above, the CRCC's decision was reasonable.

Other submissions of the Applicant

[111] The Applicant makes various other submissions. However, many of these are not relevant to the judicial review of the CRCC's decision. For example, the Applicant alleges that the RCMP took a County bylaw out of context and, with respect to another County bylaw, did not consider its true meaning as a whole. I note that in both instances, the CRCC was simply setting out the County's contention or its position. Moreover, it was not the role of the CRCC to review correctness of the County's view that a development permit expires if construction is not completed within 24 months of issuance or that the SDAB's decision was, in effect, a new development permit.

[112] I agree with the Respondent that this and other points raised by the Applicant appear to be a line-by-line hunt for errors. Further, these purported errors do not constitute sufficient shortcomings such that they render the CRCC decision unreasonable.

Costs

[113] The Respondent submitted that costs in the amount of $2080 would be appropriate in this case. When appearing before me the Applicant agreed that this was a reasonable figure.

[114] As the Respondent has been successful, it shall have its costs in the all inclusive lump sum amount of $2080.

JUDGMENT IN T-1620-21

THIS COURT'S JUDGMENT is that

1. The application for judicial review is dismissed; and
2. The Respondent will have its costs paid by the Applicant in the all inclusive lump sum amount of $2080.

"Cecily Y. Strickland"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1620-21
STYLE OF CAUSE:	DANIEL HILDERBRAND v THE ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	BY VIDEOCONFERENCE USING ZOOM
DATE OF HEARING:	OCTOBER 31, 2022
JUDGMENT AND REASONS:	STRICKLAND J.
DATED:	NOVEMBER 23, 2022

APPEARANCES:

Daniel Hildebrand	FOR THE APPLICANT (ON HIS OWN BEHALF)
Daniel Vassberg	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Department of Justice Canada Edmonton, Alberta	FOR THE RESPONDENT