

IN THE MATTER OF THE *POLICE ACT*, R.S.B.C. 1996, c. 367

AND

IN THE MATTER OF THE PUBLIC HEARING

INTO THE COMPLAINT AGAINST

CONSTABLE ERIC LUDEMAN

AND

CONSTABLE NEIL LOGAN

OF THE VANCOUVER POLICE DEPARTMENT

DISCIPLINE AUTHORITY'S REASONS FOR DECISION

ON PUBLIC HEARING

TO:	Mr. Vladimir Tchaikoun	(Complainant)
AND TO:	Constable Eric Ludeman #2982 Constable Neil Logan #2787 c/o Vancouver Police Department Professional Standards Section	(Members)
AND TO:	Mr. Mark Underhill	(Commission Counsel)
AND TO:	Mr. Brad Hickford	(Public Hearing Counsel)
AND TO:	Ms. Claire Hatcher	(Counsel for Cst. Ludeman)
AND TO:	Mr. Kevin Woodall	(Counsel for Cst. Logan)
AND TO:	Mr. Marino Sveinson	(Counsel for Chief Constable Palmer)

[1] These are my reasons for decision on a public hearing involving allegations of oppressive conduct against Constables Eric Ludeman and Neil Logan of the Vancouver Police Department, in connection with their entry of a residence and use of force against members of the family who lived there.

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A. Introduction

[2] Pursuant to a Notice of Public Hearing issued by the Police Complaint Commissioner on November 17, 2019, the members face the following allegations:

- (i) That on March 13, 2016, Constable Ludeman and Constable Logan committed Abuse of Authority pursuant to section 77(3)(a) of the Police Act by engaging in oppressive conduct towards a member of the public; specifically, that the members unlawfully entered the complainant's residence.
- (ii) That on March 13, 2016, Constable Ludeman and Constable Logan committed Abuse of Authority pursuant to section 77(3)(a)(ii)(A) of the Police Act by intentionally or recklessly using unnecessary force in the course of their entry into the home of the complainant.

[3] The allegations arise out of the members' attendance at the residence of the Tchaikoun family on March 16, 2016 in response to a call by a neighbour, Olga Reounina. Ms. Reounina reported that Ms. Natalia Chaikun had been slapped by her husband, Vladimir Tchaikoun, earlier that day. The members entered the residence and became engaged in a struggle with Vladimir Tchaikoun, age 60, Natalia Chaikun, age 58, and their 36-year-old son, Yuri Chaikun. Their 20-year-old daughter Alicia Tchaikoun was also present during the incident. As a result of the incident, the three family members involved in the struggle were arrested, held overnight, and charged with assaulting a police officer. A criminal trial proceeded against them in 2017 but was stayed for delay. Vladimir Tchaikoun filed a complaint with the Office of the Police Complaint Commissioner on March 6, 2017.

[4] The issues to be determined on the public hearing are whether it has been established that, in entering the Tchaikoun family's residence and using force against the family members, the two officers were acting without authority, and if so, whether they did so intentionally or recklessly. The standard of proof is the balance of probabilities, and the outcome depends upon an assessment of the evidence led over the course of a 10-day hearing.

B. Summary of Evidence

[5] At the outset I am going to review the evidence somewhat chronologically, within the framework of the incident as recounted by the two members. Where it assists, I will contrast or supplement their evidence with that of other witnesses that bears on the incident as it unfolded. Following that framework

summary of the incident, I will review the additional evidence of Ms. Reounina, the family members, and attending police.

1. Constable Ludeman

[6] Constable Ludeman has been a police officer since 2010. He served four years in Port Moody, with two years off to return to school, and then joined the Vancouver Police Department in 2014. He estimated that he has been to hundreds of domestic violence calls.

[7] For their shift on the incident date, Constable Ludeman was the lead officer and Constable Logan, as the patrol car driver, was the cover officer. They were dispatched at 6:13 p.m. to the Tchaikoun residence, in a Vancouver townhouse complex.

[8] Constable Ludeman reviewed the computer-aided dispatch record (referred to as CAD), which indicated the call was to “check wellbeing” based on the concern of the 911 caller, Olga Reounina, for her friend, Natalia (or Natasha) Chaikun, who she reported had been “hit” by her husband. The CAD record showed that her call came in at 5:20 p.m. Ms. Reounina reported that she had received a call from Ms. Chaikun earlier in the day. She had expected Ms. Chaikun to come to her home, but she had not yet arrived over an hour later. Ms. Reounina said that Ms. Chaikun’s husband, Vladimir Tchaikoun, had been violent to his wife in the past and that Ms. Reounina did not want Ms. Chaikun to know that she had called the police.

[9] In her evidence, Olga Reounina said that Ms. Chaikun had called her, sobbing, saying her husband had slapped her hard on the face. Ms. Chaikun asked to come to Ms. Reounina’s residence, but Ms. Reounina was not going to be home from work for an hour. She had suggested Ms. Chaikun call the police but she did not want to. Ms. Reounina thought that Ms. Chaikun had called her between noon and 1:00 p.m. On her way home from work, worried about her friend, Ms. Reounina pulled over and tried to call Ms. Chaikun back. She didn’t answer, so Ms. Reounina called 911. She confirmed the content of her

911 call reflected in the transcript. While she believed that call had been made in the early afternoon, the records clearly confirm that it came in at 5:20 p.m.¹

[10] Constable Ludeman conducted computer inquiries about the history of the parties and learned that Mr. Tchaikoun had no criminal record or prior negative contact with police. There had been one attendance by police at the residence in 2014, arising from some concerns Ms. Chaikun had about Mr. Tchaikoun's mental health, resulting in a referral to community resources. Based on that history, Constable Ludeman had some concerns, which he described as, "somebody having declining mental health, it's probably going to be a stressor in a relationship, and the other is that sometimes someone who has a sort of significant mental health issue, they may not be particularly rational..."²

[11] Constable Ludeman placed a call to Ms. Reounina within a few minutes of being dispatched and learned that Ms. Chaikun had arrived at Ms. Reounina's residence. Ms. Reounina reported to Constable Ludeman what Ms. Chaikun had told her; that earlier in the day she had a migraine headache, she went into the kitchen and asked her husband to be quiet, and he slapped her. Ms. Reounina was less concerned now that Ms. Chaikun had arrived at her home and was not apparently injured. Ms. Reounina told Constable Ludeman that the concerns about Mr. Tchaikoun's mental health were related to hoarding.

[12] In her testimony Ms. Reounina said she believed that the call she received while Ms. Chaikun was at her house had been from the 911 operator, not Constable Ludeman. She went upstairs to take it, not wanting Ms. Chaikun to know she had called the police. She told the caller that Ms. Chaikun was there and she seemed all right. Ms. Reounina asked to cancel the police visit. She recalled being told that they would need to check on the family anyway, but that they would not identify her as the caller. Ms. Reounina believed that Ms. Chaikun arrived at her home around 4:00 p.m. and stayed for about half an hour before returning home.³

[13] Constable Ludeman said in cross-examination by Public Hearing Counsel that as soon as he heard that Ms. Chaikun was at Ms. Reounina's residence, his concerns about her imminent safety were at

¹ Exhibit 5, Transcript from 911 call; Exhibit 3, Nice Inform Organizer.

² August 26 Transcript, page 7, lines 13 – 18.

³ March 10 Transcript, Excerpt, pages 4 – 7.

“almost zero”.⁴ He agreed that in his testimony at the criminal proceeding he had said Ms. Reounina left him with the impression that everything was fine and his assistance would not be required anymore. In his *Police Act* statement he had said he had the impression that Ms. Chaikun would be “somewhat cooperative” and that he and Constable Logan did not have “a whole lot in the way of officer safety concerns.” At the public hearing he qualified those assertions, saying it was Ms. Reounina’s impression, not his, that his assistance was not required, that he had “no assumptions” about Ms. Chaikun’s level of cooperation, and while the matter was at the low end for a domestic violence case, it was still serious.⁵

[14] Constable Ludeman recalled that Ms. Reounina had expressed concern in their conversation that if Ms. Chaikun knew she had called the police it would end their 15-year friendship. Constable Ludeman said he would ask his supervisor if they could maintain her anonymity. In cross-examination by Public Hearing Counsel he said that maintaining confidentiality was one reason he did not ask to speak with Ms. Chaikun while he was on the telephone with Ms. Reounina. The other reason was that it would not have been appropriate to commence a domestic violence investigation on the phone.⁶

[15] Constable Ludeman spoke with Sergeant Ward, who advised him that it would be acceptable not to disclose Ms. Reounina’s identity during the wellbeing check. Sergeant Ward’s evidence in relation to that call is contained in his filed statement:

I told them, basically, we’re compelled to investigate a report of a domestic assault. We have, obviously, the common law duty to protect life. We’ve got the AG’s policy, which says if ... not a whole lotta discretion here going to investigate and if there’s evidence, we’re going to be arresting and charging and then we have our own internal policy that says we will thoroughly investigate every report of a domestic assault. So knowing that, knowing the history, um, I sent LUDEMAN and LOGAN to go investigate. I told them that ah they’re welcome to use any ruse they wanted to try and see the complainant, hear her version ah and/or gain any ah observations or notes, for example, if she had a broken nose, if she had a black eye, if she had any of those things that would substantiate kind of what’s being said, they will have to ...take more action.⁷

⁴ August 26 Transcript, page 53, line 37.

⁵ August 26 Transcript, pages 63 – 65.

⁶ August 26 Transcript, pages 51 – 53.

⁷ Exhibit 18, October 11, 2018 Interview Transcript, p. 4

[16] In the General Occurrence Report written on the incident date, Sergeant Ward put his advice to Constable Ludeman this way:

Sgt [Ward] explained officers have [to] meet the victim to hear her version, note any potential evidence and most importantly keep her safe. Police could use any ruse to see the victim including the ‘hoarder angle’ if need be; but the bottom line was ensuring the victim’s safety. Finally, this welfare check must occur whether Olga wanted the victim to know [it] was her that called police or not.⁸

[17] After speaking with Sergeant Ward, Constable Ludeman called Ms. Reounina back and learned that Ms. Chaikoun had returned to her own residence. Constable Ludeman’s view was that this complicated things because Mr. Tchaikoun would likely be there. The fact that she was returning to the person who had allegedly slapped her was concerning. Constable Ludeman believed that they had a credible report that Mr. Tchaikoun had slapped his wife, and said he was concerned that the altercation may have started back up. He and Constable Logan proceeded to the Tchaikoun residence to conduct the wellbeing check and “conduct appropriate follow-up” to investigate the alleged offence.⁹

[18] The CAD reflects that officers arrived at the residence at 7:34 p.m. As lead officer, Constable Ludeman knocked on the door. Constable Logan stood behind him, slightly to his right, as Constable Ludeman recalled. Mr. Tchaikoun opened the door. Constable Ludeman introduced himself and Constable Logan, and told Mr. Tchaikoun they were there to speak to Vladimir and Natasha. Constable Ludeman recalled that Mr. Tchaikoun identified himself as Vladimir and asked why they were there. He told Mr. Tchaikoun that they had received a report that Vladimir had struck his wife Natasha and they needed to make sure she was okay. Mr. Tchaikoun said there had been no fight, everything was fine. Constable Ludeman advised him that they would need to speak with Natasha themselves. Constable Ludeman described Mr. Tchaikoun’s demeanour as stern and cold, but did not recall that he had answered the door in an unusual manner. He did not recall, as Constable Logan had testified, that Mr. Tchaikoun “seemed suspicious” when he opened the door.¹⁰

⁸ Exhibit 18, GO Report Excerpt, page 42 of 164

⁹ August 26 Transcript, page 9, lines 38 to page 10, line 23.

¹⁰ August 26 Transcript, page 89, lines 14 – 19.

[19] Alicia Tchaikoun joined her father at the door. At about the same time, Constable Ludeman said, he felt the door bump his foot, which he had placed on the door sill. He explained this by saying that it was a technique he had learned at the police academy, that “any time the police might have to force entry, we put our boot in the door.” His understanding was that such cases might include a call to check the wellbeing of an occupant. He based his authority to do that on his common law duty to protect life, prevent crime and preserve the peace.¹¹

[20] Constable Ludeman said that Alicia Tchaikoun asked why the officers were there and he gave her a similar explanation about an allegation that Vladimir had struck Natasha, and added that it was an anonymous complaint. Alicia and Mr. Tchaikoun then spoke to each other in Russian. Constable Ludeman described Alicia’s demeanour as anxious and animated, and characterized the exchange between Mr. Tchaikoun and Alicia as frantic. Shortly after that, almost “in the midst of” the exchange, Alicia left. Constable Ludeman did not understand her to be going to call her mother to the door. While (as noted below) Alicia and Mr. Tchaikoun had both testified that Mr. Tchaikoun told Alicia clearly in English to go and get Ms. Chaikun, Constable Ludeman said if that was said, he didn’t hear it.¹²

[21] In cross-examination by Public Hearing Counsel, Constable Ludeman agreed the conversation with Mr. Tchaikoun was “cordial” in the sense that they were each listening and giving the other an opportunity to talk. He agreed it was possible that Mr. Tchaikoun told Alicia to go and get her mother, but added:

...I will say it would be a very unusual way of bringing that to my attention, I would think that someone would say, well, is it okay if my daughter goes and gets my wife? Or my daughter is going to grab my wife, she'll bring her here.¹³

[22] After Alicia left, Constable Ludeman said, he employed a “common de-escalation technique”¹⁴ by giving Mr. Tchaikoun a choice between coming outside to talk to Constable Logan while Constable Ludeman went inside to talk to Ms. Chaikun, or having both officers come inside. Mr. Tchaikoun

¹¹ August 26 Transcript, page 14 line 42 to page 15 line 41.

¹² August 26 Transcript, pages 16 – 17.

¹³ August 26 Transcript, page 70, line 47 and page 71, lines 1 – 4.

¹⁴ August 26 Transcript, p. 18, lines 25 – 26.

responded with something to the effect of, there was no assault, and the police were not coming in. In response, Constable Ludeman told him they were coming inside, “no matter what.”¹⁵

[23] Constable Ludeman said that while this conversation was taking place, he felt the pressure on his foot from the door increase, and perceived that Mr. Tchaikoun was attempting to close the door. He concluded that Mr. Tchaikoun had no intention of letting them see his wife.¹⁶ Letting him close the door at that point, after having advised him that his wife had told someone he struck her, would have been “totally inappropriate”,¹⁷ in Constable Ludeman’s view. While he was stating, “we’re coming inside no matter what,” he reached inside the door, and “grabbed [Mr. Tchaikoun] by the arm to try to pull him outside.”¹⁸

[24] When asked in cross-examination by Public Hearing Counsel whether he could have kept the door open with his foot and told Mr. Tchaikoun they would wait there until he got his wife, Constable Ludeman said, “I never had an opportunity, he started to close the door, I mean that really forced ... my hand to take some action ... it wasn't him discussing his concerns with me, or -- or negotiating or bargaining, he just made these very close-ended, very clear statements, and that again, coupled with the closing of the door, I had to do something.”¹⁹

[25] Constable Logan’s evidence on this point was that Mr. Tchaikoun said they “would not be speaking with his wife.” Constable Logan also testified that Constable Ludeman and Mr. Tchaikoun were pushing back and forth on the door, that Mr. Tchaikoun had tried to slam the door, and that he, Constable Logan, had told Constable Ludeman to put his foot in the door.²⁰ In cross-examination by Commission Counsel, Constable Ludeman said he did not recall that things had happened that way.²¹ He had concluded that Mr. Tchaikoun was preventing them from checking on his wife, so rather than go into a

¹⁵ August 26 Transcript, p. 19, lines 30 – 31.

¹⁶ August 26 Transcript, p. 29, lines 43 – 44.

¹⁷ August 26 Transcript, p. 20, lines 6 – 7.

¹⁸ August 26 Transcript, p. 27 line 42 – 47.

¹⁹ August 26 Transcript, p. 72, lines 16 – 30.

²⁰ August 26 Transcript, page 90, lines 5 – 9.

²¹ August 26 Transcript, pages 91 - 92.

house where they didn't know what was going on inside, he believed it would be safer to bring him outside to get control of him and mitigate the risk to Ms. Chaikun.

[26] Constable Ludeman said it was his experience that once he “put hands on someone” they generally became more compliant²². Constable Ludeman agreed in cross-examination by Public Hearing Counsel that if he pulled Mr. Tchaikoun out, the door would close, but said his concerns about Ms. Chaikun's safety would be alleviated. He considered Mr. Tchaikoun detained at that point, but not arrestable. He said Mr. Tchaikoun was detained for officer safety and to prevent him from obstructing the investigation: “Certainly closing the door on me when I'm there to check on the wellbeing of a victim of domestic violence, yes, I would say that's obstructing me.”²³ Constable Ludeman maintained that he had no other option than to take hold of Mr. Tchaikoun because he was closing the door, denying the assault, and saying they were not coming inside.²⁴

[27] Constable Ludeman agreed with suggestions in cross-examination by Commission Counsel that he did not ask Mr. Tchaikoun if he was trying to close the door on him or if he was refusing to get his wife, because it was so obvious what he was doing, and, “...for the same reason I didn't ask him, you know, did you just punch me in the face” (alluding to his testimony, referred to below, that Mr. Tchaikoun punched him in the face during the ensuing altercation). Constable Ludeman added that he did not feel he had the time for further communication, or that Mr. Tchaikoun was open to it.²⁵ He explained that his “common law duty to prevent crime” dictated that grabbing Mr. Tchaikoun's arm was the only choice he had at that point.²⁶

[28] When Constable Ludeman took his arm, Mr. Tchaikoun resisted. Constable Ludeman said he underestimated how much resistance there would be, and it was like Mr. Tchaikoun was “carved out of oak”. He pulled him but he didn't move an inch.²⁷

²² August 26 Transcript, p. 28, lines 30 - 37.

²³ August 26 Transcript, p. 73, lines 25 - 27.

²⁴ August 26 Transcript, p. 75, lines 17 - 26.

²⁵ August 26 Transcript, pages 94 - 95.

²⁶ August 26 Transcript, p. 96, lines 15 - 17.

²⁷ August 26 Transcript, p. 28, lines 5 - 8.

[29] Mr. Tchaikoun then pulled his arm away. In cross-examination by Public Hearing Counsel, Constable Ludeman said he believed that was not a natural or reasonable reaction on the part of a person who was having his arm grabbed “in response to his actions in the context of a domestic violence investigation.”²⁸

[30] Constable Ludeman described what happened next as follows:

...And I'm holding onto his arm so tightly that I sort of come along for the ride, and it's a little bit surprising. And on my way, sort of into the house as he's pulling away, I stumble on that -- that step, that sort of doorsill with my other foot, and we both sort of go stumbling into the house.

I gain my footing a bit, and at this point, instead of getting into a tug of war where I'm -- we're both sort of pulling each other, I start to push him. So I change where I'm initially trying to pull him, he's pulling away, I go sort of stumbling into the house, I get my senses and realize what's happening, and I start to push him now. Which is a common technique when someone's pulling on you, because it throws them off balance a bit.

... I push him, he is off balance, and we both end up in the bathroom, with me pressing Mr. Tchaikoun up against the wall.²⁹

[31] The photographs of the residence show that the bathroom is immediately to the right of the front door. The righthand frame of the front door can be seen at right angles to the bathroom door. The bottom of the staircase to the upper floor is directly across from the front door and the space outside the bathroom is clearly very tight. The bathroom is small with little floorspace.³⁰

[32] Constable Ludeman said he and Mr. Tchaikoun were in the bathroom within “a split second.” He placed Mr. Tchaikoun into a “bear hug” from behind, and told him, “we’re not going to fight right now.” Mr. Tchaikoun began screaming in Russian at the top of his lungs. Constable Ludeman, believing he had control of Mr. Tchaikoun, told Constable Logan to call for cover and said that he was fine; he was just going to hold Mr. Tchaikoun until he “gassed out”. He assumed he would be able to maintain control,

²⁸ August 26 Transcript, p. 77, lines 7 – 17.

²⁹ August 26 Transcript, p. 29, lines 1 – 36.

³⁰ Exhibit 4, Photo DSS_9444, August 18 Transcript, page 8, lines 39 – 42.

given that Mr. Tchaikoun was twice his age and 30 or 40 pounds lighter. Constable Logan took a position at the door of the bathroom.³¹

[33] Mr. Tchaikoun then started pulling his arms and breaking out of the bear hug. Constable Ludeman described himself as “losing control” of him. Constable Logan had become engaged with the other occupants of the home. Mr. Tchaikoun freed his arms, turned to face Constable Ludeman, and punched him in the mouth. Constable Ludeman punched him back, intending to stun him enough to get him into handcuffs. Things then “spun out of control” with both men grabbing the other’s clothing, pushing each other around, and banging off the walls of the bathroom.

[34] Mr. Tchaikoun continued to scream loudly and Constable Ludeman was telling him to stop fighting. Constable Logan came into the bathroom to try to help pull Mr. Tchaikoun to the ground, but he was “frozen solid” and they were unable to move him. Constable Logan punched him a few times, to no effect. Constable Logan left the bathroom, and Constable Ludeman punched, kneed, and head-butted Mr. Tchaikoun but was unable to get him to the ground. Constable Ludeman said that Mr. Tchaikoun in fact got on top of him at one point and was raining down punches while Constable Ludeman was on his back on the floor. Constable Ludeman was unable to get up and for the first time in his career, had to call out for help. Constable Logan came in and pulled Mr. Tchaikoun off Constable Ludeman. Constable Ludeman got up and drew his baton. Constable Logan left again.³²

[35] I will note here that Constable Logan had testified that at this point it was Constable Ludeman who left the bathroom and Constable Logan was struggling with Mr. Tchaikoun. Constable Ludeman stated in cross-examination that was “completely incorrect”.³³

[36] Constable Ludeman said he hit Mr. Tchaikoun “multiple” times in the upper arms and upper legs with his extended baton, but Mr. Tchaikoun “low tackled” him, taking him to the ground again. He

³¹ August 26 Transcript, p. 29, lines 38 – 47, p. 30.

³² August 26 Transcript, pages 31 – 33.

³³ August 26 Transcript, page 88, line 23.

continued hitting Mr. Tchaikoun with his baton until Constable Primerano arrived with other officers and took him and Mr. Tchaikoun outside and placed Mr. Tchaikoun under arrest.³⁴

[37] During the altercation inside the residence, Constable Logan had activated his radio. The recorded transmissions and a transcript of them were filed in evidence. They establish a timeline of about four minutes for the whole incident from Constable Logan's call for cover until the arrest of Mr. Tchaikoun. On the recording, Mr. Tchaikoun can be heard yelling in Russian, and Constable Ludeman can be heard saying, "put your hands behind your back" and "...stop fighting. The fight's over, stop".³⁵

[38] Olga Reounina testified that from her home she heard Alicia Tchaikoun screaming from the upstairs window, "They are killing my father. Help. They are killing him." She went straight to the front door of the Tchaikoun home, which she found open about two or three feet wide. She saw a police officer hitting Mr. Tchaikoun on the face and another officer with his back to her. Mr. Tchaikoun was facing her, Yuri Chaikoun was behind him, and Alicia was at the bottom of the stairs. One officer was beside Mr. Tchaikoun. Mr. Tchaikoun was screaming, "Help, they are killing me," and the officer was holding him with one hand and hitting him with the other fist. Later on she saw him pull out a baton, after he had dragged Mr. Tchaikoun into the bathroom and pushed him onto the floor. He beat Mr. Tchaikoun with the baton. Mr. Tchaikoun kept yelling, "help they are killing me." Ms. Reounina recalled hearing the officer say, "Shut up or I will kill you."³⁶ Constable Ludeman denied ever saying that to anyone.³⁷

[39] Ms. Reounina said that when Mr. Tchaikoun saw her standing at the door, he said, in Russian, "Olga, did you call the police?" The officer kept hitting him, and Yuri Chaikoun stepped forward to intervene. The second officer hit Yuri. Ms. Chaikoun also stepped forward, and the officer hit her as well. Ms. Reounina yelled, "Why are you hurting him?" The officer who was hitting Mr. Tchaikoun got up and said to her, "Get out of here or you will be charged with getting involved in police -- police job, and we'll take you to the police station." One of the officers closed the door, and she left. During her time at the door she only saw Mr. Tchaikoun with his arms up trying to protect himself, not striking any blows. She

³⁴ August 26 Transcript, pages 34 – 35.

³⁵ Exhibits 2, 3 and 6.

³⁶ March 10 Transcript, Excerpt, Testimony of Olga Reounina, pages 8 - 10

³⁷ August 26 Transcript, page 36, lines 1 – 4.

also did not see Yuri or Ms. Chaikun hit anyone. Ms. Reounina described her reaction to this scene as “shock and disbelief, ...fear, ... shame and guilt.”

[40] The recording of the radio transmission from Constable Logan’s emergency button was played for Alicia Tchaikoun when she testified, and she translated what Mr. Tchaikoun said in Russian as, “Olga, what have you done?”³⁸

[41] Constable Ludeman received injuries he characterized as minor relative to the incident: a fat lip, a loose tooth and some cuts and scrapes. He went to the hospital for medical attention and was back to work the next day, though he was really sore.³⁹

[42] Constable Ludeman identified a policy manual published by the BC government entitled, “Violence Against Women in Relationships Policy, December 2010,” referred to as the VAWIR Policy, the stated purpose of which is to set out “the protocols, roles and responsibilities of service providers across the justice and child welfare systems that respond to domestic violence.”⁴⁰ It states as follows in relation to the entry of premises by police:

Where police have reasonable certainty that the ongoing safety of individuals within a premises is in jeopardy, police have limited authority to forcibly enter a premise to ensure the safety of all parties. They do not take the word of any single occupant with regard to safety, but speak to all occupants. The specific authority to enter a premise to check on the safety of occupants is found in the 1998 Supreme Court of Canada decision (*R. v. Godoy*)⁴¹.

[43] Constable Ludeman referred to *Godoy* as “one of the few pieces of caselaw that I think any police officer knows by name.”⁴²

³⁸ March 13 Transcript, page 30, lines 1 – 10.

³⁹ August 26 Transcript, page 38, lines 16 – 30.

⁴⁰ <https://www2.gov.bc.ca/assets/gov/law-crime-and-justice/criminal-justice/victims-of-crime/vs-info-for-professionals/info-resources/vawir.pdf>, p. 2

⁴¹ Ibid, p. 8, *R. v. Godoy*, (1991), 131 CCC (3d) 129 (SCC).

⁴² August 26 Transcript, pages 23, lines 8 – 9.

[44] Constable Ludeman stated that in hindsight he would not have done anything differently. Although in cross-examination by Public Hearing Counsel he agreed that something went horribly wrong, he did not believe he was the cause of it.⁴³

[45] In relation to his duty to investigate domestic violence calls, Constable Ludeman said:

...every single call that relates to domestic violence is serious, I mean, when you read the domestic violence policy, that's really the point it's driving home is that you're not to brush these off as misunderstandings or family disputes, or couples fight and it's not a big deal. Each one is taken seriously, each one needs a proper assessment, and each one needs to be investigated thoroughly.⁴⁴

2. Constable Logan

[46] Constable Logan has been a Vancouver police officer since 2007; nine years by the incident date. He estimated that he has been to about 2,000 calls related to domestic violence. He stated that his understanding of the Vancouver Police Department's policy relating to speaking to alleged victims of domestic violence is that officers "at a minimum" must speak with both parties, but it doesn't mean that they must "go inside or outside a residence." He understood that they were required to "physically see" the victim. If the alleged assailant answered the door and refused permission to speak with the alleged victim, the police might have to "force entry" to "ensure the safety of the victim." His understanding is that he had a common law duty to enter the home to "protect life, and preserve damage to property." The police would not be able to just walk away.⁴⁵

[47] Constable Logan testified that on the incident date they had received the "check wellbeing" call from dispatch indicating a third party complaint about an assault inside a residence, involving a "slap". They received direction from Sergeant Ward to attend the residence and speak to all persons involved. When they arrived Constable Logan understood the alleged victim to be inside and considered her to be still "at risk". He described his duty in relation to entry, in such circumstances, as follows:

⁴³ August 26 Transcript, page 40, lines 9 – 17.

⁴⁴ August 26 Transcript, page 60, ll. 2-10

⁴⁵ August 25 Transcript, pages 32 - 33.

It's not the first thing on our mind to enter every single household, but if we have to, there's a duty to locate that victim and speak to him or her. There's no option to leave. We don't know their safety, or if they're hurt, harmed, or if they're okay, it's an unknown.⁴⁶

[48] Constable Ludeman knocked on the door. Constable Logan's evidence regarding the interaction at the door may be contrasted with Constable Ludeman's in the following respects:

- (a) he recalled standing to the left of Constable Ludeman, not the right;
- (b) he described Mr. Tchaikoun as "peering his head around" the door as if "hiding something";
- (c) Mr. Tchaikoun said, "you're not talking to her" in addition to saying "you're not coming in here", in an unfriendly, firm, tone;
- (d) Mr. Tchaikoun tried to shut the door and Constable Logan told Constable Ludeman to put his foot in the door;
- (e) he described Mr. Tchaikoun as moving the door quickly and with force in a jarring motion toward Constable Ludeman, Constable Ludeman pushing it back, and Mr. Tchaikoun pushing it back toward Constable Ludeman, going back and forth maybe four times.

[49] Constable Logan's description of the verbal interaction regarding the explanation of options to Mr. Tchaikoun accorded with Constable Ludeman's, as did his view about the reasons for not letting him close the door. Constable Logan explained that if the door closed the situation would escalate, requiring additional resources, and perhaps the Emergency Response Team or a command vehicle, to attend, with the possibility of harm to the victim while waiting for those. When Mr. Tchaikoun tried to close the door, Constable Logan said, he was escalating the situation and it required that the officers also escalate their actions.⁴⁷

[50] Following the back and forth of the door, Constable Logan recalled the door suddenly flying open, Constable Ludeman being pushed or pulled into the residence, and he and Mr. Tchaikoun ending up in the bathroom. Constable Logan followed him in, a decision he said was based on instincts, training, and his role as cover officer. He saw Constable Ludeman holding Mr. Tchaikoun in a bear hug and telling him to calm down. Constable Ludeman said he was okay, so Constable Logan assumed a role of covering for him at the bathroom door. Constable Logan stated in response to questions by Constable Ludeman's

⁴⁶ August 25 Transcript, pages 37 – 38.

⁴⁷ August 25 Transcript, pages 39 – 44.

counsel that at the door, he saw Constable Ludeman “lurch forward unnaturally,” and that in the bathroom, he was saying, “stop resisting,” and, “stop fighting.”⁴⁸

[51] In cross-examination by Public Hearing Counsel, Constable Logan agreed that he had not made notes about what Mr. Tchaikoun said at the door or provided that evidence prior to testifying at the criminal trial in September 2017. He did not hear all of what Mr. Tchaikoun said at the door and did not recall seeing Alicia Tchaikoun there. He agreed that given the time lapse, they were not attending with the understanding that there was an ongoing assault, and they believed it was going to be a low-level call.⁴⁹

[52] Constable Logan said that the officers were going to enter the residence if it appeared necessary, and that Mr. Tchaikoun appeared to be trying to close the door. He denied that he pushed his way in or hit Mr. Tchaikoun while they were at the door. He went in, without force, because his partner had gone in. After hearing from Constable Ludeman that he was okay he took up a post at the bathroom door.⁵⁰

[53] Constable Logan’s evidence about the events inside the residence comes from cross-examination by Public Hearing Counsel. Constable Logan denied that he was holding the front door open while he was standing cover at the bathroom door. He saw Alicia Tchaikoun, Natalia Chaikun, and Yuri Chaikun approaching. Natalia Chaikun was in front, screaming. He did not recall what she was saying. He realized she was the victim of the domestic call. Alicia Tchaikoun said, “Why are you doing this?”⁵¹

[54] Constable Logan did not respond to their questions, except to say, “get back,” because they “charged” him and he did not have time. He denied saying he would pepper spray them. Yuri Chaikun was right beside Natalia Chaikun, and came at him with his arms up. Constable Logan did not recall if Yuri Chaikun had his palms out or was saying “stop”. He said Yuri Chaikun made contact with him and tried to push past him into the bathroom. He could hear Vladimir Tchaikoun screaming in Russian from the bathroom.

⁴⁸ August 25 Transcript, pages 45 – 46.

⁴⁹ August 25 Transcript, page 55, lines 1 – 14.

⁵⁰ August 25 Transcript, pages 42 – 46.

⁵¹ August 25 Transcript, page 66, lines 30 - 40.

[55] Natalia Chaikun pushed Constable Logan, he said, and he “eventually ...had to push her back.” He struck her with the heel of his palm to her chest. Yuri Chaikun kept trying to push into the bathroom and Constable Logan struck him also, with the heel of his palm. Alicia Tchaikoun stood back, yelling and challenging their authority, asking why they were doing this.⁵²

[56] Constable Logan could see that Constable Ludeman was getting into trouble, while he was still trying to fend off Yuri and Natalia Chaikun. He described him as overcoming Constable Ludeman’s attempts to restrain him. Constable Logan pushed Natalia and Yuri Chaikoun back and punched Vladimir Tchaikoun twice in the side of the head. He turned back to face Natalia and Yuri Chaikun, who were again trying to push past him. He described Natalia Chaikun as “hitting and scraping” at his arm, and Yuri Chaikun as coming at him. He pushed or struck them both in the chest again.⁵³

[57] Constable Logan said that Yuri Chaikun then hit him in the face with “a punch or a slap or a movement of his arm,” and Constable Logan hit him twice in the face with a closed fist. This moved him back and Constable Logan turned back to the bathroom to see Constable Ludeman on his back with Vladimir Tchaikoun straddled over top of him, hitting him. Constable Ludeman’s head was “bouncing off” the bathroom floor.⁵⁴

[58] Constable Logan had to turn to get Yuri Chaikun off him again, then turned back to assist Constable Ludeman, who was still on the floor. Yuri Chaikun was still hitting Constable Logan from behind. Constable Logan struck Vladimir Tchaikoun in the face, twice, to no effect, and then kneed him twice in the face. Constable Logan then felt Yuri Chaikun being pulled off him by another officer. Constable Logan pulled Vladimir Tchaikoun off Constable Ludeman, and threw him into the corner of the wall. He told Constable Ludeman to disengage, but did not see what he did after that.

[59] As previously noted, Constable Logan’s evidence differs from Constable Ludeman’s as to which of them was in the bathroom with Vladimir Tchaikoun when the backup members arrived. Constable Logan recalls being removed from the bathroom by Constable Farrell while he was engaged with

⁵² August 25 Transcript, pages 68 – 69.

⁵³ August 25 Transcript, pages 69 – 70.

⁵⁴ August 25 Transcript, pages 70 – 72.

Vladimir Tchaikoun. He did not recall that Constable Ludeman was still there when that happened. He agreed that he had testified at the criminal trial that he had sidekicked Mr. Tchaikoun while he was in the corner in the bathroom with him, and that Constable Ludeman had left at that point.⁵⁵

[60] Constable Logan had a broken hand as a result of the incident.⁵⁶

3. Olga Reounina

[61] In addition to the evidence of Ms. Reounina that I have already outlined, in cross-examination by Counsel for Constable Logan Ms. Reounina described Mr. Tchaikoun as physically controlling in relation to Natalia Chaikoun and Alicia Tchaikoun. Natalia Chaikoun was training with Ms. Reounina to become a yoga instructor and Vladimir Tchaikoun was not pleased with this. Ms. Reounina recounted a conversation she recalled having with him, in which he asked her not to interfere in his marriage, and told her that a wife needs to be obedient and that a husband has a right to hit her to put her in her place.⁵⁷

[62] Ms. Reounina further recounted prior incidents that Natalia Chaikoun had described to her, such as, “Pushing, squeezing her wrists, twisting her arms. Locking the door.”⁵⁸ She testified that Vladimir Tchaikoun would interrupt her phone calls with Natalia, and when she went to visit Natalia, he would peer around the door and say she wasn’t home, although Ms. Reounina knew he was.⁵⁹ Ms. Reounina agreed she told the 911 operator that he might not open the door for the police.⁶⁰

[63] After the incident, Alicia Tchaikoun came to Ms. Reounina’s door and asked to stay overnight because the police were investigating at her house and she couldn’t stay there.

[64] Ms. Reounina was never interviewed by the police. The first statement she gave was at the request of Public Hearing Counsel prior to her testimony at the public hearing. Her friendship with

⁵⁵ August 25 Transcript, pages 47 to 78.

⁵⁶ August 25 Transcript, page 48, lines 6 -7.

⁵⁷ August 18 Transcript, page 14, lines 36 to 46.

⁵⁸ March 10 Transcript, Page 15, lines 23 – 24.

⁵⁹ Pages 15 – 16.

⁶⁰ Page 16, lines 17 - 19, Exhibit 5, line 168.

Natalia was ended by the incident. She had never discussed the incident with the family, other than an attempt about two years later to apologize to Natalia, which was rebuffed.

[65] In cross-examination by Counsel for Constable Logan, Ms. Reounina provided details of her conversation with Natalia Chaikun at her house before the incident. She said that Natalia told her Vladimir Tchaikoun had hit her on the face in the kitchen, and that Alicia was there and saw it, but she didn't do anything. Natalia expressed concern about her future in the relationship.

[66] Ms. Reounina denied that she had discussed any issue about trees in the complex (discussed below) with Vladimir Tchaikoun or that he had talked to her about how to parent her sons. She did not recall discussing with him anything about her calling the police on an Iraqi family that had moved into the complex.⁶¹

[67] It became clear from Ms. Reounina's responses to questions in cross-examination and in re-examination by Public Hearing Counsel that Ms. Reounina only recalled receiving one call from Constable Ludeman, the one while Natalia Chaikun was at her residence. She believed that call came from the 911 operator, but it must have been from Constable Ludeman.⁶²

4. Vladimir Tchaikoun

[68] Vladimir Tchaikoun testified that he worked as a senior civil and design engineer in Argentina for 14 years and then in Canada after his arrival in 1998. He confirmed that Russian is his first language. His accent was strong and he was soft-spoken. He worked on helicopter design in Canada, including work for the military and police. At the time of the incident he had lived in the complex for 20 years, with his wife Natalia, whom he said worked with the refugee society, his son Yuri, an electronics engineer, and his daughter Alicia, a student.⁶³

[69] The night before the incident, Mr. Tchaikoun stated, his wife had returned from yoga tired, exhausted, and sick. My quotes of his evidence will come from the transcript and I mean no disrespect in quoting them as transcribed. Mr. Tchaikoun said Ms. Chaikun had been "laying without doing anything."

⁶¹ March 10 Transcript, excerpt, pages 8 – 12, page 14 lines 10 – 12, pages 16 – 17.

⁶² August 18 Transcript, pages 26 – 27.

⁶³ March 10 Transcript, pages 39 – 44.

The next morning she was still sick, very sensitive to light and sound, and nervous. She had come into the kitchen where he and Alicia were making dinner and asked them not to talk. He asked her to leave and she “reacted very exaggeration.” She didn’t want to go, but there was no argument. She started crying and was a “little nervous.” Mr. Tchaikoun denied that he hit her, saying: “I not striking a woman, especially my wife in this case, and for me it's impossible to strike a woman, because it's -- it's my wife, and I only ask her to leave the room if she stay in this condition because she trying to make waves, not healthy waves.” She made some juice and left. Mr. Tchaikoun did not know what time this occurred.⁶⁴

[70] In the evening of that day, perhaps more than two hours later, Mr. Tchaikoun was in the kitchen with Alicia when he heard a knock at the door. He wasn’t expecting anyone and believed it may be a neighbour. He opened his door, which he stated had a mechanism that caused it to close automatically. He opened the door wide and saw two police officers, which surprised him. The taller of the two (Constable Ludeman) asked if he was Vladimir. Mr. Tchaikoun responded by asking why they were there. He did not recall identifying himself to the officers. Constable Logan told him they were there to check on his wife’s wellbeing. He asked who called them and they said it was anonymous. Alicia joined him at the door and stood behind him.

[71] Mr. Tchaikoun said he asked Alicia, once in English and again in Russian, to “get Mom”. He considered it “ethically polite” to speak in English first, with the police standing there. Alicia started to move. Up to this point the officers were standing outside the door, with Constable Ludeman on the left. Mr. Tchaikoun was facing to his right and did not see a foot in the door. He was about a metre from the door with his left hand on the door frame and his right hand on the doorknob, holding the door open.⁶⁵

[72] Mr. Tchaikoun said the officers did not ask him to go outside, stating, “Because I believe there's none reason at all, if the person not recognizable who was standing in front of them, there's no point to ask why you're -- why I should go away -- -- from this position.” He said that neither officer offered to come inside and speak to Natalia Chaikun.⁶⁶

⁶⁴ March 10 Transcript, pages 44 – 46.

⁶⁵ March 10 Transcript, pages 47 – 50, and March 11 Transcript, page 2, line 8 and pages 28 - 29

⁶⁶ March 10 Transcript, page 50, lines 26 – 40.

[73] Mr. Tchaikoun described what happened after that as follows:

At this moment when I turn my head to the right, I -- I feel some motions that somebody grabbed my hand, and I receive very powerful blows on my head, on the eyes, and several blows was -- like serial blows to my hand -- or to my head, and to my feet as well, right feet especially.

... My right hand was grabbed by Mr. Logan, and left hand grabbed by Mr. Ludeman. Mr. Logan grabbed my hand, and give me a blow to the head, was screaming no matter for what he rushed onto me making moment to push me inside of the room, the bathroom.⁶⁷

[74] Mr. Tchaikoun went on to say that Constable Logan had struck him several times in the eyes with his right hand, and that he tried to use his boots to take Mr. Tchaikoun to the ground. Constable Ludeman was holding his hand and then used the momentum to take him into the bathroom. He was receiving blows to the head and he also hit his head in the bathroom. He believed that he blacked out for some of the time in the bathroom. He recalled a tall man with dark hair using a baton on him, hitting his hand when he tried to cover his face. A mirror broke at some point and the glass fell onto Mr. Tchaikoun, cutting his scalp. He remembered saying only, "stop doing this," "stop beating." He heard someone say, "use the taser," and he believed the police were trying to kill him. He started calling for his son to help, calling his name and saying, "They killing me!"⁶⁸

[75] Mr. Tchaikoun remembered sitting in the corridor in front of the front door, and seeing Ms. Reounina standing outside the open door with her son behind her. Later in his evidence he said he was in the bathroom at this time. He asked her in Russian what she had done. Someone struck him on his shoulder and his head, and he was "out again". He believed this happened after the events in the bathroom, but described himself essentially as in and out of consciousness. He ended up in handcuffs outside the residence, but did not remember how that happened. He saw Yuri for the first time outside. He was also handcuffed. He saw his wife later in the police car, also handcuffed.⁶⁹

[76] As to whether he was resisting the efforts of the police to handcuff him, Mr. Tchaikoun stated:

⁶⁷ March 10 Transcript, page 50, lines 42 to 47, and page 51, lines 4 to 9.

⁶⁸ To page 54

⁶⁹ To page 57 and March 11 Transcript, page 5, line 18 – 19.

I don't know what the resisting is, struggling means, because I receive so many blows to my body that maybe my body was resisting to such interference that someone working to damage that, maybe my body was in protection.⁷⁰

[77] Mr. Tchaikoun was taken to the hospital after his arrest. In his evidence he described extensive injuries to many parts of his body, which may be roughly summarized as stitches to his head; swelling and blurred vision in his eyes; broken teeth; significant injuries on his shins, hands, and neck; some effects on his hearing; and vertigo.⁷¹ Mr. Tchaikoun provided photographs of his injuries. It is clear they were significant and extensive.⁷² He said he was still suffering effects from the incident at the date of the public hearing.⁷³

[78] Mr. Tchaikoun confirmed that after he was treated in hospital he was taken to jail, as were his wife and son. They were charged with assaulting a police officer and released on bail the afternoon after the incident.

[79] In cross-examination by Counsel for Constable Ludeman, Mr. Tchaikoun stated that he asked Ms. Reounina what she had done because he believed she must have been the one who called the police, as she had a propensity for calling the police, and had done so on her own sons as well as others in the complex. He denied that his wife could have called the police because he did not believe she had left their residence, although he agreed he was not really paying attention to what she was doing. He denied that anyone had ever complained about him being a hoarder.⁷⁴ In cross-examination by Counsel for Constable Logan Mr. Tchaikoun stated that he believed Ms. Reounina did not like his position with respect to saving trees in the complex.⁷⁵

[80] In further cross-examination by Counsel for Constable Logan, Mr. Tchaikoun agreed that he had not identified Olga as the person to whom he said, “what have you done,” in his statement to Sergeant

⁷⁰ Page 58, lines 13 – 17.

⁷¹ To page 61 and March 11 Transcript, page 18, lines 24 - 27

⁷² Exhibit 4.

⁷³ March 11 Transcript, pages 25 – 26.

⁷⁴ March 11 Transcript, pages 37 – 39.

⁷⁵ March 11 Transcript pages 58 – 60.

Kowan in connection with the *Police Act* complaint⁷⁶. He agreed that he believed Ms. Reounina was influencing Natalia to become a yoga instructor and go out at dangerous times, and that he felt it was not good for her to be involved in that. He was concerned that she was not spending time with their daughter, and not helping him. He believed that would not be good for the family and disagreed with her about going to classes, but he denied that they had “arguments” about it. It became apparent that his disagreement with Natalia was more about her spending time with Ms. Reounina than about her training to be a yoga instructor.⁷⁷

[81] Mr. Tchaikoun maintained that he did not know Ms. Reounina had called the police, he was not aware that his wife had gone to see her, and he denied that he hit his wife “during that day”. He said he had lost 10 kilograms since the incident.⁷⁸ He maintained that it was Constable Logan who started the attack, and he did not recall seeing him at all in the bathroom.⁷⁹

5. Natalia Chaikun

[82] Natalia Chaikun stated that she and Olga Reounina had been friends since about 2008 or 2009 when Ms. Chaikun became interested in yoga. At the time of the public hearing, Ms. Chaikun had just finished her training as a yoga instructor. She said that her yoga practice sometimes required that she rise at 3:00 a.m. and that her husband did not like the idea.⁸⁰

[83] On the date of the incident, she was missing the third day of a yoga training instructor course because she had a migraine headache. She called to excuse herself from the class, and went to the kitchen to get some tea. She thought that was around noon. Vladimir Tchaikoun and Alicia were in the kitchen talking. Ms. Chaikun found her husband’s voice very irritating and she asked him to stop talking. He told her to get her tea and leave, which upset her. She denied that he slapped her.

[84] Ms. Chaikun went upstairs to her bedroom and called Ms. Reounina to talk to her about missing her yoga training and as a friend, like “women talk”. Ms. Reounina told her she would be home in an

⁷⁶ March 11 Transcript, pages 72 – 77.

⁷⁷ March 11 Transcript, to page 84.

⁷⁸ March 11 Transcript, page 85 line 35.

⁷⁹ March 11 Transcript, page 87, lines 20 – 47, page 88.

⁸⁰ March 12 Transcript, page 11, lines 14 – 18.

hour. Ms. Chaikun rested for a time and then went to Ms. Reounina's home, she believed at around 4:00 p.m. Her husband and Alicia were in the kitchen cooking, and she thought maybe they didn't see her sneak out. Her son Yuri was in his bedroom sleeping after working late.⁸¹

[85] Ms. Chaikun believed she stayed at Ms. Reounina's residence until between 6:30 and 7 p.m. They visited and had some tea. She denied telling Ms. Reounina that Mr. Tchaikoun had slapped her in the face. She said he had never slapped her on her face.⁸² She confirmed her husband's evidence about Ms. Reounina's propensity for calling the police and the dispute about the trees, as possible motives for Ms. Reounina to lie about the slap.⁸³

[86] While Ms. Chaikun was with Ms. Reounina, Ms. Reounina excused herself to make a call, and was gone between 10 and 15 minutes. When she came back, she seemed tense and appeared to want Ms. Chaikun to leave. Ms. Chaikun nonetheless stayed for another hour. Ms. Reounina received another call which took another 10 – 15 minutes, and then came downstairs to tell Ms. Chaikun that she had to go to an appointment.⁸⁴

[87] Ms. Chaikun returned home and found her husband and daughter still in the kitchen. She went upstairs to her bedroom. Not long after that, Yuri woke up and appeared at her door in a jacket, shorts and slippers. They started a conversation, then heard a loud bump from downstairs, like something bumping on the floor. They rushed down the stairs, Yuri in front, and heard Vladimir Tchaikoun screaming, "Yuri, help me, they're killing me!" She believed he was saying this in English. They went as quickly as they could, and saw Constable Logan standing in the open front door with his left hand extended toward them, directing them to stop. Ms. Chaikun believed Constable Logan was holding the door open because it closes automatically.⁸⁵

[88] Ms. Chaikun said she saw Constable Ludeman sitting on Mr. Tchaikoun, beating him repeatedly. She said: "For me it was like demon, ... it's like some animal or something because he was killing him."

⁸¹ March 12 Transcript, pages 3 – 9.

⁸² March 12 Transcript, page 10.

⁸³ March 12 Transcript, pages 13 – 14.

⁸⁴ March 12 Transcript, page 12.

⁸⁵ March 12 Transcript, pages 15 - 18.

It was impression that this guy killing him. So fiercely he was bumping him.” She indicated a chopping motion and said he was using his baton.⁸⁶

[89] She saw Yuri trying to approach and saying to Constable Ludeman, “What are you doing, stop doing, why are you doing this? Explain.” They tried to get to Mr. Tchaikoun, but, she stated, Constable Logan told them to stay back or he would pepper spray them. Fearing for Yuri, Ms. Chaikun called him and pulled him back by the back of his jacket. Constable Logan punched Yuri in the face. Alicia came beside Ms. Chaikun at some point and was screaming “Why are you beating my father?”⁸⁷

[90] Ms. Chaikun said Yuri did not strike Constable Logan, but came forward with his hands up, palms facing the officer, in a friendly manner. Ms. Chaikun did not remember if she was struck by Constable Logan, she was too afraid for her children. Another officer came through the front door, jumped on Yuri and pushed and punched him into the living room, with Ms. Chaikun still holding his jacket. That officer pushed her in the abdomen with his boot very firmly a couple of times to remove her. Yuri slowed down and the officer handcuffed him. A number of other officers came in the sliding door. Yuri was placed in a chair. Ms. Chaikun told Alicia to come upstairs with her, but as they were starting up the stairs, an officer said, “arrest her,” and two other officers took hold of Ms. Chaikun and handcuffed her.⁸⁸

[91] Ms. Chaikun was taken to jail and kept overnight. When she saw her husband at the bail hearing she didn’t recognize him because of the condition of his face. She heard someone saying they had assaulted police officers. She was released with her husband and Yuri the next afternoon. Ms. Chaikun gave a statement to Sergeant Kowan in 2018 on the *Police Act* investigation but was never interviewed in connection with the allegation that Ms. Reounina made. Ms. Chaikun confirmed that she and Ms. Reounina had only spoken once since the incident.⁸⁹

[92] Counsel for Constable Logan played a recording of Ms. Chaikun’s statement to Sergeant Kowan in 2018. The statement was taken in the lobby of a hotel and there is a lot of background noise, which Ms.

⁸⁶ March 12 Transcript, page 19, Lines 34 – 46.

⁸⁷ March 12 Transcript, pages 20 – 22.

⁸⁸ March 12 Transcript, pages 23 – 28.

⁸⁹ March 12 Transcript, pages 29 – 37.

Chaikun described as “unprofessional”. Each of the witnesses’ statements contains a preface from the transcriber indicating that due to background conversations and noises, it is difficult to hear what was being said.

[93] Counsel for Constable Logan also established that, based on Ms. Chaikun’s recollection of the time she arrived at Ms. Reounina’s home and the log of call times provided by the VPD, Ms. Reounina would have made her 911 call while Ms. Chaikun was at her residence. In addition, Ms. Chaikun agreed that Constable Logan was holding his arm out and may have been saying “stop fighting” to her and Yuri, but she denied they were fighting with him. She was not sure what he had said but expected it must have been recorded on the police radio.⁹⁰

6. Alicia Tchaikoun

[94] Alicia Tchaikoun testified that her mother left the residence on the incident date between 3:00 p.m. and 3:30 p.m. and was gone for at least 3 hours. She arrived home around 6:30 p.m. She stated that around lunchtime her mother had come into the kitchen, in a bad mood, feeling ill, and told Alicia and her father to be quiet. Her father told her to let them finish their conversation and go upstairs. Their voices were raised a bit, but her father did not slap her mother. Her mother went back upstairs until she left the residence. When Alicia and Mr. Tchaikoun heard the police knock on the door, Mr. Tchaikoun went to answer it and Alicia followed right behind him. Alicia saw two police officers, the taller of the two (Constable Ludeman) on the left. He asked if Mr. Tchaikoun was Vladimir, and Mr. Tchaikoun answered, “Who called you? What happened?” The other officer (Constable Logan) said they could not tell him who called, it was anonymous, but they were there to check on Natalia’s wellbeing. Mr. Tchaikoun turned to Alicia and asked her to get her mother. Her evidence as to what language he spoke was: “He first said it in English, loud and clear, and then he repeated it in Russian.”⁹¹

[95] Alicia said she was barely able to take a step and she heard a bang. She was certain there was no conversation between the officers and her father at the door between him asking her to get her mother and her hearing the bang. She looked to see that her father was “punched, and pushed off balance by the

⁹⁰ March 12 Transcript, pages 64 – 67, Exhibit 2, Tab 2, Exhibit 3, page 95, lines 15 - 33.

⁹¹ March 13 Transcript, pages 4 – 7.

shorter officer, and then the taller one, he proceeds to shove him into the washroom.” She recalled that Constable Logan had used his right hand when he punched Mr. Tchaikoun. It was kind of a fluid motion from a punch to a push and then Constable Ludeman pushed him into the bathroom. She heard a banging crash, and believed it must have been the mirror falling.

[96] She could see her father’s legs, with Constable Ludeman on top of him, delivering blows with his hands. Constable Logan was standing in front of the bathroom holding the front door open with one leg, she believed his left, and holding his left hand out facing Alicia, “shoving” her away. She confirmed that the front door was self-closing, and said it was fairly heavy. She said Constable Logan’s other hand was on the bathroom door frame, and that he was about an arms’ length from her. Alicia was screaming, “Please don’t kill my father! What are you doing?” At one point, she said, Constable Logan said something like, “You guys have caused too much commotion around here.” Alicia could hear her father calling her name, and saying, “Yuri, they’re killing me! They’re killing me!” Alicia was saying, “Please stop, stop killing my father! What are you doing?”⁹²

[97] Alicia saw her brother and her mother appear beside her, with her mother a bit behind him. Yuri had his hands up with his palms out, and said, “Please stop fighting,” to Constable Logan. Natalia Chaikun was trying to hold Yuri back. Constable Logan then pushed Yuri and punched him back. When that happened, Alicia ran upstairs and screamed out the bedroom window, “Help, they’re killing my father!” She went back downstairs, and saw Ms. Reounina outside the front door, which was still open, but she did not hear if Mr. Tchaikoun said anything to her. Yuri was still asking the police to stop and Constable Logan punched him twice in the face. She did not see Yuri strike Constable Logan. Yuri fell back. Her mother was holding Yuri’s jacket, screaming his name, and “get back”. At this point another officer burst through the front door, and pushed, then punched Yuri into the living room. Natalia Chaikun was still beside Alicia, screaming “please don’t hit my son!”

[98] Yuri was saying, “Please don’t fight.” The officer punched him again, grabbed his left arm, dragged him into the living room and pushed him into a chair. Alicia said she saw that officer kicking her mother away, more than once, when she came closer, still screaming, “please don’t hit my son!” Alicia

⁹² March 13 Transcript pages 8 – 17.

did not see her mother touching or pulling at the officer. A number of officers then burst through the sliding door, and she heard an officer say, “Bring out the taser, let’s finish him.”

[99] Alicia and her mother went upstairs, but the officer who had punched Yuri came up and said, “arrest her, too,” indicating Natalia Chaikun. Alicia asked why, and he said she touched his sleeve. Natalia Chaikun was arrested and taken downstairs. Alicia spent the night at Ms. Reounina’s but they did not discuss what Ms. Reounina saw or who had called the police.⁹³ Alicia Tchaikoun confirmed that she could hear her father saying, “Olga, what have you done?” in Russian on the 911 tape. She also said she believed this was at the point that her mother and brother were there with her and Yuri was saying, “stop fighting”.⁹⁴

[100] In questioning by Commission Counsel, Alicia Tchaikoun agreed that she had told Sergeant Kowan that her father had acknowledged that he was Vladimir, at the door, and said that she believed the bang she heard was the door banging into the wall. She also agreed that she had not told Sergeant Kowan that Constable Logan had punched her father, stating only that when she turned around in response to the bang she “saw that he was just kind of pushed into the bathroom” and they started to hit him. Later in the statement she had told Sergeant Kowan that he was pushed in, and “they started” punching him.⁹⁵ She explained, “I believe he first pushed him, and then there was a punch, my father was off balance, and then Ludeman proceeded to then shove him into the washroom. Right after.”⁹⁶

[101] In cross-examination by Counsel for Constable Logan, Alicia Tchaikoun acknowledged she had not told Sergeant Kowan that her mother had gone out in the afternoon, and she said she recalled that it was dark when she got home. She also acknowledged that she did not tell Sergeant Kowan that her father had told her to go and get her mother once in English and once in Russian, or that he had said it in English “loud and clear”. She had not told Sergeant Kowan that Constable Logan punched her father at the door. She had told Sergeant Kowan she could not see what was happening in the bathroom, not that

⁹³ March 13 Transcript, to page 25

⁹⁴ March 13 Transcript page 30, lines 1 – 27.

⁹⁵ March 13 Transcript, pages 39 - 42

⁹⁶ March 13 Transcript, page 42, lines 17 - 26

she could see blows, although she had said she heard the sound of blows. She said in her statement that she saw Constable Logan push Yuri and hit him in the chest, but not that he punched him in the face.⁹⁷

[102] Alicia Tchaikoun also did not tell Sergeant Kowan:

- (a) that an officer had said to “finish him” with the taser;
- (b) that her mother was holding onto Yuri’s jacket and yelling his name;
- (c) that she (Alicia) was screaming “stop killing him” to the police;
- (d) that the police threatened to arrest her if she did not leave the house; and
- (e) that she went to the door “directly” after her father. (In her statement she said she had come to the door “a minute” after him.)⁹⁸

[103] Ms. Tchaikoun explained these discrepancies by the fact that the location where she gave her statement to Sergeant Kowan was very noisy and distracting, a point that had come up in the testimony of Ms. Chaikun. In her interview, Alicia had also estimated the timing from the knock on the door to her father’s arrival in the bathroom to be five to seven minutes, which in her evidence she stated was incorrect. It seemed long to her because she was very stressed, but she could not now be exact.⁹⁹

7. Yuri Chaikun

[104] Yuri Chaikun is a design engineer with a Master’s Degree in electrical and electronics engineering. He was 40 at the time of the public hearing. He had been working long hours in the days before the incident, and had worked from 5 a.m. on March 12 until 11 a.m. on the day of the incident. He got up at about 7:20 p.m. and went to the door of his mother’s room. They were chatting, when he heard a loud noise like a bump on the floor and screaming from downstairs. He heard his father yelling, “Help, they’re killing me!” in Russian, and Alicia’s voice as well. Mr. Chaikun and his mother rushed downstairs.

[105] Mr. Chaikun saw Constable Logan standing facing Alicia with his left hand in front of him in a stop motion, holding the front door open with his foot. He and Alicia were “arm’s length” apart. Mr.

⁹⁷ March 13 Transcript, pages 49 - 65.

⁹⁸ March 13 Transcript, pages 66 – 72.

⁹⁹ March 13 Transcript, pages 73 – 74.

Chaikun arrived on Alicia's left side. He could see over Constable Logan, and saw Constable Ludeman on top of his father in the bathroom, brutally kicking, punching, striking and hitting him with a baton. Mr. Chaikun said he "woke up", and believed the officer was killing his father. He said he initially tried to communicate, to ask Constable Logan to "please stop this brutal violence, can we please talk peacefully," but he didn't react.¹⁰⁰

[106] Mr. Chaikun said that Constable Logan did not respond to his attempts to communicate, nor give any explanation or reason for their presence or business with his father. He just warned them in an aggressive manner to stay back and kept his arm extended. Alicia was crying and saying, "Please don't kill my father!" As they tried to talk to Constable Logan, Mr. Chaikun said, he came towards them and pushed them. Mr. Chaikun said he tried to look around the corner to see into the bathroom, while maintaining an arm's length distance, and Constable Logan punched him in the chest, and pushed him and Alicia, as they were standing in front of him.¹⁰¹

[107] Mr. Chaikun stated that Constable Logan said he would pepper spray them if they didn't stay back. Mr. Chaikun and Alicia kept trying to get them to stop the brutal violence, he said, but Constable Logan never responded to them except to tell them to stay back. Then Constable Logan "suddenly" punched Mr. Chaikun, hard, in the face, at least twice. Mr. Chaikun lost his balance. Constable Logan kept his foot in the door throughout this time. Shortly after that another officer arrived "like a rugby player," elbowed Constable Logan out of the doorway, and attacked Mr. Chaikun by punching and pushing him towards the living room. Mr. Chaikun just said, "Please don't fight, we haven't done anything wrong."¹⁰²

[108] Mr. Chaikun's mother was asking this third officer not to beat her son, and he kicked her twice in the stomach, which caused her to lean back into the hallway. Other officers arrived through the sliding door. Mr. Chaikun was handcuffed and placed in a chair in the living room.¹⁰³

¹⁰⁰ August 19 Transcript, pages 1 – 8.

¹⁰¹ August 19 Transcript, to page 10.

¹⁰² August 19 Transcript, to page 14.

¹⁰³ August 19 Transcript, to page 17.

[109] In questioning by Commission Counsel, Mr. Chaikun agreed that he had seen Olga Reounina outside the door during the incident, and that he did not see his father strike Constable Ludeman at any time.¹⁰⁴

[110] In cross-examination by Counsel for Constable Ludeman, Mr. Chaikun agreed that he was terrified during the incident, that he was acting on instinct and had an urge to help his father and to find out what was happening. In relation to what he told Sergeant Kowan during the 2018 interview, Mr. Chaikun referred to the background noise and said the statement was not complete if it did not reflect that he told Sergeant Kowan that his father was saying “they’re killing me.”

[111] In cross-examination by Counsel for Constable Logan, Mr. Chaikun acknowledged that he had discussed with his family members the fact that the setting where Sergeant Kowan took their statements was noisy and not private. He agreed he got right in close to the action to see what was happening with his father. He also agreed that when Constable Logan pushed him, he kept his foot in the door. He did not recall his mother telling him not to approach or holding his jacket.¹⁰⁵ He later acknowledged that he and his family members had discussed the noisy location of their interviews with Sergeant Kowan between hearing dates.¹⁰⁶

8. Other Officers

[112] Constable Lapthorne testified that while he was on patrol on the incident date, at 7:39 p.m., which was 5 minutes after Constables Ludeman and Logan arrived at the Tchaikoun residence, he received a call for “less lethal,” which means a request to bring a taser or a bean bag gun to the scene. The call for less lethal came over what Constable Lapthorne described as an “open mike”, which occurs when an officer hits the emergency button on their uniform. Once the button is pushed, an alert tone comes on, and other members are discouraged from using the radio while the emergency is addressed.

[113] On the recorded police radio transmission of the emergency call, Constable Logan can be heard calling for less lethal at 7:42 p.m., although it is not clear this was the first time he called for it. Constable

¹⁰⁴ August 19 Transcript, to page 24

¹⁰⁵ August 19 Transcript, pages 41 - 55.

¹⁰⁶ August 19 Transcript, page 59.

Lapthorne said he could hear the sounds of a struggle against the microphone, but that is not audible on the recording.¹⁰⁷

[114] Constable Lapthorne and his partner, who had a taser, headed for the Tchaikoun residence, aware only that an emergency button had been pressed, a request for less lethal had been made, and a scuffle was likely in progress. Constable Lapthorne said his mobile data terminal (MDT) likely said it was a domestic call, probably not a “domestic in progress”, although he could not remember what it said. He expected to receive an update en route indicating that the situation was under control, but that didn’t happen, and his adrenaline started to rise. He broadcast when they were close that they were a block away and were “less lethal”.¹⁰⁸

[115] Constable Lapthorne and his partner arrived at 7:43 p.m. to see a “pile of police officers” including Constable Ludeman and Constable Primerano, come with Vladimir Tchaikoun out the front door and onto the ground. Constable Ludeman was holding one of Mr. Tchaikoun’s hands and Constable Lapthorne took over from him. He tried to handcuff Mr. Tchaikoun and found him resistant: Moving his arm was “like trying to move concrete.” He had to get down on one knee and push the arm as hard as he could with both of his own to eventually get it around behind Mr. Tchaikoun’s back to meet the other arm being brought back by another officer.¹⁰⁹

[116] In cross-examination by Counsel for Constable Logan, Constable Lapthorne agreed that Constable Logan sounded panicked when he called for less lethal on the recording. He said he perceived Mr. Tchaikoun to be very strong and resistant, though he had expected him to be tired, and that when he saw Constable Ludeman as they came out of the residence, he looked exhausted and white as a ghost, which is why he took over the arrest.¹¹⁰

[117] Constable Primerano also responded to the emergency call and arrived at the residence to see the front door open and a commotion in the bathroom. As he approached he heard yelling and screaming,

¹⁰⁷ August 19 Transcript, pages 61 – 64, Exhibit 6.

¹⁰⁸ August 19 Transcript, pages 65 – 69. Exhibit 6.

¹⁰⁹ August 19 Transcript, pages 69 – 73.

¹¹⁰ August 19 Transcript, pages 83 – 85.

“Stop fighting.” He believed another officer, Constable Rhode, was already on scene and that he was in or near the bathroom. Constables Ludeman and Logan and Vladimir Tchaikoun were in the bathroom. Mr. Tchaikoun was sitting with his back against a wall and his legs pointing outward, kicking vigorously with his legs and flailing his arms in a punching manner. Constables Ludeman and Logan were trying to gain control of him. Constable Primerano perceived that the bathroom was too small to permit them to do so. He pushed in to stand in front of the toilet and assess the situation, then took out his baton and struck Mr. Tchaikoun in the shoulder blade area five or six times to try to incapacitate him. They were able to drag him out the front door. They had Mr. Tchaikoun face down and were attempting to handcuff him. He was kicking his feet, so Constable Primerano struck his calves with a baton and then got onto his legs. They were able to handcuff him. In cross-examination by Counsel for Constable Ludeman, Constable Primerano said it looked like Mr. Tchaikoun was doing everything he could to avoid being taken into custody.¹¹¹

[118] Constable Farrell was one of the officers who entered the sliding door to the Tchaikoun residence. He saw Vladimir Chaikun in custody on the ground in the living room, with an officer who directed Constable Farrell to go help the others in the bathroom area. It was momentarily silent when Constable Farrell arrived but then he heard screams and a scuffle, like those he had heard on the radio broadcast. He arrived at the bathroom area to see Constable Ludeman standing in the doorway of what he described as a foyer, with Constable Logan nearby on one knee, cradling one of his arms. He put a hand on Constable Logan, moved him aside and told him help was here. Constable Farrell saw a pair of legs from a person lying on the ground. He said the situation then exploded with Constable Ludeman and Mr. Tchaikoun holding each other’s shirts and wrestling. It appeared that Constable Ludeman was being driven backwards out of the room.¹¹²

[119] Constable Farrell said he did not see Constable Primerano inside the residence at this time. Constable Ludeman had his back to Constable Farrell and Constable Farrell was able to get between them and deliver a kick to Mr. Tchaikoun’s chest but it had little effect. He delivered two more kicks to Mr. Tchaikoun’s upper thighs, in an attempt to drive him out the front door. At that point a “wall” of members

¹¹¹ August 20 Transcript, pages 4 – 19.

¹¹² August 21 Transcript, pages 1 – 6.

came in the front door and took over with Mr. Tchaikoun. Constable Farrell pulled Constable Ludeman away and took him outside. He appeared dishevelled and wide eyed as though he had been in a fight. Constable Farrell told him “your fight is over,” and escorted him to a police car outside the premises while the other officers dealt with Mr. Tchaikoun.

[120] In cross-examination by Counsel for Constable Ludeman, Constable Farrell agreed that in his police report, he described Vladimir Tchaikoun as assaultive, agitated and non-compliant. Although he had ticked boxes indicating “pull away, attempt flee” and “attempt/strike person” he did not believe those were accurate descriptions. He saw that Mr. Tchaikoun had Constable Ludeman in something like a hockey grip with his fists clenched pulling back and forth as he held onto Constable Ludeman.¹¹³

C. Analysis

1. Statutory Framework

[121] Section 77(1)(b)(ii) of the *Police Act* provides that misconduct includes “a disciplinary breach of public trust”, which is defined in Section 77(3) as follows:

(3) ...any of the conduct described in the following paragraphs constitutes a disciplinary breach of public trust, when committed by a member:

(a) "abuse of authority", which is oppressive conduct towards a member of the public, including, without limitation,

(i) intentionally or recklessly making an arrest without good and sufficient cause,

(ii) in the performance, or purported performance, of duties, intentionally or recklessly

(A) using unnecessary force on any person, or

(B) detaining or searching any person without good and sufficient cause, ...

[122] The analysis generally commences with an assessment of whether the actions of the officers were authorized; which, if so, is the end of the matter. If unauthorized, the issue becomes whether the conduct

¹¹³ August 21 Transcript, page 12.

was an abuse of authority amounting to oppressive conduct, which encompasses an analysis of the officer's state of mind.

[123] In the case of arrest, use of force, detention or search, the legislation prescribes a mental element of intentionality or recklessness in relation to the existence of authority. As pointed out by Commission Counsel in his submissions, the application of that test has recently been described by Adjudicator Oppal in a decision under Section 117, anonymized due to the confidentiality of proceedings under that section:

... the use in the Police Act of the word “reckless” (in both of the s. 77 subsections at issue here) is consistent with the fact that Police Act disciplinary matters involve an objective component. That is to say, the assessment of a misconduct allegation is not dictated by the individual officer's personal intention or “good faith”; rather it also involves an objective question as to the reasonableness of what the officer believed and did. While an officer's subjective belief will always be relevant, and may mitigate a misconduct allegation, the analysis does not start and end with the subjective component. It is necessary to assess objectively whether what the officer believed and did was reasonable.¹¹⁴

[124] Counsel differed on whether a passage in the case of *Scott v. British Columbia (The Police Complaint Commissioner)*¹¹⁵ created an additional element of serious blameworthiness for a finding of oppressive conduct. That passage states:

I do not read the phrase “without limitation”, as the retired judge apparently did, to mean that intention or recklessness can be ignored when considering the petitioner's conduct. In my view, the section should be read to apply to conduct which has a serious blameworthy element and not simply a mistake of legal authority alone.¹¹⁶

[125] Members' Counsel in their Submissions took the position that this passage requires a finding of bad faith, malice, or ulterior motive. Considering the passage in context, I do not accept that interpretation. As I read *Scott*, which dealt with an allegation of unlawful entry to a residence, Justice Affleck meant only that the mental element for that allegation, which is not specified in Section 77(3), was the same or similar to that for the types of misconduct specified in Section 77(3)(a)(ii). Justice Affleck was discussing what he found to be a failure by the adjudicator to distinguish between the issues

¹¹⁴ Oppal Decision (2016-11505), January 25, 2017, para. 24

¹¹⁵ 2016 BCSC 1970

¹¹⁶ *Supra*, para. 36

of lack of authority and abuse of authority. He found that it is not enough for an officer to have made a decision for which he lacked authority, there must be an additional analysis of his mental state.

[126] That finding is consistent with another authority considering the issue of blameworthiness under section 77(3), *Lowe v. Diebolt*,¹¹⁷ in which a finding that a member either knew she lacked authority or ought to have known was rejected as a sufficient basis for a finding of misconduct. The court stated:

[42] ...The question of misconduct is different from whether a *Charter* breach occurred, and also from whether evidence obtained from an illegal search should be excluded. That is clear from the definition of the charged misconduct, which requires recklessness or intent. The “intent” cannot refer to the physical act of the search, because it is virtually impossible to conduct a physical search non-intentionally. It must refer to the *mens rea*, or state of mind of the officer. Recklessness must be interpreted in the same manner. The fact that an officer is ignorant of the law related to searches does not, by itself, indicate intent or recklessness. It is more in line with negligence, or, for that matter, poor training.

[127] I agree with Commission Counsel that a finding of serious blameworthiness will be subsumed in a finding of recklessness and that *Scott* does not add an additional layer of analysis to the issue that arises here. As with unlawful arrest and unnecessary force where the mental element is specified, the analysis of blameworthy conduct in relation to a decision to enter a residence unlawfully will depend on whether the decision was made deliberately despite knowledge of a lack of authority, or with recklessness as to whether that authority existed in the circumstances.

[128] I turn to an assessment of the evidence within this framework.

2. The Lawfulness of Entry

[129] It is argued on behalf of the members that the officers were engaged in the execution of their duty to confirm Natalia Chaikun’s wellbeing when they knocked on the door of the residence. They submit that Constable Ludeman was justified in grabbing Vladimir Tchaikoun’s arm to prevent him from closing the door. Counsel also submit that the entry into the premises was not a decision made by the members as

¹¹⁷ 2013 BCSC 1092 (CanLII)

much as an inadvertent result of Mr. Tchaikoun's attempt to close the door and thereby obstruct their wellbeing check.

[130] The resolution of these issues depends upon a proper characterization of the actions of the officers within the context of their common law duty to protect life, as outlined in the case of *R. v. Godoy*,¹¹⁸ cited in the VAWIR Policy manual.

[131] On reviewing the principles set out in *Godoy*, I find the following passage is a crucial guidepost for determining the circumstances under which police may enter a residence following a 911 call. It must be borne in mind that the call in that case was disconnected, described as an "unknown trouble call," resulting in an assumption of current distress on the part of the caller:

16 ...it is reasonable, indeed imperative, that the police assume that the caller is in some distress and requires *immediate* assistance. To act otherwise would seriously impair the effectiveness of the system and undermine its very purpose. The police duty to protect life is therefore engaged whenever it can be inferred that the 911 caller is or may be in some distress, including cases where the call is disconnected before the nature of the emergency can be determined. (Emphasis added.)

[132] The key to reliance on *Godoy* to authorize entry is the immediacy of the situation. The circumstances in which it applies are further circumscribed in this passage:

19 There is unquestionably a recognized privacy interest that residents have within the sanctity of the home... the values underlying the privacy interest protected by [s. 8](#) of the *Canadian Charter of Rights and Freedoms* are ..."dignity, integrity and autonomy"... [O]ne aspect of this privacy interest is "[t]he right to be free from intrusion or interference". However, dignity, integrity and autonomy are the very values engaged in *a most immediate and pressing nature* by a disconnected 911 call. In such a case, the *concern that a person's life or safety might be in danger is enhanced*. Therefore, the interest of the person who seeks assistance by dialing 911 is closer to the core of the values of dignity, integrity and autonomy than the interest of the person who seeks to deny entry to police who arrive in response to the call for help. (Emphasis added.)

[133] I note the use of the term "in danger" as opposed to "endangered" which prescribes a real time analysis. The conclusion in *Godoy* makes it equally clear that the authority to enter is dependent upon a current perception of risk that requires an immediate response:

¹¹⁸ Op cit, footnote 41.

28 In summary, emergency response systems are established by municipalities to provide effective and *immediate* assistance to citizens *in need*. The 911 system is promoted as a system available to handle all manner of crises, including situations which have no criminal involvement whatsoever. When the police are dispatched to aid a 911 caller, they are carrying out their duty to protect life and prevent serious injury. This is especially true where the call is disconnected and the nature of the *emergency* unknown. When a caller uses a 911 system, he or she has requested *direct and immediate intervention* and has the right to expect emergency services will arrive and locate the caller. The public interest in maintaining this system may result in a *limited intrusion* in one's privacy interests while at home. This interference is authorized at common law as it falls within the scope of the police duty to protect life and safety and does not involve an unjustifiable use of the powers associated with this duty.

[134] For *Godoy* to apply, then, the need for assistance, or risk of harm, must clearly be immediate and pressing. The VAWIR policy itself cites the requirement of “reasonable certainty” that the “ongoing” safety of an occupant “is” in jeopardy, again suggesting a contemporaneous assessment and an extant emergency. For that reason, the authority arising from *Godoy* falls under the umbrella of “exigent circumstances.”¹¹⁹ As pointed out by Commission Counsel, another example is Section 529.3 of the *Criminal Code*, which permits entry of a residence to effect an arrest of a person (who is arrestable) when an officer “has reasonable grounds to suspect that entry into the dwelling-house is necessary to prevent imminent bodily harm or death to any person.” These are limited and narrow exceptions to the overarching rule that a warrant is required to enter a dwelling place.

[135] Turning to the application of *Godoy* and the VAWIR Policy to these circumstances, the factual background to the members’ attendance at the Tchaikoun residence is that provided by the 911 transcript, Constable Ludeman’s conversations with Olga Reounina, and Sergeant Ward’s direction to the members before they attended there.

[136] Whether Mr. Tchaikoun in fact slapped Ms. Chaikun is immaterial in determining the officers’ mindset because it is clear that they had a credible complaint through Ms. Reounina’s 911 call. They were dispatched, in response to that, to conduct a wellbeing check. I pause to note that there must be a distinction between a wellbeing check and a justified *Godoy* situation, and it is clear that the officers were alive to the difference. Both indicated an understanding that their attendance “may” result in a need to

¹¹⁹ e.g. http://criminalnotebook.ca/index.php/Warrantless_Entry_into_Dwellings_in_Exigent_Circumstances

enter, but it is equally clear they were not initially dispatched with instructions, or belief in a duty, to enter the residence under *Godoy*.

[137] It is important to consider in some depth the surrounding circumstances in order to properly assess how the authority of the officers may have changed as events unfolded. Assuming that the original complaint arose about an hour before Ms. Reounina called the police at 5:20 p.m., by the time the members arrived at the residence, as counsel point out, they would have been aware that at least three hours had elapsed. This was clearly not an assault in progress, as confirmed by Constable Laphorne, by the CAD record, and by Sergeant Ward's direction, which was to investigate the assault, look for evidence, and as a "bottom line," keep Natalia Chaikun safe.

[138] The pace of the officers' initial investigation also does not suggest exigency. In fact, as pointed out by Commission and Public Hearing Counsel in their submissions, both officers acknowledged that the situation was low level. Any suggestion of current distress had clearly dissipated; to "almost zero," as acknowledged by Constable Ludeman; with Natalia Chaikun's arrival at Ms. Reounina's residence, and the indications from her that Natalia seemed fine.

[139] The only thing that happened after that and before the members' arrival at the residence was that Natalia Chaikun returned to her own home. While Constable Ludeman cited concerns that the altercation "may have" started back up, there were no reports or information to support that, beyond what the officers understood and articulated about the dynamics of domestic violence.

[140] There was clearly, at the time of arrival, no "reasonably certain" basis for concluding that Natalia Chaikun may be in ongoing jeopardy. Indeed, as I have observed, at this point the officers both indicated that they considered it only a situation where they "may" have to enter. Clearly their primary purpose at that time was to investigate, not to enter under *Godoy*, which, based on the available information, did not authorize an entry.

[141] The distinction between attending for a domestic violence investigation and attending pursuant to a *Godoy* situation was the subject of comment in *R. v. Côté*,¹²⁰ cited by Commission Counsel, as follows:

I also note that the trial judge made a clear finding that the officers were not exercising their investigative powers arising from the 9-1-1 call [which had been made 3 hours before the entry] when they came to Ms. Côté's house. Rather, he found that their purpose was to conduct a criminal investigation by speaking with an obvious suspect.¹²¹

[142] It is argued by Members' Counsel's, however, that *Godoy* became applicable at the door when Mr. Tchaikoun attempted to close it. That requires an assessment of the evidence regarding what transpired at the door before Constable Ludeman made the decision to intervene physically.

[143] I will say firstly that I reject the evidence of Vladimir and Alicia Tchaikoun that Constable Logan punched and pushed Mr. Tchaikoun before Constable Ludeman became physically involved. There were parts of the Tchaikoun family evidence that were clearly the result of collaboration; that had been tailored or enhanced since their statements to Sergeant Kowan, and indeed, as their evidence unfolded on the public hearing. An example of that was their evidence pertaining to Olga Reounina. Although the family members have pointed to reasons for Ms. Reounina to have made up her 911 complaint, and to a timeline that suggests she called 911 while Ms. Chaikun was with her, I find their evidence on those points to be tailored, and prefer the common-sense conclusion that Ms. Reounina believed Ms. Chaikun had been assaulted by her husband, and likely just has the timeline wrong. It must be observed that she was not asked to recall the events in a statement until the public hearing convened.

[144] In any event, based on Alicia Tchaikoun's evidence that it was dark by the time her mother came home, it is more probable that the visit with Ms. Reounina happened later in the day, after the 911 call. Alicia did not mention her mother's absence in her interview, and gave a timeline similar to her mother's after her Natalia Chaikun had testified. I do not find the discrepancies in this part of Ms. Reounina's evidence to detract from her credibility. I found her to be otherwise a credible witness. On the other hand, I find the efforts of the Tchaikoun family to pillory Ms. Reounina by collaborating on motives for her to fabricate, and tailoring a timeline that casts doubt on her veracity, affects the degree of credibility that

¹²⁰ [2011] 3 S.C.R. 215

¹²¹ *Supra*, at paragraph 52.

may be accorded to those and some other parts of their evidence. My conclusion is that the Tchaikoun family were inclined to paint Mr. Tchaikoun in an overly favourable light; not an unnatural response, perhaps, in light of the traumatic incident they all experienced. They may equally have had a motive to overstate the incident or to cast the officers in an unfavourable light.

[145] Alicia Tchaikoun did not mention Constable Logan punching her father at the door, in her 2018 statement. Vladimir Tchaikoun's description of this part of the incident to Sergeant Kowan was vague, and he could have been mistaken about which officer initiated the physical contact, given his later reference to a tall officer with dark hair in the bathroom (without identifying that officer as Constable Ludeman). He also admitted to blacking out at times during the incident. Moreover, the chaotic and traumatic nature of the encounter and the length of time since it occurred may have affected his, and Alicia Tchaikoun's, ability to perceive and to recall the events at the door.

[146] I prefer those conclusions to a finding that Constable Logan simply assaulted Vladimir Tchaikoun out of the blue for no reason, as described by Vladimir and Alicia Tchaikoun, a version which is not supported by Constable Ludeman's or Constable Logan's evidence. In any event, for these reasons I do not find it to be established on the evidence that Constable Logan initiated the entry to the residence, or the altercation.

[147] By the same token, Constable Logan's observations about a tug of war at the door are inconsistent with Constable Ludeman's and seem coloured in hindsight by the level of conflict that occurred afterward. Constable Logan was not a primary actor in the conversation and perhaps may not be expected to remember the events as vividly. In any event, I find it was Constable Ludeman who entered the residence first, and therefore his understanding of the events at the door upon which a determination of the lawfulness of the entry must be based.

[148] Constable Ludeman states that he told Vladimir Tchaikoun there had been an anonymous allegation that he had assaulted his wife. He believed Mr. Tchaikoun admitted he was Vladimir, and denied there had been an assault. Alicia came to participate, received the same explanation, and then left the doorway. I accept that Constable Ludeman may not have understood that Alicia Tchaikoun had gone to get her mother, and I find it immaterial whether Mr. Tchaikoun said he would not let them in or not let them see his wife.

[149] I have difficulty, however, accepting that Constable Ludeman believed Mr. Tchaikoun was closing the door. Constable Ludeman's description of this part of the encounter was strained and lacked

credibility. As pointed out by Commission Counsel, he initially stated that he felt increased pressure on his boot, not that the door was “closing.” Later he said he believed Mr. Tchaikoun was “trying to close” the door, and in cross-examination by Public Hearing Counsel, he said he was “closing the door” and that was the “deciding factor”.¹²² However, both officers testified that Constable Ludeman had his foot over the threshold at this point and there was no indication that Mr. Tchaikoun’s action was dislodging it. I will say here that I am not prepared to decide that placing a foot there in circumstances where an entry “may” have to be made is itself unreasonable.

[150] As pointed out by Public Hearing Counsel and Commission Counsel, Constable Ludeman, on his own evidence, did not ask Mr. Tchaikoun whether he was closing the door or going to get his wife. He did not ask him to keep the door open or to bring his wife to the door. He did not explain to Mr. Tchaikoun that the officers had a duty to see Natalia Chaikun; that they could not leave or let him close the door until they did; or that if he closed the door it would be an obstruction of that duty. Instead, Constable Ludeman said, “we are coming in, no matter what,” and grabbed Mr. Tchaikoun’s arm, intending, he said, to pull him out and handcuff him for obstruction and for officer safety.

[151] Constable Ludeman agreed that his action in pulling Mr. Tchaikoun out would not have prevented the door from closing, the “deciding factor” that he advances as creating the exigent need for intervention. While Constable Ludeman said his concerns about Ms. Chaikun’s safety would be lessened with Mr. Tchaikoun outside, his actions in taking his arm clearly indicate that his primary aim at that point was not to enter and check Ms. Chaikun’s safety. Constable Ludeman’s actions and words at the time he chose to detain Mr. Tchaikoun were not in my view consistent with a belief that there was a risk the door would close. His assertion that Mr. Tchaikoun’s closed-ended statements and actions left him no choice but to place his hand on Mr. Tchaikoun’s arm is inconsistent with what I find on his own evidence to have been a failure to make further inquiries to determine if in fact Mr. Tchaikoun was refusing to comply.

[152] In any event, even accepting that Constable Ludeman believed the door was closing, there was no reasonable basis for him to conclude that would place Ms. Chaikun was in any immediate danger such

¹²² August 26 Transcript, page 75, lines 5-6.

that Mr. Tchaikoun needed to be physically detained. It should be noted that the only thing that had changed at that point was that Mr. Tchaikoun had been advised of the assault allegation. The concern expressed by Constable Ludeman was that, freshly armed with the knowledge that his wife must have accused him of assault, Mr. Tchaikoun posed a heightened risk to her wellbeing, such that *Godoy* created a duty to ensure her safety by preventing him from closing the door, and taking him into custody.

[153] I have difficulty with the suggestion that the fact that the members accused Vladimir Tchaikoun of domestic assault at his doorstep can reasonably be used as a basis for heightened exigency. Moreover, I am concerned that these officers did not appear to follow the advice of their supervisor, to consider the use of a ruse to confirm the safety of the complainant. It was apparent to Sergeant Ward that the first approach, in the circumstances, should not necessarily have been to make an accusation at the door, presumably because of the tendency of such an approach to result in a conflict with the suspect. Given the information that the members had that he had struck his wife earlier in the day, and that he had some mental health issues, the range of expected responses to learning that he was accused of assault would reasonably include denial, resistance, and potential volatility. If the officers were proceeding under the belief that their primary purpose was a wellbeing check, I would have expected them not to confront the suspected assailant with knowledge that would escalate the situation. Their approach at that point was more consistent with conducting an assault investigation than a wellbeing check.

[154] I note that Constable Ludeman denies that he had formed an intention to force entry at the point when he took Mr. Tchaikoun's arm, so he was clearly not at that time relying on his *Godoy* authority in any event. That denial is inconsistent with his admitted statement to Mr. Tchaikoun that they were coming in "no matter what," which itself is inconsistent with his professed intention to pull Mr. Tchaikoun out.

[155] Based on Constable Ludeman's own description of what transpired at the door, I find that the circumstances did not amount to a *Godoy* level of exigency at the time when he decided to take Mr. Tchaikoun's arm. Moreover, I do not accept that he had a reasonable belief either that *Godoy* applied or that, as a result, Mr. Tchaikoun's physical detention was authorized or necessary. Even if Mr. Tchaikoun was attempting to close the door, which I reject, he was not at that time impeding any duty or obstructing the officers. He was, at worst, declining to participate in an assault investigation against himself.

[156] Mr. Tchaikoun was not detainable for obstruction of the assault investigation, nor is that the basis on which Constable Ludeman decided to detain him. Because there was admittedly no basis for a *Godoy* entry at that point, Mr. Tchaikoun equally cannot be said to have been obstructing a wellbeing check.

[157] Constable Ludeman's assertion that the detention was also for "officer safety" is at odds with his description of Mr. Tchaikoun's actions and demeanour prior to the moment when he placed his hand on his arm. It is also difficult to see how officer safety concerns arose at all from a perceived attempt to close the door, if indeed that occurred, which, again, I reject.

[158] I find that Constable Ludeman's action in taking Mr. Tchaikoun's arm was clearly unauthorized and precipitous. It is notable that he at no time told Mr. Tchaikoun he was under detention for obstruction or advised him that he could be, if he persisted in closing the door. His failure to articulate that authority belies a belief in it.

[159] As for what occurred after that, in relation to what Constable Ludeman says was an accidental entry into the premises, he said that based on his experience in laying hands on people, he expected that grabbing Mr. Tchaikoun's arm would make him become compliant. I have difficulty finding that to be a reasonable assumption, given the surrounding circumstances as Constable Ludeman understood them, including the fact that he had advised him of the allegation and there were potential mental health concerns. In any event, the fact that Constable Ludeman expected compliance with an unauthorized action, and did not receive it, does not create authority or justify an escalation of force.

[160] Constable Ludeman maintains that it was only after he tripped across the threshold that he came to his senses and decided he had to push Mr. Tchaikoun, at that point apparently deliberately continuing the entry. However, I find the description of being drawn inside by Mr. Tchaikoun's resistance to his grasp unlikely, as I do the "trip" over the threshold. I have difficulty accepting that Constable Ludeman's grip on Mr. Tchaikoun's arm was so tight that he was caused to move forward by Mr. Tchaikoun's resistance. He could have let go. Stumbling forward is more consistent with forward movement than with a pulling of the arm. It is more consistent with what Constable Ludeman said about coming in.

[161] Constable Ludeman says he made a split second decision to push instead of pull, after he tripped. However, that decision is only consistent with either a continued assumption of authority to enter (which he now denies), or a continuation of his unauthorized detention of Mr. Tchaikoun.

[162] The Court in *Godoy* distinguished between entry to effect an arrest and entry to ensure an occupant's safety in exigent circumstances.¹²³ This entry was not cloaked with authority to do either. Constable Ludeman's decision to push instead of letting go of Mr. Tchaikoun's arm was both an unreasonable use of force and an unauthorized entry into the residence.

[163] I am of the view that Constable Ludeman's unlikely description of the events at the door is an attempt to retroactively place responsibility onto Mr. Tchaikoun based on recognition that his decisions to place hands on him and to push him into the residence were taken without authority. Those decisions led inevitably to the most unfortunate events that ensued. Constable Ludeman continued in his unauthorized efforts to take Mr. Tchaikoun into custody, and Mr. Tchaikoun continued to resist them.

[164] Constable Ludeman failed to recognize that at the time he attended the residence, his authority was limited by the apparent circumstances to pursuing a domestic assault investigation, and did not at any point amount to justification for an exigent entry or grounds to detain for obstruction or officer safety. The entry, in all the circumstances, was clearly unlawful, as was the detention.

[165] As for Constable Logan's involvement, I have already indicated that I do not find that he used force in entering the residence. I accept as well that he was required by his duty as cover officer to enter the premises after Constable Ludeman had done so, whatever the reason for Constable Ludeman's entry. The alternative, to leave his partner inside the premises embroiled in a struggle, even if he considered the detention to be obviously unauthorized, would be untenable. He had to follow and provide reasonable cover as Constable Ludeman attempted to gain control of the situation, whatever had precipitated it.

[166] I agree with Members' Counsel's submissions in this respect, based on the case of *R. v. Ewatski and Fiorilli*¹²⁴ to which they refer. As put in that case:

[50] P/Sgt. Fiorilli's duty as a peace officer did not depend on the lawfulness of Cst. Karpo's entry into the house. P/Sgt. Fiorilli's entry into the house was not for the purpose of arresting Mr. Light. It was for the purpose of protecting Cst. Karpo from reasonably apprehended harm and preserving the peace. It was not an entry for which a ***Feeney*** warrant under [*Criminal*](#)

¹²³ *Godoy*, supra, at paragraph 25

¹²⁴ 2009 ABQB 214

[Code s. 529.1](#) was required. It is not necessary to consider whether the circumstances are "exigent" within the meaning of [s. 529.3](#) because the purpose of P/Sgt. Fiorilli's entry into the house, as demonstrated by the testimony quoted, was not to arrest Mr. Light. It was to perform his duty as a peace officer -- to prevent anyone from being harmed in a situation of obvious and high risk of harm.

[167] I do not find that Constable Logan's entry of the premises was unlawful in the circumstances.

3. Recklessness in Entering Unlawfully

[168] I am not convinced that Constable Ludeman deliberately acted without authority in entering the residence or attempting to take Mr. Tchaikoun into custody, so the question is whether he was reckless (or blameworthy) in failing to recognize that he did not have authority to do so.

[169] In considering the question of recklessness, the subjective belief of an officer that he was acting with authority, or his failure to realize he was not, must be measured against an objective yardstick as to whether his state of mind is reasonable, given the facts available to the officer at the time.¹²⁵ One of the questions that sometimes arises is whether the officer was equipped through training or knowledge of the law to properly assess the situation as it unfolded. In both *Scott* and *Lowe v. Diebolt* the courts allowed of a finding of good faith where officers did not have sufficient training to properly assess their authority.

[170] In this case, as I understand the argument in relation to the mental state of Constable Ludeman, it is that he acted in accordance with what he understood to be his *Godoy* authority, in the belief that he had a duty to detain Mr. Tchaikoun for obstruction, and that he pushed him further into the residence only in furtherance of that duty. It is argued that he acted in good faith, or under a mistake as to his legal authority.

[171] Adjudicator Oppal in the case earlier cited expressed the following view regarding the effect of a mistake of law on an officer's assessment of the adequacy of his grounds:

But where a mistake as to the law is compounded by a failure to engage in the necessary analysis as to the grounds for detention or arrest, it may be taken into consideration. And of course each case falls to be assessed on its own facts. Unlike in *Lowe v. Diebolt*, here, the record supports a conclusion that there were no objective grounds for detention or arrest. In the matter before me,

¹²⁵ Oppal (2016-11505), para. 24, Tiwana Public Hearing Decision, PH 2014-01, pages 15 – 16, *Lowe v. Diebolt*, 2013 BCSC 1092, para. 46.

the record suggests that the officer was reckless in failing to analyze the basis for the steps he took; he simply pressed on.¹²⁶

[172] Counsel for the members have cautioned against a frame by frame analysis of the officers' assessment of a situation as it unfolds in the field, and I do not disagree that the analysis must be undertaken with caution. That is why the test is not simply objective and is applied from the perspective of an officer with similar experience in the surrounding circumstances as he perceived them. The case law dictates a consideration of the question of whether these officers, in particular Constable Ludeman, were equipped to distinguish between their authority as it related to attendance at a residence to investigate a domestic assault (not in progress) and as it related to attendance to protect life or prevent injury, and whether they were reckless in failing to make that distinction.

[173] Recognizing, as clearly stated in *Scott*, that the concept of good faith as it applies to misconduct under the *Police Act* is different from its application in relation to Charter of Rights breaches, the following passage in the case of *HMTQ v. Bareuther and Hunter*,¹²⁷ in relation to Section 24(2) *Charter* issues nonetheless appears to be apt. The case considered the issue of good faith in relation to a blanket departmental policy authorizing officers to enter and conduct a full search of premises on all wellbeing checks:

[90] I am very mindful of the difficult task often faced by police officers. They have onerous duties to perform. However, one of those duties is to be aware of the limits of the powers available to be utilized in the performance of those duties. In my opinion the appropriate limitations on police powers are readily apparent from a rudimentary perusal of the *Godoy* case. To hold it out as authority for something it specifically refutes is a serious matter.

[174] The Court in *Bareuther and Hunter* pointed out that *Godoy* was at that time 13 years old, that the Supreme Court of Canada specifically stated that it did not create a search power, and additionally that police officers were required not to enter if the subject of the wellbeing check could be located without doing so. I recognize that a *Charter* analysis considers good faith from a departmental perspective and that in certain cases, a blanket policy, or lack of training, may negate a finding of recklessness under the *Police Act*.

¹²⁶ OPCC File No. 2016-11505), paragraph 25

¹²⁷2012 ONSC 6639 (CanLII)

[175] However, it is apparent from the passages contained in Sergeant Ward's reports, the evidence of both officers, the VAWIR Policy Manual and the plain wording of *Godoy* itself, that both officers were aware that entry pursuant to *Godoy* was only justified in limited circumstances. The fact that Constable Ludeman is not asserting that he made a decision to enter is indicative of an understanding that the doctrine did not authorize it. Constable Ludeman clearly recognized that the exigency was not there when he said he found himself inadvertently entering the residence. The problem with that state of mind is that it clearly demonstrates a failure to assess whether he had any authority to detain Mr. Tchaikoun before he did so.

[176] These principles of exigency have been in place for well over 20 years. Section 529.3 of the Criminal Code requires a similar analysis. These officers both describe significant experience and training with respect to domestic assault calls. It is not reasonable to conclude that Constable Ludeman mistakenly believed he could detain a person for obstruction, without further inquiry, if they declined to participate in a non-exigent investigation of a domestic assault. That assumption on his part, if he made it, was not in line with the VAWIR Policy manual or Sergeant Ward's direction. If that was departmental policy or training, I do not have evidence of it. I expect and conclude that VPD policy and training is that *Godoy* is an exception to the rule against warrantless entry and that reasonable and probable grounds are necessary for forcible arrest of an assault suspect. I would expect that distinguishing one from the other would be rudimentary for officers with the level of experience that these members had.

[177] In addition, if the officers' actions caused the situation to increase in exigency, those actions can only be characterized as reckless. Even if I were to accept that Constable Ludeman genuinely believed the circumstances had escalated, by the time he laid his hand on Mr. Tchaikoun, to a situation where Ms. Chaikun was at heightened risk, he clearly falls within the category of failure to analyze or reflect, or ask more questions, before taking that next highly intrusive step, as referred to by Adjudicator Oppal in the case previously cited. I agree with Commission Counsel that the actions of Constable Ludeman in failing to make further inquiry are indicative of a cavalier willingness to intervene physically as a shortcut for other reasonably available investigative options. That state of mind amounts to recklessness, given Constable Ludeman's experience, training, direction, and perception of the events that faced him, in my view.

[178] Counsel for the members in their submissions express concern about the chilling effect on future cases of scrutinizing officers' actions in relation to the application of *Godoy* in exigent situations:

The Supreme Court expressed, in clear and forceful language, the primacy of the protection of vulnerable women as social objective. That policy would be dangerously undermined if police

officers were expected to carry out a nuanced assessment of each case in the field, in real time, and decide whether the case before them was sufficiently exigent, with risk to their professional careers if they erred in favour of protection of women.

[179] In my view this concern is misplaced. It suggests that in every case of an allegation of domestic violence, officers should enter or act first, and ask questions later. The finding here provides only that *Godoy* requires an assessment of risk that Constable Ludeman failed to make, in a situation where there was time for him to do so. As argued by Commission and Public Hearing Counsel, more questions or a bit more conversation were clearly required. To escalate an assault allegation to exigency by creating a conflict, and then concluding without further inquiry that *Godoy* applies sufficiently to justify a physical intervention, is unreasonable and reckless. I would hope this is not consistent with departmental training.

[180] A finding that neither physical intervention nor entry are justified in these circumstances will not have a chilling effect on officers who are performing their duty in clearly exigent circumstances, or conducting an assault investigation without intruding on the suspect's privacy or bodily integrity.

4. Unnecessary Force

[181] I have previously been asked to rule in this matter on the scope of the second allegation, as it relates to use of force "in the course" of the officers' entry of the residence. My ruling was that the events at the residence were a continuing transaction such that any force used during the incident was used in the course of the officers' entry to the premises. Accordingly I turn to consider the use of force by each officer against the family members at the various stages of the incident.

[182] All of Constable Ludeman's force applied to Mr. Tchaikoun was applied with the intention of placing him under control, based on what I have found to be an erroneous and reckless belief that he had authority to take Mr. Tchaikoun into custody. Mr. Tchaikoun, quite understandably, and expectedly, resisted, and his significant strength was underestimated by the officer. The efforts that ensued to place him under control flowed naturally from that resistance but were equally unauthorized. In my view, Constable Ludeman's application of force throughout the incident falls with the lack of justification for the initial detention.

[183] Mr. Tchaikoun clearly resisted the efforts of both officers to detain and handcuff him; strenuously, and reasonably. He appears to have been a man of considerable strength. I am not satisfied, however, based on all of the evidence, that he became the aggressor at any point in the incident. Even if he did, that was a direct result of the unnecessary force that was used against him. All of his actions were consistent with terror and an attempt to resist the considerable force being applied to him.

[184] In relation to Constable Logan's use of force against Mr. Tchaikoun, if he recognized the absence of authority in relation to Constable Ludeman's attempt to detain Mr. Tchaikoun, his decision to apply force to assist in detaining him, beyond attempting to prevent Mr. Tchaikoun from injuring his partner, would be an intentional unauthorized application of unnecessary force. I am not satisfied on the evidence, however, that Constable Logan can be said to have been a party to the unauthorized detention of Mr. Tchaikoun. If he did not recognize the absence of authority, the question is whether he recklessly failed to recognize that the force he used to assist his partner was unnecessary.

[185] It is clear that at some point during the altercation in the bathroom, Constable Logan perceived that Mr. Tchaikoun was the aggressor and that his partner was in danger. Considered in light of that and his role as cover officer, his physical intervention would have been objectively necessary.

[186] In relation to Constable Logan's application of force to Yuri and Natalia Chaikun, I am prepared to accept his description of the incident, which is consistent with the observations of Olga Reounina at the door. He admittedly forcibly struck both Yuri and Natalia Chaikun without taking any time to explain the purpose of the police presence or to verbally de-escalate the situation.

[187] I accept that Yuri and Natalia Chaikun were coming at Constable Logan to try to get to Vladimir. They were clearly alarmed and very upset, believing that Vladimir was being killed. However, I reject Constable Logan's assertion that they charged him, swarmed him, struck him or pulled at his arm, in anything other than a natural attempt to assist Vladimir Tchaikoun. I also reject his evidence that they did not give him time to explain to them what was occurring, and why.

[188] I acknowledge Members' Counsel's submissions that if, as described by the Tchaikoun family, Constable Logan had his foot against the door in order to keep it open, he would have been essentially anchored there and arguably acting defensively as the family members intruded into his space. However, this description by the Tchaikouns is inconsistent with both officers' account of Constable Logan being back and forth into the bathroom attempting to assist Constable Ludeman. As well, the family's evidence on this point again seemed to be the subject of tailoring and collaboration, for whatever reason. I note that Yuri Chaikun steadfastly maintained that he kept an arm's length distance from Constable Logan but it seems clear he attempted to get around him, and as well that his mother was trying to hold him back.

[189] I do not take from their evidence, however, that they were as aggressive toward Constable Logan as he maintains. Yuri Chaikun's actions as described by Constable Logan himself are more consistent with the approach with his hands up that Yuri described, and with contact incidental to that, than with the

aggression that Constable Logan attributes to him. Constable Logan knew that Natalia Chaikun was the alleged victim of the assault the officers were there to investigate and yet, inexplicably; and notably; Constable Logan did not even tell her that was the reason for their decision to place her husband into custody.

[190] A simple calm statement to advise the family members that they had a complaint; that they believed they had authority to arrest Mr. Tchaikoun; and that they needed the family to let them do that, or even to help them, would perhaps have gone a long way to defusing the situation. Instead, he stated only, “Stay back,” at the outset, which clearly would have done nothing to diffuse their obvious concerns that something unauthorized was occurring in the bathroom. I am not assuming the family would have cooperated, but they were not given the opportunity. And the fact that nothing beyond that was said is telling, in relation to Constable Logan’s mindset. He either did not believe they had such authority, or he rushed unreasonably to the use of force.

[191] It was not necessary for Constable Logan to strike Yuri or Natalia Chaikun with a palm heel. He had pushed them back prior to that, and he could have used verbal commands before using force as significant as the blows he himself describes. Again, I agree with the submission that using the force that he did, as described by him, when he used it, represented the use of force as an expedient substitute for other less violent tools that were available to him.

5. Recklessness in the Use of Force

[192] In relation to Constable Ludeman’s state of mind in applying unnecessary force to Vladimir Tchaikoun, and Constable Logan’s in relation to Natalia and Yuri Chaikun, given that I have found the force used to be objectively unnecessary, the question is whether the officers in each case believed the force used was necessary, and whether, if so, the belief was reasonable.¹²⁸

[193] Beyond what I have already said in relation to Constable Ludeman’s decision to detain Mr. Tchaikoun, I have no hesitation in finding that he was reckless throughout in his application of force. I recognize that the encounter had gotten seriously out of hand. In my view that was directly attributable to

¹²⁸ Tiwana Public Hearing, op cit, para. 14

Constable Ludeman's failure to assess his authority to use force, and the amount he used, at every step, as he proceeded. In the absence of authority, or a non-reckless belief in authority, the force used cannot but be unnecessary. The reasonableness of Constable Ludeman's belief in his authority to use force falls with what I have found to be his reckless state of mind in relation to the detention. His decision to continue to apply force at the point after Mr. Tchaikoun arrived in the bathroom was borne of that erroneous and reckless assumption that he had authority to restrain Mr. Tchaikoun physically in the first place. I agree with Commission Counsel's submission that Constable Ludeman's conduct throughout displayed a cavalier use of force as an expedient alternative to lesser intrusive available alternatives. What flows from that is that the force he used, at least in the purported exercise of his authority, was reckless.

[194] At some point, fairly early in the incident, Mr. Tchaikoun started providing inordinate resistance to Constable Ludeman's attempts, and arguably posing a danger to him. I say arguably because I am not convinced Constable Ludeman could not have removed himself from the situation at least at the earlier part of the altercation before Mr. Tchaikoun got the upper hand, if he did. There is no suggestion he was seized into the home and confined in the bathroom by Mr. Tchaikoun. He did not have to place him into a bear hug.

[195] While at some point, Constable Ludeman's actions arguably became purely defensive from his perspective, that does not assist in characterizing his use of force prior to that point, which I find was clearly unnecessarily and recklessly applied within the circumstances known to him at the time.

[196] I have found that Constable Logan's use of force against Vladimir Tchaikoun was not objectively unreasonable. In relation to the force used by him on Natalia and Yuri Chaikun, I have found that it was objectively unreasonable, given his failure to use other apparently available options. Again, the question is whether he subjectively believed it was necessary, and whether if so, that belief was reasonable.

[197] I recognize that these are decisions made in the heat of a situation that Constable Logan found himself essentially drawn into. Nonetheless, in my view this again falls into a situation like that referred to by Adjudicator Oppal, where the officer failed to take the available time and opportunity to analyze the nature of his authority, his available options, and how the situation might be de-escalated without resorting to the use of force. I am not satisfied that Constable Logan subjectively believed the force he used was necessary, because he failed to consider whether it was.

[198] I will add that for both officers, there appears to have been no consideration as to whether, despite the fact that they had gone down the path of using force, they could have withdrawn from that course of

action as the matter clearly got out of hand. Perhaps if they had simply disengaged, or de-escalated, at some earlier point in the incident, the altercation would have ended, and far less harm would have been caused.

D. Conclusion and Next Steps

[199] In relation to the first allegation, unlawful entry, I find it to be proven that Constable Ludeman committed the alleged misconduct. I find the allegation not to have been proven as against Constable Logan. In relation to the second allegation, unnecessary force, I find that Constable Ludeman recklessly used unnecessary force against Vladimir Tchaikoun, and that Constable Logan recklessly used unnecessary force against Natalia and Yuri Chaikun.

[200] The matter will be scheduled for submissions in relation to penalty. I will add that I am concerned about what amounts to a finding that two officers relatively independently neglected or declined to consider whether a lesser option than the application of force was preferable in the circumstances, and throughout the incident as it unfolded. In my view it will be appropriate to hear more about their training and departmental policy in considering whether recommendations should be made under Section 143(9)(c).

Reasons delivered at Vancouver, British Columbia this 18th day of February, 2021.



Carol Baird Ellan, Retired Judge
Adjudicator