OPCC File No. 2016-12210

PH No. 19-01

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 ON DISCIPLINARY OR CORRECTIVE MEASURES

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)
AND TO:	Brian Neal, PCJ Rt, Q.C.	(Disciplinary Authority)

1. Introduction

[1] Following a public hearing I found two allegations of abuse of authority to be proven against Constable Eric Ludeman, by unlawfully entering a residence and using unnecessary force, and one allegation of abuse of authority to be proven against Constable Neil Logan, by using unnecessary force. The issue at this stage is the appropriate disciplinary or corrective measures.

[2] The facts may be summarized for these purposes as follows. The members attended at the residence of the Tchaikoun family on March 13, 2016, entered the residence and became engaged in a violent struggle with three of the residents. The complainant, Mr. Vladimir Tchaikoun, suffered extensive injuries, summarized in the Notice of Public Hearing as "a probable concussion, damaged teeth, severe bruising of the entire body including [his] face, head, arms, legs, chest, back, abdomen, and also multiple lacerations on his head, face, lips, [and] nose." I found Constable Ludeman to have recklessly entered the residence without authority and used unnecessary force against Mr. Tchaikoun.

[3] Mr. Tchaikoun's wife, Ms. Natalia Chaikun, and their adult son, Mr. Yuri Chaikun attempted to intervene in the altercation between Constable Ludeman and Mr. Tchaikoun, and were subjected to blows by Constable Logan. I found Constable Logan's use of force against them to be unnecessary and reckless.

[4] After receiving applicable medical treatment all three family members were taken to jail, held overnight and released on bail the following day. Criminal charges proceeded against them but were ultimately stayed for delay.

[5] The available measures for disciplinary or corrective action are set out in Section 126(1) of the *Police Act*.[1] Counsel's submissions and comparable cases essentially define the range of potential

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[1] **Imposition of disciplinary or corrective measures in relation to members**

126 (1)After finding that the conduct of a member is misconduct and hearing submissions, if any, from the member or her or his agent or legal counsel, or from the complainant under section 113 *[complainant's right to make submissions]*, the discipline authority must, subject to this section and sections 141 (10) *[review on the record]* and 143 (9) *[public hearing]*, propose to take one or more of the following disciplinary or corrective measures in relation to the member:

(a)dismiss the member;
(b)reduce the member's rank;
(c)suspend the member without pay for not more than 30 scheduled working days;
(d)transfer or reassign the member within the municipal police department;
(e)require the member to work under close supervision;
(f)require the member to undertake specified training or retraining;
(g)require the member to undertake specified counselling or treatment;
(h)require the member to participate in a specified program or activity;
(i)reprimand the member in writing;
(j)reprimand the member verbally;

measures in this case as starting with advice as to conduct under Section 126(1)(k), and encompassing reprimand, training or retraining, working under close supervision, suspension without pay for a specified period not exceeding 30 days, and reduction in rank, under Sections 126(1)(j) to (b).

[6] Public Hearing Counsel, Mr. Hickford, submits that reduction in rank is necessary for both officers, and that they should also work under supervision and receive retraining. Counsel for Constable Ludeman, Ms. Hatcher, submits on his behalf that a brief suspension and supplemental training would be sufficient. Counsel for Constable Logan, Mr. Woodall, submits that advice as to conduct or a reprimand would be appropriate for his client.

[7] It is important to bear in mind that the measures provided for under the *Police Act* are not aimed at providing redress to complainants. Those remedies are addressed in other forums. The aims of the *Act* are to preserve the public interest in maintaining a high quality of policing standards and foster community respect for the administration of police discipline.

[8] Section 126(2) [2] sets out the aggravating and mitigating factors that I am required to consider in the assessment of necessary measures. Section 126(3) provides, as a paramount principle, that if I find one or more of the specified measures under Section 126(1) to be necessary, an approach that seeks to correct and educate the member concerned takes precedence, unless it is unworkable or would bring the administration of police discipline into disrepute. My reading of the section is that I am first to determine

(k)give the member advice as to her or his conduct.

[2] *Imposition of disciplinary or corrective measures in relation to members*
…
(2)Aggravating and mitigating circumstances must be considered in determining just and appropriate disciplinary or corrective measures in relation to the misconduct of a member of a municipal police department, including, without limitation,

(a)the seriousness of the misconduct,
(b)the member's record of employment as a member, including, without limitation, her or his service record of discipline, if any, and any other current record concerning past misconduct,
(c)the impact of proposed disciplinary or corrective measures on the member and on her or his family and career,
(d)the likelihood of future misconduct by the member,
(e)whether the member accepts responsibility for the misconduct and is willing to take steps to prevent its recurrence,
(f)the degree to which the municipal police department's policies, standing orders or internal procedures, or the actions of the member's supervisor, contributed to the misconduct,
(g)the range of disciplinary or corrective measures taken in similar circumstances, and
(h)other aggravating or mitigating factors.

what measures I consider to be necessary to address the aggravating and mitigating factors, and then to consider them in light of Section 126(3).

2. Aggravating and Mitigating Factors

(a) Seriousness of the Misconduct

[9] The entry of the residence and the use of force against Vladimir Tchaikoun commenced with Constable Ludeman's decision to place his hand on Mr. Tchaikoun's arm at the door to the residence when he lacked authority to do so. His use of force escalated into a bear-hug, punches, head-butts, kicks and baton strikes. Several other officers became involved in the altercation, unaware of the lack of authority on Constable Ludeman's part.

[10] The description of Vladimir Tchaikoun's injuries by Public Hearing Counsel as "horrific" is apt. While it is not clear which of the injuries were caused at the hands of Constable Ludeman, it is reasonable to conclude based on the force he admitted to using that he was responsible for a number of them. Certainly the involvement of other officers in the altercation stemmed from Constable Ludeman having initiated force against Mr. Tchaikoun and having continued to use force in an unauthorized attempt to place him into custody.

[11] Mr. Tchaikoun testified as to the continuing effects of the injuries, and the incident, on his life. He was still feeling those effects, both physical and emotional, when he gave evidence on the public hearing, four years after the events, and I have no reason to believe they have fully resolved, yet, after five years.

[12] Ms. Hatcher in her submissions underscores the finding of recklessness and points to the fact that Constable Ludeman did not act maliciously. She points out that all of the force he used was directed toward placing Mr. Tchaikoun into custody due to his reckless decision to detain him, and was therefore not borne of a loss of control.

[13] Considering the extent of Mr. Tchaikoun's injuries, the fact that they were preceded by an unlawful intrusion into his home, and followed by an overnight detention in jail, I consider the events as they relate to Constable Ludeman to be high on the scale of seriousness.

[14] Mr. Woodall submits that Constable Logan's misconduct lay in not considering an "unspecified" de-escalation technique that might "perhaps" have avoided the altercation. In my view this

characterization of Constable Logan's actions unduly minimizes his level of responsibility and, as I will discuss shortly, arguably detracts from his acceptance of it. The suggestion was made early in the evidence, when the Tchaikoun family testified, that Constable Logan did not answer them when they asked what the police were doing, while Constable Ludeman was engaged in a violent struggle with Vladimir in the bathroom. Constable Logan admitted in his testimony that he stated only, "Stay back," before deciding, recklessly, I found, that his only option was to strike them.

[15] It is clear that the absence of an explanation from Constable Logan only served to heighten the family members' level of alarm. While I don't disagree with Mr. Woodall that it cannot be known with certainty if better communication would have been successful in gaining their cooperation, what is very clear is that if it had been, escalating force against them would not have been necessary. If Mr. Woodall is suggesting that Constable Logan's conduct is somehow lower on the scale of recklessness because a de-escalation technique was not obvious to him, I cannot agree. I will say more about this when I turn to the topic of acceptance of responsibility.

[16] In relation to the use of force against Yuri Chaikun, Mr. Woodall submits that Constable Logan's actions were limited to pushing him while maintaining his foot in the door, and punching him "only after several pushes." In my view this is a mischaracterization of the interaction, which was summarized in paragraph 187 of the decision as follows:

> [187] 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.

[17] And further, in paragraph 189, I stated:

> [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.

[18] In considering the seriousness of Constable Logan's misconduct, I note that the degree of force he used against Natalia and Yuri Chaikun was far less severe that that used against Vladimir, and it occurred in connection with what I have found to be Constable Logan's belief in a duty to assist his partner. It amounted to recklessness in his failure to consider the use of options other than force. I nonetheless consider his actions also to be high on the scale of seriousness. Constable Logan admittedly elected to use considerable force, two chest strikes, against a person whose wellbeing the officers had gone to the residence to protect. He used greater force, at least two punches to the face, against her son, in her presence. I found that he recklessly failed to consider available alternatives to the use of force such as explaining to the family members why the police were there and the authority under which they were acting.

[19] In relation to the seriousness of the misconduct, in summary, it was apparent to me that both officers' instincts, for whatever reason, were to use force as an expedient shortcut; forgoing the use of communication to gain cooperation. For each officer, I found their leap to the use of force to be cavalier, and while I agree that the findings are grounded in recklessness, in my view the decision to use force at the time when it occurred here, for both officers, borders on intentionality. I would hope that most officers realize it is not sufficient to show up in uniform and expect automatic respect and compliance without a proper explanation of their purpose and authority. As I said of both officers, their failure to articulate their authority belied a belief in it.

[20] The level of interference with human dignity here and the moral culpability on the part of both officers in this matter are aggravating factors, in my view. The injuries to Vladimir Tchaikoun were very serious, Yuri Chaikun also suffered injury, and Natalia Chaikun experienced the indignity of being treated like a criminal when she was the reported victim. Natalia and Yuri experienced the anguish of witnessing the unexplained beating of Vladimir at the hands of the police. All three of those family members had the added humiliation of being arrested, detained in jail overnight, and criminally charged. In addition, Vladimir and Natalia's daughter, Alicia, had the trauma of witnessing all of the events and being ordered out of the house by the later attending members.

[21] On the whole, I place the level of misconduct on the part of both officers very high on the scale of seriousness in comparison with other cases of unlawful entry and excessive force.

(b) Members' Records of Employment

[22] Constable Ludeman has submitted service records, departmental feedback and commendations, and letters of reference, from which it may be concluded that he generally performs at an exemplary level and consistently demonstrates leadership qualities and skills. He is said to be characteristically sensitive and compassionate in relations with the public during the exercise of his duties. He engages in mentorship and education opportunities and is assessed as a talented teacher. His service record suggests he is conscientious, intelligent and articulate. He has assumed the role of Acting Sergeant based on his skills, and excelled at it according to his records.

[23] Were it not for a subsequent incident after this one, in late 2017, I would have concluded that this set of circumstances was wholly out of character for Constable Ludeman. However, as Public Hearing Counsel has pointed out, Constable Ludeman's Vancouver Police Department Service Record shows three entries arising out of a single incident on December 31, 2017. The first was neglect of duty with a disposition of advice as to future conduct. The second and third were two incidents of abuse of authority, each with a disposition of written reprimand. The allegations consisted of unlawful detention, unnecessary force, and oppressive conduct. As I understand it, the third allegation was disposed of by the discipline authority as neglect of duty, while the first two allegations went to a pre-hearing conference after a Section 117 review before Adjudicator Oppal.

[24] Commission Counsel provided a copy of the reasons on that review. Public Hearing Counsel summarizes the findings of fact as follows:

> 49. … Adjudicator Oppal was unable to find a proper basis to categorize the complainant's conduct as amounting to an apprehended or actual breach of the peace as claimed by Constable Ludeman. The Adjudicator also noted that the accompanying cover officer had little choice but to become involved in the altercation once Constable Ludeman made the decision to detain the complainant and applied force to take custody of him. That force was very similar to this case as it involved Constable Ludeman grabbing the complainant's arm and then delivering knee strikes when the complainant pulled away. Adjudicator Oppal had the benefit of video evidence and concluded that the complainant pulled his arm back in an instinctive way and was not being combative.

[25] Mr. Hickford submits that Constable Ludeman's conduct in the 2017 incident bore "striking similarities" to those at issue here. He further submits:

> 51. While the events in that matter occurred on December 31, 2017 and the events in this case occurred on March 13, 2016 it is disconcerting that Constable Ludeman's actions appear to

> display the same cavalier use of force as an expedient alternative to less intrusive available alternatives. In my submission this is an extremely aggravating factor as it shows a continued inappropriate mindset and an attitude that Constable Ludeman considers himself to be above the law. There is little if any excuse for an officer of his training and experience to behave in such a manner.

[26] Ms. Hatcher on behalf of her client disagrees that the similarities are striking, points out that the underlying facts are significantly different, and submits that these incidents do not establish a pattern of conduct. She submits that the investigation in this matter had not commenced at the time when the 2017 incident occurred, so Constable Ludeman did not have a prior record of misconduct when that incident occurred. She points to the fact that, in that matter, Constable Ludeman accepted a prehearing conference without a discipline proceeding, so that his admissions of the allegations in that context do not permit full conclusions as to the underlying facts.

[27] Constable Logan has also submitted his service records, including favourable performance summaries and feedback. These disclose that on the whole Constable Logan performs well, has displayed calmness under pressure, and has some prior favourable experience in defusing crises in mental health and domestic violence situations. He has acted as a coach to junior members, and exhibited patience in doing so. He also had assumed the role of Acting Sergeant in 2019 with favourable reviews.

[28] As Mr. Woodall points out, Constable Logan's career with the Vancouver Police Department is bookended by favourable performance appraisals in 2010 and 2019, and punctuated by positive feedback in between, despite a medical leave of absence for about a year and a half from 2017-2018. He returned to work in 2018, and both 2018 and 2019 reviews were favourable. His 2020 performance appraisal, if he had one, was not provided, although I note that for a portion of the proceedings in this matter he was on medical leave due to an incident that occurred while he was on duty in May of 2020.

[29] Mr. Woodall submits, correctly, that prior to the events in this matter, Constable Logan had no record of disciplinary matters. However, Public Hearing Counsel in his Supplementary Submissions added recent information pertaining to Constable Logan's service record arising from a decision of Adjudicator Neal in late 2020. The events in that case arose in Seaside, Oregon on September 23, 2017, after the incident here. He was found to have committed acts of discreditable conduct by intentionally shattering a vehicle windshield and assaulting a female individual on five occasions over several hours. The disciplinary or corrective measures have not yet been determined. Mr. Hickford submits that these

findings are admissible and relevant under Section 126(2)(b) as, "…any other current record of past misconduct."

[30] Both of these entries on the members' service records relate to incidents that occurred after the events in this matter. In the *Hobbs* public hearing[3] Adjudicator Neal had occasion to consider the effect of a subsequent incident of misconduct which was disposed of before the incident he was dealing with. It was argued by the member's counsel that the subsequent incident was not relevant in considering a progressive discipline approach, and, similarly to the points made by counsel here, that it did not indicate a pattern of conduct because the member was unaware at the time when he committed the subsequent misconduct that his actions on the prior date would be found to be misconduct. Adjudicator Neal found that the subsequent incident was relevant as an aggravating factor and in relation to the likelihood of future misconduct on the part of the member. He also observed that the member was not entitled to be treated the same as a member with no entries of misconduct on his service record.

[31] In my view it is relevant that these members each have a service record of discipline in relation to separate incidents involving the use of unnecessary force that happened after the date of these allegations. In the case of Constable Logan the events happened outside of his employment and have not yet been the subject of disciplinary or corrective action.

[32] In the case of Constable Ludeman they happened while he was on duty, and appear to have involved conduct very similar to the allegations at issue here, in the context of an unauthorized detention. While I agree with Ms. Hatcher that disposition at a prehearing conference does not necessarily provide a full factual foundation for the misconduct, in my view the reasons on the Section 117 review and the similarity of the incidents cannot be disregarded.

[33] For both officers the fact of a subsequent misconduct allegation on their record distinguishes this case from many of the precedents referred to by counsel in which the officers had exemplary and blemish-free records; in particular OPCC No. 2018-15276, as I will discuss further in due course. In each case, the fact that the incident occurred after this one but before the penalty on this matter is to be assessed means that, while it is not "prior" misconduct, it is a current record of past misconduct, and a significant feature of their service records.

[3] https://opcc.bc.ca/wp-content/uploads/2017/06/17-01-2018-08-30_Adjudicators-Decision_Discipline-Redacted.pdf

[34] I nonetheless recognize that neither member had received a finding that they acted recklessly in this matter at the time when those subsequent matters occurred, and that the discipline proceedings in this matter did not commence until after those allegations arose.

(c) Impact of Proposed Measures on the Member, their Family and Career

[35] In relation to the potential effects on Constable Ludeman and his family, Ms. Hatcher provides the following submissions:

> 30. Cst. Ludeman accepts that there will be a financial consequence as a result of this finding of misconduct. This will have a negative impact on this officer and his family…
>
> 31. By way of example, a 3-day suspension … would amount to approximately $1,600.00 in lost pay…
>
> 32. If the sanction is demotion, which we submit is entirely out of the range of appropriate and proportionate sanctions in this case, Cst. Ludeman's professional and personal lives will be devastated.
>
> 33. Financially, demotion even one rank would amount to a loss of roughly $1,300.00 in salary for each month he is demoted (or $15,600.00/annum).
>
> 34. As a demoted lower class constable, Cst. Ludeman would not have the opportunity to take on "Acting" sergeant shifts. A Constable earns 120% of their regular salary for those shifts. But perhaps more importantly, Cst. Ludeman's efforts towards promotion will grind to a halt. In order to successfully compete for promotion to sergeant, an officer must have as many hours as possible as an "Acting" sergeant. This is one of the top considerations; the hiring committee must see that the officer has proven themselves in this position and has amassed broad experience on all sorts of files.
>
> 35. There is virtually no way that a second or third class constable would have the opportunity to take on these shifts because they are first offered to first-class constables who understandably snatch them up.
>
> 36. It would take years for Cst. Ludeman to return to his current rank, seniority and reputation in the department if he is demoted. The layered consequences of such a sanction would go miles beyond what s. 126 requires in this case, even if Madam Adjudicator chooses to emphasize discipline over correction.

[36] For Constable Logan, Mr. Woodall joins in that submission, stating:

> 19. …The financial impact [of] reduction in rank … would depend on how long Cst. Logan would remain demoted, and by how many ranks or increments he would be demoted. Without

> that information it is not possible to give a precise figure of the impact. However, generally speaking, a one-year demotion of a constable is measured in the tens of thousands of dollars.

[37] Mr. Woodall adds that even advice as to conduct or a reprimand will have a significant impact, although it is not entirely clear to me what that would be. I have not heard in this or any other case under the current legislative regime or existing departmental policy what effect the entry of a reprimand or advice as to conduct on a service record may have on an officer's career path or livelihood. I can only conclude that it would be significantly less than the impact of suspension or reduction in rank.

[38] As pointed out by Ms. Hatcher, reduction in rank has a long-term financial effect while suspension has a direct and immediate cost, given that the Act dictates suspension without pay. In that respect it may be likened to a fine, but is likely more severe, in that a member's absence and the reasons for the suspension are unlikely to go unnoticed by their colleagues, even in a case less publicized than this one. I would expect for that reason there would be some stigma attached beyond the financial impact. The same might be observed in relation to working under close supervision. Of course, in relation to reduction in rank, the long-term effect is not only financial; it also affects the officer's assignments, opportunities, and stature within the department.

[39] The potential impacts of these measures will have relevance in considering the proportionality of the disciplinary measures in the analysis under Section 126(3).

(d) Likelihood of Future Misconduct; and

(e) Acceptance of Responsibility

[40] I agree with both Members' Counsel that these two factors are best considered together and prospectively. They are additionally best dealt with in reverse order, as Mr. Woodall has done in his submissions.

[41] Public Hearing Counsel submits as follows with respect to these factors:

> In my submission any consideration of s. 126(2)(d) must be done in light of the manner in which both Constable Ludeman and Constable Logan testified. Both took the position that they were going in no matter what. Both took the position that the force used on both the complainant and his family members was necessary and as a result of their aggression. This was completely rejected by the Adjudicator. There was nothing in the testimony of either officer to suggest they would act any differently if faced with a similar situation in the future. This means that there is a real risk of future misconduct by both members.

> In considering s. 126(1)(e) it is abundantly clear that neither Constable Ludeman nor Constable Logan accept any responsibility for their misconduct. This was reflected in the way each of them testified, denying responsibility in the face of clear evidence to the contrary being put to them in cross examination. Things like, you could have asked the complainant if he was trying to close the door or go and get his wife. Things like, you could have said to Natalia Tchaikoun, we know you are the subject of a domestic 911 call and are here to talk to you and your husband, please help us calm him down. When these suggestions were put to the officers as proper and viable alternatives to the use of force, they denied that was so and became argumentative.

[42] Both Members' Counsel submit that adverse credibility findings do not foreclose later acceptance of responsibility. Counsel also both point to the fact that three prior decisions on this matter found no misconduct, presumably by way of justifying their clients' evidence at the public hearing stage, that they believed they were acting appropriately.

[43] This submission is concerning if counsel mean to suggest that the members could not have known, when they testified, that they acted without authority, because they had not previously been told that. A finding of recklessness entails that they had the capacity to understand the limits of their authority.

[44] The Tchaikoun family has taken the position from the outset that neither officer communicated sufficiently with them about the reasons for their presence or the authority for the actions they took, and as pointed out by Public Hearing Counsel, both he and Commission Counsel suggested strenuously in cross-examination of the members, and again in submissions, that the officers should, and clearly could, have said more to the family about why they were there and the authority under which they were acting. It should be noted that the members were not subjected to cross-examination in any of the prior proceedings.

[45] Moreover, it was on the basis of the officers' own testimony about the actions they took, and failed to take, that I found they both acted recklessly in deciding to use force when they did. Inherent in that finding is the conclusion that the officers had the capacity to understand that they had available alternatives and recklessly failed to consider them. That finding is underpinned by a rejection of their assertion that they believed their use of force was reasonable, or were simply mistaken about that.

[46] In relation specifically to Constable Ludeman, I note that he admitted that he did not tell Mr. Tchaikoun he was being detained at the time when he elected to place hands on him. He observed that most subjects become cooperative when he does that.

[47] The fact that an officer expects to gain cooperation by an unauthorized action does not legitimize it. As stated succinctly by Adjudicator Oppal on OPCC File No. 2016-11505, a case previously referred to in these proceedings, "It is a mistake to confuse somebody's non-cooperation with violation of a legal obligation."[4]

[48] Constable Ludeman's evidence on this point is particularly troubling in light of the fact that it was preceded by a finding against him, in 2018, that he had acted without authority in forcefully taking the arm of an individual, apparently without grounds and without telling him he was being detained. While as I have acknowledged the decision in that matter came after the events at issue here, it preceded Constable Ludeman's testimony in this matter, when he appeared to remain of the mindset that this same action was appropriate in relation to Mr. Tchaikoun.

[49] In relation to Constable Logan I am additionally troubled by the submissions Mr. Woodall makes on his behalf to the effect that the de-escalation technique he should have used yet remains unclear. At several junctures in his submissions he makes points such as the following:

> 24. Therefore, given the determinations that had been made by statutory decision-makers that Cst. Logan committed no misconduct, and the absence of training and authoritative standards that both identified de-escalation tactics and mandated their use, Cst. Logan cannot be faulted for not recognizing that he had committed misconduct by failing to consider de-escalation tactics before receiving the reasons for decision of the Adjudicator.

[50] I will discuss the issue of training and policy further under the next heading, but I am concerned at this point that this submission comes perilously close to a suggestion that Constable Logan had a defence of good faith based on a lack of knowledge of his available options, a defence that was both not advanced, and which I specifically found did not arise on the evidence. The finding of recklessness is inconsistent with a suggestion that it is not yet clear what Constable Logan should have done. I found on the basis of his own evidence that it should have been clear.

[51] The expected standard of conduct here does not lie in some mysterious, unspecified, untrained "de-escalation tactic." The use of that kind of jargon in relation to a basic use of force concept obfuscates

[4] 11505_2017-01-25_Sec_117_Decision_Oppal.pdf (opcc.bc.ca), paragraph 21.

the issue and does the member a disservice, in my view. It should be apparent from the decision that, for both officers, the available and unutilized option was simply communication.

[52] Based on Constable Logan's own evidence I found that he recklessly failed to articulate to Natalia and Yuri Chaikun why the police were there and what they were doing, despite being asked repeatedly, "Why are you doing this?" Constable Logan characterized these questions as "challenging his authority," but he admittedly did not explain that authority to them.

[53] Accordingly I share Public Hearing Counsel's concerns that for both officers, the rejected testimony suggests they have not accepted responsibility for their conduct. Nonetheless, I agree that the focus at this point is prospective, and requires a forward thinking analysis of the extent to which they are now likely to take instruction from the finding of misconduct and adjust their behaviour in the future.

[54] Ms. Hatcher submits on Constable Ludeman's behalf that:

> 42. Testifying in one's own defence does not foreclose a genuine acceptance of responsibility at a later time. The question should be: Having reviewed the Decision, does Cst. Ludeman accept responsibility for his decisions and actions? The answer is: Of course he does. Cst. Ludeman respectfully acknowledges the Decision of Madam Adjudicator and will move forward as a more seasoned, more knowledgeable police officer.

[55] Ms. Hatcher points out that in relation to Constable Ludeman's subsequent disciplinary matter, the discipline authority made the following observations:

> The Prehearing Conference Authority noted that [Cst. Ludeman] was genuinely concerned about how he could avoid this type of occurrence in the future. In particular, [Cst. Ludeman] described his proactive efforts, post incident, to educate himself in the following areas: participated in two modules of the acting supervisors program that included training related to arrest and detention, inclusive of policies and procedures such as breach of the peace as well as responsibilities associated with use of force; participated in the Investigator Development program with a focus on effective decision making; and participated in the Field Trainers program which includes competencies such as communications, problem solving, and decision making.

[56] I note that these observations were accepted by the Commissioner in the Conclusion of Proceedings filed on January 17, 2019. Ms. Hatcher submits that Constable Ludeman can be expected to take a similar approach with respect to this matter. Having read through his service records and the related

documentation, as I have stated, it appears to me that Constable Ludeman is very conscientious, and he clearly made efforts after the prior discipline proceeding to improve his skills in relation to arrest and detention and use of force.

[57] I note however that those efforts preceded his testimony in this matter, and I remain concerned that, based on that, he not only made the decisions that he made, but defended them in his testimony despite their obvious similarity to the disciplinary matter, despite the Adjudicator's findings, and despite his subsequent training. The primary question at this point must be whether Constable Ludeman is capable of adjusting his response to perceived resistance of his authority. If he is not, despite his many proven skills, there are significant concerns about his judgement in the field, let alone his ability to mentor and instruct junior officers.

[58] As to the likelihood of future misconduct on Constable Logan's part, his Counsel submits:

> 27. The question under s. 126(2)(d) for Cst. Logan is whether, in the future, he would ignore the findings and guidance of the Adjudicator, and fail to consider the use of de-escalation tactics. For the reasons set out in the preceding section, the fact that Cst. Logan did not use de-escalation tactics in this case is no reason to assume that, with the benefit of the findings and guidance of the Adjudicator, he will fail to consider such tactics in the future.

[59] I would hope that it is now obvious that the guidance that should be taken by him does not relate as much to unspecified de-escalation tactics as it does to the obligation, and duty, to communicate before resorting to violence; however, the submissions on his behalf do not assist in reaching that conclusion. While Constable Logan does not have the history of repeated misjudgement in the field that Constable Ludeman appears to have, I am not entirely convinced that for either officer, that point has yet fully hit home.

(f) Departmental Policies

[60] In the decision, I raised the issue of whether departmental training or policies might have underlain these officers individually electing to forgo available options before engaging physically. I was considering whether there might be a systemic issue, and whether it might be necessary or advisable to make recommendations to the department under Section 143(9)(c) about training deficiencies.

[61] Counsel for the Chief Constable, Mr. Sveinson, kindly obliged by providing considerable materials pertaining to departmental policies and training in lawful entry and the use of force, including

the training records of the members, for which I am indebted. The materials support a view that policies, training or the lack thereof did not play a role in relation to the actions of either officer in this case. None of the parties suggested that any recommendations were necessary. The Chief Constable's submission with respect to policy and training was summarized as follows by Mr. Sveinson:

> 5. In summary, it is submitted that VPD policies and practices are consistent with the findings in the Decision related to the applicable legal authority of officers governing warrantless entries, including with respect to responding to domestic violence incidents, and use of force; and that any associated training of officers (most of which has been provincially developed and mandated) is sufficient. Therefore, it is submitted that no changes to policy or practice should be recommended...

[62] In relation to the entry of premises, it appears that officers receive full training regarding the application of *Godoy* and exigent principles, and the distinction between exigent entry, a wellbeing check, and investigation of domestic violence. Neither member has submitted that their perception that entry was or may be required in this matter was negatively affected by training or policy or lack thereof.

[63] With respect to the use of force, the materials are all very clear that communication is an available option, one step up from officer presence, and several steps below punches and strikes.[5] With respect to communication, the VPD Regulation and Procedures Manual specifies the following procedure: "An officer can use verbal and non-verbal communication to control and/or resolve a situation. Communication can include crisis intervention and de-escalation techniques."[6]

[64] Officers receive training in crisis intervention and de-escalation techniques (CID), as outlined by Mr. Sveinson:

> 48. The CID course arose out of the findings and recommendations from the Braidwood Commission and a substantial portion of the course content is directed at assisting officers to identify and deal with persons suffering from mental health issues. However, the overarching focus of the course is to assist officers [to] assess and deal with all situations involving persons in distress at the outset of an incident and as the circumstances evolve.

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[5] See Vancouver Police Department Regulations and Procedures Manual, https://vpd.ca/police/assets/pdf/manuals/vpd-manual-regulations-procedures.pdf Part 1.2, Use of Force, pp. 25-26

[6] Ibid, page 25.

> 49. The common thread of this course is constant assessment and re-assessment based on the BC CID Model:
>
> Phase 1- make first contact - Goal - build rapport to start de-escalating the crisis
>
> Phase 2- assess crisis -Goal -assess the crisis while maintaining rapport
>
> Phase 3- Collaborate to build solutions – Goal - create opportunities for collaboration/cooperation (buy-in)
>
> Phase 4 - Resolve and follow up – Goal - follow through on the solution made in phase 3

[65] Mr. Sveinson also submitted as follows in relation to the use of force training provided by the Vancouver Police Department:

> 57. Officers receive extensive training about use of force at the JIBC and at the VPD on a regular basis. Every use of force related course at the VPD is focused around the National Use of Force Framework that requires an officer to assess at each step the reasonableness of and justification for the escalation of the use of force and method of force used. This includes making a decision to withdraw from the use of force when appropriate to do so.

[66] Counsel for Constable Ludeman submits that he does not rely on any deficiency in training to explain or mitigate his conduct.

[67] Counsel for Constable Logan submits as follows:

> 31. The Chief Constable has submitted evidence that suggests that Cst. Logan received training in Crisis Intervention and De-Escalation three times, most recently in 2015. The Chief Constable has also provided voluminous documentation about the Crisis-Intervention and De-escalation (CID) training that officers generally receive. However, there is no evidence that that course offers any guidance to officers who are drawn into situations like the one Cst. Logan was drawn into. Rather, it appears that these courses are aimed at giving officers guidance when they are dealing with what [the] province calls, 'EDPs', a somewhat de-humanizing term for people suffering from mental health crises, substance abuse, and other medical problems."

[68] The use of communication is clearly not specific to crisis intervention, however. As pointed out in the Chief Constable's submissions, it has long been a specified option on the National Use of Force Framework (NUFF)[7], it is included in the provincial use of force standards,[8] and based on the materials submitted, it is clearly the subject of considerable training in the Vancouver Police Department.

[69] The departmental policies, available training, and training records of these officers make it clear that both were equipped to decide whether force was an appropriate response at the time when they employed it, and failed to do so. I do not find that departmental policies or procedures or lack of training contributed to the misconduct of either officer.

(g) Disciplinary or Corrective Measures Taken in Similar Circumstances

[70] Counsel have provided helpful summaries of cases from the OPCC dealing with excessive force and unlawful entry, which I agree set a range starting with advice as to conduct and ending with suspension, depending on the circumstances. Clearly each case turns on its own facts, and I agree with all counsel that there are few that correspond with the facts in this matter. In addition, in some cases it is difficult to know how they compare because the service records of the subject members are not included in the summaries.

[71] In brief summary, however, most cases involving punches or blows, whether or not in the course of arrest, seem to merit suspensions of 2-3 days. Many of those cases do not involve injury or protracted interactions of the type in this case.

[72] Both Members' Counsel have pointed to a recent discipline proceeding on which they were counsel and I was the discipline authority, OPCC No. 2018-15276. While the findings in that case should be viewed with some caution as the proceedings are not yet past the Section 133(5) stage, I agree that it is most closely similar to the case here. It may have some relevance however that in a discipline proceeding there are submissions only from members' counsel.

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[7] https://www.cacp.ca/cacp-use-of-force-advisory-committee.html?asst_id=199#:~:text=The%20National%20Use%20of%20Force%20Framework%20was%20developed%20to%20assist,not%20justify%20an%20officer's%20actions.&text=The%20outer%20area%20of%20the,officer's%20use%20of%20force%20options.

[8] https://www2.gov.bc.ca/assets/gov/law-crime-and-justice/criminal-justice/police/standards/1-9-1-use-of-force-models-and-techniques-b.pdf

[73] Like this matter, that case also involved an unlawful entry scenario and multiple subjects, one of whom experienced considerable injuries in the course of attempts to place him into custody. Both cases involved hospitalization and overnight incarceration of the injured subject.

[74] Similarly to Constable Ludeman's interaction with Mr. Tchaikoun, "Officer B" in that case encountered resistance from an individual and subjected him to considerable force and injury in a prolonged attempt to handcuff him and take him into custody, when he lacked grounds to do so. Similarly to Constable Ludeman, the submissions on behalf of that officer were that he took instruction from the suggestion that an explanation of his authority may have assisted in gaining compliance.

[75] In relation to Constable Logan, while I agree with Mr. Woodall's submission that the interaction between his client and the Chaikuns involved less force than that of Officer B, I do not agree it was less than "any of the constables" in that case. In my view it was very comparable to the use of force by Officer C against an individual whose wellbeing the officers had attended to check. While that individual was taken forcibly to the ground in a controlled fashion, she was not subjected to blows. Similarly to this matter, I found that officer did not give the individual an opportunity to decide whether to comply without being subjected to violence. Officer C may however be contrasted with Constable Logan in that she was found to be responsible for the unlawful entry, and the submissions on her behalf included insight into the suggestion that more communication should have preceded the use of force against the putative victim.

[76] Mr. Woodall seeks to distinguish Constable Logan's behaviour in this matter, stating as follows:

> …As noted earlier, the cases where suspensions were ordered were not similar to Cst. Logan's case, where the misconduct lay in failing to consider de-escalation tactics that might perhaps have avoided the need to use force. Further, before punching Yuri Chaikun Cst. Logan gave the Chaikuns directions verbally, and by gesture, to stay back, which they did not comply with. Yuri Chaikun agreed that Cst. Logan pushed him back several times, and then punched him only after several pushes did not prevent Yuri Chaikun from trying to get past him. Cst. Logan's step-wise escalation of force distinguishes his case favourably from that of the officers in OPCC File NO. 2018-15276.

[77] I have already commented on the fact that it is not open to Counsel to submit that Constable Logan's use of force fell short of recklessness. The characterization of a "step-wise escalation" of force is inapt. The plain issue was an unreasonable and reckless failure to communicate. While I have acknowledged that the misconduct occurred in the heat of the moment and within the context of an altercation that Constable Logan was essentially drawn into, it is exactly those kinds of circumstances that call out for communication, reflection, and rational reassessment on the part of the crisis manager. In that

respect I do not see any favourable distinction between Constable Logan's conduct in this matter and that of Officer C in the case referred to, or others in which unnecessary force resulted in suspensions.

[78] I will add that, in contrast to both officers in this case, those in OPCC Case No. 2018-15276 all had unblemished service records.

[79] The *Hobbs* case I referred to earlier is also similar to this matter in that it involved an unlawful entry and arrest as well as an entry on the member's service record for a subsequent matter. Adjudicator Neal imposed a two-day suspension along with corrective measures including retraining and working under close supervision. I note that the amount of force used by the member in that case was considerably lower than the force used by both officers in this case.

(h) Other Aggravating or Mitigating Factors

[80] I take into account the fact that the publicity surrounding these proceedings and the length of time they have been outstanding has had a negative impact on the members and their families.

3. Section 126(3)

[81] Commission Counsel, Mr. Underhill, provided the following guidance in relation to the operation of Section 126(3) [Footnotes omitted]:

> 7. Section 126(3) does not mandate the least onerous measure available; that requirement was removed by legislative amendment in 2010. Rather, s. 126(3) expresses the overarching principle that measures which focus on education and remediation are generally preferred over those which are primarily punitive. Consistent with /the broader public interest objectives of Part 11 of the Police Act, this general principle is subject to considerations of workability and public confidence in the administration of police discipline…
>
> 8. Under s. 126(3), 'workability' addresses both the practicality of implementing educational or corrective measures in the particular circumstances, as well as the expected effectiveness of those measures for correcting the misconduct at issue.
>
> 9. The second consideration under s. 126(3), whether less punitive measures would bring the administration of police discipline into disrepute, is answered from the perspective of a "reasonable person, dispassionate and fully apprised of the circumstances of the case". The question "is whether such a person would hold the system of police discipline in lower regard" if punitive measures are not imposed.

[82] I have previously noted that the *Police Act* does not use the term penalty or punishment, and that the available measures under Section 126(3) are not aimed at providing redress to complainants. They are not designed to provide sanctions beyond disciplinary measures within the context of the members' duties as police officers, although clearly some of those measures are more punitive than others.

[83] Considered in that light, Public Hearing Counsel submits that the adverse credibility findings in relation to both officers and the totality of the circumstances that flowed from their misconduct support an emphasis on disciplinary as opposed to corrective measures, and require the demotion of both officers.

[84] While I agree that it is appropriate to take into account the entire series of events in assessing the degree to which the response will foster respect for the administration of police discipline, in my view it is important not to duplicate the analysis of aggravating circumstances and seriousness of the misconduct already performed under Section 126(2). To my mind the analysis under this section requires an assessment of proportionality to determine, in light of the circumstances, what disciplinary or corrective measures are necessary to encourage the retention and development of creditable officers and at the same time to uphold the integrity of police discipline.

[85] It is important also to observe that the assessment of proportionality is to be determined from the perspective of a dispassionate, informed, observer, not from that of any of the participants. Having said that, I agree with Mr. Hickford that, based on the aggravating factors in this case, in particular the seriousness of the misconduct, there must be significant disciplinary measures at the punitive end of the scale. The question at this point is whether for either officer a less onerous measure than demotion would bring the administration of police discipline into disrepute, when considered from the perspective of an informed public.

[86] I have had occasion to consider the proportionality of demotion in two prior cases, De Haas[9] and McLaughlin[10], both involving officers of superior rank. In the latter I had submissions from the chief constable as to workable alternatives to demotion that did not foreclose restoration of the officer to a leadership role. That officer had two similar entries on her service record but they were not matters involving significant interference with bodily integrity, and there were compassionate personal circumstances. In the former, I found demotion to be disproportionate to a workplace incident that I

[9] https://opcc.bc.ca/wp-content/uploads/2018/04/13492-2018-09-19_Adjudicators-Decision_Disciplinary_Corrective-Masures_d....pdf
[10] https://opcc.bc.ca/wp-content/uploads/2017/04/11200_2016-12-19_Adjudicator_Decision-2.pdf

believed could be addressed by retraining, in an otherwise unblemished career, although the officer had effectively retired before the disciplinary measures were imposed.

[87] I note that in the *Hobbs* case discussed earlier, despite the entry on that member's record of a prior incident involving excessive force, Adjudicator Neal did not consider that demotion was necessary. That case involved the use of force by effecting an arrest without authority, but nothing close to the level of force employed in this case.

[88] In relation to Constable Ludeman the issue is whether what emerges here as a tendency toward the precipitous use of violence can be addressed through measures short of demotion. I say tendency advisedly because with the two findings of oppressive conduct that occurred in very similar circumstances, it is clear that Constable Ludeman responds badly to challenges to his authority. Based on his evidence in this matter, that has not been rectified by one disciplinary experience and the remedial measures he undertook in response to it.

[89] It is difficult to reject the submission of Mr. Hickford that Constable Ludeman considers himself to be above the law. It may be that his assumption of a leadership role has negatively affected his capacity for humility and compassion. Whatever the reason, it is clear that the retraining he has undertaken has not yet been effective for him. I note that none of the cases in which demotion was rejected raised a similar issue about the effectiveness of prior corrective action.

[90] Based on a review of Constable Ludeman's record, before and even since the events in this case he appeared to have a promising career and to serve as a credit to his department. I would sincerely hope that with an appropriate disciplinary response, correction, and reflection on his part, he could go on from this to rehabilitate his character and perhaps in due course resume his role as a mentor to junior officers, maybe even in relation to the use of communication as an authoritative tool. At present, however, I do not see him fulfilling that role, nor do I have confidence in his abilities as an Acting Sergeant.

[91] While I understand that a demotion will likely set his career trajectory off track, I am not convinced that when considered objectively it is a disproportionate response to these events, in their totality. While the point is made that it will take some time for Constable Ludeman to regain the ground he will lose to a demotion, in considering the proportionality of that, I am mindful of the length of the Tchaikoun family's recovery period and the need to safeguard the public's trust in the quality of policing.

[92] With respect to Constable Logan, I have found that his actions in relation to this matter were less serious than those of Constable Ludeman and I am therefore satisfied that this first disposition entry on his service record does not demand his demotion. In saying that, I am mindful that the disciplinary or corrective measures on the subsequent matter have not yet been determined, and he had not had the same experience of intervention prior to his testimony. The circumstances do not raise the same concerns about the effectiveness of corrective action for him.

[93] In the interests of parity, the measures with respect to Constable Logan should be proportionate to those for Constable Ludeman, considering their relative roles and the nature of their misconduct. In my view, in order to maintain confidence in the administration of police discipline, for Constable Logan the circumstances require suspension, accompanied by the appropriate corrective action, in order to sufficiently emphasize the need for discipline. While I do not see demotion as necessary or proportionate for him, I have concerns about his judgement and leadership ability that dictate restrictions on his advancement in policing for a specified period or until he has completed his retraining, in order to maintain public confidence.

4. Conclusion

[94] With respect to Constable Ludeman, pursuant to Section 126(1)(b) there will be a reduction of one rank.

[95] With respect to Constable Logan, pursuant to Section 126(1)(c) there will be a suspension of 8 days.

[96] In addition, pursuant to Section 126(1)(f), both members will be required to receive training or retraining in the following areas:

> (a) Exigent entry with an emphasis on intimate partner violence; including the use of ruses if available;
> (b) Use of force; with an emphasis on reassessment and verbal de-escalation if available;
> (c) Arrest and detention; with an emphasis on providing grounds and gaining compliance verbally if available; and
> (d) Crisis Intervention and De-Escalation; including the use of communication as an authoritative tool if available.

[97] If available and workable, such retraining should in each case include role playing or simulations.

[98] Finally, pursuant to Section 126(1)(e), each member shall:

> (a) work under close supervision for a minimum of one year or until the specified retraining is completed, whichever is longer; and
> (b) not advance in rank or participate in Acting Sergeant duties within the period specified in (a), and, following that, until assessed by the appropriate department personnel as ready to do so after giving due consideration to the decisions in this matter, their service record of discipline and their performance in the retraining specified in (a).

[99] I will not make any formal recommendations under Section 143(9)(c); however, I recommend (informally) that the Vancouver Police Department or JIBC consider incorporating disciplinary case summaries into training and simulations on the subjects of exigent entry, detention, arrest and the use of force, with an emphasis on making decisions and using communication in the face of challenges to authority, if that is not already done. I also recommend that any of the areas of training specified in paragraph [96] above for which I have stated "if available" be made available, if that is not already done.

[100] If required, I will remain open to any questions or concerns with respect to the workability of any of the measures I have imposed.

Reasons delivered at Sechelt (via Teams), British Columbia this 11th day of June, 2021.

Carol Baird Ellan, Retired Judge
Adjudicator