OPCC FILE NO. 17-13143
D.A. NO. 16-1450

IN THE MATTER OF THE POLICE ACT, R.S.B.C. CHAPTER 367

AND

IN THE MATTER OF A REVIEW UNDER SECTION 117

AND

IN THE MATTER OF ALLEGATIONS OF MISCONDUCT AGAINST

[redacted]

OF THE VANCOUVER POLICE DEPARTMENT

TO:	[redacted] C/O PROFESSIONAL STANDARDS SECTION VANCOUVER POLICE DEPARTMENT	MEMBER
AND TO:	MR. STAN LOWE	COMMISSIONER
AND TO:	CHIEF CONSTABLE ADAM PALMER C/O PROFESSIONAL STANDARDS SECTION VANCOUVER POLICE DEPARTMENT	
AND TO:	[redacted] C/O PROFESSIONAL STANDARDS SECTION VANCOUVER POLICE DEPARTMENT	INVESTIGATOR

NOTIFICATION OF MISCONDUCT AND NEXT STEPS PURSUANT TO SECTION 117(7)

Overview

[1] In a Notice dated October 17, 2017 the Police Complaint Commissioner ordered a review under Section 117 of the Police Act of an allegation that the subject member committed discreditable conduct pursuant to Section 77(3)(h) of the Police Act by displaying his badge while under investigation by an officer from another police force.

[2] Because the proceedings at this stage are not public, I will not refer to the member by name or provide identifying information in the body of this decision.

[3] For the reasons set out below I have concluded that the member's conduct appears to constitute misconduct. This is the member's Notification of misconduct and next steps under Section 117(7):

a. The member will be offered a prehearing conference under Section 120.
b. If the member declines a prehearing conference, pursuant to Sections 117(9) and 118 a discipline proceeding must be convened, with me as discipline authority, by December 18, 2017.
c. Within 10 business days of receipt of this Notification the member may file with the discipline authority a request to call and examine or cross-examine at the discipline proceeding one or more witnesses listed in the final investigation report.

d. I direct that the member advise me whether he will accept the offer of a prehearing conference within 5 business days of the later of the date on which he advises that he will not request witnesses or on which he is advised of my decision in relation to his request that witnesses be called.

History of Proceeding

[4] The member's conduct during a incident in Surrey was reported to the Office of the Police Complaint Commissioner (OPCC) on February 20, 2017. The Commissioner (PCC) ordered an investigation relating to the reported conduct of causing a disturbance by being intoxicated in public, on March 1, 2017. The Final Investigation Report (FIR) was delivered on September 1, 2017, recommending a finding of discreditable conduct in relation to the original investigation. The investigator also identified and considered an additional allegation that the member committed discreditable conduct by displaying his badge to the attending officers, but the investigator did not recommend a finding of misconduct on that allegation.

[5] On September 18, 2017, the discipline authority issued his decision under Section 112, finding that the allegation in relation to displaying a badge did not appear to be substantiated. The initial allegation proceeded and was dealt with in a prehearing conference.

[6] The Notice of Appointment of Retired Judge under Section 117 was issued on October 17, 2017. I received the FIR and related materials on October 20, 2017.

Review Process

[7] The task under Section 117(8) is to review the FIR and the evidence and records referenced in it to determine whether there is apparent misconduct. It is a fresh consideration, not a review of the Section 112 decision.

[8] I am to identify and consider not just the allegation which is the subject of the Notice but all incidents of misconduct that arise from the report (other than those that have already proceeded to disciplinary measures or corrective action), and to consider, in relation to each, whether the evidence referenced in the FIR appears to substantiate misconduct and to require the taking of disciplinary measures or corrective action. I must then consider whether the member will be offered a prehearing conference, and what range of disciplinary or corrective measures will be considered.

[9] The review must be completed within 10 business days of receipt of the FIR, by November 3, 2017. I instruct myself as I have in prior such reviews[1]. The specific steps I am required to follow under Section 117(8) are dealt with under the applicable headings below.

Conduct of Concern [Section 117(8)(a)]

[10] On , the member was reported to police for exhibiting intoxicated and unruly behaviour in a parking lot near a Surrey pub. Several Surrey RCMP officers attended and the member was arrested for causing a disturbance.

[11] While under the scrutiny of the Surrey officers, the member was asked to produce identification. He produced his police badge and stated that he was a police officer. He later told the investigating officers that he had trained them or their department in surveillance, and that he believed they were watching him. He requested

[1] https://opcc.bc.ca/wp-content/uploads/2017/06/11867_2017-07-14_Notice_of_Adjudictors_Decision.pdf

that he be sent home in a taxi or dropped off near his residence but not in front because he was an undercover officer and he did not want to be recognized as such by his neighbours.

[12] If the member showed his badge or identified himself as a police officer with the intention of gaining favour, this would be a form of misconduct commonly referred to as "badging", and would be a contravention of the Police Act.

[13] The nature of the misconduct has been referred to thus far in the proceedings as a possible breach of Section 77(3)(h) of the Police Act. That section defines the following as a disciplinary breach of public trust, when committed by a member:

> (h) "discreditable conduct", which is, when on or off duty, conducting oneself in a manner that the member knows, or ought to know, would be likely to bring discredit on the municipal police department...

[14] Incidents of badging may also fall under the definition of "corrupt practice" contained in Section 77(3)(c)(iii):

> (iii) using or attempting to use one's position as a member for personal gain or other purposes unrelated to the proper performance of duties as a member...

[15] I note in this respect that the [applicable department's] Regulation and Procedure Manual, Section 4.2.1, in Paragraph 44 under Heading "Off-Duty Incidents" refers specifically to an officer identifying themselves as a police officer while off-duty as being a potential breach of Section 77(3)(c)(iii), in creating an exception for officers who are required to identify themselves pursuant to an Independent Investigation Office (IIO) investigation.

[16] I note as well that the application of Section 77(3)(c) was considered by Adjudicator I.H. Pitfield in OPCC Case No. 2009-4716[2]. Retired Justice Pitfield decided in that case that the section did not apply because in displaying his badge the officer did not use it to "compel action" and that it was not an action by which favouritism would be afforded in exchange for a benefit to the recipient. Justice Pitfield preferred to find the action to be discreditable conduct.

Allegations Considered [Section 117(8)(c)]

[17] The conduct of the member that could constitute misconduct consists of two separate actions: displaying his badge and identifying himself as a police officer. Those may be separate matters and the intent pertaining to each of them may be different; nonetheless if intent is proven in relation to either act, it will amount to the same type of misconduct. Accordingly I have considered them together in identifying the allegations.

[18] Because the matter has so far been dealt with under Section 77(3)(h) but may properly fall under Section 77(3)(c)(iii) I will consider the two sections as separate allegations for the purposes of this review.

[19] The allegations I have identified and considered are therefore as follows:

a. That on , while off duty the member committed discreditable conduct under Section 77(3)(h) by conducting himself in a manner that he knew or ought to have known would be likely to bring discredit on the municipal police department; specifically, by displaying his badge and/or identifying himself as a police officer to an investigating officer or officers with the intention of gaining a benefit.
b. That on , while off duty the member committed corrupt practice under Section 77(3)(c)(iii) by using or attempting to use his position as a member for personal gain or

[2] http://www.bclaws.ca/civix/document/id/complete/statreg/96367_01#section117

other purposes unrelated to the proper performance of duties as a member; specifically, by displaying his badge and/or identifying himself as a police officer to an investigating officer or officers with the intention of gaining a benefit.

Does the Evidence Appear Sufficient to Substantiate the Allegations? [Section 117(8)(d)(i)]

1. Evidence

[20] My review of the FIR and the evidence and records referenced in it disclose the following evidence, which if proven, may have relevance to the questions of misconduct raised in this review. It is important to note that identifying the facts that form the basis of the allegations does not entail a conclusion that they will ultimately be proven.

[21] The member came to the attention of a security guard in a Surrey parking lot when the member, who was apparently intoxicated, approached the guard outside a Tim Horton's coffee shop. The shop was closed, and the guard offered to obtain a coffee for the member. The member demanded that the guard take his hands out of his pockets, and the encounter escalated into the member, on foot, chasing the guard, who was in his car, around the parking lot. The guard called police.

[22] Several Surrey officers arrived to investigate. There are four officer witness statements in the materials. Three of those officers were present for the initial exchange with the member. The member first tried to give them his cell phone. They declined and asked for his identification. The member produced a brown badge wallet and flipped it open, saying, "Here's my identification," or, "This is the ID you need." He may have said at the same time, "I'm a cop."

[23] After showing the badge to the officers who were present, the member dropped his badge wallet to the ground, along with another wallet and his cell phone. One of the officers concluded that the subject member had "flashed his police badge" and "it was pretty obvious that's what he was trying to do." Another expressed the view that the member "should probably know better."

[24] The member also told the attending officers that he had taught the Surrey RCMP how to do surveillance. He suggested that they and the guard were conducting surveillance of him in the parking lot because of a prior incident that had occurred at Whistler. These officers described the member as drunk, rude and belligerent.

[25] One of the officers who dealt with the member was a supervisor. He arrived after the initial encounter, but also heard the member exhibiting "persistency" in stating that he was a police officer and a belief that the Surrey RCMP were following and watching him.

[26] The member made a statement to the conduct investigator. He said he believed that the Surrey officer who dealt with him first was an undercover officer, that he had run his licence plate earlier in the evening and knew he was a police officer. He based this belief on a prior encounter with one of the officers in which the officer had pointed out the donut shop, which he took as an indication that they "probably knew I was a cop and that was some kind of funny cop joke." He did not recall showing the officers his badge and described it as "tucked in the wallet." He stated that when he was first arrested, "when they talked about being a police officer I said, you already know I am a police officer because you ran my plate. I was just telling them what they already knew, in my mind at the time." The member said that he did not intend to seek preferential treatment, that he was very aware of the "double-edged sword" of identifying himself as a police officer or failing to do so, and that he "had no intentions of getting any kind of favouritism because of that."

2. Analysis

a. Discreditable Conduct

[27] Discreditable conduct is defined in Section 77(3)(h) of the Police Act as "when on or off duty, conducting oneself in a manner that the member knows, or ought to know, would be likely to bring discredit on the municipal police department..." Although some types of misconduct are specified in the remainder of the section, the conduct under scrutiny here falls under the general wording in the first part of it.

[28] There are several decisions on the OPCC website dealing with the application of the section to the issue of identifying oneself as a police officer while under investigation. In addition to the decisions referred to by the PCC in the Notice of Appointment in this matter, I have considered the decision of Retired Judge Filmer in the Berndt Public Hearing Matter, No. PH 11-01[3], and the decision of Retired Justice M. Allan in OPCC File No. 2012-7741[4].

[29] Generally a consideration of discreditable conduct entails an analysis of the nature of the conduct and then a consideration of the officer's state of knowledge regarding whether it is likely to bring discredit on the department.

[30] The issue in relation to whether displaying a badge or identifying oneself as a police officer is discreditable conduct turns on whether there is subjective or objective evidence to support a conclusion that the officer did so for the purpose of gaining preferential treatment: OPCC File No. 2015-10904, Justice Pitfield.

[31] There is consensus among the adjudicators that if a finding of intent to gain favour is made, the action constitutes discreditable conduct. On this point, the decisions commonly refer to community standards; that is, the expectation of the public that police officers will be treated the same as any other citizen. The finding of intent on the part of the officer has been considered determinative of the issue: there is generally no separate analysis of whether he knew or ought to have known the conduct was likely to discredit the department.

[32] The member has stated that he believed the officers already knew he was a police officer. In considering the issue of intention on the part of the member here, the member's characterization of his actions must be considered with his own admission that he did not recall clearly, against the backdrop of the perceptions of others present and their description of his state of intoxication. This is referred to in the cases as an objective test of the member's intention.

[33] The attending officers' descriptions of the member's behaviour at the time of the incident are somewhat at odds with the member's later statement to the investigator. In looking at the question at this stage of the proceedings without weighing the evidence, in my view the attending officers' statements must be taken at face value and considered as objective evidence in deciding whether there is support for a conclusion of intent that contradicts the member's denial. The matter may ultimately be one of credibility.

[34] The attending officers' descriptions of how the badge was produced must be looked at together with their evidence that the member stated, at the same time, that he was a police officer; that he may have done so more than once; and that he trained them, or their department, in surveillance. This collection of observations could be objectively interpreted as an attempt to "pull rank" on those present, or to suggest that they accord the member some deference.

[35] The perceptions of those present at the incident can also have relevance to the objective interpretation of the member's actions. One of the attending officers here concluded that the member was "flashing his badge" and

[3] https://opcc.bc.ca/wp-content/uploads/2017/04/11-01_Filmer_Decision_Part_1.pdf
[4] https://opcc.bc.ca/wp-content/uploads/2017/05/7741_2015_01_13_S117_Notice_of_Decision.pdf

another believed he should have known better. While not determinative, those observations afford some evidence of how the member's actions and statements were objectively perceived by others as they unfolded.

[36] I also note that none of the officers stated that they knew the member was a police officer before they attended, nor do any of them say anything in their statements about the member telling them, at the time when he produced his badge and first identified himself as a police officer, that he believed they already knew that. Indeed, as pointed out by the PCC in the Notice, he said he did not remember pulling out his badge. The issue of what the member actually believed will turn on credibility. As it stands, the statements and perceptions of others present are at odds with the member's assertion that he did not intend or attempt to gain a preference.

[37] The investigator placed emphasis on the member's intoxicated state, and his invitation to the officers to "take him in". The latter occurred later in the encounter, after a conversation with one of the officers about deciding what to do with the member. It is equally consistent with frustration at not being "let go" as it is with acceptance of his fate. As for the state of intoxication, in the member's own statement he admitted stating and discussing the fact that he was a police officer. The sole issue is what was his intent in doing so, assessed based on the surrounding circumstances. I am not reviewing the investigator's decision but considering the issue afresh. I do not at this stage consider the description of the member's level of intoxication to be inconsistent with the ability to form an intent to seek favour based on his office.

[38] While the investigator in his thorough analysis considered whether the member's status as a police officer affected the decisions made by those who dealt with him, there is no requirement that actual preference be accorded to the officer if the action and the intent are apparently supported by the evidence. In my view, the comments of the officers in this regard serve only to answer the question of whether there was any advantage available to the member by virtue of his office.

[39] On this point, it must be considered that the officer had reportedly been causing a disturbance, a Criminal Code offence, and if he was pulling rank or seeking deference by his remarks, a logical extension of that may be a request or a suggestion for leniency in relation to whether he was charged, or with what. As well, the comments of the officers that they had a discretion about whether to take the member home or lodge him in cells suggests there may have been other advantages available to him. Moreover, the member himself asked to be sent home in a taxi or dropped off near his home, which if done instead of charging him and taking him to jail, would clearly be a preference.

[40] It is necessary to observe that there are most certainly circumstances when it is appropriate for an officer to identify himself while he is the subject of an investigation. In this case, for instance, the reason the member gave the officers for requesting that they not take him to his home in a marked police car was that he was an undercover officer and did not want his cover blown. Although it strikes me that being brought home in a police vehicle, as a subject, would probably strengthen his cover rather than attenuate it, raising the issue of his position for safety reasons or because of logistical concerns may well have been reasonable. It has also been found that simply explaining that one is familiar with a roadside screening device because of the nature of his employment, or asking about the effects of a charge on the officer's employment, barring any request or suggestion of leniency, are not misconduct: Decision of Retired Judge C. Lazar in OPCC File No. 2011-6633[5].

[41] The standard of conduct was perhaps best articulated by Retired Judge A. Filmer in the PH 11-01 decision: the member producing a badge for appropriate reasons can say, "Yes, I'm a cop, but do your job."

[42] The member himself referred to the issue of identifying oneself as a "double-edged sword". At this stage I have not been provided with any information regarding the training officers receive relating to this issue. I found

[5] https://opcc.bc.ca/wp-content/uploads/2017/05/6633_2015_01_13_S117_Notice_of_Decision.pdf

the relevant department's Regulation and Procedure Manual online, but apart from the passage I mentioned earlier, I found no policy in it on the issue of identifying oneself as a police officer while the subject of an investigation. In the decision of Justice Allan in OPCC File No. 2012-7741, which involved a member of the same department as this case, there was evidence that there was no departmental policy pertaining to the issue. It strikes me that if that is the case, some consideration should be given to providing officers with some guidance on the matter.

b. Corrupt Practice

[43] Section 77(3)(c)(iii) defines the following as corrupt practice:

> (iii) using or attempting to use one's position as a member for personal gain or other purposes unrelated to the proper performance of duties as a member...

[44] The application of the term "corrupt practice" to police conduct was considered in the case of *Constable Graham Brooks and the Durham Regional Police Service*.[6] The Police Commission adopted the judge adjudicator's distinction between corrupt practice and discreditable conduct:

> We agree with Judge Salhany's view that "the charge of discreditable conduct is directed towards the question of bringing discredit upon the reputation of the police force. The charge of corrupt practice is directed towards the particular conduct of the officer charged, that is conduct that is personal to him". We also find that such a distinction is valid and sufficient to take this matter out of the application of the Kineapple principle.

[45] The Brooks case involved an overt use of the officer's position while on duty, by extending leniency to a suspect in exchange for his selling a gun to the officer.

[46] The definition of corrupt practice as it applied under a section of the relevant police Code of Conduct was further considered in *Stone v. Toronto Police Service*[7]. The section in that case included, in the definition of corrupt practice, an officer who "improperly uses his or her character and position as a member of the police force for private advantage". The section required actual use and advantage, but it is of note that the Commission found that they need not be linked temporally. Apart from that, the case provides an example of the kind of behaviour that can constitute corrupt practice. In that case an officer had released a suspect whom he knew to be influential, and later received tickets to a hockey game from him. The Commission stated:

> [23] Subsection 2(1)(f)(v) requires a causal relationship between the improper use of the officer's position and the personal advantage. The subsection does not, however, require that the personal benefit be anticipated or intended prior to or at the time the police officer improperly uses his position as a police officer, in this case, at the time Mr. Amaro was released. The temporal nexus urged by the Appellant is not required by the language of the subsection and would effectively limit the scope of ss 2(1)(f)(v) so that it is merely a repetition of the prohibition against bribes as stated in ss. 2(1)(f)(i). The misconduct under ss. 2(1)(f)(v) in this case commenced with the officer's misuse of office in releasing Mr. Amaro and crystallized when the officer accepted a personal benefit offered in gratitude for that failure to carry out his duties as a police officer. Further, the Hearing Officer found that P.C. Stone provided some direction to P.C. McCormack on how to approach Mr. Amaro as he entered the restaurant to solicit some

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[6] https://www.canlii.org/en/on/oncpc/doc/1990/1990canlii10509/1990canlii10509.html?searchUrlHash=AAAAAQASImNvcnJ1cHQgcHJhY3RpY2UiAAAAAAE&resultIndex=11

[7] https://www.canlii.org/en/on/onscdc/doc/2008/2008canlii50515/2008canlii50515.html?searchUrlHash=AAAAAQASImNvcnJ1cHQgcHJhY3RpY2UiAAAAAAE&resultIndex=17

benefit on his behalf. The Commission was both reasonable and correct in finding such conduct violated both the language and spirit of corrupt practice under ss. 2(1)(f)(v) of the Code of Conduct.

[47] The only references I have found that may relate corrupt practice to "badging" are the statement in the Regulation and Procedure Manual I have already referred to, and the use of the term "corrupt" by a police witness in the decision of Retired Justice M. Allan in OPCC File No. 2012-7741. I found that interesting, and wonder whether it relates to training that officers receive regarding the circumstances under which it is appropriate to identify oneself as a police officer.

[48] Justice Pitfield in OPCC No. 2009-4216 dealt with the situation of an officer at a traffic stop simply placing his badge in his lap, before he was asked for identification, and saying nothing. Justice Pitfield found that the action in that case did not constitute the overt use of the officer's position to provide, and thereby gain, preferential treatment, such as in the cases I have already referred to. He found however that the officer intended to gain a preference, which constituted discreditable conduct.

[49] I do not take Justice Pitfield's decision as standing for the proposition that Section 77(3)(c)(iii) would never apply to these kinds of cases. I do not have the benefit of argument on the point, but it strikes me that the wording of the section is apt in the current circumstances, and the cases suggest that no quid pro quo or actual benefit is required, to make out misconduct. The Police Act section requires only an "attempt" to use one's position for personal gain or for other purposes unrelated to the proper performance of duties as a police officer. Notably, it also does include the element of "improper" use of the position as did the legislation in the *Stone* case, which might entail an additional element of the officer's breaching or failing to uphold a duty.

[50] As I mentioned earlier, there appears to be a lack of guidance in departmental policy regarding when it is and when it is not appropriate, or necessary, for an officer who is the subject of an investigation to identify himself as a police officer. This guidance might better be provided by the wording of Section 77(3)(c)(iii) than that of Section 77(3)(h): if the conduct is "for personal gain or other purposes unrelated to the proper performance of duties as a member," it is misconduct. Additionally it strikes me that the characterization of this kind of conduct as discreditable and the applicable analysis under Section 77(3)(h) may be somewhat more tortuous than it would be under Section 77(3)(c)(iii).

[51] I will add that, if after argument on some future occasion it is determined that the section is wholly inapplicable to these kinds of cases, it may be that the section in the subject policy manual, and perhaps others, dealing with the IIO exception should be amended to reflect the applicable section.

(c) Conclusion

[52] Applying the standard of review at this stage of the proceedings, pursuant to Section 117(9) and 117(8)(d)(i) I find that there is evidence which if proven could substantiate the allegations, establish misconduct, and require the taking of disciplinary measures. I am of the view that further consideration should be given to the proper characterization of the misconduct, if such is found, under the Police Act. Accordingly for these purposes I find that the two alternative allegations are apparently substantiated.

Range of Disciplinary or Corrective Measures Being Considered [Section 117(8)(d)(iii)]

[53] The measure imposed in the relevant cases for this type of misconduct is primarily suspension, under Section 126(1)(c), but in my view in this case some of the (lesser) measures set out in paragraphs 126(1) (d) through (k) might properly be considered. I do not consider at this stage that this is a case warranting the measures of dismissal or demotion under paragraphs 126(1)(a) and (b).

Next Steps [Section 117(8)(d)(ii)]

[54] The next steps under the Act are set out in the Overview at the beginning of this Notification. The following are my reasons for setting out those steps in the way that I have. My analysis may serve to highlight the difficulties with the timelines prescribed in the legislation.

[55] Pursuant to Section 117(8)(d)(ii) and Section 120, I considered whether it is appropriate to offer the member a prehearing conference. Given that the companion allegation considered in the FIR was dealt with in that fashion, and based on the relevant cases, I see no basis for concluding otherwise. The relevant authorities in the member's police department will receive notice of this decision.

[56] There is no provision under the Act for the expiry of the offer of a prehearing conference. I have considered whether it is appropriate to align that offer with the timelines provided under the Act in relation to other events: convening a discipline hearing (no more than 40 days from date I receive the FIR), the issuance of notices of the discipline proceeding under Section 123 (at least 15 days prior to the discipline proceeding date), the member's opportunity under Section 119 to provide notice of a request to have evidence called (within 10 business days from his receipt of this Notification), and the decision in relation to that request (5 business days following my receipt of the request).

[57] Putting those timelines together, the window of time within which a discipline proceeding may be convened if a request for witnesses is made commences on the 30th business day following delivery of this Notification to the member and ends on the 40th day following the reviewer's receipt of the report. In cases where decisions are not made before the statutory deadlines, there will be no window of time between those dates: they will converge on the 40TH day.

[58] If the member decides not to request witnesses the discipline proceeding could be convened as early as 15 business days after that decision is conveyed, which at its earliest could be the date of this Notification, perhaps allowing an additional day for preparation and delivery of the requisite notices to the member, PCC and investigating officer under Section 123. That would provide a wider window for convening the discipline proceeding, but it is not determinable at this point.

[59] I note that Section 120(3) provides that a prehearing conference may not be offered if a request for witnesses is accepted. The member may not know of the decision in relation to his request until as late as 15 business days following delivery of this Notification to the member. That section presumes that the offer, which must be made at the time Notification under Section 117 is delivered, remains open until that decision is known. Presumably, if the request is rejected, the member will need additional time to decide anew whether to accept the prehearing conference. Minimum time frames under the Act are generally 5 business days, so the earliest reasonable deadline for the member's decision about a prehearing conference would seem to be 5 days following the later of his decision not to request witnesses and the date on which his request for witnesses is denied.

[60] Presumably the decisions of whether to request witnesses and whether to accept the offer of a prehearing conference will go somewhat hand in hand, and that timeline of an additional 5 business days following the Section 119 decision would afford sufficient time for taking advice regarding the acceptance of a prehearing conference in the face of a denial of the request for witnesses to be called.

[61] Unfortunately, in a case where decisions are made at or near the statutory deadlines, the member's decision to accept a prehearing conference could come after the 15-day deadline for notices of the discipline proceeding under section 123. Indeed the final outcome of a prehearing conference could come after the 40-day Section 118 deadline for convening the discipline proceeding, in which case presumably an adjournment under Section 123(10) will be required.

[62] The question to my mind must be what kind of notice is reasonable to advise those who receive notices of a discipline proceeding that it will not be convened on the appointed date. I would think that in a given case, the discipline authority might consider directing at the time when the hearing notices are delivered that the member advise of his or her decision in relation to a prehearing conference at least 10 business days before the scheduled date. There may however be cases where that deadline is too close to the notification of the denial of witnesses.

[63] In this matter, I have decided that it is reasonable to direct that the member advise whether he will accept the offer of a prehearing conference within 5 business days of the later of the date on which he advises that he will not request witnesses or on which he is advised of my decision in relation to his request that witnesses be called. This date will not be known until service on the member of this Notification has been effected.

[64] I note as well that there is no provision for notification of the discipline authority of a member's decision to accept an offer of a prehearing conference under Section 120, although duties will fall to the discipline authority given the inevitable effect on the original discipline proceeding timelines. Accordingly, I have directed that I be notified if the member decides to accept a prehearing conference.

Dated at Vancouver, British Columbia, this 3rd day of November, 2017.

Carol Baird Ellan, Retired Judge, Adjudicator