



The Association of Professional
Engineers and Geoscientists of Alberta

APEGA DISCIPLINE COMMITTEE DECISION ON SANCTIONS

Date of Hearing: Written Submissions
Date of Decision: April 29, 2024
APEGA Discipline Case Number: 20-001-FH

**IN THE MATTER OF A HEARING OF THE DISCIPLINE
COMMITTEE OF THE ASSOCIATION OF PROFESSIONAL
ENGINEERS AND GEOSCIENTISTS OF ALBERTA**
Pursuant to the *Engineering and Geoscience Professions Act*,
being Chapter E-11 of the Revised Statutes of Alberta 2000

Regarding the Conduct of CHINEDU GIDEON UBAH, P.ENG.

DECISION ON SANCTIONS

INTRODUCTION

1. The Hearing Panel of the Discipline Committee (“the Hearing Panel”) of the Association of Professional Engineers and Geoscientists of Alberta issued a written decision dated January 19, 2024 (the “Conduct Decision”) in which it found that the following Charge was proven:

On or about 2014 to 2018, Mr. Ubah, P.Eng. commenced, attempted to commence or threatened to commence complaints or proceedings with one or more of the following bodies, in circumstances amounting to an abuse of process, or for improper purposes, or both:

- a. The Association of Professional Engineers and Geoscientists of Alberta (“APEGA”);
- b. The Office of the Information and Privacy Commissioner of Alberta (“OIPC”);
- c. The Alberta Courts.

2. The Hearing Panel determined that the proven allegation constituted unprofessional conduct under section 44 of the *Engineering and Geoscience Professions Act* (“the EGP Act”).

3. The Hearing Panel directed the parties to provide written submissions on possible orders to APEGA staff. The Investigative Committee provided submissions dated February 14. Mr. Ubah then provided written submissions dated March 6, to which the Investigative Committee replied in submissions dated March 13. Mr. Ubah provided a final written reply dated March 14.

4. The following members of the Hearing Panel met by videoconference to consider the written submissions on sanctions from the parties:

Christine Neff, P.Eng., Discipline Committee Panel Chair
Douglas Cox, P.Eng., Discipline Committee Panel Member
Zsolt Margitai, P.Eng., P.Geol., Discipline Committee Panel Member

David Jardine and Ashley Reid from Shores Jardine LLP attended as independent legal counsel to the Hearing Panel.

SUBMISSIONS ON SANCTION

Written Submissions of the Investigative Committee

5. The Investigative Committee began by noting that the Hearing Panel found that the Charge was proven and constituted unprofessional conduct.

6. Based on this proven unprofessional conduct, the Investigative Committee requested the Hearing Panel make the following orders pursuant to sections 63 and 64 of the EGP Act:

- a) Mr. Ubah's registration shall be cancelled;
- b) Mr. Ubah shall be required to pay the full costs of the hearing within 30 days; and
- c) The Discipline Committee's orders shall remain in effect pending any appeal to the APEGA Appeal Board or the Alberta Court of Appeal, pursuant to section 66(1) of the EGP Act.

7. The Investigative Committee advised that the fundamental purpose of sentencing in professional regulatory contexts is to ensure that the public is protected from unprofessional conduct. Protection of the public is achieved by ensuring the public are not at risk of harm as a result of continuing conduct by the member, by ensuring the public has confidence in the profession, and by sending an appropriate message to other members of the profession.

8. The Investigative Committee reviewed the factors from *Jaswal v Newfoundland (Medical Board)*, 1996 CanLII 11630 ("*Jaswal*"), which should be considered to determine an appropriate sanction. The Investigative Committee provided submissions on the application of each factor.

9. The Investigative Committee submitted that taken together, the *Jaswal* factors demonstrate that Mr. Ubah's proven unprofessional conduct is extremely serious. He commenced improper and abusive legal proceedings and threatened to commence more to pressure others

to do as he wished. He used legal proceedings in a retaliatory and malicious manner. His conduct undermined the reputation of the profession and public confidence in the profession generally. There is no reason to believe that a remedial order or suspension could adequately deter Mr. Ubah from continuing his pattern of unprofessional conduct. The Investigative Committee proposed that cancellation is the only rational result.

10. The Investigative Committee further submitted that Mr. Ubah should be found ungovernable. The Investigative Committee referred to court cases relating to ungovernability: *Kuny v College of Registered Nurses of Manitoba*, 2017 MBCA 111, *Ahluwalia v College of Physicians and Surgeons*, 2017 MBCA 15 (“*Ahluwalia*”), and *College of Physicians and Surgeons of Saskatchewan v Ali*, 2016 SKQB 42 (“*Ali*”). From the Investigative Committee’s perspective, Mr. Ubah should be found to be ungovernable for the following reasons:

- Mr. Ubah’s behaviour during the hearing was shocking and reflected an attitude and pattern of behaviour that warranted a finding of ungovernability. The Investigative Committee’s submissions summarized Mr. Ubah’s conduct during the hearing, and these submissions are reproduced in Appendix “A” of this Sanctions Decision.
- Mr. Ubah’s lack of a prior discipline history does not preclude the Hearing Panel from cancelling his registration. In *Ahluwalia* the Manitoba Court of Appeal stated: “*It would be a mistake, however, to assume that disbarment is a penalty reserved for cases that combine the worst imaginable offence with the worst imaginable offender.*”
- Mr. Ubah has shown no recognition or understanding of the seriousness of his conduct. He was entitled to defend himself at the hearing, but he has displayed an attitude of utter defiance towards his regulator.
- The Hearing Panel’s findings and Mr. Ubah’s conduct in response to the complaints and in the hearing demonstrate his unwillingness to appropriately respond to APEGA’s legitimate regulatory authority. There is no basis to believe that Mr. Ubah will change his behaviour. Conversely, there is ample evidence that Mr. Ubah is intent on pursuing his inappropriate and abusive course of conduct.

11. The Investigative Committee submitted that based on Mr. Ubah’s ungovernability, the only rational sanction is cancellation.

12. The Investigative Committee also sought an order requiring that Mr. Ubah pay full costs within 30 days. The Investigative Committee referred to *KC v College of Physical Therapists of Alberta*, 1999 ABCA 253 and *Jinnah v Alberta Dental Association and College*, 2022 ABCA 336 (“*Jinnah*”) for principles relating to costs awards. The Investigative Committee submitted that there are compelling reasons to order Mr. Ubah to pay a substantial portion or all the costs of the hearing, given that he engaged in serious unprofessional conduct on multiple occasions over four years. He also engaged in hearing misconduct, which involved repeated refusals to acknowledge the Hearing Panel’s jurisdiction and role; his repeated assertions of bias and impropriety without evidence; repeated refusals to cooperate with reasonable scheduling efforts; excessively long,

repetitive, abusive and irrelevant cross-examinations of the Investigative Committee's witnesses; refusing to respond to correspondence and refusing to heed instructions from the Hearing Panel; and refusing to continue his participation in the hearing until his demands were met.

13. The Investigative Committee indicated that if Mr. Ubah did not bear the full costs of the hearing, other members of APEGA would bear the costs through membership fees. The Investigative Committee submitted that it was not appropriate to place the burden of the costs of Mr. Ubah's conduct on other members of APEGA.

Written Submissions of Mr. Ubah on Sanction

14. Mr. Ubah devoted a significant portion of his submissions rearguing the Hearing Panel's Conduct Decision. For this decision on sanctions (the "Sanctions Decision"), the Hearing Panel will not consider submissions that reargue the Conduct Decision, as the Hearing Panel is not prepared to revisit its findings in the Conduct Decision. This Sanctions Decision will only address the appropriate sanction given the proven conduct in this case. Mr. Ubah has a right to appeal to the Appeal Board and may make any arguments about the Conduct Decision in that forum.

15. Mr. Ubah submitted that the Hearing Panel lacked authority to make sanctions orders:

- The Hearing Panel became *functus officio* after rendering the Conduct Decision, as the authority to make orders under the EGP Act expired. If the Hearing Panel intended to make sanctions orders, the orders should have been in the Conduct Decision. Further, the Hearing Panel was precluded from making any sanctions orders because Mr. Ubah had filed an appeal of the Conduct Decision.
- The Hearing Panel lost jurisdiction to make sanctions orders when it asked for the Investigative Committee to recommend orders. Mr. Ubah referred the Hearing Panel to section 52(1) of the EGP Act.
- There is nothing in the EGP Act that allows the Hearing Panel to start another hearing to ask the Investigative Committee about what orders should be made. Further, there is now a reasonable apprehension of bias because the Hearing Panel lost jurisdiction and received the Investigative Committee's sanctions submissions.

16. With respect to an appropriate sanction, Mr. Ubah submitted that the Investigative Committee's proposed orders do not speak to the Charge and are therefore retaliatory and oppressive. Mr. Ubah stated:

[...] cancelling my registration does not stop me from making a complaint to APEGA, the office of Privacy Commissioner or filing an application in Court. My registration as APEGA member is not prerequisite to taking those steps and APEGA authority that take away my legal or constitutional right. [...] An order must address what the charges are, and the charges much come from the complaint. [*sic*]

17. Mr. Ubah also submitted that the Investigative Committee's proposed orders are unreasonable. He specifically noted that "you certainly do not ask a person to pay for cost of flawed investigation/proceedings." [sic]

Reply Submissions of the Investigative Committee

18. The Investigative Committee's reply noted the Hearing Panel exercised its statutory authority under sections 62 and 63 of the EGP Act using a two-step process, which addressed unprofessional conduct in one stage and sanctions in a subsequent stage. This bifurcated approach is typical in professional disciplinary and regulatory cases and does not make the Hearing Panel *functus officio* for the purposes of a decision on sanctions. The Investigative Committee referred the Hearing Panel to the cases of *Chandler v Alberta Association of Architects*, 1989 CanLII 41 (SCC) and *MA v College of Pharmacy*, 2023 ABKB 522 in support of their submission.

19. The Investigative Committee also advised that section 52 of the EGP Act gives the Investigative Committee authority to resolve a discipline complaint prior to the complaint being referred for a hearing. Section 52 is not relevant in this case because the complaint was referred to a hearing. No member of the Hearing Panel acted as a case manager under section 52.

20. The Investigative Committee advised that the rationale of the proposed sanctions is not to stop Mr. Ubah from initiating proceedings with APEGA, the OIPC, or the Courts. Rather, the rationale is that cancellation would stop Mr. Ubah from initiating proceedings and abusing processes as a professional engineer. From the Investigative Committee's perspective, Mr. Ubah's conduct is wholly inconsistent with the expected standards and conduct of a member of APEGA.

21. The Investigative Committee enclosed a summary of the hearing costs in its reply submissions. The hearing costs as of the date of the submissions totalled \$505,413.12.

Response from Mr. Ubah

22. Mr. Ubah submitted an additional response to the Investigative Committee's submissions. In summary, Mr. Ubah's submissions included the following points:

- The Hearing Panel does not have the authority under the EGP Act to solicit submissions from anyone with respect to sanctions. The Hearing Panel's process tainted the entire hearing and the Hearing Panel cannot continue to act on this matter.
- The Investigative Committee asks the Hearing Panel to consider Mr. Ubah's conduct at the hearing, which included when Mr. Ubah stood up to the Investigative Committee's legal counsel. However, the hearing was about Mr. Yukes' complaint an [REDACTED] text messages.

- The Investigative Committee cited the case of *MA v College of Pharmacy, 2023 ABKB 522*, which involves the *Health Professions Act*. The *Health Professions Act* explicitly allows bifurcated hearings, while the EGP Act does not.

Decision of the Hearing Panel on Sanctions and Costs

Sanctioning Authority

23. The Hearing Panel considered Mr. Ubah’s argument that the Hearing Panel lacked authority to hold a bifurcated hearing and to make sanctions orders. Mr. Ubah also submitted that the Hearing Panel was *functus officio*. He indicated that he had filed an appeal following the Hearing Panel’s Conduct Decision and therefore the Hearing Panel was precluded from acting.

24. The Conduct Decision indicated at paragraph 244 that the Hearing Panel would receive submissions about which orders, if any, should be made following the finding of unprofessional conduct. The Hearing Panel directed Mr. Ubah to provide written submissions on sanctions and costs orders. It was clear that sanctions were a forthcoming stage in the process.

25. The Hearing Panel has an obligation under section 65 of the EGP Act to make a written decision that describes each finding and states any orders made. The Hearing Panel’s role is not complete while the issue of appropriate orders remains outstanding. The Hearing Panel is not *functus officio* until its role is complete. The Hearing Panel’s general authority over the hearing process allows it to hold a bifurcated hearing for the conduct and sanctions phases.

Ungovernability

26. The Hearing Panel considered the Investigative Committee’s argument that Mr. Ubah is ungovernable. A finding of ungovernability is based on a case-by-case analysis in which the guiding principle is the public interest. The test of for ungovernability was described in *Ahluwalia*:

A professional person will be considered “ungovernable” if the nature, duration and repetitive nature of the persons misconduct demonstrates an inability on the part of that person to respond appropriately to the authorities who are authorized to regulate the individuals’ professional activities.

27. To determine whether a finding of ungovernability is warranted in this case, the Hearing Panel considered the ungovernability factors described in *Ali*:

- the nature, duration, and repetitive character of the misconduct;
- any prior discipline history;
- any character evidence;
- the existence or lack of remorse. Remorse includes a recognition and understanding of the seriousness of the misconduct;
- the degree of willingness to be governed by the [regulator];
- medical or other evidence that explains (but does not excuse) the misconduct;

- the likelihood of future misconduct, having regard to any treatment being undertaken or other remedial efforts; and
- the member's ongoing cooperation with the [regulator] in addressing the outstanding matters that are the subject of the misconduct.

28. The Hearing Panel found that the single Charge against Mr. Ubah constituted unprofessional conduct. However, the Charge related to a serious ongoing pattern of behaviour that continued to occur over a period of five years and was directed towards many of Mr. Ubah's professional acquaintances, supervisors, and several companies involved in the industry.

29. Mr. Ubah's unprofessional conduct involved the commencement of proceedings and filing of complaints for improper purposes or in circumstances constituting an abuse of process, as well as further threats of additional actions or complaints. His threats to file complaints or commence proceedings were not one-off communications. They were not single emails or isolated interactions with others, but a pattern of correspondence towards Mr. Yuke [REDACTED], and their companies designed to force them to take steps or provide statements that Mr. Ubah wanted.

30. Mr. Ubah initiated numerous lawsuits in the Provincial Court and the Court of King's Bench related to the Camp Incident (described in the Conduct Decision). He filed complaints with APEGA that concerned substantially similar subject matter. He appealed APEGA's dismissals of his complaints, including a complaint he requested be closed. Mr. Ubah's unprofessional conduct was very serious, repetitive, and occurred over many years.

31. The Hearing Panel recognizes that Mr. Ubah does not have any prior discipline history. However, the factor is not determinative, as it must be weighed in all the circumstances and in the context of all other factors.

32. The Hearing Panel considered whether Mr. Ubah demonstrated remorse for his unprofessional conduct. This factor can be aggravating or mitigating specifically in respect of a finding of ungovernability. However, the Hearing Panel recognized that a lack of remorse is treated as neutral in relation to determining the severity of an appropriate sanctions order.

33. Mr. Ubah has not recognized that his unprofessional conduct is improper nor understood the seriousness of his actions. When authorities try to restrict his proceedings or reject his complaints, he starts new actions to prove them wrong. In taking these actions, Mr. Ubah has either not recognized or not cared about the impact of his behaviour on others. The Hearing Panel is not persuaded that any prior decision or direction Mr. Ubah has received has deterred him from making threats, filing complaints or commencing proceedings. As a result, the Court prohibited Mr. Ubah from commencing to or attempting to commence complaints under the EGP Act without leave of the Chief Justice or the Associate Chief Justice of the Court of King's Bench. The Vexatious Litigant Decision similarly allowed the courts to manage Mr. Ubah's behaviour by imposing indefinite court access restrictions.

34. The likelihood that Mr. Ubah's unprofessional conduct will continue is very high. Mr. Ubah's pattern of behaviour described in the Charge was echoed in his conduct at the hearing.

Mr. Ubah did not cooperate with the Hearing Panel and APEGA during the hearing process. The Hearing Panel considered this factor particularly in light of the events that occurred during the hearing as summarized by the Investigative Committee and reproduced in Appendix "A."

35. The hearing was very difficult to manage due to Mr. Ubah's behaviour. He did not accept that the Hearing Panel had the authority to manage the hearing. He did not recognize directions given to manage the hearing nor did he accept any direction as final. He sent an overwhelming amount of correspondence raising various alleged procedural matters (including matters on which the Hearing Panel had already issued decisions), which he required the Hearing Panel to decide before he would participate or follow directions. In his communications with the Panel and at the hearings he attended, Mr. Ubah was combative and aggressive. His behaviour did not improve over the extended time period of the hearing. Based on the evidence presented and his conduct when he did attend the hearing, the Hearing Panel concludes that Mr. Ubah will not cooperate with APEGA in the future, will not accept his professional obligations as a member of APEGA and will not cease his pattern of unprofessional conduct in the future.

36. The Hearing Panel's guiding principle is the public interest. The public interest is served by ensuring that APEGA can regulate members' behaviour and deter or stop unprofessional conduct that harms the public and confidence in the profession in the future. The nature, gravity, and repetition of Mr. Ubah's unprofessional conduct, demonstrate that his pattern of behaviour will continue into the future and has not been modified by this discipline proceeding. While Mr. Ubah does not have a prior discipline history, his conduct before, during and after this hearing makes clear that he will not accept regulation as a professional member of APEGA.

37. Based on Hearing Panel's consideration of all the factors and the public interest, the Hearing Panel finds that Mr. Ubah is ungovernable.

Severity of Appropriate Sanctions

38. Although the Hearing Panel has found that Mr. Ubah is ungovernable, the Hearing Panel has also determined that the *Jaswal* factors referred to by the Investigative Committee would weigh in favour of a severe sanction:

- The nature and gravity of the proven allegations, and the number of times the offence was proven to have occurred: The nature and gravity of the proven allegations are serious, as described in paragraphs 28 – 30 of this Sanctions Decision. Though there was a single Charge, Mr. Ubah's unprofessional conduct occurred numerous times, involved many individuals and companies, and was advanced through the OIPC, APEGA, and the Courts.
- The age and experience of the offending member: At the time of the hearing, Mr. Ubah was not a new member nor a senior member of the profession. This factor is not mitigating.

- The previous character of the member, and the presence or absence of prior complaints or convictions: Mr. Ubah does not have a prior discipline history, which is a mitigating factor. However, this mitigation is limited given Mr. Ubah's ongoing refusal to accept any form of regulation or limitation on his conduct by APEGA.
- The role of the member in acknowledging what has occurred: Mr. Ubah has not acknowledged his role in the unprofessional conduct, which is a neutral factor. However, the fact that he does not accept the authority of his professional regulatory body to investigate these matters and to conduct a hearing is a serious concern.
- The impact of the incident on offended persons: The impacts of Mr. Ubah's unprofessional conduct on others are significant. As Mr. Yukes testified, the matters involving Mr. Ubah have gone on for ten years, caused Mr. Yukes personal problems, cost Mr. Yukes and his company serious lost work hours and legal cost and required significant resources from the court system. There has also been a significant impact on APEGA. Under cross-examination, Mr. Thiessen testified that APEGA had limited resources and that an "inordinate amount of time" was being used to investigate Mr. Ubah's complaints, which were "taking investigative and committee time away from other complaints."
- The need to promote specific and general deterrence: There are two types of deterrence. The first is specific deterrence, meaning that the orders imposed ought to deter the member from repeating the conduct in the future. The second is general deterrence, meaning that the order ought to deter other members of the profession from engaging in similar conduct. Specific deterrence weighs in favour of a very serious sanction. Based on the evidence and Mr. Ubah's conduct at the hearing, the Hearing Panel finds Mr. Ubah's conduct is likely to continue into the future, that he has not been deterred by this hearing and that a severe order is necessary to prevent Mr. Ubah from acting similarly in the future as a professional engineer. The Hearing Panel accepts that general deterrence is not a significant factor in this case, as Mr. Ubah's conduct is far outside the acceptable behaviour of a professional engineer and other professional engineers would know not to conduct themselves as Mr. Ubah has.
- The need to maintain the public's confidence in the integrity of the profession: This factor has significant weight. The public must have confidence in APEGA's ability to regulate professional members. Mr. Ubah's pattern of filing complaints and commencing proceedings for improper purposes or in circumstances amounting to an abuse of process against members of the public and other members of the profession is conduct that has diminished public confidence in the profession and a severe sanction is necessary to demonstrate to the public that this conduct is not acceptable and will not be permitted.
- The degree to which the offensive conduct was outside the range of permitted conduct: Mr. Ubah's conduct is far outside the range of permitted conduct for a professional member of APEGA.

- The range of sentences in similar cases: The Hearing Panel considered a decision of the Discipline Committee regarding the conduct of Mr. Mills, which was provided by the Investigative Committee. In the Mills case, the Discipline Committee declined to find that Mr. Mills was ungovernable. Mr. Mills participated in the five-day hearing and did not have a prior discipline history. On that basis, the Discipline Committee was not prepared to find him ungovernable. However, the Discipline Committee noted that if Mr. Mills displayed similar conduct moving forward, it could result in a future finding of ungovernability. While the Mills case is useful, the Hearing Panel is cognizant that ungovernability is assessed on a case-by-case basis. Mr. Ubah's unprofessional conduct under the Charge demonstrated a pattern of behaviour spanning years, which extended into the lengthy hearing process. Mr. Mills' unprofessional conduct and behaviour during the hearing occurred over a much shorter time period.

39. When considered together, the *Jaswal* factors weigh in favour of a very serious sanction.

40. The Hearing Panel has considered the specific sanctions orders addressed by the Investigative Committee and Mr. Ubah. The Hearing Panel noted that Mr. Ubah did not propose alternative sanctions in his written submissions, but advanced the position that there should be no orders. Given the severity of Mr. Ubah's conduct and the need to promote the public interest, the Hearing Panel does not accept Mr. Ubah's position that no sanctions orders would be appropriate and finds that serious sanction orders are required.

Cancellation

41. The Hearing Panel acknowledges that cancellation is a serious sanction that should not be considered lightly. However, the Hearing Panel also considered the guidance in *Ahulwalia*:

"It would be a mistake, however, to assume that disbarment is a penalty reserved for cases that combine the worst imaginable offence with the worst imaginable offender. In cases involving fraud or theft, in spite of evidence of prior good character and financial or other pressures, lawyers are almost certain to be disbarred. In one such case, a discipline hearing panel held that 'disbarment is as much required for the lawyer who throws away a hard-earned reputation for integrity as it is for the scoundrel who caps a disreputable career with more of the same.' Thus the profession sends an unequivocal message in the interest of maintaining public trust and the reputation of the profession." [Emphasis added]

42. The Hearing Panel's finding of ungovernability weighs in favour of cancellation. A remedial order would be inappropriate in the circumstances. Mr. Ubah's technical competence was not in issue in this hearing and the issues raised did not concern a lack of specific engineering skills or knowledge, so educational courses or supervision would not be appropriate or address the nature of the unprofessional conduct. In the opinion of the Hearing Panel, a suspension would not adequately address the seriousness of the conduct in this case and would not deter Mr. Ubah from engaging in similar conduct in the future. The Hearing Panel is not convinced that Mr. Ubah will acknowledge that any of his conduct is unprofessional or that he would modify his behaviour in the future after the completion of a period of suspension. Nothing in these proceedings provides

any evidence that Mr. Ubah recognizes that his conduct is both unprofessional and inappropriate and that his behaviour must change if he were to remain a professional member. Therefore, the Hearing Panel finds that the public interest would not be adequately protected by a suspension.

43. Mr. Ubah's written submissions on sanctions are illustrative. His submissions state:

Now the order by Mr. Sim (who cannot be acting for IC) recommended show that the charges would not have come from IC because it is very unreasonable and does not speak to the charges and is retaliatory and oppressive, because cancelling my registration does not stop me from making a complaint to APEGA, the office of Privacy Commissioner or filing an application in Court. My registration as APEGA member is not prerequisite to taking those steps and APEGA authority that take away my legal or constitutional right. [sic]

44. The Hearing Panel agrees that cancelling Mr. Ubah's registration will not stop him from filing complaints or initiating proceedings. However, he will no longer be able to do so as a professional engineer. Cancellation is appropriate given the Hearing Panel's finding of ungovernability, the need to protect the public interest, and the need to maintain public confidence in the engineering and geoscience professions more broadly.

Costs

45. The Hearing Panel has carefully considered the significant amount of costs in this matter, being approximately \$505,413.12 as of March 13, 2024. The Investigative Committee sought an order requiring Mr. Ubah to pay the full amount of costs within 30 days of the Sanctions Decision.

46. The Hearing Panel considered Mr. Ubah's submission that a person should not be ordered to pay the costs of a flawed investigation or proceeding. The Hearing Panel was not persuaded by this argument, as there has not been a finding that the investigation or hearing was flawed.

47. The Hearing Panel considered the factors that weighed in support of a costs order. Costs are not presumptively awarded on a full-indemnity basis. The Hearing Panel considered the Investigative Committee's success in proving the Charge, the seriousness of the unprofessional conduct, the conduct of the parties at the hearing, and the reasonableness of the amounts.

48. The Hearing Panel also considered the four compelling reasons described by the Court of Appeal in *Jinnah* which would warrant a costs order. The single Charge against Mr. Ubah was proven, and it constituted serious unprofessional conduct. Mr. Ubah ought to have known his conduct was completely unacceptable. Mr. Ubah's proceedings and complaints continued to be dismissed by APEGA and the courts. Justice Rooke explained why Mr. Ubah's behaviour was inappropriate in the Vexatious Litigant Decision. Further, Mr. Ubah ought to have known that using the discipline process or the court system to threaten members of the public and members of the profession is completely unacceptable.

49. Further, Mr. Ubah engaged in significant hearing misconduct which substantially prolonged the hearing and resulted in increased costs. Mr. Ubah's hearing misconduct is

described at paragraphs 34 and 35 and relates to the events listed in Appendix “A” of this Sanctions Decision. The Investigative Committee and the Hearing Panel expended significant resources responding to Mr. Ubah’s ongoing procedural challenges. On days the hearing proceeded, a significant amount of time was often spent addressing his procedural matters. Between hearing days, Mr. Ubah’s continual written correspondence required the Investigative Committee to incur expense to prepare replies and required the Hearing Panel to devote inordinate amounts of volunteer time and legal expense to procedural decisions and directions.

50. The Hearing Panel would also like to note that the Investigative Committee’s costs estimate accounts only for types of “hard costs” such as court reporter fees, legal costs and honorarium credits. Costs estimates cannot quantify and account for APEGA’s “soft costs” like staff and volunteer time and resources. In this case, APEGA staff who were the first point of interaction with Mr. Ubah had to expend inordinate time and resources to deal with Mr. Ubah’s ongoing correspondence and attacks on all aspects of the investigation and hearing. The Hearing Panel accepts that the time and resources of APEGA staff were significant and far beyond those that would be expected in a hearing that proceeded without the ungovernable conduct displayed by Mr. Ubah.

51. The expenditure of most of these resources would not have occurred but for Mr. Ubah’s conduct during the hearing. It is appropriate for Mr. Ubah to pay a substantial amount of the costs for the expenses incurred in prosecuting the complaint.

52. The costs in this case were significant. The Hearing Panel considered that it would not be reasonable to impose all \$505,413.12 in costs incurred on Mr. Ubah, with the recognition that APEGA would have incurred some costs related to the hearing regardless of his conduct during the hearing. It is appropriate for APEGA to incur some expense related to the discipline process and the cost of this hearing.

53. However, given the serious nature of the unprofessional conduct and the actions of Mr. Ubah which prolonged the hearing and resulted in substantial additional time spent and costs incurred, the Hearing Panel finds that it is appropriate for Mr. Ubah to pay 75% of the costs of this hearing, given the Investigative Committee’s success in proving the Charge, the seriousness of Mr. Ubah’s unprofessional conduct, and the extent of his hearing misconduct.

54. Given that Mr. Ubah will be responsible for a significant amount of costs, he should not be required to pay within 30 days as suggested by the Investigative Committee. The Hearing Panel believes that 24 months will be a more realistic time period in which Mr. Ubah can pay costs.

Conclusion

55. For the reasons set out above, the Hearing Panel makes the following orders pursuant to sections 63 and 64 of the EGP Act:

- a) Mr. Ubah’s registration is cancelled as of the date of this Sanctions Decision;
- b) Mr. Ubah shall pay costs in the amount of \$379,059.84, which is 75% of the costs.

- c) The costs shall be payable within 24 months of the Sanctions Decision by equal monthly payments of \$15,794.16.

The Discipline Manager may, in their discretion, consider alternative payment plans, provided that the payment plan set by the Discipline Manager require Mr. Ubah's full payment of costs be made within 24 months of this Sanctions Decision.

- d) The Hearing Panel's orders shall remain in effect until the Appeal Board or Court of Appeal renders a decision on appeal, pursuant to section 66(1) of the EGP Act.
- e) APEGA will publish the Hearing Panel's Conduct Decision and Sanctions Decision in a medium deemed appropriate by the Discipline Manager and such publication shall name Mr. Ubah.

On behalf of the Hearing Panel of the APEGA Discipline Committee

Christine Neff

Signed with ConsignO Cloud (2024/04/29)
Verify with verifio.com or Adobe Reader.



Christine Neff, P.Eng., Discipline
Committee Panel Chair

Zsolt Margitai

Signed with ConsignO Cloud (2024/04/29)
Verify with verifio.com or Adobe Reader.



Zsolt Margitai, P.Eng., P.Geol., Discipline
Committee Panel Member

Douglas Cox

Signed with ConsignO Cloud (2024/04/29)
Verify with verifio.com or Adobe Reader.



Douglas Cox, P.Eng., Discipline
Committee Panel Member

APPENDIX “A”

SUMMARY OF HEARING EVENTS

1. In his early communications before and after the initial hearing dates of January 26 and 27, 2022, Mr. Ubah raised various arguments on preliminary matters, alleging that the Hearing was an abuse of process and brought in bad faith, that APEGA doesn't have jurisdiction to make decisions about his conduct, that there is a conflict of interest, bias, and intimidation, that Mr. Sim be added as a witness, that Mr. Jardine be removed from the process because his role has no basis in the EGPA, and that Field Law be removed from the process because they were involved in his civil proceedings, and more.

2. On February 23, 2022, the Hearing Panel directed that Mr. Ubah provide a list of his proposed witnesses by March 4, 2022 and that a Doodle Poll would be circulated to determine the parties' availability for future hearing dates. The Hearing Panel also provided information on the role of Mr. Jardine. The same day, Mr. Ubah responded and refused to acknowledge the instructions and information provided by the Chair and continued to insist that information was being withheld from him illegally and that Mr. Jardine was not legally allowed to assist the Panel.

3. On February 25, 2022, Mr. Ubah wrote to APEGA seeking the disqualification of the Hearing Panel and dismissal of the matter claiming that, because APEGA was involved in the civil case, it was biased.

4. By March 11, 2022, Mr. Ubah had failed to comply with the Hearing Panel's direction to provide an updated list of his proposed witnesses by March 4, 2022.

5. On April 4, 2022, the Hearing Panel directed that the Hearing would proceed on April 26 and 27, 2022, following a Doodle Poll sent out with a deadline of March 1, 2022, to which Mr. Ubah refused to respond. On April 4 and 5, 2022, Mr. Ubah refused to accept this decision, indicating that he had “exams and other engagements,” that he would “not be available till end of this year unless the hearing can be set on a weekend,” and “it is inappropriate to talk about hearing date and disqualification at the same time.”

6. On April 19, 2022, the Hearing Panel wrote to the parties and directed Mr. Ubah to make himself available for the discipline proceedings, which were to proceed on April 26 and 27, 2022. On April 20, 2022, Mr. Ubah wrote to the Hearing Panel and provided documents showing he had an exam on April 27, 2022 and as such he could not attend the Hearing on that day. He requested that the Hearing be moved to the next week. On April 25, 2022, the Hearing Panel determined that it had to adjourn the Hearing scheduled for April 26 and 27, 2022, but instructed all parties to meet on April 26, 2022 and bring their availability Monday through Friday for the next 6 months so the Hearing could be rescheduled.

7. On April 26, 2022, the parties canvassed dates to continue with the Hearing. The Hearing Panel noted that it was critical for Mr. Ubah to make himself available for the Hearing and asked him to suggest dates on which he was available for the coming months. Mr. Ubah asserted

repeatedly that he was unavailable for the entirety of May, June and July, but refused to provide any more specific information than he had school and work commitments. The Hearing Panel instructed Mr. Ubah to provide the dates that he had firm commitments that he could not get out of, but Mr. Ubah refused. The Hearing Panel directed that the Hearing would continue on May 19 and 20, 2022.

8. On May 11, 2022, Mr. Ubah advised that he was unavailable for the new hearing dates of May 19-20, attaching his course schedule and a subpoena for a traffic court hearing set for May 20. The ticket was from two years earlier and Mr. Ubah spoke to the traffic court matter on April 25, 2022, meaning he was aware of the May 20 date before the Hearing Tribunal directed the Hearing to proceed on May 20. On May 12, 2022, Mr. Ubah argued that there was a difference between “making himself available” and “being available” and that there was no decency or professional ethics in asking him to miss class.

9. On May 13, 2022, the Hearing Panel directed that the Hearing would proceed on May 19-20, 2022. On May 16, 2022, Mr. Ubah continued to demand an adjournment for traffic court and class, stating that the May 20, 2022 traffic court hearing could not be adjourned. On May 18, 2022, the Hearing Panel directed that the Hearing would continue on May 19, 2022 and the Hearing Panel would hear submissions regarding proceeding on May 20, 2022.

10. On May 19, 2022, at the Hearing, Mr. Ubah provided that the date for the traffic court hearing was fixed in 2020, and when he was asked why he didn't mention this during the April 26, 2022 meeting for canvassing dates, Mr. Ubah again stated that he had said he was unavailable during the entirety of May, and continued to argue about the scheduling of hearing dates. The Hearing Panel directed that the Hearing would be adjourned until August 24, 2022.

11. Also at the May 19, 2022 Hearing, Mr. Ubah was directed on several occasions to focus his questions on cross-examination to what would be relevant to his case. He continued to ask broad and irrelevant questions and argued with the directions of the Hearing Panel.

12. On August 11, 2022, the Hearing Panel directed the parties to come to the Hearing on August 24, 2022 prepared to speak to available dates for future hearing dates. On August 24, 2022, at the Hearing, Mr. Ubah argued with the Chair regarding the Hearing Panel's decision on scheduling hearing dates. When asked for his availability in the remainder of 2022, Mr. Ubah again asserted that he was unavailable without providing any further information, other than saying that he had a private family matter.

13. Also at the August 24, 2022 Hearing, Mr. Ubah again raised arguments that the Hearing Panel should be disqualified, that Mr. Jardine has no role in the Hearing and that Mr. Sim has no role in the Hearing. Further, the Hearing Panel directed Mr. Ubah on several occasions to move on from questions in his cross-examination that had been asked and answered or were not relevant, but Mr. Ubah resisted the Panel's instructions.

14. On August 29, 2022, the Hearing Panel directed that the Hearing would continue over 10 days through November 2022 to January 2023 and directed Mr. Ubah that if he made any further adjournment requests, he was to provide specific information as to why he is unavailable.

15. Between September 25 and October 19, 2022, Mr. Ubah provided requests for further documentation from Mr. Spinks. The Hearing Panel provided a direction on these requests on October 26, 2022. The same day, Mr. Ubah provided a preliminary response to the Hearing Panel's direction in which he refused to acknowledge solicitor-client privilege and accused the Hearing Panel of improperly blocking evidence. Mr. Ubah reiterated these arguments on November 2, 2022.

16. On November 10, 2022, Mr. Ubah wrote to the Hearing Panel, accusing them of bullying him and failing to follow the provisions of the EGPA, writing "APEGA does not have the lawful authority to decide when, why or I go to court or any tribunal including APEGA." He expressed concerns over being required to provide a list of witnesses and discontent over the Hearing Panel's directions regarding Mr. Spinks' evidence and documentary production.

17. On November 14, 2022, Mr. Ubah provided extensive submissions, responding to submissions of the Investigative Committee, writing "I am in charge of my representation and well able to let the DC panel know when I am done with my questioning/cross-examination." Mr. Ubah continued on to complain about hearing dates being set when "the DC knows [he] will not be available," and reiterated his allegations that the Hearing Panel is biased against him and questioned the authority of the Hearing Panel as set out in the EGPA.

18. On December 19, 2022, Mr. Ubah responded to a direction of the Hearing Panel on the issues raised in his November 14, 2022 submissions. Mr. Ubah described the Hearing as "discriminatory and racially motivated." He took issue with the authority of Director, Enforcement and again raised allegations regarding Mr. Jardine. Mr. Ubah then requested an extension of time so that his concerns could receive a response before the Hearing proceeds, part of his pattern to insist on answers to all of his emails before any other steps are taken.

19. On December 21, 2022, Mr. Ubah advised the Hearing Panel of his availability for future hearing dates, disregarding the dates set in November and indicating he can only attend once a week due to family and work engagements.

20. On December 22, 2022, Mr. Ubah replied to the Hearing Panel's direction that the Hearing would proceed as set in November and reiterating the dates for Mr. Ubah to reply to the Investigative Committee's objections to his witness list. Mr. Ubah noted that the Panel's letter did not address his earlier correspondence or concerns. On December 23, 2022, Mr. Ubah again argued regarding scheduling hearing dates.

21. On January 5, 2023, in response to communication from the Discipline Coordinator regarding the availability of Mr. Spinks for cross-examination, Mr. Ubah suggested that there was a conspiracy and that the Hearing Panel was trying to deny him his s. 7 *Charter* rights.

22. On January 10, 2023, Mr. Ubah responded again and argued that there was a double standard regarding adjournments – no evidence was requested to prove Mr. Spinks’ surgery date, but Mr. Ubah had been asked for proof of his other commitments. He accused the Hearing Panel of a “witchhunt,” “spying into my personal life,” and “sabotage[ing] my work”.

23. On January 11, 2023, Mr. Ubah responded again, challenging the authority of the Hearing Panel and Mr. Jardine, writing “this panel has provided no provision in the Act of any authority from the council or the legislature that they can form their own mini court and do as they please under the direction of Mr. Jardine, the Supreme Leader of that mini-Court”. Mr. Ubah reiterated his argument that the hearing dates should be fixed to accommodate his work and family schedule.

24. Again on January 11, 2023, Mr. Ubah responded another time, arguing that the Hearing Panel had been “improperly and illegally appointed”, questioning the authority of the Chair and Mr. Jardine, and calling for an investigation.

25. On January 23, 2023 Mr. Ubah responded to the Investigative Committee’s disclosure of an email with Mr. Yukes, alleging incomplete production, bad faith, hijacking of the process and advising that he will add Ms. Gregson to his witness list. Mr. Ubah continued to take issue with the Hearing Panel’s authority to direct its own process, as well as the authority of Mr. Jardine.

26. On February 8, 2023, Mr. Ubah requested an adjournment of the Hearing set for February 9 on the grounds that a request he made on February 1 for production of records from the Investigative Committee had been denied and his witnesses were unavailable. Mr. Ubah’s February 1 request included the list of the Investigative Committee members who received the Investigation report and the record of their discussions/votes on deciding to send the matter to a hearing, as well as transcripts of an interview that the 2014 Director of Investigations conducted with him as well as internal emails. On February 3, Mr. Sim advised that the file had been reviewed and there was no indication of an interview by the 2014 Director of Investigations.

27. On March 24, 2023, the Hearing Panel noted that on March 7, 2023, Mr. Ubah was directed to respond to the Investigative Committee’s objections to certain witnesses by March 15 but he did not. The Hearing Panel then directed Mr. Ubah to complete a “Proposed Case Plan” by April 4. The same day, Mr. Ubah responded and asked for a stay of the Hearing and indicated he would seek judicial review of the Hearing Panel’s direction. Mr. Ubah again questioned the authority of the Hearing Panel and accused the Hearing Panel of bias.

28. On April 5, 2023, the Hearing Panel declined Mr. Ubah’s request and directed the Hearing to proceed. The same day, Mr. Ubah replied, writing, “I will not participate or be part of this hearing until I receive evidence that this is a legally constituted panel under the act and the charges were from legally constituted investigation committee.” On April 19, 2023, the Hearing Panel reiterated that it expected Mr. Ubah to continue to participate in the Hearing, however if Mr. Ubah did not attend on April 28, the Hearing would proceed without him.

29. On April 24, 2023, Mr. Ubah requested reconsideration of the APEGA complaints he made in 2014 that were dismissed. In this letter, he stated that the Hearing need not proceed until he receives a response to the issues raised. Mr. Ubah wrote “I will not be part of the hearing so far as there are so many serious concerns”.

30. On April 28, 2023, Mr. Ubah refused to attend the Hearing. He emailed and confirmed “I will not be part of this process anymore.”

31. On April 28, 2023, the Hearing Panel wrote to Mr. Ubah to inform him that the Investigative Committee had made a motion to close the evidentiary portion of the Hearing, and the Hearing Panel would wait until May 8, 2023 to make their decision on the issue to give Mr. Ubah time to respond. On April 29, 2023, Mr. Ubah responded and wrote that, even if he receives the evidence he’s requested, he will be out of province May 8th and not available that day. Mr. Ubah reiterated that he “will not be any part of hearing untill (sic) I receive [the evidence].” Mr. Ubah again challenged Field Law and Mr. Jardine’s independence and role.

32. On May 5, 2023, Mr. Ubah wrote to the Hearing Panel and reiterated many of his previous arguments, including reconsideration of his previous APEGA complaints, requesting evidence that the Hearing Panel was properly constituted, evidence that the Chair has the authority in her role, questioning the role of Field Law and Mr. Jardine, questioning the real purpose of the Hearing, and more. Mr. Ubah stated several times that until his questions are answered, he would not be participating in the Hearing any further.

33. On May 9, 2023 the Hearing Panel adjourned the rest of the set hearing dates, and requested written closing arguments from the Investigative Committee by June 9, 2023 and Mr. Ubah by July 10, 2023. The Investigative Committee submitted their written closing argument on June 9, 2023. On June 29, 2023, Mr. Ubah emailed the Hearing Panel stating he was ready to proceed with the Hearing and would be calling ██████████ as his next witness and that he would be calling a new witness ██████████, who he said had revealed new information.

34. On July 10, 2023, Mr. Ubah provided his written submissions, wherein he reiterates all of his previous complaints: lack of notice, improper constitution of committees/panels, lack of jurisdiction, breach of his *Charter* rights, and more.