



The Association of Professional  
Engineers and Geoscientists of Alberta

# APEGA DISCIPLINE COMMITTEE DECISION

**Date(s) of Hearing:** 17 days (2022 and 2023).

**Date of Decision:** January 19, 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.**

## INTRODUCTION

The hearing of the Discipline Committee took place virtually via video conferencing. It occurred on 17 days between January 26, 2022, and May 8, 2023.

The Hearing Panel's decision is organized into the following parts:

INTRODUCTION	
OPENING OF THE HEARING	Paragraphs 1–27
DECISIONS ON PRELIMINARY AND PROCEDURAL MATTERS	Paragraphs 28–123
DECISION AS TO WHETHER THE CONDUCT IS PROVEN	Paragraphs 124–220
DECISION AS TO WHETHER THE CONDUCT IS UNPROFESSIONAL	Paragraphs 221–242
CONCLUSION	Paragraphs 243–244

## Appearances

The members of the Hearing Panel of the Discipline Committee (“the Hearing Panel”) of the Association of Professional Engineers and Geoscientists of Alberta (“APEGA”):

Christine Neff, P.Eng., Discipline Committee Chair  
Douglas Cox, P.Eng., Discipline Committee Panel Member  
Zsolt Margitai, P.Eng., P.Geol., Discipline Committee Panel Member<sup>1</sup>

Chinedu Ubah, P.Eng.<sup>2</sup>

Greg Sim and Tessa Gregson, Legal Counsel for the Investigative Committee of APEGA (“Legal Counsel for the IC”)

David Jardine and Ashley Reid, Independent Legal Counsel for the Hearing Panel of the Discipline Committee of APEGA

Over the course of the hearing, various APEGA staff members attended as observers and to provide support for the hearing.

### **OPENING OF THE HEARING**

1. Mr. Ubah is a professional engineer regulated by APEGA. The Charge before the Hearing Panel against Mr. Ubah is as follows:

1. 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;
  - b. The Office of the Information and Privacy Commissioner of Alberta; and/or
  - c. The Alberta Courts.

AND IT IS FURTHER ALLEGED that the above-referenced conduct constitutes unprofessional conduct as set out in one or more of sections 44(1)(a), (b) or (c) of the

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<sup>1</sup> The Hearing Panel initially included two additional members: Neil Jamieson, P.Eng., and Muriel Dunnigan, Public Member. Due to personal circumstances and the extended duration of the hearing, Mr. Jamieson and Ms. Dunnigan could not complete the hearing. The Hearing Panel continued with three professional members as permitted by section 45(1) of *Engineering and Geoscience Professions General Regulation*, Alta. Reg. 150/1999. Mr. Jamieson acted as Chair prior to August 3, 2022, at which time Ms. Neff became the Chair. Ms. Neff remained Chair for the remainder of the hearing.

<sup>2</sup> Mr. Ubah did not attend the hearing on April 28, 2023, and May 8, 2023. The Hearing Panel was satisfied that Mr. Ubah knew about the hearing and elected to not attend. The Hearing Panel’s reasons for proceeding in Mr. Ubah’s absence are described at paragraphs 112–123 of this decision.

*Engineering and Geoscience Professions Act, APEGA's Guideline for Ethical Practice v2.2, and Rules of Conduct 3, 4, and 5 of APEGA's Code of Ethics.*

2. The hearing opened on January 26, 2022. The Chair asked all hearing participants to confirm on the record that they were alone and in a private space. Mr. Ubah was advised that he could be represented by legal counsel. He confirmed that he would represent himself.

3. The Chair asked the Hearing Panel's independent legal counsel, Mr. Jardine, to describe the hearing process. Mr. Jardine explained that the Hearing Panel would first address any preliminary matters. The parties would then have an opportunity to make an opening statement. Next, Legal Counsel for the IC would present their case, including any witnesses. Mr. Ubah, as the member, would then present his case. Each witness could be cross-examined. After the evidentiary portion of the hearing, the parties would make their final arguments.

4. On January 26, 2022, the Hearing Panel addressed several preliminary matters raised by the parties. The Hearing Panel's reasons and rulings on the preliminary and procedural matters raised over the course of the hearing begin at paragraph 28 of this written decision.

#### **Evidence Presented at the Hearing and Final Submissions**

5. The parties called the following witnesses over the course of the hearing:

Called by Legal Counsel for the IC:

- William ("Bill") Spinks, APEGA investigator;
- James ("Jim") Yukes, the complainant;

Called by Mr. Ubah:

- Richard ("Rick") Thiessen, former APEGA Director, Investigations.

6. A significant amount of documentary evidence was presented over the course of the hearing. The following documents were entered as exhibits<sup>3</sup>:

Exhibit 1 – Investigative Committee Index of Documents containing 51 Tabs

Exhibit 2 – Letter to the Director, Enforcement dated January 18, 2022 with enclosures

Exhibit 3 – Records of Mr. Ubah containing 319 Tabs

Exhibit 4 – APEGA Notice to Produce Documents dated August 31, 2022

Exhibit 5 – Letter of Calderbank Offer to Mr. Ubah dated August 14, 2018

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<sup>3</sup> Mr. Ubah presented additional documents that were marked for identification but not entered as exhibits.

Exhibit 6 – Email from Mr. Ubah to Mr. Thiessen dated May 9, 2017

7. Legal Counsel for the IC opened their case on January 27, 2022. They presented their case over approximately nine days, with most of these days used for Mr. Ubah's cross-examination of Mr. Spinks and Mr. Yukes, the two witnesses called by Legal Counsel for the IC, and for consideration of a series of procedural challenges raised by Mr. Ubah.
8. Mr. Ubah made his opening statement at the hearing on February 9 and 16, 2023. His direct examination of a single witness, Mr. Thiessen, occurred over four hearing days.
9. Mr. Ubah did not attend the last two hearing days scheduled for his case, after the Hearing Panel dismissed his application for a stay of proceedings. The application and the Hearing Panel's decision are discussed below at paragraphs 105–111.
10. After Mr. Ubah ceased attending the hearing, Legal Counsel for the IC applied to conclude the evidentiary portion of the hearing. The Hearing Panel granted the application and directed that the parties make closing submissions in writing. The Hearing Panel received written submissions from the parties on June 9, July 10, July 28, and August 15, 2023.
11. The Hearing Panel met via videoconference on September 8, 2023 to consider the evidence and the parties' closing submissions.

**Position of the Investigative Committee**

12. Legal Counsel for the IC made their opening statement on January 27, 2022. Legal Counsel for the IC began by referring to a written case summary that was provided to the Hearing Panel in advance of the hearing and that forms part of the record.
13. Legal Counsel for the IC advised that it intended to call two witnesses in support of its case: Bill Spinks, an APEGA investigator, and Jim Yukes, the complainant. Legal Counsel for the IC also provided a package of documents with 51 tabs. Legal Counsel for the IC submitted that despite the volume of evidence, the case was straightforward and based largely on documents.
14. Legal Counsel for the IC stated that they intended to show that Mr. Ubah commenced, attempted to commence, or threatened to commence complaints or proceedings with APEGA, the Office of the Information and Privacy Commissioner ("OIPC"), and the Alberta courts for improper purposes or in circumstances amounting to an abuse of process. Legal Counsel for the IC advised that the Hearing Panel's task was not to re-evaluate the complaints and lawsuits, as the matters had already been adjudicated by APEGA and the courts.
15. Legal Counsel for the IC stated that Mr. Ubah's complaints and court actions spiralled out of circumstances related to his employment in 2012 with a company called ██████████ ("██████████") to work at the Canadian Natural Resources Limited ("CNRL") Horizon Project site (the "Horizon Project") in Fort McMurray. His complaints and actions also related to two references that were given by Jim Yukes and another individual. Legal Counsel for the IC

provided a detailed summary of the circumstances of Mr. Ubah's employment and the references given.

16. Legal Counsel for the IC's case summary indicated that the evidence would show that Mr. Ubah submitted the following complaints to APEGA:

- A complaint about Jerry Bauman and CNRL in May 2014, who at that time were regulated by APEGA, and which resulted in APEGA file #14-31 ("IC 14-31");
- A complaint about CNRL on October 17, 2017, who at that time was regulated by APEGA, and which resulted in APEGA file #17-45 ("IC 17-45");
- A complaint about [REDACTED], AVH Engineering Inc. ("AVH"), and Intelligent Data Solutions Inc. ("IDS") on May 11, 2018, who at that time were regulated by APEGA, and which resulted in APEGA file #18-23 ("IC 18-23");
- A complaint about [REDACTED], on August 2, 2018, who at that time was regulated by APEGA, and which resulted in APEGA file #18-38 ("IC 18-38");
- A complaint about [REDACTED] on September 4, 2018, who at that time was regulated by APEGA, and which resulted in APEGA file #18-44 ("IC 18-44"); and
- A complaint about Mr. Bauman on October 1, 2018, who at that time was regulated by APEGA, which the Investigative Committee did not accept and did not open a file.

17. Legal Counsel for the IC also expected the evidence to show that Mr. Ubah initiated lawsuits and made several applications and appeals related to those lawsuits:

- In October 2015, Mr. Ubah filed a Civil Claim against CNRL in the Provincial Court<sup>4</sup> of Alberta, Action No. P1590104216 ("*Ubah v CNRL*");
- On January 25, 2017, Mr. Ubah filed a Civil Claim against Mr. Yukes in the Provincial Court of Alberta, Action No. P1790100423 ("*Ubah v Yukes*");
- On March 24, 2017, Mr. Ubah filed a Civil Claim against Mr. Bauman in the Provincial Court of Alberta, Action No. P1790101506 ("*Ubah v Bauman*");
- In May 2018, Mr. Ubah filed a civil action against AVH, IDS, and CNRL in the Provincial Court of Alberta, Action No. P189010892 ("*Ubah v AVH*").
- In late 2018, Mr. Ubah filed a Statement of Claim against CNRL and Steve Laut in the Court of Queen's Bench of Alberta, Action No. 1801-17978. He later amended the claim to include Mr. Yukes as a defendant ("QB Action #1).

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<sup>4</sup> The Provincial Court of Alberta has since been renamed the Alberta Court of Justice.

18. Legal Counsel for the IC advised that Associate Chief Justice Rooke issued a decision that found that Mr. Ubah is a vexatious litigant and indefinitely restricted his court access.

19. Legal Counsel for the IC further expected the evidence to show that Mr. Ubah filed a complaint with the OIPC which resulted in OIPC Files 005779 and 006715.

20. Lastly, Legal Counsel for the IC expected the evidence to show that Mr. Ubah used complaints and lawsuits to leverage people to do what he wanted. They submitted that the evidence would show that Mr. Ubah did not want Mr. Yukes to collect a court judgement, and he threatened to reinstate complaints unless Mr. Yukes agreed not to pursue the \$3,000 judgement.

21. Legal Counsel for the IC submitted that the above circumstances would prove Mr. Ubah commenced, attempted to commence, or threatened to commence complaints and proceedings for improper purposes or in circumstances amounting to an abuse of process, all of which amounted to unprofessional conduct under section 44(1)(a), (b) or (c) of the *EGP Act*.

#### **Position of Mr. Ubah**

22. Mr. Ubah made an initial opening statement on January 27, 2022, and an additional statement on February 9 and 16, 2023. He indicated that he was an engineer-in-training in 2012. He described the circumstances of his employment with ██████, his work at the CNRL Horizon Project site, and his interactions with individuals who were the subjects of his APEGA and OIPC complaints and the defendants in his court litigation.

23. Mr. Ubah agreed that he made complaints to APEGA and the OIPC and that he initiated lawsuits in the courts. He indicated that he would present evidence to show that his complaints and lawsuits were made for proper purposes. He expected the evidence to demonstrate:

- While Mr. Ubah worked at the Horizon Project site, he was living in camp housing, and several items were stolen from his room. He reported the thefts. He began a lawsuit when the investigation did not go anywhere.
- Mr. Bauman, his supervisor at the Horizon Project site, provided a reference with incorrect information to a prospective employer, after which a job offer that had been made to Mr. Ubah was rescinded. Mr. Ubah's opening statement described the circumstances around the reference and his interactions with various individuals that led to his first complaint to APEGA.
- Mr. Ubah believed that APEGA required an unredacted copy of the reference to support his first complaint. APEGA's then Director, Investigations (the "2014 Director of Investigations"), suggested that Mr. Ubah contact the OIPC for help. Mr. Ubah contacted the OIPC, who said it could not release the redacted information.
- Mr. Ubah spoke to Mr. Thiessen, who was the subsequent APEGA Director, Investigations. Mr. Thiessen indicated that the complaint would be dismissed for insufficient evidence. Mr. Thiessen mentioned that if Mr. Ubah was not successful

with OIPC, he could try the courts. After the APEGA complaint was dismissed, Mr. Ubah went to court, but the judge dismissed his application.

- During the litigation with CNRL, [REDACTED], who was a professional engineer at the time, swore an affidavit stating that she barely knew Mr. Ubah and denying that certain discussions took place. Mr. Ubah believed [REDACTED] affidavit contained lies. He made a complaint to APEGA because professional engineers have an obligation to be honest.
- During the court litigation, [REDACTED], who was a professional engineer at the time, swore an affidavit that attached what Mr. Ubah believed was a falsified version of a contract. Mr. Ubah alleged that [REDACTED] swore statements he knew were inaccurate, which led to Mr. Ubah's complaint to APEGA. The complaint required Mr. Ubah to recall his previous experiences with [REDACTED] while at the CNRL camp.
- After Mr. Yukes provided a reference to Mr. Ubah's prospective employer, Mr. Ubah contacted [REDACTED] with concerns about the reference. [REDACTED] said that he would talk to Mr. Yukes and, if possible, contact the prospective employer to have the reference withdrawn. Later, Mr. Ubah learned that the prospective employer still had Mr. Yukes's reference, which led to Mr. Ubah's APEGA complaint against [REDACTED].
- Mr. Ubah contacted the OIPC to have the information in Mr. Yukes's reference corrected. The OIPC advised him that he needed to write to the organization and ask for the information to be corrected. If there was no response after 45 days, he could bring a complaint. Mr. Ubah requested that Mr. Yukes correct the information, but Mr. Yukes's lack of response launched the OIPC inquiry. The OIPC later identified that Enbridge, the recipient of the reference, was the proper respondent organization.
- Mr. Yukes made statements that Mr. Ubah believed were not honest. Mr. Yukes' actions motivated Mr. Ubah to make a complaint to APEGA.

24. Mr. Ubah submitted that we live in a civil society. There are channels for dealing with matters, including APEGA and the courts.

25. It was Mr. Ubah's view that the Investigative Committee had not investigated his complaints properly, and it was inappropriate to now allege that his complaints were for improper purposes. He asked how the members of the Investigative Committee could look at the evidence and conclude that the complaints and proceedings were made for improper purposes. Mr. Ubah stated that the decisions of the Investigative Committee made him question whether the Investigative Committee even existed prior to the hearing.

26. Mr. Ubah's opening statement outlined what he saw as many deficiencies in the Investigative Committee's prior investigations. He asserted that the Investigative Committee had not investigated the complaints he made to APEGA and erred procedurally in a variety of ways.

27. Mr. Ubah indicated that he expected to call many witnesses in support of his case. The witnesses included individuals involved in APEGA complaints, investigations, and appeal proceedings; individuals involved in various capacities in the court litigation; and individuals Mr. Ubah had interacted with during his work at the Horizon Project site. Mr. Ubah stated that he did not intend to testify as a witness.

## **DECISIONS ON PRELIMINARY AND PROCEDURAL MATTERS**

28. Mr. Ubah challenged the APEGA hearing process on many occasions. The Hearing Panel issued written rulings over the course of the hearing to ensure that scheduled hearing days could be used effectively. The Hearing Panel's written rulings and directions are dated:

- February 23, 2022
- April 4, 2022
- April 19, 2022
- April 25, 2022
- May 13, 2022
- May 18, 2022
- July 20, 2022
- August 29, 2022
- September 23, 2022
- October 26, 2022
- December 9, 2022
- December 19, 2022
- December 21, 2022
- December 22, 2022
- January 10, 2023
- January 30, 2023
- February 8, 2023
- February 17, 2023
- March 24, 2023
- April 5, 2023
- April 19, 2023
- May 9, 2023

29. The Hearing Panel's written rulings and directions noted above are part of the hearing record and are not reproduced here. The subsequent section of this written decision addresses procedural rulings given orally at hearings or written rulings that indicated the Hearing Panel's reasons would be provided in its final decision.

### **1) Request for an Adjournment under Section 53(2) of the *EGP Act*<sup>5</sup>**

30. On January 26, 2022, Mr. Ubah requested that the Hearing Panel adjourn the hearing under section 53(2) of the *EGP Act*, which provides the following:

(2) Notwithstanding subsection (1), if proceedings in respect of the same circumstances or events are commenced in the Provincial Court or the Court of Queen's Bench,<sup>6</sup> the Discipline Committee may adjourn the hearing.

31. Mr. Ubah submitted that the circumstances that were the subject of the hearing were also the subject of outstanding litigation in the Alberta Court of Queen's Bench. He argued that based on section 53(2) of the *EGP Act*, the Hearing Panel needed to adjourn the hearing until the litigation was discontinued or the Court rendered a decision on the issues before it. He further submitted that it would be an abuse of process for the hearing to proceed.

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<sup>5</sup> The Hearing Panel ruled on this issue at the hearing on January 26, 2022.

<sup>6</sup> The Court of Queen's Bench of Alberta has been renamed the Court of King's Bench of Alberta.

32. Legal Counsel for the IC noted that section 53(2) of the *EGP Act* gives the Hearing Panel the ability to choose to adjourn the hearing. It was possible for the Hearing Panel to proceed with the hearing even if issues are before the Court. Legal Counsel for the IC submitted that the purpose of section 53(2) is to avoid inconsistent outcomes on issues before the courts and the Hearing Panel. In this case, the issues that are before the Hearing Panel are not the same as the issues before the Court. Therefore, there was no reason to delay the hearing.

33. Legal Counsel for the IC further submitted that evidence to be presented at the hearing would show that all the issues that were before the Court were adjudicated or addressed. While some of Mr. Ubah's litigation technically existed, it was stayed, and it was uncertain whether the courts would ever hear the issues.

34. In reply, Mr. Ubah submitted that it was speculative to suggest that the Court may not hear or decide the issues in the outstanding litigation. He also submitted that the Hearing Panel should consider Mr. Yukes' motive for submitting a complaint to APEGA and his actions in the litigation when deciding whether the hearing should be adjourned.

35. The Hearing Panel adjourned to consider Mr. Ubah's request for an adjournment and the parties' submissions. When the hearing reconvened, the Hearing Panel advised the parties that it decided not to adjourn the hearing.

36. The Hearing Panel considered that the facts in issue at the hearing were whether Mr. Ubah commenced, attempted to commence, or threatened to commence complaints or proceedings with APEGA, the OIPC, or the Alberta courts for improper purposes or in circumstances amounting to an abuse of process. The Hearing Panel's purpose was to determine whether any conduct was unprofessional under the *EGP Act*.

37. The Hearing Panel's understanding, based on the parties' submissions, was that the court litigation concerned disputes between Mr. Ubah and others about the circumstances of his employment with [REDACTED] and work at the CNRL Horizon Project site. The Hearing Panel did not consider the issues before the Court and the Hearing Panel to be sufficiently similar to warrant an adjournment.

## **2) Challenges to the Hearing Panel's Jurisdiction<sup>7</sup>**

38. At the hearing on January 26, 2022, Mr. Ubah submitted that the Hearing Panel did not have the jurisdiction to proceed with the hearing:

- First, he argued that Hearing Panel lacked jurisdiction because the Charge concerned legal and constitutional issues and did not relate to the practice of engineering.
- Second, he argued that the Hearing Panel lacked the authority to regulate or manage court processes and the processes in other tribunals such as the OIPC. Further, the

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<sup>7</sup> The Hearing Panel ruled on these specific jurisdictional challenges on January 26, 2022.

Hearing Panel could not stop complaints from being made to APEGA. The Hearing Panel could not prevent Mr. Ubah from going to the courts or the OIPC.

- Third, he indicated that he was involved in litigation with APEGA. Because the Hearing Panel was a part of APEGA, it would be a conflict of interest to proceed with the hearing.
- Fourth, he argued that the process that led to the hearing was biased and the product of bad faith. The hearing could not proceed as it was tainted by the prior bias and bad faith. As part of this argument, Mr. Ubah argued that there were procedural errors in the investigation.

39. Legal Counsel for the IC submitted that the Hearing Panel had the jurisdiction to proceed with the hearing. Legal Counsel for the IC made the following submissions in response to Mr. Ubah's arguments:

- The definition of unprofessional conduct in the *EGP Act* is very broad. Alberta courts have held that conduct outside of the practice of the profession can be unprofessional conduct.<sup>8</sup> Though Mr. Ubah was not engaging in the technical practice of engineering or geoscience when he commenced, attempted to commence, or threatened to commence complaints or proceedings, Legal Counsel for the IC argued that Mr. Ubah's conduct can be unprofessional conduct.
- Legal Counsel for the IC agreed that the Hearing Panel does not have the ability to regulate the OIPC processes or Court processes. However, the Charge does not require the Hearing Panel to do so. The Hearing Panel's task is to adjudicate the Charge and determine whether Mr. Ubah engaged in unprofessional conduct.
- There is no conflict of interest. The Hearing Panel's decision is not the same as the decision that APEGA asked the courts to make.
- Mr. Ubah did not direct the Hearing Panel to any evidence of bias or bad faith. The Hearing Panel cannot decide whether bias or bad faith occurred without evidence.

40. The Hearing Panel adjourned to consider the parties' submissions. The Hearing Panel found that it had the jurisdiction to proceed and advised the parties of the same upon return to the hearing. The Hearing Panel's reasons for proceeding are set out below.

41. The Hearing Panel considered Mr. Ubah's argument that the Hearing Panel lacked jurisdiction to consider allegations that did not concern the technical practice of engineering. The Hearing Panel accepted that the definition of unprofessional conduct is sufficiently broad to encompass a member's conduct outside of the technical scope of engineering. It was appropriate for the Hearing Panel to hear evidence about the conduct alleged in the Charge and

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<sup>8</sup> Legal Counsel for the IC referred the Hearing Panel to the case of *Erdmann v Institute of Chartered Accountants of Alberta*, 2013 ABCA 147.

to receive submissions about whether Mr. Ubah's conduct was unprofessional conduct as defined in the *EGP Act*.

42. The Hearing Panel agreed that it does not have the jurisdiction to regulate court processes or OIPC processes. However, the Hearing Panel found that it would not be required to do so in adjudicating the Charge. The focus of the hearing was to determine whether Mr. Ubah engaged in unprofessional conduct. The Hearing Panel dismissed Mr. Ubah's second argument on this basis.

43. The Hearing Panel also accepted that there is no proven conflict of interest that would prevent the hearing from proceeding. The Discipline Committee is a statutory body under the *EGP Act* authorized to and tasked with holding a hearing. The Hearing Panel's performance of its statutory obligation does not amount to a conflict of interest.

44. The Hearing Panel went on to consider whether the process leading to the hearing was biased, procedurally flawed, or a demonstration of bad faith such that the Charge should be dismissed. At the time of Mr. Ubah's arguments, the Hearing Panel had not received any evidence upon which it could make a finding that there was bad faith, bias, or flaws in the investigation. It was also unclear which of the Investigative Committee's actions Mr. Ubah alleged were biased or in bad faith. The Hearing Panel determined that it would be premature to make a finding on bad faith or bias, or to find any procedural errors in the investigation at the hearing on January 26, 2022.

### **3) Challenges to the Investigation and Referral to Hearing<sup>9</sup>**

45. The Hearing Panel's discussion of Mr. Ubah's challenges to the investigations requires discussion of his defence to the Charge. The Hearing Panel understands his defence as twofold: first, that there were procedural issues that required the Charge to be dismissed, and second, that his complaints and lawsuits were commenced for proper purposes.

46. The Hearing Panel believes that Mr. Ubah's various challenges to APEGA investigations were intended to relate to both branches of his defence. To the first branch, Mr. Ubah challenged the Investigative Committee's investigation into Mr. Yukes's complaint about Mr. Ubah (IC 18-22). Second, Mr. Ubah alleged procedural errors in the Investigative Committee's investigation of complaints he submitted about others (i.e., IC 14-31, 17-45, 18-23, 18-38, and 18-44). It was not immediately clear to the Hearing Panel how flaws in the investigations of complaints in the latter category, if established, were relevant to Mr. Ubah's argument that his complaints were for proper purposes.

47. Further, the Investigative Committee referred a single Charge to the Hearing Panel, following the investigation in IC 18-22. The Hearing Panel's statutory authority to make findings and a decision relates to the Charge that was referred. It would be inappropriate to assess

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<sup>9</sup> The Hearing Panel ruled on these challenges at various points during the hearing.

whether the investigations for IC 14-31, 17-45, 18-23, 18-38, and 18-44 were procedurally deficient, as they were not referred for a hearing.

48. Mr. Ubah appealed the Investigative Committee's decisions to terminate the investigations in IC 14-31, 17-45, 18-23, 18-38, and 18-44 to the Appeal Board. It was open to him to make procedural fairness arguments or to allege procedural errors. In every case, the Appeal Board upheld the Investigative Committee's decision to terminate the investigation. The Appeal Board did not refer any of the complaints to the Discipline Committee for a formal hearing. It is not the role of the Hearing Panel to review the Appeal Board's decisions.

49. The Hearing Panel considered Mr. Ubah's arguments related to the investigation of IC 18-22. Mr. Ubah brought forward numerous arguments which the Hearing Panel found could be generally summarized as:

- There was no evidence that the Investigative Committee existed, or alternatively, of a "legally constituted" Investigative Committee;
- The Investigative Committee did not meet the test of an independent and impartial tribunal. Mr. Ubah argued that the Investigative Committee and APEGA more broadly were improperly influenced by CNRL;
- The Investigative Committee lacked jurisdiction to investigate the complaint against him. Among other things, the Investigative Committee did not seek notice from the Court or the OIPC about the investigation of Mr. Yukes's complaint;
- The Investigative Committee and APEGA as a whole discriminated against Mr. Ubah;
- Mr. Ubah did not receive proper notice of the investigation. The notice of investigation that he received related to a different issue than the matter referred for a hearing;
- The Charge was improperly brought by Field Law, not the Investigative Committee; and
- Mr. Spinks, the APEGA staff investigator, lacked the qualifications to investigate the complaint about Mr. Ubah. Further, Mr. Spinks misrepresented his position at APEGA.

50. Generally, the Hearing Panel notes that Mr. Ubah's closing arguments alleged several versions of events without reference to the evidence that would support a finding. Some of Mr. Ubah's versions of events appeared to have no basis in the evidence. The Hearing Panel cannot find that a fact occurred on a balance of probabilities without evidence.

51. Legal Counsel for the IC provided submissions in response to Mr. Ubah's various challenges. The Hearing Panel considered submissions from each party when the issues arose.

52. In considering the parties' submissions, the Hearing Panel reviewed investigation documents from IC 18-22 in Exhibit 1, including:

- Mr. Yukes' letter of complaint dated May 8, 2018 (Tab 14);
- Email from an Administrative Assistant, Investigations, to Mr. Ubah on May 11, 2018, enclosing a letter from the Director, Investigations (Tab 15);
- Transcript of interview with Mr. Yukes on August 10, 2018 (Tab 20);
- Email from an Administrative Assistant, Investigations, to Mr. Ubah on September 21, 2018, enclosing a letter from Mr. Spinks (Tab 25);
- Mr. Ubah's written response to the complaint dated September 24, 2018 (Tab 26);
- Transcript of interview with Mr. Ubah on June 17, 2019 (Tab 29);
- Correspondence between Mr. Ubah and Mr. Spinks (Tabs 30, 34, and 35); and
- Investigation Report dated February 22, 2019 (Tab 36).

#### **a) Existence of the Investigative Committee**

53. Mr. Ubah expressed concern that there was a lack of evidence demonstrating that the Investigative Committee existed or was "legally constituted." He demanded that APEGA provide evidence of a legally constituted Investigative Committee on several occasions.

54. The evidence before the Hearing Panel suggests that the Investigative Committee does exist. Mr. Spinks testified that he assisted ██████████, P.Eng., the Investigation Panel Chair in IC 18-22 (the "Investigation Panel Chair"), with the investigation into Mr. Yukes' complaint. ██████████ is the member of the Investigative Committee who was appointed to form the one-member Investigation Panel.<sup>10</sup>

55. It was open to Mr. Ubah to call the Investigation Panel Chair as a witness and to question him about the existence of the Investigative Committee. However, Mr. Ubah ceased participating in the hearing and did not call the Investigation Panel Chair to testify. The Hearing Panel is satisfied on the balance of probabilities and the evidence before it that the Investigative Committee does exist.

#### **b) Duty of Procedural Fairness**

56. Several of Mr. Ubah's arguments related to the duty of fairness during an investigation, including his arguments about notice and the duty of the Investigative Committee to be an "independent and impartial tribunal." He submitted that he did not receive the required notice of the investigation as Mr. Yuke's complaint was not the matter ultimately referred for hearing.

57. Legal Counsel for the IC submitted that the duty of fairness during an investigation is lower than the duty at the adjudicative stage. They referred the Hearing Panel to the case of *MK Engineering v APEGA*, 2014 ABCA 58 in support of their position. They submitted that the Investigative Committee is not required to be impartial. It is only required to be open-minded. The Investigative Committee's role is investigatory and prosecutorial within the APEGA

<sup>10</sup> The *EGP Act* does not specify a minimum number of Investigative Committee members that must be appointed to Investigation Panels.

discipline process. It does not make findings of fact or decide whether a member's conduct is unprofessional conduct.

58. First, the Hearing Panel dismisses Mr. Ubah's argument that the Investigative Committee failed to act independently or impartially. Mr. Ubah's argument that the Investigative Committee was improperly influenced by CNRL during the investigation was not substantiated by evidence. Mr. Ubah also argued that the Investigative Committee discriminated against him. The basis for Mr. Ubah's claim, beyond his own statements, is unclear. It is also unclear which of the Investigative Committee's actions Mr. Ubah alleges were discriminatory.<sup>11</sup> Accordingly, the Hearing Panel finds that Mr. Ubah has not demonstrated on a balance of probabilities that the Investigative Committee was in fact improperly influenced by CNRL, that it discriminated against him, or that it had a closed mind during the investigation.

59. Second, the Hearing Panel finds that Mr. Ubah received proper notice of the investigation. Section 48 of the *EGP Act* requires that a member be given notice that an investigation is being conducted. The documentation in Exhibit 1 shows:

- Mr. Ubah was advised by letter from the Director, Investigations, on May 11, 2018, that Mr. Yukes had made a complaint about Mr. Ubah in respect of "threatening and harassing behaviour and failure to pay a court-ordered judgement."
- Mr. Ubah was advised by letter from Mr. Spinks on September 21, 2018, that the Investigative Committee had appointed an Investigation Panel to investigate Mr. Yuke's complaint. Mr. Spinks noted that he was a staff member assisting the Investigation Panel. The letter requested Mr. Ubah's response to the allegations in the complaint.
- On February 1, 2019, Mr. Spinks emailed Mr. Ubah to request a complete list of all Mr. Ubah's court actions, including the parties, issues, result (if complete), and current status (Exhibit 1, Tab 34). Mr. Ubah responded the same day with the requested list.

60. The documentation showed Mr. Ubah received notice that an investigation was being conducted, and he participated in the process. For example, he attended an interview with Mr. Spinks and the Investigation Panel Chair, and exchanged email correspondence with Mr. Spinks.

61. Mr. Ubah also knew that APEGA was investigating his court litigation on February 1, 2019, when Mr. Spinks requested a complete list of Mr. Ubah's court actions.

62. Alternatively, the Hearing Panel notes that any potential errors in the investigation were cured by a full hearing in which Mr. Ubah had a fulsome opportunity to respond to the allegations.

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<sup>11</sup> Mr. Ubah also alleged that the Hearing Panel had discriminated against him by treating him and the Legal Counsel for the IC differently during the hearing. The Hearing Panel dismissed these arguments in the written rulings referred to above.

### **c) Improper Charge**

63. The Hearing Panel considered Mr. Ubah's argument that the Charge was improperly prepared by Field Law, and Legal Counsel for the IC's submissions in response.

64. It is common practice in professional regulation for prosecuting counsel to assist in the preparation of charges. The Hearing Panel dismisses Mr. Ubah's argument that it was improper for Field Law to assist the Investigative Committee in this way.

65. Lastly, the Hearing Panel accepts that neither the Investigative Committee nor the Registrar had an obligation to consult with the OIPC or the courts before referring the complaint to the Discipline Committee. Mr. Ubah has not demonstrated why the Investigative Committee or the Registrar had an obligation to do so.

### **d) Weight of Mr. Spink's Testimony**

66. The Hearing Panel considered several of Mr. Ubah's arguments as speaking to the weight of Mr. Spink's testimony. Mr. Ubah argued that Mr. Spinks lacked the qualifications to investigate unprofessional conduct, as he was not an engineer. Mr. Ubah also argued that Mr. Spinks lied and misrepresented his status as an "investigator."

67. Mr. Spinks testified about the investigation into Mr. Yuke's complaint about Mr. Ubah in IC 18-22. Mr. Spinks assisted the Investigation Panel with the investigation in IC 18-22. During that investigation, Mr. Spinks reviewed the files in IC 14-31, 17-45, 18-23, 18-38, and 18-44. He was also involved in a number of the original investigations for those files.

68. Mr. Spinks testified about the documents that the Investigation Panel obtained, reviewed, and produced for each of the investigations. The documents that Mr. Spinks spoke about were not technical in nature. Engineering knowledge was not required for the evidence that Mr. Spinks gave. For this reason, the Hearing Panel did not lessen the weight of Mr. Spink's testimony on the basis that he is not an engineer.

69. During the hearing, Mr. Ubah came to perceive Mr. Spinks as having admitted that he misrepresented his status as an "investigator." Mr. Ubah's belief appeared to stem from his cross-examination of Mr. Spinks on May 19, 2022, where the following exchange occurred:

Q: Okay. You assisted them in the investigation as the investigator, correct?

A: The title is "investigator," and it probably should be written in a different way, because it's not an investigator per se in – in the classical sense, and I think there can be some confusion with that title. I think that a word of "coordinator" or "assistant" would be better used, but that's here nor there. My role is to assist the panel with their investigation with any tasks that they wish me to do. [...]

70. Later, Mr. Spinks testified:

A: [...] And – and again, as I mentioned, underneath my name, it does say the word “investigator,” because that’s the title that APEGA has assigned to my position. It doesn’t necessarily reflect the actual role, and as I’ve mentioned, I don’t really prefer – I don’t really think that’s an accurate description of our role, because we’re there to assist the panel.

71. From the Hearing Panel’s view, there was nothing improper with Mr. Spink’s use of the term “investigator” on correspondence when that was in fact his job title. The Hearing Panel was not persuaded that Mr. Spink’s testimony about APEGA investigations and documents should be weighed less because “investigator” may not reflect the authority of his role.

#### **e) Mr. Spink’s Qualifications and Role as “Investigator”**

72. On January 26, 2022, Mr. Ubah argued in objection to the Hearing Panel’s jurisdiction that Mr. Spinks lacked the proper qualifications to investigate unprofessional conduct.<sup>12</sup>

73. Legal Counsel for the IC submitted that there are no prerequisites in the statute to be an investigator. They noted that Mr. Spinks is not a member of the Investigation Panel appointed to investigate the complaint and complete a report. APEGA staff assisting with the investigation don’t make decisions about what to investigate or about whether to refer a matter to a hearing.

74. The Hearing Panel finds that as an APEGA staff member, Mr. Spinks assisted the Investigation Panel. The question of whether Mr. Spink’s role is consistent with his job title of “investigator” is not relevant to the Hearing Panel’s jurisdiction, investigation fairness, or the Hearing Panel’s decision on the Charge. The Investigation Panel Chair signed the report with recommendations for the Investigative Committee. Ultimately, it was the Investigative Committee that decided to refer the matter to the Discipline Committee for a hearing. The investigation documents were one type of evidence that the Hearing Panel considered, but it was not the only evidence.

#### **4) Legal Counsel for the IC’s Objections to Mr. Ubah’s Witnesses<sup>13</sup>**

75. In advance of the hearing scheduled for January 26 and 27, 2022, Mr. Ubah requested that Notices to Attend be issued for many witnesses. At the hearing, Legal Counsel for the IC indicated that they would object to several individuals being called as witnesses and to those individuals’ testimony.

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<sup>12</sup> In relation to this argument, Mr. Ubah sought to admit two decisions from the Law Enforcement Review Board (“LERB”) as evidence. Legal Counsel for the IC objected to the decisions being marked as exhibits. They noted that the first decision related to a narrow issue and was related to the substantive second decision. The second decision was overturned by the Court of Appeal. From the view of Legal Counsel for the IC, the LERB decisions were irrelevant. At the hearing on January 31, 2023, the Hearing Panel sustained the Legal Counsel for the IC’s objection and ruled that the LERB decisions would not be admitted as they would not assist the Hearing Panel in making its final decision.

<sup>13</sup> The Hearing Panel ruled on these objections at the hearing on January 31, 2023 and in a written ruling dated March 24, 2023.

76. The Hearing Panel directed that the Legal Counsel for the IC's objections be addressed in writing. Mr. Ubah requested that the Hearing Panel listen to his opening statement before refusing to hear any of his witnesses. The Hearing Panel agreed that it would not refuse to hear any witnesses until after Mr. Ubah's opening statement on February 9 and 16, 2023.

77. Mr. Ubah provided an updated list of expected witnesses on February 21, 2023. Two individuals he identified had already testified as part of the Investigative Committee's case. Legal Counsel for the IC objected to all but three potential witnesses.<sup>14</sup>

78. The Hearing Panel considered written submissions from both parties before issuing its written ruling on March 24, 2023. The Hearing Panel sustained Legal Counsel for the IC's objections to 21 witnesses and rejected two objections. The Hearing Panel's reasons are below.

**a) APEGA Staff**

79. Mr. Ubah proposed calling several APEGA executives and staff members as witnesses. The individuals named included:

- the Registrar and Chief Executive Officer;
- two current or former Deputy Registrar and Chief Regulatory Officers;
- the Senior Advisor and Director of Council Relations;
- three current and former Directors, Investigations; and
- a former staff investigator.

80. Mr. Ubah indicated that these individuals were involved in or knew about the investigations, could provide evidence about departures from the *EGP Act*, could explain the meaning and purpose of the *EGP Act*, and could explain APEGA's jurisdiction.

81. Legal Counsel for the IC submitted that these individuals should not be permitted as witnesses, as they would not have any relevant evidence to give. They could not speak to Mr. Ubah's reasons or motivations for his conduct, or whether his conduct was for improper purposes or an abuse of process. Legal Counsel for the IC further noted that the individuals named had limited involvement in the complaints by or against Mr. Ubah. The parties would have an opportunity for legal argument about how the *EGP Act* should be interpreted.

82. The Hearing Panel sustained Legal Counsel for the IC's objections to six of the eight proposed witnesses. The Hearing Panel agreed that many of the individuals were not directly involved or did not have personal knowledge of the Charge. Mr. Ubah's purpose for calling these individuals was to litigate perceived procedural errors in the investigations of IC 14-31, 17-45, 18-23, 18-38, and 18-44. The Hearing Panel finds that it is not the Hearing Panel's role to review the procedure of investigations that were terminated.

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<sup>14</sup> The Hearing Panel issued a written ruling on December 21, 2022 confirming that Mr. Ubah could call as witnesses the three individuals for which there were no objections.

83. The Hearing Panel also finds that Mr. Ubah intended to call these individuals to challenge procedure and the Hearing Panel's earlier rulings in the present hearing. The Hearing Panel determined the testimony of these individuals was not relevant to the Charge.

84. At the hearing on January 31, 2023, the Hearing Panel dismissed Legal Counsel for the IC's objection to Mr. Ubah calling the 2014 Director, Investigations. He occupied the same position as Mr. Thiessen and Mr. Jespersion. The Hearing Panel determined the 2014 Director, Investigation's interactions with Mr. Ubah may be relevant to Mr. Ubah's reasons for contacting the OIPC.

85. The Hearing Panel reserved its ruling on the objection to Garth Jespersion, the current Director, Investigations. The Hearing Panel felt that it would be better positioned to assess the relevance of Mr. Jespersion's evidence after hearing the Investigative Panel Chair's testimony. However, Mr. Ubah ceased participating in the hearing and did not call the Investigative Panel Chair or the 2014 Director, Investigations, as witnesses. The Hearing Panel did not make a ruling on the objection to Mr. Jespersion before the hearing concluded and finds it is unnecessary to do so now.

#### **b) APEGA Statutory Board Volunteers**

86. Legal Counsel for the IC objected to Mr. Ubah's proposal to call the following individuals as witnesses, all of whom were volunteers on APEGA's statutory boards:

- Three current or former volunteers of the Investigative Committee, who were appointed to an Investigation Panel for IC 14-31 to investigate Mr. Ubah's first complaint about Mr. Bauman and CNRL;
- "All members of the IC Committee that voted in the decisions of the complainant when I was the complainant and when I was the MUI" [*sic*]; and
- Two current members of the Appeal Board appointed to hear Mr. Ubah's appeals of investigation terminations relating to his complaints.

87. Mr. Ubah indicated that these individuals were involved in or knew about APEGA's investigations, could provide evidence about departures from the *EGP Act*, could explain the meaning and purpose of the *EGP Act*, and could explain APEGA's jurisdiction.

88. Legal Counsel for the IC submitted that by seeking to call these individuals as witnesses, Mr. Ubah sought to relitigate his previous complaints. The testimony of these individuals would not be relevant to the Charge. Further, the members of the Appeal Board could not be compelled to give evidence about the Appeal Board's decisions, as a function of the legal doctrine of deliberative secrecy. The doctrine of deliberative secrecy protects the independence of decision-makers and promotes the consistency and finality of decisions. The Appeal Board's written decisions were in evidence and stood for themselves.

89. The Hearing Panel sustained Legal Counsel for the IC's objections to individuals who volunteered on the Investigative Committee. In making this ruling, the Hearing Panel was aware that its role was not to review the procedure of investigations that were terminated and which terminations were upheld by the Appeal Board.

90. The Hearing Panel's ruling on the objections to the members of the Investigation Panel for IC 14-31 was also informed by its earlier ruling that the 2014 Director, Investigations, could be called as a witness. The 2014 Director, Investigations, was involved with and could speak to IC 14-31.

91. The Hearing Panel also sustained the objection to "All members of the IC Committee that voted in the decisions of the complainant when I was the complainant and when I was the MUI." Mr. Ubah did not identify any specific member of the Investigative Committee he intended to call, except for the Investigation Panel Chair for IC 18-22. Legal Counsel for the IC did not object to the Investigation Panel Chair being called as a witness.

92. From the Hearing Panel's view, the Investigation Panel Chair would be the best person on the Investigative Committee to speak to Mr. Yukes's complaint and the investigation in IC ~~22~~. Testimony from other members of the Investigative Committee, who did not sit on the Investigation Panel, could be repetitive, and as of March 24, 2023, the Hearing Panel had not heard anything to suggest that other members of the Investigative Committee had better knowledge of the complaint than the Investigation Panel Chair.

93. The Hearing Panel also sustained the objections to the two members of the Appeal Board. The only reason Mr. Ubah would have for calling these individuals as witnesses would be to examine them about the Appeal Board's decisions. It is not within the Hearing Panel's purview to review Appeal Board decisions.

### **c) Defendants of Mr. Ubah's Complaints and Litigation**

94. Mr. Ubah proposed calling the following individuals as witnesses:

- Mr. Bauman;
- [REDACTED];
- [REDACTED];
- Mr. Laut;
- "CNRL";
- [REDACTED];

95. Mr. Ubah indicated that these were individuals against whom he made complaints. He submitted that these individuals' testimony would support his argument that he had legitimate intentions and motives for commencing the complaints and proceedings listed in the Charge.

96. Legal Counsel for the IC objected to the above witnesses on the basis that their evidence would be irrelevant to the matters before the Hearing Panel. The named individuals

could not provide evidence relevant to Mr. Ubah's reasons or motivations for the complaints and proceedings, whether the complaints were made for improper purposes, or whether the complaints amount to an abuse of process. Legal Counsel for the IC expressed concern that Mr. Ubah wished to call these individuals as witnesses in efforts to relitigate previously terminated investigations or dismissed lawsuits. Legal Counsel for the IC submitted that the Hearing Panel's task was not to re-evaluate Mr. Ubah's complaints or his lawsuits.

97. The Hearing Panel sustained the objections to these individuals. Mr. Ubah's opening statement demonstrated that his complaints and litigation flowed from his initial employment with ██████ and his work at the CNRL Horizon Project site. While the named individuals could possibly testify to the circumstances and their interactions (or lack thereof) with Mr. Ubah at the CNRL Horizon Project site or in subsequent complaint and litigation proceedings, they could not testify about his motivations for the complaints or proceedings, or about whether the complaints or lawsuits were made for proper purposes.

98. In particular, the Hearing Panel noted that ██████ and Mr. Laut were executives at CNRL. ██████ was in-house legal counsel for CNRL. The Hearing Panel was not satisfied that any of these individuals had direct and personal knowledge of Mr. Yukes's complaint or the conduct alleged in the Charge against Mr. Ubah.

#### **d) Signatories to Contract in 2012**

99. Mr. Ubah proposed calling two individuals who signed a contract on behalf of CNRL and IDS in 2012 (see Exhibit 1, Tab 36, pages 470–474).

100. Legal Counsel for the IC objected to these witnesses. They submitted that neither of the named individuals could have any relevant evidence about whether Mr. Ubah commenced, attempted to commence, or threatened to commence proceedings in various forums. Legal Counsel for the IC expressed concern that Mr. Ubah's purpose in calling these individuals as witnesses was to relitigate his concerns around his employment and work at the CNRL Horizon Project site in 2012.

101. The Hearing Panel sustained the objection. From the Hearing Panel's view, there was no basis to find that these individuals had any personal knowledge about Mr. Ubah's intention in commencing complaints with APEGA or the OIPC, commencing lawsuits in Court, or threatening to commence complaints or proceedings.

#### **e) Lawyers from Field Law LLP**

102. Mr. Ubah expected to call Greg Sim and Tessa Gregson, Legal Counsel for the IC, as witnesses. He argued that Mr. Sim and Ms. Gregson were relevant because they were involved in the hearing, interacted with witnesses, and exchanged documents with witnesses.

103. Legal Counsel for the IC submitted that they should not be compelled to testify. They were not personally involved in the underlying circumstances and do not have relevant evidence

to give. Any communications between counsel and the Investigative Committee would be subject to solicitor-client privilege.

104. The Hearing Panel agrees that the communications Mr. Sim and Ms. Gregson had with the members of the Investigative Committee in relation to the hearing would be subject to solicitor-client privilege. Further, the lawyers' testimony would not be relevant to the Charge.

### **5) Mr. Ubah's Application for a Stay of Proceedings<sup>15</sup>**

105. Shortly after the Hearing Panel's written ruling on the objections to Mr. Ubah's witnesses, Mr. Ubah requested that the hearing be stayed. He planned to seek leave from the Court to judicially review the Hearing Panel's ruling and the stay would remain in place until the Court rendered a decision on his leave application.

106. Legal Counsel for the IC provided written submissions on the stay application on April 3, 2023. They outlined the test for a stay pending judicial review, which requires the following questions to be answered in the affirmative:

- a. Whether there was a serious issue to be tried in the application for judicial review;
- b. Whether Mr. Ubah would suffer irreparable harm if the stay were not granted;
- c. Whether the overall balance of convenience favoured granting a stay pending determination of an application for judicial review.

107. The Hearing Panel considered Mr. Ubah's email of March 24, 2023, and Legal Counsel for the IC's submissions of April 3, 2023, in deciding whether to stay the hearing pending Mr. Ubah's application for leave for judicial review. The Hearing Panel found Legal Counsel for the IC's written submissions on the application of the test for a stay to be very persuasive.

108. The Hearing Panel agreed that even if Mr. Ubah could establish a serious issue with the Hearing Panel's March 24, 2023, ruling, he would not suffer irreparable harm. If the hearing proceeded, Mr. Ubah could appeal to the Appeal Board, where it would be open to him to argue that the Hearing Panel erred.

109. Under section 69 of the *EGP Act*, the Appeal Board could refer the matter back to the Hearing Panel. The Appeal Board could also hear from these witnesses that the Hearing Panel did not allow and vary the Hearing Panel's decision, if warranted. Therefore, the Hearing Panel found that Mr. Ubah would not suffer irreparable harm if the hearing proceeded.

110. The Hearing Panel also agreed that the balance of convenience favoured denying the stay. It was entirely possible for Mr. Ubah to call other witnesses while waiting for the Court's decision on any application for leave to seek judicial review. The public interest weighed in favour of dismissing the stay and proceeding and completing the hearing.

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<sup>15</sup> The Hearing Panel issued a written ruling on Mr. Ubah's application dated April 5, 2023.

111. For the reasons above, the Hearing Panel issued a written ruling on April 5, 2023, dismissing Mr. Ubah's stay application. That same day, Mr. Ubah emailed the Hearing Panel with additional arguments. The Hearing Panel reconvened to consider Mr. Ubah's arguments. The Hearing Panel was not persuaded that Mr. Ubah's email submissions of April 5, 2023, changed its determination on the application for a stay. His email largely reiterated arguments relating to his requests for evidence that the Hearing Panel and Investigative Committee were legally constituted and to Mr. Jespersen's involvement in the hearing. His communication did not relate to the test for a stay pending judicial review.

#### **6) Legal Counsel for the IC's Application to Close Mr. Ubah's Case<sup>16</sup>**

112. The hearing proceeded on April 28, 2023, following the Hearing Panel's dismissal of Mr. Ubah's stay application. Mr. Ubah did not attend.<sup>17</sup> Legal Counsel for the IC made two applications: first, an application to proceed with the hearing in Mr. Ubah's absence, and second, an application to close the evidentiary portion of the hearing.

113. Legal Counsel for the IC submitted that previous correspondence showed that Mr. Ubah did not intend to attend or participate in the hearing. They summarized the correspondence in the days leading up to Mr. Ubah's absence on April 28, 2023:

- The Hearing Panel issued a written ruling of March 24, 2023, about Legal Counsel for the IC's objections to Mr. Ubah's proposed witnesses;
- Mr. Ubah replied and requested a stay of the hearing pending his application to the court for leave for judicial review;
- The Hearing Panel issued a written ruling on April 5, 2023, dismissing the stay application;
- Mr. Ubah responded via email later on April 5, 2023. His email stated:

This letter is to inform this "panel", that 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 [*sic*];

- The Hearing Panel issued a written ruling on April 19, 2023. The Hearing Panel held that it had jurisdiction to proceed with the hearing despite Mr. Ubah's objections. The Hearing Panel encouraged Mr. Ubah to attend the hearing on April 28, 2023, and cautioned that

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<sup>16</sup> The Hearing Panel issued its ruling on the application at the hearing on May 8, 2023.

<sup>17</sup> The Hearing Panel briefly adjourned the hearing on April 28, 2023, to allow APEGA staff time to call Mr. Ubah. The Discipline Coordinator advised that she had called Mr. Ubah's phone four times and that her calls were dismissed.

if he chose not to do so, the hearing could proceed without him, and the Hearing Panel could make a decision on the Charge;

- Mr. Ubah provided a letter on April 24, 2023, and reiterated that he would not participate in the hearing until his demands for proof of a legally constituted Hearing Panel and Investigative Committee were met; and
- Legal Counsel for the IC responded via letter on April 25, 2023. They advised that they planned to apply to close the case if Mr. Ubah did not attend the hearing.

114. Based on the correspondence, the Hearing Panel was satisfied that Mr. Ubah knew that the hearing was proceeding on April 28, 2023. It went on to consider whether to grant the application to close the evidentiary portion of the hearing.

115. If the Hearing Panel granted the application, Mr. Ubah would not have another opportunity to present witnesses. The Hearing Panel did not consider Legal Counsel for the IC's application lightly and decided to defer its decision on the application to May 8, 2023. It advised Mr. Ubah in writing later on April 28, 2023, that Legal Counsel for the IC had applied to close the evidentiary portion of the hearing, and that he would have an opportunity to respond to the application at the hearing on May 8, 2023.

116. The hearing proceeded on May 8, 2023, and Mr. Ubah did not attend. Legal Counsel for the IC renewed their application to close the evidentiary portion of the hearing. Legal Counsel for the IC referred the Hearing Panel to correspondence that was received after the hearing on April 28, 2023:

- Mr. Ubah's email of May 5, 2023, in which he stated that he would not attend the hearing until APEGA met his various demands;
- The Discipline Coordinator's email response to Mr. Ubah, in which she referred to May 8, 2023, as the next hearing date.

In the context of these communications, Legal Counsel for the IC submitted that the Hearing Panel could fairly decide that Mr. Ubah was aware the hearing was proceeding.

117. The Hearing Panel was satisfied, based on the correspondence it had received in the week prior, that Mr. Ubah knew the hearing was occurring. It elected to proceed to decide the application to close the hearing in Mr. Ubah's absence.

118. The Hearing Panel decided that it was appropriate to close the evidentiary portion of the hearing in the circumstances. Mr. Ubah decided not to participate in the hearing, and the Hearing Panel had a statutory obligation to hold the hearing and to render a decision on the Charge.

119. It was significant for the Hearing Panel that Mr. Ubah had already had many days to present his case. Over multiple hearing days, he made an opening statement and presented one witness. He did not fully utilize the scheduled days.

120. The Hearing Panel formally directed Mr. Ubah to arrange witnesses on multiple occasions. Mr. Ubah knew as early as December 21, 2022, that he could also call [REDACTED] and the Investigation Panel chair as witnesses. On January 31, 2023, the Hearing Panel allowed the 2014 Director, Investigations, as a witness. Mr. Ubah chose not to call these individuals as witnesses on the days that were scheduled and available.

121. On March 24 and April 5, 2023, the Hearing Panel directed Mr. Ubah to submit a proposed schedule of witnesses for the remaining hearing days. Mr. Ubah refused to do so.

122. Mr. Ubah refused to attend the hearing on April 28 and May 8, 2023, which were scheduled for the presentation of his case. He continued to refuse to call witnesses.

123. For these reasons, the Hearing Panel granted the application and directed that the evidentiary portion of the hearing be closed. The Hearing Panel directed the parties to submit final arguments in writing by specified dates.<sup>18</sup>

## **DECISION AS TO WHETHER THE CONDUCT IS PROVEN**

### **Standard of Proof**

124. The Hearing Panel met via videoconference on September 8, 2023, to consider the evidence from the witnesses, the documents marked as exhibits, and the parties' final arguments made in writing. Legal Counsel for the IC provided their final arguments on June 9, 2023. Mr. Ubah provided his argument on July 10, 2023. Legal Counsel for the IC replied on July 28, 2023, and Mr. Ubah submitted a final reply via email on August 15, 2023.

125. Rather than summarizing all the evidence in detail, the Hearing Panel intends to provide a detailed discussion of the evidence under the Charge set out below.

126. In coming to its decision in this matter, the Hearing Panel recognizes that the onus is on Legal Counsel for the IC to prove that the conduct alleged in the Charge occurred as a fact on a "balance of probabilities." This standard requires that the alleged conduct is proven as more likely to have occurred than not. If some or all the conduct is proven, the Hearing Panel will determine whether the conduct constitutes unprofessional conduct.

127. This decision will therefore review the Charge and the particulars in the Charge, and consider whether the evidence establishes that it is more likely than not that the conduct alleged in the Charge occurred. Based on its conclusions on whether the conduct occurred, the Hearing Panel will then consider whether any conduct constitutes unprofessional conduct.

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<sup>18</sup> Legal Counsel for the IC was directed to provide written arguments on June 9, Mr. Ubah on July 10, Legal Counsel on July 28, and Mr. Ubah on August 15, 2023.

## Background

128. The Hearing Panel heard a significant amount of information relating to events regarding Mr. Ubah's alleged conduct between 2014 and 2018. The Hearing Panel has described the circumstances to assist a reader.

129. In 2012, [REDACTED], an APEGA permit holder, hired Mr. Ubah (who was then an engineer-in-training) through IDS to work at the CNRL Horizon Project site. Mr. Yukes and [REDACTED] worked at [REDACTED]. [REDACTED] is a professional engineer. Mr. Yukes is not a professional engineer.

130. Mr. Ubah lived at the CNRL camp during most of the time that he worked on the Horizon Project site. He worked with various other individuals, including Mr. Bauman and [REDACTED] who are both professional engineers. There was a series of incidents in 2012 when his personal belongings went missing from his room at camp. As a result of Mr. Ubah's dealings with his concerns about the missing items, Mr. Ubah was suspended from camp. This written decision will refer to the camp events as the "Camp Incident."

131. After the Camp Incident, arrangements were made for Mr. Ubah to work in Calgary until the end of the term of his employment contract in 2012, which was not renewed. The Hearing Panel understands that Mr. Ubah has various disputes relating to his employment contract, including disputes related to the date at which his work on the Horizon Project site and his employment with [REDACTED] ended and the parties involved in the contracting arrangement.

132. Mr. Ubah sought employment elsewhere. He asked Mr. Bauman and Mr. Yukes to provide references for his prospective employers. Ultimately, he was not successful in obtaining a position with the companies for whom Mr. Yukes and Mr. Bauman provided references.

133. Following these events, Mr. Ubah initiated lawsuits and filed complaints against CNRL, IDS, and a number of individuals who worked at these companies. He also made complaints and commenced lawsuits against AVH, another company started by Mr. Yukes and [REDACTED] in 2013 and regulated by APEGA.

## Proof of Particulars and Alleged Conduct

134. The Hearing Panel first considered whether Mr. Ubah commenced, attempted to commence, or threatened to commence complaints or proceedings with APEGA, the OIPC, or the Courts in circumstances amounting to an abuse of process or for improper purposes.

135. In his opening statement, Mr. Ubah did not dispute that he had filed complaints or commenced proceedings with APEGA, the OIPC, or the Courts.

136. The Hearing Panel considered the evidence entered at the hearing, which included documents from the investigation and testimony from Mr. Spinks, Mr. Yukes, and Mr. Thiessen.

### 1) Commenced or Attempted to Commence Complaints or Proceedings

**a) Association of Professional Engineers and Geoscientists of Alberta**

137. The Hearing Panel considered the evidence entered at the hearing related to complaints that Mr. Ubah submitted to APEGA. Based on the evidence described below, the Hearing Panel finds that Mr. Ubah commenced or attempted to commence six complaints with APEGA between 2014 and 2018.

**i) IC 14-31 Complaint Against Mr. Bauman and CNRL**

138. The Hearing Panel finds that Mr. Ubah submitted a complaint about Mr. Bauman and CNRL on May 23, 2014. At that time, both CNRL and Mr. Bauman were regulated by APEGA. Mr. Bauman was Mr. Ubah's supervisor at the Horizon Project site. Mr. Ubah's email detailing the complaint was before the Hearing Panel at Exhibit 1, Tab 2.

139. The complaint alleged that Mr. Bauman acted unprofessionally and unethically when he provided a "defamatory," "malicious and damaging" reference to Mr. Ubah's prospective employer. Mr. Ubah's complaint asserted that after Mr. Bauman provided the reference, the company rescinded the offer of employment because the reference did not clear.

140. Mr. Ubah's also complained about CNRL because "I told them that I may seek other means if they do not want to internally clear the false allegation made against me, that has been affecting my career since my working with them [...]" [sic] The complaint went on to describe the Camp Incident. Mr. Ubah asserted that his career was damaged as a result of this incident and Mr. Bauman's reference.

141. Mr. Spinks testified that he reviewed Mr. Ubah's complaint about Mr. Bauman and CNRL, the investigation of IC 14-31, and the specific documents the Investigation Panel had obtained or produced. The Investigative Committee terminated IC 14-31 for insufficient evidence of unskilled practice of the profession or unprofessional conduct.

142. In 2017, Mr. Ubah obtained an unredacted copy of Mr. Bauman's reference letter. Mr. Thiessen was the Director, Investigations, for APEGA at the time. Mr. Thiessen testified that he reopened IC 14-31 in respect of the complaint about Mr. Bauman because of Mr. Ubah's insistence that APEGA consider the unredacted reference.

143. After the Investigation Panel reviewed the letter, it determined that the new document did not alter its prior conclusion and recommended that the investigation be terminated. The Investigative Committee approved the termination of the re-opened investigation. Mr. Ubah appealed the Investigative Committee's decision. On January 17, 2018, the Appeal Board issued its decision upholding the Investigative Committee's termination. The Appeal Board's decision was before the Hearing Panel at Exhibit 1, Tab 6.

**ii) IC 17-45 Complaint Against CNRL**

144. The Hearing Panel finds that Mr. Ubah submitted a second complaint about CNRL to APEGA on October 17, 2017. CNRL was also regulated by APEGA at the time of the second

complaint. Mr. Ubah's complaint letter was entered as Exhibit 1, Tab 5. The complaint recounted the Camp Incident in detail.

145. Mr. Spinks testified that he was involved in the investigation of IC 17-45. He advised that the Investigative Committee determined there was insufficient evidence of unskilled practice of the profession or unprofessional conduct to proceed to a hearing and terminated the investigation. Mr. Ubah appealed the Investigative Committee's decision. The Appeal Board upheld the Investigative Committee's termination in a decision dated March 23, 2020. The Appeal Board's decision was before the Hearing Panel at Exhibit 1, Tab 45.

**iii) IC 18-23 Complaint Against [REDACTED], AVH, and IDS**

146. On May 11, 2018, Mr. Ubah submitted a third complaint to APEGA regarding the conduct of [REDACTED], AVH, and IDS. The Hearing Panel understands that at that [REDACTED] and the two companies were regulated by APEGA. Mr. Ubah's email and enclosed letter of complaint was before the Hearing Panel at Exhibit 1, Tab 16.

147. The complaint alleged that [REDACTED] acted unprofessionally and unethically when he failed to rectify a situation involving a reference letter Mr. Yukes provided in 2013 to Mr. Ubah's potential employer. Mr. Ubah stated in the complaint letter "I tried the civil litigation to see if the full reference could be released by Jim Yukes [...]." The complaint also alleged that Mr. Ubah contacted AVH and IDS regarding issues with the contract with CNRL. He asserted that both companies refused to respond and that "their silence means there were parties to whatever was going on." [sic]

148. Mr. Spinks assisted the Investigation Panel with the investigation of IC 18-23. He testified that the timing of Mr. Ubah's complaint was significant. On May 8, 2018, Jim Yukes submitted his complaint to APEGA about Mr. Ubah, which resulted in IC 18-22 (the subject of this written decision). On May 11, 2018, at 11:26 a.m., APEGA staff sent Mr. Ubah a notice of investigation with respect to IC 18-22. Less than three hours later, Mr. Ubah submitted his complaint about [REDACTED], AVH, and IDS.

149. On August 17, 2018, Mr. Ubah emailed Mr. Thiessen, the Director, Investigations, at APEGA. He stated: "This is to inform you that I am happy to withdraw the APEGA complaint against, [REDACTED] and AVH Engineering Inc. based on the information that has been provided to me. [sic]" Mr. Spinks testified that the Investigation Panel did not receive the email and completed the investigation.

150. The Investigative Committee determined there was insufficient evidence of unskilled practice of the profession or unprofessional conduct to proceed to a hearing and terminated the investigation. Mr. Ubah appealed the Investigative Committee's decision. In a decision dated March 24, 2020, the Appeal Board upheld the Investigative Committee's decision. The Appeal Board's decision was before the Hearing Panel at Exhibit 1, Tab 50.

**iv) IC 18-38 Complaint Against [REDACTED]**

151. The Hearing Panel finds that on August 2, 2018, Mr. Ubah made a fourth complaint to APEGA about [REDACTED]. [REDACTED] was a professional engineer that worked with Mr. Ubah at the Horizon Project site in 2012, and continued to be regulated by APEGA at the time of the complaint. The complaint letter was in evidence at Exhibit 1, Tab 19.

152. Mr. Ubah alleged that while he was working at the Horizon Project site, [REDACTED] made inappropriate advances and harassed Mr. Ubah. Further, Mr. Ubah alleged that [REDACTED] was involved in the inappropriate modification of Mr. Ubah's contract, and that in later litigation, [REDACTED] lied in an affidavit regarding that contract.

153. Mr. Spinks assisted the Investigation Panel with the investigation of IC 18-38. The Investigative Committee ultimately terminated the investigation for insufficient evidence of unskilled practice of the profession or unprofessional conduct. Mr. Ubah appealed the Investigative Committee's decision. The Appeal Board upheld the Investigative Committee's decision in its written decision dated March 24, 2020 (Exhibit 1, Tab 46).

**v) IC 18-44 Complaint Against [REDACTED]**

154. The Hearing Panel finds that Mr. Ubah made a fifth complaint to APEGA on September 4, 2018, regarding the conduct of [REDACTED], a senior executive at CNRL. The Hearing Panel understands that [REDACTED] was regulated by APEGA at the time of the complaint. The complaint letter was before the Hearing Panel at Exhibit 1, Tab 24.

155. Mr. Spinks testified that during one of Mr. Ubah's legal actions, he asked that [REDACTED] be subpoenaed to Court. [REDACTED] made an application to the Court to not be part of the action and not attend as a witness because she did not have direct involvement with Mr. Ubah's concerns with CNRL. Mr. Ubah's complaint alleged that [REDACTED] lied in an affidavit filed in support of her court application.

156. Mr. Spinks assisted the Investigation Panel with the investigation of IC 18-44. The Investigative Committee ultimately determined there was insufficient evidence of unskilled practice of the profession or unprofessional conduct and terminated the investigation.

157. Mr. Ubah appealed the Investigative Committee's decision. In a decision dated March 24, 2020, the Appeal Board upheld the Investigative Committee's decision. The Appeal Board's decision was before the Hearing Panel at Exhibit 1, Tab 41.

**vi) October 1, 2018, Complaint Against Jerry Bauman**

158. The Hearing Panel finds that Mr. Ubah submitted his sixth and last complaint to APEGA on October 1, 2018. The complaint was about Mr. Bauman, who was also the subject of IC 14-31. The complaint letter was in evidence at Exhibit 1, Tab 27. The complaint alleged that Mr. Bauman provided falsified documents and lied in a sworn affidavit filed in court proceedings related to the Camp Incident.

159. By letter dated December 5, 2018, Mr. Thiessen advised Mr. Ubah that the Investigative Committee decided to conduct no investigation into his complaint against Mr. Bauman. He also advised that the Investigative Committee decided not to accept any additional complaints from Mr. Ubah pertaining to the events of his employment and cessation of employment at the CNRL Horizon Project site, any complaints about the provision of employment references, or any complaints against CNRL, AVH, [REDACTED], or any of their employees. Mr. Thiessen's letter was in evidence at Exhibit 1, Tab 31. No IC file number was assigned to this complaint because the Investigative Committee did not accept the complaint.

**b) Office of the Information and Privacy Commissioner**

160. The Hearing Panel considered the evidence entered at the hearing related to complaints that Mr. Ubah submitted to the OIPC. Based on the evidence described below, the Hearing Panel finds that Mr. Ubah commenced or attempted to commence complaints with the OIPC between 2014 and 2018.

161. Mr. Ubah's package of documents marked as Exhibit 3 included a Request for Review/ Complaint Form (the "OIPC Complaint"), which was stamped received on April 19, 2017. The OIPC Complaint was in evidence at Exhibit 3, Tab 6.

162. Attached to the OIPC Complaint was Mr. Ubah's correspondence with a representative of [REDACTED], in support of the OIPC Complaint. The correspondence showed that on April 12, 2017, Mr. Ubah requested access to his personal information related to Mr. Yukes's reference letter. The representative responded that [REDACTED] was required by legislation to refuse to confirm the existence of or provide access to Mr. Yukes's reference letter.

163. The Information and Privacy Commissioner sent a letter to Mr. Ubah and the [REDACTED] representative dated July 5, 2017, which indicated that they had authorized a Senior Information and Privacy Manager to conduct a review (Exhibit 3, Tab 6).

164. Mr. Yukes testified that he received an email from Mr. Ubah dated September 28, 2017, which related to the reference letter Mr. Yukes provided to Mr. Ubah's prospective employer. Mr. Ubah's email expressed that the reference was untrue. He demanded that Mr. Yukes rectify the reference and stated "You have 45 days according to office of the information and privacy commissioner." [sic] (Exhibit 1, Tab 4). Mr. Spinks explained during his testimony that the OIPC process gives parties 45 days to resolve their differences before the OIPC acts on a complaint.

165. In a letter dated February 26, 2018, the OIPC Senior Information and Privacy Manager issued a Letter of Findings which indicated that Enbridge Inc. and not [REDACTED] was the appropriate respondent organization in the matter. Accordingly, the OIPC was closing File 005779 and opening File 006715, which named Enbridge as the respondent organization. The Letter of Findings stated "The Applicant has been previously advised of, and consented to, the opening of file 006715 in regards to Enbridge Inc." The Letter was before the Hearing Panel at Exhibit 3, Tab 5.

166. Mr. Ubah's documents show he submitted a Request for Inquiry dated March 9, 2018, to the OIPC in relation to Files 005779 and 006715 (Exhibit 3, Tab 117). He sent a Request for Inquiry to the OIPC Senior Information and Privacy Manager and the Chief Privacy Officer and Senior Legal Counsel, Ethics and Compliance, at Enbridge (Exhibit 1, Tab 9). On March 19, 2018, the Chief Privacy Officer and Senior Legal Counsel offered for Enbridge and [REDACTED] to delete all references on file.

167. After further correspondence, Mr. Ubah confirmed via email with the OIPC Senior Information and Privacy Manager that the OIPC could close the file related to his Requests for Inquiry for files 005779 and 006715. The email chain was in evidence at Exhibit 3, Tab 198.

### **c) The Alberta Courts**

168. The Hearing Panel heard testimony and received documentation related to five separate actions that Mr. Ubah commenced in the Alberta Courts. During APEGA's investigation into Mr. Ubah's conduct, Mr. Spinks emailed Mr. Ubah to request a list of Mr. Ubah's court actions. Mr. Ubah provided the list via email on February 1, 2019 (Exhibit 1, Tab 34).

169. Legal Counsel for the IC referred the Hearing Panel to several court decisions produced in the course of Mr. Ubah's lawsuits, including:

- *Ubah v Canadian Natural Resources Limited*, 2019 ABQB 155;
- *Ubah v Canadian Natural Resources Limited*, 2019 ABQB 347;
- *Ubah v Canadian Natural Resources Limited*, 2019 ABQB 692;
- *Ubah v Canadian Natural Resources Limited*, 2020 ABQB 40; and
- *Ubah v Canadian Natural Resources Limited*, 2021 ABCA 5.

170. Several of these court decisions discussed Mr. Ubah's various lawsuits.

#### **i) Provincial Court of Alberta, Action No. P1590104216 ("Ubah v CNRL")**

171. On October 20, 2015, Mr. Ubah filed a Civil Claim against CNRL in the Alberta Provincial Court. Mr. Ubah listed this lawsuit in his email to Mr. Spinks on February 1, 2019. The Court in *Ubah v Canadian Natural Resources Limited*, 2019 ABQB 155 discussed this lawsuit:

[13] Mr. Ubah on October 20, 2015, sued CNRL in Provincial Court, Docket P1590104216. In brief, that lawsuit alleges that after a series of thefts from his room in a work camp operated by CNRL, CNRL falsely blamed Mr. Ubah for making threats, and suspended him from the work camp without a proper basis. The Civil Claim notice also indicates that Mr. Yukes gave a bad reference for Mr. Ubah. Mr. Yukes is not, however, named as a party to this lawsuit. Mr. Ubah sought \$49,999.00 in damages and a letter of apology "... to repair my career situation with other firms." Mr. Ubah in 2018 applied to transfer this action to the Alberta Court of Queen's Bench. That application was dismissed on December 20, 2018.

172. The Court noted at paragraph 16 that Mr. Ubah appealed the outcome of this lawsuit.

**ii) Provincial Court of Alberta, Action No. P 1790100423 (“Ubah v Yukes”)**

173. Mr. Ubah filed a second lawsuit the Alberta Provincial Court, against Mr. Yukes, on January 25, 2017. Mr. Ubah listed this lawsuit in his email to Mr. Spinks on February 1, 2019.

174. The Court in *Ubah v Canadian Natural Resources Limited*, 2019 ABQB 155 and *Ubah v Canadian Natural Resources Limited*, 2019 ABQB 692 summarized the subject of this lawsuit. The latter noted:

[59] This is Mr. Ubah’s first lawsuit against Mr. Yukes, filed on January 25, 2017. In brief, Mr. Ubah sued Mr. Yukes for “ruining” a job opportunity by providing an unfavourable reference, and demanded \$10,000 in lost wages for not getting the job “... not to mention the depression and emotional trauma ...”.

175. The case went on to say that Judge Day dismissed the lawsuit and ordered Mr. Ubah to pay \$3,000 in costs. Judge Day’s order was before the Hearing Panel at Exhibit 1, Tab 7.

176. The Court in *Ubah v Canadian Natural Resources Limited*, 2019 ABQB 155 noted at paragraph 16 that Mr. Ubah appealed the outcome of this lawsuit.

**iii) Provincial Court of Alberta, Action No. P1790101506 (“Ubah v Bauman”)**

177. On March 24, 2017, Mr. Ubah filed his third lawsuit in the Alberta Provincial Court against Mr. Bauman. Mr. Ubah listed this lawsuit in his email to Mr. Spinks on February 1, 2019.

178. The Court in *Ubah v Canadian Natural Resources Limited*, 2019 ABQB 155 and *Ubah v Canadian Natural Resources Limited*, 2019 ABQB 692 discussed the lawsuit. The former noted:

[15] A third Provincial Court action was subsequently initiated by Mr. Ubah against a Jerry Bauman, on March 24, 2017: Provincial Court Docket P1590104216. The Civil Claim seeks \$25,000.00, alleging that Mr. Ubah lost an employment offer and was “blacklisted” as a consequence of a job reference provided by Mr. Bauman. While this action at first seems unrelated to the P1590104216 and P1790100423 actions, a subsequent decision of Burt PCJ reported as *Ubah v Bauman*, 2017 ABPC 98 reports the substance of this matter again related to CNRL, since Mr. Bauman is an employee of CNRL. This action was struck out because the Provincial Court of Alberta has no jurisdiction to hear defamation matters (paras 9-10) and was filed outside the limitations period.

179. Judge Burt struck the lawsuit and ordered Mr. Ubah to pay \$1,250 in costs (*Ubah v Canadian Natural Resources Limited*, 2019 ABQB 692 at para 63).

**iv) Provincial Court of Alberta, Action No. P189010892 (“Ubah v AVH”)**

180. Mr. Ubah filed a fourth lawsuit in the Alberta Provincial Court against AVH, IDS, and CNRL. Mr. Ubah acknowledged the lawsuit in his email to Mr. Spinks dated February 1, 2019. His email noted that he had withdrawn the lawsuit and settled with one of the parties.

181. The court documents in evidence included an order made by Judge Higa on August 22, 2018 (Exhibit 1, Tab 23) and Master Robertson on October 17, 2018 (Exhibit 1, Tab 28). Judge Higa's order indicated that CNRL and AVH applied to have Mr. Ubah declared a vexatious litigant. The terms of the order show that Judge Higa dismissed the application, but restricted Mr. Ubah's ability to commence new actions in Provincial Court, limited his ability to communicate with CNRL and its employees, and ordered that he pay \$2,000 in costs.

182. Mr. Ubah's email to Mr. Spinks on February 1, 2019, indicated that he had appealed the outcome of *Ubah v AVH* to the Court of Queen's Bench, which resulted in court action number 1801-13295.

**v) Court of Queen's Bench, 1801-17978 ("QB Action #1)**

183. On December 17, 2018, Mr. Ubah filed a Statement of Claim against CNRL and Steve Laut in the Court of Queen's Bench. He later amended the claim to include Mr. Yukes as a defendant. Mr. Ubah listed this lawsuit in his email to Mr. Spinks on February 1, 2019. He indicated that this lawsuit was a refiling of *Ubah v CNRL*.

184. The Court in *Ubah v Canadian Natural Resources Limited*, 2019 ABQB 155 summarized Mr. Ubah's claim as follows:

[11] In brief, the Amended Statement of Claim alleges that Mr. Ubah was employed by CNRL. There was "an incident" that led to an investigation of Mr. Ubah by CNRL. The "incident" was what Mr. Ubah claims was a false allegation of him making threats. Mr. Ubah's employment was then terminated. Mr. Ubah claims that was discrimination. The employment termination was "... a way of eliminating me and obstructing justice ...". A second allegation against CNRL, Mr. Laut, and Mr. Yukes are that they had conspired to conceal the date on which Mr. Ubah's contract ended.

185. The Hearing Panel considered the summaries of Mr. Ubah's litigation history, which originated in the Camp Incident, as stated in *Ubah v Canadian Natural Resources Limited*, 2019 ABQB 347 and *Ubah v Canadian Natural Resources Limited*, 2019 ABQB 692.

186. In February 2019, counsel for CNRL, Steve Laut, and Mr. Yukes applied to the Court to have QB Action #1 declared an Apparently Vexatious Application or Proceeding ("AVAP") and reviewed under a court procedure provided in Civil Practice Note 7 ("CPN7"). They alleged that QB Action #1 had the same subject matter as several of Mr. Ubah's earlier lawsuits in Provincial Court. Through the two-stage CPN7 procedure, the Court can strike lawsuits that are either unmeritorious and have no prospect of success or are otherwise abusive and vexatious.

187. On March 4, 2019, Associative Chief Justice Rooke (“ACJ Rooke”) issued the first decision in the CPN7 procedure: *Ubah v Canadian Natural Resources Limited*, 2019 ABQB 155. ACJ Rooke concluded that Mr. Ubah’s QB Action #1 appeared to be a collateral attack and relitigation of his earlier Provincial Court lawsuits (specifically *Ubah v CNRL* and *Ubah v Yukes*) and an abuse of the Court’s processes. As a result of the decision, QB Action #1 was stayed.

188. On May 9, 2019, ACJ Rooke issued the second decision in the CPN7 procedure: *Ubah v Canadian Natural Resources Limited*, 2019 ABQB 347. ACJ Rooke noted that Mr. Ubah had not complied with the CPN7 procedure, and that it was the first instance, in his knowledge, where a litigant had not complied with CPN7 instructions. Ultimately, ACJ Rooke concluded that Mr. Ubah had failed to establish that QB Action #1 was not an abuse of process, a duplicate proceeding, and a collateral attack. Alternatively, QB Action #1 could be struck on the basis that Mr. Ubah’s conduct constituted an abuse of court processes. ACJ Rooke noted that Mr. Ubah attempted to bypass the CPN7 process and to “evade court management of his proceeding.”

189. There is a third step of the CPN7 procedure which involves Court consideration of whether to declare a person a vexatious litigant. Courts can impose indefinite court access restrictions on vexatious litigants. On September 6, 2019, ACJ Rooke issued his third decision: *Ubah v Canadian Natural Resources Limited*, 2019 ABQB 692 (the “Vexatious Litigant Decision”). ACJ Rooke concluded that Mr. Ubah is a vexatious litigant and imposed indefinite restrictions on Mr. Ubah’s access to Court.

190. ACJ Rooke made the following observations in the Vexatious Litigant Decision:

- “Mr. Ubah’s many actions and appeals which flow from the CNRL work camp incidents, and negative evaluations of Mr. Ubah as an employee, form a clear example of escalating and expanding litigation. Mr. Ubah simply will not stop re-engaging in this conflict, in person, via communications, professional complaints, information privacy demands, litigation in two courts, and appeals.” (Paragraph 158)
- “What I do find, as fact, is that Mr. Ubah has a pattern of filing lawsuits against parties over what he says are unsatisfactory commercial or professional interactions, and that Mr. Ubah then attempts to settle those disputes for payment. [...] I do not know if Mr. Ubah is suing as a litigant for profit, in an attempt to extort benefits, as revenge or harassment, but I am willing to conclude, on a balance of probabilities, that Mr. Ubah sues for improper purposes.” (Paragraph 161)
- “Mr. Ubah actively attempts to evade management of his litigation.” (Paragraph 164)
- “Finally, there is the question of Mr. Ubah’s conduct. His is a very aggressive litigant. His submissions include inappropriate and scandalous allegations.” (Paragraph 168)
- “When coupled with Mr. Ubah’s clearly established litigation *modus operandi*, his knowingly ignoring and breaking court rules and instructions, this attitude and belief

predicts unrelenting, continual attempts to continue the abusive litigation Mr. Ubah apparently believes is his absolute right, and, more fundamentally, that his actions are also right and just.” (Paragraph 170)

- “Mr. Ubah is completely ungovernable. He entirely ignores court procedures and instructions. His contempt is not just frequent, but methodical.” (Paragraph 174)
- “Mr. Ubah refuses to accept unfavourable results. Nothing is ever his fault.” (Paragraph 174)

191. ACJ Rooke also noted at paragraph 191 that the Court had “received evidence in this proceeding that indicated Mr. Ubah is potentially abusing the APEGA complaint and professional disciplinary process, and the statutory information privacy and access processes supervised in Alberta by the Office of the Information and Privacy Commissioner.” He directed that a copy of the Vexatious Litigant Decision be delivered to APEGA and the OIPC, and invited both to make applications to consider whether the court should extend the access restrictions to APEGA and the OIPC.

192. Subsequently, APEGA applied to ACJ Rooke for an order restricting Mr. Ubah from filing new complaints without leave of the Court (the “APEGA Application”). Rick Thiessen provided an affidavit in support of the APEGA Application, which was in evidence at Exhibit 1, Tab 43.

193. When Mr. Ubah cross-examined Mr. Thiessen at the hearing on February 21, 2023, Mr. Thiessen stated 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.”

194. Similarly, Mr. Spinks testified that APEGA receives a number of complaints and has limited resources to achieve its objective of protecting the public. He indicated that if APEGA is “continually barraged” with additional complaints, it is problematic for achieving APEGA’s mandate. Mr. Spinks referred to the hardship on APEGA members who were the subject of Mr. Ubah’s complaints, and APEGA’s concerns about the same.

195. On January 15, 2020, ACJ Rooke granted APEGA’s application: *Ubah v Canadian Natural Resources Limited*, 2020 ABQB 40. The decision noted:

[6] Mr. Ubah’s complaints to APEGA follow a pattern that is in keeping with his actions in the courts. When faced with an adverse outcome, he expands the scope of his complaints to encompass new parties further and further removed from the original incident.

196. ACJ Rooke was satisfied that APEGA did not have the ability “to perform the gatekeeping function necessary to prevent abusive proceedings [...]” ACJ Rooke stated “I am satisfied that his abusive activities have extended to APEGA as well. Accordingly, I consider it

appropriate for this Court to assist APEGA by granting an Order limiting Mr. Ubah's access to APEGA's disciplinary procedures."

197. ACJ Rooke ordered that Mr. Ubah be prohibited from commencing or attempting to commence complaints under the *EGP Act* without leave from the Chief Justice or the Associate Chief Justice of the Court of Queen's Bench.

## **2) Threatened to Commence Complaints or Proceedings (All Particulars)**

198. The Hearing Panel heard testimony from Mr. Yukes about emails and text messages he received from Mr. Ubah in February and May of 2018, which related to a reference that Mr. Yukes provided through [REDACTED] program in 2013. Mr. Yukes testified that he gave his honest opinion of working with Mr. Ubah, and that his reference was based on his own experience and on his discussions with others about dealing with Mr. Ubah.

199. Based on the documentation before the Hearing Panel and Mr. Ubah's own arguments, it was clear that Mr. Ubah disagreed with Mr. Yukes's reference. He threatened to file a request with the OIPC to receive the unredacted reference. He attempted to have the reference changed through the APEGA and court process.

200. Mr. Yukes testified that on September 28, 2017, he received an email from Mr. Ubah, (Exhibit 1, Tab 4). The email included the following statement:

On or about June 2013, you provided a reference of me to Enbridge Pipelines and information contact there in were untrue. For example, you said I had a superior attitude with my co-workers, among other things. You never met and see my co-worker. Unless, you can provide my co-worker (s) that told you this. You have 45 days according to office of the information and privacy commissioner. [sic]

201. Mr. Yukes testified that Mr. Ubah filed a lawsuit related to the reference. Judge Day dismissed the lawsuit and ordered Mr. Ubah to pay \$3,000 in costs. As mentioned previously, Judge Day's order filed February 9, 2018, was before the Hearing Panel at Exhibit 1, Tab 7.

202. On the day of the order, Mr. Yukes received an email from Mr. Ubah, which stated:

I will agree to terminate of the matter with office and Privacy commissioner office and future action, if you agree to go back to the original no cost settlement.<sup>19</sup> But, at the end of the day, I gave my best to [REDACTED] and did not deserve all that the reference put me through and still putting me through. [sic]

203. Mr. Yukes testified that he did not accept Mr. Ubah's offer as he had incurred significant costs to defend himself, and that his lawyer subsequently corresponded with Mr. Ubah about

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<sup>19</sup> During the hearing, Mr. Ubah suggested to Mr. Yukes that there had been a prior settlement offer described in a letter from Mr. Yukes's lawyer dated August 14, 2018. The letter was marked as Exhibit 5. Upon review of the letter, the Hearing Panel observed that the letter was dated after Judge Day's order and Mr. Ubah's email of the same day that referred to a "no cost settlement."

collection of the \$3,000 costs award. Mr. Yukes's lawyer sent Mr. Ubah a financial statement for him to complete.

204. Mr. Ubah emailed Mr. Yukes and Mr. Yukes's legal counsel on Friday, May 4, 2018, at 9:06 p.m. (Exhibit 1, Tab 10). He said he spoke to Mr. Yukes' counsel about "settling everything." The email included the following statements:

So, if after all these, you want to start this all over again. I will have to contact the office of privacy commissioner and Enbridge and let them and this whole things will have to start all over again, because of you. Then your credibility and that of AVH Engineering will be affected very badly.

You may not be an engineer but I see AVH Engineering and [REDACTED] is registered under APEGA and I would have to make complaint with Apega, Apega will have into this and [REDACTED] will have to testify [...]

So, I would ask you again to let this remained resolved. Please reply by Monday to let me know your answer. If you accept or not. I have sent a text to [REDACTED] as well. [sic]

205. Mr. Yukes testified that AVH is a separate company with no connection to [REDACTED], CNRL, IDS, or Gideon Energy Services (Mr. Ubah's company). He and [REDACTED] started AVH after [REDACTED] was purchased by another company.

206. Mr. Yukes testified that [REDACTED] received text messages from Mr. Ubah, which were entered within Exhibit 2. The text messages stated:

Sorry [REDACTED], but just got a letter from Jim after I decided to stop investigation by OIPC and Enbridge. If Jim wants to continue, Apega will have to come into this, and I will have to let OIPC and Enbridge know. He made not be an engineer but avh engineering is under apega and will be investigated. Please talk to him

I'm sorry [REDACTED] but whatever I'm doing Jim pushed me to it [sic]

207. Mr. Yukes testified that the next day [REDACTED] sent him copies of the texts. [REDACTED] told Mr. Yukes that Mr. Ubah was threatening him, and that the essence of the threat was that if [REDACTED] did not do something about Mr. Yukes, Mr. Ubah would make complaints to APEGA and the OIPC about [REDACTED] and AVH.

208. Mr. Yukes's legal counsel responded to Mr. Ubah on May 5, 2018 confirming that "no settlement was entered into" (Exhibit 1, Tab 10). Mr. Ubah's email reply included the following:

[...] If you or Jim do not get back to me by Monday. I will this letter to Enbridge, OIPC office indicating that nothing has been resolved by this action from Jim and the whole investigation will restart. I will also submit a complaint with APEGA about

AVH Engineering. I will also send request to AVH engineering where Jim works for correction of my personal information and they will have 45 days to respond to that or another inquiry will be started against AVH Engineering by OIPC.

Enbridge doesn't know about AVH engineering and they will know that where Jim is and any present or future work with Enbridge and its subsidiaries will be soiled.

So it's up to you and Jim because once this is out you can't take it back. Or you can pause your request until you are in the office to deal with this.

Nobody has lost more than I in this process and according to information released to me Jim and [REDACTED] are still owing me, all that will come to life. [sic]

209. Mr. Ubah emailed Mr. Yukes and his legal counsel again on May 6, 2018 (Exhibit 1, Tab 12). His email included the following statements:

But, by now you must have received my request for correction of my personal information. By end of day tomorrow, if I have not heard back from you. I will forward that letter to Canadian Natural Resources and another request for correction to [REDACTED].

Your Friday document requesting my financial information letter will also be forwarded to Enbridge and OIPC as my reason to reinstating the investigation because based on your letter, nothing have been resolved.

Compliant for unethical and unprofessional conduct will be filled with APEGA against AVH Engineering.

You can choose to end this now or not.. [sic]

210. During his testimony, Mr. Yukes explained Mr. Ubah's reference to [REDACTED]. [REDACTED] is one of Mr. Yukes's business contacts. They did not have any connection with [REDACTED], CNRL, AVH, or IDS. Mr. Yukes had a relationship with [REDACTED] since the 1990s, and they were friends. Mr. Yukes testified that his LinkedIn page noted that he had dealings with [REDACTED]. Mr. Yukes further testified that after Mr. Ubah's email, he had to phone [REDACTED] to let them know that Mr. Ubah was threatening to contact them and make accusations about Mr. Yukes to damage the business relationship.

211. On May 31, 2018, Mr. Ubah emailed Mr. Yukes, his legal counsel, and [REDACTED] proposing "a settlement of the matter at no cost" in respect of Judge Day's \$3,000 costs order (Exhibit 1, Tab 17). His email stated:

I will stop all proceeding in seeking to have Jim Yukes and [REDACTED] added in the civil claim. I will also considering discontinuing action with OIPC and APEGA.

212. Mr. Yukes testified at the hearing that Mr. Ubah used the court system, the OIPC, and APEGA to pressure him to do things Mr. Yukes did not want to do. Mr. Ubah represented himself in the courts and did not pay judgements. He tried to use the legal system to cost Mr. Yukes as much money as possible and to get revenge. Mr. Yukes noted that this matter has gone on for ten years, caused him personal problems, cost him enumerable work hours, and cost the court system and taxpayers.

213. Based on the above evidence, the Hearing Panel accepts that Mr. Ubah's emails and text messages contained threats to commence complaints or proceedings with the OIPC, APEGA, and the courts. Mr. Ubah's communications were clearly threats, as they were intended to pressure other individuals into doing what he wished. On that basis, the Hearing Panel accepts that Mr. Ubah's actions and communications noted above constituted a threat to commence complaints or proceedings with APEGA, the OIPC, and the Alberta courts.

### **3) Circumstances Amounting to an Abuse of Process, or for Improper Purposes, or Both**

214. The Hearing Panel considered whether the complaints or proceedings that Mr. Ubah commenced, attempted to commence, and threatened to commence were made in circumstances amounting to an abuse of process, or were made for improper purposes, or both.

215. In the Hearing Panel's view, one complaint or one lawsuit may not amount to an abuse of process. Mr. Ubah likely had genuine concerns that led to his first complaints about Mr. Bauman and CNRL. It is possible that he commenced *Ubah v CNRL* and *Ubah v Yukes* in a real attempt to seek redress for perceived wrongs. APEGA's complaint process, the OIPC's process, and the court process were established and continue to exist to settle disputes and address concerns.

216. However, when such processes have served their purpose, the outcome must be respected. The evidence showed that Mr. Ubah repeatedly made complaints and commenced proceedings about similar subject matter after his concerns were dismissed in another venue, including filing of many appeals. He made complaints and initiated lawsuits against a broadening pool of defendants when he did not get a favourable outcome.

217. Mr. Ubah's subsequent filings demonstrate a pattern by which he used administrative processes to impose burdens on people with whom he had a dispute. They also show that he repeatedly attempted to leverage those processes to have the subjects of the complaints do as he demanded. Mr. Ubah's attempted and failed negotiations with Mr. Yukes following Judge Day's costs order and the subsequent complaint against [REDACTED] illustrate Mr. Ubah's use of the regulatory system for retaliatory and malicious [REDACTED] the matter concerning Mr. Yukes, Mr. Ubah explicitly threatened to proceed with a complaint unless Mr. Yukes agreed to discontinue collecting the outstanding judgement.

218. Throughout Mr. Ubah's complaint and litigation history, APEGA and the courts have repeatedly found Mr. Ubah's claims to be inappropriate. He continued to relitigate the same

issues in different forums and involve numerous individuals and companies. The courts, and ACJ Rooke specifically, have explicitly ruled that Mr. Ubah's lawsuits were for improper purposes or constituted an abuse of process.

219. Overall, the Hearing Panel found that evidence regarding Mr. Ubah's complaints and lawsuits shows that he abused APEGA, OIPC, and court processes to obtain a result he wanted. It is clear that he persisted with complaints and proceedings made for improper purposes. In addition, his attempts to threaten and use APEGA's complaint process to obtain results after his legal actions had been dismissed clearly demonstrate an abuse of process.

220. For these reasons, the Hearing Panel finds that Mr. Ubah commenced, attempted to commence, or threatened to commence complaints or proceedings with APEGA, the OIPC, and the Alberta courts for improper purposes or in circumstances amounting to an abuse of process.

### **DECISION AS TO WHETHER THE CONDUCT IS UNPROFESSIONAL**

221. The Hearing Panel considered Legal Counsel for the IC's submissions that Mr. Ubah's conduct was unprofessional conduct under section 44 of the *EGP Act*. Legal Counsel for the IC's view was that Mr. Ubah's conduct undermined the credibility and integrity of the regulator's processes, which harms or tends to harm the standing of the profession generally in the eyes of the public.

222. Legal Counsel for the IC further submitted that conduct that abuses the processes of institutions like APEGA, the OIPC, and the courts or is undertaken for improper purposes is unprofessional because it is detrimental to the best interests of the public. The public interest favours the efficient and proper operation of institutions like APEGA, the OIPC, and the courts.

#### **1) Mr. Ubah's Conduct Involves Professional Activities**

223. The Hearing Panel considered Mr. Ubah's submission that his conduct was not unprofessional conduct as it did not involve the practice of engineering.

224. The Hearing Panel observed that Mr. Ubah's complaints and proceedings, and his threats to commence complaints or proceedings, were directed towards individuals and companies with whom he had professional relationships because of his employment as a professional engineer-in-training and were filed when he was a professional member. The Hearing Panel accepts that Mr. Ubah's conduct involves and stems from professional activities and relationships.

225. The Hearing Panel considered that the Code of Ethics in Rule of Conduct 3 refers to "professional activities." The Hearing Panel finds that "professional activities" are not limited to the technical practice of engineering. A professional engineer must act professionally in all business dealings and relationships involved in their work as a professional engineer.

226. Even if Mr. Ubah's conduct did not involve professional technical activities, the Hearing Panel accepts that Mr. Ubah's conduct would be unprofessional conduct. The definition of

unprofessional conduct in section 44(1) of the *EGP Act* is sufficiently broad to encompass conduct that is not directly involved in the technical practice of engineering. There is a sufficient nexus between his conduct and his then role as a professional to establish that he was presenting himself as a professional in his dealings with the various companies and individuals against whom he made complaints. For example, he signed his email correspondence with Mr. Yukes and Mr. Yukes's legal counsel with "P.Eng." when he sent emails threatening to make complaints about AVH to APEGA.

## **2) Mr. Ubah's Conduct Is Unprofessional Conduct under Section 44(1)**

227. The Hearing Panel went on to consider whether Mr. Ubah's conduct is detrimental to the best interests of the public and constitutes unprofessional conduct under section 44(1)(a) of the *EGP Act*. The Hearing Panel accepts that it is in the interest of the public for APEGA, OIPC, and court processes to operate effectively and efficiently. Mr. Ubah continually challenged the decisions produced by these processes and refused to accept any decision as final, even after the appeal processes were exhausted. His conduct undermined the effective operation of APEGA's complaint and investigation process and the court process and is detrimental to the public interest.

228. The Hearing Panel is also aware that APEGA, OIPC, and the courts have a limited ability to prohibit individuals from filing or commencing complaints at the outset. The CPN7 process and ACJ Rooke's Vexatious Litigant Decision address this very concern.

229. Before Mr. Ubah was declared a vexatious litigant, the defendants to his complaints and lawsuits needed to bring the matter before an appropriate decision-maker for the matter to be dismissed. Between 2014 and 2018, the defendants to Mr. Ubah's complaints and lawsuits cooperated with APEGA investigations, responded to the OIPC, and attended court to address Mr. Ubah's claims. The individuals were asked to defend themselves against allegations that had been raised and decided previously. Mr. Ubah's conduct created significant burdens for the defendant participants, who are members of the public. His conduct is detrimental to the best interests of the category of the public who were asked repeatedly to defend themselves.

230. Accordingly, the Hearing Panel finds that Mr. Ubah's conduct is unprofessional conduct as defined in section 44(1)(a) of the *EGP Act*.

231. The Hearing Panel finds that the Mr. Ubah's conduct also contravenes APEGA's Code of Ethics, and specifically Rule of Conduct 3 and Rule of Conduct 5:

*3 Professional engineers and geoscientists shall conduct themselves with integrity, honesty, fairness and objectivity in their professional activities.*

*5 Professional engineers and geoscientists shall uphold and enhance the honour, dignity and reputation of their professions and thus the ability of the professions to serve the public interest.*

232. Mr. Ubah's conduct fails to demonstrate honesty and integrity. A professional engineer acting with integrity and honesty would not use or threaten to use complaint processes employed by APEGA and OIPC to force another individual or company to not enforce legal judgements. They would not threaten coworkers and companies related to an individual to force that individual to do something against their wishes.

233. Processes like the APEGA professional discipline process ensure that the public is protected from unprofessional conduct. However, they necessarily impose burdens on an investigated person. For example, when a person is the subject of an APEGA investigation, they have an obligation to cooperate with the investigation. They may also experience emotional and psychological burdens, like stress, because their ability to practise can be at stake. Additionally, they may incur costs to retain legal counsel or to take time off work.

234. A professional engineer acting with integrity and honesty would not make repeated complaints or threaten to make complaints with the intention of controlling or retaliating against another person or to obtain a personal benefit. Integrity would require that the professional member bring genuinely improper conduct to APEGA's attention rather than using the information to attempt to repeatedly threaten or leverage a fellow professional and would respect the governance processes and their outcomes.

235. When Mr. Ubah threatened Mr. Yukes that he would make an APEGA complaint about ██████████ and AVH, he did not act with integrity. It was clear from his communications that his threat was to dissuade Mr. Yukes from enforcing the Court's costs order. Neither ██████████ nor AVH were involved in Mr. Yukes's reference, which was the subject of the underlying lawsuit. AVH was not involved with Mr. Ubah's employment with ██████████ or his work with CNRL. His complaint was retaliatory and intended to leverage Mr. Yukes for Mr. Ubah's own personal gain.

236. Mr. Ubah's conduct demonstrates consistent refusal to accept any final decision that was not in his favour. He pursued all avenues of appeal through APEGA when his complaints were terminated, even for complaints that he indicated could be withdrawn. When the courts dismissed his lawsuits, he appealed the decisions or refiled the same lawsuit in superior courts. When eventually his routes of appeal were exhausted, he attempted to relitigate the same issues with new complaints and new lawsuits. He regularly expanded the scope of his complaints and lawsuits to include new and peripheral defendants. For example, he made complaints about and commenced lawsuits against CNRL, then his supervisors and colleagues at the Horizon Project site, and then senior executives at CNRL, such as ██████████ and Mr. Laut, who were many degrees removed from his initial concerns. His ongoing refusal to accept any decision as final is reflected in ACJ Rooke's Vexatious Litigant Decision.

237. The Hearing Panel finds that Mr. Ubah's conduct contravenes Rule of Conduct 5 by failing "to uphold and enhance the honour, dignity and reputation of the profession and thus the ability of the profession to serve the public interest." Mr. Ubah's conduct, and in particular his abuse of APEGA's processes and the court system, does not enhance the reputation of APEGA and professional engineers and compromises APEGA's ability to serve the public interest.

238. Mr. Ubah's conduct also harms the public perception of a regulated professional member. A reasonable member of the public could doubt a professional engineer's commitments to act with integrity and honesty because of Mr. Ubah's conduct, which demonstrated a repeated failure to do so. Mr. Ubah's conduct would also cause a reasonable person to question APEGA's ability to govern Mr. Ubah in the public interest. When the public lacks faith in APEGA's ability to regulate, they may be deterred from bringing unprofessional conduct to APEGA's attention. This deterrence negatively affects APEGA's ability to fulfil its public protection mandate.

239. The Hearing Panel's reasons are illustrated by Mr. Yukes's testimony. Mr. Yukes testified that his view of the engineering profession is negatively impacted by his dealings with Mr. Ubah.

240. For these reasons, the Hearing Panel finds that Mr. Ubah's conduct breaches Rules of Conduct 3 and 5 of the Code of Ethics and constitutes unprofessional conduct as defined in section 44(1)(b) of the *EGP Act*. The Hearing Panel notes that the Charge also refers to Rule of Conduct 4. However, Legal Counsel for the IC's closing submissions did not request a finding to be made that Mr. Ubah's conduct breaches Rule of Conduct 4. Accordingly, the Hearing Panel does not make any finding as to whether Mr. Ubah did or did not breach Rule of Conduct 4.

241. The Hearing Panel adopts its reasons in paragraphs 237–239 in finding that Mr. Ubah's conduct is conduct that harms or tends to harm the standing of the profession generally. His conduct also constitutes unprofessional conduct under section 44(1)(c) of the *EGP Act*.

242. In summary, the Hearing Panel finds that Mr. Ubah's conduct constitutes unprofessional conduct as defined in section 44(1)(a), (b), and (c) of the *EGP Act*.

## **CONCLUSION**

243. For the reasons in this decision, the Hearing Panel has found that the Charge in the Notice of Hearing is proven and that Mr. Ubah's conduct constitutes unprofessional conduct.

244. The Hearing Panel is prepared to receive submissions from Legal Counsel for the IC and Mr. Ubah concerning what orders, if any, should be made by the Hearing Panel in respect of its finding of unprofessional conduct. The Hearing Panel directs the parties to provide written submissions on possible orders to [hearings@APEGA.ca](mailto:hearings@APEGA.ca) as follows:

- a. Legal Counsel for the IC will provide submissions on sanctions and costs orders, if any, by February 14, 2024;
- b. Mr. Ubah will provide submissions on sanctions and costs orders, if any, within three weeks of Legal Counsel for the IC's submissions; and
- c. Legal Counsel for the IC may provide a written reply to Mr. Ubah's submissions on sanctions and costs within one week of Mr. Ubah's submissions.

Dated this 19<sup>th</sup> day of January 2024

On behalf of the Hearing Panel of the APEGA Discipline Committee

**Christine Neff**

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Verify with verifio.com or Adobe Reader.



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

*D. F. Cox*

Signed by Douglas Cox (2024/01/19)  
Verify with verifio.com or Adobe Reader.



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

**Zsolt Margitai**

Signed with ConsignO Cloud (2024/01/19)  
Verify with verifio.com or Adobe Reader.



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