

THE ALBERTA TEACHERS' ASSOCIATION
REPORT OF THE HEARING COMMITTEE
OF THE PROFESSIONAL CONDUCT COMMITTEE

IN THE MATTER OF CHARGES OF UNPROFESSIONAL
CONDUCT AGAINST LEE SCOTT BREakey

The hearing committee of the Professional Conduct Committee of the Alberta Teachers' Association reports that charges of unprofessional conduct laid against Lee Scott Breakey of [Location Redacted] were duly investigated in accordance with the *Teaching Profession Act* (TPA). The hearing was held in Barnett House, 11010 142 Street NW, Edmonton, Alberta, Canada on Tuesday, June 18, 2019 and Wednesday, June 19, 2019, commencing at 0900 on both dates.

Professional Conduct Committee members present as the hearing committee were [REDACTED]

[REDACTED] The investigated member, Lee Breakey, was not present and was not represented by counsel.

COMPOSITION/JURISDICTION

There were no objections to the constitution or jurisdiction of the hearing committee.

PRELIMINARY MATTERS

Application to Close the Hearing

The committee heard an application from [Name Redacted] to close the hearing to the public during those parts of the hearing where students would be testifying. [Name Redacted] requested this out of concern for the privacy of those students whose statements would become part of the record. She also requested a publication ban on the students' names.

The committee made a decision pursuant to section 33(b) of the TPA to close the hearing to the public during those parts of the hearing where students would be testifying to protect their identity. The committee determined that protecting the anonymity of the witnesses outweighed any public interest in an open hearing. The committee agreed to protect the anonymity of the students in its written decision.

Absence of the Investigated Member

The investigated member, Breakey, was not present and was not represented by an agent or legal counsel. Further, there was no agreement between Breakey and [Name Redacted] with respect to documents or the facts relating to these discipline proceedings.

Section 40 of the TPA provides that

A hearing committee, on proof of service in accordance with this Act of the notice of hearing on the investigated person, may

- (a) proceed with the hearing in the absence of the investigated person, and*
- (b) act and decide on the matter being heard in the same way as if the investigated person were in attendance.*

Section 31 of the TPA requires that a notice of hearing be served on the investigated person at least 15 days before the hearing and it shall state

- (a) the date, time and location of the hearing and*
- (b) reasonable particulars of the matter to be heard.*

Section 64(a) of the TPA, in turn, requires that if a document is to be served on any person, the document or notice is sufficiently served

- (a) if it is served personally on that person or sent to that person by registered mail or courier at the address last shown for that person on the records of the Association...*

The hearing committee was provided with the notice of hearing and the Canada Post confirmation of delivery of said notice by registered mail to Breakey and entered the same as Exhibit 1 in these proceedings. The committee confirmed that the notice of hearing was sent to the last recorded address for Breakey in Association records and received by Breakey on May 17, 2019, which is well within the 15-day timeline required under section 31 of the TPA. The committee confirmed the notice of hearing met the other requirements of the TPA with respect to providing the date, time, location and particulars of the hearing.

The hearing committee was satisfied that there was sufficient proof of service of the notice of hearing in accordance with the TPA requirements and was satisfied that Breakey was aware of the investigation and hearing. Accordingly, the hearing committee exercised its authority under section 40 of the TPA and determined that it would proceed with the hearing in the absence of Breakey.

CHARGES AND PLEA

The following charges were read aloud by the secretary to the hearing committee:

1. Lee Scott Breakey is charged with unprofessional conduct pursuant to the *Teaching Profession Act* in that he, while a member of the Alberta Teachers' Association, during the

2017/18 school year, made inappropriate comments, of a nonsexual nature, to pupils, thereby failing to treat a pupil or pupils with dignity and respect and be considerate of their circumstances, contravening article 4 of the Code of Professional Conduct.

2. Lee Scott Breakey is charged with unprofessional conduct pursuant to the *Teaching Profession Act* in that he, while a member of the Alberta Teachers' Association, during the 2017/18 school year, made inappropriate comments, of a nonsexual nature, to pupils, thereby failing to maintain the honour and dignity of the profession, contravening article 18 of the Code of Professional Conduct.
3. Lee Scott Breakey is charged with unprofessional conduct pursuant to the *Teaching Profession Act* in that he, while a member of the Alberta Teachers' Association, during the 2017/18 school year, forcibly restrained a student against the wall, which was not appropriate to the situation, thereby failing to treat a pupil with dignity and respect and be considerate of their circumstances, contravening article 4 of the Code of Professional Conduct.
4. Lee Scott Breakey is charged with unprofessional conduct pursuant to the *Teaching Profession Act* in that he, while a member of the Alberta Teachers' Association, during the 2017/18 school year, forcibly restrained a student against the wall, which was not appropriate to the situation, thereby failing to maintain the honour and dignity of the profession, contravening article 18 of the Code of Professional Conduct.

In Breakey's absence, the hearing committee entered a plea of not guilty for each of the charges.

WITNESSES

The presenting officer called the following witnesses:

1. [Name Redacted] Principal, [School Redacted]
2. Student A (accompanied by a parent)
3. Student B (accompanied by parents)
4. Student C (accompanied by a parent)
5. [Name Redacted] Superintendent, [School Division Redacted]
6. [Name Redacted], Principal, [School Redacted]
7. Student D (accompanied by a parent)
8. Student E (accompanied by a parent)

EXHIBITS FILED

Exhibit 1—Notice of hearing and Canada Post confirmation of delivery on May 17, 2019 Exhibit

2—Proof of Breakey's membership in the Alberta Teachers' Association

Exhibit 3—Photocopy of [Name Redacted] notebook dated January 19-25, 2018, including notes from acting principal, [Name Redacted]

Exhibit 4—E-mail from [Name Redacted] to Assistant Superintendent [Name Redacted], dated January 19, 2018

Exhibit 5—Letter of concern from [Name Redacted] to Breakey, dated February 6, 2018

Exhibit 6—Notice of suspension from [Name Redacted] to Breakey, dated June 13, 2018

Exhibit 7—Photocopy of [Name Redacted] notebook, dated February 14-15, 2018

Exhibit 8—Factors to consider when determining penalty

Exhibit 9—List of precedent cases on Charges 1 and 2

Exhibit 10—List of precedent cases on Charges 3 and 4

EVIDENCE ADDUCED AND EXHIBITS FILED INDICATED THAT:

1. Service of notice of this hearing on Breakey was affected in compliance with the TPA.
2. Breakey was a member of the Alberta Teachers' Association during the following periods (Exhibit 2):
 - a) September 1, 1997 to April 30, 1999;
 - b) March 1, 2002 to June 30, 2002;
 - c) September 1, 2002 to April 30, 2003;
 - d) September 1, 2003 to August 31, 2004;
 - e) October 1, 2004 to April 1, 2005;
 - f) September 1, 2006 to January 31, 2007;
 - g) October 1, 2008;
 - h) December 1, 2008 to June 30, 2009;
 - i) September 1, 2009 to December 31, 2009;
 - j) February 1, 2010 to April 30, 2010 and
 - k) September 1, 2010 to August 31, 2018.
3. Breakey was hired by [School Division Redacted] in September 2015. Breakey was employed as a Career and Technology Studies (CTS) teacher assigned to visit various schools in the division with a mobile semi-trailer containing a CTS construction shop at the time of the incidents giving rise to the charges, and therefore, was an active member of the Association. (Exhibit 2)
4. The mobile trailer CTS program moves around to different schools within the school division throughout the year. There are 10 to 12 instructional days offered per site. In January 2018, Breakey taught the mobile trailer CTS program at [School Redacted] and in February 2018, Breakey taught the mobile trailer CTS program at [School Redacted].
5. A complaint was brought forward by a parent on January 19, 2018 about comments that Breakey was reported to have made to students in the CTS trailer on January 18, 2018. It was alleged that Breakey had said that one student was in the back "smoking a dube" and that Student A, a [gender redacted] student, was "not just a pretty face". It was these comments that necessitated further investigation by the principal of [School Redacted],

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[Name Redacted] had a meeting with Student A and confirmed the comments were made by Breakey. (Exhibits 3 and 4)

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

CREDIBILITY OF WITNESSES

1. [Name Redacted] was a credible witness in that [Gender Redacted] had a good ability to perceive the events and was forthright when [Gender Redacted] couldn't remember specific points. [Gender Redacted] made notes that were timely to the events and could refer to the notes. [Gender Redacted] was professional in [Gender Redacted] demeanour and in [Gender Redacted] presentation. [Gender Redacted] testimony was internally and externally consistent.

2. Student A appeared calm but slightly nervous. [Gender Redacted] had a good ability to perceive as [Gender Redacted] was directly involved in the incident with Breakey. [Gender Redacted] was motivated to be at the hearing

because of how uncomfortable Breakey's behaviour made [Gender Redacted] feel and [Gender Redacted] wanted the truth to be heard. [Gender Redacted] evidence was very plausible. The committee found Student A to be credible.

3. Student B was a bit nervous but calm and polite. [Gender Redacted] was internally and externally consistent in [Gender Redacted] story and had clear recall of the events. The committee found Student B to be credible.
4. Student C appeared shy and nervous. [Gender Redacted] was soft spoken. [Gender Redacted] could not recall the exact comment made to Student 1 but acknowledged this and [Gender Redacted] knew it was related to Student 1's identity as a [Religion Redacted]. [Gender Redacted] motivation was to tell the truth. [Gender Redacted] testimony was consistent with that of prior witnesses and evidence. The committee found Student C to be credible.
5. [Name Redacted] was professional and spoke intelligently about the situation. [Gender Redacted] was forthright and wanted to protect students and the reputation of the school division. [Gender Redacted] testimony was probable and plausible. The committee found [Name Redacted] to be credible.
6. [Name Redacted] was confident, professional and personable. [Gender Redacted] recalled information with the help of [Gender Redacted] notes and [Gender Redacted] readily admitted when [Gender Redacted] didn't remember particular details. [Gender Redacted] testimony was externally consistent with that of other witnesses and evidence. The committee found [Name Redacted] to be credible.
7. Student D was fairly nervous and was a quiet speaker. [Gender Redacted] understood the serious nature of the incident with Breakey. [Gender Redacted] had a good ability to recall the incident and [Gender Redacted] story was externally consistent with the testimony of other witnesses and evidence. The committee found Student D to be credible.
8. Student E was calm and articulate and explained, in significant detail, the incident between Breakey and Student D. [Gender Redacted] could distinguish between what [Gender Redacted] had witnessed and what was hearsay. [Gender Redacted] testimony was externally consistent. The committee found Student E to be credible.

DECISION OF THE HEARING COMMITTEE

Charge 1—Guilty

Charge 2—Guilty

Charge 3—Guilty

Charge 4—Guilty

REASONS FOR DECISION

Charge 1

1. Breakey made inappropriate comments of a nonsexual nature to students during the 2017/18 school year including, "[gender redacted] was in the back smoking a dube" and "you're not just a pretty face". He also used phrases in class such as, "hit it like it's your wife" and "dumb blonde" and "all looks and no smarts". Some of these derogatory comments were made to the only [Gender Redacted] student in the class. Notwithstanding his meeting with [Name Redacted] where concerns about his comments were discussed, Breakey did not stop his inappropriate conduct and made further comments of a derogatory nature concerning a student's religion. Breakey demonstrated a pattern of inappropriate behaviour.
2. A school must be a safe learning environment and teachers must be considerate in such a safe learning environment. Breakey's derogatory comments made students uncomfortable and created a stressful learning environment. Breakey's misconduct is especially serious as he was working with young teens.
3. By making these inappropriate comments, Breakey failed to treat students with dignity and respect and to be considerate of their circumstances, thus contravening article 4 of the Code of Professional Conduct.

Charge 2

1. The comments made by Breakey during the 2017/18 school year were neither honourable nor dignified. They were unprofessional. Students, parents and society have an expectation that teachers will behave in a dignified and professional manner when interacting with students.
2. As discussed under Charge 1, Breakey's derogatory comments were inappropriate, made students uncomfortable and created a stressful learning environment. His comments were damaging to the public's perception of the teaching profession.
3. By making the inappropriate comments, Breakey failed to maintain the honour and dignity of the profession thereby contravening article 18 of the Code of Professional Conduct.

Charge 3

1. During the 2017/18 school year, Breakey grabbed a student and then forcibly restrained the student against the wall by holding [Gender Redacted] forearm against the student's chest, which was not appropriate to the situation. Breakey was loud, upset, and angry during the incident. The student was not behaving in a way that was dangerous to [Gender Redacted] or others and the force used by Breakey was not necessary. This conduct was witnessed by other students and teachers.

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2. Breakey acknowledged the events in his conversation with [Name Redacted] but failed to see any problems with his actions. Breakey demonstrated a lack of insight into his behavior.
3. A school must be a safe learning environment and teachers must ensure that they take care of students in the learning environment. Breakey's actions failed to provide students with a safe learning environment.
4. By using unnecessary force against a student, Breakey failed to treat the student with dignity and respect, thereby contravening article 4 of the Code of Professional Conduct.

Charge 4

1. Breakey's actions in restraining a student against the wall during the 2017/18 school year were neither honourable nor dignified. They were unprofessional. Students, parents and society have an expectation that teachers will behave in a dignified and professional manner when interacting with students.
2. Students have an expectation that teachers will not use inappropriate or unnecessary physical force. Society expects that teachers will provide a safe and caring learning environment for their children.
3. By using unnecessary physical force, Breakey breached the trust afforded to him as a teacher and failed to maintain the honour and dignity of the profession, thereby contravening article 18 of the Code of Professional Conduct.

SUBMISSION ON PENALTY

The presenting officer recommended the following penalties to address all four charges:

1. A single letter of severe reprimand
2. A declaration of ineligibility for membership in the Alberta Teachers' Association for a period of three months
3. A recommendation to the minister of education to suspend Breakey's teaching certificate for a period of three months

The presenting officer cited a number of precedent cases dealing with Charges 1 and 2 (Exhibit 9), and also Charges 3 and 4 separately. (Exhibit 10)

PENALTY

The hearing committee ordered the following penalties to address all four charges:

1. A single letter of severe reprimand
2. A declaration of ineligibility for membership in the Alberta Teachers' Association for a period of three months
3. A recommendation to the minister of education to suspend Breakey's teaching certificate for a period of three months

REASONS FOR PENALTY

1. In considering an appropriate penalty for the unprofessional conduct, the hearing committee considered a number of factors.
2. Breakey's unprofessional conduct was serious. Breakey's derogatory comments and use of physical force were inappropriate, disrespectful and constituted a failure to treat students with dignity and respect. Breakey also failed to maintain the honour and dignity of the profession with his actions.
3. Breakey's comments to students made them feel uncomfortable, anxious, worried, and unsafe in his classroom. Some students testified that they still feel the impact of Breakey's comments. Unfortunate experiences at school can have a negative impact on how young people feel about school and themselves and can seriously undermine their self-esteem.
4. The only [Gender Redacted] student in Breakey's [Grade Redacted] class was made to feel exceptionally uncomfortable in his classroom due to his misogynistic comments directed towards [Gender Redacted] in general. [Gender Redacted] did not want to be by [Gender Redacted] in the class with Breakey.
5. Making reference to a student's religion in front of other students can have a negative impact and fails to treat students with dignity and respect; nor is it considerate of their circumstances. Breakey's derogatory comments toward a [Religion Redacted] student about his religion had the potential to diminish the trust the [Religion Redacted] community has in the public school system.
6. In a number of instances, Breakey was reminded of his professional obligations and expectations by his administrators. Even after receiving verbal and written direction from the administrators, more than once, Breakey continued to conduct himself in an unprofessional manner. His repeat behaviour demonstrated a lack of understanding of the impact of his actions.
7. Breakey's tenure as a teacher with approximately 21 years of experience was such that he should have known his professional responsibilities under the Code of Professional Conduct.

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8. The penalty reflects the precedent cases referenced by the presenting officer.
9. The committee was unable to consider any potential mitigating factors due to Breakey's lack of participation in the process.
10. The public and the profession expect that teachers will behave in a manner that upholds the honour and dignity of the profession. The penalty reflects the profession's condemnation of Breakey's unprofessional conduct and the importance of protecting students' safety and dignity.
11. The committee also intends that the penalty be sufficient to deter similar behaviour, from Breakey as well as other members of the profession, in the future.

Dated at the City of Edmonton in the Province of Alberta, Friday, July 12, 2019.

HEARING COMMITTEE OF THE PROFESSIONAL CONDUCT COMMITTEE OF
THE ALBERTA TEACHERS' ASSOCIATION

