



Canadian Association of University Teachers  
Association canadienne des professeures et professeurs d'université

## Memorandum 20:33

**Date:** June 23, 2020

**To:** Presidents and Administrative Officers  
Local, Federated and Provincial Associations

**From:** David Robinson, Executive Director

**Re:** **Dealing with Claims of Financial Distress and Exigency: Key Principles for Academic Staff Associations<sup>1</sup>**

In the wake of the COVID-19 pandemic, some universities and colleges have approached academic staff associations and other campus unions to discuss possible cost-cutting measures. Associations will need to analyze carefully the financial assumptions being made by the administration, while recognizing the situation remains very fluid. Where bona fide financial difficulties can be demonstrated, associations will need to consider measures that have the most limited impact on members' rights and security of employment. Specific contract language on financial exigency and redundancy should be followed. In all cases, lay-offs or redundancies of both regular and contract academic staff should be avoided.

The following is a suggested set of principles to help guide associations in responding to administration demands for cost reductions, whether the institution has made a formal declaration of financial exigency or is considering significant cutbacks. These principles apply even if your specific collective agreement has limited or no specific financial exigency provisions. As with all CAUT advice on matters related to the fallout of COVID-19, this advisory will be updated as necessary.

### 1. Uphold collegial governance

Financial decisions will necessarily require a collegial response under the governance framework of your institution. Proposals around course offerings, program consolidation, departmental changes, class size, or changes to the academic calendar must follow the necessary collegial governance decision-making process. Your institution's academic governance body must be involved.

---

1. Some of the concepts and ideas in this memorandum flow from the University and College Union's document, "Redundancy Avoidance Guidelines" ([https://www.ucu.org.uk/media/2820/FE-England-redundancy-avoidance-guidelines-Jul-15/pdf/feeng\\_redundancyavoidanceguidelines\\_sep15.pdf](https://www.ucu.org.uk/media/2820/FE-England-redundancy-avoidance-guidelines-Jul-15/pdf/feeng_redundancyavoidanceguidelines_sep15.pdf)). We acknowledge with thanks.

## 2. Apply the Collective Agreement

Your collective agreement is the main tool you have when dealing with demands concerning cost-cutting or claims of financial exigency. This includes not just a strict application of financial exigency and redundancy articles that may exist, but also activating contract provisions that require consultation, often through joint committees, on all matters of interest. Consultation provisions can also be used to engage in meaningful dialogue before any cost-cutting measures are enacted, and possibly help avoid any declaration of financial exigency altogether. If your agreement does not have financial exigency language, or it is of a limited nature, then consultation clauses under the collective agreement can become the main method for enforcing dialogue.

## 3. Engage in meaningful dialogue

The Administration should engage in meaningful consultation. The Association should challenge attempts of surface or superficial consultations in which the Administration may simply go through the motions and come to the consultation process with key decisions already made, or fail to give proper consideration to the Association's input. Consultation is reasonable only if it is meaningful. This requires the Administration to meet a rigorous standard of transparency and disclosure.

## 4. Formalize the steps

Develop a written formal procedure for information disclosure, the consultation process, and the timeline to be followed. Keep detailed notes of all meetings and steps in the process. The Association should be represented at every meeting between the Administration and members.

## 5. Demand information and evidence

Financial exigency cannot be established by budget forecasts alone. Many agreements set a high bar for what constitutes exigency over a designated time period, while others specify a threshold of projected financial losses that trigger discussions between the Association and the Administration. An Administration's assertions that they foresee an upcoming shortfall will need to be supported by detailed revenue and expenditure data. Associations should be provided with the assumptions underlying the forecast and given all necessary financial documents, including information about government funding, student enrolment, other revenue sources, and detailed expenditure projections.

## 6. Defend tenure and job security

Lay-offs of tenured and tenure-track staff, and lay-offs of contract academic staff positions during their term should be avoided at all costs. Associations should be prepared to defend the principle of tenure, as it provides the procedural protection for academic freedom that is fundamental to the mission of post-secondary education. In cases of bona fide financial distress, reductions in the total number of tenured positions as a result of hiring freezes and retirements should only be temporary. These positions should be restored when the financial outlook improves.

## 7. Protect Contract Academic Staff

Contract Academic Staff (CAS) often bear the brunt of financial cost-cutting and restructuring. CAS may have collective agreement rights to continuing employment status between contracts. This provides an enforceable expectation of contract renewal based on renewal history, seniority rights or the right of first refusal of contracts. A simple refusal to renew a contract may be challenged and should be subject to proof of financial exigency. Associations should try to ensure that any

eliminated CAS positions will be returned. Protocols should be in place to ensure that CAS are able to apply to teach the same courses once they become available again. Associations should seek compensation to lessen the financial impact on CAS.

## **8. Avoid program closures**

Wherever possible, work with other unions at your institution, students and community partners to save small or vulnerable programs. Look for alternatives and mobilize.

## **9. Enforce rights of recall**

Assume that in the next two years, funding and student enrolment will return to normal levels. Thus, if any academic staff must lose work temporarily, then strive to include rights of recall for those individuals.

## **10. Preserve pension and health benefits**

Preservation of pension contributions and the extension of health benefits is very important, since these benefits are not compensated through Employment Insurance (EI) benefits, the Canada Emergency Response Benefit (CERB), or other government assistance.

## **11. Ensure no direct bargaining between employer and member**

It is a violation of the Association's exclusive bargaining rights for an employer to negotiate or offer packages directly to individual members without involving the Association. Ask members to contact the Association if the employer makes offers directly to them without notice.

## **12. Be aware and wary of early retirement offers**

Associations should ask members to notify them of any early retirement offers they receive from the Administration. Early retirement offers must conform to human rights legislation preventing age discrimination, and should not be available to members generally and not target specific groups. For more information, please contact CAUT.

## **13. Apply an equity lens**

Associations should ensure that any cost-cutting initiatives contemplated do not exacerbate historical disadvantage and inequities. Indigenous peoples and members of equity-seeking groups are over-represented amongst the ranks of Contract Academic Staff. Associations should ensure that these equity concerns form a part of the consultations around the institution's finances. Additionally, Associations should be wary of agreeing to terms that disproportionately or exclusively affect a definable group directly or indirectly – e.g. retired members' benefits, or research funding changes that may disproportionately impact Indigenous members.