

Beyond Tenure: Faculty Employment Protection at Canadian Universities

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Table of Contents

Abbreviations	2
1. Introduction	3
2. Observations	5
2.1 Institution-wide Financial Exigency Clauses	7
2.2 Unit Level Redundancy and Redeployment Clauses	9
2.2.1 Redundancy Clauses	9
2.2.2 Redeployment Clauses	10
2.3 Layoff and No Layoff Clauses	13
2.4 Minimum Complement Clauses	13
2.5 The Layoff Process, including Notice and Severance	16
3. Analysis	21
3.1 Job Security in an Institution-Wide Cutback Situation	23
3.2 Job Security at the Unit Level	25
3.3 Impacts of Minimum Complement Clauses	28
3.4 Comparison to Other Public Sector Agreements	30
4. Conclusion	34
Appendix 1 – Reviewed Institutions	36
Appendix 2 – Policies at Universities Without Faculty Agreements	37
Appendix 3 – Adherence to CAUT Exigency/Layoff Criteria by Institution	38
Appendix 4 – Adherence to Job Protection Criteria by Institution	39
Appendix 5 – Comparison Agreements	40

Abbreviations

AB	Alberta
AMC	Absolute Minimum Complement
BC	British Columbia
CAPE	Canadian Association of Professional Employees
CAUT	Canadian Association of University Teachers
CBU	Cape Breton University
MB	Manitoba
NB	New Brunswick
NL	Newfoundland
NS	Nova Scotia
OCADU	Ontario College of Art and Design University
ON	Ontario
PE	Prince Edward Island
PIPS	Professional Institute of the Public Service of Canada
PMC	Proportional Minimum Complement
QC	Quebec
StFX	Saint Francis Xavier University
SK	Saskatchewan
SMU	Saint Mary's University
TRU	Thompson Rivers University
UOIT	University of Ontario Institute of Technology
UQAM	Université du Québec à Montréal
VIU	Vancouver Island University
WLU	Wilfrid Laurier University

1. Introduction

When employees organize through collective bargaining, job security is usually one of the top priorities. The usual method through which this is achieved is by negotiating rules regarding the termination of employment. The point of these kinds of rules is to prevent, or raise, the cost of layoffs or re-organization; the higher the costs imposed, the more effective these protections are likely to be for employees. Academics are no different. Although we tend to think of academics' job security in terms of rules involving academic freedom, tenure, and "jobs for life", these concepts do not, on their own, protect academics from job loss in cases of financial problems or program termination. And so, quite separate from the job protection they receive through tenure, Canadian academics have, over time, negotiated a separate set of rules to raise the cost of employment termination.

During good times, these rules tend not to matter very much; as long as employers' revenues are buoyant, there is little reason to reduce headcount, and hence little reason to worry about the costs of doing so. It is only when times are difficult and expenditures need to be reduced that the true cost of these provisions become clear.

Canada's university sector is in the midst of precisely such a difficult time. Provincial government budgets across the country are constrained, both by the need to reduce deficits and the increased health costs that accompany an aging population. Income from students is constrained by the shrinking youth population and the growing reluctance of governments to sanction tuition increases. To some extent, institutions have been able to offset these problems by enrolling more international students, but this is merely a stopgap solution. In the coming years, institutions may face serious financial crises, and having the flexibility to reallocate resources and seize upon emerging opportunities will only grow in importance. It is precisely this kind of flexibility that job protection, codified in collective agreements, seeks to minimize or even eliminate.

The purpose of this paper is to examine the nature of academic job protection in Canada. This is not a paper about tenure or academic freedom. It is about the kind of job protection academics have over and above that required for tenure and academic freedom. It is a paper about the degree of flexibility institutions have to re-allocate or eliminate academic positions in the face of an increasingly challenging financial situation. This is not idle curiosity: in the spring of 2015, the Nova Scotia Government introduced Bill 100 into its legislature, an act that effectively allowed universities facing extreme financial circumstances to override their collective agreements, enabling them to restructure. This reflects the Nova Scotia Government's fears that one or more institutions may need drastic financial restructuring, but also the belief that collective agreements and their restrictive rules around staffing represent a major barrier to institutions' financial viability.

In order to examine the nature of economic job protection that academics have secured over time, we reviewed collective bargaining agreements, framework agreements or university policies on tenure, and terminations at fifty-five Canadian universities.¹ Specifically, we looked at rules relating to layoffs, exigency, termination (without cause), redundancy, redeployment, transfer, and minimum faculty complement. These were compared with equivalent clauses in collective agreements for eleven Kindergarten-12 (K-12) teachers unions (11), and five Federal Government scientific/research employees bargaining units. Our findings indicate that employment protections for university faculty members severely curtail institutional flexibility in the face of financial crises, or changes in demand for specific programs. Universities have bargained away many of the rights generally ascribed to employers, in many cases almost certainly beyond what would be necessary to protect academic freedom.

¹ Throughout the report we will refer to all relevant agreements between faculty associations and university administrations under the blanket term of faculty agreements, whether or not these were created through a formal collective bargaining process.

2. Observations

Based on our analysis, faculty agreements include six different types of policies, which provide academics with economic job protection. They are: i) exigency clauses, ii) redundancy clauses, iii) redeployment clauses, iv) layoff clauses, v) “no layoff” clauses and vi) minimum complement clauses.

- i) *Financial Exigency* clauses are the most common articles addressing layoffs. In effect, these clauses require an institution to declare a financial emergency before any terminations for financial reasons can be effectuated. The financial emergency must affect the entire institution, and not simply individual units, programs, or faculties.
- ii) *Redundancy* clauses are the second most common articles addressing layoffs. These clauses address layoffs when a unit is being downsized or eliminated.
- iii) *Redeployment* clauses are almost identical to Redundancy clauses in that both address the downsizing or elimination of an academic unit. However, Redeployment clauses do not allow for the layoff of academic faculty, except in some cases where a faculty member rejects redeployment to a different position.
- iv) *Layoff* clauses permit layoffs either in response to cross-institutional financial challenges or changes at the level of specific units. They are basically a hybrid of Exigency and Redundancy clauses, with some different characteristics observed with respect to each.
- v) *“No Layoff”* clauses are simply interdictions against layoffs for the life of the contract, except for cause (i.e. discipline),
- vi) *Minimum Complement* clauses require the university to maintain a minimum number of permanent faculty members.

In distinguishing between exigency and redundancy/redeployment, we categorize each as being either “institution” or “unit” level processes. Many faculty agreements refer instead either to “financial” or “academic” reasons for workforce adjustments, a classification that we find unworkable. In practice, an institution’s financial and academic wellbeing cannot be easily separated. The rule of thumb in agreements is that “financial reasons” cause cuts across the institution in order to protect financial viability, and “academic reasons” cause a specific department to be targeted for cuts, generally due to chronic lack of demand. Financial and academic considerations are necessarily relevant to both types of workforce adjustments. We will return to this discussion in Section 2.2.1.

Of course, not all universities have faculty agreements. Four universities in our sample (7%) are governed by institutional policies alone, as discussed in Box 1.

Box 1: Economic Job Protections without Faculty Agreements

Among our sample universities, McGill, McMaster, Simon Fraser, and Toronto do not have faculty agreements. Instead, these universities simply follow the governance and human resources policies outlined in Appendix 2.

Among these, Simon Fraser is the only institution to explicitly reference circumstances of both exigency and redundancy, and also to allow layoffs of tenured faculty as a result of either. There is no particular requirement to establish the need for layoffs in either case, or to consult with the faculty association.

McGill, McMaster, and Toronto indicate that tenured faculty may not be laid off, except with cause. However, for “reasons of redundancy” layoffs of lower-ranked faculty are permitted at McGill (tenure-track faculty), McMaster (teaching-track faculty), and Toronto (Senior Lecturers and limited-term faculty who are at the end of their contracts.)

In theory, a university may have greater ability to reduce economic job security protection when these are contained in university policy, given that the faculty association would not have to agree to the policy change. Of course, in practice, this will depend on the governance structure of the university in question.

2.1 Institution-wide Financial Exigency Clauses

Of the fifty-five institutions in our sample, forty (73%) have what amount to exigency clauses. Not all of these clauses use the term “exigency”, instead, they may use terms such as financial emergency, financial stringency, financial necessity, retrenchment, *urgence financière*, and discontinuance for financial reasons.

Most exigency clauses (92% of them) indicate the circumstances in which an institution must find itself in order to consider declaring financial exigency. Generally, these correspond to a financial ‘crisis’ that is projected to continue unless financial pressures can be relieved through layoffs. The financial crisis must be affecting the entire institution (i.e. exigency cannot be used to trim specific academic units on grounds of under-enrollment). Two-thirds (67%) of exigency clauses require the financial crisis to be so grave that it threatens the university’s long-term viability and/or academic mission.

Exigency clauses generally establish faculty layoffs as a very last resort. Almost half (46%) of all exigency clauses reference the primacy of the university’s academic mission to support this notion, thereby recognizing that permanent faculty members are the most essential component of the university. The vast majority (87%) list alternative steps to increase revenues (e.g. raise tuition, seek additional provincial funding, borrow), or reduce expenses (lay off other employees, sell assets) *prior* to laying-off faculty, and in most cases (62%) the alternatives must be exhausted to the greatest reasonable extent before proceeding to layoffs. Basically, other parties within the university must take the brunt of financial restructuring before faculty are affected. Table 1 indicates possible required actions for different institutions.

Table 1: Explicit Exigency Clause Considerations Prior to Faculty Layoffs

Action	Institutions
Cuts in all other sectors	Brandon, Calgary, Carleton, Concordia, Dalhousie, Guelph, Laurentian, Mount Saint Vincent, New Brunswick, Prince Edward Island, Queen’s, Ryerson, Thomson Rivers, Victoria, Waterloo, Winnipeg, York
Layoff other employees	Bishop’s, Dalhousie, Mount Saint Vincent, StFX
Seek additional provincial funding	Bishop’s, Brock, Concordia, Guelph, Laurentian, Mount Saint Vincent, Nipissing, Northern BC, Prince Edward Island, Queen’s, Ryerson, StFX, Victoria, Waterloo, Western Ontario, Wilfrid Laurier, Windsor, Winnipeg, York
Loans or deficit financing	Bishop’s, Brock, Concordia, Mount Saint Vincent, Queen’s, Victoria, Wilfrid Laurier, Windsor, York
Sell property	Brock, Concordia, Dalhousie, Mount Saint Vincent, Queen’s, StFX,

or assets	Wilfrid Laurier
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Increase tuition	StFX
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Much of the clauses' text is devoted to the specific process by which an institution may declare exigency. Except in the cases of Athabasca, OCAD U, and Saskatchewan, the university must convene a financial commission to declare exigency. These commissions are responsible for reviewing the university's financial circumstances in order to determine whether financial circumstances are sufficiently severe as to require faculty layoffs and, if so, the degree to which financial savings are required through faculty layoffs. Some commissions are also empowered to declare whether sufficient effort has been devoted to other possible revenue-raising/cost-cutting possibilities prior to declaring exigency. Commissions are nearly always jointly appointed by the faculty association, and the university (represented variously by President, Board of Governors, or Senate). At roughly one-in-five institutions in our sample, committee composition guidelines suggest faculty members or their representatives would likely comprise a majority of committee members to determine whether a state of exigency exists.

The commission's decision as to whether an exigency exists is binding at eighteen universities, and in most of these cases the commission's opinion as to the maximum savings required from faculty payroll delimits the maximum payroll cut. However, at most institutions the commission's role is consultative rather than decisive, as Boards of Governors retain the authority to declare exigency and determine payroll reduction amounts, after considering advice from a Commission and/or the President. Regardless, the requirement for a commission to render its views can significantly delay the restructuring process. It generally takes as long as three months to confirm a state of exigency based on indicated time limits (the longest timeline is 195 days at Brock University, i.e. 6.5 months).² The consultation process may also create a political focus around which opposition to cuts can rally.

If a state of Exigency is confirmed, one-third of clauses include a period for renegotiation of the faculty agreement in order to avert layoffs. A minority (26%) of exigency clauses also require that a joint committee of the faculty association and the university be responsible for selecting members for layoff. Fully 20% of clauses require that layoffs be distributed evenly across departments.

The University of Saskatchewan is unique in having two separate exigency clauses whose application depends on the length of time the financial constraint is expected to last. The longer-term clause, General Redundancy, is consistent with the other clauses discussed here. The shorter-term clause, Temporary Layoff, is less complex

² Where possible, this figure excludes the time required to determine which employees are to be laid off.

to implement, but implies that laid-off professors should expect to return to their positions after a brief interruption, although without any concrete assurances.

Where institutions have exigency clauses in their faculty agreements, they may waive the right to apply them. The faculty agreement at Saint Thomas includes a Memorandum of Agreement that Financial Exigency will not be invoked.

2.2 Unit Level Redundancy and Redeployment Clauses

Redundancy and Redeployment clauses address payroll flexibility only at the unit level. The distinction between the two is that redundancy clauses allow for layoffs, while redeployment clauses do not, except when a faculty member rejects a reasonable reassignment. We have only considered Redeployment clauses at institutions that do not have redundancy clauses, except where a single clause fulfills the terms of both categories with respect to differently ranked faculty members. So, whereas under Bishop's and Laval's clauses, tenured faculty cannot be laid off as a result of unit-level workforce adjustments, but probationary faculty can, we classify these clauses under both redundancy (for probationary faculty) and redeployment (for tenured faculty).

2.2.1 Redundancy Clauses

Of the fifty-five institutions in our sample, twenty-nine (53%) have faculty agreements with redundancy clauses applying to at least some professors. Not all of these clauses use the term "redundancy"; in fact, their headings reference many other terms such as academic reorganization, changes for academic reasons, curricular necessity, *sécurité d'emploi*, and program discontinuance.

Most redundancy clauses (79%) reference layoff of faculty for "academic reasons". Almost half reference academic reasons as the sole justification for redundancy layoffs (as opposed to "financial reasons"); Lethbridge and Saskatchewan are the only universities to explicitly mention financial constraints as possible grounds for redundancy.

The distinction between "academic reasons" and "financial reasons" is not always clear. Most, but not all (79%), redundancy clauses indicate specific conditions under which redundancy may be declared, not all of which reference "academic reasons".³ Redundancy seems to result principally from limited demand for an academic program (87% mention limited or declining enrolment), but also from programs not

³ This 79% proportion does not correspond to all the same universities as the 79% that reference academic reasons.

upholding an institution's academic standards and/or falling behind the demands of their discipline (e.g. losing accreditation).

Nearly two-thirds (63%) of clauses require that the supreme academic governing body (Senate, Academic Council, etc.) approve any declaration of redundancy.⁴ This is distinct from exigency clauses where Boards of Governors have authority, except where it is delegated to a specific committee. This fact may be the most solid basis for distinguishing between academic and financial reasons for layoffs.⁵

In many cases (62%), committees must be convened to validate redundancy, but committees' decisions are only binding for 17% of these institutions. Where such committees exist, nearly all (89%) are co-appointed with faculty associations. For a slight majority of these (56%) the committees are composed equally of representatives of the faculty association and management, while professors or their representatives could be expected to comprise the majority of committee members for 44%.⁶ In a few cases (21%), the redundancy clauses require committees to seek alternatives to layoffs, or to determine whom to layoff.

2.2.2 Redeployment Clauses

Thirteen institutions (24%) have redeployment clauses. Clause headings reference a wide variety of processes, generally at the level of departments, programs, or academic units, including transfer, *Sécurité d'emploi*, reorganization, redundancy, restructuring, closure, adjustments for academic reasons, and internal mergers.

Redeployment clauses are an alternative to redundancy clauses; instead of permitting layoffs, institutions are required to offer academic staff with other employment opportunities. In most cases, redeployment clauses allow for layoffs if requested by tenured faculty, or if they reject reassignment (at the Université du Québec à Montréal – UQAM and Sherbrooke, employees may appeal redeployments to the Board of Governors or an arbitrator, respectively, if they feel that the reassignment is not “reasonable”). Mount Saint Vincent, Regina, Victoria, and Windsor do not allow for layoffs of any faculty under their redeployment clauses,

⁴ We have included in this proportion those institutions where discretion in declaring redundancy is granted to a committee appointed by Senate.

⁵ Of course the Board of Governors also must approve redundancies in most cases whether the Senate has decision-making authority or not. Where Senate has decision-making authority, it may lie in delivering a binding opinion to the Board or in having a vote that is followed by a second vote at the Board (i.e. Senate has a veto on a declaration of redundancy, whether or not the Board also has this authority). In a very limited number of cases, the President is able to declare redundancy of their own accord, although they could necessarily be subject to censure by the Board.

⁶ This 44% figure includes clauses where faculty and management appoint equal numbers of representatives given that management may be required to appoint professors.

while Bishop's prohibits only the layoff of tenured faculty. York exempts probationary faculty from transfer.⁷

As with redundancy clauses, redeployment clauses are supposed to apply in cases where cuts are being made for "academic reasons" or low enrolments, though the term is usually similarly vaguely defined. Only four institutions indicate any specific conditions that may justify use of the redeployment clauses.

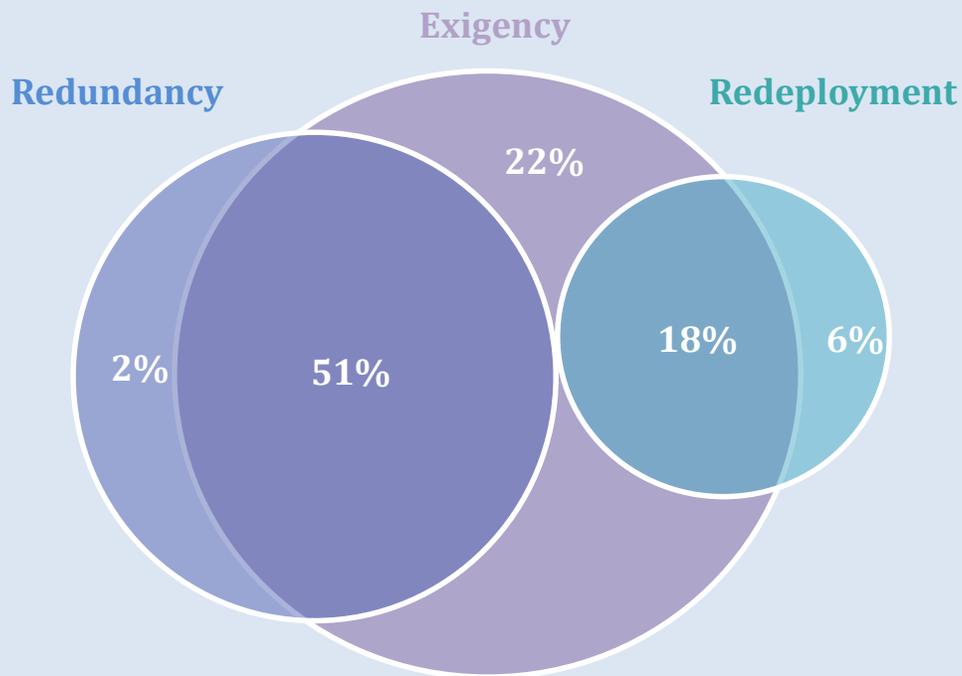
Use of redeployment is generally much less restrictive for universities than redundancy, presumably because the consequences are much less disadvantageous for academics. Only Bishop's and Western require that joint committees be assembled with the faculty association to review whether redeployment is necessary, and the committees' opinions are not binding. At five other institutions, redeployment clauses require that committees be assembled to consider possible positions to which professors may be reassigned; four of these committees include faculty association representatives.

⁷ Additional exemptions will be discussed later in the section on layoff processes.

Box 2: How Exigency, Redundancy and Redeployment fit together

As shown in Figure 1, most institutions (69%) approach institution and unit level layoffs through a combination of separate exigency and redundancy clauses (51%), or exigency and redeployment clauses (18%).

Figure 1: Predominance of exigency, redundancy, and redeployment clauses*



*Not to scale.

In general, the processes behind the different clauses operate separately, based largely on the distinction between layoffs for financial or academic reasons. However, certain cases, such as Waterloo, explicitly outline how redundancy may be pursued as a step in an exigency process. Meanwhile, Guelph and Ryerson actually explicitly allow cuts under exigency to target particular units. Even among exigency clauses requiring that layoffs be distributed evenly across departments, some allow for exceptions, provided that processes corresponding to, or resembling, redundancy clauses are applied.

2.3 Layoff and No Layoff Clauses

Certain institutions address job security at both the institution and unit levels through a single faculty agreement clause. These approaches correspond to Layoff and No Layoff clauses.

Layoff clauses are in place at Cape Breton (CBU), Mount Allison, Saint Mary's (SMU) and Vancouver Island (VIU). Again, these clauses combine characteristics of exigency and redundancy. For example, CBU and Mount Allison reference bona fide academic, financial, or academic and financial reasons for layoffs, while SMU and VIU reference financial reasons and enrolment in their clauses, without limiting layoffs to the unit level. Similar to many exigency clauses, CBU requires that a joint committee be convened to provide an opinion on the need for layoffs, while Mount Allison requires that a joint committee be convened to consider not only alternative arrangements for faculty members (i.e. transfer, retraining, or other voluntary measures), but also whether the university could liquidate assets to avert layoffs. SMU must consult its faculty association, and together with them consider other steps to address the university's financial challenges, while VIU is required to provide information to the faculty association and notice of layoffs prior to December 15 of a given academic year.

On the other hand, faculty layoffs without cause are explicitly prohibited under the agreement for any reason at Acadia, Montréal, and the University of Ontario Institute of Technology (UOIT). UOIT's *No Layoffs* clause states simply: "There will be no layoff of Faculty Members while this agreement remains in force." Montréal's clause addressing *Congédiement, Mesures disciplinaires ou administratives* stipulates that employees may be laid off only for just cause. Finally, Acadia's *Tenure Stream Position Complement* clause indicates that, "there shall be no layoff of Employees for redundancy, or for any financial reason", faculty may only be terminated "by resignation or for just cause".

2.4 Minimum Complement Clauses

All of the foregoing types of clauses focus on protecting the jobs of current faculty members. Faculty associations may also seek to protect or even expand the total *number* of jobs, irrespective of whether vacancies are created through voluntary termination. Ten institutions (18%) have faculty agreement clauses that require the institution to maintain a baseline tenure-track faculty complement in some fashion. These clauses are referred to in French as *Plancher d'emploi* clauses.

Table 2 outlines the six cases where faculty agreements contain Absolute Minimum Complement (AMC) clauses, which identify a specific minimum number of faculty numbers that must be employed at all times.

Table 2: Absolute Minimum Complement Clauses

University	Prov.	Most Recent Minimum Complement	Faculty Types Included
Acadia	NS	182	Tenure-Stream, excluding Canada research chairs, contractually limited term, administrators, and Board of Governors Representatives
Bishop's	QC	115	Tenured
Concordia	QC	675	Probationary and tenured, as well as no more than 25 extended term and 35 limited term
Laval	QC	1295	Tenure-Stream
UQAM	QC	1155	Full-time equivalents, excluding those funded from external grants and former administrators
Wilfrid Laurier	ON	473	Full-time excluding seminary faculty and faculty on unpaid leave, plus one-term 0.5 credit intramural courses or equivalents taught by contract academic staff divided by 6, excluding one-term course equivalents of tutorial/lab sections

Acadia, Concordia and Wilfrid Laurier's clauses fix minimum complements for the duration of the collective agreement.⁸ Bishop's and UQAM identify different minimum complements for each year of the collective agreements, increasing the number of positions by two per year in the former case, and 25 to 35 per year for the latter. Laval requires that the minimum complement figure be recalculated each year as a function of changes in the student population.

The Bishop's and Wilfrid Laurier clauses explicitly provide for some flexibility if falling enrolment bring the faculty-student ratio below a certain threshold (20:1 and 25:1, respectively), although at Bishop's this could only allow for a reduction of the minimum complement by five positions, at the most. The UQAM clause additionally requires that at least 25% of any revenues in excess of expenses in a given year be dedicated towards opening additional professor faculty positions in the subsequent year.

Faculty agreements at Nipissing, Queen's, and Thompson Rivers (TRU) do not have AMC requirements, but they do have requirements that tenure-track faculty comprise a minimum proportion of the total teaching complement. These can be

⁸ The Acadia agreement includes a memorandum allowing for a reduced complement for each of the three years of the agreement, progressively increasing by eight positions in total.

described as Proportional Minimum Complement (PMC) clauses, and greater detail on them is provided in Table 3.

Table 3: Proportional Minimum Complement Clauses

University	Prov.	Measure	Minimum Proportion
Nipissing	ON	Full-time faculty complement, not including limited term appointments for temporary replacements	74.5%
Queen's	ON	Total faculty (full-time equivalent)	72%
Thompson Rivers	BC	Total number of credit courses offered under the bargaining unit certification	70%

To the six institutions with AMC clauses, and the three with PMC clauses, must be added a somewhat unique tenth case. The final complement-related clause is at Saint Francis Xavier (StFX), which must replace at least 50% of retiring tenured faculty members with greater than eighty years combined age and service time. Replacement positions must be tenure-stream.

Across all Minimum Complement clauses, faculty complement is generally counted as of a specific date, or based on a record of the previous year's course responsibilities. Reports are provided to joint committees of the university and faculty association, with a seat for a student union representative in the case of Acadia. If institutions fail to maintain the minimum complement where indicated in collective agreements, they may incur penalties as indicated in Table 4.

Table 4: Explicit Penalties for Failing to Maintain Minimum Complement

University	Penalty	Years to penalty
Concordia	Contribute to university's graduate fellowships an amount equal to the shortfall in the number of faculty multiplied by the floor salary of an associate professor	1
Laval	Pay an equal proportion of the number of required positions that were not filled times the average professor salary	1
Wilfrid Laurier	Pay to each faculty association member an equal proportion of the shortfall in the number of faculty multiplied by the floor salary of assistant professors	2

A small majority of the AMC and PMC complement clauses apply only at the institution level. TRU's PMC clause applies a slightly reduced requirement at the unit

level (60%), while Acadia, Laval, and UQAM reference limitations or grounds for grievance based on unit level complements, as determined by Senate. UQAM’s agreement also requires that a unit be prioritized for new positions if temporary instructors teach 30% of courses or more over the course of a year.

2.5 The Layoff Process, Including Notice and Severance

Layoff processes can have important financial implications for institutions, adding administrative steps, time, and direct expenses, thus reducing and delaying any potential savings. This section considers these processes for cases in which layoffs are permitted, pursuant to the terms of a faculty agreement, not including retirement or voluntary layoff where this differs.

In all these cases, institutions are explicitly required to explore options to redeploy faculty prior to layoff, and nearly all (90%) mention retraining to support reassignment. Voluntary steps including retirement are explicitly mentioned by 50%, but would appear to be generally implied.

Nearly all (93.5%) layoff clauses set conditions with respect to how to determine which employees are laid off. In determining layoff order, a primary consideration is first assessed, followed by a secondary consideration, and then any other. As indicated in Table 5, most of these institutions reference Rank, Merit or Utility, and Seniority.

Table 5: Explicit Considerations in Order of Faculty for Layoff

	Primary	Secondary	Other	Total
Rank	65%	9%	2%	74%
Merit/Utility	26%	26%	5%	57%
Seniority	7%	58%	23%	88%
Other	2% (1)	0%	2% (1)	4%

If rank is the first consideration, then layoffs would move up the ranks such that under a typical full-time faculty rank structure assistant professors would be laid-off first, then associate professors, and finally professors (professors would only be laid off once no one is left within the lower ranks). Under this same scenario, the secondary consideration would dictate layoff order within the ranks. Seniority as a secondary consideration would indicate that assistant professors, for example, would be laid off in order from those with the least service time to those with the most service time.

A significant proportion (41%) of agreements exempt certain employees from layoff. Almost half of these exemptions (47%) reference merit, or occupying a role that could not be filled by another employee; slightly fewer (41%) reference elevated

rank and/or seniority. Institutions also commonly exempt permanent employees whose salaries are funded through external grants or contract employees until their contracts expire.

Western is unique in interpreting layoffs under exigency not as loss of employment, but rather as a reduction in remunerated days of employment, or *furlough*. The reduction in days of work is distributed equitably across the faculty such that those who earn less than $\frac{3}{4}$ of the floor salary for assistant professors have reduced layoffs, and those who earn $\frac{2}{3}$ or less of the same floor are exempted. Among those who can have their hours reduced, the reductions must be distributed to match the reduction in expenditures required under the exigency. This clause would seem to assume that the circumstances of exigency are only temporary, as opposed to structural and indefinite.

Notice and severance requirements are a critically important facet of economic job protection, and institutional payroll flexibility. To consider this, we divided ranks into two categories: Senior and Junior, given the inconsistency in faculty ranks across universities, and the fact that agreements almost exclusively use only two different categories in relation to the layoff clauses. The senior category almost always corresponds to tenured faculty, while junior faculty members are usually probationary.⁹

All institutions require that some form of notice be provided to professors prior to layoff, or termination pay in lieu of notice.¹⁰ This is not particularly surprising given that there are also strict legal requirements for weeks of notice across Canada, but 94% of clauses require that universities provide a specific number of *months*' worth of notice or salary in lieu. The only universities that do not outline specific months of required notice of layoff are Grant MacEwan, OCAD U, and UQAM.

Most clauses require standard notice, irrespective of the employee's length of service or rank, at a median period of 12 months. At some institutions, however, notice requirements may depend upon faculty rank and length of service.

Severance pay is additional to notice and/or termination pay, and is generally based on the employee's salary during his or her most recent (usually highest) earning period. This is intended to compensate employees for the salary they would be earning during the time they are seeking another job and, in certain cases, full severance amounts are provided only if the employee fails to find alternative employment.

⁹ At institutions without tenure, all faculty were classified under the junior category. In some cases junior faculty may include contract faculty, although contract faculty were not the focus of our research.

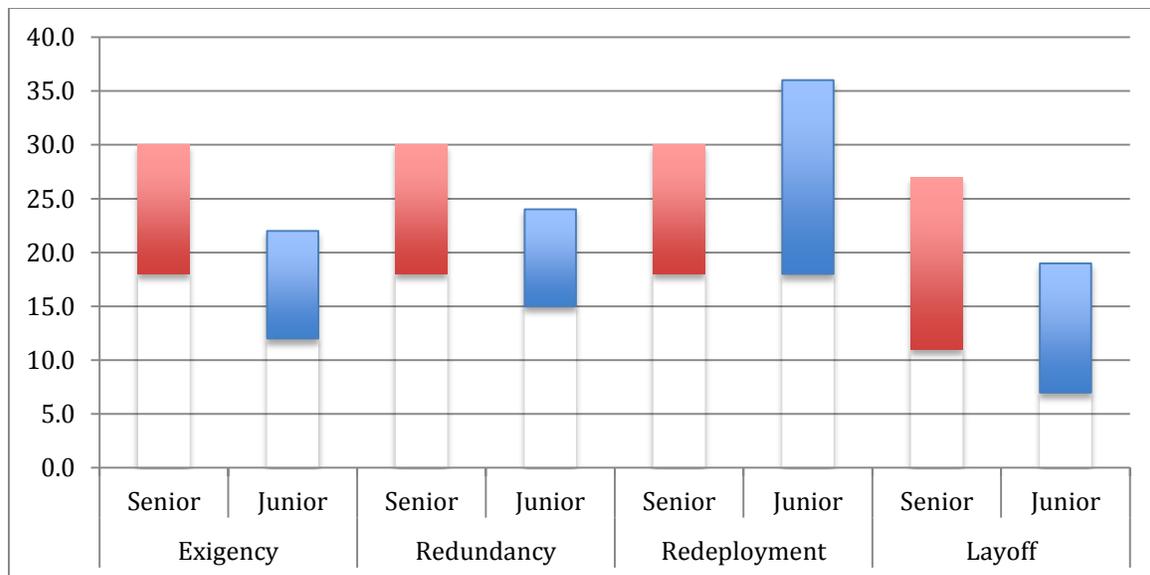
¹⁰ If the employer, or sometimes the employee, does not wish that the employee continue to work during the required notice period, then termination pay corresponds to the salary that the laid off employee would have received during the notice period.

All clauses provide for severance to senior faculty. Nearly all also provide it to junior faculty, with the exception of Bishop’s, Concordia, and UQAM. Most institutions base severance on the principle of one-month-per-year-of-service with minima and maxima. Severance is often more generous to senior faculty, not only through higher minima and maxima but also in permitting them to accumulate more severance months more quickly. The median minimum severance is for six months across the ranks, while the median maximum severance is 18 months for senior faculty and 12 months for junior faculty.¹¹

Adding together required months of notice and required severance payments indicates the total salary that a university must pay a faculty member from the time they reach a decision to lay them off. Although details differ by institution and type of layoff, the basic story is that, after receiving a layoff notice, senior faculty at most universities can usually expect to receive between 1.5 and 2.5 years of pay, while junior faculty can expect to receive between 14 months and two-years pay.

We observed some patterns in this data with respect to economic job security approaches, institution types, and geographic regions. These are represented in Figures 2, 3 and 4, in which the bottom of each bar represents the median minimum salary to layoff (notice plus severance) and the top represents the median maximum salary to layoff, in months.

Figure 2: Median Salary Payable from Time of Layoff Decision by Clause Type

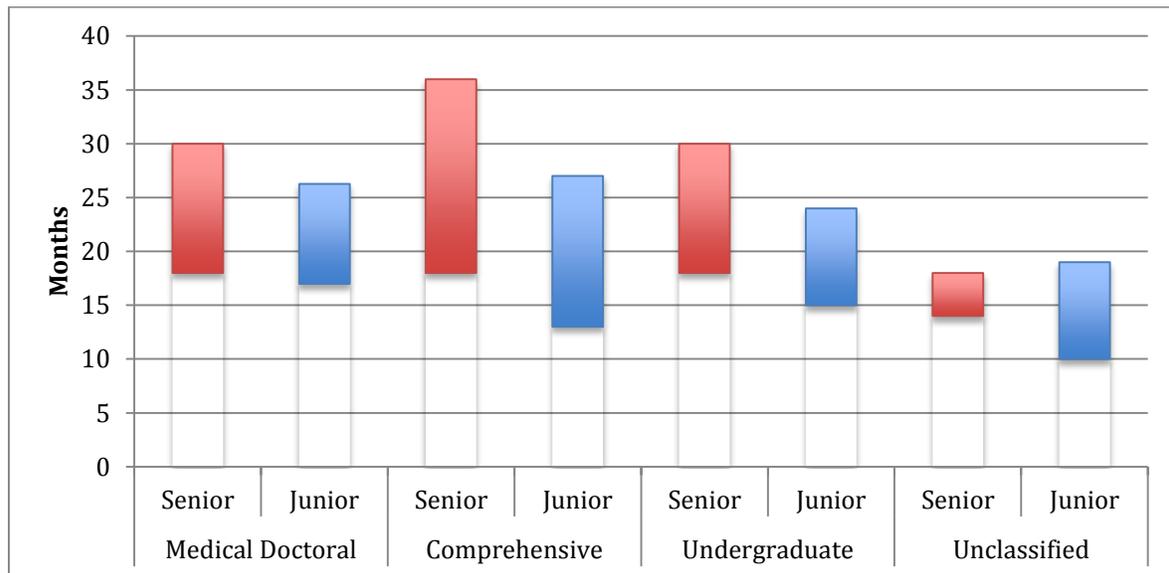


¹¹ Severance at CBU varies by reason for layoff: 18 months for academic reasons, 12 months for financial reasons. We used the higher number for our maxima

Institutions with Layoff clauses are the least generous in terms of notice and severance,¹² while provisions in redeployment clauses are the most generous to junior faculty. Notwithstanding the overall finding, severance/notice periods are generally similar for exigency and redundancy; at institutions that have *both* exigency and redundancy clauses, layoff under redundancy tends to imply more notice and/or severance. This is presumably because exigency is predicated on the institution facing severe financial hardship, while redundancy only reflects changes in needs at the unit level, but not an inability to cover payroll.

To consider institutions by type, we divided them on the same basis as the Maclean’s rankings (i.e. Medical Doctoral, Comprehensive, Primarily Undergraduate and Unclassified¹³). The results are displayed in Figure 2. Essentially, the pattern is very similar across institution types (except at “unclassified institutions”), which suggests that results are not being driven by “big schools” or “small schools”.

Figure 3: Median Salary Payable from Time of Layoff Decision by Institution Type



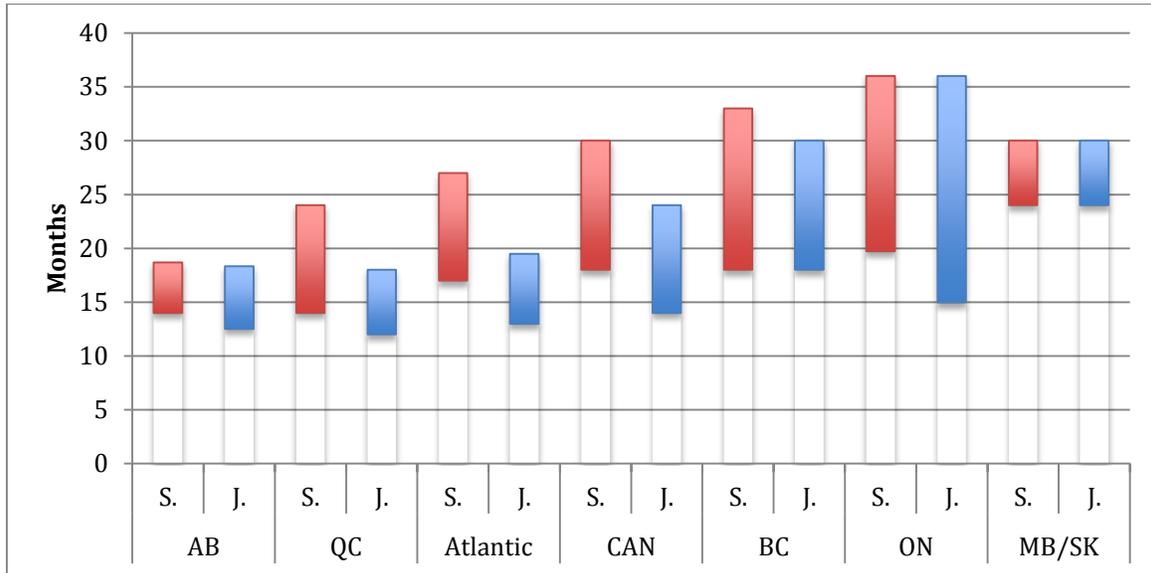
Note: With respect to unclassified institutions, it is worth noting that one-third (VIU and Grant MacEwan) do not have tenure, which impacts on the figure for senior faculty.

¹² Institutions with Layoff clauses have both significantly lower median notice and severance requirements. Notably, minimum median severance is in fact just two months across all ranks.

¹³ Unclassified institutions are those which were not included in the Maclean’s Rankings, i.e. Athabasca, Grant MacEwan, Mount Royal, OCADU, TRU and VIU).

Figure 4 reveals a slightly different story with respect to regions. Median months of salary payable from the time of layoff decision are higher in Saskatchewan/Manitoba, and to a lesser extent Ontario, and lower in Alberta and Quebec.

Figure 4: Median Salary Payable from Time of Layoff Decision by Region



Almost all clauses (94% for senior faculty and 85% for junior faculty) outline a recall period when laid-off faculty must be informed of job postings, and given right of first refusal for positions that they would be qualified to fill. Guelph, Laval, and Western are the only institutions without any recall provisions: Cape Breton, Concordia, Mount Allison, and StFX have recall provisions for senior faculty, but not junior faculty. Median years of eligibility for recall are three for senior faculty and 2.5 (minimum) to three (maximum) for junior faculty.

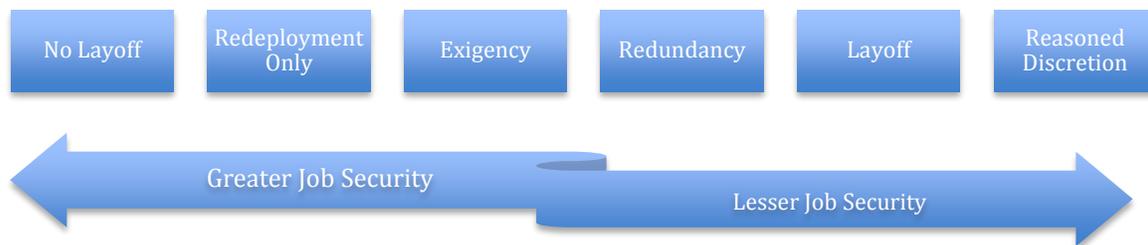
Laid-off faculty members may receive additional benefits during the recall and/or severance period. Most clauses (56%) provide for reasonable access to library and computer facilities, 29% indicate that laid-off faculty members may continue to have office space if available, and many of these also provide for access to laboratories where applicable and available. In terms of insurance, 29% of severance packages allow for employees to maintain their health/dental insurance at their own expense, while some explicitly indicate that severance is paid as salary and benefits. Some institutions also extend tuition benefits to faculty members and their families after their service ends: 28% of the clauses referenced this directly, but others may offer this benefit through their specific policies on tuition waivers. Less common benefits include employment counseling, financial aid for retraining to work elsewhere, and access to physical education facilities.

3. Analysis

Having now catalogued and described the various forms of job protection which are available to academic staff in addition to guarantees around tenure and academic freedom, we can now analyze their implications for universities.

Figure 5 shows how the different identified approaches may be contextualized in terms of job security for faculty members, excluding minimum complement clauses, which we treat separately in section 3.3. By and large, one would expect faculty unions to bargain for clauses in collective agreements that are further to the left on this diagram, and management to bargain for approaches further to the right.

Figure 5: Relative Faculty Job Security of Different Approaches



Clauses prohibiting layoffs obviously provide the greatest job security, while redeployment clauses guarantee faculty members that they will be offered alternative employment in the institution, and only be laid off if they so choose. Exigency clauses are relatively favorable because they apply only under rare circumstances that university administrations normally do their utmost to avoid, while the mere fact that institutions must make a formal declaration of financial distress is itself a significant barrier to institutions terminating staff, due to the negative publicity and loss of prestige such a declaration would incur. Redundancy clauses provide less assurance to faculty, simply because changes in enrolment or other factors at the level of a single unit are much more common. Layoff clauses generally provide universities with the greatest flexibility among clauses of faculty agreements, although having reasoned discretion with no clauses provides even greater flexibility. In general, institutions without faculty agreements fall at either end of the spectrum, either prohibiting layoffs entirely, or retaining reasoned discretion.

Figure 5 treats flexibility at both the institution and unit levels together, even though it might be preferable to treat these levels separately. However, greater flexibility at the unit level implicitly ensures greater longer-term flexibility at the institution level. The inverse is not true, however, especially given that many exigency clauses require layoffs be distributed evenly across units. This further explains why redundancy clauses arguably provide less job security to faculty, and greater flexibility to institutions.

Consideration of the Canadian Association of University Teachers' (CAUT) policy statements on both Financial Exigency and Lay-offs and Redeployment of Academic Staff reinforces the analysis in Figure 5. Both policies firmly oppose redundancy clauses as we have classified them (i.e. which permit layoffs), while exigency clauses are endorsed as the only acceptable grounds for layoffs without cause. Agreements with redeployment clauses alone, minimum complement clauses, and full prohibitions against layoff offer even greater job security than CAUT seeks through its policy.

3.1 Job Security in an Institution-Wide Cutback Situation

The existence of CAUT’s policy statement on Financial Exigency and Lay-offs is something of a boon for our analysis, as it gives an independent standard for the strength of job protection at any given institution; or, conversely, details the degree of flexibility universities have over payroll. In Table 6, we examine the proportion of institutions that possess clauses that meet 15 criteria selected from CAUT’s policy statement, emphasizing alternatives that must be exercised prior to faculty layoffs, and restrictions on institutions’ ability to declare exigency. Overall results by institution are indicated in Appendix 3.

Table 6: Proportion of Institutions Adhering to CAUT Exigency/Layoff Criteria

Criteria	%
Acknowledge that the first duty of the institution is to ensure that its academic priorities remain paramount.	42
A state of financial exigency exists when substantial and recurring financial deficits threaten the survival of the whole institution.	63
Termination of academic staff appointments should only take place during a state of financial exigency (No Redundancy)	28
There shall be no new academic or administrative appointments for the duration of the financial exigency.	67
Specific alternatives to reduce expenditures or increase revenues are indicated that must be explored prior to faculty layoffs	83
Alternatives to reduce expenditures or increase revenues before faculty layoffs are mandatory	57
Cuts must be made in all other sectors before faculty layoffs	40
The Board may declare financial exigency only after a fact-finding commission has reviewed the university’s financial circumstances	90
The fact-finding commission should be jointly appointed by the Board and the academic staff association.	88
The fact-finding commission’s determination regarding exigency is binding on the University.	45
Layoff order should be based only on rank and seniority	42
Employees to be laid off must receive 18 months’ notice (all ranks)	12
Members must be provided severance provided based on service (all ranks)	95
Laid-off faculty must have recall rights for five years (senior faculty)	16
Provides for faculty access to scholarly facilities while on recall	35

In Table 7, we group our fifty-five institutions based on the analysis in Table 6. We describe institutions as having “high” compliance if their agreement fulfills ten or more of the CAUT criteria, “moderate” if it fulfills six to nine criteria, and “low” if it meets five or fewer.

Table 7: Protection Against Institution Level Layoffs

No-Layoffs	Exigency or Layoff			Reasoned Discretion
	High CAUT Compliance	Moderate CAUT Compliance	Low CAUT Compliance	
Acadia* Laval* McGill (Tenured) McMaster Montréal UOIT UQAM* Sherbrooke Toronto	Brock Concordia* Dalhousie Guelph Laurentian MSVU Northern BC PEI Queen’s** Ryerson TRU** Waterloo WLU* Winnipeg York	Alberta Bishop’s* Brandon UBC Calgary Carleton Lakehead Lethbridge Manitoba Memorial Moncton New Brunswick Nipissing** Ottawa Regina StFX Trent Victoria Western Ontario Windsor	Athabasca Cape Breton Mount Allison OCADU Saint Thomas Saskatchewan SMU VIU	Grant MacEwan McGill (Junior faculty) Mount Royal Simon Fraser

* Agreement includes an Absolute Minimum Complement (AMC) clause

** Agreement includes a Proportional Minimum Complement (PMC) clause

Institutions with layoff clauses tend to have lower CAUT compliance scores, which supports our earlier classification of layoff clauses as providing greater flexibility to institutions. The presence of AMC or PMC clauses increase job protection and decrease institutional payroll flexibility for institutions which have them.

The institutions classified as having “Reasoned Discretion” in Table 7 deserve special note. Grant MacEwan and Mount Royal have no clauses addressing exigency, or limiting the institution’s options in exigency circumstances. McGill and Simon Fraser have institutional policies allowing some discretion in decisions around

faculty layoffs, the former only with respect to lower-ranked faculty, which is why it appears in our table twice.

Overall, roughly 79% of our institutions have clauses that can be described as being moderately CAUT-compliant, or higher, and 16% prohibit institution-level layoffs altogether.¹⁴ The degree of protection depends to some extent on the type of institution. Table 8 shows the distribution of levels of protection against exigency/layoffs by institution type. Although numbers are small, on the whole faculty at medical-doctoral institutions have better job protection than those in other types of institutions.

Table 8: Protection from Institution Level Layoffs by Institutional Type

Institution Type	N	No Layoffs	High exigency	Moderate exigency	Low exigency	Reasoned Discretion
Medical Doctoral	15	40%	13%	40%	7%	7%
Comprehensive	15	7%	47%	40%	0%	7%
Primarily Undergraduate	19	11%	26%	42%	21%	0%
Unclassified	6	0%	17%	0%	50%	33%
TOTAL	55	16%	27%	36%	15%	7%

There appears to be an association between region/province and faculty job security. Most institutions in Quebec (5/7) do not allow layoffs at the institution level; it is probably not a coincidence that most (4/7) also have AMC clauses. Ontario appears to have stronger-than-average job security, as well, given that most institutions either cannot lay off faculty, or have strong exigency clauses in place, with almost the full balance employing moderate exigency clauses. The Atlantic and Western Provinces are more mixed, although, overall, Alberta has the weakest job security protections, with nothing stronger than moderate exigency clauses.

3.2 Job Security at the Unit Level

As previously noted, job protection at the unit level may be as important as at the institution level, or perhaps even more so given that it may be easier to employ redundancy than exigency.

CAUT does not provide detailed advice on the elements redundancy clauses should include, which is unsurprising, given its opposition to such clauses. As such, we do not have the same kind of independent criteria we had for Table 8, making it more complex to evaluate the strength of these clauses. To remedy this, we have created our own similar set of redundancy criteria, in part using the CAUT statement on

¹⁴ At McGill, the no-layoff clause applies only to tenured faculty.

Redeployment of Academic Staff to create a similar measure of job protection. The overall results for institutions with redundancy or layoff clauses are shown below in Table 9; results by institution can be seen in Appendix 4.

Table 9: Proportion of Institutions Adhering to Redundancy/Layoff Job Protection Criteria

Criteria	%
Redundancy may be declared for academic reasons only	31
Senate has decision-making authority in declaring redundancy	63
Senate may declare financial exigency only after a fact-finding committee has reviewed the academic grounds	56
The fact-finding committee should be jointly appointed by the Board and the academic staff association	50
The fact-finding commission's determination regarding exigency is binding on the University	16
A joint committee must seek layoff alternatives and/or select employees for layoff	16
Layoff order should be based only on rank and seniority	13
Employees to be laid off must receive 18 months' notice (all ranks)	9
Members must be provided severance provided based on service (all ranks)	100
Laid-off faculty must have recall rights for five years (senior faculty)	13
Provides for faculty access to scholarly facilities while on recall	56
TOTAL	41

As with our exigency clauses, we can classify institutions according to the degree of protection afforded professors. In this case, we only qualify them as having “moderate” protection (i.e. meeting 50% or more of criteria) or “low” protection (i.e. meeting half or fewer criteria), reflecting both the smaller number of criteria under consideration and the presence of Redeployment Clauses as equivalent to stronger protection against layoffs. These are shown below in Table 10.

Table 10: Protection Against Unit Level Layoffs

No Layoffs	Redeployment	Redundancy or Layoff		Reasoned Discretion
		Moderate Protection	Low Protection	
Acadia ^T UBC McGill ^T McMaster ^T Montréal UOIT UPEI St Thomas Toronto	Bishop's ^{T*} (Tenured) Brock Concordia* Guelph Laval ^{T*} MSVU UQAM* Regina Sherbrooke Trent Western Ontario Windsor York	Lakehead Laurentian Nipissing** Ottawa Ryerson TRU** Victoria Waterloo WLU* Winnipeg	Alberta Athabasca Bishop's ^J Brandon Calgary Cape Breton Carleton Dalhousie Grant MacEwan Laval* Lethbridge Manitoba Memorial Moncton Mount Allison Mount Royal New Brunswick Northern BC OCADU Queen's** StFX SMU Saskatchewan VIU	McGill ^J McMaster ^J Simon Fraser

^T Tenured only

^J Junior only

* Agreement includes an Absolute Minimum Complement (AMC) clause. Bishop's is noted as only having an AMC clause for tenured faculty, not junior-ranked faculty.

** Agreement includes a Proportional Minimum Complement (PMC) clause

The groupings here are similar to those in Table 7; as in the previous analysis, all institutions with clauses we have classified under the Layoff category have relatively low protection scores. None of the three institutions recorded as having “Reasoned Discretion” have collective agreements, and in two cases this discretion is applicable only to lower-ranked faculty members, while tenured faculty are exempt from layoffs (two other institutions also appear in the table twice because they allow layoffs of junior faculty, but only redeployment of tenured faculty¹⁵).

With respect to protection by institution type, the picture is very much the same as it was at the institutional level (above, Table 8), with the strongest protections at the

¹⁵ The distinction between ranks is made on the same basis as indicated in Section 2.4.

medical/doctoral institutions. Regional results are also consistent. Institutions in Quebec again provide the highest degree of job protection, with none allowing redundancy layoffs of tenured faculty, except in some cases when they reject reassignment – although 43% provide relatively weak protections to lower-ranked faculty. Institutions in Ontario provide relatively strong protections as well, while Alberta institutions again tend to have the least protection.

3.3 Impacts of Minimum Complement Clauses

Minimum complement clauses also have important implications for faculty job security. The impacts of different AMC clause elements on institutional finances vary, in part, depending on whether the AMC adjusts automatically to enrolment. AMCs that are not enrolment-dependent (Acadia, Bishop’s, Concordia, UQAM, Wilfrid Laurier) work in universities’ favour when enrolment increases (i.e. no requirement to raise staffing), but against them when enrolment falls. In contrast, where Laval’s AMC adjusts to enrolment, the complement can fall with enrolment declines, but must rise when enrolment increases, thereby limiting disposable resources. The most restrictive AMC clauses in this sense are at Bishop’s and UQAM, which are fixed for each year at increasingly higher rates, regardless of enrolment.

Of course, the restrictiveness of AMC clauses also partly depends on their relationship to the current faculty complement, as well as the student body. An institution such as AMC, which is dramatically lower than the active complement, would have little impact, except in extreme cases. Table 11 compares AMC numbers with active faculty complements and enrolment, measured in full-time equivalents (FTEs) unless otherwise indicated. Numbers should be viewed as approximates, given that they come from different data sources, with potentially different methodologies.

Table 11: Comparison of AMC Clauses to Active Complements and Enrolment

University	Active complement	Ratio Year	AMC	Enrolment	Max Ratio	Actual Ratio
Acadia	140	2013-14	182	3,932.4	22:1	28:1
Bishop’s	114*	2012-13	111	2,504.6	23:1	22:1
Concordia	990*	2011-12**	675	27,374.6	41:1	28:1
Laval	1,350*	2011-12**	1295	32,006.6	25:1	24:1
UQAM	1145	2013-14	1155	26,430	23:1	23:1
WLU	471	2013-14	473	17264.7	37:1	37:1

* FTE data from 2010-2011, Statistics Canada Custom Tabulation.

** Most recent enrolment data available is from 2011-12 from Statistics Canada, but AMC corresponds to 2012-13 for Concordia and 2013-14 for Laval.

Note: Active complement figures are for the most recent year for which data was available, whereas enrolment figures correspond to the ratio year. Unless FTE enrolment numbers were provided directly, they were calculated as the sum of: *full-time enrolment + part-time enrolment/3.5*.

One obvious anomaly in Table 12 is the fact that Acadia's AMC is actually considerably higher (30%) than its active complement for the reference year. This is due to the "notwithstanding" addenda in Acadia's 2010-2014 and 2014-2017 collective agreements. The first addendum suspended the requirement to fill vacancies over the course of the agreement, allowing for the complement to fall through attrition. The second addendum identified AMC requirements below the AMC contained in the main clause, but increasing incrementally each year. Essentially, these addenda represent agreements between the faculty association and the administration, indicating that Acadia could not fulfill the terms of the complement clause, and taking into account the institution's revenues, expenditures, and other collective agreement commitments. Put simply, the AMC at Acadia is financially unworkable, everyone at the university knows it, but no one wishes to admit it.

Most other AMCs are close to the active complement, except in the case of Concordia University (although this may reflect differences in how the complement figures were calculated). At UQAM, the faculty agreement actually aimed to increase the AMC by 145 positions (14.8%) from 2007-08 to 2013-14. As it happened, the institution did not quite hit the target, although its 13.8% expansion in the professor ranks almost exactly matched enrolment growth over the same period.

We will limit our comments respecting PMC clauses, given that it is beyond the scope of this report to explore, in depth, the relative roles of tenure-stream and contract faculty, especially given the limited data available.¹⁶ Overall, PMC clauses imply some similar challenges as adjustable AMC clauses, given that they intrinsically adjust to the scope of the university's activities, especially teaching. Whether they are more or less restrictive than AMC clauses, however, will depend considerably upon the specific clause, and the circumstances in which an institution finds itself. For example, most of UQAM's courses (54.3%) are not taught by professors, but rather by instructors (*chargés de cours*), who also outnumber professors roughly by a ratio of 9:5. This means that the typical PMC clause, requiring that tenure-stream professors comprise roughly 70% of the teaching body, or teach 70% of courses, would be much more stringent for UQAM than the current AMC. Of course, this last point also highlights how PMC clauses can place demands on faculty, given that TRU's clause in relation to courses taught could be fulfilled not only through hiring of tenure-stream faculty over limited-term faculty, but also through the former taking on higher teaching loads.

¹⁶ See, for example: <http://www.heqco.ca/en-ca/Research/ResPub/Pages/The-Other-University-Teachers-Non-Full-Time-Instructors-at-Ontario-Universities.aspx>

3.4 Comparison to Other Public Sector Agreements

To further develop our analysis, we undertook a limited review of other collective agreements for two separate but comparable groups of public sector workers: K-12 Teachers and scientific/research employees of the Government of Canada. In all cases, as per our approach to faculty agreements, we used the most recent collective agreements available online, and focused on clauses relating to layoff/termination, severance, redeployment, complement, class-size, and temporary/contract employees.

With respect to teachers, we considered one collective agreement from each province, except Ontario, where we consulted two, since primary and secondary teachers bargain separately. We chose province-wide agreements where applicable; otherwise, we chose agreements from the school board located in the provincial capital. In Nova Scotia and British Columbia, teachers work under a combination of provincial and board level agreements, in which cases both were reviewed. For the Government of Canada scientific/research personnel, we considered bargaining units where the members had similar standing or responsibilities to university faculty. Groups were chosen from bargaining units of the Canadian Association of Professional Employees (CAPE) or the Professional Institute of the Public Service of Canada (PIPS). Appendix 5 contains the full list of collective agreements consulted.

In general, the comparison groups' collective agreements contain considerably less detail on layoffs. Only two circumscribe the reasons for which an economic layoff may take place, in any way; in both cases, these are teachers' union agreements that reference both educational and budgetary reasons, with no restriction on the employer's discretion over whether those reasons are sound. Not a single agreement provides for a review of whether there is really a need for layoffs, except where layoffs may violate principles of respect for seniority and/or requirements that redeployment be first pursued to the greatest extent possible. Although multiple agreements indicate that the employer will seek to effect any workforce reductions through attrition, there are no requirements that the employer exhaust all alternatives to layoffs, such as by selling school property.

While this suggests strongly that professorial job protection is more than an order of magnitude better than that of teachers, not all the comparison clauses allow for employers to lay-off faculty without difficulties. In fact, the agreement between the Government of Quebec and the *Association des enseignantes et enseignants du Québec* forbids involuntary full layoffs of permanent teachers. Instead, when teachers are deemed surplus, they are still paid most of their salaries until the school system finds them a new position (with the proportion falling marginally from 90% as the layoff period lengthens). This commitment is reminiscent of the redeployment clauses that are relatively common among Quebec universities.

None of the comparison agreements have clauses that are perfectly analogous to university AMC requirements. The closest relationship are clauses referencing class sizes. Manitoba's agreement references class size requirements that must be met "insofar as possible". A clause on class sizes will return to the BC Teachers' Federation's collective agreement after the Supreme Court of Canada struck down legislation removing this item from bargaining. A slim majority of teacher's agreements (6/11) have clauses referencing job security or "contracting out" that limit the employer's ability to hire temporary contract employees in place of permanent employees, which is more analogous to PMC clauses in faculty contracts. However, the progress clauses addressing probationary teachers are generally such that employees who obtain full-time work in a role equivalent to a permanent teacher should be able to attain permanence relatively quickly, while the rights of permanent employees to temporary positions also make the long-term, full-time replacement of permanent teachers with temporary contract employees unlikely.¹⁷

PMC-like clauses in the Government of Canada scientific/research personnel agreements were, for the most part, less strict than under teachers' agreements. Four provided a general message about giving all reasonable consideration to retaining employees, instead of contracting out their work.¹⁸ The agreement with PIPS members at the Chalk River Laboratories, however, outlined requirements for quarterly reporting to the union regarding contract employees, and for the employer to facilitate bargaining unit members acquiring previously outsourced skills.

All agreements require (to a lesser or greater extent) that the employer exhaust opportunities to redeploy permanent staff prior to layoff, much like the university agreements. Most of the agreements do have elements specifically related to terms of redeployment, although these are principally concerned with redeployments to different geographical locations, as opposed to different roles on a single site.¹⁹

Where explicit, all teachers' union agreements require that seniority/rank be prioritized in determining layoff order, with a caveat quite similar to that found in many faculty agreements, whereby those with the correct qualifications to fulfill different roles required by the system can be retained on that basis. The Federal Government agreements provide less guidance respecting layoff order, with only

¹⁷ These observations apply to conventional fulltime classroom teaching positions, not substitute teaching positions. We did not look closely at the circumstances of resource teachers.

¹⁸ "The Employer will continue past practice in giving all reasonable consideration to continued employment in the Public Service of employees who would otherwise become redundant because work is contracted out."

¹⁹ In one case – the PIPS Applied Science and Patent Examination Group – the appendix on workforce adjustment indicates that employees identified as surplus must be placed on a priority list for redeployment for twelve months, with 120 additional days for them to choose to join this list or opt for other options, including retraining and voluntary layoff. Interestingly this is basically equivalent to recall rights only while on staff; the employees no longer have these rights when they are actually laid off.

one agreement (PIPS-Chalk River) indicating that knowledge, skills, and ability should be prioritized first, and then rank.

Respectively, only 64% and 40% of the teachers' union and Government of Canada Scientific/Researcher agreements indicate explicit requirements for notice, and only 55% of teachers' union agreements note requirements for severance. Once again, 94% of university agreements indicate notice requirements, and all indicate severance requirements for tenured faculty (three do not for junior faculty). Where severance is not indicated in the agreement, however, many of the employees in the comparison agreements would have severance entitlements based either on provincial legislation (in Ontario) or jurisprudence.

Table 12 compares notice provisions for K-12 teachers and Government of Canada scientific/research personnel with those of academic faculty.²⁰ Notice requirements are dramatically more generous to university faculty than to teachers and federal researchers.²¹

Table 12: Median Notice Requirements by Sector in Weeks

Sector	Minimum	Maximum
Teachers	4.3	8
Government of Canada Researchers	1	8
Universities (Junior and Senior Faculty)	52.14	

Table 13 shows similar trends with respect to severance.

Table 13: Median Severance Requirements by Sector in Weeks

Sector	Minimum	Maximum
Teachers	2.04	52.65
Government of Canada Researchers	2	33
University Faculty	Junior	52.1
	Senior	78.2

Note: The figure presents severance periods explicitly indicated in collective agreements for a first layoff (several comparison groups' severance clauses provide for lesser payments upon a subsequent layoff). Maximum figures correspond to 35 years of service where no maximum severance period is indicated.

²⁰ Where agreements indicate notice requirements for teachers, layoff often may occur only on certain days and notice must be given by a certain specific date based on school terms, which could extend the notice period.

²¹ The PIPS Applied Science and Patent Examination Group is the only comparison group whose entitlements in this area are comparable to university professors as a result of the complex process discussed in Footnote 19.

While maximum figures for severance may be comparable for the two groups, the comparison group employees require many more years of service to reach the highest severance packages, given that the comparison agreements are structured around roughly one week's severance per year of service (much like Ontario legislation relating to severance), as opposed to one month's severance per year of service for university faculty.

Finally, nine of the eleven K-12 teachers' agreements have post-layoff recall provisions, but just one Federal Researchers agreement has a similar provision. Across all such agreements, the median recall period is 24 months, as compared with 2.5 to three years for junior faculty, and three years for senior faculty.

In sum, quite apart from the protections faculty have with respect to tenure and academic freedom, the job protection clauses in faculty agreements are vastly stronger than for their public sector peers in K-12 education and scientific research. Not only do faculty agreements include many more conditions that must be satisfied to justify layoffs (as opposed to almost none), but also they also provide for vastly higher notice and severance to employees who are being laid off.

4. Conclusion

Though we have spent considerable time looking at various job protection provisions in faculty agreements in Canadian universities, there is a sense by which all of the foregoing is moot: after all, Canadian universities never declare financial exigency. So why does any of this matter?

The answer is in fact quite simple: the main reason universities do not declare exigency – apart from the obvious fact that declaring exigency enormously damages prestige, which is something institutions are loath to do, is precisely that the costs of doing so are too high. That is, the language around exigency and redundancy has been written in such a way that these processes are time consuming, and will generate very few savings, and hence are unattractive as policy instruments.

This has two consequences. The first is that, faced with high job separation costs, universities simply become more reticent about hiring in the first place. This is a fairly predictable consequence on increased job security, which is well documented in economic literature: high levels of job protection tend to dampen hiring.²² In a university context, during periods of financial stress, this generates greater incentive to hire contingent sessional faculty, as opposed to making essentially irrevocable commitments to full-time faculty. This is not the only factor behind the increasing use of sessionals in Canadian universities, but it is certainly a contributing factor.²³

The second consequence is to complicate the adjustment process for universities that face long-term shortfall in income; – for instance, if the region in which they are located faces significant demographic decline. If attrition or untargeted buy-outs are the only tools universities have with which to reduce faculty complement, there is in effect no way to shrink intelligently. In this case, the future shape of the university will be determined by retirement sequence rather than by strategic planning. Such a state of affairs may have long-term consequences for institutional autonomy. Governments are unlikely to sit idly by if they reach the conclusion that institutions no longer have the tools to manage their staffing levels.

²² See: <http://www.oecd.org/employment/emp/34846856.pdf>

²³ Current faculty agreements arguably encourage an increase in sessional staff in other ways as well. While most agreements emphasize rank and seniority in determining layoff order, meaning junior faculty are usually the first to go irrespective of their skills or performance. More importantly, the lack of collective agreement clauses preventing precarious work is in striking contrast to the strong protections in place for senior faculty members. PMC clauses seem much more consistent with job protections in collective agreements outside the university sector than many of the stringent protections for tenure-stream faculty, but are very rare. Beyond administration pressure to retain some payroll flexibility, another possible cause for the low prevalence of these clauses may be their possible implications for faculty teaching loads, which faculty associations have consistently sought to reduce.

The essential purpose of lengthy notice/severance provisions is to protect incumbents. And while all incumbents deserve some protection, our analysis demonstrates that the extent of protection afforded faculty is simply light-years beyond what comparable professions outside the university receive. Collectively, the exigency, redundancy, and “no layoff” clauses in faculty contracts convey an aura of university faculty exceptionalism, whereby Canadian tenured faculty should enjoy unparalleled protections from impacts from the material conditions of their employers (not to mention failures in their own performance). If such exceptionalism was justified by claims of academic freedom, it might be worth it. But all of these provisions are on top of tenure provisions, which are meant to guarantee such freedoms. They are pure protectionism.

Canada has one of the best-funded university systems in the world. It should be possible to balance job protection for academics with the institutions’ ability to maintain viability, and optimally pursue their missions even if financial conditions become challenging. But current faculty agreements, for the most part, do not facilitate this goal. Forcing institutions to pay years’ worth of salary to former employees and impeding them from reducing spending in a strategic manner does not in any way enhance their ability to pursue their academic mission.

And yet, here we are. These protections exist, and they will be difficult if not impossible to remove – except through intrusive legislation such as that recently introduced in Nova Scotia. In the years ahead, the consequences for Canadian universities may be severe.

Appendix 1 – Reviewed Institutions

University	Pr.	Class	Years
Alberta	AB	MD	2006+
Athabasca	AB	NA	2013-16
Calgary	AB	MD	2013-15
Grant MacEwan	AB	NA	2011-14
Lethbridge	AB	U	2014-17
Mount Royal	AB	NA	2014-16
British Columbia	BC	MD	2012-14
Northern British Columbia	BC	U	2012-14
Simon Fraser	BC	C	NA
Thompson Rivers	BC	NA	2012-14
Vancouver Island	BC	NA	2007-10 ^[1]
Victoria	BC	C	2010-12
Brandon	MB	U	2015-19
Manitoba	MB	MD	2010-13
Winnipeg	MB	U	2013-16
Moncton	NB	U	2011-14
Mount Allison	NB	U	2013-16
New Brunswick	NB	C	2009-13
Saint Thomas	NB	U	2013-16
Memorial	NL	C	2014-17
Acadia	NS	U	2014-17
Cape Breton	NS	U	2013-16
Dalhousie	NS	MD	2011-14
Mount Saint Vincent	NS	U	2012-15
Saint Mary's	NS	U	2012-15
Saint Francis Xavier	NS	U	2013-16
Brock	ON	C	2014-17
Carleton	ON	C	2014-17
Guelph	ON	C	2014-17

University	Pr.	Class	Years
Lakehead	ON	U	2011-15
Laurentian	ON	U	2011-14
McMaster	ON	MD	NA
Nipissing	ON	NA	2012-15
Ontario College of Art and Design	ON	NA	2013-16
Ontario Institute of Technology	ON	NA	2010-15
Ottawa	ON	MD	2012-16
Queen's	ON	MD	2011-15
Ryerson	ON	C	2011-15
Toronto	ON	MD	NA
Trent	ON	U	2013-16
Waterloo	ON	C	2014+
Western Ontario	ON	MD	2010-14
Wilfrid Laurier	ON	C	2011-14
Windsor	ON	C	2011-14
York	ON	C	2012-15
Prince Edward Island	PE	U	2012-16
Bishop's	QC	U	2012-15
Concordia	QC	C	2012-15
Laval	QC	MD	2012-16
McGill	QC	MD	NA
Montreal	QC	MD	NA
Québec à Montréal	QC	C	2009-13
Sherbrooke	QC	MD	2012-15
Regina	SK	C	2014-17
Saskatchewan	SK	MD	2014-17

Appendix 2 – Job Security Policies at Universities Without Faculty Agreements

University	Policy/Regulations	Clause
McGill	Employment of Tenure Track and Tenured Academic Staff	Sections 6 and 7
McMaster	Academic Appointment, Tenure and Promotion	Sections VI and VII
Simon Fraser	Tenure Track Appointments	Appendix I
Toronto	Academic Appointments	Article V

Appendix 3 – Adherence to CAUT Exigency/Layoff Criteria by Institution

University	Prov.	Class	Score	University	Prov.	Class	Score
Alberta	AB	MD	47%	Northern British Columbia	BC	U	67%
Athabasca	AB	NA	7%	Ontario College of Art and Design	ON	NA	27%
Bishop's	QC	U	40%	Ottawa	ON	MD	40%
Brandon	MB	U	47%	Prince Edward Island	PE	U	80%
British Columbia	BC	MD	47%	Queen's	ON	MD	67%
Brock	ON	C	67%	Regina	SK	C	60%
Calgary	AB	MD	53%	Ryerson	ON	C	73%
Cape Breton	NS	U	27%	Saint Francis Xavier	NS	U	47%
Carleton	ON	C	53%	Saint Mary's	NS	U	13%
Concordia	QC	C	87%	Saint Thomas	NB	U	33%
Dalhousie	NS	MD	73%	Saskatchewan	SK	MD	27%
Guelph	ON	C	73%	Thompson Rivers	BC	NA	73%
Lakehead	ON	U	47%	Trent	ON	U	47%
Laurentian	ON	U	73%	Vancouver Island	BC	NA	13%
Lethbridge	AB	U	40%	Victoria	BC	C	67%
Manitoba	MB	MD	40%	Waterloo	ON	C	73%
Memorial	NL	C	47%	Western Ontario	ON	MD	60%
Moncton	NB	U	53%	Wilfrid Laurier	ON	C	67%
Mount Allison	NB	U	33%	Windsor	ON	C	60%
Mount Saint Vincent	NS	U	80%	Winnipeg	MB	U	80%
New Brunswick	NB	C	53%	York	ON	C	80%
Nipissing	ON	U	53%				

Scores correspond to the proportion of criteria fulfilled by the exigency or layoff clause in the institution's faculty agreement. Higher scores reflect greater inflexibility for the institution.

Appendix 4 – Adherence to Redundancy/Layoff Job Protection Criteria by Institution

University	Prov	Class	Score	University	Prov	Class	Score
Alberta	AB	MD	36%	Mount Royal	AB	NA	9%
Athabasca	AB	NA	9%	New Brunswick	NB	C	45%
Bishop's (Junior)	QC	U	36%	Nipissing	ON	U	55%
Brandon	MB	U	27%	Northern BC	BC	U	45%
Calgary	AB	MD	45%	OCADU	ON	NA	36%
Cape Breton	NS	U	45%	Ottawa	ON	MD	55%
Carleton	ON	C	18%	Queen's	ON	MD	36%
Dalhousie	NS	MD	36%	Ryerson	ON	C	55%
Grant MacEwan	AB	NA	9%	Saint Mary's	NS	U	27%
Lakehead	ON	U	64%	Saskatchewan	SK	MD	45%
Laurentian	ON	U	64%	StFX	NS	U	45%
Laval (Junior)	QC	MD	27%	Thompson Rivers	BC	NA	73%
Lethbridge	AB	U	36%	Vancouver Island	BC	NA	18%
Manitoba	MB	MD	45%	Victoria	BC	C	55%
Memorial	NL	C	36%	Waterloo	ON	C	55%
Moncton	NB	U	18%	Wilfrid Laurier	ON	C	64%
Mount Allison	NB	U	45%	Winnipeg	MB	U	82%

Percentages correspond to the proportion of criteria fulfilled by the redundancy or layoff clause in the institution's faculty agreement.

Appendix 5 – Comparison Agreements

Union	Local (if applicable)	Years
Alberta Teachers' Association	Edmonton School District	2012-16
Association des enseignantes et enseignants du Québec		2009-14
British Columbia Teacher's Federation	Greater Victoria School District	2006-11
CAPE	Economics and Social Science Services	-2014
Canadian Union of Public Employees	PEI Teachers' Federation	2013-16
Elementary Teachers' Federation of Ontario	Toronto District School Board	2008-12
Manitoba Teachers' Society	Winnipeg Teachers' Association	2010-14
New Brunswick Teachers' Federation		2012-16
Nova Scotia Teachers' Union	Halifax Regional School Board	2013-16
Ontario Secondary School Teachers' Federation	Toronto District School Board	2008-12
PIPS	Applied Science and Patent Examination	-2014
PIPS	Canadian Food Inspection Agency Scientific and Analytical	-2014
PIPS	Chalk River Professional Employees	2011-14
PIPS	National Research Council Research Officer/Research Council Officer	-2014
Teachers of Saskatchewan		2013-17



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