

news from CUASA

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Editor: Bob Lovejoy

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CUASA PAT FINN

TOWARD A CLARIFICATION OF ISSUES

Since the last CUASA Newsletter members of the academic staff have heard and seen a variety of statements from the Administration concerning the University's financial health and prospects. These have ranged from the President's reports to the General Faculty Board and to Senate, through his appearances before the committee of chairmen of at least two Faculties and at the Faculty Board of at least one, to the columns of TWAC and of The Charlatan.

On every occasion the form of the message has been much the same: broad statements about the inevitability of expenditures outrunning revenues, a few concrete figures and some examples as the principal evidence for the argument, a reference to the threat of bankruptcy and a call for trust, and a unilaterally imposed timetable which, even when it does not reverse the appropriate order for considering plans and proposals, provides insufficient time and opportunity for their examination and discussion. Shaped and expressed in this way, the content of the message emerges as follows:

1. Under present arrangements the University's financial condition is, both in the short and the long run, irreversibly precarious.
2. Whatever other actions may be taken, lay-offs — of some magnitude, at some early date, distributed and implemented in some fashion — are so certain that one must simply assume and accept their occurrence.
3. Article 17 of the Collective Agreement, the only currently available means for effecting lay-offs, except perhaps through lockout, "will not allow the accomplishment of expenditure reduction even in part by lay-offs and still keep the University alive". Consequently, a major effort must be made, at the next round of negotiations which begins in March, to amend the article in ways, so far unspecified, which will make it "fair and workable in the eyes of both parties".
4. In a more positive way, we should address ourselves to creating a new Carleton, an institution considerably reduced in size, but not in excellence, and marked by "an elegant and useful mix of academic programs", both liberal and professional.

On what points and on what grounds can or should CUASA take issue with this obviously reasonable, sincere and down-to-earth view? The issues between the Administration and the academic staff are, if not simple, at least clear. On those few occasions when we have had the opportunity to present our case, always at our initiative, CUASA's officers have argued the following:

1. We cannot help being troubled by the University's financial condition. However, we are also deeply concerned that the minutiae of a given year's budget, the simplistic forecasts of the 1982 Report and the gross judgments that may or may not be suggested by the entries in balance sheets and auditors' reports are treated as self-evident and indisputable indicators of that conditions and of the means for its repair.
2. In particular, we have yet to see or to be told about the evidence that makes, at the very least, a strongly convincing case for the unavoidability of lay-offs. Moreover, the academic staff and the University community as a whole are entitled to much more

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People



"Miss Hargroves, find me some statistics to validate my report!"

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TOWARD A CLARIFICATION OF ISSUES (continued from page 1)

and to much fuller demonstration of efforts to reduce expenditures (e.g., on middle and senior management) and, even more, to increase revenues (e.g., not only through more effective action to attract and retain students, but through the more profitable use and perhaps even disposal of some of the University's assets). If we are, indeed, in the sort of crisis that has been announced, measures of both types, as well as particular examples of the sort just described, are surely an appropriate first step. On the subject of lay-offs, our view remains unchanged: Let us take the proposals of the Committee on Article 19 (sketched on page 6 of this Newsletter), or at least those on which we can agree, and let us give them some reasonable opportunity to have their anticipated effect. Then we shall know whether radical surgery is called for, whether lay-offs are really necessary, and whether the financial savings that may possibly be made in this way are worth the price, institutional perhaps even more than personal, that we shall inevitably have to pay. The President, in part, recognized this point in his support of the Committee's activities, but clearly only in part, since he accompanied that with the repeated announcement of his determination to come to the bargaining table within a very few months with proposals to make lay-offs not less drastic or less painful, but easier.

3. Just as we have seen little convincing evidence for lay-off, we have heard no strongly convincing argument for a very substantial transformation of Article 17. As is indicated at greater length in another section of this Newsletter, Article 17 protects the institution as well as the individual; and while it protects the individual, it also provides the means for effecting lay-offs, but only lay-offs that are financially justifiable and that are carried out by a process that is orderly, reasonable and fair. In the absence of compelling arguments, we are understandably reluctant simply to set aside the efforts and the consensus of the whole University community, both before unionization and in successive negotiations, that underlie Article 17, a point that is also developed more fully elsewhere in these pages.
Closely related to the preceding is another point which merits a brief comment. At the meeting of the General Faculty Board the President mentioned the possibility of "some kind of outside independent audit" to allay distrust. That may, indeed, be a useful way of uncovering minor corruption, mismanagement or other questionable practices, but it obviously does not and cannot address the principal concerns of these paragraphs. Similarly, an audit of the sort that is apparently visualized is clearly in no way comparable to the report of the Financial Commission that is called for in Article 17 on financial stringency, should we come to that. The Commission is not an "outside person telling us what we should or shouldn't be doing" and there is no reason for misunderstanding on this point.
4. We are quite prepared to participate, as best we can, in the process of redefining the University's size, shape and mission. As indicated in our earlier Newsletter, we should not and do not "take the view that no change is necessary, whether in the University's organization, in its program and program mix, or in the number and complement of its academic staff". On the other hand, we urge the University, at all levels and in all sectors, to avoid the planning by hunch and lurch which have sometimes marked its activities in the past. For that the University needs time, not the unrealistic deadlines which have become as frequent in recent months as were the rumours that filled the summer: for example, a deadline, issued through The Charlatan, for policy proposals in respect to Article 19, with the threat of administrative action on individual cases if that deadline is not met; a deadline for an instant demonstration of the success of these policies that is clearly heralded by the intention of coming to the negotiations in early March with proposals for substantial change in Article 17; a deadline of mid-December for a plan to the Board which will lay the financial foundation, as well as map out the internal allocation of resources, for the "New Carleton", to be followed in April or May by the proposed changes in curricula and programs which have scarcely begun to make their way through the participatory processes of Faculty Boards, the Senate Academic Planning Committee and Senate itself. In these and other ways the University has been told that there is no time to do things right. In our view, this time the University cannot risk doing them wrong.

Two points need to be repeated again and again. First, in his report to the General Faculty Board, the President referred, at some length, to a "deeply ingrained . . . distrust" at Carleton of the reliability of financial information and of the way in which it is made known. That is not quite the point. Surely, his vice-presidential advisors should have informed him of the events, experiences and practices which gave root to this disposition. Surely, he must himself realize that a new president, with virtually instant plans for a reduction in staff, might provoke and prolong this reaction. Surely, once again, it is a matter of right much more than out of lack of trust that all of us, not merely those who may feel themselves personally threatened, should want to be informed, fully and precisely, of the circumstances in which we find ourselves. As academics we deal in evidence, analysis and argument. We see no reason to lay these requirements aside in matters that are so vital to our own and our University's future.

Second, CUASA does, indeed, have an interest in protecting jobs, particularly when lay-offs may be unnecessary or may otherwise be brought about by arbitrary or ill-considered action, or may be sought in ways and for reasons which are contrary to the best interests of the University. We make no apology for that. Who else is better qualified than the academic staff, on its established record of commitment and contribution to the central purposes of the University, to safeguard those interests and purposes?

Moni Frumhartz
President

WHAT IS WRONG WITH ARTICLE 17, ANYWAY?

In the past few months, the new President has said flatly on a number of occasions that Article 17 (Financial Stringency Declaration and Related Procedures) "won't work", that "we don't have either fair or workable means for lay-off particularly for faculty", and has implied that this historic article is simple feather-bedding which he is unwilling to tolerate. Now although memories are short, most members of CUASA will certainly remember several salient facts about the history of Article 17, such as (1) that its character grew out of the apprehended lay-offs of 1975, (2) that its basic principles were fought for by all major elements of the Carleton community -- Senate, Deans, etc., as well as by CUASA, (3) that its details were worked out in a lengthy set of problem-solving negotiations at Carleton and enjoyed the support of the academic community on both "sides" of the bargaining table and (4) that it enjoyed the full support of CAUT and, indeed, conforms to the CAUT Guidelines. Beyond these basic facts, however, much of the history and rationale of various aspects of the Article may have become more vague for some of the veterans of 1975. Certainly, this analysis should bring those aspects back into focus for the veterans, while informing those who have joined the Carleton community since 1975.

The Article Concerning Financial Stringency Declaration and Related Procedures deals with a set of related but analytically distinct phases of a situation in which a grave financial crisis threatens the academic viability of the institution: (1) the process of distinguishing between financial difficulties which justify the laying-off of full-time academic staff members and financial difficulties which do not justify such actions; (2) the process of determining where in the university lay-offs should occur in terms of programmes; (3) the process of determining which individuals shall be laid-off; (4) the process whereby the decisions made concerning individuals will be implemented and grieved; (5) the process whereby compensation and the rights of laid-off individuals are protected. While several other related matters are dealt with in the Article, the five identified embody the basic principles which constitute the RULE OF LAW as it currently pertains to this troubled issue.

A) WHY DOES THE ARTICLE PROVIDE FOR A FINANCIAL COMMISSION?

Clauses 17.1 and 17.2 outline the commitment made by the Carleton Board of Governors to establish a Financial Commission composed of three respected individuals from outside of the University to advise the Board concerning its preliminary judgement that a financial crisis may exist which is so severe and long-lasting that it can only be resolved through the lay-off of members of the academic staff. In an examination of lay-off situations at other universities in North America, CUASA and Board negotiators alike were struck by the fact that the absence of such advice had frequently led to lay-off actions which were subsequently challenged successfully in the courts. What is more, in light of the apprehended lay-offs of 1975, Board representatives were well aware that they were dependent in making such judgements on the information provided to them from within the University and could not, themselves, be fully familiar with the sorts of evidence with which an impartial financial commission would provide them. In addition, it was recognized that the very impartiality of the advising body would give the Commission's Report far more weight in the eyes of government officials and ministers with whom Board members would have to "do battle" to preserve the academic integrity of the institution. In short, therefore, the actors in these early negotiations saw a convergence of interests in providing a device which they felt would help protect Carleton's academic integrity. In addition, the terms of reference of the Commission were framed to ensure a full exposure of information concerning priorities and spending judgements in such a way that the Board of Governors had the advice of faculty and students as well as that of administrators.

Clearly, this aspect of the Article reflects the long-standing commitment of the Carleton community, including its Board of Governors, to a rational and open process of decision-making in which a number of potentially divergent views are heard before decisions are taken (rather than in law courts after the event).

B) WHY ARE THE PROCEDURES TO DETERMINE WHO WILL BE LAID-OFF SO COMPLICATED?

Unlike the situation discussed concerning 17.1 and 17.2, the community involved in these historic negotiations was not "of one mind" concerning the methods to identify those to be laid-off (once a declaration of stringency had been made, following the reporting of the financial commission and the negotiations called for under 17.2). I personally favoured the university-wide seniority approach found in the Agreements at St. Mary's and York Universities which offers an objective criterion and relatively little dislocation through in-house "blood-letting" and extensive grievances. The parties, however, had agreed not to displace Senate documents and procedures and the then President of the University was determined to retain as many Senate Documents and procedures as possible. As a result, the Senate Document with its very detailed procedures and kit-bag of criteria was "referenced-in" to describe the rather extensive process of determining where in the University lay-off cuts would come and which individuals would be affected. This having been agreed to, however, both Board and CUASA negotiators feared that some aspects of the Senate procedures could create paralysis at any level and thus added a set of "fail-safe" procedures (now 17.10) to deal with such an eventuality.

Clearly, far simpler procedures could have been (and were devised) by CUASA. The fact of the matter is, however, that the Community (including Senate AND Board) had discussed the issue extensively and the (generally wise) view that one should not create *de novo* just for the purpose of novelty or iconoclasm prevailed. The addition of new provisions concerning grievance was, of course, a simple recognition of the provisions of the Ontario Labour Relations Act which provides for arbitration to resolve such grievances regardless of the agreement of the parties or the words in their collective agreement.

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COUNCIL VOTES FINANCIAL SUPPORT TO PROFESSOR KURT FUERST

The following motions were passed by CUASA Council at its September 19th meeting:

- 1) That CUASA, through its officers, offer its "good offices" to the President and Professor Fuerst to explore the possibilities of a fair settlement of the case. Further, that the financial support agreed to by Council be made conditional on Professor Fuerst's agreement to cooperate actively in efforts to achieve such a settlement providing, of course, that the President is similarly willing to cooperate actively toward that end.
- 2) That CUASA shall, in the event that the Review Chairman does not assess costs against the Employer, contribute towards the real costs of Professor Fuerst's legal fees an amount up to 75% of CUASA's accumulated defence fund, as of the date of the Review Chairman's report.
- 3) That Council advises the Finance Committee that the amount referred to in the above motion shall not be less than Professor Fuerst's real costs or 75% of the Academic Defence Fund as of July 1st, 1979, whichever is less.

These motions were brought to Council from the Steering Committee, but were proposed to Steering Committee by an ad hoc Committee (J. Vickers, A. Tilson, L. Copley, G. Kardos) created to examine the Fuerst case and advise the Steering Committee on the question, "Should CUASA declare itself willing to fund Professor Fuerst's costs (if any) arising from the arbitration proceedings?" The following is a summary of the ad hoc Committee's report.

I WHY IS THERE A QUESTION AT ALL?

Since CUASA pays for the cost of cases it takes to arbitration under all other clauses of the collective agreement, members may be under the impression that CUASA is already committed to paying costs under the Dismissal Review Procedure; however, our collective agreement differs in this area from ordinary arbitration practice in that it gives the aggrieved individual the right to proceed to a form of arbitration before a Dismissal Review Chairman whether or not s/he has the consent and support of CUASA. If we ask what CUASA intended concerning its responsibility for costs incurred by individuals under the Dismissal Review clauses, we find that no clear policy was established. It was, however, clearly not the intention of the Association or its members that CUASA would never accept responsibility for costs in Dismissal Review cases. Certainly this would have been an unacceptable view to our members who expect (and have the legal right to expect) reasonable services from CUASA when they exercise their rights as legally established by the Agreement. Nor would it have been reasonable to our members that we would finance arbitrations in cases which are less serious than dismissal but make a blanket refusal to fund the more serious cases of dismissal. Equally, it would be unreasonable to assume that CUASA and the members intended that every single dismissal case would be funded automatically since CUASA had no power to prevent access to the process and would therefore be providing a "blank cheque" which did not depend on the calibre of the case.

II THE CRITERIA AND THEIR APPLICATION TO THIS CASE

Since no explicit policy exists within CUASA concerning the decision of whether or not to provide support in this kind of case, the ad hoc Committee reviewed the case using the following criteria.

- 1) Seriousness of the Case. Is the possibility of a serious or flagrant injustice involved? What is necessary is not a determination of the final "merits of the case" (which is the Dismissal Review Chairman's job) but an estimation of the seriousness of the case. The Committee members, having reviewed the documentary evidence relevant to the case, conclude that Professor Fuerst's grievance is in no way frivolous or capricious, and that his allegations concerning academic freedom are genuinely serious. The Committee stresses that it can only establish that a serious injustice would be involved if Professor Fuerst's allegations are established.
- 2) The Duty of Fair Representation. What legal responsibility does CUASA have in a case of this kind? The Ontario Labour Relations Board has held that bargaining agents are guilty of a breach of fair representation if they refuse to assist an employee in obtaining his/her rights under the agreement because of considerations of political expediency, discrimination motivated by hostility against the grievor, etc. While this provision obviously does not require CUASA to finance every arbitration, it does and must set limits to reasons offered for not supporting a case.
- 3) Economic Significance. Does the grievance involve a potential financial loss or gain for the grievor? Clearly this case has the most serious financial implications for Professor Fuerst since his livelihood as a tenured professor is at stake.
- 4) Political Significance. Are the issues involved of particular importance to the membership, the CAUT, the profession? As the case involves alleged breaches of academic freedom, we must anticipate that it will be viewed as important by the membership since such breaches of one member's rights threatens those of all members. CAUT has expressed its interest through Vic Sim who has assisted the ad hoc Committee.
- 5) Labour Relations Significance. What significance has the case for the Association/ Administration relationship? The parties were equally responsible for the establishment of the dismissal procedures in hopes of a fair and thorough hearing of complex cases of this sort. In agreeing to these procedures, CUASA did not intend that members would in effect be denied fair access because the University feels it can afford the best legal counsel while almost no unassisted individuals can. Obviously this aspect of the procedures may prove contentious in future negotiations.
- 6) Is Relief Available? Could a favourable judgment bring relief or remedy? If no such remedy is possible, then even a serious case may not be pursued to arbitration. In his case, however, a clear and simple remedy is specified in the documentation since the President of the University will not recommend dismissal unless the Review Chairman determines that adequate cause for dismissal exists.

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WHAT IS WRONG WITH ARTICLE 17, ANYWAY? (continued from page 3)

C) COMPENSATION AND THE PROTECTION OF RIGHTS OF LAID-OFF ACADEMIC STAFF MEMBERS

Most of the details in clauses 17.8 and 17.9 are straight-forward and consistent with most other collective agreements in the higher education sector. One point, however, requires comment -- that is, the relatively long period of notice and the very poor compensation provisions. The balance achieved in 17.8 was quite simply an unsatisfactory trade-off. It was considered by CUASA negotiators to be marginally acceptable in the context of the whole Article, especially in an environment in which a laid-off faculty member might reasonably hope to secure another job given reasonable lead-time. In the current context, I personally wouldn't recommend an agreement with such low compensation provisions to the members.

IN SUMMARY, Article 17 represents a very complex balance which was the product of University-wide debate rather than a simple union-management negotiation. Its few clauses represented (in 1975) the results of more than five-years' work and debate at Carleton. In negotiations subsequent to 1975 it has been modified in its detail but never until this year have its basic principles been challenged. What is more, it parallels in most of its details similar clauses at practically every other unionized university in Canada. While I would not argue that it cannot be improved and streamlined, I would argue that the current all-out attacks on its principles are quite simply an attack on the rule-of-law principle and the participatory decision-making processes which have evolved here at Carleton.

Jill Vickers

Chair, Grievance Policy Committee.

COUNCIL VOTES FINANCIAL SUPPORT TO PROFESSOR KURT FUERST (continued from page 4)

III THE ISSUE OF PEER EVALUATION

Several CUASA members have suggested that it would be improper somehow for CUASA to provide support for Professor Fuerst because it may involve challenges to peer evaluations conducted by other members of the Association. It is the ad hoc Committee's view that while it may be politically awkward for CUASA to support the case, it would be improper to refuse support on such grounds. Generally, CUASA recognizes that complex issues in complex cases are best tested by arbitration which is a neutral outside process, rather than being somehow "fought out" within the unit. Also, CUASA is asked to support the grievor only on the basis of the perceived seriousness of the case not on the "truth" which arbitrators sort out.

IV ACADEMIC FREEDOM

Potential or alleged threats to academic freedom have always been taken very seriously by the academic profession because each of us realizes that one successful breach of the protections so essential to academic excellence threatens the rights of each of us. Hence cases in which serious breaches are alleged must be treated most conscientiously both out of empathy and because we realize that the "shoe" may always be on the "other foot" in the future. We believe that even those CUASA members with negative views on the "merits" of this case will agree that it must be fairly and thoroughly heard by an impartial arbitrator and that access to such a process must not depend on a grievor's financial position. We are sure that they would wish to receive similar treatment were they the aggrieved parties.

On the basis of this report brought by the ad hoc Committee, both Steering Committee and Council passed the motions providing Professor Fuerst with a designated amount of financial support.

Report prepared by R. Lovejoy
Editor.

CARLETON UNIVERSITY REFUGEE PROJECT

Bob Lovejoy is CUASA's representative on the Steering Committee for the Carleton University Refugee Project. If you would like to help or need further information, you may leave a message for Bob at 3847. The phone number for the Project office is 4428.

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UPDATE ON ACADEMIC CAREER PLANNING

Many of you may recall, and may even have read, a recent article in *This Week at Carleton* on "Faculty Mobility". The article referred to, but did not identify, a committee whose responsibility it is to devise policies which will encourage faculty transfers. The committee referred to is the Committee on Article 19 (Academic Career Planning) whose composition and activities were reported by me in the April issue of the CUASA Newsletter.

Its responsibilities extend well beyond making faculty transfers more attractive. Indeed, its mandate covers every aspect of staffing policy with but two exceptions: terminations of employment by lay-off and matters related to tenure and dismissal.

The primary impetus behind the Committee's work is the need to ease the pain associated with the slow revenue growth-high inflation tandem that the University is currently faced with. However, the analysis that it is performing and the changes that it will propose would be necessary even if we were blessed with an adequate level of funding. The primary goal in that situation would be, for sound academic as well as financial reasons, to restore and maintain a normal faculty age profile.

The Committee has met on a weekly basis since the beginning of February, sifting through a large variety of data on such diverse subjects as student enrolments, age profiles, retirement and attrition rates, sessional lecturer use, and resource needs and allocations across the University. An exhaustive analysis of these data has not been attempted because of time constraints and because experience elsewhere suggests that an exhaustive analysis of the present situation is not particularly helpful in designing tomorrow's staffing policies. The process which the Committee hopes to initiate should be viewed as a long-term controlled experiment. Based on the analysis we have done, we will make informed guesses as to what policy innovations will be effective and we will then recommend their implementation to the employer and the Association. The proof of the pudding will then be in the eating. If and when these innovations are implemented, they will have to be carefully monitored to see if they require additions, deletions or just fine-tuning. It is this future phase of the Committee's deliberations that constitutes the heaviest part of its workload. Among other things, financial and staffing models of the University will have to be constructed and maintained, a not insignificant task in itself.

The Committee's preliminary recommendations will be contained in a report which will be submitted to the Presidents of CUASA and the University shortly. While I can not at this stage reveal any details of what they contain, I can at least indicate the variety of concerns that they touch on. These include the size of sessional lecturer budgets, voluntary separation, early retirement, sabbatical leaves, reduced work loads, reduced time appointments and faculty transfers. If implemented, those policies which introduce alternative employer-employee relationships (e.g. faculty transfers, separation, reduced workload, etc.) will do so in a way that makes them available on a strictly voluntary basis, both for individuals and for management. Their effectiveness will depend on the publicity which is given them and, of course, on the attractiveness of the career options that they offer.

The report will be the subject of extensive debate at a Council meeting in early November. At that time the representative in your sub-unit will be able to fill you in on the detailed content of the report's recommendations and, of course, relay your reactions to them back to Council for its consideration.

Les Copley
President-Elect

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