

## TRANSITIONAL #27 ELECTION OF UNION DUES AND FINANCIAL DISCLOSURE

### I. ELECTION OF UNION DUES - COMING INTO FORCE DATES

On February 1, 2022, the *Labour Relations Code* (the “Code”), the *Police Officers Collective Bargaining Act* (“POCBA”), the *Public Education Collective Bargaining Act* (“PECBA”), and the *Public Service Employee Relations Act* (“PSERA”) were amended to include provisions that address the characterization and payment of union and association dues. The *Election of Union Dues Regulation* (“the Regulation”) was also introduced.

Some of these amendments, and certain provisions of the *Regulation*, came into force on February 1, 2022, with others coming into force on August 1, 2022. The following table provides an overview of key new provisions and their proclamation dates:

Legislation or Regulation	Came Into Force on February 1, 2022	Coming into Force August 1, 2022
<i>Labour Relations Code</i>	Section 26.1(1), (3), (5), (6) and (9)-(13).	Section 26.1 – Dues election provision: 26.1(2), (4), (7) and (8).
<i>Election of Union Dues Regulation</i>	Section 1-3, 5-6, 10, 11(2), 12.	Section 4, 7, 8, 9, 11(1) and 13.
<i>Police Officers Collective Bargaining Act</i>	Section 42.1(1), (2), (4), (6), (7), (10)-(12).	Section 42.1(3), (5), (8), and (9).
<i>Public Education Collective Bargaining Act</i>	Section 5.1(1), (2), (4), (6), (8), (11)-(13).	Section 5.1(3), (5), (7), (9), and (10).

<i>Public Sector Employee Relations Act</i>	Section 22(2)  Section 22.1(1), (3), (5), (6), (9)-(11).	Section 22.1(2), (4), (7), (8).
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These legislative changes also resulted in amendments to Division 23 of the *Code*, which addresses prohibited practises. Amendments to section 149(1)(d.1)-(d.3) of the *Code*, which relate to fee elections and revocations, deductions, and intimidation or undue influence arising from those events, and an amendment to section 151(1)(f) to include activities relating to making or revoking a dues election, came into force on February 1, 2022. Further amendments to section 149(1)(d.2) and section 151(1)(g) come into force on August 1, 2022.

Similar amendments regarding prohibited practices, with equivalent coming into force dates, were made to sections 45.3 and 47 of *PSERA*.

In addition, sections 26.1(12)-(13) of the *Code* contemplate different proclamation dates for the applicability of these amendments to academic staff associations, graduate students associations, or postdoctoral fellows associations in their roles as bargaining agents:

- February 1, 2022: Sections 26.1(1), (3), (5), (6), (9)-(13) and section 27.
- August 1, 2022: Sections 26.1(2), (4), (7) and (8), section 29(2), 149(a)(iii) and 151(g).

## II. UNION DUES PROVISIONS

The key aspects of the amendments to the *Code*, *POCBA*, *PECBA*, *PSERA* and the *Regulation* relating to union dues election are outlined below. However, trade unions, the ATA, police associations and the respective members of these organizations should review the applicable provisions in the legislation that governs their bargaining relationship. Section 2 of the *Regulation* addresses how it applies to section 42.1 of *POCBA*, section 5.1 of *PECBA* and section 22.1 of *PSERA*. For ease of reading, references to trade unions below are intended to also refer to the ATA and police associations.

- Trade unions, when setting dues, assessments or initiation fees (referred to collectively in this Information Bulletin as “Dues”) must indicate the amounts or percentage of the Dues that:
  - Relate to political activities and other causes, including charities, non-governmental organizations, political organizations, and any other activities referenced in section 26.1(1)(a) of the *Code* or described in section 3(2) of the

*Regulation*.<sup>1</sup> These activities are referred to as “non-core activities” and Dues relating to these activities are considered “non-core dues” under the *Regulation*; and

- Directly relate to activities under the *Code*, including collective bargaining and the representation of their members, and any other activities referenced in section 26.1(1)(b) of the *Code*, including those described in section 3(3) of the *Regulation* as “directly benefiting dues payers in the workplace”. These activities are referred to as “core activities” and the Dues relating to these activities are considered “core dues” under the *Regulation*.<sup>2</sup>
- Effective August 1, 2022, dues payers (a term defined in section 1(c) of the *Regulation*), are not required to pay the amount or percentage of Dues that relate to non-core activities unless they make an election to do so.
- Elections may be revoked. The provisions relating to the revocation of elections do not come into force until August 1, 2022.
- Prior to August 1, 2022, the *Regulation* provided for an interim election under section 6 of the *Regulation*, which required trade unions to give each dues payer an opportunity to make an initial election during the period beginning February 1, 2022 and ending on July 31, 2022. Trade unions are required to provide the following information to each dues payer before the dues payer makes an initial election:
  - a list of the activities and causes referred to in section 26.1(a) of the *Code*;
  - a list of the persons or entities paid by the trade union in respect of the activities and causes referred to in section 26.1(a) of the *Code*;
  - information respecting the amount or percentage of core dues, including:
    - the amount or percentage of core dues that the dues payer is required to pay, and
    - the total amount or percentage of core dues required to be paid by all dues payers;
  - information respecting the amount or percentage of non-core dues, including:

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<sup>1</sup> Section 3(2) of the *Regulation* concerning “activity that does not directly benefit dues payers in the workplace” should be read in conjunction with section 3(3) of the *Regulation*.

<sup>2</sup> The “core activity” status of Dues paid to other parties, including parent trade unions, is dealt with in accordance with section 5(5) of the *Regulation*.

- the amount or percentage of non-core dues that the dues payer will be required to pay if the dues payer makes an election, and
  - the total amount or percentage of non-core dues required to be paid by all dues payers who have made an election;
- any information required or reasonably requested by the dues payer to make an informed decision for the purpose of making an election.
- During the period beginning February 1, 2022 and ending on July 31, 2022, a trade union may continue to charge core dues and non-core dues in the same amount and percentage charged immediately before February 1, 2022, regardless of whether a dues payer has made an election.
- Section 12 of the *Regulation* states that elections must be in writing, contain the name and signature of the dues payer, and be signed by an officer or authorized official of a trade union. Elections must clearly indicate that the dues payer is electing to pay the applicable amount or percentage of non-core dues and/or any changes.
- Trade unions are prohibited from expelling or suspending a member, or taking disciplinary action or imposing a penalty, because the member has not made or revoked an election.

### III. BOARD'S DISPUTE RESOLUTION PROCESS CONCERNING DUES

The Board has broad dispute resolution powers under section 26.1(9) of the *Code*, section 42.1(10) of *POCBA*, section 5.1(11) of *PECBA*, and section 22.1(9) of *PSERA* to resolve any matters arising under these new provisions, including adjudicating disputes about whether Dues relate to core or non-core activities; whether an election has been made or revoked in accordance with the *Regulations*; and whether the information a trade union is required to provide under the *Regulation* is sufficient to enable a person to make an informed decision regarding an election or revoking an election.

Applications must be filed within **90 days** of when the party knew or ought to have known of the actions or circumstances relevant to the dispute. Applications filed after this 90-day period must provide reasons for the late filing. See: Section 16(2) of the *Code*, Section 3(1) of *PSERA* and 43(1) of *POCBA*. See also *Iler v Alberta Union of Provincial Employees*, 2018 Alta. L.R.B.R. LD-085.

The Board has developed the following process for applications under section 26.1(9) of the *Code*, section 42.1(10) of *POCBA*, section 5.1(11) of *PECBA*, and section 22.1(9) of *PSERA*. Applications made under these provisions will be conducted through written submissions alone, in accordance with the steps below, unless the Board exercises its discretion to hold a hearing:

1. The member making the application must provide a letter to the Board that contains the following information:
  - the name, address, telephone number, and email address of the member making the application;
  - the name, address, telephone number, and email address of the member's lawyer if the member is represented by counsel;
  - the name, local number, address, telephone number, and email address of the trade union or police association;
  - the legislation that applies to the application, i.e. the *Code*, *POCBA*, *PECBA*, *PSERA*, and any corresponding sections of the *Regulation* that are relevant;
  - a detailed explanation describing the nature of the dispute and what it relates to, particularly whether:
    - the Dues relate to core or non-core duties;
    - an election has been made or revoked in accordance with the *Regulations*;
    - the information a trade union is required to provide under the *Regulation* is sufficient to enable a person to make an informed decision regarding an election or revoking an election; or
    - where the dispute relates to another matter arising from section 26.1 of the *Code*, section 42.1 of *POCBA*, section 5.1 of *PECBA*, or section 22.1 of *PSERA*, a detailed explanation of the dispute, and the underlying facts.
  - documents or other records relevant to the dispute; and
  - a statement describing the relief the member seeks. The requested remedy must be in accordance with section 26.1(10) of the *Code*, section 42.1(11) of *POCBA*, section 5.1(12) of *PECBA*, and section 22.1(10) of *PSERA*. Remedies are discussed in more detail below in Part IV.
2. The applicant must provide confirmation in the letter that a copy of the application has been served on the trade union.
3. When an application is received, the Director of Settlement will review it to ensure it is complete and provides sufficient information for the Board to accept it. The Director is an employee of the Board. The Board also employs a number of Officers. All Board employees are impartial and act to assist the Board with processing applications. The Board's employees do not advocate on behalf of employees, unions, union members, or employers. See: *Rules of Procedure, Rules 22, 29; Bulletin 2*.
4. If the Director accepts the application, the Board will send a letter to the trade union or police association requesting a response. The response must provide a detailed response to all the allegations contained in the application, including any additional documents or records that are relevant.

5. The applicant will be permitted to provide a reply to the response. These reply submissions are the last chance to make submissions before the application file is sent to the Board for a decision. The Board's *Rules of Procedure* permit the Director of Settlement to limit the number of submissions and any further submissions require the Director's consent.
6. Once all submissions have been provided, the application, the response, the applicant's reply, and any further submissions, will be sent to a panel of the Board for a decision.

Note: Individuals filing applications, complaints or references may be identified by name at various stages of the Board's procedures including in Board decisions, on the Board's website, and in print and online reporting services that publish the Board's decisions. An exception to this general practice may be made, at the discretion of the Board, in cases where sensitive personal information will be disclosed. Individuals wishing to have their names masked may apply to the Board by letter setting out the reasons for the request including what sensitive personal information will be disclosed. This request should be made early on in the processing of the application.

#### **IV. REMEDIES**

Pursuant to section 26.1(10) of the *Code*, section 42.1(11) of *POCBA*, section 5.1(12) of *PECBA*, and section 22.1(10) of *PSERA*, the Board may make any order it considers appropriate to resolve the dispute, including an order:

- Directing a trade union to produce necessary information;
- Adjusting the amount or percentage of Dues that directly relate to core activities or relate to non-core activities;
- to cease the collection of Dues that are in contravention of an election
- restitution;
- suspending a trade union's ability to collect Dues.

#### **V. FINANCIAL DISCLOSURE**

Effective August 1, 2022, the *Code*, *POCBA*, and *PSERA* are amended to include provisions requiring trade unions and police associations to provide financial statements to each member as soon as possible after the end of the trade union's or police association's fiscal year. Regulations under the *Code*, *POCBA*, and *PSERA*, each titled "*Financial Disclosure Regulation*", also come into force on the same date.

The Board has authority pursuant to sections 24.1(3) and (4) of the *Code*, 40.1(3) and (4) of *POCBA*, and 4.1(3) and (4) of *PSERA*, to adjudicate disputes about whether a trade union or police association has provided a financial statement in accordance with the *Code*, *POCBA*, or

*PSERA*, and the applicable *Financial Disclosure Regulation*, including disputes about whether the financial statement or the information provided is inadequate.

The Board's dispute resolution process for complaints about financial disclosure are similar to the process for union dues election disputes, described above. The member making the complaint shall provide a letter to the Board containing the following information:

- the name, address, telephone number, and email address of the member making the application;
- the name, address, telephone number, and email address of the member's lawyer if the member is represented by counsel;
- the name, local number, address, telephone number, and email address of the trade union or police association;
- the legislation that applies to the application, i.e. the *Code*, *POCBA*, *PSERA*, and any corresponding sections of the *Financial Disclosure Regulation*;
- a detailed explanation describing the nature of the dispute and what it relates to, particularly whether:
  - a financial statement has been provided;
  - the financial statement is in the form required by the *Financial Disclosure Regulation*;
  - the financial statement does not contain the prescribed information, or is otherwise inadequate;
  - where the dispute relates to the adequacy of the financial statement or prescribed information, a detailed explanation of how the information provided is inadequate.
- documents or other records relevant to the dispute; and
- a statement describing the relief the member seeks. The requested remedy must be in accordance with section 24.1(3) or (4) of the *Code*, section 40.1(3) or (4) of *POCBA*, and 4.1(3) or (4) of *PSERA*.

Depending upon the dispute described and the section of the *Code*, *POCBA*, or *PSERA* relied upon by the member, the Board may order a trade union or police association to:

- provide a member with a financial statement or the information prescribed by regulation;
- prepare another financial statement;
- provide the prescribed information in a form and containing the particulars that the Board considers appropriate.

*See also:* Information Bulletins 1 and 2 and the Board's *Rules of Procedure*.

*For further information or answers to any questions regarding this or any other Information Bulletin please contact:*

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