

Changing Practice: Serving Estoppel Notice

In this Bulletin:

- **Introduction to Estoppel**
- **Serving Estoppel Notice: Where and by Whom?**
- **Estoppel Toolkit: Resource for Districts**
- **BCPSEA Advice and Contacts**

Introduction to Estoppel

Many districts have recently contacted BCPSEA regarding information on changing existing practices that are inconsistent with the provisions of the collective agreement.

Part of bargaining preparation includes a review of existing practices which are not consistent with the provisions of the collective agreement. If an employer wishes to change such practices, they may be "estopped" (i.e., barred) from doing so, if an arbitrator determines that the union has relied on the employer's actions to their detriment without their having had an opportunity to address the matter through collective bargaining.

Estoppel simply works on the principle of fairness. It isn't fair for an employer to suddenly effect change when, through practice, words, or silence, they have led the union to believe that a certain way of doing things will continue. However, there is a window of time during which employers may serve notice to a union that they no longer intend to follow a practice which is not required or not consistent with the collective agreement. This window occurs at the time the parties are re-negotiating a collective agreement, as this gives the other party an opportunity to negotiate collective agreement provisions to legally provide what had previously been enjoyed through practice.

If there are practices that you and the local have followed, but that are not grounded in the collective agreement and you now wish to change, this may be your opportunity to make such a change.

Serving Estoppel Notice

In past rounds of bargaining, BCPSEA and the BCTF discussed the issue of estoppel notice in protocol and ongoing discussions and discussed setting a date by which estoppel notice would be served.

For this round of bargaining, BCPSEA anticipates to again discuss the issue of estoppel notice in protocol discussions with the BCTF.

As previously requested by BCPSEA, should your local serve your district with estoppel notice, please forward copies of such notice to BCPSEA.

Estoppel Toolkit: Resources for Districts

To assist school district staff in understanding the somewhat complicated and technical concept of estoppel, BCPSEA is providing the attached “Estoppel Toolkit.”

The toolkit defines estoppel, sets out the requirements to establish an estoppel, provides case examples on the application of estoppel, describes the contents of estoppel notices and contains sample estoppel notice wording.

The toolkit also explains that an estoppel does not arise for every change of practice. The toolkit provides options for districts to consider where an estoppel is not established but a change of practice is being contemplated.

BCPSEA Advice and Contacts

Should your district wish to explore serving estoppel notice to change an existing practice, please contact your BCPSEA labour relations liaison. Each liaison will consult with the BCPSEA Bargaining Team to coordinate a response and analysis of whether estoppel is established.

In addition, please send any estoppel notices you may receive from your local to your BCPSEA labour relations liaison. As referenced above in Serving Estoppel Notices, it is anticipated the issue of estoppel notice will be discussed between the provincial parties. The status of any estoppel notice served before those discussions are concluded will need to be considered.

Questions

For further information please contact your BCPSEA labour relations liaison at any time.

Attachment: Estoppel Toolkit