

Investigation into reprisal

Subsection 62(2) of the *Official Languages Act*

The *Official Languages Act* provides protection against reprisal for people who file a complaint with or participate in an investigation of the Office of the Commissioner of Official Languages. A person who experiences reprisal can file a complaint with the Office of the Commissioner, which can then investigate and make recommendations to the federal institution.

Reprisal is often subtle and difficult to prove. In order to determine whether reprisal has occurred, the Office of the Commissioner must verify that the situation cited in the complaint is related to a language rights complaint.

It is therefore important to provide as much detailed information as possible to the Office of the Commissioner so that it can conduct its investigation and gather all relevant information.

Establishing a link between the reprisal and a language rights complaint

To determine whether the situation cited in the complaint is in fact a reprisal, the Office of the Commissioner must verify that it is related to a language rights complaint.

The language rights complaint must be one of the reasons for the action taken

The language rights complaint does not have to be the only reason for the alleged reprisal. It can simply be a factor that contributed to the action's being taken or the severity of the action.

Here's an example:

A federal employee files a complaint with the Office of the Commissioner, alleging that he has been passed over for promotion because he is English-speaking. One week later, his supervisor takes disciplinary action (a note in his file) because he was late for work four times in the past month. The employee believes that the note is a reprisal to punish him for filing a language rights complaint.

In determining whether this is a reprisal, the Office of the Commissioner may ask the following questions:

- Is the employee's language rights complaint one of the reasons for the disciplinary action?
- Would the supervisor have taken the disciplinary action had the employee been late four times but not filed a complaint with the Office of the Commissioner?
- Is the disciplinary action a logical consequence for lateness?
- Does the federal institution have policies on disciplinary action that explain when and how it is applied? If the federal institution does not have a policy, is it common practice to punish lateness with a note in the employee's file?
- Does the level of punishment (a note in the employee's file) match the level of the offence (being late four times)?

Gathering the information

To verify the link between the reprisal and a language rights complaint, the Office of the Commissioner must consider all available evidence. It takes into account not only your allegations and those of the federal institution, but also several other pieces of evidence, including the following:

- Witness statements (verbal or written)
- Your personnel file
- Minutes from meetings at your institution
- Internal reports on your performance