

Privileged Speech is not Defamatory Speech, but Privilege Can Be Easily Lost

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Some callers to my office, wanting to sue for defamation because someone said terrible, false and hurtful things about them, are disappointed to learn that they cannot seek legal action because the speech falls under a privilege. By definition, “privileged” speech can never be defamatory, and therefore cannot support a defamation action.

Examples? Speaking at a City Council meeting, testifying in court, or filing a police report – all privileged speech. (There are of course exceptions to every rule of law, but my New Year’s resolution was to write shorter articles.) So, if someone trashes you from the witness stand in court, there is nothing you can do about it from a defamation standpoint. (Although the person could be criminally liable for perjury. Sorry, couldn’t let that one go.)

“BUT,” I tell the caller, “if the person steps out of court and makes the same statements, you have them.”

I ran across this case out of Canada that so beautifully illustrates the point, eh. A teacher allegedly says terrible things about a student in front of the class. Parents sue. On the day of trial, parents agree to settle for \$5,000 with no admission of wrongdoing by the teacher.

But then they felt compelled to gloat. The walked out to waiting media, and said: “She’s a marked lady and before she makes any more unprofessional moves, she’ll have to think twice.” Wait a second parents, you just agreed that there was no admission of liability, so how is she marked or unprofessional? Now it was the teacher’s turn to be miffed. The teacher sued, and a court awarded \$234,011.87. The parents appealed, but the appeal court not only upheld the verdict, it added insult to injury by spotting an error in the trial court’s math, and added \$552. Ouch.

The parents could have said the exact same thing INSIDE the courtroom, and the media could have reported those statements, and the parents would have been fine. But when they left the courtroom, they stepped out of the defamation immunity bubble and got nailed.