



Letter to Dental College body protected by absolute privilege

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In a recent decision¹, the Ontario Superior Court of Justice has made it clear that professionals who are the subject to defamatory statements made during disciplinary proceedings that merely repeat allegations made in the initial complaint cannot sue the maker of such statements – no matter how false and egregious the statements might be and no matter how malicious their intent.

In *Tucakov v. Engelberg*, the plaintiff, a dentist, sued one of his former patients for statements she made during disciplinary proceedings before the Royal College of Dental Surgeons of Ontario. The former patient's complaint alleged concerns with the level of hygiene and sanitation employed by the plaintiff while she attended a dental appointment.

Despite warnings from the College, the plaintiff harassed the defendant with letters that threatened to sue her unless her complaint was withdrawn. The defendant replied in a letter to the plaintiff that was copied to the College. In his action, the plaintiff sought damages for what he said were false allegations in this reply letter that he had engaged in extremely unhygienic behaviour that endangered his patient's welfare during a dental appointment.

In dismissing the action, Mr. Justice Dambrot held that the letter was protected by absolute privilege. He observed that absolute privilege immunizes a

person from liability for any statement made in the course of proceedings before a statutory body exercising disciplinary powers over its members with respect to professional conduct. Unlike the more limited defence of qualified privilege, absolute privilege applies regardless of whether the statement was maliciously or for an improper purpose.

While absolute privilege has traditionally protected only letters of complaint that initiate disciplinary proceedings for unprofessional conduct, Dambrot J. found that it applied to the defendant's letter because it was so inextricably connected to the original complaint letter that it, too, should be protected. Because absolute privilege provided a complete defence to the plaintiff's defamation action, the action was summarily dismissed.

¹ *Tucakov v. Engelberg*, [2005] O.J. No. 4949 (SCJ)



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