

MacDonald's thoughts on reply in opposition to HBC's motion to enforce protective order beyond the arbitration, contrary to settlement.

HBC's motion is contrary to 2 distinct settlement provisions which anticipate disclosure.

1. The the settlement agreement plainly anticipates an end to confidentiality As set forth in detail in MacDonald's motion to dismiss arbitration [possibly cut and paste or attach], the plain language of the settlement agreement calls for an end to confidentiality after the eight-week quiet period. Additionally, the claimants' release language in section 4 specifically anticipates litigation against Wagenmaker & Oberly and SDK accounting firms. If there were any doubt whether this put HBC on notice that there would be substantial public disclosure of arbitration-related matters, Kevin Todd, of his own initiative, confirmed his understanding that "Discovery responses in a state court case are not generally 'private'" in an email to MacDonald counsel dated October 14.

Additionally, much of the first 6 sections of HBC's motion complains of MacDonald's tone, yet HBC asked for a nondisparagement, but acquiesced to the current settlement language when MacDonald refused

Notwithstanding that 2 distinct provisions of the settlement anticipate disclosure of arbitration matters, HBC falsely claims, in section 7, that termination of confidentiality was not a matter of negotiation. In fact, HBC first asked for such, but MacDonald refused, and HBC subsequently asked for a terse, neutral statement which MacDonald also refused, telling HBC representatives repeatedly that he would not agree to any statement that did not being their long overdue journey down the road of 'mea culpa.' In fact stating his clear intent to disclose what he has kept private, in hopes they themselves would begin to do the right thing for the congregation. HBC should not now act surprised by a more comprehensive statement that they perceive to place them in a negative light. They wanted this and chose it during the October 19, 2019 face to face refusals, and subsequent non-action. There is no surprise here.

HBC's motion is inequitable because:

1) it seeks to end public discussion after publicizing false and disparaging information.

HBC's motion should also be denied because their unclean hands in the matter of public statements make it inequitable to grant HBC equitable relief concerning MacDonald's public statements about their conduct.

- 1) The record shows that HBC's comprehensive and damaging public statements November 2019, were timed to preclude MacDonald seeking injunctive relief, and to avoid ICC confidentiality.
- 2) HBC now claims to be concerned over privacy, yet most of the participants in the arbitration whose privacy they now seek, are the very people who participated in a scheme to make extensive disclosures of personal information concerning McDonald in an attempt to embarrass him and mischaracterize. As just one example, they led the public to believe the \$270,000 spent on hunting (sans donor reimbursements) was for MacDonald's personal recreation, when their own records show they were well aware the hunters had contributed \$8.4 million during the same time period. It would be beyond unreasonable to preclude MacDonald from disclosing this exculpatory evidence.

- 3) In fact, the protective order was originally sought by MacDonald and his attorneys, to protect him from further false public statements during the arbitration, which had been a past strategy,
- 4) Unlike HBC, MacDonald made only minimal public statements during the pendency of the dispute
- 5) The record is clear that HBC lied to the panel about the defamatory intent of their statements. For example, Elder chairman Brian Laird testified the (second) public disqualification was intended only for HBC congregants, yet HBC minutes reflect his statement that “the world needs to know.”
- 6) The record is clear that HBC and their attorneys lied to the public, and to the panel, that Wagenmaker and SDK conducted an independent investigation when actually they were advocates hired for litigation, and Kevin Todd letter to HBC insurer, Philadelphia Insurance states this plainly.
- 7) In light of the above, it is manifestly unjust that HBC would make false public statements and then seek to enforce a gag order that was intended to protect MacDonald from HBC, in order to prevent MacDonald from ever being able to dispute their claims.

2) it is contrary to HBC claims to desire transparency and congregational accountability.

HBC’s motion is in the interest of a few leaders who wish to conceal misdeeds and mismanagement, and opposed to the best interests of the church at large

- 1) At the outset of arbitration, HBC elders wrote the congregation that they had no desire for the arbitration to be unnecessarily private. Both before and since that written statement, they have committed to a “new era of transparency and openness.” Those same leaders now ask the ICC for cover to renege on this significant commitment
- 2) **Likewise, HBC sought to justify their numerous public statements about MacDonald under the guise of congregational accountability. Yet they now seek to avoid exactly that.**
- 3) The record shows that HBC
 - a. wrongfully withheld stewardship of WITW and the ability to use intellectual property freely as contracted
 - b. sought to steal MacDonald’s retirement funds after telling the church these funds were fully and legally vested
 - c. sought to influence ECCU to cancel a mediated settlement (later having to spend considerably more to resolve the dispute)
 - d. threatened, and then fulfilled their threats, to make harsh public statements about MacDonald if he did not acquiesce to settlement demands

It is in the congregational interest that the full truth of these matters be know.

HBC ridiculously complains that MacDonald demanded a *mea culpa*, even as their public statement does make an apology to MacDonald. “We are sorry- how dare you ask for an apology?” is now common, Kevin Todd duplicity. The settlement terms leave little doubt there was substantial truth to MacDonald’s claims. To borrow a phrase HBC has worn out, MacDonald was only asking for the truth, not to shame the HBC elders.

HBC used MacDonald's mere disclosure of the existence of a settlement¹ (but not of any terms) as a pretext to release its own statement in violation of the confidentiality it now seeks to enforce against MacDonald. In that statement, HBC mischaracterized funds paid to MacDonald as being compensation for funds that belonged to Walk in the Word, and, unsupported by the settlement document, stated that a \$250,000 payment to WITW was compensation for MacDonald's loss on the sale of his Inverness home. These statements were designed to imply there was no merit to MacDonald's defamation claims, and to suggest he was benefitting personally from money that actually went to a charitable entity in coverage of just 25% of legal fees spent to recover his own teaching ministry. As is obvious, and stated explicitly in the insurer's reservation of rights letter, the insurance funds could not possibly relate to a breach of contract or conversion claim. By publicizing false statements detrimental to MacDonald and then asking for a gag order on him, HBC leaders now seek an encore to their pre-arbitration shenanigans.

HBC's false appeal to the integrity of ICC arbitration

HBC disingenuously asserts in paragraph 9 that their motion should be granted in the interest of integrity of the ICC forum. In fact, continuation of the protective order would result in ICC arbitration being seen as a tool for covering up matters of public interest. The Wagenmaker litigation is already underway, and will lead to much of the discovery in the current arbitration becoming public. If HBC is successful in kicking the disclosure can a few months down the road, it will be at the expense of the ICC, which inevitably will appear to some observers to have been complicit in covering up the scandalous conduct revealed in these proceedings.

¹ We are also aware that HBC has already broadly disclosed to many of its employees, in a staff leadership forum, the existence of the settlement agreement and significant information about its terms