

Appendix – Input from Board Chair

On February 9, 2023 NWCCU inquired about several lawsuits and a settled lawsuit stemming from Board actions occurring in 2021.

NIC's response to the "Show-Cause sanction" was transmitted on March 30, 2023 and was written through a collaborative effort of administrators, faculty and staff who were not privy to all the information surrounding a former president's departure. In early September NIC's servers were disposed of for communications due to the notice of tort claim provided by the still sitting president. Presidents have operational control and can gain access to attorney client privileged information if retained on NIC's servers.

The public has a right to know, Trustees worked in extensive collaboration with ICRMP lawyers to avoid avoidable claims.

In working with the assigned attorney, the attorney put forth the situation the Board was dealing with on September 10, 2021 in verbatim words from the ICRMP attorney.

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In July of this year, Dr. MacLennan's Employment Agreement was not extended. There is no provision in the Employment Agreement for yearly automatic extensions. In fact, the Employment Agreement expressly provides that the President serves at the pleasure of the Board of Trustees. The Board has not yet determined what action it will take regarding Dr. MacLennan's employment.

On September 7, 2021, Dr. MacLennan's attorney sent what is purported to be a notice of tort claim to our office. A copy of that letter is attached as Exhibit B. In that letter, Dr. MacLennan describes what he believes is a violation of the Idaho Whistleblower Act. Dr. MacLennan alleges that the Board's failure to renew his employment contract in July constitutes an adverse employment action. Dr. MacLennan also alleges that such failure constitutes defamation and slander. In the letter, Dr. MacLennan alleges that he has suffered damages in the amount of \$1,500,000.00. However, he does not elaborate on how he reached that amount.

Options Available to Board of Trustees

Under the Employment Agreement, there are four options available to the Board of Trustees. The decision regarding which option to take is left to the sole discretion of the Board and the Board may decide to take whichever action is in its best interest. This letter is meant to explain the available options to the Board and the related potential legal consequences. Nothing in this letter should be construed as an attempt to influence the actions of the Board.

- 1. The first option available to the Board of Trustees is to renew Dr. MacLennan's contract and continue the employment relationship with him.*

2. *The next option is to not extend Dr. MacLennan's contract but simply let it expire on June 30, 2023.*
3. *The third option is to terminate the Employment Agreement without cause and pay Dr. MacLennan a severance equal to twelve months of salary and benefits pursuant to Section 9.3 of the Employment Agreement*
4. *The final option would be to terminate Dr. MacLennan for cause pursuant to Section 9.4 of the Employment Agreement. Under this section, the Board may terminate Dr. MacLennan for any one of the five enumerated causes set forth in the Employment Agreement.*

While the Board has the sole discretion to determine which course of action to take in this matter, each of these courses of action carry with them varying consequences which will be discussed below.

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Additionally, it is apparent from the material that we have reviewed as part of this case that Dr. MacLennan and Mr. Banducci have conflicting personalities. Based on the notice of tort claim sent on September 7, 2021, as well as the more recent email sent on September 8, 2021, regarding mask mandates, it is clear that Dr. MacLennan will continue to look for faults in the Board's actions as long as Mr. Banducci is a part of the Board. This conflict of personalities would likely require the entire Board to walk on eggshells as long as Dr. MacLennan is employed at the College. Any slip up could result in a lawsuit against the college

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Ways to Mitigate Legal Consequences

While it is likely the any action taken by the Board in relation to Dr. MacLennan's Employment Agreement will result in a lawsuit at this point, the Board can take some steps to ensure that the consequences from any such lawsuit are mitigated. The most important step the Board can take is to refrain from making any statements regarding this matter to the media. While Dr. MacLennan is a public official and it will be difficult for him to prevail on any defamation action, it would still be better to avoid providing him with ammunition for a defamation case. As such, we would recommend not making any statements regarding Dr. MacLennan's employment.

In addition to not making any statements regarding Dr. MacLennan's employment, the Board should also try to avoid making statements to Dr. MacLennan that could be construed as adverse employment actions until the Board determines what to do about Dr. MacLennan's employment. This would include employment evaluations, reprimands, or other communications about Dr. MacLennan's actions as President of the College. Board members should avoid communicating directly with Dr.

MacLennan unless that communication is either written or recorded to prevent that communication from being misconstrued in future litigation.

Going forward Board members should assume that any communication they have with or concerning Dr. MacLennan could be part of future litigation of this matter. As such, Board members should take extreme caution with future communications to mitigate the College's exposure.

Conclusion

Pursuant to the Employment Agreement and Idaho Code section 33-2109, the Board of Trustees has the sole discretion regarding the employment of Dr. MacLennan. While we anticipate that Dr. MacLennan will bring a suit against the College should his employment be terminated, if he is terminated without cause and paid a severance the potential damages from such a suit will be significantly less than if he is terminated for cause.

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In summary, "it is likely the any action taken by the Board in relation to Dr. MacLennan's Employment Agreement will result in a lawsuit at this point..." The Board chose to find another president able to address the Governance issues plaguing North Idaho College.

Incorrectly identified that NIC's President was dismissed against the legal advice of NIC's insurer, Idaho County Risk Management Plan (ICRMP) at the time and further the Board's actions directly resulted in the insurer dropping NIC's coverage.

This error occurred because the authoring team had no documentation on the process to achieve a settled lawsuit and Trustees who were involved at the time were not engaged in authoring the March 30, 2023 response, even though requested to participate weeks prior.