



Fordell Castle

# Clan Henderson Society, INC

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## REPORT OF THE VICE PRESIDENT & GENERAL COUNSEL TO THE EXECUTIVE BOARD OF THE CLAN HENDERSON SOCIETY

There were several legal matters that I have addressed and advised the Executive Committee, the Executive Board, and Society officers. One matter was the required conflict of interest statements. The second matter was the review of a fund-raising proposal. The third matter concerned the creation of a new class of Society membership, the lifetime membership. The fourth matter concerns the creation of a new elective office, the Vice President of Communications. The fifth matter is the Henderson Stone Project.

### CONFLICT OF INTEREST STATEMENTS

Compliance with this Bylaws requirement continues to improve. The Society Bylaws require officers and certain other individuals to file conflict of interest statements with the Society Secretary and have the Executive Board review them. Under Article IX, Section 7, of the Bylaws, Executive Board members and “interested persons”, as determined by the Board, are required to file a statement annually with the Society Secretary regarding conflicts of interest.

There is a fill-in form to make it easier for individuals to better enable filing the statement online. Timely filing of the form is important to the Society as the Executive Board is required to review the forms as one of the Board’s corporate oversight responsibilities and is an annual board meeting requirement. The IRS looks for compliance with this legal requirement.

### AGM RAFFLE

In preparing for the 2024 annual general meeting (AGM), a fundraising idea was presented to the Executive Board that a kilt donated to the Society to raise money for the Society could be a prize in a raffle operated by the Society at the AGM. Generally, a raffle is considered a form of gambling and is a highly regulated activity, especially at the state level.

I explained that the state of Washington, where the AGM was held, has extensive laws and administrative rules regulating raffles which would make operating such a fundraising activity very difficult, especially in view of the amount of money that would be raised by such an activity. The discussion then turned to an auction or sale of the donated kilt to raise money through the Society's website.

## LIFETIME MEMBERSHIPS

President Russell proposed the creation of a new class of Society membership, the lifetime membership. I assisted in the preparation of the amendment to the Society Bylaws to create the new membership class which resolution was approved by the Executive Board.

## CREATION OF THE OFFICE OF VICE PRESIDENT FOR COMMUNICATIONS

President Russell has proposed creation of a new elected officer position in the Society of Vice President for Communications. I requested input from the Executive Committee and have prepared a draft resolution for President Russell for consideration at the next Executive Board meeting.

## THE HENDERSON STONE PROJECT

The Society has been interested in protecting, preserving, and maintaining reasonable permanent public access to *Clach Eanruig*, the Henderson Stone, located at 8 Upper Carnach, a croft in Glencoe. The Stone is of importance to Clan Henderson, particularly its significance in regard to the Massacre of Glencoe in 1692.

Many years ago, a member of the Clan Henderson Society, Jean Henderson, living in Glencoe had a stile and stone-paved footpath installed on the croft to allow for better public access to the Stone. At some point in time since that installation, and after the death of Jean Henderson, the stile and stone pavers were removed, and a padlock was put on the field gate. Recently, one of our members, Regional Commissioner Emeritus for Scotland Allen Henderson, discovered this. He contacted various local authorities about his concerns without any satisfactory response at the time. He was in contact with the crofters also a little over a year ago.

Sometime later, Allen Henderson was contacted by Bridget Thomas, Outdoor Access Officer, Lochaber and Skye, with the Highland Council, regarding his complaint and his efforts to reestablish a path to the Stone to see whether she could assist him in communicating with the croft tenant, discuss the situation, and come to an agreement. Per the Register of Crofts, the tenant of 8 Upper Carnach is Mr. Donald H. Young, Grianan 11 Carnoch, Glencoe, Argyll PH49 4HS, and the landlord is Mrs. Agnes Margaret Armstrong, Woodlands 24 Coniscliffe Road, Hartlepool TS26 0BT, south of Newcastle upon Tyne.

Allen Henderson and Bridget Thomas spoke with Mr. Young, the crofter, and his wife, Ms. Jane Henderson Young. We have been told that the landowner, Mrs. Armstrong, wants nothing to do

with this matter. The result of these discussions has been a proposal presented to the Executive Board of the Society to provide a secure pathway to the Stone and to preserve and protect the Stone. The Youngs want to use a fenced path giving access to the stone to prevent irresponsible behavior by passing motorists. The Youngs have agreed that the location of the new gate should be to the left of the existing field gate, and that a fence would run around the outside of the croft before turning towards the stone. They would like a formal agreement. Bridget Thomas mentioned that having an agreement between the parties would be helpful. She suggested we apply for a construction permit, but that probably requires additional information we don't have yet. We received a cost estimate for the construction work of approximately \$18,000 (£13,500), although it is about a year old. We do not want the Society to pay \$18,000 for a new pathway just to find the gate to the Stone locked shut 5 years later.

Not surprisingly, there has been more than one proposal for access to the Stone. There's also a proposal to renovate the existing pathway, stepping stones that are on the right-hand side, and then perhaps also install a single fence prohibiting visitors from going in behind the trees that are off on the right side of the road, as has been a concern of the crofters. An alternative option involves simply having a pathway straight out from the road to the Stone.

There are several parties with an interest in at least some aspect of the project: The Youngs (the crofting tenants); Mrs. Armstrong (the owner of the croft); the Highland Council (local government); the Crofting Commission (government agency regulating crofts); the Scottish Land Court; and the Society.

Because of the legal issues and complexities involved and the parties' interests, I have sought legal counsel in Scotland, specifically, near to Glencoe. I have contacted Mr. Jeremy Benfield, a solicitor and partner with MacPhee & Partners with offices in Fort William, who has knowledge and experience in crofting law and conveyancing. I gave him some basic information concerning the project, and he came back with some information.

Mr. Benfield gave us several options to consider:

1. For an agreement by the Society with Mr. Young to be framed in a way that would be binding on his successors in the croft tenancy, authorized by the Scottish Land Court. Mr. Benfield mentioned that he was unsure whether this option is even possible.
2. For the pathway and the Stone to be resumed from crofting tenure, that is, taken out of the property that is otherwise regulated as a croft. This would require an application to the Scottish Land Court by the croft owner, Mrs. Armstrong. This would probably require the Society to fully indemnify her in respect to her legal expenses. The Society would need a contractual agreement with Mrs. Armstrong in such terms whereby she would then convey the pathway and the Stone to the Society.
3. For the Society to acquire the landlord's interest in the small area of land which we wish to protect so that the Society becomes the owner of that part of the croft; this would then mean that the Society could take a Land Court action for resumption. See above paragraph 2.

4. For the croft tenant to apply to the Crofting Commission for an Advance of Purchase Decrofting Direction in respect of the land to be protected and the Commission then authorizing the decrofting. Croft tenant would acquire title from his croft owner but nominating title to be taken in the Society's name. This would then mean that the Society would be the owner of the croft free of any crofting considerations.

Mr. Benfield mentioned that he would be willing to meet for a preliminary discussion of this project. I spoke with Alistair Henderson of Fordell, Chief of Clan Henderson, and he suggested that I contact his daughter, Claire Henderson who lives and works in Glasgow, Scotland, which I have done. She has agreed to assist me in this project, and I am presently working on scheduling a meeting with Mr. Benfield, Claire Henderson, Louis Russell, and myself.

As you can see from the options that Mr. Benfield has suggested, this will not be an inexpensive project. I have not entered into any discussions about his legal fees and expenses. That will be one of the first items for discussion and decision by the Executive Board after I meet with him.

#### ACTION ITEMS

The following are items derived from the discussion:

1. Conflicts of interest statement review and approval
2. Consideration of a resolution creating the elected office of Vice President for Communications
3. Completion of the Henderson Stone Project

Respectfully submitted,

*Vincent C. Henderson II*

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