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

Over the past year, the Executive Board has been adjusting to the new Society Bylaws and Executive Board resolutions. As we have gone forward, and continue to do so, there have been and will continue to be a breaking-in period. While some decisions and operations may seem to be slower and taking more time than in the past, it drives more deliberative decision-making and better managed implementation and organization of Executive Board and Society policies. This will set the standard by which future boards and future officers can be expected to perform their functions and duties on behalf of the Clan Henderson Society.

CONFLICT OF INTEREST STATEMENTS

As was explained last year, 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. While a form is attached to the Bylaws, earlier this year, I prepared a fill-in form that should make it easier for those persons to file the statement online. I hope to have that put up on the Society website, if it has not been uploaded already.

I have provided information and advice to the Society Secretary with respect to the filing requirement. During this year’s meeting of the Executive Board, the board will be required to formally review and approve these conflict of interest statements. This is part of the Board’s corporate oversight responsibilities and will be an annual board meeting requirement. In the future, the Secretary will identify for the Executive Board those officers who have not timely filed their conflict of interest form. There is the possibility that there might be others, not officers, who are required under the Society Bylaws to file a conflict of interest form. Those persons will be determined by the Executive Board. The Executive Board must exercise its due diligence to monitor and enforce the implementation of these bylaw requirements.

AD HOC FUNDRAISING

First, this is not a criticism of anyone. Ad hoc fundraising, that is engaging in non-approved solicitation of money on behalf of an unincorporated association, is quite common, if not always quite legal. However, most states have certain laws and rules regulating the solicitation of funds by nonprofit and charitable organizations. For example, a few years ago in anticipation of the AGM at the Ligonier Highland Games in Pennsylvania, it was suggested that the Society engage in a raffle for fundraising. Pennsylvania has fairly comprehensive laws regulating gambling and charitable solicitations. It was decided not to engage in that project as the application and approval process appeared to be a little too daunting and probably not worth the effort in view of the amount of funds that might have been raised.

One of the officers of the Society, recognizing the need to raise additional moneys to fund additional scholarships given by the Society, solicited funds from individuals for that purpose. While the purpose and intent was perfectly proper, the solicitation had not been approved by the Executive Board prior to its implementation. With such fundraising being done in the name of the Society a donor or donee might infer that the Society has approved of the fundraising venture. This can give rise to a donor or donee attempting to impose certain obligations or duties upon the Society unbeknownst to the Executive Board. If this practice were to continue, it could give rise to someone completely unknown to us using the Society's name and reputation to defraud others by supposedly raising funds for the Society while pocketing those funds.

I am not questioning the purpose or intent of the solicitation nor am I casting aspersions upon those who were involved. The purpose was perfectly proper, but the proper approval process needed to be followed. The Executive Board absolutely must exercise control over these financial matters. The Board will now need to consider, belatedly, a motion to ratify and confirm the solicitation of funds for scholarships that occurred earlier this year on behalf of the Society.

SCHOLARSHIP AWARDING PROCESS

Second, this is not a criticism of anyone. During the discussions concerning the fundraising activity, some misunderstandings became apparent with respect to the process for awarding Society scholarships. Under the previous Society Constitution and Bylaws, like the other then-standing committees, the Scholarship Committee had near carte blanche power within its assigned authority. When the committee approved a scholarship that was all that was necessary. No further approval, for example by the Executive Board or any Society officer, was required. The new Society Bylaws have changed this somewhat.

Under Society Bylaw X, § 3, the Society has four standing committees: Audit Committee; Finance Committee; Fundraising and Development Committee; and Program Oversight Committee. The Scholarship Committee is not one of them. Under Society Bylaw X, § 4, "The [Executive] Board may establish, divide, combine, or dissolve committees as it may deem

advisable for the achievement of the purposes and the proper conduct of the affairs of the Society, such committees being subject to the power and authority established by the Board.” And under Society Bylaw X, § 7, in part, “All activities of committees shall be subject to the control of the Board and conducted in accordance with any policies, rules, or regulations which may be promulgated by the Board.”

The purpose of these bylaw provisions is not to hamstring the committees, but to make sure that any decisions made on behalf of the Society by a committee, particularly those decisions that might impose financial obligations on the Society, can be timely reviewed and, if necessary, approved by the Executive Board. Again, the Executive Board has the duty and responsibility to do due diligence and exercise its authority legally on behalf of the Society.

That being said, the Executive Board should consider adopting policies and rules for the committees, in this case the Scholarship Committee, to allow the Board to monitor the activities of the committees in a timely manner such that, should it become necessary, the Board may make sure that the committees are properly and appropriately conducting their affairs on behalf of the Society without unduly restraining the committees in their work.

ACTION ITEMS

The following are items derived from the discussion above that the Executive Board should consider by motion or resolution, as appropriate:

1. Conflicts of interest statement review and approval
2. Ratification and confirmation of the solicitation of funds for scholarships that occurred earlier this year on behalf of the Society
3. Ratification and confirmation of the awarding of scholarships given earlier this year on behalf of the Society, including approval of the disbursement of funds outside of the budget for 2022 scholarships
4. Policies and rules for the operation and monitoring of Society committees

Respectfully submitted,

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