

Dear Sir John,

Following our recent telephone conversation, you asked me to let you have a short note to share with the Clan Society on next steps as we approach the tenth anniversary of the Family Convention which appointed you as Commander of the Clan. My note takes into account the publication last month of a Practice Note by the Lyon Court setting out an updated process for the recognition of Chiefs in Clans and Families which are without one.

The background

When we met in Argyll almost three years ago, I explained the process that we would follow over the second five years of your Commandership of the Clan, following your original appointment as Commander at the Family Convention in Glasgow. It is important to remember that the Lord Lyon doesn't "appoint" Clan chiefs, or heads of Families. His role, and that of the Court, is to recognise the holder of the "undifferenced" Arms of the family – the person who holds those Arms is the head of the family. All the rest of us have to "difference" our Arms in some way. In Scotland Arms are a form of property and are passed down through the generations. The Lyon Court exists to protect the ownership of that property just as the Land Registry protects the ownership of a house, or the Courts protect intellectual property such as copyright.

Where the "owner" of the Arms dies without an heir, or without leaving directions as to who should inherit, then generations can pass before someone else seeks to establish their ownership by descent either from the owner or from an earlier generation. At the moment, I am helping Clan Donald to establish the descent of a MacDonald living in New Zealand from the last chieftain of one of their prominent branches, where that family has been without a head for five generations. It has been a long drawn out process and has involved eliminating several potential senior claimants through working out that their lines have died out. Once that lengthy genealogical work is complete, we will then petition the Lyon Court to grant our man in NZ the undifferenced Arms of that branch of Clan Donald.

In this case, as you know, the situation is different. Many, many generations have passed since the House of Otter died out, and the likelihood of finding someone with a provable descent is very, very remote. In these situations, the Lyon Court allows for a Family Convention to come into being, to enable the Clan or Family to choose someone – a Commander – to help them identify a suitable candidate to petition for the undifferenced Arms. The expectation is that the Commander will serve a series of five-year terms, with at least ten years until he or she is able to petition for the grant of the undifferenced Arms.

The situation today

With the publication of the Practice Note last month, the Lyon Court has updated its procedures in relation to Family Conventions. One or two points need to be noted as they will guide what you do next. The Note states that one of the responsibilities of a Commander is to "seek out and encourage to come forward" any potential claimant to the chiefship. It continues:

So, as we approach the tenth anniversary of your appointment as Commander we have a few things to do:

1. Determine that the Clan has "sought out" potential hereditary claimants. This should be relatively easy to do. The committee of the Clan Society should prepare a Statement to the effect that after many years of searching for a descendant of the House of Otter it has failed to find anyone with a stateable, and provable, descent. Given that the last known Chief died in 1493, the likelihood of finding anyone with a

provable descent is very remote. Since the Clan Society was formed in 1977 its primary function has been to find a Chief for the Clan. In all that time no-one with a provable descent from the House of Otter has been found.

2. Write to the Lord Lyon, this year, asking that a Supervisory Officer be appointed to convene a further Family Convention in 2024 with the aim of “nominating a chief”, or in other words, nominating an individual to petition the Lyon Court for the grant of the undifferenced Arms of MacEwen. It is likely that Lyon would ask me to be the Supervisory Officer given I chaired the 2004 Convention, and attended the Gathering in Kilfinan. You can of course ask Lyon to (re) appoint me, or not reappoint me!
3. In your letter to Lyon you should point out all the work that has occurred since Sir John’s appointment as Commander. This would include showing how the Clan Society has grown globally; how there is now a Clan Centre in Kilfinan, and a Pipe Band; how Sir John has shown leadership through, for example, his membership of the Standing Council of Scottish Chiefs; and, how the profile of the Clan has grown through appearance at Gatherings and other events. I can, of course, help you to draft the letter.
4. Once Lyon replies in the affirmative, you should take steps to prepare for a Convention in 2024 along similar lines to those held in Glasgow and Argyll.

The undifferenced Arms

Given that there are no recorded Arms in the Public Register held in the Lyon Office, we have had to “back cast” using Arms granted to other MacEwens. We have devised an outline set of Armorial Bearings and Lyon has given an indication that these would be acceptable. We have some further work to do, but I don’t envisage any obstacles to Lyon approving what we petition for. I should also add that the Lyon Court has reduced the time it takes to deal with uncomplicated business, and I envisage that once we hold the Convention in 2024, the time to the granting of Arms will be a matter of months. As well as the plans for 2024, you should plan for a significant Gathering in 2025 to be presided over by the new Chief.

A final point

The Practice Note makes one other point to note. Where a Commander successfully applies for the grant of undifferenced Arms, the law of long prescription applies. That means that for twenty years after the grant anyone with a provable hereditary descent from the House of Otter could challenge the grant, and the process would be re-opened. Given all I have said above about the likelihood of finding a descendant who could prove their descent, then I think this is a very unlikely scenario, but it needs to be stated.

Do let me know if the Committee needs any further information at this point. I should just add that this note is just for information and isn’t a legal opinion nor should it be relied on as such. Lyon Court practice changes over time, and there is no guarantee that the rules of procedure won’t change again during this process, but I think that prospect is remote.

With all best wishes

Adam Bruce
Marchmont Herald