

Barons Courts of Prestoungrange & Dolphinstoun

Trinity Session: Elizabeth II. 53. 2004. July – November

JUDGEMENT AND DECLARATOR

[E II. 53. 2004 P & D. 12] Manifest statutory intent of Parliament to preserve unadulterated and un-modified past the ‘appointed day’ the complete ‘noble element’ in ‘the dignity of baron’ defined statutorily by §63(4) of the Abolition of Feudal Tenure (Scotland) 2000 ACT as such existed upon the date of Royal Assent to the ACT [9th June 2000] to avoid paying compensation for the taking of the considerable commercial value of the ‘noble element’ in baronies consisting of ‘the social, ceremonial, and armorial aspects of baronies’ ... notwithstanding the changed status of Barons arising from the ACT re (1) abolition of civil and criminal judicial jurisdiction of barons; (2) severance of ‘the dignity of baron’ from an attachment to or an interest in land; and (3) transformation of ‘the dignity of baron’ into a personal dignity ... is explicitly evidenced by the ‘savings clause’ in §63 (1), 2nd clause of the ACT: ‘*nothing* in this ACT [re abolition of baronial judicial jurisdiction and severance of the barony from the land] *affects* the dignity of baron or any other dignity or office (whether or not of feudal origin)’:

UPON THE PETITION of our Common Baron Sergeand of the Barons Courts of Prestoungrange and Dolphinstoun for findings of fact, declarations of law concerning the legal and heraldic effect which the changed status of a Baron in the Estate of the Baronage of Scotland occasioned by (1) abolition of the residual civil and criminal judicial jurisdiction of Barons by §63(1), 1st clause, of the Abolition of Feudal Tenure (Scotland) Act 2000 (hereinafter the ‘ACT’); (2) severance of the dignity of baron as a feudal estate attached to or as an interest in land by §63(2) of the ACT; and (3) transformation of ‘the dignity of baron’ into ‘incorporeal heritable property’ by §63(2) of the ACT ... has upon the statutory entitlement of the Holder of ‘the dignity of baron’ after the ‘appointed day’ of 28th November 2004 when the ACT enters into force to the *noble element* of ‘the dignity of baron’ defined statutorily in §63(4) of the ACT as ‘includes any quality or precedence associated with, and any heraldic privilege incidental to’ the dignity of baron ... and to issue a **Declarator of Entitlement** setting forth in detail and with specificity the survival of all such ‘qualities’, ‘precedences’ associated with and ‘any heraldic privilege’ incidental to ‘the dignity of baron’ notwithstanding the changed status of Barons arising from the ACT re abolition of the judicial jurisdiction of the Baron and the severance of the Barony from an interest in the land:

1. PARLIAMENTARY INTENT to preserve entire “NOBLE ELEMENT” in BARONIES:

THAT as evidenced by the *legislative history* of §63 of the Abolition of Feudal Tenure (Scotland) ACT 2000 [hereinafter the ‘ACT’] set forth in ¶¶ 2.30 to 2.45 of the Scottish Office’s ‘Report on Abolition of the Feudal System’ (SCOT LAW COM 168) [hereinafter the “Report”]), the explicit *parliamentary intent* of §63 of the ACT is to preserve unchanged, unaltered, and unmodified past the ‘appointed day’ the complete ‘noble element’ in baronies consisting of ‘the social, ceremonial, and armorial aspects of baronies’ which constitute ‘the considerable commercial value’ of baronies in order to avoid paying

compensation for the taking of this ‘**noble element**’ by the re abolition of the judicial jurisdiction of the Baron worked by the ACT and the severance of the dignity of baron from an interest in or an attachment to the land under the ACT.

A. From the outset of the debate leading to the enactment of the Abolition of Feudal Tenure (Scotland) ACT 2000, Parliament clearly recognised that allowing of ‘the “noble aspects of the barony title”’ to lapse upon ‘the abolition of the feudal relationship on which the ennoblement of the baron’ is derived was not a necessary part of feudal land reform and ‘might well give rise to justifiable claims for compensation’.¹

B. The value of Scottish Baronies derived from ‘the “noble aspects of the barony title”’ consisting of a minimal amount of land (i.e., the caput to which the barony has been reduced) of no value in itself is £60,000.²

C. The £60,000 value of Scottish Baronies is derived from personal ennoblement (i.e., a grant of arms) by the *nobilitating effect* of the ‘noble quality’ of the feudal tenure upon which the baronial caput is held.³

D. Specifically, the £60,000 commercial value of Scottish baronies based upon the ‘title of baron’, inclusion of the *nomen dignitatis* of that barony as part of the surname (i.e., Ian Doe of X, Baron of X), the legal capacity to be granted arms and certain baronial heraldic additaments, including baronial robes of estate, the right to hold a Baron Court, and to appoint a Baron Baillie and other Officers of that Baron Court.⁴

E. The title of baron, use of the *nomen dignitatis* of that barony as part of the surname, the legal capacity to petition the Lord Lyon for arms and conventional baronial heraldic additaments, entitlement to baronial robes of estate, the capacity of hold a Baron Court, and to appoint the Baron Baillie and other Officers of that Court ... acquired legal rights of incorporeal property having the present-day commercial market value of £60,000 ... are derived from the original historical erection of the lands of that barony in *liberam baroniam* by the Crown under the Great Seal of Scotland.⁵

F. The *legal entitlement* to this ‘title of baron’, use of a barony’s *nomen dignitatis* as part of the surname, the legal capacity to petition the Lord Lyon for arms and conventional baronial heraldic additaments including baronial robes of estate, the capacity to hold a Baron Court, and to appoint its Baron-Baillie and other officers ... intangible property and rights having the present market value of £60,000 ... is derived from the *feudal relationship with the Crown* ... which ‘noble quality’ would be lost if this feudal link were severed.⁶

G. The *legislative history* to §63 of the ACT states that barony titles under the feudal system of land tenure possess three special features: (1) conveyancing privileges (including salmon fishing); (2) legal capacity to hold a Barons Court; and (3) the ‘title of baron’ and baronial heraldic additaments.⁷

H. The policy decision was made in the drafting of §63 of the ACT to separate the noble aspects in baronies ... encompassing all of the above referenced ‘noble elements’ (i.e., the ‘title of baron’, use of the *nomen dignitatis* of the barony in the surname, capacity to petition for arms and baronial heraldic additaments, baronial robes of estate, capacity to hold a baronial court for non-judicial ceremonial purposes, capacity to appoint a Baron-Baillie and other Officers of the baron court) ... from the title to land conveyed by a ‘barony title’.⁸

I. Noting that neither the conveyance of a barony by its general name nor the acquisition of new salmon fishing rights are ‘of much practical significance’, the *legislative history* of the abolition of ‘any conveyancing privilege incidental to’ baronies in §63(1), 1st clause, of the ACT constitutes a directly intended part of the reform of the feudal system of land tenure ... which clearly has no relationship to the referenced ‘noble element’ in baronies.⁹

J. Because the ‘noble element’ in baronies ... apart from the caput — a residual plot of land with little or no intrinsic value ... have considerable commercial value in the amount of £60,000 the abolition of which would give rise to substantial claims for compensation; the *legislative history* of §63 of the ACT evidence the **intent of Parliament** (1) that the abolition of baronies is not a necessary feature of abolishing the feudal system of land tenure; (2) separation of the social, ceremonial, and armorial aspects of baronies from land ownership; and (3) that baronies are to become non-territorial dignities.¹⁰

K. As unmistakably evidenced in the *legislative history* of §63 of the ACT, the clear, manifest and unambiguous **intent of Parliament** was that the full range of ‘the social, ceremonial and armorial aspects of baronies’ encompassed in the term of the ‘noble element’ in baronies together with the right to the title and dignity of baron were **to survive legally** the ‘appointed day’ and to be entitled to full **future recognition** after the ‘appointed day’ by the Lord Lyon for a grant of all ‘baronial heraldic additaments’ existing as of the date of Royal Assent to the ACT (9th June 2000) ... notwithstanding the changed legal status of a baron brought about by the abolition of the judicial jurisdiction of the Baron worked by the ACT nor the severance of ‘the dignity of baron’ from an interest in the land under the ACT.¹¹

L. Incorporable heritable property consisting of ‘the dignity of baron’ re §63(2) of the ACT is defined statutorily in §63(4) of the ACT as ‘includes **any quality or precedence associated with, and any heraldic privilege incidental to**’ the dignity of baron as such existed upon the date of Royal Assent [9th June 2000] to the ACT and as such had been commonly granted, recognised, or accorded by the various Lords Lyon to that date ... because the explicit **Parliamentary intent** of §63 of the ACT is **to save** ‘the dignity of baron’ — legally defined as consisting of such ‘qualities’, ‘precedences’ and ‘any heraldic privilege’ — to avoid paying compensation in the amount of £60,000 for every barony in Scotland.¹²

2. OFFICIAL “RECOMMENDATION” TO RETAIN all existent ADDITAMENTS:

THAT the explicit **intent of Parliament** evidenced by 5(c) of the official “Recommendation” set forth in ¶2.45 of the Scottish Office’s “Report” is that §63 of the ACT be judicially construed by the Courts to the effect that after the ‘appointed day’ Barons will **“retain** any precedence and ceremonial or heraldic privileges derived from their barony” as well as will **“retain** the right to call themselves baron” as such existed as of the date of Royal Assent (9th June 2000) to the ACT and as had been commonly granted or recognised by the various Lords Lyon to feudal Barons to that date:¹³

“5(c) **The new legislation** should not **abolish** the dignity of baron or any other dignity (whether or not of feudal origin). Accordingly barons **should retain** the right to call themselves baron and **should retain** any precedence and ceremonial or heraldic privileges deriving from their barony.”

A. the verb **“retain”** as used in 5(c) of the official “Recommendation” set forth in ¶2.45 of the *legislative history* of §63 of the ACT is defined in the following dictionaries as,

- Webster’s New International Dictionary, 1926, RE-TAINED; RE-TAINING. {ME *reteynen*, *retaynen*, F. *retenir*, L. *retinere*; re- re- + *tenere* to hold, keep. See TENABLE; cr. REI~ of a bridle, RETENTION, RETINUE.} **1.** To restrain; prevent. **2.** To continue to hold, have, use recognize, etc.; to keep in possession, control, use, custody; to keep; not to lose, part with, dismiss, or permit to escape.. “Thy shape invisible *retain*.” Shak. “Be obedient, and *retain* Unalterably firm his love entire.” Milton.
- Ballentine’s Law Dictionary, 3rd edition, To continue to hold; to keep.

- Merriam Webster's Collegiate Dictionary, 10th Edition, {ME *reteinen*, *retainen*, Fr. MF *retenir*, fr. L *retinere* to hold back, keep, restrain, fr. *Re* + *tenere* ^ to hold^ . **1a**: to keep In possession or use **b**: to keep in one's pay or service **c**: to keep in mind or memory: REMEMBER 2: to hold secure or intact.

B. In the specific context of the official "Recommendation" at in 5(c) as set forth in ¶2.45 of the "Report" as the *legislative history* of §63 of the ACT ... use of the verb "**retain**" as used in 5(c) of the "Recommendation" ... **explicitly mandates** ... that after the 'appointed day' when "the new legislation" referenced in 5(c) enters into force ... that the barons are *to continue to keep in position, control, use, custody* ... and are *not to lose part with, dismiss, or permit to escape* — re use of the verb "**retain**" — "any precedence and ceremonial or heraldic privilege deriving from their barony" as well as "the right to call themselves baron" ... **existing before** the 'appointed day' ... and which **existed as of the date** of Royal Assent to the ACT ... as had been **commonly granted** by the various Lords Lyon **as of** that date.

C. Use of The verb "**retain**" as used in the official "Recommendation" at 5(c) at ¶2.45 of the "Report" constituting the *legislative history* of §63 of the ACT ... means to keep the **status quo ante** ... existing **before** the "new legislation" came into force on the 'appointed day' ... and which existed **as of the date** when the ACT received Royal Assent (9th June 2000) ... which had been **commonly granted, recognised, or accorded** by the various Lords Lyon **as of** that date.

D. According, the *legislative history* of §63 of the ACT set forth in the official "Recommendation" of 5(c) in ¶2.45 of the "Report" expresses the clear **Parliamentary intent** ... by use of the verb "**retain**" ... that "any precedence and ceremonial or heraldic privileges deriving from their barony" as well as "the right to call themselves baron" (and implicitly to use the *nomen dignitatis* of that barony as part of the surname) ... is **to survive** both the 'appointed day' and the statutory abolition by "The new legislation" of baronial judicial jurisdiction and severance of 'the dignity of baron' from attachment to or an interest in land ... in the **same unaltered form** which such 'precedences', 'ceremonial' qualities, any 'heraldic privileges', and 'the right to call themselves baron' **existed as of the date of Royal Assent to the Act** and as had been **commonly granted by various Lord Lyons as of that date**.

E. When the *legislative history* of §63 of the ACT set forth in the official "Recommendation" at 5(c) in ¶2.45 of the "Report" expressing the clear Parliamentary intent by use of the verb "**retain**" ... is read in conjunction with the **legal definition** of 'the dignity of baron' is set forth in §63(4) of the ACT as,

"includes any quality or precedence associated with, and any heraldic privilege incidental to" the dignity of baron; ...

the **manifest intent of Parliament** is that all those 'qualities', 'precedences', and 'any heraldic privilege' associated with or incidental to 'the dignity of baron' constituting the **legal definition** of 'the dignity of baron' set forth in §63(4) of the ACT ... are precisely those very 'qualities', 'precedences', and 'any heraldic privilege' **existing as of the date of Royal Assent to the ACT as had been commonly granted by the sundry Lords Lyon before that date** ... notwithstanding abolition by "the new legislation" of baronial judicial jurisdiction referenced in 5(a) of ¶2.45 in the "Report" as well as severance of 'the dignity of baron' from an attachment to land or an interest in land referenced in 5(d) and 5(e), respectively of ¶2.45 of the "Report".

F. Conversely, the **manifest intent of Parliament** expressed in the *legislative history* of §63 of the ACT set forth in the official "Recommendation" at 5(c) in ¶2.45 of the "Report" ... by use of the verb "**retain**" ... is that **despite the changed status** of a baron wrought by explicit abolition in "the new legislation" referenced in 5(c) of the baronial judicial jurisdiction cited in 5(a) of ¶2.45 in the "Report" and the specific severance of baronies from any attachment to or

an interest in land referenced in 5(d) and 5(e), respectively of ¶2.45 of the “Report” ... that after the ‘appointed day’ when the ACT enters into full force and legal effect ... Barons are **to retain** the same “right to call themselves baron and ... any precedence and ceremonial or heraldic privileges deriving from their barony” **as such existed before** “the new legislation” ... as of the date of Royal Assent to the ACT and as had been commonly granted by the various Lords Lyon **before** that date.

G. Use of the verb “**retain**” at 5(c) of the official “Recommendation” at ¶2.45 of the “Report on Abolition of the Feudal System” (SCOT LAW COM 168) constituting the *legislative history* of §63 of the ACT ... **explicitly evidences** the **intent of Parliament** for the **retention** by barons after the ‘appointed day’ of *existing* “**any** ... heraldic privileges deriving from their barony” ... which existed as of the date of Royal Assent (9th June 2000) to the ACT and as had been commonly granted by previous Lord Lyons to feudal Barons.

H. Use of the verb “**retain**” at 5(c) of the official “Recommendation” at ¶2.45 of this “Report” also ... **explicitly evidences** the **intent of Parliament** for the **retention** by barons after the ‘appointed day’ of *existing* “**any** precedence and ceremonial ... privileges deriving from their barony” ... which existed as of the date of Royal Assent (9th June 2000) to the ACT and as had been commonly accorded or granted by previous Lord Lyons to feudal Barons.

I. Use of the verb “**retain**” at 5(c) of the official “Recommendation” at ¶2.45 of this “Report” ... **explicitly evidences** the **intent of Parliament** for the **retention** by barons after the ‘appointed day’ of the *existing* “right to call themselves baron” ... and *implicitly* use of the *nomen dignitatis* of that barony as part of the surname ... which existed as of the date of Royal Assent (9th June 2000) to the ACT and as had been commonly recognised by previous Lord Lyons to feudal Barons.

J. The explicit preservation of “the dignity of baron or any other dignity (whether or not of feudal origin)” from abolition by “the new legislation” at 5(c) of the official “Recommendation” at ¶2.45 of this “Report” ... when read in conjunction with the statutory legal definition of baron in §63(4) of the ACT that “**‘dignity’** includes any quality or precedence associated with, and any heraldic privilege incidental to, a dignity” ... **explicitly evidences** the **intent of Parliament** after the ‘appointed day’ for the **retention** unaffected by “the new legislation” of not only ‘the dignity of baron’, itself, but also the dignities of Baron-Baillie and the other Officers and Personnel of Baron Courts, including their legal capacity to petition for and to be granted the heraldic insignia of office associated with Baron-Baillies and the other Officers/Personnel of Baron Courts ... which existed as of the date of Royal Assent (9th June 2000) to the ACT and as had been granted by previous Lord Lyons to feudal Barons.

K. In light of the particular official “Recommendation” in ¶2.45 at 5(a) of the “Report” for the abolition of “any surviving criminal or civil jurisdiction of barony courts”; ... the **explicit declaration** in ¶2.45 at 5(c) of the “Report” that after the ‘appointed day’ barons “should **retain any** precedence and ceremonial or **heraldic privileges** deriving from their barony” ... evidences the specific **intent of Parliament** for the **retention** by barons after the ‘appointed day’ of those particular “heraldic privileges” in existence as of the date of Royal Assent to the ACT (9th June 2000) which had been commonly granted by Lords Lyon prior to the Date of Royal Assent — including the **Red Chapeau** and **Feudo-baronial robes** associated with baronial judicial jurisdiction — as part of the ‘noble element’ consisting of ‘the social, ceremonial and armorial aspects of baronies’ which ‘gives baronies the value which they have’ re ¶2.40 of the “Report” ... notwithstanding the changed status of a baron arising from the abolition of the judicial jurisdiction of the Baron by the ACT and the severance of the barony from any interest in land caused by the ACT.

L. In light of the particular recommendation in ¶2.45 at 5(d) of the “Report” that “the dignity of baron should no longer be attached to land” ... and the specific recommendation in ¶2.45 at

5(e) of the “Report” “that after the appointed day a barony will not be an interest in land”; ... the **explicit declaration** in ¶2.45 at 5(c) of the “Report” that after the ‘appointed day’ barons “should **retain** any precedence and ceremonial or **heraldic privileges** deriving from their barony” ... evidences the specific **intent of Parliament** for the **retention** by barons of those particular “heraldic privileges” in existence as of the date of Royal Assent to the ACT (9th June 2000) which had been commonly granted or recognised by Lords Lyon prior to the Date of Royal Assent — including use of a **nomen dignitatis** derived from the barony as part of a baron’s surname, grant of a **badge** and a **standard** upon which to display the badge, and **Feudo-baronial robes** associated with an attachment to land including the ‘following’ or ‘hereditary representation’ derived there from — as part of the ‘noble element’ consisting of ‘the social, ceremonial and armorial aspects of baronies’ which ‘gives baronies the value which they have’ re ¶2.40 of the “Report” ... notwithstanding the changed status of a baron arising from the severance of the barony by the ACT from any attachment to or interest in land.

M. In summary, use of the *verb* “**retain**” in ¶2.45 at 5(c) of the “Report on Abolition of the Feudal System” (SCOT LAW COM 168) in the ‘recommendation’ set forth in 5(c) ... in reference to the explicit **retention** of “any precedence and ceremonial or heraldic privileges deriving from their barony” and in **retention** of “the right to call themselves baron” ... refers explicitly to those **existing** ‘heraldic privileges’, use of the title of baron and *nomen dignitatis* in the surname, and ‘precedences’ and ‘ceremonial’ qualities (including the use of baronial robes) as of the date of Royal Assent to the ACT (9th June 2000) and which had been previously commonly granted by sundry Lord Lyons to feudal Barons.

N. Manifestly, use of the *verb* “**retain**” in 5(c) of the “Recommendation” at ¶2.45 of the “Report” ... constituting the *legislative history* of Section 63 of the ACT ... evidences that the explicit and unmistakable intent of Parliament to retain the **status quo ante** re the statutory legal definition of ‘the dignity of baron’ in §63(4) of the ACT and the actual existent enjoyment by barons of “any precedence and ceremonial or heraldic privileges deriving from their barons” and “the right to call themselves baron” as such existed as of the date of Royal Assent to the ACT and had been previously commonly granted or recognised by past Lord Lyons ... for the explicit **legislative purpose** of avoiding any loss of “any quality or precedence associated with, and any heraldic privilege incidental to’ baronies ... which give baronies their commercial value of £60,000 re ¶2.32 of the “Report” ... and would render the Scottish Government liable for payment of ‘substantial claims for compensation’ re ¶¶ 2.34 and 2.40 of the “Report”.

O. The ‘Recommendation’ re baronies set forth in ¶2.45 of the “Report” ... constituting the *legislative history* of §63 of the ACT ... evidences an explicit **Parliamentary intent** to “**retain**” the *status quo ante* concerning “any precedence and ceremonial or heraldic privileges deriving from their barony” as well as “the right to call themselves baron” including use of the *nomen dignitatis* of the barony as part of the surname **as such existed as of the date of Royal Assent** and as had been **commonly granted or recognised by the Lords Lyon up to that date** ... notwithstanding the changed legal status of Barons caused by the abolition of the judicial jurisdiction of the Baron by the ACT and the severance of attachment of the barony to the land or as an interest in land.

P. Parliament clearly intends for barons to “**retain**” after the appointed day “any heraldic privilege incidental to” the dignity of baron re §63(4) of the ACT **as such existed as of the date of Royal Assent to the Act** and as had been **commonly granted or recognised by the Lords Lyon up to that date** to be granted or re-matriculated — as precisely those intangible ‘right[s] which give baronies the value which they have’ ... the taking of which would give rise to ‘substantial claims for compensation’.¹⁴

- the Red Chapeau,
- a Badge,

- a Standard upon which to display that Badge,
- Feudo-baronial robes to be worn or draped heraldically behind the Shield,
- the use of the *nomen dignitatis* of the barony as part of the surname, and
- ‘standing’ or legal capacity to petition for arms in the right of that barony as a Scottish dignity
- ‘standing’ or legal capacity of barons to hold a non-judicial baron court for ceremonial purposes and to appoint the Baron-Baillie and other officers and personnel

Q. The over-riding Parliamentary goal is to avoid ‘**substantial claims for compensation**’ for the ‘considerable commercial value’ of baronies is self evident when the *legislative history* concerning the abolition of the anachronistic civil and criminal jurisdiction of barons set forth in ¶2.42 of the “Report” ... is read in conjunction with the clear *legislative intent* expressed in ¶2.40 of the “Report” to preserve the ‘noble element’ consisting of ‘the social, ceremonial and armorial aspects of baronies’ together with ‘The right to the title and dignity of baron’ (including the *nomen dignitatis* of the barony as part of the surname) which are ‘the right[s] which give baronies the value which they have’.

R. The *unmistakable Parliamentary intent* expressed in 5(c) of the formal “Recommendation” set forth in ¶2.45 of the “Report” is that after the ‘appointed date’ “barons should **retain** the right to call themselves baron and should **retain any** precedence and ceremonial or **heraldic privileges** deriving from their barony” ... notwithstanding the abolition of the judicial jurisdiction of the baron or the severance of the dignity of baron from attachment to land or as an interest in land by “the new legislation” as specifically noted at 5(a), 5(d), and 5(e) of the official “Recommendation” at ¶2.45 of the “Report”.

3. RETENTION OF *status quo ante re ADDITAMENTS*:

THAT the ‘qualities’, the ‘precedences’, and ‘any heraldic privilege’ associated with or incidental to ‘the dignity of baron’ **set forth in the legal definition** of ‘incorporeal heritable property’ constituting ‘the dignity of baron’ in §63(4) of the ACT ... must of *logical necessity* be **those particular** ‘qualities’, ‘precedences’ and ‘any heraldic privilege’ associated with or incidental to feudal barony-titles in land **existing as of the date** of Royal Assent (9th June 2000) to the ACT and which had been **commonly granted, accorded, or recognised** by the various and sundry Lords Lyon up to the date of Royal Assent.

A. The above is derived from the overriding **Parliamentary intent** expressed in the *legislative history* to Section. 63 of the Abolition of Feudal Tenure (Scotland) ACT 2000 set forth at length in ¶¶2.30 to 2.45 of the Scottish Offices’ “Report on Abolition of the Feudal System” of preserving the **existing** ‘qualities’, ‘precedences’, and ‘any heraldic privileges’ conveyed by a barony-title under the feudal system of land tenure — which give baronies the market value which they have — **after** the ‘appointed day’ in order **to avoid payment of compensation** in the amount of £60,000 for every feudal barony in Scotland.

B. The *legislative history* to §63 of the ACT notes that under the feudal system of land tenure in Scotland, conveyance of a ‘tiny plot of waste ground, of little or no value in itself’ containing the **caput** or head-place to which a barony in land had been reduced ... **also conveyed** the dignity of baron ... carrying with it the following ‘qualities’, ‘precedences’ and ‘heraldic privileges’ constituting the ‘noble aspects of the barony-title’:

- the title of baron,

- use of the *nomen dignitatis* of that barony in the surname,
- legal capacity to petition the Lord Lyon for nobiliary arms (usually granted unless the petitioner is a convicted felon, prostitute, or publican),
- grant of baronial heraldic additaments to the coat-of-arms,
- use of Baronial Robes of Estate,
- legal capacity to hold a baron's court, and
- legal capacity to appoint a Baron-Baillie and other officers and personnel of that baron's court — some of which are independently entitled to a grant by the Lord Lyon of official insignia for that office.¹⁵

C. The *legislative history* to §63 of the ACT establishes that the **market value** for the above listed privileges derived from 'noble aspects of the barony title' for a Scottish feudal barony having no special features and a minimal amount of land constituting the baronial caput — having no value in itself — is **£60,000** ... in existence before and as of the date of Royal Assent to the ACT (9th June 2000) and which had been commonly granted, recognised, or accorded by sundry Lords Lyon before that date.¹⁶

D. Logically, this **market value of £60,000** for a Scottish feudal barony title in land consisting of a minimal baronial caput of waste land which the *legislative history* finds has 'no value in itself' consists *solely* of those particular 'qualities', 'precedences' and 'any heraldic privilege' associated with or incidental to the seven referenced 'privileges' derived from 'the noble aspects of the barony title' in land ... which were in existence as of the date of Royal Assent to the Act and which had been commonly granted, recognised, or accorded by the various Lords Lyons on or before the date of Royal Assent.

E. The *legislative history* to §63 of the ACT ... constituting the **Parliamentary Intent** for the judicial construction of the meaning of Sec. 63 of the ACT ... adopted a *minimalist approach* respecting feudal land reform specifically rejecting the abolition of 'the noble aspects of the barony title' — from which the above seven 'privileges' are derived — **to avoid 'justifiable claims for compensation'** ... for the taking of those particular 'qualities', 'precedences', and 'any heraldic privilege' derived from those '**noble aspects**' of a barony-title in land ... in existence as of the date of Royal Assent to the ACT (9th June 2000) and as had been commonly granted, recognised, or accorded by the various Lords Lyon prior to that date ... having a **market value of £60,000 for every barony in Scotland.**¹⁷

F. The *legislative history* to §63 of the ACT notes that Scottish Parliament asserts the competence to deal with feudal baronies as an aspect of the feudal system of land tenure which are *in commercio* and available to anyone desiring to purchase one.¹⁸

G. As a logical corollary, if feudal barony-titles consisting of a caput "of a tiny plot of waste ground, of little or no value in itself" re ¶2.31 of the "Report" are *in commercio* to anyone for £60,000; ... the **real object of purchase** ... is *not* this "minimal amount of land of no value in itself" re ¶2.32 of the "Report" **but** the "**noble aspects**" of '**the dignity of baron**' derived from barony titles re ¶2.34 of the "Report" carrying with it certain intangible 'privileges' constituting acquired legal rights of incorporeal property 'vesting' personally in the Holder of the Barony-Title re ¶2.31 of the "Report" ... in existence as of the date of Royal Assent to the Act and as had been commonly granted, recognised, or accorded by sundry Lords Lyon before that date.¹⁹

H. Accordingly, the **real object of purchase** of a feudal barony-title are those particular 'qualities', 'precedences', and 'any heraldic privilege' derived from those 'noble

aspects' of a barony-title in existence as of the date of Royal Assent to the ACT and as had been commonly granted, recognised, or accorded by the various Lords Lyon before that date ... for which compensation in the amount of £60,000 for every barony in Scotland would have to be paid by the Government of Scotland if the abolition of the feudal system of land tenure destroyed or 'took' these particular 'qualities', 'precedences', and 'any heraldic privilege' constituting the 'noble aspect' constituting 'the dignity of baron' derived from barony-titles in land:

*In essence, in purchasing a barony-title the **real object** of the purchase is the acquisition of those particular intangible 'qualities', 'precedences', and 'any heraldic privilege' derived from the 'noble aspects' of 'the dignity of baron' created by the original erection in liberam baroniam ... in existence as of the date of Royal Assent to the ACT and which had been commonly granted by various Lords Lyon prior to that date.*

I. The *legislative history* to §63 of the ACT states that the Scottish Parliament made the **policy decision ... to separate 'the dignity of baron'** to which such 'qualities', 'precedences', and 'any heraldic privilege' are attached as the 'noble aspect' of feudal barony-titles in land ... **from land ownership, per se**, as part of the reform of the feudal system of land tenure ... allowing 'the dignity of baron' — encompassing those referenced 'qualities', 'precedences', and 'any heraldic privilege' — to survive as a personal 'floating dignity' ... to avoid any *taking* of the referenced 'noble aspects' — in existence as of the date of Royal Assent to the ACT and which had been commonly granted by various Lords Lyon before that date — for which compensation would have to be paid for every barony in Scotland.²⁰

- i) This policy decision was made precisely to avoid paying compensation in the amount of £60,000 per barony for the loss of intangible acquired legal rights of incorporeal property consisting of those referenced particular 'qualities', 'precedences', and 'any heraldic privilege' constituting the 'noble aspect' of 'the dignity of baron' derived from barony-titles in land — as such existed as of the date of Royal Assent to the ACT and which had been commonly granted by the various Lords Lyon to that date.
- ii) The **policy goal** of Parliament's intent ... is to allow **all the 'noble aspects'** of 'the dignity of baron' consisting of "any quality or precedence associated with, and any heraldic privilege incidental to" this dignity — in existence as of the date of Royal Assent to the ACT and which had been commonly granted, recognised, or accorded by various Lords Lyons before that date ... **to survive** after the 'appointed day' ... completely separate from the system of land tenure and the abolished judicial jurisdiction of the baron ... **to avoid payment of compensation** for the loss of these particular acquired intangible legal rights of incorporeal property constituting such 'qualities', 'precedence' and 'any heraldic privilege' vesting in the Holder of a Barony-Title:
- iii) §63 of the ACT must be construed judicially ... in light of this over-riding **Parliamentary intent ... to avoid paying compensation** for any loss of any these particular intangible 'noble aspects' of 'the dignity of baron' in existence as of the date of Royal Assent to the ACT and as had been commonly granted, recognised, or accorded by the various Lords Lyon before that date ... which endow this dignity with the **market value of £60,000**.
- iv) Conversely, because one could not be expected rationally to pay £60,000 after the 'appointed day' for 'the dignity of baron' **stripped of any** of the particular 'qualities', 'precedences', and 'any heraldic privilege' associated with or incidental to 'the dignity of baron' **in existence as of** the date of Royal Assent to the ACT and which had been commonly granted, recognised, or accorded by the various Lords Lyon before that date —

which give this dignity its **market value of £60,000**; ... the **clear and manifest intent of Parliament** is that the particular ‘qualities’, ‘precedences’ and ‘any heraldic privilege’ referenced in §63(4) of the ACT must logically be **those in existence as of the date of Royal Assent** to the ACT

J. The *legislative history* to §63 of the Act declares that **to avoid “substantial claims for compensation” for the “considerable commercial value”** of the “noble element” of ‘the dignity of baron’ consisting of “the social, ceremonial and armorial aspects of baronies” which gives baronies the market value they have apart from the residual plot of land constituting the *caput*^ “with little or no intrinsic value” ... that ‘the dignity of baron’ — conveying those ‘qualities’, ‘precedences’, and ‘any heraldic privilege’ associated with or incidental to ‘the dignity of baron’ which give baronies their *actual market value* — **are to be severed from landownership** and are to become “non-territorial dignities”.²¹

- i) Because the legislative history to §63 of the ACT envisions that an applicant for a coat of arms with **baronial heraldic additaments** could appeal any denial of such by the Lord Lyon to the Court of Session for a declarator of entitlement, ... the implied **intent of Parliament** is that those particular baronial heraldic additaments existing as of the date of Royal Assent to the ACT and as had been commonly granted by the various Lords Lyons as of that date ... **would survive the ‘appointed day’ unimpaired** by the changed status in ‘the dignity of baron’ caused (1) by abolition of the judicial jurisdiction of barons by the ACT and (2) by the statutory severance of baronies from an interest in land or any attachment to land ... in order for the Court of Session to have subject-matter jurisdiction or competence over such ‘baronial heraldic additaments’.²²
- ii) It would be irrational for the legislative history to §63 of the ACT in ¶2.40 of the “Report” to state that the Court of Session were to have competence/jurisdiction over entitlement to “baronial additaments” derived from a barony ... if such additaments **failed to survive** the ‘appointed day’ as a result of the abolition of baronial judicial jurisdiction caused by the ACT and as a result of the severance of ‘the dignity of baron’ from an interest in or attachment to land caused by the ACT.
- iii) Logically, **Parliament intends** for such “baronial additaments” **to survive the ‘appointed day’** as such existed as of the date of Royal Assent to the ACT and as had been commonly granted by the sundry Lords Lyon before that date ... **in order to avoid payment of compensation** for the loss of all such baronial heraldic additaments which give ‘the dignity of baron’ its **market value of £60,000**.
- iv) Rationally, no one will pay £60,000 after the ‘appointed day’ for ‘the dignity of baron’ which has been stripped of those baronial heraldic additaments which make the barony **meaningful** to the owner.
- v) Because the **over-riding legislative object of §63 of the ACT** is to avoid paying compensating, reference in the legislative history — expressive of **Parliamentary intent** — to bringing a case for a declarator of entitlement in the Court of Session re “baronial additaments” clearly implies that **meaningful baronial heraldic additaments** are intended by Parliament **to survive the ‘appointed day’** ... unimpaired by the changed legal status of ‘the dignity of baron’ caused by the ACT re (1) abolition of baronial judicial jurisdiction and (2) severance of ‘the dignity of baron’ from any interest in or attachment to land ... to give the Holder of ‘the dignity of baron’ the standing or legal capacity to bring a case to declare entitlement to such baronial heraldic additaments.

vii) Conversely, no one will rationally bring a case to the Court of Session to obtain a declarator of entitlement to “baronial additaments” which were lost, destroyed, superseded ‘etc’ due to the change in legal status of ‘the dignity of baron caused by the ACT by either abolition of baronial judicial jurisdiction or severance of ‘the dignity of baron’ from any interest in or attachment to land.

viii) By stating that the Holder of ‘the dignity of baron’ has standing to bring a case for a declarator of entitlement for “baronial additaments’ to the Court of Session, the legislative history of §63 in ¶2.40 of the “Report” clearly implied that such baronial heraldic additaments are **to survive the ‘appointed day’** ... as such existed as of the date of Royal Assent to the ACT and as had been commonly granted by various Lords Lyon as of that date ... in order to provide **subject-matter jurisdiction** for such a case: One can’t bring a case for non-existent ‘baronial additaments’....

K. Because 5(c) of the official ‘Recommendation’ set forth in ¶2.45 of the “Report” ... declares that notwithstanding (1) the abolition of baronial judicial jurisdiction by the ACT²³ and (2) severance of baronies from any attachment to or an interest in land²⁴ ... **after the ‘appointed day’** that,

“The *new legislation* should **not** abolish the dignity of baron or any other dignity (whether or not of feudal origin). *Accordingly*, Barons **should retain** the right to call themselves baron and **should retain** any precedence and ceremonial or *heraldic privilege* deriving from their barony”;

... documenting **Parliamentary intent**, the *legislative history* for §63 of the ACT encompassed in this official “Recommendation” is explicit direct evidence that **Parliament explicitly intended** that,

- all ‘precedences’, ceremonial ‘qualities’, and any ‘heraldic privilege deriving from their barony’ would survive the ‘appointed day’ *in toto* ... unimpaired by the ACT’s abolition of the judicial jurisdiction of barons in §63(1), 1st clause, and the ACT’s severance of ‘the dignity of baron’ from any attachment to or interest in land in §63(2) ... as such ‘precedences’, ‘qualities’, and ‘any heraldic privilege’ associated with or incidental to the dignity of baron **existed as of the date of Royal Assent to the ACT** and as had been commonly granted, recognised or accorded by various Lords Lyon **before that date**; and that ...
- the statutory **legal definition** of ‘the dignity of baron’ set forth in §63(4) of the ACT **specifically references** “any quality or precedence associated with, and any heraldic privilege incidental to” the dignity of baron ... in the original form **that such existed as of the date of Royal Assent to the ACT** (9th June 2000), ... as had been **commonly granted by the Lords Lyon before that date**, ... and **un-impaired** by any of the changed status of ‘the dignity of baron’ caused by the ACT’s abolition of baronial judicial jurisdiction and severance of baronies from any attachment to or interest in land.

4. STATUTORY TRANSFORMATION of ‘qualities’, ‘precedences’, and ‘any heraldic privilege’ into “LEGAL ENTITIES” over which courts have jurisdiction:

THAT specific reference of “any quality or precedence associated with, and any heraldic privilege incidental to” in the **legal definition** of ‘the dignity of baron’ set forth in §63(4) of the ACT ... **statutorily transforms** all such ‘qualities’, ‘precedences’, and ‘any heraldic privilege’ ... into **fundamental legal subjects** or “**legal entities**”²⁵ over which the courts have judicial jurisdiction as

particular **acquired legal rights of intangible property** ‘vesting’ personally in the Holder of ‘the dignity of baron’ as “incorporeal heritable property” under §63(2) of the ACT which can be made the subject-matter of a judicial judgement enforceable by a court of law.²⁶

A. As expressed in 5 (c) of the official “Recommendation” set forth in ¶2.45 of the “Report” constituting the *legislative history* of §63 of the ACT, the explicit Parliamentary intent is to **“retain”** the ‘title of baron’ and “any precedence and ceremonial or heraldic privileges deriving from their barony” *after* the ‘appointed day’ as such existed *before* “the new legislation” which abolished baronial judicial jurisdiction and severed baronies from attachment to or as an interest in land.

B. Before the enactment of §63(4) of the ACT statutorily defining the legal definition of the dignity of baron as consisting of “any **quality** ... associated with” the dignity of baron²⁷ ... no **statutory foundation existed**²⁸ in terms of an Act of Parliament empowering either the Lord Lyon or the Court of Session with competence or jurisdiction²⁹ to render a judgement upon ‘social dignities’³⁰ unknown to statutory law³¹, such as issues concerning Chiefship of clans, depending upon any principle of law of succession applicable by courts³², having no armorial significance, no heraldic insignia, and no patrimonial consequences as an interest which the law can recognise.³³

C. Previous to the enactment of §63(4) of the ACT statutorily defining the legal definition of the dignity of baron as consisting of “any ... **precedence** associated with” the dignity of baron³⁴ ... no **statutory foundation existed** in terms of an Act of Parliament³⁵ giving the Lord Lyon jurisdiction or competence in matters of precedence ... or a continued and accepting practice giving Lyon such jurisdiction³⁶ ... and thus empowering either the Court of Session or Lyon with judicial jurisdiction over matters of precedence³⁷ ... as a “legal entity” upon which a judgement can be rendered by a court of law.³⁸

D. Previous to the enactment of §63(4) of the ACT statutorily defining the legal definition of the dignity of baron as consisting of “any heraldic privilege incidental to” the dignity of baron³⁹ ... no **statutory foundation existed** by an Act of Parliament for protecting specifically this **‘noble element’** consisting of ‘the social, ceremonial and armorials aspects of baronies’ which give baronies the ‘considerable commercial value’ which they have’ re ¶2.40 of the “Report” of £60,000 for such baronial additaments re ¶2.32 of the “Report” separate and apart of minimal waste land of little or no value ... the abolition of which “would give rise to substantial claims for compensation” re ¶2.40 of the report:

Prior to the enactment of §63(4) of the ACT, all of the particular baronial heraldic additaments granted by the Lord Lyon to the Holder of the dignity of baron were subject to arbitrary ‘re-interpretation’ by the Lord Lyon at his ‘discretion; for whatever ‘heraldic justifications’ he might wish to give for making such changes to the scope or content of such additaments.

5. STATUTORY TRANSFORMATION of ‘LEGAL ENTITIES’ into concrete acquired legal rights of property:

THAT Parliament made the *policy decision* referenced in 5(c) of ¶2.45 of the “Report” constituting the official “Recommendation” to Parliament to **“retain”** after the ‘appointed day’ the title of baron and the *status quo ante* concerning “any precedence and ceremonial or heraldic privileges derived from their barony” as such existed as of the date of Royal Assent to the ACT and as had been commonly granted by the Lords Lyon as of that date ... by **statutorily transforming**⁴⁰ all of these ‘noble elements’ into *fundamental legal concepts* or “legal entities” over which courts have judicial jurisdiction

... which as individually construed by authoritative publicists on Scottish heraldry ... became **acquired legal rights of intangible property** ‘vesting’ personally in the Holder of each barony as “incorporeal heritable property” ... by explicit statutory reference of such ‘qualities’, ‘precedences’ and ‘any heraldic privilege’ in the statutory **legal definition** of ‘the dignity of baron’ set forth in §63(4) of the ACT as consisting of the following:

“any quality or precedence associated with, or any heraldic privilege incidental to” the dignity of baron.

A. Parliament made the policy decision to **“retain”** after the ‘appointed day’ the *status quo ante* concerning baronial heraldic additaments and every other ‘quality’ and ‘precedence’ as *such existed as* of the date of Royal Assent to the ACT (9th June 2000) ... to implement the **over-riding policy goal** expressed in the *legislative history* of §63 of the ACT of avoiding payment of “substantial claims for compensation” for the “considerable commercial value” of the “noble element” consisting of “the social, ceremonial and armorial aspects of baronies” re ¶2.40 of the “Report” in the amount of £60,000 per barony re ¶2.32 of the “Report” for every barony in Scotland ... caused by the changed status of baronies wrought by “the new legislation” abolishing judicial baronial jurisdiction and the severance of baronies from any attachment to or an interest in land re 5(a), 5(d), and 5(3) of the official “Recommendation” in ¶2.45 of the “Report” ...

B. By *legally defining* ‘incorporeal heritable property’ consisting of ‘the dignity of baron’ in §63(4) of the ACT as consisting of “any quality or precedence associated with, or any heraldic privilege incidental to” the dignity of baron as such existed as of the date of Royal Assent to the Act in order to **“retain”** after the ‘appointed day’ the *status quo ante* of such as declared in 5(c) of the official “Recommendation” set forth in the *legislative history* of §63 of the ACT at ¶2.45 of the “Report” ... Parliament **conclusively resolved all issues** concerning the right of barons after the ‘appointed day’ to such ‘qualities’, ‘precedences’, and ‘any heraldic privilege’ by statutorily transforming such into particular acquired legal rights of intangible property ‘vesting’ in the Holder of the dignity of baron as “incorporeal heritable property”.⁴¹

C. The legal definition of ‘the dignity of baron’ set forth in §63(4) of the ACT **statutorily transforms** all such ‘qualities’, ‘precedences’, and ‘any heraldic privilege’ associated with or incidental to ‘the dignity of baron’⁴² ... by reference therein into *fundamental legal concepts* or “*legal entities*” over which courts have judicial jurisdiction ... which as construed by authoritative publicists on Scottish heraldry ... became **concrete acquired legal rights of intangible property ‘vesting’ personally in the Holder of the dignity of baron** as “Incorporeal heritable property”.⁴³

D. The legal right to all such ‘qualities’, ‘precedences’, and ‘any heraldic privilege’ as such existed as of the date of Royal Assent to the ACT⁴⁴ legally defined in §63(4) of the ACT statutorily transforming such into *fundamental legal concepts* or “*legal entities*” over which the courts have judicial jurisdiction ... which as construed by authoritative publicists on Scottish heraldry ... became concrete acquired legal rights of intangible property conclusively ‘vesting’ personally in the Holder of the dignity of baron are binding on all courts, including the Lyon Court.⁴⁵

E. Expressing the clear parliamentary intent in 5(c) of the official “Recommendation” in ¶2.45 of the “Report” constituting the *legislative history* of §63 of the ACT to **“retain” permanently** after the ‘appointed day’ the unaltered *status quo ante* concerning the “noble element” in baronies in order to avoid paying compensation for any taking of “the social, ceremonial and armorial aspects of baronies” which gives baronies their “considerable commercial value” of £60,000 re ¶¶2.32 and 2.40 of the “Report”; ... all issues concerning the rules and uses of heraldry and all abstract heraldic controversies over the changed status of barons caused by “the new legislation” re abolition of baronial judicial jurisdiction and severance of baronies

from attachment to or an interest in land are resolved conclusively by the legal definition of ‘the dignity of baron’ set forth in §63(4) of the ACT as such existed as of the date of Royal Assent to the Act ... so that the courts need “not go a step beyond the statute”.⁴⁶

F. This legal definition of the dignity of baron set forth in §63(4) of the ACT statutorily transforming the referenced ‘qualities’, ‘precedences’, and ‘any heraldic privilege’ into fundamental legal concepts or “legal entities” over which the courts have judicial jurisdiction which as construed by authoritative publicists on Scottish heraldry became concrete particular acquired legal rights of intangible property ‘vesting’ personally in the Holder of the dignity of baron as “incorporeal heritable property” re §63(2) of the ACT⁴⁷ ... **resolves conclusively** any **abstract heraldic controversies** over whether the changed status of a baron caused by abolition under “the new legislation” of (1) baronial judicial jurisdiction and (2) severance of the dignity of baron from any interest in or attachment to land would cause loss of the Red Chapeau re baronial judicial jurisdiction; Feudo-Baronial Robes re representation of an organised community; Badge and Standard re a land holding presuming a ‘following’ ... which might **otherwise arise** over these issues **if** §63(4) of the ACT did not exist.⁴⁸

G. Because the legal definition of “incorporeal heritable property” constituting the dignity of baron in §63(4) of the ACT *statutorily transforms* all such referenced ‘qualities’, ‘precedences’, and ‘any heraldic privilege’ into *fundamental legal concepts* or “*legal entities*” over which the courts have judicial jurisdiction ... which as construed by authoritative publicists on Scottish heraldry ... became concrete particular acquired legal rights of intangible property ‘vesting’ individually and personally in the Holder of a barony as a **statutory entitlement**, it is the duty of the Court of Session to ensure that Lyon has ‘sufficiently complied with the terms of the statute’.⁴⁹

H. In any conflict between the ordinary or ‘common laws’ of heraldry or the Law of Arms as applied in Scotland concerning the rules and uses of heraldry re the heraldic effects of “the new legislation” referenced in 5(c) of the official “Recommendation” set forth in ¶2.45 of the “Report” as the *legislative history* to §63 of the ACT upon ‘the dignity of baron’ concerning the following:

- loss of entitlement to the Red Chapeau resulting from “the new legislation’s” abolition of baronial judicial jurisdiction;
- loss of entitlement to Feudo-Baronial Robes resulting from “the new legislation’s” severance of the dignity of baron from an interest in land and abolition of baronial judicial jurisdiction;
- loss of entitlement to a Badge and a Standard resulting from “the new legislation’s” severance of the dignity of barony from an interest in or an attachment to land ... presuming a ‘following’; and
- loss of ‘standing’ or legal capacity of the Holder of the dignity of baron to petition Lyon for a grant of arms resulting from “the new legislation’s” severance of baronies from an attachment or an interest in land; ...

and the **statutorily created** acquired legal rights of **property** in arms or ‘any heraldic privileges’, ‘precedences’, or ‘qualities’ related thereto and ‘vesting’ in the Holder of the dignity of Baron under Section 63(4) of The Abolition of Feudal Tenure (Scotland) ACT 2000; ... the Court of Session must apply the statutorily-created rights as ‘a statute of the realm’ to resolve any conflict in favour of any rights in arms flowing from the Statute.⁵⁰

6. POLICY DECISION *to retain* ALL ADDITAMENTS:

THAT as evidenced by 5(c) of the formal “Recommendation” to Parliament set forth in ¶2.45 of the “Report” constituting the *legislative history* to §63 of the ACT, the Scottish Parliament made the **policy decision** that following the ‘appointed day’⁵¹ that Holders of the dignity of baron would “**retain**” “the right to call themselves baron and ... any precedence and ceremonial or heraldic privileges deriving from their barony” as such existed as of the date of Royal Assent to the ACT and as had been commonly granted by the various Lords Lyon to that date — which were “derived from the former connection with the Crown as feudal superior” re ¶2.43 of the “Report” — to preserve the *status quo ante* of this “noble element” consisting of “the social, ceremonial and armorial aspects of baronies” constituting the “considerable commercial value” therein to avoid payment of “substantial claims for compensation” re ¶2.40 of the “Report” in the amount of £60,000 for every barony in Scotland re ¶2.32 of the “Report”.

A. As revealed in the *legislative history* to §63 of the ACT set forth in ¶¶2.30 to 2.45 of the Scottish Office’s “Report”, the **over-riding Parliamentary intent** in §63 of the ACT is to avoid **any payment of compensation** for any loss of the “noble element” in baronies⁵² arising from the **change in the legal status of baronies** under “the new legislation” caused by the abolition of feudal tenure re (1) abolition of baronial judicial jurisdiction and (2) severance of the dignity of baron from an interest in or an attachment to land.

B. As concretely expressed in 5(c) of the official “Recommendation” in ¶2.45 of the “Report”, the clear Parliamentary intent was to “**retain**” after the ‘appointed day’ the *status quo ante* concerning entire “noble element” in baronies — having the assessed market value of £60,000 re ¶2.32 of the “Report” — as such existed as of the date of Royal Assent to the ACT and as had been commonly granted by various Lords Lyon to that date ... **notwithstanding** the change in the status of barons arising from “the new legislation” re (1) abolition of baronial judicial jurisdiction and (2) severance of the dignity of baron from an interest in or an attachment to land.

C. Implicitly, the *legislative history* to §63 of the ACT in ¶¶2.30 to 2.45 of the Scottish Office’s “Report” evidences that the *practically minded* Scottish Parliament was **more concerned** with the possibility of paying compensation for any loss of the “noble element” in baronies occasioned by the change in the status of barons caused by “the new legislation” ... then for the continued existence of any formal heraldic justification for the retention of such ‘qualities’, ‘precedences’, and ‘any heraldic privilege’ referenced in the legal definition of the dignity of baron set forth in §63(4) of the ACT:

- i) The *legislative history* in ¶2.31 of the “Report” recognises that the heraldic justification for the title of Baron, inclusion of the nomen dignitatis as part of the surname, the ‘standing’ or legal capacity to be granted armorial bearings, the right to relevant baronial additaments to the coat of arms, entitlement to wear baronial robes, to hold a baron court, and to appoint a baron baillie are all derived from “ownership of such an estate in land [which] carries with it a barony” which “enables the owner to claim ennoblement by the ‘nobilitating effect’ of the ‘noble quality’ of the feudal title on which the land is held”.
- ii) The *market value* of the above ‘qualities’, ‘precedences’, and ‘any heraldic privilege’ associated with or incidental to the dignity of baron resulting from “a barony, with no special features and a minimal amount of land of no value in itself, was about £60,000” re ¶2.32 of the “Report”
- iii) Out of the fear of “justifiable claims for compensation” the preliminary ‘discussion paper’ “rejected the possibility of allowing the ‘**noble aspects of the barony title**’ to lapse along with the abolition of the feudal relationship on which the ennoblement of the baron is

based” as such abolition “was not a necessary part of feudal land reform” re ¶2.34 of the “Report” constituting the *legislative history* to §63 of the ACT:

The intention of Parliament was to “retain” — re 5(c) of the official “Recommendation” set forth in ¶2.45 of the “Report” — the ‘noble aspects of the barony title’ notwithstanding abolition by “the new legislation” of ‘the feudal relationship on which the ennoblement of the baron is based’ ... constituting the formal heraldic justification for such ‘noble aspects’ (i.e., baronial heraldic additaments consisting of the Red Chapeau, the Feudo-Baronial Mantle, a Badge, and a Standard together with the ‘title of baron’ and the nomen dignitatis of the barony as part of the surname) ... under the Law of Arms as applied in Scotland.

D. The *legislative history* of Sec. 63 of the ACT evidences that the Scottish Parliament was clearly aware that abolition of baronial judicial jurisdiction and severance of the dignity of baron from an interest in or an attachment to land would also abolish the **formal heraldic justification** for the baronial heraldic additaments constituting the **“noble aspects of the barony title”** (¶2.34 of the “Report”) from the comprehensive response of the Convention of the Baronage of Scotland set forth in ¶2.36 of the “Report”:

- The Convention “deplore[s] the termination of the **legal relationship** between the Crown ... and those individuals who hold **noble estates** granted by the Crown” which references implicitly that the heraldic justification for baronial heraldic additaments is derived from ‘noble estates’ held under this ‘legal relationship’;
- The Convention declared the **“essence of the nobiliary effect** of the ownership of an estate erected by the Crown into a barony is the **feudal relationship** with the Crown” which references an attachment to or an interest to land as the factual basis for the ‘nobiliary effect’ and the heraldic additaments derived there from;
- The Convention stated “the **essential feature** of a barony title is the **noble quality** of the feudal grant” which references the attachment to or interest in land so feudally granted as the heraldic basis for the title of baron and related heraldic additaments.
- The Convention feared if the feudal link were severed by ‘the new legislation’ then “the **nobilitating effects of holding land** on a barony title will be lost” which references the attachment to or interest in land as the factual basis for the formal heraldic justification for the baronial heraldic additaments derived from land so erected *in liberam baroniam*;
- The Convention stated that “the **Feudal Baron’s rights within his own barony** are very comparable — on a smaller scale — to the Royal rights of Paramount Superior over the land of the nation” which comparison references the derivation of a baron’s judicial jurisdiction from his tenure of land erected *in liberam baroniam*.

E. In response to the discussion paper referenced in the *legislative history* the Keeper of the Registers of Scotland suggested in ¶2.37 of the “Report” “that if baronies were not abolished altogether, the noble title should be separated from the title to land”.⁵³

F. The *legislative history* of §63 of the ACT recorded in ¶2.40 of the “Report” sets forth the **Parliamentary intention** to preserve *in toto* the “noble element” (i.e., baronial heraldic additaments, the title of baron, the *nomen dignitatis* of that barony as part of the surname) in baronies separate from land ownership **to avoid paying compensation**.⁵⁴

*The unmistakable Parliamentary intention of §63 of the ACT was to preserve **unaltered** “the social, ceremonial and armorial aspects of baronies” to avoid **compensation** — nothing could be clearer.*

G. Any doubt as to the *intention of Parliament* to preserve unaltered the *status quo ante* concerning the complete baronial heraldic additaments, use of the ‘title of baron’, use of the *nomen dignitatis* of that barony as part of the surname, ... as well as every other ‘quality’, ‘precedence’, or ‘any heraldic privilege’ associated with or incidental to the dignity of baron ... as such existed as of the date of Royal Assent to the ACT and as had been granted by various Lords Lyon as of that date is settled by **5(c) of the official “Recommendation”** set forth in ¶2.45 of the “Report” ... declaring that notwithstanding “the new legislation” barons “should **retain** any precedences and ceremonial or heraldic privileges deriving from their barony” as well as “**retain** the right to call themselves baron” after the ‘appointed day’:⁵⁵

The verb “retain” means to keep as it was before ... unaltered, unimpaired, and unaffected by “the new legislation”: In sum, retention of the status quo ante after the ‘appointed day’ re baronial heraldic additaments, etc. as such existed on the date of Royal Assent to the ACT and as had been granted commonly by the various Lords Lyon as of that date.

7. STATUTORY INCORPORATION of existent additaments into DIGNITY:

THAT *vesting* as individual acquired legal rights of intangible property incorporated statutorily by use of the verb “**includes**” into the very substance of ‘the dignity of baron’ as such existed as of the date of Royal Assent to the Act (9th June 2000) and as had been commonly granted, accorded, or recognised by the various Lords Lyon up to that date, “**incorporeal heritable property**” constituting ‘the dignity of baron’ is **legally defined** in §63(4) of the Abolition of Feudal Tenure (Scotland) ACT 2000, as follows:

§63(4): In this section- ... “dignity” includes any quality or precedence associated with, and any heraldic privilege incidental to, a dignity.”

A. Given the express declared Parliamentary intention⁵⁶ to “**retain**” the ‘title of baron’ and “any precedence and ceremonial or heraldic privileges deriving from their barony” after the ‘appointed day’ as such existed *before* “the new legislation” ... notwithstanding abolition of baronial judicial jurisdiction and severance of ‘the dignity of baron’ from attachment to or as an interest in land; ... the **legal definition** of “incorporeal heritable property” consisting of ‘the dignity of baron’ statutorily defined in §63(4) of the ACT must of **logical necessity** refer to those particular “qualities”, “precedences”, and “any heraldic privilege” **existing as of the date** of Royal Assent to the ACT (9th June 2000) ... which were **in existence before** “the new legislation” referenced in 5 (c) of the official “Recommendation” in ¶2.45 of the “Report” ... as such had been **commonly granted** to barons by the various Lords Lyon **before** this date.

B. The precise composition of *any* ‘qualities’, *any* ‘precedences’, and ‘any heraldic privilege’ “associated with” and “incidental to” the dignity of baron **legally defined** in §63(4) of the ACT and ‘vesting’ in the Holder of ‘the dignity of baron’ as individual legal rights of intangible “incorporeal heritable property” re §63(2) of the ACT ... may be determined judicially by the Court of Session by reference to the following authoritative evidence:

- Actual grants of hereditary baronial heraldic additaments, official declarations of ‘baronial status’ and precedence made in modern times by various Lord Lyon as of the date when the ACT received Royal Assent on 9th June 2000 ... concretely evidencing the actual existence of such ‘qualities’ and ‘precedences’ “associated with” and “any heraldic privilege incidental to” the dignity of baron as individual rights of intangible property ‘vesting’ in the Holder of ‘the dignity of baron’.⁵⁷
- Specialist historical and heraldic research by authoritative publicists on the Minor Baronage of Scotland and their applicable heraldic additaments: The late Lord Lyon Sir Thomas Innes of Learney, “The Robes of the Feudal Baronage of Scotland”, Proceedings of

the Society of Antiquaries of Scotland, Vol. 79, pp. 111-163, (Session 1944-45).

- Writing of the authoritative publicists upon the Law of Arms as applied in Scotland.⁵⁸

C. “Any quality ... *associated with*” the dignity of baron **legally defined** in §63(4) of the ACT existing as of the date of Royal Assent to the ACT, as had been commonly granted by various Lords Lyons to barons before that date, ... which the *Parliamentary intent* expressed in 5 (c) of the official “Recommendation” set forth in ¶2.45 of the “Report” constituting the *legislative history* of §63 of the ACT are to be **retained** notwithstanding the changed status of barons wrought by “the new legislation” re abolition of baronial judicial jurisdiction and severance of the dignity of baron from any attachment to or interest in land after the ‘appointed day’ ... are, as follows:

1. **Personal ennoblement** of the holder of the ‘dignity of baron’.⁵⁹
2. The ‘standing’ or legal capacity of the holder of the ‘dignity of baron’ **to hold a Baron Court and to appoint Officers and personnel of that Baron Court**, as follows:⁶⁰
 - i) Baron-Baillie.⁶¹
 - ii) Clerk of Baron Court.⁶²
 - iii) Baron-Officer or Sergeant.⁶³
 - iv) Dempster.⁶⁴
 - v) Procurator Fiscal.⁶⁵
 - vi) Keeper of the Castle and Fortalice or baronial caput.⁶⁶
 - vii) Burlaw Men.⁶⁷
 - viii) Lacqueys or Pages.⁶⁸
 - ix) Halberdier Guards.⁶⁹
3. The *heraldic equality* of the minor Baronage of Scotland with the Chiefs of Clans or Names re selection of the following heraldic additaments or devices for matriculation with the Lord Lyon:
 - i) Territorial ‘duthus plant-badge’ heraldic device
 - ii) Slughorn or *crie de guerre*,⁷⁰

D. “Any ... *precedence associated with*” ‘the dignity of baron’ **legally defined** in §63(4) of the ACT existing as of the date of Royal Assent to the ACT, as had been commonly granted by various Lords Lyons to barons before that date, ... which the *Parliamentary intent* expressed in 5(c) of the official “Recommendation” set forth in ¶2.45 of the “Report” constituting the *legislative history* of §63 of the ACT are to be **retained** notwithstanding the changed status of barons wrought by “the new legislation” re abolition of baronial judicial jurisdiction and severance of baronies from any attachment to or interest in land after the ‘appointed day’ ... are, as follows:

1. The **precedence of feudal or minor Barons** is after Knights and before Esquires, and before doctors of divinity, law and physics and that rank among themselves according to the date of the erection of their lands into a barony.⁷¹

2. Use of the title “**Baron of X [*nomen dignitatis*]**” as part of the name of the owner or holder of the ‘dignity of baron’.⁷²
3. Addition of the *nomen dignitatis* or ‘fife name’ to the surname of the owner or holder of the ‘dignity of baron’.⁷³
4. Use of the prefix of “**The Much Honoured**” as in ‘The Much Honoured John Doe of Glenroe, Baron of Glenroe’.⁷⁴
5. Official Lyon Court **recognition of ‘baronial status’** consisting of the following:
 - a) That the Baronage of Scotland is an ‘order’, ‘estate’ (of the Scots’ Realm) and a ‘Rank’.⁷⁵
 - b) Statement in official Lyon Court documents of the entitlement to be received as “**Hoch-Adel**” on the Continent.⁷⁶
 - c) Statement in Lyon Court documents that minor barons are officially the ‘**equivalent to the chiefs of Baronial Houses on the Continent of Europe**’.⁷⁷
 - d) Statement in Lyon Court documents that minor barons statutorily constitute ‘**a part of the nobility**’ in the Statute of 20 Dec 1567.⁷⁸
 - e) Statement in Lyon Court documents that minor barons constitute a ‘**titled nobility**’ and that the estate of the Baronage are of the ancient feudal nobility of Scotland.⁷⁹
 - f) Declaration of ‘baronial status’ in official Lyon Court documents stating the following:

“ THAT the Petitioner is desirous of the declaration that the feudal Baronage of Scotland is a distinct ‘Estate’ being in terms of Statute 1567, cap. 33, a ‘part of the nobility’; that the Minor Barons of Scotland are, and have been both in this nobiliary Court and in the Court of Session recognised as a ‘titled nobility’ and that the estate of the Baronage (i.e. *Barones Minores*) are of the ancient Feudal Nobility of Scotland; and that the Petitioner, as Representer of the Baronial race of John Doe of Glenroe, Baron of Glenroe is of status equivalent to that designated Hoch Adel and of nobiliary rank corresponding to the Chiefs of Baronial Families in the Feudal Baronages of European Kingdoms [Sir Thomas Craig of Riccarton in ‘Jus Feudale’, book I chapter 8 section 2 re Baron in the Feudal Baronage of Scotland:- “habentur de Baronibus qui a jure feudali descendant cum ante ea tempora Capitanei tantum Tribuum discernentur”] and that the foresaid Ensigns Armorial are tesserae Nobilitatis by demonstration of which the Petitioner and his lawful successors in the same are to be so accounted, taken and received, Amongst all Nobles and in all places of Honour.”⁸⁰

E. “Any heraldic privilege incidental to” ‘the dignity of baron’ **legally defined** in §63(4) of the ACT existing as of the date of Royal Assent to the ACT, as had been commonly granted by various Lords Lyons to barons as of that date, ... which the *Parliamentary intent* expressed in 5(c) of the official “Recommendation” set forth in ¶2.45 of the “Report” constituting the *legislative history* of §63 of the ACT are to be **retained** notwithstanding the changed status of barons wrought by “the new legislation” re abolition of baronial judicial jurisdiction and severance of the dignity of baron from any attachment to or interest in land after the ‘appointed day’ ... are, as follows:

1. The ‘Standing’ or legal capacity of the Holder of the ‘dignity of baron’ **to petition the**

Lord Lyon for a grant of hereditary Arms on the basis of the possession or ownership of this dignity.⁸¹

2. **Baronial Chapeau:** Gules, furred Ermine, tasselled Or.⁸²
3. **Feudo-Baronial Mantle or Robe of Estate,**⁸³
4. **Banner,** three feet square, ensigned on the top by the baronial chapeau.⁸⁴
5. **Steel Helmet** of three grills, garnished with gold, or Great Tilting Helmet garnished with gold.⁸⁵
6. **Badge.**⁸⁶
7. **Standard** of four yards, ensigned on the top by the Baronial Chapeau.⁸⁷
8. **Guidon** of eight feet, ensigned on the top by the baronial chapeau.⁸⁸
9. **Pennon** of four feet, ensigned on the top by the baronial chapeau.⁸⁹
10. **Pinsel** of four and one-half feet by two feet, ensigned on the top by the baronial chapeau,⁹⁰
11. **Ensign,** ensigned on the top by the baronial chapeau.⁹¹
12. **Nautical Streamer** of four yards, ensigned on the top by the baronial chapeau.⁹²
13. **Compartment** representing the fife of the barony in the form of specific local geographical and historical features constituting the noble feus ... *separate and independent* from the existence of supporters.⁹³
14. **Supporters** for the representative of the baronial house entitled to sit in the old Scots Parliament before 1587.⁹⁴
15. Heraldic additaments of the Officers of a Baron Court as official insignia of office:
 - i) **Cap of Justice** for Baron Baillies.⁹⁵
 - ii) **Key in bend** for Keeper of Baronial Caput.⁹⁶
 - iii) **Horn and white wand** for Baron Sergeant.⁹⁷

8. STATUTORY INCORPORATION *into* ‘dignity’ as a ‘bundle’ of property rights

THAT use of the *verb* “includes” in §63(4) of the ACT *statutorily incorporates* all such referenced ‘qualities’, ‘precedences’, and ‘any heraldic privilege’⁹⁸ ... as an integral ‘bundle’ of all such component acquired legal rights of property **into** the *essence* or the *very fabric, fibre and substance* of the ‘dignity of baron’ as incorporeal heritable property” under §63(2) of the ACT ... as such existed upon the day of Royal Assent to the ACT (9th June 2000) and as had been granted, recognised, or accorded by various Lords Lyon prior to that date⁹⁹

A. Such statutory incorporation was made in order to achieve the *statutory goal* of Parliament **to “retain”** unchanged after the ‘appointed day’ the “noble element” consisting of “the social, ceremonial and armorial aspects of baronies” including “the right to the title and dignity of baron ... which gives baronies the value which they have over and above ... a residual plot of

land, with little or no intrinsic value” constituting the “considerable commercial value” the taking of which “would give rise to substantial claims for compensation” re the *legislative history* to §63 of the ACT found at ¶2.40 of the “Report” of £60,000 per barony for every barony in Scotland re ¶2.32 of the “Report”.

B. Permeating the *Parliamentary intent* expressed in the preliminary ‘discussion paper’ referenced in the *legislative history* to Section 63 of The Abolition of Feudal Tenure (Scotland) ACT 2000 found at ¶¶2.30 to 2.45 of the Scottish Office’s “Report” is the over-riding *policy goal* of the Scottish Parliament **to avoid payment of compensation** in the amount of £60,000 (¶2.32 of the “Report”) for any taking of “the noble aspect of baronies” which might be caused by the abolition of the feudal system of land tenure.¹⁰⁰

C. Evidencing Parliamentary intent, the *legislative history* to Section 63 of the ACT set forth in the Scottish Office’s “Report” noted in ¶2.32 that the commercial market value for baronies “with no special features and a minimal amount of land of no value in itself” is £60,000 ... for the “nobilitating effect” upon the Holder of the barony of the “noble quality” upon which the feudal title to that barony is held.¹⁰¹

D. The *legislative history* of §63 of the ACT in ¶2.40 of the “report” records the policy decision made to sever the “noble element” in baronies¹⁰² from land ownership which would then become “non-territorial dignities” ... **in order to preserve** the “considerable commercial value” of baronies represented by this “noble element” the abolition of which “would give rise to substantial claims for compensation”.¹⁰³

E. To avoid paying compensation the Scottish Parliament made the policy decision to remove baronies from an attachment to or an interest in land and to allow the dignity of baron “derived from the former connection with the Crown as feudal superior” to survive as a floating dignity.¹⁰⁴

F. The *legislative history* in ¶2.43 of the “Report” notes “Anyone can buy a barony” and thus, for all practical purposes¹⁰⁵ legal entitlement to the “noble element” consisting of “the social, ceremonial and armorial aspects of baronies” referenced in ¶2.40 of the “Report” having the “considerable market value” of £60,000 re ¶2.32 of the “Report” ... the loss of which “would give rise to substantial claims for compensation” against the Scottish Government re ¶2.40 of the “Report”.

G. To execute the explicit Parliamentary intent directly expressed in 5(c) of the official “Recommendation” set forth in ¶2.45 of the “Report” **to “retain”** after the ‘appointed day’ “any precedence and ceremonial or heraldic privileges deriving from their barony” as well as “the right to call themselves baron” *as such existed as of* the date of Royal Assent to the ACT and as had been commonly granted by the various Lords Lyon to that date; ... the legal definition of the dignity of baron set forth in §63(4) of the ACT **“includes”** “any quality ... associated with” the dignity of baron **existing upon the date of Royal Assent**, which were statutorily transformed by this legal definition into fundamental legal concepts or “legal entities” over which the courts have judicial jurisdiction which as specifically construed by authoritative publicists on Scottish heraldry became concrete acquired legal rights of intangible property ‘vesting’ personally and individually in the Holder of the dignity of baron, as follows:

- **Personal ennoblement** of the holder of the ‘dignity of baron’.
- The ‘standing’ or legal capacity of the holder of the ‘dignity of baron’ **to hold a Baron Court and to appoint Officers and personnel of that Baron Court.**
- The *heraldic equality* of the minor Baronage of Scotland with the Chiefs of Clans or Names re selection of the following heraldic additaments or devices for matriculation with the Lord Lyon:

- Territorial ‘duthus plant-badge’ heraldic device
- Slughorn or *crie de guerre*,

H. To execute the explicit Parliamentary intent directly expressed in 5(c) of the official “Recommendation” set forth in ¶2.45 of the “Report” to **“retain”** after the ‘appointed day’ “any precedence and ceremonial or heraldic privileges deriving from their barony” as well as “the right to call themselves baron” *as such existed as of* the date of Royal Assent to the ACT and as had been commonly granted by the various Lords Lyon to that date; ... the legal definition of the dignity of baron set forth in §63(4) of the ACT **“includes”** “any ... precedent associated with” the dignity of baron ***existing upon the date of Royal Assent***, which were statutorily transformed by this legal definition into fundamental legal concepts or “legal entities” over which the courts have judicial jurisdiction which as specifically construed by authoritative publicists on Scottish heraldry became concrete acquired legal rights of intangible property ‘vesting’ personally and individually in the Holder of the dignity of baron, as follows:

- The **precedence of feudal or minor Barons** is after Knights and before Esquires, and before doctors of divinity, law and physics and that rank among themselves according to the date of the erection of their lands into a barony.
- **Use of the title “Baron of X [*nomen dignitatis*]” as part of the name** of the owner or holder of the ‘dignity of baron’.
- **Addition of the *nomen dignitatis* or ‘fife name’ of the barony to the surname** of the owner or holder of the ‘dignity of baron’.
- **Use of the prefix of “The Much Honoured”** as in ‘The Much Honoured John Doe of Glenroe, Baron of Glenroe’.
- Official Lyon Court **recognition of ‘baronial status’** consisting of the following:
 - That the Baronage of Scotland is an ‘order’, ‘estate’ (of the Scots’ Realm) and a ‘Rank’.
 - Statement in official Lyon Court documents of the entitlement to be received as **“Hoch-Adel”** on the Continent.
 - Statement in Lyon Court documents that minor barons are officially the **‘equivalent to the chiefs of Baronial Houses on the Continent of Europe’**.
 - Statement in Lyon Court documents that minor barons statutorily constitute **‘a part of the nobility’** in the Statute of 20 Dec 1567.
 - Statement in Lyon Court documents that minor barons constitute a **‘titled nobility’** and that the estate of the Baronage are of the ancient feudal nobility of Scotland.
 - Declaration of ‘baronial status’ in official Lyon Court documents stating the following:

“THAT the Petitioner is desirous of the declaration that the feudal Baronage of Scotland is a distinct ‘Estate’ being in terms of Statute 1567, cap. 33, a ‘part of the nobility’; that the Minor Barons of Scotland are, and have been both in this nobiliary Court and in the Court of Session recognised as a ‘titled nobility’ and that the estate of the Baronage (i.e. *Barones Minores*) are of the ancient Feudal Nobility of Scotland; and that the Petitioner, as Representor of the Baronial race of John Doe of Glenroe, Baron of Glenroe is of status equivalent to that designated Hoch Adel and of nobiliary rank corresponding to the Chiefs of Baronial Families in the Feudal Baronages of European Kingdoms [Sir Thomas Craig of Riccarton in ‘Jus Feudale’, book I

chapter 8 section 2 re Baron in the Feudal Baronage of Scotland:- “habentur de Baronibus qui a jure feudali descendant cum ante ea tempora Capitanei tantum Tribuum discerentur”] and that the foresaid Ensigns Armorial are tesserae Nobilitatis by demonstration of which the Petitioner and his lawful successors in the same are to be so accounted, taken and received, Amongst all Nobles and in all places of Honour.”

I. To execute the explicit Parliamentary intent directly expressed in 5(c) of the official “Recommendation” set forth in ¶2.45 of the “Report” to “**retain**” after the ‘appointed day’ “any precedence and ceremonial or heraldic privileges deriving from their barony” as well as “the right to call themselves baron” *as such existed as of* the date of Royal Assent to the ACT and as had been commonly granted by the various Lords Lyon to that date; ... the legal definition of the dignity of baron set forth in §63(4) of the ACT “**includes**” “any heraldic privilege incidental to” the dignity of baron ***existing upon the date of Royal Assent***, which were statutorily transformed by this legal definition into fundamental legal concepts or “legal entities” over which the courts have judicial jurisdiction which as specifically construed by authoritative publicists on Scottish heraldry became concrete acquired legal rights of intangible property ‘vesting’ personally and individually in the Holder of the dignity of baron, as follows:

- The ‘Standing’ or legal capacity of the owner of the ‘dignity of baron’ to **petition the Lord Lyon for a grant of hereditary Arms** on the basis of the possession or ownership of this dignity.
- **Baronial Chapeau:** Gules, furred Ermine, tasselled Or.
- **Feudo-Baronial Mantle or Robe of Estate,**
- **Banner,** three feet square, ensigned on the top by the baronial chapeau.
- **Steel Helmet** of three grills, garnished with gold, or Great Tilting Helmet garnished with gold.
- **Badge.**
- **Standard** of four yards, ensigned on the top by the Baronial Chapeau.
- **Guidon** of eight feet, ensigned on the top by the baronial chapeau.
- **Pennon** of four feet, ensigned on the top by the baronial chapeau.
- **Pinsel** of four and one-half feet by two feet, ensigned on the top by the baronial chapeau,
- **Ensign,** ensigned on the top by the baronial chapeau.
- **Nautical Streamer** of four yards, ensigned on the top by the baronial chapeau.
- **Compartment** representing the fife of the barony in the form of specific local geographical and historical features constituting the noble feus ... *separate and independent* from the existence of supporters.
- **Supporters** for the representative of the baronial house entitled to sit in the old Scots Parliament before 1587.
- Heraldic additaments of the Officers of a Baron Court as official insignia of office:
 - **Cap of Justice** for Baron Baillies.
 - **Key in bend** for Keeper of Baronial Caput.

- **Horn and white wand** for Baron Sergeant.

9. STATUTORY INCORPORATION of every ‘NOBLE ELEMENT’ re BARONIES which existed as of date Royal Assent:

THAT use of the verb “**includes**” in the legal definition of the dignity of baron set forth in §63(4) of the ACT operates to cause those acquired rights of intangible property to become **statutorily incorporated** as integral component parts **into the very fabric** of “incorporeal heritable property constituting ‘the dignity of baron’ as such ‘qualities’, ‘precedences’, and ‘any heraldic privilege’ existed at the date when the ACT received Royal Assent (9th June 2000)

A. The Parliamentary intent of such statutory incorporation of the ‘qualities’, ‘precedences’, and ‘any heraldic privilege’ referenced in the legal definition of the dignity of baron at §63(4) of the ACT was to “**retain**” “any precedence and ceremonial or heraldic privileges deriving from their barony” as well as “the right to call themselves baron” **after** the ‘appointed day’ as such existed as of the date of Royal Assent to the ACT and as had been commonly granted by various Lords Lyon as of that date **unimpaired** by the changed status of a baron caused by “the new legislation” re abolition of baronial judicial jurisdiction and severance of the dignity of baron from attachment to or an interest in land (5(c) of the official “Recommendation” in ¶2.45 of the “Report” constituting the *legislative history* to §63 of the ACT)

B. All of the particular ‘qualities’, ‘precedences’, and ‘any heraldic privilege’ as such existed as of the date of Royal Assent to the ACT statutorily transformed into *fundamental legal concepts* or “legal entities” over which courts have judicial jurisdiction as individually construed by Innes of Learney and like authoritative Scottish publicists on heraldry as being individual acquired legal rights of intangible property (i.e., specific baronial heraldic additaments) by the legal definition of the dignity of baron set forth in §63(4) of the ACT ... were **statutorily incorporated** by use of the verb “**includes**” in §63(4) of the ACT into an integral component ‘bundle’ of such intangible property forming the very essence or the very fabric and fibre of “incorporeal heritable property” constituting ‘the dignity of baron’.

C. The *language* of §63(4) of the ACT — that “‘dignity’ includes any quality or precedence associated with, and any heraldic privilege incidental to, a dignity” and the use of the *active case* of the verb “**includes**” — operates to have the following legal effects upon the **particular** ‘qualities’ or ‘precedences’ associated with and ‘any heraldic privilege incidental to’ the dignity of baron as such existed as of the date of Royal Assent to the ACT and as had been commonly granted by various Lords Lyon as of that date, as individually construed by Innes of Learney and like authoritative Scottish publicists on heraldry:

- to be **statutorily transformed** into *fundamental legal concepts* or “*legal entities*” over which courts have judicial jurisdiction as individually construed by Innes of Learney and like authoritative Scottish publicists on heraldry into separate concrete *acquired legal rights* of intangible incorporeal property (i.e., the various baronial heraldic additaments) ‘vesting’ individually and personally in the Holders of all dignities of baron throughout Scotland, and
- to become indefeasibly **statutorily incorporated** as an integral component ‘bundle’ of all such legal rights of intangible property constituting the *essence* of *very substance* of the dignity of baron as “incorporeal heritable property”:

D. In sum, all such ‘qualities’, ‘precedences’, and ‘any heraldic privilege’ associated with or incidental to the dignity of baron as *fundamental legal concepts* or “legal entities” over which courts have judicial jurisdiction which became *statutorily transformed* by the legal definition

given in §63(4) of the ACT into *fundamental legal concepts* or “legal entities” as individually construed by Innes of Learney and like authoritative Scottish publicists on heraldry as being individual acquired legal rights of intangible property (i.e., the full range of baronial heraldic additaments) ‘vesting’ personally in the Holder of a barony ... which use of the *verb* “includes” in this legal definition operates to cause the entire ‘bundle’ of such acquired rights of property to become *statutorily incorporated* as integral components forming the whole, the entirety, or the sum total of “incorporeal heritable property” constituting the complete ‘dignity of baron’.

E. In particular the use of the verb “**includes**” in the *language* of the statutory legal definition of the dignity of baron set forth in §63(4) of the ACT operates to cause the complete ‘bundle’ of individual acquired legal rights of intangible property ... referenced in this *statutory definition* as “any quality or precedence associated with, or any heraldic privilege incidental to” the dignity of baron as such existed upon the date of Royal Assent to the ACT and as had been commonly granted by various Lords Lyon before that date ... **to ‘vest’** as a packaged ‘bundle’ of all such individual acquired rights of property constituting integral components of the dignity to baron and to become **statutorily incorporated** into the *very fibre, substance, and fabric* of such “incorporeal heritable property” constituting the *essence* of the dignity of baron:

- i) The dignity of baron is ‘incorporeal heritable property’ consisting of a integral packaged ‘bundle’ of those individual acquired rights of intangible property constituting the legal definition of this dignity statutorily delineated in §63(4) of the ACT and statutorily incorporated into the *essence* of this dignity by use of the *verb* “includes” in §63(4) of the ACT:
 - a) individual acquired rights of intangible property consisting of “any quality ... associated with” the dignity of baron;
 - b) individual acquired rights of intangible property consisting of “any ... precedence associated with” the dignity of baron; and
 - c) individual acquired rights of intangible property consisting of “any heraldic privilege incidental to” the dignity of baron.
- ii) Setting forth the statutory legal definition of the dignity of baron, use of the verb “includes” in §63(4) of the ACT operates to bundle together all referenced ‘qualities’, ‘precedences’, and ‘any heraldic privileges’ and to statutorily incorporate this entire bundle of individual acquired rights of property into *integral components* of “incorporeal heritable property” constituting the dignity of baron.
- iii) The ‘dignity of baron’ may be legally defined as “incorporeal heritable property” consisting of those ‘qualities’, ‘precedences’, and ‘any heraldic privilege’ associated with or incidental to the dignity of baron *statutorily transformed* by reference in 63(4) of the ACT into *fundamental legal concepts* or “legal entities” over which courts have judicial jurisdiction as individually construed by Innes of Learney and like authoritative Scottish publicists on heraldry as being individual acquired legal rights of intangible property (i.e., specific baronial heraldic additaments) ‘vesting’ personally in the Holder of this dignity **statutorily incorporated** by use of the *verb* “**includes**” into an integral bundle of component parts constituting essence or the *very substance, fabric, and fibre* of the dignity of baron.
- iv) The property-right of ‘the dignity of baron’ as “incorporeal heritable property” ... “**includes** any quality or precedence associated with, and any heraldic privilege incidental to, a dignity” as the statutory legal definition of this dignity in §63(4) of the ACT ... all of which were *statutorily transformed* by §§3(4) of the ACT into *fundamental legal concepts*

or “legal entities” over which courts have judicial jurisdiction as individually construed by Innes of Learney and like authoritative Scottish publicists on heraldry as being individual acquired rights of intangible property (i.e., the entire set of baronial heraldic additaments) ‘vesting’ in the Holder of this dignity ... and *statutorily incorporated* by use of the *verb* “includes” therein into an integral component bundle of such acquired rights of property to form the essential ‘whole’ or the ‘entirety’ of the ‘dignity of baron’.

F. it is ULTRA VIRES or beyond the competence of any government official or officer to ignore, refuse to recognise, or refuse to grant any component of the ‘bundle’ of various *acquired* legal rights of intangible property¹⁰⁶ derived from the fundamental legal concepts or “legal entities” (i.e., the referenced ‘qualities’, ‘precedences’, and ‘any heraldic privilege’) over which the courts have judicial jurisdiction as such existed on the date of Royal Assent to the ACT and as had been commonly granted by various Lords Lyon to that date ... encompassed within the legal definition of the dignity of baron *statutorily* defined in §63(4) of the ACT ... which were ***statutorily incorporated*** by use of the *verb* “**includes**” in §63(4) of the ACT into the very *essence* of the *fibre and fabric* of “incorporeal heritable property” consisting of the dignity of baron.

G. The *legislative history* of Sec. 63 of the ACT as set forth in ¶¶ 2.40 and 2.41 of the Scottish Office’s “Report” further clarifies the explicit intent of Parliament that no change by the ACT was to be worked upon the hereditary ‘noble element’ in baronies, in particular ‘the social, ceremonial and armorial aspect of baronies’, which give them their value and would otherwise give rise to ‘substantial claims for compensation’.

H. 5(c) of the official “Recommendation” set forth in ¶2.45 of the “Report” as the *legislative history* of §63 of the ACT establishes the explicit **Parliamentary intent** for the Baronage of Scotland to “**retain**” after the ‘appointed day’ the *status quo ante* respecting “any precedence and ceremonial or heraldic privileges deriving from their barony” together with “the right to call themselves baron” as such existed as of the date of Royal Assent to the ACT and as had been commonly granted by the various Lords Lyon to that date ... ***notwithstanding*** the affect of “the new legislation” abolishing baronial judicial jurisdiction and severance of the dignity of baron from any interest in or attachment to land:

*This evidences direct Parliamentary intent that §63 of the ACT was to work **no change** upon the ‘title of baron’ or upon the existing ‘precedence and ceremonial or heraldic privileges’ of the dignity of baron after the ‘appointed day’ as such existed before that day.*

I. Whatever may have been the ***previous*** technical status of any quality or precedence associated with, and any heraldic privilege incidental to” the dignity of baron under heraldic law and practice ***before*** the enactment of The Abolition of Feudal Tenure (Scotland) ACT 2000; ... the explicit denomination of such ‘qualities’, ‘precedences’, and ‘any heraldic privilege’ as being ***included*** within the legal definition of the dignity of baron set forth in §63(4) of this ACT operates to ***statutorily transform*** these ***into*** fundamental legal concepts or “legal entities” over which courts have judicial jurisdiction ... as such existed as of the date of Royal Assent to the Act and had been commonly granted by various Lords Lyon as of that date ... constituting specific individual acquired legal rights of intangible property (as construed by Innes of Learney and like authoritative Scottish publicists on heraldry as comprising particular baronial heraldic additaments) ‘vesting’ personally in the Holder of the dignity of baron as “incorporeal heritable property”.¹⁰⁷

J. Armigerious holders of the dignity of baron’ possess an acquired legal right of property to be granted or to be accorded as a matter of *legal right* by the Lord Lyon King of Arms in his *judicial capacity* the ***entirety*** of the whole ‘bundle’ of particular acquired legal rights of intangible property (i.e., specific baronial heraldic additaments) as such existed as of the date of Royal

Assent to the ACT and as commonly granted by various Lords Lyons to that date ... derived from the ‘qualities’, ‘precedences’, and ‘any heraldic privilege’ referenced in §63(4) of the ACT which were **statutory transformed** by the reference to such in §63(4) of the ACT constituting the legal definition of the dignity of baron **into fundamental legal concepts or “legal entities”** over which courts have judicial jurisdiction ... which by use of the *verb* **“includes”** therein were **statutorily incorporated** as integral component acquired legal rights of property into the *very essence of the fibre and fabric* of the dignity of baron.

K. Only **Parliament itself** possess the **competence, authority, or jurisdiction** to alter, change, abolish, or otherwise destroy **any** of the particular intangible and ‘incorporeal’ fundamental legal concepts or “legal entities” referenced in §63(4) of the ACT constituting the statutory legal definition of the dignity of baron.¹⁰⁸

L. **Any** ‘traditional’ heraldic jurisdiction which the Lord Lyon may have **otherwise** possessed *before* the ACT to alter or other wise affect the ‘title of baron’, ‘any heraldic privilege’, and ‘any quality or precedence’ concerning the dignity of baron ... was taken away ... by the **indefeasible statutory incorporation** of “any quality or precedence associated with, and any heraldic privilege incidental to” the dignity of baron as such existed on or before the date of Royal Assent to the ACT and has been commonly granted by various Lords Lyon to that date as a ‘bundle’ of integral component acquired legal rights of intangible property constituting the *essence* of the ‘dignity of baron’ as ‘incorporeal heritable property’ ... by use of the verb **“includes”** in §63(4) of the ACT.¹⁰⁹

M. Statutory transformation of the items referenced in §63(4) of the ACT into **fundamental legal concepts or “legal entities”** over which the courts have judicial jurisdiction as the legal definition of the dignity of baron ... causing such (as heraldically construed by authoritative publicists on Scottish heraldry) to become acquired legal rights of intangible property ‘vesting’ personally in the Holders of baronies ... caused all such ‘qualities’, ‘precedences’, and ‘any heraldic privilege’ **to ‘vest’** as such existed as of the date of Royal Assent to the ACT and as had been commonly granted by the various Lords Lyon to that date as a ‘bundle’ of individual acquired rights of intangible property **statutorily incorporated** by use of the *verb* **“includes”** in §63(4) of the ACT as integral components of the dignity of baron.

10. ‘SAVINGS CLAUSE’ designed to retain *status quo ante* existing before ‘appointed day’:

THAT to execute 5(c) of the official “Recommendation” set forth in ¶12.45 of the Scottish Office’s “Report” constituting the *legislative history* to Sec. 63 of The Abolition of Feudal Tenure (Scotland) ACT 2000 ... that barons **“should retain** any precedence and ceremonial or heraldic privileges deriving from their barony” and **“should retain** the right to call themselves baron”; ... Parliament inserted the following **‘savings clause’** designed to retain the ***status quo ante*** to preserve the full range of baronial heraldic additaments, the ‘title of baron’, use of the *nomen dignitatis* of the barony in the surname, the prefix of ‘The Much Honoured’, the capacity to hold a baron court for non-judicial purposes, and to appoint its officers, as such existed as of the date of Royal Assent to the ACT and as had been commonly granted by various Lords Lyon to that date:

“ but nothing in this Act affects the dignity of baron or any other dignity or office (whether or not of feudal origin)”¹¹⁰

A. The first noun of the ‘*savings clause*’ in §63(1), 2nd clause, of the ACT, **“nothing** in this ACT” has the following definitions as set forth in dictionaries:

- Webster’s New International Dictionary, 1926, *adv.* In no degree; not at all; in no wise; — now chiefly used with verbs; as, this differs ***nothing*** from that.

“The influence of reason in producing our passions is **nothing** near so extensive as is commonly believed.” *Burke*

- *Merriam Webster’s Collegiate Dictionary*, 10th Edition, [ME, fr. OE *na thing*, *nathing*, fr. *nan* no + *thing* thing — more at NONE] 1: not any thing; no thing (leaves **nothing** to the imagination) 2: no part. not at all; in no degree
- i) Applied to the ‘*savings clause*’ in §63(1), 2nd clause, of the ACT, the noun **“nothing”** simply means that **no consideration** in “the new legislation” **shall ‘affect’** the various ‘qualities’, ‘precedences’, and ‘any heraldic privilege’ constituting the statutory legal definition of the dignity of baron set forth in §63(4) of the ACT
- ii) The noun **“nothing”** as used in the ‘*savings clause*’ in §63(1), 2nd clause, of the ACT must be judicially construed to mean that that **no consideration** arising from the changed legal status of barons respecting the ACT’s abolition of baronial judicial jurisdiction and severance of the dignity of baron from attachment to or an interest in land **shall ‘affect’** the following baronial heraldic additaments and other ‘qualities’ and ‘precedences’ associated therewith — as such existed on the date of Royal Assent to the ACT and which had been commonly granted by various Lords Lyon to that date — which constitute the statutory legal definition of the dignity of baron set forth in §63(4) of the ACT:
 - the Red Chapeau vis-à-vis abolition of baronial judicial jurisdiction
 - the Feudo-Baronial Robe or Mantle vis-à-vis abolition of baronial judicial jurisdiction and vis-à-vis severance of barony from an interest in or attachment to land re the existence of a ‘following’
 - a Badge vis-à-vis severance of barony from an interest in or attachment to land re the existence of a ‘following’
 - a Standard vis-à-vis severance of barony from an interest in or attachment to land re the existence of a ‘following’
 - ‘standing’ or legal capacity to petition Lyon for a grant of arms in right of a barony vis-à-vis severance of barony from an interest in or attachment to land
 - use of the *nomen dignitatis* of the barony as part of the surname vis-à-vis severance of barony from an interest in or attachment to land
- iii) When use of the noun **“nothing”** as used in the ‘*savings clause*’ in §63(1), 2nd clause, of the ACT ... is read in conjunction with 5(c) of the official “Recommendation” in ¶2.45 of the “Report” constituting the *legislative history* to §63 of the ACT; ... the ‘*savings clause*’ operates **to prevent no consideration** of “the new legislation” re abolition of baronial judicial jurisdiction by §63(1), 1st clause, of the ACT or severance of the dignity of baron from an interest in or attachment to land by §63(2) of the ACT **from ‘affecting’** the capacity of barons **to “retain”** after the ‘appointed day’ the *status quo ante* concerning “any precedence and ceremonial or heraldic privileges deriving from their barony” as well as “the right to call themselves baron” ... as such existed as of the date of Royal Assent to the ACT and as had been commonly granted by the various Lords Lyons to that date.
- iv) When judicially construed in light of 5(c) of the official “Recommendation” in ¶2.45 of the “Report” constituting the *legislative history* to §63 of the ACT, the noun **“nothing”** as used in the ‘*savings clause*’ in §63(1), 2nd clause, of the ACT operates to bar no consideration in “the new legislation” **from ‘affecting’** “any quality or precedence associated with, or any

heraldic privilege incidental to” barons constituting the statutory legal definition of the dignity of baron in §63(4) of the ACT as such existed as of the date of Royal Assent to the ACT and as had been commonly granted by various Lords Lyon as of that date.

B. The first phrase of the *‘savings clause’* in §63(1), 2nd clause, of the ACT, “**nothing** in this ACT” refers specifically to the changed status of the dignity of baron caused by “the new legislation’s” (1) abolition of baronial judicial jurisdiction and (2) severance of the dignity of baron from an interest in or attachment to land:

- i) Severance of the dignity of baron from attachment to or any interest in land by “the new legislation” (5(c) of the official “Recommendation” in ¶2.45 of the “Report”) would otherwise “**affect**” the legal capacity or ‘standing’ of barons to petition the Lord Lyon for a grant of arms by virtue of ownership of land or an interest in land in Scotland.
- ii) Abolition of baronial judicial jurisdiction by “the new legislation” (5(c) of the official “Recommendation” in ¶2.45 of the “Report”) would otherwise “**affect**” the legal capacity or ‘standing’ of barons to be granted by the Lord Lyon (1) the Red Chapeau indicative of baronial judicial jurisdiction and (2) the Feudo-Baronial Mantle or Robe of Estate indicative of both baronial judicial jurisdiction and as representative of a community based upon the land.
- iii) Severance of the dignity of baron from attachment to or any interest in land by “the new legislation” (5(c) of the official “Recommendation” in ¶2.45 of the “Report”) would otherwise “**affect**” the ‘standing’ or legal capacity of barons to be granted by the Lord Lyon (1) a badge – - representing a territorial ‘following’; (2) a standard upon which to display that badge for the ‘following’; (3) use of *nomen dignitatis* of the barony as part of the surname.
- iv) Abolition of baronial judicial jurisdiction by “the new legislation” (5(c) of the official “Recommendation” in ¶2.45 of the “Report”) would otherwise “**affect**” the legal capacity or ‘standing’ of barons (1) to hold a baron court for non-judicial and ceremonial purposes and (2) to appoint the baron-baillie, other Officers, and Personnel of the baron court.

C. The second phrase of the *‘savings clause’* in §63(1), 2nd clause, of the ACT, “affects the **dignity** of baron or **any other dignity** or office (whether or not of feudal origin)” must be judicially construed in conjunction with the statutory legal definition of all such ‘dignities’ set forth in §63(4) of the ACT, as follows:

- i) As used in the legal definition of ‘dignity’, the adjective “**any**” as used to modify “quality”, “precedence” or “heraldic privilege” is language of the widest possible construction ... referencing *‘anything’* which may have been granted, recognised, or accorded by the Lord Lyon at *anytime* prior to the date of Royal Assent to the ACT. Note that this language refers to ‘any’ dignity — whether Baron, Baron-Baillie, or ‘any’ other officer of a baron court.
- ii) As used in the legal definition of ‘dignity’ at §63(4) of the ACT, adverb phrase “**associated with**” as used to modify ‘any quality’ and ‘any precedence’ ... is also language of the widest possible construction: This adverb phrase should be judicially construed to reference *‘any’* such “quality” or “precedence” which has ever been *related to* a dignity by either the Lyon Office or by an authoritative publicist on Scottish heraldry.
- iii) Similarly, as used in the legal definition of ‘dignity’ at §63(4) of the ACT, the adverb phrase “**incidental to**” as used to modify “any heraldic privilege” ... is also language of the widest

possible construction. This adverb phrase should be judicially construed to refer to **the universe** of “any heraldic privilege” which has ever been **connected with** a dignity by either the various Lords Lyon or by an authoritative publicist on Scottish heraldry.

- iv) Constituting the statutory legal definition of ‘dignity’ — Baron, Baron-Baillie, or any other officer of a baron court — the ‘qualities’, ‘precedences’, and ‘heraldic privileges’ referenced in §63(4) of the ACT must be given the widest possible judicial construction as such existed as of the date of Royal Assent to the ACT and as had been granted, recognised, or accorded by the various Lords Lyon as of that date.
- v) Among such widely construed “any heraldic privilege incidental to” the dignity of baron are the following: (1) the Red Chapeau; (2) The Feudo-Baronial Mantel; (3) the Badge; (4) the Standard, (5) Banner, and (6) official insignia of office for Baron-Baillie and other officers of a Baron Court.
- vi) Among such widely construed “any quality .. associated with” the dignity of baron are the following: (1) personal ennoblement of the Holder of a barony re legal capacity to petition for arms; and (2) the ‘standing’ or legal capacity of a baron to hold a baron court for ceremonial purposes and (3) to appoint the officers and personnel of that court.
- vii) Among such widely construed “any ... precedence associated with” the dignity of baron are the following: (1) Use of the title ‘Baron of X’ as part of the name; (2) addition of the *nomen dignitatis* of the barony to the surname; (3) use of the prefix of ‘The Much Honoured’; and (4) explicit Lyon Office recognition of ‘baronial status’ in Letters Patents, Matriculations, Birthbriefs, and other official documents.

D. The verb “**affects**” as used by the ‘*savings clause*’ in §63(1), 2nd clause, of the ACT, ... “but nothing in this ACT **affects** the dignity of baron or any other dignity or office (whether or not of feudal origin)” ... concerns those ‘qualities’, ‘precedences’, and ‘any heraldic privilege’ constituting the statutory legal definition of ‘baron’ set forth in §63(4) of the ACT.

- i) The dignity of baron is **nothing more** than those very ‘qualities’, ‘precedences’, and ‘any heraldic privilege’ referenced in the legal definition of baron at §63(4) of the ACT ... which statutorily transformed such into fundamental legal concepts or “legal entities” over which the courts have judicial jurisdiction as such have been heraldically construed by authoritative Scottish publicists on heraldry to constitute concrete individual acquired rights of intangible property (i.e., the entire set of baronial heraldic additaments) ‘vesting’ in the Holder of this dignity:

*¿Of what **else** does the dignity of baron consist ... **other than** those particular ‘qualities’, ‘precedences’, and ‘any heraldic privilege’?*

- ii) The verb “**affects**” has the following definitions as set forth in dictionaries:
 - Ballentine’s Law Dictionary, 3rd edition, To act upon; to produce an effect; **to weaken, debilitate, or injure** a person or thing.
 - Merriam Webster’s Collegiate Dictionary, 10th Edition, [ME, fr. *affectus*, pp. of *afficere*] to produce an effect upon; to produce a material influence upon or alteration in
 - Webster’s New International Dictionary, 1926, *Scots Law*: to lay hold of or seize, as a debtor’s property. To lay hold on; to act upon; to produce an effect upon; to impress, influence, or move, as the mind; to touch:

*'The climate **affected** their health and spirits.'* Macaulay

- iii) The verb **"affects"** as used in the *'savings clause'* in §63(1), 2nd clause, of the ACT, ... refers to **any consideration** in the ACT which might serve to change, to weaken, to influence materially, to alter, to produce an effect upon, to alter, to weaken, to debilitate, or to injure ... any of the 'qualities', 'precedences', and 'any heraldic privilege' — existing as of the date of Royal Assent to the ACT and as had been commonly granted by the Lords Lyon as of that date — which constitute the statutorily defined legal definition of the dignity of baron set forth at §63(4) of the ACT.
- iv) When read in conjunction with 5(c) of the official "Recommendation" set forth in ¶2.45 of the "Report" constituting the *legislative history* to §63 of the ACT ... the verb **"affects"** as used in the *'savings clause'* in §63(1), 2nd clause, of the ACT ... refers to any consideration in "the new legislation" which would serve **to prevent** barons from **retaining** "any precedence and ceremonial or heraldic privileges deriving from their barony" and from **retaining** "the right to call themselves baron" — as such existed as of the date of Royal Assent to the ACT and as had been commonly granted by the Lords Lyon as of that date.
- v) Specifically, the verb **"affects"** as used in the *'savings clause'* in §63(1), 2nd clause, of the ACT ... refers particularly to those considerations in "the new legislation" which **effects** a change in the legal status of barons which would **affect** the legal capacity of the barons under the Law of Arms as applied in Scotland **to "retain** any precedence and ceremonial or heraldic privileges deriving from their barony" or **to "retain** the right to call themselves baron" — as such existed as of the date of Royal Assent to the ACT and as had been commonly granted by the Lords Lyon as of that date — re 5(c) of ¶2.45 of the "Report" constituting the *legislative history* to §63 of the ACT.
- vi) In particular, the verb **"affects"** as used in the *'savings clause'* at §63(1), 2nd clause, of the ACT ... must be judicially construed to refer to the following changes in the legal status of barons caused by "the new legislation" which **affects** "any quality or precedence associated with, or any heraldic privilege incidental to" barons — existing as of the date of Royal Assent to the ACT and as had been commonly granted by the Lords Lyon as of that date — which constitutes the legal definition of the dignity of baron as statutorily defined in §63(4) of the ACT:
- Abolition of baronial judicial jurisdiction by §63(1), 1st clause, of the ACT ... which **affects** "any heraldic privilege" — existing as of the date of Royal Assent to the ACT and as had been commonly granted by the Lords Lyon as of that date — constituting the statutory legal definition of baron consisting of (1) the Red Chapeau and (2) Feudo-Baronial Mantel or Robes of Estate predicated upon such baronial judicial jurisdiction
 - Severance of the dignity of baron from any attachment to or interest in land by §63(2) of the ACT ... which **affects** "any heraldic privilege" — existing as of the date of Royal Assent to the ACT and as had been commonly granted by the Lords Lyon as of that date — constituting the statutory legal definition of baron consisting of (1) a Badge, (2) a Standard, (3) use of the *nomen dignitatis* of a barony as part of the surname, and (4) 'standing' or legal capacity to petition the Lord Lyon for arms ... predicated upon the existence of a 'following' derived from attachment to or an interest in land.
 - Abolition of baronial judicial jurisdiction by §63(1), 1st clause, of the ACT ... which **affects** "any quality" — existing as of the date of Royal Assent to the ACT and as had been commonly recognised by the Lords Lyon as of that date — constituting the

statutory legal definition of the dignity of baron consisting of (1) the right of a baron to hold a baron court for non-judicial ceremonial purposes and (2) the right of a baron to appoint the Baron-Baillie and the other officers of that baron court.

- vii) Abolition of baronial judicial jurisdiction by §63(1), 1st clause, of the ACT is a **‘matter’** which **“affects”** ... “any heraldic privilege” — existing as of the date of Royal Assent to the ACT and as had been commonly granted by the Lords Lyon as of that date — constituting the statutory legal definition in §63(4) of the ACT of the dignity of baron re the Red Chapeau and Feudo-Baronial Robes.
- viii) Severance of the dignity of baron from any attachment to or interest in land by §§3(2) of the ACT is a **‘matter’** which **“affects”** ... “any heraldic privilege” constituting the statutory legal definition in §63(4) of the ACT of the dignity of baron re a Badge, a Standard, use of the *nomen dignitatis* of a barony as part of the surname, and ‘standing’ or legal capacity to petition the Lord Lyon for arms — existing as of the date of Royal Assent to the ACT and as had been commonly granted by the Lords Lyon as of that date.
- ix) Abolition of baronial judicial jurisdiction by §63(1), 1st clause, of the ACT is a **‘matter’** which **“affects”** ... “any quality” — existing as of the date of Royal Assent to the ACT and as had been commonly granted by the Lords Lyon as of that date — constituting the statutory legal definition in §63(4) of the ACT of the dignity of baron re
- a) the legal capacity to hold a non-judicial baron court for ceremonial purposes and
 - b) the right of a baron to appoint the Baron-Baillie and the other Officers of that baron court.
- x) As the *prima facie* Parliamentary intent of the ‘*savings clause*’ in §63(1), 2nd clause, of the ACT is **to prevent ‘anything’** in “the new legislation” from **‘affecting’** the legal capacity of barons **to “retain** any precedence and ceremonial or heraldic privileges deriving from their barony” or **to “retain** the right to call themselves baron” re 5(c) of the official “Recommendation” at ¶2.45 of the “Report” constituting the *legislative history* to §63 of the ACT; ... this ‘*savings clause*’ must be judicially construed by the Court of Session ... **to prevent** literally “nothing in this ACT” respecting
- the abolition of baronial jurisdiction or
 - the severance of the dignity of baron from any attachment to or an interest in land
- ... from **‘affecting’** ... the “any heraldic privilege” or “any quality or precedence” — existing as of the date of Royal Assent to the ACT and as had been commonly granted by the Lords Lyon as of that date — constituting the statutorily defined legal definition of the dignity of baron in §63(4) of the ACT.
- xi) Because the ‘substance’ of dignity of baron consists of **nothing more** than those particular ‘qualities’, ‘precedences’, and ‘any heraldic privilege’ set forth in the statutory legal definition of the dignity of baron in §63(4) of the ACT, ... **any effect** of “the new legislation” referenced in 5(c) of the official “Recommendation” at ¶2.45 of the “Report” constituting the *legislative history* to §63 of the ACT ... which **‘affects’** the composition of any of the ‘qualities’, ‘precedences’, and ‘any heraldic privilege’ statutorily constituting the dignity of baron existing as of the date of Royal Assent to the ACT and as had been commonly granted by the Lords Lyon as of that date ... **is ‘barred’** or **prohibited** by the operation of the ‘*savings clause*’ in §63(1), 1st clause, of the ACT.
- xii) Therefore, the ‘*savings clause*’ in §63(1), 2nd clause, of the ACT ... ought to be construed

judicially by the Court of Session ... to bar or to prohibit **anything** “in this ACT” — specifically,

a) abolition of baronial judicial jurisdiction and

b) severance of the dignity of baron from any interest in or attachment to land —

from ‘**affecting**’ the composition of “any heraldic privilege” concerning the Red Chapeau, Feudo-Baronial Robes, Badge, Standard, use of the *nomen dignitatis* of the barony in the surname, and legal capacity or ‘standing’ to petition for arms in the right of the barony ... as well as the legal capacity of a baron to hold a baron court for non-judicial ceremonial purposes and to appoint the Baron-Baillie and other Officers and Personnel of the baron court ... existing as of the date of Royal Assent to the ACT and as had been commonly granted by the Lords Lyon as of that date ... encompassed within the statutory legal definition of the dignity of baron at §63(4) of the ACT.

E. The Scottish Parliament was well aware of the **heraldic effect** which the changed status of the dignity of baron caused by abolition of baronial judicial jurisdiction and severance of baronies from an interest in or attachment to land would have upon the ‘standing’ or legal capacity of barons to be granted the referenced baronial heraldic additaments (i.e., Red Chapeau, Feudo-Baronial Mantle, badge, standard, use of the baronial *nomen dignitatis* in the surname) .¹¹¹

i) From the *legislative history* of §63 of the ACT at ¶¶2.31, 2.32, 2.34, and in particular 2.40 of the Scottish Office’s “Report”, the Scottish Parliament was **particularly aware** that any **loss** of these referenced baronial heraldic additaments, use of the *nomen dignitatis* of the barony in the surname, and the legal capacity or ‘standing’ to hold a baron court and to appoint its officers caused by “the new legislation” ... would subject the Scottish Government “to substantial claims for compensation” for the “considerable commercial value” represented by such “noble element” consisting of “the social, ceremonial and armorial aspects of baronies” in the amount of £60,000 for every barony in Scotland.¹¹²

ii) The practically-minded Scottish Government made the **policy decision** referenced in ¶2.40 of the “Report” constituting the *legislative history* of §63 of the ACT:

To preserve the right to the title and dignity of baron as well as the social, ceremonial and aspects of baronies “which gives baronies the value which they have” as a non-territorial dignity separated from land ownership ... **in order to avoid payment of compensation ...** for any change in the legal status of a baron occasioned by the ACT’s abolition of baronial judicial jurisdiction and severance of baronies from attachment or an interest in land.¹¹³

iii) The explicit **Parliamentary intent** to avoid payment of compensation for any ‘loss’ of the “noble element” in baronies re baronial heraldic additaments (i.e., Red Chapeau, Feudo-Baronial Mantle, Badge, Standard) or other ‘qualities’ or ‘precedences’ associated with the dignity of baron (i.e., ‘Standing’ or legal capacity to petition Lyon for Arms, use of the *nomen dignitatis* of the barony as part of the surname, the legal capacity to hold a non-judicial baron court for ceremonial purposes and to appoint its Officers and other Personnel) is the **key concept** which **permeates every aspect** of the *legislative history* of §63 of the ACT set forth in ¶¶2.30 to 2.45 of the Scottish Office’s “Report”:

Parliamentary intent to retain ‘the noble element’ in baronies to avoid payment of compensation for any ‘loss’ of baronial heraldic additaments provides the key concept for any judicial construction of §63 of the ACT

- iv) The *legislative history* to §63 of the ACT as set forth in ¶2.40 of the “Report” ... declaring that “ an applicant for a coat of arms with baronial additaments” could appeal the Lord Lyon’s denial of such for “ a declarator of entitlement to the barony in the ordinary courts and, if successful, to return to the Lord Lyon with that declarator” ... explicitly evidences that *after* the ‘appointed day’ Barons were to **“retain** any precedence and ceremonial or heraldic privileges deriving from their barony” re 5(c) of the official “Recommendation” set forth in ¶2.45 of the “Report”:

Otherwise, what would be the point of appealing a denial of “baronial additaments” to the Court of Session for a “declarator of entitlement” ?

- v) Notwithstanding the changed status of barons cause by “the new legislation’s” abolition of baronial judicial jurisdiction and severance of the dignity of baron from an interest in or attachment to land, ... **Parliament explicitly intended** to preserve unaltered after the ‘appointed day’ the *status quo ante* concerning the full range of baronial heraldic additaments, use of the *nomen dignitatis* as part of the surname, and the capacity to hold a baron court and to appoint its officers ... as evidenced explicitly in 5(c) of the official “Recommendation” set forth in ¶2.45 of the Report summarising the *legislative history* of §63 of the ACT.¹¹⁴
- vi) Notwithstanding “the new legislation’s” abolition of baronial judicial jurisdiction, ... **Parliament explicitly intended** to preserve unaltered after the ‘appointed day’ the *status quo ante* concerning the legal capacity of barons to hold a baron court for non-judicial ceremonial purposes and to appoint the Officers of that Court ... as evidenced explicitly in 5(c) of the official “Recommendation” set forth in ¶2.45 of the Report:

“5(c) The new legislation should not abolish the dignity of baron **or any other dignity (whether or not of feudal origin).**”¹¹⁵

F. The ‘*savings clause*’ in §63(1), 2nd clause, of the ACT operates to preserve unaltered the *status quo ante* of “any quality or precedence associated with, or any heraldic privilege incidental to” barony as such existed as of the date of Royal Assent to the ACT and as had been commonly granted by the Lords Lyon as of that date constituting the **statutory legal definition** of the dignity of baron set forth in §63(4) of the ACT

G. When the ‘*savings clause*’ in §63(1), 2nd clause, of the ACT ... is read in conjunction with ... 5(c) of the official “Recommendation” in ¶2.45 constituting the *legislative history* to §63 of the ACT ... mandating that barons are to **“retain”** after the ‘appointed day’ the *status quo ante* concerning “any precedence and ceremonial or heraldic privileges deriving from their barony” as well as “the right to call themselves baron”; ... the clear and unmistakable **Parliamentary intent** is that the ‘*savings clause*’ operates to **prevent any** of the components of the **legal definition** of the dignity of baron statutorily defined in §63(4) of the ACT from being ‘*affected*’ by any of the changes in the legal status of barons cause by “the new legislation”:

- Abolition of baronial judicial jurisdiction by §63(1), 1st clause, of the ACT
- Severance of the dignity of baron from any attachment to or interest in land by §63(2) of the ACT

H. Read in conjunction with 5(c) of the official “Recommendation” in ¶2.45 constituting the *legislative history* to §63 of the ACT, ... the ‘*savings clause*’ in §63(1), 2nd clause, of the ACT ... operates to bar or to prohibit abolition of baronial judicial jurisdiction by §63(1), 1st clause, of the ACT from ‘*affecting*’ the legal and heraldic capacity of the Baronage of Scotland to **“retain”** the Red Chapeau and Feudo-Baronial Robes originally attributed to such baronial

judicial jurisdiction encompassed within “**any heraldic privilege**” constituting the statutorily defined legal definition of the dignity of baron in §63(4) of the ACT.

I. Read in conjunction with 5(c) of the official “Recommendation” in ¶12.45 constituting the *legislative history* to §63 of the ACT, ... the ‘*savings clause*’ in §63(1), 2nd clause, of the ACT ... operates to bar or to prohibit severance of the dignity of baron from any attachment to or interest in land by §63(2) of the ACT from ‘*affecting*’ the legal and heraldic capacity of the Baronage of Scotland to “**retain**” badges and standards originally attributed to a ‘following’ arising from the attachment of baronies to land or an interest in land encompassed within “**any heraldic privilege**” constituting the statutorily defined legal definition of the dignity of baron in §63(4) of the ACT.

J. Read in conjunction with 5(c) of the official “Recommendation” in ¶12.45 constituting the *legislative history* to §63 of the ACT, ... the ‘*savings clause*’ in §63(1), 2nd clause, of the ACT ... operates to bar or to prohibit severance of the dignity of baron from any attachment to or interest in land by §63(2) of the ACT from ‘*affecting*’ the legal and heraldic capacity of the Baronage of Scotland to “**retain**” the following encompassed within “**any quality**” constituting the statutorily defined legal definition of the dignity of baron in §63(4) of the ACT:

- use of the *nomen dignitatis* of the barony as part of the surname,
- the legal capacity or ‘standard’ of the Holder of the dignity of baron to petition the Lord Lyon for a grant of arms in the right of that barony, and
- the legal capacity of a baron to hold a non-judicial baron court for ceremonial purposes and to appoint the Baron-Baillie and other Officers and Personnel of the baron court

K. In summary, **Parliament’s clear intent** is that the ‘*savings clause*’ in §63(1), 2nd clause, of the ACT operates **to protect** all ‘qualities’, ‘precedences’, and ‘any heraldic privilege’ constituting the statutory legal definition of the dignity of baron in §63(4) of the ACT — as such existed as of the date of Royal Assent to the ACT and as had been commonly granted by various Lords Lyons to that date — **from being ‘affected’ by** any of the following consideration in “the new legislation” which might disturb the *status quo ante* of the composition of all the various baronial heraldic additaments, baronial ‘qualities’, and baronial ‘precedences’ which constitute the dignity of baron:

- Abolition of baronial judicial jurisdiction by §63(1), 1st clause, of the ACT
- Severance of the dignity of baron from any attachment to or interest in land by §63(2) of the ACT

L. The **clear intent of Parliament** re the effect of the ‘*savings clause*’ in §63(1), 2nd clause, of the ACT to protect specifically the *status quo ante* of the entire *package* of ‘qualities’, ‘precedences’, and ‘any heraldic privileges’ statutorily constituting the legal definition of the dignity of baron in §63(4) of the ACT as such existed as of the date of Royal Assent to the ACT and as had been commonly granted by the various Lords Lyon to that date ... **is confirmed** by 5(c) of the official “Recommendation” in ¶12.45 of the *legislative history* to §63 of the ACT ... declaring that **notwithstanding** the changed status of baron caused by “the new legislation” re (1) abolition of baronial judicial jurisdiction by §63(1), 1st clause, of the ACT and (2) severance of the dignity of baron from any attachment to or interest in land by §63(2) of the ACT ... that “barons **should retain** the right to call themselves baron and **should retain** any precedence and ceremonial or heraldic privileges deriving from their barony” as such existed **before** the ‘appointed day’.

FINDINGS OF THE BARON COURTS

On 16th November 2004 the Baron Courts of Prestoungrange and Dolphinstoun pronounced the following interlocutor:

Finds in fact:

- 1) The explicit *parliamentary intent* of §63 of the ACT is to preserve unchanged, unaltered, and unmodified past the ‘appointed day’ the complete ‘noble element’ in baronies consisting of ‘the social, ceremonial, and armorial aspects of baronies’ which constitute ‘the considerable commercial value’ of baronies in order to avoid paying compensation for the taking of this ‘noble element’ by the re abolition of the judicial jurisdiction of the Baron worked by the ACT and the severance of the dignity of baron from an interest in or an attachment to the land under the ACT.
- 2) The “noble element” in Scottish baronies include The title of baron, use of the *nomen dignitatis* of that barony as part of the surname, the legal capacity to petition the Lord Lyon for arms, conventional baronial additaments — including the Red Chapeau, Baronial Robes of Estate, a badge, and a standard — the capacity of hold a Baron Court, and to appoint the Baron Baillie and other Officers of that Court have the “commercial market value” of £60,000 for a barony which includes a caput of a minimal amount of land of no value of itself.
- 3) The *legislative history* of §63 of the ACT set forth in ¶¶2.30 to 2.45 of the Scottish Office’s “Report on Abolition of the Feudal System” (hereinafter, “Report”) evidences the the clear, manifest and unambiguous *intent of Parliament to “retain”* unimpaired and unaltered after the ‘appointed day’ the full range of ‘the social, ceremonial and armorial aspects of baronies’ encompassed in the term of the ‘noble element’ in baronies together with the right to the title and dignity of baron in order to avoid paying compensation in the amount of £60,000 for every barony in Scotland.
- 4) The explicit *intent of Parliament* evidenced by the *legislative history* of §63 of the ACT set forth in the official “Recommendation” of 5(c) in ¶2.45 of the “Report” expresses the clear Parliamentary intent ... by use of the verb “retain” ... that “any precedence and ceremonial or heraldic privileges deriving from their barony” as well as “the right to call themselves baron” (and implicitly to use the *nomen dignitatis* of that barony as part of the surname) ... is to *survive* both the ‘appointed day’ and the statutory abolition by “The new legislation” of baronial judicial jurisdiction and severance of ‘the dignity of baron’ from attachment to or an interest in land ... in the *same unaltered form* which such ‘precedences’, ‘ceremonial’ qualities, any ‘heraldic privileges’, and ‘the right to call themselves baron’ *existed as of the date of Royal Assent to the Act* and as had been *commonly granted by various Lord Lyons as of that date*.
- 5) The *unmistakable Parliamentary intent* expressed in 5(c) of the formal “Recommendation” set forth in ¶2.45 of the “Report” is that after the ‘appointed date’ “barons should retain the right to call themselves baron and should retain any precedence and ceremonial or **heraldic privileges** deriving from their barony” ... notwithstanding the abolition of the judicial jurisdiction of the baron or the severance of the dignity of baron from attachment to land or as an interest in land by “the new legislation” as specifically noted at 5(a), 5(d), and 5(e) of the official “Recommendation” at ¶2.45 of the “Report”.
- 6) The overriding **Parliamentary intent** expressed in the *legislative history* to Section. 63 of the Abolition of Feudal Tenure (Scotland) ACT 2000 set forth at length in ¶¶2.30 to 2.45 of the Scottish Offices’ “Report on Abolition of the Feudal System” of preserving the *existing* ‘qualities’, ‘precedences’, and ‘any heraldic privileges’ conveyed by a barony-title under the feudal system of land tenure — which give baronies the market value which they have — *after*

the ‘appointed day’ in order **to avoid payment of compensation** in the amount of £60,000 for every feudal barony in Scotland.

- 7) If feudal barony-titles consisting of a caput “of a tiny plot of waste ground, of little or no value in itself” re ¶2.31 of the “Report” are *in commercio* to anyone for £60,000; ... the **real object of purchase** ... is **not** this “minimal amount of land of no value in itself” re ¶2.32 of the “Report” ... **but** the “**noble aspects**” of ‘**the dignity of baron**’ derived from barony titles re ¶2.34 of the “Report” carrying with it certain intangible ‘privileges’ constituting acquired legal rights of incorporeal property ‘vesting’ personally in the Holder of the Barony-Title re ¶2.31 of the “Report” ... in existence as of the date of Royal Assent to the Act and as had been commonly granted, recognised, or accorded by sundry Lords Lyon before that date.
- 8) This **market value of £60,000** for a Scottish feudal barony title in land consisting of a minimal baronial caput of waste land which the *legislative history* finds has ‘no value in itself’ consists **solely** of those particular ‘qualities’, ‘precedences’ and ‘any heraldic privilege’ associated with or incidental to the seven referenced ‘privileges’ derived from ‘the **noble aspects** of the barony title’ in land ... which were in existence as of the date of Royal Assent to the Act and which had been commonly granted, recognised, or accorded by the various Lords Lyons on or before the date of Royal Assent.
- 9) The *legislative history* to §63 of the ACT in ¶2.40 of the “Report” states that the Scottish Parliament made the **policy decision ... to separate ‘the dignity of baron’** to which such ‘qualities’, ‘precedences’, and ‘any heraldic privilege’ are attached as the ‘noble aspect’ of feudal barony-titles in land ... **from land ownership, per se**, as part of the reform of the feudal system of land tenure ... allowing ‘the dignity of baron’ — encompassing those referenced ‘qualities’, ‘precedences’, and ‘any heraldic privilege’ — to survive as a personal ‘floating dignity’ ... to avoid any *taking* of the referenced ‘noble aspects’ — in existence as of the date of Royal Assent to the ACT and which had been commonly granted by various Lords Lyon before that date — for which compensation would have to be paid for every barony in Scotland.
- 10) Because the **over-riding legislative object of §63 of the ACT** is to avoid paying compensating, reference in the legislative history — expressive of **Parliamentary intent** — to bringing a case for a declarator of entitlement in the Court of Session re “baronial additaments” clearly implies that **meaningful baronial heraldic additaments** are intended by Parliament **to survive the ‘appointed day’** ... unimpaired by the changed legal status of ‘the dignity of baron’ caused by the ACT re (1) abolition of baronial judicial jurisdiction and (2) severance of ‘the dignity of baron’ from any interest in or attachment to land ... to give the Holder of ‘the dignity of baron’ the standing or legal capacity to bring a case to declare entitlement to such baronial heraldic additaments.
- 11) Conversely, no one will pay £60,000 after the ‘appointed day’ for ‘the dignity of baron’ which has been stripped of those baronial heraldic additaments which make the barony **meaningful** to the owner.
- 12) Parliament made the **policy decision** referenced in 5(c) of ¶2.45 of the “Report” constituting the official “Recommendation” to Parliament to **“retain”** after the ‘appointed day’ the title of baron and the **status quo ante** concerning “any precedence and ceremonial or heraldic privileges derived from their barony” as such existed as of the date of Royal Assent to the ACT and as had been commonly granted by the Lords Lyon as of that date ... by **statutorily transforming** all of these ‘noble elements’ into *fundamental legal concepts* or “*legal entities*” over which courts have judicial jurisdiction ... which as individually construed by authoritative publicists on Scottish heraldry ... became **acquired legal rights of intangible property** ‘vesting’ personally in the Holder of each barony as “incorporeal heritable property” ... by explicit statutory reference of such ‘qualities’, ‘precedences’ and ‘any heraldic privilege’ in the statutory **legal definition** of ‘the dignity of baron’ set forth in §63(4) of the ACT as consisting

of “any quality or precedence associated with, or any heraldic privilege incidental to” the dignity of baron.

- 13) As evidenced by 5(c) of the formal “Recommendation” to Parliament set forth in ¶2.45 of the “Report” constituting the *legislative history* to §63 of the ACT, the Scottish Parliament made the **policy decision** that following the ‘appointed day’¹¹⁶ that Holders of the dignity of baron would “**retain**” “the right to call themselves baron and ... any precedence and ceremonial or heraldic privileges deriving from their barony” as such existed as of the date of Royal Assent to the ACT and as had been commonly granted by the various Lords Lyon to that date — which were “derived from the former connection with the Crown as feudal superior” re ¶2.43 of the “Report” — to preserve the *status quo ante* of this “noble element” consisting of “the social, ceremonial and armorial aspects of baronies” constituting the “considerable commercial value” therein to avoid payment of “substantial claims for compensation” re ¶2.40 of the “Report” in the amount of £60,000 for every barony in Scotland re ¶2.32 of the “Report”.
- 14) As revealed in the *legislative history* to §63 of the ACT set forth in ¶¶2.30 to 2.45 of the Scottish Office’s “Report”, the **over-riding Parliamentary intent** in §63 of the ACT is to avoid **any payment of compensation** for **any loss** of the “noble element” in baronies¹¹⁷ arising from the **change in the legal status of baronies** under “the new legislation” caused by the abolition of feudal tenure re (1) abolition of baronial judicial jurisdiction and (2) severance of the dignity of baron from an interest in or an attachment to land.
- 15) As concretely expressed in 5(c) of the official “Recommendation” in ¶2.45 of the “Report”, the clear Parliamentary intent was to “**retain**” after the ‘appointed day’ the *status quo ante* concerning entire “noble element” in baronies — having the assessed market value of £60,000 re ¶2.32 of the “Report” — as such existed as of the date of Royal Assent to the ACT and as had been commonly granted by various Lords Lyon to that date ... **notwithstanding** the change in the status of barons arising from “the new legislation” re (1) abolition of baronial judicial jurisdiction and (2) severance of the dignity of baron from an interest in or an attachment to land.
- 16) The *legislative history* to §63 of the ACT in ¶¶2.30 to 2.45 of the Scottish Office’s “Report” evidences that the *practically minded* Scottish Parliament was **more concerned** with the possibility of paying compensation for any **loss** of the “noble element” in baronies occasioned by the change in the status of barons caused by “the new legislation” ... then for the continued existence of any formal heraldic justification for the retention of such ‘qualities’, ‘precedences’, and ‘any heraldic privilege’ referenced in the legal definition of the dignity of baron set forth in §63(4) of the ACT.
- 17) The *legislative history* of Sec. 63 of the ACT evidences that the Scottish Parliament was clearly aware that abolition of baronial judicial jurisdiction and severance of the dignity of baron from an interest in or an attachment to land would also abolish the **formal heraldic justification** for the baronial heraldic additaments constituting the “**noble aspects of the barony title**” (¶2.34 of the “Report”) from the comprehensive response of the Convention of the Baronage of Scotland set forth in ¶2.36 of the “Report”.
- 18) The *legislative history* of §63 of the ACT recorded in ¶2.40 of the “Report” sets forth the **Parliamentary intention** to preserve *in toto* the “noble element” (i.e., baronial heraldic additaments, the title of baron, the *nomen dignitatis* of that barony as part of the surname) in baronies separate from land ownership to **avoid paying compensation**.
- 19) Any doubt as to the **intention of Parliament** to preserve unaltered the *status quo ante* concerning the complete baronial heraldic additaments, use of the ‘title of baron’, use of the *nomen dignitatis* of that barony as part of the surname, ... as well as every other ‘quality’, ‘precedence’, or ‘any heraldic privilege’ associated with or incidental to the dignity of baron ...

as such existed as of the date of Royal Assent to the ACT and as had been granted by various Lords Lyon as of that date is settled by **5(c) of the official “Recommendation”** set forth in ¶2.45 of the “Report” ... declaring that notwithstanding “the new legislation” barons “should retain any precedences and ceremonial or heraldic privileges deriving from their barony” as well as “retain the right to call themselves baron” after the ‘appointed day’.

- 20) “Any quality or precedence associated with, and any heraldic privilege incidental to” the dignity of baron were **statutorily incorporated** by use of the verb “**includes**” in §63(4) of the ACT as an integral ‘bundle’ of all such components **into** the *essence* or the *very fabric, fibre and substance* of the ‘dignity of baron’ as incorporeal heritable property” under §63(2) of the ACT ... as such existed upon the day of Royal Assent to the ACT (9th June 2000) and as had been granted, recognised, or accorded by various Lords Lyon prior to that date ... in order to achieve the *statutory goal* of Parliament to “**retain**” unchanged after the ‘appointed day’ the “noble element” consisting of “the social, ceremonial and armorial aspects of baronies” including “the right to the title and dignity of baron ... which gives baronies the value which they have over and above ... a residual plot of land, with little or no intrinsic value” constituting the “considerable commercial value” the taking of which “would give rise to substantial claims for compensation” re the *legislative history* to §63 of the ACT found at ¶2.40 of the “Report” of £60,000 per barony for every barony in Scotland re ¶2.32 of the “Report”.
- 21) Permeating the *Parliamentary intent* expressed in the preliminary ‘discussion paper’ referenced in the *legislative history* to Section 63 of The Abolition of Feudal Tenure (Scotland) ACT 2000 found at ¶¶2.30 to 2.45 of the Scottish Office’s “Report” is the over-riding *policy goal* of the Scottish Parliament to **avoid payment of compensation** in the amount of £60,000 (¶2.32 of the “Report”) for any taking of “the noble aspect of baronies” which might be caused by the abolition of the feudal system of land tenure.
- 22) All of the particular ‘qualities’, ‘precedences’, and ‘any heraldic privilege’ as such existed as of the date of Royal Assent to the ACT statutorily transformed into *fundamental legal concepts* or “legal entities” over which courts have judicial jurisdiction as individually construed by Innes of Learney and like authoritative Scottish publicists on heraldry as being individual acquired legal rights of intangible property (i.e., specific baronial heraldic additaments) by the legal definition of the dignity of baron set forth in §63(4) of the ACT ... were **statutorily incorporated** by use of the verb “**includes**” in §63(4) of the ACT into an integral component ‘bundle’ of such intangible property forming the very essence or the very fabric and fibre of “incorporeal heritable property” constituting ‘the dignity of baron’.
- 23) To execute 5(c) of the official “Recommendation” set forth in ¶2.45 of the Scottish Office’s “Report” constituting the *legislative history* to Sec. 63 of The Abolition of Feudal Tenure (Scotland) ACT 2000 ... that barons “**should retain** any precedence and ceremonial or heraldic privileges deriving from their barony” and “**should retain** the right to call themselves baron”; ... Parliament inserted the ‘savings clause’ — found at §63(1), 2nd clause, of the ACT — designed to retain the *status quo ante* to preserve the full range of baronial heraldic additaments, the ‘title of baron’, use of the *nomen dignitatis* of the barony in the surname, the prefix of ‘The Much Honoured’, the capacity to hold a baron court for non-judicial purposes, and to appoint its officers, as such existed as of the date of Royal Assent to the ACT and as had been commonly granted by various Lords Lyon to that date:
- “but nothing in this Act affects the dignity of baron or any other dignity or office (whether or not of feudal origin)”
- 24) From the submission of the Convention of the Baronage of Scotland, the Scottish Parliament was well aware of the *heraldic effect* which the changed status of the dignity of baron caused by abolition of baronial judicial jurisdiction and severance of baronies from an interest in or attachment to land would have upon the ‘standing’ or legal capacity of barons to be granted the

referenced baronial heraldic additaments (i.e., Red Chapeau, Feudo-Baronial Mantle, badge, standard, use of the baronial *nomen dignitatis* in the surname).

- 25) The ‘*savings clause*’ in §63(1), 2nd clause, of the ACT operates to preserve unaltered the ***status quo ante*** of “any quality or precedence associated with, or any heraldic privilege incidental to” barony as such existed as of the date of Royal Assent to the ACT and as had been commonly granted by the Lords Lyon as of that date constituting the **statutory legal definition** of the dignity of baron set forth in §63(4) of the ACT.
- 26) Parliament’s clear intent is that the ‘*savings clause*’ in §63(1), 2nd clause, of the ACT operates **to protect** all ‘qualities’, ‘precedences’, and ‘any heraldic privilege’ constituting the statutory legal definition of the dignity of baron in §63(4) of the ACT — as such existed as of the date of Royal Assent to the ACT and as had been commonly granted by various Lords Lyons to that date — **from being ‘affected’ by** any consideration in “the new legislation” which might disturb the ***status quo ante*** of the composition of all the various baronial heraldic additaments, baronial ‘qualities’, and baronial ‘precedences’ which constitute the dignity of baron.
- 27) Parliament’s intent re the ‘*savings clause*’ in §63(1), 2nd clause, of the ACT ... is *confirmed* by 5(c) of the official “Recommendation” in ¶2.45 of the *legislative history* to §63 of the ACT ... declaring that *notwithstanding* the changed status of baron caused by “the new legislation” re (1) abolition of baronial judicial jurisdiction by §63(1), 1st clause, of the ACT and (2) severance of the dignity of baron from any attachment to or interest in land by §63(2) of the ACT ... that “barons *should retain* the right to call themselves baron and *should retain* any precedence and ceremonial or heraldic privileges deriving from their barony” as such existed *before* the ‘appointed day’.

Finds in Law:

- 1) The *legal entitlement* to this ‘title of baron’, use of a barony’s *nomen dignitatis* as part of the surname, the legal capacity to petition the Lord Lyon for arms and conventional baronial heraldic additaments including baronial robes of estate, the capacity to hold a Baron Court, and to appoint its Baron-Baillie and other officers ... intangible property and rights having the present market value of £60,000 ... is based upon the *feudal relationship with the Crown* derived from the original historical erection of the lands of that barony *in liberam baroniam* by the Crown under the Great Seal of Scotland
- 2) the statutory legal definition of ‘the dignity of baron’ set forth in §63(4) of the ACT specifically references “any quality or precedence associated with, and any heraldic privilege incidental to” the dignity of baron ... in the original form *that such existed as of the date* of Royal Assent to the ACT (9th June 2000), ... as had been *commonly granted* by the Lords Lyon *before* that date, ... and *un-impaired* by any of the changed status of ‘the dignity of baron’ caused by the ACT’s abolition of baronial judicial jurisdiction and severance of baronies from any attachment to or interest in land.
- 3) Use of The verb **“retain”** as used in the official “Recommendation” at 5(c) at ¶2.45 of the “Report” constituting the *legislative history* of §63 of the ACT ... means to keep the *status quo ante* ... existing *before* the “new legislation” came into force on the ‘appointed day’ ... and which existed *as of the date* when the ACT received Royal Assent (9th June 2000) ... which had been *commonly granted, recognised, or accorded* by the various Lords Lyon *as of* that date.
- 4) the *manifest intent* of Parliament expressed in the *legislative history* of §63 of the ACT set forth in the official “Recommendation” at 5(c) in ¶2.45 of the “Report” ... by use of the verb **“retain”** ... is that despite the changed status of a baron wrought by explicit abolition in “the new legislation” referenced in 5(c) of the baronial judicial jurisdiction cited in 5(a) of ¶2.45 in the “Report” and the specific severance of baronies from any attachment to or an interest in land

referenced in 5(d) and 5(e), respectively of ¶2.45 of the “Report” ... that after the ‘appointed day’ when the ACT enters into full force and legal effect ... Barons are *to retain* the same “right to call themselves baron and ... any precedence and ceremonial or heraldic privileges deriving from their barony” as such existed *before* “the new legislation” ... as of the date of Royal Assent to the ACT and as had been commonly granted by the various Lords Lyon *before* that date.

- 5) The *explicit declaration* in 5(c) of the official “Recommendation” at ¶2.45 at of the “Report” that after the ‘appointed day’ barons “should *retain* any precedence and ceremonial or heraldic privileges deriving from their barony” ... evidences the specific intent of Parliament for the ***retention*** by barons after the ‘appointed day’ of those particular “heraldic privileges” in existence as of the date of Royal Assent to the ACT (9th June 2000) which had been commonly granted by Lords Lyon prior to the Date of Royal Assent — including the Red Chapeau and Feudo-baronial robes associated with baronial judicial jurisdiction — as part of the ‘noble element’ consisting of ‘the social, ceremonial and armorial aspects of baronies’ which ‘gives baronies the value which they have’ re ¶2.40 of the “Report” ... notwithstanding the changed status of a baron arising from the abolition of the judicial jurisdiction of the Baron by the ACT and the severance of the barony from any interest in land caused by the ACT.
- 6) The *explicit declaration* in 5(c) of the official “Recommendation” at ¶2.45 at of the “Report” that after the ‘appointed day’ barons “should **retain** any precedence and ceremonial or heraldic privileges deriving from their barony” ... evidences the specific intent of Parliament for the ***retention*** by barons after the ‘appointed day’ of those particular “heraldic privileges” in existence as of the date of Royal Assent to the ACT (9th June 2000) which had been commonly granted by Lords Lyon prior to the Date of Royal Assent — including use of a *nomen dignitatis* derived from the barony as part of a baron’s surname, grant of a badge and a standard upon which to display the badge, and Feudo-baronial robes associated with an attachment to land including the ‘following’ or ‘hereditary representation’ derived there from — as part of the ‘noble element’ consisting of ‘the social, ceremonial and armorial aspects of baronies’ which ‘gives baronies the value which they have’ re ¶2.40 of the “Report” ... notwithstanding the changed status of a baron arising from the severance of the barony by the ACT from any attachment to or interest in land.
- 7) Specific reference of “any quality or precedence associated with, and any heraldic privilege incidental to” in the legal definition of ‘the dignity of baron’ set forth in §63(4) of the ACT ... ***statutorily transforms*** all such ‘qualities’, ‘precedences’, and ‘any heraldic privilege’ ... into fundamental legal subjects or “legal entities” ¹¹⁸ over which the courts have judicial jurisdiction as particular acquired legal rights of intangible property ‘vesting’ personally in the Holder of ‘the dignity of baron’ as “incorporeal heritable property” under §63(2) of the ACT which can be made the subject-matter of a judicial judgement enforceable by a court of law.
- 8) Before the enactment of §63(4) of the ACT statutorily defining the legal definition of the dignity of baron as consisting of “any quality ... associated with” the dignity of baron ... no statutory foundation *existed* in terms of an Act of Parliament empowering either the Lord Lyon or the Court of Session with competence or jurisdiction to render a judgement upon ‘social dignities’ unknown to statutory law , such as issues concerning Chiefship of clans, depending upon any principle of law of succession applicable by courts , having no armorial significance, no heraldic insignia, and no patrimonial consequences as an interest which the law can recognise.
- 9) Previous to the enactment of §63(4) of the ACT statutorily defining the legal definition of the dignity of baron as consisting of “any ... precedence associated with” the dignity of baron ... no statutory foundation *existed* in terms of an Act of Parliament giving the Lord Lyon jurisdiction or competence in matters of precedence ... or a continued and accepting practice giving Lyon such jurisdiction ... and thus empowering either the Court of Session or Lyon with judicial jurisdiction over matters of precedence ... as a “legal entity” upon which a judgement can be rendered by a court of law.

- 10) Previous to the enactment of §63(4) of the ACT statutorily defining the legal definition of the dignity of baron as consisting of “any heraldic privilege incidental to” the dignity of baron ... no statutory foundation *existed* by an Act of Parliament for protecting specifically this ‘noble element’ consisting of ‘the social, ceremonial and armorials aspects of baronies’ which give baronies the ‘considerable commercial value’ which they have’ re ¶12.40 of the “Report” of £60,000 for such baronial additaments re ¶12.32 of the “Report” separate and apart of minimal waste land of little or no value ... the abolition of which “would give rise to substantial claims for compensation” re ¶12.40 of the report.
- 11) Prior to the enactment of §63(4) of the ACT, all of the particular baronial heraldic additaments granted by the Lord Lyon to the Holder of the dignity of baron were subject to arbitrary ‘re-interpretation’ by the Lord Lyon at his ‘discretion; for whatever ‘heraldic justifications’ he might wish to give for making such changes to the scope or content of such additaments.
- 12) The legal definition of ‘the dignity of baron’ set forth in §63(4) of the ACT statutory transforms all such ‘qualities’, ‘precedences’, and ‘any heraldic privilege’ associated with or incidental to ‘the dignity of baron’ ... by reference therein into ***fundamental legal concepts*** or ***“legal entities”*** *over which courts have judicial jurisdiction* ... which as construed by authoritative publicists on Scottish heraldry ... became concrete acquired legal rights of intangible property ‘vesting’ personally in the Holder of the dignity of baron as “Incorporeal heritable property”.
- 13) This legal definition of the dignity of baron set forth in §63(4) of the ACT statutorily transforming the referenced ‘qualities’, ‘precedences’, and ‘any heraldic privilege’ into fundamental legal concepts or “legal entities” over which the courts have judicial jurisdiction which as construed by authoritative publicists on Scottish heraldry became concrete particular acquired legal rights of intangible property ‘vesting’ personally in the Holder of the dignity of baron as “incorporeal heritable property” re §63(2) of the ACT ... *resolves conclusively* any abstract heraldic controversies over whether the changed status of a baron caused by abolition under “the new legislation” of (1) baronial judicial jurisdiction and (2) severance of the dignity of baron from any interest in or attachment to land would cause loss of the Red Chapeau re baronial judicial jurisdiction; Feudo-Baronial Robes re representation of an organised community; Badge and Standard re a land holding presuming a ‘following’ ... which might *otherwise arise* over these issues if §63(4) of the ACT did not exist.
- 14) *Vesting* as individual acquired legal rights of intangible property incorporated statutorily by use of the *verb* “includes” into the very substance of ‘the dignity of baron’ as such existed as of the date of Royal Assent to the Act (9th June 2000) and as had been commonly granted, accorded, or recognised by the various Lords Lyon up to that date, “incorporeal heritable property” constituting ‘the dignity of baron’ is *legally defined* in §63(4) of the ACT: In this section- ... “‘dignity’ includes *any quality* or *precedence associated with*, and *any heraldic privilege incidental to*,” a dignity.
- 15) The precise composition of *any* ‘qualities’, *any* ‘precedences’, and ‘*any* heraldic privilege’ “associated with” and “incidental to” the dignity of baron *legally defined* in §63(4) of the ACT and ‘vesting’ in the Holder of ‘the dignity of baron’ as individual legal rights of intangible “incorporeal heritable property” re §63(2) of the ACT ... may be determined judicially by the Court of Session by reference to the following authoritative evidence:
- Actual grants of hereditary baronial heraldic additaments, official declarations of ‘baronial status’ and precedence made in modern times by various Lord Lyon as of the date when the ACT received Royal Assent on 9th June 2000 ... concretely evidencing the actual existence of such ‘qualities’ and ‘precedences’ “associated with” and “any heraldic privilege incidental to” the dignity of baron as individual rights of intangible property ‘vesting’ in the Holder of ‘the dignity of baron’.

- Specialist historical and heraldic research by authoritative publicists on the Minor Baronage of Scotland and their applicable heraldic additaments: The late Lord Lyon Sir Thomas Innes of Learney, “The Robes of the Feudal Baronage of Scotland”, Proceedings of the Society of Antiquaries of Scotland, Vol. 79, pp. 111-163, (Session 1944-45).
- Writing of the authoritative publicists upon the Law of Arms as applied in Scotland.

16) the legal definition of the dignity of baron set forth in §63(4) of the ACT “**includes**” “any quality ... associated with” the dignity of baron ***existing upon the date of Royal Assent***, which were statutorily transformed by this legal definition into fundamental legal concepts or “legal entities” over which the courts have judicial jurisdiction which as specifically construed by authoritative publicists on Scottish heraldry became concrete acquired legal rights of intangible property ‘vesting’ personally and individually in the Holder of the dignity of baron, as follows:

- **Personal ennoblement** of the holder of the ‘dignity of baron’.
- the ‘standing’ or legal capacity of the holder of the ‘dignity of baron’ **to hold a Baron Court and to appoint Officers and personnel of that Baron Court.**
- the *heraldic equality* of the minor Baronage of Scotland with the Chiefs of Clans or Names re selection of the following heraldic additaments or devices for matriculation with the Lord Lyon:
 - Territorial ‘duthus plant-badge’ heraldic device
 - Slughorn or *crie de guerre*,

17) the legal definition of the dignity of baron set forth in §63(4) of the ACT “**includes**” “any ... precedent associated with” the dignity of baron ***existing upon the date of Royal Assent***, which were statutorily transformed by this legal definition into fundamental legal concepts or “legal entities” over which the courts have judicial jurisdiction which as specifically construed by authoritative publicists on Scottish heraldry became concrete acquired legal rights of intangible property ‘vesting’ personally and individually in the Holder of the dignity of baron, as follows:

- The **precedence of feudal or minor Barons** is after Knights and before Esquires, and before doctors of divinity, law and physics and that rank among themselves according to the date of the erection of their lands into a barony.
- **Use of the title “Baron of X [*nomen dignitatis*]” as part of the name** of the owner or holder of the ‘dignity of baron’.
- **Addition of the *nomen dignitatis* or ‘fife name’ of the barony to the surname** of the owner or holder of the ‘dignity of baron’.
- **Use of the prefix of “The Much Honoured”** as in ‘The Much Honoured John Doe of Glenroe, Baron of Glenroe’.
- Official Lyon Court **recognition of ‘baronial status’** consisting of the following:
 - That the Baronage of Scotland is an ‘order’, ‘estate’ (of the Scots’ Realm) and a ‘Rank’.
 - Statement in official Lyon Court documents of the entitlement to be received as “**Hoch-Adel**” on the Continent.
 - Statement in Lyon Court documents that minor barons are officially the **‘equivalent to the chiefs of Baronial Houses on the Continent of Europe’**.

- Statement in Lyon Court documents that minor barons statutorily constitute ‘**a part of the nobility**’ in the Statute of 20 Dec 1567.
- Statement in Lyon Court documents that minor barons constitute a ‘**titled nobility**’ and that the estate of the Baronage are of the ancient feudal nobility of Scotland.
- Declaration of ‘baronial status’ in official Lyon Court documents stating the following:

“THAT the Petitioner is desirous of the declaration that the feudal Baronage of Scotland is a distinct ‘Estate’ being in terms of Statute 1567, cap. 33, a ‘part of the nobility’; that the Minor Barons of Scotland are, and have been both in this nobiliary Court and in the Court of Session recognised as a ‘titled nobility’ and that the estate of the Baronage (i.e. *Barones Minores*) are of the ancient Feudal Nobility of Scotland; and that the Petitioner, as Representer of the Baronial race of John Doe of Glenroe, Baron of Glenroe is of status equivalent to that designated Hoch Adel and of nobiliary rank corresponding to the Chiefs of Baronial Families in the Feudal Baronages of European Kingdoms [Sir Thomas Craig of Riccarton in ‘Jus Feudale’, book I chapter 8 section 2 re Baron in the Feudal Baronage of Scotland:- “habentur de Baronibus qui a jure feudali descendant cum ante ea tempora Capitanei tantum Tribuum discerentur”] and that the foresaid Ensigns Armorial are tesserae Nobilitatis by demonstration of which the Petitioner and his lawful successors in the same are to be so accounted, taken and received, Amongst all Nobles and in all places of Honour.”

18) The legal definition of the dignity of baron set forth in §63(4) of the ACT “**includes**” “any heraldic privilege incidental to” the dignity of baron ***existing upon the date of Royal Assent***, which were statutorily transformed by this legal definition into fundamental legal concepts or “legal entities” over which the courts have judicial jurisdiction which as specifically construed by authoritative publicists on Scottish heraldry became concrete acquired legal rights of intangible property ‘vesting’ personally and individually in the Holder of the dignity of baron, as follows:

- The ‘Standing’ or legal capacity of the owner of the ‘dignity of baron’ **to petition the Lord Lyon for a grant of hereditary Arms** on the basis of the possession or ownership of this dignity.
- **Baronial Chapeau:** Gules, furred Ermine, tasselled Or.
- **Feudo-Baronial Mantle or Robe of Estate,**
- **Banner,** three feet square, ensigned on the top by the baronial chapeau.
- **Steel Helmet** of three grills, garnished with gold, or Great Tilting Helmet garnished with gold.
- **Badge.**
- **Standard** of four yards, ensigned on the top by the Baronial Chapeau.
- **Guidon** of eight feet, ensigned on the top by the baronial chapeau.
- **Pennon** of four feet, ensigned on the top by the baronial chapeau.
- **Pinsel** of four and one-half feet by two feet, ensigned on the top by the baronial chapeau,
- **Ensign,** ensigned on the top by the baronial chapeau.
- **Nautical Streamer** of four yards, ensigned on the top by the baronial chapeau.

- **Compartment** representing the fife of the barony in the form of specific local geographical and historical features constituting the noble feus ... *separate and independent* from the existence of supporters.
 - **Supporters** for the representative of the baronial house entitled to sit in the old Scots Parliament before 1587.
 - Heraldic additaments of the Officers of a Baron Court as official insignia of office:
 - **Cap of Justice** for Baron Baillies.
 - **Key in bend** for Keeper of Baronial Caput.
 - **Horn and white wand** for Baron Sergeant.
- 19) Use of the *verb* “includes” in §63(4) of the ACT as the legal definition of the dignity of baron *statutorily incorporates* all such referenced ‘qualities’, ‘precedences’, and ‘any heraldic privilege’ ... as an integral ‘bundle’ of all such component acquired legal rights of property into the *essence* or the *very fabric, fibre and substance* of the ‘dignity of baron’ as incorporeal heritable property” under §63(2) of the ACT ... as such existed upon the day of Royal Assent to the ACT (9th June 2000) and as had been granted, recognised, or accorded by various Lords Lyon prior to that date.
- 20) The use of the verb “includes” in the *language* of the statutory legal definition of the dignity of baron set forth in §63(4) of the ACT operates to cause the complete ‘bundle’ of individual acquired legal rights of intangible property ... referenced in this *statutory definition* as “any quality or precedence associated with, or any heraldic privilege incidental to” the dignity of baron as such existed upon the date of Royal Assent to the ACT and as had been commonly granted by various Lords Lyon before that date ... to ‘vest’ as a packaged ‘bundle’ of all such individual acquired rights of property constituting integral components of the dignity to baron and to become *statutorily incorporated* into the *very fibre, substance, and fabric* of such “incorporeal heritable property” constituting the *essence* of the dignity of baron.
- 21) it is ULTRA VIRES or beyond the competence of any government official or officer to ignore, refuse to recognise, or refuse to grant any component of the ‘bundle’ of various *acquired* legal rights of intangible property¹¹⁹ derived from the fundamental legal concepts or “legal entities” (i.e., the referenced ‘qualities’, ‘precedences’, and ‘any heraldic privilege’) over which the courts have judicial jurisdiction as such existed on the date of Royal Assent to the ACT and as had been commonly granted by various Lords Lyon to that date ... encompassed within the legal definition of the dignity of baron *statutorily defined* in §63(4) of the ACT ... which were *statutorily incorporated* by use of the *verb* “includes” in §63(4) of the ACT into the *very essence* of the *fibre and fabric* of “incorporeal heritable property” consisting of the dignity of baron.
- 22) Armigerous holders of the dignity of baron’ possess an acquired legal right of property to be granted or to be accorded as a matter of *legal right* by the Lord Lyon King of Arms in his *judicial capacity* the *entirety* of the whole ‘bundle’ of particular acquired legal rights of intangible property (i.e., specific baronial heraldic additaments) as such existed as of the date of Royal Assent to the ACT and as commonly granted by various Lords Lyons to that date ... derived from the ‘qualities’, ‘precedences’, and ‘any heraldic privilege’ referenced in §63(4) of the ACT which were *statutory transformed* by the reference to such in §63(4) of the ACT constituting the legal definition of the dignity of baron *into* fundamental legal concepts or “legal entities” over which courts have judicial jurisdiction ... which by use of the *verb* “includes” therein were *statutorily incorporated* as integral component acquired legal rights of property into the *very essence of the fibre and fabric* of the dignity of baron.

- 23) Only Parliament *itself* possess the competence, authority, or jurisdiction to alter, change, abolish, or otherwise destroy *any* of the particular intangible and ‘incorporeal’ fundamental legal concepts or “legal entities” referenced in §63(4) of the ACT constituting the statutory legal definition of the dignity of baron.
- 24) *Any* ‘traditional’ heraldic jurisdiction which the Lord Lyon may have otherwise possessed *before* the ACT to alter or other wise affect the ‘title of baron’, ‘any heraldic privilege’, and ‘any quality or precedence’ concerning the dignity of baron ... was taken away ... by the *indefeasible statutory incorporation* of “any quality or precedence associated with, and any heraldic privilege incidental to” the dignity of baron as such existed on or before the date of Royal Assent to the ACT and has been commonly granted by various Lords Lyon to that date as a ‘bundle’ of integral component acquired legal rights of intangible property constituting the *essence* of the ‘dignity of baron’ as ‘incorporeal heritable property’ ... by use of the verb “includes” in §63(4) of the ACT.
- 25) The *noun* “nothing” as used in the ‘*savings clause*’ in §63(1), 2nd clause, of the ACT must be judicially construed to mean that that *no consideration* arising from the changed legal status of barons respecting the ACT’s abolition of baronial judicial jurisdiction and severance of the dignity of baron from attachment to or an interest in land *shall* ‘*affect*’ any of the baronial heraldic additaments and other ‘qualities’ and ‘precedences’ associated therewith — as such existed on the date of Royal Assent to the ACT and which had been commonly granted by various Lords Lyon to that date — which constitute the statutory legal definition of the dignity of baron set forth in §63(4) of the ACT:
- 26) When use of the *noun* “nothing” as used in the ‘*savings clause*’ in §63(1), 2nd clause, of the ACT ... is read in conjunction with 5(c) of the official “Recommendation” in ¶2.45 of the “Report” constituting the *legislative history* to §63 of the ACT; ... the ‘*savings clause*’ operates to prevent *no consideration* of “the new legislation” re abolition of baronial judicial jurisdiction by §63(1), 1st clause, of the ACT or severance of the dignity of baron from an interest in or attachment to land by §63(2) of the ACT *from* ‘*affecting*’ the capacity of barons to “retain” after the ‘appointed day’ the *status quo ante* concerning “any precedence and ceremonial or heraldic privileges deriving from their barony” as well as “the right to call themselves baron” ... as such existed as of the date of Royal Assent to the ACT and as had been commonly granted by the various Lords Lyons to that date.
- 27) The *verb* “affects” as used in the ‘*savings clause*’ in §63(1), 2nd clause, of the ACT, ... refers to *any consideration* in the ACT which might serve to change, to weaken, to influence materially, to alter, to produce an effect upon, to alter, to weaken, to debilitate, or to injure ... any of the ‘qualities’, ‘precedences’, and ‘any heraldic privilege’ — existing as of the date of Royal Assent to the ACT and as had been commonly granted by the Lords Lyon as of that date — which constitute the statutorily defined legal definition of the dignity of baron set forth at §63(4) of the ACT
- 28) Specifically, the *verb* “affects” as used in the ‘*savings clause*’ in §63(1), 2nd clause, of the ACT ... refers particularly to those considerations in “the new legislation” which *effects* a change in the legal status of barons which would *affect* the legal capacity of the barons under the Law of Arms as applied in Scotland to “retain any precedence and ceremonial or heraldic privileges deriving from their barony” or to “retain the right to call themselves baron” — as such existed as of the date of Royal Assent to the ACT and as had been commonly granted by the Lords Lyon as of that date — re 5(c) of ¶2.45 of the “Report” constituting the *legislative history* to §63 of the ACT.

HELD:

The Barons Courts of Prestoungrange and Dolphinstoun rule that weightily and sufficient grounds of both fact and law exist, as set forth above, to issue Our Declarator of Entitlement setting forth that the ‘savings clause’ in §63(1), 2nd clause, of the ACT operates to preserve the *status quo ante* past of the ‘appointed day’ of all baronial heraldic additaments, specifically the Red Chapeau, the Baronial Robes of Estate, Badge, Standard, use of the *nomen dignitatis* of the barony as part of the surname, the ‘standing’ or legal capacity to petition for arms in right of the barony as a statutory dignity of the Kingdom in Scotland, the legal capacity to hold a baron court for non-judicial ceremonial purposes and to appoint the baron-baillie, and other officers and personnel of the baron court as such existed as of the date of Royal Assent to the Abolition of Feudal Tenure (Scotland) ACT 2000 and as had been commonly granted by the various Lords Lyon to that date **notwithstanding** the changed legal status of a baron caused by “the new legislation’s” abolition of baronial judicial jurisdiction and severance of the dignity of baron from attachment to or an interest in land pursuant to the **policy decision** referenced in 5(c) of the official “Recommendation” in ¶2.45 of the Scottish Office’s “Report” to **“retain”** unaltered after the ‘appointed day’ ‘any precedence and ceremonial or heraldic privileges deriving from their barony’ and “the right to call themselves baron”.

NOTES [E II.53.2004] JULY – NOVEMBER

¹ ¶ 2.34 **Proposals in the discussion paper.** The discussion paper mentioned, but **rejected**, the possibility of allowing the **“noble aspects of the barony title”** to lapse along with the abolition of the feudal relationship on which the ennoblement of the baron is based. It noted that the abolition of entitlement to the title “baron” was **not** a necessary part of feudal land reform and might well **give rise to justifiable claims for compensation**. The discussion paper also mentioned, but rejected, the possibility of separating the title from the ownership of the barony lands. The **preferred approach** in the discussion paper was the **minimalist one**. (Emphasis supplied.)

² ¶ 2.32 of the “Report on the Abolition of the Feudal System” as follows:

2.32 In recent years a market in Scottish baronies has developed. We were informed by a dealer in baronies that in June 1997 the expected price for a barony, with no special features and a **minimal amount of land of no value in itself**, was about £60,000. Information from other sources suggests that the market value of baronies has not decreased since then.

³ ¶ 2.31 of the “Report on the Abolition of the Feudal System” as follows:

2.31 **Introduction.** One of the most distinctively feudal features of the system of land tenure in Scotland is that the holding of a feudal estate in land on a particular type of title called a barony title gives rise to certain conveyancing peculiarities and carries with it certain privileges. The estate in land might be no more than the *dominium utile* or even the bare *dominium directum* of a **tiny plot of waste ground, of little or no value in itself**, which represents the head place or *caput* of the barony. The estate in land can be bought and sold in the normal way. Remarkable as it may seem, **ownership of such an estate in land carries with it a barony**. It enables the owner to claim **ennoblement by the “nobilitating effect” of the “noble quality” of the feudal title on which the land is held**. (Emphasis supplied)

⁴ ¶ 2.31 of the “Report on the Abolition of the Feudal System” as follows:

¶2.31 ... The title of “Baron of So-and-So” or “Baroness of So-and-So” can be adopted. If the holder is granted armorial bearings by the Lord Lyon (which is entirely a matter for the Lord Lyon’s administrative discretion) and if a *prima facie* title to the barony is established there is a right to relevant baronial additaments to the coat of arms. Baronial robes can be worn. The baron can, in theory, hold a baron’s court, appoint a baron baillie to be judge, and exercise a minor civil and criminal jurisdiction.

NOTE BENE: Whilst in legal theory the Lord Lyon has the ministerial discretion to refuse arms to one who is not a ‘deserving person’; unless one is a convicted criminal, a pimp, a prostitute, or has been dishonourably discharged from the Forces under normal circumstances a person upon whom a barony is resettled is likely to qualify as a ‘deserving person’

In this specific connection, J. H. Stevenson, Heraldry in Scotland (Glasgow, 1914) p. 35, states:

“9. The ‘virtue’ which entitles to arms is not moral virtue but ‘politic or civil’. The following are thus entitled:

“**A lord of a barony; a laird, or person who holds his lands under the crown directly**, in contra distinction to a ‘Goodman’, who holds his lands from a subject-superior; a solider who enjoys any ‘considerable command’; clergymen; doctors of universities; advocates; physicians; ‘orators’ (possibly the same as advocates); ‘laureate poets’.”

“12. Whatever renders a person infamous renders him incapable of getting arms, though every infamy forfeits them not.

Stevenson cites Sir George Mackenzie of Rosenhaugh, the Science of Heraldry (Edinburgh, 1680) at pp. 11-15. as the source of his authority.

Therefore, it would seem that if Lyon refused a petitioner Arms without citing ‘facts’ which would render that Petitioner ‘infamous’, that Lyon’s refusal might be appealable to the Court of Session as an *abuse of authority*....

Once the determination has been made that one is a ‘deserving person’ ... or if one has already been granted or matriculated Scottish arms; ... such a ‘deserving person’/Scots Armiger holding a Scottish Barony is entitled to be granted the conventional baronial heraldic additaments *as a matter of legal right* by the Lord Lyon *acting in his judicial capacity*.

⁵ ¶ 2.33 of the “Report on the Abolition of the Feudal System” as follows:

2.33 It is important to be clear about what is meant by a barony title. The term is used in two senses. The first sense refers to the **actual title to the land**. This must have **originally been granted by the Crown by a feudal grant which specifically conferred baronial privileges and responsibilities**. The conveyancing terminology varied from time to time but a standard form of wording came to be a **grant of all and whole the lands and barony of X to be held in free barony (*in liberam baroniam*)**. In this sense the term “barony title” simply means a title to land which can, from its nature and wording, be identified by conveyancers as deriving from a Crown grant of land in barony. The land or the estate in land must still be held of the Crown without any intermediate superior but it is possible for the estate to be a mere *dominium directum*. The second sense of “barony title” refers to **the right to use the title or appellation “Baron”**. This is more of a lay person’s usage than a lawyer’s usage but **the idea that the purchaser of a barony acquires a “title” in this sense may well contribute to the value of baronies on the market**. In this report we use “barony title” in the conveyancing sense. (Emphasis supplied.)

⁶ ¶ 2.36 of the “Report on the Abolition of the Feudal System” as follows:

2.36 In their comments on the discussion paper the Convention [of the Baronage of Scotland] said that full membership of the Convention was “open only to the feudal barons of Scotland” and that members had “pride in their heritage as successors of those who formed one of the Estates of the Scottish Parliament”. They were determined to “preserve the special form and advantages of their title to land and the historic ‘Scotch titles’ which are fully recognised by the Court of St. James ... , H M Government (on official documents such as passports) and by the Lord Lyon King of Arms”. They said that they would “deplore the **termination of the legal relationship between the Crown, representing the people of Scotland, and those individuals who hold noble estates granted by the Crown**”. They claimed to be a surviving element of the old Scottish Parliament – one of the Three Estates – along with the Church of Scotland and the Convention of Scottish Local Authorities. They said **that the “essence of the nobiliary effect of the ownership of an estate erected by the Crown into a barony is the feudal relationship with the Crown”** and that “the essential feature of a barony title is **the noble quality of the feudal grant**”. They were concerned that if the **feudal link** were to be severed then “the **nobilitating effects** of holding land on a barony title will be **lost**”. They claimed that “the Feudal Baron’s rights within his own barony are very comparable – on a smaller scale – to the Royal rights of Paramount Superior over the land of the nation”. They recommended that both the paramount superiority of the Crown and the equivalent right of barons should be preserved. (Emphasis supplied.)

⁷ ¶ 2.38 of the “Report on the Abolition of the Feudal System” as follows:

2.38 **Assessment**. There are three special features of barony titles. First, certain **conveyancing peculiarities** attach to them. Secondly, the holder of land on a barony title still has, in theory but not in practice, the right to hold a **baron’s court**. Thirdly, the holder of land on a barony title has the right to use **the title of baron** and, if granted armorial bearings by the Lord Lyon, **to add certain special baronial features to the coat of arms**. (Emphasis supplied)

⁸ ¶ 2.33 of the “Report on the Abolition of the Feudal System” as follows:

2.37 Most other consultees supported the provisional proposal in the discussion paper. However, some favoured the complete abolition of barony titles, including the noble aspects. The Keeper of the Registers of Scotland referred to the practical inconveniences of having separate conveyancing rules for barony titles and suggested that, if baronies were not abolished altogether, **the noble title should be separated from the title to land**. (Emphasis supplied)

⁹ ¶ 2.39 of the “Report on the Abolition of the Feudal System” as follows:

2.39 The main conveyancing specialities of land held on a barony title are that (1) a barony can be conveyed by its general name and (2) the barony title suffices for the acquisition of salmon fishing’s by prescription, even if they have not been expressly granted in the title. We agree with the Keeper’s suggestion, which attracted support at a meeting of our advisory group, that these aspects of barony titles should be removed. The new Scottish system of landownership should, in our view, be free of feudal peculiarities. Land which is owned outright under the new system of landownership should be conveyed in the same way, and should be subject to the same rules, no matter what the nature of the feudal holding was under the former law. In fact, the issue is no longer of much practical significance. New salmon fishing rights are unlikely to be acquired today, and existing rights would not be affected by our proposals. Once land is entered on the Land Register, the conveyancing privileges cease to have a distinctive role.

¹⁰ ¶ 2.40 of the “Report on the Abolition of the Feudal System” as follows:

2.40 **The right to the title and dignity of baron is the right which gives baronies the value** which they have over and above the actual value of the lands themselves. Indeed the barony as such is often attached to a residual plot of land, with little or no intrinsic value, which is recognised as the *caput baroniae*. **Baronies have a considerable commercial value and to abolish the so-called noble element in them**, as was strongly urged by some consultees and members of our advisory group, **would give rise to substantial claims for compensation**. We see no need to do this. Although baronies are a feudal relic, **the abolition of baronies is not a necessary feature of the abolition of the feudal system of land tenure**. We do however consider that **the social, ceremonial and armorial aspects of baronies should be severed from landownership**. Baronies should become **non-territorial dignities**. ...’ (Emphasis supplied.)

¹¹ ¶ 2.40 of the “Report on the Abolition of the Feudal System” as follows:

2.40 ... There should be **no change in the jurisdiction of the Lord Lyon** in relation to questions of **precedence and arms**. If the Lord Lyon were not satisfied, on the evidence produced, that an applicant for a coat of arms **with baronial additaments** was entitled to a barony, and refused the application in relation to the additaments, then it would be open to the applicant to seek a declarator of entitlement to the barony in the ordinary courts and, if successful, to return to the Lord Lyon with that declarator. The courts already have sufficient jurisdiction to decide questions relating to heritable right and title. There is no need to create any special new jurisdiction. (Emphasis supplied.)

Note Bene: If the *legislative history* to §63 of the ACT ... demonstrating formal Parliamentary intent ... speaks of ‘no change in the jurisdiction of the Lord Lyon in relation to questions of precedence and arms’ ... *as well as* ... of ‘an applicant for a coat of arms **with baronial additaments**’ ... *and* ... ‘the application in relation to the additaments’ ; manifestly the **clear intent of Parliament** is that all such baronial heraldic additaments — and the legal entitlement to the same — are to survive the ‘appointed day’ ... completely unimpaired by the changed status of a baron wrought by (1) abolition of the judicial jurisdiction of such barons worked by the ACT and (2) by the severance of the dignity of baron from an interest in the land caused by the ACT.

¹² **Note Bene:** §63(4) of the ACT uses broad, sweeping terminology relation to “any quality ... associated with”; “any ... precedence associated with”; and “any heraldic privilege incidental to” the dignity of baron: “Any” is an adjective of very broad scope.

“Any” clearly references those particular ‘qualities’, ‘precedences’ and ‘heraldic privilege’ associated with or incidental to ‘the

dignity of baron' existing as of the date of Royal Assent ... which give baronies their referenced commercial value of £60,000. To put it another way, no one is going to pay £60,000 after the 'appointed day' for a barony stripped of its principle "heraldic privileges" ... re the Red Chapeau, a Badge, a Standard upon which this Badge is displayed, Feudo-baronial robes draped behind the Shield, and use of the *nomen dignitatis* of that Barony in the surname ... due to changes in the status of a baron caused by the abolition of the judicial jurisdiction of the Baron by the Act and by the severance of 'the dignity of baron' from an interest in land worked by the ACT:

Simply put, nobody is going to pay £60,000 for *nothing*....

Accordingly, any logical judicial construction of §63(4) of the ACT by a reasonable Judge of the Court of Session would construe that the language "any heraldic privilege incidental to" the dignity of baron must rationally consist of those heraldic additaments in common existence as of the date of Royal Assent (9th June 2000) to the ACT.

In this specific connection, the term "any heraldic privilege incidental to" the dignity of baron ... logically refers to those 'heraldic privileges' *above and beyond* those 'heraldic privileges' attributed to ordinary armigers (i.e., Shield, Crest, and Motto) ... commonly granted to feudal barons as of the date of Royal Assent.

Otherwise, stripped of the Red Chapeau, a Badge, a Standard, and feudo-baronial robes draped behind the shield due to the changed status of a Baron caused by (1) abolition of baronial judicial jurisdiction and (2) severance of the dignity of baron from an interest in land, ... the legal definition of 'the dignity of baron' in §63(4) of the ACT as "any heraldic privilege incidental to" this dignity would be **completely meaningless**.

Statutes are to be judicially construed by a reasonable judge in a rational manner as to yield a *meaningful result* ... not a literal result which is meaningless.

Accordingly, the legal definition of 'the dignity of baron' in §63(4) of the ACT to include "any heraldic privilege incidental to" this dignity in accordance with the **obvious intent of Parliament** can only be judicially construed to those conventional baronial heraldic additaments existing as of the date of Royal Assent to the ACT ... and as commonly granted by the various Lord Lyons before that date.

Any other judicial construction of this language would be nonsensical.

¹³ ¶ 2.45 of the "Report on the Abolition of the Feudal System" as follows:

2.45 Recommendation. We recommend that

5. (a) Any surviving criminal or civil jurisdiction of barony courts should be abolished.

(b) Any conveyancing privileges incidental to barony titles to land should be abolished.

(c) **The new legislation** should not **abolish** the dignity of baron or any other dignity (whether or not of feudal origin). Accordingly barons **should retain** the right to call themselves baron and **should retain** any precedence and ceremonial or heraldic privileges deriving from their barony.

(d) The dignity of baron should no longer be attached to land. It should be, and should be transferable only as, incorporeal heritable property.

(e) It should be provided that after the appointed day a barony will not be an interest in land for the purposes of the Land Register and no deed relating to a barony can be recorded in the Register of Sasines.

¹⁴ ¶ 2.42 of the "Report of the Abolition of the Feudal System" as follows:

2.42 The civil and criminal jurisdiction of barons was preserved by the Heritable Jurisdictions (Scotland) Act 1746 but was limited to cases of a minor nature. The criminal jurisdiction was restricted to cases of "assaults, batteries and smaller crimes" and the powers of punishment were limited to a fine of up to £1 or confinement in the stocks for up to three hours "in the daytime". The civil jurisdiction was limited to cases with a value of up to £2 and cases for the recovery of rents or other dues of a like nature. A privately owned criminal and civil jurisdiction, even if limited and fallen into disuse, is such an anachronistic and objectionable relic of feudalism that it must clearly be abolished. The jurisdictional rights of barons have no value and compensation for their abolition would be inappropriate and unnecessary.

Note Bene: Although the judicial jurisdictional rights of barons, per se, might have no value, the connected Red Chapeau, Baronial Robes, entitlement to a Badge and a Standard, and the *nomen dignitatis* of the barony as part of the surname clearly do have "**considerable commercial value**" re ¶2.40 of the "Report".

Abolition of these "noble elements" consisting of "the social, ceremonial and armorial aspects of baronies" as noted by ¶2.40 of the "Report" "would give rise to substantial claims for compensation".

¶2.40 of the "Report" declares "we see no need to do this. Although baronies are a feudal relic, the abolition of baronies is not a necessary feature of the abolition of the feudal system of land tenure."

¶2.40 of the "Report" resolves this issue: "We do however consider that the social, ceremonial and armorial aspects of baronies should be severed from land ownership. Baronies should become non-territorial dignities."

Accordingly, notwithstanding the changed status of barons caused by the abolition of the judicial jurisdiction of barons by the ACT or the severance of the dignity of baron from attachment to land or as an interest in land by the ACT, the official 'Recommendation' set forth in 5(c) of ¶2.45 of the "Report" ... constituting the *legislative intent* of Parliament re §63 of the ACT ... **mandates** that "Accordingly barons should **retain** the right to call themselves baron and should **retain** any precedence and ceremonial or heraldic privileges deriving from their barony."

Use of the verb "**retains**" as used in 5(c) of ¶2.45 of the "Report" clearly refers to those "heraldic privileges" existing as of the date of Royal Assent to the Act and as had been commonly granted or recognised by the various Lords Lyons up to that date.

Because sub-sections 5(a), 5(d), and 5(e) of ¶2.45 of the "Report" clearly references the changed status of barons resulting from abolition of their judicial jurisdiction by the ACT as well as severance of baronies from attachment to land or as an interest in land by the ACT; ... use of the verb "**retains**" as used in 5(c) of ¶2.45 of the "Report" expresses the *legislative intent of Parliament* that barons are **to retain** the Red Chapeau, Baronial Robes, entitlement to a Badge and a Standard, and the *nomen dignitatis* of the barony as part of the surname ... notwithstanding the fact that after the 'appointed day' that Baronies no longer have the judicial jurisdiction or the attachment to land upon which entitlement to these heraldic additaments were originally derived.

As the over-riding *intent of Parliament* as expressed in ¶2.40, ¶2.34 of the "Report" is to avoid paying £60,000 compensation for every barony in Scotland as referenced in ¶2.32 of the "Report"; ... the clear and unmistakable intent of Parliament in §63(1), 2nd clause, of the ACT is that the **changed status of barons** caused by the abolition of baronial judicial jurisdiction in the ACT and the severance of baronies from any attachment or interest in land by the ACT ... was not **to affect** in any manner whatsoever "any quality or precedence associated with, and any heraldic privilege incidental to" baronies, which constitutes the legal definition of

'the dignity of baron' in §63(4) of the ACT ... as such existed as of the date of Royal Assent to the ACT and as had been commonly granted or recognised by the various Lords Lyon up to that date — evidenced by use of the verb **"retain"** in 5 (c) of the official 'Recommendation' in ¶2.45 of the "Report":

In essence, the **intent of Parliament** is to retain the **status quo ante** respecting "any quality or precedence associated with, or any heraldic privilege incidental to" the dignity of baron as legally defined in §63(4) of the ACT ... as such existed as of the date of Royal Assent to the Act and as had been commonly granted by the Lords Lyon prior to the ACT ... in order **to avoid paying compensation** for the loss of any such baronial heraldic additaments, use of the *nomen dignitatis* of the barony as part of the surname, precedences and qualities which give baronies their "considerable commercial value" re ¶2.40 of the "Report":

Although the criminal and civil judicial jurisdiction of barons might not have any "value", the Red Chapeau, the Baronial Robes of Estate, the Badge, the Standard, use of the *nomen dignitatis* of the barony as part of the surname clearly do have **"value"** ... the taking of which "would give rise to substantial claims for compensation" re ¶2.40 of the "Report":

The unmistakable **intention of Parliament** is **to preserve** all of the above baronial heraldic additaments, precedences, and qualities which give baronies "considerable commercial value" re ¶2.40 of the "Report" ... notwithstanding the changed status of barons caused by the abolition of their judicial jurisdiction by the ACT and by the severance of barony from an attachment to or an interest in land by the ACT as the considerations upon which such baronial heraldic additaments were originally derived ... in order **to avoid paying compensation** for any loss of the Red Chapeau, the Baronial Robes of Estate, the Badge, the Standard, the use of the *nomen dignitatis* of the barony as part of the surname.

The manifest intention of Parliament is that baronies are to be treated by the Lord Lyon for all heraldic, nobiliary, titular, and honorific purposes ... as if the Abolition of Feudal Tenure (Scotland) ACT 2000 **had never been enacted** ... to avoid diminishing the market value which such baronial heraldic additaments, titles, and use of the baronial *nomen dignitatis* in the surname give baronies ... which would render the Scottish Government liable for compensation.

¹⁵ ¶ 2.31 of the "Report on the Abolition of the Feudal System" as follows:

2.31 **Introduction.** One of the most distinctively feudal features of the system of land tenure in Scotland is that the holding of a feudal estate in land on a particular type of title called a barony title gives rise to certain conveyancing peculiarities and **carries with it certain privileges**. The estate in land might be no more than the *dominium utile* or even the bare *dominium directum* of a **tiny plot of waste ground, of little or no value in itself**, which represents the head place or *caput* of the barony. The estate in land can be bought and sold in the normal way. Remarkable as it may seem, ownership of such an estate in land carries with it a barony. It enables the owner to claim **ennoblement** by the "nobilitating effect" of the "noble quality" of the feudal title on which the land is held. The **title of "Baron of So-and-So" or "Baroness of So-and-So"** can be adopted. If the holder is **granted armorial bearings** by the Lord Lyon (which is entirely a matter for the Lord Lyon's administrative discretion) and if a *prima facie* title to the barony is established there is a **right to relevant baronial additaments to the coat of arms**. **Baronial robes** can be worn. The baron can, in theory, hold a **baron's court**, appoint a **baron baillie** to be judge, and exercise a minor civil and criminal jurisdiction. (Emphasis supplied)

¹⁶ ¶ 2.32 of the "Report on the Abolition of the Feudal System" as follows:

2.32 In recent years a market in Scottish baronies has developed. We were informed by a dealer in baronies that in June 1997 the expected price for a barony, with **no special features** and a **minimal amount of land of no value in itself**, was about **£60,000**. Information from other sources suggests that the market value of baronies has not decreased since then." (Emphasis supplied)

¹⁷ ¶ 2.34 of the "Report on the Abolition of the Feudal System" as follows:

2.34 **Proposals in the discussion paper.** The discussion paper mentioned, **but rejected**, the possibility of allowing the **"noble aspects of the barony title" to lapse** along with the abolition of the feudal relationship on which the ennoblement of the baron is based. It noted that **the abolition of entitlement to the title "baron" was not a necessary part of feudal land reform and might well give rise to justifiable claims for compensation**. The discussion paper also mentioned, but rejected, the possibility of separating the title from the ownership of the barony lands. **The preferred approach in the discussion paper was the minimalist one.** ... (Emphasis supplied)

¹⁸ ¶ 2.43 of the "Report on the Abolition of the Feudal System" as follows:

2.43 **Competence of the Scottish Parliament.** In our view it would be within the competence of the Scottish Parliament **to deal with feudal baronies**. The only reserved matter which might be relevant is that specified in paragraph 1 of Part I of Schedule 5 to the Scotland Act 1998. This comes under the heading "The Constitution" and it reserves, among other "aspects of the constitution",

"the Crown, including succession to the Crown and a regency".

It cannot, in our view, reasonably be argued that feudal baronies are an "aspect of the constitution" coming under the heading of "the Crown". Barons of this type have no constitutional position. They are not members of the House of Lords. They are an aspect of the **feudal system of land tenure**. Feudal baronies go with land which can be bought and sold in the ordinary way. Anyone can buy a barony. (Emphasis supplied)

¹⁹ The 'title of baron', the *nomen dignitatis* of that barony as part of the surname, the legal capacity to petition for arms in the right of that barony, the legal capacity to be granted certain baronial heraldic additaments in addition to the coat-of-arms, the use of Baronial Robes of Estate, the legal capacity to appoint a Baron Court, the legal capacity to appoint the Officers and other Personnel of that Baron Court — some of whom are entitled to be granted by Lyon official insignia of office.

²⁰ ¶ 2.44 of the "Report on the Abolition of the Feudal System" as follows:

2.44 ... In our view the Scottish Parliament could, if it wished, abolish feudal baronies altogether as part of a reform of the feudal system of land tenure. If that is so then it is even more clear that it **can take baronies out of the system of land tenure** and land registration, **while allowing the dignity of baron**, derived from the former connection with the Crown as feudal superior, **to continue as a floating dignity**. (Emphasis supplied)

²¹ ¶ 2.40 of the "Report on the Abolition of the Feudal System" as follows:

2.40 The right to the title and dignity of baron is the right which **gives baronies the value which they have** over and above the actual value of the lands themselves. Indeed the barony as such is often attached to a residual plot of land, with little or no intrinsic value, which is recognised as the *caput baroniae*. **Baronies have a considerable commercial value and to abolish the so-called noble element in them**, as was strongly urged by some consultees and members of our advisory group, **would give rise to substantial claims for compensation**. We see no need to do this. Although baronies are a feudal relic, the abolition of baronies is not a necessary feature of the abolition of the feudal system of land tenure. We do however consider that **the social, ceremonial**

and armorial aspects of baronies should be severed from landownership. Baronies should become non-territorial dignities.... (Emphasis supplied)

²² ¶ 2.40 of the “Report on the Abolition of the Feudal System” as follows:

2.40 ... We do however consider that **the social, ceremonial and armorial aspects of baronies should be severed from landownership.** Baronies should become non-territorial dignities. There should be no change in the jurisdiction of the Lord Lyon in relation to questions of precedence and arms. If the Lord Lyon were not satisfied, on the evidence produced, that an applicant for a coat of arms **with baronial additaments** was entitled to a barony, and refused the application in relation to the additaments, then it would be open to the applicant to seek a **declarator of entitlement** to the barony in the ordinary courts and, if successful, **to return to the Lord Lyon with that declarator.** The courts already have sufficient jurisdiction to decide questions relating to heritable right and title. There is no need to create any special new jurisdiction.” (Emphasis supplied)

²³ Official Recommendation in 5(a) of ¶ 2.45 of the “Report on the Abolition of the Feudal System” declares:

2.45 **Recommendation.** We recommend that

5. (a) Any surviving criminal or civil jurisdiction of barony courts should be abolished.

²⁴ Official Recommendation in 5(a) of ¶ 2.45 of the “Report on the Abolition of the Feudal System” declares:

2.45 **Recommendation.** We recommend that

5. (d) The dignity of baron should no longer be attached to land. It should be, and should be transferable only as, incorporeal heritable property.

5. (e) It should be provided that after the appointed day a barony will not be an interest in land for the purposes of the Land Register and no deed relating to a barony can be recorded in the Register of Sasines.

²⁵ Such fundamental legal subjects or “legal entities” referenced as ‘qualities’, ‘precedences’, and “any heraldic privilege” in the legal definition of the dignity of baron given at §63(4) of the ACT are specifically identified by Innes of Learney and other authoritative Scottish publicists on heraldry as being *particular* baronial heraldic additaments and recognition of baronial qualities, status, and precedence as granted by various Lords Lyon or re-discovered upon scholarly research.

²⁶ See Stair Memorial Encyclopaedia: The Laws of Scotland, Vol. 6, “Courts and Competency”, “8. The Court of the Lord Lyon”, ¶1018 re “Judicial functions of the Lord Lyon”, as follows:

“With regard to the Lord Lyon’s jurisdiction in relation to the question of precedence there is considerable doubt. The question was considered by the Court of Session in litigation between the Royal College of Surgeons and the Royal College of Physicians of Edinburgh, where Lord Johnston remarked that:

‘the present question [that is the question between the two colleges] must be disposed of without a full examination into the history of the matter, which might adduced information which is not before us at present’

In that case the court decided that Lyon had no jurisdiction in the question of precedence because:

‘A right of precedence by itself is not a legal entity which can properly be made a matter of judgement that can be enforced by a Court of law’

“In England it is evident that questions of precedence may be a matter of judgement. [G. D. Squibb *The Law of Precedence in England* (1980)] In a later case Lord Justice-Clerk Atchison is reported to have observed during argument that if the question of Lyon’s jurisdiction in relation to precedence again came upon on appeal the court would immediately send it to seven judges. Lord Lyon Innes of Learney in 1955 took the view that the extent of Lyon’s jurisdiction was ‘to determine as between the parties what the Crown has done, and thereafter apply it without prejudice to what the Crown may thereafter do.’ It would appear that Lyon may administratively make certain determinations regarding precedence. [*Lay Society of Scotland*, 1955 SLT (Lyon Ct) 2 at 4]”

NOTE BENE: §63(4) of the ACT specifically **statutorily transformed** “any quality or precedence associated with” the ‘dignity of baron’ into particular statutory **legal entities** recognised upon the law books which empowers the Lyon Court with explicit competence over issues of precedence and ‘any quality’ concerning the ‘dignity of baron’ upon which can now be made a specific matter of judgement enforceable by the Court.

²⁷ Such ‘**qualities**’ include (1) the personal ennoblement of the holder; (2) the legal capacity of hold a baron court [for social and ceremonial purposes] and to appoint the officers and personnel thereof; and (3) heraldic equality of the minor Baronage with the Chiefs of Clans or Names re entitlement to plant badges and slughorns.

²⁸ Maclean of Ardgour v. Maclean, 1941 S. C. 613 et seq.: Lord Justice-Clerk Atchison, First Advisement of 16th July 1937, 1941 S.C. 613 at 636, stated:

“ ... [I]n particular, if there is a dispute as to who the chieftain is, in the sense that there is divided recognition within the branch, **is that dispute justiciable** in the Lyon Court so that Lyon’s determination of it shall have **the force of law?** That is the immediate issue in this appeal.” (Emphasis supplied.)

“In answering this question, the fundamental thing to bear in mind is that neither chiefship of a clan, nor chieftainship of a branch, **subject to one exception as regards the right to supporters in arms**, is any longer a status known to the law. Highland chiefship or chieftainship in the modern sense is today no more than a **high social dignity**. Historically it was otherwise.” (Emphasis supplied.)

“The chief and the chieftain were at one time in the governmental system of the Highlands high political personages, who wielded a large and often an arbitrary authority. But not even a semblance of this now remains. To stand in the succession of an ancient line of chiefs or chieftains maybe a legitimate ground of family pride, but **it is not a status that the law recognises**. It carries **no patrimonial consequences that the law will countenance** and enforce, subject to one exception in the law of supporters. It does not depend upon **any defined law of succession** of which a Court of law could take cognisance. It ultimately depends, as it must, **upon recognition by the clan**, in the case of chiefship, or the branch of the clan, in the case of a lesser chiefship. The recognition of the clan or the branch is immune from challenge before any tribunal. Historically the idea of a chief or chieftain submitting his dignity to the arbitrament of it Court of law is really grotesque. The chief was the law, and his authority was derived from his own people.” (Emphasis supplied.)

“There is no instance in the registers of any judicial decision by Lyon in a disputed question of chiefship or chieftainship. ...”

²⁹ Maclean of Ardgour v. Maclean, 1941 S. C. 613 et seq.: Lord Justice-Clerk Aitchinson, First Advisement of 16th July 1937, 1941 S.C. 613 at 636, stated:

“ ... [I]n particular, if there is a dispute as to who the chieftain is, in the sense that there is divided recognition within the branch, **is that dispute justiciable** in the Lyon Court so that Lyon’s determination of it shall have **the force of law?** That is the immediate issue in this appeal.” (Emphasis supplied.)

"In answering this question, the fundamental thing to bear in mind is that neither chiefship of a clan, nor chieftainship of a branch, **subject to one exception as regards the right to supporters in arms**, is any longer a status known to the law. Highland chiefship or chieftainship in the modern sense is today no more than a **high social dignity**. Historically it was otherwise." (Emphasis supplied.)

"The chief and the chieftain were at one time in the governmental system of the Highlands high political personages, who wielded a large and often an arbitrary authority. But not even a semblance of this now remains. To stand in the succession of an ancient line of chiefs or chieftains maybe a legitimate ground of family pride, but **it is not a status that the law recognises**. It carries **no patrimonial consequences that the law will countenance** and enforce, subject to one exception in the law of supporters. It does not depend upon **any defined law of succession** of which a Court of law could take cognisance. It ultimately depends, as it must, **upon recognition by the clan**, in the case of chiefship, or the branch of the clan, in the case of a lesser chiefship. The recognition of the clan or the branch is immune from challenge before any tribunal. Historically the idea of a chief or chieftain submitting his dignity to the arbitrament of its Court of law is really grotesque. The chief was the law, and his authority was derived from his own people." (Emphasis supplied.)

"There is no instance in the registers of any judicial decision by Lyon in a disputed question of chiefship or chieftainship. ..."

³⁰ Maclean of Ardgour v. Maclean, 1941 S. C. 613 et seq.: Lord Wark, First Advisement of 16th July 1937, 1941 S.C. 613 at 656 stated: "... But, in view of the elaborate argument addressed to us, and especially of the claims made by Mr Innes as to the extent of Lyon's jurisdiction, unnecessary as they were to his main argument, I feel, with your Lordships, that it is necessary to express my opinion upon the question of **Lyon's jurisdiction to determine a question of disputed chiefship** of a Highland clan, or chieftainship of a branch thereof." (Emphasis supplied)

"The anxiety of the respondent to exclude from Lyon's consideration *any question of chieftainship of the Macleans of Ardgour as a branch of the Clan Maclean* is accounted for by the desire, should he fail in his opposition to the grant to the petitioner of the principal arms of her father, **to preserve his claim to this chieftainship** which, in the view of both parties, **has a real existence as a social dignity**, although, as the respondent argued, **it is unknown to the law and has no patrimonial or armorial significance**." (Emphasis supplied.)

³¹ Maclean of Ardgour v. Maclean, 1941 S. C. 613 et seq.: Lord Mackay, First Advisement of 16th July 1937, 1941 S.C. 613 at 643-644, stated:

"A. I propose to affirm (a) **that there is no original (or other) jurisdiction in the Lyon Court to entertain and decide by Declarator or other Decree a dispute between two persons as to the Chiefship or Chieftainship of a Highland Clan—or as to the alleged status of Chieftainness or Chieftain ...** " (Emphasis supplied.)

.....
"I am against the contention (a) because **in the statutes regulating the Court from 1592 to ditto there is nothing to suggest it**, (b) because in point of principle (all Courts flowing from the Sovereign power) the constitution of a special judicial power, lower than the Supreme Courts who have power over all things justiciable not otherwise exclusively assigned, to determine these things, cannot be presumed, and (c) because in answer to our requests for precedent, no authentic instance can be shown in the three or four centuries covered by Lyon's and parties' research of its exercise." (Emphasis supplied.)

³² Maclean of Ardgour v. Maclean, 1941 S. C. 613 et seq.: Lord Wark, First Advisement of 16th July 1937, 1941 S.C. 613 at 657-658 stated:

"There is direct authority, by way of precedent, for Lyon considering an acknowledged chiefship of a clan as incidental to a grant of arms with supporters. The case of Macnaghton [13th January 1818, Lyon Register, vol. ii, p. 172] is a case of that kind. But it is a different thing altogether to say that in a case of dispute Lyon has jurisdiction to determine and declare who is chief. For that no precedent has been cited to us. In my opinion, it is outwith his jurisdiction to decide because (1) at best it is a question merely of social status or precedence; (2) this social status is not one recognised by law; and **(3), and, most important of all, it depends, not upon any principle of law of succession which can be applied by a Court of law**, but upon recognition by the clan itself." (Emphasis supplied.)

"Like your Lordship, I am at a loss to understand how any determination or decree of Lyon ever could impose upon a clan a head which it did not desire to acknowledge. "It is a sound rule," said Lord President Inglis in *Fraser v. Fraser and Hibbert*, [(1870) 8 Macph. 400.] **"that no Court should arrogate a jurisdiction which it cannot [658] effectively exercise."** If one goes back to the time when chiefship of a Highland clan was part of the system of local government and was recognised by law as such, it is, to my mind, little less than grotesque to suggest that the chief could be effectively designated and appointed by decree of the Lyon Court. And I see no reason to think that there is any wider power in Lyon now that the law no longer recognises any such office." (Emphasis supplied.)

³³ Maclean of Ardgour v. Maclean, 1941 S. C. 613 et seq.: Lord Wark, First Advisement of 16th July 1937, 1941 S.C. 613 at 657 stated:

"I agree with your Lordships that **Lyon has no jurisdiction to entertain a substantive declarator of chiefship of a Highland clan, or of chieftainship of a branch of a clan.**" (Emphasis supplied.)

"No instance of such a declarator was cited to us. The case of *Cameron of Lochiel*, [24th February 1795, Lyon Register, i, 567] is not, in my view, such a case. Nor is the case of *Clan Chattan* [Nisbet, *System of Heraldry*, 1742, vol. ii, App. p. 48] nor of *Innes*, [14th December 1698] nor of *Drummond of Megginch*. [Lyon Register, vol. i, p. 456] In the case of *Macrae* [22nd April 1909, *Stevenson, Heraldry*, ii, 465] Sir James Balfour Paul observed: "I am not here to try the question of chieftainship. **I am here to try the question of arms**. I have really no jurisdiction in the question of chieftainship." It appears from his note that he was referring to chiefship of a clan by itself and not as incidental to a grant of arms." (Emphasis supplied.)

"The question of chiefship of a Highland clan, or chieftainship of a branch of a clan, is not in itself, in my opinion, **a matter which involves any interest which the law can recognise**. At most, it is a question of social dignity or precedence. In so far as it involves social dignity it is a dignity which, in my opinion, is unknown to the law. It was decided in the case of *College of Surgeons of Edinburgh v. College of Physicians of Edinburgh*, [1911 S. C. 1054] that **Lyon has no jurisdiction except such as is conferred by statute, or is vouched by the authority of an Institutional writer, or by continuous and accepted practice of the Lyon Court.**" (Emphasis supplied.)

³⁴ Such 'precedences' include (1) social precedence; (2) use of the title of baron; (3) use of the *nomen dignitatis* of the barony as part of the surname; (4) use of the prefix 'The Much Honoured'; and (5) Lyon Court recognition of 'baronial status'.

³⁵ Royal College of Surgeons of Edinburgh v. the Royal College of Physicians of Edinburgh, 20th June 1911, 1911 S.C. 1045: Lord President's Advising of 20th June 1911, 1911 S. C. at 1060, as follows:

"Now, having said that, the next observation I make is this, that **there is no trace in the statutes which deal with the office of**

the Lyon of any jurisdiction being given in the matter of precedence. There is no authority for it in any text writer—because the note that was quoted of a very learned editor of “Erskine” is not an authority—and there is admittedly no recorded instance of a decision of such a matter.” (Emphasis supplied.)

“I think it is enough to dispose of the case; ...”

³⁶ *Royal College of Surgeons of Edinburgh v. the Royal College of Physicians of Edinburgh*, 20th June 1911, 1911 S.C. 1045: Lord Kinnear at Advising of 20th June 1911, 1911 S. C. at 1061, as follows:

“I am of the same opinion. I think it enough for the decision of this case that **the supposed jurisdiction of the Lyon Court in this matter certainly rests upon no Act of Parliament, and upon no such continuous and accepted practice as should enable the Court to presume a legal and constitutional origin.** There is no instance before us of the supposed jurisdiction having been exercised, and, as I have said, there is no statutory foundation for it.” (Emphasis supplied.)

³⁷ *Royal College of Surgeons of Edinburgh v. the Royal College of Physicians of Edinburgh*, 20th June 1911, 1911 S.C. 1045: Lord Kinnear at Advising of 20th June 1911, 1911 S. C. at 1061, as follows:

“I am of the same opinion. I think it enough for the decision of this case that **the supposed jurisdiction of the Lyon Court in this matter certainly rests upon no Act of Parliament, and upon no such continuous and accepted practice as should enable the Court to presume a legal and constitutional origin.** There is no instance before us of the supposed jurisdiction having been exercised, and, as I have said, there is no statutory foundation for it.” (Emphasis supplied.)

³⁸ *Royal College of Surgeons of Edinburgh v. the Royal College of Physicians of Edinburgh*, 20th June 1911, 1911 S.C. 1045: Lord Kinnear at Advising of 20th June 1911, 1911 S. C. at 1061, as follows:

“I am of the same opinion. I think it enough for the decision of this case that **the supposed jurisdiction of the Lyon Court in this matter certainly rests upon no Act of Parliament, and upon no such continuous and accepted practice as should enable the Court to presume a legal and constitutional origin.** There is no instance before us of the supposed jurisdiction having been exercised, and, as I have said, there is no statutory foundation for it.” (Emphasis supplied.)

³⁹ Such ‘heraldic privileges’ include the standing or legal capacity of the Holder of ‘the dignity of baron’ to petition for arms and for grants of particular baronial heraldic additaments in the right of that barony by the Lord Lyon.

⁴⁰ Such **statutory transformation** of all ‘qualities’, ‘precedences’, and ‘any heraldic privilege’ by use of the *verb* “includes” in the legal definition of baron set forth in §63(4) of the ACT *into* integral components of the dignity of baron ... created a specific statutory foundation for protecting these commercially valuable “noble elements” in ‘the dignity of baron’ after the ‘appointed day’ when “the new legislation” referenced in 5(c) of the official “Recommendation” at ¶2.45 of the “Report” enters into force.

⁴¹ *Cuninghame v. Cunyngham*, 13th June 1849, 11 *Dunlop* 1139, Case No. 187: Lord Ordinary’s Interlocutor, Note III, 11 *Dunlop* 1139 at 1144-1145, states:

“He considers it quite clear, that the matter has been settled by Act of Parliament. ...

.....
It is said that this statute enjoins bad heraldic law,... But even if it were the common usage to give the arms and supporters to the heir male, in preference to the heir of line, **the reverse has been declared by this statute as applicable to this particular case.**

.....
But if the enactment could be shown to be inconsistent with the usage of heraldry, **still it has been so declared by the highest authority as the law affecting the rights of the parties in this particular case.** ... Effect, therefore, must be given to the Act of Parliament, and no heraldic difficulty has been pointed out, which renders it impossible to obey that Act in the case in hand. (Emphasis supplied.)

⁴² As such ‘qualities’, ‘precedences’, and ‘any heraldic privilege’ existed as of the date of Royal Assent to the ACT with the explicit **Parliamentary intent** expressed in 5(c) of the official “Recommendation” set forth in the *legislative history* of §63 of the ACT at ¶2.45 of the “Report” of permanently retaining after the ‘appointed day’ the *status quo ante* of all such baronial heraldic additaments, ‘titles’ and matters of precedence and ceremonial privileges notwithstanding the changes to baronies effected by “the new legislation” ... in order to preserve the “considerable commercial value” with which such intangible ‘qualities’, ‘precedences’, and ‘any heraldic privilege’ endow a barony and to avoid paying “substantial claims for compensation” re ¶2.40 of the *legislative history* given in the “Report”.

⁴³ *Cuninghame v. Cunyngham*, 13th June 1849, 11 *Dunlop* 1139, Case No. 187: Lord Ordinary’s Interlocutor, Note IV, 11 *Dunlop* 1139 at 1145, states:

“The interlocutor of the Lyon-depute gives to the respondent the supporters of Dick of Prestonfield, and that specially on the finding, that as head and chief in the male line of Cunyngham, of Lambroughton, and Dick of Prestonfield, he would have been entitled to the full arms but for the Act of Parliament. **That Act of Parliament, however, took away any right that he had, or might have claimed, to supporters, and gave them to the heir of line of both families,** just as much as it rendered it imperative on the respondent, in wearing the arms of Cunyngham of Lambroughton, to do so with the difference or mark of cadency of . younger branch. **The interlocutor, with regard to the supporters, appears to be in the face of the Act of Parliament, and gives to the respondent, those supporters which that Act gives to the advocator.**” (Emphasis supplied.)

⁴⁴ To execute the parliamentary intent in 5(c) of the official “Recommendation” at ¶2.45 of the “Report” to **“retain” permanently** after the ‘appointed day’ the *status quo ante* concerning all such ‘titles’ and “any precedence and ceremonial or heraldic privileges deriving from their barony” notwithstanding the changes worked by “the new legislation” ... in order to avoid paying compensation of £60,000 per barony for the loss of these ‘noble elements’ in baronies.

⁴⁵ *Cuninghame v. Cunyngham*, 13th June 1849, 11 *Dunlop* 1139, Case No. 187: Lord Ordinary’s Interlocutor, Note IV, 11 *Dunlop* 1139 at 1146, states:

“The heraldry enacted by the legislature, applicable to this case, in short, so far as the Lord Ordinary can judge, is more consistent and intelligible than that of the Lyon-depute. **There could, at all events, have been no difficulty in carrying the Act of Parliament into effect,** and denoting the junior branch by a crescent or mullet, according to what is explained to be the usual form. But as the Act can practically be carried into execution, **it is satisfactory to decide the case upon the statute, which is binding both in this Court and in the Lyon Court.** The Lord Ordinary begs it to be explicitly understood, that his judgment proceeds on this view of the statute; ... “ (Emphasis supplied.)

⁴⁶ *Cuninghame v. Cunyngham*, 13th June 1849, 11 *Dunlop* 1139, Case No. 187: Lord President, 11 *Dunlop* 1139 at 1147-1148, declares: “I must confess that I am not particularly versant with the rules and usages of heraldry, nor have I any great skill in heraldic terms. But such knowledge does not seem to me to be at all necessary to the right determination of this case; **for, upon the statute I have no difficulty in making up my mind that the interlocutor of the Lord Ordinary should be adhered to.** The Lord

Ordinary, although **he rests his judgment on the Act of Parliament**, has intimated all opinion upon the abstract question of heraldic right, and inclines to the view maintained by the heir of line. I am not prepared to go into that abstract question, and on it I give no opinion. **I will not go a step beyond the statute.**" (Emphasis supplied.)

⁴⁷ **NOTE BENE:** The legal definition in §63(4) of the ACT was made with the explicit parliamentary intention of retaining permanently the *status quo ante* existing before the 'appointed day' to preserve unaltered the 'noble element' in baronies to avoid paying compensation for any taking of such by "the new legislation": See 5(c) of the official "Recommendation" at ¶2.45 of the "Report" and ¶¶2.40 and 2.32 of the "Report".

⁴⁸ Cunninghame v. Cunyngham, 13th June 1849, 11 Dunlop 1139, Case No. 187: Lord Mackenzie, 11 Dunlop 1139 at 1149, declares: "I give no opinion on the merits of that question at common law, but, at any rate, **under the Act of Parliament**, the decision of the Lord Ordinary, as between the present parties, is perfectly right. **We must adhere to the Act**, and it expressly gives the supporters of the family to the advocator." (Emphasis supplied.)

"... But whether the original use was founded on right or sufferance, and in whatever way the present question would have been settled by the rules of common law—whether in favour of the heir of line or the heir-male—there can be no doubt that **now die matter is fairly settled under the Act of Parliament**. The advocator has right to the indivisible honours, and specially has right to the supporters; and this right is reserved to him, entire." (Emphasis supplied.)

⁴⁹ Cunninghame v. Cunyngham, 13th June 1849, 11 Dunlop 1139, Case No. 187: Lord President, 11 Dunlop 1139 at 1148-1149, declares:

"It was argued by the respondent that Parliament had no power to confer heraldic honours; **but we cannot for a moment assume that they have done anything illegal or ultra vires**. In this state of matters Parliament having declared the right of the heir of line to the indivisible honours of the family, and *inter alia* to the supporters, it follows that the advocator is clearly entitled to the supporters under the statute; and this right he is to have entire—unencroached upon by the respondent.

The enactment of the statute is express, "that the said Sir R. K. Dick, being a younger branch of the said families, in taking the name of Cunyngham, and arm of Cunyngham of Lambrughton, shall do so with the difference and mark of cadence in such cases applicable to a younger branch." This is **a provision which must be strictly enforced**; and the **question** is, Has the Lord-Lyon, in introducing into the arms, for a difference, "on a canton, the badge of Nova Scotia," **sufficiently complied with the terms of the statute?** (Emphasis supplied)

Without going into, the heraldic dispute we have here **a very important question on the statute**. I am not satisfied that he has done so, for, without any deep knowledge of heraldry I can see that what has been assigned as the difference, is not a mark of cadence [1149] at all. ..."

What difference is to be introduced, so as to comply with the statute, it is not for me but for the Lord-Lyon to determine; but this is clear, that the badge of Nova Scotia is not a mark of cadence. I hold that the difference assigned by the Lord-Lyon is not **a compliance with the Act of Parliament**, and I am therefore for adhering." (Emphasis supplied.)

⁵⁰ Cunninghame v. Cunyngham, 13th June 1849, 11 Dunlop 1139, Case No. 187: Lord Jeffrey, 11 Dunlop 1139 at 1151-1152, stated:

"I concur with your Lordships, and particularly on that point which we must all feel to be a great relief—that **we can rest our judgment on the construction of the statute, and need not go into the question which we would have been called upon to decide, had the statute not existed, upon the common law of heraldry.** ..." (Emphasis supplied.)

"... **I think the right to supporters in this case rests upon the Act of Parliament.**" (Emphasis supplied.)

.....
"**But I do not assent to the argument that Parliament cannot grant arms**; that is hardly a correct expression. It may be indecent to suppose that Parliament would go so far out of its way as to make a grant of arms or to make a bishop; but we cannot enter upon that consideration in giving judgment on an Act which was passed on the consent of parties, first, because of that consent, and, **second, because this is a statute of the realm, to which, as a Court, we must give effect.**" (Emphasis supplied.)

⁵¹ Notwithstanding the change of status in the dignity of baron caused by "the new legislation" re abolition of baronial judicial jurisdiction and severance of the dignity of baron from attachment to or an interest in land

⁵² This "noble element" in baronies is statutorily defined in the legal definition of the dignity of baron set forth in §63(4) of the ACT as such existed as of the date of Royal Assent to the ACT and as had been commonly granted by various Lords Lyon to that date.

Such legal definition statutorily transforms all such referenced 'qualities', 'precedences', and "any heraldic privileges" associated with or incidental to the dignity of baron into **fundamental legal concepts** or "**legal entities**" which as construed by authoritative publicists on Scottish heraldry became concrete individual acquired rights of intangible property 'vesting' personally and individually in the Holder of the dignity of baron.

⁵³ This recommendation was ultimately adopted in §63 of the ACT ... which incorporated a 'savings clause' in §63(1), 2nd clause, of the ACT designed to insulate the *status quo ante* from any 'changes' made by "the new legislation" re abolition of baronial judicial jurisdiction and severance of barony from an attachment to or an interest in land ... and which legally defined the 'qualities', 'precedences', and 'any heraldic privilege' associated with or incidental to the dignity of baron as those existing as of the date of Royal Assent to the Act and has had been commonly granted by various Lords Lyon prior to that date ... **to preserve unaltered all aspects of 'the noble title' from separation from 'the title to land'** re the Keeper of the Registers of Scotland.

⁵⁴ ¶ 2.40 of the "Report on the Abolition of the Feudal System" as follows:

"Baronies have a **considerable commercial value** and to abolish the so-called noble element in them, as was strongly urged by some consultees and members of our advisory group, would give rise to **substantial claims for compensation**. We see no need to do this. Although baronies are a feudal relic, the abolition of baronies is not a necessary feature of the abolition of the feudal system of land tenure. We do however consider that **the social, ceremonial and armorial aspects of baronies** should be severed from landownership. Baronies should become non-territorial dignities." (Emphasis supplied)

NOTE BENE: Parliament's over-riding concern is to avoid paying compensation for any loss of baronial heraldic additaments, the title of baron, the *nomen dignitatis* of the barony as part of the surname, etc. arising from the abolition of the feudal system of land tenure.

Parliament was **not** concerned about the continued existence of the formal heraldic justifications after the 'appointed day' for such baronial heraldic additaments.

Accordingly, to avoid paying compensation for any loss of baronial heraldic additaments which give baronies their "considerable commercial value" Parliament did two things to preserve unaltered such heraldic additaments:

1) Inserted a *savings clause* into 63(1), 2nd Clause, of the ACT designed to preserve the *status quo ante* concerning 'the dignity of baron' **notwithstanding** the change in the status of barons caused by "the new legislation" re abolition baronial judicial

jurisdiction and the severance of 'the dignity of baron' from attachment to or an interest in land:

"but nothing in this Act affects the dignity of baron or any other dignity or office (whether or not of feudal origin)"

2) Legally defined the dignity of baron in §63(4) of the ACT as *including* "an quality or precedence associated with, and any heraldic privilege incidental to" ... referencing the existence of such as of the date of Royal Assent to the ACT and as had been granted up to that date by various Lords Lyon.

⁵⁵ **NOTE BENE:** The clear and unambiguous import of 5(c) of the official "Recommendation" set forth in ¶2.45 of the "Report" is that the barons are to **"retain"** unaffected by "the new legislation" the title of baron and "any precedence and ceremonial or heraldic privilege deriving from their barony" after the 'appointed day' ... *notwithstanding* the change in the status of baron affected by "the new legislation" re abolition of baronial judicial jurisdiction and severance of the dignity of baron from any attachment to or interest in land.

As specifically evidenced in the official "Recommendation" set forth in ¶2.45 of the "Report" ... and permeating the entire *legislative history* of §63 of the ACT set forth in ¶¶2.30 to 2.45 of the "Report" ... the *unambiguous* intention of Parliament was for barons to **"retain"** after the 'appointed day' the full range of those 'qualities', 'precedences', and 'any heraldic privilege' referenced in the *legal definition* of the dignity of baron in §63(4) of the ACT as existed upon the date of Royal Assent to the ACT and as had been commonly granted by the various Lords Lyon before that date ... in order to avoid payment of compensation for the loss of such baronial heraldic additaments constituting the market value of baronies of £60,000 occasioned by "the new legislation". Simply put, the verb **"retain"** as used in 5(c) of the official "Recommendation" set forth in ¶2.45 of the "Report" ... means to keep as it was before ... to retain the *status quo ante* ... concerning any precedence and ceremonial or heraldic privileges deriving from their barony" ... and "the right to call themselves baron" ... *notwithstanding* "the new legislation".

There is *no other way* which verb **"retain"** as used in 5(c) of the official "Recommendation" set forth in ¶2.45 of the "Report" can be judicially construed.....

⁵⁶ This parliamentary intention is directly stated in 5 (c) of the official "Recommendation" set forth in ¶2.45 of the "Report" as the official *legislative history* of §63 of the ACT.

⁵⁷ Such would include the grant of the Red Chapeau, *Gules doubled Ermine tasselled Or, Chisholm of Chisholm*, *Lyon Register* 33/12: 30th March 1944. Declarations of baronial status made in Chisholm of Chisholm, *Lyon Register* 33/12; Wauchop of Niddrie, *Lyon Register* 35/31; and Borthwick of Borthwick, *Lyon Register* 35/14; and Lord Lyon's Judgement of 26th February 1943 re the Baronage as 'titled nobility' in *Register of Genealogies* Vol. IV, p. 26. Grant of a Compartment representing 'feudal territories' made in *Berowald Fortescue Innes of Inverista*, *Lyon Register* 31/59. Grant of Cap of Justice for Baron-Baillies in Thomas Allan Keith- Hill, *Lyon Register*, Vol. 51, p. 115; Alistair Robertson Ross, *Lyon Register* 61/37; and David Lacey Garrison, Junior, Baron of Tranent and Cockenzie, *Lyon Register* 82/90 Key in bend for Keeper of Baronial Caput in Major- General Clifford Thomason Becket, *Lyon Register* 48/58. Horn and white wand for Baron-Sergeants statutorily designated by the old Scots Parliament in A.P.S., II, 22, c. II; see also matriculation of similar insignia of office for a Hereditary Seneschal in Viola Stirling of Gargunock ib *Lyon Register* 51/105.

⁵⁸ The authoritative writings of eminent publicists on the Law of Arms as applied in Scotland includes the following:

- Sir George Mackenzie of Rosenhaugh, *The Science of Heraldry*, Edinburgh, 1680, declared to be of *institutional authority* in Scotland
- Alexander Nisbet, *System of Heraldry*, Edinburgh 1722, in two Volumes
- George Seton, *The Law and Practice of Heraldry in Scotland*, Edinburgh, 1863
- J. H. Stevenson, *Heraldry in Scotland*, Glasgow, 1914
- Lord Lyon Sir Thomas Innes of Learney, *Scots Heraldry*, 2nd Edition, 1956
- Lord Lyon Sir Thomas Innes of Learney, *The Clans, Septs, and Regiments of the Scottish Highlands* 8th Edition, 1970
- Lord Lyon Sir Thomas Innes of Learney, *The Tartans of the Clans and Families of Scotland*, 5th Edition, 1950
- Lord Lyon Sir Thomas Innes of Learney, "Huntly Processional Roll of Scottish Armorial Funeral, etc", *Proc. of soc. of Antiquaries of Scotland*, (16 October 1943) Vol. 77, p. 154
- Lord Lyon Sir Thomas Innes of Learney, "Standards and Badges in Scotland", *The Coat of Arms* Vol. I, No. 6, April, 1950, pp. 193-4
- Lord Lyon Sir Malcolm Innes of Edingight, *Scots Heraldry*, 3rd Edition, 1978.
- Robert Gayre of Gayre & Nigg, *Heraldic Standards and other Ensigns* (1959),
- Lord Lyon Sir Thomas Innes of Learney, Case of *George Kenneth Stewart Ferguson of Dunfallandy*, *1953 Scots Law Times* (Lyon Ct) 2

⁵⁹ Authority for the **personal ennoblement of the Holder of 'the dignity of baron'** as included among amongst "any quality ... associated with" the 'dignity of baron' is evidenced by the following logical considerations of the Law of Arms as practiced in Scotland:

- Historically, noble dignities possess annexed ensigns armorial which are transferred with that dignity to new representatives therein: See Alexander Nisbet, *System of Heraldry*, Edinburgh, 1722, Vol. II, Part Third, Chap. 2. p. 79,
- Such related ensigns armorial are acquired by possession of the corresponding dignity, territory or jurisdiction: Alexander Nisbet, *System of Heraldry*, Edinburgh, 1722, Vol. II, Part Third, Chap. 2. p. 75
- Acquisition of a noble dignity conveys to the possessor the associated heraldic ensigns: Alexander Nisbet, *System of Heraldry*, Edinburgh, 1722, Vol. II, Part Third, Chap. 2. p. 74
- Those dignified with the 'title' of a noble dignity carry the related heraldic ensigns associated with that dignity: Alexander Nisbet, *System of Heraldry*, Edinburgh, 1722, Vol. II, Part Third, Chap. 2. p. 82
- The successor to a dignity assumes the heraldic additaments related to the corresponding dignity: J. H. Stevenson, *Heraldry in Scotland* (Glasgow, 1914), p. 304
- 'Dignities' are resettled along with the heraldic ensigns associated with the heraldic representation of such 'dignities': J. H. Stevenson, *Heraldry in Scotland* (Glasgow, 1914), p. 360, fn. 1
- Having *institutional authority* in Scotland, Mackenzie declares that acquisition of an erected dignity with an annexed authority held directly from the Prince ennobles the possessor and warrants him to bear arms: Sir George Mackenzie of Rosenhaugh, *Science of Heraldry*, Edinburgh, 1680, Chap. ii, pp. 13-14,
- A non-armigerous person acquiring a noble dignity is nobilitated by this dignity and may carry its related heraldic additaments: Alexander Nisbet, *System of Heraldry*, Edinburgh, 1722, Vol. II, Part Third, Chap. 2. p. 74
- The ensigns armorial related to a dignities pass to the successive holder of that dignity even if not related in blood to his processor-in-title to that dignity: J. H. Stevenson, *Heraldry in Scotland* (Glasgow, 1914), p. 276 – 277
- Attached to certain dignities, feudal ensigns pass to the successor in that dignity: George Seton, *The Law and Practice of Heraldry*

in Scotland, Edinburgh, 1863, p. 348, fn. 3

- The chief heraldic insignia of a barony often follows the resettlement of that dignity in their capacity as the feudal arms of that dignity: George Seton, The Law and Practice of Heraldry in Scotland, Edinburgh, 1863, pp. 350 – 351
- The possessor of a dignity has the legal right to transfer both the dignity as well as arms derived from the heraldic representation of that dignity *to the exclusion of his own heirs* : J. H. Stevenson, Heraldry in Scotland (Glasgow, 1914), p. 360
- The heraldic term ‘representative’ has “a *broader character* than ‘heir of line’ and is sufficiently *elastic* to include the successor of a stranger-in-blood to a family in its principal dignity: J. H. Stevenson, Heraldry in Scotland (Glasgow, 1914), p. 352-353
- This *character* “could include” the succeeding ‘representative’ to the Owner of that Barony as “nominee”: *Via* a “**Resignation in favorem for Re-Grant**” (Form No. 257, Encyclopaedia of Scottish Legal Styles, Vol. V, “Heraldry”, page 286-287)
- Because the character of the “Representer” of a dignity has a “broader character” than that of a general legal “heir of line” that the resettlement of the feudal and armorial ‘representation’ of such dignity upon a “**nominee**” who is a “stranger in blood” is an appropriate exercise of the Scots principle of **Tainstry**: Sir Thomas Innes of Learney, Scots Heraldry (2nd edition, 1956), p. 111 - 112, fn. 2 — see Footnote 2, above, for the **legal authority** for this conclusion set forth by Sir Thomas, *himself* !
- Such “**nominations**” by the *previous* Owner of a Barony amounts to a form of (armorial) **quasi-adoption** of his succeeding ‘representative’ in the dignity of the corresponding Barony to be the succeeding Baron in the right and in the place of the former Baron: See Footnote 2, above, for the **legal authority** for this conclusion set forth by Sir Thomas, *himself* !

⁶⁰ Authority for the ‘**standing**’ or **legal capacity of the holder of the ‘dignity of baron; to hold a Baron Court**’ as included among amongst “any quality ... associated with” the ‘dignity of baron’ is evidenced by the following logical considerations of the Law of Arms as practiced in Scotland:

- The right of a minor baron to hold a Baron Court: William Croft Dickinson, The Court Book of the Barony of Carnwath (Edinburgh, 1937)
- Scottish Office’s ¶ 2.32 , ¶ 2.38 in “Report on Abolition of the Feudal System”,
- The ‘standing’ or legal capacity of a Baron after the ‘appointed day’ to hold a Baron Court for ceremonial purposes and to appoint the Officers and Personnel is an **acquired legal right of property** preserved by the ‘savings clause’ in Sec. 63(1) of the ACT: “nothing in this Act affects the dignity of baron **or any other dignity or office** (whether or not of feudal origin).”: The Baron Court and its Officers constitute “any other dignity or office (whether or not of feudal origin)” referenced in Sec. 63(1) of the ACT.
- The ‘savings clause’ in Sec. 63(1) of the ACT leaves in effect the capacity of the Holder of ‘the dignity of baron’ to hold a Baron Court and to appoint Officers of such for ceremonial purposes after the ‘appointed day’. This is because the holding of a Baron Court for ceremonial purposes is not connected with land tenure.
- The *general premise* of the entire ACT in general and Sec. 63 of the ACT in particular is established by ¶2.30 of the “Report on Abolition of the Feudal System”, as follows:
“This report is concerned with **land tenure**. Superiors will disappear and there will be special provisions on baronies but, subject to that, the report is **not concerned with any right, title, honour or dignity (even if of feudal origin historically) held by any person**. In particular, it is **not the purpose** of this report to **affect any of the feudal elements** in constitutional law **or practice**, any peerages, **or any of the ancient offices or positions which may have been feudal in origin. The draft Bill is framed in such a way that all such matters would be unaffected by it.**” (Emphasis supplied.)
- See also *legislative history* to Sec 63 of the ACT set forth in ¶2.40 of the “Report” references the specific intent of Parliament to preserve as much as possible of the ‘noble element in them’ re ‘the social, ceremonial and armorial aspects of baronies’ as ‘non-territorial dignities’ which are ‘severed from landownership’ because ‘the abolition of baronies is not a necessary feature of the abolition of the feudal system of land tenure’
- The Official “Recommendation” of the “Report” set forth in ¶2.45 thereof declares 5(c) The new legislation **should not abolish** the dignity of baron **or any other dignity (whether or not of feudal origin)**. Accordingly barons should retain the right to call themselves baron and **should retain any** precedence and **ceremonial** or heraldic **privileges deriving from their barony**”: This includes the acquired legal right to hold a Baron Court for ceremonial purposes and to appoint its Officers.
- The Officers of such Baron Courts appointed after the ‘appointed day’ by the Holder of ‘the dignity of baron’ must be recognised officially by the Lord Lyon and (if armigerous) possess a **legal right** to be granted heraldic additaments of office appropriate to the Officers of such Baron Courts: Sir Thomas Innes of Learney, Scots Heraldry (2nd ed., 1956), pp. 143 – 145: *re* “Official Arms and Insignia”.

⁶¹ Authority for the ‘**standing**’ or **legal capacity of the holder of the ‘dignity of baron’ to appoint a BARON – BAILLIE**, as the chief executive officer of the baron court as included among amongst “any quality ... associated with” the ‘dignity of baron’ is evidenced by the following authorities :

- Sir Thomas Innes of Learney, The Clans, Septs & Regiments of the Scottish Highlands (8th Ed, 1970) p. 72-73
- See Registrum Magni Sigilli Regum Scotorum, Vol II, p. 369; See also Antiq. Abdn. and Banff, Vol. II, pp. 248-249.
- William Croft Dickinson, The Court Book of the Barony of Carnwath (Edinburgh, 1937), pp. lxxviii-lxxix and footnote 1 on p. lxxix,

⁶² Authority for the ‘**standing**’ or **legal capacity of the holder of the ‘dignity of baron’ to appoint the Clerk of the Baron Court**, as the secretary of the baron court as included among amongst “any quality ... associated with” the ‘dignity of baron’ is evidenced by the following authorities :

- William Croft Dickinson, The Court Book of the Barony of Carnwath (Edinburgh, 1937), §3, pp. lxxxi to lxxxv.

⁶³ Authority for the ‘**standing**’ or **legal capacity of the holder of the ‘dignity of baron’ to appoint the Baron-Sergeant of the Baron Court**, as the enforcement officer of the baron court as included among amongst “any quality ... associated with” the ‘dignity of baron’ is evidenced by the following authorities :

- William Croft Dickinson, The Court Book of the Barony of Carnwath (Edinburgh, 1937), pp. lxxxv-lxxxvi

⁶⁴ Authority for the ‘**standing**’ or **legal capacity of the holder of the ‘dignity of baron’ to appoint the Dempster of the Baron Court**, as the enforcement officer of the baron court as included among amongst “any quality ... associated with” the ‘dignity of baron’ is evidenced by the following authorities :

- Sir Thomas Innes of Learney, The Clans, Septs & Regiments of the Scottish Highlands (8th Ed, 1970) p. 108

⁶⁵ Authority for the ‘**standing**’ or **legal capacity of the holder of the ‘dignity of baron’ to appoint the Procurator Fiscal of the Baron Court**, as the financial and prosecuting officer of the baron court as included among amongst “any quality ... associated with” the ‘dignity of baron’ is evidenced by the following authorities :

•William Croft Dickinson, *The Court Book of the Barony of Carnwath* (Edinburgh, 1937), pp. lxxxviii

⁶⁶ Authority for the **‘standing’ or legal capacity of the holder of the ‘dignity of baron’ to appoint the Keeper of the Castle and Fortalice**, as the castellan or chatelaine charged with the up-keep of the baronial caput as included among amongst “any quality ... associated with” the ‘dignity of baron’ is evidenced by the following authorities :

•See Grant of Arms to Major- General Clifford Thomason Becket, *Lyon Register* 48/58, of a key proper in bend set behind his shield in respect of his office of Keeper of the Castle and Fortalice of Lochoreshyre or Inchgall. Grant referenced in *The Military and Hospitaller Order of St. Lazarus of Jerusalem: The Hereditary Commandery of Lochochore* (Edinburgh, ca. 1970), page 11.

⁶⁷ Authority for the **‘standing’ or legal capacity of the holder of the ‘dignity of baron’ to appoint Burlaw Men**, to assure the ‘Good-neighbourhood’ of the Barony and to see that all observed the ‘styles’ or rules of the Barony as included among amongst “any quality ... associated with” the ‘dignity of baron’ is evidenced by the following authorities :

•See William Croft Dickerson, *The Courtbook of the Barony of Carnwath*, pp. lxvi, cxiv – cxvi.

⁶⁸ Authority for the **‘standing’ or legal capacity of the holder of the ‘dignity of baron’ to appoint Lacqueys or Pages**, to attend the person of the baron as included among amongst “any quality ... associated with” the ‘dignity of baron’ is evidenced by the following authorities:

•Thomas Innes of Learney, “The Robes of the Feudal Baronage of Scotland,” (27th Oct 1945) *Proceedings of the Society of Antiquaries of Scotland*, Vol. 79, pp. 111 at 137

⁶⁹ Authority for the **‘standing’ or legal capacity of the holder of the ‘dignity of baron’ to appoint Halberdiers** as the guard of the barony comprising four to six Halberdiers armed with Lochaber axes as included among amongst “any quality ... associated with” the ‘dignity of baron’ is evidenced by the following authorities :

• Sir Thomas Innes of Learney, *The Clans, Septs & Regiments of the Scottish Highlands* (8th Ed, 1970) p. 108.

⁷⁰ Authority for the *Heraldic equality* of minor Baronage of Scotland with Chiefs of Clans or Names re selection of (1) territorial ‘duthus plant-badge’ and (2) Slughorn as included among amongst “any quality ... associated with” the ‘dignity of baron’ is evidenced by the following authorities :

A. The minor baronage originated from the tribal structure of Scotland as *Chef de Famille* or Captain over the clan formed around that barony:

• Thomas Innes of Learney, “The Robes of the Minor baronage of Scotland,” (27th Oct 1945) *Proceedings of the Society of Antiquaries of Scotland*, Vol. 79, pp. 111 at 111, 112, 113, 116, 118; at fn 3 beginning on p. 118 and extending to p. 119, at 121-22,

• Frank Adams, rev. by Sir Thomas Innes of Learney, *The Clans, Septs, and Regiments of the Scottish Highlands* (8th edition, 1970), p. 16, . 30 fn. 1, 30 fn. 3, 143,

• Thomas Innes of Learney, *The Tartans of the Clans and Families of Scotland* (7th edition, 1964), p. 18 – 19.

B. Minor barons are equivalent to Chiefs of Clans and Names:

•Thomas Innes of Learney, “The Robes of the Minor baronage of Scotland,” (27th Oct 1945) *Proceedings of the Society of Antiquaries of Scotland*, Vol. 79, pp. 111 at 131, fn. 3,

•Sir Thomas Innes of Learney, *The Clans, Septs, and Regiments of the Scottish Highlands* (8th edition, 1970), pp. 15, 104-105, 163,

•William Croft Dickinson, *The Court Book of the Barony of Carnwath* (Edinburgh, 1937), pp. xxvi-xxvii, at fn 3 beginning at xxvi,

C. Minor barons are entitled to the same heraldic insignia and regalia of Chiefs of Clans and Names:

•Sir Thomas Innes of Learney, *The Clans, Septs & Regiments of the Scottish Highlands* (8th Ed, 1970) p. 99, 105 fn. 6, 114, 123, 129, 161 fn. 4, . 171-172,

•Thomas Innes of Learney, “The Robes of the Minor baronage of Scotland,” (27th Oct 1945) *Proceedings of the Society of Antiquaries of Scotland*, Vol. 79, pp. 111 at 118, 148, 151,

D. Minor barons are entitled to select *totum ‘duthus’* plant-badges for use as a ‘district badge’ for the following of the minor baronial fief for matriculation with the Lord Lyon as a matter of legal right:

•J. H. Stevenson, *Heraldry in Scotland* (Glasgow, 1914), p. 226,

•Sir Thomas Innes of Learney, *The Clans, Septs & Regiments of the Scottish Highlands* (8th Ed, 1970), p. 124, 525, 543-554,

•Sir George Mackenzie, *Science of Heraldry*, Edinburgh, 1680, Chap. xxxi., p. 98,

•Alexander Nisbet, *System of Heraldry*, Edinburgh, 1722, Vol. II, Part Fourth, Chap. VI, “Of Mottos, Cries of War, and Devices”, pp. 25-26,

•George Seaton, *The Law and Practice of Heraldry in Scotland* (Edinburgh, 1863), p. 259,

E. Minor barons are entitled to select a slughorn or *crie de guerre* for use by the following of the minor baronial fief for matriculation with the Lord Lyon as a matter of legal right:

•Sir George Mackenzie of Rosenhaugh, *Science of Heraldry*, Edinburgh, 1680, Chap. xxxi., p. 97-98,

•Alexander Nesbitt, *System of Heraldry*, Edinburgh, 1722, Vol. II, Part Fourth, Chap. VI, “Of Mottos, Cries of War, and Devices”, p. 23

•J. H. Stevenson, *Heraldry in Scotland* (Glasgow, 1914), p 218

⁷¹ Authority for inclusion of **the precedence of Barons is after Knights and before Esquires and amongst themselves as of the date of erection of their particular baronies** among amongst “any ... precedence associated with” the ‘dignity of baron’ is evidenced by the following:

•Sir George Mackenzie, *Works*, Vol. II, p. 545

•*Stair Memorial Encyclopaedia: The Laws of Scotland*, Vol. 14, “Precedence”, ¶12021

•Green’s *Encyclopaedia of the Laws of Scotland*, Vol. XII, “Precedence”, ¶128

• Sir Thomas Innes of Learney, “The Robes of the Feudal Baronage of Scotland,” (27th Oct 1945) *Proceedings of the Society of Antiquaries of Scotland*, Vol. 79, pp. 111 at p. 113; 116 fn. 1

• Lyon Court Precedency Book folio 76

⁷² Authority for inclusion of **use of the title “Baron of Bradwardine” as part of the name** among amongst “any ... precedence associated with” the ‘dignity of baron’ is evidenced by the following:

•Thomas Innes of Learney, “The Robes of the Feudal Baronage of Scotland,” (27th Oct 1945) *Proceedings of the Society of Antiquaries of Scotland*, Vol. 79, pp. 111 at 157, 158, 159, 160, 162-163,

•Frank Adams, rev. by Sir Thomas Innes of Learney, *The Clans, Septs, and Regiments of the Scottish Highlands* (8th edition, 1970), p. 410

⁷³ Authority for inclusion of **addition of the ‘fife name’ or *nomen dignitatis* to the surname of the feudal baron** among amongst “any ... precedence associated with” the ‘dignity of baron’ is evidenced by the following:

- *Sir Arthur Herman Munro of Foulis-Obsdale*, 1955 S.L.T. (Lyon Ct.) 5 at p. 10
- *Petition of Sir Hugh Vere Huntly Duff Munro-Lucas-Tooth*, 1965 S.L.T. (Lyon Ct.) 2 at p. 13
- *Patrick Gascoigne Munro of Foulis*, 1953 S.L.T. (Lyon Ct.) 15 at p. 19 – 20

In sum, a Scottish feudal Barony is preserved and kept alive in the public eye and mind through the bearing of the *nomen dignitatis* or the ‘fife name’ of that Barony as one’s ‘title’ and ‘as part of one’s surname’: The “*nomen dignitatis*” serves as the “title” or the ‘fife name’ by which a ‘House and Family’ is recognised for the social and identification purpose of preserving and perpetuating the ‘family’ with its influence and leadership status.

In relation to the enjoyment of a Scottish feudal estate ‘of that name’, the “*nomen dignitatis*” or ‘fief name’ is in fact a ‘nobiliary title’ and form of title by which the holder of the *noble terre* or ‘fife’ is both distinguished and entitled; such “fife name” constitute the *nomen dignitatis* which serves the official purpose of ‘name’ re establishing certain identity and their nobiliary status as feudal land-owners.

Analogous to peerage law the *nomen dignitatis* or the ‘fife name’ is adjoined as part of a feudal baron’s ordinary name constituting both his signature as well as in ordinary speech and writing as his feudal “style” or “title” or in older conveyancing phraseology simply as his “name”.

Thus, in ordinary speech a feudal baron is commonly called by his ‘fife name’ or ‘*nomen dignitatis*’ rather than by his own surname.

⁷⁴ Authority for inclusion of **the prefix of “The Much Honoured”** among amongst “any ... precedence associated with” the ‘dignity of baron’ is evidenced by the following:

- See Frank Adams, rev. by Sir Thomas Innes of Learney, *The Clans, Septs, and Regiments of the Scottish Highlands* (8th edition, 1970), p. 410.
- Sir Thomas Innes of Learney, *The Tartans of the Clans and Families of Scotland* (5th Ed., 1952), p. 64.
- Patrick Montague-Smith, *Debrett’s Correct Form* (1986), p. 90.

In this particular connection, Sir Thomas notes that the prefix ‘The Much Honoured’ is the “style [which] should invariably be employed if *An Baran* is on the Continent. The baronial title is carefully set forth in Lyon Court Birthbriefs for production at foreign courts.”

⁷⁵ Authority for inclusion in official documents of **Lyon Court recognition that the Baronage of Scotland is an ‘order’, ‘estate’ (of the Scots’ Realm) and a ‘Rank’** among amongst “any ... precedence associated with” the ‘dignity of baron’ is evidenced by the following:

- Sir Thomas Innes of Learney, “The Robes of the Feudal Baronage of Scotland,” (27th Oct 1945) *Proceedings of the Society of Antiquaries of Scotland*, Vol. 79, pp. 111 at 113, 116, fn. 1, 146, 150.

⁷⁶ Authority for inclusion in official documents of **Lyon Court recognition of the entitlement of the minor barons to be received as “Hoch-Adel”** on the Continent among amongst “any ... precedence associated with” the ‘dignity of baron’ is evidenced by the following:

- Sir Thomas Innes of Learney, “The Robes of the Feudal Baronage of Scotland,” (27th Oct 1945) *Proceedings of the Society of Antiquaries of Scotland*, Vol. 79, pp. 111 at 141, 155.
- *Wauchope of Niddrie*, *Lyon Register*, Vol XXXV, p. 31, 19th April 1945;
- Matriculation of *Chisholm of Chisholm*, *Lyon Register* 33/12: 30th March 1944;
- Matriculation of *Borthwick of Borthwick*, *Lyon Register* 35/14;

⁷⁷ Authority for inclusion in official documents of **Lyon Court recognition** that minor barons are officially the **‘equivalent to the chiefs of Baronial Houses on the Continent of Europe’** on the Continent among amongst “any ... precedence associated with” the ‘dignity of baron’ is evidenced by the following:

- Sir Thomas Innes of Learney, “The Robes of the Feudal Baronage of Scotland,” (27th Oct 1945) *Proceedings of the Society of Antiquaries of Scotland*, Vol. 79, pp. 111 at p. 143, fn. 3, 155.
- *Wauchope of Niddrie*, *Lyon Register*, Vol XXXV, p. 31, 19th April 1945;
- Matriculation of *Chisholm of Chisholm*, *Lyon Register* 33/12: 30th March 1944;
- Matriculation of *Borthwick of Borthwick*, *Lyon Register* 35/14;

⁷⁸ Authority for inclusion in official documents of **Lyon Court recognition** that minor barons statutorily constitute **‘a part of the nobility’** as among amongst “any ... precedence associated with” the ‘dignity of baron’ is evidenced by the following:

- Statute of 20 Dec 1567 re A.P.S., Vol. III, p. 40:
- Sir Thomas Innes of Learney, “The Robes of the Feudal Baronage of Scotland,” (27th Oct 1945) *Proceedings of the Society of Antiquaries of Scotland*, Vol. 79, pp. 111 at 132, 144;

⁷⁹ Authority for inclusion in official documents of **Lyon Court recognition** that minor barons constitute a **‘titled nobility’** and that the estate of the Baronage are of **the ancient feudal nobility of Scotland** as among amongst “any ... precedence associated with” the ‘dignity of baron’ is evidenced by the following:

- 26th February 1943, Register of Genealogies, Vol IV, p 26;
- Sir Thomas Innes of Learney, “The Robes of the Feudal Baronage of Scotland,” *Proc. of Soc. of Antiquaries of Scotland*, (27th October 1945) Vol 79, P. 111 at pp. 131-132, 143 at fn. 3, 154, 160
- *Petition of Sir Hugh Vere Huntly Duff Munro-Lucas-Tooth*, 1965 S.L.T. (Lyon Ct.) 2 at p. 13:
- *Wauchope of Niddrie* [*Lyon Register*, 35/31, 19th April 1945 by Lord Lyon Sir Francis Grant]
- 30th March 1944 Matriculation of *Chisholm of Chisholm*, *Lyon Register* 33/12
- *Chisholm of Chisholm*, *Lyon Register* 33/12

⁸⁰ Authority for inclusion in official documents of **Lyon Court declaration of ‘baronial status’** as among amongst “any ... precedence associated with” the ‘dignity of baron’ is evidenced by the following:

- Statute of 20 Dec 1567 re A.P.S., Vol. III, p. 40
- 26th February 1943, Register of Genealogies, Vol IV, p 26;
- Sir Thomas Innes of Learney, “The Robes of the Feudal Baronage of Scotland,” *Proc. of Soc. of Antiquaries of Scotland*, (27th October 1945) Vol 79, P. 111 at pp. 131-132, 143 at fn. 3, 154, 160
- *Petition of Sir Hugh Vere Huntly Duff Munro-Lucas-Tooth*, 1965 S.L.T. (Lyon Ct.) 2 at p. 13:
- *Wauchope of Niddrie* [*Lyon Register*, 35/31, 19th April 1945 by Lord Lyon Sir Francis Grant]
- 30th March 1944 Matriculation of *Chisholm of Chisholm*, *Lyon Register* 33/12
- *Borthwick of Borthwick*, *Lyon Register* 35/14

⁸¹ As a landowner in Scotland — re ownership of the Messuage or caput to which the barony has been reduced — statutorily required to possess a coat of arms (21 February 1400, Acts, I, 575; 1430, cap. 21, Acts, II, 19) to petition Lyon for a grant of arms, crest, and motto.

After the ‘appointed day’, similar to a personal peerage or baronetcy dignity the Holder of ‘the dignity of baron’ in the historic Estate of the Baronage of Scotland possesses the ‘standing’ or legal capacity to petition for arms based upon the legal status of this dignity as a recognised dignity of the Kingdom of Scotland ... without any connection to land.

As expressed in the ‘*savings clause*’ in §63(1), 2nd clause’, of the ACT, “ but **nothing** in this Act *affects* the dignity of baron or any other dignity or office (whether or not of feudal origin)”:

This *statutory inhabitation* of the changes in the status of ‘the dignity of baron’ caused by the ACT re abolition of baronial judicial jurisdiction and severance of baronies from an interest in or attachment to land ... from ‘*affecting*’ “**the dignity of baron**” ... would include the ‘standing’ or legal capacity of the Holder of ‘the dignity of baron’ after the ‘appointed day’ to petition the Lord Lyon for arms ... on the basis of such being a *personal dignity of the Kingdom in Scotland* as a result of explicit Scottish statutory legislation:

As a purely personal dignity severed from any attachment to or an interest in land, the Holder of ‘the dignity of baron’ possesses after the ‘appointed day’ the same legal capacity to petition Lyon for arms ... possessed by the Holder of any other personal dignity having no relationship to Land ... similar to a peerage bearing the nomen dignitatis of a place in Scotland, the Holder of a heritable office, such as keeper and constable of a castle, or a member of the Order of the Thistle:

The **logical nexus** with the Kingdom in Scotland to provide the requisite ‘standing’ or legal capacity to petition for arms on the basis of ‘the dignity of baron’ severed from any attachment to or an interest in land is derived from the following:

- The original erection of the Barony by Royal Charter under the Great Seal of Scotland ... as both a privileged feudal tenure in land .;. as well as a conveyance of ‘the dignity of baron’
- The ‘nomen dignitatis’ of the Barony from a geographical location in Scotland
- The transformation of a barony-title in land into the personal ‘dignity of baron’ by statutory legislation of the Scottish Parliament ... with the clear intention that “nothing in this Act *affects* the dignity of baron” ... coupled with the parliament intent revealed in ¶¶2.30 to 2.45 of the “Report” constituting the *legislative history* of Sec. 63 of the ACT to avoid paying compensation for any loss of any of the unique intangible, incorporeal legal rights of property arising from the ‘noble element’ in baronies which give them the market value of £60,000

⁸² Authority for inclusion of “Chapeau Gules, furred Ermine, tasselled Or” among amongst “any heraldic privilege incidental to” the ‘dignity of baron’ is evidenced by the following:

- *Chisholm of Chisholm*, *Lyon Register* 33/12: 30th March 1944;
- Petition, *Gordon of Hallhead*, 4 Sept 1934, *Lyon Register* 31/20
- *Douglas of Brighton*, 21 May 1941, *Lyon Register* 34/33
- *Carnegy of Lour*, 28 Feb 1945, *Lyon Register* 35/24
- *Ainslie of Pilton*, 28 Jan 1836, *Lyon Register* 4/2
- Sir Thomas Innes of Learney, Lord Lyon, “The Robes of the Feudal Baronage of Scotland”, *Proceedings of the Society of Antiquaries of Scotland*, Vol. 79, p. 111 at 149, 152-155;
- Sir Thomas Innes of Learney, *Scots Heraldry*, 2nd Ed., 1956, p. 28. 31-32
- *Nisbet’s Heraldry* (1742 ed.), II, part iv, p. 1, plate of “External Ornaments” after ‘Lords’ coronet and before ‘mural crown’; and
- Malcolm Innes of Edingight, *Scots Heraldry*, 3rd. Ed, 1978, pp. 17, 26
- Sir Thomas Innes of Learney, *The Clans, Septs, and Regiments of the Scottish Highlands*, 8th Ed., 1970, p. 485
- Norris, *Costume and Fashion*, Vol. II, p. 177

⁸³ Authority for inclusion of a Feudo-Baronial Mantle or Robe of Estate among amongst “any heraldic privilege incidental to” the ‘dignity of baron’ is evidenced by the following:

- The actual design of the *Baronial Robe of Estate* applicable to the Minor Baronage of Scotland is evidenced in the Birthbrief of Sir Henry Innes of that ilk (later 4th Baronet) discovered by Sir Thomas in the Charter Chest of the Duke of Roxbury, copied, and recorded by Sir Thomas on 22nd June 1942 in the *Public Register of All Genealogies and Birthbriefs*, Vol. IV, P. 25, in order to provide a permanent public record
- Under Statute 1455, c. 10, both the Lords of Parliament (*Barones Majores*) and the Minor Barons wore red robes lined in white.
- Sir Thomas Innes of Learney, Lord Lyon, “The Robes of the Feudal Baronage of Scotland”, *Proceedings of the Society of Antiquaries of Scotland*, Vol. 79, p. 111 at p. 124-148
- Sir Thomas Innes of Learney, Lord Lyon, “Huntly Processional Roll,” *Proc. of Soc... of Antiquaries of Scotland*, Vol. 77, p. 154.
- Malcolm Innes of Edingight, *Scots Heraldry*, 3rd.. Ed., 1978, p. 17

⁸⁴ Authority for inclusion of a **Banner** among amongst “any heraldic privilege incidental to” the ‘dignity of baron’ is evidenced by the following:

- Sir Thomas Innes of Learney, *Scots Heraldry* (2nd ed., 1956), p. 40 – 42: see fn. 1, p. 42, for size of baronial processional banner
- Malcolm Innes of Edingight, *Scots Heraldry*, 3rd. Ed. 1978, pp. 20-21, 36 fn. 26
- Robert Gayre of Gayre & Nigg, *Heraldic Standards and other Ensigns* (1959), Chapter III, “The Personal Banner”, pp. 21 – 42.
- *The Coat of Arms*, January 1952, p. 9

⁸⁵ Authority for inclusion of the assignment of a **steel helmet of three grills, garnished with gold**, or a **great tilting helmet, garnished with gold** among amongst “any heraldic privilege incidental to” the ‘dignity of baron’ is evidenced by the following:

- Sir Thomas Innes of Learney, *Scots Heraldry* (2nd Ed., 1956), p. 29
- Malcolm Innes of Edingight, *Scots Heraldry* (3rd Ed., 1978), p. 17

⁸⁶ Authority for inclusion of a **badge** among amongst “any heraldic privilege incidental to” the ‘dignity of baron’ is evidenced by the following:

- Sir Thomas Innes of Learney, *Scots Heraldry* (2nd ed., 1956), pp. 45 – 46
- Malcolm Innes of Edingight, *Scots Heraldry*, 3rd. Ed., 1978, pp. 23-24.
- Robert Gayre of Gayre & Nigg, *Heraldic Standards and other Ensigns* (1959), Chapter VII, “The Heraldic Household Badge,” pp. 89 – 102

⁸⁷ Authority for inclusion of a **Standard** among amongst “any heraldic privilege incidental to” the ‘dignity of baron’ is evidenced by the following:

- Sir Thomas Innes of Learney, *Scots Heraldry* (2nd ed., 1956), pp. 43 – 45, , fn. 3 on p. 45
- Malcolm Innes of Edingight, *Scots Heraldry*, 3rd ed, 1978, pp. 21-22, fn. 30 at p. 35

- Robert Gayre of Gayre & Nigg, *Heraldic Standards and other Ensigns* (1959), Chapter V, “The Heraldic Standard,” pp. 51 – 85
- *Stuart of Inchmahome*, 27 July 1935, *Lyon Register* 11/74
- *Kinghorn of Auchinhove*, 30 Jan 1943, *Lyon Register* 34/64

⁸⁸ Authority for inclusion of a **Guidon** among amongst “any heraldic privilege incidental to” the ‘dignity of baron’ is evidenced by the following:

- Sir Thomas Innes of Learney, *Scots Heraldry* (2nd ed., 1956), p. 43 – 44.
- Robert Gayre of Gayre & Nigg, *Heraldic Standards and other Ensigns* (1959), Chapter IV, “The Guidon”, pp. 43 – 50.
- *The Coat of Arms* Vol. I, No. 6, April, 1950, Sir Thomas Innes of Learney, Lord Lyon, “Standards and Badges in Scotland”, p. 193-194:
- Malcolm Innes of Edingight, *Scots Heraldry*, 3rd. ed, 1978, pp. 21-23

In this specific connection, in an interesting article, “Standards and Badges in Scotland”, *The Coat of Arms* Vol. I, No. 6, April, 1950, p. 193-194, Lord Lyon Sir Thomas Innes of Learney states, as follows:

“In certain circumstances it has been granted to persons with followings . In some cases some years ago, full Chiefs or Peers who **could** have got Standards **applied for guidons, as they were entitled to do, in addition to the full standard.**” (Emphasis supplied.)

⁸⁹ Authority for inclusion of a **Pennon** among amongst “any heraldic privilege incidental to” the ‘dignity of baron’ is evidenced by the following:

- Sir Thomas Innes of Learney, *Scots Heraldry* (2nd ed., 1956), p. 43 – 44
- Robert Gayre of Gayre & Nigg, *Heraldic Standards and other Ensigns* (1959), Chapters I, “The Pennon”, pp. 1-11; II, “The Lance-Pennon”, pp. 12-20
- *The Coat of Arms* Vol. I, No. 6, April, 1950, Sir Thomas Innes of Learney, Lord Lyon, “Standards and Badges in Scotland”, p. 193-194:
- Malcolm Innes of Edingight, *Scots Heraldry*, 3rd Ed., pp . 21-23
- *Kinghorn of Auchinhove*, *Lyon Register* 34/64
- *Maclean of Ardgour*, 11 July 1944, *Lyon Register* 35/15

Specifically, In *Scots Heraldry*, 2nd ed., Sir Thomas declares on p. 44, “Pennons are half the size of guidons, ... Pennons are assigned by Lyon in grants or matriculations to those who are ... barons, ... i.e., to those who from their **position** or feudal tenure may be presumed to have a ‘following’.”

Retired Lord Lyon Sir Malcolm Innes of Edingight, *Scots Heraldry*, 3rd Ed., 1978, page 21, states, “Standards, guidons, and **pennons** are assigned by Lyon in grants or matriculations to those who are peers, baronets, knights, **barons**, or chieftains, i.e., to those who from their **position** or feudal tenure may be presumed to have a ‘following’.”

Even **after** the ‘appointed day’ the Holders of ‘the dignity of baron’ will still retain — similar to a peer — the “**position**” which may be presumed to have a ‘following’.

⁹⁰ Authority for inclusion of a **Pinsel** among amongst “any heraldic privilege incidental to” the ‘dignity of baron’ is evidenced by the following:

- Sir Thomas Innes of Learney, *Scots Heraldry* (2nd ed., 1956), p. 45
- Sir Thomas Innes of Learney, Lord Lyon, “Standards and Badges in Scotland”, *The Coat of Arms* Vol. I, No. 6, April, 1950, p. 193-194
- Sir Thomas Innes of Learney, “Huntly Processional Roll of Scottish Armorial Funeral, etc”, *Proc. of soc. of Antiquaries of Scotland*, (16 October 1943) Vol. 77, p. 154 at pp. 157, 160 fn. 2 continued on p. 161 — top of footnote section.
- Malcolm Innes of Edingight, *Scots Heraldry*, 3rd. Ed. 1978, p. 23.
- Robert Gayre of Gayre & Nigg, *Heraldic Standards and other Ensigns* (1959), pp. 9, 10, 16, 17-18

In this specific connection, Sir Thomas Innes of Learney declares in “Court Rulings and Decisions from the Lord Lyon King of Arms: Standards and Badges in Scotland”, *The Coat of Arms*, April 1951, Vol. I, No. 6, pp. 193-194 at 194, as follows:

“Pinsels are granted only to the **feudal Baronage** and Peers. They are triangular flags 4 1/2 feet long bearing within a circle inscribed with the title, the crest surmounted by the coronet or chapeau. The motto is set in an escrol towards the fly, with plant badge, if any.”

Sir Thomas Innes of Learney further states in “Huntly Processional Roll of Scottish Armorial Funeral, etc”, *Proc. of soc. of Antiquaries of Scotland*, (16 October 1943) Vol. 77, p. 154 at pp. 160, fn. 2 continued on p. 161 — top of footnote section, the following:

“Reference in 1644 to ‘divers utheris pinsellis maid for the barronis’ (Spalding, *Memorials of the Troubles*, p. 343) **shows these flags related to the feudal baronage**”. (Emphasis supplied.)

Col. Gayre likewise observes in *Heraldic Standards and Other Ensigns* (Edinburgh, 1959) at p. 18, as follows:

“Reference in 1644 to ‘divers utheris pinsellis maid for the barronis’ **shows that the feudal baronage employed them**, and the reference to Mackay’s pinsel should not be taken to indicate that they were peculiarly highland.” (Emphasis supplied.)

The Pinsel is appropriate for use by a Baron- Bailiff, who is the administrative subordinate of the Feudal Baron. As Col Gayre notes, *Ibid.*, Pp. 17-18: “... the Pinsel acts as a focal point in a rally of followers (and, thereby, performs some of the functions of a standard, on a less imposing scale and in a more portable manner) ... its use as the rallying flag, in the absence of the head of the house, ...” A Pinsel would perform the same function for the following of a Feudal Baron in his absence but in the presence of his Baron Ballie.

⁹¹ Authority for inclusion of a **Ensign** among amongst “any heraldic privilege incidental to” the ‘dignity of baron’ is evidenced by the following:

- Sir Thomas Innes of Learney, *The Clans, Septs, and Regiments of the Scottish Highlands* (8th ed., 1970), p. 521
- Sir Thomas Innes of Learney, *Scots Heraldry* (2nd ed., 1956), pp. 29, 42-43
- Malcolm Innes of Edingight, *Scots Heraldry* (3rd ed., 1978), p. 21

In this specific connection, Sir Thomas Innes of Learney, *The Clans, Septs, and Regiments of the Scottish Highlands* (8th ed., 1970), p. 521, describes the Ensign, as follows:

“Another form of what we, perhaps, call a ‘**square-standard**,’ the **Ensynzie** developed during the seventeenth century after the carrying of the real heraldic banner became less usual. These later ‘standards’ are rectangular flags with the full heraldic achievement of the chief or chieftain depicted on them.”

Thus, anyone entitled to a **standard** ... would be logical extension also be entitled to an **ensign**: This includes the Holders of ‘the dignity of baron’.

⁹² Authority for inclusion of a **Nautical Streamer** among amongst “any heraldic privilege incidental to” the ‘dignity of baron’ is evidenced by the following:

- Malcolm Innes of Edingight, *Scots Heraldry*, 3rd Ed., 1978, p. 36, fn. 33
- Robert Gayre of Gayre and Nigg, *Heraldic Standards and other Ensigns* (Edinburgh, 1959), Chapter VI, “The Streamer”, pp. 86-88; see Plate XIII illustrating the streamer

In this connection, the Streamer is a nautical form of the Standard: In its capacity as the nautical form of the Standard, the streamer lacks the motto bends and personal arms or national flag in the hoist of the standard but displays the same badges, crest, etc. against the baron’s livery colours.

Such heraldic nautical forms of the Standard have been specifically matriculated as ‘galley-pavon or Streamer’ for Campbell of Dunstaffnage: 11 November 1943, *Lyon Register* 34/71; 10 June 1959, *Lyon Register* 43/26.

⁹³ Authority for inclusion of a **Compartment** among amongst “any heraldic privilege incidental to” the ‘dignity of baron’ is evidenced by the following:

- Sir Thomas Innes of Learney, *Scots Heraldry* (2nd ed., 1956), pp. 39:
- Nisbet, *Heraldry*, IV, ii, 135, 137, 138
- George Seaton, *The Law and Practice of Heraldry in Scotland* (Edinburgh, 1863), p. 278
- Sir George Mackenzie Mackenzie of Rosenhaugh, *Science of Heraldry*, Edinburgh, 1680, Chap. xxxi., p. 95,
- J. H. Stevenson, *Heraldry in Scotland* (Glasgow, 1914), p. 252
- *Berowald Fortescue Innes of Inverisla*, *Lyon Register* 31/59

⁹⁴ Authority for inclusion of a **Supporters** among amongst “any heraldic privilege incidental to” the ‘dignity of baron’ is evidenced by the following:

- Sir George Mackenzie of Rosenhaugh, *Science of Heraldry*, Edinburgh, 1680, Chap. xxxi., p. 94,
- Alexander Nisbet, *System of Heraldry*, Edinburgh, 1722, Vol. II, Part Fourth, Chap. vii. p. 27,
- J. H. Stevenson, *Heraldry in Scotland* (Glasgow, 1914), p. 88.
- Sir Thomas Innes of Learney, *Scots Heraldry* (2nd Ed, 1956), pp. 130 – 131
- George Seton, *The Law and Practice of Heraldry in Scotland*, Edinburgh, 1863, p. 287,
- Case of *George Kenneth Stewart Ferguson of Dunfallandy*, *1953 Scots Law Times* (Lyon Ct) 2

⁹⁵ Authority for inclusion of a **Cap of Justice for Baron-Baillies** among amongst “any heraldic privilege incidental to” the ‘dignity of baron’ is evidenced by the following:

- See 20th April 1969 Matriculation of Thomas Allan Keith- Hill of a Cap of Justice upon his arms in respect of his office of Baron-Bailey of the Castle and Barony of Lochoreshyre or Inchgall, *Lyon Register*, Vol. 51, p. 115.
- See also the 12th December 1976 Matriculation of Alistair Robertson Ross of a Cap of Justice as the Baron-Ballie of Easter Moncreiffe, *Lyon Register* 61/37.
- David Lacey Garrison, Junior, Baron of Tranent and Cockenzie, *Lyon Register* 82/90

⁹⁶ Authority for inclusion of a **Key for Keeper of the Castle and Fortalice** among amongst “any heraldic privilege incidental to” the ‘dignity of baron’ is evidenced by the following:

- See Grant of Arms to Major- General Clifford Thomason Becket, *Lyon Register* 48/58, of a key proper in bend set behind his shield in respect of his office of Keeper of the Castle and Fortalice of Lochoreshyre or Inchgall.

⁹⁷ Authority for inclusion of a **Horn and White Wand for Baron-Sergeant** among amongst “any heraldic privilege incidental to” the ‘dignity of baron’ is evidenced by the following:

- Specific statutory designation of this particular insignia for Baron-Officers or Sergeants by the old Scots Parliament in A.P.S., II, 22, c. II
- See Matriculation of similar insignia of office for Viola Stirling of Gargunnoch as Hereditary Seneschal of the Free Tenantry of Gargunnoch, 24th February 1969, *Lyon Register* 51/105.

⁹⁸ All of which ‘qualities’, ‘precedences’, and ‘any heraldic privilege’ associated with or incidental to the dignity of baron have been **transformed statutorily** by the legal definition of the dignity of baron given therein into **fundamental legal subjects or “legal entities”** over which courts have judicial jurisdiction construed (by Innes of Learney and like authoritative Scottish publicists on heraldry) as consisting of established particular individual acquired legal rights of intangible property (i.e., specific heraldic additaments) ‘vesting’ personally in the owner or holder of the ‘dignity of baron’.

⁹⁹ The **statutory incorporation** of such ‘qualities’, precedences’, and ‘any heraldic privilege’ into the *essence* of the dignity of baron was done to accomplish the *Parliamentary intent* expressed in 5(c) of the official “Recommendation” in the *legislative history* to §63 of the ACT at ¶2.45 of the “Report on Abolition of the Feudal System” to **“retain”** the *status quo ante* re “the right to call themselves baron” and “any precedence and ceremonial or heraldic privileges deriving from their barony” *notwithstanding* the change in the status of the dignity of baron caused by “the new legislation” vis-à-vis (1) abolition of baronial judicial jurisdiction and (2) severance of the dignity of baron from an attachment to or an interest in land.

¹⁰⁰ ¶ 2.34 of the “Report on the Abolition of the Feudal System” as follows:

2.34 **Proposals in the discussion paper.** The discussion paper mentioned, but rejected, the possibility of allowing the “noble aspects of the barony title” to lapse along with the abolition of the feudal relationship on which the ennoblement of the baron is based. It noted that the abolition of entitlement to the title “baron” was not a necessary part of feudal land reform and **might well give rise to justifiable claims for compensation.** ... The preferred approach in the discussion paper was the minimalist one. ...” (Emphasis supplied)

¹⁰¹ ¶ 2.31 of the “Report on the Abolition of the Feudal System” as follows:

2.31 **Introduction.** One of the most distinctively feudal features of the system of land tenure in Scotland is that the holding of a feudal estate in land on a particular type of title called a **barony title** gives rise to certain conveyancing peculiarities and **carries with it certain privileges.** The estate in land might be no more than the *dominium utile* or even the bare *dominium directum* of a tiny plot of waste ground, of little or no value in itself, which represents the head place or *caput* of the barony. The estate in land can be bought and sold in the normal way. Remarkable as it may seem, ownership of such an estate in land carries with it a barony. **It enables the owner to claim ennoblement by the “nobilitating effect” of the “noble quality” of the feudal title on which the land is held.** The title of “Baron of So-and-So” or “Baroness of So-and-So” can be adopted. If the holder is granted armorial bearings by the Lord Lyon (which is entirely a matter for the Lord Lyon’s administrative discretion) and if a *prima facie* title to the barony is established there is a **right to relevant baronial additaments to the coat of arms. Baronial robes** can be worn. The

baron can, in theory, hold a **baron's court**, appoint a **baron baillie** to be judge, and exercise a minor civil and criminal jurisdiction. (Emphasis supplied)

¹⁰² This “noble element” in baronies consists of “the social, ceremonial and armorial aspects of baronies” including the ‘title of baron’ and *the nomen dignitatis* of that barony as part of the surname “which give baronies the value which they have” as referenced in the legal definition of the dignity of baron at §63(4) of the ACT.

¹⁰³ ¶ 2.40 of the “Report on the Abolition of the Feudal System” as follows:

2.40 The right to the title and dignity of baron is the right which gives baronies the value which they have over and above the actual value of the lands themselves. Indeed the barony as such is often attached to a residual plot of land, with little or no intrinsic value, which is recognised as the *caput baroniae*. **Baronies have a considerable commercial value and to abolish the so-called noble element in them**, as was strongly urged by some consultees and members of our advisory group, **would give rise to substantial claims for compensation**. We see no need to do this. Although baronies are a feudal relic, the abolition of baronies is not a necessary feature of the abolition of the feudal system of land tenure. We do however consider that the social, ceremonial and armorial aspects of baronies should be severed from landownership. Baronies should become non-territorial dignities.” (Emphasis supplied)

¹⁰⁴ ¶ 2.44 of the “Report on the Abolition of the Feudal System” as follows:

2.44 ... In our view the Scottish Parliament could, if it wished, abolish feudal baronies altogether as part of a reform of the feudal system of land tenure. If that is so then it is even more clear that it can take baronies out of the system of land tenure and land registration, while allowing the dignity of baron, derived from the former connection with the Crown as feudal superior, to continue as a floating dignity.

¹⁰⁵ Theoretically, the Lord Lyon can refuse to grant arms to an applicant who is not a ‘deserving person’ ... such as a convicted felon, a prostitute, and someone who is otherwise public ally notorious.

However, for all **practical purposes** the typical purchaser of a Scottish barony is **highly unlikely** to be a felon, a prostitute, or someone otherwise so public ally notorious ... to be disqualified for a grant of arms by the Lord Lyon.

The normal purchaser of such baronies is likely to be a successful business or professional man of Scottish descent who desires a substantial personal link with Scotland’s historical past. There are no legitimate grounds for denying a grant of arms to a ‘deserving person’ of this ilk.

¹⁰⁶ The particular referenced ‘qualities’, ‘precedences’, and ‘any heraldic privilege’ were **statutorily transformed** by reference in §63(4) of the ACT as constituting the legal definition of the dignity of baron **into** the fundamental legal concepts or “legal entities” which have been heraldically construed by Innes of Learney and like authoritative Scottish publicists on heraldry as constituting specific baronial heraldic additaments, titles, *nomen dignitatis* in the surname, and prefixes.

¹⁰⁷ Whatever might have been the previous heraldic status of such ‘qualities’, ‘precedences’ and ‘any heraldic privilege’ associated with or incidental to the dignity of baron before the ACT; ... the ACT *itself* statutorily transformed all of the items referenced in §63(4) of the ACT into fundamental legal concepts or “legal entities” which — as construed by Innes of Learney and like authoritative Scottish publicists on heraldry — constitute concrete particular legal rights of intangible property (i.e., such as the various specific baronial heraldic additaments) ‘vesting’ personally in the Holder of the dignity of baron as “incorporeal heritable property”.

¹⁰⁸ This is because the legal definition of the dignity of baron set forth in §63(4) of the ACT operates to cause the items referenced therein to be **statutorily transformed** into fundamental legal concepts or “legal entities” (construed by Innes of Learney and other authoritative publicists on Scottish heraldry as being specific baronial heraldic additaments, etc.) over which the courts have judicial jurisdiction.

Such baronial heraldic additaments and other ‘qualities’ and ‘precedences’ are individual acquired legal rights of intangible property ‘vesting’ personally in the Holder of the dignity of baron **as such existed on the date of Royal Assent to the ACT** and as had been commonly granted by various Lords Lyon before that date.

Furthermore, all such baronial heraldic additaments and other ‘qualities’ and ‘precedences’ were **statutorily incorporated** by use of the *verb* “**includes**” in §63(4) of the ACT into the very essence or the fabric and fibre of the dignity of baron as integral component parts thereof.

Such statutory transformation was done **to “retain”** after the ‘appointed day’ the *status quo ante* concerning “any precedence and ceremonial or heraldic privileges deriving from their barony” as well as “the right to call themselves baron” re 5(c) of the official “Recommendation” set forth in ¶2.45 of the *legislative history* to §63 of the ACT.

¹⁰⁹ *Such statutory incorporation was done to achieve the policy goal specified in 5(c) of the official “Recommendation” set forth in ¶2.45 of the “Report” constituting the legislative history of §63 of the ACT:*

Causing barons to “retain” after the ‘appointed day’ the status quo ante existing as of the date of Royal Assent to the ACT:

“ Any precedence and ceremonial or heraldic privileges deriving from their barony” as well as “the right to call themselves baron”.

The intention of Parliament could not be clearer...

¹¹⁰ This ‘savings clause’ was inserted **to prevent** the changed status of barons after the ‘appointed day’ when the ACT enters into full force and legal effect re abolition of baronial judicial jurisdiction and severance of baronies from any interest in or attachment to land caused by “the new legislation” **from ‘affecting’** any of the ‘qualities’, ‘precedences’, and any heraldic privilege constituting the statutory legal definition of the dignity of baron in §63(4) of the ACT.

¹¹¹ See the concerns expressed re loss of nobiliary entitlement and heraldic additaments in the submission of the Convention of the Baronage of Scotland referenced in ¶2.36 the Scottish Office’s “Report” constituting the *legislative history* of §63 of the ACT.

¹¹² There exist an estimated 1,000 baronies in Scotland having a good and transferable title. Should the “noble element” in these baronies be lost due to changes in the status of barons caused by “the new legislation”, the Scottish Parliament would be liable for approximately £60,000,000L *A tidy sum!*

¹¹³ 2.40 The right to the title and dignity of baron **is the right which gives baronies the value which they have** over and above the actual value of the lands themselves. Indeed the barony as such is often attached to a residual plot of land, with little or no intrinsic value, which is recognised as the *caput baroniae*. **Baronies have a considerable commercial value and to abolish the so-called noble element in them**, as was strongly urged by some consultees and members of our advisory group, **would give rise to substantial claims for compensation**. **We see no need to do this**. **Although baronies are a feudal relic, the abolition of baronies is not a necessary feature of the abolition of the feudal system of land tenure**. **We do however consider that the social, ceremonial and armorial aspects of baronies should be severed from landownership**. **Baronies should become non-territorial dignities**. There should be no change in the jurisdiction of the Lord Lyon in relation to questions of precedence and arms. If the Lord Lyon were not satisfied, on the evidence produced, that an applicant for

a coat of arms **with baronial additaments** was entitled to a barony, and **refused the application in relation to the additaments**, then it would be open to the applicant to seek **a declarator of entitlement to the barony** in the ordinary courts and, if successful, to return to the Lord Lyon with that declarator. The courts already have sufficient jurisdiction to decide questions relating to heritable right and title. There is no need to create any special new jurisdiction.

¹¹⁴ 5(c) of the official “Recommendation” set forth in ¶2.45 is, as follows:

(c) The new legislation should not abolish the dignity of baron or any other dignity (whether or not of feudal origin). Accordingly **barons should retain the right to call themselves baron and should retain any precedence and ceremonial or heraldic privileges deriving from their barony.**”

¹¹⁵ **Note Bene:** Reference in 5(c) of the official “Recommendation” set forth in ¶2.45 of the “Report” to “ **any other dignity (whether or not of feudal origin)**” clearly refers to the dignity of Baron-Baillie and the other Officers and personnel of a baron court.

As evidenced by ¶2.31 of the “Report”, the capacity of a baron to hold a baron court and to appoint a baron baillie is part of the “noble element” consisting of “the social, **ceremonial** and armorial aspects of baronies” re ¶2.40

The “Assessment” in ¶2.38 of the “Report” noted that, “There are three special features of barony titles. First, certain conveyancing peculiarities attach to them. **Secondly, the holder of land on a barony title still has, in theory but not in practice, the right to hold a baron’s court.** Thirdly, the holder of land on a barony title has the right to use the title of baron and, if granted armorial bearings by the Lord Lyon, to add certain special baronial features to the coat of arms.”

Although the ‘anachronistic’ civil and criminal jurisdiction of barons would be abolished as part of the reform of the feudal system of land tenure, as noted in ¶2.42 of the “Report”; ... nevertheless, the *legislative history* to §63 of the ACT set forth in ¶2.40 of the “Report” recommending “that the social, **ceremonial** and armorial aspects of baronies should be severed from land ownership. Baronies should become non-territorial dignities” ... also recognised that “Baronies have a considerable commercial value and to abolish the so-called noble element in them, as was strongly urged by some consultees and members of our advisory group, would give rise to substantial claims for compensation. We see no need to do this”.

Among the principal ‘noble elements’ of baronies is the holding of a baron court for **ceremonial purposes** and the legal capacity of a baron to appoint a Baron Baillie and the other Officers and Personnel of that baron court ... again ... for purely **ceremonial purposes**.

In this specific connection, 5(c) of the official “Recommendation” of the *legislative history* set forth at ¶2.45 of the “Report” declares “The new legislation should not abolish the dignity of baron **or any other dignity (whether or not of feudal origin)**.”

The above clearly includes the ‘dignity’ of Baron-Baillie and the other Officers and Personnel of baronial courts ... which have a **ceremonial value** to the Holders of Baronies: Something to which they may appoint friends and relatives.

Survival of baron courts ... for ceremonial purposes ... after the ‘appointed day’ is also in keeping with the general Parliamentary intent that the ACT was drafted to affect solely tenure in land ... and not the existence of any feudal titular honorifics such as baron courts and their officers set forth in ¶2.30 of the “Report”, as follows:

2.30 This report is concerned with **land tenure**. Superiors will disappear and there will be special provisions on baronies but, subject to that, the report is **not concerned with any right, title, honour or dignity (even if of feudal origin historically) held by any person**. In particular, it is not the purpose of this report **to affect any of the feudal elements** in constitutional law or practice, any peerages, **or any of the ancient offices or positions which may have been feudal in origin**. The draft Bill is framed in such a way that all such matters would be **unaffected** by it.” (Emphasis supplied)

The manifest intent of the ACT, particularly §63 thereof, was to abolish the system of feudal tenure of land ... not to abolish the holding of purely ceremonial baron courts and appointment of its Officers for honorific purposes.

¹¹⁶ Notwithstanding the change of status in the dignity of baron caused by “the new legislation” re abolition of baronial judicial jurisdiction and severance of the dignity of baron from attachment to or an interest in land

¹¹⁷ This “noble element” in baronies is statutorily defined in the legal definition of the dignity of baron set forth in §63(4) of the ACT as such existed as of the date of Royal Assent to the ACT and as had been commonly granted by various Lords Lyon to that date.

Such legal definition statutorily transforms all such referenced ‘qualities’, ‘precedences’, and “any heraldic privileges” associated with or incidental to the dignity of baron into **fundamental legal concepts** or “**legal entities**” which as construed by authoritative publicists on Scottish heraldry became concrete individual acquired rights of intangible property ‘vesting’ personally and individually in the Holder of the dignity of baron.

¹¹⁸ Such fundamental legal subjects or “legal entities” referenced as ‘qualities’, ‘precedences’, and “any heraldic privilege” in the legal definition of the dignity of baron given at §63(4) of the ACT are specifically identified by Innes of Learney and other authoritative Scottish publicists on heraldry as being *particular* baronial heraldic additaments and recognition of baronial qualities, status, and precedence as granted by various Lords Lyon or re-discovered upon scholarly research.

¹¹⁹ The particular referenced ‘qualities’, ‘precedences’, and ‘any heraldic privilege’ were **statutorily transformed** by reference in §63(4) of the ACT as constituting the legal definition of the dignity of baron **into** the fundamental legal concepts or “legal entities” which have been heraldically construed by Innes of Learney and like authoritative Scottish publicists on heraldry as constituting specific baronial heraldic additaments, titles, *nomen dignitatis* in the surname, and prefixes.