

# Old Lennox House

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Nadine Behan

## *A case of heritage and tenancy in the ACT.*

Old Lennox House is a group of weatherboard buildings at the quiet end of the campus of the Australian National University (ANU). They now attract the protection of interim heritage listing of the ACT Heritage Council and appear on the Interim Register of the National Estate. They are also classified by the National Trust. The story of these listings is the story, partly, of a tenancy dispute which lasted three years and managed to stir the pot on a number of 'delicate' issues. The following is an account of that dispute, containing matters that may be of interest to both practitioners and activists.

### **Preliminaries**

Since 1970 the ANU Students' Association (SA) has managed Old Lennox House as low cost rental accommodation for undergraduate students. The ANU, as property owner and developer, used a variety of means between 1991 and 1994 to evict the residents and demolish the buildings which were claimed to be a substantial fire, health and safety risk. The residents disagreed with this claim and resisted eviction attempts in the hope of securing a future for Lennox as student accommodation.

Their position was simple enough. They insisted they were tenants and used the protection of the *Landlord and Tenant Act 1949* (ACT) (*L&T Act*) against unlawful eviction. They also insisted that the buildings, though humble, had considerable historical, social and cultural value and should be conserved and retained as functioning, low-cost student accommodation.

### **Legal issues**

The ANU argued that the Lennox House residents were licensees not tenants, that any agreements made, were made between the residents and the SA which, itself as a licensee, could not confer tenancy and that, in any event, the ANU was not bound by ACT tenancy law. The residents, with the assistance of the ACT Welfare Rights and Legal Centre, had to start from the ground up in establishing, firstly, the existence of their tenancies then that their landlord was in fact the ANU, and then that the ANU was bound by the *L&T Act*.

On the issue of the residents as licensees, Welfare Rights contended that their living arrangements and the terms of their written agreements fulfilled the essential elements of a fixed-term tenancy. The residents had exclusive possession of their own areas and no services were provided to them. Some residents shared toilet and shower facilities but all cooked and lived independently. For years the residents had been largely left to their own devices by both the SA and the university, and in 20 years staff had rarely set foot on the premises.

Welfare Rights found that the SA is not a legal entity and is reliant on funds negotiated and transferred to it by the ANU administration, and is thus an arm of the ANU. In managing and renting out Lennox House to the students, the SA was not a licensee but part of the landlord, the ANU.

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Nadine Behan is a solicitor at the Welfare Rights and Legal Centre, ACT.



*Two views of Old Lennox House, Canberra — the centre of a three-year heritage and tenancy dispute.*

On the contention that the ANU was not bound by the *L&T Act*, Welfare Rights argued that the *Australian National University Act 1946* (Cth) established the ANU as an autonomous Commonwealth instrumentality that is not a manifestation of the Crown. It is, therefore, not excluded from the operation of the *L&T Act*; indeed it is bound in the absence of inconsistent federal legislation.

The alternative path for the ANU could have been to accept the residents as tenants, itself as the landlord, and to pursue eviction through the *L&T Act*, though this path had its own perils. Section 63 of the Act sets out specific grounds for eviction. Section 68, however, contains an anomaly which on close reading reverts the grounds for eviction during a fixed-term to the legal position prior to the current *L&T Act*. This means that some grounds in s.63 are not available during the fixed term. Section 68 is often relied on by Welfare Rights in their tenancy work to prevent eviction during a fixed term. Although untested in court, Welfare Rights invariably finds the section useful when negotiating with landlords and was eager for an opportunity to test it. In relation to Lennox, the only ground ANU could rely on to evict would be short-circuited by the operation of s.68 during the fixed term. Fortunately, each of the residents had entered what

Welfare Rights regarded as fixed term agreements during 1991, 1992 and 1993. These would not expire until December 1993.

The ANU, instead persisted with the licensee view. By 1993, whenever the ANU threatened action to remove the 'licensees', Welfare Rights counter-threatened immediate action for wrongful eviction of the tenants. So the stalemate continued, gaining time for the residents to pursue the heritage matter.

### Heritage

It is unlikely that the heritage value of Lennox, at any other time, would have been investigated or acknowledged. Until recently, heritage meant the heritage of the privileged. The prevailing view attached significance to the relic places of famous people and historic events, and took a narrow approach to the question of what deserves to be kept. This view attracted criticism for its bias and also its clinical 'rationality'. The heritage machine itself attracted criticism for its specialised professionalism and neglect of popular sentiment in determining heritage value. At the moment though, a change in thinking is occurring toward enabling the more controversial and modest parts of our past to be preserved. The shift is not from the heritage of the rich to that of the poor, but instead to the heritage of the community. Increasing credence is starting to be given to the importance of 'social value' as a criterion of assessment. 'Social value' acknowledges the continuing attachment to a place by a particular community. It deals with those places that continue to bind a community to their past and are seen by that community as valuable and worth preserving. Grounded in the present, it acknowledges subjective aspects such as emotional attachment and encourages the community's participation in the heritage process. This view treats heritage not as an isolated, historical whim but as having a firm social and a current political context.

In December 1993, the Queensland Planning and Environment Court<sup>1</sup> judicially interpreted for the first time, the terms 'social', 'community', 'aesthetic' and 'historic' in relation to heritage (albeit narrowly). Then in 1994 the Australian Heritage Commission released a discussion paper on Social Value.<sup>2</sup> Earlier in the 1990s, however, this issue had not yet been so clearly articulated. The claim by residents for the heritage protection of Lennox came as an early example of the social value issue in the ACT. From 1991, careful research into the history of Lennox House made the residents confident of the significance of the buildings. They contacted various heritage bodies on both a formal and informal level and began pressuring the ANU.

### The local context

By 1993, all parties found themselves at a curious juncture. The ANU had not contemplated such prolonged resistance to ridding itself of the residents or the dilapidated buildings. Its plans to build a research facility in the vicinity could not be advanced while the Lennox stalemate existed.

Under the National Capital Plan,<sup>3</sup> the whole Lennox neighbourhood is a 'designated area' and attracts the control

of the federal body, the National Capital Planning Authority (NCPA) rather than the local ACT planning authority. Lennox House forms the edge of the ANU campus on the Acton Peninsula, and is adjacent to the site now proposed for the National Museum. Even by 1993, the NCPA was proving to have definite ideas itself about the future of the area.

The ANU's plans for the research facility were also meeting with opposition from its own academics. Concerned and frustrated with the growing power of the university bureaucracy and the lack of consultation about such a large development on campus, the academics began criticising the plans through the media as short-sighted, ill-conceived and a waste of precious resources.

The Students' Association had meanwhile been kept busy negotiating its own path. Faced with the ANU selling off-campus rental properties en masse and dismantling its policy on provision of low-cost undergraduate accommodation, the SA also had to resist pressure from the ANU to take back management of Lennox. In March 1993, after being lectured about Lennox as a considerable fire and safety risk and warned that it may be held legally responsible for any injuries resulting from the condition of the buildings, the SA, feeling like 'the meat in the sandwich', relented.

The other local player was the ACT Heritage Council. It had been prudently quiet on the Lennox issue. As a newly established body it was inexperienced and had not yet set up an interim heritage register. Also there was the vexing matter of whether the Council even had jurisdiction over a 'designated area'.

### Heritage and eviction

Whereas in 1991 the ANU could clearly assert that Lennox was of 'no heritage value' and needed to be demolished, by 1993 the picture had changed and in response to pressure from various sources, the ANU commissioned two heritage studies. The first, a brief work by David Flannery,<sup>4</sup> found the buildings to be unremarkable and in a deteriorated condition. The second, however, was a substantial work investigating the heritage significance of the whole Acton precinct. Conducted by Radcliffe and Armes,<sup>5</sup> the study was released in mid-1993. It found Lennox House to be of considerable heritage significance with parts being of exceptional significance. Certain blocks of the Lennox complex were declared the second oldest surviving buildings in Canberra. Erected in 1911 as bachelors' quarters while the capital was being built, the study concluded that Lennox contained the seeds of the early capital both architecturally, culturally and socially. It recommended a thorough Conservation and Management Plan be undertaken. Despite these findings the ANU continued to affirm its decision to demolish, now on the basis that the cost of restoration would be prohibitive.

By the end of 1993, five residents remained at Lennox. Others had accepted generous offers by the ANU to be rehoused or had left Lennox to continue their studies in a more stable environment. The five had decided to stay until the heritage issues were resolved.

With the expiration of the fixed terms, the ANU changed tack and finally issued Notices To Quit under the *L&T Act*. These were served in February 1994. The ground relied on was s.63 (5)(m): that the premises were reasonably required by the lessor for reconstruction or demolition.

With the re-activation of the dispute, residents found themselves again doing the circuit of press releases, inter-

views and lobbying all relevant ACT and Commonwealth politicians. Resident Iain Brady finalised and submitted the nomination to the Australian Heritage Commission for the inclusion of Lennox on the Register of the National Estate. On another front, after lengthy negotiations, the ACT Trades and Labour Council passed resolutions supporting the preservation of Lennox and calling on the ANU to halt eviction action.

In early April 1994, the residents were served with their Notices of Application for a Warrant of Possession in Ejectment under the Landlord and Tenant Act, to be heard in the ACT Magistrates Court on 26 April. On 21 April, just days before the hearing, the ANU sent contractors onto the premises. They proceeded to the unoccupied sections to 'secure' them, removing doors and windows, breaking glass and smashing plumbing on the heritage-sensitive buildings.

Later that day, the National Trust released its decision that Lennox was to be recommended for classification. The next day, the Australian Heritage Commission formally notified the ANU of its approval of the heritage nomination and its intention to enter Lennox House on the Register of the National Estate. It urged the ANU to do no further damage to the buildings and expressed concern for those parts now exposed to the weather. The residents, glad of the heritage tidings at last, were still a little shaken and worried by their encounter with the contractors, but thought it best to stay on at Lennox and see the court case through.

The following week, on 26 April, an adjournment was granted until 30 May for Welfare Rights to obtain experts' reports in order to fully prepare the case. On 5 May contractors again entered the premises and 'secured' the unoccupied sections further. This time the National Capital Planning Authority notified the ANU that its methods of 'securing' the premises amounted to unapproved works and if further such 'works' were contemplated, appropriate approval would be necessary. The Trades and Labour Council also formally warned the ANU of its resolutions and associated bans imposed.

The media, on the other hand, vacillated between presenting an image of the tenants as the squatters of a derelict slum threatening the safety of an adjacent childcare centre and the image of Lennox as some kind of resort for a handful of privileged students. As a response to the 'resort' myth, residents printed and sold t-shirts sporting the words 'CLUB LENNOX'. On the back was detailed legal advice and tips about eviction.

The court case began on 30 May 1994 and lasted two and a half days. On the first day, Welfare Rights was assisted by counsel. For the remainder, the residents decided to go it alone with just the Welfare Rights solicitor. This solicitor was not able to rebut the evidence on the state of the premises nor successfully call into question the reasonableness of the ANU's need for possession, despite the best efforts of a building design consultant, heritage architect, leading fire consultant, officer of the Australian Heritage Commission and Acting Executive Director of the National Capital Planning Authority who all appeared as witnesses for the residents.

On 6 June, Magistrate Ward found that the repairs needed would amount to reconstruction, that the ANU was bona fide in requiring possession and that there would be no hardship suffered by the residents if evicted. The applications were granted and warrants of ejectment were issued. The residents negotiated a week in which to leave Lennox. They decided

not to seek leave to appeal as it seemed unlikely they would be permitted to remain in occupation for the duration of the appeal. They also decided not to resist the eviction order or opt for the publicity of being dragged from the premises. A recent amendment to the ANU's disciplinary rules meant such resistance could lead to expulsion from their courses. Press interviews by Welfare Rights at the time intimated that the residents were now passing the baton to the heritage bodies.

### The next stage

Lennox House was vacated in June 1994. Electricity, water supply and the fire alarm system were disconnected. Since then, apart from the re-installation of some of the windows and doors and a rough paint job, no maintenance has been done. It is officially in mothballs awaiting the outcome of heritage considerations.

In May 1995, the Australian Heritage Commission formally placed Lennox on its Interim Register of the National Estate. In the same month the local ACT Heritage Council gazetted its own interim listing. While these listings afford temporary protection, there is now a three-month period in which objections to permanent listing may be lodged. Objections cannot be based on financial considerations. If an objection is lodged, Lennox will remain on the interim list while a new, independent assessment is undertaken. And so it goes: the careful heritage process moves slowly onward.

Perhaps the last contributions by the ex-residents will be on the contentious issues of their claim to participate in the drafting of the conservation plan and the fight over the future use of the buildings. They maintain that Lennox's original purpose and continual use as accommodation is a crucial aspect of the heritage significance and wish to see Lennox survive as living heritage, that is, to be conserved and used as an accommodation facility (hopefully for students).

### The benefits of the Lennox experience

As a case and an experience, Lennox proved to be an initiation for both the residents and the solicitor at Welfare Rights. In challenging the 'clout' of authorities grown unaccustomed to opposition, it covered difficult issues on largely untested terrain and required sustained leg work and head work by all involved.

Perhaps for this reason it felt, for most of the time, like a 'homemade' job. Strategies were decided on the run, usually in the midst of the shifting tide of simultaneous developments and setbacks on multiple fronts. The experts didn't have the answers and often even the questions were faulty. The residents could only rely on themselves and the assistance of Welfare Rights. What was initially lacking in sophistication of technique was often made up for in flexibility of approach and ability to exploit opportunities. The relationship between Welfare Rights and the residents and the allocation of responsibilities was worked out as issues arose. Although the function of Welfare Rights was a legal one, the case would not have been possible if it had operated on a traditional solicitor-client model because Welfare Rights would have been unable to allocate the resources needed and unable to do much of the non-legal work. Teamwork between solicitor and client is also still attempted as a philosophy of the Centre. Welfare Rights tries to be careful not to appropriate the client's matter. With Lennox, Welfare Rights became responsible for dealing with the bureaucracies, negotiating, attending meetings, preparing documents and running the legal

case. Individual residents, over time, became specialists in their chosen area, be it heritage research, press interviews, approaching consultants, meeting with politicians and lobby groups, preparing options papers, doing costings of necessary repair work, getting articles published or organising publicity events and working bees. Needless to say, the residents also became experts in surviving the long haul and just staying put. For all of these reasons, it was a home made job because it had to be. It allowed for the accrual of experience and sophistication of knowledge and enabled constant, quick revision of strategies and fall back positions while still keeping accountability strong and organisation simple.

The other lasting impression is the haunting feeling that the whole episode was an exercise in seventies' activism. Words like 'struggle', 'resistance', 'battle' often seemed as pertinent as ever. But the paths of activism chosen at the time seemed and still seem the most productive. For all the talk of spiffing new nineties' ways to get what you want, it was noticeable how little the landscape has actually changed. Of course, the question of whether there are other, better approaches, (and how to learn them) is a recurring one. Perhaps the best suggestion came back in 1992 when residents and friends of Lennox were already tired of treading the well-worn SOL (Save Old Lennox) trail. One student suggested approaching the university to run a course allocating credit points for the effort. Next year's university calendar could contain the following entry: Save Old Lennox — a two credit point, full-time course offered regularly at the ANU; teaches skills required to achieve legal and bureaucratic goals; provides hands on/on site experience in research, public relations, lobbying, resource management, law, negotiation and motivation, using the trial and error method of instruction — no tutors, no texts, lots of surprises.

### References

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2. Johnston, C., *What is Social Value*, Australian Heritage Commission, Technical Publications Series No 3., AGPS, Canberra, 1994.
3. A statutory planning document containing policies and detailed planning conditions for planning, design and development of the ACT. It contains general conditions for land use throughout the ACT and detailed planning conditions for designated areas.
4. P.M.D. Flannery Pty Ltd; May & Flannery Architects, Lennox House Statement of Cultural Significance, April 1993.
5. Ratcliffe, R. and Armes, J., *Australian National University Heritage Study*, Stage 1, Vols 1 and 2, 1993. This study assessed the heritage significance of part of the ANU campus.