

MacHall Operating Agreement & Ownership Dispute

BACKGROUND ON THE DISPUTE

In late 2012, two years before the Students' Union's (SU) current License of Occupation and Management Agreement (LOOMA) was set to expire on Dec. 9, 2014, the SU began preparing for the renegotiation of the agreement.

The LOOMA forms the current basis of the relationship between the SU and the University of Calgary Board of Governors for the management and operations of MacEwan Hall and MacEwan Student Centre (known as MacHall). The LOOMA establishes the SU as the building manager and landlord, and defines space allocations for both parties. The SU uses its space in MacHall to operate businesses which provide low-cost, high-value experiences, services, and events for students. As well, the SU uses some of its space in MSC to generate revenue to fund student programs and services by leasing to food and retail vendors.

On Apr. 17, 2013 the SU presented a draft agreement to University of Calgary President Elizabeth Cannon to serve as a starting point for the negotiations. In the summer of 2013, during the regular negotiation meetings, the university's current administration claimed the SU is a tenant in MacHall and that the new agreement to be negotiated would be a lease.

After the university's current administration attempted to diminish the SU's status from managing stakeholder to that of a tenant, it prompted the SU to review the history. The SU sought clarity on the construction, expansions, and operation of the buildings to understand the nature of the capital investments made by undergraduate students since 1969.

The SU's research uncovered a 47-year partnership with the university which began with an agreement acknowledging that the financial contributions made by each party would equate to an ownership percentage of the building with the understanding that the university would continue to be the sole owner of the land.

Since its original construction in 1967-68, the SU and the university have jointly acted as owners of MacHall. In the decade following the original agreements, the university repeatedly acknowledged the SU as majority owner of MacHall. In 1974 an agreement was reached for the SU to act as building manager. Acting as an owner and building manager, the SU made significant additional investments, took out substantial mortgages, engaged in preventative maintenance, and undertook renovations.

Beginning in 1981 the shared understanding about ownership began to erode. The preamble in the management agreements from 1981, 1986, and 1991 simply acknowledged that each side made significant "contributions" to the construction and expansion of MacHall. These management agreements omitted any reference to the joint ownership of the buildings, instead only noting the university's ownership of the land.

The current LOOMA, signed in 1999, even includes a line that commercial leases "shall be executed by [the university] as owner of the Buildings and by the Union as Manager," which implies that university is the sole owner of MacHall. However, despite extensive reviews of SU and university records, the SU has not found evidence to corroborate the view that the university is the sole owner of MacHall. Repeated requests made to the university's current administration for any relevant evidence have not produced any documents or records to validate the assertion that the university is the sole owner of MacHall.

The SU first raised the issue of ownership with the university on Oct. 23, 2013. Despite ongoing negotiations regarding the operations and management of the buildings, the two parties have been unable to reach a shared understanding.

The SU withdrew the initial draft agreement presented in April 2013 from consideration, since it did not address the SU's position as a co-owner of MacHall.

Previous university administrations have repeatedly acknowledged the SU's ownership stake in the buildings in past agreements, board motions, documents, and other official correspondence. Yet, the university's current administration's legal counsel now claims that the SU never possessed an ownership stake in MacHall. This assertion appears to reveal a major discrepancy between the documented representations originally made to the SU by past university administrations about the SU's ownership stake and the newly adopted legal position of the university's current administration. The university's current administration has not provided the SU with any evidence to support their assertion, nor have they even attempted to explain why past university officials would have made false representations to the SU about the ownership of the building.

In addition to the original 1969 agreements that detail the ownership percentages of both parties, a letter on May 14, 1974 from G.C. Swann, then Chairman of the Board of Governors reconfirmed the SU's ownership stake.

In fact, the university even resolved a previous misunderstanding about the ownership of the buildings on Nov. 21, 1978, when S.G.A. McKinnon, then Secretary of the Board of Governors, wrote a letter to the SU, again reconfirming the SU's ownership of 55% of the student centre.

Despite extensive research of SU and university records, the SU has not been to locate any agreement, record, decision or other document where the SU surrendered its ownership interest at any time.

On Sep. 23, 2014, the university's current administration provided a termination notice for LOOMA on Dec. 9, 2015, thereby extending the agreement by one year.

While detailed and extensive negotiations continued for the first four months of 2015, these discussions were ultimately fruitless. After reconfirming the SU's ownership position in the summer of 2013, the SU acted to protect its rights and to pre-emptively address any potential of a two year limitation period applying by filing a lawsuit on Apr. 28, 2015 to preserve the SU's claim to ownership. An injunction was filed to prevent the termination of the LOOMA on Dec. 4, 2015, but was pre-empted on Dec. 3, 2015 by a mutual decision to enter mediation.

The mediation agreement rescinded the termination of the LOOMA and stayed all court proceedings for the duration of the mediation period. The mediation agreement was set to expire Feb. 26, 2016. The mediation process was ultimately extended several times until it ended on Apr. 15, 2016, without resolution despite significant compromises from the SU's legal position and offers to take on additional duties and obligations at the SU's expense.

On May 5 and June 3, 2016, the court heard the SU's injunction to prevent the termination of the LOOMA. On Oct. 7, 2016 the judge ruled against the SU's application for an injunction. The university and the SU are working together to transition management of the building to the university.

At present, the ownership issue is still before the courts and could take years to resolve.

As MacHall ages and further redevelopment or expansion projects are planned, students will be called upon to make further financial contributions. The SU believes all students should have clarity about what their past, present, and future capital investments mean for MacHall's management, governance, and each side's responsibilities in the building.

Additional information available on www.mymachall.com:

- Summary of the SU's position
- Historic milestones in the ownership of MacHall
- Financial summary of investments

ABOUT THE SU

As of 2016, the University of Calgary's Students' Union (SU) is in its 74th year. The SU is an effective advocacy and service group for all undergraduate students at the University of Calgary. All undergraduate students are members of the SU. The Students' Legislative Council (SLC), the SU's governing body, is made up of five executives - the president and four vice presidents - and 19 faculty representatives, elected annually to represent students' interests. The SU's operations are supported by a professional team of staff and hundreds of student staff. As well as managing MacEwan Student Centre (MSC), the SU runs a number of businesses. All proceeds from these student-owned ventures are reinvested directly into SU programs, services, events, and advocacy to benefit students and the campus.