

York University Development Corporation (YUDC): Concerns with respect to Accountability, Transparency and Efficiency

A Report prepared by the YUFA Subcommittee on Governance
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Context:

The YUDC plays a key role in decision-making about York University real estate matters, capital projects and campus expansion. It “owns and operates” [York Lanes](#), a Keele campus centre that includes restaurants and shops, but also York University-related offices. According to its [website](#), it was responsible for “winning the competitive bid for a new university campus in Markham Centre,” participates in campus capital project planning, represents York University in municipal real estate matters, and is York’s public voice for the planned Mackenzie health complex expansion in Vaughan.

Notwithstanding the importance of its role for the university, how YUDC reports to the university administration and the Board of Governors (BOG), responsible under the York University Act for university real estate and capital projects, is unclear. The YUDC is a for-profit corporation whose sole shareholder is York University. Although the YUDC Board is composed entirely of present or former members of the York University BOG, the university considers the YUDC to be an independent entity, outside public and internal university accountability processes. The YUDC’s financial operations and their impact for York University are not disclosed in York University’s financial statements. The YUDC’s precise role in York University capital project development and its relationship with university governance structures is undefined.

Legal Status and Relationship with York University

According to the YUDC’s Articles of incorporation:

- The YUDC was incorporated in 1985 as a for profit business corporation, with one shareholder, not expressly named as York University.
- The YUDC can issue an unlimited number of common shares and these shareholders have voting rights and are eligible to receive dividends. The YUDC Board can transfer shares without the authorisation of York University.
- The YUDC Board can, without shareholder authorisation, i.e., the authorisation of York University, secure debentures, and contract debt. If the Corporation is liquidated or wound-up, the holders of the common shares participate in the distribution of its assets and debts.
- There are no restrictions on the business the Corporation may conduct or on the powers the Corporation may exercise: “it is, nevertheless, generally proposed and intended that the Corporation act on behalf of York University with respect to the development of excess university lands and facilities.” Nothing in the articles of incorporation prevents the YUDC from undertaking commercial activities in its own interests without consideration for the University’s interests and its educational mission.
- Both the YUDC and York University have argued before the courts (*YUDC v. Information and Privacy Commissioner*, 2022 ONSC 1755) that the YUDC is exempt from York University’s obligations under FIPPA.

History:

Documentation is sparse, but the [Saunders Report](#) (June 2005), provides some history:

- The YUDC was created following a recommendation in the Lapp Report to establish “a development corporation which among other things would be the instrument of the University in marketing and promoting its lands and facilities.”
- The Lapp Report also recommended the creation of “an Advisory Committee representing the University community to provide advice and views on campus development to the YUDC on a continuing basis.”
- A YUDC Advisory Council was established in 1985 “to act as a two way channel of information between YUDC and the University and to provide a forum to reflect academic and other needs of the University concerning the development and improvement of the campus; to provide advice to YUDC concerning the use and development of the University land; to seek out and actually solicit the views of individuals and interests affected by proposals for development on the campus; and to create opportunities for input for those to the committee.”
- The YUDC Advisory Council ceased to be active in 1988. In 1998, its function was integrated with that of the YUDC Board, whose number of directors was increased.

Governance Structures:

According to the latest available information on the YUDC website, the YUDC is run by the YUDC Board, composed of 8 members, including 2 independent Board members, the President & Secretary (one position) of the YUDC, and 5 other members defined as follows:

- General Counsel & University Secretary, York University
- Vice-President Finance & Administration, York University
- President and Vice-Chancellor, York University
- Chair, Board of Governors, York University
- Chair, Land and Property Committee, Board of Governors, York University

YUDC Board members listed as independent have all served as members of the York University BOG. The YUDC Board has consistently been chaired by a member of the University BOG, often a current or former Chair, including Philip Lapp, Charles Hantho (1998-2000), Joseph Sorbara (2001-2016), and Marshall Cohen (2017-), Chair of the York University BOG (2000-2009). In other words, all YUDC Board members are senior university administrators or BOG members.

The York University Confidential Professional and Managerial Employees Association (CPM) [website](#) shows that two members represent the CPM at the YUDC, but the YUDC website does not confirm their status. No faculty, staff or student union is represented at the YUDC.

Under the [York University Act](#), all authority for overseeing the use of York University property is vested in the BOG and any income and revenues from university property shall be applied only to the university’s educational purpose. There is no provision in the York University Act that allows the University or its Board to divest its control over its property or any other University interest to an independent corporation outside its control.

Reporting Structures:

On the York University website, the YUDC's status and who it reports to are unclear:

- In 2019, the YUDC was listed on the Vice-President Finance and Administration's webpage under Campus Services and Business Operations. However, YUDC reporting to the VPFA was denied by the YUDC and the University in their submissions (*YUDC v. Information and Privacy Commissioner, 2022 ONSC 1755*) to the Information and Privacy Commissioner (IPC)
- In 2018, the YUDC was presented on the York University YUDC page as "a wholly owned subsidiary of York University." In 2019, on the VPFA page, the YUDC is presented as the "University's development partner." In March 2023, the York University YUDC [webpage](#) uses only the "partner" formula" and the YUDC is not mentioned on the [VPFA's webpage](#).
- The Chair of the YUDC Board, Marshall Cohen, was listed as a member of the BOG's Land and Property Committee for 2022-2023, but his name has been removed from the [Committee's](#) webpage.

YUDC reporting structures are further complicated by the fact that the YUDC Board is composed solely of senior university administrators and BOG members, placing the YUDC Board, if and when it reports to the BOG, in the position of reporting to its own members.

Mandate and Powers:

The mandate of the YUDC has evolved over time from a consultative to a performative function:

- The Saunders Report indicates overlap between the YUDC and the Land Use Coordinating Group (LUCG), "a committee composed of members of the University administration and other faculty members which, as its name implies, dealt with issues relating to existing and future use of University property" and whose "function was to advise the President." The LUGG was replaced by the Master Planning and Facilities Committee (MPF).
- The YUDC now defines its mandate on its website as follows: "Central to YUDC's mandate is to recommend strategies to the University to unlock the value in York University's Edge Precinct Lands, representing approximately 15 million square feet of development capacity. YUDC's mandate is also to lead every aspect to implement the approved strategies from municipal approvals, to deal structure and negotiation, to deal closing, and oversight of the ensuing development."
- The university "[Policy on Capital projects](#)," revised in November 2022, gives the YUDC a virtual veto on capital projects related to non-academic services: The University "shall permit or undertake the construction of major new facilities on its property or permit or undertake major renovations to existing facilities, including leased facilities, only with the approval of the Board of Governors after due consideration by and the recommendation of: i. the President - for all academic and related projects; and ii. jointly by the President and the Chair of the board of directors of the York University Development Corporation - for non-academic projects."
- The YUDC informs planning decisions through the MPF, the Master Plan and Facilities Committee. The President of the YUDC Board is a member of the MPF. Under the [Capital Projects Procedure policy document](#), last amended in June 2012, "Prior to recommending

approval by the Board of Governors of a Major Project, the President shall seek the advice and recommendation of MPF.”

YUDC Obligations under University Policies:

Under the University policy “[Businesses and Programs Operating on York University Premises](#)” any faculty or staff member or student wishing to operate a business or program on York University premises must obtain approval from the Dean or the Assistant Vice-President, Campus Services and Business Operations (AVP-CSBO). The policy requires that projects be assessed in terms of the benefit to the University.

The YUDC does not appear to be required to report to the VPFA or VP-CBSO, or to apply these criteria of educational relevance and viability to its commercial projects. It actively seeks new [commercial tenants](#) at York Lanes without reference to York’s educational mission. No information is available on how YUDC makes decisions with respect to the allocation of space at York Lanes between commercial tenants and York University academic services, a number of which are housed at [York Lanes](#).

YUDC’s Role in Real Estate and Capital Project Decisions:

Access to documents about the decision-making processes is not simple since the minutes of the YUDC Board meetings are not available and York Board of Governor meetings are only partially open to the public. The [Saunders Report](#) and [Appendices](#) shows that the YUDC was responsible for virtually all decisions with respect to the sale of lands by York University to Tribute Homes in 2002. The YUDC informed the York University Board of Governors there would be no public bidding and solicited submissions. In documents on planning processes at the City of Toronto, Markham, and the York University Lands of Learning Project the YUDC is York University’s public presence and developer.

According to its website, the YUDC can carry out activities unrelated to York University but there appears to be no university policy requiring it to report on such activities or outlining how conflicts of interest with York University’s mission are avoided and how revenues revert to York University.

YUDC Financial Accountability:

York University financial statements do not provide information on YUDC income from York Lanes, YUDC management fees, responsibility for maintenance and capital improvements, or revenue or costs accruing to York University. The Saunders Report indicates that the YUDC received revenues from the sale of the York University lands to Tribute in 2004-2005, via a commission of 1.5% of the sale price (for a total amount over two years of \$476,550). Consulting fees of \$1.4M were paid for the sale, but no details are given as to who the consultants were, whether YUDC was considered a consultant.

The YUDC has an office at York University and 9 employees are listed in the York University Directory, but no information is available about whether the YUDC pays rent or contributes to overhead for technical support or who pays the salary for its employees. .

Overlap with York University Services and Use of Outside Consultants:

Several York University services have functions appearing to overlap with those of the YUDC, including [Campus Planning, Design & Construction](#) (CPDC) that provides capital project design and feasibility studies, and construction project development support. The CPDC falls under the Assistant Vice-President, Facilities Services. AVP-F). It is unclear how the Office of the AVP-F coordinates with the YUDC or how functions are attributed between the CPDC or the YUDC.

The Saunders Report shows that the YUDC makes substantial use of outside consultants: Fees of \$1.4M were paid to several consultants in the context of the sale of York lands to Tribute. The YUDC website does not disclose YUDC's use of outside consultants. The University does not provide an assessment of the cost-effectiveness of the YUDC model vs internal services.

Conclusions:

An analysis of the YUDC based on its articles of incorporation and information available on the York University website identifies several governance concerns with respect to accountability, transparency, and efficiency:

- Given the overlapping membership between the BOG and the YUDC Board, the YUDC appears to function as a mini-BOG determining BOG policy on land use and capital projects. However, as a corporation, it operates outside the BOG governance structure under the York University Act. This considerably reduces accountability and transparency for the university community with respect to decisions about university land and capital projects.
- It is unclear how the YUDC reports to the University, and how its work is monitored. There appear to be no procedures for ensuring that the YUDC's activities, including activities unrelated to York University, do not conflict with the University's educational mission and interests.
- The YUDC does not appear to be subject to university policies with respect to the obligation to evaluate the academic value of a commercial service or project before proceeding. How it allocates space at York Lanes between academic-related services and commercial tenants is unclear.
- In the absence of financial information, it is impossible to assess YUDC assets and liabilities and the university responsibility for them. It is also impossible to evaluate the efficiency and cost-effectiveness of the YUDC compared to the use of internal services, some of whom appear to overlap with YUDC functions.
- The YUDC is a for-profit corporation whose sole shareholder is York University, a non-profit organisation, raising the questions whether an organisation receiving donations as a non-profit be the sole shareholder of a for-profit corporation, directly involved in the non-profit organisation's activities.