

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

CORPORATION OF THE CANADIAN CIVIL LIBERTIES ASSOCIATION  
AND LESTER BROWN

Applicants

and

TORONTO WATERFRONT REVITALIZATION CORPORATION, CITY OF  
TORONTO, HER MAJESTY IN RIGHT OF ONTARIO as represented by the  
MINISTER OF INFRASTRUCTURE, HER MAJESTY IN RIGHT OF  
CANADA as represented by the MINISTER OF COMMUNITIES AND  
INFRASTRUCTURE, AND THE ATTORNEY GENERAL OF CANADA

Respondents

APPLICATION under sections 2, 6(1) and 6(2) of the *Judicial Review Procedure Act*, R.S.O. 1990, c. J.1, as amended, and sections 2, 7, 8 and 24 of the *Charter of Rights and Freedoms*.

**AFFIDAVIT OF MICHAEL BRYANT  
SWORN MAY 21, 2019**

I, MICHAEL BRYANT, of the City of Toronto, in the Province of Ontario, MAKE OATH AND SAY:

1. I am the Executive Director and General Counsel of the Applicant, the Corporation of the Canadian Civil Liberties Association ("CCLA"), and, as such, have knowledge of the matters contained in this affidavit. On matters where I do not have direct knowledge, I have stated the source of my information and believe it to be true. Where the source of my information is my counsel, I do not waive the privilege that attaches to my other solicitor-and-client communications.

## Overview

2. Waterfront Toronto and Sidewalk Labs have entered into agreements to develop and build a "smart city" neighbourhood at Quayside (the "**Quayside Project**"), an approximately 12-acre, under-developed plot on Toronto's eastern waterfront within walking distance of downtown Toronto. Quayside sits adjacent to 880 acres of under-developed lands known as the Eastern Waterfront.

3. According to its Framework Agreement, the stated objective of Sidewalk Labs and Waterfront Toronto is the "creation of the world's first urban district planned and executed at scale from the 'internet up'".<sup>1</sup> Quayside is said therein to be "Phase 1". Sidewalk Labs states that "Waterfront Toronto has set the stage for Quayside to become an initial testbed and a dynamic site for experimentation."<sup>2</sup> Sidewalk Labs states that they will deploy the ideas it tests in the "living laboratory" of Quayside to scale across the Eastern Waterfront and then globally.<sup>3</sup>

4. The stated means of achieving the aforementioned objective is to build a digital layer into the physical infrastructure of the neighbourhood. A network of sensors and other connected technologies will be deployed throughout Quayside to enable "ubiquitous sensing".<sup>4</sup> The sensors will be embedded in city infrastructure like streetlights, traffic lights, roads and buildings.<sup>5</sup> Based on Sidewalk Labs published statements in its SL RFP Response (defined below), it is my belief that they will capture personal data from anyone who lives in, works at or enters Quayside.

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<sup>1</sup> See Framework Agreement, s. 10, at Exhibit 12

<sup>2</sup> See SL RFP Response (as defined below), p 40, at Exhibit 11

<sup>3</sup> See SL RFP Response (as defined below), pp 20, 22 and 31, at Exhibit 11

<sup>4</sup> See SL RFP Response (as defined below), p 72, at Exhibit 11

<sup>5</sup> See SL RFP Response (as defined below), pp 18, 28, 72, 129, 146, 167, at Exhibit 11

## Key Players

5. The CCLA is an independent, non-partisan, national organization. Since its creation in 1964, the CCLA has been Canada's national civil liberties organization, defending and promoting the rights and freedoms of Canadians. The CCLA has appeared as a public interest litigant or intervener before all levels of the Court in Ontario and Canada. In this proceeding, the CCLA seeks standing as a public interest litigant.

6. I am the Executive Director of the CCLA, a position I have held since January, 2018. I am a barrister and solicitor, and a member of the Law Society of Ontario since 1996. From 1999 to 2009, I was an elected Member of Legislative Assembly of Ontario for the riding of St. Paul's in mid-town Toronto. During that time, I served on the Executive Council as, *inter alia*, Attorney General, Minister of Aboriginal Affairs, Minister Responsible for Democratic Renewal and Minister of Economic Development. Previously, I clerked for the Rt. Hon. Beverley McLachlin and practiced law at McCarthy Tetrault LLP and Norton Rose Fulbright LLP; obtained a B.A. and M.A. from the University of British Columbia, a J.D. from Osgoode Hall Law School and an LL.M from Harvard where I studied public law and policy; co-authored *Public Law* (Carswell) with Hon. Lorne Sossin; and taught constitutional law at King's College, London (UK) and Osgoode Hall Law School.

7. The Toronto Waterfront Revitalization Corporation ("**Waterfront Toronto**") was incorporated on November 1, 2001 under the Ontario *Business Corporations Act*. It is continued as a corporation without share capital pursuant to the *Toronto Waterfront Revitalization Corporation Act, 2002*. A copy of the corporate profile report for Waterfront Toronto is attached as **Exhibit 1**.

8. In March 2000, the Toronto Waterfront Revitalization Task Force recommended that the governments of Toronto, Ontario and Canada jointly create a development company to revitalize Toronto's waterfront in part to support Toronto's bid for the 2008 Summer Olympics. Waterfront Toronto was created following those recommendations. I attach a copy of the Task Force's report as **Exhibit 2**.

9. Waterfront Toronto's board of directors (the "**WT Board**") is composed of directors appointed by each level of government: four by each of Canada, Ontario and the City of Toronto. The Chair of the WT Board is appointed by Ontario Lieutenant Governor in Council upon agreement by all three levels of government..

10. Sidewalk Labs LLC ("**Sidewalk Labs**") was formed in 2015. It is a limited liability corporation under the laws of the State of Delaware headquartered in New York City. Sidewalk Labs is a sibling of Google LLC ("**Google**") and a subsidiary of Alphabet Inc. ("**Alphabet**"). Sidewalk Labs describes itself as "an Alphabet company that uses new technology to address big urban challenges" by bringing together urbanists with technologists.<sup>6</sup> Sidewalk Labs promises to "deliver its parent company's unparalleled expertise" at Quayside.<sup>7</sup>

11. Alphabet is a Delaware corporation headquartered in Mountain View, California. Its shares are traded on the NASDAQ stock exchange under the symbols "GOOGL" and "GOOG". I attach as **Exhibit 3** Alphabet's annual report (Form 10-K) for the fiscal year ended December 31, 2018. Alphabet had a market capitalization as of June 29, 2018 of \$680 billion.

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<sup>6</sup> <https://sidewalktoronto.ca/>

<sup>7</sup> See SL RFP Response (as defined below), slide 16. at Exhibit 11

12. Alphabet is a collection of businesses, the largest of which is Google. As of December 31, 2018, Alphabet had earned gross revenues of US \$136.8 billion (and net income of US \$30.7 billion), 85% of which were from advertising. Alphabet states that the "goal of our advertising business is to deliver relevant ads at just the right time and to give people useful commercial information, regardless of the device they're using", and that "machine learning and artificial intelligence (AI) are increasingly driving many of our latest innovations."<sup>8</sup>

13. The City of Toronto is a municipal corporation continued under the *City of Toronto Act, 2006* (Ontario) and governed by elected councillors who make up the Toronto City Council.

14. The Ontario Minister of Infrastructure governs the Ontario Ministry of Infrastructure on the Executive Council of Ontario, pursuant to the *Ministry of Infrastructure Act, 2011* (Ontario).

15. The federal Minister of Infrastructure, Communities and Intergovernmental Affairs governs Infrastructure Canada in Cabinet, pursuant to the *Canada Strategic Infrastructure Fund Act* (Canada).

### **Waterfront Toronto**

16. It is the CCLA's position that Waterfront Toronto is an atypical public institution lacking both the necessary accountability and the necessary statutory powers to undertake a project outside of its statutory purpose. Most government enterprise corporations are either a Crown agency, or its shareholder is the Crown or Municipality. By statute, Waterfront Toronto is neither. Its board cannot contain a federal, provincial or municipal government employee, and cannot hold elected public office, save for two board members.

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<sup>8</sup> Alphabet Annual Report 10-K, at p 3, at Exhibit 3

17. The 2002 legislative committee hearings into Bill 151 raised these issues of insufficient accountability and insufficient powers, particularly for projects unforeseen by the legislature in 2002. In particular, during legislative committee hearings into Bill 151, the Toronto Board of Trade stated:

AT THE OUTSET, I WOULD LIKE TO CLEARLY CONVEY OUR CONCERN WITH THE LEGISLATION. IN OUR VIEW, THE AUTHORITY VESTED IN THE CORPORATION IS MUCH WEAKER THAN IT SHOULD BE. ... TO THAT END, WE URGE YOU TO AMEND BILL 151 IN THREE WAYS: FIRST, ENSHRINE THE CORPORATION'S POWERS IN THE LEGISLATION SO THAT IT CAN BE RESPONSIVE TO CHANGE OVER A 25-YEAR TIME HORIZON; SECOND, CREATE THE STRONG, POWERFUL CORPORATION REQUIRED TO SUCCESSFULLY IMPLEMENT THE WATERFRONT PLAN; AND, THIRD, BALANCE THESE CONSIDERABLE POWERS WITH STRONG ACCOUNTABILITY MEASURES.

18. I attach a copy of the Official Report of Debates (Hansard) of the standing committee on finance and economic affairs on November 28, 2002 as **Exhibit 4**.

19. It is the CCLA's position that Waterfront Toronto was designed as a pragmatic real estate planning vehicle, to better coordinate formal approvals of tri-partite real estate transactions. I am not aware of any indication in the record that the Ontario Legislative Assembly contemplated that Waterfront Toronto would have the authority to govern a technology project like the Quayside Project, entailing data surveillance by an entity (Alphabet) whose annual revenues exceed that of the entire Government of Ontario.

20. I attach the following publicly available documents that are relevant to the history and scope of authority of Waterfront Toronto:

- (a) as **Exhibit 5**, a copy of the City Staff Report by the Deputy City Manager of the City of Toronto to the Executive Committee on January 16, 2018, which sets out the history of Waterfront Toronto, and is available on the City Council website, <https://www.toronto.ca/legdocs/mmis/2018/ex/bgrd/backgroundfile-110745.pdf>;

- (b) as **Exhibit 6**, a copy of the Memorandum of Understanding between City of Toronto, Toronto Economic Development Corporation and Waterfront Toronto dated 2006, which is referenced in the City Staff Report and Plan Development Agreement;
- (c) as **Exhibit 7**, a copy of Waterfront Toronto's Governmental Accountability Framework dated April 6, 2017, which describes the role of the Intergovernmental Steering Committee ("**IGSC**");
- (d) as **Exhibit 8**, a copy of Waterfront Toronto's Investment and Real Estate Committee Mandate and the Minutes of the WT Board on June 13, 2017 approving this mandate; and
- (e) as **Exhibit 9**, a copy of Waterfront Toronto's Freedom of Information Policy, where Waterfront Toronto states that it is not subject to freedom of information legislation.

### **Waterfront Toronto's Request for Proposals**

21. On March 17, 2017, Waterfront Toronto issued a Request for Proposals seeking an "Innovation and Funding Partner" for Quayside, a copy of which I attach as **Exhibit 10** (the "**RFP**"). Waterfront Toronto asked proponents to realize fully the benefits of emerging technologies including the Industrial Internet of Things, analytics, and artificial intelligence to support data-informed decision-making for residents, visitors, investors, employers and service

providers.<sup>9</sup> It also asked proponents to develop "legal frameworks (e.g. intellectual property, privacy, data sharing)".<sup>10</sup>

22. Quayside is an area bounded by Lakeshore Boulevard on the north, Bonnycastle Street on the west and Queens Quay Boulevard on the south, and borders on Parliament Street on the east. Waterfront Toronto owns most of the lands in Quayside. The City of Toronto and Toronto Economic Development Corporation own parcels in Quayside totalling approximately 1.5 acres. Plaza Corp and the Royal Canadian Yacht Club own parcels totalling 0.8 acres.<sup>11</sup>

23. I am not aware of any public consultations by Waterfront Toronto before it issued the RFP and began the process of creating a smart city in Toronto.

24. On September 12, 2017, Waterfront Toronto selected Sidewalk Labs as the successful proponent.

25. In its response to the RFP, Sidewalk Labs wrote "Welcome to Quayside, the world's first neighborhood built from the internet up."<sup>12</sup> Sidewalk Labs wrote that it planned to use Quayside as a "global testbed",<sup>13</sup> stating "what happens in Quayside will not stay in Quayside", as the "ideas first tested there will take on new life when deployed at scale across the Eastern Waterfront district".<sup>14</sup> The "Visions Sections of Sidewalk Labs' RFP Submission" ("**SL RFP Response**") was posted on <https://sidewalktoronto.ca/> on October 17, 2017 and is attached as **Exhibit 11**.

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<sup>9</sup> RFP, p 8, at Exhibit 10

<sup>10</sup> RFP, p 17, at Exhibit 10

<sup>11</sup> City Staff Report, pp 6-7 and Attachment 1, at Exhibit 5

<sup>12</sup> SL RFP Response, p 15, at Exhibit 11

<sup>13</sup> SL RFP Response, p 15, at Exhibit 11

<sup>14</sup> SL RFP Response, p 15, at Exhibit 11



### **The Framework Agreement**

26. On October 16, 2017, Waterfront Toronto entered into the Framework Agreement with Sidewalk Labs and Sidewalk Toronto, Limited Partnership ("**Sidewalk Toronto**") to develop and implement a master innovation development plan ("**MIDP**") "for Quayside and the Eastern Waterfront (and any Additional Lands) for the creation of the world's first urban district planned and executed at scale 'from the internet up'".<sup>15</sup>

27. Sidewalk Toronto was then a newly created affiliate of Sidewalk Labs and was designated under the Framework Agreement as the "Master Developer", responsible for developing and implementing the MIDP (s. 3). I attach a copy of the Framework Agreement as **Exhibit 12**, the partnership reports for Sidewalk Toronto collectively as **Exhibit 13** and the corporation reports for Sidewalk Master Developer GP, Ltd. (Sidewalk Toronto's general partner) collectively as **Exhibit 14**.

### **The Plan Development Agreement**

28. On July 31, 2018, Waterfront Toronto and Sidewalk Labs entered into the Plan Development Agreement ("**PDA**") to work collaboratively, diligently and in good faith to jointly prepare the MIDP, which will be "co-created" (sections 1.05(a) and (b)).

29. Waterfront Toronto agreed that the MIDP will include plans for both Quayside and the "MIDP Site", which is the entire designated waterfront area of approximately 2,600 acres (Schedule B, s. 1.03 and Schedules A and E). The PDA superseded the Framework Agreement. A copy of the PDA is attached as **Exhibit 15**.

30. Terms of the PDA include:

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<sup>15</sup> Framework Agreement, s. 10, at Exhibit 12

- (a) the MIDP will be subject to the approval of Waterfront Toronto and Sidewalk Labs (s. 3.01(a));
- (b) the PDA will terminate on the occurrence of specified events or dates, including September 30, 2019 if Waterfront Toronto and Sidewalk Labs have not approved the MIDP, and December 31, 2019 if the "Principal Implementation Agreements" between Waterfront Toronto and Sidewalk Labs to implement the MIDP have not been approved by Waterfront Toronto and Sidewalk Labs (s. 9.01(a)(v) and (vi)); and
- (c) Waterfront Toronto will not be liable to Sidewalk Labs for any amounts if the PDA terminates in accordance with its terms (s. 9.01(b)), the forthcoming termination deadline being September 30, 2019.

31. Sidewalk Labs also confirmed its commitment in the Quayside Agreements to move Google's Canadian headquarters to Quayside or the Eastern Waterfront.<sup>16</sup>

32. Schedule I of the PDA addresses Digital Governance Framework Principles. Section 2 states that "access by and *potential ownership* of data [non-personal data captured at Quayside] by Waterfront Toronto, the City of Toronto, Province of Ontario or Government of Canada or other such third parties as deemed appropriate by the Parties [emphasis added]" will be addressed by Sidewalk Labs through the MIDP.

33. On July 31, 2018, Waterfront Toronto issued a press release announcing the signing of the PDA and releasing copies of the PDA and the Framework Agreement (collectively, the

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<sup>16</sup> Framework Agreement, s. 28, at Exhibit 12; PDA, Schedule B. at Exhibit 15

"Quayside Agreements"). I believe this was the first time that Waterfront Toronto released the Framework Agreement to the public. I attach as **Exhibit 16** a copy of this press release.

34. On May 1, 2018, the Respondent governments agreed to provide \$1.185 billion in funding toward flood protection of the Port Lands. This commitment is referred to as the "Second Contribution Agreement" in the PDA (s. 4.01(a)(i)) and was a condition of Sidewalk Labs' "Second Funding Commitment" to spend up to US \$40 million for the development and completion of the MIDP (s. 5.02(b)). I attach as **Exhibit 17** a press release issued by the Ontario Ministry of Infrastructure regarding this commitment.

#### **Waterfront Toronto-Sidewalk Labs Agreements: No Government Involvement or Oversight**

35. In his City Staff Report on January 16, 2018, the Deputy City Manager wrote that Waterfront Toronto only shared the Framework Agreement "with staff of the three levels of government on a confidential basis after it was approved by the Waterfront Toronto Board of Directors" and after the Sidewalk Toronto announcement.<sup>17</sup>

36. Waterfront Toronto also entered into the PDA without seeking the input or involvement or approval of the City of Toronto. In a letter dated July 23, 2018 to Waterfront Toronto, the Interim City Manager wrote:

City staff have not been involved in any way in initiating the process which led to this agreement or negotiating its terms...The PDA will not be presented to Council for debate or approval, and City staff do not have the benefit of any direction by Council. Nothing in the PDA or in this letter should be construed as binding the City in any way or in any way changing the prevailing relationship between Waterfront Toronto and the City of Toronto, or conferring on Sidewalk Labs any authorities, roles and relationships accorded to Waterfront Toronto

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<sup>17</sup> City Staff Report, p 1, at Exhibit 5

under the prevailing *framework created by legislation, the MOU and various council decisions* [emphasis added].

I attach a copy of this letter as **Exhibit 18**. I am advised by my counsel that they were provided with a copy of this letter by Professor Mariana Valverde, FRSC, of the University of Toronto.

37. As I discuss below, the Auditor General also made findings that Waterfront Toronto did not collaborate, involve or consult with the Respondent governments on the RFP and the Quayside Agreements.

38. Further, as of this writing, no bill or regulation has been introduced by federal or Ontario governments that address the unique privacy and data governance<sup>18</sup> issues raised by ubiquitous and intensive data capture regime proposed for Quayside by Sidewalk Labs. On February 26, 2019, Toronto City Council “direct[ed] the Chief Information Officer and the City Clerk, in consultation with appropriate City staff, to develop a City-wide policy framework and governance model associated with digital infrastructure, such as smart cities, and a work plan for implementation.”<sup>19</sup> No further decisions by City Council have resulted from the latter to date, to my knowledge.

### **Surveillance at Quayside**

39. Sidewalk Labs states that it will build a digital layer into the physical infrastructure of Quayside that will include a "Sense" component.<sup>20</sup> A network of varied sensors will be distributed throughout the neighbourhood to capture personal and non-personal data.<sup>21</sup> The sensors will include low-bandwidth thermometers, air monitors, radar, Lidar, location services

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<sup>18</sup> By data governance, I am referring to the issues surrounding the collection, retention, control, ownership, use, disclosure, residency, and security of data captured at Quayside.

<sup>19</sup> Motion and City Council Decision adopted February 26, 2019, at Exhibit 46

<sup>20</sup> SL RFP Response, p 17, at Exhibit 11

<sup>21</sup> SL RFP Response, p 17-18 and 72-73, at Exhibit 11

and high-resolution cameras that capture millions of pixels dozens of times per second.<sup>22</sup> I attach as **Exhibit 19** a copy of Quayside Civic Labs Information Sheet #1. Quayside Civic Labs is a forum hosted by Waterfront Toronto for discussion of issues related to digital governance and intellectual property.

40. Sidewalk Labs states that these sensors will be embedded in public infrastructure such as traffic lights, buildings, roads and bridges. Sidewalk Labs will provide "ubiquitous connectivity" to achieve "ubiquitous sensing" in the neighbourhood.<sup>23</sup>

41. Sidewalk Labs states that this digital layer will also include a "Model" component to be developed by Sidewalk Labs. It will consist of algorithms and machine learning techniques that could process the mass of data captured by ubiquitous sensing to analyze and predict human behaviour. In its RFP response, Sidewalk Labs explained that "[m]odelling how people make choices about where to live, where to shop, whether to own a car, or how to travel place to place are key concerns for urban planners".<sup>24</sup>

42. Based on the foregoing and Sidewalk Labs' draft Quayside Site Plan dated November 2018, attached as **Exhibit 20**, it is the CCLA's position that anyone (including the 5,000 residents that Sidewalk Labs estimates will live in Quayside) within Quayside will therefore be perpetually subject to 360°, always-on data capture: Quayside will be an immersive surveillance environment. It is the CCLA's position that such an immersive surveillance environment is unprecedented in Canada.

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<sup>22</sup> SL RFP Response, p 72, at Exhibit 11

<sup>23</sup> SL RFP Response, p 72 and 16, at Exhibit 11

<sup>24</sup> SL RFP Response, p 74, at Exhibit 11

### Privacy and digital data governance at Quayside

43. On October 4, 2018, Saadia Muzaffar, the founder of TechGirls Canada, resigned from Digital Strategic Advisory Panel ("**DSAP**"), an independent panel of appointed experts to guide Waterfront Toronto on data privacy, digital systems, and the safe and ethical use of new technologies at Quayside.<sup>25</sup> Ms. Muzaffar cited concerns about Waterfront Toronto's "utter lack of leadership", "shaky public trust and social license" and "squandered opportunities to take ownership of the narrative that would clarify the boundaries between who is in charge of how this 'partnership' [with Sidewalk Labs] unfolds". I attach a copy of Ms. Muzaffar's resignation letter as **Exhibit 23**.

44. On October 19, 2018, Ann Cavoukian, Ontario's former Information and Privacy Commissioner, resigned as a consultant to Sidewalk Labs. In that latter, she states:

- "I imagined us creating a Smart City of Privacy, as opposed to a Smart City of Surveillance."
- "Just think of the consequences: If personally identifiable data are not de-identified at source, we will be creating another central database of personal information (controlled by whom?), that may be used without data subjects' consent, that will be exposed to the risks of hacking and unauthorized access."
- "As we all know, existing methods of encryption are not infallible and may be broken, potentially exposing the personal data of Waterfront Toronto residents! Why take such risks?"

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<sup>25</sup> Waterfront Toronto announced the formation of DSAP in a press release issued on April 27, 2018. To date, DSAP has held 9 meetings. I attach a copy of the press release as **Exhibit 21**, and as **Exhibit 22** a USB key containing the meeting materials for the DSAP meetings currently available on the Waterfront Toronto website and the Quayside Civic Labs materials dated March 26, 2019 titled "Realizing the Value of Data Civic Lab".

A copy of Ms. Cavoukian's resignation letter to Sidewalk Labs is not in my possession. Portions of it were quoted in published reports, copies of which are attached collectively as **Exhibit 24**. A published report of expected resignations of other members of the Digital Advisory Panel is attached as **Exhibit 25**.<sup>26</sup>

45. Similar concerns were also recently expressed by the Sidewalk Toronto Residents Reference Panel in its Final Report dated May 8, 2019. The Residents Reference Panel describes itself as an informed group of Torontonians who represent a range of neighborhoods and perspectives who were randomly selected to advise Sidewalk Labs and Waterfront Toronto on the Quayside Project. In its Final Report, the Residents Reference Panel wrote that many Torontonians do not have a basic level of data literacy, and that "[w]e are concerned about the potential for community members' data to be collected by third parties without their knowledge, and used in ways which harm those providing the data". The Residents Reference Panel also stated that "solutions should ensure the right to be forgotten".<sup>27</sup> I attach a copy of this report as **Exhibit 26**.

46. Published reports of similar privacy and accountability concerns regarding the Quayside Project are voluminous. I attach a sample of collection of these reports as **Exhibit 27**.

### **Civic Data Trust**

47. On October 15, 2018, Sidewalk Labs published an article titled "An Update on Data Governance for Sidewalk Toronto", in which it proposed that an independent civic data trust be created to exercise stewardship and management over "urban data", which it defines as data

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<sup>26</sup> Article: Waterfront Toronto advisers threaten resignations ahead of key Sidewalk Labs project meeting, dated October 17, 2018, at Exhibit 25

<sup>27</sup> Final Report and Recommendations of the Sidewalk Toronto Residents Reference Panel, slide 48, at Exhibit 26

collected from a physical spaces in a city. The article denied that Sidewalk Labs and Quayside "are intended to be a data source for Google". I attach as **Exhibit 28** a copy of Sidewalk Labs' article and as **Exhibit 29** Sidewalk Labs' presentation titled Digital Governance Proposals for DSAP Consultation dated October 2018, which was included as a hyperlink in the article.

48. I believe this was the first time that Sidewalk Labs publicly committed to pursuing a so-called "independent data trust." Sidewalk Labs' previous presentations on their Responsible Data Use Framework dated May 1, 2018 and June 7, 2018 do not refer to a civic data trust. I attach these presentations as **Exhibits 30** and **31**.

49. While Sidewalk Labs stated that "[b]y default, companies, organizations or individuals will not sell Urban Data containing personal information to third parties or use it for advertising purpose", it has *not* made the same commitment for de-identified data captured at Quayside. Instead, Sidewalk Labs has said that "[a]ll de-identified Urban Data gathered in the public realm will be made open, free, and available in the public domain by default..."<sup>28</sup> It is the CCLA's position that Sidewalk Labs has preserved its right and the right of other parties to use, sell and monetize de-identified<sup>29</sup> data captured at Quayside.

50. In November 2018, Waterfront Toronto engaged MaRS Solutions Lab ("**MaRS**") to develop a "Primer" on a civic data trust.<sup>30</sup> According to the minutes of DSAP meeting #6 on December 13, 2018, MaRS advised that the purpose of the engagement is to "synthesize and clarify a topic that is still relatively abstract and provide a foundation of information that can be

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<sup>28</sup> Digital Governance Proposals for DSAP Consultation dated October 2018. Slide 9, at Exhibit 29

<sup>29</sup> "De-identification" is the general term for the process of removing personal information from a record or data set, whether at source (i.e., at the point of collection, before the data is stored or shared), or later.

<sup>30</sup> DSAP Meeting #6 Minutes, found in DSAP Meeting #7 Materials, p 8, which I attach as **Exhibit 32**



used to spark future discussion."<sup>31</sup> I attach collectively as **Exhibit 33** the current version of the Primer, which I understand was published on January 18, 2019 at <https://marsdd.gitbook.io/datatrust/>.

51. MaRS states that the "Primer is meant to provide an easy to read and reliable introduction to civic digital trusts", "[t]his is a conversation that Toronto, Canada is just starting to have"<sup>32</sup> and "[c]ivic digital trusts are a relatively new idea, and our understanding of how they work is evolving rapidly."<sup>33</sup> MaRS acknowledges that "*Governments...* should be the conveners and facilitators of this conversation, as they have the formal authority and a duty of care [emphasis added]".<sup>34</sup> It also acknowledges that "[l]egislation in Ontario...is limited to allow the creation of a legal trust with open-ended beneficiaries, so new legislation maybe (sic) required to set up a new kind of legal entity."<sup>35</sup>

52. The members of DSAP at meeting #7 on January 17, 2019 stated that "[p]lacing all of the privacy/governance concerns on an entity that does not yet exist is not an appropriate solution."<sup>36</sup> In published reports, former Ontario Privacy Commissioner Ann Cavoukian's cited the refusal of Sidewalk Labs to guarantee de-identification of data at source for the so-called civic data trust as prompting her resignation.

It was only at the meeting that Cavoukian realized "de-identification at source" was not a guarantee. "When Sidewalk Labs was making their presentation, they said they were creating this new civic data trust which will consist of a number of players — Sidewalk, Quayside, Waterfront Toronto and others — and that Sidewalk Labs would encourage them to de-identify the data involved that was collected but it would be up to the group to

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<sup>31</sup> DSAP Meeting #6 Minutes, found in DSAP Meeting #7 Materials, p 9, at Exhibit 32

<sup>32</sup> Primer – A Primer on Civic Digital Trusts, at Exhibit 33

<sup>33</sup> Primer – About This Primer, at Exhibit 33

<sup>34</sup> Primer – Broad Citizen and Stakeholder Engagement, at Exhibit 33

<sup>35</sup> Primer – Concerns and Open Questions, at Exhibit [33]

<sup>36</sup> DSAP Meeting #7 Minutes, found in DSAP #8 Meeting Materials, which I attach as **Exhibit 34**

decide," she told The Star Saturday. "That's where I just said no." I attach as **Exhibit 35** a copy of this article.<sup>37</sup>

### **Auditor General Report on Waterfront Toronto**

53. On December 5, 2018, Ontario's Auditor General, Bonnie Lysk, tabled the 2018 Annual Report in the Legislative Assembly of Ontario, which included a report on Waterfront Toronto (the "**Auditor's Report**") The Auditor General is an independent officer of the Legislative Assembly of Ontario who has a public duty to conduct value-for-money and financial audits of the provincial government, its ministries and its agencies, including Waterfront Toronto. I attach a copy of the Auditor's Report as **Exhibit 36**.

54. The Auditor General made findings regarding Waterfront Toronto's conduct in the Quayside Project, including:

- (a) The RFP was not conducted in a fair or open manner as Waterfront Toronto provided more information to Sidewalk Labs than it did to the other proponents who responded. Waterfront Toronto had frequent communications with Sidewalk Labs before it issued the RFP. In August 2016, Waterfront Toronto entered into a non-disclosure agreement with Sidewalk Labs in order to receive information from Sidewalk Labs. Waterfront Toronto provided surveys, drawings, topographic illustrations of the waterfront area of Toronto and other materials to Sidewalk Labs. On September 16, 2016, Waterfront Toronto led Sidewalk Labs on a guided tour of the waterfront area.<sup>38</sup>

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<sup>37</sup> Article: Privacy expert steps down from advisory role with Sidewalk Labs, dated October 20, 2018, at Exhibit 35

<sup>38</sup> Auditor's Report, pp 652 and 689-690, at Exhibit 36

- (b) Waterfront Toronto did not consult the City of Toronto on the RFP or the selection of the successful bidder.<sup>39</sup> The Mayor's Office had "almost no information about the project" according to an internal Waterfront Toronto email 3 weeks before the Framework Agreement was signed.<sup>40</sup>
- (c) The full WT Board was provided with the Framework Agreement on Friday, October 13, 2017 and asked to approve it at a special meeting held on Monday, October 16, 2017 at 9:00 a.m. despite the fact that the Investment and Real Estate Committee of the WT Board had not approved the project. The directors were not provided with sufficient time to review the agreement. Nonetheless, the majority of the directors approved the Framework Agreement on October 16, 2017, with two directors absent and one, Julie Di Lorenzo, dissenting.<sup>41</sup> (Julie DiLorenzo resigned from the WT Board effective July 30, 2018.) I attach a copy of Julie DiLorenzo's resignation letter from the WT Board dated July 30, 2018 and letter to the Standing Committee on Access to Information, Privacy and Ethics of the House of Commons of February 28, 2019 as **Exhibit 37**, and the minutes of the special meeting of the WT Board on October 16, 2017 as **Exhibit 38**, respectively.
- (d) The WT Board felt it was "urged – strongly" by the federal and provincial governments to approve the Framework Agreement as soon as possible.<sup>42</sup>

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<sup>39</sup> Auditor's Report, p 693, at Exhibit 36

<sup>40</sup> Auditor's Report, p 689, at Exhibit 36

<sup>41</sup> Auditor's Report, pp 690-691, at Exhibit 36

<sup>42</sup> Auditor's Report, p 691, at Exhibit 36

- (e) The public announcement of the Framework Agreement on October 17, 2017 by the Prime Minister, Premier, Mayor and Chair of Alphabet Inc. was scheduled on October 12, 2017, one day before the WT Board received a copy of the Framework Agreement on October 13, 2017.<sup>43</sup>
- (f) Waterfront Toronto failed to adequately consult the appropriate representatives of the Respondent governments. Waterfront Toronto did not (i) brief the IGSC - a body made up of members from each level of government that is responsible for oversight and governance of Waterfront Toronto - on the RFP until three months after it was issued, (ii) advise the IGSC of its decision on September 12, 2017 to select Sidewalk Labs until October 12, 2017 (five days before the public announcement) or (iii) provide a signed copy of the Framework Agreement to the IGSC until November 2, 2017 (over two weeks after it had been signed).<sup>44</sup>

55. The Auditor General recommended that the Ontario government (in consultation with the City of Toronto and the Canadian government):<sup>45</sup>

- (a) reassess whether it is appropriate for Waterfront Toronto to make commitments and finalize a long-term partnership arrangement with Sidewalk Labs or whether a separate governance structure is needed that allows for more direct provincial oversight; and
- (b) to protect the public's interest, establish the policy framework, through legislation, for the development of a smart city in Ontario that addresses intellectual property;

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<sup>43</sup> Auditor's Report, p 691, at Exhibit 36

<sup>44</sup> Auditor's Report, p 689, at Exhibit 36

<sup>45</sup> Auditor's Report, p 695, at Exhibit 36

data collection, ownership, security and privacy; legal; and consumer protection issues.

56. The Auditor General also stated that prior to issuing the RFP, Waterfront Toronto had primarily handled traditional mix-use developments and that as a result it had limited experience in digital data infrastructure development.<sup>46</sup>

57. Following the release of the Auditor's Report, Ontario's Minister of Infrastructure dismissed three Ontario directors who were appointed to the WT Board: Helen Burstyn (Chair), Michael Nobrega (Interim CEO) and Meric Gertler. I attach as **Exhibit 39** a related news article.

58. In late February 2019, Ontario's Minister of Infrastructure appointed Andrew MacLeod, Patrick Sheils, Kevin Sullivan and Christopher Voutsinas to the WT Board. I attach a copy of the Minister of Infrastructure's news release issued on February 28, 2019 as **Exhibit 40**.

### **Waterfront Toronto has effectively ceded control over the project to Sidewalk Labs**

59. On November 1, 2017, Sidewalk Labs' Chief Executive Officer, Daniel L. Doctoroff, and Waterfront Toronto's then-Chief Executive Officer, Will Fleissig, published a commentary in the Toronto Star (attached as **Exhibit 41**) in which they wrote, in part:

Since our announcement of Sidewalk Toronto, people keep asking us the same question: When will this neighbourhood of the future be finished? The answer is we don't know, because we are just beginning our public conversation around the vision. The plan is something we will spend the next year co-creating with the city and the local community.

60. It is the CCLA's position that Sidewalk Labs has effectively been left to devise its own rules. While we acknowledge that Waterfront Toronto must agree to them, in light of the asymmetry of information and resources available to Sidewalk Labs as compared to Waterfront

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<sup>46</sup> Auditor's Report, p 689, at Exhibit 36

Toronto, and the short period provided for review, the CCLA is concerned that Sidewalk Labs has been put in the position of being essentially self-regulating. The CCLA is not alone in its concern on this front. For example, the Chair of Waterfront Toronto stated in a published report the following at the March 21, 2019 board meeting: "I can advise the board that we have all been somewhat frustrated over the last few months that Sidewalk Labs has chosen to continually provide the media with elements of the plan ... but yet has not delivered that plan, particularly the business terms, to Waterfront Toronto as has been promised." I attach as **Exhibit 42** a copy of this report.<sup>47</sup>

### **Meaningful Consent to Data Surveillance at Quayside is Impossible**

61. It is the CCLA's position that the surveillance mechanisms spread throughout Quayside would necessarily lack meaningful consent to the capture of individuals' personal information.

This position is based upon the following:

- (a) the Guidelines for obtaining meaningful consent, which was published by the Office of the Privacy Commissioner of Canada in May 2018, attached as **Exhibit 43**
- (b) the MaRS Primer:<sup>48</sup> "In a smart city, where sensors are embedded in roads, streetlights and public spaces, it becomes difficult, if not impossible, for private sector organizations to obtain meaningful consent from individuals. It can also be challenging for municipal governments and other public sector institutions to give meaningful notice to individuals."
- (c) Sidewalk Labs has conceded that "[i]ndividual consent is hard to achieve in public or publicly accessible spaces..."<sup>49</sup>

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<sup>47</sup> Article: Waterfront Toronto 'frustrated' over Sidewalk Labs publicly speaking on financial plans, board chair says, dated March 21, 2019, at Exhibit 42

<sup>48</sup> Primer – The Need to Govern the Digital Layer, at Exhibit 33

<sup>49</sup> Digital Governance Proposals for DSAP Consultation dated October 2018, slide 14, at Exhibit 29

**The proposed consultation will not address the gaps in the legal framework**

62. Waterfront Toronto issued a press release on April 11, 2019 (a copy of which I attach as **Exhibit 44**) stating that it would release the MIDP to the public for comment within one week of receiving it from Sidewalk Labs. It is the CCLA's position, however, that this consultation will not address what we regard as gaps in the legal framework.

63. To my knowledge, there is no statute or regulation or city ordinance in effect, expected or expected to come into effect prior to the release of the MIDP, that specifically addresses the data privacy issues raised by the Sidewalk Labs' project. The current state of the legal framework has been described as follows:

- (a) Sidewalk Labs states that the existing legislation does not deal with ownership of "urban data" and does not apply to de-identified "urban data".<sup>50</sup>
- (b) The Deputy City Manager of the City of Toronto states in his report on January 16, 2018 that the scope, scale and implications of data collection at Quayside and proposed technologies "will require...potentially the adoption of new policies, regulations and structures".<sup>51</sup>
- (c) Waterfront Toronto states that "governments across the world have been developing new regulatory frameworks to respond to the unprecedented amount of data that public institutions and private companies have been amassing about individuals".<sup>52</sup>

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<sup>50</sup> Article: An Update on Data Governance for Sidewalk Toronto, dated October 15, 2018, at Exhibit 28

<sup>51</sup> City Staff Report, p 15, at Exhibit 5

<sup>52</sup> Quayside Civic Labs Information Sheet #2, which I attach as **Exhibit 45**

- (d) On February 26, 2019, City Council approved a motion presented by WT Board member and Councilor Joe Cressy to develop a City-wide policy framework and governance model associated with digital infrastructure, such as smart cities, and a work plan for implementation. I attach a copy of the motion and City Council's decision collectively as **Exhibit 46**. Councillor Cressy states the following on his website:<sup>53</sup>

..if private partners are going to pursue tech-focused projects in our city, Toronto needs to first develop its own vision. We need to decide how data should be collected, managed and used to ensure it's in the best interest of all. We must lead so our partners can follow.

I also attach a commentary that Councillor Cressy co-authored in the Toronto Star on February 25, 2019 titled "Toronto should provide the leadership on data and smart cities, not private companies" as **Exhibit 47**.

- (e) The Residents Reference Panel observed in its Final Report (at Exhibit [26]) that "regulation and public oversight are not keeping up with the rapid pace of technological innovation" and that "this is important because new technologies, when adopted at scale, can create unintended consequences, which could ultimately hinder the success of an endeavour or cause harm".<sup>54</sup>
- (f) Dr. Andrew Clement, Professor Emeritus of the Faculty of Information Studies, University of Toronto, and a member of the DSAP, gave a public lecture outlining a variety of concerns, including the regulatory vacuum at present. I attach his presentation as **Exhibit 48**, and the video file of his lecture as included in the

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<sup>53</sup> [http://www.joecressy.com/data\\_governance\\_and\\_smart\\_cities](http://www.joecressy.com/data_governance_and_smart_cities)

<sup>54</sup> Final Report and Recommendations of the Sidewalk Toronto Residents Reference Panel, slide 44, at Exhibit 26



USB key at Exhibit [22] and a certified transcription of his lecture as **Exhibit 49**.

The slide deck and the video file are publicly available.

### **The CCLA's Open Letter**

64. On March 5, 2019, I, together with Dr. Brenda McPhail, the CCLA's Director of Privacy, Technology & Surveillance, issued an open letter to Prime Minister Justin Trudeau, Premier Doug Ford and Mayor John Tory setting out the CCLA's concerns and objections regarding the Quayside Project. A copy of our open letter is attached as **Exhibit 50**.

65. In a letter stamped April 15, 2019, which the CCLA received on April 18, 2019, Francois-Phillipe Champagne, Canada's Minister of Infrastructure and Communities wrote to me and Dr. McPhail in response to our open letter. A copy of Mr. Champagne's letter is attached as **Exhibit 51**.

66. No other responses from the Respondents have been received to date, other than from Waterfront Toronto (below).

### **Correspondence with Waterfront Toronto**

67. On March 27, 2019, Kristina Verner of Waterfront Toronto wrote to me in response to the CCLA's Open Letter. A copy of Ms. Verner's letter is attached as **Exhibit 52**.

68. After we commenced this proceeding, I wrote to Stephen Diamond, the Chair of the WT Board, on April 18, 2019 both in response to Mr. Verner's March 27, 2019 letter and in response to public comments made by Waterfront Toronto. A copy of my letter is attached as **Exhibit 53**.

69. Later on April 18, 2019, Meg Davis, Waterfront Toronto's Chief Development Officer wrote to me in response to my letter to Mr. Diamond. I attach a copy of Ms. Davis' letter and my email response as **Exhibits 54** and **55** respectively.

### **Public Interest Standing**

70. On behalf of the CCLA, I respectfully request that this Court grant the CCLA standing to bring this proceeding as a public interest litigant. I believe that the CCLA meets the test for public interest standing for reasons that include the following:

- (a) The Quayside Project will result in breaches of individuals' privacy rights and Charter rights. The Supreme Court of Canada has recognized privacy as fundamental to an individual's dignity and autonomy in a democratic society. I believe the questions raised in this proceeding are important.
- (b) Protecting the rights and freedoms of Canadian citizens goes to the heart of the CCLA's mandate, one that it has been pursuing since 1964. The CCLA has a genuine interest in the issues that are before this Court.
- (c) This proceeding is a reasonable and effective way for the issues to be brought before the Court as (i) given its mandate and experience, the CCLA has the expertise to bring this proceeding, (ii) the issues raised in this proceeding transcend the interests of the parties, (iii) the CCLA is not aware of any separate, similar proceedings that have been brought against the Respondents and (iv) the issues that in this proceeding will have a direct impact on all individuals who will live in, work in or visit Quayside.

71. I also attach as **Exhibit 56** a list of cases in which the CCLA has been granted intervener status and as **Exhibit 57** a list of cases relating to privacy in which the CCLA has intervened.

### **Urgency**

72. In the December 13, 2018 DSAP materials, Waterfront Toronto published a Current MIDP Timeline (which I attach as **Exhibit 58**) indicating that the MIDP would be published for consultation at the end of Q1 2019. However, the MIDP has not been publicly released as of this date.

73. I believe that Waterfront Toronto expects to receive a copy of the MIDP in early June 2019, based upon the following information: in an interview published by The Logic on or about April 11, 2019 (which I attach as **Exhibit 59**), the current chair of the WT Board, Stephen Diamond, said that he believes that the MIDP will be issued in early June 2019.


74. The PDA terminates automatically if the MIDP is not approved by Waterfront Toronto or Sidewalk Labs by September 30, 2019, pursuant to section 9.01(a)(v) of the PDA, unless the parties agree otherwise.

75. It is the CCLA's position that the PDA and MIDP operating within the existing regulatory vacuum risks irreparable harm to privacy rights at Quayside and the surrounding areas, if the MIDP is approved, no matter the contractual representations and warranties therein. Kurtis McBride, the CEO and founder of Miovision and a DSAP member, explained the urgency of this issue at a DSAP meeting by expressing: "[g]iven the relative rigidity of the architecture, it

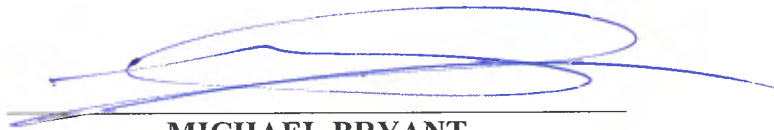
is essential that the right decisions are made, since the policy environment that surrounds the architecture will endure for decades."<sup>55</sup>

76. I swear this affidavit in support of the CCLA in this proceeding.

SWORN BEFORE ME at the City of Toronto, in the Province of Ontario, on May 21, 2019

  
\_\_\_\_\_  
Commissioner for Taking Affidavits  
(or as may be)

**Karl Douglas Hopland, a Commissioner, etc.,  
Province of Ontario, while a Student-at-Law.  
Expires May 3, 2020.**

  
\_\_\_\_\_  
**MICHAEL BRYANT**

RCP-E 4D (July 1, 2007)

<sup>55</sup> See Minutes of DSAP Meeting #6, found in DSAP Meeting #7 Materials, p 11, at Exhibit 32