

**ONTARIO
SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT**

BETWEEN:

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 APRIL 29, 2020**

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.
2. I swear this affidavit further to my affidavits sworn on May 21, 2019 and December 2, 2019, in response to the affidavit of Kristina Verner sworn on January 17, 2020 and to outline

M.B.

some of the developments that have taken place with the Quayside Project since Ms. Verner swore her affidavit.

3. Capitalized terms that I do not define below will have the meanings I attributed to them in my first affidavit.

4. Despite the developments in the Quayside Project since my first two affidavits (which I discuss below), the position of the CCLA has not changed. The risk of harm to Canadians' rights and liberties that the Quayside Project poses remain as real and imminent as at the start of this litigation. As I said at paragraph 70(a) of my first affidavit:

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.

I stand by this statement. Nothing that has happened since I made this statement compels me to alter it.

5. I attach as **Exhibit "1"** a copy of Waterfront Toronto's 2018/2019 Annual Report.

6. On December 11, 2019, Waterfront Toronto's senior management appeared before the Standing Committee on Public Accounts of the Legislative Assembly of Ontario to answer questions arising from the Auditor General's Report released in December 2018. This Committee is empowered to review and report to the Legislative Assembly its observations, opinions and recommendations on the Report of the Auditor General and the Public Accounts.¹

¹ <https://www.ola.org/en/legislative-business/committees/public-accounts/parliament-42/mandate>

M. G. B.

7. As I explained in my first affidavit, the Auditor General of Ontario had raised serious assurance and jurisdictional concerns about the manner in which Waterfront Toronto had selected Sidewalk Labs as the successful RFP proponent and entered into the Quayside Agreements. I attach as **Exhibit "2"** a copy of the transcripts from the December 11th hearing before the Committee.

8. Waterfront Toronto created the Evaluation Committee for Quayside. It is made up of three representatives from Waterfront Toronto's management, one external member, and two consultants. Its mandate was (a) to review Waterfront Toronto's assessment of Sidewalk Labs' MIDP and (b) to ensure that Waterfront Toronto is properly prepared should it decide to enter into negotiations with Sidewalk Labs on a final contract for the Quayside Project.

9. The Evaluation Committee issued its 10-page "Quayside Evaluation Report" dated on January 16, 2020, a copy of which is attached as **Exhibit "3"**.

10. In its report, the Evaluation Committee approved Waterfront Toronto's evaluation of the MIDP and concluded that no further evaluation was required. It also recommended that Waterfront Toronto proceed to the negotiation phase with Sidewalk Labs.

11. Ms. Verner states at paragraphs 8, 74 and 76 of her affidavit that no decisions have been made on the innovations that may be pursued at Quayside and that the Framework Agreement, PDA and MIDP do not crystalize these innovations.

M. Verner

12. I note, however, that the Evaluation Committee supported Waterfront Toronto's conclusion that 143² of the 160 innovations proposed by Sidewalk Labs in the MIDP should be pursued at Quayside.

13. On February 18, 2020, Waterfront Toronto released a "Discussion Guide" before a one-day public consultation meeting on the MIDP that it held at the Westin Harbour Castle Hotel, Toronto, on February 29, 2020. I attach a copy of the Discussion Guide as **Exhibit "4"**.

14. The Discussion Guide summarizes the results of Waterfront Toronto's technical evaluation of the MIDP and "key considerations that will inform Waterfront Toronto's...decision on whether to move forward with this proposal and partner with Sidewalk Labs..."

15. In the Discussion Guide, Waterfront Toronto explains that it translated the MIDP into 160 innovations, of which 59 involve digitally-enabled solutions that collect and use data. It concludes that, after careful review, Waterfront Toronto supports 144 of the 160 innovations, including all 58 digitally-enabled solutions.

16. On February 26, 2020, DSAP published its Supplemental Report on Sidewalk Labs' Digital Innovation Appendix. A copy of the Supplemental Report is attached as **Exhibit "5"**.

17. On March 26, 2020, Waterfront Toronto's Board of Directors approved a resolution to amend the PDA to extend the deadline for approval of the MIDP from May 20, 2020 to June 25, 2020. Waterfront Toronto and Sidewalk Labs subsequently entered into an Amending Agreement dated April 14, 2020 that extended this deadline. Copies of the resolution and Amending Agreement are attached as **Exhibit "6"**.

² Waterfront Toronto later clarified in the Discussion Guide that the Evaluation Committee had approved 144 of these innovations.

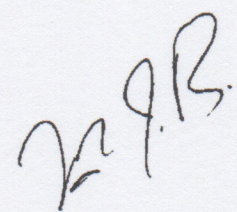
18. On April 15, 2020, Professor Andrew Clement, a member of DSAP, authored an "Opinion" in NOW magazine, entitled "Toronto still in the dark on Google's digital plans for smart city". Professor Clement describes Sidewalk Labs' digital vision for Quayside as "algorithmic management based on a ubiquitous sensor network" that will continuously generate fine-grained data, much of it personal. I bring this article to the Court's attention as it discloses significant concerns regarding the Quayside Project from a distinguished member of DSAP, whose "mandate ... is to provide Waterfront Toronto with objective, expert advice", according to Waterfront Toronto.³ A copy of Professor Clement's Opinion is attached as **Exhibit "7"**.

19. In its Notice of Motion dated January 17, 2020, Waterfront Toronto seeks to strike out the privacy harms that underlie this application on the alleged basis that such harms are premature and speculative.

20. In fact there are privacy harms to individuals who will live in, work at or visit Quayside. The harms result from the unprecedented pervasive and continuous data capture that Sidewalk Labs has planned, through its agreements with Waterfront Toronto, for Quayside. The harms raise a matter of profound public interest. These privacy harms are thus essential to the factual and legal grounds of the application that the Applicants have brought.

21. In January 2020, I learned that one of the expert witnesses engaged by the Applicants, Professor Zeynep Tufecki, had sustained an injury in late 2019, and had advised our lawyers that she would no longer be able to participate in this proceeding. I attach as **Exhibit "8"** a copy of a letter dated February 25, 2020 from Dr. Jennifer Megan M. Patterson, an orthopedic surgeon, concerning Professor Tufecki's injury.

³<https://www.waterfronttoronto.ca/nbe/portal/waterfront/Home/waterfronthome/about-us/who-we-are/digital+strategy+advisory+panel+members>



22. The Applicants' lawyers engaged Professor Ellen Goodman as an expert on behalf of the Applicants to replace Professor Tufekci on February 21, 2020. Professor Goodman is a lawyer and professor in the area of information policy, law, and digital governance, focusing especially on digital infrastructure and data analytics.

23. Ms. Verner is correct when she states at paragraph 84 of her affidavit that the CCLA has not provided any comments in writing to Waterfront Toronto about the Quayside Project during what Waterfront Toronto has characterized as a public consultation process. There is a good reason for this. The matter is before the Court. The CCLA elected not to participate in Waterfront Toronto's public consultations while this proceeding, commenced on April 16, 2019, is pending. The CCLA has, however, continued to actively monitor the progress of the Quayside Project, including Waterfront Toronto's public consultation sessions, and have served on Waterfront Toronto our comments through our court filings, including my affidavits.

24. In my second affidavit, sworn December 2, 2019, I referred to a tentative agreement between the Applicants and Waterfront Toronto to bifurcate this proceeding. The Applicants would proceed first with our judicial review, while preserving the right to pursue our *Charter* challenge if necessary in a future hearing (para 12).

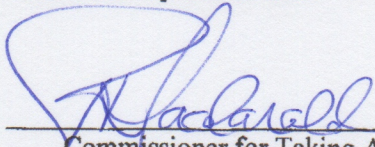
25. This tentative agreement was not finalized.

26. On March 5, 2020, our counsel advised Waterfront Toronto's counsel that the Applicants were withdrawing our bifurcation cross-motion. It was no longer necessary, given the scope of Waterfront Toronto's motion served January 17, 2020, which aims to strike out all the privacy harms that are essential to the factual and legal grounds of this application. Our counsel

MJB.

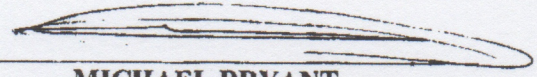
explained this in the correspondence to Waterfront Toronto's counsel attached as exhibits to the affidavit of Chloe Eng sworn April 27, 2020.

SWORN BEFORE ME by videoconference
at the City of Toronto in the Province of
Ontario, on April 29, 2020.



Commissioner for Taking Affidavits
(or as may be)

ROBERT MACDONALD / LSO# 60512B



MICHAEL BRYANT