

Supplemental Report on Smart Cities and Democratic Rights

New Democratic Party

Introduction

In the course of the Committee's study into the Privacy of Digital Government Services, the Committee heard evidence on the related issue of the controversial "smart city" project being developed by the Alphabet subsidiary Sidewalk Labs on Toronto's waterfront.

The project is a response to a Request for Proposals from Waterfront Toronto, a corporation jointly established by the Governments of Canada, Ontario and Toronto and responsible for the development of the city's waterfront, seeking an Innovation and Funding Partner to develop a 12-acre plot of land called Quayside.

Since Waterfront's joint announcement with Sidewalk Labs in October 2017, which additionally included its parent company Alphabet, the Government of Canada, the Government of Ontario and the City of Toronto, the "smart city" project has been dogged by controversy, from a report from the Auditor General of Ontario that raised serious questions about the project to a spate of resignations from advisory positions within both Sidewalk Labs and Waterfront Toronto.

The concerns raised include the protection of residents' privacy, the process through which Sidewalk Labs was granted the opportunity to develop a Master Innovation and Development Plan and the surveillance capitalism business model of Sidewalk parent company Alphabet.

It is now facing serious resistance from a coalition of Torontonians organizing as Block Sidewalk.

New Democrats recommend that:

1. The Government of Canada suspend engagement with and commitment to Sidewalk Labs until a final, detailed plan is submitted to Waterfront Toronto, the City of Toronto, the Province of Ontario and the federal government.
2. Any "smart city" projects in Canada begin with a public consultation of residents' needs and desires;
3. Be continuously oriented towards addressing these real needs and desires;
4. Include citizen input and design as thoroughly as possible;
5. Any "smart city" project ultimately cannot be deployed to serve a surveillance capitalism business model.

Concerns with Process – Request for Proposals

The Quayside development has faced serious questions from the beginning about the process used to select Sidewalk Labs as the potential innovation and funding partner awarded the opportunity to present Waterfront Toronto with a Master Innovation and Development Plan.

Waterfront Toronto's original request for proposals (RFP), entitled "Request for Proposals: Innovation and Funding Partner for the Quayside Development Opportunity" was issued on March 17, 2017, and specified a submission deadline of April 27, 2017.¹ This is six weeks, or 30 business days.

A "smart city" project is an enormous undertaking, and indeed, this project would be the first of its kind and scope in Canada. It involves complicated questions about data collection and privacy, governance and democratic accountability, intellectual property, and land use, to name a few. As the Auditor General of Ontario noted in her 2018 audit of Waterfront Toronto, "respondents were given six weeks to respond to a complex request for proposal – in comparison to 10 weeks previously been given to respondents for public art projects in the West Don Lands."² The Auditor General's Report further noted that Waterfront Toronto had previously had RFP submission periods of "11 weeks for a construction manager for Port Lands flood protection and 25 weeks for a developer to lead the construction of a single office building."³ She ultimately concluded that "six weeks was not enough time for respondents to respond to [the] RFP."⁴

On the February 21st, 2019, meeting of the Committee, Waterfront Toronto's Chief Development Officer, Meg Davis, told the Committee that the RFP period was 159 days. Sidewalk Labs' Chief Executive Officer, Dan Doctoroff, also told the Committee this during his appearance before the Committee on April 2nd, 2019.

Despite these claims, Waterfront Toronto did not apparently raise this matter with the Auditor General of Ontario in the course of her value-for-money audit of the organization, and she duly reported that the RFP period was only six weeks, as noted above. Likewise, Waterfront Toronto did not note their objections to this interpretation of events in their formal responses to the Auditor General included in her Report. A statement from the interim CEO of Waterfront Toronto, Michael Nobrega, issued in response to the Auditor General's Report, also made no reference to the brevity of the RFP and made no attempt to contest the Auditor General's determination that the submission period was six weeks long.⁵

Mr. Kent, a Conservative member of this Committee, raised in questions to Mr. Doctoroff that other parties submitting responses to the RFP were aware only of the 30-day period specified in Quayside's original RFP. This view was not contradicted by Mr. Doctoroff.

New Democrats believe that Waterfront Toronto and Sidewalk Labs' insistence that the RFP period was 159 days is in contradiction to their own documents, the understanding of other respondents, the

¹ Waterfront Toronto, "Quayside Request for Proposals: Innovation and Funding Partner for the Quayside Development Opportunity," March 17, 2017, page 1.

<https://waterfronttoronto.ca/nbe/wcm/connect/waterfront/3f21abe9-a5bb-4665-8cd3-322e1e13811f/Waterfront+Toronto+-+RFP+No.+2017-13.pdf?MOD=AJPERES&CACHEID=3f21abe9-a5bb-4665-8cd3-322e1e13811f>

² Auditor General of Ontario, 2018 Annual Report, "Chapter 3.15: Waterfront Toronto," 651.

³ Auditor General, "Waterfront Toronto," 690.

⁴ Ibid., 690.

⁵ Waterfront Toronto, "Statement by Waterfront Toronto Interim CEO Michael Nobrega Regarding the Report of Ontario's Auditor General," December 5th 2018.
<https://waterfronttoronto.ca/nbe/portal/waterfront/Home/waterfronthome/newsroom/newsarchive/news/2018/december/statement+from+waterfront+toronto+regarding+ontario+auditor+general+report>

Auditor General of Ontario's report, and contemporary coverage of the process in the media, and is not credible.

The Auditor General's critical role of performing detailed oversight is indispensable in our system of government. It is not enough to casually contradict a report of the Auditor General, particularly after the fact as Waterfront Toronto and Sidewalk Labs both did. This has undermined our confidence in the project and should trouble Torontonians and Canadians.

Given the power and scope of Alphabet as a corporation, and the oft-noted public concerns about the technological and governance aspects of this project, these contradictions are not acceptable.

Further, given the complexities surrounding "smart city" projects noted above and given that Sidewalk Labs noted in its submissions to the Auditor General that they see their commitment to Toronto "as a twenty-plus year undertaking," the short RFP was in itself inappropriate.

New Democrats believe that any "smart city" project should involve deep and proactive consultation with residents, a lengthy period to develop plans and respond to concerns in the public sphere, and a thorough understanding on the part of residents, civic officials and the public precisely of what is being agreed to at every step of the process before deals are signed.

Finally, it is unclear to New Democrats that Waterfront Toronto, which per s. 13(3) of its enabling legislation, the *Toronto Waterfront Revitalization Corporation Act*, must be finally wound up by order of the Lieutenant Governor of Ontario-in-Council no later than 2028, is an appropriate body to be entering the public into a generational commitment such as a long-term "smart city" project with so many unknowns.

Concerns with Process – Approval of Framework Agreement

In her Report, the Auditor General noted that Waterfront Toronto "did not adequately consult with any levels of government regarding the Sidewalk Labs project." Instead of consultation with relevant provincial ministries and federal and municipal departments, she said, "this was being discussed at a senior political level."⁶ She further notes that "the Board felt it was being 'urged – strongly' by the federal and provincial governments to approve and authorize the Framework Agreement with Sidewalk Labs as soon as possible," that the Board itself only had one day to consider and approve the agreement, and that an announcement of the approved agreement with the Prime Minister, the Premier of Ontario, the Mayor of Toronto and the Executive Chairman of Alphabet had already been scheduled for October 17th on October 12th, "the day before the Board received the final Framework Agreement for review and approval."⁷

Though the Auditor General did not provide more detail on the nature of these discussions at a senior political level, she also found that the 2017 RFP seeking an innovation and funding partner was not consistent with the objectives and priorities laid out in Waterfront Toronto's 2014-2023 Strategic Plan, and that Waterfront Toronto's own Intergovernmental Steering Committee rebuked the organization in

⁶ Auditor General, "Waterfront Toronto," 652.

⁷ Ibid., 690-1.

a November 2017 meeting for not providing adequate time to Waterfront Toronto's Board in advance of major decisions.⁸

In her submission to our Committee, Ms. Julie Di Lorenzo, a past board member of Waterfront Toronto and the Chair of the Board's Investment and Real Estate Committee (IREC) who resigned over the organization's handling of the Sidewalk Toronto project, noted serious concerns about the approval process for the original October 2017 framework agreement and inaccuracies in Waterfront Toronto's testimony to our Committee about the same.

In her letter, she says that she dissented on a vote to approve the framework agreement because IREC, which Ms. Davis of Waterfront Toronto claimed before our Committee on February 21st, "[had] reviewed every clause and every comma and [had] been helping the team negotiate," was only provided with a copy of the agreement four business days prior to the meeting of the full Board.⁹ The Board approved the agreement without IREC's recommendation, and as Ms. Di Lorenzo notes, in normal proceedings, "if the lead subcommittee chair opposes a motion, that is sufficient grounds to suspend further action until the concerns at least permit a fulsome consideration of that chair's concerns. That the Chair of the Investment and Real Estate Committee dissented on an investment and real estate project vote is extraordinary."¹⁰

Ms. Di Lorenzo also stated that Ms. Davis' claim before our Committee that there was only one vote against the framework agreement at the meeting of the full board on October 16th was, while technically accurate, not a fair characterization. Ms. Di Lorenzo states that there were two absent members who did not provide a vote by proxy, and another member of the board abstained. As she puts it, "the lead subcommittee chair on the board dissented, two members were absent, and one Board Member abstained. Contrary to Ms. Davis' characterization of the meeting, in fact, the board vote on the motion reflected a distinct *lack* of consensus by Waterfront Toronto, which was clearly divided and uninformed over such a historic, consequential agreement with no reasonable time to review and contemplate the impacts of said agreement."¹¹

Ms. Davis told our Committee that the Investment and Real Estate Committee had had several meetings about the agreement in advance of its unveiling, but Ms. Di Lorenzo calls this "misleading."¹² She states that in her experience as chair of that committee that "those meetings were not about the actual Framework Agreement since the actual agreement was not available until Thanksgiving weekend 2017. The meetings of the IREC Committee prior to the Thanksgiving weekend 2017 were about various Waterfront Toronto business items such as affordable housing, high level briefings on the potential agreement, but not the Framework Agreement itself."¹³ This is corroborated by the Auditor General's report, which states that the "Committee received an overview of the principles and draft terms of the

⁸ Ibid., 688-9.

⁹ Ms. Meg Davis, Oral Testimony to the Standing Committee on Access to Information, Privacy and Ethics, February 21, 2019.

¹⁰ Julie Di Lorenzo, "Brief to the Standing Committee on Access to Information, Privacy and Ethics," May 9, 2019, page 2. <https://www.ourcommons.ca/Content/Committee/421/ETHI/Brief/BR10470671/br-external/DiLorenzoJulie-e.pdf>

¹¹ Di Lorenzo, "Brief," 2.

¹² Ibid., 4.

¹³ Ibid., 4.

Framework Agreement about one month prior to the submission of the agreement to Board for approval.”¹⁴

As noted above, the Sidewalk Labs “smart city” project is a generational commitment for the City of Toronto and for Canadians. The procedural irregularities in Waterfront Toronto’s approval process for the Framework Agreement and the inconsistencies in their testimony before our Committee have served to undermine New Democrats’ confidence in this project.

Surveillance Capitalism and Democracy

This Committee recently heard a great deal of evidence from leading experts on what is increasingly often called surveillance capitalism and the risks it poses to citizens’ democratic rights, both through a business model that is fundamentally an affront to human autonomy and the new institutional and market power of its leading practitioners, which include companies such as Alphabet, Facebook and Amazon.

Dr. Shoshana Zuboff, professor emerita at the Harvard Business School and the author of *The Age of Surveillance Capitalism: The Fight for a Human Future at the New Frontier of Power*, defined surveillance capitalism before our Committee as “a comprehensive, systemic economic logic that is unprecedented in our experience,” in that it “claims private human experience for the market dynamic.”¹⁵

In previous modes of capitalism, Dr. Zuboff argues, capital took “something that exists outside the marketplace and [brought] it into the market dynamic for production and sale. Industrial capitalism famously claimed nature for the market dynamic, to be reborn as land or real estate that could be sold or purchased.” Surveillance capitalism, she argues, “claims private human experience for the market dynamic.”¹⁶

Dr. Zuboff further elaborated that under surveillance capitalism, “private human experience is repurposed as free raw material. These raw material[s] are rendered as behavioural data. Some of these behavioural data are certainly fed back into product and service improvement, but the rest are declared a behavioural surplus identified for their rich predictive value.”

This “behavioural surplus” is, through the application of machine learning technology, turned into what Dr. Zuboff calls a “prediction product,” which is “sold into a new kind of marketplace that trades exclusively in human futures. The first name of this marketplace was online targeted advertising. The human predictions that were sold in those markets were called click-through rates. Zoom out only a tiny bit and what you understand is that the click-through rate is simply a fragment of a prediction of a human future.”

These are ultimately used by the platforms able to leverage economies of scope and scale to offer refined predictive and even determinative (i.e. behavioural modification) services to their customers.¹⁷

¹⁴ Auditor General, “Waterfront Toronto,” 690.

¹⁵ Dr. Shoshana Zuboff, Oral Testimony to the Standing Committee on Access to Information, Privacy and Ethics, May 28, 2019.

¹⁶ Zuboff, Oral Testimony, May 28, 2019.

¹⁷ Ibid.

Ultimately, Dr. Zuboff argued, the model's objective is "to have surveillance capitalism's computational analysis which favours its own commercial outcomes replace democracy and governance as we know it."¹⁸ Mr. Roger McNamee, an early Facebook investor and expert on Silicon Valley, corroborated this, saying that for surveillance capitalists, "behavioural manipulation is the goal."¹⁹

Dr. Zuboff suggested that the way for legislators and regulators to address the harms caused by surveillance capitalism is to "devise strategies that interrupt and in many cases outlaw surveillance capitalism's foundational mechanisms. This includes the unilateral taking of private human experience as a free source of raw material and its translation into data. It includes the extreme information asymmetries necessary for predicting human behaviour. It includes the manufacture of computational prediction products based on the unilateral and secret capture of human experience."²⁰

On smart cities, Dr. Zuboff said that "The frontier [of surveillance capitalism] is the smart city. If it can conquer the smart city, it can conquer democratic society. Right now, the war is being waged in Toronto. If Canada gives Google, that is, Alphabet—Sidewalk Labs now goes out of its way to claim that it is not Google—Toronto, a blow will be struck against the future possibilities of a democratic society in the 21st century." On Sidewalk specifically, Dr. Zuboff further described it as "a reincarnation of a kind of absolutist tyranny that we thought we had left behind us in the 18th century, now served with cappuccino and draped in ones and zeroes," through a "direct bypassing of democracy in order to impose their vision, which ultimately is aimed at their own narrow commercial purposes."²¹

Mr. Jim Balsillie, the founder and former CEO of Research in Motion, also told the committee that "technology is disrupting governance, and if left unchecked could render liberal democracy obsolete. ... Technology is becoming the new fourth estate and our system of checks and balances. This makes technology co-equal with the executive, the legislative and the judiciary." Mr. Balsillie further stated specifically that "Canadians are currently in a historic battle for the future of our democracy with a charade called Sidewalk Toronto."²²

Mr. McNamee said specifically of Sidewalk Toronto that he "wouldn't let them within 100 miles of Toronto. The fundamental issue here is one of self-governance and self-determination. I just don't believe that any business—not Google, not anybody—should be in the business of operating our public spaces and our civic infrastructure. There is a limit to what you can do with a public-private partnership, and that is way over the line."

He further stated that he is "still cautious about the gathering of the data [in a smart city] in the first place. I believe that the underlying issues relative to surveillance create too many temptations for people, and at the moment it is way too difficult to monitor what they're doing with the data once it's

¹⁸ Ibid.

¹⁹ Mr. Roger McNamee, Oral Testimony to the Standing Committee on Access to Information, Privacy and Ethics, May 28, 2019.

²⁰ Zuboff, Oral Testimony, May 28, 2019.

²¹ Ibid.

²² Mr. Jim Balsillie, Oral Testimony to the Standing Committee on Access to Information, Privacy and Ethics, May 28, 2019.

collected.” Mr. McNamee also recommended looking at Barcelona’s ongoing “smart city” project as a potential alternative model.²³

New Democrats believe that surveillance capitalism as a business model poses a serious risk to democratic government and human autonomy. Further, they take the specific concerns of Dr. Zuboff, Mr. McNamee and Mr. Balsillie about the uncertainties and risks of the Sidewalk Toronto project seriously and believe that Torontonians are well within their rights to demand better for themselves and their community.

The services and conveniences that “smart city” visions hold out are not themselves inimical New Democrats believe that a responsible “smart city” project built democratically from the ground up has great promise.

The surveillance capitalism business model of Sidewalk’s parent company Alphabet, however, as well as the concerns over process detailed above, leave them with no choice but to say that the Government of Canada, the Government of Ontario and the City of Toronto should be very skeptical of this project and take great care before making any long-term commitments on their citizens’ behalf.

²³ McNamee, Oral Testimony, May 28, 2019.