

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

B E T W E E N :

**POORKID INVESTMENTS INC., THE COACH PYRAMIDS INC.,  
and BRIAN HAGGITH**

Applicants

- and -

**SOLICITOR GENERAL OF ONTARIO SYLVIA JONES, ONTARIO  
PROVINCIAL POLICE COMMISSIONER THOMAS CARRIQUE,  
ONTARIO PROVINCIAL POLICE CHIEF SUPERINTENDENT  
JOHN CAIN, ONTARIO PROVINCIAL POLICE INSPECTOR  
PHILIP CARTER and HER MAJESTY THE QUEEN IN THE RIGHT  
OF ONTARIO**

Respondents

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**RESPONDING APPLICATION RECORD**

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September 24, 2021

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ONTARIO**

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Court File No. CV 21-00000012-0000

*Courts of Justice Act*

LV/as

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- - - - -

This is the Cross-Examination of DAVID THOMPSON, on his Affidavit sworn the 29th day of June, 2021, taken via videoconference at the offices of VICTORY VERBATIM REPORTING SERVICES INC., 222 Bay Street, Suite 900, Toronto-Dominion Centre, Toronto, Ontario, on the 9th day of August, 2021.

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A P P E A R A N C E S:

PETER MURRAY -- for the Applicants

DANIEL HUFFAKER -- for the Respondents

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1 --- upon commencing at 9:55 a.m.

2

3 DAVID THOMPSON, affirmed

4 CROSS-EXAMINATION BY MR. HUFFAKER:

5 1. Q. Good morning, Mr. Thompson. My  
6 name is Daniel Huffaker. I'm a lawyer with the  
7 Ministry of the Attorney General of Ontario. I'm  
8 here this morning to ask you a few questions  
9 about the affidavit that you swore in this  
10 proceeding.

11 A. Yes, good morning, Counsel.

12 2. Q. You swore an affidavit on June  
13 29th, 2021; is that correct?

14 A. Yes, that's correct.

15 3. Q. Do you have a copy of that  
16 affidavit in front of you?

17 A. Yes, I do.

18 4. Q. Fantastic. And I take it, you  
19 are familiar or you have reviewed the *Crown*  
20 *Liability and Proceedings Act, 2019*?

21 A. Yes, I have.

22 5. Q. I may refer to it, from time to  
23 time, as the *CLPA*. You are aware that the *CLPA*  
24 requires leave to commence proceedings, including  
25 certain kinds of claims against the Crown, or an

1 officer, or an employee of the Crown; correct?

2 A. Yes, I am.

3 6. Q. And you are aware that Mr.  
4 Murray's firm represents the plaintiffs in a  
5 proceeding under the *Class Proceedings Act*?

6 A. Yes, I am aware.

7 7. Q. And that claim alleges  
8 misfeasance in public office against the Crown  
9 and other defendants; is that correct?

10 A. Yes, that's my understanding,  
11 Counsel.

12 8. Q. Did Mr. Murray or anyone else  
13 provide you with any information about the fee  
14 arrangement between his firm and the plaintiffs,  
15 either the representative plaintiffs or any class  
16 members?

17 A. No, I have no knowledge as to  
18 what that arrangement is.

19 9. Q. Did Mr. Murray or anyone else  
20 provide you with any information about the  
21 financial situation of the representative  
22 plaintiffs or the class members?

23 A. No, none whatsoever.

24 10. Q. Do you know whether Mr. Murray's  
25 firm is receiving funding from the Class

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1 Proceedings Fund in respect of this proceeding?

2 A. I have no knowledge.

3 11. Q. And you are aware that the *CLPA*  
4 contains a provision that each party shall bear  
5 its own costs on a leave motion under section 17;  
6 correct?

7 A. Yes, I am aware of that.

8 12. Q. And so when I say "costs", we are  
9 not talking, then, about a costs award by the  
10 court; is that correct? Because there will be no  
11 award of costs.

12 A. That's correct, yes. We are not  
13 talking about an adverse costs award, we are  
14 talking about the costs incurred by the party in  
15 terms of paying their own lawyers.

16 13. Q. I'm going to call that the  
17 "actual cost" for the time being as opposed to a  
18 costs award by a court, which might, of course,  
19 be reduced from the actual costs that are  
20 incurred. Do you understand me?

21 A. Yes, understood.

22 14. Q. So we are talking about the  
23 actual cost to each party of bringing the motion,  
24 and that would include legal fees?

25 A. Yes.

1           15.           Q.       And disbursements?

2                           A.       Yes.

3           16.           Q.       And any other miscellaneous fees,  
4           such as, for example, filing fees?

5                           A.       That's correct, yes. It could, I  
6           suppose, also include third-party costs if  
7           investigations were undertaken, if counsel  
8           employed outside resources, I suppose. I  
9           suppose, though, it would be...this would be  
10          captured under disbursements, but I just give you  
11          the caveat, Counsel, those disbursements could  
12          include third-party costs.

13          17.           Q.       I understand, thank you. It is  
14          fair to say, though, that lawyers' fees are  
15          typically, or can be, a large part of the costs,  
16          the actual costs; is that correct?

17                          A.       Yes, I agree with that.

18          18.           Q.       And they will depend on a  
19          lawyer's hourly rate?

20                          A.       Yes.

21          19.           Q.       And a plaintiff or a litigant can  
22          hire more or less experienced counsel with a  
23          greater or lesser hourly rate?

24                          A.       Yes, true.

25          20.           Q.       And they can set limits on a

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1           retainer for a firm?

2                   A.       Yes.

3       21.           Q.       So, for example, "I only want you  
4           to spent X amount of money on this motion"?

5                   A.       Yes.

6       22.           Q.       And on the firm side, a firm  
7           could delegate more or less work to less senior  
8           associates or even non-lawyers where it is  
9           appropriate to do so?

10                   A.       Yes, that's correct.

11       23.           Q.       Those are factors that can affect  
12           the actual cost of a proceeding, or a step in a  
13           proceeding?

14                   A.       Absolutely.

15       24.           Q.       You have never argued a motion  
16           under section 17 of the *CLPA*, have you?

17                   A.       No, I have not.

18       25.           Q.       And to be fair, it is my  
19           understanding or as far as I know, there have  
20           been no reported decisions under section 17; is  
21           that your understanding, as well?

22                   A.       Yes, that's my understanding, as  
23           well.

24       26.           Q.       So there is no data available  
25           about the actual cost to plaintiffs of bringing a

1 motion under this provision?

2 A. I agree with you.

3 27. Q. And you haven't attached any data  
4 about the cost of civil motions, in general, to  
5 your affidavit?

6 A. No, I have not.

7 28. Q. Or of motions for leave, of one  
8 kind or another, in particular?

9 A. That's correct, I have not  
10 attached such information.

11 29. Q. So I take it, then, that you  
12 didn't conduct any research yourself into the  
13 cost of civil motions?

14 A. The estimate in my affidavit,  
15 Counsel, is based on my 30-plus years of  
16 experience. I didn't conduct any independent  
17 investigation. It simply sets out my view, my  
18 assessment, based on history, my own historical  
19 experience, and that of my colleagues with whom,  
20 you know, I'm surrounded...by whom I am  
21 surrounded every day.

22 30. Q. Is it fair if I call it  
23 "empirical research"? That is what I'm trying to  
24 get at, by which I mean looking at a list of  
25 motions and the associated costs of those

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1 motions; you didn't do that kind of empirical  
2 analysis?

3 A. It's...I didn't perform any  
4 independent investigation. However, obviously, I  
5 have a great deal of experiential knowledge as to  
6 costs of motion based on either being successful  
7 on such motions over the history of my practice,  
8 or being unsuccessful and having to, perhaps in  
9 many cases, argue costs in respect of motions of  
10 various types. But did I go out independently  
11 and conduct or gather any empirical evidence?  
12 No. The information that I have is contained  
13 here, and that formed the basis of my assessment.

14 31. Q. So those would be motions you  
15 would have been counsel on; you either argued or  
16 were counsel on? That's the...

17 A. Yes.

18 32. Q. ...basis of your experience?

19 A. Yes.

20 33. Q. That is your experience, rather.

21 A. That's true, yes.

22 34. Q. And you didn't conduct any  
23 analysis of the representative plaintiffs' or the  
24 class members' ability to pay for the costs of a  
25 motion under section 17; did you?

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1 A. No, that's correct, I did not.

2 35. MR. HUFFAKER: Thank you, Mr.  
3 Thompson. That's all I have for you.  
4 Thank you for your time.

5 THE DEPONENT: You are welcome.  
6 Thank you, Counsel. Thank you  
7 everybody.

8 MR. MURRAY: I don't have anything.

9

10 --- upon adjourning at 10:05 a.m.



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