

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

Haidar Omarali

Plaintiff

- and -

**JUST ENERGY GROUP INC., JUST ENERGY CORP.
and JUST ENERGY ONTARIO L.P.**

Defendants

Proceeding under the *Class Proceedings Act, 1992*

**SUPPLEMENTARY RESPONDING MOTION RECORD
OF THE DEFENDANTS
(Summary Judgment Motion)
Returnable June 11-13, 2019**

March 4, 2019

FASKEN MARTINEAU DuMOULIN LLP

Barristers and Solicitors

333 Bay Street, Suite 2400

Bay Adelaide Centre, Box 20

Toronto, ON M5H 2T6

Paul J. Martin (LSO: 24140B)

pmartin@fasken.com

Tel: 416 865 4439

Laura F. Cooper (LSO: 35426A)

lcooper@fasken.com

Tel: 416 865 5471

Anastasia Reklitis (LSO: 67591L)

areklitis@fasken.com

Tel: 416 865 5460

Fax: 416 364 7813

Lawyers for the defendants

TO: **KOSKIE MINSKY LLP**
Barristers and Solicitors
20 Queen Street West
Suite 900
P.O. Box 52
Toronto ON
M5H 3R3

David Rosenfeld (LSO: 51143A)
drosenfeld@kmlaw.ca
Tel: 416 595 2700
Fax: 416 204 2894

Lawyers for the plaintiff

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TAB 1

ONTARIO
SUPERIOR COURT OF JUSTICE

MS/am

B E T W E E N:

KIA KORDESTANI HAIDAR OMARALI

Plaintiff

- and -

JUST ENERGY GROUP INC., JUST ENERGY
CORP. and JUST ENERGY ONTARIO L.P.

Defendants

Proceeding under the Class Proceedings
Act, 1992

- - - - -

This is the Cross-Examination of HAIDAR OMARALI on his
affidavit sworn the 6th day of August, 2015, taken at the
offices of FASKEN MARTINEAU LLP, Suite 2400, Bay Adelaide
Centre, 333 Bay Street, Toronto, Ontario, on the 18th day
of March, 2016.

- - - - -

APPEARANCES:

DAVID ROSENFELD
SCOTT ROBINSON
PAUL J. MARTIN
LAURA F. COOPER

-- for the Plaintiff

-- for the Defendants

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1 Haidar Omarali, affirmed

2 CROSS-EXAMINATION BY MR. MARTIN:

3 1. Q. Mr. Omarali, you affirmed an
4 affidavit on August 6th, 2015. Is that correct?

5 A. Yes.

6 2. Q. And you understand that you are
7 being put forward in this action as a potential
8 representative plaintiff in a class proceeding?

9 A. Yes.

10 3. Q. Can you tell me, sir, for today's
11 purposes, what have you done to prepare for today?

12 A. Not really much. Just...nothing
13 really.

14 4. Q. Nothing really?

15 A. No. Just...

16 5. Q. And in relation to the action
17 generally, what have you done besides swearing this
18 affidavit, if anything?

19 A. Well, I went online and read about
20 Just Energy, just to catch up, what is going on with
21 Just Energy. And that is it, just...

22 6. Q. There are affidavits provided by
23 representatives of Just Energy. Have you seen those
24 affidavits?

25 A. Yes, I saw them yesterday. I went

1 to the lawyer's office yesterday.

2 7. Q. What affidavits were those?

3 A. There were two affidavits, I forget
4 the people's names, countering what we are doing
5 here.

6 8. Q. Did you read them?

7 A. Yes. Yes, I looked at them. Yes, I
8 read them, yes.

9 9. Q. And there is a third affidavit of a
10 Janna Young. Did you see that?

11 A. Was that put in with another one?
12 There were three altogether?

13 10. Q. Well, there are three affidavits. I
14 don't know whether you have seen them or not.

15 A. Okay. So, I remember two of them
16 may have been together. They were clipped together,
17 and then there was one separate. So, I saw that
18 there was an affidavit, but I didn't really catch
19 the name Janna Young or anything like that.

20 11. Q. And the Janna Young affidavit
21 contained a number of documents. Have you seen
22 those?

23 A. I looked through what was given to
24 me yesterday.

25 MR. ROSENFELD: He was provided the

1 affidavit, yes.

2

3 BY MR. MARTIN:

4 12. Q. So, you saw them for the first time
5 yesterday?

6 A. Yes, I saw them, yes.

7 13. Q. How much time did you spend with
8 them?

9 A. Enough to know...to read it and not
10 really agree, like, to everything. Sort of...I
11 looked through them.

12 14. Q. Five minutes?

13 MR. ROSENFELD: What does it matter?

14 15. MR. MARTIN: It matters to me.

15 MR. ROSENFELD: Yes.

16 16. MR. MARTIN: Did you spend five minutes
17 on it?

18 THE DEPONENT: Yes.

19 MR. ROSENFELD: Is it relevant or not,
20 though?

21 17. MR. MARTIN: Sorry?

22 MR. ROSENFELD: Why is that relevant,
23 how much time he spent with this affidavit
24 that he received yesterday?

25 18. MR. MARTIN: It is to me. I am asking

1 the question.

2 MR. ROSENFELD: Okay. So, don't answer

3 the question.

/R

4

5 BY MR. MARTIN:

6 19. Q. And in addition to swearing your
7 affidavit, just yesterday, spending whatever little
8 time you may have spent reading the materials, what
9 else have you done regarding this litigation?

10 A. Well, I read my own affidavit and
11 supporting documentation from my affidavit, I have
12 done that. Anything else? That is all?

13 A. Yes.

14 20. Q. I am sorry, you are going to have to
15 speak up so the reporter can record what you are
16 saying.

17 A. Yes, yes. That is...

18 21. Q. Do you maintain a file in regard to
19 either this action or in regard to the time you
20 spent as an independent contractor with Just Energy?

21 A. Okay. So, the time I spent with
22 Just Energy?

23 22. Q. Yes.

24 A. You are asking if I kept a file?

25 23. Q. Yes.

1 A. Whatever file I had, I gave it to
2 the lawyers. The days I worked, and when we have to
3 record the sales for gas and hydro, the pink papers
4 and the pay stubs, and whatever notes I did at Just
5 Energy, I handed it in to my lawyers at the
6 beginning, when I handed in my affidavit. I had
7 supporting...prove to them that I was working at
8 Just Energy.

9 24. Q. Okay. You did provide them with,
10 then, a file of materials, then, that you kept?

11 A. Yes, I kept some materials, and then
12 I gave it to them. I didn't keep everything. I
13 didn't know that it was going to reach this point,
14 but I wouldn't have needed everything. A lot of
15 things I kept, I threw out because I didn't think I
16 needed it.

17 25. Q. What did you throw out?

18 MR. ROSENFELD: Sorry, don't answer the
19 question. That is not relevant. /R

20 26. MR. MARTIN: Counsel, do you have that
21 file? Can you produce it to me, please?

22 MR. ROSENFELD: No. /R

23 27. MR. MARTIN: Let's break it down, then.
24 Do you have the file?

25 MR. ROSENFELD: I am not going to answer

1 the question. It is not relevant. /R

2 28. MR. MARTIN: So, his record-keeping with
3 Just Energy, to the extent that he had any
4 record-keeping, you are saying is not
5 relevant?

6 MR. ROSENFELD: To certification? No.
7

8 BY MR. MARTIN:

9 29. Q. And, Mr. Omarali, can you tell me,
10 how old are you?

11 A. Right now, I am 57. I will be 58 in
12 September.

13 30. Q. Where do you live?

14 A. 19 Blue Ridge Road in Toronto.

15 31. Q. And what do you currently do?

16 A. I am working with a company called
17 Teleperformance.

18 32. Q. What do you do there?

19 A. I work for the campaign for Sling
20 TV, which is Internet TV. So...

21 33. Q. What is your job?

22 A. So, my job is to help troubleshoot
23 and explain the program to consumers who are so used
24 to using cable and satellite dish that they didn't
25 know that...it is pretty new in the market, like,

1 kind of like CraveTV, where you can watch TV using
2 the Internet. You don't need to have cable or a
3 satellite dish.

4 34. Q. So, you sell that product?

5 A. I don't really sell. I am support.
6 So, I do troubleshooting, when people says there is
7 freezing and buffering, or they can't find the
8 channels, or, "How do I download this onto my
9 iPad?", "How do I watch it on my phone?", "How do I
10 use my Xbox One to watch TV?" So, that is what I am
11 doing right now.

12 35. Q. And are you on commission at that
13 job?

14 A. No, there is no commission. It is a
15 salary job.

16 36. Q. And how long have you been with
17 Teleperformance?

18 A. A year.

19 37. Q. And what did you do before
20 Teleperformance?

21 A. I worked in collections with a
22 company called Common Collection Agency.

23 38. Q. And roughly what period of time was
24 that?

25 A. It was about three or four months.

1 Three months, I think.

2 39. Q. Was that a commission position?

3 A. Yes, if you meet all targets and
4 then kind of...

5 40. Q. You were paid a commission on
6 whatever collected?

7 A. You get salary and you get a
8 commission. It is the same thing with my current
9 job. They do quality assurance, and listening to
10 the calls. And if I save a certain amount of
11 accounts from cancelling, and I maintain...when they
12 listen to the recording, and they find that I didn't
13 make any mistakes, like I didn't verify the person
14 correctly, or gave him misinformation, if I didn't
15 do that, then I get a higher quality score. So,
16 then, I am entitled to a bonus for Teleperformance.
17 That is how they do it.

18 41. Q. I understand. And before Common
19 Collection Agency, what did you do?

20 A. Before that, I did, like, just
21 little things. Mostly...well, Just Energy, and then
22 when I finished with Just Energy, my mother wasn't
23 well. That is part of the...most of the reason I
24 stopped going to Just Energy, plus I wasn't really
25 getting any money from Just Energy. No residuals or

1 anything. So there was a gap for a couple of months
2 before I got into Teleperformance.

3 42. Q. Just so I understand...so, from Just
4 Energy, you went to Teleperformance, and from
5 Teleperformance you went to...sorry, in between
6 that, you were at Common Collection Agency?

7 A. Yes.

8 43. Q. So, you went from Common Collection
9 Agency to Teleperformance, where you are today?

10 A. Yes.

11 44. Q. And with Teleperformance or with
12 Common Collection Agency, either of those, did you
13 sign a contract with either of those?

14 A. Yes, there is paperwork to sign.
15 You always have to sign something when you are
16 getting employed. Just like Just Energy, they gave
17 you something to sign.

18 45. Q. Well, with Just Energy, we will come
19 to...you signed a contract. Did you sign a contract
20 with either Teleperformance or Common Collection
21 Agency?

22 A. I would have to say Common
23 Collections, yes, you would have to sign it, because
24 you have to get all those licences for all those
25 provinces. So, there is lots of paperwork I signed

1 for Common Collection Agency. And with
2 Teleperformance, you do have to sign, yes.

3 46. Q. Okay. Could you produce those
4 contracts to me, please?

5 MR. ROSENFELD: No. /R

6 47. MR. MARTIN: Why?

7 MR. ROSENFELD: They are not relevant to
8 certification.

9 48. MR. MARTIN: Just so you understand, Mr.
10 Omarali, we will likely be back another day
11 to talk about this information.

12

13 BY MR. MARTIN:

14 49. Q. Now, can you tell me, at the
15 time...just prior to commencing with Just Energy,
16 what were you doing?

17 A. I was working for another collection
18 agency. I think it is called Receivable Management
19 Services.

20 50. Q. Okay. And how long did you work for
21 them?

22 A. I was with them for about 25 years,
23 and they were bought out by a company called iQor,
24 and my boss would be in Montreal, and they downsized
25 and relocated the company. So, things were,

1 like...there wasn't really that much communication
2 once we moved, and once my boss is in Montreal. So,
3 we kind of had some issues that I just had to
4 just...I just gave up and just couldn't work that
5 job anymore. Really got tired of it.

6 51. Q. Did you resign?

7 A. Yes, I did.

8 52. Q. As opposed to being terminated?

9 A. No, we had a disagreement. We
10 decided to...that was it. It is the summertime, I
11 wanted to take some time off, and then they are
12 telling me that you are going to have to wait later,
13 because other people...there was no other people.
14 So, we basically said, "Okay, that is it". We
15 just...done.

16 53. Q. Did you have a contract with
17 Receivables Management?

18 MR. ROSENFELD: Don't answer that, Mr.
19 Omarali.

/R

21 BY MR. MARTIN:

22 54. Q. Were you on a commission basis with
23 Receivables Management?

24 MR. ROSENFELD: Again, it is not
25 relevant.

/R

1

2 BY MR. MARTIN:

3 55. Q. Can you tell me what other jobs you
4 have held in your lifetime, sir, where you were paid
5 on commission?

6 MR. ROSENFELD: Not relevant. /R

7

8 BY MR. MARTIN:

9 56. Q. And apart from what you did with
10 Just Energy as an independent contractor, have you
11 held any other sales positions in your working life?

12 A. Yes, well, I did...I started out
13 when I graduated from university, I went to
14 Lexington Andrews, I sold encyclopedias
15 door-to-door.

16 57. Q. Roughly what period of time was
17 that?

18 A. That was for almost a year.

19 58. Q. What time frame?

20 A. Well, 25 minus...so, in...the late
21 '80s.

22 59. Q. Yes.

23 A. Because I graduated in 1987. So,
24 right after 1988, 1989.

25 60. Q. And you graduated with what degree?

1 A. York University, Bachelor of Arts.

2 61. Q. And selling encyclopedias, was that
3 door-to-door sales?

4 A. Yes.

5 62. Q. On a fully commissioned basis?

6 A. No, we got paid, and we went into
7 meetings, and we had briefcases, and we...because in
8 those days, they didn't have, like, things on disc.
9 It was actually brochures, and then the delivery
10 would be the actual books.

11 63. Q. Right. But your remuneration was
12 based on how many books you sold?

13 A. No, that was the bonus, because I
14 passed...wrote that we went into training, and we
15 got paid a minimum or something that...what we ended
16 up doing is when we made sales, that is where we
17 would get the bonus, that we would get the money.

18 64. Q. And apart from selling
19 encyclopedias...this was door-to-door, I gather,
20 correct?

21 A. Yes.

22 65. Q. And did you do any other sales in
23 your work life?

24 A. Well, in Cubs and Scouts, apples and
25 things like that.

1 71. Q. And how do you know him?

2 A. Because we would be on the field
3 together. They would drop us off, and many times on
4 road trips, I would be working with him.

5 72. Q. And did he advise you of this
6 lawsuit?

7 MR. ROSENFELD: Don't answer the
8 question.

/R

9

10 BY MR. MARTIN:

11 73. Q. Have you had many discussions with
12 Mr. Kordestani about this lawsuit?

13 A. Well, I talked to him about it. We
14 all...everybody is in the same situation. We were
15 working for Just Energy. So, it is like associates,
16 associates always talk to each other in almost all
17 jobs, right?

18 74. Q. But at the time that Mr. Kordestani
19 may have spoken to you about this lawsuit, neither
20 of you were working with Just Energy, correct?

21 A. Yes, it was...yes, I talked to him
22 after...like, we kept in touch, everybody. People
23 started to drop off after a while.

24 75. Q. What do you mean, people kept in
25 touch?

1 A. Well, people would...like, we were
2 friends. Some of us...like, there were a lot of us
3 that are friends, that...we worked together for so
4 long that we just know each other.

5 76. Q. How long did you work with Mr.
6 Kordestani?

7 A. Well, from when I started until when
8 I finished. I met him...he worked in a different
9 office. He worked in the Ottawa office. So,
10 whenever he came to Toronto or we went on road trips
11 to Thunder Bay or Timmins, or Sudbury or Sault Ste.
12 Marie. That is when I would be working with him.
13 Otherwise, he would be working in his Ottawa office,
14 and I would be working in the Etobicoke office.

15 77. Q. Okay. So, one of the ways you got
16 to know him was through various road trips?

17 A. Yes, that is how I got to know him,
18 yes.

19 78. Q. And at the time was Mr. Kordestani
20 crew coordinator?

21 A. No, I don't think he was ever a
22 coordinator.

23 79. Q. Now, why would the Toronto office
24 and the Ottawa office be doing road trips together?

25 A. Because of the same owners of the

1 offices. The one who owns the Ottawa office is also
2 part-owner of the Toronto office.

3 80. Q. Who is that?

4 A. One person's name is Ali. Another
5 one would be Jahan (phon.). And another one, there
6 is just...John Lavoie.

7 81. Q. They were the real distributors?

8 A. What do you mean by "distributors"?

9 82. Q. Did they have the title of regional
10 distributor, to the best of your knowledge?

11 A. To the best of my knowledge,
12 something like that. I don't really pay much
13 attention to people's titles and that. I was just
14 trying to do my job to sell door-to-door, that was
15 basically what my focus is.

16 83. Q. Okay. And going door to door, doing
17 sales, with Just Energy your remuneration was only a
18 commission-based remuneration, correct?

19 A. Turns out that way, yes. It is...

20 84. Q. Well, it doesn't turn out that way.
21 That is what it was, correct?

22 A. Well, I didn't get any bonuses
23 after. Like, you are supposed to get, after a year,
24 you are supposed to get residual payments for the
25 deals you signed, where the customers are still

1 there. And I didn't get anything like that.

2 85. Q. So, is it your position that you are
3 entitled to residuals and you didn't receive them?

4 A. Well, yes, I was told I would be
5 getting it. And then when I asked about it, they
6 always said, "There are no cheques here for you.
7 There are no cheques, just your recent"...after
8 three weeks, you get the cheque for whatever you did
9 three weeks earlier. So, there was a three-week
10 delay.

11 86. Q. That is on the very sale itself,
12 correct? You get your payment three weeks later?

13 A. Yes, that is...

14 87. Q. But you are saying that...what I
15 understand what you are saying is you believe you
16 were entitled to and haven't been paid residuals?

17 A. Yes, there are some...yes, I never
18 got any residuals since I worked there.

19 88. Q. I appreciate that, but you are
20 saying you were entitled to some? I gather you
21 still think you are entitled to some?

22 A. Well, I was told that that is what
23 will happen. After a year, you are going to get
24 residuals from the deals you signed. So, I just
25 hung in there year after year, and eventually build

1 up a bit of a fortune working for Just Energy.

2 89. Q. And is that part of your claim in
3 this lawsuit, that you want to recover residuals?

4 MR. ROSENFELD: No, it is not.

5 THE DEPONENT: No, because that wasn't
6 the focus of this claim. The focus of the
7 claim is that I was working all this time,
8 and I wasn't getting any payment for
9 anything other than the deal that was
10 signed.

11

12 BY MR. MARTIN:

13 90. Q. Which is the deal that you arranged
14 with Just Energy. That is the contract you signed.
15 That was the bargain you reached with Just Energy?

16 A. Well, whatever I signed with Just
17 Energy, they gave me the papers on the first day and
18 just signed. And I asked them for a copy of what I
19 signed, and they said, "Yes, we will get it to you",
20 but...

21 91. Q. Who said that?

22 A. The office.

23 92. Q. Who?

24 A. Paulina...

25 93. Q. Yes?

1 99. Q. Well, we are going to come to that.
2 Okay. And you have also testified, sir...remember,
3 you are under oath. You have testified...

4 A. Yes.

5 100. Q. ...that people would come in on
6 a...if not daily, almost weekly basis to be engaged
7 by Just Energy.

8 A. Yes.

9 101. Q. And every one of them would have
10 signed those contracts?

11 A. Well, I don't know about everybody
12 signing the contract. I know...you are asking me
13 about what I signed, and I know what I signed, we
14 were all in a group, and they passed out the papers,
15 and you sign it, and then they just collected it
16 back.

17 102. Q. So, every person in that group
18 signed a contract, you say?

19 A. On the particular hiring day that I
20 was there with a bunch of us, yes.

21 103. Q. Well, you have given evidence that
22 there were a number of other hiring days that you
23 have attested to. And isn't it fair that every
24 single time, if anybody wanted to be badged, they
25 had to sign that contract?

1 A. Well, one would have to assume so,
2 right?

3 104. Q. Don't assume, sir. I am telling
4 you, everyone...and you know everyone had to sign
5 that contract, or else they weren't going out in the
6 field.

7 A. Yes, well, that is...

8 105. Q. That is correct.

9 A. ...how they do it. That is how...

10 106. Q. Yes, that is how they do it.

11 A. Yes, that is...

12 107. Q. Yes. And if you choose not to sign
13 the contract, you don't sell for Just Energy.

14 Correct?

15 A. Yes, you don't have the...so, to get
16 the job, you have to sign that.

17 108. Q. You had to sign.

18 A. Yes, and then we moved to the next
19 room, and...

20 109. Q. And continued with your training and
21 orientation, correct?

22 A. Yes.

23 110. Q. But you well know why people had to
24 sign that contract, because they are engaged as
25 independent contractors on a commission basis,

1 correct?

2 A. See, we didn't really know it was a
3 commission-type job...

4 111. Q. Sir, it was explained to you fully,
5 before you signed the contract, that it was 100
6 percent commission?

7 MR. ROSENFELD: Is that a question?

8 112. MR. MARTIN: Yes.

9 MR. ROSENFELD: That he did, that it was
10 explained to him? I don't understand the
11 question. Is that a statement you are
12 posing to Mr. Omarali?

13 113. MR. MARTIN: Sir, please don't
14 interrupt. This is a cross-examination.

15 MR. ROSENFELD: That is right. And I am
16 interrupting...

17 114. MR. MARTIN: He understood the question.
18 He was about to answer. So, don't
19 interrupt.

20 MR. ROSENFELD: I don't know what he
21 understood or didn't understand. I didn't
22 understand the question.

23 115. MR. MARTIN: Well, you are not being
24 examined.

25

1 BY MR. MARTIN:

2 116. Q. Sir, you knew, before you signed
3 that contract, it was a 100 percent commission
4 opportunity. If you wanted to choose to do it, you
5 had to sign.

6 A. I was, like, 100 percent...I am not
7 too sure I understood the whole thing. Everything
8 went by so quickly. Like, we didn't know how we
9 were going to get paid, really.

10 117. Q. Sir, it was explained in the
11 orientation.

12 A. We were told after we signed all the
13 papers and went into the next room. Then, people
14 asked questions like that.

15 118. Q. Did you ask the questions?

16 A. No, there was other people who were
17 very...who were, like...

18 119. Q. So, other people asked?

19 A. ...eagerly asked, yes.

20 120. Q. And you...

21 A. I am not the person that really digs
22 into asking questions when other people are asking
23 questions.

24 121. Q. So, you heard...

25 A. The question was asked...

1 122. Q. ...other people...

2 A. ...before...

3 123. Q. Go on.

4 A. I heard from when other people asked
5 the question, what the answers were.

6 124. Q. 100 percent commission?

7 A. I didn't hear it was 100 percent
8 commission.

9 125. Q. What did you hear otherwise?

10 A. I heard that we were going to be
11 getting...going on field trips, going on road trips,
12 our gasoline would be paid, our lunch would be paid
13 for. We were told that we would be getting money
14 for the deals we signed, and then there are also
15 bonuses, but there was never any mention about
16 us...other than working to make the fortune, like,
17 you can make \$800 to \$1,000 a week. That is, like,
18 52 a year. As you increase, you can double that,
19 because they said they will train us how to do it,
20 how to get...

21 126. Q. So, you were never told that there
22 was any salary aspect to this position?

23 A. After I signed the paper, I heard
24 that that is how it works, and then they set up this
25 chart on the board, and explained to us that it was

1 \$30 per every gas and Hydro One...so, you can go to
2 one house and make \$60.

3 127. Q. So, the very day you signed the
4 contract, you were aware that there was no salary
5 component...

6 A. After I signed the contract...

7 128. Q. That very day.

8 A. We were told, yes, later in the day
9 that we would...that is what we would have to do.

10 129. Q. Right.

11 A. Go door-to-door...

12 130. Q. Right.

13 A. ...to...

14 131. Q. So, you knew that, but
15 notwithstanding that, that there was no salary
16 component, you took the position? You chose to go
17 and sell?

18 A. Because I wanted the job. I wanted
19 to try it out.

20 132. Q. You wanted to try it out?

21 A. Yes.

22 133. Q. Knowing that it was a 100 percent
23 commission opportunity?

24 A. It took me a while to realize that,
25 because it was always...it was never really

1 straightforward like that.

2 134. Q. Before you went in the field...

3 A. Yes.

4 135. Q. ...sir, there was no mistaking that
5 there was no salary component to this job.

6 A. The salary you get is what you sign,
7 the people that you sign...

8 136. Q. So, that is a commission. Sir, you
9 have a university degree. You know the difference
10 between a commission and a salary. You are not
11 telling me you don't, are you?

12 A. Did I understand the difference
13 between salary and commission?

14 137. Q. You knew, before you went in the
15 field, you knew that the opportunity with Just
16 Energy was 100 percent commission?

17 A. Yes...

18 138. Q. Of course you knew.

19 A. Yes.

20 139. Q. You are under oath, sir.

21 A. Yes, well...

22 140. Q. Okay, it is going to come out in
23 court.

24 A. I...

25 MR. ROSENFELD: He is aware he is under

1 oath. Please stop suggesting to him that
2 he is under oath. He swore an oath before
3 you started here. So...

4 141. MR. MARTIN: He is struggling with these
5 answers, which should be very simple.

6 MR. ROSENFELD: Well, he is struggling
7 with the answers, Mr. Martin, but
8 don't...enough with the "you swore an
9 oath", please. Thank you.

10 142. MR. MARTIN: No, I will come back to it
11 if he is not going to tell the truth on
12 this examination.

13 MR. ROSENFELD: Are you suggesting that
14 he is lying? I don't understand.

15 143. MR. MARTIN: He is being evasive.

16 MR. ROSENFELD: I disagree.

17 144. MR. MARTIN: What do you determine
18 lying, sir? We are going to find out about
19 that, perhaps.

20 MR. ROSENFELD: I guess so. But he is
21 under oath. He knows he is under oath.

22 THE DEPONENT: And I have to remember
23 way back when, what it is to answer your
24 question. I don't...

25

1 BY MR. MARTIN:

2 145. Q. How long were you with Just Energy?

3 How many months?

4 A. About a year and a half.

5 146. Q. About 18 months, roughly?

6 A. Yes.

7 147. Q. Never once, sir, did you receive any
8 salary, did you?

9 A. We got a paycheque for what I...the
10 deals I signed.

11 148. Q. On a commission basis?

12 A. Yes, that is...

13 149. Q. Right.

14 A. ...some of them...

15 150. Q. You knew that from day one, and you
16 knew that every day that you sold for Just Energy,
17 correct?

18 A. Okay. So, the day one...

19 151. Q. Yes, that is fine. I just need the
20 answer. Yes, that is fine. That is all the
21 question I am asking.

22 A. Okay. So...

23 152. Q. And you also knew, sir, that there
24 were no benefits to this opportunity, because it was
25 100 percent commission. You knew that.

1 A. No, we were told that there would be
2 benefits, when somebody asked that question, but
3 there were never any benefits. We were asked...

4 153. Q. What benefits, sir?

5 A. Somebody asked about insurance for
6 medical.

7 154. Q. Yes?

8 A. Yes, and they said that, yes, they
9 have it. What happened was, the person who was
10 talking came from an office, from head office,
11 like...they are actually salaried people that...they
12 were trying to explain that you can move up into the
13 company. So, the lowest...starting at the bottom,
14 and you can work your way up, where you can get the
15 benefits, and you can move up into different
16 positions. So, they say everybody starts at the
17 bottom like that, and...

18 155. Q. Without benefits?

19 A. With benefits. We thought we were
20 getting benefits. So, it was a month later, when I
21 realized, when the cheques were coming just
22 straight, one number, no deductions or anything,
23 that we figured out that...see, the office was
24 relatively new. So, all of us that were starting
25 there, we started around the same time.

1 156. Q. Do you have a claim in this lawsuit
2 for benefits that you say that were agreed to be
3 paid to you?

4 MR. ROSENFELD: No.
5

6 BY MR. MARTIN:

7 157. Q. So, your evidence, if I understand
8 it, is that only when you got your first paycheque
9 did you realize that you were not getting benefits?

10 A. Actually, it was about the second or
11 third, because I thought things take time. I kept
12 this one, because I was interested in getting
13 medical, the medical from...like, diabetes, things
14 that you would need medication for.

15 158. Q. So, you were hoping that there was
16 some sort of group insurance plan?

17 A. Yes, and I was specifically told
18 that there was...

19 159. Q. Who told you, sir?

20 A. The person that came in and gave us
21 the lecture, after we passed the test, and after we
22 wrote, we signed these employment papers, there was
23 question and answer after. It was explained what it
24 is we are doing.

25 160. Q. So, in agreeing, sir, to sell for

1 Just Energy, is it your evidence that you relied on
2 that person saying there were benefits as part of
3 the opportunity?

4 A. Yes, definitely.

5 161. Q. All right.

6 A. I definitely thought there would be
7 more to it than just commission.

8 162. Q. All right. And I gather, then, you
9 might have considered not taking up the opportunity
10 if you weren't...if it wasn't represented to you
11 that there were benefits?

12 A. It was too late. I already was
13 working in there by the time I realized it, and I
14 just kept on having that...the morning lectures we
15 would get, that as we worked the job, the better we
16 will get at it, the more deals we will get, and the
17 service we are doing for the consumer out there is
18 better than what...the rates the government is
19 giving.

20 163. Q. Well, I understand that, but what I
21 am hearing from you, tell me if I am wrong, I am
22 hearing from you that if it was made plain to you
23 that there weren't benefits, you might not have
24 taken on the opportunity?

25 A. Well, I have to put myself in that

1 position at that time. So, I don't know. I might
2 have continued for...I don't know what I would have
3 done. That is...

4 164. Q. But you might not have? You might
5 have said, "I am looking for an opportunity that has
6 benefits. You have misrepresented this to me".

7 A. Yes.

8 165. Q. "I am not going to take this
9 opportunity at Just Energy. I am going to go
10 somewhere else".

11 A. Okay. So, what happened was I did
12 talk to my doctor about that, and he referred me to
13 a low...it is called...it is like an insurance for
14 low-income earners. And it is Trillium, it is
15 called. So, I found out that I could work with Just
16 Energy and get my benefits through this Trillium
17 plan. So, I used the Trillium plan.

18 166. Q. Okay. But what you are saying to me
19 is someone...you don't know who the person...you
20 don't know their name, misrepresented to you that
21 there would be benefits?

22 A. Yes, I don't know the person's name.
23 He came from the head office.

24 167. Q. And when you got your paycheques...
25 let me try it a different way. At the time, these

1 early days, did you realize that the company wasn't
2 going to be taking deductions at source for things
3 like taxes and CPP and unemployment insurance?

4 A. No, I didn't know that until the day
5 I was getting the cheques. And the first ones, you
6 know, sometimes companies just gave you the first
7 cheques, and then later they catch up, and they do
8 that. But they never did. It was always just
9 whatever you earned on your commissions, and minus
10 whatever they minused off of the paycheque, that is
11 what you got.

12 168. Q. So, it is your evidence that only
13 upon getting one of your early paycheques did you
14 realize that there were not being deductions at
15 source by Just Energy?

16 A. Yes, and then I saw that, and then I
17 talked to the crew leader about that, and he says he
18 knows a really good tax person who could do your
19 taxes, so to make sure to keep all your receipts for
20 your food and your lodging. And then that is when I
21 asked him, "Aren't you guys covering lodging, too?"
22 And then they were saying no. But I hadn't been on
23 a road trip. So, I knew ahead of time that I would
24 have to pay my own lodging, that I would have to pay
25 reimburse them. But that is where you make all the

1 money, is going on these road trips. So, the more I
2 bought into their program, the more I kept on
3 staying, because with those working hours, you never
4 really get a chance to think of doing anything else,
5 but going out there and trying to knock on the door,
6 and let the customer know that we had a deal for you
7 because nobody likes the smart meters.

8 169. Q. The Trillium insurance you
9 mentioned, did you actually purchase that?

10 A. No. It is a government thing. My
11 doctor just said to apply, so I applied.

12 170. Q. Okay. And the advice you got to
13 keep your receipts and whatnot, did you take up that
14 advice and, in fact, keep those receipts?

15 A. Yes. Yes, definitely. And then
16 what happened was the guy who did the taxes said,
17 "You have way too many receipts. You can't declare
18 all of it". So, he gave it to the max. But he has
19 kept everything in bags of all the receipts that I
20 used.

21 171. Q. So, you did, in fact, claim all
22 those deductions on your income tax?

23 A. Yes, he said, "Based on your money
24 you made, you can't use all those receipts".

25 172. Q. You made too much money?

1 A. No, "You spent too much money on
2 food", and whatever expenses, like you need to buy
3 pencils, or you need to buy new shoes or socks,
4 because...

5 173. Q. Okay.

6 A. ...things related work.

7 174. Q. But you understood that you were
8 able, from a tax perspective, to deduct those
9 because you were self-employed?

10 A. We were told...we can...that he
11 knows...the crew leader told me that he can deduct
12 all that from your taxes. And...

13 175. Q. But you understand, you are
14 knowledgeable enough to understand that the reason
15 you can deduct those from your taxes...

16 A. Yes.

17 176. Q. ...is because you are considered to
18 be a self-employed person?

19 A. Because of what...yes, what happened
20 was they gave us a badge saying we are an
21 independent contractor.

22 177. Q. Yes.

23 A. So, that is...

24 178. Q. Well, you signed a contract that
25 says you are an independent contractor.

1 A. Yes. So, yes, we all signed this...

2 179. Q. Right. But you understood from that
3 that being independent, you could deduct your
4 expenses from your taxes?

5 A. That is what I was told we could do,
6 yes.

7 180. Q. Right. But you understand that,
8 though? I mean, you are a clever enough person to
9 understand that. Or are you not?

10 A. I understand what I was told, how
11 the system works. I never, like...I didn't... other
12 than the encyclopedia, there was...this is all new
13 to me. Like, I had...before this, I was working in
14 an office, so this is how the world is working now.
15 That is the way it is.

16 181. Q. Well, when you were selling
17 encyclopedias, did you deduct your expenses from
18 your taxes?

19 A. I didn't have expenses.

20 MR. ROSENFELD: Don't answer the
21 question.

/R

22

23 BY MR. MARTIN:

24 182. Q. Sorry, was it...what was the name of
25 the crew coordinator, you said? Was it crew chief?

1 What is the phrase you used? Crew chief?

2 A. No.

3 183. Q. Crew leader?

4 A. Yes, leader. Yes...

5 184. Q. Crew leader?

6 A. Crew coordinator. It was, kind

7 of...the name kind of flipped back and forth. His

8 name is Dominic. That is his name.

9 185. Q. Is that his first or last name?

10 A. First name.

11 186. Q. What is his last name?

12 A. I think it is Santia (phon.) or

13 Sorelli (phon.). It is an Italian name.

14 187. Q. And did you understand that the crew

15 leader, that he would be also an independent

16 contractor?

17 A. We all had this badge they gave us,

18 that said we are independent...

19 188. Q. He, too?

20 A. ...contractors.

21 189. Q. He, as well?

22 A. Yes, we all had to wear it. It is

23 part of the...

24 190. Q. And so...

25 A. You can't knock on the door without

1 showing identification.

2 191. Q. Correct.

3 A. So, we had these things printed up
4 with our name saying, "Just Energy independent
5 contractor".

6 192. Q. So, would you have understood that
7 he, too, would have signed an independent contractor
8 agreement at one point?

9 A. How would I know what he did?

10 193. Q. I am just asking. Do you know?

11 A. No, I don't know whether he signed
12 it, because he was working...he is the guy who says
13 he was motivating us, that he...some month he made
14 \$10,000 just doing this job. So, you are going to
15 follow this guy's lead and try to make money,
16 because he knows the pitch and he knows what to do,
17 and that is what we do. We rehearse the pitch, and
18 see ways that we can convince the consumer at the
19 door that they should change to the Just Energy
20 rates.

21 194. Q. So, that would be training and
22 motivation that he would provide to you and others?

23 A. Yes, because that is his...when you
24 get driven off, and he would drop us off in an area.
25 I would work with him sometimes. And he...just

1 trying to do the job, trying to get the work done.

2 195. Q. When you got your first cheques, and
3 you say you came to some realization that there
4 weren't these deductions being made...

5 A. Yes.

6 196. Q. ...did you speak to anyone at Just
7 Energy?

8 A. Oh, yes. We all talked about it,
9 and they told us that you would just...that when you
10 do your income taxes, that you have to deduct
11 things. It is all hearsay. Some people said they
12 would have to. Some people said they are not even
13 going to pay taxes. They are just going to...there
14 were all kinds of people there.

15 197. Q. And what I am getting at, sir, is
16 your evidence was that you had been advised that
17 there were insurance, medical insurance benefits as
18 part of this opportunity. You realized, then, there
19 wasn't...

20 A. Yes.

21 198. Q. ...and I am asking you, did you then
22 ask anyone at Just Energy about that?

23 A. Yes. Well, yes, I did. Paulina, I
24 asked her about it one time. And she says, "Well,
25 we are working on it, but what happens is you really

1 have to move up in the company. Right now, you are
2 in the position where everybody starts in that
3 position, and then once you prove yourself, then you
4 can move up in the company into different
5 positions". And I was thinking, like, they have so
6 many offices, the one at Yonge and Sheppard was like
7 a collections for Just Energy. And, so, I was
8 thinking maybe I would work this a couple of years
9 and then maybe get a job with Just Energy in an
10 office instead of knocking on doors all the time.

11 199. Q. But do you understand that people
12 who worked in the office, for example...

13 A. Yes.

14 200. Q. ...that they were employees and not
15 independent contractors?

16 A. Yes, that is why I was thinking that
17 I would...that is what I mean about moving up.

18 201. Q. And...

19 A. Because when I see what I got, then
20 do I stick to what I am doing. Yes, because I can
21 eventually move up into the company. They were
22 always told, "It is a growing company".

23 202. Q. No, but did you understand the
24 employees were salaried?

25 A. Where?

1 203. Q. At Just Energy.

2 A. In the office...

3 204. Q. Yes.

4 A. ...jobs?

5 205. Q. Yes.

6 A. I figured they would have to be.

7 They are, like...they are in office buildings like

8 these ones.

9 206. Q. But they wouldn't have, in a salary
10 position, the opportunity to earn almost unlimited
11 income, that the sales people had the opportunity to
12 do?

13 A. Well, the company works, where they
14 are making money off of people that purchased the
15 contracts. So, the people in the offices don't do
16 that. It is the people who go door to door, that
17 actually get the money for the company. So, we are
18 doing the hard work, and then already, they are
19 working with the customers. So, they are
20 already...they don't need to make sales. Their job
21 is...they already have other kind of jobs, just to
22 monitor things. And, so, if they are not actually
23 signing contracts, they would have to be on a
24 salary, right? That is what anybody can figure out.
25 That is why a lot of us just stayed there, hoping to

1 sign up for these positions. They always had
2 positions open, but nobody ever really gets back to
3 you.

4 207. Q. But at some point, when you
5 realized, for example, there wasn't medical
6 insurance benefits, you must have realized there
7 weren't other elements that maybe the office people
8 would have had, such as vacation pay?

9 A. No, because you know what? We know
10 that they do, because some of the people went on
11 vacation. They went on...so and so is...

12 208. Q. What type of people?

13 A. The people from their head office.
14 Like...

15 209. Q. Well...

16 A. ...there is an office in Dixie.
17 There is an office in Courtneypark, which is in
18 Mississauga, not too far from Etobicoke. Where I
19 live, at Yonge and Sheppard, there is a Just Energy
20 office. There is a Fairview, there was a similar
21 type office from the Dundas one. If I had known
22 that, I probably would have gone to the Fairview
23 office. But the one that was advertising was a new
24 office opening on Dundas. So, there wasn't a lot of
25 people there that already worked Just Energy, just

1 the ones that were there were with National Home
2 Services, doing the furnace and the water heaters,
3 type of...

4 210. Q. But those employees at the office,
5 the office personnel...

6 A. Yes.

7 211. Q. ...they may have had vacation
8 entitlements, but the independent contractors like
9 yourself did not, correct?

10 A. Yes, looking at it, that is how
11 their system works.

12 212. Q. Right. And you understood that.

13 A. Once I got to understand the system,
14 I...

15 213. Q. Within the first paycheque or two,
16 you understood that.

17 A. Yes, after...yes. I didn't know
18 that from day one, when these things sink in. You
19 have to learn how it was...

20 214. Q. But you were there for 18 months,
21 roughly, you say?

22 A. Yes.

23 215. Q. You must have taken time off from
24 time to time?

25 A. No, I never took time off until

1 after a year when my mother got sick. In September,
2 October, that is when I took time off.

3 216. Q. Okay.

4 A. Otherwise, I never really missed...I
5 did take...I think I took...yes, I did. I took one
6 week off in August or July.

7 217. Q. Right. And, so, when you took time
8 off, you just didn't come into work?

9 A. No, I let them know. I had to get
10 permission, because you just can't not show up. You
11 are...

12 218. Q. Why not?

13 A. Because they would call you and say,
14 "Where are you?"

15 219. Q. You say, "I am taking the day off".

16 A. No, it doesn't work like that. They
17 want to ask you for...like, there is no way you can
18 actually take a day off. Like, if I am walking into
19 work, and I am one minute outside the building and
20 it starts at 9:00 and it is 9:00, they will phone
21 you and say, "Where are you?" And I would say, "I
22 am just outside the building. I will be there in a
23 minute".

24 220. Q. Who is phoning you?

25 A. Well, like Cheyenne, one of the crew

1 leaders would call me, or Jen, Jennifer, she would
2 call. Or...they are trying to round up the people
3 so they would know where to go. They have got to
4 make sure of how many people are there.

5 221. Q. Only because they want to know, are
6 you coming out on today's...

7 A. Yes.

8 222. Q. ...trip?

9 A. Yes.

10 223. Q. That is all.

11 A. Yes, but you have to be there.

12 224. Q. Well, because if they are waiting
13 for you to go...

14 A. No, it is not a waiting thing.
15 Because once...they have meetings. That starts at
16 9:00. You have to be there for the 9:00 meeting,
17 and then practise your stuff from around until
18 10:00. After that then you are heading out to start
19 working at around 1:00, and with lunch, they drop
20 you for lunch, and we all still...like, a
21 camaraderie. Yes, like, the whole thing is, we
22 motivate each other. We...

23 225. Q. And were you good at that, sir?
24 Motivating your other independent contractors?

25 A. Yes. I was...I wouldn't say that I

1 was on top of the motivating person. I was, like,
2 in the middle of the pack. Like, some people, if
3 they are down or whatever, or they needed to...some
4 people always, like, needed to borrow money to get
5 by for...and then the drop-off rate was always high.
6 So, you would try to...at meetings, we would talk
7 about when new people come in, let's try to show
8 them what we are about. And they had a few talks
9 with me, telling me that, "You are a senior person
10 almost, now, you have got to show some sort of
11 leadership in this. You just can't be...you have
12 got to show some more leadership skills".

13 226. Q. And did you ever become an assistant
14 crew coordinator or a crew coordinator?

15 A. No, I just was door-to-door. They
16 just dropped me off. And, see, the thing is, a lot
17 of times, I would drive my car there, and they would
18 have three vans all ready. And if the overflow,
19 they would ask me to use my car.

20 227. Q. Right.

21 A. And then they never even paid me
22 back for...I would voluntarily say, "Okay". And
23 then we will go up to, like, Canada's Wonderland and
24 then eat lunch in the mall or the McDonald's,
25 whatever, and then we would work the Maple area, to

1 give you an example.

2 228. Q. Right.

3 A. So, I wasn't the leader or anything.

4 I was always, just, like, following the thing and...

5 229. Q. Did you ask to be a leader?

6 A. Not really, no. Not directly asked.

7 230. Q. Did you understand that the leaders

8 got overrides on the independent contractors'

9 commissions?

10 A. Yes, at this point...sometimes, I

11 don't believe a lot of these things, whether they

12 did get an override or not. They say they did, but

13 like I told you right from the start, you never

14 really know anything until you find out, as time

15 went on, how the whole thing worked.

16 231. Q. When you learned very early in the

17 piece that there wasn't, you said, medical

18 insurance...

19 A. M'hmm.

20 232. Q. ...and you spoke to someone at Just

21 Energy about that...

22 A. Yes, Paulina.

23 233. Q. Paulina?

24 A. Yes, that is the human

25 resources-type person that was there, and then...

1 234. Q. No, wait for the question. I
2 haven't asked a question yet.

3 A. And...

4 235. Q. When you spoke to Paulina, was it
5 confrontational?

6 A. No.

7 236. Q. Did you say...

8 A. I am not a confrontational type of
9 person...

10 237. Q. So, what I am getting at, though,
11 sir, the way I hear your evidence, and help me if I
12 am wrong, you are suggesting that it was somehow
13 misrepresented to you that there would be medical
14 insurance, and then you discovered there wasn't.

15 A. Yes, because...yes, that is right.

16 238. Q. So, to me, if it was misrepresented
17 to you, it would strike me that you might then
18 become confrontational, as in, you know, "You told
19 me that this was going to happen, and now it hasn't.
20 I am upset". Was it that kind of a conversation?

21 A. No, because like I said, I am not a
22 confrontational type of person. I take my lumps and
23 make do with what best the situation is.

24 239. Q. Did Paulina admit that she
25 misrepresented the situation?

1 A. No, because she wasn't the one that
2 told us. It was the head office person that was
3 there, that told us that we had the benefits and
4 that kind of thing.

5 240. Q. Okay. Just so I understand it, in
6 addition to medical insurance benefit, was there
7 some other benefit you thought you were to receive?

8 A. Well, I can't think of it...there is
9 no other benefit. Like, what other...

10 241. Q. Dental plan?

11 A. Well, that falls under medical,
12 doesn't it?

13 242. Q. Okay. Vacation pay.

14 A. No, there was no vacation pay.

15 243. Q. That wasn't represented to you that
16 there would be, was it?

17 A. No, because, well, how would you get
18 a job, and then the first thing, ask about vacation
19 for?

20 244. Q. I am trying to get a sense of what
21 you say was misrepresented to you, that you relied
22 upon in taking the opportunity?

23 A. What was misrepresented...

24 245. Q. One was medical insurance, okay,
25 what else? I want to hear the story.

1 A. Okay, well, the real
2 misrepresentation is that they would have given me a
3 copy of the contract that I signed, all those papers
4 that were similar to what he has here, which is what
5 I signed. I never got a copy of it.

6 246. Q. How many times did you ask for it?

7 A. A few, and then a lot of us asked
8 for it, too. And then they said...oh, at one point,
9 "It has all gone to head office. It is there".

10 247. Q. So...

11 A. And, so, we never got it. I mean,
12 you can ask any of these people that I worked with.
13 I still keep in touch with some of them, and they
14 would tell you the same thing, that they never give
15 you the contracts that we signed, and the papers
16 that we sign. And they said they would.

17 248. Q. Who did you ask?

18 A. Paulina again. Paulina was...and,
19 also, they had...she had assistants in those days.
20 And then eventually Jackie came in, and then Paulina
21 left and Jackie took over Paulina's place, and then
22 they got another HR person. So, they flipped around
23 the persons, and then they moved from the fifth
24 floor to the ground floor. So, they kept
25 on...because it was expanding, they needed more room

1 for training and all that. So, they made a bigger
2 office downstairs, and they paid over \$100,000 right
3 here to do that.

4 249. Q. But you were there for 18 months.
5 How many times did you ask for a copy of your
6 contract?

7 A. Oh, I gave up after a while, because
8 then you kind of know that they are not giving it to
9 you. We go on road trips, and we compare with other
10 people and we talk, and they go, "Yes, same thing,
11 dude. I was asking for mine, too, and they never
12 gave it to me".

13 250. Q. And why did you want it?

14 A. Just so I could see what I signed,
15 just to know what the rules and the things are. But
16 then you are working, so if you are already
17 involved, you are already so far deep in, whatever
18 happens, happens. As long as you try to become a
19 good salesperson and make money on the door when you
20 are there. And they would teach you how to do that.

21 251. Q. The other people who have sworn
22 affidavits in this litigation, sir, do you know any
23 of them?

24 A. Just by name. I can't remember what
25 they look like, or anything like that.

1 261. Q. Okay. Sorry, you met him yesterday,
2 but did you know him prior to yesterday?

3 A. Yes, I worked with him in, like,
4 Thunder Bay. I remember him and I worked a whole
5 day together in Thunder Bay. Because he is from the
6 other office, the Ottawa office...

7 262. Q. Right.

8 A. He was in our office when we go on
9 road trips.

10 263. Q. Have you discussed this litigation
11 with Kian?

12 A. Just yesterday.

13 264. Q. What did you talk about yesterday?

14 A. Just, "Hi, how are you?"
15 Like...and, yes, he says that we should have gotten
16 paid for all this time that we were there.
17 Just...and then he is in Scarborough now, and he has
18 just moved to Toronto three weeks ago, and he gave
19 me his number, and then...that was about it. Just,
20 basically, exchanged pleasantries and he read my
21 affidavit while I was just reading through my
22 things. I didn't read his affidavit.

23 265. Q. But as of the very first day you
24 engaged with Just Energy, you knew there was no
25 salary component to the opportunity, correct?

1 A. On the very first day, when I got in
2 there, I didn't know that. But by the time...the
3 end of the day, when I left, I kind of figured that
4 this whole thing could be just all commission.

5 266. Q. Well, you wouldn't have signed the
6 contract, sir, would you have, not knowing what the
7 pay was?

8 A. I would have thought it over. Like,
9 I would have figured, like...I might have approached
10 it differently. The people that were working, that
11 came in with me, and did the test, and later on
12 seemed to be nice people to work with. So, it is
13 not like...I didn't feel like an outsider so much,
14 because we are all looking for a job.

15 267. Q. But you knew then there wasn't a
16 salary component to the job, or the opportunity?

17 A. At the end of the day, when I
18 talked, yes, it kind of sunk in, that this is
19 probably just all salary. And then they said to get
20 the \$800, some of us thought it was going to be just
21 three sales in a week. Turns out to be three sales
22 a day. So, we weren't too sure...we were all
23 scratching our heads. Like, "How did this thing you
24 put on the board...is it really that easy" sort of
25 thing we were thinking. So, when you new to

1 something, you kind of have to rely on what you
2 heard and what you talked to other people about.

3 268. Q. And you weren't obliged by Just
4 Energy to keep any records on a daily basis, in
5 terms of...

6 A. Yes, every time you sign a deal, you
7 have to put in the address, the person's name,
8 whether it was gas or hydro. You tear off the top
9 portion, you hand that in, and you keep the pink
10 copy.

11 269. Q. Right. But how many doors you knock
12 on, you don't keep track of that?

13 A. No, because later on, when we had an
14 iPad and we go out with the SmartStat thermostat,
15 they would put us on an iPad where they can track
16 our movements, and then we can tap on it that we
17 went to that house, we went to that house, and
18 then...so, that was the one that they would know or
19 we would know that we did those. Other than that,
20 we just...like, if I worked with Petra, you start on
21 this side of the street, I start on this side. It
22 ends there, and then rolls around. Whenever we
23 meet, that is where we meet. So, when we went into
24 a house that somebody is in, then we would know
25 that...where that person is. So...

1 270. Q. I meant to ask this earlier, sir. I
2 am talking about you taking time off for vacation,
3 whatnot. I mean, did you ever take a sick day?

4 A. No, I never really got sick, no.

5 271. Q. Okay.

6 A. Only when my mom got sick did I have
7 to let them know. They were accommodating. They
8 said, "Yes, okay".

9 272. Q. And were there times where you
10 worked half-days because there was some family
11 obligation you had to go to?

12 A. No. For some reason, I was always
13 there. I always showed up. I didn't have a family
14 obligation. Like, what kind of obligation?

15 273. Q. Birthday party? I don't know. Any
16 kind of obligation that other families tend to have.
17 You had to take a family member to the hospital or
18 to the doctor or there was some event that you had
19 to get to?

20 A. No, knock on wood. I was always
21 there. I didn't miss any days.

22 274. Q. Who provided the training for you at
23 the outset of the opportunity as an independent
24 contractor?

25 A. The people in the office. We really

1 watched them...it is a movie. When they show you
2 how to...how your contract...you would go
3 door-to-door, and then how you can move up to the
4 different things in the sales scripts, and circle
5 round and round.

6 275. Q. And then...

7 A. And the people from the head office
8 come in and give us...Jahan, the regional manager,
9 would give us lectures. Crew leaders would take
10 turns in giving us lectures, because they would plan
11 ahead. They were told that they have to give the
12 lecture the next day. So, they would make notes,
13 and then we would do role plays and share the
14 experiences from other people.

15 276. Q. And what about in the field? Who
16 provided any training in the field?

17 A. You are on your own, mostly. I used
18 to have to have new people come with me to see how
19 it is done. And that is how I did it when I first
20 started. Everybody does that. They shadow, they
21 call it. They shadow the person who is knocking on
22 the doors, until you get a feel for it. And then
23 the next day you work with someone experienced in
24 case you need help. But you would be able to call
25 that next person to help you out.

1 277. Q. And you agree with me that some
2 people are better sales people than others?

3 A. Nobody is the same.

4 278. Q. But some are better than others?
5 Some have a knack for sales?

6 A. Yes. There is...well, may I
7 just...some people are...yes. Some people have
8 a...like Dominic, for example. He is Italian, so he
9 would knock on the door, and if it is an Italian
10 customer, right away he would start speaking
11 Italian, and they would get the trust, or they would
12 know what they are signing. They can sign that
13 deal; whereas I am not Italian, so I wouldn't be
14 able to sell it as quickly, or as well as he would
15 have. Because right away, sales is a lot of times
16 about trust.

17 279. Q. Right. It is not necessarily how
18 many doors you knock on. It is how you can interact
19 and gain the trust of the customer at the door, to
20 effect a sale?

21 A. Yes, because that is why you are
22 knocking on the door.

23 280. Q. Right. But you mentioned about a
24 high turnover. I gather there was and is a high
25 turnover, because many people...and I think you also

1 said...give it a try?

2 A. Yes.

3 281. Q. And they realized they are not good
4 at sales, or they don't enjoy sales.

5 A. Well, yes, it was that or they would
6 find out...so, you would be in an area where there
7 are no stores, nothing to eat, or you didn't bring
8 fruit or something with you, and these people
9 couldn't handle that. So, they go, "That is the
10 last day I am doing this. I missed my dinner. I
11 don't want to work...be knocking...it is pitch dark
12 at 8:30", and people don't like doing it. So,
13 mostly...once you clear the first month or so, then
14 you would stay, but a lot of times people would be
15 there for a week, or a bit more or a little less,
16 and they would quit, or they would be told not to
17 come back, if they become confrontational with the
18 pitch, or asked too many questions. They just
19 don't...if you don't get it, then they will tell you
20 not to come back. Like...

21 282. Q. Because there are compliance
22 issues...Ontario Energy Board and regulatory
23 obligations...as a salesperson, you have to fulfill
24 at the door?

25 A. Like what do you have to fulfill?

1 283. Q. Well, are there not, and are you not
2 trained in the skill of selling at the door, from a
3 compliance perspective?

4 A. So, what do you mean by
5 "compliance"?

6 284. Q. You had to obey certain rules and
7 regulations and the law about selling at the door.

8 A. Yes, we had to have a business card.

9 285. Q. Yes.

10 A. And it was a big piece of paper that
11 actually said, "Business card".

12 286. Q. Anything else that you recall?

13 A. Yes, you have to have the badge...

14 287. Q. Right.

15 A. ...and the clothes that make
16 you...they make you buy the shirt for \$35. So, they
17 are all...everybody is in uniform.

18 288. Q. And what about the script? Is there
19 a script that you have to go over, at least in part?

20 A. Yes. It is more...you have to catch
21 the person's attention within ten seconds is how it
22 works. So, "Hi there, I am coming by in regards to
23 the meter inside your house. It is called a
24 SmartMeter that nobody likes. My name is Haidar
25 from Just Energy Ontario. We are just making sure

1 you have received the adjustments on your gas and
2 hydro bills so you wouldn't have those SmartMeter
3 rates. Could you get me a copy of the gas and hydro
4 bill, I will wait right here". That is a very
5 summrizing way of saying it, but what you have done
6 is actually...I don't know if it is in compliance,
7 would be you would alarm the people that their rates
8 might be too much, that you have to trigger some
9 sort of thinking. So, I don't know if that is
10 compliance.

11 289. Q. Well, you are aware that...

12 A. There wasn't anybody from the energy
13 board hanging around with me.

14 290. Q. No, but you are aware that there is
15 a code of conduct that the energy board oversees,
16 that you needed to be following.

17 A. Yes, when you sign a contract, there
18 are disclosure agreements with the Ontario Energy
19 Board...clearly says, "The rights of the consumer".
20 They have to sign that, and it is written on the
21 back. We need seven signatures before the iPad came
22 out, and you would have to sign here. There are
23 seven different signatures, and two of them was for
24 gas and hydro, Ontario Energy Board.

25 291. Q. Well, you mentioned about someone

1 being confrontational. Obviously, that I gather
2 would be a bad thing to do at the door?

3 A. Yes, if you get confrontational at
4 the door...yes, why would you do that?

5 292. Q. Right. What I gather you are
6 telling me is that some people who maybe are overly
7 confrontational aren't going to make good
8 salespeople?

9 A. Well, people handle frustration
10 differently, right? So, if somebody knocks on a
11 door and they do it all day, and they see I got four
12 sales and they didn't get anything, then they are
13 going to start to maybe cross the line, and maybe
14 say some things or do some things to try to get a
15 sale. And that just leads to cancelling the
16 agreement. So...

17 293. Q. You mentioned someone had advised
18 you to deduct your expenses, and that they could put
19 you in touch with a tax person who could help in
20 that regard. Did you ever reach out to a tax person
21 in that regard?

22 A. Yes, he gave it to me. Right near
23 his house, Dominic lives on Steeles and Islington.
24 So, you know, he showed me the guy...he did it for
25 the two years, that I had to do the taxes.

1 294. Q. So, you had a...is it a bookkeeper
2 or an accountant? What kind of title did this
3 person have?

4 MR. ROSENFELD: I am sorry, let's stop
5 here. I don't know why this is relevant to
6 certification.

7 295. MR. MARTIN: I am going to get there.

8 MR. ROSENFELD: Okay. Is it something
9 about commonality that we are talking
10 about?

11 296. MR. MARTIN: Because I have asked you to
12 produce his income tax returns. Do you
13 have them here today?

14 MR. ROSENFELD: No, and we are not going
15 to be producing them.

16 297. MR. MARTIN: Because?

17 MR. ROSENFELD: They are not relevant to
18 certification.

19

20 BY MR. MARTIN:

21 298. Q. But you did take those deductions
22 off your income tax, did you?

23 A. Whatever the accountant did, he did.

24 299. Q. Did you review your income tax
25 returns for the purpose of today?

1 MR. ROSENFELD: Stop there.

2

3 BY MR. MARTIN:

4 300. Q. Have you produced your income tax
5 returns to your counsel?

6 MR. ROSENFELD: Stop there. Don't
7 answer the question. /R

8

9 BY MR. MARTIN:

10 301. Q. In the 18-month period that you
11 worked for...as an independent contractor, did you
12 have any other income?

13 A. No. Well, I cashed in my
14 Canada...my insurance from London Life, because I
15 wasn't making enough money. So, I had, like,
16 \$20,000, and what I did was I took out, like, \$3,000
17 when I needed money, and then still the job wasn't
18 getting me enough money. So, then I took out more.
19 So, I eventually took out money. Does that count as
20 income? Is that what you mean?

21 302. Q. Yes.

22 A. Okay. So, I did cash my London Life
23 to get income because I wasn't making enough like
24 that.

25 303. Q. Just as we are here today, could you

1 give me a ballpark figure of the amount of the
2 deductions you took off taxes for your expenses in
3 your role as an independent contractor?

4 MR. ROSENFELD: Don't answer the
5 question.

/R

6

7 BY MR. MARTIN:

8 304. Q. You did file tax returns, though, in
9 those years, did you?

10 A. Yes, I have always paid my...

11 305. Q. You always...

12 A. I have always paid taxes. I mean,
13 everybody is supposed to...the CRA would have been
14 knocking on the door, right, if I didn't pay taxes.

15 306. Q. I am showing you a document, sir, if
16 you can identify that? I believe this is your T4A
17 from Just Energy for the year 2012. Does that meet
18 with your recollection or understanding?

19 MR. ROSENFELD: Don't answer the
20 question. You need to produce it. I don't
21 know what this is.

22 307. MR. MARTIN: Well, I would like him to
23 identify it, right?

24 MR. ROSENFELD: For what purpose?

25 308. MR. MARTIN: To show what he received by

1 way of self-employed commissions?

2 MR. ROSENFELD: And what does that have
3 to do with certification?

4 309. MR. MARTIN: Everything.

5 MR. ROSENFELD: Okay, well, I refuse. /R

6 310. MR. MARTIN: I am going to mark this for
7 identification, then, as Exhibit A on this
8 examination. This is a T4A Statement of
9 Pension, Retirement, Annuity, and Other
10 Income, recipient named Haidar Omarali.
11

12 --- EXHIBIT A: T4A Statement of Pension,
13 Retirement, Annuity and Other Income
14 of Haidar Omarali for the year 2012
15

16 BY MR. MARTIN:

17 311. Q. Sir, I gather at some point you
18 lived at 19 Blue Ridge Road in Willowdale?

19 A. Still do.

20 312. Q. And it shows self-employed
21 commissions of \$8,851.40. Sir, does that number
22 seem accurate, in terms of the commission income you
23 received from Just Energy for the tax year 2012?

24 MR. ROSENFELD: Don't answer the
25 question. We won't be answering any

1 --- EXHIBIT B: T4A Statement of Pension,
2 Retirement, Annuity and Other Income
3 of Haidar Omarali for the year 2013
4

5 MR. ROSENFELD: How much further do you
6 think you are going to be? We have gone
7 for about an hour and a quarter, give or
8 take.

9 316. MR. MARTIN: Do you want a break? I can
10 break now, if you want.

11 MR. ROSENFELD: Sure.

12 317. MR. MARTIN: Well, let's take five
13 minutes.
14

15 --- A BRIEF RECESS
16

17 HAIDAR OMARALI, resumed

18 CONTINUED CROSS-EXAMINATION BY MR. MARTIN:

19 318. MR. MARTIN: So, Counsel, if you just
20 turn up Mr. Omarali's independent
21 contractor agreement, which is Exhibit D to
22 the affidavit of Richard Teixeira.
23

24 BY MR. MARTIN:

25 319. Q. Have you, in preparation for today,

1 have you seen this recently, this document?

2 A. No, I really...done much
3 preparation. There is nothing for me to prepare.

4 320. Q. In the last couple of days, have you
5 seen this document?

6 A. Yes, I saw...yes, I looked at it,
7 like, yesterday.

8 321. Q. Okay. And is there any dispute that
9 you...that the signature on this document is yours?

10 A. Okay, well, where is the signature?

11 322. Q. So, I take you to what is page 53 of
12 the record.

13 A. Oh, yes.

14 323. Q. And you see "Candidate's signature".
15 Is that your signature?

16 A. Yes, that is my signature.

17 324. Q. Okay. And if I go over to the page,
18 to page 54, this is on the Privacy Notice and
19 Consent.

20 A. M'hmm.

21 325. Q. There is a contractor's signature.
22 Again, is that your signature?

23 A. Yes, that looks like my signature.

24 326. Q. And if I could take you to, again,
25 page 57...

1 A. Yes, the same, July the 23rd.

2 327. Q. And it says under the heading:

3 "...Be sure that you have read and

4 understood this agreement before

5 signing..."

6 And then in printing, it says:

7 "...Haidar Omarali..."

8 And then there is a contractor's signature. Again,

9 is that your signature, sir?

10 A. Yes. That is my signature.

11 328. Q. And just pausing there. This was

12 witnessed by a David Meghan. Who is that?

13 A. This would be the...I would think

14 that is the head office person that was there.

15 329. Q. Do you remember him?

16 A. No, because...what do you mean,

17 "Remember"? You mean what he looks like?

18 330. Q. I mean, is that somebody known to

19 you?

20 A. No, that is...no, I wouldn't

21 remember.

22 331. Q. Did you have discussions with him at

23 any point in time?

24 A. No, because he was leading the talk.

25 Just, we fill this out, and then he talked. I don't

1 even remember that his name was David Meghan.

2 332. Q. Okay. Then I go over to the next
3 page, which is page 58, a document titled
4 "Contractor certification"? Could you just look at
5 that for a moment?

6 A. Yes.

7 333. Q. And, again, is that your signature
8 under "Contractor signature"?

9 A. Yes.

10 334. Q. And this says that you were swearing
11 that you received and read the OEB Code of Conduct
12 for Gas Marketers, and that:

13 "...Just Energy has provided training in
14 and I agree to abide by the Code of Conduct
15 for Gas Marketers and the Electricity
16 Retailer Code of Conduct..."

17 A. Yes.

18 335. Q. Is it fair to say you agreed to
19 that?

20 A. It was part of the movie we saw.
21 So, we were told, yes, that is all we needed to
22 know. You watched the movie, so you can sign that.

23 336. Q. And then at the back of this
24 document, sir, starting at page 61 of the record, if
25 you want to flip through that, do you recall that

1 there was a test you were obliged to take, and that
2 you did take?

3 A. Yes, we all had to do that test.

4 337. Q. And is it your understanding that
5 this is the test that you took?

6 A. Yes, we took this after we
7 watched...and then we were able to do the test.

8 338. Q. Okay.

9 A. It is basically questions that were
10 answered on the movie.

11 339. Q. And you scored 44 out of 50, it says
12 here?

13 A. Yes.

14 340. Q. And you may not recall that or maybe
15 you do.

16 A. Yes, okay, well...yes, because I
17 know I didn't fail it, so...

18 341. Q. That was my next question. That was
19 a pass, I gather?

20 A. Yes, that was a pass, yes.

21 342. Q. And did you take the test on just
22 one occasion? Did you need to take it multiple
23 times?

24 A. This test?

25 343. Q. Yes.

1 A. No.

2 344. Q. Okay. Now, I understand your
3 evidence that you didn't get a copy of this, but you
4 talked about all of the independent contractors
5 having to sign this agreement. It is fair to say
6 that there would have been copies of this agreement,
7 then, in the office at all times, in blank?

8 A. How would I know that, if they
9 had...it is fair to say that?

10 345. Q. Yes. Well, you were at the office
11 for 18 months...

12 A. Yes, but I don't go opening their
13 drawers and checking things out, what they got.

14 346. Q. Well, you have also told me that
15 there was a flow, and you have given evidence that
16 there was a flow of candidates through...for the
17 independent contractor position on a weekly basis.
18 All of them would have been asked to sign this,
19 correct?

20 A. I would have to assume that they
21 would have to sign it. I know from when I went in
22 there, we had to sign it. And the other people,
23 like, I am not in their class to know everything
24 they did. When you talk to them, they all said that
25 they signed...

1 347. Q. Right. So, what I am saying is,
2 certainly, there would be multiple blank copies of
3 this available in the office if you had chosen to
4 ask somebody to see one?

5 A. They wouldn't...like, how would I
6 know that there are multiple agreements? Like, the
7 way they did it, they didn't want you to see this,
8 it seems like, because other people asked for it,
9 too, and other people I talked to, they wanted to
10 know what it was they signed, and, "Did you ever get
11 a copy of your thing?" Like, even months and months
12 later, when you talked to other people, "Did you
13 ever get a copy?" "No, I never got a copy, never
14 gave it back to me".

15 348. Q. Well, that is not Mr. Kordestani's
16 evidence.

17 A. I don't have anything to do with
18 that, what he says. I am saying...

19 349. Q. Well, you do, because you have a
20 copy of Mr. Kordestani's agreement. How did you get
21 that in your affidavit?

22 A. We gave it to the lawyers. It is
23 very similar to what I signed. I can tell by the
24 look of it.

25 350. Q. So, if I asked you to go to the

1 first page of the agreement, which is at page 52, if
2 you see under paragraph 1, marketing activity?

3 A. Yes, I never read that. Like, they
4 just gave it to us to sign.

5 351. Q. Is it your habit not to read
6 contracts that you sign?

7 A. Well, we are all there together, and
8 it was, like, "Everybody just sign this, and then we
9 will explain it to you in detail more", and then
10 once you sign it, you go on a break.

11 352. Q. Is it your evidence they told you
12 not to read it? They just said, "Sign this. Don't
13 read it"?

14 A. They didn't...

15 353. Q. That is not your evidence, surely.

16 A. No, nobody ever said what you just
17 said.

18 354. Q. Right. But you are a man with a
19 university education. You are not prone to signing
20 contracts that you don't read, are you?

21 A. Well, when I bought a car, for
22 example, I didn't read the whole contract. Some
23 things are a lot of words. You just don't...you
24 just take the word of the salesperson, or in this
25 case the employer, that "Go ahead. Just sign this,

1 and then we will..." so that is what I did. I
2 signed it.

3 355. Q. I am trying to get a sense, sir,
4 what your evidence is. You just signed without
5 reading it. That is your evidence. Yes or no?

6 A. That I...which signature are you
7 referring to?

8 356. Q. Any of them.

9 A. This one, I remember looking it
10 over.

11 357. Q. What page?

12 A. Page 53.

13 358. Q. Okay. That is for the criminal
14 record check?

15 A. And the health card and the whole
16 thing here...

17 359. Q. Yes?

18 A. ...and driver's licence.

19 360. Q. What about page 54, the Privacy
20 Notice and Consent?

21 A. Yes, that was just one page. Just
22 sign that page.

23 361. Q. Is it likely that you read that?

24 A. Well, we were told as we were
25 signing what it was for. So, we were told that we

1 are working with Just Energy, and that everybody is
2 a member of Ontario Energy Association, all the Just
3 Energy companies. And then they introduced us to
4 the idea that there is competition with companies
5 like Summittt and Universal. So, we kind of got an
6 idea, and we are with Just Energy, and not with
7 these other things, companies.

8 362. Q. Let me just take you back to the
9 first page, sir, paragraph 1, under "Marketing
10 Activity". Fifth line down, the sentence starts:

11 "...In no event shall a contractor
12 represent that he or she is an employee of
13 or connected with JEC or JE OLP in any way
14 other than as provided herein..."

15 So, were you aware, sir, that you had agreed not to
16 represent that you were an employee?

17 A. No, I only read this yesterday,
18 like, when I was in the lawyer's office, I was
19 reading it over. I read that for the first time.

20 363. Q. Is your evidence that when you
21 signed this, in...whenever the date was, 2012...

22 A. Because I wouldn't know what JEC is,
23 or J...I don't even know right now what JE...

24 364. Q. Well, they are defined in the first
25 line. This is an agreement between Just Energy

1 Corp., JEC.

2 A. Okay. Well, I didn't read that. It
3 was just words.

4 365. Q. Could I just take you to page 55 of
5 the record? And you see the heading, point 5:

6 "...Independent status..."

7 Now, again, the second paragraph on point 5:

8 "...The contractor is not and shall make no
9 claim the contractor is an employee of
10 JEC..."

11 A. This is the first time reading this.
12 Like, I haven't really read all this.

13 366. Q. So, you are saying at the time you
14 signed this, you weren't aware of that?

15 A. No, I didn't read it. I didn't read
16 it...any of this. I haven't read any of this still,
17 to date.

18 367. Q. So, even the bold in paragraph 5. it
19 is in capitals, it is bold and it is underlined.

20 A. Okay.

21 368. Q. And it says:

22 "...This independent contractor
23 relationship does not qualify the
24 contractor for minimum wage, Workers'
25 Compensation or other employment benefits.

1 Contractors who must collect GST much have
2 their own GST number..."

3 You don't recall reading that?

4 A. I never read it. This is the first
5 time I am reading this.

6 369. Q. Did you have your own GST number?

7 A. No.

8 370. Q. At any point?

9 A. No.

10 MR. ROSENFELD: Don't answer the
11 question.

12

13 BY MR. MARTIN:

14 371. Q. Were you aware of other independent
15 contractors having a GST number?

16 A. I never talked to anybody about a
17 GST number.

18 372. Q. Do you know why you might require a
19 GST number?

20 A. No. Why would you need it?

21 373. Q. For tax purposes.

22 A. Like I said, the guy told me that he
23 knows an accountant who does the taxes.

24 374. MR. MARTIN: Just a second.

25

1 --- DISCUSSION OFF THE RECORD

2

3 BY MR. MARTIN:

4 375. Q. Can I take you to paragraph 7 there
5 for a moment, sir? Paragraph 7 says that:

6 "...The contractor and JEC agree that the
7 contractor's services are not and are not
8 intended to be exclusive to JEC..."

9 I take it that you didn't carry on any other
10 business or employment while you were engaged as an
11 independent contractor with Just Energy, correct?

12 A. That is...yes, this is around the
13 time.

14 376. Q. Were you aware of others, though,
15 who did do other jobs or sell other products while
16 they were also independent contractors of Just
17 Energy?

18 A. No, I can't think of anybody who
19 would be doing that.

20 377. Q. One of the examples in our materials
21 is given as to a contractor who also sold lights
22 while he was selling energy contracts, as well. Had
23 you ever heard of that?

24 A. Yes, well, I heard about people
25 doing things like...for that. That is when Flora

1 MacDonalld was starting out and Rebecca MacDonald.
2 Like, we were all talking about how she was
3 successful, and went door-to-door selling
4 lightbulbs, and selling toiletry things for...and
5 then she got into gas and hydro. So, you know,
6 Rebecca MacDonald did it.

7 378. Q. Did you ever meet Rebecca MacDonald?

8 A. No, but we always had this... if you
9 do, well, you go on a trip to some Caribbean island
10 or Hawaii or something, and you will meet Rebecca
11 MacDonald there.

12 379. Q. Did you ever qualify for a trip?

13 A. No.

14 380. Q. Did you...are you aware of other
15 independent contractors who did?

16 A. Yes, the crew...yes, Dominic, like
17 the crew leader, Cheyenne, and some other people.
18 They went.

19 381. Q. What about any people at your level?

20 A. No, we always seemed to miss it.
21 Like, it was...the closest I got, like, some time I
22 was off by about 18 or something like 20 sales or
23 something. I didn't make it on the top of the
24 lists.

25 382. Q. So, just going over the page to...go

1 back to page 56. That is a provision respecting
2 term and termination. I appreciate you didn't...you
3 say you haven't read this.

4 A. Right.

5 383. Q. How did your relationship with Just
6 Energy come to an end?

7 A. Well, I wasn't making much money.
8 My mom wasn't feeling well or whatever, and I just
9 told them I wasn't coming back anymore. I told
10 Dominic, "That is it. It is winter now". It was
11 January, and I was just not going to be doing it
12 anymore.

13 384. Q. So, just one day, you just up and
14 stopped working?

15 A. Yes. And then Dominic told me that
16 he was...he called me up, he told me that he is
17 quitting, too. And he went to work for a water
18 filtration system. You go door-to-door and you sell
19 water filters.

20 385. Q. And did you look into doing that
21 business?

22 A. Yes, I went over to his place there
23 for, like, three days to see what it is about.

24 386. Q. Yes?

25 A. And then I left, because it was

1 confusion. It is, like...you would actually tell
2 the guy that this water in your house isn't safe to
3 drink. You would put drops in it and show him it is
4 not good. Your skin is bad because it is the
5 chlorine in it, and you are buying all this extra
6 stuff. So, what you need, it goes down to the
7 basement, and you would see that the water main, the
8 water that comes from your water main and goes
9 straight to all the things. There are some
10 attachments, pipes you can put in there. And then
11 when the customer agrees right away, I see these
12 guys are waiting out in the van around the corner,
13 and right away they are installing it, and they have
14 no chance of...

15 387. Q. Cancelling.

16 A. Yes. It didn't feel right, because
17 I didn't really want to do something like that.

18 388. Q. But that business, again, same as
19 Just Energy for the sales people, 100 percent
20 commission.

21 A. Yes, well, I didn't want to do that.

22 389. Q. You didn't want to do that?

23 A. No.

24 390. Q. You were done with 100 percent
25 commission business?

1 A. No, it wasn't that. It was the
2 nature of the job, like, going to people's houses
3 and checking their water, and then telling them they
4 needed a new filter, "Sign a contract here for five
5 years, and then every year you will be getting some
6 new pieces of equipment to put in, and you can take
7 out all the...see the brown in the thing. That is
8 the stuff you are drinking, or you are having a bath
9 with, or cooking with. And we will put in...install
10 this thing here, and then right away, then this van
11 is around the corner, and we are in the area today
12 only. So, that is what...what he was doing wasn't
13 something that...like, "Thanks, Dominic, but this
14 isn't for me".

15 391. Q. You were aware of other door-to-door
16 sales for energy and electricity being done by
17 competitors to Just Energy, correct?

18 A. Yes, the people, because you see
19 their bill, and you could see, like, the electricity
20 was already with Summitt.

21 392. Q. Summitt. That is a good example.
22 They are a competitor...

23 A. Yes.

24 393. Q. ...of Just Energy?

25 A. Right.

- 1 394. Q. And you are aware that their
2 salespeople were independent contractors, as well?
- 3 A. Yes, they did the same job as us.
- 4 395. Q. Yes.
- 5 A. They go door-to-door.
- 6 396. Q. Right. And on the same basis of,
7 like, 100 percent commission?
- 8 A. Well, I never asked anybody how they
9 got their money.
- 10 397. Q. You never encountered anybody from
11 Summitt?
- 12 A. To talk to?
- 13 398. Q. Yes.
- 14 A. No, not...there was...Petra worked
15 at Summitt.
- 16 399. Q. Right.
- 17 A. And Jen, the other crew leader,
18 worked in Summitt.
- 19 400. Q. On the same basis?
- 20 A. Well, no, Jen was a crew leader in
21 Summitt...
- 22 401. Q. No, on a commission basis, what I am
23 getting at. That is the nature of sales in this
24 business?
- 25 A. Yes, well, I figured that out. They

1 are the same as us, Just Energy is the same kind of
2 business.

3 402. Q. And I was going to ask you. You
4 have told me that people came from Summitt, but
5 also...were you ever aware of Just Energy people,
6 like yourself, going over to the competition, like
7 going to work for Summitt, from time to time?

8 A. No.

9 403. Q. No? You are not aware of people
10 moving, sort of, back and forth between competitors?
11 I mean, you mentioned Petra and Jan, but others, as
12 well?

13 A. I can't think of anybody else.

14 404. Q. Okay. Pull up your own affidavit
15 for a moment, sir, which is in volume 2, I believe.
16 Sorry, 1 of your record. So, just go to paragraph 7
17 on page 2 for a moment, sir. You are referencing,
18 sorry, the submissions that Just Energy made to the
19 Ontario Energy Board.

20 A. Yes.

21 405. Q. And you attached those to your
22 affidavit. I presume you have read them?

23 A. Yes, yes, of course.

24 406. Q. And in paragraph 7, you note that
25 Just Energy suggests, or puts into submission that

1 it employs over 700 people in addition to the
2 roughly 130 independent sales agents. Do you see
3 that?

4 A. Yes. That is what I wanted to do.
5 Move out of sales, and get into...

6 407. Q. Employment jobs?

7 A. Yes, the Just Energy...

8 408. Q. Right, so it is fair to say that to
9 the best of your knowledge, the vast majority of
10 people with Just Energy are employees, and the ones
11 who aren't are the outdoor salespeople, correct?

12 A. Yes, well, we are technically
13 employees, because we are doing the work for Just
14 Energy.

15 409. Q. Well, that remains to be seen in
16 this litigation about what the status may be, but
17 the distinction is, the independent sales agents,
18 those are the people who knock on the doors,
19 correct?

20 A. Yes, because that is what they gave
21 us on our badge. It says, "Independent contractor".
22 They just print it up in there.

23 410. Q. Just look at paragraph 14 of your
24 affidavit for one moment, sir. You say:

25 "...Sales agents have no control over the

1 setting of commissions or prices..."

2 What I am curious about, sir, is why would you think
3 they should?

4 A. Well, if you sign up somebody who
5 uses a lot of electricity, or a lot of gas, more
6 than the normal, like, more than 2,400 cubic metres
7 of gas in their house, then you would get more
8 money, because they are using more than the average.
9 And the same thing with the electricity, with the
10 kilowatts of electricity.

11 411. Q. So, you thought you should get more
12 commission if you sold to a higher user?

13 A. Yes, you do get higher commission.

14 412. Q. Okay. But what you say in your
15 affidavit here, sir, is that,
16 "...agents have no control over the setting
17 of commissions..."

18 And what I am asking you is, why would you suggest
19 they should have any control over that at all?

20 A. Well, it is a way of...it would have
21 been nice to be able to do that. It is just wishful
22 thinking. I would think that...like, I always like
23 to be part of the...trying to get in the company,
24 trying to put my two cents in, to be noticeable.
25 Like, you know, the thing is they would be way more

1 productive if they actually did give us a salary,
2 because then people would actually...I think we
3 would work harder, that other people would work
4 harder, because I seen some people slacking off and
5 that kind of thing, and I figure if there is some
6 way that they can motivate us with...other than the
7 sales, like, to get money.

8 413. Q. When you say slacking off, you mean
9 people who wouldn't come into work, or would take
10 days off?

11 A. No, no, no. People who actually
12 come into work, but then they don't really...they
13 skip a house here or there, or they take longer
14 breaks than normal, that kind of thing. So, if
15 you...

16 414. Q. Take vacation?

17 A. This vacation thing keeps coming up.

18 415. Q. No, I only asked it once about
19 yourself. I am just saying others took vacation.

20 A. I don't know. When people weren't
21 there, I don't know what they were doing.

22 416. Q. Right.

23 A. But then I know people, like, you
24 can hear them on the phone begging to come back in
25 because they were told not to come back if they

1 missed some days like that. If..."Why weren't you
2 here?" And they would embarrass you in front of
3 everybody, you know?

4 417. Q. Because there is a motivational
5 aspect to the job?

6 A. Is that what you think? It was
7 motivational?

8 418. Q. I am asking you. I mean, wasn't
9 there sort of a team component involved in what you
10 were doing?

11 A. Yes, but then there is also a
12 strategy on their side to make sure that we are
13 there, whether...the motivational might be
14 secondary. Primarily, they just want bodies. The
15 more bodies they have, the more houses that can get
16 knocked.

17 419. Q. Well, no, there is a sales
18 component, right? They want people who are good at
19 the job, good at sales.

20 A. So many people, you knock on their
21 door, and they will sign anything. Like, they
22 would, "Hi, how are you today? It is regarding the
23 meter at the side of your house". "Yes, what about
24 it?" "Well, we need to check your gas and hydro to
25 make sure you receive the discount". "Oh, okay, I

1 will get it for you". There are some people that
2 don't even really need any prodding, like, in...so,
3 there is all kinds of scenarios. You don't have to
4 be really good at this. I have seen some people
5 come in and...some girls came in, and they were
6 really dressed up, really nice, and they seemed to
7 sign up deals just because they looked really nice
8 and that. But then...

9 420. Q. Well, they teach you and train you,
10 and motivate you in respect of professional
11 appearance as part of sales, don't they?

12 A. Not really. There are people there
13 that came in wearing these pants that drag down to
14 their knees. Like, how do they do it? They are
15 actually making deals. They are...

16 421. Q. But that is not something that you
17 would recommend. You would think, I gather, from
18 what I am hearing from you, that that wouldn't be an
19 ideal way to do sales.

20 A. You have to be in the comfort zone.
21 So, these people are comfortable wearing those kind
22 of clothes. Like, I mean, there are days where it
23 is raining and that, and they were wearing different
24 kinds of...like, a windbreaker type of thing that,
25 the hideous-type collars, and they are still

1 knocking, because they just put the badge out on the
2 thing there, "I am not with the utility", because
3 later Just Energy kept on having to do little
4 changes, like make the business card bigger, like
5 put the badge, "I am not from the utility" because
6 people were going in there, saying...misleading
7 people. I read these stories on the Internet that
8 they got fined, and these kind of things, because
9 misrepresentation. That is the people I am talking
10 about.

11 422. Q. But you wouldn't engage in that
12 activity, sir?

13 A. I didn't what?

14 423. Q. Engage in that kind of activity?

15 A. Like what kind of activity?

16 424. Q. You weren't misrepresenting anything
17 at the door?

18 A. No, because I expected to move into
19 a company in a higher position. Like, I wanted
20 to...

21 425. Q. But also you wanted to comply with
22 the law, did you not?

23 A. I wanted to what?

24 426. Q. Be compliant with the law.

25 A. Yes.

1 427. Q. And not misrepresent things to
2 people.

3 A. Yes, that is right. That is why I
4 probably didn't...yes, that is true.

5 428. Q. Right, and you were...

6 A. I wouldn't argue that.

7 429. Q. And oftentimes, I think you
8 described it, as you were longer in the business,
9 people would shadow you. And, so, you would be
10 demonstrating to younger, newer, independent
11 contractors, I gather, how to do the job properly.

12 A. Yes, well, they were told not to say
13 or do anything, just watch. So, when I knock on the
14 door, "Hi, my name is Haidar from Just Energy
15 Ontario. This is an associate of mine. He is just
16 on his first day or second day here, he is following
17 us. We are coming by regarding the meter at the
18 side of the house, the SmartMeter. The gas and
19 hydro. Can I get a copy of those bills? I would
20 like to take a look at them with you".

21 430. Q. Can you look at paragraph 19, there,
22 sir? This advertisement that you saw, do you recall
23 where you saw the advertisement?

24 A. Yes, it was...you know those boxes,
25 those metal boxes where it says, "Jobs"?

1 431. Q. Okay.

2 A. And I was taking a few different
3 ones up, and I noticed in the front page, \$800 a
4 week, right?

5 432. Q. Okay.

6 A. And it made some comment about easy
7 hours, or something flexible, flexible rates or
8 something...something that doesn't seem too hard.
9 And you can get \$800 minimum, that is the word
10 minimum, \$800 a week.

11 433. Q. Did you discuss that with Just
12 Energy when you first met with them?

13 A. Yes, we all did, because some of
14 them went through Kijiji, but the other ones wanted
15 to know...and then we wanted to know how we can only
16 get three sales in a week and we can get \$800. That
17 doesn't sound so bad. And then the next day
18 afterwards, we found out it was three sales a day to
19 make it \$800.

20 434. Q. But no one at Just Energy said to
21 you that three sales a week would be \$800.

22 A. No, we had that assumption because
23 they said, "All you need to do to have this job is
24 be able to do at least three sales a week".

25 435. Q. Who said that to you?

1 A. Both Jahan and the representative.
2 There was also somebody else there. There was
3 somebody along those lines..we were told that \$800
4 was with three sales.

5 436. Q. Sorry, someone at Just Energy
6 represented to you that three sales would be \$800 a
7 week?

8 A. Yes. That is...

9 437. Q. And they represented that to you on
10 one of the first days you were there?

11 A. Yes, verbally. Yes, they told us,
12 yes.

13 438. Q. And then that turned out not to be
14 the case?

15 A. Yes, but that was what was written
16 in the ad. The ad also said \$800 a week minimum.
17 It said "minimum \$800 a week".

18 439. Q. You don't have that ad, though, do
19 you, sir?

20 A. No, I don't have the ad.

21 440. Q. And the ad may very well have said,
22 "Many successful independent contractors can make a
23 minimum of \$800 a week"?

24 A. It didn't say anything about
25 contracting, because I always thought a contractor

1 was somebody who fixes the gas, like, the guy who
2 drives in the truck, contracted by Enbridge, let's
3 say, to fix...to do things. Like, when you are
4 building a house, those are contractors.

5 441. Q. So, then, when you first saw the
6 independent contractor agreement that they asked you
7 to sign...

8 A. Yes.

9 442. Q. ...wouldn't you have then
10 immediately said to someone, "Wait a minute. I
11 don't understand what a contractor is"?

12 A. No, I never really did. Like I
13 said, after the first week, after the first cheque
14 came in, and whatever, I started to get wind of how
15 this job works. And then I just stayed, hoping to
16 get better.

17 443. Q. The materials...if you go back to
18 our record, and the materials at the back of the
19 Young affidavit. I want to take you to there for a
20 moment. There was, and is, a training program...if
21 I could ask you to go to tab A, this material...have
22 you had a chance yesterday to go through this
23 material?

24 A. No.

25 444. Q. Maybe not in great...

1 A. No.

2 445. Q. ...depth, but I mean, have you at
3 least glanced at it?

4 A. No, but I used to sit down and read
5 it, and when we are waiting in our room, we used to
6 have lots of these kind of books like this.

7 446. Q. Okay. And are these the kind of
8 books that you would have had at your training...in
9 the first few days, you were applying to Just
10 Energy?

11 A. Yes, these books were always around.

12 447. Q. Okay.

13 A. Yes, those were the kinds they would
14 leave out, but they wouldn't leave a copy of the
15 contract out.

16 448. Q. So, these books, though, it is Just
17 Energy's evidence that this is part of the training
18 that takes place in the first few days, that someone
19 is trying to engage as an independent contractor.
20 So, these would have been available to you in those
21 first few days you were applying to Just Energy?

22 A. Yes, they are...they were in the
23 back of the room. You can do it, but when you first
24 start off they are trying to train you the pitch.
25 You are focusing on your pitch. You can learn

1 everything else later. Your pitch is your bread and
2 butter. You can't go to the door and go, "Uh, uh,
3 uh, can I...I am with Just Energy. Can I take a
4 look at your bill? I want to see if you got a
5 discount". You have to learn the thing. So, these
6 things, may be back in the room, and lots of them,
7 like, hundreds are there. But you are not really
8 sitting there to learn this. You are sitting there
9 to learn the pitch. You are learning...

10 449. Q. But they go through this at those
11 first few days, they go through these materials,
12 whether it is by PowerPoint, and you said there was
13 a video.

14 A. Yes, right at the beginning on the
15 first day.

16 450. Q. Right.

17 A. Once you are in the first day, then
18 the second day, it is the pitch, what you are
19 learning, and everybody is practising with each
20 other, and these books are there. Anybody can look
21 at them, but who has got time to read a book when
22 you are supposed to memorize something? It is not
23 so easy to memorize something that...you know,
24 memorized from scratch. I never really heard of
25 Just Energy. The ad didn't even say it was Just

1 Energy.

2 451. Q. I am going to ask you to go to page
3 325 of that record.

4 A. Exhibit B?

5 452. Q. Exhibit B to the affidavit of Janna
6 Young, the record at page 325. And this isn't some
7 document labelled, "The independent contractor
8 orientation manual".

9 A. M'hmm.

10 453. Q. And I don't know whether you would
11 have seen this in the first few days, but I gather
12 it was of the type of materials that you say were
13 around the office at all times?

14 A. Yes. And this came in a binder,
15 this first page...

16 454. Q. A binder, yes, okay.

17 A. This first page was slipped into the
18 front of the binder...

19 455. Q. M'hmm.

20 A. And then the rest of it was inside.
21 And we were told to ignore some of the material in
22 there that is out of date.

23 456. Q. Okay.

24 A. So, this stuff was...we were
25 told...when I first saw it, it was green, and we

1 were told..."It is out of date. Just ignore it.
2 You can take a look at it, yes, but just leave it
3 here because we are not using that anymore". And
4 everybody will tell you the same thing.

5 457. Q. But...

6 A. ...they had all these binders, and
7 then eventually they took these things and blue
8 boxed it, and you were able to put in your own
9 materials, and walk with a binder out the door. It
10 was the binder that came from this...yes, so we
11 never used this. We were told that that is...

12 458. Q. Okay.

13 A. But there were tons of them.

14 459. Q. But...

15 A. What a waste of money, I was
16 thinking.

17 460. Q. But there were updated versions of
18 this, is that right? I gather you are saying this
19 was...

20 A. No.

21 461. Q. ...outdated?

22 A. No, this was there, but we were
23 told, "We are not using this. It is out of date".
24 This was outdated. Because I remember looking at
25 it. A lot of it didn't make sense. I didn't pay

1 attention to it because it was out of date. The
2 basis...I remember, just, like, maybe one, two days,
3 I took a look at it and put it back. The next thing
4 I knew, we were all throwing out the contents here,
5 to put our own stuff and keep our own empty
6 contracts and Ontario Energy Board paperwork and
7 brochures and business cards in the same binder that
8 this stuff was in. So, none of this even makes any
9 sense. Like, I wouldn't know...this stuff is out of
10 date.

11 462. Q. Could I ask you to go to paragraph
12 24 of your affidavit? You make reference to people
13 who were fired. Do you see that? Are you aware of
14 anyone who was ever fired in the 18 months you were
15 an independent contractor?

16 A. Yes, there was people who just
17 didn't show up. They were told not to...and then
18 they showed back up. They would call them in the
19 office, and you can hear them yelling at him or
20 whatever, and some people left, and some people came
21 back in the room pretty quiet. They hired people
22 that worked for like a month, even went on a road
23 trip, and then they were told that they do
24 have...their criminal record come back. They do
25 have a criminal record, and, "We can't have you

1 here, but you can go for your pardon. As soon as
2 you get your pardon come back to us".

3 463. Q. Right.

4 A. Yes. So, they were fired, because
5 they were told to...and they didn't want to leave.

6 464. Q. Were they...they weren't...

7 A. This was all because...

8 465. Q. But a criminal record check that was
9 an obligation that you had to satisfy to be an
10 independent contractor, right?

11 A. Yes. I...

12 466. Q. Did you understand why the criminal
13 record check was done?

14 A. Because there want people that don't
15 have a record.

16 467. Q. Right. Why, though? It is because
17 they were going door-to-door, outdoor sales. That
18 was the reason why. It was a government regulation
19 requiring that. Did you understand that?

20 A. Well, now that you tell me. Now I
21 know.

22 468. Q. But you didn't know that otherwise?
23 When you agreed to have a criminal record check done
24 on yourself...

25 A. Yes.

1 469. Q. ...did you ask why?

2 A. No, because I have got nothing to
3 hide. I don't have any criminal...like why would I
4 even ask why?

5 470. Q. Okay. Did you ever do commercial
6 sales?

7 A. Commercial sales? Like, what is...

8 471. Q. Sell not to residential but to
9 commercial businesses?

10 A. Oh, commercial businesses. No, I
11 asked him about that, and Jahan told me that it is
12 harder to do than it is residential because Just
13 Energy doesn't even really do that. You would have
14 to go to Hudson, another affiliate of Just Energy,
15 or there is somebody in...no, so to answer your
16 question, no, I never did commercial sales. I did
17 ask about it, because I was thinking of moving up,
18 right?

19 472. Q. Did you...then, I gather you are not
20 aware that they had separate commercial offices from
21 time to time?

22 A. Yes, as Jahan said, it was called
23 Hudson. That is another commercial office. It is
24 another thing, but they have Just Energy...I walked
25 into...I know that Just Energy...I seen the Just

1 Energy cars. They must have been doing commercial
2 things, too. This place keeps really secretive
3 about a lot of things. You never really know...it
4 is a lot of hearsay, a lot of things, but when you
5 ask a question, you are kind of, like, "Okay, that
6 kind of answers". I don't...there is not really any
7 follow-up. Like, so I never got in...I never did
8 the commercial thing with Just Energy.

9 473. Q. You never made any commercial sales
10 at all?

11 A. No, never.

12 474. Q. Did you ever do any renewal sales?

13 A. No, I...no. It is a renewal. Why
14 would you...if the person is already on Just Energy,
15 they would mail them the thing to renew. Repeat
16 customers would show us at the door, "Oh, yes, I
17 already have you guys. You are on my bill". In
18 fact, I got this big package here. I got to send it
19 in to renew". And I said, "Yes, you have got to do
20 that". So, make sure...

21 475. Q. So, you weren't aware that
22 independent contractors were going to doors to do
23 renewals?

24 A. No. I just did...the contractors
25 are going to the door?

1 476. Q. People like yourself...

2 A. Yes.

3 477. Q. ...at Just Energy...

4 A. Yes.

5 478. Q. ...in addition to or independent of
6 going to new customers would go to renewal customers
7 to try and engage them to renew their contracts.
8 But you never did any of that work?

9 A. Well, you know, it is very
10 disorganized, because...

11 479. Q. No, sorry, my simple question is you
12 never did any of that work?

13 A. Knocking on the door?

14 480. Q. No one said to you, "Here is Mr.
15 Rosenfeld. He is a customer whose contract is up
16 for renewal. Would you contact him, go to his home
17 and try and renew his contract?"

18 A. No, absolutely not. No, everybody
19 is brand new. You knock on doors, and people are
20 asking...telling you, "I am already at Just Energy".
21 They are not telling you...you don't know who has
22 got it and who does not. You are just knocking on
23 the doors they tell you to knock.

24 481. Q. Well, I am simply asking whether you
25 personally ever did any renewal sales. Others did.

1 That is what I am telling you. Maybe you did or
2 didn't. I don't know.

3 A. Well, I feel ripped off, then,
4 because...

5 482. Q. Okay.

6 A. Because I never had a renewal, like,
7 knock on the door and there is a renewal.

8 483. Q. You don't know that they had, for
9 example, an office in Cambridge that largely did
10 renewals?

11 A. No.

12 484. Q. People would go out into the field
13 to do renewals?

14 A. No, never...

15 485. Q. You didn't know that?

16 A. Yes, how do you...no, that would
17 have been nice. That sounds like easy money,
18 because they are already a customer and they want to
19 renew them and...

20 486. Q. Yes.

21 A. Yes, that would be great. I would
22 like to do that. No, I never did that. I would
23 have liked to.

24 487. Q. And you weren't aware of that?

25 A. No. Like, no. Nobody ever told me.

1 You know more than I do, about these things,
2 obviously. Because that would be easy, like, just
3 to knock on the door and tell them, "I am here to
4 renew your contract". It was never like that.

5 488. Q. Now, were you aware, sir, of
6 independent contractors of Just Energy who didn't
7 work in teams, who would go out on their own and,
8 you know, set their own schedules?

9 A. Yes. Sometimes people would say,
10 "Look, I am going to work from my own neighbourhood
11 today".

12 489. Q. Right.

13 A. Yes, and...

14 490. Q. Did you ever do that?

15 A. Yes, and then I come back, and the
16 next day, "Don't do that again, okay?" That was a
17 one-time exception, because it is a team thing. You
18 don't really work on your own. You are
19 always...your crew leader. We have got areas and
20 territories to cover, and you can work on your own
21 time, like, on your day off, which puts you in a
22 Sunday to knock in your neighbourhood.

23 491. Q. But were you aware...so, you did it.
24 Were you aware of others who did do that, though,
25 who did operate, sort of, on their own, and didn't

1 need the team structure?

2 A. No, because I only did it, like, one
3 day or two days, and that was the end of that
4 because I came home.

5 492. Q. Did you know any others who did it,
6 though? I am asking you.

7 A. Yes, one other person. She did her
8 apartment. Yes, she phoned in and she did her,
9 like, condo, that she lived in.

10 493. Q. Anyone else?

11 A. I did it then Sue was the other
12 person. She did it. They don't encourage...they
13 don't tell you to do that. They want you in the
14 office.

15 494. Q. But they don't prevent you from
16 doing that?

17 A. Yes, they do. You are not supposed
18 to have done that, "We made you an exception to the
19 rule because you just called in or you weren't
20 feeling well, and you can say you did it. So, that
21 is fine, but make sure you are back in the office".
22 They don't...

23 495. Q. But there is no consequence for you
24 doing that?

25 A. You get reprimanded. You get

1 verbally...

2 496. Q. How do you get reprimanded?

3 A. They verbally tell you, "You
4 shouldn't have done that". That is reprimanded.

5 When you are verbally told...

6 497. Q. Who is telling you, this, sir?

7 A. Jahan.

8 498. Q. Jahan is an independent contractor
9 himself.

10 A. Well, he is the boss. He runs the
11 office.

12 499. Q. He is not. Your contract isn't with
13 him. Your contract is with Just Energy.

14 A. And he is the Just Energy
15 representative.

16 500. Q. No, he is not, sir.

17 A. Well, as far as I know...

18 501. Q. He is independent.

19 A. ...he has always been the...

20 502. Q. He is independent.

21 MR. ROSENFELD: Is there a question? I
22 am sorry.

23 THE DEPONENT: Yes, I don't
24 understand...

25 MR. ROSENFELD: You are telling him an

1 answer?

2 503. MR. MARTIN: I am telling him that. He
3 is telling me he doesn't know that.

4 THE DEPONENT: I didn't know that.
5

6 BY MR. MARTIN:

7 504. Q. Yes. He is the regional
8 distributor. He is independent. Your contract...

9 A. He gets all his orders from head
10 office. Head office...

11 505. Q. He doesn't get orders at all.

12 A. He told us he gets orders from head
13 office. He tells us head office wants to know why
14 our numbers are down. He tells us head office wants
15 us to wear the uniforms and to make sure you are
16 handing out the right materials.

17 506. Q. Well, even uniforms, sir, you...

18 A. All the contracts, come in. They
19 are from head office, and Jahan is telling us
20 that...he is the regional...of the office, and the
21 people that own the offices, like Johnny Lavoie,
22 they say they own offices with an RPM Group. They
23 got these other guys...

24 507. Q. You didn't know they were
25 independent?

1 A. That Jahan is acting all by himself?

2 508. Q. He is independent of Just Energy.

3 He has his own independent contract with Just

4 Energy. Yes.

5 A. No, as far as I know, he is Just

6 Energy. It is his office.

7 509. Q. And he is...

8 A. He even tells you, "This is my

9 office".

10 510. Q. And he is strictly commission?

11 A. He takes \$2,000 out of his pocket,

12 and said, "This is what you guys should be making",

13 and he throws it at the board. And he says, "Walk

14 around with \$2,000 in your pocket, and you will see

15 how you feel. Now go out there and knock on some

16 doors and bring in...and make yourself a better

17 person". But he is the Just Energy person, because

18 he goes to Just Energy, and comes up with stuff all

19 the time, and information, and they compare

20 everything with the other offices.

21 511. Q. Well, he wants to drive sales,

22 because he is on a commission basis.

23 A. So, he is getting a commission on

24 what we are getting, right?

25 512. Q. Yes.

1 A. Is that...

2 513. Q. Did you not understand that?

3 A. No, but isn't he also getting money
4 for being the office...I think he is.

5 514. Q. No, he is not. He gets an override
6 on what people like yourself sell. You didn't know
7 that?

8 A. Well, but Johnny Lavoie gets money
9 from the head office.

10 515. Q. He is a regional distributor.

11 A. Johnny Lavoie, too? The...

12 516. Q. No, but you don't know. You didn't
13 know what his relationship was, right? Is that what
14 you are telling me? You didn't know that?

15 A. I didn't know that he was getting
16 money from just us. But whenever the head office
17 people come, that is who they go to, and that is how
18 he goes to their office all the time. They must
19 be...

20 517. Q. Just wait for the question. Just
21 wait for the question.

22 A. What is that?

23 518. Q. Just wait for the question. Wait
24 for me to ask a question.

25 A. Okay.

1 519. Q. Exhibit P to your affidavit, sir, is
2 something called a living income plan. Have you
3 reviewed that?

4 A. Yes.

5 520. Q. Now, this was prepared before you
6 were involved in the lawsuit. Do you recall that?

7 MR. ROSENFELD: I don't know the answer
8 to that question, to be honest. I don't
9 know. Do you need to know?

10 521. MR. MARTIN: No, I don't really need to
11 know.

12

13 BY MR. MARTIN:

14 522. Q. My real question is, you talk about
15 a class that says any person since 2012. So, I
16 would think, then, what you are saying is it was
17 since 2012. So, anyone as of January 1, 2013, who
18 worked or continues to work as a sales agent. Am I
19 right?

20 MR. ROSENFELD: No, I would say it would
21 be January 1st, 2012.

22 523. MR. MARTIN: It says since 2012.

23 MR. ROSENFELD: Like I said. To me,
24 that would include 2012.

25 524. MR. MARTIN: Is that the intention, or

1 do you need to think about that?

2 MR. ROSENFELD: That is the intention.

3 525. MR. MARTIN: Okay, well, that is beyond
4 two years from when Mr. Kordestani issued
5 his claim.

6 MR. ROSENFELD: Mr. Omarali?

7 526. MR. MARTIN: Mr. Kordestani.

8 MR. ROSENFELD: Either way. It is a
9 statement. So, is there a question from
10 that?

11 527. MR. MARTIN: Well, no, I just wanted you
12 to clarify. I understood, since 2012...

13 MR. ROSENFELD: Yes, no...

14 528. MR. MARTIN: ...to mean post-2012, which
15 would have been as of January 1, 2013, but
16 you are now telling me you intended it to
17 be something different?

18 MR. ROSENFELD: Yes, January 1st, 2012.
19 If that is not accurate, I will let you
20 know.

U/T

21 529. MR. MARTIN: Thank you. Go to your
22 Statement of Claim...sorry, it is an
23 Amended Statement of Claim...for a moment.
24 Paragraph 19...you suggest in paragraph 19,
25 Mr. Omarali, that you were misled by the

1 Defendants that you were not an employee.

2 MR. ROSENFELD: Sorry, did you say
3 paragraph 19?

4 530. MR. MARTIN: Paragraph 19, page 12.

5 MR. ROSENFELD: No, I might be...

6 531. MR. MARTIN: I have something called an
7 Amended Statement of Claim.

8 MR. ROSENFELD: I have that.

9 532. MR. MARTIN: Paragraph 19 on page 12.

10 MR. ROSENFELD: Paragraph 19 says,
11 "...The Defendants required Kordestani and
12 Omarali to work between 60 and 72 hours per
13 week without receiving the minimum wage..."

14 533. MR. MARTIN: Sorry, go off the record
15 for a second.

16

17 --- DISCUSSION OFF THE RECORD

18

19 BY MR. MARTIN:

20 534. Q. So, in...I appreciate Counsel has a
21 different version, that wasn't issued, but in the
22 issued one in paragraph 19, and I will read the
23 allegation, you say:

24 "...Omarali relied on the defendants to
25 properly classify him regarding his status

1 as an employee and his entitlement to
2 minimum wage, overtime pay, vacation pay,
3 public holiday and premium pay, and was
4 misled by the defendants that he was not an
5 employee of the defendants..."

6 Can you tell me, sir, is there anyone who
7 specifically misled you in that regard, that you
8 were not an employee?

9 A. Yes, that I am not an employee, is
10 that the question?

11 535. Q. Yes. Your allegation, your claim,
12 is that the defendants, Just Energy is the
13 defendants, misled you that you were not an
14 employee.

15 MR. ROSENFELD: May I see the
16 paragraph...

17 THE DEPONENT: Not an employee? Is that
18 what you are saying? I am...

19

20 BY MR. MARTIN:

21 536. Q. Yes.

22 A. ...not an employee? Yes.

23 MR. ROSENFELD: Okay. I just want to
24 see the paragraph, that is all.

25 537. MR. MARTIN: It starts out:

1 "...Omarali relied on the defendants in
2 good faith, and was unaware while
3 working..."

4 That is how it starts.

5 MR. ROSENFELD: Yes, I have got it.

6 538. MR. MARTIN: Okay. What paragraph do
7 you have in that one?

8 MR. ROSENFELD: This will be paragraph
9 20 of the claim that is at tab 3 of the
10 plaintiff's motion record.

11 539. MR. MARTIN: Yes, okay. There we go.

12

13 BY MR. MARTIN:

14 540. Q. So, my question was, are there...I
15 want to know who, like what people misled you?

16 A. Everybody thinks that they are an
17 employee...

18 541. Q. No, no...

19 A. ...but we just don't get...

20 542. Q. No, no, wait, sir. Sir, sir, wait,
21 wait. Wait. I am asking you...

22 A. Yes.

23 543. Q. ...you, who do you say, at Just
24 Energy...so, I want names of people...misled you
25 that you were an employee, that you were not an

1 employee?

2 A. That I was not an employee?

3 544. Q. That you were not an employee.

4 A. Nobody thinks that they are not an
5 employee. Everybody thinks they are employees.

6 545. Q. Okay, stop, okay? Just slow down,
7 okay?

8 MR. ROSENFELD: I don't think this is
9 relevant one way or the other.

10

11 BY MR. MARTIN:

12 546. Q. You are not speaking for 7,000
13 people, sir, okay?

14 MR. ROSENFELD: Sorry...

15 THE DEPONENT: But I was answering your
16 question.

17

18 BY MR. MARTIN:

19 547. Q. No, no, I am asking who you, Haidar
20 Omarali, say misled Haidar Omarali that he was not
21 an employee. Did someone say something to you? Did
22 someone say, "Oh, of course you are an employee.
23 Don't worry about what that independent contractor
24 agreement says"?

25 MR. ROSENFELD: Is it not the opposite?

1 THE DEPONENT: Yes.

2 MR. ROSENFELD: That paragraph is not
3 the opposite? That they would have told
4 him he was an independent contractor?

5 548. MR. MARTIN: He said he was misled. He
6 said he was misled.

7 MR. ROSENFELD: Right, and the
8 allegation is that he is an employee. So,
9 he is being told he is an independent
10 contractor, but the allegation is that he
11 is an employee.

12 THE DEPONENT: Yes, the cheque I get.
13 says "Just Energy". That is an employee
14 cheque.

15

16 BY MR. MARTIN:

17 549. Q. No, it is not.

18 A. That is the proof we have.

19 MR. ROSENFELD: We don't need to argue
20 about it. It is the allegation. So, I
21 don't know what...the question is not
22 relevant.

23 550. MR. MARTIN: So I can understand your
24 claim.

25 MR. ROSENFELD: Okay. So, great. So,

1 why don't you understand the claim?

2 551. MR. MARTIN: I am trying to understand
3 it. I am trying to understand what it was
4 he relied upon to suggest that he was an
5 employee?

6 MR. ROSENFELD: Are you asking for
7 particulars at this point?

8 552. MR. MARTIN: Yes, absolutely, from
9 him...

10 MR. ROSENFELD: ...thank you.

11

12 BY MR. MARTIN:

13 553. Q. So, we have, in our material,
14 suggested that there could be some 7,000 people who
15 would fit within the category of the claim. And you
16 don't know, sir, how many of those 7,000 intended to
17 become independent contractors and not employees, do
18 you?

19 A. I wouldn't know the numbers. Only
20 what was on the websites.

21 554. Q. I am not asking you to verify the
22 7,000. You don't know how many, if not...everyone
23 besides yourself actually wanted to be independent
24 contractors?

25 A. It is the starting job for Just

1 Energy.

2 555. Q. Yes, but they actually wanted to be
3 independent contractors, or they didn't want to be
4 employees.

5 A. You have to do that to move up in
6 the company.

7 556. Q. Right, but I am suggesting to you
8 that there may be thousands of people who actually
9 wanted to be independent contractors. They agreed
10 and intended to be independent contractors. They
11 didn't want to be employees working for, say,
12 minimum wage. They wanted the opportunity to make
13 thousands of dollars as an independent contractor.

14 A. I wouldn't know those people.

15 557. Q. Right. But there could be thousands
16 of people who fit into that category. You haven't
17 polled 7,000 people, have you, sir?

18 A. No, I haven't told polled people. I
19 haven't polled anybody.

20 558. Q. And if I was one of those 7,000, and
21 I am sitting here having a discussion with you...

22 A. Yes.

23 559. Q. ...and I said to you, "Mr. Omarali,
24 no one misrepresented anything to me. I wanted to
25 be an independent contractor", well, you wouldn't

1 know how many of those 7,000 people would fit into
2 that category, would you?

3 A. I am an independent contractor. You
4 all have to be at one point to work in that company.

5 560. Q. But some people, I am saying many of
6 them, may have actually wanted that status.

7 A. Well, I don't know any of those
8 people. All I know is the people that I work with.
9 That is how it works.

10 561. Q. Right, no, but I am talking about
11 people who wanted it, who intended that to be the
12 outcome.

13 A. But how do I know? I don't know any
14 of those people.

15 562. Q. Of course not. And to know, you
16 would have to ask every one of them. Is that...you
17 would have to ask all 7,000, "Isn't that what you
18 wanted? You actually wanted to be independent
19 contractor with the opportunity to make thousands of
20 dollars, well above minimum wage"?

21 MR. ROSENFELD: In this scenario, they
22 could just opt out, couldn't they, Mr.
23 Martin?

24 563. MR. MARTIN: Absolutely not.

25 MR. ROSENFELD: They could not just opt

1 out?

2 564. MR. MARTIN: Absolutely not.

3 MR. ROSENFELD: Why not?

4 565. MR. MARTIN: You would opt out the
5 entire class. You would have no class.

6 MR. ROSENFELD: Well, that posits that
7 everybody in the class wants to be an
8 independent contractor. Isn't that what we
9 are arguing about?

10 566. MR. MARTIN: No, what we are arguing
11 about is that you won't know unless you ask
12 every person.

13 MR. ROSENFELD: I think he has answered
14 the question.

15 567. MR. MARTIN: There is no commonality.

16 MR. ROSENFELD: He doesn't know the
17 scenario that you are suggesting.

18 568. MR. MARTIN: Well, what I am
19 suggesting...actually, I am answering my
20 question. You have to ask every one of the
21 7,000.

22

23 BY MR. MARTIN:

24 569. Q. Did you intend to be an independent
25 contractor or not?

1 MR. ROSENFELD: And you are asking
2 whether Mr. Omarali thinks that is an
3 appropriate question one way or the other
4 for this case?

5 570. MR. MARTIN: I am asking him whether he
6 agrees with me. You would have to ask
7 every one of the 7,000.

8 THE DEPONENT: Why would I ask anybody
9 that question?

10 571. MR. MARTIN: Because...

11 MR. ROSENFELD: That is a good point,
12 Mr. Omarali.

13

14 BY MR. MARTIN:

15 572. Q. ...because you don't know whether we
16 didn't themselves intend to be an independent
17 contractor, and chose not to be an employee?

18 A. Well, it seems like...it sounds like
19 they are going through this misery thing, where we
20 have to get sales, and knock on the doors, and that
21 is the job.

22 573. Q. So, they agreed to it. They
23 understood it, they intended it, and they agreed to
24 it, because they knew they had a chance to make
25 many, many more dollars if they were successful than

1 they ever would if they were an employee on a salary
2 basis?

3 A. Yes, but don't you...

4 574. Q. Yes, I agree.

5 A. It leads to both, right? Eventually
6 you would get a base salary if you end up in those
7 office jobs. If you get promoted, that is with a
8 promotion thing I am saying.

9 575. Q. No, the promotions, sir, only go to
10 the regional distributor bases, and they are all
11 independent. The Johnny Lavoies are independent.
12 They are on commission.

13 MR. ROSENFELD: Is that a question
14 again?

15 576. MR. MARTIN: I am telling him.

16 MR. ROSENFELD: You are telling him...

17 577. MR. MARTIN: He is suggesting...

18 THE DEPONENT: No, but you are telling
19 me things I didn't know about.

20

21 BY MR. MARTIN:

22 578. Q. Right, so that is what I said. Your
23 whole assumption is wrong, sir, that these people
24 would move into a salaried position. They don't.

25 A. Yes, but you are creating a scenario

1 for me that I never even thought of. Like, how
2 would I even be in that position to answer
3 something...

4 579. Q. You are right. I have given you a
5 scenario that you never thought of, and that is of
6 the potential 7,000 people, that many if not most of
7 them actually intended to be an independent
8 contractor, and not to be an employee.

9 MR. ROSENFELD: Is that a statement,
10 or...

11

12 BY MR. MARTIN:

13 580. Q. I am saying, you don't know that to
14 be the case one way or the other, do you?

15 A. An independent contractor is an
16 employee, as far as I am...

17 581. Q. Sorry?

18 A. An independent contractor is an
19 employee.

20 582. Q. No, sir, it is not.

21 A. Well, that is what I am working
22 under. So is everybody else. Everybody else who is
23 there, wearing a JE shirt and a JE hat, we think we
24 are the employees.

25 583. Q. No, they don't, sir. You have asked

1 all 7,000?

2 A. No, the people I work with. We are
3 all employed...

4 584. Q. Yes, the four or five people.

5 A. We knock on the door and we tell the
6 people we are employed by Just Energy...

7 585. Q. No, you don't, sir.

8 A. Yes.

9 586. Q. No, with the greatest of respect,
10 sir, you do not say that.

11 A. We said...

12 587. Q. You do not say that, sir.

13 MR. ROSENFELD: Is that a question or
14 are you telling him that he is not saying
15 it? Please, just ask a question,
16 questions.

17 THE DEPONENT: Because we are not...we
18 don't work for the Ontario Energy Board.
19 That is what we are told to say.
20

21 BY MR. MARTIN:

22 588. Q. You do not say you are an employee
23 of Just Energy, because if you were to say that,
24 that is wrong, because you are not.

25 MR. ROSENFELD: And is that a question,

1 Mr. Martin?

2

3 BY MR. MARTIN:

4 589. Q. And you did not ever say that, sir,
5 did you? You never said that, sir, at the door?

6 A. You have made it sound like I was
7 going to get fired now.

8 590. Q. You would, because you would be
9 non-compliant. You did not say that you were an
10 employee of Just Energy, did you?

11 A. I don't know how to answer that.

12 591. Q. You got a badge that says,
13 "Independent contractor".

14 A. Yes.

15 592. Q. You never said you were an employee,
16 sir, and you well knew you were not an employee?

17 A. Okay. So, I know we did say we were
18 employed by Just Energy, "Who is your employer, who
19 pays your..." I have had people nail me down, like,
20 "Who sends you here?"

21 593. Q. You would be wrong to say that in my
22 respectful view, sir, because you weren't. You were
23 an independent contractor, and that is what you were
24 obliged to say, and you didn't say that.

25 MR. ROSENFELD: And that is what this

1 case is about, Mr. Martin. So, I don't
2 know how many more questions you are going
3 to ask Mr. Omarali about this. But it is
4 enough already.

5 594. MR. MARTIN: It is not enoug already.

6

7 BY MR. MARTIN:

8 595. Q. So, you haven't...

9 A. You can ask other people the same
10 question. They are going to be very surprised that
11 that is...

12 596. Q. I have to ask all 7,000, sir. I
13 have to ask every one of them, because you want them
14 to be in this class. And I am saying to you, and
15 don't you agree, I have to ask every 7,000, because
16 you don't know the answer, do you?

17 MR. ROSENFELD: Don't know the answer to
18 what question?

19 597. MR. MARTIN: Don't get in here, please.

20 MR. ROSENFELD: I am sorry, you pointed
21 at me again, but clarify the question,
22 please. And don't point at me.

23

24 BY MR. MARTIN:

25 598. Q. That you have to ask every one of

1 them whether they intended to be an independent
2 contractor, and not an employee?

3 A. There is no difference between the
4 two. As far as we know...

5 599. Q. No, don't keep saying "we", sir,
6 because you are not giving evidence for 7,000
7 people.

8 A. No, but "we" as the...

9 600. Q. "We", who, sir? Who? Who?

10 A. In our office.

11 601. Q. Who?

12 A. In our office at...

13 602. Q. When did you last speak to any of
14 those people, sir? And did you ask them that
15 question?

16 A. You know, when we...

17 603. Q. "We", who, sir? Stop saying "we".

18 A. Well...

19 MR. ROSENFELD: Why don't you let him
20 answer the question?

21 THE DEPONENT: ...the fellow employees
22 that I work with.

23

24 BY MR. MARTIN:

25 604. Q. You don't work with any employees,

1 sir. They are all independent contractors. They
2 all signed contracts, and you admitted to that.
3 Everyone who signs a contract says they are an
4 independent contractor.

5 A. We had to sign it to get the job.

6 605. Q. Yes. And if you didn't sign it, get
7 another job, sir. Because that is the rule.

8 A. Well, no...

9 MR. ROSENFELD: Is that a question, Mr.
10 Martin?

11 606. MR. MARTIN: I am telling him that.

12 MR. ROSENFELD: Again, please stop
13 telling evidence...

14 607. MR. MARTIN: And, again, I am asking him
15 to agree with that.

16 MR. ROSENFELD: Ask him questions. Now,
17 you are asking him to agree with that.

18 THE DEPONENT: We all signed it. Nobody
19 is just going through all this and not even
20 trying it. They were signing the papers so
21 we...

22

23 BY MR. MARTIN:

24 608. Q. So, you are saying to me, sir, you
25 are not aware of anyone determining that they went

1 through the interview process and simply said, "I
2 don't agree. This isn't for me", and they left?

3 A. No, everybody...

4 609. Q. Every single person who comes in the
5 door, you are telling me, signs the independent
6 contractor agreement?

7 A. In my group that I was there that
8 day, we all did.

9 610. Q. That day.

10 A. Yes. And then I am not there the
11 other days to know if anybody walked out.

12 611. Q. Didn't know.

13 A. Well, how would I know?

14 612. Q. I agree, sir. How would you know?

15 The same way, with the other 7,000 people, you do
16 not know whether they intended to be an independent
17 contractor or not, do you, sir? You...Haidar
18 Omarali does not know?

19 A. Just like I wouldn't know, like,
20 whether they can all swim.

21 613. Q. Right.

22 A. I don't know these people.

23 614. Q. Exactly, because you have to ask
24 them the question, sir, correct? You have to ask
25 them.

1 A. So, why would I have to ask them
2 that question? It never occurred to me to ask them
3 that question.

4 615. Q. Because now you are trying to
5 include them all in the same lawsuit, right? Just
6 like...your swimming analogy is a good one. Unless
7 you ask somebody, "Can you swim?" you can't make an
8 assumption about them, can you, sir?

9 A. No, that is...yes, that is why I
10 said that.

11 616. Q. Right. Right. And, so...

12 A. You are asking me that...

13 617. Q. ...unless you ask somebody, "Did you
14 intend...when you signed the independent contractor
15 agreement to actually be an independent contractor",
16 you don't know the answer unless you ask them, do
17 you, sir?

18 MR. ROSENFELD: I don't agree with the
19 question. I don't agree the question is
20 even relevant.

21 618. MR. MARTIN: I am asking him to answer,
22 please.

23 MR. ROSENFELD: And I am refusing. /R

24 619. MR. MARTIN: Okay.

25

1 BY MR. MARTIN:

2 620. Q. Paragraph 20, which I guess is 21,
3 the line starts:

4 "...Omarali did not become aware that he
5 was eligible as an employee..."

6 Do you have that one? Is it 21?

7 A. Yes.

8 621. Q. Yes. Again, this says here:

9 "...The Defendants have continually
10 misrepresented to him his actual
11 eligibility and entitlement to such pay..."

12 Sir, who at Just Energy continually misrepresented
13 to Haidar Omarali that he was not eligible for
14 minimum wage, overtime pay, vacation pay and public
15 holiday and premium pay?

16 MR. ROSENFELD: It specifically says
17 that in the independent contractor
18 agreement. It specifically says that.

19 622. MR. MARTIN: This paragraph, sir,
20 says...

21 MR. ROSENFELD: It says...

22 623. MR. MARTIN: "...The Defendants have
23 continually misrepresented to him..."

24 MR. ROSENFELD: Let's go to the
25 document.

1 entitled to it, and our allegation is that
2 they are employees, and they are entitled
3 to it.

4 629. MR. MARTIN: Okay.

5

6 BY MR. MARTIN:

7 630. Q. That is one reference point for you.

8 Do you have any others?

9 MR. ROSENFELD: I am not answering the
10 question.

/R

11

12 BY MR. MARTIN:

13 631. Q. Just so I understand it, sir, if
14 something was misrepresented to you, you would have
15 had to have relied on it to your detriment to have a
16 claim. You have told me you didn't read your
17 independent contractor agreement. So, how, sir,
18 tell me, has Just Energy ever misrepresented this
19 issue of being an employee and an entitlement to
20 these benefits...was ever misrepresented to you?

21 MR. ROSENFELD: One place is in the
22 independent contractor agreement.

23 632. MR. MARTIN: He didn't read it.

24 MR. ROSENFELD: Well, you say that it is
25 effective and he signed it. I assume that

1 validate...

2 MR. ROSENFELD: We are done.

3 638. MR. MARTIN: ...that as a rep plaintiff.

4 MR. ROSENFELD: There are no more

5 questions...

6 639. MR. MARTIN: Right?

7 MR. ROSENFELD: ...about this paragraph.

8

9 BY MR. MARTIN:

10 640. Q. So, you have no claim, sir, because

11 you didn't read the contract. Is that what you are

12 telling me?

13 MR. ROSENFELD: Don't answer the

14 question.

/R

15

16 BY MR. MARTIN:

17 641. Q. So, just go to paragraph 38 for a

18 moment of the statement...sorry, it is 38 of the

19 Statement of Claim. It will be the document you

20 have, 39.

21 MR. ROSENFELD: "...There was no

22 legitimate basis for the Defendants'

23 arbitrary designation..."

24 642. MR. MARTIN: Yes.

25 MR. ROSENFELD: So, yes, paragraph 39.

1 643. MR. MARTIN: The last sentence of that
2 paragraph says:
3 "...Such classification and exclusion is
4 contrary to the terms of the ESA..."
5 Sorry, I missed a bit. The sentence before
6 that says:

7 "...no legitimate basis for the Defendants'
8 arbitrary designation of the class members
9 as independent contractors, and
10 ineligibility from minimum wage, overtime
11 pay, vacation pay and public holiday and
12 premium pay, which was contrary to the
13 employees' express or implied terms of
14 contract with the Defendants..."

15 Can you tell me what express term or terms
16 are there to suggest Mr. Omarali was not an
17 independent contractor?

18 MR. ROSENFELD: The Employment Standards
19 Act applies. So, those terms and
20 provisions of the Employment Standards Act
21 are either express or implied terms of the
22 contract of employment. That is the
23 allegation.

24 644. MR. MARTIN: Anything else?

25 MR. ROSENFELD: That is the allegation.

1 645. MR. MARTIN: Okay. Let's take a break,
2 take five minutes. I am almost done,
3 because I want to clean up, and then we can
4 move on.

5

6 --- A BRIEF RECESS

7

8 HAIDAR OMARALI, resumed

9 CONTINUED CROSS-EXAMINATION BY MR. MARTIN:

10 646. Q. You were never given a performance
11 review at any time while you were an independent
12 contractor?

13 A. Not a written one, no.

14 647. Q. There was no formal review on any
15 timely basis, like every six months or every year,
16 of you as an independent contractor?

17 A. It wasn't discretionary.

18 648. Q. You mentioned road trips. My
19 understanding is that those road trips are financed
20 by the regional distributor or by an assistant
21 regional distributor. Is that fair?

22 A. I thought so at the beginning, but
23 then we had to pay our own hotel bill.

24 649. Q. And...

25 A. And our own food. The only thing

1 they paid for was the vehicle to drive us there.

2 650. Q. And it is fair to say that not
3 everybody would go on every particular road trip,
4 correct?

5 A. It was mandatory. You really had to
6 have a good excuse why you wouldn't go on a road
7 trip.

8 651. Q. And...

9 A. And they would wait for you for
10 hours until everybody showed up.

11 652. Q. But you told me that you would go on
12 road trips with people from other offices, correct?

13 A. Sometimes it was the Ottawa office.

14 653. Q. And would everyone from the Ottawa
15 office go on a road trip?

16 A. I wouldn't...I was in the Dundas
17 Street office. So, I don't know every single
18 employee in the Ottawa office. So, if any employee
19 in the Ottawa office couldn't make it, I wouldn't
20 know. Because there is a lot of changes, different
21 faces all the time. Half the people might be the
22 same, but the other half might be different again,
23 because the dropout rate is high.

24 654. Q. But the people who had family
25 commitments and the like, they wouldn't go on the

1 road trips?

2 A. How do you know that?

3 655. Q. I am asking you. Were you aware of
4 that?

5 A. No, because that is the kind of job
6 that it is. You have to be there every day, almost,
7 except for Sundays. So...

8 656. Q. But you wouldn't know for example,
9 that people could choose to stay, let's say, in the
10 Ottawa region, and continue to do sales in Ottawa,
11 the Ottawa region, while other members of the Ottawa
12 team went on road trips?

13 A. No, the whole...we were told
14 everybody from the team was there, from Ottawa, and
15 when we have morning meetings in the hotels, they
16 would make sure that we are all there.

17 657. Q. Who told you that everyone from
18 Ottawa was there?

19 A. When you go on a road trip, you
20 would think that everybody from Ottawa...everybody
21 in Ottawa is there, because the same rules would
22 apply, the same owner. The same people own the two
23 offices.

24 658. Q. But you didn't know that everyone
25 from the Ottawa office was there. You didn't know

1 people in the office?

2 A. How would I know if somebody got
3 hired one day and didn't show up, and then they are
4 still employed a week later? Like...

5 659. Q. Okay, what I am talking about,
6 though, is those people who choose, for whatever
7 reasons, family or otherwise, other commitments, or
8 they are just not interested in road trips, they
9 just don't go on the road trips.

10 A. I wouldn't...I didn't know anybody
11 that wasn't interested in the road trips.

12 660. Q. And the road trips, I gather, would
13 be to new territories, perhaps, where doors hadn't
14 been knocked on before?

15 A. You would think so.

16 661. Q. So, the prospects for sales would be
17 higher?

18 A. Yes, but, like, for example, they
19 took us to Thunder Bay and told us, "Nobody has ever
20 worked Thunder Bay before. It is all fresh meat".
21 You are just going to be able to knock and to have
22 sign these people. And then when we get there, we
23 find out another Just Energy office was there two
24 weeks prior, and when you knock further, other
25 people already had Just Energy on their bills for

1 about two years already, they said. So, we were
2 misled, but we were all jumping at the idea of going
3 to an area that Just Energy has never been before.

4 662. Q. Misled by who?

5 A. Well, Jahan and the people who drive
6 us up there, telling us this road trip is going to
7 be the best because we are going to an area that
8 nobody has ever worked before.

9 663. Q. The crew coordinators or the
10 regional distributors told you that?

11 A. Yes, both, yes.

12 664. Q. Sir, can I assume that you have not
13 made a complaint to the Employment Standards branch
14 in respect of the allegations in this litigation?

15 A. Do you know of the Employment...

16 665. Q. Standards branch of the Ministry of
17 Labour. You have not made a complaint to them?

18 A. About Just Energy?

19 666. Q. About the allegations you have in
20 this litigation.

21 A. No, I haven't personally.

22 667. Q. Were you aware of your ability to do
23 so?

24 A. Not until you just mentioned it, no.

25 668. Q. So, your lawyers haven't mentioned

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I hereby certify the foregoing to be a true and accurate transcription of the above-noted proceedings held before me on 18th DAY OF MARCH, 2016, and taken to the best of my skill, ability and understanding.

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Michael Schintz
Verbatim Reporter

TAB 2

Court File No. CV-15-527493-00CP

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

KIA KORDESTANI Haidar Omarali

Plaintiff

- and -

**JUST ENERGY GROUP INC., JUST ENERGY CORP.
and JUST ENERGY ONTARIO L.P.**

Defendants

Proceeding under the *Class Proceeding Act, 1992*

**AFFIDAVIT OF JODY KELLY
SWORN JANUARY 25, 2016**

I. JODY KELLY, of the City of Ottawa, in the Province of Ontario, MAKE OATH AND SAY:

A. INTRODUCTION

1. I am the Director of Sales Performance with Just Energy Group Inc. (“**Just Energy**” or the “**Company**”). I have had a relationship with Just Energy since April of 2004. At that time I became an independent contractor sales agent, later transitioning into various team leader positions. I am currently an employee of the Company, in the capacity of Director of Sales Performance. As such, I have knowledge of the matters contained in this affidavit.

B. HISTORY WITH THE COMPANY

2. As set out above, I started as an independent contractor doing door-to-door sales with Just Energy in April of 2004. At that time, the regional office closest to me was the Ottawa office.

3. I was very successful as a sales agent. I had a high volume of sales of retail energy contracts and I was able to earn a significant income from the commissions associated with my sales.

4. As a result of my success with door-to-door sales, I moved quickly into team leader positions, still as an independent contractor, at the Ottawa office. Despite having only commenced in 2004, I quickly transitioned into being a Crew Coordinator and eventually some months later to an Assistant Regional Distributor. In these roles I was able to grow my income through override payments, which are payments made by Just Energy based on the sales of the badged independent contractors from each office.

5. By mid to late 2005, I became a Regional Distributor. I stayed in the role of Regional Distributor until 2011, at which time I joined RPM (described in further detail below). I remained a part of RPM until I joined the Company as an employee in or around December 2013.

C. REGIONAL PRODUCING MACHINES GROUP (“RPM”)

6. In 2011, I decided that I wanted to continue to grow my income stream. In order to accomplish this objective, I worked with two other Just Energy Regional Distributors to handle our respective regional offices as a group under the umbrella of RPM.

7. In addition, I decided to open a second and separate sales office in Ottawa which sold furnaces and hot water tanks. This office was a National Home Services office, an affiliated Just Energy company. Sales agents were required to complete a specific training course and meet specific regulatory standards, in order to sell the hot water tanks and furnaces door-to-door.

8. The creation of RPM and my ability to open a National Home Services office demonstrate that independent contractors at Just Energy are unequivocally able to direct their own results. During my time as an independent contractor with Just Energy, I was able to use my skills to develop and engage in any activity, venture, or sales method that I deemed profitable.

D. INDEPENDENT CONTRACTORS

9. In my role as a regional distributor, I interviewed individuals who were interested in the Just Energy door-to-door sales opportunity. So as to ensure that individuals truly understood the independent contractor relationship and the challenges associated with door-to-door sales, I would strive to present the opportunity at Just Energy with the utmost transparency.

10. Despite my detailed and thorough explanation of the potential risks associated with door-to-door sales at Just Energy, I found that the majority of the interviewees were attracted by the value proposition in the 100% commission based compensation structure. As a result, the bulk of the interviewees were determined to continue onto the training portion of the “onboarding” process.

11. The interviews were conducted by me or the regional recruiter as a one-on-one session and it is was up to each interviewee to determine whether her or she, after having completed the interview, was keen on pursuing the opportunities available with Just Energy.

12. If an individual elected to work towards become a badged independent contractor, he or she would attend a training session. Just Energy's training program is a five module course offering that is structured around explaining the independent contractor relationship at Just Energy, the legal and regulatory framework of the energy business, Just Energy's product and service offerings, and the way in which an independent contractor can be successful at door-to-door sales.

13. Just Energy's training is designed to foster success and to ensure that each badged independent contractor operates within the province's regulatory framework. This is why, for example, each independent contractor receives training that addresses what must and must not be said at each door. While Just Energy's sales agents must abide by the provincial regulatory requirements, each independent contractor is at liberty to use his or her own methods and he or she is not required to follow Just Energy's suggestions or advice.

14. The training also includes an Ontario Energy Board mandated module and an Ontario Energy Board mandated examination. As director of RPM, I would ensure that my group of offices were conducting each training module as though there was an representative from the Ontario Energy Board in attendance, so as to ensure that the instructions were entirely consistent with the legislative and regulatory requirements.

15. The Ontario Energy Board mandated examination was always proctored by a Just Energy employee who did not have a financial interest in the success of badged independent contractor candidates.

16. It is during the Just Energy training that I would provide successful individuals with their independent contractor agreements and it was standard practice for me to provide each individual with a copy of his or her signed agreement.

E. FREEDOM AND AUTONOMY OF THE INDEPENDENT CONTRACTORS

17. The sales agents at the Ottawa office were at liberty to engage in door-to-door sales at any time and at any location, so long as their sales fell within the regulatory framework. I never implemented a sales quota or minimum number of doors to be knocked on per day.

18. While each independent contractor could elect to operate in a quasi-team like environment at the office, the Ottawa office and its team leaders existed only to serve as conduits, to facilitate and foster success. Every activity was voluntary and the participation in any opportunity for growth was within the sole discretion of each and every independent contractor. The team structure is designed to provide ongoing support to each person and to allow for constant learning, as there are many activities and things that people can do so as to grow and develop as salespersons.

19. I also invested in sales agents that were part of my group, by advancing funds to assist individuals just starting their sales careers. For example, I would often provide cash advances to allow them to purchase supplies. These funds were from my own resources and were an investment by me as an independent contractor in the possibility of increasing my own income based on the sales those agents would ultimately make. Some such advances were repaid, others were not.

20. One example of an Ottawa office activity that was designed to facilitate sales and foster an environment of success was road trips. Road trips were often organized by Crew

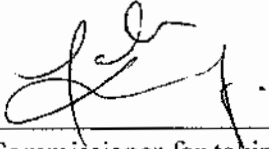
Coordinators and the goal of the road trip was to provide each sales agent with an opportunity to focus on and hone their craft as sales agents. While road trips were designed to foster success, it was up to each independent contractor to determine whether he or she would attend the trip. As a result of their ability to choose, the Ottawa office was typically divided in half - with half of its sales agents being on the road and the other having elected to remain in town.

F. INDEPENDENT CONTRACTOR STATUS

21. Just Energy's performance-driven culture has proven profitable for me since my commencement with the Company in 2004. I have enjoyed being the master of my own destiny, and it is as a result of my status as an independent contractor that I was able to steadily grow my income.

22. While I was obligated to operate within the provincial regulatory requirements, being an independent contractor allowed me to work (i) where I wanted, (ii) when I wanted and (iii) to put in as much effort, or not, as I desired. I recognized, however, that the more I put into my door-to-door sales, the more profitable I would be. This meant, therefore, that I elected to have Just Energy's door-to-door sales as my only vocation and it was in so doing that I was able to earn a significant income. The amount of time that I dedicated to working as a sales agent with Just Energy was solely of my choosing. I chose to dedicate myself to being a sales agent for Just Energy on the basis of my desire to earn more money.

SWORN before me at the City of
Ottawa, in the Province of Ontario
this 25th day of January, 2016.



A Commissioner for taking affidavits.
TALA KHOURY, LSVC # 68135N
FASKEN MARTINEAU DUMOULIN LLP



Jody Kelly

KIA KORDESTANI HAIDAR OMARALI

Plaintiff

-and- JUST ENERGY GROUP INC. et al

Defendants

Court File No. CV-15-527493-00CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

**Proceeding commenced at
Toronto**

**AFFIDAVIT OF JODY KELLY
(Sworn January 25, 2016)**

FASKEN MARTINEAU DuMOULIN LLP

Barristers and Solicitors
333 Bay Street, Suite 2400
Bay Adelaide Centre, Box 20
Toronto, ON M5H 2T6

Paul Martin (LSUC: 24140B)

Tel: 416 865 4439

Laura Cooper (LSUC: 35426A)

Tel: 416 366 8381

Fax: 416 364 7813

Lawyers for the Defendants

TAB 3

ONTARIO
SUPERIOR COURT OF JUSTICE

AWK/mdp

B E T W E E N:

KIA KORDESTANI HAIDAR OMARALI

Plaintiff

- and -

JUST ENERGY GROUP INC., JUST ENERGY CORP. and JUST ENERGY
ONTARIO L.P.

Defendants

- - - - -

This is the Cross-Examination of JODY KELLY, on his
Affidavit sworn on the 25th day of January, 2016, taken at
the offices of FASKEN MARTINEAU DUMOULIN LLP, Suite 2400,
333 Bay Street, Toronto, Ontario, on the 16th day of March,
2016.

- - - - -

APPEARANCES:

DAVID ROSENFELD	}	-- for the Plaintiff
SCOTT ROBINSON	}	
PAUL J. MARTIN	}	-- for the Defendants
LAURA F. COOPER	}	

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1 JODY KELLY, affirmed

2 CROSS-EXAMINATION BY MR. ROSENFELD:

3 1. Q. Mr. Kelly, so you have your
4 affidavit in front of you, January 25th, 2016?

5 A. Yes.

6 2. Q. I'm going to likely go through your
7 affidavit paragraph by paragraph, starting with the
8 first paragraph. It says you're the director of
9 sales performance with Just Energy Group?

10 A. M'hmm.

11 3. Q. Can you tell me what that means?

12 A. Currently I am tasked with testing
13 new products for the company in all or our markets
14 throughout North America. Before we give them to
15 the sales force, I go with my team and we kind of
16 vet whether the product has any viability or not,
17 make changes or tweaks before we roll it out to the
18 sales force.

19 4. Q. Products...what do you mean by
20 "products"?

21 A. New commodity bundles or technology
22 bundles that we put together to offer customers for
23 more value.

24 5. Q. And so you take your team out there
25 and you try and pitch it to the customers and see if

1 it sticks, that kind of thing?

2 A. We do some preliminary testing
3 beforehand, in terms of vetting the product, then we
4 hit the field and we will knock on doors to offer it
5 to customers, yes.

6 6. Q. So you don't have responsibility
7 over sales agents generally, as a director sales
8 performance?

9 A. No.

10 7. Q. No. Okay. Do you communicate with
11 regional distributors now, during the course of your
12 job?

13 A. If a test is in a market and I'm
14 there, yes.

15 8. Q. You tell them, "Hey, I'm in your
16 neighbourhood. This is what I'm doing", but...

17 A. I get them up to speed so they
18 understand why I'm there, yes.

19 9. Q. But you don't speak to them
20 generally about general sales for Just Energy or
21 sales agents?

22 A. That is not my role.

23 10. Q. Okay. And your employment history
24 with Just Energy, if you could describe that to me
25 quickly? In general.

1 A. In general? Yes. I started as an
2 independent agent back in 2004.

3 11. Q. As an employee of Just Energy?

4 A. As an employee?

5 12. Q. Yes.

6 A. That would be December of
7 2013...no...yes, 2013.

8 13. Q. Into this position that you hold
9 now?

10 A. No. I originally came on as...we
11 had a new product at the time, before this entire
12 project I'm on now that was created, we had a new
13 product it was a thermostat. My responsibility was
14 to go into the existing sales offices where the
15 product was being offered as a value add to the
16 customers and teach...and work with the sales force
17 to make sure they're offering it properly.

18 14. Q. Right. And how long did you do that
19 for?

20 A. Up until about February of 2014.

21 15. Q. And then what's...

22 A. Sorry, 2015.

23 16. Q. 2015. And what's the next position
24 that you...

25 A. That's when I came into the role of

1 director of sales performance.

2 17. Q. Okay. Thank you. Paragraphs 2
3 through 8, sort of your history as an independent
4 contractor with Just Energy.

5 A. M'hmm.

6 18. Q. Paragraph 4, you talk about becoming
7 a sales agent and then transitioning to becoming a
8 crew coordinator.

9 A. Indeed, yes.

10 19. Q. How quickly did that happen?

11 A. I started as a sales agent in early
12 2014...

13 20. MR. ROSENFELD: Do you want to just...

14 THE DEPONENT: Sorry, 2004 I mean.

15 21. MR. ROSENFELD: ...take a second?

16

17 --- DISCUSSION OFF THE RECORD

18

19 BY MR. ROSENFELD:

20 22. Q. I'll do that question again. It was
21 paragraph 4, you say that you quickly transitioned
22 to being a crew coordinator, can you tell us how
23 quickly, when did you start and when you became a
24 crew coordinator?

25 A. I started in April 2004. Became

1 crew coordinator...I don't have the exact date, but
2 it would be near the end of that summer.

3 23. Q. End of the summer in 2004?

4 A. Yes.

5 24. Q. Did you sign a new independent
6 contractor agreement with Just Energy when you
7 became a crew coordinator?

8 A. No. No.

9 25. Q. How did you become a crew
10 coordinator?

11 A. Through basic hard work and effort,
12 and commitment and dedication to the job at hand. I
13 wanted to grow, that's why I came into the position
14 in the first place.

15 26. Q. But who said, "Mr. Kelly, you are
16 now a crew coordinator"?

17 A. My regional distributor at the time.

18 27. Q. And so he asked you to, or you asked
19 him to become one?

20 A. I made it very clear to him that I
21 wanted to progress through the role, yes.

22 28. Q. Did you receive any training to be a
23 crew coordinator?

24 A. From him and his experience.

25 29. Q. But no training manuals or documents

1 or anything like that?

2 A. No.

3 30. Q. And then paragraph 4, then you say
4 you then transitioned to assistant regional
5 distributor?

6 A. Yes.

7 31. Q. And how long, or when...how long
8 after crew coordinator and when was that?

9 A. That would have been...again, I
10 don't have the exact date, but approximately spring
11 of 2005.

12 32. Q. Spring of 2005. Did you sign a new
13 independent contractor agreement with Just Energy
14 when in that role?

15 A. No.

16 33. Q. And how were you...

17 A. I was...sorry, never mind.

18 34. Q. Go ahead.

19 A. It was more of title we created at
20 the time for the role to help him out.

21 35. Q. Right. And who offered you that
22 position?

23 A. The same gentleman. Regional
24 distributor at the time.

25 36. Q. And was it he offered it to you or

1 you asked for, that sort of thing?

2 A. I was...it was a mutual thing again,
3 it was a progression of what I was looking for.

4 37. Q. Right. And did that role come with
5 increased remuneration, pay?

6 A. I was now overseeing the office and
7 collecting, yes. An override on the team that I was
8 training.

9 38. Q. Right. So you would be training a
10 crew coordinator and team?

11 A. I would be working with crew
12 coordinators, assisting crew coordinators and
13 agents.

14 39. Q. And what would you be doing with
15 them?

16 A. It would be in-field training,
17 in-class training, role playing.

18 40. Q. Right.

19 A. Goal setting, anything and
20 everything.

21 41. Q. And then you moved to regional
22 distributor in 2005?

23 A. Yes. Near the latter part of the
24 year.

25 42. Q. And you were in that role until

1 2013?

2 A. No. 2005 in that office there from
3 2011 when I formed a partnership with the RPM Group.

4 43. Q. And were you still acting as a
5 regional distributor as part of the RPM Group.

6 A. Well, no. I was no longer receiving
7 direct sales operations with that particular office.
8 I was there, still located in Ottawa, helping and
9 assisting. But we had basically appointed somebody
10 at that point in time.

11 44. Q. Okay. So, I'll get to the RPM in a
12 second. So at least until 2011, you were a regional
13 distributor?

14 A. M'hmm.

15 45. Q. Right. How did you become a
16 regional distributor?

17 A. Hard work and effort.

18 46. Q. Who asked you to, did you ask to,
19 how did it come about that you became a regional
20 distributor in charge of a regional sales office?

21 A. Once I displayed I had the ability
22 to build a business, and that was through
23 progression, whether it would be the assistance to a
24 crew as an agent, and I can run a large business as
25 in the ARD role, it was turned over to me by the

1 regional distributor at that point in time to be
2 that regional distributor.

3 47. Q. And did you sign a new independent
4 contractor agreement with...

5 A. When I became a regional, yes. I
6 don't have the date. I cannot recall the date on
7 which I signed it.

8 48. Q. I believe we have a copy of your
9 agreement which we'll reference in a minute. How
10 did you know how to be a regional distributor? Was
11 there any training involved, and by whom?

12 A. And again, my regional at the time,
13 just...he was my mentor.

14 49. Q. There was no training manual or
15 materials or anything like that?

16 A. No.

17 50. Q. Is this a rare occurrence for a
18 sales agent to move up the ranks to a regional
19 distributor?

20 A. No. That's the premise on which I
21 came into this business, in which I can...if I
22 wanted to work hard enough, if I wanted to take on
23 the role and I wanted to be trainable, teachable and
24 coachable, I can take on the role.

25 51. Q. How many have transitioned from

1 sales agent to regional distributor since 2014?

2 A. I have no...

3 52. Q. 2004, excuse me.

4 A. ...idea of that number.

5 53. Q. Is 100, is it 10, is it 5?

6 A. I would be purely speculating...

7 MR. MARTIN: You don't have to
8 speculate.

9

10 BY MR. ROSENFELD:

11 54. Q. Well, you said that it's not rare,
12 so...

13 A. Sorry?

14 55. Q. You said it was not rare for that to
15 occur. So I'm trying to get a sense of what you
16 mean by "rare" or "not rare".

17 A. I mean, people...

18 MR. MARTIN: Do you know others who have
19 done that?

20 THE DEPONENT: Yes.

21 MR. MARTIN: Yes. They had some.

22 THE DEPONENT: I know others who have
23 done it, yes.

24

25 BY MR. ROSENFELD:

1 56. Q. How many others?

2 A. I don't have the exact number.

3 57. Q. You moved to an employee in 2013.

4 You changed, I guess, remuneration at that point in
5 time?

6 A. Yes.

7 58. Q. Right. You were previous to that as
8 a regional distributor and/or as part of RPM getting
9 commissions or overrides, that's what you call them?

10 A. Yes.

11 59. Q. And then as an employee you don't
12 get that anymore?

13 A. No.

14 60. Q. And where is the office that you
15 currently work out of?

16 A. My head office, so I guess it would
17 be 6345 Dixie Road.

18 61. Q. Is that a regional sales office?

19 A. That's our head office here for
20 Ontario...for Canada.

21 62. Q. A Just Energy head office?

22 A. Yes.

23 63. Q. Okay. So RPM Group, what exactly
24 was that?

25 A. It was a group of three individuals

1 who had been in the business similar amounts of
2 time. We all knew each other, we all had our own
3 degrees of success individually, we decided to
4 partner up.

5 64. Q. To do what?

6 A. To build bigger and better.

7 65. Q. Bigger and better what?

8 A. More offices.

9 66. Q. More regional...

10 A. Grow more and more opportunities.

11 67. Q. More regional offices for Just

12 Energy?

13 A. Yes.

14 68. Q. Right. And so were each of those
15 two others, partners of yours, also regional
16 distributors at the time?

17 A. Ali, at the time would have been.

18 69. Q. I don't know who Ali...

19 A. He was one of the partners, yes.

20 70. Q. And the other?

21 A. John, Mr. Lavoie, had was more of a
22 national title at that time. He wasn't overseeing
23 or running a particular office.

24 71. Q. And what does the agreement do, what
25 were the offices that RPM Group operated?

1 A. We had offices in Ontario, Quebec,
2 Pennsylvania, New York...

3 72. Q. What about Ontario, how many did you
4 have in Ontario?

5 A. At the time four.

6 73. Q. Where were they?

7 A. Two were in Ottawa and one in
8 Windsor and one here in Toronto.

9 74. Q. And what was the purpose of the
10 partnership?

11 A. Combine our resources.

12 75. Q. And so did you coordinate...share
13 costs, that idea?

14 A. I took...I had a lesser role in the
15 partnership so the shared costs were taken on...the
16 burden of the costs were taken on by Ali and John.

17 76. Q. Right. But they shared costs
18 together...

19 A. Yes.

20 77. Q. ...for all the offices shared costs
21 under the RPM umbrella?

22 A. Yes.

23 78. Q. So there were some sort of economies
24 of scales that you may have gotten due for that?

25 A. Yes.

1 79. Q. And did you coordinate sales
2 tactics?

3 A. What do you mean by "sales tactics"?

4 80. Q. Sales...how sales agents at the
5 regional offices should go out and market their
6 contracts with Just Energy?

7 A. Well, in conjunction with whatever
8 the requirements were in that province or state,
9 yes.

10 81. Q. And did you coordinate marketing
11 areas between your offices?

12 A. Well, marketing areas weren't really
13 so much coordinated. A lot of the crew coordinators
14 had the freedom to pick their areas as long as
15 they...they had to acquire permits if it was
16 necessary, like if you pick Ontario, you could have
17 worked anywhere in Ontario.

18 82. Q. Well, you had two offices in Ottawa,
19 how did you coordinate that they wouldn't stop at
20 the same doors?

21 A. Well, one office was actually the
22 National Home Services, it was our hot water tank
23 business at the time, the other one was Just Energy.
24 So they weren't really selling the same product.

25 83. Q. And so they don't sell the same

1 products door-to-door?

2 A. Right.

3 84. Q. So the National...well, we'll get to
4 that. And so how would you coordinate between your
5 Toronto office and your Ottawa office? Would your
6 Ottawa agents go to Toronto and market in Toronto?

7 A. Sometimes, yes.

8 85. Q. And you would coordinate with
9 that...through your regional distributors...or
10 sorry, the offices?

11 A. They would communicate saying where
12 they were going to be.

13 86. Q. Was there somebody in the role of
14 regional distributor at each of the offices?

15 A. Yes.

16 87. Q. And did they, each of those people
17 execute agreements with Just Energy directly?

18 A. I'm assuming it would be so, if
19 they're in a regional role, they would have signed
20 the regional agreement, yes.

21 88. Q. Did they sign an agreement with RPM?

22 A. Not to my knowledge.

23 89. Q. And so to create RPM Group you had
24 to get the permission of Just Energy?

25 A. I'm not sure.

1 A. Yes. They had opportunities and
2 they would say the customer wanted this because they
3 knew about it and...

4 97. Q. So the same...sorry. Sorry to
5 interrupt.

6 A. Yes.

7 98. Q. At the same door, they would be
8 selling electricity and gas contracts from Just
9 Energy and also furnaces and hot water tanks?

10 A. It was rare, but it happened. The
11 customer would actually express that they wanted
12 something and they would just make a call and say,
13 "Yes, we can set them up. We'll take care of them".

14 99. Q. But would they solicit at the same
15 time?

16 A. Actively?

17 100. Q. Yes.

18 A. Not really.

19 101. Q. And do the National Home Services
20 agents, are they independent contractors also?

21 A. Yes.

22 102. Q. And do they sign agreements with
23 National Home Services?

24 A. Yes.

25 103. Q. Paragraph 8...

1 A. M'hmm.

2 104. Q. ...you demonstrated that independent
3 contractors at large at Just Energy,
4 "...Are equitably able to direct their own
5 results..."

6 And then later it says,

7 "...During my time as an independent
8 contractor, I was able to use my skill to
9 develop and engage in any activity, venture
10 or sales method that I deemed
11 profitable..."

12 That was subject to provincial regulations, is that
13 right?

14 A. I'm not sure what you mean.

15 105. Q. Is your ability to engage in any
16 activity, venture or sales method that you deem
17 profitable subject to provincial regulations?

18 A. I'm still not sure what you're
19 asking me.

20 106. Q. You couldn't go out and do anything
21 you wanted, you couldn't go out and misrepresent
22 aspects, you couldn't go out and not be badged with
23 an identification from Just Energy. There were
24 provincial regulations that you were required to
25 follow...

1 A. Yes. Had to wear a badge, yes.

2 107. Q. Yes. So there were provincial
3 requirements that you were required to follow?

4 A. Some, yes.

5 108. Q. And is your ability to engage in any
6 activity, venture or sales method that you deem
7 profitable subject to your agreement with Just
8 Energy?

9 A. To my knowledge I can't go sell a
10 competing...for a competing company for the exact
11 same product.

12 109. Q. So you were limited to the services
13 that you agreed to provide as part of your
14 independent contractor agreement?

15 A. To sell a commodity for Just Energy
16 or hot water tanks for National Home Services.

17 110. Q. Well, as an independent contractor
18 for Just Energy, you had said that the sales agents
19 signed different contracts with National Home
20 Services.

21 A. M'hmm.

22 111. Q. So the ones for Just Energy?

23 A. Yes. I would work for Just
24 Energy...contract.

25 112. Q. Paragraph 9. Now, you talked about

1 the roles of regional distributor, but in 2011 you
2 stopped being a regional distributor?

3 A. M'hmm.

4 113. Q. So you were no longer located in a
5 regional office?

6 A. No. I still called Ottawa home. I
7 still would show up at that office there.

8 114. Q. Right. And so you would manage that
9 office, is that the idea?

10 A. I would assist the regional that was
11 there for any type of support, mentorship he needed.

12 115. Q. Right. So when you talk about it in
13 paragraph 9 and thereafter, you're talking about
14 your time as a regional distributor between 2005 and
15 2011?

16 A. Sorry. What's the question?

17 116. Q. You make a number of comments and
18 facts in evidence in paragraph 9 and forward, and
19 you say,

20 "...In my role as a regional
21 distributor..."

22 A. M'hmm.

23 117. Q. And you talk about you interviewed
24 individuals et cetera, and it goes on in paragraphs.
25 And I'm asking you are the paragraphs following

1 paragraph 9 and inclusive of paragraph 9, based on
2 your experiences in the time of when you were a
3 regional distributor between 2005 and 2011?

4 A. Yes.

5 118. Q. Not between 2011 and 2013?

6 A. Correct.

7 119. Q. Paragraph 9, it said in your role as
8 a regional distributor at the time, you interviewed
9 individuals interested in Just Energy door-to-door
10 sales opportunities.

11 A. M'hmm.

12 120. Q. Who told you to do that, as a
13 regional distributor?

14 A. I did it myself.

15 121. Q. And why did you do it?

16 A. To build my business.

17 122. Q. But interview to find prospective
18 candidates if...that kind of thing?

19 MR. MARTIN: What was the purpose of the
20 interview?

21 THE DEPONENT: The purpose of the
22 interview was to let them know what the
23 role was about. And the opportunity they
24 would have with the organization.

25

1 BY MR. ROSENFELD:

2 123. Q. Were these interviews provided when
3 you were at RPM?

4 A. I'm not sure what you're asking me.

5 124. Q. Between 2011 and 2013.

6 A. Were there interviews conducted?

7 125. Q. At your regional offices, the Ottawa
8 office in particular?

9 A. Yes. Of course.

10 126. Q. Right. By your regional
11 distributor?

12 A. The regional distributor or his
13 recruiter at the time.

14 127. Q. His recruiter? What do you mean by
15 "his recruiter"?

16 A. Well, the lady that...well, it's
17 usually a lady, but she was the recruiter.

18 128. Q. Recruiter...

19 A. For Just Energy.

20 129. Q. A Just Energy employee?

21 A. Yes.

22 130. Q. When you were a regional
23 distributor, did you receive training on how to
24 conduct these interviews?

25 A. Yes.

1 131. Q. And who gave you that training?
2 A. The national recruiter.
3 132. Q. The national recruiter who is a Just
4 Energy employee?
5 A. Yes.
6 133. Q. How often did you do the interviews
7 as a regional distributor?
8 A. I made it a habit of trying to do
9 five to ten myself a week.
10 134. Q. Five to ten yourself a week...
11 A. Interviews.
12 135. Q. Interview with one particular
13 candidate...potential candidate?
14 A. Right.
15 136. Q. What I mean is, each interview was
16 with one only?
17 A. Yes.
18 137. Q. Right. So one-on-one. So each week
19 you would only...your office as a regional
20 distributor would only do one interview...five
21 interviews a week?
22 A. No. I said "myself". The
23 recruiter, she was hired to do interviews...
24 138. Q. Right.
25 A. ...but I try stay involved in the

1 role so I would 10 to 15 myself a week.

2 139. Q. Okay. 10 to 15 yourself, a week.

3 And then the regional recruiter, how often would
4 they do interviews?

5 A. They...again, they could do 10 a
6 day, they could 20 in a day.

7 140. Q. And how many did they do a day on
8 average when you were a regional distributor?

9 A. I would be guessing.

10 141. Q. Is it 100, is it 10, is it closer to
11 5 a day to 10 a day?

12 A. I would say closer to 10 a day.

13 142. Q. Right. And would you turn people
14 away from becoming Just Energy sales agents?

15 A. No. I give everybody equal
16 opportunity.

17 143. Q. And so was there a maximum number of
18 sales agents that you would interview or hire for
19 Just Energy?

20 A. There would be a maximum we would
21 give an opportunity to, just based on the bandwidth
22 of the office that we had to train.

23 144. Q. And what was the maximum of that?

24 A. It would depend on the office at the
25 time.

1 145. Q. And would determine the bandwidth,
2 as you called it?

3 A. People that I had mentored into the
4 role of trainers in terms of being a crew
5 coordinator. Their responsibility would be to make
6 sure that, for instance, in Ontario, that the
7 requirements that we had to fulfil were being
8 trained to these individuals.

9 146. Q. And so...

10 A. I wouldn't be giving...couldn't give
11 an individual 20 people to go out and train in one
12 day, so maybe limited to one or two.

13 147. Q. And so you wouldn't get more sales
14 agents than you had sufficient capacity to train?

15 A. No, I would provide more opportunity
16 than I could actually...no.

17 148. Q. Is there a minimum number of sales
18 agents that you were asked to get, or could get as a
19 regional distributor?

20 A. No one ever asked me...

21 MR. MARTIN: Sorry. Sorry. Asked by
22 who?

23

24 BY MR. ROSENFELD:

25 149. Q. Just Energy.

1 A. Nobody ever asked me to do anything.

2 150. Q. Right. Is there an optimal number
3 of sales agents that you wanted as a regional
4 distributor?

5 A. For my business? I wanted to have
6 anywhere between 30 and 40 representatives that were
7 going to work, yes, as independent agents.

8 151. Q. At any given time during your time
9 as a regional distributor?

10 A. Yes, sir.

11 152. Q. The same for the...during your RPM
12 Group?

13 A. It was...30 to 40 was typical.

14 153. Q. And how do you decide who does
15 interviews, the recruiter or yourself, during the
16 time when you were the regional distributor?

17 A. The recruiter was hired by Just
18 Energy for the role to do them. I just was...good
19 practice for me to be involved and make sure I was
20 still doing interviews as well.

21 154. Q. Did the interviews include the
22 training involved, the orientation and the training?
23 Or the interview was just simply, "This is the role.
24 This is what you would be doing"?

25 A. The interview would be a

1 breakdown...well, it would be getting to know them,
2 what they...explain the role to them, what we did,
3 what the opportunity was and to see if it was a fit
4 for them. If we felt it was a fit for them, then I
5 would do an orientation.

6 155. Q. At paragraph 12 of your affidavit,
7 it talks about the training session...attending a
8 training session, is that the orientation that you
9 referred to?

10 A. It was, yes.

11 156. Q. And so you would sometimes
12 administer the Just Energy's training program, the
13 five module course?

14 A. Near the end of my tenure, the five
15 modules came out, yes. It was similar to what I
16 did, but yes.

17 157. Q. So was it in place between 2011,
18 2013 when you were at RPM?

19 A. Yes.

20 158. Q. And this training program was
21 provided to all sales agents who came through the
22 RPM doors?

23 A. Yes.

24 159. Q. And it was provided by either the
25 regional distributor or the recruiter, the training?

1 A. The modules?

2 160. Q. Correct.

3 A. The orientation was conducted mainly
4 by the regional, except for the pieces in Ontario
5 there had to be the proctors involved.

6 161. Q. The orientation being the training
7 modules, that we are talking about. Other than the
8 aspects that required a proctor, are you referring
9 to the Ontario Energy Board exam?

10 A. Yes.

11 162. Q. The Ontario Energy Board also has a
12 module, from what I understand, of training, was
13 that provided by the recruiter or the regional
14 directors?

15 A. It would be the regionals'
16 responsibility to do orientation and the training.

17 163. Q. Right. How quickly after the
18 interview would they then go into the orientation
19 session?

20 A. Could be a day, could be a week.

21 164. Q. It would be a different day?

22 A. Yes. For myself? I did
23 orientations on Tuesdays, so...

24 165. Q. Did you do interviews and
25 orientations on Tuesdays?

1 A. Well, interviews would be conducted
2 on Tuesday, but not for Tuesday's training.

3 166. Q. Right. Other people who got
4 interviewed maybe on Monday went to the training
5 session on Tuesday, is that the idea?

6 A. Yes.

7 167. Q. The orientation or the training
8 module, was there ever any training that you were
9 provided as a regional director on how to administer
10 that module?

11 A. Yes.

12 168. Q. By whom?

13 A. The regional sales manager for the
14 region at the time.

15 169. Q. What's a regional sales manager?

16 A. It's a Just Energy employee that
17 oversees a particular region to...

18 170. Q. Were they...sorry...

19 A. With regards to the marketing
20 materials and things of that nature, to make sure
21 they were all up to speed, up to date, had every
22 thing they needed.

23 171. Q. So what was their role specifically?

24 A. Good question. I couldn't define it
25 for you.

1 172. Q. But in your experience, what do they
2 do?

3 A. They assisted me with numerous
4 things, whether there would be an issue with a pay
5 cheque or an issue with a...or...you know, marketing
6 materials that needed to be updated or paper would
7 need to be ordered, things like that.

8 173. Q. The regional sales offices under
9 RPM's umbrella, the four in Ontario which I'm
10 talking about so I'm not referring to ones in Quebec
11 or elsewhere, where were they, in terms of location?
12 Office buildings, malls...

13 A. The two in Ottawa were in office
14 buildings on Slater Street. One was in an office
15 building down in Windsor, then there was one in an
16 office building here on Dundas.

17 174. Q. Who paid the rent for those office?

18 A. Just Energy.

19 175. Q. Right. And was there a Just Energy
20 sign out in front of those offices?

21 A. Yes.

22 176. Q. And Just Energy had employees at
23 those offices?

24 A. It would be the recruiter, yes, and
25 some offices may have had an admin, yes.

1 177. Q. An admin to do what? What did the
2 admin do?

3 A. Answer the phones, paperwork.

4 178. Q. So now I'm at paragraph 17 and 18,
5 it's talking about sales agents and activities,
6 team-like environment, quasi teams and those kinds
7 of things that are offered by sale offices. What
8 things are offered by sales offices to sales agents?

9 A. I mean, that's a very broad question
10 like...

11 179. Q. Fair enough. To help them be better
12 sales agents.

13 A. I can only speak for myself. I was
14 given a lot of training and support in terms of how
15 to be...how to speak to people, how to set goals,
16 how to pitch in a presentation, how to understand a
17 product, do my own research, hard work came
18 naturally to me, so I worked hard. And...

19 180. Q. And...

20 A. ...pass those things on to anybody
21 who was willing.

22 181. Q. I'm talking about your time...well,
23 RPM's time, 2011 to 2013. Were contracts provided
24 by the regional office to the sales agents?

25 A. Contracts, in terms of...

- 1 182. Q. The customer contracts?
- 2 A. Provided by Just Energy to the
- 3 office, yes.
- 4 183. Q. And then the office to the sales
- 5 agents?
- 6 A. Yes.
- 7 184. Q. And the only place they can get the
- 8 contracts would be the sales office?
- 9 A. If they drove to Toronto, they could
- 10 stop and pick them up, they can make a phone
- 11 call...I'm sure they can be ordered, but typically
- 12 they pick them up at the office.
- 13 185. Q. Right. The offices provided
- 14 training and marketing best practices?
- 15 A. Yes.
- 16 186. Q. They provide the identification for
- 17 those sales agents?
- 18 A. The badging, you mean?
- 19 187. Q. Correct.
- 20 A. Yes.
- 21 188. Q. They would provide clothing, Just
- 22 Energy clothing?
- 23 A. It was optional, but if they wanted
- 24 it, yes.
- 25 189. Q. Right. So that would be facilitated

1 through the regional office?

2 A. They would place the order there.
3 One of the responsibilities of the admin, to place
4 an order for clothing, yes.

5 190. Q. Right. And they would report the
6 completion of their contracts to the regional sales
7 office?

8 A. You mean, report their
9 completion...what they signed that day?

10 191. Q. That day, that week, you tell me.

11 A. Well, each week they submitted their
12 agreements to get submitted to the utility or
13 submitted to the critical control. They would be
14 processed, yes.

15 192. Q. Submitted to what? I'm sorry I
16 didn't hear that.

17 A. The critical control department
18 which process our contracts.

19 193. Q. Critical control? Right. And
20 that's at Just Energy?

21 A. I'm not actually sure of the
22 address.

23 194. Q. Right. But sales agents would
24 submit the contracts to the regional sales office
25 though?

1 A. They would provide them to the
2 admin, she would ensure that, you know, they didn't
3 miss anything, they were put in the boxes and sent
4 off, yes.

5 195. Q. Right. The regional sales office
6 organized the teams, these teams referred to in
7 paragraph 18?

8 A. So a crew coordinator would be
9 provided with an opportunity to train people, yes.

10 196. Q. And...

11 A. And build a team.

12 197. Q. Right. And the office organized
13 that?

14 A. What do you mean by "organized"?

15 198. Q. It had the crew coordinators...

16 A. Yes.

17 199. Q. ...there?

18 A. Yes.

19 200. Q. Facilitated and assigned sales
20 agents to particular crew coordinators?

21 A. Yes.

22 201. Q. Paragraph 15 refers to...this is the
23 proctoring requirement, but it refers to,

24 "...A Just Energy employee who does not
25 have a financial interest in the success of

1 the badged independent contractor

2 candidates..."

3 A. M'hmm.

4 202. Q. The regional directors have that
5 financial interest?

6 A. The regional distributor?

7 203. Q. Distributor, I keep getting director
8 in my head. Regional distributor.

9 A. Has a financial interest in the
10 individual, yes.

11 204. Q. Yes. And same thing with the
12 assistant regional distributor?

13 A. Yes.

14 205. Q. And the crew coordinator?

15 A. Yes.

16 206. Q. And assistant crew coordinators,
17 should they exist?

18 A. Yes.

19 207. Q. These are the overrides that each
20 one gets paid?

21 A. Yes.

22 208. Q. Can you just explain the overrides,
23 the chain of overrides, if you don't mind?

24 A. It could vary a team, it could be
25 just a crew coordinator and he's trying to build his

1 team, build his business. And by "build his
2 business", he's trying to pass on what he has
3 learned...again, sales skills to that individual to
4 build a team. And he would get an override for
5 training that individual because he takes away from
6 his own time, from where he's actually selling he's
7 actually teaching and training.

8 209. Q. The override is a commission on the
9 contract...

10 A. Sales...sorry.

11 210. Q. Sorry. On the contracts that the
12 sales agent gets?

13 A. Yes.

14 211. Q. And who else gets a commission on
15 overrides?

16 A. If there's an ARD, possibly, the
17 regional distributor, the national distributor, if
18 there is one.

19 212. Q. What is a national distributor?

20 A. He would be, or she would be an
21 individual that's gone on to build a large
22 organization. And they could have five or six or
23 seven different offices.

24 213. Q. Being regional distributors?

25 A. He could have, or she could have

1 five or six regional distributors. He or she would
2 oversee the five or six.

3 214. Q. Isn't RPM a national distributor?

4 A. Yes.

5 215. Q. And so how would RPM get its
6 commission?

7 A. Through the sales of those offices.

8 216. Q. So it has a financial interest in
9 how many sales get made by those offices?

10 A. Yes.

11 217. Q. By the sales agents?

12 A. Yes.

13 218. Q. Now, as a regional distributor and
14 as to your time in RPM, you would make more money if
15 your sales agents were more successful, is that
16 correct?

17 A. Yes.

18 219. Q. And the more successful those sales
19 agents were the more money you would make, is that
20 correct?

21 A. Yes.

22 220. Q. Would you agree that the regional
23 distributors and your RPM Group had an incentive to
24 ensure that sales agents were marketing as well and
25 as often as they could?

1 A. My...I'm only going to speak for
2 myself and my group and our incentive was to make
3 sure these individuals were as well informed and
4 trained as possible to do their job at the best of
5 their ability, and motivated.

6 221. Q. And that would result in higher
7 productivity by them?

8 A. Typically, yes.

9 222. Q. And greater sales?

10 A. Yes.

11 223. Q. Is it fair to say that you as a
12 regional distributor and as at RPM were concerned
13 about the levels of sales that each office would be
14 making?

15 A. I was more concerned with the
16 individuals.

17 224. Q. With the individual sales that each
18 individual would be granted?

19 A. For them, not so much for me, but
20 for them.

21 225. Q. Right. So you were just...what
22 steps did you take to help them increase their
23 sales, for themselves?

24 A. I would offer them the opportunity
25 to do more role play. I would offer the opportunity

1 for them to pick up a good book...I would even buy
2 books for them.

3 226. Q. Would you suggest better areas to
4 solicit in?

5 A. No. I was firm believer that area
6 didn't matter.

7 227. Q. So if you knocked on the same
8 door...each sales agent knocked on the same door
9 every single day, marketed in the exact same place,
10 that would be a productive way to increase sales?

11 A. Well, I don't think anybody would be
12 that illogical to knock the same door every single
13 day.

14 228. Q. How would they know if someone else
15 knocked on a particular door during the day?

16 A. Well, they would communicate with
17 each other.

18 229. Q. Communicate with whom? The other
19 sales agents?

20 A. The other crew coordinators would
21 talk to each other, I'm sure.

22 230. Q. So the crew coordinators would talk
23 to each other about which areas they went into and
24 they wouldn't overlap?

25 A. Yes.

1 231. Q. Paragraph 20 of your affidavit. It
2 talks about road trips.

3 A. M'hmm.

4 232. Q. Are these the same road trips that
5 occurred in your time as at RPM?

6 A. They would be similar road trips,
7 yes, for sure.

8 233. Q. Sorry?

9 A. There would be similar road trips,
10 yes.

11 234. Q. So the road trips you're describing
12 in paragraph 20 were not during the time of RPM,
13 they were during your time as a regional
14 distributor?

15 A. Yes.

16 235. Q. Okay. What was the goal of the road
17 trips?

18 A. Again, I'll speak for myself, I love
19 getting away for a week, away from distractions and
20 we used to get to work more hours and get a better
21 income.

22 236. Q. Right. And by "getting better
23 income", means making more sales?

24 A. Yes. That's right.

25 237. Q. And so the goal is of any endeavour

1 is to get more sales?

2 A. Yes.

3 238. Q. Right. Now, how did...so you say
4 these road trips were often organized by crew
5 coordinators...

6 A. M'hmm.

7 239. Q. ...in the office? And that was
8 accurate during your time as a regional distributor?

9 A. Yes.

10 240. Q. And accurate during your time as a
11 RPM?

12 A. Yes.

13 241. Q. And how would these crew
14 coordinators know where to go for the road trips?

15 A. Experience.

16 242. Q. They would just find an area and
17 say, "I'm going to go to it this time"?

18 A. Again, I'll speak for myself. When
19 I was a regional and when I was a crew
20 coordinator...creatures of habit, I would like to go
21 up North. I like to go to Huntsville, like to go to
22 North Bay, Sudbury.

23 243. Q. Right. Did you...

24 A. The people that worked with me and
25 trained with me came to the same habits and they

1 like to go to the same areas.

2 244. Q. Right. Did you talk to the regional
3 distributor when you were a crew coordinator about
4 where you were going?

5 A. Yes, sure. We had a conversation
6 about it, yes.

7 245. Q. All right. And so, based on the
8 crew coordinator's experience is where they would
9 determine where to go?

10 A. M'hmm.

11 246. Q. Would they go to an area that was
12 heavily saturated by other sales agents?

13 A. Again, speaking for myself,
14 preferably not.

15 247. Q. And how would you know whether an
16 area is saturated with sales agents?

17 A. I communicated with the other
18 regionals in Ontario on a regular basis to see where
19 they were.

20 248. Q. Right.

21 A. Yes.

22 249. Q. And these crew coordinators, they
23 are the ones who organize the trips?

24 A. Typically, yes. Sometimes they've
25 asked for help.

1 250. Q. Help from whom?

2 A. Me.

3 251. Q. Help, in terms of what?

4 A. Financial, if they needed a few
5 dollars for gas or if they're having a bad day, a
6 bad week, a bad month, I helped out. If they had
7 new agents that didn't have money, I paid for
8 hotels.

9 252. Q. So they organized the
10 transportation, the crew coordinators?

11 A. They provide the transportation for
12 those that were willing to go on the road trips.
13 They had a van.

14 253. Q. Did they provide the transportation
15 for the sales agents that are on their teams on a
16 regular basis?

17 A. Well, the crew coordinators
18 provide...yes, if they came in...if they want to
19 show up to the office, they want to come in and they
20 want to go to territory with that team that day,
21 they could get in the van.

22 254. Q. Right. "The van" being the crew
23 coordinator's van?

24 A. Yes.

25 255. Q. And for these road trips, the crew

1 coordinator would decide when to go and when to come
2 back?

3 A. Yes.

4 256. Q. Throughout your affidavit, you refer
5 to two different terms, "sales agents" and then
6 "independent contractors", are they the same term
7 that your using?

8 A. Yes.

9 257. Q. They're interchangeable?

10 A. Independent contractors, yes. Same
11 thing.

12 258. Q. And the term "sales agent", would
13 that be identifiable by independent contractors?

14 A. Yes.

15 259. Q. I would like you to review a
16 paragraph of Richard Teixeira, do you know that is?

17 A. Yes.

18 260. Q. So if you could turn up his
19 affidavit. Paragraph 22 of his affidavit, just take
20 a minute to review it, please.

21 A. Okay. This is from Richard?

22 261. Q. Yes. And, sort of in the middle of
23 the paragraph, he makes a statement that,

24 "...Large numbers of individuals who spend
25 only a short time as independent

1 contractors..."

2 A. Very true, yes.

3 262. Q. So you agree with that statement?

4 A. Yes.

5 263. Q. So what would you consider a short
6 time?

7 A. A day.

8 264. Q. A short time as "a day", is that a
9 large number only stayed for day, or is it a large
10 number stayed for all through a week or what's the
11 sort of average that you would expect?

12 A. If I had 30 people in a training
13 class, I would have 29 show up the next day. Two
14 who wanted to go into the field and want to be
15 trained.

16 265. Q. Right. And then the next week?

17 A. Probably, again, 10 to 15.

18 266. Q. And the next month?

19 A. Five to ten.

20 267. Q. And so are you able to, based on
21 your experience as a regional distributor, assess
22 how long the average time would be for a sales agent
23 to stay with Just Energy?

24 A. No. To give you an average time?

25 No. Never much dwell on...

1 268. Q. So I would say there is a high
2 turnover of sales agents.

3 A. Yes.

4 269. Q. Right. And that was the case when
5 you were a regional distributor and when you were
6 with RPM?

7 A. Yes.

8 270. Q. Paragraph 22 of your affidavit now.

9 A. Okay.

10 271. Q. At paragraph 22 you say,
11 "...I recognize however that the more I put
12 in to my door-to-door sales the more
13 profitable I would be..."

14 A. M'hmm.

15 272. Q. What do you mean by "more"? More in
16 time, more in effort?

17 A. More focus, more energy.

18 273. Q. More time included in that?

19 A. Yes.

20 274. Q. You would agree with me that not all
21 sales agents are successful?

22 A. Yes.

23 275. Q. And not all sales agents made the
24 level of production that you did as a sales agent?

25 A. True.

1 276. Q. Right. And that's not necessarily
2 the result of time or effort, would you say? Maybe
3 I'll put it another way. For some sales agents, no
4 matter how much time or effort they would spend,
5 they wouldn't get to the production level that you
6 had?

7 A. Can you...you're asking me to
8 speculate on somebody I don't know.

9 277. Q. What about in your experience?

10 A. I've worked with people that had
11 horrible attitudes. Negative 24/7, everyday. But
12 claim to put in an eight hour day or six hour day
13 regardless. I can't speak to somebody in a bad
14 mood.

15 278. Q. Right. I guess what I'm suggesting
16 is that there is some level of skill associated
17 with it?

18 A. Yes.

19 279. Q. And some people do have it...

20 A. I started and that was...I was
21 trained.

22 280. Q. Right. Sales, you agree that sales
23 generally is a skill?

24 A. It's a learned skill, yes.

25 281. Q. Yes. And some people are able to

1 learn it and some people are not?

2 A. Agreed.

3 282. Q. Throughout your affidavit you talk
4 about your income as an independent contractor.

5 A. M'hmm.

6 283. Q. You talk about a significant income
7 in paragraph 3, you can refer to it if you would
8 like. You talk about growing your income...in
9 paragraph 3 you talk about significant income...

10 A. M'hmm.

11 284. Q. The next paragraph you talk about
12 growing your income.

13 A. Yes.

14 285. Q. Paragraph 21 later you talk about
15 steady growth or,

16 "...Steadily grow my income..."

17 A. M'hmm.

18 286. Q. What were your levels of income
19 between 2004 and 2013?

20 MR. MARTIN: Don't answer that. /R

21

22 BY MR. ROSENFELD:

23 287. Q. Can I have copies of your tax
24 returns between 2004 and 2013?

25 MR. MARTIN: No. /R

1 BY MR. ROSENFELD:

2 288. Q. And I think I've already done this,
3 but now you are a Just Energy employee you don't get
4 commissions?

5 A. I do not.

6 289. Q. Your work...your compensation is not
7 based on the sales of any particular sales agents?

8 A. No.

9 290. MR. ROSENFELD: Okay. Those are my
10 questions.

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Adam Kennedy
Verbatim Reporter

Haidar Omarali

-and- JUST ENERGY GROUP INC. et al.
Plaintiff

Defendants

Court File No. CV-15-527493-00CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

**Proceeding commenced at
Toronto**

**SUPPLEMENTARY RESPONDING MOTION RECORD
OF THE DEFENDANTS
(Summary Judgment Motion)
Returnable June 11-13, 2019**

FASKEN MARTINEAU DuMOULIN LLP

Barristers and Solicitors
333 Bay Street, Suite 2400
Bay Adelaide Centre, Box 20
Toronto, ON M5H 2T6

Paul J. Martin (LSO: 24140B)

pmartin@fasken.com
Tel: 416 865 4439

Laura F. Cooper (LSO: 35426A)

lcooper@fasken.com
Tel: 416 865 5471

Anastasia Reklitis (LSO: 67591L)

areklitis@fasken.com
Tel: 416 865 5460
Fax: 416 364 7813

Lawyers for the defendants