

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

Haidar Omarali

Plaintiff

-and-

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

Defendants

Proceedings under the *Class Proceedings Act, 1992*

**TRANSCRIPT BRIEF
(Summary Judgment Motion Returnable June 11-13, 2019)**

April 26, 2019

KOSKIE MINSKY LLP
900-20 Queen Street West
Toronto, ON M5H 3R3

David Rosenfeld LSO#51143A
Tel: 416-595-2700
Fax: 416-204-2894

Janeta Zurakowski LSO#75326P
Tel: 416-595-2124
Fax: 416-204-2890

Lawyers for the Plaintiff

TO: FASKEN MARTINEAU DUMOULIN LLP
333 Bay Street, Suite 2400
Bay Adelaide Centre, Box 20
Toronto, ON M5H 2T6

Paul J. Martin
Tel: 416-865-4439
Fax: 416-364-7813

Lawyers for the Defendants

TABLE OF CONTENTS

TAB	DESCRIPTION	PAGE
1.	Transcript of the Cross Examination of Brian Marsellus, March 6, 2019	1
2.	Transcript of the Cross Examination of Richard Teixeira, March 6, 2019	41
3.	Transcript of the Cross Examination of Daniel Gadoua, March 6, 2019	130
4.	Transcript of the Cross Examination of Katlyn Schwantz, March 21, 2019	157
5.	Transcript of the Cross Examination of Bahram Nemati, March 22, 2019	349
6.	Transcript of the Cross Examination of Roland Lavigne, March 22, 2019	427
7.	Transcript of the Cross Examination of Jamie Acton, March 28, 2019	513
8.	Transcript of the Cross Examination of Jennifer Borg, March 28, 2019	593



Court File No. CV-15-527493-OOCP

ONTARIO
SUPERIOR COURT OF JUSTICE

SH/ld

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

This is the Cross-Examination of BRIAN MARSELLUS, on his Affidavit sworn on the 11th day of January, 2019, taken at the offices of VICTORY VERBATIM REPORTING SERVICES INC., 222 Bay Street, Suite 900, Ernst & Young Tower, Toronto-Dominion Centre, Toronto, Ontario, on the 6th day of March, 2019.

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

DAVID ROSENFELD -- for the Plaintiff

PAUL J. MARTIN -- for the Defendants
ANASTASIA REKLITIS

ALSO PRESENT:

Grace Silvestre



B. Marsellus - 2

INDEX OF PROCEEDINGS

	<u>PAGE NUMBER</u>
BRIAN MARSELLUS, sworn	3
Cross-Examination by Mr. Rosenfeld	3 - 38
Index of Under Advisements	39
Certificate	40



B. Marsellus - 3

1 --- upon commencing at 11:45 A.M.

2
3 BRIAN MARSELLUS, sworn

4 CROSS-EXAMINATION BY MR. ROSENFELD:

5 1. Q. Mr. Marsellus, can you please
6 state and spell your name for our transcript,
7 please?

8 A. Yes, Brian Hugh Marsellus. First
9 name, Brian, B-R-I-A-N. Second name, Hugh,
10 H-U-G-H. Last name, Marsellus,
11 M-A-R-S-E-L-L-U-S.

12 2. Q. And you swore an affidavit in
13 this proceeding, dated January 11, 2019. Is that
14 right?

15 A. Yes.

16 3. Q. And I'd like to ask you some
17 questions about that.

18 A. Okay.

19 4. Q. And you have that affidavit
20 before you?

21 A. I do.

22 5. Q. At paragraph 1, it says that you
23 were previously a national distributor with Just
24 Energy Group Inc., and you have defined that as
25 Just Energy, from 2009 to 2016. And that's



B. Marsellus - 4

1 correct, right?

2 A. Correct.

3 6. Q. And I will use the same
4 definition of Just Energy as you have through my
5 questionings.

6 A. Okay.

7 7. Q. I'm concerned about the period,
8 what I call the class period, which I define as
9 2012 until at least November 2016.

10 A. Okay.

11 8. Q. So it sounds like you were a
12 national distributor during that time frame?

13 A. Correct.

14 9. Q. When in 2016 did you stop being a
15 national distributor?

16 A. We transitioned into an employee
17 model at that point, so I would have become a
18 director at that time, so I became an employee of
19 Just Energy.

20 10. Q. And are you still an employee of
21 Just Energy?

22 A. I am not.

23 11. Q. And you were in the role of
24 director. For how long was this in a director
25 role?



B. Marsellus - 5

1 A. Two years, just shy of two years.

2 12. Q. And are you an independent
3 contractor of Just Energy now?

4 A. No, I am not.

5 13. Q. Right. And do you have any
6 involvement with Just Energy?

7 A. I do not.

8 14. Q. Paragraph 11 states:

9 "...As national distributor of Just
10 Energy, it was my responsibility to
11 oversee the operations of certain sales
12 offices in Ontario and around Canada..."

13 And you were responsible for the Fairview office
14 in particular, as one of the offices that you
15 were responsible for?

16 A. Correct.

17 15. Q. And who assigned you that office?

18 A. Just Energy.

19 16. Q. All right. And you oversaw other
20 offices. Is that correct?

21 A. Correct.

22 17. Q. And are those the Yorkland office
23 and the Oshawa office?

24 A. Correct.

25 18. Q. And that's all of the offices you



1 ran in Ontario?

2 A. Correct.

3 19. Q. You ran other offices in other
4 locations, other provinces or states?

5 A. Yes.

6 20. Q. Thank you.

7 A. Not states; provinces.

8 21. Q. Right, only Canada.

9 A. We did have a...yes, yes,
10 correct, yes.

11 22. Q. And these offices were Just
12 Energy offices or they were your offices?

13 A. Just Energy.

14 23. Q. And as a national distributor,
15 you were an independent contractor with Just
16 Energy. Is that right?

17 A. Yes.

18 24. Q. I would like a copy of your
19 national distributor agreement during the class
20 period.

21 MR. MARTIN: We'll take that under
22 advisement.

U/A

23 25. MR. ROSENFELD: Okay.

24 THE DEPONENT: Maybe, I don't know.

25 MR. MARTIN: It may be...I thought it



B. Marsellus - 7

1 was but let me take that under
2 advisement and we'll get back to you on
3 that.

4 26. MR. ROSENFELD: Either way, I would
5 like it in the evidence for this motion.

6
7 BY MR. ROSENFELD:

8 27. Q. Now, the difference between
9 national distributors and regional distributors
10 is that the national distributors are responsible
11 for multiple offices, where a regional
12 distributor is only responsible for a particular
13 office?

14 A. Yes.

15 28. Q. Now, the Fairview Yorkland and
16 Oshawa offices in Ontario, you saw...oversaw
17 those operations. Is that right?

18 A. Yes.

19 29. Q. And that included the recruitment
20 of sales agents?

21 A. Yes.

22 30. Q. And that would have included the
23 training of sale agents on behalf of Just Energy?

24 A. Yes.

25 31. Q. And that would have included the



B. Marsellus - 8

1 marketing of Just Energy gas and electricity
2 contracts out of that office?

3 A. Yes.

4 32. Q. And would that have included the
5 compliance of the sales agents with the various
6 regulations?

7 A. Yes.

8 33. Q. And you oversaw those operations
9 on behalf of Just Energy?

10 A. Yes.

11 34. Q. And, you had regional
12 distributors that reported to you?

13 A. Yes.

14 35. Q. And there were crew coordinators
15 who reported to those regional distributors?

16 A. Yes.

17 36. Q. And, there were sales agents that
18 then reported to those crew coordinators?

19 A. Yes.

20 37. Q. And that was the case in all of
21 your offices?

22 A. Yes.

23 38. Q. Throughout the class period?

24 A. Yes.

25 39. Q. You, as the national distributor,



B. Marsellus - 9

1 did not contract with the regional distributors
2 in your office, did you?

3 MR. MARTIN: When you say "contract," I
4 don't understand the question.

5
6 BY MR. ROSENFELD:

7 40. Q. Did you...did they sign their
8 independent contractor agreements with you, the
9 national distributor?

10 A. No.

11 41. Q. Did they sign independent
12 contractor agreements with Just Energy?

13 A. Yes.

14 42. Q. So you oversaw the regional
15 distributors on behalf of Just Energy. Would
16 that be accurate?

17 A. Yes.

18 43. Q. Paragraph 14, in the last
19 sentence in particular:

20 "...Based on how things were going, I
21 would provide whatever advice and
22 guidance I could to assist them achieve
23 their business objectives..."

24 A. Your question is?

25 44. Q. The question is the "their" in



B. Marsellus - 10

1 that sentence, would that be the sales agents?

2 A. I would say it would be the
3 community in whole. It would be the crew
4 coordinators, the regional distributors as well
5 as the sales agents.

6 45. Q. Right now, the business objective
7 of the sales agents, would that be to make money?

8 A. Correct.

9 46. Q. And to make...to market more
10 contracts successfully?

11 A. Yes, if they so desired, yes.

12 47. Q. Right. And then that would get
13 them more commissions, the contracts?

14 A. That would be correct, yes, as
15 well as win trips and incentives, yes.

16 48. Q. Right. And the business
17 objective is also to be...one day to succeed so
18 well that they became a crew coordinator or a
19 regional distributor?

20 A. That could be in their path, yes,
21 absolutely.

22 49. Q. And the business they were in for
23 Just Energy would be the marketing of gas and
24 electricity contract for Just Energy?

25 A. Yes, well, yes, for themselves



B. Marsellus - 11

1 through the Just Energy campaign, yes. They
2 would be marketing as independent contractors,
3 basically running their own business through the
4 Just Energy opportunity of marketing gas and
5 electricity.

6 50. Q. Right. Their business would be
7 the marketing of Just Energy gas and electricity
8 contracts.

9 51. A. Correct, yes. Just Energy would
10 be the suppliers, yes.

11 52. Q. And as the national distributor,
12 your financial success would be tied to that of
13 the sales agents in your office. Is that
14 correct?

15 A. Yes, the office as a whole, yes,
16 not just the sales agents...the group
17 coordinators, the regional distributors, the
18 office as a whole, but the answer would be yes.

19 53. Q. Right. And, you would receive
20 some type of compensation or override for every
21 contract that a sales agent would successfully
22 market in your...

23 A. That would be correct, yes.

24 54. Q. And the more successful the sales
25 agents, the more successful you were...



B. Marsellus - 12

A. Correct.

55. Q. ...financially?

A. Correct.

56. Q. And so you would provide advice and guidance to the regional distributors and the crew coordinators, to try to make sure that the sales agents were more successful?

A. Absolutely.

57. Q. And that more...

A. And the agents themselves directly.

58. Q. And you would talk to the agents themselves as well?

A. Yes.

59. Q. Okay.

A. Absolutely.

60. Q. And you said you had a number of offices in Canada. And on an average day, were you in each office on any...

A. No.

61. Q. ...give or take?

A. No. Logistically, that would be impossible.

62. Q. Right. Were you based out of a particular office or...



B. Marsellus - 13

1 A. Fairview.

2 63. Q. And on an average day, you
3 wouldn't be directly overseeing sales agents,
4 would you?

5 A. Not on an average day, no, no.
6 My interaction would not be direct on an average
7 day, no.

8 64. Q. And, would you, on an average
9 day, directly oversee crew coordinators?

10 A. So to qualify that question
11 further, would I have conversations with crew
12 coordinators, absolutely or even sales agents,
13 right? So I don't want to lose the context here.
14 It's a fluid office. There would be sales agents
15 coming in. There would be crew coordinators
16 coming in. There would be regional distributors
17 however out of Fairview coming in. And I, you
18 know, very...I could well have contact with them
19 on a daily basis.

20 65. Q. But your main communication was
21 with the regional distributors. Would that be
22 fair to say?

23 A. Not necessarily. I ran sales
24 meetings as well. So I would be running sales
25 meetings intermittently, sometimes two, three



B. Marsellus - 14

1 times a week, sometimes not at all, depending
2 upon what events were going on and...oh, and,
3 yes, just again day-to-day operations were fluid.

4 66. Q. And would that be the daily
5 morning meetings?

6 A. That would be correct, sir.

7 67. Q. Paragraph 45 of your affidavit
8 refers to them?

9 A. Yes.

10 68. Q. And that would be the sales
11 meetings you're referring to?

12 A. Yes.

13 69. Q. I just want to review that to
14 confirm that answer.

15 A. Yes, yes, yes.

16 70. Q. Sorry. I want to make sure
17 you've read them before.

18 A. Yes. No, I know. Absolutely,
19 yes.

20 71. Q. I'd like to go back to paragraph
21 19, if you don't mind.

22 72. Q. The first sentence:

23 "...Importantly as we were not offering
24 increased salary as a carrot to
25 successful sales people, promotion



B. Marsellus - 15

1 became the key incentive for people to
2 build their sales business under the
3 Just Energy business model..."

4 You reference a salary, and perhaps this is just
5 the terminology that is being used. Who would
6 the salary be paid by?

7 A. Well, I don't understand your
8 question. There was no salary. They're
9 independent contractors.

10 73. Q. Right. So no one was ever
11 operating at increased salary?

12 A. Absolutely not.

13 74. Q. But they were offered an
14 opportunity to increase their pay if they were
15 more successful?

16 A. They would increase their pay in
17 elevating their performance, as well as they
18 could increase their pay by, you know, becoming a
19 crew coordinator or an assistant crew
20 coordinator, right?

21 75. Q. Right.

22 A. And there us a lot of autonomy,
23 right? Because they were independent contractors
24 to magnetize the deal, to make it exciting, to
25 make it attractive, you know, we did offer the



B. Marsellus - 16

1 opportunity of promotion, right?

2 76. Q. Right. So the sales agents, the
3 more contracts they successfully marketed, the
4 more commissions they would earn, the more money
5 they would make?

6 A. Yes, absolutely.

7 77. Q. Is that not a carrot to
8 successful sale people?

9 A. Of course, it is.

10 78. Q. Okay, yes. And then the crew
11 coordinators would get what I understand to be an
12 override on the successful contracts that were
13 marketed by their sales agents in their group?

14 A. The answer would be yes. Yes.

15 79. Q. Right. And so they would
16 financially succeed, and the carrot would be they
17 would make more money if they were...

18 A. That would be correct, yes.

19 80. Q. Okay. And the same thing with
20 regional distributors, in that they would receive
21 overrides of commissions based on the contracts
22 that the crew coordinators and sales agents in
23 their offices would achieve?

24 A. Yes.

25 81. Q. And so they would receive a



B. Marsellus - 17

1 financial carrot...

2 A. Yes.

3 82. Q. ...for success?

4 A. Yes.

5 83. Q. Okay. You referred to promotions

6 being a key incentive. And does that promotion

7 up to the levels that we described from sales

8 agent to crew coordinator to regional

9 distributor, is that the promotional levels?

10 A. Yes.

11 84. Q. Okay.

12 A. Yes, they would be running their

13 own business as independent contractors. And

14 that level of autonomy, we wanted them to grow so

15 they had the opportunity to grow in the...you

16 know, in their personal growth to be able to earn

17 more income or, you know, facilitate promotion,

18 this type of thing, right?

19 85. Q. At paragraph 20, I don't think we

20 specifically covered this, but this talks about

21 regional distributors running their own offices

22 and sub-offices. Are these different offices

23 than the offices that you operated?

24 A. So Saunders and Orr are out of

25 Fairview. Mr. Slizauskas (Phon)...so I just



B. Marsellus - 18

1 butchered his name, sorry. Anyway, okay, he
2 would be running Yorkland. That would be
3 downstairs, commercial operation. Mr. Bromell
4 would be running Oshawa and Ms. Walt would be
5 running Alberta.

6 86. Q. These were all offices that you
7 were overseeing though?

8 A. Correct, sir.

9 87. Q. Okay. So they're not different
10 offices?

11 A. Yes. Well, they're different
12 location-wise. Well, no, actually Danny Bromell
13 would be in Oshawa. Am I misunderstanding your
14 question?

15 88. Q. Yes. No, I think my question is
16 you're saying that they're running offices.

17 A. The regional...

18 89. Q. They're your offices?

19 A. Yes, they fall into my offices,
20 yes, I guess.

21 90. Q. Right. And the regional
22 distributors don't employ anybody, any sales
23 agents...

24 A. No. It's all independent
25 contractors.



B. Marsellus - 19

1 91. Q. With Just Energy?

2 A. With Just Energy, yes.

3 92. Q. So they're running a group of
4 independent contractors out of an office provided
5 by Just Energy?

6 A. Correct.

7 93. Q. Paragraph 26. It is a reference
8 to the interview process:

9 "...The interviews were scripted and
10 tightly controlled by Just Energy's
11 centralized recruiting, to ensure that
12 recruiters appropriately dealt with the
13 nature and implications of the
14 independent contractor position, et
15 cetera, et cetera..."

16 And those are scripted and controlled by Just
17 Energy. Is that right?

18 A. That is correct.

19 94. Q. So you would receive the scripts
20 from Just Energy?

21 A. Yes. There would be an ongoing
22 training component to that as well. Centralized
23 recruiting would do regular visits. I would also
24 provide some level of oversight to that, because
25 we didn't want any confusion around it being



B. Marsellus - 20

1 commissioned.

2 95. Q. And the training that Just Energy
3 provided for these interviews would be to you,
4 the national distributor?

5 A. To the recruiters. I would be
6 involved in that process, but I wouldn't sit in
7 every single training.

8 96. Q. And would the regional
9 distributors receive that training?

10 A. Absolutely.

11 97. Q. Right. And the interviews were
12 on behalf of Just Energy, were they not? These
13 were interviews for a position with Just Energy?

14 A. Yes. You want to qualify that
15 further, so your question is?

16 98. Q. My question is...there are
17 interviews here. And my question is...

18 A. Yes, they're interviewing for
19 independent contractor positions.

20 99. Q. With Just Energy?

21 A. With Just Energy, yes.

22 100. Q. And so the regional distributors
23 would be conducting those interviews on behalf of
24 Just Energy?

25 A. The recruiter would be conducting



B. Marsellus - 21

1 the interviews. The regional could be as well,
2 but that would be the recruiter function. You
3 would have regionals doing interviews as well
4 sometimes.

5 101. Q. And so when they did those
6 interviews, they would be doing them on behalf of
7 Just Energy?

8 A. That would be...yes, yes, yes,
9 yes. You could say that, yes.

10 102. Q. I can say that or that isn't the
11 case?

12 A. On behalf of Just Energy,
13 recruiting independent contractors for the
14 opportunity to qualify it further, yes.

15 103. Q. Paragraphs 41 and 42, please.
16 And this talks about an independent contractor
17 orientation guidebook and who those orientation
18 sessions would be conducted by. In paragraph 41,
19 it refers to the guidelines and directions on how
20 to conduct the orientation.

21 And then paragraph 42 suggests that if a
22 Just Energy recruiter...or sorry, in addition to
23 the Just Energy recruiter, regional distributors
24 would also be conducting the training, the
25 reorientation. Is that right?



B. Marsellus - 22

1 A. That would be correct, yes.

2 104. Q. And so the regional distributors
3 received training from Just Energy on how to
4 conduct the orientation?

5 A. Absolutely, yes, yes, yes, many
6 training sessions.

7 105. Q. And the orientation sessions
8 themselves happen on a weekly basis at your
9 offices?

10 A. Biweekly, weekly, depending upon
11 time of year.

12 106. Q. At least weekly?

13 A. I wouldn't say that, no. It's
14 biweekly and some...

15 107. Q. Biweekly is twice a week or is
16 it...

17 A. No, biweekly would be every two
18 weeks.

19 108. Q. Okay, thank you.

20 A. Sorry.

21 109. Q. Yes, so mostly biweekly?

22 A. Not necessarily. Time of year
23 dictated that. We wouldn't be hiring as much in
24 certain times of the year, weather prohibiting.
25 Summertime would be...springtime would be, you



B. Marsellus - 23

1 know, a lot more...you know, a lot more.

2 Even during different years, there were
3 different programs that we would have been
4 providing, so we're covering a big timeline. So,
5 yes, so to say absolutely weekly, no. We would
6 be inaccurate, right?

7 So different periods of time, you would
8 have biweeklies every two weeks or you could have
9 weekly, right? But certainly there was ongoing
10 training occurring out of these offices.

11 110. Q. Paragraph 45. Paragraph 45, you
12 say that:

13 "...Each day began with a daily morning
14 meeting as it did in other offices..."

15 Were these daily morning meetings something that
16 you put in place or something that Just Energy
17 suggested that happened every day?

18 A. I would say that's a standard
19 practice in our industry.

20 111. Q. Okay. And these morning meetings
21 happened at all your offices?

22 A. Yes, except for the commercial
23 office.

24 112. Q. Okay. And which one is the
25 commercial office?



B. Marsellus - 24

1 A. Gintris, (Phon) the Lithuanian
2 fellow.

3 113. Q. Right. And it's sort of named by
4 the individual or is it named by the location?

5 A. A good one. I have a hell of a
6 time with his name, so...

7 114. Q. No, no, but it's your Fairview
8 office.

9 A. Yorkland.

10 115. Q. That office is the only
11 commercial?

12 A. Yes, sir. Yes, sir, only
13 commercial.

14 116. Q. Paragraph 58, please. And the
15 first sentence says:

16 "...In addition...and perhaps the most
17 important determinant of an independent
18 contractor's marketing schedule is
19 transportation..."

20 And then it talks about arranging for vans and
21 carpools. Did you arrange for vans and carpools
22 for transportation of sales agents into the field
23 at all your offices, save for the commercial
24 office?

25 A. Yes. So, again, we're covering a



B. Marsellus - 25

1 big timeline. There was a period of time when
2 there was vans provided. There was a period of
3 time where they supplied their own
4 transportation. It would be organized on a daily
5 basis. It was certainly non-mandatory.

6 We had a good percentage of the office
7 that would just go out to work on their own. It
8 was recommended, suggested we supply this
9 service, you know, would be the essence of that
10 transportation, right?

11 117. Q. So the vans, they would be
12 provided by your office?

13 A. I had...I purchased vans in the
14 past. Just Energy had vans. They had a fleet
15 program. There were different incarnations over
16 this period of time.

17 118. Q. And so Just Energy had a fleet
18 program where they would provide vans to the
19 various regional offices?

20 A. Yes.

21 119. Q. And those vans were for the
22 purposes of transportation sales agents...

23 A. Absolutely.

24 120. Q. And then when they stopped having
25 that program, you would go out and purchase them



B. Marsellus - 26

1 on your own yourself?

2 A. No, that would need to be prior
3 to that. Their fleet program continued right up
4 until pretty much the time that I was no longer a
5 national distributor.

6 121. Q. And do you know how long the
7 fleet program lasted for?

8 A. But if you...if we want to talk
9 in industry terms, it's been around since 2005.
10 You know, my tenure was ongoing.

11 122. Q. Right.

12 A. But it also...an agent didn't
13 have...an independent contractor didn't have to
14 participate in that, right? They would sometimes
15 use their own vehicles. They wouldn't even come
16 into the office. There was...

17 MR. MARTIN: The van...

18 123. MR. ROSENFELD: Let him finish,
19 please.

20 MR. MARTIN: The van...

21 124. MR. ROSENFELD: Let him finish,
22 please. You cut him off. Did you want
23 to finish?

24 THE DEPONENT: Yes. So there was a
25 lot of autonomy to that. So it wasn't



B. Marsellus - 27

1 mandatory for them at all to use our
2 transportation program.

3
4 BY MR. ROSENFELD:

5 125. Q. The van program that Just Energy
6 was providing vans to your offices...

7 A. Yes.

8 126. Q. ...that happened between 2012 and
9 2016?

10 A. That would be correct, yes.

11 127. Q. Right. So you weren't providing
12 your own vans?

13 A. I still did some rentals myself
14 during that time period.

15 128. Q. Okay. So you either...your vans
16 or Just Energy's vans during 2012 to 2016?

17 A. As well as they would bring in
18 their own vehicles.

19 129. Q. Right. And on a daily basis,
20 sales agents would go in those vans, among other
21 methods of transportation?

22 A. Yes. You would...you could say
23 anything could be happening. And I'm sorry for
24 being so general. You could have agents not
25 coming into the office. You could have them



B. Marsellus - 28

1 coming into the office. There was no mandatory
2 process to it. They could use their own
3 vehicles. They could go out in their own team.
4 They could come into the office. There was...you
5 know, there was an going fluid process not
6 constrained to anything specific. There was not
7 mandatory to the Just Energy vans.

8 130. Q. And in paragraph 59, you talk
9 about the majority of sales agents referred to
10 marketing groups. So they do so by virtue of the
11 vans and car pools and transportation together?

12 A. I would say that it wasn't the
13 vans. I would say that, you know, people thrive
14 in a social structure and that they would compete
15 with each other and have fun with each other and,
16 you know, and have common goals and like-
17 mindedness. And we found it to be a synergy,
18 right? People wanted to work together.

19 131. Q. And the vans that you had, the
20 transportation that you organized, it was...those
21 vans went out to locations that were determined
22 that day?

23 A. Yes.

24 132. Q. Right. And those would be
25 determined at the daily morning meetings?



B. Marsellus - 29

1 A. No. Well, it could be. Yes, it
2 could be determined at the meeting. It would be
3 determined in a group probably. It could be
4 determined by the regional group coordinator as
5 well as some of the agents, some of the
6 independent contractors. It was around a
7 community process, right?

8 133. Q. Paragraph 61 talks about
9 discussing market locations at the daily morning
10 meeting?

11 A. M'hmm. Yes.

12 134. Q. And at these daily morning
13 meetings, that's where the recommended marketing
14 locations were determined?

15 A. Yes, and qualify the word,
16 "recommended," because many times we would
17 suggest they go to this area, and they would go
18 to a different area.

19 135. Q. Right.

20 A. Right.

21 136. Q. And would the vans go to the
22 recommended areas?

23 A. Not necessarily. So they would
24 head out potentially in that direction, but they
25 might end up going somewhere else. A lot of



B. Marsellus - 30

1 autonomy, right?

2 137. Q. And this is...the daily morning
3 meetings is where the make-up of the teams would
4 be determined?

5 A. Yes, yes. There would be an
6 ongoing team developmental program meaning that
7 teams would work together, right? But, you know,
8 you would have new folks joining potentially.
9 You would have people, you know, not in there.
10 Like on any given day, you could have, you know,
11 seven to 15 people not be there. And it was
12 not...it was very fluid.

13 138. Q. But the daily morning meetings is
14 where the make-up of the teams on that particular
15 day was?

16 A. Yes, that would be correct, yes.
17 That would be...that was the best way that we
18 could see to do that, yes.

19 139. Q. You refer to market intelligence
20 in that paragraph?

21 A. Yes.

22 140. Q. Did that market intelligence
23 include locations where sales agents from that
24 office had marketed in previous days?

25 A. Yes, yes. And amongst other



B. Marsellus - 31

1 things, we could have regulatory issues going on.
2 We could have...we could have, yes, the highway
3 could be blocked. It could be...you know, could
4 be very, very cold out, so we would want to keep
5 to more local. There was all kinds of different
6 things that could play into that decision-making
7 process.

8 141. Q. Like the market intelligence,
9 would that have included information on areas
10 where customers were not available. They had
11 signed contracts with Just Energy already or do
12 not solicit lists?

13 A. That would be a misconception of
14 the industry. On any given day, you find maybe
15 15 percent, 10 percent of people at home overall.

16 142. Q. All right.

17 A. But you wouldn't want to go back
18 to the same door the next day.

19 143. Q. Right.

20 A. Right?

21 144. Q. And so that market intelligence
22 is where you've been, the successes you've had in
23 those times when you've been out there?

24 A. That would be correct, yes. Yes,
25 that would be a fair statement, yes.



B. Marsellus - 32

1 145. Q. Would it include the availability
2 of the installation technicians?

3 A. So installation technicians only
4 came along in the last year of the period of time
5 that we're talking about today or last year and a
6 half, right? So installation technicians...and
7 we never utilized the installation technician
8 requirement or whatever you want to call it. I
9 think "requirement" is the wrong word...that the
10 availability of technicians was never a
11 certainty, so we didn't utilize that on a daily
12 basis, no.

13 146. Q. Paragraphs 64 and 66, they seem
14 blank. I don't know if there's some information
15 there that I don't have.

16 MR. MARTIN: No, that was just a typo.

17
18 BY MR. ROSENFELD:

19 147. Q. Paragraphs 73 and 74, please.
20 Seventy-three at the last sentence talks about
21 trying to place the sales agents in locations
22 where there would be a higher probability of
23 successful sales.

24 And then 74 talks about the
25 considerations for that success, which I would



B. Marsellus - 33

1 guess to be the probability, what impacts that
2 probability. And you refer to prior success rate
3 in an area. So we've talked about that briefly.
4 Is that information kept by your office where
5 sales agents go out into on particular days?

6 A. No, no, we didn't keep an ongoing
7 record of where they had been. But certainly at
8 agent level, crew coordinator level, they would
9 know where they were the next day. I
10 wouldn't...you know, I left that...there was a
11 lot of autonomy around that. So I kept no
12 records of, you know, anything like that.

13 148. Q. But the crew coordinators had
14 that?

15 A. They would know where they were,
16 and they would want to best their opportunity for
17 the day. They were down there to...you know, as
18 being self-employed and independent contractors,
19 they wanted to earn as much as they possibly
20 could. So, they would make decisions based on
21 where they had been last week and what areas they
22 felt would be the most successful.

23 149. Q. The prevalence of do not solicit
24 signs it says there, is that different than do
25 not solicit lists?



B. Marsellus - 34

1 A. Yes that's...do not solicit
2 signs, you would find on houses. So you
3 certainly wouldn't want to knock on the door
4 of...

5 150. Q. No, the question is, is it
6 different than do not solicit lists that are
7 provided by Just Energy?

8 A. Let me read the whole context
9 here. Yes, this sentence is just pointing out
10 some of the things you would want to avoid during
11 the course of a day of marketing, the day in the
12 life of an independent contractor.

13 151. Q. You know, my question is, do not
14 solicit signs, is that different then do not
15 solicit lists?

16 A. The answer is yes.

17 152. Q. Okay.

18 A. Yes, yes, in this context, in
19 this sentence, yes.

20 153. Q. And the recommended locations
21 will be based on these considerations. Is that
22 the idea?

23 A. Yes, yes.

24 154. Q. Paragraph 75, it references a map
25 to daily morning meetings. Is that...



B. Marsellus - 35

1 A. Yes, they would have map books
2 themselves.

3 155. Q. All right. What are map books...

4 A. Yes, maps, yes. So if I'm going
5 to go work in an area, I'm going to need to map
6 that out. If I've got 50 people and I'm going to
7 deploy them, we're going to create mapping for
8 that day, right? So it comes out of map books.
9 We have maps and then we would hand them out so
10 the independent contractors, you know, market in
11 that territory.

12 156. Q. Right. And so you would provide
13 the maps of the territories that they're going to
14 be marketing in. Is that not the idea?

15 A. We may.

16 157. Q. It talks about a map, so it seems
17 like there are more than one map.

18 A. You know, I understand the
19 sentence here, but I certainly didn't have a big
20 map that I would use in the office that would be,
21 you know, used to coordinate everything on a
22 daily basis. We did it out of map books, right?
23 We had map books that we would be utilizing.

24 158. Q. And those map books are...

25 A. You can buy...you buy them at any



B. Marsellus - 36

1 gas station.

2 159. Q. Right.

3 A. Yes.

4 160. Q. And so you've given these out to
5 sales agents.

6 A. We would have them over the
7 years. Like we had stacks of them, right?

8 161. Q. Right.

9 A. Yes, yes. The crew coordinators
10 had them. Regionals had them.

11 162. Q. And how does the market
12 intelligence use...for the use of the map...I
13 guess the map book? It's...

14 A. I mean...

15 163. Q. Does someone have a map book that
16 shows particular information in it?

17 A. You know, to go into it...I mean
18 your crew coordinators would know where they were
19 and they would be tracking that within, you know,
20 their daily marketing activities. So, I mean, to
21 me, there was no other way to, you know, to do
22 it, right? You would want to not go back to the
23 same house the next day. You would want to be
24 ongoing marketing throughout an area.

25 164. Q. Right. And that was done by the



B. Marsellus - 37

1 crew coordinators?

2 A. Yes.

3 165. Q. And that was...

4 A. Co-ordinators, what I've...I
5 would be involved in that sometimes, too. So
6 would the regional distributors.

7 166. Q. Right.

8 A. It would be a community effort,
9 right, to make sure that we were maximizing
10 performance, because we wanted to put up...you
11 know, supply a service to the agents, to be able
12 to succeed at the highest level.

13 167. Q. Right. So you would use a map
14 saying these are the...these are some prime
15 locations to go to?

16 A. Absolutely, absolutely. Yes, I
17 didn't have a map in the big room. It was
18 certainly...we had maps around there though.

19 168. MR. ROSENFELD: I don't know if you've
20 refused or taken under advisement any
21 questions. But subject to those
22 questions, I will...those are to my
23 examination.

24 THE DEPONENT: Thanks very much.

25 169. MR. ROSENFELD: Thank you.



B. Marsellus - 38

1
2 --- upon adjourning at 12:15 p.m.
3
4
5
6
7
8
9
10
11
12
13
14
15
16



B. Marsellus - 39

INDEX OF UNDER ADVISEMENTS

REFERENCE
NUMBER

PAGE
NUMBER

QUESTION
NUMBER

1

6

24



Court File No. CV-15-527493-OOCP

ONTARIO
SUPERIOR COURT OF JUSTICE

SH/ld

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

- - - - -

This is the Cross-Examination of RICHARD TEIXEIRA, on his Affidavit sworn on the 10th day of January, 2019, taken at the offices of VICTORY VERBATIM REPORTING SERVICES INC., 222 Bay Street, Suite 900, Ernst & Young Tower, Toronto-Dominion Centre, Toronto, Ontario, on the 6th day of March, 2019.

- - - - -

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

DAVID ROSENFELD -- for the Plaintiff

PAUL J. MARTIN -- for the Defendants
ANASTASIA REKLITIS

ALSO PRESENT:

Grace Silvestre /



R. Teixeira - 2

INDEX OF PROCEEDINGS

	<u>PAGE NUMBER</u>
RICHARD TEIXEIRA, sworn	3
Cross-Examination by Mr. Rosenfeld	3 - 83
Cross-Examination by Mr. Martin	83 - 87
Index of Undertakings	88
Certificate	89



R. Teixeira - 3

1 --- upon convening at 10:00 a.m.

2 --- upon commencing at 10:10 a.m.

3
4 RICHARD TEIXEIRA, sworn

5 CROSS-EXAMINATION BY MR. ROSENFELD:

6 1. Q. So, you have been sworn in today?

7 A. I have been, yes.

8 2. Q. Can you just say your name and
9 spelling for the transcript, please?

10 A. Yes. My name is Richard
11 Teixeira. And the last name is spelled
12 T-E-I-X-E-I-R-A.

13 3. Q. And this is a cross-examination
14 on an affidavit you swore on January 10, 2019 in
15 this matter. Is that right?

16 A. That's correct.

17 4. Q. And do you have that affidavit in
18 front of you?

19 MR. MARTIN: He does.

20
21 BY MR. ROSENFELD:

22 5. Q. Great. And so you...in paragraph
23 1 of that affidavit, you note that you are
24 currently a vice-president of consumer sales with
25 Just Energy Group. Is that still your title?



R. Teixeira - 4

1 A. That is correct.

2 6. Q. And you define "Just Energy" in
3 your affidavit to mean Just Energy Group Inc. I
4 guess I'll maintain what that definition of Just
5 Energy, when I talk about Just Energy in this
6 cross-examination.

7 A. Yes.

8 7. Q. Okay. And in that position, you
9 are responsible for the door-to-door sales
10 channel for Just Energy North America. Is that
11 right?

12 A. That's correct.

13 8. Q. And that was your position and
14 responsibilities during the class period? And
15 I'll define the class period as 2012 until at
16 least November 2016.

17 A. No. I assumed that role
18 around...I believe it was June, late June, early
19 July of 2015.

20 9. Q. And before that, what was your
21 position?

22 A. I was director of sales
23 operations.

24 10. Q. And how did that differ from your
25 current position?



R. Teixeira - 5

1 A. More responsible for the back-end
2 sales support of our sales offices and the entire
3 sales channel.

4 11. Q. In the position of vice-president
5 of consumer sales, you dealt with all of North
6 America. Is that right?

7 A. Correct.

8 12. Q. So Ontario is just one part of
9 that?

10 A. Correct.

11 13. Q. And that would include all the
12 states in the United States where Just Energy
13 operates?

14 A. That's correct.

15 14. Q. And all the other provinces and
16 territories in Canada in which Just Energy
17 operates?

18 A. Correct.

19 15. Q. And from taking on this position
20 in July 2015, if I have that correct, it's the
21 same position and same responsibilities as you
22 currently hold?

23 A. That's correct.

24 16. Q. And, it's part of your
25 responsibilities to drive sales in your channel,



R. Teixeira - 6

1 in that door-to-door sales channel?

2 A. That's correct.

3 17. Q. And in that role during the class
4 period...I just want to talk about during the
5 class period, so I will preface, my questions are
6 about the class period.

7 A. That's fine.

8 18. Q. In that role, did you have direct
9 regular contact with Werner, (Phon) National
10 Distributors?

11 A. Yes, I think you would have to
12 define if a matter consistent on behalf of the
13 firm, there would be a regular cadence of
14 conversations with them.

15 19. Q. Well, how would you define direct
16 regular contact with them?

17 A. Sometimes once a week, sometimes
18 once a month. So, different individuals would be
19 a different frequency of communication.

20 20. Q. Right. But the whole group of
21 national distributors, would that be a daily
22 basis, whether it would be a particular national
23 distributor in Ontario or someone in California?

24 A. It's fair enough to say yes.

25 21. Q. Okay. And would you have direct



R. Teixeira - 7

1 regular contact on a daily basis with regional
2 distributors throughout North America?

3 A. And if I heard that question,
4 regular daily communication with regional
5 distributors?

6 22. Q. Yes.

7 A. I would say no.

8 23. Q. Well, weekly?

9 A. Yes.

10 24. Q. And would you have some direct
11 communications or contact with assistant regional
12 distributors on a daily or weekly basis?

13 A. Substantially less frequent.

14 25. Q. And you wouldn't have direct
15 regular contact with sales agents though, would
16 you?

17 A. No.

18 26. Q. And you wouldn't have direct
19 regular contact with assistant crew coordinators?

20 A. No.

21 27. Q. And you wouldn't have direct
22 regular contact with crew coordinators?

23 A. No.

24 28. Q. And so you drove sales in the
25 door-to-door channel through your interactions



R. Teixeira - 8

1 with the national distributors and visual
2 distributors?

3 A. That's correct.

4 29. Q. And you would motivate them or
5 guide them to increase sales?

6 A. Yes, yes, and among other things.

7 30. Q. And on an average day during the
8 class period, you were not at each particular
9 sales on this North America, were you?

10 A. That's correct.

11 31. Q. You would be in head office
12 somewhere. Is that...

13 A. That's correct.

14 32. Q. You were not directly overseeing
15 sales agents during that time frame?

16 A. That's correct.

17 33. Q. And you were not overseeing crew
18 coordinators during that time frame?

19 A. That's correct.

20 34. Q. You were overseeing regional
21 distributors and national distributors though?

22 A. Correct.

23 35. Q. And you were not in each regional
24 office for what has been termed as the on-
25 boarding process for...



R. Teixeira - 9

1 MR. MARTIN: You're talking about
2 regularly?

3 36. MR. ROSENFELD: Right. Yes, yes.

4 THE DEPONENT: Regularly, yes.
5 Regularly done.
6

7 BY MR. ROSENFELD:

8 37. Q. And regularly, you would not be
9 in the regional offices for the interview process
10 of those sales agents?

11 A. That's correct.

12 38. Q. And regularly, you would not be
13 in the office when the independent contractor
14 agreement was being discussed with the sales
15 agents?

16 A. That's correct.

17 39. Q. And you were not at the regional
18 offices on a regular basis, participating in
19 daily meetings?

20 A. I would challenge to say yes, I
21 travelled quite a bit in my role, so I would be
22 in...if we're going to define all of North
23 America, I would be in sales offices quite
24 frequently for daily sales meetings.

25 40. Q. Like once per week, five times



R. Teixeira - 10

1 per week, on average?

2 A. I would probably be travelling
3 anywhere from 15 to 75 percent of the month. So,
4 if you want to amortize that over a week,
5 probably on average of two to three times a week.

6 41. Q. And you would be participating in
7 the daily meetings you've referred to in your
8 affidavit, paragraph 61 through 65, I guess?

9 A. I'm sorry. Could you repeat your
10 question, please?

11 42. Q. You just mentioned that you would
12 be participating -- so you would be at the
13 regional offices participating in the daily
14 meetings on a regular basis. And I'm asking if
15 the daily meetings you're talking about are the
16 ones in paragraph 61 in particular.

17 43. A. If I was in the office at that
18 time, this would be -- yes, I would be there
19 during the time of these meetings as discussed
20 here.

21 44. Q. Right. But you weren't a sales
22 agent at any point in time, were you?

23 A. I was not, no.

24 45. Q. And you certainly haven't spoken
25 to all the sales agents in the class, have you?



R. Teixeira - 11

1 A. No.

2 46. Q. Now, the sales agents in the...in
3 your channel, they would market the gas and
4 electricity contracts primarily for Just Energy.
5 Is that right?

6 A. Correct, yes.

7 47. Q. Now, Just Energy doesn't produce
8 the gas or electricity. It doesn't make the gas
9 or electricity, does it?

10 A. No, we do not.

11 48. Q. And Just Energy does not
12 distribute the gas or electricity, does it?

13 A. That's correct.

14 49. Q. Just Energy, from what I
15 understand, buys from a producer or distributor
16 and sells it to the customer?

17 A. Yes, very...yes, the basic level
18 of it, but that's obviously correct, yes.

19 50. Q. Right. In simplistic terms?

20 A. Yes.

21 51. Q. Right. And those are the
22 contracts that sales agents primarily market for
23 Just Energy?

24 A. That's correct.

25 52. Q. I'd like to talk about paragraphs



R. Teixeira - 12

1 8 through 15, so if you want to take a second to
2 look at those.

3 A. In those paragraphs 8 to 15?

4 53. Q. Yes, description of Just Energy's
5 team model.

6 A. M'hmm.

7 54. Q. Okay. Now, what I understand to
8 be the team model, would this be a description of
9 the sales agents working in teams with crew
10 coordinators and regional distributors, to go out
11 and market their Just Energy products?

12 A. Should the independent
13 contractors choose to be part of that team model,
14 that's correct.

15 55. Q. But that's the model? The team
16 of sales agents group together with crew
17 coordinators with regional distributors?

18 A. That's what we found. Most
19 independent contact OD prefer, yes.

20 56. Q. Right. I understand that. And
21 my question is, that is what the model is being
22 described as?

23 A. It is a model that's provided,
24 yes.

25 57. Q. Okay. Provided by Just Energy?



R. Teixeira - 13

1 A. Provided by the sales offices.

2 58. Q. Right. And that's a model that
3 was created by Just Energy?

4 A. No. A common practice in door-
5 to-door sales, whether it's selling cable,
6 Internet, you know, home filtration, but whatever
7 the product might be, from a door-to-door
8 sampling.

9 59. Q. It is the model that is
10 recommended by Just Energy in its training
11 materias though, is it? Is it not?

12 A. I don't know. Maybe it's
13 encouraged to provide support and help develop
14 individuals to be effective and successful in
15 this role.

16 60. Q. Right. The role of crew
17 coordinator, that was something that was created
18 by Just Energy, was it not?

19 A. I don't think we have coined the
20 term about it...like we may have coined a term,
21 "crew coordinator," but the function of an
22 individual providing support to crews of
23 individuals isn't something that was proprietary
24 to Just Energy.

25 61. Q. But it is known as a crew



R. Teixeira - 14

1 coordinator in Just Energy?

2 A. At that time, there was a role
3 that was offered to individuals that provide
4 support, referred to, as the crew coordinators.

5 62. Q. And that was defined by Just
6 Energy?

7 A. That title, yes.

8 63. Q. Yes. And I guess whatever
9 independent contract that those crew coordinators
10 would sign with Just Energy?

11 A. No, no, I don't understand that
12 part of the question, sorry.

13 64. Q. The...you said the term, "crew
14 coordinator" is what was created by Just Energy
15 or coined by Just Energy. And I'm asking whether
16 the role and responsibility is something that was
17 recommended by Just Energy.

18 A. No. It was a role available for
19 individuals in sales offices to utilize this.
20 I'm sure you'll speak to other people and they'll
21 tell you that they utilized that role in very
22 different capacities. That was nothing that was
23 governed by the organization in any way, shape or
24 form.

25 65. Q. Right. But the term, "crew



R. Teixeira - 15

1 coordinator," it wasn't, you know, supervisor.
2 It wasn't called the supervisor, was it, in
3 various offices? I mean, if they could do what
4 they want, those individuals didn't call
5 themselves supervisors, is that it?

6 A. What they referred to themselves
7 specifically in the office, I would not know.

8 66. Q. Right. And how did Just Energy
9 compensate what are termed "crew coordinators"?

10 A. So anyone who would have been
11 identified as a crew coordinator within a sales
12 office would receive commissions for their own
13 personal sales, and would have received a
14 commission on the sales of the individuals that
15 they've been, for lack of a better term, assigned
16 to, to provide support and assistance to.

17 67. Q. Right. So Just Energy in its
18 systems pays what are identified as crew
19 coordinators that kind of commission?

20 A. Yes. And additional commission
21 on the sales of the people they support in the
22 system.

23 68. Q. Now, regional distributors, they
24 get commissions or overrides, is what I
25 understand that they're called, on contracts



R. Teixeira - 16

1 obtained by the sales agents in their office. Is
2 that right?

3 A. That is correct. There's a
4 little more to that. Assuming the sale is what
5 we would refer to becomes an effective contract
6 or an approved contract, yes, they would have
7 received a commission on that.

8 69. Q. But all the sales agents in their
9 office...

10 A. In the...

11 70. Q. ...that's where they would
12 receive a commission for it?

13 A. Yes, that is correct.

14 71. Q. Yes. And Just Energy tracks the
15 contracts and the sales and who was the crew
16 coordinator, regional distributor and sales agent
17 for those contracts. Is that right?

18 A. Yes, they do. We...in that we
19 process the sales, and through the processing of
20 the sales, we can identify who generated the
21 sale. And then from there, we can identify who
22 are the individuals who provided support as
23 assigned by the sales office. That's correct.

24 72. Q. Paragraph 10 in particular talks
25 about...the second-last sentence:



R. Teixeira - 17

1 "...In this regard, regional
2 distributors, crew coordinators and
3 assistant crew coordinators marketed
4 together to support the sales agents and
5 the sales agents' business
6 objectives..."

7 Now, the business objectives defined there or
8 described there, I should say, is that the
9 objective to make money?

10 A. The objective is to drive sales
11 and through the driving of a sale, if it's an
12 acceptable sale, assuming it's compliant and the
13 customer is happy with the program and the
14 products they received, then they would receive
15 money for it.

16 73. Q. So the sales agent's business
17 objective is to make more or get more contracts
18 signed up, so that they would get a commission
19 and make more money?

20 A. I think this is a simplistic way
21 to put it. Yes, absolutely, a sales agent's goal
22 in any organization where they derive revenue for
23 themselves and the organization is to drive
24 sales, no different than a Xerox salesperson or a
25 RECO salesperson.



R. Teixeira - 18

1 Also, individuals have goals of
2 advancing their careers. Maybe future marketing
3 companies put themselves in a position maybe one
4 day work on a sales office themselves.

5 74. Q. Right.

6 A. So...

7 75. Q. Sorry.

8 A. Yes, that's it.

9 76. Q. And so, the more contracts that
10 they are able to obtain through their marketing,
11 the more money they make. Is that right?

12 A. Yes, that would be fair.

13 77. Q. And one day, one of the
14 objectives is to potentially succeed so well that
15 they become a crew coordinator and run their own
16 group of sales agents. Is that right?

17 A. Should they want to, yes.

18 78. Q. Yes. And is that something
19 that's promoted to sales agents?

20 A. I think it's encouraged. I think
21 every salesperson is different in what they want
22 out of their career. Some people are just
23 content going out there and driving sales for
24 themselves, and some people like to take on a
25 little bit more of a leadership and guidance



R. Teixeira - 19

1 role. No two individuals are the same.

2 79. Q. And, in this position, they are
3 selling Just Energy gas and electricity
4 contracts. Is that right?

5 A. Yes, with respect, yes. They
6 could be providing services for other
7 organizations. We wouldn't know. Again, the
8 assumption would be if they signed an independent
9 contract agreement with Just Energy, that they're
10 marketing referrals as well, in addition to other
11 products.

12 80. Q. I'd like to move to paragraph 16,
13 please.

14 A. Yes.

15 81. Q. This talks about the variety of
16 office structures.

17 A. M'hmm.

18 82. Q. Now, the sales agents want to
19 confirm that the sales agents were not
20 independent contractors of the regional
21 distributors, were they?

22 A. They entered into an independent
23 contractor agreement with Just Energy Marketing
24 Corp. That's correct.

25 83. Q. Right. So, they were not



R. Teixeira - 20

1 independent contractors of the regional
2 distributors?

3 A. No.

4 84. Q. And, they were not independent
5 contractors of the national distributors?

6 A. That's correct.

7 85. Q. And no matter what office they
8 worked out of, they would be independent
9 contractors of Just Energy, not the particular
10 office?

11 A. Correct.

12 86. Q. And the crew coordinators, were
13 the crew coordinators independent contractors of
14 the regional distributors?

15 A. That's a tongue-twister, but no,
16 they were not.

17 87. Q. Right. And were the crew
18 coordinators independent contractors of the
19 national distributors?

20 A. They were not.

21 88. Q. They were independent contractors
22 of Just Energy. Is that right?

23 A. That's correct.

24 89. Q. And no matter what office they
25 worked out of, they would still be independent



R. Teixeira - 21

1 contractors of Just Energy. Is that right?

2 A. That's correct, yes.

3 90. Q. And the regional distributors,
4 were they independent contractors of the national
5 distributors?

6 A. They were not.

7 91. Q. But they were independent
8 contractors of Just Energy. Is that right?

9 A. That's correct.

10 92. Q. And no matter what office they
11 operated, they were still an independent
12 contractor of Just Energy. Is that right?

13 A. Correct, yes.

14 93. Q. And that was the case in every
15 office in Ontario?

16 A. Yes.

17 94. Q. And that would have been the case
18 in the Fairview office that you've described in
19 paragraph 17?

20 A. Yes.

21 95. Q. At paragraph 18, you talk about
22 the Cambridge office. Would that be the same
23 structure at the Cambridge office?

24 A. Correct.

25 96. Q. And in paragraph 18, you also



R. Teixeira - 22

1 talk about a Hespeler office. Would that be the
2 same structure at the Hespeler office?

3 A. Correct.

4 97. Q. And in paragraph 18, you also
5 talk about a Toronto office. And would that be
6 the same structure in the Toronto office?

7 A. Correct.

8 98. Q. And lastly, in paragraph 18, you
9 talk about a Viking office. Would that be the
10 same structure as in the Viking office?

11 A. That is correct.

12 99. Q. In paragraph 21, you reference
13 Mr. Ravi Maharaj?

14 A. Yes.

15 100. Q. Is he still employed by Just
16 Energy?

17 A. He is.

18 101. Q. And, he was the representative of
19 Just Energy on examination for discovery, was he
20 not?

21 A. I believe so, yes.

22 102. Q. Has he been unavailable between
23 September 2018 and January of this year somehow,
24 unavailable to swear an affidavit?

25 A. I have no idea.



R. Teixeira - 23

1 103. Q. Okay. Paragraph 21, you also
2 talk about -- I'll try the pronunciation, Tike
3 Asajile. Did I get that right?

4 A. You get the first name, and I'm
5 with you on the last name.

6 104. Q. Okay, great. And is he or she
7 employed by Just Energy?

8 A. Currently?

9 105. Q. Yes.

10 A. He is not.

11 106. Q. Is he an independent contractor
12 of Just Energy?

13 MR. MARTIN: So, you mean, he's
14 not...sorry, say that again.

15 107. MR. ROSENFELD: Is he an independent
16 contractor of Just Energy?

17 MR. MARTIN: I thought he said that he
18 wasn't with it, just...okay, I'm sorry.

19 108. MR. ROSENFELD: The first one was
20 employed in...

21 MR. MARTIN: Employed. Oh, my legal
22 terminology...sorry, sorry. Okay, I
23 understand.

24 THE DEPONENT: He's not, no.
25



R. Teixeira - 24

1 BY MR. ROSENFELD:

2 109. Q. And when was he a crew
3 coordinator?

4 A. He was a crew coordinator, I
5 wouldn't...around...up until around 2016, I
6 believe.

7 110. Q. And from when until when?

8 A. I, unfortunately, do not have the
9 information to provide right now.

10 111. Q. And you didn't speak with Tike,
11 did you?

12 A. Actually, Tike would be someone I
13 would speak to.

14 112. Q. About this?

15 A. Oh, no. But I actually had
16 witnessed this myself in my time spent at that
17 sales office.

18 113. Q. But for your statement as you've
19 been informed by Mr. Maharaj about Tike who was a
20 crew coordinator?

21 A. Correct.

22 114. Q. And you didn't speak to Tike
23 about that statement?

24 A. I did not, no.

25 115. Q. And is Tike somehow unavailable



R. Teixeira - 25

1 to swear an affidavit?

2 A. I would not know.

3 116. Q. Paragraph 37, reference is to Mr.
4 Jahan Safari (Phon). Is he employed by Just
5 Energy Group?

6 A. Yes.

7 117. Q. And as an employee?

8 A. Yes.

9 118. Q. And what's his position.

10 A. He is what we refer to as a
11 regional director of consumer sales for our
12 northern California market.

13 119. Q. And is that a similar position to
14 a regional distributor during the class period?

15 A. I would probably equate that role
16 more to a national distributor.

17 120. Q. In that he operated multiple
18 regional offices?

19 A. Correct, and that he oversees
20 multiple sales offices.

21 121. Q. Has he been unavailable to swear
22 an affidavit since September of 2018?

23 A. I would not know that.

24 122. Q. Paragraph 44, please. This talks
25 about orientation, if you want to take a second



R. Teixeira - 26

1 to review that. And I will go to Exhibit I that
2 is referenced there.

3 A. Yes.

4 123.

Q. And just the paragraph reads:

5 "...Assuming the orientation was spread
6 out across three days, the first day
7 typically began with classroom
8 orientation sessions, while the second
9 day and perhaps third day were dedicated
10 to field shadowing. Attached as Exhibit
11 I is a copy of the Just Energy and OEB
12 training proctor step-by-step guide,
13 which sets out a general template of the
14 two-to-three-day orientation process..."

15 So Exhibit I, this is a document that's prepared
16 by Just Energy, is it not?

17 A. Yes, it is.

18 124.

Q. And this is provided to the
19 regional offices?

20 A. It is.

21 125.

Q. And it would be provided to the
22 national distributors and regional distributors?

23 A. I would assume so, yes.

24 126.

Q. Exhibit I, the first page under
25 the heading, "Day One, Section 1.1," refers to:



R. Teixeira - 27

1 "...The new prospective independent
2 contractor will:

3 (a) arrive at the regional
4 office;

5 (b) sign in;

6 (c) attend regional office
7 orientation room; and then

8 (d) complete independent
9 contractor agreement..."

10 And then Section 1.2 refers to:

11 "...The regional distributor or
12 designate will collect all the
13 contractor agreements and confirm they
14 have been completed..."

15 And then Section 1.3 talks about:

16 "...The regional distributor providing
17 the new prospective independent
18 contractor with all the Just Energy
19 approved orientation material..."

20 And so Section 1.1 addresses the interview and
21 the signing of the independent contractor
22 agreement. Would this describe a typical start
23 day where the independent contractor agreement
24 would...excuse me, the sales agents would sign an
25 independent contractor agreement and then move on



R. Teixeira - 28

1 to the five-step module orientation program that
2 Just Energy put in place?

3 A. And, sorry, when you...can you
4 repeat the beginning part of that question again?

5 127. Q. I guess on a typical day, would
6 this describe the process at these regional
7 offices where a sales agent would go through the
8 process of Section 1.1, sign their independent
9 contractor agreement and only after they signed
10 it, would they then go and start the five-course
11 module Just Energy orientation process?

12 A. I don't think it's fair to say in
13 the vast majority of the sales offices, the first
14 thing they would have done was had all the new
15 trainees, for lack of a better term, people
16 attending orientation sign off on an independent
17 contractor agreement, yes, the first statement.

18 128. Q. Yes, and they wouldn't start
19 going through the materials until they sign up on
20 those agreements. Is that right?

21 A. Not necessarily. Maybe sometimes
22 individuals didn't have their proper government
23 ID information, maybe had some more questions
24 about the independent contractor agreement, maybe
25 wanted some more time. But it wouldn't



R. Teixeira - 29

1 necessarily preclude or stop them from proceeding
2 with the orientation.

3 129. Q. At paragraph 50 of your
4 affidavit...

5 MR. MARTIN: Sorry, I'm not doing my
6 job. I'm sorry. Did you say 50, David?

7 130. MR. ROSENFELD: Five zero, yes.
8

9 BY MR. ROSENFELD:

10 131. Q. This paragraph refers to
11 recommending that the regional offices present
12 all of the modules during the orientation
13 sessions?

14 A. M'hmm.

15 132. Q. And, these are the modules that
16 you've described at paragraph 45 as the five
17 modules?

18 A. That is correct.

19 133. Q. This is a reference to Just
20 Energy recommending it to regional distributors
21 and national distributors?

22 A. Yes.

23 134. Q. And I guess the question I have
24 to...about that paragraph is, can they ignore
25 particular modules or they just take their own



R. Teixeira - 30

1 time in presenting those modules to the sales
2 agents?

3 A. I think the answer to both is
4 yes, they could, much to probably my unhappiness,
5 ignore should they use, and yes, also could spend
6 as much time emphasizing certain points and
7 certain modules and maybe a little less on other
8 modules.

9 135. Q. But your recommendation is that
10 they would go through all of the modules?

11 A. Yes.

12 136. Q. That's what Just Energy's
13 recommendation would be?

14 A. Yes.

15 137. Q. Field shadowing, paragraph 54,
16 refers to, in the last sentence of that
17 paragraph:

18 "...Field shadowing was highly
19 recommended for individuals who did not
20 have previous experience with door-to-
21 door sales..."

22 Is that different than just recommended? It's of
23 greater importance on field shadowing than the
24 other recommendations that Just Energy would
25 provide?



R. Teixeira - 31

1 A. I don't know. I don't know if I
2 understand the question, "recommended." It's
3 highly recommended. And, yes, it would be ideal
4 to help someone who has no experience with door-
5 to-door sales or sales in general understand how
6 to navigate through their roles as an independent
7 contractor.

8 138. Q. In paragraph 50, you describe
9 Just Energy recommended that regional offices
10 would present all modules. And then in paragraph
11 54, you talk about field shadowing as being
12 highly recommended. My question is, does the
13 field shadowing have a greater importance in the
14 recommendations that Just Energy is directing to
15 sales agents?

16 A. I...no, I wouldn't necessarily
17 put any one on a higher pedestal than the other
18 one. I think there is a combination of both,
19 where there's the theory of what you're doing,
20 which is identified through the orientation
21 session, and there is the practical element of it
22 which is actually when you're out there in the
23 field and talking to customers and understanding
24 clients' signals, and things of that nature.

25 139. Q. And the recommendation of field



R. Teixeira - 32

1 shadowing from Just Energy is communicated to all
2 the sales agents. Is that right?

3 A. No, I...no two individuals are
4 the same. We would have individuals who would
5 have prior experience in door-to-door sales being
6 independent contractors with competitors such as
7 Summit Energy, Universal Energy, Superior Energy,
8 or would have previous door-to-door sales
9 experience as independent contractors
10 representing Bell, Telus, Rogers, AlarmForce,
11 Vivint, ATM, whatever platforms. So, I think
12 every individual's requirement of how much, you
13 know, support they would require from a field
14 shadow sampling is very different, based on the
15 individual.

16 140. Q. Right. It's highly recommended
17 for individuals who do not have previous
18 experience with door-to-door sales. That's what
19 the statement says?

20 A. Yes.

21 141. Q. Right. And, the field shadowing
22 recommendation is set out in the five modules
23 from Just Energy, is it not?

24 A. I would have to go back and
25 reference it, but I can't guess. And, I am not



R. Teixeira - 33

1 sure we would mention it in our supplement.

2 142. Q. Well, I guess if you noted them,
3 you can peruse and check. The one that is
4 Exhibit J, is there no reference in your
5 affidavit?

6 A. Yes, so the point is, I don't
7 know if we specifically reference it. But we do
8 reference things, for example, extensive
9 orientation, learning and mentoring. So those
10 are all three different ways of identifying and
11 providing sales shadowing, if the person should
12 need it to go on.

13 143. Q. Paragraph 57 of your affidavit.
14 Yes, so this is the sentence:

15 "...Just Energy had many sales agents
16 without sales experience, which meant
17 that for the vast majority of them,
18 field shadowing was an essential tool
19 for them to succeed..."

20 So, does this statement refer to the vast
21 majority of sales agents as being without sales
22 experience?

23 A. Yes.

24 144. Q. They would not be seasoned sales
25 professionals?



R. Teixeira - 34

1 A. In my experience, more often than
2 not, individuals came into this role with little
3 to no experience in sales, or door-to-door sales
4 more specifically.

5 145. Q. Related to the Just Energy world?

6 A. Yes.

7 146. Q. Paragraph 60, the second sentence
8 says:

9 "...To this end, the above
10 activities..."

11 which I guess they talk about field shadowing,
12 and they do.

13 A. M'hmm.

14 Q. It goes on:

15 "...utilized by Just Energy were
16 directed to a sales agent's ability to
17 successfully market energy, while
18 complying with the OEB and regulatory
19 status..."

20 They were not used to supervise or control sales
21 agents. So, is field shadowing something that
22 was directed by Just Energy to the regional
23 distributors or national distributors to
24 implement for their sales agents?

25 A. It was up to the discretion of



R. Teixeira - 35

1 the sales office to determine who required field
2 shadowing, based on the feedback and
3 conversations of those individuals and the prior
4 experience they brought into the role of
5 independent contractor marketing energy
6 contracts.

7 147. Q. Right. And, if they didn't have
8 any experience?

9 A. I would assume or I, in my
10 experience, would talk to that individual and
11 provide them support if they should want to
12 embrace it.

13 148. Q. And did Just Energy recommend to
14 regional distributors and national distributors
15 that those without sales experience should go
16 through field shadowing?

17 A. Should the individual...was open
18 to the getting support and having someone support
19 them with field shadowing, absolutely.

20 149. Q. I'm just sort of struck by the
21 language which says:

22 "...The above activity is utilized by
23 Just Energy..."

24 And so is "Just Energy" there the whole construct
25 of all of the sales force and field shadowing



R. Teixeira - 36

1 being used in that sales force?

2 A. Just Energy wants individuals to
3 be successful, wants individuals who have
4 actually no experience knocking on someone's door
5 and talking to a program that is in a highly
6 regulated environment in the Province of Ontario
7 to be successful, to do this for a long time
8 should they choose to. So we encourage and
9 provide support to every sales individual and
10 sales office, to use whatever means and tools
11 they need that will help those individuals become
12 successful. And if that means those individuals
13 can provide assistance in field shadowing, should
14 the individual want to receive that support and
15 assistance, then yes, they can provide it.
16 Should the individual say, "No, I've got this,
17 I'm fine," all right. And that's a conversation
18 for them to have.

19 150. Q. Right. And the statement:

20 "...The above activity was utilized by
21 Just Energy..."

22 I think we've already established that the
23 activities are as described here, field
24 shadowing...

25 MR. MARTIN: And also role playing.



R. Teixeira - 37

1 THE DEPONENT: Role playing.

2 MR. MARTIN: And it's not...

3 THE DEPONENT: Limited thereto.

4 151. MR. ROSENFELD: Well, it says the
5 "above," I would guess that means field
6 shadowing.

7 MR. MARTIN: And role playing, it says
8 as well, are important tools. It
9 doesn't say they're the only tools.

10
11 BY MR. ROSENFELD:

12 152. Q. Okay. So the above activities,
13 field shadowing and role playing were utilized by
14 Just Energy. So is this role playing and field
15 shadowing, the term utilized by Just Energy, is
16 that something that was available, that was made
17 sure to be available to all the sales agents in
18 Ontario by Just Energy?

19 A. I don't know if I understand the
20 question here.

21 153. Q. Explain to me what "utilized"
22 means in that statement.

23 A. In my position in the statement,
24 it would be working with the regional
25 distributors that these were concepts and ideas



R. Teixeira - 38

1 that they could generate in their sales office,
2 to help individuals improve. So as mentioned
3 here, these were important tools among other
4 tools that they could use, to help individuals
5 become successful. So these activities were
6 recommended to the national and regional
7 distributors in the regional offices, to assist
8 sales agents by Just Energy?

9 A. Absolutely, yes.

10 154. Q. Paragraph 61, this refers to
11 daily meetings. And were these daily meetings
12 something that Just Energy recommended to the
13 regional offices to conduct?

14 A. It would have been generally
15 something that the sales offices generated
16 themselves, that would do on their own.

17 155. Q. Then, so all the offices in
18 Ontario would have these daily meetings?

19 A. Not necessarily, no.

20 156. Q. All the ones that did new
21 business, door-to-door sales?

22 A. I would...yes. Well, I won't say
23 I would assume. I would believe that they would
24 have a...what you would have is a time in which
25 you would want everyone to show up, so that they



R. Teixeira - 39

1 can procure themselves some transportation to the
2 field that they otherwise didn't...and that would
3 usually embody itself into a sales meeting.

4 Sometimes there were meetings. Sometimes they
5 were just "Be here at 11:30, and that's what time
6 we're going to head out into the field. And, if
7 you need a ride, be here for that."

8 So was there actual content in meetings?
9 Were they designated meeting times? That would
10 differ by office. I couldn't necessarily say to
11 you a meeting was had versus "Hey, this is what
12 time the vans are rolling out, and if you're
13 going to be a part of it, you can be here for
14 that time."

15 157. Q. Paragraph 64.

16 A. Yes.

17 158. Q. It says:

18 "...Every Monday with Darren Pritchard,
19 I would arrange a weekly conference call
20 for all regional and national
21 distributors..."

22 A. M'hmm.

23 159. Q. So, every week, you would be on
24 call with regional and national distributors from
25 all of North America?



R. Teixeira - 40

1 A. Yes, I would.

2 160. Q. Right. Not just Ontario?

3 A. Correct.

4 161. Q. And on these calls, you would
5 motivate and provide guidance to these regional
6 distributors and national distributors?

7 A. That would be on the motivation
8 piece, yes.

9 162. Q. Right, yes. So, the last
10 sentence talks about:

11 "...Providing an opportunity for us to
12 give them motivation or any guidance we
13 felt they could benefit from, in order
14 to achieve their business goals..."

15 So you would motivate and provide guidance to
16 them during these weekly calls, right? And that
17 would be on the business of marketing Just Energy
18 gas and electricity contracts?

19 A. Correct.

20 163. Q. And on these calls, you would get
21 sales goals and targets from the regional
22 distributors or national distributors?

23 A. At times, they would provide
24 their targets and what they felt, based on the
25 feedback they got from their independent



R. Teixeira - 41

1 contract. Yes, they would at times provide their
2 sales targets based on the feedback they would
3 receive from their independent contractors and
4 what they felt their targets were for the week as
5 well and what they wanted to put on themselves.

6 164. Q. And on these calls, would you get
7 info on how they were meeting those targets?

8 A. The following week, yes, there
9 would be sometimes an update on whether they
10 achieved their goals that they provide us, or
11 not.

12 165. Q. Paragraph 69 of your affidavit...

13 A. Yes.

14 166. Q. ...refers to something called
15 market intelligence?

16 A. Yes.

17 167. Q. And does market intelligence mean
18 in part information of where the sales agents
19 have been marketing in the past?

20 A. If your question is would they,
21 during these conversations, talk about previous
22 experiences they had while marketing, that would
23 be an element of some of the conversations they
24 would have, yes.

25 168. Q. Experience in particular areas



R. Teixeira - 42

1 that they had canvassed before?

2 A. Yes, I would assume so, yes.

3 169. Q. And those successes in those
4 areas?

5 A. And sometimes failures, yes.

6 170. Q. Yes. And whether they have
7 canvassed a particular area or not?

8 A. Yes.

9 171. Q. Paragraph 73 talks about iPads
10 and it refers to "red zones" on the iPad to
11 identify which consumers to avoid approaching.

12 A. Yes.

13 172. Q. And was that information on those
14 iPads, was that inputted there by Just Energy?

15 A. Yes.

16 173. Q. And would that...would the only
17 thing in those iPads or the only information in
18 those iPads be the "Do Not Solicit" list that
19 Just Energy would maintain?

20 A. You know, from my memory, I
21 believe so.

22 174. Q. That would be the only thing?

23 A. In terms of identifying who not
24 to knock on the door on.

25 175. Q. Information about red zones.



R. Teixeira - 43

1 A. Yes. What I don't recall is
2 whether we identified maybe a customer who...or
3 existing customers, so not to re-engage a
4 customer who was already in a program with Just
5 Energy.

6 176. Q. Right. Is there any other
7 information on this iPads?

8 MR. MARTIN: Sorry, relating to red
9 zones?

10 177. MR. ROSENFELD: No....at all, about
11 consumers, about potential customers.

12 MR. MARTIN: I don't think so.

13
14 BY MR. ROSENFELD:

15 178. Q. Paragraph 77 talks about:
16 "...Marketing locations would be
17 predetermined for the purposes of
18 planning whether sales agents would need
19 an insulation technician team to travel
20 with them into the field..."

21 And then it says:

22 "...Most sales agents sold a JECP
23 product which had an installation
24 component to the provision of energy
25 services..."



R. Teixeira - 44

1 And then it says that meant that:

2 "...The success of selling this
3 particular product in many, if not most
4 cases, depended on the ability of the
5 sale agents to offer customers same-day
6 installation..."

7 Now, JECP was the product that was sold by sales
8 agents during the class period. Is that right?

9 A. One of the products, yes.

10 179. Q. Was it the primary product that
11 they sold?

12 A. I believe so, yes.

13 180. Q. Yes. You say that most sales
14 agents sold the JECP products, don't you?

15 A. Yes.

16 181. Q. And the JECP product was
17 available throughout the class period from 2012
18 to November 2016 at least?

19 A. If my memory stands correctly, I
20 believe towards the end of the class period.

21 182. Q. What period?

22 A. I think it was around 2014 at
23 some point into the class period.

24 183. Q. I'd like to know that
25 information.



R. Teixeira - 45

1 MR. MARTIN: Sure, we'll let you know
2 that.

U/T

3
4 BY MR. ROSENFELD:

5 184. Q. Now, the JE...

6 MR. MARTIN: I think we have already
7 answered that previously.

8 185. MR. ROSENFELD: Yes.

9 MR. MARTIN: I don't know if we did
10 with Mr. Maharaj, but we'll let you know
11 that, sure.

12
13 BY MR. ROSENFELD:

14 186. Q. The JECP program refers to having
15 an installation component. What is that?

16 A. It would be a Smart Thermostat
17 installed in the consumer or customer's home.

18 187. Q. But that Smart Thermostat would
19 have to be installed by a technician?

20 A. Yes.

21 188. Q. And those technicians are Just
22 Energy technicians?

23 A. Contractors.

24 189. Q. They're contracted by Just
25 Energy?



R. Teixeira - 46

1 A. I believe so, yes. I wasn't too
2 involved with the installation world, if you
3 will, so I don't want to provide a wrong answer,
4 but yes, I believe they were contracted by Just
5 Energy.

6 190. Q. Right. If that's incorrect, will
7 you let me know?

8 A. Of course.

9 MR. MARTIN: We will, yes.

U/T

10
11 BY MR. ROSENFELD:

12 191. Q. Thank you. And if they didn't
13 have same-day installation available in an area
14 that the sales agents were marketing, that would
15 negatively impact their ability to market the
16 JECP program?

17 A. Not necessarily, no.

18 192. Q. So this statement says:
19 "...This meant that the success of
20 selling this particular product in many,
21 if not most cases, depended on the
22 ability of sales agents to offer
23 customers same-day installation..."

24 So, if they're unable to offer same-day
25 installation, this statement suggests that that



R. Teixeira - 47

1 would negatively impact their ability to sell
2 this JECP program. Would you agree with that?

3 A. What would happen is the...an
4 install would be scheduled that sometimes maybe
5 would be 24 or to maybe 96 hours later. And what
6 would unfortunately maybe sometimes happen is
7 that, you know, customers would cancel because a
8 product wasn't immediately put into their homes,
9 and an immediate kind of instant gratification
10 customers tend to want or have when they purchase
11 something. So, yes, there are times where that
12 would negatively impact them.

13 193. Q. At times, or generally speaking,
14 that would negatively impact them? And these
15 were the statements that this meant that success
16 of selling this particular product in many, if
17 not most cases, depended on the ability of sales
18 agents to offer customers same-day installation.
19 So, if same-day installation was not available,
20 that would negatively impact their ability to
21 sell that particular product?

22 A. Yes.

23 194. Q. You agree with that?

24 A. Yes, I do.

25 195. Q. So, sales agents would try to



R. Teixeira - 48

1 make sure that there was same-day installation
2 services in the areas that they would market?

3 A. We would try to provide them
4 assistance with that, yes.

5 196. Q. In that Just Energy would tell
6 the regional sales offices where the same-day
7 installation would be happening?

8 A. Generally, you would have...you
9 know, if I gave the supports now to you, you'd
10 have kind of have man-to-man defence, or you
11 would have zone defence. So, in heavily-
12 populated areas with...throughout Ontario where
13 you would have a lot of capacity and a lot of
14 installers, the same days could be provided,
15 because you had individuals who could go there,
16 and had the capacity to do it.

17 If sales offices chose to go out of
18 heavily-populated areas where our install team
19 could not support same-day capacity, simply
20 because we couldn't find a contractor who had the
21 ability to do same days, they would sometimes be
22 picked out to next days or, you know, installed
23 three days later.

24 197. Q. But the regional offices would
25 know where the same-day installation technicians



R. Teixeira - 49

1 would be on any given day?

2 A. They knew that heavily-populated
3 areas such as the GTA or Ottawa would generally
4 have same-day installation capacity, and
5 sometimes that wouldn't be a guarantee. If there
6 was a lot of volume and the installers were full
7 at capacity, you couldn't schedule installation
8 and sometimes they're next day. But, yes, the
9 sales force eventually would figure out heavily-
10 populated area, more likely to get a same day or
11 next day. Less populated area, the time involved
12 to get an installation would take a little bit
13 longer, based on the capacity of getting a
14 contractor out there to provide support and
15 service.

16 198. Q. And so how would a sales agent
17 request a same-day installation?

18 A. Well, they wouldn't. What they
19 would do is during the verification process of
20 the sale with the customer, they would schedule
21 installation date. And, if a slot was open for
22 the same day, then -- by the way, it is the
23 customer who is requesting this, based on their
24 schedule. Some customers did not want same days;
25 some did. They would...that would be discussed



R. Teixeira - 50

1 at the time of the verification call in which the
2 customer chose what day they wanted the product
3 installed.

4 199. Q. So in areas where there wasn't
5 significant coverage in these man-to-man
6 locations as you talked about, how would the
7 sales agent know that there was same-day
8 installation available on any particular day?

9 A. They wouldn't. I guess that you
10 would know on that call. We would try our best
11 to provide same-day installations if we could.
12 But on that call, they would know and...okay,
13 yes, sorry.

14 200. Q. Would the regional offices
15 contact Just Energy to determine technician
16 availability in a particular area?

17 A. They would reach out to us when
18 the crew coordinators and their teams were
19 planning where they wanted to go and say, "Hey,
20 you know, I have a team who wants to go to
21 Orangeville, you know. What is capacity out
22 there?" And we would look into it and let them
23 know. So we wouldn't prohibit them from
24 marketing there if they wanted to. They could
25 market wherever they wanted to. It really was



R. Teixeira - 51

1 just what was our ability to provide installation
2 on there.

3 201. Q. Would regional offices arrange
4 for...with Just Energy, to have a technician
5 available in a particular area at a particular
6 day?

7 A. If we could provide it, we would
8 try our best to assist. And sometimes, we would
9 ask the installation contractors if they would be
10 willing to do, you know, road trips or go out,
11 you know, out of town to provide support. And,
12 sometimes, they would; sometimes they wouldn't.
13 But we would provide our best to, again, help the
14 sales force and complete their sales.

15 202. Q. And is there somebody at Just
16 Energy that the regional distributors would talk
17 to about the availability of installation
18 technicians?

19 A. They would...yes, they would
20 direct their inquiries to either Ravi or directly
21 to...we had a manager of installations at the
22 time, I'm blanking on his name, but they would
23 also send emails and inquire.

24 203. Q. So they would communicate with
25 the manager of installations at Just Energy, who



R. Teixeira - 52

1 then communicate with the installers?

2 A. Yes. They would just give him a
3 heads up, "Hey, the team is decided this is where
4 they would like to be. Can you give just a
5 general idea of what installation capacity would
6 look like in a particular area?

7 204. Q. At a particular day?

8 A. Yes, yes. A particular day,
9 sure.

10 205. Q. Paragraph 87. Actually,
11 paragraph 79 first and then paragraph 87.

12 Paragraph 79 talks about:

13 "...The majority of sales force either
14 had no driver's licences or no access to
15 their own [schedule]..."

16 A. Schedule or vehicle?

17 206. Q. Sorry, vehicle. My apologies.

18 A. That's all right. I always get
19 it.

20 207. Q. Paragraph 87 refers to:

21 "...The majority of them [sales agents]
22 preferred to meet at the regional office
23 and travel together, whether in the vans
24 that were generally available at the
25 regional office or in their own cars..."



R. Teixeira - 53

1 I'm just...I'm wondering if the majorities are
2 the same in both paragraphs, the majorities that
3 didn't have their own driver's licence or access
4 the vehicles and the majority that preferred to
5 meet at the regional office?

6 A. That would differ by office.

7 There's some offices...for instance, the ones in
8 the GTA where most...a lot of people didn't have
9 cars and some offices that are out...and I don't
10 want to call Kitchener a rural area, because that
11 would be rude to anyone who lives in Kitchener...
12 but they might have more access to vehicles, so I
13 would offer that statement differs by office.

14 208. Q. Paragraph 95. Paragraph 95
15 refers to someone named Joel Stewart. Is he an
16 employee of Just Energy?

17 A. He is not.

18 209. Q. Is he an independent contractor
19 of Just Energy?

20 A. He is a vendor of Just Energy,
21 yes.

22 210. Q. Sorry, and what does that mean?

23 A. An independent contractor, if you
24 will. He provides sales services for the
25 organization.



R. Teixeira - 54

1 211. Q. And, it talks about you were
2 informed by Joel Stewart. When did you have that
3 discussion with Joel Stewart?

4 A. I cannot recall the specific...I
5 think it would have been recent, shortly after
6 her (sic) affidavit, but that same statement has
7 been supported by a few other individuals as
8 well.

9 212. Q. You know, I just want to know
10 when you had that conversation with Joel Stewart.
11 Was it by telephone? Was it by e-mail?

12 A. I believe it would have been via
13 telephone.

14 213. Q. And between September and when
15 you swore this affidavit, is that the idea?

16 A. Yes.

17 214. Q. And you don't remember when?

18 A. The exact day, unfortunately not,
19 my apologies

20 215. Q. Is he unavailable to swear an
21 affidavit for some reason between September and
22 January?

23 A. I do not know, sorry.

24 216. Q. Paragraph 105...sorry, paragraph
25 109.



R. Teixeira - 55

1 A. Right.

2 217. Q. And 109 to, I guess, 112 talks
3 about the Just Energy compliance regime.

4 A. That was the word, "regime,"
5 sorry. Yes...okay.

6 218. Q. Okay. And this is, I guess, Just
7 Energy's regime to monitor compliance of the
8 sales agents and to address any compliance
9 issues. Would that be a fair generalization?

10 A. No, because I, yes, I...

11 219. Q. I guess 110, paragraph 110, would
12 be, I guess, the descriptor. I'm just trying to
13 set up...

14 A. Yes, sorry. So 109 speaks to the
15 regulatory body that governs and licenses
16 utilities and energy retailers, so as ourselves
17 within the Province of Ontario. 110 speaks to a
18 department, I believe, within the organization
19 which tracks, enforces, provides recommendations
20 within the organization to the sales force.

21 220. Q. Right. And were those compliance
22 issues that were identified by Just Energy
23 investigated and recommended...were those issues
24 discussed with the regional offices, the regional
25 distributors and national distributors?



R. Teixeira - 56

1 A. Yes.

2 221. Q. And if a sales agent out of their
3 office was non-compliant, would Just Energy
4 address that with the regional distributors and
5 national distributors?

6 A. Yes.

7 222. Q. And they would...Just Energy
8 would direct those regional distributors and
9 regional offices on how to make sure this didn't
10 happen again with other sales agents? Is that
11 the idea?

12 A. I think we would provide
13 recommendations as well on it. Ultimately, our
14 goal was to have feedback or negative feedback
15 stopped, to protect the licence and protect the
16 individuals themselves. So, it's up to the
17 regional offices to work within their means and
18 have discussions with those individuals, to
19 identify how they could, you know, I think for
20 lack of a better term, crack down on that, so
21 that these individuals continue to successfully
22 market on our behalf.

23 223. Q. Okay. And those were discussions
24 that Just Energy was having with the regional
25 offices about their sales agents...



R. Teixeira - 57

1 A. We would...yes. We would inform
2 them. And then whatever conversations happened
3 thereafter would be between the regional
4 distributor and the individual in question.

5 224. Q. I'm next going to go through a
6 series of paragraphs to identify some
7 information, and then I'm to ask you a question
8 about it afterwards. So we'll start at paragraph
9 118. Paragraph 118 talks or discusses some sales
10 information of Ms. Schvantz.

11 A. Yes.

12 225. Q. Paragraph 121 references sales
13 information or the lack thereof for 55,100 sales
14 agents.

15 Paragraph 122 is a reference to the
16 majority of the class members are seeing less
17 than \$5,000 in annual commissions.

18 Paragraph 125, you refer to sales dates
19 for various affiants.

20 Paragraph 127, you refer to the sales
21 of...sales agents on Ms. Schvantz's teams.

22 A. M'hmm.

23 226. Q. Paragraph 120, you refer to the
24 sales of sales agents on Mr. Lavigne, Mr. Nemati
25 and Mr. Barbieri's teams.



R. Teixeira - 58

1 And then paragraph 129 to 132, you refer
2 to sales for the various affiants. You saw all
3 this?

4 A. M'hmm.

5 227. Q: Right. And all that information
6 is in the records of Just Energy. Is that right?

7 A. Yes.

8 228. Q. And someone looked at Just
9 Energy's records and obtained that information
10 for you, which you included in the...here today?

11 A. Correct.

12 229. Q. I would like the same information
13 for all class members. In particular, for each
14 class members, I would like the date of their
15 independent contractor agreement being signed,
16 the date of their first contract being obtained,
17 the number of contracts per day for each class
18 members, the date that independent contractors
19 were deemed inactive or otherwise terminated and
20 the total commissions paid to them per month
21 during the class period.

22 MR. MARTIN: If available, we'll give
23 you that.

U/T

24
25 BY MR. ROSENFELD:



R. Teixeira - 59

230.

Q. Paragraph 135, please. Paragraph

135 talks about road trips and push weeks that were organized by Just Energy. Just quickly, what is a push week and what is a road trip as compared to each other?

A. Sure. So push weeks are

generally common in most sales practices. You'll see some organizations near the end of a fiscal quarter with their sales force have a push week to drive sales and make sure they come within their quota. So, it's a tactic or a strategy deployed or employed by many sales organizations.

What we would do is on those calls, speak to the regional distributors and really put out...or they would put out stretch targets of what they really felt they can do and really drive sales and work with the individuals in their offices to really push themselves and have a great week, which would obviously drive and increase the revenue they made themselves, help them be eligible for the countless incentives that we had going on, whether it be qualifying for trip programs or weekly bonuses. So those were push weeks. There were times where we would together as a team...and some offices



R. Teixeira - 60

1 participated and some did not. It was entirely
2 up to them. Road trips...

3 231. Q. Sorry, just, yes, before we...

4 A. Oh, yes.

5 232. Q. Push week is a particular period
6 of time where incentives are provided for sales?

7 A. Well, we have incentives
8 frequently. There's always incentive. For the
9 sales force, it's a fantastic tool to help engage
10 individuals to really push themselves and drive
11 sales. And if they drive sales, both the
12 individual wins and the organization wins.

13 So I would offer incentives and push
14 weeks were mutually exclusive. There are always
15 incentives. But sometimes, we would put some
16 additive incentives during those weeks to help
17 them really stretch and, you know, a stretch goal
18 that they had.

19 233. Q. I guess what distinguishes a push
20 week from every other week, where you're
21 motivating them to make as many sales
22 possible...is it the greater set of incentives
23 during that particular week?

24 A. Yes, sometimes or just it's...

25 234. Q. It's a particular period of time?



R. Teixeira - 61

1 A. It sounds cheesy sometimes. But
2 to mindset, it's just, "Hey, let's just push
3 ourselves. Let's create a stretch goal. Let's
4 just out of the blue decide that this week, we
5 want to be fantastic and we want to be great."
6 And some people are okay with not participating,
7 and some of them take on that challenge to say,
8 "Yes, let's drive ourselves this week."

9 235. Q. Right. And a road trip is an
10 organized trip of sales agents to a particular
11 location, to market in that particular location?

12 A. Yes. So like push weeks, road
13 trips are extremely common so...

14 236. Q. Sorry. Was that a yes to that
15 question? I'm sorry.

16 A. Oh, I'm sorry. Can you repeat
17 the question?

18 237. Q. A road trip is a trip of sales
19 agents, a group of sales agents, going to a
20 particular location to market in that particular
21 location?

22 A. That would be correct, yes.

23 238. Q. And these are organized by Just
24 Energy?

25 A. No.



R. Teixeira - 62

1 239. Q. Well, you...it says they're
2 organized by Just Energy. Road trips and push
3 weeks are organized by Just Energy.

4 A. Then I apologize. We would not
5 organize road trips.

6 240. Q. Right. So push weeks were
7 organized by Just Energy?

8 A. Push weeks we would announce and
9 just out of the blue put...you know, say, "Hey,
10 this is the week we would like everyone to have a
11 stretch goal and push themselves." And then road
12 trips would be something at the determination of
13 the sales office themselves.

14 241. Q. Right. And push weeks, who would
15 organize those at Just Energy?

16 A. Well, no one organized them at
17 Just Energy. So, I apologize if I misstated in
18 there, but...

19 MR. MARTIN: So did you say road trip
20 or push week?

21 242. MR. ROSENFELD: Push week.

22 THE DEPONENT: Oh, sorry, did you say
23 push weeks?

24
25 BY MR. ROSENFELD:



R. Teixeira - 63

1 243. Q. Push week.

2 A. I'm sorry. I apologize. I
3 should listen first. Push weeks would be
4 something Darren or myself would put after
5 everyone saw.

6 244. Q. And would those be organized at
7 Just Energy? Would you be authorized to provide
8 greater incentives during those push weeks?

9 A. If we felt we wanted to, yes, we
10 could.

11 245. Q. And did you?

12 A. At times, yes.

13 246. Q. How many push weeks were
14 organized by Just Energy during the class period?

15 A. Oh, gees, I would not have -- I
16 couldn't tell you. They ranged...but I couldn't
17 definitively tell you that right now. I'm sorry.

18 247. Q. Do you have a sense of a month
19 basis?

20 A. I don't know when it...when the
21 concept started or when it ended. But, I would
22 offer they would maybe be every six weeks, maybe
23 sometimes depending on the frequency, maybe
24 depending on the time of the year, maybe once a
25 month. But generally, it's maybe once a month or



R. Teixeira - 64

1 once every few months.

2 248. Q. Paragraph 144 references an
3 individual named Sam Masri.

4 A. Yes.

5 249. Q. Is he an employee of Just Energy?

6 A. No.

7 250. Q. Is he an independent contractor
8 with Just Energy?

9 A. I do not believe so, no.

10 251. Q. Was he an independent contractor
11 with Just Energy?

12 A. I believe yes.

13 252. Q. When would you last speak with
14 him?

15 A. I couldn't tell you. It's been a
16 while.

17 253. Q. How long?

18 A. Oh, a long time.

19 254. Q. Ten years?

20 A. No, no. I'd venture a couple of
21 years.

22 255. Q. And in what context did you speak
23 with him?

24 A. In a sales office meeting him,
25 probably just some casual conversation.



R. Teixeira - 65

1 256. Q. And, he was a sales agent?

2 A. Independent contractor, yes.

3 257. Q. A sales agent as in the door-to-
4 door sales agent or as a crew coordinator or a
5 regional distributor?

6 A. He was not a regional
7 distributor. I could not tell you if he was a
8 crew coordinator or not. Definitely an
9 independent contractor.

10 258. Q. And you mentioned he sold LED
11 retrofits and other products on the side, so not
12 at the door with his Just Energy name tag on,
13 while he was doing door-to-door sales for Just
14 Energy?

15 A. Presumably not, no.

16 259. Q. And, is he somehow unavailable to
17 swear an affidavit from September to January of
18 this year?

19 A. I do not know.

20 260. Q. It also references someone named
21 Brandon Reidel? Is he an employee of Just
22 Energy?

23 A. He is not.

24 261. Q. Is he an independent contractor
25 of Just Energy?



R. Teixeira - 66

1 A. I believe he might be. Not an
2 independent contractor of Just Energy though.

3 262. Q. I don't understand.

4 A. I believe he's an independent
5 contractor of a sales vendor.

6 263. Q. Of a sales vendor?

7 A. Yes.

8 264. Q. Right, okay. And, what's a sales
9 vendor? A sales vendor is a company by which
10 Just Energy contracts with to market door to
11 door?

12 A. Sales vendors are marketing
13 companies that Just Energy, among with many other
14 organizations, will enter into agreements with
15 and provide sales services on behalf of that
16 organization.

17 265. Q. And that organization is the one
18 who contracts with the various sales agents, I
19 guess is the term?

20 A. I guess it looks like, yes.

21 266. Q. But, in the Just Energy context,
22 is that the case? Yes. And, was he an
23 independent contractor during the class
24 period...a sales agent during the class period?

25 Excuse me.



R. Teixeira - 67

1 A. I believe so, yes.

2 267. Q. You don't know?

3 A. I...yes, he was.

4 268. Q. Right. And when did you speak
5 with him?

6 A. The same thing, I have to say
7 it's quite a bit of time. There may be a couple
8 of years.

9 269. Q. And where did you speak with him?

10 A. Like all these individuals, at
11 one point or another when I was in their sales
12 office or maybe on an incentive program that they
13 would have qualified for, if they attended.

14 270. Q. But did he tell you, had an
15 antique shop?

16 A. And made known to me by a couple
17 of other individuals, yes.

18 271. Q. Who are not named in this
19 document here?

20 A. In this particular...these
21 individuals right here, no.

22 272. Q. Okay. Is Brandon Reidel somehow
23 unavailable to swear an affidavit between
24 September and January of this year?

25 A. I do not know.



R. Teixeira - 68

1 273. Q. Matt Pancer, is he an employee of
2 Just Energy?

3 A. He is not.

4 274. Q. Is he an independent contractor
5 of Just Energy?

6 A. He is not.

7 275. Q. Is he providing independent...is
8 he an independent contractor of one of your
9 vendors?

10 A. That, I do not know.

11 276. Q. Was he an independent contractor
12 during the class period?

13 A. Yes.

14 277. Q. Was he a sales agent during the
15 class period?

16 A. He provided sales or marketing as
17 an independent contractor, yes.

18 278. Q. Was he a regional distributor?

19 A. No.

20 279. Q. When did you speak with Matt
21 Pancer?

22 A. This going to be par for the
23 course with all my answers on this one, it going
24 to be a while ago and within an office setting.

25 . When, exactly, I do not know.



R. Teixeira - 69

1 280. Q. Right. And that individual that
2 is video production company, did he tell you
3 that?

4 A. It was provided to me by another
5 individual.

6 281. Q. Right. That individual is not
7 named anywhere in this affidavit, certainly not
8 named in this paragraph that's providing your
9 information?

10 A. Not in this paragraph. Yes, he
11 might be named in this, yes.

12 282. Q. And Matt Pancer, do you know if
13 he was available to swear an affidavit between
14 September and January of 2019?

15 A. I do not.

16 283. Q. And, you wouldn't know why he
17 would be unavailable during that time frame?

18 A. I would not know, sorry.

19 284. Q. Eric Manirambona.

20 A. Yes.

21 285. Q. You've already, I guess, answered
22 the question about when you spoke with him. Is
23 Eric an employee of Just Energy?

24 A. No.

25 286. Q. Is he an independent contractor



R. Teixeira - 70

1 of Just Energy?

2 A. No.

3 287. Q. Is he an independent contractor
4 of one of your vendors who are marketing on
5 behalf of Just Energy?

6 A. Not that I'm aware of.

7 288. Q. Was he an independent contractor
8 during the class period?

9 A. Yes.

10 289. Q. And was he a regional
11 distributor?

12 A. No.

13 290. Q. He would have been a sales agent
14 or a crew coordinator?

15 A. I don't know about a crew
16 coordinator. He's definitely an independent
17 contractor providing sales and marketing services
18 for the organization.

19 291. Q. And did he tell you about the
20 restaurant?

21 A. This was made -- no, he did not.

22 292. Q. And how did you get that
23 information?

24 A. Through another individual.

25 293. Q. And that individual who was not



R. Teixeira - 71

1 the named that was providing you this information
2 in this paragraph?

3 A. In Section 144, that's correct.

4 294. Q. And in any other part of this
5 affidavit, was telling you the information?

6 A. Is his name anywhere else in this
7 affidavit or is that do I reference this
8 individual telling me this information in the
9 affidavit?

10 295. Q. The latter, the second part.

11 A. No.

12 296. Q. And do you know if Mr.
13 Manirambona was available to swear an affidavit
14 between September and January of this year?

15 A. I do not know.

16 297. Q. And do you know why he wouldn't
17 be available?

18 A. No, I don't.

19 298. Q. The next person is Ben Van
20 Dieren. Is he an employee of Just Energy?

21 A. He is not.

22 299. Q. Is he an independent contractor
23 of Just Energy?

24 A. He is not.

25 300. Q. Is he an independent contractor



R. Teixeira - 72

1 of one of Just Energy's vendors who provide
2 marketing services for Just Energy?

3 A. I believe he is, yes.

4 301. Q. Right. And was he an independent
5 contractor during the class period?

6 A. Yes.

7 302. Q. Was he a regional distributor
8 during the class period?

9 A. I believe so.

10 303. Q. Was he also a sales agent during
11 the class period?

12 A. Yes.

13 304. Q. And the selling of a solar
14 product for another company, did he tell you
15 that?

16 A. No.

17 305. Q. And where did you get that
18 information?

19 A. Through another individual.

20 306. Q. Right. And that individual or
21 the identity of that individual providing you
22 that information is not provided here?

23 A. No.

24 307. Q. And the selling of solar products
25 for another company, do you know if he did that



R. Teixeira - 73

1 while he was marketing gas and energy contracts
2 for Just Energy door to door?

3 A. Literally at the exact same time?

4 308. Q. Yes.

5 A. That, I do not know.

6 309. Q. Matt Pancer had a video

7 production company. I can only assume that he
8 wasn't also producing videos at the door while he
9 Was selling Just Energy gas and electricity
10 contracts?

11 A. You never know. I would assume
12 no.

13 310. Q. Right. And Eric Manirambona, I
14 assume he did not operate a restaurant while he
15 was going door to door for Just Energy selling
16 gas and electricity contracts?

17 A. I would hope he marketed it, but
18 I doubt that he was selling fair at the door.

19 311. Q. Right. Richard Carvell is also
20 listed there?

21 A. M'hmm.

22 312. Q. Is Richard Carvell an employee of
23 Just Energy?

24 A. He is not.

25 313. Q. Is he an independent contractor



R. Teixeira - 74

1 of Just Energy?

2 A. He is not.

3 314. Q. Is he an independent contractor
4 of one of the vendors that Just Energy contracts
5 with to market for their gas and electricity
6 contracts?

7 A. Yes.

8 315. Q. And was he a sales agent during
9 the class period?

10 A. Yes.

11 316. Q. And was he a regional distributor
12 here in the class period?

13 A. No, no, I don't think so.

14 317. Q. And was he a national distributor
15 in the class period?

16 A. No.

17 318. Q. And would Richard be selling real
18 estate while also marketing at the same time for
19 Just Energy?

20 A. I'm sure he would be marketing
21 himself. I don't know if he is -- I would assume
22 no. I don't think he can -- like he might say,
23 "Hey, I also...thinking of selling." I don't
24 know.

25 319. Q. Right. With the Just Energy name



R. Teixeira - 75

1 tag on?

2 A. I would hope not, but...

3 320. Q. Right. The information about his
4 real estate marketing, or his work in real
5 estate, I should say, did Richard tell you that?

6 A. I...you know, no. But I am
7 friends with him on social media, and I've seen
8 it, and I have...and was also told by another
9 individual.

10 321. Q. Yes. So, the social media...did
11 you know that he was doing...working in real
12 estate while also marketing with Just Energy?

13 A. Yes.

14 322. Q. During the class period?

15 A. I don't know how far back he went
16 into the class period exactly. But I do know he
17 was...he definitely recently has it. And again,
18 I'm not sure how long he's had it for.

19 323. Q. Right. Recently, like 2016
20 recently?

21 A. No, I think a little bit longer
22 than that.

23 324. Q. So further back than 2016?

24 A. I believe so, yes.

25 325. Q. But did you know that? That's my



R. Teixeira - 76

1 question.

2 A. Oh, sorry.

3 326. Q. Yes.

4 A. No, at that time, did not.

5 327. Q. Right. And so this information
6 was provided to you by somebody else?

7 A. Yes.

8 328. Q. Right. And that individual isn't
9 being referenced in this affidavit as providing
10 you that information?

11 A. That is correct. I do not
12 believe so.

13 329. Q. And do you know if Mr. Carvell is
14 somehow unavailable to provide an affidavit
15 between September 2018 and January of this year?

16 A. I do not know.

17 330. Q. And do you know why he would be
18 so unavailable?

19 A. I do not know.

20 331. Q. I've got a few more to go through
21 and then we'll be done. Paragraph 146...

22 A. Yes.

23 332. Q. ...refers to an individual named
24 Dan Camirand. Is Dan Camiran an independent
25 contractor?



R. Teixeira - 77

1 A. Currently?

2 333. Q. I guess so, yes.

3 A. No, he is not.

4 334. Q. Is he an employee of Just Energy?

5 A. He is not.

6 335. Q. Is he an independent contractor

7 of one of the vendors that Just Energy has

8 contracted with the market?

9 A. He is not.

10 336. Q. Was he a sales agent during the

11 class period?

12 A. It depends if we're defining a
13 national distributor as a sales agent that had
14 the ability to drive sales himself.

15 337. Q. No.

16 A. No?

17 338. Q. So sales agents. Was he a sales
18 agent during the class period?

19 A. No.

20 339. Q. So this independent contractor,

21 Dan Camirand, was a national distributor during

22 the class period. And so he operated his

23 national distributorship through a corporation?

24 A. Yes.

25 340. Q. Yes, correct. And I also



R. Teixeira - 78

1 reference Glen Lancaster.

2 A. Yes.

3 341. Q. Is he an employee of Just Energy?

4 A. No.

5 342. Q. Is he an independent contractor
6 of Just Energy?

7 A. No.

8 343. Q. Is he an independent contractor
9 of one of the vendors that Just Energy uses to
10 market its products?

11 A. No.

12 344. Q. Was he a sales agent during the
13 class period?

14 A. I believe so, yes.

15 345. Q. And was he also a regional
16 distributor during the class period?

17 A. No.

18 346. Q. Was he a national distributor
19 during the class period?

20 A. No.

21 347. Q. And, did you speak with Glen
22 Lancaster?

23 A. Recently, and life in general,
24 sure.

25 348. Q. Did you speak to him about his



R. Teixeira - 79

1 corporation?

2 A. Specifically about his
3 corporation, yes.

4 349. Q. Is Glen Lancaster...has Glen
5 Lancaster been unavailable between September 2018
6 and January of this year to swear an affidavit?

7 A. I do not know.

8 350. Q. And would you know why he would
9 be unavailable?

10 A. No.

11 351. Q. I also reference Kevin Godin.

12 A. Yes, Godin.

13 352. Q. Godin. Is he an employee of Just
14 Energy?

15 A. No.

16 353. Q. Is he an independent contractor
17 of Just Energy?

18 A. No.

19 354. Q. Is he an independent contractor
20 of one of the vendors that Just Energy has
21 contracted with to market?

22 A. No.

23 355. Q. Was he a sales agent during the
24 class period?

25 A. I believe he was not.



R. Teixeira - 80

1 356. Q. Was he a regional distributor?

2 A. I believe so, yes.

3 357. Q. So this statement is about him
4 acting as a regional distributor through a
5 corporation?

6 A. The statement is that he had his
7 own corporation, yes.

8 358. Q. Right. But during the class
9 period, he was not a sales agent?

10 A. If we are not defining regional
11 distributors as sales agent, then I believe no.
12 But I would have to confirm those, the time
13 frame, to be exactly. But, I believe he was
14 regional during that period...

15 359. Q. Right.

16 A. ...or for a period of time during
17 that...

18 360. Q. Well, I guess the opposite would
19 be my question. Was he a sales agent during that
20 time, while he was a sales agent during the class
21 period and was he operating through a
22 corporation?

23 A. So, he started as a sales agent,
24 but I don't know exactly the exact time frame he
25 started as a sales agent, whether that fell



R. Teixeira - 81

1 within the window of the class period. So I
2 apologize. I can't give you that information
3 right now. It's not coming to my mind.

4 But, he was definitely a sales agent at
5 one point, whether it was class period or not,
6 and then he became a regional distributor. And
7 again whether that was during the class period,
8 I'd have to get back and confirm that for you. U/T

9 361. Q. Good. And also when he
10 incorporated, was he acting as a sales agent
11 through his corporation during the class period?

12 A. That, I do not know exactly. But
13 quite possibly, he could have, yes.

14 362. Q. I'd like to know that information
15 too, please.

16 MR. MARTIN: Yes. U/T

17
18 BY MR. ROSENFELD:

19 363. Q. Is Mr. Godin unavailable to swear
20 an affidavit between September and January this
21 year?

22 A. I do not know.

23 364. Q. And would you know why he would
24 be unavailable?

25 A. Unfortunately, no.



R. Teixeira - 82

1 365. Q. It also references Jody Kelly.
2 Is he an employee of Just Energy?

3 A. No.

4 366. Q. Is he an independent contractor
5 of Just Energy?

6 A. No.

7 367. Q. Is he an independent contractor
8 of one of the vendors that Just Energy has
9 contracted with to market?

10 A. No.

11 368. Q. Is he an employee of one of those
12 vendors?

13 A. No.

14 369. Q. Is he involved with Just Energy
15 at all?

16 A. Yes, during the class period?

17 370. Q. No, now.

18 A. Oh, no, he's not involved with
19 the organization in any way, right.

20 371. Q. Has Mr. Kelly been unavailable
21 between September 2018 and January of this year
22 to swear an affidavit?

23 A. I do not know.

24 372. Q. Right. But has he been
25 contacted?



R. Teixeira - 83

1 A. I have no idea.

2 373. Q. Yes, I'd like to know whether he
3 has been contacted.

4 MR. MARTIN: Mr. Kelly has provided an
5 affidavit in this litigation already.
6

7 BY MR. ROSENFELD:

8 374. Q. Right. But now in this period,
9 has he been contacted to provide an affidavit?

10 A. I can't answer that.

11 375. Q. And do you know why he would be
12 unavailable to swear an affidavit now?

13 A. No.

14 376. MR. ROSENFELD: Okay. And subject to
15 the undertakings and questions refused,
16 those are my questions for today. Thank
17 you.
18

19 CROSS-EXAMINATION BY MR. MARTIN:

20 377. Q. I just have a couple of questions
21 as in reply. In paragraph 144, you indicated to
22 Mr. Rosenfeld that there were a number of
23 independent contractors who had their own
24 businesses. And he asked you how that
25 information came to you.



R. Teixeira - 84

1 Let me just ask. Was any of that
2 information provided to you by Mr.
3 Daniel Gadoua, G-A-D-O-U-A?

4 A. Yes, it was.

5 378. Q. And with respect to which
6 individuals?

7 A. I believe all of them.

8 379. Q. Okay. And similarly, was any of
9 that information provided to you by Mr. Brian
10 Marsellus, M-A-R-S-E-L-L-U-S?

11 A. I believe he provided...I can't
12 recall if he provided information on Sam or not.

13 380. Q. Okay. My friend asked you
14 about...let's go to the paragraph or
15 paragraphs...it was paragraph 8 and following
16 about Just Energy's team model. And you had
17 indicated that that was not mandatory. What did
18 you mean by that?

19 A. It was...

20 MR. ROSENFELD: I'm sorry. That's not
21 an appropriate question. I didn't ask
22 about mandatory. So it's in a statement
23 in this affidavit. It's not a
24 clarification.

25 381. MR. MARTIN: It was an answer that he



R. Teixeira - 85

1 had given that I want to expand on what
2 he meant by that.

3 MR. ROSENFELD: No, I did not ask him
4 whether it was mandatory or not.

5 382. MR. MARTIN: No, but he did answer
6 that it was not mandatory. And, I want
7 to know...

8 MR. ROSENFELD: I did not ask him about
9 whether it was mandatory or not.

10 383. MR. MARTIN: But he answered that it
11 was not and I wanted to...

12 MR. ROSENFELD: Again, it's not a
13 reply to a question that I asked.

14 384. MR. MARTIN: And I think fairly that it
15 is, and I want him just to answer it and
16 you can object.

17 MR. ROSENFELD: And I do object.

18 385. MR. MARTIN: I've heard your objection.

19 MR. ROSENFELD: And don't have him
20 answer the question.

21 386. MR. MARTIN: Well, he's going to answer
22 the question and then you have your
23 remedy.

24 MR. ROSENFELD: We can talk...the
25 remedy will be whether he gets to answer



R. Teixeira - 86

1 the question on this record or
2 otherwise, the cross-examination.

3 387. MR. MARTIN: Well, he's going to answer
4 it on the record...and this is going to
5 be on the record...and then you can say
6 it ought not to be in any way used in
7 the litigation. But he's going to
8 answer it on the record, so it's on the
9 record.

10
11 BY MR. MARTIN:

12 388. Q. So, go ahead and answer the
13 question.

14 A. So the team model was not a
15 mandatory component for anyone to participate,
16 should they not want to participate in going out
17 with a team and marketing with them.

18 389. Q. And then he took you to Exhibit 5
19 which is a document entitled "Just Energy, an
20 Ontario Energy Board Training Proctor Step by
21 Step." And he asked you questions that included
22 about the completion of the independent
23 contractor agreement.

24 And, I wanted to ask though, where
25 in the process of someone becoming a, at



R. Teixeira - 87

1 least in my friend's term, sales agent,
2 does this take place?

3 A. The execution of the independent
4 contractor agreement?

5 390. Q. Well, this is described in this
6 Exhibit I which includes that, this Ontario
7 Energy Board Training Proctor Step by Step, in
8 "Becoming a Sales Agent." Where in the process
9 does this take place?

10 A. After your interview and upon
11 your first arrival of the sales office to begin
12 the orientation process, the steps of it, this
13 would begin in no particular order. I prefer to
14 do it this way, but this would begin once you
15 gave accepted that you want to become an
16 independent contractor for the organization and
17 came in for orientation.

18 MR. MARTIN: Okay. That's not my
19 question. Thank you.

20
21 --- Upon adjourning at 11:30 a.m.
22



R. Teixeira - 88

INDEX OF UNDERTAKINGS

<u>REFERENCE NUMBER</u>	<u>PAGE NUMBER</u>	<u>QUESTION NUMBER</u>
1	45	183
2	46	190
3	58	229
4	81	360
5	381	361



Court File No. CV-15-527493-OOCP

ONTARIO
SUPERIOR COURT OF JUSTICE

SH/ld

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

This is the Cross-Examination of DANIEL GADOUA, on his Affidavit sworn on the 11th day of January, 2019, taken at the offices of VICTORY VERBATIM REPORTING SERVICES INC., 222 Bay Street, Suite 900, Ernst & Young Tower, Toronto-Dominion Centre, Toronto, Ontario, on the 6th day of March, 2019.

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

DAVID ROSENFELD -- for the Plaintiff

PAUL MARTIN -- for the Defendants
ANASTASIA REKLITIS

ALSO PRESENT:

Grace Silvestre



D. Gadoua - 2

INDEX OF PROCEEDINGS

	<u>PAGE NUMBER</u>
DANIEL GADOUA, affirmed	3
Cross-Examination by Mr. Rosenfeld	3 - 25
Index of Under Advisements	26
Certificate	27



D. Gadoua - 3

1 --- upon commencing at 12:20 p.m.

2
3 DANIEL GADOUA, affirmed

4 CROSS-EXAMINATION BY MR. ROSENFELD:

5 1. Q. Mr. Gadoua, can you state and
6 spell your name for the transcript?

7 A. Daniel Gadoua, D-A-N-I-E-L,
8 G-A-D-O-U-A.

9 2. Q. Great. And you swore an
10 affidavit in this matter, January 11, 2019?

11 A. That's correct.

12 3. Q. And you have that in front of
13 you?

14 A. Yes.

15 4. Q. Paragraph 1, it talks about you
16 being employed by Just Energy between 2010 and
17 2015. And then in paragraph 7, you describe that
18 role, to a certain degree. You were a re-
19 contracting manager. Were you a re-contracting
20 manager throughout the time that you were
21 employed at Just Energy?

22 A. Yes. That was my only title.

23 5. Q. And then it talks about assisting
24 with renewal sales. What does "assisting with
25 renewal sales" mean?



D. Gadoua - 4

1 A. So there was an office in
2 Cambridge exclusively doing renewals. And the
3 regional distributor there managed all the
4 renewals, and I would assist him with some of the
5 technical stuff, you know, leads on iPads,
6 working that system, essentially the lead
7 assignment system, handing out stickers, things
8 of that nature.

9 6. Q. Leads provided by Just Energy?

10 A. Yes.

11 7. Q. And what does "helped out with
12 door-to-door sales" mean?

13 A. So one of the rules in Ontario is
14 that you have to have an OEB test and the OEB
15 test cannot be proctored by somebody who is
16 incentivized by the training process. So I would
17 do a lot of that OEB testing. I did it for
18 Hespeler and I did it for a lot of offices
19 actually, mainly Kitchener and Hespeler and
20 Cambridge.

21 8. Q. So that's what you would mean by
22 assisting the door-to-door sales?

23 A. Sure, yes.

24 9. Q. Sure, yes? That's what it means,
25 nothing else?



D. Gadoua - 5

1 A. Yes, yes, that's what I did, yes,
2 yes.

3 10. Q. Okay. And you provided that
4 assistance in Ontario, Alberta, New York and
5 Quebec?

6 A. Yes, that or...but different
7 things. And in New York, they had the leads as
8 well. There was like a re-contract campaign that
9 we did in New York. Alberta, there was a re-
10 contract campaign there as well. So essentially,
11 I assisted with renewals pretty much in every
12 market.

13 11. Q. Oh, I see. Re-contracting, you
14 mean re-contract the customers?

15 A. Yes. So depending on where they
16 are essentially. Sometimes they're a re-
17 contract. Sometimes they're a renewal. But
18 essentially, they're all existing Just Energy
19 customers.

20 12. Q. But the door-to-door sales, was
21 that part of your re-contracting manager position
22 or some other position that you had at Just
23 Energy?

24 A. No, it's just a re-contract
25 manager did renewals. The door-to-door stuff was



D. Gadoua - 6

1 essentially the training, the OEB or retraining
2 module.

3 13. Q. Right. So what period of time
4 did you do either one of those?

5 A. I did them both. Because I was a
6 Just Energy employee, I was allowed to do them,
7 the proctoring, because it was not incentivized
8 by the training.

9 14. Q. So you did both at the same time?

10 A. Yes, yes.

11 15. Q. And then in February 2015, you
12 become an independent contractor again?

13 A. Not in February. I think it was
14 July of 2015.

15 16. Q. Okay.

16 A. July 2015, I became an IC again.

17 17. Q. Right. Your paragraph 1 says
18 ended in around February 2015. I don't know. It
19 doesn't matter to me. There just seems there's
20 some inconsistency.

21 A. February 2018, yes, I guess I
22 missed that one. So February 2018 is when I
23 stopped being an independent contractor. But,
24 no, it was July of 2015.

25 18. Q. Yes, paragraph 1 talked about



D. Gadoua - 7

1 February...

2 A. Yes.

3 19. Q. ...2015 as well.

4 A. No, that's...I guess that's an
5 error I missed completely.

6 20. Q. Yes.

7 A. Yes.

8 21. Q. So July 2015?

9 A. July 2015 is when I terminated my
10 employment with Just Energy.

11 22. Q. Right. And you became an
12 independent contractor?

13 A. That's right.

14 23. Q. Was that a sales agent?

15 A. I was a sales agent. I also took
16 on a regional distributor role as well.

17 24. Q. At the same time?

18 A. Yes.

19 25. Q. Right. So you were a regional
20 distributor at various offices?

21 A. That's right.

22 26. Q. Paragraph 8, if you don't mind.

23 A. M'hmm.

24 27. Q. It first talks about being a
25 regional and senior regional distributor at the



D. Gadoua - 8

1 Cambridge office.

2 A. Yes.

3 28. Q. At what times were you the
4 regional and senior distributor at the
5 various...at the Cambridge office and I'm
6 interested in up until November 2016, so from
7 July 2015 up until November 2016.

8 A. So I became the regional
9 distributor for Cambridge office immediately. I
10 became a senior regional distributor...I guess
11 the structure is that once you get multiple
12 offices, then you'll be a senior regional
13 distributor. So when I took over responsibility
14 for Alberta, then I became a senior regional
15 distributor. And then Kitchener at a later date
16 was another office that I managed as well.

17 29. Q. And did you manage the Cambridge
18 office between July 2015 and November 2016, if
19 you can put those dates in your mind?

20 A. Yes, yes, definitely. I became a
21 senior...or I became a regional distributor in
22 July of 2015, right until 2018.

23 30. Q. Right. The Cambridge office was
24 under your care?

25 A. The Cambridge office, yes.



D. Gadoua - 9

1 31. Q. Okay. And what kind of office is
2 Cambridge...the Cambridge office?

3 A. Cambridge is a renewal office.

4 32. Q. Solely a renewal office?

5 A. Yes. We did some commercial as
6 well. So we did new business commercial.

7 33. Q. Residential door-to-door new
8 business was not done out of that location?

9 A. No.

10 34. Q. Okay. Edmonton-South office, did
11 this add to your portfolio of...

12 A. Yes.

13 35. Q. ...offices that you managed? And
14 when did that add to your portfolio?

15 A. Shortly after, within a few
16 weeks, the conversation was that since leadership
17 from that office went on to other things, that I
18 would take over that office as well.

19 36. Q. And who had that discussion with
20 you?

21 A. It was between us and the
22 leadership at Just Energy, Richard Teixeira and
23 some other people.

24 37. Q. So Just Energy talked to you
25 about taking over another office?



D. Gadoua - 10

1 A. Yes, that's correct.

2 38. Q. And Edmonton-South office, you
3 managed through November 2016?

4 A. Through until 2017,
5 because...well, through the whole period, but
6 yes.

7 39. Q. Okay. And what kind of office
8 was the Edmonton-South office?

9 A. Edmonton sales office was a
10 primarily re-contract office, but they also did
11 door-to-door sales as well.

12 40. Q. And the Manitoba office?

13 A. The Manitoba office is strictly
14 re-contracts.

15 41. Q. Right. And the Manitoba office,
16 you took on when during your time frame?

17 A. That was late. I would say it
18 was probably a year or two later, so twenty...end
19 of 2016.

20 42. Q. Okay, so in or around the time of
21 November 2016?

22 A. Sure, yes. That's right.

23 43. Q. And the B.C. office...

24 A. The B.C. office...

25 44. Q. ...when did you take that office?



D. Gadoua - 11

1 A. Again, around the same time as
2 Manitoba which was at the end of 2016.

3 45. Q. Okay. And, what work was done at
4 the B.C. office?

5 A. The B.C. office was re-contracts
6 as well.

7 46. Q. Right. And the Kitchener office?

8 A. The Kitchener office was door-to-
9 door sales.

10 47. Q. And the Kitchener office, when
11 did you take that over?

12 A. It went dormant for a couple of
13 months, so I would say two months. Maybe August
14 or September of 2015.

15 48. Q. You took it on over on
16 August...in August or September 2015?

17 A. Yes.

18 49. Q. And you operated that until the
19 end of 2016, it says?

20 A. Until the...yes, until the office
21 itself closed.

22 50. Q. Right. And they did door-to-door
23 new business sales there?

24 A. New business, yes.

25 51. Q. Paragraph 9 talks about 2017, you



D. Gadoua - 12

1 engaged exclusively in renewal and commercial
2 sales with Just Energy. What is that? Was that
3 different?

4 A. So, well, no. It's just that at
5 that point by 2017, we weren't doing any new
6 business anymore, no door-to-door whatsoever.

7 52. Q. So there was no Kitchener office
8 that you...

9 A. No Kitchener offers at that point
10 and there was...there's no door...there's no re-
11 contract...or new business going on in Alberta
12 either at that point. It was just strictly
13 renewals and commercial.

14 53. Q. Okay. And you were doing that as
15 an independent contractor as an employee of Just
16 Energy?

17 A. No, as an independent contractor,
18 as a regional...senior regional distributor.

19 54. Q. Right. And then
20 paragraph...excuse me. Paragraph 8 is still,
21 your time as a a new regional distributor during
22 the period, 2015 until end of 2016, so November
23 2016. As a regional distributor, did you report
24 to a national distributor?

25 A. No.



D. Gadoua - 13

1 55. Q. You were the distributor for the
2 various offices?

3 A. That's correct.

4 56. Q. Right. And so you would
5 have...you were the one who ran the day-to-day
6 operations of those offices?

7 A. I was the one who ran the day-to-
8 day operations of Cambridge. And I had a
9 regional distributor in Kitchener and a regional
10 distributor in Alberta. And B.C. and Manitoba,
11 when that happened, there was no office per se.
12 There was no building space. It was just
13 literally ICs in the field.

14 57. Q. Right. And the Kitchener office,
15 that regional distributor reported to you?

16 A. That's correct.

17 58. Q. And these physical offices, they
18 were Just Energy offices? They...you didn't...
19 they weren't your offices?

20 A. That's right.

21 59. Q. And in the Kitchener office,
22 there were crew coordinators working out of the
23 Kitchener office?

24 A. That's correct.

25 60. Q. And they would report to the



D. Gadoua - 14

1 regional distributor at the Kitchener office...

2 A. That's correct.

3 61. Q. ...who would then report to you?

4 A. Yes.

5 62. Q. And a regional...as a regional
6 distributor, you signed an independent contractor
7 deal with Just Energy. Is that right?

8 A. That's correct.

9 63. Q. I'd like a copy of that
10 agreement, dealing with time frame in question.

11 MR. MARTIN: I'll take that under
12 advisement.

U/A

13
14 BY MR. ROSENFELD:

15 64. Q. Okay. And then at paragraph 10,
16 you talk about in February, 2018, your company
17 signed a masters services agreement and
18 statements of work to operate as a vendor of Just
19 Energy. And the company operating as a vendor of
20 Just Energy, what was it vending? What was it
21 selling to Just Energy?

22 A. We were providing sales and
23 marketing services. So in this capacity,
24 depending on the different offices, sometimes it
25 was managing a sales team like we did in



D. Gadoua - 15

1 Cambridge. And depending on what the product
2 listing that they had, we would sell either
3 sometimes door-to-door or sometimes, you know, a
4 renewal campaign, whatever their statement of
5 work was. I had...there were multiple statements
6 of work.

7 65. Q. Right. And those people who were
8 selling those products were being engaged by your
9 company?

10 A. That's correct.

11 66. Q. I would like a copy of that
12 master services agreement and statement of work.

13 MR. MARTIN: We'll take it under
14 advisement.

U/A

15
16 BY MR. ROSENFELD:

17 67. Q. Paragraph 18 talks about the
18 recruitment of renewal and commercial independent
19 contractors. Did you have any new recruits
20 coming through the orientation process that would
21 directly become commercial or renewal sales
22 agents in your offices?

23 68. Q. It says primarily...they were
24 often retained by word of mouth or they were
25 independent contractors already working for Just



D. Gadoua - 16

1 Energy. Would that be the primary method for...

2 A. That was the preferred method
3 because they had product knowledge, and they had
4 already kind of institutional knowledge of the
5 business.

6 69. Q. Paragraph 23...sorry. Let's go
7 to paragraph 34, please. Paragraph 34 talks
8 about morning meetings. You say most of the
9 regional offices that engage in door-to-door new
10 business sales had daily morning meetings. And
11 are you talking only about the Kitchener office
12 that you ran or some other office?

13 A. I just know that that was a
14 practice that was common. It happened in
15 Kitchener, but it was...it was something that
16 most offices did.

17 70. Q. How do you know that?

18 A. Just the...you know, it was
19 a...kind of a discussed thing when they would
20 have their meetings, usually at 10:00 or 11:00 if
21 they had them.

22 71. Q. I guess who would discuss...I'm
23 just trying to get a a sense of how you knew
24 these were happening at other door-to-door...

25 A. You know, we would meet with



D. Gadoua - 17

1 other regionals and other sales forces from time
2 to time.

3 72. Q. Right. It refers to "group up"
4 in that paragraph. That's page 9.

5 A. M'hmm.

6 73. Q. And "group up" would mean who
7 goes in the field with whom, which sales agents
8 would go work together with which co-
9 ordinators...crew co-ordinators, I gather?

10 A. Yes, depending on where people
11 where were working and depending on who was
12 driving that day, they would...if somebody was
13 working in London and people wanted to work in
14 London, then they would, you know, group up with
15 them in a van, and then they would go off to
16 London. And if somebody wanted to work in a
17 different town, they could tag up with that town.

18 74. Q. Right. So the locations where, I
19 guess, the transportation was going was discussed
20 at those meetings?

21 A. Yes, absolutely.

22 75. Q. Paragraph 35, you say:
23 "...The primary purpose of weekly
24 meetings was to provide independent
25 contractors the opportunity to pick up



D. Gadoua - 18

1 their commission cheques and provide
2 them with product or pricing
3 information, as well as to obtain the
4 sales contracts and paperwork without
5 which they did not market..."

6 Are you referring to the renewal offices that
7 you're talking about there?

8 A. All markets, if you don't have
9 paperwork and contracts, you can't work.

10 76. Q. Right. But the primary purpose
11 of the weekly meetings?

12 A. From the offices that I managed
13 and the ones that I saw, the primary purpose was
14 to pick up cheques and the...

15 77. Q. Right. And so a weekly meeting
16 is different than a daily meeting?

17 A. Yes. For renewals, we had weekly
18 meetings, only because each renewal agent is in
19 disparate parts of Ontario, so pulling them in
20 was really difficult. Whenever we could get
21 people together it was great, but we couldn't do
22 it on a daily basis. It just wasn't possible.

23 78. Q. Right. But the door...the new
24 business door to door, particularly at your
25 Kitchener office, was a daily meeting?



D. Gadoua - 19

1 A. There was usually a meeting every
2 day.

3 79. Q. Right. Not weekly meetings?

4 A. Every day, every week.

5 80. Q. Right.

6 A. Or, well, not every day, but
7 there was usually meetings every day.

8 81. Q. Paragraph 37...I'm sorry, I think
9 you may have answered this, but I do not recall.
10 Cambridge was a renewal office. Is that right?

11 A. That's correct, and commercial.

12 82. Q. And in commercial. Okay.
13 Paragraph 38, so in the middle, first, it refers
14 to:

15 "...The crew coordinator would speak to
16 the sales agents and then ask them for
17 their market and location preferences
18 and availability for the following
19 day..."

20 And so...sorry?

21 A. No, nothing.

22 83. Q. Okay. And so the availability
23 for the following day, is that so that the crew
24 coordinators could plan for the next day?

25 A. Yes. So if they were coming in



D. Gadoua - 20

1 the next day and they wanted...we all wanted
2 north, London, and we all agreed that we're going
3 there, then that's where we planned.

4 84. Q. And this was the Kitchener office
5 that you're referring to here at paragraph 38?

6 A. The Kitchener office, yes, that's
7 where my experience was for that.

8 85. Q. Okay. And reference to crew
9 coordinators having their own preference for
10 where they would like to market, and would that
11 be informed by the knowledge of where they had
12 marketed in previous days?

13 A. Yes. They would communicate with
14 the other crew coordinators and say where have
15 you worked and decide where they wanted to work,
16 trying to not overlap or, you know, kind of walk
17 all over each other, and so the crew coordinators
18 would communicate between themselves.

19 86. Q. Right. So that they wouldn't go
20 over territory that had already been covered by a
21 crew coordinator?

22 A. Ideally. And there was no place
23 they couldn't go but ultimately, you didn't want
24 to go after somebody just went there.

25 87. Q. And that was discussed amongst



D. Gadoua - 21

1 the crew coordinators at the Kitchener office?

2 A. That's correct.

3 88. Q. Did your Kitchener office sell
4 JECP products?

5 A. Yes, they did, yes.

6 89. Q. And did those products include a
7 component that needed to be installed?

8 A. JECP had an install component,
9 yes.

10 90. Q. And the installation of those
11 components would be done by a technician
12 contracted by Just Energy?

13 A. As far as I know, yes.

14 91. Q. And that installation was tried
15 to be offered the same day by your office?

16 A. That was the hope. A lot of
17 places, we didn't have same-day installation
18 capabilities.

19 92. Q. And how would you know if you had
20 same-day installation capabilities?

21 A. Just that they used to let us
22 know kind of some cities that they knew they had
23 coverage and, you know, if we could work there.
24 And ideally, that was...if there were same days,
25 we would work there. Otherwise, we just knew



D. Gadoua - 22

1 that they didn't. Small towns, as an example,
2 didn't have same day usually.

3 93. Q. Right. And the particular dates
4 on which these installations were available,
5 would that information be provided by Just
6 Energy?

7 A. Afterwards usually. We didn't
8 know in advance. It depended on the amount of
9 business that was coming in, if they could
10 install it on specific days. Sometimes, they
11 needed to schedule it out of multiple days.

12 94. Q. Paragraph 58 refers to a
13 gentleman named Matt Pancer. When did you last
14 speak with him?

15 A. He left for Indonesia three
16 months ago. Prior to that, he was working with
17 us.

18 95. Q. He's been in Indonesia ever
19 since?

20 A. He's been in Indonesia for about
21 two and a half, three months.

22 96. Q. Right. And before that, sorry,
23 he was...I apologize, I missed that. Before
24 that, he was doing what?

25 A. So, he's an independent



D. Gadoua - 23

1 contractor through my business. He did renewal
2 sales with me and off and on, kind of, you know,
3 through a few weeks here, a few weeks there, over
4 the last ten years or so.

5 97. Q. Okay. Paragraph 63, push weeks
6 being generally organized by Just Energy's
7 corporate office. How would those push weeks be
8 communicated by Just Energy to you, the regional
9 office?

10 A. They would usually be announced
11 in weekly meetings that the regionals had on
12 Mondays, sometime through e-mail. It just
13 depended on when they were looking, you know, to
14 have a push on sales. Either way.

15 98. Q. And would it apply to just your
16 Kitchener office or all your sort of renewal
17 offices, other renewal offices?

18 A. It depended. Renewals was a
19 little bit more difficult, because it was a lead
20 based business, so sometimes they couldn't.
21 There wasn't enough work to do...you know, to
22 have people, you know, do a push week. But, we
23 tried to line them up. Usually, they lined up
24 with incentives, so we wanted to where possible.
25 Commercial didn't really do push weeks because no



D. Gadoua - 24

1 point doing a whole lot of commercial business on
2 a weekend. So, we tried if at all possible.
3 Usually lined up with incentives, so wanted to.

4 99. Q. Usualy lined up with incentives,
5 like what kind of incentives?

6 A. There was a kind of biannual or,
7 you know, maybe it's three times a year, a trip
8 incentive. And you accumulate points throughout
9 the year. And generally, our push weeks
10 coincided with double points or some sort of
11 incentive. Maybe there was a double commission,
12 a double bonus. So there was a lot of incentive
13 to go out on those weeks to really, you know,
14 drive sales.

15 100. Q. And those incentives were
16 provided by Just Energy?

17 A. In some cases. Some cases, we
18 would put on our own. Regionals would say, "Hey,
19 we'd like, you know, anybody who wants to go this
20 week and hit a straight target, we'll cash them
21 out a certain amount of money."

22 101. Q. But the point system was a Just
23 Energy point system?

24 A. The trip point system was, yes.

25 102. Q. Paragraph 67 talks about road



D. Gadoua - 25

1 trips. In the first sentence, it talk about,
2 "...In addition to providing the
3 opportunity to market in areas intended
4 not to be over-marketed..."

5 And the information to determine where...whether
6 the area was over-marketed or not, was that
7 coming from the crew coordinators?

8 A. From the crew coordinators. The
9 regional offices would sometimes communicate to
10 each other where they were working, so we weren't
11 sending two groups of people to the same city at
12 the same time, where possible.

13 103. MR. ROSENFELD: Great. Subject to, I
14 believe there was an under advisement,
15 those are my questions.

16 MR. MARTIN: Thanks very much. I have
17 no questions.

18
19 --- upon adjourning at 12:45 p.m.
20
21
22
23
24
25



D. Gadoua - 26

INDEX OF UNDER ADVISEMENTS

<u>REFERENCE NUMBER</u>	<u>PAGE NUMBER</u>	<u>QUESTION NUMBER</u>
-----------------------------	------------------------	----------------------------

1	14	63
---	----	----

2	15	66
---	----	----

Court File No. CV-15-527493-00CP

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

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

CROSS-EXAMINATION OF KATLYN SCHWANTZ
held at the offices of ASAP Reporting Services Inc.,
333 Bay Street, Suite 900, Toronto, Ontario,
on Thursday, March 21, 2019, at 10:00 a.m.

APPEARANCES:

David Rosenfeld

for the Plaintiff

Anastasia Reklitis

Paul J. Martin

for the Defendants

A.S.A.P. Reporting Services Inc.© 2019

940-100 Queen Street

900-333 Bay Street

Ottawa, Ontario K1P 1J9

Toronto, Ontario M5H 2R2

(613) 564-2727

(416) 861-8720

INDEX

	PAGE
Affirmed: Katlyn Schwantz	3
Cross-examination by Mr. Martin	3
Re-examination by Mr. Rosenfeld	189

LIST OF UNDERTAKINGS, REFUSALS AND UNDER
ADVISEMENTS

Undertakings (U/T) found at pages: N/A

Refusals (REF) found at pages: 6, 61-62, 190

Under advisements (U/A) found at pages: 150, 152

March 21, 2019

1 Toronto, Ontario

2 --- Upon commencing on Thursday, March 21, 2019, at
3 10:00 a.m.

4 AFFIRMED: Katlyn Schwantz

5 CROSS-EXAMINATION BY MR. MARTIN:

6 1 Q. Ms. Schwantz, could you just
7 state your full name for the record?

8 A. Sure. Katlyn Elizabeth Schwantz.

9 2 Q. Where do you reside?

10 A. Like my full address?

11 3 Q. Yes, please.

12 A. 238 Maple Street, Cambridge,
13 Ontario, N3C 1T2.14 4 Q. And how long have you resided
15 there?

16 A. Just over four years now.

17 5 Q. You have sworn two affidavits in
18 this matter. The first one August 29, 2018, and a
19 second one on February 14, 2019. Correct?

20 A. Correct.

21 6 Q. And I gather you have reviewed
22 those affidavits for purposes of today's
23 cross-examination?

24 A. Correct.

25 7 Q. Can you tell me, having reviewed

1 them, is there any change or amendment or revision you
2 would like to make to either one of them?

3 A. No.

4 8 Q. Just a little bit by way of
5 background. And we are going to talk about,
6 obviously, times involving your engagement with Just
7 Energy. But can you tell me what is the highest level
8 of education you have achieved?

9 A. Sure. I did a bachelor of arts
10 degree.

11 9 Q. From where?

12 A. Wilfred Laurier University.
13 Honours.

14 10 Q. When did you graduate?

15 A. Oh, my god. The year? It is
16 going to be tough. When I was 22, 23, my convocation
17 was. So what year is that? Seven, eight years ago.

18 11 Q. You are how old today?

19 A. Thirty.

20 12 Q. And how much later from your
21 graduation were you engaged with Just Energy?

22 A. Just within a few months. So
23 technically it would have been 2013 that I had my
24 convocation.

25 13 Q. And what do you presently do?

- 1 A. I am working towards opening up
2 my own business right now, actually, in final
3 disposition.
- 4 14 Q. Your own disposition?
- 5 A. No. In final disposition.
- 6 15 Q. I don't know what that means.
7 Sorry.
- 8 A. The industry of death. So
9 funeral home and crematorium.
- 10 16 Q. Sorry about that. Okay.
- 11 A. Yeah.
- 12 17 Q. All right. Is that something you
13 have been trained in?
- 14 A. No. It hasn't.
- 15 18 Q. And other than your arts degree,
16 do you have any other formal certificates or training
17 or education, post secondary?
- 18 A. I have my life insurance licence,
19 my mutual funds licence, because I worked for London
20 Life Insurance Company, after I resigned from Just
21 Energy, up until last year.
- 22 19 Q. In sales?
- 23 A. I worked in sales, yes.
- 24 20 Q. Okay. With just that one
25 insurance company?

1 A. Yes.

2 21 Q. Okay. And that sales position
3 with that company. Was that on a hundred percent
4 commission basis?

5 A. It was.

6 22 Q. Did it involve door-to-door
7 sales?

8 A. No. But it was like
9 cold-calling, natural market. However anybody wanted
10 to market.

11 23 Q. And did you have a contract with
12 that insurance company?

13 REF MR. ROSENFELD: Don't answer the
14 question.

15 MR. MARTIN:

16 24 Q. And I would like you to produce a
17 copy of that contract for me, please.

18 REF MR. ROSENFELD: We will not.

19 MR. MARTIN:

20 25 Q. And in addition to your time at
21 Just Energy and what you just described as your
22 position with the insurance company, have you had any
23 other engagements where you were remunerated on a one
24 hundred percent commission basis?

25 A. No.

1 26 Q. And in preparing your affidavits,
2 I am assuming that you had no personal records from
3 your time at Just Energy. Correct?

4 A. "Personal records" meaning?

5 27 Q. Yes. Being documentation of any
6 kind.

7 A. Well, like I said, I had,
8 obviously, text messages and what was included.

9 28 Q. Yes. You had --

10 A. So if that is considered a
11 personal record for me --

12 29 Q. So, for example, in terms of
13 documentation, you had --

14 A. Like our contract or agreement?

15 30 Q. You don't have that?

16 A. No. We weren't given that.

17 31 Q. And we are going to talk about
18 that in a moment. But what I meant by -- in addition,
19 just to expand on it, in terms of recordkeeping, I
20 presume you have no records from your time at Just
21 Energy other than, say, what you may have had on your
22 phone?

23 A. Yeah. That is correct.

24 32 Q. At that time that you were first
25 engaged with Just Energy, you were working, though, at

1 another job. Correct?

2 A. Correct.

3 33 Q. And I understand that to have
4 been a bartending job.

5 A. That is correct.

6 34 Q. Was it full-time?

7 A. No. It was part-time. It was
8 weekends.

9 35 Q. Weekends?

10 A. Mm-hmm.

11 36 Q. And my understanding is that even
12 when you were engaged with the Just Energy position,
13 that you continued, at least for some time, with that
14 weekend bartending job.

15 A. Correct. For approximately a
16 month. I had to fight tooth and nail, though, to be
17 able to work Fridays and Saturdays at that job. But I
18 received, obviously, a tonne of pressure from Joel
19 Stewart, who was my regional, to adhere to the Just
20 Energy structure and the hours and to quit that role
21 and to obviously work for Just Energy a hundred
22 percent, which I did.

23 37 Q. And we are going to talk about
24 that.

25 A. Okay.

1 38 Q. But you did have the two
2 positions at one time?

3 A. Like I said, yes. And I
4 explained.

5 39 Q. And the bartending job. Was that
6 a commission job? Tips?

7 A. We obviously received an hourly
8 wage, and then tips are on top of it. It varied,
9 obviously.

10 40 Q. And the hourly wage. Was it
11 above or below minimum wage?

12 A. It was a dollar, I believe, below
13 minimum wage, if I can recall.

14 41 Q. And the idea being that you would
15 be more fully remunerated with tips?

16 A. Correct. That is the hospitality
17 industry.

18 MR. ROSENFELD: Sorry. Can you
19 clarify minimum wage for restaurant workers or for
20 somebody else?

21 MR. MARTIN: She understood what it
22 was.

23 MR. ROSENFELD: I don't think so.

24 MR. MARTIN: I think she did.

25 MR. ROSENFELD: I am clarifying,

1 please.

2 THE WITNESS: Okay.

3 MR. MARTIN: Well, you can do that
4 in...

5 MR. ROSENFELD: I guess I will. But
6 the question is to clarify your question for her.

7 MR. MARTIN: So --

8 MR. ROSENFELD: So you are not going
9 to clarify the question?

10 MR. MARTIN: She answered. She
11 understood the question. It doesn't need --

12 THE WITNESS: If we could clarify.
13 Let's just clarify.

14 MR. MARTIN:

15 42 Q. It doesn't need clarification.
16 And your counsel has the opportunity, if he thinks
17 that it needed it, to ask a question on
18 re-examination, if he chooses to do so.

19 MR. ROSENFELD: It does need
20 clarification. Ms. Schwantz just --

21 MR. MARTIN: Well, I don't agree. It
22 is my examination. I don't agree. And you have a
23 right to re-examine.

24 MR. ROSENFELD: You have the answers
25 from Ms. Schwantz afterwards to say let's clarify.

March 21, 2019

1 MR. MARTIN: No. Only based on your
2 prompting, counsel. And I don't appreciate your
3 interruptions.

4 MR. ROSENFELD: I am going to
5 interrupt to clarify every single question, if it is
6 necessary, Mr. Martin.

7 So she has asked that we should
8 clarify. If you don't want to --

9 MR. MARTIN: She hasn't asked to
10 clarify. She didn't. You asked to clarify.

11 THE WITNESS: I just did.

12 MR. MARTIN: Well, I don't need any
13 clarification --

14 THE WITNESS: So for the second time,
15 can you clarify your question for --

16 MR. MARTIN: No. I am going to move
17 on.

18 THE WITNESS: Oh. Okay.

19 MR. MARTIN: I am happy with what I
20 have on the record. Thank you.

21 THE WITNESS: Okay.

22 MR. MARTIN:

23 43 Q. You suggest that you started with
24 Just Energy in September of 2013. You don't have any
25 formal record of when you commenced with Just Energy?

1 A. No. Because, like I said, we
2 were not provided our independent contractor
3 agreement. When we asked for it, which numerous
4 agents did, we were not provided with it.

5 44 Q. And who did you ask?

6 A. Joel Stewart, our regional.

7 45 Q. How many times did you ask him?

8 A. Numerous times.

9 46 Q. Do you have any record of asking
10 him?

11 A. More than five. Just
12 conversation, like we are having ourselves.

13 47 Q. Just conversation. Yes.

14 A. Not on paper. Not in e-mail.

15 48 Q. And you were with Just Energy for
16 approximately, what, 13 months?

17 A. Thirteen or 14 months. Yeah.
18 Until December of 2014.

19 49 Q. And you indicate, in your
20 affidavit material, that there was hiring ongoing on a
21 weekly basis?

22 A. Yes.

23 50 Q. And you would be in attendance
24 during that hiring process?

25 A. No. Not during the hiring

1 process, but the training, retaining process. So
2 every Thursday.

3 51 Q. Right. And you played a role, I
4 gather, at some point as a crew coordinator in that
5 training, recruiting process?

6 A. As I said, every Thursday.
7 Correct.

8 52 Q. What role did you play?

9 A. We had to, every Thursday, as a
10 crew coordinator, take the new agents that had just
11 been hired into the office. Our regional would
12 dictate which crew coordinator was getting which new
13 agent, and we had to take them into field that
14 particular day. They had to obviously shadow us at
15 the door. We had to work on script,
16 objection-handling, et cetera. And then we tried to
17 get them out knocking on their own and tried to
18 obviously help secure them a deal that first day.

19 53 Q. But they wouldn't be able to go
20 out in the field until they had signed an independent
21 contractor agreement. Correct?

22 A. Correct.

23 54 Q. And then --

24 A. And that was done before
25 orientation.

1 55 Q. And that Thursday or Friday.

2 That is when the agreement would have been signed by
3 every sales agent. Correct?

4 A. At our office, it was done prior
5 to orientation. So that would have been Wednesday
6 morning.

7 56 Q. And there were sales agreements
8 in the office, obviously?

9 A. No. We were told by Joel Stewart
10 that head office had all of our agreements, and that
11 if we wanted them -- as I said, he denied providing
12 them.

13 57 Q. No, no. The agreement itself.

14 A. The agreement itself? The blank?
15 Are you talking --

16 58 Q. Yes.

17 A. -- the blank copy that would be
18 signed?

19 59 Q. Yes.

20 A. I am not sure where it would come
21 from. If it was from Joel printing it off or the head
22 office, I am not sure. Just, we were provided it at
23 the very beginning --

24 60 Q. So it just would mysteriously
25 appear at the contracting stage?

March 21, 2019

1 A. Like I said, I don't know who was
2 in charge of it. I know it was handed out, during the
3 orientation process, by the person who was conducting
4 the orientation. And as a new agent, you had to sign
5 it before the orientation process started.

6 61 Q. And then they quickly took it
7 away from you and would deny you any copy. That is
8 your evidence?

9 A. Well, as I said, my statement
10 would be that they were -- the agreements were
11 collected and, from what we were told, sent to head
12 office.

13 62 Q. Did you ever ask head office for
14 a copy of your agreement?

15 A. There was -- I never did. There
16 was a gentleman, Arcenio Sawyers, who was a gentleman
17 in the office. I know he had said that he had reached
18 out on a couple of occasions to head office and never
19 received any e-mails back. So there were agents that
20 did.

21 63 Q. Do you have any record of him
22 having done so?

23 A. I don't. But I know --

24 64 Q. So we just have your word for it?

25 MR. ROSENFELD: Yes.

1 THE WITNESS: Correct.

2 MR. ROSENFELD: Under oath. Yes.

3 THE WITNESS: Under oath. Yes.

4 MR. MARTIN:

5 65 Q. Did you ever ask Mr. Teixeira for
6 a copy of your independent contractor agreement?

7 A. Mr. -- sorry. Who?

8 66 Q. Teixeira.

9 A. Oh. Teixeira. Richard?

10 67 Q. Mm-hmm.

11 A. No. I did not. Like I said, I
12 never reached out to him. I specifically stated I
13 asked Joel Stewart, our regional.

14 68 Q. Did you have any doubts about
15 what your independent contractor agreement said?

16 A. At the time, I can definitely say
17 I was young and naive. It was my first, you know,
18 kind of full-time role, if you will, out of
19 university. So I trusted in the company. That is
20 what we were told. A multi-billion-dollar corporation
21 and they have been around for years and they know what
22 they are doing, and we trusted in that.

23 69 Q. But you didn't have any doubt,
24 though, that this was a one hundred percent commission
25 opportunity?

1 A. Well, again, we definitely --
2 myself and other agents, there was definitely
3 confusion regarding the exact operations of how things
4 worked in regards to commission and hourly wages, et
5 cetera. So once we kind of got into the role and
6 started learning and receiving pay cheques is when we
7 kind of really started to understand how it worked.

8 70 Q. Well, you understood that there
9 would be no deductions for taxes?

10 A. We knew that. Yeah. Joel
11 Stewart had told us.

12 71 Q. Yes.

13 A. But never -- it was never really
14 preached upon for agents to save money, or anything
15 like that, to deal with taxes.

16 72 Q. And you understood that in fact
17 there were no overtime payments to be made with
18 respect to what might have been a situation if you
19 were an employee?

20 A. Sorry. Can you repeat that
21 again?

22 73 Q. So you were aware that they
23 weren't paying overtime as if one were an employee?
24 You were aware of that?

25 A. Correct.

1 74 Q. And in fact there was no wage
2 aspect to your remuneration. Correct?

3 MR. ROSENFELD: Define "wage," please.

4 MR. MARTIN:

5 75 Q. Some payment per hour worked.

6 A. Correct.

7 76 Q. And you knew they were not
8 deducting for Canada Pension Plan?

9 A. Correct.

10 77 Q. You knew they were not deducting
11 for Employment Insurance?

12 A. Correct. But if all these things
13 were, I would say, legitimate, then we would have been
14 treated very differently than the way that we were.
15 We were treated as employees, not as independent
16 contractors. Right? So --

17 78 Q. Well, that is how an employee is
18 treated. An employee has those benefits. You didn't
19 have those benefits at all. Did you?

20 A. No. But, again, employees
21 operate in a very different capacity than what we were
22 told or solicited as an independent contractor.
23 Right?

24 79 Q. Well, in fact, very early on you
25 became a crew coordinator?

1 A. Within a month, because I did so
2 well there, yes.

3 80 Q. Yes. And you had your own crew
4 or team. Correct?

5 A. Correct. That I had to build.
6 Yes.

7 81 Q. Yes. But part of what the team
8 looked to you to do would be to assist them in
9 answering questions relating to their remuneration.
10 Correct?

11 A. Not really. That was not my
12 role. Joel Stewart, our regional director, who was
13 the face of the office for Just Energy, he was the one
14 that dealt with any of those questions. As a crew
15 coordinator, we focused on training, retaining and
16 providing that in-field support for the agents, as per
17 the Just Energy structure or model.

18 82 Q. But you are surely not telling me
19 that in 13 months, or however long it was, that people
20 on your team didn't ask you questions about the
21 remuneration process?

22 A. I can honestly say that I was not
23 asked those type of questions. Joel Stewart received
24 those types of questions.

25 83 Q. And just so I understand, though,

1 you are not saying that you couldn't have answered
2 them if they were posed to you?

3 A. Again, I never answered those
4 types of questions. It was Joel Stewart who dealt
5 with that. Who dealt with the agents.

6 84 Q. My question was: You are not
7 suggesting that you couldn't have answered those
8 questions if they were posed to you?

9 A. That I couldn't? I am sure I
10 could have. But like I said, Joel Stewart dealt with
11 that. Not me.

12 85 Q. My point is you had that
13 knowledge.

14 A. Well, again, when you are working
15 there, you obviously -- when you are getting a pay
16 cheque on a weekly basis, every Monday, you understand
17 that everything is a hundred percent commission based,
18 based on approved deals. Not written deals, but
19 approved deals.

20 86 Q. We will get to that as well.

21 A. Okay.

22 87 Q. Okay. And that nothing was
23 deducted from your remuneration with respect to things
24 like Canada Pension Plan and Unemployment Insurance?

25 MR. ROSENFELD: Sorry. The question

1 is that she had the information?

2 MR. MARTIN:

3 88 Q. That she had the knowledge.

4 A. Well, yeah. I have answered yes
5 to that.

6 89 Q. So let's talk about just your
7 role as crew coordinator.

8 A. Sure. Crew coordinator.

9 90 Q. Crew coordinator.

10 A. Got you. Yeah.

11 91 Q. Very early in the piece, you
12 became a crew coordinator?

13 A. Correct.

14 92 Q. Do you know when?

15 A. I was -- within a month, I was
16 promoted to an assistant crew coordinator. And then,
17 shortly after, I was promoted to crew coordinator. I
18 am not exactly sure of the exact time frame.

19 93 Q. And let's talk a little bit about
20 your responsibilities.

21 A. I believe it was by January of
22 2014.

23 Sure.

24 94 Q. And one of your responsibilities,
25 you said, was training?

1 A. Training and retaining. Yes.

2 95 Q. Retaining. What do you mean by
3 "retaining"?

4 A. That was what Joel Stewart used.
5 His kind of statement, if you will. So we, as crew
6 coordinators, were responsible for training and
7 retaining agents. So obviously providing the in-field
8 training to agents, as well as retaining them. So
9 obviously trying to keep them in the office. Because,
10 again, building the office -- people, you know, in the
11 higher positions, obviously received overrides. It
12 looked better for the office to have growing numbers.
13 And obviously it appeased the executives at the
14 company, and shareholders, because new business would
15 be coming in by new agents being there to write the
16 deals.

17 96 Q. But my question was about
18 retaining them. What specifically would you have done
19 to retain your team members?

20 A. Sure. So Joel Stewart of course
21 --

22 97 Q. But you. I am asking about you.
23 What did you do, as a crew coordinator?

24 A. I know. I am just saying
25 everything we did came from our regional, Joel

1 Stewart. We had to follow and adhere to that
2 structure. So I am just explaining it.

3 98 Q. No. Let's cut right to the
4 chase.

5 A. Oh. Okay.

6 99 Q. Joel Stewart had no ability to
7 terminate you in any way. Did he?

8 A. Absolutely he did. And I saw him
9 do it to numerous agents.

10 100 Q. You are not aware of the fact
11 that Just Energy alone had the power to terminate any
12 sales agent?

13 MR. ROSENFELD: Are you talking about
14 the legal right?

15 MR. MARTIN: Yes. Yes.

16 MR. ROSENFELD: According to the
17 contract?

18 MR. MARTIN: According to the
19 contract. Yes.

20 THE WITNESS: Sorry. Can you clarify
21 what you mean?

22 MR. MARTIN:

23 101 Q. According to the contract, who
24 did you contract with? Do you know? Not Joel
25 Stewart.

1 A. Well, again, when we signed our
2 independent contractor agreements, it was done the
3 morning of, prior to orientation beginning. So when
4 we went in -- because, again, the interview process
5 was very foggy as to what the actual role was. So we
6 didn't really know what we were getting into, if you
7 will, prior to orientation beginning.

8 So, again, whomever -- like, we always
9 thought that everything was coming from, obviously,
10 Just Energy. And Joel Stewart was the regional, he
11 was the manager in the office and he was the one that
12 was obviously running that office.

13 102 Q. My question to you is this. You
14 were aware that it was only Just Energy that could
15 terminate a sales agent?

16 A. We were not, again, aware of
17 that. We thought Joel Stewart --

18 103 Q. Sitting here today, your evidence
19 is --

20 MR. ROSENFELD: Let her finish the
21 answer.

22 THE WITNESS: Yeah. Sorry.

23 MR. MARTIN: I am going to rephrase it
24 for her.

25 MR. ROSENFELD: I am going to ask her

March 21, 2019

1 to --

2 MR. MARTIN: I am going to ask the
3 same question.

4 MR. ROSENFELD: So I am going to get
5 her to answer. Continue her answer.

6 MR. MARTIN: Absolutely.

7 THE WITNESS: So, again, to answer
8 your question, as sales agents in the office, we
9 looked to Joel Stewart as the manager who was there
10 representing, if you will, Just Energy in that
11 appointed position. So, again, he would be, if you
12 will, an extension of Just Energy and their
13 operations. Right? So we trusted that, as in a
14 managerial role, in a position of superiority.

15 MR. MARTIN:

16 104 Q. That is not my question.

17 A. So we followed what he said.

18 105 Q. That is not my question. My
19 question is: Sitting here today...

20 A. Sitting here today.

21 106 Q. Is it your evidence that you
22 didn't understand that only Just Energy had the
23 ability to terminate a sales agent?

24 A. Again, like I am saying, we
25 believed Joel did it. And I am sticking to that.

Page 25

1 Right? Because I saw him do it, time and time again.
2 And I was threatened, too, at times by him.

3 107 Q. All right. And did you
4 understand that Mr. Stewart was an independent
5 contractor himself?

6 A. Again, we believed that he was a
7 manager that was appointed to a regional distributor
8 role via the Just Energy model.

9 108 Q. Did you understand him to be an
10 independent contractor?

11 A. Well, I just answered that from
12 my perception. Right?

13 109 Q. Well, did you understand him to
14 be an employee of Just Energy?

15 A. Well, I would say an employee --
16 would it not be Mr. Richard Teixeira being in an
17 executive role, or Mr. Darren Pritchett? Would that
18 not be considered an employee?

19 110 Q. Well, they were. But not
20 regionals.

21 A. Okay.

22 111 Q. Regional distributors were
23 independent contractors. I am trying to get a sense.
24 Did you know that to be the case?

25 A. Again, like, he operated, if you

March 21, 2019

1 will, in a managerial role. We believed him to be.
2 Whether it was an employee or not, that is the role we
3 believed him to be in.

4 112 Q. But my question is: Did you
5 understand that he himself was --

6 A. But I am saying I believed.
7 Right? I am --

8 113 Q. Well, I asked exactly what you
9 understood, not what you believed. Did you understand
10 --

11 MR. ROSENFELD: I am not sure what the
12 difference is.

13 THE WITNESS: Exactly. I don't --

14 MR. MARTIN:

15 114 Q. -- he was receiving --

16 A. So you want a yes or no answer?
17 Or I am not understanding.

18 115 Q. Please. Please. Please. That
19 he was receiving his remuneration based only on
20 commission.

21 A. Again I --

22 MR. ROSENFELD: That is not -- you are
23 clarifying whether that is associated with an
24 independent contractor? That is not correct at law.

25 MR. MARTIN: No. I am just trying to

Page 27

1 take it apart here.

2 116 Q. Did you understand that he was
3 receiving his remuneration only by commission?

4 A. Again, I am not sure. I
5 didn't -- we never talked about Joel's pay cheques.
6 He never advertised that to us or showed us that or
7 how it was broken down. So I do not know.

8 117 Q. You don't know. Okay.

9 A. We do not know.

10 118 Q. That is fine.

11 A. Does that make sense or...

12 119 Q. If you don't know, just tell me
13 you don't know.

14 MR. ROSENFELD: Just answer the
15 question.

16 MR. MARTIN:

17 120 Q. Just answer the question.

18 MR. ROSENFELD: And whatever your
19 answers are, are what your answers are.

20 THE WITNESS: Yeah. I just...

21 MR. MARTIN:

22 121 Q. Let's go back to your position as
23 crew coordinator.

24 A. Sure.

25 122 Q. In your managerial and

1 supervisory role, I gather one of the things you say
2 is that you provided transportation?

3 A. Correct.

4 123 Q. You personally provided
5 transportation?

6 A. Yeah. We had to.

7 124 Q. Did you have your own car?

8 A. Yes.

9 125 Q. I gather you paid your own
10 expenses?

11 A. We had to.

12 126 Q. You paid the gas?

13 A. Correct. Insurance. Any types
14 of maintenance that had to be done to the vehicle.
15 Correct.

16 127 Q. You weren't in any way reimbursed
17 for that?

18 A. No. We were not. And I was not.

19 128 Q. And you talked about shadowing.
20 I gather that means that you would follow one of your
21 team members outside, in the field, and observe them
22 doing a sales transaction?

23 A. I was going to say to you, in
24 regards to the vehicle driving, we were not allowed to
25 drive as just a regular sales agent. As an

1 independent contractor, we were denied the right to be
2 able to drive to and from field ourselves due to
3 control, et cetera, to make sure that agents were in
4 the field knocking and did not have a way to get out
5 of area if they decided to leave. They had to
6 obviously be there the full time. So we were
7 pressured again by our regional, Joel, to purchase
8 seven-seater vehicles as well, just to be able to
9 maximize agents getting to and from area.

10 So as crew coordinators, we all --
11 Matt Snow, Ryan Clarkson and myself, as well as Derek
12 Wagler, we all ended up having to, you know, be
13 pressured into purchasing seven-seater vehicles as
14 well, just so you are aware. So only as a crew
15 coordinator were you able to drive to and from field.
16 Not as an agent. And I started --

17 129 Q. So your evidence is you were
18 pressured to buy a seven-seat vehicle?

19 A. We did. We did receive pressure.

20 130 Q. You. You. I am talking about
21 you.

22 A. Sure.

23 131 Q. So you did?

24 A. And I listed some other
25 individuals as well who did.

- 1 132 Q. And you did?
- 2 A. Correct. Because that was the --
- 3 133 Q. What did you buy?
- 4 A. I bought a Toyota Sienna.
- 5 134 Q. And you felt pressured to buy
- 6 that?
- 7 A. A hundred percent. I had a Mini
- 8 Cooper when I started, and then I was pressured by
- 9 Joel into getting a larger vehicle. I didn't want a
- 10 van. He said that is what people at Just Energy
- 11 drove, as crew coordinators, was vans to get to and
- 12 from area. It was pretty much the standard
- 13 encouragement. So I ended up buying the Ford Edge,
- 14 and then trading that in and having the Toyota Sienna
- 15 after receiving more and more pressure to have an
- 16 extra two seats in the vehicle.
- 17 135 Q. The more seats in a vehicle,
- 18 though. That would mean the more agents in the field?
- 19 A. Well, because they are not
- 20 allowed to --
- 21 136 Q. Correct? Correct? Correct?
- 22 A. Correct. They are not allowed to
- 23 drive themselves to field, as an agent. So an extra
- 24 two people.
- 25 137 Q. And you are not aware of any

1 written policy of Just Energy that says an agent can't
2 drive themselves to the field?

3 A. That is how the office was
4 structured. That is how we operated.

5 138 Q. Sorry. Sorry. We are going to
6 really have a hard time today if you don't answer the
7 question. Listen carefully for the question. I will
8 slow it down.

9 You are not aware of any written
10 policy of Just Energy that says that an agent can't
11 drive themselves to the field?

12 A. Again, that is when we were
13 operating and working at --

14 139 Q. Sorry. Sorry. Sorry.

15 A. Well, I am going to tell you,
16 because --

17 140 Q. Listen to the question.

18 A. I understand the question. I
19 know you want a yes or no.

20 141 Q. No. I want you to answer the
21 question.

22 A. I am answering the truth, though,
23 sir.

24 142 Q. I want you to answer the
25 question. I don't want you to go off on a diatribe --

March 21, 2019

1 A. So whether it is --

2 MR. ROSENFELD: One way or another,
3 please don't talk over each other.

4 MR. MARTIN:

5 143 Q. I want you to answer the
6 question.

7 MR. ROSENFELD: Otherwise the
8 transcript is not going to record anything. It is
9 just going to see you guys talking over each other.

10 THE WITNESS: Sure. So the reality is
11 I know you want a yes or no question, but I think what
12 you have to understand is --

13 MR. MARTIN:

14 144 Q. No. I understand perfectly.

15 A. -- that we were treated very
16 differently.

17 145 Q. No, no. You don't understand.
18 Please stop.

19 Please. She is going off again,
20 counsel. If you can't rein your witness in, I am
21 going to do it.

22 You are here --

23 MR. ROSENFELD: There is no reining in
24 of anything. She is answering your question. Period.

25 MR. MARTIN: No. She is not. With

Page 33

1 the greatest of respect, she is not.

2 MR. ROSENFELD: I am sorry you are
3 frustrated that she is not answering your questions,
4 Mr. Martin.

5 MR. MARTIN: I am not frustrated. I
6 am frustrated she won't answer the question she is
7 asked.

8 THE WITNESS: Pretty aggressive.

9 MR. MARTIN: We will try again.

10 MR. ROSENFELD: Let's just ask and
11 answer questions and see if we can move on.

12 MR. MARTIN:

13 146 Q. We will try it again.

14 Okay. Are you aware of any written
15 policy of Just Energy that says an agent can't drive
16 themselves to the field?

17 A. I never saw any written policy.
18 But that is not how we were treated. We were treated
19 as such --

20 147 Q. Wait. Wait. Did I ask how you
21 were treated?

22 MR. ROSENFELD: I am sorry, Mr.
23 Martin.

24 MR. MARTIN:

25 148 Q. Have I asked her how she was

March 21, 2019

1 treated? I asked a simple question.

2 MR. ROSENFELD: Enough, Mr. Martin. I
3 am sorry. Ask the questions, and then you will get
4 responses. If you don't like the responses, I am
5 sorry, but please don't --

6 THE WITNESS: Do not bully me.

7 MR. MARTIN: It is not bullying. It
8 is --

9 MR. ROSENFELD: I am sorry, Mr.
10 Martin. Let me finish, too.

11 MR. MARTIN: I am paying for the
12 transcript, as you well know.

13 MR. ROSENFELD: Just please let me
14 finish, too, on the record. Seriously.

15 Just let her answer questions. I am
16 sorry if you don't like the responses.

17 Ms. Schwantz, please just answer Mr.
18 Martin's questions --

19 THE WITNESS: For sure.

20 MR. ROSENFELD: -- so that we can move
21 on.

22 THE WITNESS: For sure.

23 MR. MARTIN:

24 149 Q. We are going to be at this all
25 day.

1 A. So --

2 150 Q. No. We are done. You answered
3 the question. You have answered the question. I
4 don't need a story.

5 A. There is -- I am not Walt Disney.
6 I am not giving you a story. I am strictly just
7 saying that --

8 151 Q. No. Stop. Stop right there. I
9 asked a question about a written document.

10 MR. ROSENFELD: Mr. Martin. Mr.
11 Martin, please stop talking to the witness like that.

12 THE WITNESS: Wow.

13 MR. MARTIN: I am paying for this
14 transcript.

15 MR. ROSENFELD: I am sorry, Mr.
16 Martin.

17 MR. MARTIN: I am paying for it.

18 MR. ROSENFELD: Okay.

19 MR. MARTIN: I don't want this
20 diatribe on my transcript.

21 THE WITNESS: It is not a diatribe. I
22 just want --

23 MR. MARTIN: Stop.

24 MR. ROSENFELD: Mr. Martin, please --

25 MR. MARTIN: No. I don't want her, on

March 21, 2019

1 my transcript, going off and not answering --

2 MR. ROSENFELD: Then stop your
3 examination.

4 MR. MARTIN: I haven't asked a
5 question. I haven't asked a question.

6 THE WITNESS: I am answering your
7 question. You asked if there was a written policy --

8 MR. ROSENFELD: Ms. Schwantz, please
9 stop.

10 THE WITNESS: Okay. And I am
11 answering.

12 MR. ROSENFELD: If you want to stop
13 the examination, go ahead and stop the examination.

14 MR. MARTIN: Well, I may, if she is
15 not going to answer the questions.

16 MR. ROSENFELD: She is answering
17 questions. You may not like the answers that she is
18 providing.

19 MR. MARTIN: That is not the case,
20 David. And you well know that.

21 MR. ROSENFELD: Please don't suggest
22 that I am now suggesting something else. This is what
23 is happening.

24 MR. MARTIN:

25 152 Q. Again, as a crew coordinator, in

Page 37

1 managing your team, one of your responsibilities was
2 to motivate them?

3 A. Correct.

4 153 Q. Motivate them to sell?

5 A. Correct.

6 154 Q. And in fact I think, in your
7 affidavit, you say really their only responsibility,
8 their only job, was to sell?

9 A. As a regular sales agent?

10 155 Q. A sales agent.

11 A. Correct.

12 156 Q. And as I said earlier, whatever
13 vehicle you were taking to the field, the more seats
14 you had in your vehicle, the more sales agents you
15 could put in the seats?

16 A. Correct.

17 157 Q. And the more sales agents selling
18 on your team, it was beneficial to you financially?

19 A. It was beneficial to assistant
20 crew coordinators, to crew coordinators, as well as
21 regionals, as well as nationals. That is the style of
22 overrides and how it worked. So that is what we were
23 told and that is how the system operated and that is
24 what we adhered to.

25 158 Q. It was beneficial to you

- 1 financially?
- 2 A. As listed as one of the
- 3 individuals. Correct.
- 4 159 Q. So the answer was yes?
- 5 A. Correct. Yes.
- 6 160 Q. And that was because you got
- 7 overrides from those members of your team?
- 8 A. Correct. That is how the
- 9 structure worked.
- 10 161 Q. What is an override?
- 11 A. An override was an amount that
- 12 either an assistant crew coordinator, a crew
- 13 coordinator, a regional or a national distributor
- 14 received based on deals written.
- 15 162 Q. So the more successful a manager
- 16 you were --
- 17 A. Approved deals, should I say.
- 18 163 Q. The more successful a manager you
- 19 were, the more money you arguably would make?
- 20 A. Correct.
- 21 164 Q. And you have indicated that you
- 22 would pay expenses, say, with respect to your vehicle.
- 23 I gather there were other expenses, as a manager of a
- 24 crew, you would incur?
- 25 A. Correct.

1 165 Q. What type of expenses would those
2 be?

3 A. Food expenses for lunch and
4 dinners. We obviously had hotel, or should I say
5 motel, costs, because that tended to be where we
6 stayed when we had to go on the mandatory push weeks,
7 on a monthly basis, of one to two weeks at a time.
8 Obviously our phone bills we had to pay for, as shown
9 in examples of exhibits, or the exhibit in regards to
10 text messages I included between Joel Stewart and I.
11 He would obviously always pressure, as his crew
12 coordinators --

13 166 Q. I am asking about the expenses.

14 A. I am letting you know. He would
15 pressure us, as crew coordinators, in regards to
16 either taking out agents on our team for dinners,
17 putting up --

18 167 Q. I am asking what was paid for.

19 A. I am letting you know.

20 168 Q. I didn't ask about pressure.

21 A. I am letting you know.

22 169 Q. I am asking what you paid for.

23 A. I got you. Thank you, sir.

24 170 Q. Well, then why don't you answer
25 the question?

1 A. I am doing it right now.

2 171 Q. No. You are not.

3 MR. ROSENFELD: Just keep going, Ms.
4 Schwantz.

5 THE WITNESS: Okay. Wow. So, again,
6 we were pressured into putting up bonuses. So whether
7 it was points, as you could see in the text messages
8 in my exhibit, or taking members out for dinners,
9 things like that. Again, those were all expenses that
10 we had to occur. Obviously driving agents to field.
11 We had to mandatorily drop agents off at home after a
12 day of work. Again, all expenses that we had to
13 occur. Or incur, should I say. Sorry.

14 MR. MARTIN:

15 172 Q. Those were all expenses incurred

16 --

17 A. Incurred. Yeah.

18 173 Q. -- to generate revenue?

19 A. That was the structure of the
20 system. That is what we had to do. We didn't have a
21 choice. I would have loved not to have to drive
22 agents home. I would love to have not had to be
23 pressured into putting up personal money and bonuses
24 for agents on the team. But we were bullied and
25 pressured into doing things like that.

1 174 Q. But the harder they worked, the
2 more successful they were, the better you were able to
3 manage them to be successful, the better off it was
4 for you financially?

5 A. I would say it all just -- it is
6 not the harder they worked. It would be depending,
7 obviously, on their sales ability as to what made them
8 successful or not. Because the agents at the office,
9 we all worked, the majority of us, the same amount of
10 hours, and I obviously excelled a lot more than other
11 agents did, by far, because of my sales ability.

12 175 Q. Right. But as a crew
13 coordinator, that sales ability, that was part of the
14 training you were to pass on to your team members?

15 A. Of course. That is the structure
16 and the message that we were constantly receiving from
17 Joel on a regular basis to grow the office.

18 176 Q. And I gather your team changed
19 from time to time?

20 A. Of course.

21 177 Q. Am I right in saying that at one
22 time the entire team -- you lost the entire team at
23 one point?

24 A. That was right near -- I wouldn't
25 say I lost the entire team at one point. But it would

March 21, 2019

1 be near the end of my working at Just Energy, when
2 again lots of different individuals had left, going
3 back to school, quit. They obviously didn't like the
4 role, et cetera. And definitely near the end, there,
5 of December 2014, the office was low in general, all
6 around. Not just my team.

7 178 Q. Over the roughly 12 months or 13
8 months you were a crew coordinator, how many team
9 members would you have had?

10 A. I don't know the exact number,
11 per se, that --

12 MR. ROSENFELD: At any one time?

13 THE WITNESS: Yeah. Because it --

14 MR. MARTIN:

15 179 Q. Over the time. Over the time.

16 A. Over the entire time, how many
17 agents came and went? Honestly, I can't even say,
18 because there were so many that came and went on a
19 weekly basis for training. So if they count --

20 MR. ROSENFELD: The question is your
21 team.

22 THE WITNESS: My team? Again --

23 MR. ROSENFELD: How many team members,
24 over the entire time from when you were there?

25 THE WITNESS: Like I said, I don't

1 know the exact number.

2 MR. MARTIN:

3 180 Q. Could it be 200?

4 A. I don't know. I honestly have no
5 idea.

6 181 Q. And on any particular day, I
7 gather, you wouldn't know if somebody who was
8 notionally on your team would be coming or not?

9 A. Sorry. Can you repeat that?

10 182 Q. On any particular day, you
11 wouldn't know whether any particular team member might
12 show up or not?

13 A. We had --

14 183 Q. Because of the turnover.

15 A. Not per se. There was -- we
16 definitely had a notion of agents that would be coming
17 in every day, because, again, we had the mandatory
18 morning meetings. So we always expected agents to
19 obviously be showing up at the office for that,
20 because it was mandatory. So, again, that was the
21 structure of the office.

22 So could agents of course come and go,
23 if they decided to quit or if they were terminated?
24 Absolutely. But, again, every morning we pretty much
25 were under the impression that the agents were going

1 to be there unless Joel let us know otherwise.

2 184 Q. Well, no. But when you were
3 saying that there could be-- I just put it out there
4 as 200, as a number.

5 A. Okay.

6 185 Q. I know you can't appreciate the
7 number. But with that kind of turnover, even on a
8 daily basis you wouldn't know, necessarily, who might
9 be in your vehicle that morning. Correct?

10 A. Again, we always accounted for
11 all of the agents that we had at that particular, say,
12 point in time, day, week, what have you, to be at the
13 office the next day. Again, there was always -- the
14 way it kind of operated is agents that were at least
15 writing two or more deals a day were obviously more
16 likely to be retained and to stay, because they would
17 be at least making a pay cheque. Agents that
18 obviously were struggling or not really writing deals,
19 you know, Joel, whatever, myself, we always did the
20 mandatory role-playing to ensure that obviously their
21 skill-set was being improved. And those individuals
22 were the ones that were a bit more of a cause for
23 concern at points as to it is only a matter of time,
24 if they are not writing deals, before they will leave
25 and find work elsewhere.

1 186 Q. Right. So then on any one
2 particular day, though, you wouldn't know -- you have
3 a seven-person vehicle, let's say. You don't know
4 whether you are going to fill that vehicle that day or
5 the next day or the day after, because you are seeing
6 so many different people, even with the weekly
7 turnover?

8 A. Again, just the regular agents,
9 like I explained, that were writing at least a minimum
10 of two-deals-plus a day were standardized that they
11 were going to be there. So it was -- there was always
12 the standard basis. Each week, when new agents came
13 in on a Thursday, depending on how their writing
14 abilities were going, that is only what deterred,
15 usually, fluctuations in the numbers.

16 187 Q. So would it be fair to say that,
17 on an average basis, you might have filled four of the
18 seven seats?

19 A. No. I always had seven seats
20 full in my car every week, pretty much. And my
21 assistant crew coordinator, Matt Snow, always had a
22 full vehicle as well. And he worked under me.

23 188 Q. So did you get priority in terms
24 of who might be in the pool to get in your car, your
25 vehicle --

March 21, 2019

1 A. No.

2 189 Q. -- at any particular time?

3 A. No. Joel Stewart, our regional,
4 dictated that. Like, in regards to new agents that
5 were being hired, he would dictate and determine which
6 crew coordinator in the office was getting them. And
7 he would split them up.

8 190 Q. Well, I think what I am hearing
9 from you, though, is it would be dependent on who had
10 some room in their vehicle.

11 A. Not really. We had to make room.
12 So there were times when Joel would pressure me to
13 rent additional vehicles and have -- and he would have
14 other people in the office drive those vehicles to
15 make sure that agents were getting to and from area.
16 At one point I had a huge, white utility van that I
17 had to, like, rent for a week, because there were so
18 many new agents, to ensure that people were getting to
19 and from field. So we had to obviously operate with
20 that. Right?

21 191 Q. Say within your seven-person
22 vehicle, though, on any sort of weekly basis, how many
23 agents would have been newly badged?

24 A. It again could have varied. Some
25 of our more veteran agents, if you will, could have --

Page 47

1 they always were paired up with a veteran agent and a
2 new agent. So it was always pretty balanced between
3 Matt Snow, who was my assistant crew coordinator, and
4 myself, the vehicle.

5 192 Q. So half then could be --

6 A. Could have been. Could have
7 been.

8 193 Q. And then if you had --

9 A. Sometimes maybe one or two.

10 194 Q. So if you had a

11 seven-person vehicle, if half of them, let's say four
12 of them, were new, you couldn't, yourself, train four
13 new people in the field at the same time?

14 A. There were times that, when I
15 went to the door, I had two, sometimes three, agents
16 with me, shadowing. But, again, that was the whole
17 purpose of what Joel did, is he would pair up, like I
18 said, a more veteran agent with a new agent on bigger
19 influx of new agents, if you will. On those
20 particular days, that is how it would operate. So
21 that way other individuals could help as well. And
22 those were people who were, you know, trying to
23 obviously become an assistant crew coordinator or
24 something like that.

25 195 Q. Mr. Teixeira, in his affidavit,

March 21, 2019

1 provides a statistic that -- and I know you have read
2 Mr. Teixeira's affidavit, because you have responded
3 to it.

4 A. I have.

5 196 Q. Where he says that some
6 sixty-nine percent of new agents never make a sale.
7 Was that consistent with your experience, roughly, at
8 your Kitchener office?

9 A. I honestly don't know. I
10 obviously didn't do statistics of new agents and their
11 deals.

12 197 Q. So what he was saying is roughly
13 seven in ten new agents never did a deal. Is it
14 possible for you, in your experience, to tell me that
15 the people who got into your car and went in the
16 field -- is that roughly your experience?

17 A. Again, I am not sure of the exact
18 statistic. So I don't want to say yes or no --

19 198 Q. I am not trying to hold you to a
20 statistic, but I mean --

21 MR. ROSENFELD: And don't speculate if
22 you don't know.

23 THE WITNESS: Yeah. That is what I
24 mean. I don't want to speculate and give you any
25 false answers. So I am not sure.

1 MR. MARTIN:

2 199 Q. I am not giving a hard number. I
3 am saying that what he would be saying is that more,
4 than less, wouldn't even do a deal, of people who
5 someone like yourself would take into the field for
6 the first time.

7 A. Well, again, like I said, I don't
8 want to speculate. I can personally say, for myself,
9 I was, again, a very strong sales agent. So I never
10 wrote one zero, the entire time I was there. And I
11 worked six or seven days a week, for 14 months
12 straight.

13 200 Q. I don't know what you mean by
14 "never wrote one zero".

15 A. So a zero would be you go into
16 the field and you don't write a deal. Right? Because
17 we had to track and report our deals each day to our
18 regional, Joel Stewart.

19 201 Q. So if you went into the field,
20 you would write a deal?

21 A. I was number one in the company.
22 Yes. So that is correct.

23 202 Q. Okay. I think I get what you
24 mean. You didn't have a day where you didn't go into
25 the field --

- 1 A. You got it.
- 2 203 Q. -- and not write a deal?
- 3 A. I wrote deals every single day I
- 4 worked.
- 5 204 Q. Okay.
- 6 A. And usually an average of four or
- 7 five plus.
- 8 205 Q. But that certainly wasn't
- 9 universally the experience. Was it?
- 10 A. Absolutely not. Like Richard
- 11 Teixeira says, I was an anomaly. Right? It refers to
- 12 just that.
- 13 206 Q. And if more weren't writing deals
- 14 than were, obviously this is a -- it is a tough job,
- 15 door-to-door sales?
- 16 A. The hardest. Direct sales is the
- 17 hardest sales role you can be in.
- 18 207 Q. And many people -- would you
- 19 agree with me it is an entry-level sales position?
- 20 A. For sure.
- 21 208 Q. Many of the people that you came
- 22 in contact with had no sales experience whatsoever?
- 23 A. None of us did, to be honest,
- 24 when we started. So that is correct.
- 25 209 Q. Many of the people that you would

1 encounter who would go in the field -- this is my
2 term. I am seeing if you would adopt it. They just
3 couldn't cut it in sales?

4 A. Correct.

5 210 Q. It wasn't for them. Correct?

6 A. Correct.

7 211 Q. They might give it a try, but
8 quickly realize that they just couldn't do it?

9 A. Correct. Correct.

10 212 Q. And they may not come back the
11 next day?

12 A. Correct.

13 213 Q. I gather there must be many, many
14 people that would have got in your van on one day that
15 you would never see again?

16 A. It did happen on -- like I said,
17 Thursdays was in-field shadowing, so there were
18 definitely numerous agents that did not come back the
19 Friday. On average, I would say within a week or so
20 was when a lot of people, as new agents -- if they
21 were going to leave or what have you, it was usually
22 within the first week. Some was within a month.
23 Right?

24 214 Q. And fair to say, from your
25 experience - and you were there 13 months. A very

1 large turnover of what you just described?

2 A. Correct. Absolutely.

3 215 Q. And in the Kitchener office --
4 and you only ever worked at the Kitchener office?

5 A. Correct.

6 216 Q. So you can only speak to the
7 Kitchener office, its experience?

8 A. Correct. There was -- yeah.

9 217 Q. And am I right, throughout your
10 tenure there, that Mr. Stewart was the only regional
11 there that you dealt with?

12 A. For residential, yes. Because
13 there was a commercial outlet as well.

14 218 Q. Did you deal with commercial?

15 A. No. I was not allowed to.

16 219 Q. Okay. And you --

17 A. I had to stay in the residential
18 field.

19 220 Q. I am sorry. Were you aware of
20 any written policy of Just Energy that said you could
21 not do commercial?

22 A. I was not aware of a written
23 policy, but that is not how it operated. I received
24 an offer, actually, after a trip to Hawaii for the
25 company. In May of 2014, I had a gentleman -- which

1 is included, I believe, in my affidavit -- from Hudson
2 Energy who had approached me -- and that is obviously
3 a large-volume department -- and had asked me if I
4 would be interested in coming to Toronto to meet with
5 some of the individuals from Hudson Energy to
6 potentially see if that avenue would be better suited
7 for me. Because they said, "You are doing so well in
8 residential. There is a lot more commissions to be
9 earned in this."

10 I brought it to Joel Stewart and asked
11 him for some time off to go and be able to set up this
12 appointment and meet, just to obviously see about this
13 opportunity, and was denied that right. So he had
14 called Dan Camirand, who was our national distributor,
15 and our national distributor was in contact with this
16 gentleman from Hudson and accused him of trying to
17 poach an agent from his office and how dare he. So I
18 was told that I was only allowed to operate and work
19 in the residential side; if I wanted to make any
20 changes, that I would have to quit; and that they
21 would not hire me back into any other role.

22 221 Q. That was...

23 A. That was Joel Stewart and Dan
24 Camirand. So our regional and national.

25 222 Q. Joel Stewart --

- 1 A. And Dan Camirand, our national
2 distributor. Yes.
- 3 223 Q. But, again, my point was you only
4 ever worked in Kitchener. Correct?
- 5 A. Correct.
- 6 224 Q. And only under the regional Joel
7 Stewart?
- 8 A. Correct.
- 9 MR. ROSENFELD: Sorry. Just worked in
10 Kitchener is out of the Kitchener office?
- 11 MR. MARTIN: Out of the Kitchener
12 office, yes.
- 13 THE WITNESS: Yeah. The Kitchener
14 residential office.
- 15 MR. MARTIN:
- 16 225 Q. The Kitchener residential office?
17 A. That is what it is called. Yes.
18 Kitchener "Resi" was its name.
- 19 226 Q. And do you know Brian Marsellus?
20 A. I have met Brian Marsellus, yes,
21 on a few different occasions.
- 22 227 Q. Okay. And I gather you have read
23 his affidavit?
24 A. I have.
- 25 228 Q. Okay. And you never worked out

1 of any of Brian Marsellus's offices?

2 A. I did not.

3 229 Q. So you can't speak to what the
4 structure and/or operations of those offices may be?

5 A. I knew a gentleman who was
6 working with Brian Marsellus --

7 230 Q. I am talking about you
8 personally.

9 MR. ROSENFELD: You just asked for
10 information, which she is providing.

11 THE WITNESS: Yeah. And I am
12 providing it. So I am explaining to you that I had a
13 friend, a gentleman at Just Energy, who did actually
14 work -- he was the regional at the commercial
15 department, if you will, out of the Kitchener office,
16 named Jamie Bradstock. He worked with Brian Marsellus
17 and even, just a couple of years ago, approached me,
18 and I went to Toronto and had a meeting with Brian
19 Marsellus because he wanted me to work with his office
20 and et cetera, et cetera. So, again, I was aware of
21 some of ways that they operate from what Brian
22 Marsellus had said, and the impressions, obviously, I
23 received from how his operation worked. It was all
24 standardized.

25 231 Q. Right. But you have read Brian

March 21, 2019

1 Marsellus's affidavit in this case?

2 A. I have read them. Read his.

3 232 Q. And you don't dispute how he
4 operates, as he describes it, his office, which is the
5 --

6 MR. ROSENFELD: Do you want to go
7 through the affidavit?

8 MR. MARTIN: I am happy to do it.

9 233 Q. But the Yorkdale office, it is
10 called.

11 MS. REKLITIS: Fairview.

12 MR. MARTIN: Sorry.

13 234 Q. Fairview. Yeah.

14 A. And are we talking about Fairview
15 Calgary, or Fairview Toronto?

16 235 Q. Toronto.

17 A. Fairview Toronto. Again, I can't
18 argue with, I guess -- like, what are you --

19 MR. ROSENFELD: I am sorry. Just hold
20 on one second.

21 THE WITNESS: Sure.

22 MR. ROSENFELD: Are you asking her if
23 she disagrees with the statements as to how the
24 Fairview office worked?

25

1 MR. MARTIN:

2 236 Q. Yes. And if she had any ability
3 to do that, because I didn't understand her to say she
4 ever worked anywhere else than the Kitchener
5 residential office.

6 MR. ROSENFELD: Are there particular
7 paragraphs you would like her to reference in this?
8 It is a fairly long affidavit talking about what is
9 happening in the Fairview offices, so if --

10 MR. MARTIN: Well, she --

11 MR. ROSENFELD: Sorry.

12 MR. MARTIN: Go ahead.

13 MR. ROSENFELD: If you want her to
14 review the whole affidavit right now, or particular
15 paragraphs, and ask questions about that, I am happy
16 to do that.

17 MR. MARTIN:

18 237 Q. Well, my point simply was she
19 noted in her affidavit, her reply affidavit, her
20 second affidavit, that she had read the Marsellus
21 affidavit. She makes no comment disputing anything
22 that he says in that regard. And that is really what
23 I was asking about, because I thought her evidence was
24 she only worked at Kitchener residential, and wouldn't
25 then have an understanding of the day-to-day

March 21, 2019

1 operations, let's say, of --

2 A. You said Fairview Toronto.

3 238 Q. -- Fairview Toronto.

4 A. Well, I can definitely tell you
5 that there were agents that worked for Brian Marsellus
6 out of Fairview Calgary who were under --

7 239 Q. Fairview Toronto.

8 A. The operation is the exact same.
9 Every office would have been run the exact same under
10 Brian Marsellus. Just like every office was run the
11 exact same under Dan Camirand, our national, or other
12 nationals as well. It was the exact same structure at
13 every office.

14 240 Q. But you don't know that, because
15 you didn't work in the other offices.

16 A. Again, I had contact --

17 MR. ROSENFELD: We were just talking
18 about Mr. Marsellus describing the structure, so why
19 don't we go through his affidavit and you can ask
20 whether she has any information to suggest that this
21 is not how it was run?

22 MR. MARTIN:

23 241 Q. Well, no. I mean, she didn't
24 respond to it in her affidavit. She had the
25 opportunity to do so, and she hasn't done so. I was

Page 59

1 just trying to get a sense of where she operated.

2 And I understand your experience was
3 only Kitchener --

4 A. Correct. But we --

5 242 Q. -- and only residential?

6 A. Absolutely. But, again, we had,
7 as agents -- and myself included. I made
8 relationships and friendships with people, whether
9 regionals, whether crew coordinators, at other
10 offices. And like I am saying, there were people that
11 worked for Brian Marsellus at Fairview Calgary, so one
12 of his offices, and they were both, two of them, crew
13 coordinators out there. And we talked on a very
14 regular basis, and they operated in the exact same
15 capacity. So the, obviously, method or structure of
16 how Brian operated, I was obviously kind of given a
17 sense of that from my correspondence with agents that
18 worked for him.

19 243 Q. So I was talking about -- coming
20 back to your management of a team and your manager's
21 role.

22 A. Sure.

23 244 Q. Did that include -- because I
24 didn't hear this. Were you responsible for acquiring
25 permits, if they were required?

1 A. No.

2 245 Q. You personally.

3 A. No. Joel Stewart, our regional,
4 the places that we worked -- and I can list them off.
5 Whether it was Chatham-Kent, Thunder Bay, et cetera,
6 Woodstock, that we should have had permits for, he
7 always sent us in without permits. Because he said no
8 agent would want to pay for them, and he wasn't paying
9 for them. So we were always pressured to go in and
10 try to be as discreet as possible and work in those
11 areas that required permits. Not very compliant.

12 246 Q. And when we talked about -- we
13 talked about issues about how there was no tax
14 withholdings, on your cheques, for your commissions.
15 Correct?

16 A. Correct.

17 247 Q. And I would like you to produce
18 your tax returns, if you could, for the relevant
19 years, which is 2003 -- sorry. 2013, 2014 and 2015.

20 MR. ROSENFELD: For what purpose?

21 MR. MARTIN:

22 248 Q. I would like to see how you
23 characterized your remuneration for those periods of
24 time.

25 REF MR. ROSENFELD: No. We won't do that.

1 REF THE WITNESS: No.

2 MR. MARTIN:

3 249 Q. Did you have a GST number?

4 A. No. I did not. I did not

5 incorporate.

6 250 Q. Well, I don't think you need a
7 GST number to incorporate. But did you not have a GST
8 number?

9 MR. ROSENFELD: She just answered the
10 question.

11 THE WITNESS: No.

12 MR. MARTIN: Well, she said she didn't
13 incorporate.

14 251 Q. Did you have a GST number?

15 MR. ROSENFELD: She said no and --

16 THE WITNESS: No GST number. No
17 incorporation. No nothing.

18 MR. MARTIN:

19 252 Q. We will come to it a bit later,
20 but just one little tax point. The statement you
21 would get regarding your annual remuneration from Just
22 Energy would be a T4A. Correct?

23 A. Correct.

24 253 Q. Not a T4?

25 A. No. I believe T4A. Correct.

1 254 Q. All right. And did you know that
2 was a distinction between self-employed earnings
3 versus employment earnings?

4 A. I didn't know that at the time,
5 no.

6 255 Q. Are you aware of that now?

7 A. I am now, yes, thanks to my
8 accountant.

9 256 Q. The various -- oh. Your
10 accountant. So did you have an accountant to deal
11 with your taxes during, say, tax years 2013, 2014?

12 A. Correct. I did not file them
13 myself, no.

14 257 Q. And I gather that all of these
15 various things that you say you were paying for with
16 respect to your team and your role as a crew
17 coordinator -- I gather you expensed all of that for
18 income tax purposes?

19 A. Correct.

20 258 Q. So you got the benefit of
21 expensing those for tax purposes?

22 A. It is not really a benefit. It
23 could have been more money in my pocket, versus over
24 \$70,000 in expenses.

25 259 Q. Sorry. Say that again.

1 A. I said I had over \$70,000 worth
2 of expenses that year. And that would have been more
3 beneficial in my pocket, would it not have, versus
4 elsewhere?

5 260 Q. Well, no. Versus not earning
6 \$200,000?

7 A. It is also my sales ability,
8 though. Right?

9 261 Q. No. It is not.

10 A. Oh. Okay.

11 MR. ROSENFELD: I don't know if that
12 is a comment by Mr. Martin. I am not sure there was a
13 question, so don't worry about it.

14 MR. MARTIN:

15 262 Q. And you just noted that -- I
16 gather you had been at various locales over the 13
17 months you worked in sales in Ontario. Is that fair?

18 A. So locales as in cities on a
19 weekly basis to work, to market?

20 263 Q. On any basis. Yes. Yes. You
21 saw most of Ontario?

22 A. Correct.

23 264 Q. Thunder Bay?

24 A. We did go up there.

25 265 Q. Kingston?

1 A. Correct.

2 266 Q. Windsor?

3 A. Correct.

4 267 Q. Hamilton?

5 A. On a very regular basis.

6 268 Q. And I gather Thunder Bay would be
7 a road trip?

8 A. It was. It was scheduled for a
9 two-week push. We did not have permits, and ended up
10 being kicked out quite quickly and had to finish our
11 two-week push week elsewhere.

12 269 Q. Did you do anything else in
13 Thunder Bay?

14 A. I did. Yeah.

15 270 Q. Windsor would be a road trip?

16 A. Windsor was a mandatory push
17 week, yes.

18 271 Q. A road trip? Do you understand
19 what the phrase "road trip" meant?

20 A. Well, we called them push weeks.
21 That is what they were considered via Darren Pritchett
22 or Richard Teixeira on their weekly Monday calls. So
23 we called it push weeks, but road trips if you would
24 like.

25 They were mandatory, yes, for those

1 locations. On a regular, weekly basis, Joel would
2 dictate and pick the areas that we worked. And every
3 Monday we would come into the office, as crew
4 coordinators, and he would let us know what area we
5 were going to be marketing in that particular week,
6 and would print us off maps that he obviously had done
7 screenshots from Google Maps. And those were the maps
8 that we were given, as per my exhibit, that were
9 dictated as to which agent would be working -- which
10 team of agents would be working each particular area.

11 272 Q. If you went into an area and you,
12 I gather, as a very experienced salesperson, decided
13 it wasn't a very lucrative area, where would you go?

14 A. We weren't allowed to change
15 areas. We had to ask Joel. And there are images and
16 examples in my exhibit where we had to specifically
17 ask him for a new area. And he would obviously ask us
18 and find out why we were wanting, if we were wanting,
19 to change area, and he would either approve it or deny
20 it.

21 273 Q. Isn't it fair to say, though,
22 that as the sales agent on the ground, that you
23 probably had better market intelligence, than a Joel
24 Stewart would have, of a particular area?

25 A. No. Because the Just Energy app

March 21, 2019

1 that we operate off of -- which again you can see, in
2 my exhibits, examples of it. That "dispositioning"
3 via the Just Energy app was mandatory, whereas I
4 preferred to work off of paper. And Joel specifically
5 says that it comes from head office that we have to
6 disposition off of the Just Energy app. That is what
7 was obviously referred to in the affidavits from your
8 witnesses as market intelligence that they received.

9 This app would basically monitor and
10 record the sales agents' different dispositions. So
11 whether it was a do not solicit, whether it was a no
12 home, whether it was a call back, whether it was a not
13 interested, we would have to mark each house on a
14 particular street as such. And that was the market
15 intelligence, as they worded it, that they received.
16 And it was strictly to monitor and be able to track
17 sales agents, to know where they were when they were
18 "dispositioning." And again that is shown in the
19 exhibits, where he will continually ask me, "What is
20 so and so doing? I haven't seen any dispositions for
21 20 minutes or so." It was strictly for monitoring
22 purposes.

23 274 Q. I was asking -- it wasn't
24 anything about that.

25 A. Oh.

1 275 Q. I was asking about your ability,
2 on the ground, to have your own intelligence as to
3 what is working and what is not working in a
4 particular area or not, and then suggesting, given
5 your need for success, to move to a different area.

6 A. Again, we were not allowed to.
7 The majority of the time, I was training and working
8 with new agents, so Joel always stated that I had to
9 lead by example, as illustrated in text messages in
10 the exhibits. So we had to work in that particular
11 area. And I am just trying to explain to you, because
12 when agents disposition, Joel was getting it
13 simultaneously as us working in-field, and he
14 monitored that. So he knew exactly what was going on
15 with each agent: Whether it was do not solicit, not
16 interested. He could see everything.

17 276 Q. We are talking at cross purposes.
18 That is not what I am talking about.

19 Joel -- and don't keep tapping your
20 lawyer. Okay? Answer the question --

21 MR. ROSENFELD: Don't tell her what
22 she can or cannot do, talking to me, please, Mr.
23 Martin.

24 MR. MARTIN: Well, she shouldn't be
25 talking offline with you. I don't know why she is

March 21, 2019

1 doing that.

2 MR. ROSENFELD: I don't know why we
3 keep talking about telling her what to do or not to
4 do. Please ask questions and get answers.

5 THE WITNESS: It is Just Energy all
6 over again. The same kind of bullying. Geez.

7 MR. MARTIN:

8 277 Q. Were you as responsive when you
9 were with Just Energy as well?

10 A. Pardon me?

11 MR. ROSENFELD: Were you responsive to
12 bullying? Is that what you are saying?

13 MR. MARTIN:

14 278 Q. Were you as unresponsive with
15 them as well?

16 MR. ROSENFELD: It doesn't seem like
17 she is being unresponsive.

18 THE WITNESS: I am being very
19 responsible.

20 MR. MARTIN:

21 279 Q. Can we get back on the track
22 here, please?

23 Someone like a Mr. Stewart.

24 A. Correct.

25 280 Q. He does better when you do

1 better?

2 A. Absolutely. He looks better.

3 Right?

4 281 Q. No. He does better financially
5 when you do better?

6 A. For sure. And looks better. So
7 more opportunity would come his way when executives
8 such as Richard Teixeira -- or the majority of the
9 time I was the company, it was Darren Pritchett. So
10 they had certain expectations each office, obviously,
11 was supposed to be hitting.

12 282 Q. And if a particular area that you
13 were working that particular day wasn't a very
14 lucrative area, and you were suggesting to move to a
15 different area, it would certainly be in Mr. Stewart's
16 best interests to allow you to do that?

17 A. Again, he --

18 MR. ROSENFELD: Yeah. Just answer Mr.
19 Martin's questions.

20 THE WITNESS: Okay. It would have.
21 But, again, we were not allowed to. Right? We had to
22 work that particular area, in regards to conserving
23 territory, so we could work a particular city for a
24 week. That was the mentality, and that was how we had
25 to operate.

March 21, 2019

1 MR. MARTIN:

2 283 Q. So he would be acting against his
3 best interests. Is that your evidence?

4 A. I am not saying he would be
5 acting against his best interests. But I am saying
6 that is how it operated.

7 284 Q. Well, he would be acting against
8 his financial interests, if that is the case?

9 A. He always told us that strong
10 sales agents could pull deals out of anywhere. It
11 didn't matter. And he didn't want it as we or certain
12 agents -- or he would actually use the terminology
13 cherry picking. He didn't, obviously, want or
14 encourage that. He wanted agents to work the
15 particular areas that they were given each day.

16 MR. ROSENFELD: If I may, did he take
17 into consideration your information? Mr. Stewart. I
18 think that is what Mr. Martin is getting at.

19 THE WITNESS: If he took it into
20 consideration, as I said, most of the time we, as
21 agents, would show up in the field. That was the area
22 we were given. That is the area we worked.

23 MR. MARTIN:

24 285 Q. So even though you were the very
25 best agent...

1 A. Yes.

2 286 Q. You agree with that? You seem
3 rather proud of that. Correct?

4 A. Absolutely. I worked my butt off
5 to achieve what I did there. And I will always be
6 proud of that.

7 287 Q. And so if your advice to Mr.
8 Stewart was, "We have got to move to another area," he
9 would ignore that advice?

10 A. Absolutely. I would say that to
11 be very factual and true. As you can see in the
12 exhibits, there were times that I had to ask,
13 obviously, for permission for a new area.

14 There were times between Ryan Clarkson
15 and I, our conversation about dispositions, obviously,
16 on the Just Energy app where it literally was the
17 majority of the street was red, which is either not
18 interested or do not solicit. And it obviously
19 showed, as illustrated, that it had been recently
20 worked by people from Just Energy, and we obviously
21 had to work it.

22 288 Q. Or he was giving you new areas to
23 work?

24 A. Well, at the end of the day,
25 considering, on a weekly basis -- not on a push week,

March 21, 2019

1 but on a weekly work basis, we travelled to area
2 usually, on average, within an hour to an hour and a
3 half, tops, in driving distance from the Kitchener
4 residential office. There are only so many areas you
5 can work. So we constantly had to work over either
6 ourselves or other agents from the office, the
7 Cambridge office. Because they are in the same boat.
8 Right? So you had to pull deals out and make it
9 happen.

10 289 Q. Right. But you are asking him
11 for his market intelligence. You are saying to him,
12 "Joel, this area isn't working. Do you, in your
13 experience, have another suggestion where we should
14 move next?" That frequently happened. Did it not?

15 A. Whether it was his market
16 intelligence or, again, because he was the one that --
17 to us, it was not about his market intelligence.

18 MR. ROSENFELD: I think the question
19 was: Did you ask him, based on his experience, where
20 you should go next?

21 THE WITNESS: I wouldn't say based on
22 his experience. It was based on the fact that he
23 picked --

24 MR. ROSENFELD: No, no. Again, did
25 you ask him where to go next, based on his information

1 --

2 THE WITNESS: Seldomly. But yes. And
3 it was based, I would say, on the fact that he
4 dictated area and knew where the agents on both teams
5 were working. So it was to make sure that, "Okay.
6 This agent is not working --"

7 MR. MARTIN:

8 290 Q. So he was using marketing
9 intelligence to assist you --

10 A. Sure. If you want to call it
11 market intelligence. Sure.

12 291 Q. To assist you to do better.
13 Correct?

14 A. I would say not to do better.
15 But, yeah, to work. To have area to knock doors.

16 292 Q. By "do better," I mean make more
17 sales.

18 A. Again, I wouldn't say make more
19 sales. But, again, it is based on our individual
20 sales ability. Right? I am cautious. Because,
21 again, based on turnover, like you have already
22 brought up and discussed, a lot of these agents worked
23 the exact same areas and the same streets as I did,
24 and they got zeros or they left or what have you.
25 Right? So I just want to clarify and make sure that

1 is getting across correctly. Honestly, it didn't
2 matter where you worked. You had to --

3 MR. ROSENFELD: Just wait for
4 questions. Questions and then answers.

5 THE WITNESS: Sure.

6 MR. MARTIN:

7 293 Q. So I gather that you would work
8 on Sundays? You personally.

9 A. Personally, me? Obviously
10 Sundays on the mandatory push weeks. Yes. We had to
11 work. If goals and targets were not hit on a
12 Saturday, Joel pressured agents to work on Sundays to
13 meet their goals.

14 MR. ROSENFELD: You. The question is
15 you.

16 MR. MARTIN:

17 294 Q. You. You.

18 A. Me? As I said, I did work
19 Sundays. Yes. And I am explaining.

20 295 Q. And sometimes you would work a
21 number of Sundays in a row?

22 A. Yeah. If we were pressured and
23 manipulated to, yes.

24 296 Q. You. You, please.

25 A. Well, I never just went out

1 myself. Sorry.

2 297 Q. I am sorry?

3 A. I said I never just went out and
4 worked, myself. It was always obviously with agents
5 on the team. So I say "we" because there was more
6 than just myself. Because, you know, especially --

7 298 Q. But on a Sunday, I am sure there
8 were lots of agents who didn't go out on a Sunday?

9 A. There were some. But there were
10 others that, yes, we had to.

11 299 Q. Well, not had to. I mean, there
12 were some who didn't go out because, as a matter of
13 choice, they chose not to go out on a Sunday?

14 A. Not chose not to. It is if they
15 hit their goals. Because myself, for example, as a
16 crew coordinator, I always received extra pressure
17 that if there were agents on my team who did not meet
18 their goals -- I always met my goals on a weekly
19 basis. We were pressured and had to take them out
20 into area so that they could obviously write and get
21 as close to their goal, their weekly goal, as
22 possible. And then we had to work as well. And,
23 again, on push weeks we had to always work Sundays.
24 It was Monday to Sunday. It was mandatory.

25 300 Q. So you would take Saturday off?

1 A. No.

2 301 Q. You said Monday to Sunday.

3 A. Correct. Monday, Tuesday,
4 Wednesday, Thursday, Friday, Saturday, Sunday. Seven
5 days straight.

6 302 Q. Why would some agents not go out
7 on a Sunday?

8 A. As I just explained, if it was a
9 regular week, if agents, as a regular agent, had met
10 their weekly goal that Joel had set for them, et
11 cetera, they didn't have to go out, if you will. They
12 did not go out on a Sunday.

13 For those that did not meet their
14 goal, their weekly six-day goal, they were pressured
15 and forced to go out on a Sunday and work, like I
16 explained.

17 And again, push weeks, every agent
18 worked a Sunday. Obviously we had to. So whether you
19 hit your goal earlier or not, you had to work.

20 303 Q. So if I was an agent who hit my
21 goal and I decided I wasn't going to go out that day
22 or the next day, I will wait until the next week. Is
23 that fair?

24 A. Sorry. Can you rephrase that?

25 304 Q. If I, as an agent, had met my

1 particular goal I set for the week, if I had met it,
2 if I was content with that, I might not go out on a
3 weekend?

4 A. That is incorrect. You still had
5 to the work six days a week no matter what. The only
6 time, as I said, was Sunday off if an agent had met
7 their goal. If not, you are working. And I always
8 met my weekly goals, and I always had to work. So I
9 never got time off.

10 305 Q. But for you, I gather, the way
11 you have described it, it wasn't so much a goal as you
12 wanted to keep selling?

13 A. No. I continually, with Joel,
14 would set weekly goals on our Monday morning meetings,
15 our mandatory meetings, and he would always push me
16 for more deals. Right? A bleed-the-stone-dry
17 mentality. Get as much out of these agents as we can.
18 So it was always pressured. "You are working. You
19 are working." There was tonnes of times I would have
20 loved off. For example, my father passed away. I
21 would have loved time off. I was not given it.

22 306 Q. Well, I am told you were in fact
23 away for your father.

24 A. One day.

25 307 Q. I was told three days.

1 A. Three days?

2 308 Q. Yes.

3 A. Incorrect. I was given one. I
4 was on a two-week push week, just to clarify so you
5 understand, in December of 2013. He was sick. He was
6 dying. I was pressured and bullied into going on a
7 two-week push week up to North Bay and Sudbury. And I
8 obviously received the news the Saturday. I had
9 worked for 13 days straight and wanted to come home
10 the day early on the Sunday and was bullied,
11 pressured, threatened, harassed to, to take that time
12 off.

13 In January of 2014, when my family did
14 the celebration of life, the end of January, we again
15 were on a mandatory push week in Chatham and I had
16 asked for some time off to obviously come back for the
17 celebration of life. I again faced the same kind of
18 treatment: Bullying, harassment, threats. I left the
19 Saturday, so a day early off of push week, to come
20 home, because that was the only time I was given. I
21 had to drive home that morning to be at the
22 celebration of life by noon. And then I was back
23 working.

24 309 Q. So if you felt so harassed and
25 pressured and bullied, why did you stay?

1 A. Why? Because I was doing so
2 well. I was making money and I worked really hard. I
3 believed what I was being told about, you know, "Suck
4 it up. You work hard, you are going to receive a
5 promotion. You know, you are making a name for
6 yourself. You are going to, you know, one day be
7 promoted to a regional distributor. You know,
8 potentially, one day, a national distributor." And I
9 bought into it. It was a lot of lies and smoke and
10 mirrors.

11 310 Q. All right. So what I am hearing,
12 though, in that is that you were phenomenally
13 successful and made a lot of money. Correct?

14 A. Correct.

15 311 Q. And you liked the money, of
16 course? I mean, human nature. Of course.

17 A. Who doesn't? Right?

18 MR. ROSENFELD: That is a question. I
19 guess it is a question. Yes.

20 THE WITNESS: Absolutely. That is
21 correct. Who doesn't like to get paid. Right? You
22 have got to live.

23 MR. MARTIN:

24 312 Q. Right. And the type of work this
25 was, was the more doors you successfully knock on, the

1 better you can be?

2 A. No.

3 313 Q. The more doors a Katlyn Schwantz
4 knocks on, given, I gather, your skill-set, the better
5 you successfully can be?

6 A. Incorrect. And I will clarify
7 for you. When I started as an agent, I was knocking
8 on over 300 doors a day, because I didn't have the
9 same level of skill-set. When I obviously grew my
10 skill-set, I could pull -- and that would basically be
11 writing three, maybe four, deals a day, doing those
12 numbers: 300, 330 doors a day. When I improved my
13 skill-set, then I could knock on 40, 45 doors in a
14 given day and write five, six deals, because my
15 skill-set was stronger. So I just wanted to clarify.
16 It is not how many doors you knock. It is your
17 skill-set and your ability to objection-handle and
18 obviously make a sale.

19 314 Q. But by the same token, if you
20 don't knock, you don't make a sale?

21 A. Correct.

22 315 Q. If I don't go out on a Saturday,
23 I don't make any sales. Correct?

24 A. Correct. If you are sitting at
25 home, you are obviously not going to make a sale.

1 Right?

2 316 Q. Same if I don't go out on a
3 Saturday or go out on a Sunday. Right? Or if I only
4 go out in the morning, and I don't go in the
5 afternoon. I only make so many sales. Correct?

6 A. You can only knock for so many
7 hours.

8 317 Q. Right. So the more doors you
9 knock on --

10 A. It increases your chances of
11 getting deals --

12 318 Q. Exactly.

13 A. -- if you are a weaker agent,
14 yes.

15 319 Q. And the better agents can be more
16 successful with fewer door knocks is what you are
17 saying. Correct?

18 A. Correct. But, again, it was the
19 same mandatory hours, just to be clear.

20 320 Q. Well, so you say.

21 A. So we all say.

22 MR. ROSENFELD: She just did.

23 THE WITNESS: I just did. Yes.

24 Correct.

25 MR. ROSENFELD: You keep saying, "So

1 you say." Is that a question, or just a comment?

2 MR. MARTIN: Well, no. She says that
3 because --

4 MR. ROSENFELD: If she says it, that
5 is her evidence. In her affidavit --

6 MR. MARTIN:

7 321 Q. It is quite inconsistent with
8 what the evidence is from Just Energy.

9 A. Yeah. In my affidavit and under
10 oath right now, it was mandatory to knock on a weekly
11 basis of 1:00 to 9:00. We had to be in-field
12 knocking.

13 And just to clarify as well, on push
14 weeks that were mandatory, we obviously were in-field
15 knocking from 10:00 a.m. to 9:00 p.m. from the Monday
16 to Sunday.

17 322 Q. I understand your evidence. I
18 understand. I have read your affidavits. Thank you.

19 A. And just --

20 323 Q. No, no. Hey. Hey. There is no
21 question.

22 MR. ROSENFELD: We will just do
23 questions and answers.

24 MR. MARTIN:

25 324 Q. Wait for the question. Okay?

1 A. Got you, Mr. Martin.

2 325 Q. Do you have that?

3 MR. ROSENFELD: Sorry. We do have it,
4 Mr. Martin. Thank you again.

5 MR. MARTIN:

6 326 Q. And just to bring it home again,
7 as the very best agent, by your own admission, there
8 would be no interest in Mr. Stewart wanting in any way
9 to disrupt your ability to knock on doors, because it
10 meant a tremendous reward for him, too, financially.
11 Correct?

12 A. The more days we worked, the more
13 he made money. Yeah. Or should I say the more deals
14 we --

15 327 Q. And there would be no reason for
16 him to even consider terminating the very best
17 performer in the company. Correct?

18 A. There are threats and, as you saw
19 -- obviously, as you can see in the attached messages
20 in my exhibit about threats and kind of bullying and
21 things of that nature. But, again, I resigned from
22 the company because I had enough and I wasn't seeing
23 the promise, or the opportunity that I had been
24 promised, and I decided to move on to something else.
25 So I resigned. I walked away from it, not being

March 21, 2019

1 terminated.

2 328 Q. And just on that, you weren't
3 terminated. Correct? Right?

4 A. Correct. Like I said, I
5 resigned. I quit. Yeah.

6 329 Q. You just walked away?

7 A. No. I quit. I gave my notice
8 and I spoke with Dan Camirand on the phone, as well as
9 our national distributor, as well as Joel Stewart, and
10 let me them know that I would not be working for them
11 anymore. So I gave them my, if you will, resignation.
12 Yes.

13 330 Q. Well, you advised them you just
14 weren't going to work anymore?

15 A. I didn't advise -- well, I gave
16 them my resignation that I would not be working with
17 their office anymore. And that was to the two of
18 them.

19 331 Q. The people that worked for you on
20 your team. They wouldn't fill out sign-in sheets at
21 the office on a regular basis?

22 A. They wouldn't, sorry, fill out?

23 332 Q. Fill in sign-in sheets at the
24 office on a regular basis.

25 A. No. Their sign-in sheet, if you

1 will, was the mandatory meetings.

2 333 Q. They weren't keeping work
3 diaries, if you will?

4 MR. ROSENFELD: Whom?

5 MR. MARTIN:

6 334 Q. The people on your team.

7 A. And work diaries as in?

8 335 Q. As in records of doors knocked or
9 sales sheets or anything like that.

10 A. No. The Just Energy app
11 recorded, obviously, all of that. And then head
12 office obviously had all of that.

13 336 Q. Was everyone in your team on the
14 iPad?

15 A. It was mandatory. We had to be,
16 yes.

17 337 Q. And so everyone on your team had
18 an iPad?

19 A. Everybody in the entire office.
20 My team. Or Ryan Clarkson's. Derek Wagler's.

21 338 Q. Did each individual purchase
22 their own iPad?

23 A. The only people that received an
24 iPad via Joel Stewart were people that were new
25 working in the office. But once you had been there

1 for, on average, about three weeks, give or take, to a
2 month tops, then, yes, you were - you had started to
3 receive a pay cheque, a weekly pay cheque, and you
4 were pressured to purchase your own iPad, and then
5 obviously your own SIM card, and pay for that plan to
6 be able to work in fields. Because, again, as per
7 messages in my exhibit, it was mandatory via head
8 office to disposition and work, obviously, on the iPad
9 system.

10 339 Q. We were talking about the iPads.

11 Okay. So your evidence is --

12 A. I was just explaining it.

13 340 Q. No. You weren't. Your evidence
14 is that the team people had to -- to perform their
15 function, they had to purchase an iPad?

16 A. Correct. As I explained.

17 341 Q. So it was an expense of the
18 salesperson?

19 A. Out of pocket. Correct.

20 342 Q. And I gather whatever data plan
21 that they were using, they had to pay for as well?

22 A. As I said, yes.

23 343 Q. And you did, yourself. Correct?

24 A. Correct. And I also had to pay
25 for numerous other agents, as well, on my team. For

1 new agents. Yeah.

2 344 Q. But you expensed that for tax
3 purposes?

4 A. Correct. I had upwards of five
5 or six different SIM cards for iPads operating on my
6 plan. Again, as mandated by Joel.

7 345 Q. Did any of your team members
8 leave, and then come back to the work?

9 A. There was only one gentleman
10 who -- he had a problem with addiction, if you will.
11 And he did at points, if you will, go on benders, and
12 he would come back. Yes.

13 346 Q. Okay.

14 A. I just am letting you know.

15 347 Q. I understand.

16 A. I am just trying to be discrete
17 and not give names.

18 348 Q. No, no. I get that.

19 A. But the only reason why he was
20 allowed to do that is because he was a good writer.
21 So Joel allowed that because, again, it was numbers on
22 the board for the office and money for him. Right?
23 So he was on Ryan Clarkson's team, and mine.

24 349 Q. All right. So that person was
25 allowed to be on a team, and then would go away for

1 whatever purposes, personal or not, and then would
2 come back. They remained badged, I gather?

3 A. They still remained badged the
4 whole time, yes, because it would be like a day or two
5 off. That is it.

6 350 Q. And so it would be a day or two
7 off, a day or two on, for a lengthy period of time?

8 A. I can probably count on one hand
9 the number of times it happened, and he was there for
10 months. I don't exactly remember the entire time,
11 but -- the gentleman that I speak of. But that was
12 the only individual. Everybody else, we all,
13 obviously, were mandated to work the set schedule.
14 And I can count on my hand the number of times that
15 ever happened to that gentleman, so...

16 351 Q. Would you ever lose team members
17 to competitors?

18 A. To competitors? No. And
19 "competitors," sorry, just to clarify, meaning?

20 352 Q. Meaning other door-to-door sales
21 companies like Just Energy.

22 A. No. Because I know for myself,
23 based on -- okay. Never mind.

24 353 Q. Did any of your team members, to
25 your knowledge, move to other offices?

1 A. Not that I know of.

2 354 Q. Do you know Jennifer Borg?

3 A. No.

4 355 Q. And my understanding is that if
5 one was to wear Just Energy attire in the field -- and
6 I don't know whether you did or didn't. But you would
7 have to -- you would be obliged to purchase that from
8 Just Energy. Is that your understanding?

9 A. Correct. And it was mandatory to
10 wear Just Energy attire in the field. And, yes, it
11 was purchased via Just Energy.

12 356 Q. My understanding is you,
13 yourself, never purchased Just Energy clothing.

14 A. I never purchased Just Energy
15 clothing. I was given Just Energy clothing via Joel
16 Stewart.

17 357 Q. So did Joel Stewart then incur
18 that expense himself?

19 A. He was obviously given points
20 from head office on a monthly basis. As illustrated
21 in my exhibit, when it is like 2,500 points for the
22 next deal. And you could use points, as well, to
23 purchase Just Energy gear.

24 MR. ROSENFELD: Sorry. Do you know
25 how he got it? How he got it purchased or not? Joel

March 21, 2019

1 Stewart.

2 THE WITNESS: I was just explaining.

3 MR. ROSENFELD: Sorry.

4 THE WITNESS: Yeah. Using points or
5 what have you, he would purchase gear. Sometimes head
6 office -- he would get gear and give it out to us in
7 the meetings. But, again, it was mandatory and the
8 majority --

9 MR. MARTIN:

10 358 Q. So that would be an expense to
11 Joel Stewart, is what you are getting at, whether he
12 did it through points or whatever. Correct?

13 A. Because I can't say whether it
14 was his personal or not. I was under the impression
15 it was not. Right? It was by head office.

16 359 Q. But you don't know for sure?

17 A. (non-verbal response)

18 MR. ROSENFELD: Okay. You have got to
19 do a yes or no.

20 THE WITNESS: No. I guess I will say
21 no, whether it was his money or points.

22 MR. MARTIN:

23 360 Q. So we talked about your departure
24 from the sales role.

25 A. Correct.

1 361 Q. I gather from what you were
2 saying, though, that at least while things were going
3 well, you had an expectation to move up in the Just
4 Energy hierarchy, much like, say, the Joel Stewarts of
5 the world had done?

6 A. Absolutely. I bought into the
7 notion and the dangling carrot in front of my face.
8 Absolutely.

9 362 Q. Okay. So you had a goal of
10 becoming a regional and a national, or whatever.
11 Correct?

12 A. That is who I am. Yeah. With
13 whatever I do in my life, I always try to excel. For
14 sure.

15 363 Q. And would that be true, would you
16 say, of many of the people on your team?

17 A. Some, yes. And I would say some
18 no. Some were just content at being agents, because
19 they were there, obviously -- like I said, some were
20 students working just for a few months in between
21 terms at school. So not everybody had the goal of
22 being there long-term.

23 364 Q. So would you frequently have had
24 students on your team?

25 A. I did have students on my team,

1 yes.

2 365 Q. When you or any other sales agent
3 do make a sale at a door, I gather there is a
4 third-party verification process that takes place?

5 A. Correct.

6 366 Q. And do you understand that that
7 third-party verification process is a requirement of
8 government regulation?

9 A. Correct.

10 367 Q. And I understand that some
11 at-the-door sales may not get verified.

12 A. Absolutely.

13 368 Q. And that could be reasons related
14 to improper filling out of the forms?

15 A. It could be a variety of reasons.

16 369 Q. But improperly filling out the
17 form could be a reason?

18 A. It could be, along with others.

19 370 Q. The credit risk of the consumer
20 could be a consideration?

21 A. I had never heard that.

22 371 Q. Okay. But let's say you are at a
23 door and you make a sale and there needs to be a
24 verification process. As part of that process,
25 though, Just Energy couldn't change the terms of the

1 sale? Like, they couldn't, for example, change the
2 volume or the price that was negotiated by you at the
3 door?

4 A. Well, the document, once the
5 customer signed the document, of course that was their
6 agreement.

7 372 Q. Yes.

8 A. And that is what they were
9 agreeing to. So terms, et cetera. At the time when I
10 worked for Just Energy, it was \$39.99 as a fixed rate
11 for electricity supply. Obviously plus your global
12 adjustment, et cetera. Gas was \$49.99 as the JECP
13 program.

14 373 Q. All right. And the length of the
15 contract. Would that have been established at the
16 door?

17 A. Correct. It was for five years.
18 That is what they signed.

19 374 Q. And so if a deal wasn't verified,
20 it was for one of these other reasons that was
21 governed by the regulatory process. The improper
22 filling out of forms or -- what other considerations
23 would there have been, from your perspective?

24 A. Sure. So the verification
25 process was done in one of two ways. Either, "A,"

1 after we completed the call, if you will, after the
2 forms -- the contract was signed via the customer at
3 the door. They received two codes. And either the
4 customer -- again, we couldn't be there for that.
5 They would have to go in, if they had access to the
6 internet, and put in those two verification codes, and
7 that obviously confirmed their agreement and gave them
8 one month free of supply, for both electricity and
9 gas, on their first billing cycle, once it began
10 flowing. Or, two, they received a call from Just
11 Energy in ten days' time, as per the cooling off
12 regulatory period, as it was considered, as you are
13 aware. And then that is obviously when they would
14 agree to it.

15 So some customers changed their mind.
16 Some people went online and read a lot of bad press
17 regarding Just Energy, saw things on CBC Marketplace
18 about Just Energy, talked to other people and changed
19 their mind. There was a lot of reasons why
20 cancellations did occur. So yeah.

21 375 Q. And again, as you say, for
22 example, the cooling-off period is governed by
23 government regulation, allowing for people to do that,
24 to cancel their contract?

25 A. Correct. Yeah. For the

1 cooling-off period. Because it is done at the door.

2 Yes.

3 376 Q. When you would go on a road trip,
4 Joel Stewart wouldn't go on the road trip?

5 A. There was only one or only, I
6 guess, a minimal amount of times that he came. And
7 not for the full extent, but would pop in for a couple
8 of days. But the majority of the time, no. It was us
9 as crew coordinators, and then our assistant crew
10 coordinator, who would. Mandatory, obviously. We had
11 to go on the road for the push weeks as we called
12 them, and road trips as you do.

13 377 Q. Did you have an assistant crew
14 coordinator?

15 A. I did, yes. As I already said,
16 Matt Snow was his name.

17 378 Q. Okay. Anyone else?

18 A. No. Just Matt Snow.

19 379 Q. And how long was Matt Snow your
20 assistant crew coordinator?

21 A. I don't remember the exact
22 duration of the time that he worked at Just Energy, so
23 --

24 380 Q. And what would Matt Snow do for
25 you, as your assistant?

1 A. Sure. So he basically did very
2 similar things to what I did. He drove agents to and
3 from field daily, and obviously to their homes at
4 night. He was responsible for keeping in constant
5 communication with agents in his car.
6 Training/retaining agents, he obviously helped with as
7 well.

8 381 Q. He had a separate car?

9 A. Yeah. He did. As I said, he
10 bought a vehicle as well. A Dodge minivan is what he
11 had purchased, as a seven-seater, due to pressure.

12 382 Q. Was he still with Just Energy
13 when you left?

14 A. I believe he was.

15 383 Q. And did he move up to be a crew
16 coordinator?

17 A. I don't know. I can't speak on
18 what he was. I know he is not with Just Energy. He
19 resigned and left as well, and moved on to something
20 else.

21 384 Q. And you talked about goal
22 setting.

23 A. Correct.

24 385 Q. Did you personally set higher and
25 higher goals for yourself as you became more

1 experienced?

2 A. Not that I personally set higher
3 and higher goals for myself. I always tried to make
4 them very achievable and attainable for me, on a
5 weekly basis, so that I hit them. It was pressure
6 that I constantly received, as well as other agents,
7 from Joel Stewart to increase goals on a weekly basis.

8 386 Q. But you were aware that there
9 were bonus plans for performance?

10 A. "Bonus plans" meaning?

11 387 Q. Just Energy had various incentive
12 programs for sales agents. Correct?

13 A. If you could clarify what you
14 mean by that, just so I am aware.

15 388 Q. Well, trips, for example.
16 Monetary bonuses. There were any number of incentives
17 that were available for people who were successful?

18 A. Correct. But, again, you had to
19 be a regular operating agent to receive those. So if
20 you did not work, as per illustrated in messages in my
21 exhibit, as well as the e-mail that was from the Legal
22 Department to Arcenio Sawyers, an agent on the team,
23 if you did not operate consistently and write deals
24 that were approved for a period of 21 days, then you
25 automatically forfeit your right to any trips, any

1 residuals that you had obviously earned, any of your
2 points bonuses, et cetera, any awards. You forfeit
3 your right to all of those.

4 389 Q. We will come back to that in a
5 second.

6 A. Okay.

7 390 Q. That wasn't what I was talking
8 about. I was talking about your awareness of there
9 being bonuses, incentives, trips and the like.

10 A. Yeah. Those bonuses I listed.
11 Correct.

12 391 Q. Right. And I gather, being
13 seemingly the driven person that you were, that you
14 wanted to attain as many of those that you could?

15 A. Correct.

16 392 Q. So in setting your own personal
17 goals, you would have targets based on what? If you
18 achieved those goals, you could also get beyond just
19 simply straight commission?

20 A. Not really. It was -- again, we
21 set goals on a weekly basis, every Monday morning.
22 For our mandatory meetings with Joel, he would again
23 influence and set goals with us of our weekly goals.
24 And regardless, I think, if I can recall when I was
25 there, it was an average of just a few deals approved

1 a week, I think -- whether it was three deals approved
2 a week -- it got you a trip. So it was things like
3 that. Right?

4 393 Q. But monetary bonuses -- but you
5 knew, on the way by, how many more deals you would
6 need to do to achieve a particular bonus, let's say?

7 A. I guess I didn't really keep
8 count. Because, again, I was doing pretty well. So,
9 for example, for the Ireland/Scotland trip of 2015, I
10 had won multiple trips per quarter to that trip
11 because of the deals that I wrote.

12 394 Q. What about the superstar bonus?

13 A. I did win that. Yeah. Because I
14 won the Gord Oakes Award, which was the highest gas
15 seller, three times, and the Princess of Power twice
16 for two of the quarters out of the four of 2014.

17 395 Q. But you would, on the way by,
18 know where you stood in terms of the number of deals
19 written and the number of deals yet to achieve to win
20 those awards?

21 A. Absolutely. There was a
22 print-off, that we received on a weekly basis, that
23 Joel would print off and put up in the office that
24 stated exactly -- it was from head office. That
25 tracked and recorded everybody's point balance per

1 deal count. So you could see --

2 396 Q. So you knew where you stood, I
3 guess is what I am saying, from time to time.

4 A. For those particular highest gas
5 and electricity sales?

6 397 Q. Yeah.

7 A. Absolutely. Because it will have
8 your name, and what office, for the whole entire North
9 America. Yes.

10 398 Q. Right. And so you could set a
11 target as to what you wanted to achieve, if you wanted
12 to benefit from those awards?

13 A. If you wanted to.

14 399 Q. And you did, I gather, as a
15 rather goal-driven person, I gather?

16 A. Yeah. I am a very A-Type
17 personality. Absolutely.

18 400 Q. Sorry? Which?

19 A. I said I am a very A-Type
20 personality. Very high-achieving, for sure.
21 Absolutely. No matter what I have done in my life, I
22 always want to be the best. That is just who I am.
23 But, again, not everybody was like that. Right?

24 MR. ROSENFELD: I think the question
25 was: Did you adjust your targets to meet the awards,

1 to reach those awards?

2 THE WITNESS: No. Not really. Again,
3 I was always influenced by Joel with my targets. My
4 targets that I had got me there no matter what.
5 Right? So I guess I didn't really adjust accordingly.
6 I just...

7 MR. MARTIN:

8 401 Q. Well, you knew what you needed to
9 achieve if you wanted to get a particular award on an
10 ongoing basis. That is my point.

11 A. Those awards, it is -- for trips,
12 yes. For those awards, no. Because you have to
13 understand that every single marketing area, based on
14 province and state, operated very differently. So
15 there were some states that did not have gas.
16 Obviously the amount of points that they received per
17 confirmed approved deal, it varied. So when you are
18 saying, "You knew what you had to," no, because I
19 didn't know what points everybody from each country
20 and each state or province received. So it would be
21 really hard to figure all of that out and do those
22 calculations. Right? I just set goals for myself,
23 and again influenced by Joel, and I just tried to be
24 the best that I could be.

25 402 Q. In talking about, though, the

1 trip that you were mentioning -- which you didn't get
2 because, I gather, you went inactive for more than
3 three weeks?

4 A. Absolutely. I resigned in, as I
5 said, December of 2014. So I lost all my -- I wasn't
6 able to go to Ireland or Scotland, I lost my
7 residuals, et cetera, et cetera.

8 403 Q. Because that was a provision of
9 the contract with Just Energy?

10 A. Correct. I was, when I -- yeah.
11 I was told that.

12 404 Q. You went what is called inactive.
13 You have heard that term before? Inactive.

14 A. Correct. As I said, it wasn't
15 for the period of 21 days.

16 405 Q. So the Kitchener office seemed to
17 work on this team concept. And I think the way you
18 described it is that even agents would pair up.
19 Correct?

20 A. Yeah. That was the structure.
21 We had to, yes.

22 406 Q. And for most people, I gather,
23 they would prefer to have worked on a team in any
24 event? They wouldn't want to be cast out there, on
25 their own, in the field?

1 MR. ROSENFELD: I am sorry. You are
2 asking about other people's preferences?

3 MR. MARTIN: Her experience.

4 MR. ROSENFELD: Her experience of
5 other people's preferences?

6 MR. MARTIN: Yes.

7 THE WITNESS: It varied. My best days
8 were when I worked by myself, because I -- which,
9 again, were very few. Few and far between. And it
10 was only ever on a push week that I was ever allowed
11 by Joel to work individually, and that was to produce
12 a big day and set records, which I did. So for
13 myself, as I said, I preferred working individually,
14 because I didn't have to deal, obviously, with other
15 agents that -- and being forced to be paired up with
16 very weak agents that obviously took from my
17 individual selling abilities.

18 MR. MARTIN:

19 407 Q. But other agents, whether they be
20 weak agents or not, though, to your experience they
21 actually preferred the team concept?

22 A. Well, again, it varies. Stronger
23 agents obviously enjoyed their time working
24 individually if they, again, were able to. Which more
25 than often they were not. Again because they didn't

1 have to deal with the training and the constant
2 hands-on assistance with weaker agents. Obviously
3 weaker agents, I would say, more so preferred the
4 working with somebody else.

5 But, again, it wasn't based on
6 preference. It was this was the structure. We were
7 dictated it via Joel Stewart, and we had to adhere to
8 it.

9 408 Q. The other agents that were
10 successful during your time in Kitchener. Would they,
11 like yourself, from time to time work on their own?

12 A. Like I said, there were times,
13 only on a push week, where an agent would have to ask
14 permission via Joel Stewart. And if Joel approved of
15 it and, you know, what have you, then they were
16 granted that ability to work on their own for one day.
17 But, again, it did not happen often.

18 409 Q. You are aware of it happening,
19 though?

20 A. We had to ask permission. I said
21 I did.

22 410 Q. The other good agents, I am
23 saying. To the extent there were other good agents.

24 A. The only people that were ever
25 able to was not a regular agent. It was a crew

1 coordinator, to be specific.

2 411 Q. Who?

3 A. Ryan Clarkson. Myself. That was
4 about it. And, again, we had to ask permission. And
5 it was not regularly. Not on a day-to-day basis.
6 Only ever on a push week. And if we were allowed to
7 and given permission, it was for one day on a push
8 week, whether a two-week, one-week, whatever.

9 412 Q. So could you find yourself, for
10 example, in a particular city or town and have the
11 rest of your team, or other members of the Kitchener
12 office, being in a completely different town or city?

13 A. It did not happen regularly.
14 Obviously, on a weekly basis, we all operated under --
15 in the exact same -- in the same cities. Only ever on
16 push weeks. For example, like when we worked in
17 Chatham, there was obviously lots of different towns
18 surrounding Chatham, and so sometimes there would be
19 -- we would drop, you know, agents off in like
20 Ridgetown, and then go to, you know, ten minutes up
21 the street and some agents would work in a different
22 town. Again, just because some of those smaller
23 townships weren't big enough to hold, you know, two
24 vehicles or four vehicles of agents for the office.
25 And again those areas, though, were dictated and given

1 to us via Joel. So we didn't have any choice in that.

2 413 Q. Did you get to choose which town
3 you went to?

4 A. No. It was given to me via Joel,
5 via the maps, the Google Maps, which I explained --

6 414 Q. He would say, "You are on your
7 own today, but you are going to do Town X, and the
8 rest of the team will be in Town Y and Z"?

9 A. Correct. But, again, the
10 majority of the time, as I said, I always had to
11 obviously work with agents, because I was the
12 strongest person in the entire office. So whether it
13 was working with other agents or, as I said, if I got
14 an approved day on a push week to work for myself,
15 just to try to set new records for the company, it was
16 dictated by Joel where my area was.

17 415 Q. So I gather on what you call a
18 push week...

19 A. Yes.

20 416 Q. There wouldn't be these morning
21 meetings, because you are not in the office?

22 A. We had them. We hosted them
23 either -- the mandatory meetings, the times were
24 adjusted. It was at 9:00 in the morning, and done by
25 9:30. And if Joel -- obviously, like I said, the

1 majority of the time he wasn't on push weeks. We had
2 to conference call him. And the entire office would
3 have to meet, obviously have breakfast and eat, et
4 cetera, et cetera, be dressed in their gear. And
5 either the conference calls were held, obviously
6 depending, either in one of our motel rooms, as the
7 crew coordinator, or in the parking lot so that
8 everybody could hear. And then he would --

9 417 Q. What did you see the ideal times
10 to knock on doors as being?

11 A. I didn't see ideal times. We
12 were told what times we -- on a push week, we had to
13 knock from 10:00 a.m. to 9:00 p.m. And then, on a
14 regular work week, we had to knock from 1:00 p.m. to
15 9:00 p.m.

16 418 Q. Surely in the morning, though,
17 people aren't home in the residential neighbourhoods?

18 A. People could be home at all hours
19 of the day. Right? There are people that work from
20 home. Like, those were just the set times that we
21 were told. When they said from those periods of time,
22 the majority of people will be home and that will --
23 you know, those were the times that we were dictated
24 by our regional. And that was the structure of Just
25 Energy, that that is when you knocked.

1 419 Q. And if you are going out after,
2 say, lunch from the Kitchener office, what time would
3 you be leaving the Kitchener office?

4 A. It obviously varied depending on
5 the location as to where we were. If we worked
6 Waterloo, you know, it was minutes up the street. If
7 we were working Hamilton, London, it was at least an
8 hour drive. So the bottom line is I had to have
9 everybody dropped off in area, and be knocking myself,
10 by 1:00. So, again, it just varied. Right?

11 420 Q. But you might not get to a
12 location until 2:00 or 2:30?

13 A. No. As you can see in text
14 messages, I had to be in area by 1:00, knocking. You
15 know, there are messages in the exhibit where, you
16 know, Joel was obviously making comments about, you
17 know, "I am not okay with long lunches," and, "You are
18 to be in area and knocking." And same with at night.
19 It was like -- I think, 8:53 p.m., there is an example
20 of it where he says, you know, "We knock until 9:00.
21 Set proper expectations, Katlyn." So those were
22 mandatory times.

23 421 Q. But you could only make a call in
24 to the call centre up until 9:00 p.m. Is that
25 correct?

1 A. There were calls that were done
2 afterwards.

3 422 Q. But isn't the call centre --
4 didn't it close at 9:00 p.m.?

5 A. I believe, as long as calls were
6 done at that time, you could still be on the phone
7 past that time. Like, doing a call.

8 423 Q. You had to initiate the call
9 before 9:00 p.m.?

10 A. I believe so, if I can recall.
11 But, again, it did vary, because I knew that there
12 were agents who did work past 9:00 p.m. R.J. Finley,
13 for example. There are messages where, "Oh, it is
14 9:00," or past 9:00, "And R.J. should still be
15 knocking" in my exhibit. And they did do deals,
16 whether paper-based or not. So I believe it did
17 happen that --

18 424 Q. But you couldn't do the
19 verification call when the verification call centre
20 was closed?

21 A. As I said, I -- I guess I am not
22 sure. I just know agents that did.

23 MR. ROSENFELD: Can we take a break,
24 please?

25 MR. MARTIN: Yeah.

1 --- Recess taken at 11:35 a.m.

2 --- Upon resuming at 11:46 a.m.

3 MR. MARTIN:

4 425 Q. If a particular member of your
5 team wasn't doing well, did you invest the time to try
6 and improve their sales outcomes?

7 A. Absolutely. We had to. Yeah.

8 426 Q. And what would that involve?
9 Role-playing? Shadowing?

10 A. Absolutely.

11 427 Q. And would Joel himself get
12 personally involved in that?

13 A. He did during the mandatory
14 morning meetings at 11:00 a.m. on, again, a regular
15 work week, yes. And he also had it where I came in
16 and had agents obviously begin even earlier, at 10:30
17 a.m. And 10:30 to 11:00 was, again, strictly a
18 portion of role-playing, objection-handling, et
19 cetera.

20 428 Q. And the idea behind that being of
21 course that, as a team, everyone does better if that
22 poor performer does better?

23 A. As a team?

24 429 Q. Well, you as a -- the sales
25 agent, the assistant crew coordinator, the crew

1 coordinator and the regional.

2 A. And the national. Yeah.

3 430 Q. Yeah.

4 A. Exactly. If people are writing
5 deals, then overrides are happening.

6 431 Q. You don't really want to see
7 people not come in, if you have some ability to
8 improve their sales performance? You don't want to
9 see them walk away from the job?

10 A. For sure.

11 432 Q. And I gather at no time during
12 your 13-odd months with Just Energy did you ever make
13 any sort of complaint that you should be receiving
14 overtime pay?

15 A. I never made complaints. I just
16 did what I was told. I followed the structure.

17 433 Q. No, no. You never made a
18 complaint?

19 A. No.

20 MR. ROSENFELD: Are you talking about
21 receiving overtime? I understand your answer was
22 generally complaints, but about overtime in
23 particular.

24 THE WITNESS: No. No.

25 MR. MARTIN:

March 21, 2019

1 434 Q. And you never made any complaint
2 to anyone that things like CPP or EI should be
3 deducting off of your remuneration?

4 A. I never made complaints. No. I
5 never complained.

6 435 Q. And at no time did you obtain a
7 formal performance review, whether it be monthly or
8 quarterly?

9 A. Joel --

10 436 Q. Formal. Something in writing.

11 A. In writing? No. Orally, yes.

12 437 Q. And in fact your performance
13 review really is your sales. Correct? Are you
14 producing sales.

15 A. Correct.

16 438 Q. And I gather, sitting here today,
17 when you look back on your time with Just Energy, you
18 would agree with me that as between being an employee
19 in an entry-level sales position and being a
20 hundred percent sales commission person like you were,
21 if you had to do it all over again, you would choose
22 the hundred percent sales commission position.
23 Correct?

24 A. Correct. With appropriate
25 treatment. Absolutely.

1 439 Q. And the treatment you are talking
2 about is that Joel...

3 A. Stewart.

4 440 Q. Stewart. The Joel Stewart
5 influence on you, to put it broadly?

6 A. Well, correct. And just -- yeah.
7 Just the structure of how things were. Right?

8 441 Q. As a crew coordinator, did you
9 ever set goals for your team, independent of what Joel
10 may have set?

11 A. No. It was all influenced by
12 Joel.

13 442 Q. Did you have any team rewards
14 that you set? Not Joel. That you set. Whether it be
15 individual bonuses, or anything in that regard.

16 A. Not willingly. Again, everything
17 was influenced --

18 443 Q. No. Not Joel. You. You.

19 A. I know that. I am just making
20 sure you understand that, no, everything was
21 influenced via Joel. He would tell me that, "You need
22 to put up points," and this and that. So the pressure
23 and the influence was there.

24 444 Q. I am not talking about that. I
25 am talking about you. Did you independently, if that

1 is the way of putting it, do that? Take Joel out of
2 the picture. I am asking about you and your team.

3 MR. ROSENFELD: Without the influence.

4 MR. MARTIN:

5 445 Q. Without the influence.

6 A. Without the influence? Then I
7 would say no. The influence was always there.

8 446 Q. You were never badged out of more
9 than one office, I understand?

10 A. No.

11 447 Q. And were you aware that some
12 agents were badged out of more than one office of Just
13 Energy?

14 A. Not...

15 448 Q. Were you aware?

16 A. Not aware. No. Not during my
17 time.

18 449 Q. You weren't aware during your
19 time, is what you are saying. Right? You were just
20 not aware?

21 A. Correct. I am just making sure
22 that --

23 450 Q. Yes. Yes.

24 A. -- during my specific time there,
25 I was not aware. It was the impression you were

1 specifically -- once you were hired into a role, that
2 was your badging, that was your station, that is where
3 you stayed, from personal experience.

4 451 Q. And in terms of areas you would
5 go to, to market -- would you agree with me, though,
6 that it is more likely than not that an area that had
7 been marketed multiple times was likely to be less
8 successful than an area that you hadn't marketed in
9 for some lengthy period of time?

10 A. I would say that is false. And
11 my reason for that being, just to clarify, is because,
12 again, there are so many companies, up until last
13 year, obviously, of March of 2018, when things were
14 changed legally here. But there were so many
15 companies -- whether furnaces, water tanks, energy, et
16 cetera -- that were constantly marketing in cities on
17 a regular basis. So, literally, it was really like no
18 matter where we worked, we always heard the same
19 things. Which was, "Somebody from your business or
20 your company was already by the other week," or,
21 "Somebody was already here with furnaces." It was
22 always -- there was always something.

23 452 Q. So you are not agreeing with me
24 that, for example -- and I will just pick Windsor for
25 example.

March 21, 2019

1 A. Okay.

2 453 Q. That if no one from Just Energy
3 had been in Windsor for 12 months, but the Kitchener
4 office had basically exhausted the Kitchener and
5 Cambridge area, let's say, over the last couple of
6 months, that the Windsor office wouldn't have appeared
7 to be more attractive as a marketing opportunity for
8 you?

9 A. Again, we never looked at it as
10 being attractive. We were dictated and told where we
11 were to work. So we didn't really have that
12 perspective, ever. It is just we were told, "This is
13 where you are working this week," and we adhered to
14 it.

15 454 Q. And I gather what you are saying
16 is that you, as a crew coordinator -- and there were
17 other crew coordinators -- didn't really work as a
18 team with Joel at all, even though he was the
19 regional? You seem to be saying that he dictated
20 everything, and that you had no input in any
21 decision-making.

22 A. Again, we worked with him in the
23 sense of we had our mandatory crew coordinator
24 meetings and things of that nature. So we worked with
25 him in a bit of a different role or different method

Page 117

1 than the average sales agent. But he did dictate and
2 have control over everything. So we did just really
3 follow suit.

4 455 Q. So you had no input into
5 decision-making, is what your position is?

6 A. No. We just followed suit.

7 456 Q. When did you first realize
8 that -- I am going back to your early days. When did
9 you first realize that the position was a
10 hundred percent a commission-based position?

11 A. Again, upon beginning with the
12 job. Right? And getting our first pay cheques and
13 everything. And obviously that is when we really
14 visually saw that, like you said, the deductions and
15 things like that weren't --

16 457 Q. Taking it back a step, though,
17 you are out of school and you have got the bartending
18 job.

19 A. Correct.

20 458 Q. At some point you heard about an
21 opportunity with Just Energy. How did that
22 opportunity present itself to you?

23 A. Sure. So I actually was
24 searching online at that time via Monster, via Kijiji,
25 for obviously job employment opportunities. I came

1 across the advertisement on Kijiji, and then I
2 obviously reached out to inquire about the position.
3 And then Courtney Macfarlane -- who was the recruiter
4 at the time for the Kitchener residential office. She
5 had contacted me via phone call and set up an
6 interview for me to come in and do an interview at the
7 office. And it was set up very immediately, within
8 like a day or two of the phone call.

9 459 Q. And I gather, within the confines
10 of that interview, you confirmed that it was a hundred
11 percent commission-based position?

12 A. No. She did not advertise that.

13 460 Q. I am not talking about the
14 advertisement. I am talking about the discussion you
15 had with her at the interview.

16 A. Yeah. She did not advertise --
17 she did not state. Sorry. She did not state that it
18 was a hundred percent commission-based.

19 461 Q. She didn't tell you it wasn't?

20 A. Well, again, it was smoke and
21 mirrors. Right? A lot of people were very confused
22 after interviews. Because the correct job
23 description, it was not given, it was not provided.
24 So understanding that there were no deductions, the
25 long hours, the mandatory push weeks, the expenses.

1 None of that was ever relayed to myself or, from
2 obviously my understanding, to any other agent in the
3 office. So it was upon, obviously, the orientation or
4 beginning to do it in the field, working, when you
5 really realized.

6 462 Q. So it is your evidence, though,
7 that you never even asked that question in the
8 interview, "How am I going to be paid?" A basic
9 question that most people ask in interviews.

10 A. Again, I was young and naive at
11 that time. It was my first, you know, kind of
12 interview, if you will, for a full-time position out
13 of university. And I am not going to lie, I don't
14 exactly remember what questions that I had asked. She
15 obviously, as the person conducting the interview,
16 kind of dictated the direction and the content of that
17 interview. A big highlight -- and, again, the
18 interview was very quick. In and out within a matter
19 of, you know, no more than 15 minutes. But a
20 highlighting point that she always focused on was in
21 the foyer, the entrance of the office, there was a big
22 board that actually posted and advertised copies of
23 weekly cheques from agents. So she would always walk
24 over the potential candidate in the interview and
25 really just focused and highlighted on cheques and

March 21, 2019

1 money that was being earned. It was never advertised
2 that it was commission-based or how that was done or
3 what obviously was required to achieve anything. And
4 it was always, you know, thousand of dollars in a
5 week. This is what people are making. And people
6 were always under the impression that it was going to
7 be easy, it was not going to be hard, and they were
8 going to come in and just have the opportunity to make
9 thousands of dollars. They didn't know the actual
10 role.

11 463 Q. But the basic question at an
12 interview, "How much am I going to be paid, and how am
13 I going to be paid?" You are not suggesting you
14 didn't ask that question?

15 A. Again, I am literally telling you
16 I don't remember what questions I asked. So I don't
17 want to mislead you in any way. I do recall, again,
18 having conversations about compensation, and it was
19 always, again, the portrayal, the image, the facade
20 of, "You can make thousands of dollars a week, and
21 here is the cheque board." And then, again, you are
22 young, you are coming in to your first kind of job
23 interview, you are excited, you are seeing this kind
24 of money and, again, you are not given the full image
25 of what that entails and what that is.

1 464 Q. This wasn't your first job,
2 though.

3 A. No. But I am saying my first,
4 like, full-time job interview after my convocation,
5 which was that summer. Yeah. My first job interview.
6 Because I had been bartending. Right?

7 465 Q. But you had other jobs besides
8 bartending, I am sure, where you were receiving pay.

9 A. During, like, obviously my
10 university years, no. I bartended full-time at one or
11 two different establishments, during my university
12 years. To pay for school, to pay for living, that is
13 what I did.

14 And then obviously when I had my
15 convocation for Wilfred Laurier University, then it
16 was starting to transition out of roles and obviously
17 get into the real world. Right? Get into the
18 workplace. Get some professional work experience.

19 466 Q. And do you recall being told that
20 unless you agreed to the independent contractor
21 agreement, that you wouldn't be engaged by Just
22 Energy?

23 A. I remember we were told that.
24 Correct. If you did not sign the independent
25 contractor agreement, that you weren't able to market.

1 And, again, a lot of things was regulatory/head office
2 compliance or regulations.

3 467 Q. I am just going to show you a
4 copy of your independent contractor agreement, if I
5 might. You can take a moment --

6 A. Sure. I haven't seen it since I
7 signed it.

8 468 Q. You can take a moment to look at
9 it.

10 MR. ROSENFELD: Was this part of the
11 record?

12 MR. MARTIN: No.

13 MR. ROSENFELD: Why not? So it wasn't
14 produced before today?

15 MR. MARTIN: No.

16 MR. ROSENFELD: Okay. Take a look.

17 THE WITNESS: Okay.

18 MR. ROSENFELD: I think you should
19 take a look at it.

20 MR. MARTIN:

21 469 Q. Yeah. Take a look at it.

22 MR. ROSENFELD: Do you have questions?

23 MR. MARTIN: I thought she was still
24 looking at it. Sorry.

25 MR. ROSENFELD: I think I have located

1 it in your record.

2 MR. MARTIN:

3 470 Q. Is it in the record? Okay.

4 MR. ROSENFELD: Well, I don't know
5 what that piece of paper is, but there is --

6 MR. MARTIN: The same thing.

7 MR. ROSENFELD: -- page 0343 until
8 page 0356, it seems, of the defendants' responding
9 motion record.

10 MR. MARTIN: All right. Thank you.

11 471 Q. Can I ask you, is that then -- I
12 am on the third page of the document. The consent for
13 disclosure and personal information. Do you have that
14 page?

15 MR. ROSENFELD: Yes.

16 MR. MARTIN:

17 472 Q. It says:

18 "Candidate's signature." (as
19 read)

20 Is that your signature, Ms. Schwantz?

21 A. Correct.

22 473 Q. And then I go into the
23 independent contractor agreement. If I could ask you
24 to just confirm at page 8. Again is that your
25 signature on page 8?

1 A. Correct.

2 474 Q. You see the date there,
3 October 16, 2013.

4 A. Correct.

5 475 Q. Does that help you with your
6 recollection as to when you may have started with Just
7 Energy? I know you noted in your affidavit it was in
8 September, but is it more likely that it was after you
9 executed this agreement on October 16, 2013?

10 A. Correct. Yeah. I said --

11 476 Q. And Courtney Macfarlane. That is
12 the person you just mentioned who was the recruiter,
13 to the best of your knowledge?

14 A. She was.

15 477 Q. And was she still the recruiter
16 throughout your tenure at the Kitchener office?

17 A. From my recollection, yes.

18 478 Q. And I just note, on page 8, it
19 says, just before your signature, in capital letters
20 and underlined:

21 "By signing below, you confirm
22 and acknowledge that you read and
23 understood this agreement before
24 signing." (as read)

25 MR. ROSENFELD: That is what the

1 document says.

2 MR. MARTIN: Yes.

3 479 Q. Do you see that? And then you
4 did sign it. So can you -- I will ask it again. Did
5 you in fact read and understand this agreement before
6 you signed it?

7 A. Again, I am -- you know, as I had
8 already stated previously, we were given the documents
9 and what have you and everything to sign prior to
10 orientation beginning. So did I sit there and
11 definitely read every single word and take it in when
12 orientation was going to be beginning? Absolutely
13 not. I was young and naive, and I signed an agreement
14 and didn't fully understand all of the detail of it at
15 the time.

16 480 Q. Did you ask any questions of Ms.
17 Macfarlane at the time, before you said that you read
18 and understood it before signing?

19 A. No. I had signed. Again, it was
20 prior to orientation. So we began orientation
21 immediately after.

22 481 Q. I am asking about whether you had
23 any questions for Ms. Macfarlane.

24 A. There was a lot of questions.
25 But I figured that, during the orientation process,

1 things would be clarified. And I figured I -- she
2 hired me on the spot and --

3 MR. ROSENFELD: Did you ask questions
4 of Ms. Macfarlane?

5 THE WITNESS: No.

6 MR. MARTIN:

7 482 Q. Do you recall asking any
8 questions of Ms. Macfarlane about the agreement?

9 A. Of the particular agreement? Not
10 that I can recall.

11 483 Q. But she was available if you had
12 wanted to ask questions?

13 A. Yes.

14 484 Q. And, again, I gather she was
15 there for your entire tenure at the Kitchener office?

16 A. I believe the majority, yes, if I
17 can recall.

18 485 Q. And is it fair to say you could
19 have asked her questions about the agreement at any
20 point thereafter if you chose to do so?

21 A. True. But the majority of us
22 always talked to Joel.

23 486 Q. Were you and Ms. Macfarlane
24 friends?

25 A. At work, or outside of work?

1 487 Q. At work.

2 A. No. We were just coworkers.

3 Friendly. I wouldn't say friends.

4 488 Q. You would see her on a daily
5 basis?

6 A. She was at the office on a daily
7 basis.

8 489 Q. And she maintained that
9 recruiting role throughout that period of time?

10 A. Correct.

11 490 Q. So anyone who was on your team
12 would have been recruited by Ms. Macfarlane?

13 A. Correct.

14 491 Q. Likely, she probably signed their
15 agreements, too. Do you know?

16 A. I am not sure. I can't,
17 obviously, say anything. I don't see their
18 agreements.

19 492 Q. Just so I understand your
20 participation in this lawsuit -- I mean, you were a
21 phenomenally successful sales agent, by your own
22 admission. I appreciate that. I am trying to
23 understand what your concern is or complaint is here.
24 You have seen the independent contractor agreement,
25 which allows for -- and I am happy to have you look at

March 21, 2019

1 it again. It allows for you to be in a role that does
2 provide certain independence for you. Is part of your
3 complaint that perhaps the Joel Stewarts of the world
4 didn't provide you with as much independence as you
5 were looking for?

6 MR. ROSENFELD: I am sorry. I don't
7 understand. What complaint are you talking about?

8 MR. MARTIN: Sorry?

9 MR. ROSENFELD: What complaint are you
10 talking about?

11 MR. MARTIN:

12 493 Q. Do you have a complaint in
13 respect of this litigation?

14 MR. ROSENFELD: She is a class member
15 for a period of the time, I believe.

16 MR. MARTIN: Right.

17 494 Q. You are pursuing -- I presume you
18 are pursuing relief in this litigation?

19 MR. ROSENFELD: She is a class member
20 for which Mr. Omarali is pursuing relief on behalf of
21 all class members.

22 MR. MARTIN: But I am asking her,
23 though.

24 MR. ROSENFELD: So the complaint is in
25 the statement of claim. Minimum wage and overtime.

1 MR. MARTIN: No. I am asking her,
2 though.

3 495 Q. Are you pursuing relief? Is it
4 your desire to, if this claim is successful --

5 MR. ROSENFELD: I don't understand the
6 relevance here --

7 MR. MARTIN:

8 496 Q. I am trying to understand what
9 her role is.

10 MR. ROSENFELD: Her role is she is an
11 affiant.

12 MR. MARTIN: Well, I appreciate that.

13 497 Q. But, I mean, did you hope to
14 achieve something from this litigation?

15 MR. ROSENFELD: From her affiant?
16 From her affidavit?

17 MR. MARTIN:

18 498 Q. From her participation in this
19 litigation.

20 MR. ROSENFELD: Her participation is
21 as directed by the Class Proceedings Act, Mr. Martin.
22 You know that.

23 MR. MARTIN:

24 499 Q. You didn't, after leaving Just
25 Energy, pursue any claim against them for any kind of

1 monetary damages. Did you?

2 MR. ROSENFELD: I guess that is a
3 litigation for money. You didn't ask Just Energy for
4 money?

5 THE WITNESS: No. I moved on with my
6 life.

7 MR. MARTIN:

8 500 Q. Did you think you had any claims
9 against Just Energy for monetary damages?

10 MR. ROSENFELD: So claims against, or
11 monetary claims, is money. That Just Energy somehow
12 owed you money.

13 THE WITNESS: At that point, not to my
14 knowledge, no.

15 MR. MARTIN:

16 501 Q. So did Mr. Stewart, or others who
17 you have dealt with at Just Energy, suggest to you
18 that, by moving up, you could be building your own
19 business?

20 A. It wasn't necessarily building a
21 business. It was growing a business. And, just, they
22 obviously worded it like any other job: That, you
23 know, if you move up through the ranks, there is
24 obviously more opportunity for money.

25 502 Q. And I know you said that you

1 perceived a goal for yourself to perhaps become, I
2 think, even a national distributor at some point.

3 A. Correct. That was the top role
4 there.

5 503 Q. And did you know that the
6 national essentially conducted their own business,
7 independent of Just Energy?

8 MR. ROSENFELD: I think that
9 characterizes -- well, I guess Ms. Schwantz can you
10 tell you about that characterization.

11 THE WITNESS: Again, as a national
12 distributor, they worked alongside Just Energy.
13 Because as Just Energy is a corporation or a head
14 office, they would encourage and influence, as well,
15 the opening or closing down of offices. So for us,
16 from again our perspective, it wasn't that you were
17 necessarily a separate entity. You obviously worked
18 with the company, as they dictated opening and closing
19 of offices and, again, territories where offices could
20 be, et cetera, et cetera.

21 MR. MARTIN:

22 504 Q. Did you ever make inquiries about
23 the potential for you opening your own office?

24 A. No. Because I wasn't even
25 allowed to have an interview or a meeting with a

March 21, 2019

1 gentleman from Hudson Energy. That was shut down and
2 denied to me, so...

3 505 Q. What would have prevented you
4 from simply, as you say, walking away and signing on
5 with Hudson Energy?

6 A. Again, because of the treatment
7 that I received. You know, when you are young and
8 naive and you have -- you are, you know, kind of
9 being, if you will, manipulated or exploited or taken
10 advantage of by people in positions of seniority. For
11 example, when I referred to earlier -- like, a
12 conference call obviously occurred between Dan
13 Camirand, our national distributor, and Hudson Energy,
14 just through Chris, the gentleman who it was that I am
15 referring to at Hudson. The hostility. The way I was
16 treated. Obviously being told, you know, this was my
17 role. That I am, you know, not to be talking to
18 people in other positions. That I am not allowed to
19 move. You know, it was obviously in Dan and Joel's
20 best interests to keep me working in my exact position
21 and writing deals for them, versus moving into areas
22 or avenues that they had no kind of hands in that
23 cookie jar. They wouldn't have made, I guess, money
24 off of that. Right? Because I would have been under
25 a different entity of Hudson Energy.

Page 133

1 506 Q. Like any, you know, person who
2 you are working for, whether an employee or an
3 independent contractor, it was not in their interest
4 to see you leave. Correct?

5 A. Of course. They wanted me to
6 continue to produce for them.

7 507 Q. Right. But there wasn't any
8 impediment to you simply walking away and engaging
9 with Hudson Energy or any other company where you
10 could say, "I have got these great sales skills."
11 Correct?

12 A. It would have been in my best
13 interests to, like anything, always keep my doors open
14 and my options open and always see what opportunity
15 could come my way. It was in my best interest.
16 Especially with Hudson Energy. They are large
17 commercial volume. So people could get paid out five,
18 six figures off of one particular deal. So with my
19 abilities, why would I not want to grow and develop
20 into a higher role, potentially, when it was offered
21 to me? Right? But, again, I was denied that right.

22 508 Q. And Hudson Energy. You
23 understood at least enough about Hudson Energy -- as
24 you say, five or six times off a single deal. It was,
25 similarly, an independent contractor position you

March 21, 2019

1 would be looking at?

2 MR. ROSENFELD: Do you know?

3 THE WITNESS: Again, I was not -- I
4 did not get into the nitty-gritty and all of the
5 details of their agreements or how they operated. It
6 was a simple, very simple, conversation. Very entry
7 level. So I can't attest to that.

8 MR. MARTIN:

9 509 Q. But you knew it was an
10 independent contractor arrangement?

11 A. Again, I am not going to --

12 MR. ROSENFELD: She --

13 THE WITNESS: I just don't want to
14 speculate.

15 MR. MARTIN:

16 510 Q. But you knew that, though. Don't
17 --

18 MR. ROSENFELD: That is the third time
19 you have asked the question.

20 MR. MARTIN: No. It is not. I want
21 her answer.

22 MR. ROSENFELD: She did not give you
23 an answer? She doesn't know.

24 MR. MARTIN:

25 511 Q. You did not know that to be the

1 -- that is your evidence?

2 MR. ROSENFELD: For the fourth time,
3 no.

4 MR. MARTIN:

5 512 Q. That is your evidence? All
6 right.

7 A. Again, I am not going to
8 speculate.

9 MR. ROSENFELD: Just, is that your
10 evidence? The same answer you just gave twice before?

11 THE WITNESS: Yes.

12 MR. ROSENFELD: Yes.

13 THE WITNESS: I am not going to
14 speculate.

15 MR. MARTIN:

16 513 Q. I think you said this. You
17 didn't do any renewal sales. Correct?

18 A. No.

19 514 Q. Were you ever offered the
20 opportunity to do renewal sales?

21 A. No. I was hired as new business,
22 residential, and that is the role I had to stay in.

23 515 Q. You did know that there were
24 agents who did renewal sales for Just Energy?

25 A. I did. I was aware of that. Out

1 of the Cambridge office, which was Dan Gadoua's
2 office. He ran renewal sales, the department there,
3 while I was at Just Energy.

4 516 Q. And, similarly, you knew there
5 were commercial sales?

6 A. Absolutely. We had a commercial
7 team operating out of the Kitchener office, under
8 Jamie Bradstock as regional.

9 517 Q. Paragraph 4 of your affidavit --
10 and I am sorry, Ms. Schwantz, I am on your affidavit
11 of August 29, 2018. When you talk about a quiz that
12 was required to be passed, did you know that that was
13 the quiz that was mandated by the Ontario Energy
14 Board?

15 A. Correct.

16 518 Q. And I gather that you needed at
17 least some orientation or training about gas and
18 energy sales before you would even be able to consider
19 writing such a test?

20 A. Correct. It was done at
21 orientation, after we went through the necessary
22 module.

23 519 Q. And not everyone passes that
24 test. Do they?

25 A. The way that it tended to work at

1 the Kitchener office is, because of the fact that Joel
2 wanted as many people badged as possible, the
3 individual who was doing the orientation -- which the
4 majority of my time while I was there was Erica.
5 Courtney Macfarlane did do a couple of orientation
6 sessions. Answers were given. I know Erica had
7 mentioned she always felt pressure from Joel. She
8 sometimes changed answers on the tests to ensure
9 people passed, so that they could be badged. So it
10 wasn't operating in a very compliant way.

11 520 Q. Really? Did you ever make any
12 complaint about that yourself?

13 A. I didn't. I kind of just kept my
14 face to the ground, did my job and didn't really get
15 into those politics of things.

16 521 Q. So did you know that Courtney --
17 who you referenced. She was an employee of Just
18 Energy?

19 A. Correct. And I know she wasn't
20 allowed to do it.

21 MR. ROSENFELD: Sorry. The question
22 was: Do you know if she was an employee of Just
23 Energy?

24 THE WITNESS: Was she an employee?
25 Oh. Of Just Energy?

1 MR. ROSENFELD: Do you know?

2 THE WITNESS: Sorry. I am not sure,
3 then. Yeah. I don't know. I know she got recruiting
4 bonuses and things like that. I don't know if she was
5 designated as an employee or a contractor.

6 MR. MARTIN:

7 522 Q. But were you aware that an
8 independent proctor had to provide the OEB quiz to
9 recruits?

10 MR. ROSENFELD: Sorry. Can you define
11 what an independent proctor --

12 MR. MARTIN:

13 523 Q. Someone who was independent of
14 Joel Stewart, let's say.

15 A. Again, I knew the majority of the
16 time while I was there, Erica, who worked as the
17 front-desk receptionist, did host the orientation
18 session.

19 524 Q. And was Erica an employee, to
20 your knowledge, of Just Energy?

21 A. I am not sure.

22 525 Q. At paragraph 14 of your
23 affidavit, you talked about sales scripts. Do you see
24 that?

25 A. Correct.

- 1 526 Q. And what are those?
- 2 A. Sorry. Sales scripts?
- 3 527 Q. Paragraph 14. Yes.
- 4 A. Those were the scripts that we
- 5 were given, via Joel at the office, in regards to what
- 6 to say at the door. It referred to
- 7 objection-handling, et cetera, explanation of the
- 8 program. So rates, thermostat, operations and
- 9 benefits, et cetera. So we were given those scripts
- 10 of what to say.
- 11 528 Q. And those were used for training
- 12 sales agents. Correct?
- 13 A. Yes. So we were given those when
- 14 we were a new hire, and we had to adhere and just
- 15 continue with them.
- 16 529 Q. All right. And much of that was
- 17 dictated again by the Ontario Energy Board, or other
- 18 regulations, as to what could or couldn't be said at
- 19 the door. Correct?
- 20 A. What we were told, and what my
- 21 understanding was of it, was that this was the script
- 22 that was created via Just Energy at the beginning.
- 23 And it was always preached to us, "Why reinvent the
- 24 wheel?" So that is what we went with.
- 25 530 Q. And my question, though, was:

1 Were you aware that aspects of that related to
2 regulatory requirements as to what could or could not
3 be said at the door?

4 A. I knew some were in regards to
5 regulatory requirements. Like, for example, we had to
6 ensure we named ourselves Just Energy so as to not
7 confuse people with -- customers with the utilities,
8 et cetera. But, again, that was the script. We were
9 told that was from Just Energy, so...

10 531 Q. And then at the door, in your own
11 personal experience -- and I think you have alluded to
12 the fact that you were a skilled salesperson. And I
13 take it by that you mean you had greater skills than
14 maybe some lesser-performing salespeople. Correct?

15 A. Correct.

16 532 Q. And I gather those skills were
17 taking what was, say, mandatory by way of what you
18 could say at the door and enhancing that with your own
19 unique sales abilities to effect a sale?

20 A. No. It was just my ability to
21 converse, my ability to handle objections. The script
22 was the script. We did not deviate from it. But it
23 was just my demeanour, my ability to interact with
24 people at the door, et cetera.

25 533 Q. Because I gather each door

1 experience is unique depending on --

2 A. Absolutely.

3 534 Q. -- who the individual is and who
4 the salesperson is?

5 A. For sure.

6 535 Q. And I am sure you could probably
7 tell me that you, yourself, of the many hundreds or
8 thousands of calls that you made --

9 A. Doors I knocked. Yeah. Yeah.

10 536 Q. One was as unique as another.

11 Correct?

12 A. It was very different.

13 537 Q. And you would have to think on
14 your feet?

15 A. Absolutely.

16 538 Q. And I suspect you will tell me
17 you were pretty good at that.

18 A. I am. But, again, that came from
19 objection-handling, et cetera.

20 539 Q. Yeah. With experience --

21 A. Mm-hmm.

22 540 Q. -- you became skilled at, among
23 other things, objection-handling?

24 A. Of course.

25 541 Q. And when you say

1 objection-handling, you mean when the person at the
2 door says, "Whatever. Not today. Don't need it. Go
3 away." Is that what you mean by objections, per se?

4 A. Of course. There is numerous
5 objections. Yes.

6 542 Q. In paragraph 15(i), you talk
7 about an iMessage board. Do you see that?

8 MR. ROSENFELD: Paragraph 59?

9 MR. MARTIN: 15(i). It is on page 5
10 of her affidavit.

11 543 Q. Do you see that?

12 A. Yeah. I am reading it. Correct.

13 544 Q. So would each agent have to have
14 an iPhone to participate in the iMessage board chat?

15 A. No. Because we worked off of
16 iPads. So on your iPad --

17 545 Q. Yes.

18 A. -- you obviously then can have
19 iMessage. So we operated off of a group chat. And,
20 again, that was created actually at the Cambridge
21 office, and the Cambridge office operated under that.
22 So Joel began to use that in the Kitchener office
23 because, again, it was an efficient way to be able to
24 monitor the entire office and their activity. And
25 just on one, obviously, group message, he was able to

1 give incentives, as illustrated in the text messages
2 in the exhibit, just out at once to everybody.

3 And then, again, it recorded every
4 agent's deals. So that is why you could see Bink one.
5 That means that was your first deal. The second deal
6 that the agent would write would be Bink two.

7 546 Q. Part of that reporting helped to
8 motivate people in terms of, "The team is doing
9 great," or, "The team is not doing so well," because
10 everyone would know how well everyone on the team was
11 doing from time to time?

12 A. Absolutely. Part of it. For
13 sure. As well as monitoring.

14 547 Q. Sorry. You said, I think, there
15 were like three or four crew coordinators at any one
16 time in the Kitchener residential office.

17 A. Well, I wouldn't say it at any
18 one time. Just during my time at Just Energy.

19 548 Q. How many? Four?

20 A. There was myself, Derek Wagler,
21 Ryan Clarkson, and Matt Snow was assistant. So there
22 was four of us.

23 549 Q. And you had seven people in your
24 van or car or whatever it was you had. Whatever
25 vehicle you had. I presume they had roughly the same.

1 So was there roughly a pool of, say, 25 to 30 agents
2 at any one time that could be out in the field?

3 A. Yeah. Give or take, on a weekly
4 basis. And that again accounted for new trainees, et
5 cetera, that were coming in and out as well.

6 550 Q. And then, in the office itself,
7 there would be recruiting ongoing?

8 A. Every week.

9 551 Q. Training, orientation, badging?

10 A. Every week.

11 552 Q. Every week. And could there be,
12 in an average week, a dozen or more trainees in the
13 office? Or would it be more than that?

14 A. Not usually. The amount of
15 people that we would take out shadowing was usually
16 not at that level on a weekly basis. Sometimes it was
17 two. Other times it may have been four, five, six.
18 But I would say never once was there ever 12 or more,
19 from what I can remember.

20 553 Q. But in the orientation, I am
21 talking about, at the office. How many would be there
22 at any one time?

23 A. I am not sure. Every week, it
24 would vary. So because, again, we were already gone
25 and in the field, I can't speculate on how many people

1 were in orientation. I can only, obviously, attest to
2 my experience with how many people would be out and
3 make that Thursday in-field training.

4 554 Q. All right. So there could be,
5 though, upwards of 35 to 40 agents floating around the
6 office, some in the field, some in training or
7 orientation, at any one particular time?

8 A. Well, again, like, I don't know
9 how many would be in orientation. So I don't want to
10 speculate.

11 555 Q. Okay. I just want to go to these
12 text messages for a moment. I am in your first
13 affidavit. It is page 19 of the record. Where is
14 this material from?

15 A. From my iPad. It was messages
16 that, again, were iMessages, as you can see linked,
17 that were on my iPad.

18 556 Q. When did you pull these off?

19 A. I don't recall the exact time as
20 when they were pulled off. Like, when I
21 screenshotted, if you will. I don't know --

22 557 Q. And each one is a separate
23 screenshot. Is it?

24 A. Correct.

25 MR. ROSENFELD: Each page?

March 21, 2019

1 MR. MARTIN:

2 558 Q. Each page?

3 A. Each page is a separate
4 screenshot of --

5 559 Q. They are not either consecutive,
6 nor are they relational to any one particular person
7 or group. Correct?

8 MR. ROSENFELD: Each page being
9 independent of the other.

10 MR. MARTIN: Yes.

11 560 Q. Correct?

12 A. Yeah. Like, the dates are given.
13 Right? In the messages itself, you can see dates.

14 MR. ROSENFELD: But each page within
15 there isn't necessarily connected to the previous
16 page?

17 THE WITNESS: No. Like, I am sure not
18 every single one is. No. They just follow dates.

19 MR. ROSENFELD: Okay.

20 MR. MARTIN:

21 561 Q. Well, just so I understand --
22 because I am looking at page 19 of the record here.
23 The iMessages on the left-hand side appear to be
24 December of 2014. Am I correct?

25 A. Correct.

1 562 Q. Whereas on the right-hand side --
2 which is the iChat? What is the right-hand side that
3 is depicted here?

4 A. Yeah. The actual conversation.
5 So this is the individual. These are all of the
6 different people in the office. That was obviously
7 Joel Stewart highlighted on page 19. And this is his
8 and I's conversation.

9 563 Q. Yeah. But those relate to -- for
10 example, here, I am looking at July. Right?

11 A. Correct.

12 564 Q. So they are not cross-linked, is
13 what I am saying --

14 A. So what that states -- right? --
15 is that, for example, Joel Stewart, the last
16 conversation that we had had, then, was December 5,
17 2014. So these messages are all a part of that
18 particular conversation.

19 565 Q. Got you.

20 A. Yes.

21 566 Q. I got you.

22 A. Yeah.

23 567 Q. Okay. So at some point you went
24 back and pulled out, selectively, this material off
25 your iPad?

1 A. I had stuff that I had
2 screenshotted or saved that was on the iPad, which is
3 why I had included it.

4 568 Q. Right. But after being engaged
5 to do your affidavit, I gather -- which must have been
6 sometime before August of last year, I gather -- you
7 went and undertook this exercise to produce this
8 material?

9 A. I wouldn't say exercise. As I
10 said, I had stuff screenshotted and I had stuff that
11 was saved on my iPad. Right?

12 569 Q. No. No. I don't understand.

13 A. Like, for example, you take a
14 picture on your phone. Right? That picture is there.
15 So for me, like I said, during my time when I had been
16 at Just Energy, I had also screenshotted and saved
17 just some of the messages. And then that is how I had
18 some.

19 570 Q. Where did you have them saved?
20 Did you have them saved in a folder or someplace?

21 A. No. Just on my iPad, in the
22 gallery.

23 571 Q. Particular pages, though. I am
24 saying this --

25 MR. ROSENFELD: This is a picture.

1 THE WITNESS: This is an image. A
2 screenshot. It is a particular picture that has been
3 printed off.

4 MR. MARTIN:

5 572 Q. Right. But you had dozens of
6 these. Right?

7 A. Yes.

8 573 Q. That you had saved. And let's
9 make it simpler. I would like you to produce all of
10 the pages of your chats with Joel Stewart. You have
11 just provided a brief, select number. I would like to
12 see them all.

13 U/A MR. ROSENFELD: Yeah. I will take it
14 under advisement.

15 MR. MARTIN:

16 574 Q. And, similarly, any of the other
17 ones that you have produced are not all Joel. Some of
18 them are team chats and whatnot. Correct?

19 A. Correct.

20 575 Q. I would like you to produce all
21 of those. And for each one, I want the period of time
22 that you were an agent or a crew coordinator with Just
23 Energy.

24 MR. ROSENFELD: Sorry. You want what?
25

March 21, 2019

1 MR. MARTIN:

2 576 Q. I want to see all of her chats
3 with Joel and all of her chats with all of the other
4 people for whom she has provided selected material in
5 her affidavit, because she doesn't tell the whole
6 story here.

7 MR. ROSENFELD: Sorry. I just want to
8 make it clear what it is you are asking for. So all
9 chats for all of the other people she has put in her
10 affidavit?

11 MR. MARTIN: Yeah.

12 577 Q. So I gather, in affidavit one --
13 Ms. Schwantz, just help me if I am wrong. Is it just
14 those are just Joel communications? Is that correct?

15 A. I would have to look through, but
16 I believe so. If I am flipping through, it says all
17 Joel at the top.

18 578 Q. And then I look at your second
19 one, and you seem to have produced some new Joels.
20 Correct? But, in addition, you have some group chats?

21 A. Correct. Yeah.

22 579 Q. And also some -- I think there is
23 one of a someone Clarkson.

24 A. Yeah. Ryan Clarkson.

25 580 Q. And there is an Allison?

1 A. Correct. That was --

2 581 Q. Allison Short, is it?

3 A. Sure. She was a friend,
4 personal, that was --

5 582 Q. And even the group chats.

6 Because I see a nine-person chat, and then there is a
7 ten-person chat.

8 A. Correct. Because each day,
9 again, it was adjusted if, for whatever reason, an
10 agent wasn't there or what have you. Or, again, new
11 agents were always added to the chat. And if they,
12 you know, did not come back or quit the role, then
13 obviously they were taken off of the group chat, and
14 then a new group chat was created with just all of the
15 relevant agents that day.

16 583 Q. So I would like production of all
17 of that. I gather you still have it, because you have
18 produced it with your second affidavit of February 14.

19 U/A MR. ROSENFELD: We will take it under
20 advisement.

21 MR. MARTIN: Thank you.

22 584 Q. I just wanted to come back, then,
23 to your first selection of material at page 19. This
24 one is just the chat with Joel. Correct?

25 A. Correct.

1 585 Q. And help me if I am incorrect in
2 interpreting this, but it appears to me that on
3 Wednesday, July 2, to the extent that these are your
4 team members -- Kenny, Matt, Henok, Josh and Suad?

5 A. Suad.

6 586 Q. Suad. As well as Piotr. Is D.J.
7 Moore one person?

8 A. D.J. Moore. Yeah. That was his
9 name. The first and last name.

10 587 Q. And Chike. Am I saying that
11 right?

12 A. It was like Chike. That is
13 right.

14 588 Q. Chike. Chike. So I look at that
15 one, and I am looking at the Thursday, July 3, at
16 9:55 a.m. It appears that members of your team are
17 all in different locations. Correct?

18 A. Correct. As discussed before, if
19 they are little townships and the entire team doesn't
20 have enough territory for everybody to be working,
21 then like I said, on a push week, there could be
22 little surrounding towns that we would drop off. And
23 they would all be within minutes of each other,
24 obviously, for installation purposes, et cetera. So
25 that is what that illustrates.

1 589 Q. Chike was a sales agent alone? I
2 mean by that not a crew coordinator.

3 A. Correct.

4 590 Q. So he is working by himself that
5 day in Victoria Harbour. Correct?

6 A. That is correct. If there was
7 odd pairings, which as you can see there were, then
8 somebody might, I guess, have had to --

9 591 Q. I see Kate. Is that you?

10 A. That is me.

11 592 Q. Okay. And Kenny. You are teamed
12 with Kenny in Midland. Correct?

13 A. Correct.

14 593 Q. Is Kenny a new recruit at the
15 time?

16 A. I can't remember, at that time,
17 if he was just hired. But again, just based on
18 pairings and how the structure worked, he would have
19 been a weaker or newer agent.

20 594 Q. So you are providing supervision
21 and management services or oversight to Kenny at that
22 time. Is that the idea?

23 A. Correct. In-field. As well as
24 the other agents on my team. Yes.

25 595 Q. So you would or would not, that

1 day, be supervising Chike, if he is in Victoria
2 Harbour and you are in Midland?

3 A. Supervision didn't have to be
4 done physically. Again, with the Just Energy app,
5 Joel was always supervising and monitoring the
6 dispositions. So he obviously -- as you can see in
7 some of the messages in the exhibits, he was always
8 able to tell us, as a crew coordinator, "I haven't
9 seen disposition," you know, "Where is so and so," et
10 cetera. And he would always text us or call us and
11 have those conversations.

12 And we obviously always used just the
13 iMessage as well, just because it was most efficient,
14 to contact the agents on our team and just touch base
15 and, "How is everything going," et cetera, et cetera.

16 So all of the time, Joel instigated
17 that, because he could obviously track all of the
18 agents via the Just Energy app. So he always knew
19 when an agent was not in area or not working.

20 596 Q. So your evidence is that at any
21 one time -- let's say in July. When I said earlier
22 there could be upwards of, say -- that was my term,
23 and I am not holding you to this -- 28 agents in the
24 field, your evidence is Joel is tracking all 28 of
25 them on a constant basis?

1 A. Absolutely. On the Just Energy
2 app. And that was his job. Right? Texting, calling
3 --

4 597 Q. Well, he had lots of other jobs
5 in terms or orientation and training and running the
6 office and communicating with head office and all of
7 that at the same time. Correct?

8 A. I don't know every facet of his
9 role, so I can't really testify to that. But, again,
10 it was constant. From my experience, and obviously
11 others' in the office, it was constant communication
12 from Joel, on a very regular basis, each day. You
13 know, no more than an hour would pass, latest, before
14 we would all obviously be hearing from him. So he
15 used the Bink board --

16 598 Q. And you are not on the chats with
17 the other crew coordinators and any of their sales
18 agents?

19 A. Yeah. We were. As I said, the
20 Bink board chats, which are a part of the affidavit,
21 that is the entire office. So every agent is a part
22 of that group chat. So...

23 599 Q. And if Chike is working by
24 himself in Victoria Harbour, you personally wouldn't
25 know when he is at lunch, when he is at Tim Hortons,

1 when is taking a break or any of that. Would you?

2 A. I wouldn't. Joel obviously
3 would, based on dispositions from the Just Energy app.
4 And he would always contact, as illustrated in the
5 exhibit.

6 600 Q. Well, all he would know is
7 whether or not he has put a sale in?

8 A. No. Because, as I explained, the
9 dispositions on the Just Energy app tracks each house.
10 So you take into consideration the time that it would
11 take to just get from one door to the next and then
12 disposition either "call back," "not interested," "do
13 not solicit," or "deal." You obviously know if
14 somebody is working, or if they are not. Because if
15 dispositions haven't been happening for 15 or 20
16 minutes, he would call them, text them and ask that
17 agent, "What are you doing? Where are you? I haven't
18 seen dispositions." And that is when the agent could
19 say, "Oh. Well, I had to leave area, you know, to
20 walk to go to the bathroom," or, "I wanted to take a
21 break," or, "I am in a deal." And he would obviously
22 always relay that message or ask us first before
23 calling them just to see. Right?

24 601 Q. And anyone who had met their goal
25 for the week, as you had described earlier -- and I

1 know you had different goals than others, perhaps.

2 A. Yes.

3 602 Q. Again, that could impact whether
4 or not they were "dispositioning" at any one
5 particular time, because they may have felt content to
6 have -- you know, not push it too hard, because they
7 have already made their goals for the week?

8 A. No. Because Joel obviously, it
9 being a sales environment, didn't encourage
10 complacency. He always referred to it as cancer in a
11 sales force. He didn't want people that were mediocre
12 or that were okay being complacent or only going to
13 the field writing, you know, one or two deals a day.
14 This is the structure. You adhered to it. And he
15 obviously pushed and pushed to get as many deals,
16 obviously, out of every agent as possible, as you are
17 aware, for the advantageous reasons.

18 603 Q. Right. But with the tremendous
19 turnover that you have described, people who had met
20 their goals are obviously people who are performing.
21 The last thing Joel, I would presume, wants to do is
22 upset those people so that they decide they don't want
23 to work anymore or produce for him?

24 A. I was number one. I was upset,
25 and I quit. Right? So it --

March 21, 2019

1 604 Q. Well, you quit after earning over
2 \$200,000.

3 A. It doesn't matter. I could have
4 earned a heck of a lot more there if I would have --
5 if I could have moved up through the ranks or I could
6 have stayed working there, versus taking on a risk of
7 transitioning to a completely new role and having to
8 again start from scratch. So that really wasn't his
9 concern --

10 605 Q. Well, except, just to finish that
11 thought --

12 A. Okay.

13 606 Q. -- I think you said earlier that
14 it is a tough job, door to door?

15 A. Absolutely.

16 607 Q. And at a certain point people
17 don't want to do it anymore?

18 A. I can definitely tell you that I
19 am a very strong individual, and the reason why I quit
20 was because I was sick of the treatment. I was sick
21 of constantly being controlled, not having any
22 freedom, not having any personal life. I never was
23 able to have time off, and I worked my butt off and I
24 earned it and --

25 608 Q. So the trade-off for you was

1 money versus time?

2 A. Not really. It was, like I said,
3 the full package. The abuse. The treatment that I
4 received. I became very, very sick, very ill.

5 Obviously, as illustrated in the message between
6 Allison Short and I, obviously, where I was saying,
7 like, "I am not sleeping." You know, I was vomiting.
8 And obviously, as illustrated via diary and vomiting,
9 as personal as that is, via illustrated in messages
10 between Joel and I, near the end there I had gotten
11 extremely sick from the treatment and the pressure.
12 And I just decided at that point, "It is not worth it
13 anymore, no matter how much money I make. I am
14 calling it quits, and I am going to move forward and
15 take a risk, because I believe in myself to start new
16 elsewhere, because it will be better than this."

17 609 Q. All right. And you chose to do
18 that, as opposed to, for example, saying to someone
19 like Joel, "I am going to cut back"?

20 A. Because I was --

21 610 Q. "I am still going to be a great
22 performer, but I am not going to be putting \$200,000
23 on the books every year."

24 A. I, at points, had talked with
25 Joel Stewart and Dan Camirand after I had left. They

1 continued to contact me for a period of over two, two
2 and a half weeks after the fact, again just trying to
3 get me to stay. And it didn't matter. That was the
4 structure. You adhered to it, or you weren't working
5 in the office. There was no flexibility.

6 611 Q. So your evidence is that you
7 believed they were prepared to lose someone of your
8 talent?

9 A. Well, they did. So yes. That is
10 the proof in the pudding. Right?

11 612 Q. Well, no. My point was you
12 didn't suggest to them that you would like to stay on,
13 but work less hours.

14 A. Like I said, I had conversations
15 with them, via the phone, specifically saying that I
16 was not going to continue in that role and in the
17 capacity and I was not going to deal with that
18 treatment. At that point, they actually had offered
19 me a role as regional distributor, as they had put it,
20 and to move to Ottawa for a position, and I denied all
21 of that. I said, "I am not doing it. I have been
22 here for the 14 months, I see how you guys operate
23 and, you know, I am done and moving on."

24 613 Q. So you were offered a regional
25 position in Ottawa?

1 A. Again, whether it was truthful or
2 not, I don't know. Because I had already resigned.
3 Right? So were they -- again, a lot of things were
4 very smoke and mirrors here.

5 614 Q. But you didn't pursue it?

6 A. Of course not. Not after my
7 treatment. It is time to move on and build anew.

8 615 Q. But you made the choice to move
9 on?

10 MR. ROSENFELD: I think that is
11 implicit in her --

12 THE WITNESS: Correct. Yeah. It was
13 not conducive for my health and my well-being. Yes.

14 MR. MARTIN:

15 616 Q. So at page 28 of that -- I am
16 just looking at the bottom. It says -- I gather this
17 is Joel to you:

18 "Please have R.J. shadow you for
19 refresher." (as read)

20 Do you see that?

21 A. Correct.

22 617 Q. Is R.J. the person we saw before?

23 MR. ROSENFELD: I think it was D.J.
24 before.

25 MR. MARTIN:

March 21, 2019

1 618 Q. Was that D.J.? Who is R.J.?

2 A. R.J. is a different agent. D.J.
3 Moore is who you are referring to. This is R.J.
4 Somebody completely different.

5 619 Q. Okay. And why would he be having
6 R.J. shadow you for a refresher?

7 A. Yeah. R.J. was never on my team.
8 He was actually an agent under Ryan Clarkson, on his
9 team. And, again, he had R.J. wanting to shadow me
10 because, again, like I said, when it comes to agents
11 and working right, people could have kind of slow
12 periods or slumps where they could be writing low
13 amounts of deals, whether it was zero, one or two, and
14 having just their periods of struggle. So Joel would
15 always, whether on my team or not -- and I did work
16 with other offices, such as the Cambridge office,
17 because it was under Dan Camirand. So they always had
18 me, obviously, be the one that had to do the training
19 and then have people shadowing to improve their
20 skills. So he, that day, requested me to have R.J.
21 shadow me.

22 And a refresher would be, obviously,
23 for a refresher because he is struggling. So work on
24 objections, have them see your script, and hopefully
25 that will help get them back on track.

Page 163

1 So, again, there was no incentive for
2 me financially, because R.J. was not even on my team.

3 620 Q. And if I could take you to page
4 31.

5 A. 31. Okay.

6 621 Q. And you see in the middle it
7 says:

8 "Manager battle standings.
9 Katlyn. Marina. Two ties." (as
10 read)

11 Do you know what that means?

12 A. Absolutely. So that is -- what
13 that is, is Joel Stewart, who is obviously the
14 regional at Kitchener, and then Andrew Dick -- who
15 during my time at Just Energy, he was the regional of
16 the residential side of the Cambridge office. So
17 every once in a while they would basically create --
18 we never had the choice. We obviously had to partake
19 in it, because we were told. They would have weekly
20 battles, if you will, between certain agents from each
21 office. So for that particular date, if you look at
22 11/07/2014, Katlyn is me. Marina was Cambridge.
23 Alfred was from Cambridge. Matt was my assistant crew
24 coordinator. Ryan is Ryan Clarkson from Kitchener.
25 Uz was his name. He was from Cambridge. And, again,

1 three days left to win. So it was, again, that week,
2 whatever agent, per battle, per pairing, obviously,
3 you know, needed to write the most deals to win.

4 622 Q. To win what?

5 A. I don't remember if there was
6 anything for us to win. Because, again, a lot of
7 points and incentives went to the sales agents, not
8 always us, per se. So I am not sure, for that
9 particular battle. I can't speak to what was offered,
10 if anything, for that particular one.

11 623 Q. But it could be points or money
12 or other incentives?

13 A. We never usually won money. It
14 might have been points. Like 1,000, 2,000 or
15 something like that points, if that is what was given.

16 624 Q. And what were the points
17 convertible to?

18 A. It was for the Just Energy
19 website, where you could purchase a different variety
20 of items. It is kind of like an online catalogue, as
21 you are aware of. And then if you ever see "to DC" at
22 the top there, that is Dan Camirand, our national
23 distributor, that particular message. So if you do
24 see that, that is who that is referring to, is our
25 national. As you can see, it illustrates us what to

1 wear, et cetera.

2 625 Q. Yeah. So if I could just take
3 you to your second affidavit. I just want to finish
4 off on these messages. Could you go to page 14? It
5 is in the right-hand corner. Fourteen.

6 MR. ROSENFELD: We don't have page
7 numbers on this, for some reason.

8 MR. MARTIN: I am sorry. It is the
9 very first -- sorry. If you start, it goes 12, 13 --

10 MR. ROSENFELD: Give me one second.

11 Okay. Yes. Page 14.

12 MR. MARTIN:

13 626 Q. So this one, I gather, is a -- it
14 is a ten-people chat. So would this be to your team?

15 A. As I said, this is -- anything
16 you see regarding this Bink board, as it was called,
17 where you see the Bink one, et cetera, as I already
18 explained, that is to the entire office. So every
19 agent that is working that day in that office -- which
20 again, at this particular point, December 10, 2014,
21 was ten people -- that is who is a part of that Bink
22 board. So it is the entire office that is registered
23 on these.

24 627 Q. Right. And Joel would be one of
25 the ten people?

1 A. Correct.

2 628 Q. So does that mean that there is
3 arguably, then, nine people, perhaps, out in the
4 field? Is that --

5 A. Correct. And that is on both
6 teams. That is the entire office.

7 629 Q. Right. Okay. And it says:

8 "First to five is 20,000 points."

9 (as read)

10 What does that mean?

11 A. Yeah. "First to five" meaning
12 whoever is the first agent to five deals would get
13 20,000 points. So there were times when head office
14 would put up -- and, again, Joel always got points
15 balances every month from head office, and then he
16 would obviously be able to distribute those points
17 accordingly, based on bonuses.

18 And there were times as well that
19 obviously we would receive individual messages saying,
20 "Okay. You don't count for this deal," or what have
21 you. That would be more so for the regular agents,
22 because we obviously would tend to get to it first.

23 630 Q. So go to page 46. Again the
24 right-hand corner of 46. And this is just, I gather,
25 you alone with someone Clarkson?

1 A. Correct.

2 631 Q. Who is Clarkson?

3 A. That was Ryan Clarkson, as I
4 said, who was a crew coordinator at the office.

5 632 Q. And why would the two of you be
6 keeping in contact on November 21, 2014?

7 A. Again because, everybody in the
8 office, we always communicated with each other.
9 Because we always went to the same cities, the same
10 work. So we always communicated. And as you can see,
11 that is me asking him questions. You know, "When you
12 pull up a street and there are red pins everywhere,
13 does it mean it has been worked recently? Like how
14 long ago?" And obviously you can see him kind of
15 stating that. Because, again, everything -- this is
16 the market intelligence that they referred to in their
17 affidavits. All of the dispositions are registered
18 and continue to show up for a period of time.

19 633 Q. And then, at the bottom, he says:
20 "Let's not be Dorothy and Tin Man
21 today." (as read)

22 And you say:

23 "Deal. Let's tear it up," (as
24 read)

25 With a smiley face. I gather you are

1 trying to motivate him to be a good salesperson that
2 day?

3 A. Well, Ryan Clarkson was, you
4 know, a decent salesperson in the office. Being a
5 crew coordinator, you had to be a stronger agent. But
6 absolutely. Like, this is showing you that we were in
7 a particular area where, like it said, it is full of
8 red pins, which is either do not solicit or not
9 interested, and we obviously had to work it. So it is
10 like, "Let's just make the most of it. Let's tear it
11 up. This is our area we were given. That is what it
12 is." So, again, we didn't have the choice to just
13 change area.

14 634 Q. But you were kind of motivating
15 each other, then, I gather is what you are saying?

16 A. Absolutely. Coworkers. I am
17 sure you are friendly and motivate coworkers as well.

18 635 Q. Paragraph 16 of your affidavit.
19 Sorry. I am back into your first affidavit.

20 A. Okay.

21 636 Q. You talk about how many hours you
22 would work weekly, including travel. I gather, many
23 weeks, the travel time could be significant,
24 particularly if you are going away from Kitchener?

25 A. Correct. Like for push weeks?

1 637 Q. Well, any time. If you are not
2 working in Kitchener, the travel time every day, to
3 and from --

4 A. Well, we weren't allowed to work
5 in Kitchener.

6 638 Q. Sorry?

7 A. We were not allowed to work in
8 Kitchener because of the utility privatization. So,
9 yeah, we could never work in Kitchener.

10 639 Q. Right. So every day, regardless
11 --

12 A. We would have to travel.

13 640 Q. -- you would have heavy travel
14 time?

15 A. Correct.

16 641 Q. And it could be, I gather, at
17 some times upwards of two hours each way?

18 A. On average, like I said, it was,
19 yeah, anywhere from an hour to an hour and a half in
20 proximity to the city of Kitchener on the regular
21 weeks. And then obviously on push weeks, which were
22 once a month, sometimes two weeks a month, yeah, it
23 could be farther. So Windsor is three hours away.
24 Obviously Thunder Bay was the farthest.

25 642 Q. But even on a week where you are

March 21, 2019

1 working out of Kitchener, if it is an hour and a half
2 out and an hour and a half back, that is three hours
3 of just travel time each day?

4 A. Correct.

5 643 Q. Commuting time?

6 A. Correct.

7 644 Q. No different than what an
8 employee might do in travelling to work every day?

9 A. I don't know. I can't speculate
10 on where anybody works as an employee. I can say a
11 lot of people I knew who are --

12 MR. ROSENFELD: Just questions and
13 answers.

14 MR. MARTIN:

15 645 Q. Just wait for the questions.

16 A. Okay. Got you, Mr. Martin.

17 MR. MARTIN: Just go off the record
18 for a second.

19 --- Recess taken at 1:05 p.m.

20 --- Upon resuming at 2:04 p.m.

21 MR. MARTIN:

22 646 Q. If I could ask you, Ms. Schwantz,
23 at paragraph 22 of what I am calling your first
24 affidavit, you indicate -- you say you have no control
25 over which contracts were accepted and finalized, and

Page 171

1 which were rejected by Just Energy or failed to be
2 finalized?

3 A. Correct.

4 647 Q. All right. And we talked about
5 this a bit this morning. You are not suggesting
6 there, though, that Just Energy improperly rejected
7 contracts? And by that I mean: You are not saying
8 they rejected contracts that otherwise met the
9 criteria?

10 A. Well, for us, again, being in
11 this market on the JECP program, half our commission
12 came from both gas and electricity successfully
13 flowing on the program, and the other half of our
14 commission for one particular deal came from the
15 successful installation of the thermostat. So, for
16 example, if a home was deemed incompatible -- which
17 you can see the terminology in some of those examples
18 in messages in the exhibit -- because either a
19 customer had a boiler or things that nature, we did
20 not get paid for that. And that was based on the Just
21 Energy program. So it wasn't regulatory elsewhere, if
22 you will.

23 648 Q. I appreciate that. But that is
24 not them rejecting it improperly. It is just that
25 that homeowner didn't have the logistical capability

March 21, 2019

1 of having that particular contract. Correct?

2 A. That is true. It is out of our
3 control, I guess.

4 649 Q. Was the Kitchener residential
5 office physically open on a Sunday?

6 A. On a Sunday? It did not operate
7 on a Sunday unless, again, we had to work.

8 650 Q. But you are at someplace -- I
9 don't know, Windsor, like you described. If you are
10 there on a Sunday, is the Kitchener office open that
11 day?

12 A. No. Not on a Sunday.

13 651 Q. And to the best of your
14 knowledge, had Mr. Stewart come up from the sales
15 agent role to assistant crew coordinator, crew
16 coordinator, regional? Had that been his ascendancy
17 in the office?

18 A. I am not sure. He didn't always
19 advertise his time, like his roles, through Just
20 Energy. But he did receive a ten-year pin while I was
21 there.

22 652 Q. I was really relating it to
23 discussions you may have had with him where he said,
24 "You could use me as a role model." That is what I
25 was getting at. As in he had done the same sort of

Page 173

1 step up that you were looking to do yourself.

2 A. He never really advertised or
3 talked about that.

4 653 Q. And once you got rolling in the
5 program and you are becoming successful and you, I
6 gather, gained confidence in doing door-to-door sales,
7 my understanding is that you had set a personal goal
8 of some \$250,000 for annual remuneration. Is that
9 correct?

10 A. Correct.

11 654 Q. And what did you base that on?
12 That number.

13 A. Those were numbers that Joel
14 Stewart gave us in regards to -- like, for some of us
15 as crew coordinator, and things like that, just to
16 have achievable, attainable goals, as well as kind of
17 push yourself, if you will. So he just talked about
18 what crew coordinators could make, what regionals
19 could make, nationals could make. So that goal was
20 based off of information that he had provided me with.

21 655 Q. And you made a comment about
22 feeling pressure around the time of your father's
23 funeral. Do you know what the date of that was?

24 A. Which day that I was feeling
25 pressure?

1 656 Q. The date of your father's
2 funeral.

3 A. Yeah. It was December 15, 2013.
4 It was right when he passed away. It was when he
5 passed away. So I was obviously on a road trip. And
6 then the actual celebration of life was the end of
7 January of 2014.

8 657 Q. Do you know the date?

9 A. I don't remember the exact date.
10 No. No. It was the end of January.

11 658 Q. And there was a compliance
12 program at Just Energy that related to their Ontario
13 Energy Board commitments. Are you aware of that?

14 A. Could you elaborate? I am just
15 not understanding.

16 659 Q. So if someone like yourself, a
17 representative, had a complaint against them, that
18 complaint would be registered with the compliance
19 group, and there was a whole program for dealing with
20 complaints and compliance?

21 A. From sales agents?

22 660 Q. Complaints against sales agents.

23 A. Oh. Against sales agents.
24 Sorry. I am aware of that, yes. There was
25 compliance.

1 661 Q. And I gather from time to time --
2 I am not talking about whether they were justified or
3 not, but there would have been complaints made against
4 you, by customers, that would have gone in to Just
5 Energy, who had a compliance department that would
6 then relate back that complaint to you?

7 A. Absolutely. The complaints were
8 always relayed through Joel, and then Joel would relay
9 it to us.

10 662 Q. So there was an entire sort of
11 investigation of each particular complaint back
12 through to the agent?

13 A. I am not sure what the
14 investigative process was, if there was one. It is
15 just I know that they did have a system, because I
16 have seen it, where it did track, you know, how many
17 deals an agent did, how many were approved and flowing
18 their tally of complaints.

19 663 Q. All right. And was there --

20 A. Like if any were confirmed.

21 664 Q. -- a penalty system that you were
22 aware of?

23 A. For complaints? I believe more
24 so near the end of my time at Just Energy, because
25 they were trying to crack down on complaints and

March 21, 2019

1 trying to keep compliance low, either through the OEB
2 or customers that called in to Just Energy to make a
3 complaint. I believe they did start allotting fines.
4 And they weren't big. I think they were like \$75, or
5 something like that, maybe.

6 665 Q. And you were once fined for a
7 complaint?

8 A. I don't know. I can't remember
9 if I was ever fined for a complaint or not.

10 666 Q. And typically the nature of the
11 complaints were what? Can you recall?

12 A. In general?

13 667 Q. Yes.

14 A. It could vary. There were agents
15 who had complaints that customers said that they were
16 saying that they were represented from the utilities.
17 That could have been Union Gas, Enbridge or whatever
18 hydro company was operating in that particular city.
19 People being aggressive or pushy. Being a senior and
20 signing a contract. There was a variety, a multitude,
21 of different reasons why people complained. And,
22 again, not all customer complaints were authentic.

23 668 Q. I appreciate that. But in
24 managing a team, was one of your responsibilities to
25 deal with the complaint resolution process?

Page 177

1 A. No. That was Joel who dealt with
2 that, not us as crew coordinators.

3 669 Q. At any time, though, to the
4 extent there was a complaint involving someone of your
5 team, could it have involved a need for you to become
6 involved with respect to retraining or other
7 role-playing or job shadowing with that particular
8 agent on your team?

9 A. Again, everything came from Joel.
10 He gave dictation on all of that. So he would deal
11 with it and talk to agents individually, if there were
12 major compliance issues that came up. And then, if
13 need be, again, during our mandatory morning meetings,
14 he would talk and address certain compliance issues as
15 a whole, and then obviously do role-playing and
16 objection-handling to deal with certain complaints
17 that were coming in.

18 670 Q. And would that go so far as to
19 you playing a role in the field with a particular
20 agent who had had a complaint or complaints?

21 A. Sorry. Can you rephrase that?

22 671 Q. Would that go so far as to
23 including you, in the field, having to deal with
24 in-the-field training with an agent on your team, for
25 example, who had --

March 21, 2019

1 A. Not really.

2 672 Q. -- complaints against him or her?

3 A. No. Because it would be done in
4 the office, in the mandatory meetings. And once it
5 was addressed again via Joel to everybody and to that
6 individual privately, then they would operate,
7 working. We didn't necessarily supervise them that
8 way. Right? Like, we would be knocking across the
9 street from each other and going -- like, when
10 somebody was, again, not a brain new trainee -- a
11 brand new, sorry, trainee in-field shadowing, that
12 they would knock across on the street, and we would
13 work our way up.

14 673 Q. But part of your management and
15 supervision -- if you saw, experienced, what I will
16 call complaint-like behaviour, what would you do?

17 A. Again, when I worked with people,
18 with agents, I never, ever really went to Joel and
19 said that I had any issues. Because a lot of time,
20 when compliance issues happened, it could have been,
21 again, just a private conversation, obviously, with
22 somebody, whether it was in their home, between the
23 agent and that individual when they were enrolling
24 them in the program and there was confusion and they
25 are trying to get out of it or -- the only ever time

Page 179

1 that there was ever issues that I ever talked to, I
2 guess, with Joel would be if a customer was getting
3 aggressive or hostile and police were being called.
4 Then that is the only time. When there were issues
5 such as that, you know, obviously things would be
6 addressed and, you know, whether we needed to move
7 area or -- again, there are issues in here. When we
8 were working in Chatham, for example, when police were
9 being called, that would be kind of a compliance
10 issue. Then that was it. But aside from that, Joel
11 handled it all, so...

12 674 Q. So you can't recall an item or a
13 time when you escalated a complaint to Joel or to Just
14 Energy?

15 A. No. Never. Not once. He dealt
16 with it all.

17 675 Q. No. I meant escalate when you
18 observed something in the field and you felt the need
19 to take it to Joel or to Just Energy.

20 A. No. Because I never -- I can
21 truthfully say I never witnessed anything in the field
22 like that from agents. We would always pride
23 ourselves on being compliant on my team.

24 676 Q. Well, apart from whether you were
25 fined or not, do you have any recollection of any of

March 21, 2019

1 your team members being fined for complaint
2 compliance?

3 A. Again, I can't remember if any of
4 my team members were ever fined of complaints.

5 677 Q. So I know you reviewed Mr.
6 Teixeira's affidavit.

7 A. Yes.

8 678 Q. One thing he comments on in there
9 is that you were at one point marketing in North Bay
10 and other members of your team were in Etobicoke, some
11 400 kilometres apart. Do you recall that evidence?

12 MR. ROSENFELD: Why don't we take a
13 look at it?

14 MR. MARTIN: Sure.

15 MR. ROSENFELD: Where is it?

16 MR. MARTIN: Let me take it out for
17 you. It is in Volume 2. Hang on a second.

18 THE WITNESS: So page 36, section 129?
19 Or paragraph 129?

20 MR. MARTIN: 129 and thereafter. That
21 is correct.

22 MR. ROSENFELD: And thereafter with
23 respect to Ms. Schwantz?

24 MR. MARTIN:

25 679 Q. Sorry? This is where he talks

Page 181

1 about this, because he references this exhibit 2.

2 Why would it be that you were in North
3 Bay, and other members of your team would be distant
4 from you?

5 A. Can I just ask -- because I know
6 it is at an exhibit. I haven't seen that exhibit.
7 What team member are we speaking of, just to verify?
8 Because that, to me, does not sound accurate, if we
9 don't mind taking a second here.

10 680 Q. Just hang on.

11 MS. REKLITIS: It is Medardo Montano.

12 THE WITNESS: Okay. So when you say
13 in December of 2013, I don't believe -- at that point,
14 I was not -- I was an assistant crew coordinator at
15 that point, so...

16 MR. MARTIN:

17 681 Q. How do you know that?

18 A. Because I am thinking in my head,
19 and I can relay the time in my head..

20 MR. ROSENFELD: What about under the
21 column:

22 "Pay level identifier"? (as read)

23 THE WITNESS: Assistant crew
24 coordinator. ACR. It lists it. So I was not a crew
25 coordinator running a full team. So technically,

1 then, that wouldn't have been an agent on my team.

2 MR. MARTIN:

3 682 Q. Who was that agent?

4 A. The one that you listed in your
5 exhibit.

6 MS. REKLITIS: Medardo Montano.

7 MR. MARTIN:

8 683 Q. Is that someone familiar to you?

9 A. To be honest, I can't even recall
10 the name.

11 684 Q. And why would the office,
12 generally speaking, be in such disparate places in
13 Ontario at the same time? North Bay versus, say,
14 Etobicoke.

15 A. Again, I am not sure. I don't
16 even -- I don't even know that name. I am not going
17 to lie. So I am not sure what that is.

18 685 Q. And, similarly, his example that
19 he gives is that in January you were marketing in
20 Brampton while another member of your team was in
21 North Bay.

22 Who is the person there?

23 MS. REKLITIS: Joshua Jafry.

24 MR. MARTIN:

25 686 Q. Joshua Jafry.

1 A. Again, I am -- honestly, like I
2 said, I don't know. I know the name Joshua Jafry,
3 obviously, from working in the office, but...

4 MR. ROSENFELD: Would your code
5 identify it? I mean, I don't...

6 THE WITNESS: Yeah. So it says ACR
7 again. So assistant crew. So that is what it was
8 listed as at that time. Because I know, again, the
9 beginning of January, in that first beginning, is when
10 I did become crew coordinator. I believe it was
11 within the first week of January, is when I was
12 officially promoted into that role, so --

13 MR. MARTIN:

14 687 Q. And from the office itself, why
15 would some people be in Brampton and others be in
16 North Bay?

17 A. Well, again, like I previously
18 discussed, from my perspective -- from my experience,
19 should I say, when I had my team operating under me,
20 the only time -- which we discussed, obviously, as
21 illustrated in some of the messages in the exhibit.
22 Certain townships are -- the only time that we would
23 ever be kind of split up is if we were on a road trip.
24 And obviously some townships were really small and
25 there wasn't enough area for all of us to work as a

1 team. Then, you know, some people would be in a
2 specific town, et cetera, et cetera, along drop-off
3 points, just to make it efficient to work for a day or
4 two.

5 Again, some people like Josh Jafry, he
6 was under other teams as well, like, during his time
7 there. So, again, that could have been under the
8 other crew coordinator, Ryan Clarkson or whomever, as
9 well. So the only time that, again, on push weeks,
10 anything was ever split up is -- for example, when we
11 went to North Bay, because there wasn't going to be
12 enough territory for all of us to work, my team went
13 to North Bay, and then the other team, I believe they
14 were in Sault Ste. Marie, for example, so...

15 688 Q. When you were an assistant crew
16 coordinator, who was the crew coordinator?

17 A. There was a gentleman named Tom
18 who trained me. I forget his last name. But he was
19 my crew coordinator when I started.

20 689 Q. And when did Tom depart?

21 A. I don't exactly remember when Tom
22 departed.

23 690 Q. Had you become a crew coordinator
24 while he was still there, or did you take his role?

25 A. I don't believe I took his role.

1 I believe, for sure, with -- I believe, beginning of
2 the January when I became crew coordinator, he was no
3 longer there, from what I can remember. But I
4 don't -- like I said, in the few months of me
5 starting, I can't recall when he resigned.

6 691 Q. And were the overrides for a crew
7 coordinator more significant than the overrides for an
8 assistant crew coordinator?

9 A. They had increased, yes.

10 692 Q. And was there an assistant
11 regional position in the Kitchener office at the time?

12 A. No.

13 693 Q. If you were out on a push week, I
14 assume that if there were new recruits being badged
15 and oriented and trained and whatnot in the office,
16 that Joel would play a role in that training?

17 A. Joel would. Yes. But I will say
18 that when agents -- when we were away on a push week,
19 then agents would wait to the following week, until we
20 were there, and it would be arranged that they would
21 come and shadow in-field, et cetera. So it would
22 delay their in-field training, because we as crew
23 coordinators did it, and not Joel.

24 694 Q. In the field?

25 A. Yes.

March 21, 2019

1 695 Q. Yes. Did Joel ever go in the
2 field?

3 A. As I said, rarely would he ever
4 go in-field. It was not often, during my time at Just
5 Energy, that he was in there on a regular basis. But
6 once in a blue moon he did.

7 696 Q. To do job shadowing or door
8 shadowing or role-playing in the field?

9 A. Sometimes. But, again, it was
10 very, very rare that he did that.

11 697 Q. I don't think this is in the
12 materials, but we have talked about this, and I just
13 wanted to make it an exhibit or not depending on what
14 Ms. Schwantz says.

15 But we did talk about you making over
16 \$200,000 one year. I have your T4A from 2014. I just
17 wanted to show it to you and just wanted to see that,
18 as far as you are aware, is reasonably accurate as to
19 what you would have received.

20 MR. ROSENFELD: Is this in the
21 materials?

22 MR. MARTIN: Is it in the materials?

23 MS. REKLITIS: No. It is not.

24 MR. ROSENFELD: It is not exhibit Z of
25 Mr. Teixeira's?

1 MR. MARTIN: It may be.

2 MS. REKLITIS: You know what? It is.

3 MR. MARTIN: It is? Okay.

4 MS. REKLITIS: It is.

5 MR. ROSENFELD: This is what they put
6 forward as exhibit Z to Mr. Teixeira's affidavit.

7 THE WITNESS: Yeah. So for Mr.
8 Teixeira's affidavit, that is correct, I would say,
9 from my knowledge. Yes.

10 MR. MARTIN:

11 698 Q. Okay. When you first applied for
12 a job, a position, with Just Energy, had you done
13 research on the company?

14 A. No.

15 699 Q. Did you know anyone who had
16 worked with them?

17 A. No. Just off the Kijiji
18 advertisement is where I found it.

19 700 Q. And can I assume that you have
20 never met or are familiar with Haidar Omarali, the
21 plaintiff in this case?

22 A. No.

23 701 Q. And you don't know or have met
24 Kia Kordestani?

25 A. No.

March 21, 2019

1 702 Q. And some of the other affiants on
2 this motion who were in some relationship in the past
3 with Just Energy. I am going to first deal with the
4 certification materials. Do you know a Mortuza Awal?

5 MR. ROSENFELD: Why are we asking
6 these questions?

7 MR. MARTIN: Because I have a
8 follow-up if she does, but I don't want to pursue it
9 if she doesn't.

10 703 Q. Petra Filipovic?

11 A. No.

12 MR. MARTIN: Just go off.

13 --- Recess taken at 2:32 p.m.

14 --- Upon resuming at 2:35 p.m.

15 MR. MARTIN: Thank you. Subject to
16 the undertakings and the under advisements and any
17 refusals, those are all the questions I have, Ms.
18 Schwartz, for you today. Thank you.

19 RE-EXAMINATION BY MR. ROSENFELD:

20 704 Q. Just one quick redirect.

21 You mentioned earlier in this
22 examination -- when you were trying to get
23 clarification on the question of minimum wage, you
24 were asked of, when you were a bartender, how much you
25 got paid relative to minimum wage. You said a dollar

Page 189

1 less than minimum wage. What minimum wage were you
2 talking about?

3 A. Me? Again, like, he didn't
4 clarify minimum wage. So I guess it might have been
5 whatever minimum wage was at that time.

6 705 Q. Are you aware of any exemptions
7 to minimum wage for restaurant employees?

8 REF MR. MARTIN: Well, that is a leading
9 question. That is not a fair question.

10 MR. ROSENFELD:

11 706 Q. Are you?

12 MR. MARTIN: She said she didn't know
13 about minimum wage at the time.

14 MR. ROSENFELD:

15 707 Q. Are you aware of --

16 A. Yes.

17 708 Q. Are you aware of any exemption?

18 A. Meaning?

19 709 Q. An exemption from a regular
20 minimum wage.

21 A. Sorry. Like, now I am confused.
22 Now I am confused, honestly.

23 REF MR. MARTIN: You should be. It is not
24 a proper question.

25

March 21, 2019

1 MR. ROSENFELD:

2 710 Q. The question was: What were you
3 referring to, with respect to minimum wage, when you
4 were asked that question?

5 And the second question was: Are you
6 aware of there being an exemption for the minimum wage
7 for restaurant employees?

8 A. No.

9 MR. ROSENFELD: Okay.

10 MR. MARTIN: Okay. I have nothing
11 further. That is it.

12 --- Whereupon the matter adjourned at 2:37 p.m.

13

14

15

16

17

18

19

20

21

22

23

24

25

I HEREBY CERTIFY THAT I have, to the best of my skill and ability accurately recorded by shorthand, and transcribed therefrom, the foregoing proceeding using real time computer aided transcription.

A handwritten signature in black ink, consisting of a large, stylized 'S' followed by a horizontal line and a smaller, more fluid signature.

SAGE SIEGEL, COURT REPORTER

Court File No. CV-15-527493-00CP

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

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

CROSS-EXAMINATION OF BAHRAM NEMATI
held at the offices of ASAP Reporting Services Inc.,
333 Bay Street, Suite 900, Toronto, Ontario,
on Friday, March 22, 2019, at 1:59 p.m.

APPEARANCES:

Janeta Zurakowski

David Rosenfeld

for the Plaintiff

Anastasia Reklitis

Paul J. Martin

for the Defendants

A.S.A.P. Reporting Services Inc.© 2019

940-100 Queen Street

Ottawa, Ontario K1P 1J9

(613) 564-2727

900-333 Bay Street

Toronto, Ontario M5H 2R2

(416) 861-8720

INDEX

	PAGE
Affirmed: Bahram Nemati	3
Cross-examination by Ms. Reklitis	3

LIST OF UNDERTAKINGS, REFUSALS AND UNDER
ADVISEMENTS

Undertakings (U/T) found at pages: N/A

Refusals (REF) found at pages: 13-16, 68, 70

Under advisements (U/A) found at pages: N/A

March 22, 2019

1 Toronto, Ontario

2 --- Upon commencing on Friday, March 22, 2019, at

3 1:59 p.m.

4 AFFIRMED: Bahram Nemati

5 CROSS-EXAMINATION BY MS. REKLITIS:

6 1 Q. Hi, Bahram. Can you please state
7 your full name for the record?

8 A. Bahram Nemati.

9 2 Q. And where do you reside? Where
10 do you live?

11 A. Richmond Hill.

12 3 Q. Richmond Hill?

13 A. Mm-hmm.

14 4 Q. And how long have you resided
15 there?16 A. Back and forth. But just
17 recently, like four or five months.18 5 Q. And you affirmed an affidavit on
19 August 30, 2018. Is that correct?

20 A. Yeah.

21 6 Q. And have you had the opportunity
22 to review it recently?23 A. I went over it once. But I have
24 a copy right here, so...

25 7 Q. And are there any changes or

1 corrections you wish to make to your affidavit?

2 A. Yes. I believe section four and
3 five. As far as the quiz, I never completed or did a
4 quiz for joining the company.

5 8 Q. And that would have been in the
6 Viking office?

7 A. Yes.

8 9 Q. And so at what point -- you
9 attended the orientation?

10 A. Yes. So the first day I started
11 was actually the very first day they were giving out
12 iPads. So I came in with one of my friends, who
13 actually referred me to the job. I did not know what
14 the job was until I walked into the office. And I did
15 the meeting with them. They gave us iPads. Right
16 after the meeting, they took my pictures and made me
17 sign the documents.

18 10 Q. The independent contractor
19 agreement?

20 A. That is correct. Yes.

21 11 Q. So your friend referred you to
22 the position at Just Energy?

23 A. Yes. As a sales agent.

24 12 Q. And was your friend a sales
25 agent?

1 A. Yes.

2 13 Q. So did he explain to you what he
3 had been doing at Just Energy as a sales agent when he
4 referred you?

5 A. No. Not at all. It was more of
6 a surprise.

7 14 Q. So when you were talking to him
8 about the opportunity, what did he say about it?

9 A. He wouldn't tell me a single
10 thing. He said, "You have to come in. We just have
11 to go to Dundas." And at the time, we were in
12 Toronto, so it was quite a bit of a drive. So we
13 drove down there. I took my own car, and we drove
14 down to the office. And, again, we just went in, we
15 sat down. The regional at the time was Jahan Safari.
16 He came in and did the morning meetings and got
17 everyone, you know, started talking. And that is when
18 I started to, like, clue in what is going on.

19 15 Q. And by "clue in what was going
20 on," what did Jahan Safari say? How did he explain
21 what the opportunity was?

22 A. Again, I can't fully recall. But
23 it more of just like, you know, introducing -- or just
24 some morning meetings that we usually did. But it was
25 like the first one that I would have attended, so...

1 16 Q. So your orientation was part of a
2 morning meeting that was taking place in the Viking
3 office?

4 A. Yes. Exactly.

5 MR. ROSENFELD: I am not sure we are
6 talking about the same thing. Orientation has a
7 different connotation in this evidence. So I am not
8 sure if the witness is talking about the orientation
9 process that you might be thinking about, as opposed
10 to being oriented to Just Energy.

11 MS. REKLITIS:

12 17 Q. So let's start from the
13 beginning, then. So your friend refers you to the
14 opportunity at Just Energy. You come into the office.
15 And did you take part in a recruitment orientation?

16 A. No. It was just, again, I just
17 sat with all of the other agents. And they just,
18 like, resumed with the morning meeting.

19 18 Q. So as if you were going out that
20 day with them?

21 A. I did go out that day with them.

22 19 Q. Okay. So was there any
23 introduction to why you were there as a sales agent
24 and what you were going to be doing for the company?
25 Or it was just as if you jumped in and you started

1 integrating into the sales team?

2 A. They were giving out the iPads.

3 So they broke down everything step by step. How to
4 fill out the forms and do everything. And that is
5 when I started getting what the job is and what they
6 required. And then they obviously did the morning
7 rebuttals and the morning meetings where they, like,
8 just like practised on the sales pitch and stuff.

9 20 Q. And did you go over -- did
10 anybody walk you through modules? The training
11 modules.

12 A. Absolutely not. No. Not for me,
13 personally. I know everyone else, I think, did. But,
14 no, I didn't do that.

15 21 Q. And you didn't complete modules
16 with respect to the Ontario -- that were related to
17 the Ontario Energy Board?

18 A. The quiz? No. I didn't do that.

19 22 Q. Okay. And you said you signed an
20 independent contractor agreement?

21 A. That is correct. Yeah.

22 23 Q. And did you have the opportunity
23 to review the agreement?

24 A. No. It was right before we
25 headed out. So we did the meeting, they gave us the

1 iPads and I just went back to the other room with the
2 assistant at the time. I forgot her name. She was
3 tall.

4 24 Q. Una?

5 A. Una. Yes. Una.

6 25 Q. And you met with her. And what
7 did you discuss?

8 A. She just gave me the papers that
9 I had to sign, and I signed them. They took my
10 picture outside. And we headed out with Jennifer
11 Borg. She was --

12 26 Q. Before you had -- sorry. Go
13 ahead.

14 A. Yeah. She was my crew
15 coordinator. She was assigned to me, because it was
16 my first day. So whoever was new, they just got
17 assigned to different crew coordinators. And I
18 believe my friend Ali -- Ali was with that crew
19 coordinator, so...

20 27 Q. Ali?

21 A. It is Sharif.

22 28 Q. And was Ali a sales agent?

23 A. Yeah. He is the one that
24 referred me.

25 29 Q. Okay. So did you know that you

1 were being engaged as an independent contractor before
2 you went out?

3 A. No.

4 30 Q. Did you know what you would be
5 doing, and what you were going to be selling?

6 A. I knew it was commission based.

7 31 Q. Okay.

8 A. The hours, the structure, wasn't
9 too clear to me at first. But as we started
10 working -- like, because it was an everyday thing.
11 You had to be there every day. So as the days went
12 on, I kind of figured that, you know, it had to be
13 mandatory that you had to be there at a certain time,
14 leave at a certain time --

15 32 Q. And who told you that?

16 A. Jahan Safari.

17 33 Q. Jahan Safari told you that the
18 first day, at the meeting?

19 A. I can't tell you if he said it.
20 But it was mandatory that you had to be there every
21 day for the morning meetings. You had to be on time
22 and, you know, you couldn't be late. You had to have
23 your uniform. You had to be looking -- you know, with
24 your badge and everything. Yeah.

25 34 Q. So you knew it was a one

1 hundred percent commission-based opportunity that day?

2 A. Yeah. They did explain that.

3 35 Q. And you knew you wouldn't be paid
4 a salary?

5 A. Yes.

6 36 Q. Or any hourly wage?

7 A. Yeah.

8 37 Q. And benefits?

9 A. We didn't go that far. But, yes,
10 I assumed so.

11 38 Q. And was it your understanding
12 that they wouldn't be making any deductions from any
13 pay that -- any income you were making there?

14 A. I don't know about that.

15 39 Q. Okay. And have you had the
16 opportunity to review the defendants' affidavits in
17 this motion? There are three affiants: Richard
18 Teixeira, Brian Marsellus and Dan Gadoua.

19 A. I was informed about it, yeah. I
20 didn't review it personally, but I was told what was
21 said on there.

22 40 Q. And have you ever -- do you know
23 who those individuals are?

24 A. No.

25 41 Q. Have you ever heard of them?

1 A. Not that I recall.

2 MS. REKLITIS: Okay.

3 MR. ROSENFELD: Do you want to hear
4 the names, specifically?

5 THE WITNESS: Do you want to go over
6 the names one more time?

7 MS. REKLITIS:

8 42 Q. Sure. So Richard Teixeira?

9 A. No.

10 43 Q. Brian Marsellus?

11 A. I have heard of him. I never got
12 to meet him.

13 44 Q. Okay. And are you aware of what
14 his position was at the time you were there?

15 A. No. I think he was higher than
16 the nationals, but I am not sure.

17 45 Q. Okay. Have you heard of the
18 Fairview office?

19 A. Yes. I have never been there. I
20 never worked for them. I know it was under a
21 different regional and different nationals and it was
22 kind of different than what we were doing with the
23 Fairview office that was --

24 46 Q. How was it different?

25 A. Based on what I knew, it was the

1 nationals, so like Jahan Safari that we were -- I
2 mean, sorry, Johnny Lavoie. And at the time it was
3 Ali or something, another Ali, who was working in the,
4 like, American part. The American side.

5 47 Q. Okay.

6 A. That they had, like, certain
7 offices. So Dundas, Ottawa, a couple in the States.
8 But I know Fairview didn't belong to them. It
9 belonged to another national that was running offices,
10 based on, like, what we were told.

11 48 Q. And were you aware that Fairview
12 had several offices within the physical location of
13 Fairview?

14 A. No.

15 49 Q. I am just going to go back and do
16 some background.

17 A. Sure.

18 50 Q. So how old are you?

19 A. 24.

20 51 Q. And what is your highest level of
21 education?

22 A. I didn't finish high school. So
23 grade 11, grade 12. I have like one credit I need or
24 something.

25 52 Q. And do you have any other formal

March 22, 2019

1 training or education?

2 A. No.

3 53 Q. So what are you currently doing?

4 A. I own a mechanic shop, body shop,

5 in Richmond Hill.

6 54 Q. And what is it called?

7 A. Friends --

8 REF MR. ROSENFELD: It doesn't matter what

9 it is called.

10 MS. REKLITIS:

11 55 Q. Are you incorporated?

12 A. Yes.

13 MR. ROSENFELD: Sorry. Incorporated

14 at his new job?

15 MS. REKLITIS:

16 56 Q. Is it a corporation?

17 MR. ROSENFELD: No. I understand the

18 corporation. But as his business currently? Not when

19 he was at Just Energy?

20 MS. REKLITIS: Yes. His business

21 currently.

22 REF MR. ROSENFELD: Yeah. Well, he

23 already answered your question. But no further

24 questions about his new business.

25

1 MS. REKLITIS:

2 57 Q. And when did you start this
3 company?

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

6 REF THE WITNESS: Yeah. I am not going to
7 answer that question.

8 MS. REKLITIS:

9 58 Q. So have you been working at this
10 company since you finished your time at Just Energy?

11 A. No. I had a few other jobs.

12 59 Q. Okay. So what were you doing
13 prior to the mechanic shop?

14 A. I worked construction for Toronto
15 Housing for about a year and a half.

16 60 Q. And was that a -- were you a
17 contractor? An independent contractor?

18 A. No. That was -- we were paid,
19 and everything was by the books. So everything was
20 CPP and all of --

21 61 Q. So you were paid an hourly wage?

22 A. Yes. Hourly, \$20 an hour. And
23 everything was deducted off the pay cheques.

24 62 Q. Okay.

25 A. And surprisingly, actually, when

1 I signed up with Just Energy, they never asked for my
2 SIN number, which was a little bit -- like, I didn't
3 understand why. But that was the only job I ever
4 experienced where they didn't ask for your SIN number
5 when you are applying. Right? Because they were
6 giving us cheques.

7 63 Q. So how long were you at the
8 construction company?

9 MR. ROSENFELD: I don't know -- sorry,
10 but I don't know how this is relevant.

11 MS. REKLITIS: I am just trying to
12 determine the timeline --

13 MR. ROSENFELD: I know.

14 MS. REKLITIS: -- post Just Energy to
15 see what kind of employment or contractor work he was
16 doing.

17 THE WITNESS: Before Just Energy --

18 REF MR. ROSENFELD: Sorry. You already
19 said what you did in terms of the location that you
20 worked at. So I don't know if there is any details
21 that are relevant to this action.

22 MS. REKLITIS:

23 64 Q. So can you please confirm again
24 until what time you were at the construction company?
25 Until what year?

1 REF MR. ROSENFELD: Again, this doesn't
2 have anything to do with this case.

3 MS. REKLITIS:

4 65 Q. Have you done any other sales
5 work after your time at Just Energy, or before?

6 A. No.

7 66 Q. Have you had any other
8 commission-based employment?

9 A. No.

10 67 Q. Or contractor opportunities?

11 A. No. Not at all.

12 68 Q. Have you ever engaged in
13 door-to-door sales, other than at Just Energy?

14 A. No.

15 69 Q. Any other sales positions?

16 A. No.

17 70 Q. So I just want to confirm your
18 evidence. So you state that you were a sales agent at
19 Just Energy for the summer of 2013?

20 A. Yeah. I started in the summer of
21 2013. That is correct.

22 71 Q. What month?

23 A. July, I believe. End of July.

24 72 Q. And you had started in the Viking
25 office?

1 A. Yes. Dundas.

2 73 Q. Is it referred to as Viking? Or
3 it is a separate office? It is not Viking, it is
4 Dundas?

5 A. Dundas.

6 MS. REKLITIS: Okay.

7 MR. ROSENFELD: Sorry. Are they
8 separate offices, or are they the same office?

9 THE WITNESS: I don't know what
10 Ottawa -- what was the name for the Ottawa office?
11 And I guess, yeah, Vikings was for Dundas. And then
12 the Ottawa office was -- I think you said it --

13 MS. REKLITIS:

14 74 Q. Viking and Dundas would be -- I
15 think they are the same, in Toronto.

16 A. Yeah. And then Ottawa was --
17 they had their own. Like, Viking was kind of like the
18 group. They called themselves a Viking, but it was
19 just a Dundas office. And then the Ottawa office on
20 Slater Street, I forgot what they would call
21 themselves. It was a long time ago.

22 75 Q. Okay. So the Dundas office?

23 A. That is correct. Yes. I believe
24 that was the Vikings. I just don't know if the
25 Vikings was all of the nationals or, like, John Lavoie

1 --

2 76 Q. Jahan Safari was your regional
3 distributor?

4 A. Yes.

5 77 Q. Okay. And you were -- let's
6 assume it is the Dundas office.

7 A. Mm-hmm. No. It is the Dundas.

8 78 Q. I understand it was the Viking,
9 but we will just go with Dundas.

10 A. Mm-hmm.

11 79 Q. And you were there from 2013,
12 until around winter of 2014?

13 A. That is correct.

14 80 Q. And what month was that?

15 A. It was the beginning of winter.

16 I am not sure.

17 MS. REKLITIS: Okay.

18 MR. ROSENFELD: Winter is December.

19 December 21 it starts.

20 THE WITNESS: It is Canadian weather.

21 MR. ROSENFELD: So before that, I am
22 guessing?

23 THE WITNESS: I don't know.

24 MS. REKLITIS:

25 81 Q. Okay. And you had requested for

March 22, 2019

1 a transfer to the Ottawa office?

2 A. Yes. We were given the
3 opportunity by Johnny Lavoie. And me and Jennifer
4 Borg -- at the time, we moved up there.

5 82 Q. So Johnny Lavoie approached you
6 for the opportunity in Ottawa? Or did you ask him for
7 the opportunity?

8 A. I believe he approached us.

9 83 Q. And did you have a choice in the
10 matter?

11 A. Yes. But it was a better
12 opportunity. They promised to give us, like, better
13 positions over there.

14 84 Q. And what was the position?

15 A. Well, before that, I was
16 assistant crew coordinator. When I moved up there, I
17 was crew coordinator.

18 85 Q. And was it your understanding
19 that, when you were going to Ottawa, you would become
20 a crew coordinator?

21 A. Yeah. And Jennifer was supposed
22 to go from crew coordinator to regional, because she
23 was supposed to take over Scott's position.

24 86 Q. Scott being the regional there?

25 A. The regional at the Ottawa office

1 at the time.

2 87 Q. Okay. And then you were a crew
3 coordinator in Ottawa up until December 2015?

4 A. That is correct.

5 88 Q. And you left?

6 A. Yes.

7 89 Q. And did you resign? Did you tell
8 anybody you were leaving, or did you just stop coming
9 to sell?

10 A. I am not sure if I told anyone or
11 not. But I did stop going.

12 90 Q. Would you have told Jennifer?

13 A. No. Mostly Johnny Lavoie.

14 91 Q. Johnny Lavoie?

15 A. Yeah. Johnny Lavoie.

16 92 Q. So Johnny Lavoie was the regional
17 in Ottawa at the time you left?

18 A. Correct. Yes. He was the
19 regional and the national. Because Scott left a few
20 months before that. So he took both positions.

21 93 Q. And after you left, what were you
22 doing? Did you start working --

23 A. I went on vacation for a month --

24 94 Q. -- at the mechanic shop right
25 away?

1 A. No. No. I went on vacation for
2 a month and a half. I came back and didn't have a job
3 for a few months. And then I started the construction
4 job.

5 95 Q. And why did you decide to leave?

6 A. It is just it wasn't what they
7 promised. We weren't making what they were, like,
8 promising. I was supposed to be making a lot more,
9 but all my money was going back into my agents. The
10 regionals and nationals didn't take responsibility for
11 any of my gas, my expenses, hotels, agents leaving.
12 Everything was on me. I had to pay for their food. I
13 had to take care of them for their first few weeks.
14 They weren't getting paid for the first three weeks.
15 A lot of them came into the office broke, getting
16 excited to be paid like thousands a week, but in
17 reality their first few cheques were no more than a
18 few hundred dollars at most. And those were deals
19 that we would write for them, to help them out. So
20 people would come and leave all of the time.

21 I actually got into -- well, we got
22 rear-ended on the way to a road trip and, during that
23 accident, I lost two of my crew coordinators and an
24 agent. The driver who was driving the vehicle was
25 scarred from driving, so he quit. The other guy

1 didn't want to work anymore. And another guy got
2 really badly injured and he was in the hospital for
3 over a year. A close friend of mine, actually.

4 96 Q. So your team then -- was this at
5 that time you were in the Ottawa office?

6 A. That is correct.

7 97 Q. Okay. So let's go back to -- so
8 you had started as a crew coordinator. And how large
9 was your team at the Ottawa office?

10 A. I had it up to two vans. About
11 nine, eight or nine, agents working for me. Three
12 crew coordinators, and four or five guys under them.
13 Sorry. Assistant crew coordinators, and four or five
14 guys under them.

15 98 Q. And you stated that these agents
16 that were working for you in your team, that there was
17 a high turnover and they would come and go?

18 A. Yeah. Extremely high turnover.
19 Like, the rate of someone staying was probably one out
20 of every 20 or 30 people would stay.

21 99 Q. And why do you think that was?

22 A. It is just it wasn't what they
23 were getting promised in the first -- in the
24 interview. So they would come in getting expected to
25 make a thousand a week at least and, again, they

1 weren't bringing in that -- like, for me personally,
2 until I brought in a thousand a week, it took me
3 probably five or six months, until I was actually,
4 like, fully trained and knew what I was doing. For
5 most of the guys, they were bringing in a few hundred
6 a week for their first -- if they stayed, it would be
7 for their first little while.

8 100 Q. And so generally, these sale
9 agents, they were salespeople that had little
10 experience?

11 A. Little to none. And they all had
12 to be there at the same time. They all were mandatory
13 to have uniforms. Like, everything was based on a
14 structure. And I was responsible for making sure that
15 they produced for the regionals. So if numbers were
16 short, they weren't doing good enough, I would get,
17 like, the notification to make sure that they are
18 doing good and so forth.

19 101 Q. Would that not be beneficial for
20 you, though? Wasn't it in your best interests to also
21 want them to do good, because you were also making an
22 override from their sales, as a crew --

23 A. Absolutely.

24 102 Q. -- coordinator?

25 A. Yes.

1 MR. ROSENFELD: Sorry. Just wait
2 until the question is done, just for the transcript,
3 so that your answer follows the question.

4 THE WITNESS: Sorry.

5 MS. REKLITIS:

6 103 Q. So given that they didn't have a
7 lot of experience, would the structure not have been
8 beneficial to them? And the structure being, you
9 know, being part of a team and engaging in shadowing
10 and role-playing and different training opportunities
11 at the office.

12 A. Absolutely. It was very
13 difficult. That is why no one -- like, it was really
14 hard for people to keep agents. I actually had one of
15 the biggest crews at the time, because, like, no one
16 really wanted to spend time with their agents and get
17 them going. I was, like, the only one that would
18 actually take care of them, take them out for -- like,
19 make sure they were all fed, make sure they all had --
20 like, you know, they were all ready, they all had
21 uniforms. Like, I would literally put in a lot of my
22 own time to write deals for them. And so I would be
23 getting probably paid a third of what my actual pay
24 would have been if I wrote the deal, but I would give
25 it to them and, like you said, I would get reimbursed

1 like a third based on the commission breakdowns. But
2 that was it. So they would keep the majority of the
3 pay, and I would get like \$40 or so for helping them
4 out.

5 But later on, when they started
6 getting on their own, then I would be making money off
7 of them. But in the beginning it was all, like, me
8 writing deals for them, and I would pretty much be
9 giving them my deals.

10 104 Q. Okay.

11 A. But no one was really ready to do
12 that, because you were pretty much losing money. But
13 I was trying to build a crew and, you know, get
14 further in the company. So those were my goals.

15 But, again, it was just all out of
16 pocket. So the regionals and the nationals didn't
17 take responsibility. Especially for, like, when we
18 went on road trips and stuff. If people quit on you
19 on the trip, like, I would be still responsible for
20 their hotel costs. Anything, like, as far as like if
21 they didn't have money for food or anything like that,
22 it was all on us. Gas was always on us. So
23 everything was on the crew coordinators --

24 105 Q. Right.

25 A. -- to make sure that we supplied

1 it.

2 106 Q. But it was in your best interest
3 to incur those costs so that you were providing
4 support to the salespeople so that they could knock on
5 more doors and --

6 A. That is how they made us feel.
7 But I don't think it was in my interests, because I
8 didn't really make any money. So...

9 107 Q. I am just going to take you to
10 the contract that you signed for the Viking office.
11 It is page 329 of the record. And I will just take
12 you to the first page. So do you recall reviewing
13 this contract?

14 A. Yeah. That is my writing.

15 108 Q. And the second page --

16 A. It wasn't this long, though. It
17 was just the first two pages they gave me. I don't
18 know where all of this came from. Yeah. No. I
19 didn't get any of this. None of this breakdown. None
20 of that. No.

21 109 Q. All right. So I will take you to
22 the second page. It is page 330.

23 MR. ROSENFELD: Sorry. Go ahead.

24 MS. REKLITIS: That is okay.

25 110 Q. And if you go down to where it

1 says:

2 "Candidate's signature," (as
3 read)

4 Is that your signature?

5 A. That is my signature, yes.

6 111 Q. And you signed it? There is no
7 dispute that that is your signature?

8 A. Yes. Yeah. They are both my
9 signatures.

10 112 Q. And page 331. Is that also your
11 signature?

12 A. Yes.

13 113 Q. Okay. And Nicole Lacz. Is that
14 the recruiter that, on the first -- sorry.

15 A. I don't know Nicole. I just know
16 Una.

17 114 Q. Una?

18 A. Una. Yeah. Like you said. Una.

19 115 Q. So this contract is from the
20 Ottawa office?

21 A. Oh, this is from the -- Nicole
22 was the assistant at the Ottawa. Okay. Yes. Yes.
23 She was there. Yeah.

24 116 Q. Okay. So there is no dispute
25 that you have signed this contract?

1 MR. ROSENFELD: Well, I think he
2 mentioned he signed these pages.

3 MS. REKLITIS: Yes.

4 MR. ROSENFELD: But he hadn't seen
5 these pages.

6 MS. REKLITIS:

7 117 Q. But you hadn't reviewed any of
8 this?

9 A. No. I didn't see any -- they
10 just gave me a page to sign. That is it.

11 118 Q. So if you go back to page 331,
12 above your signature it states:

13 "By signing below, you confirm
14 and acknowledge that you read and
15 understood this agreement before
16 signing"? (as read)

17 A. Yeah. But there was no other
18 agreement here. It was just that one page.

19 119 Q. You didn't understand that this
20 wasn't in fact -- this is with respect to a disclosure
21 of personal information. It wasn't the agreement?

22 A. Yes. Like, I didn't understand
23 that.

24 120 Q. So you said you understood an
25 agreement, but you hadn't actually reviewed an

1 agreement, you are saying?

2 A. Yes.

3 121 Q. Okay. Do you recall reviewing an
4 agreement -- did you ever have the opportunity to ask
5 to review the contract at any point?

6 A. No.

7 122 Q. Did you want that opportunity?

8 A. I never asked for it.

9 123 Q. Did you ever question whether you
10 were in fact entitled to a salary during your time
11 there?

12 A. It never came up, no.

13 MS. REKLITIS: Do you mind if we take
14 a five-minute break?

15 MR. ROSENFELD: Sure.

16 --- Recess taken at 2:24 p.m.

17 --- Upon resuming at 2:27 p.m.

18 MS. REKLITIS:

19 124 Q. So this contract that you signed
20 in the Ottawa office. At this point would you have
21 had to have completed another -- at that point would
22 you have had to complete another orientation or
23 training before signing?

24 A. No. I think, the first page,
25 they just gave us this one to sign. This is it.

1 125 Q. Which one? Sorry.

2 A. Page 331.

3 126 Q. Okay. So at no point, up until

4 this time, had you completed any training?

5 A. No.

6 127 Q. OEB training --

7 A. No.

8 128 Q. -- which was mandatory and

9 regulated by the Ontario Energy Board?

10 A. No.

11 129 Q. Okay. And as a crew coordinator,

12 are you not aware that sales agents have to have

13 completed this prior to being badged and out in the

14 field and --

15 A. Well, I knew everyone wrote a

16 quiz. But they just never asked me to write a quiz,

17 so...

18 130 Q. And do you know why?

19 A. You can ask them that question.

20 131 Q. Did you ever see that happen to

21 anyone else during your time at Just Energy?

22 A. I am not aware at this point, no.

23 132 Q. As a crew coordinator, generally

24 you would see -- so you, in your affidavit, state that

25 every week you would witness the training that took

1 place in the office.

2 A. Mm-hmm.

3 133 Q. Right? And did you --

4 MR. ROSENFELD: Sorry. You have to
5 say yes or no.

6 THE WITNESS: Oh. Sorry. Yes. Okay.

7 MS. REKLITIS:

8 134 Q. And the general procedure was
9 that they would come in and they would complete the
10 modules. And then, prior to being badged and going
11 out in the field, they would have had to complete that
12 and then sign the contract?

13 A. Based on my understanding, with
14 their crewmen, it would happen after we would leave
15 the office. So they would book in -- like, a whole
16 bunch of people would come in. Ten, 20 people. And
17 then they would come for the meeting. I guess that is
18 when they did the quiz and all of the training for
19 Ontario Energy Board training. And then whoever would
20 stay or pass the test, then they would be told to come
21 back the following week when we did the trainings and,
22 like, get everyone introduced. I think it was on
23 Tuesdays and Thursdays, if I am not mistaken, that
24 they would bring in new agents. And they would,
25 again, scout for them to find new people, train them,

1 quiz them and then bring them on to the morning
2 meetings. So we didn't have anything to do with that.
3 It was all done by Una, and Nicole when we went to
4 Ottawa. So they would do all the recruiting based on
5 ads from Kijiji and whatnot. So as a crew
6 coordinator, we didn't have anything to do with the
7 recruiting process.

8 135 Q. Okay. But if I take you to
9 paragraph 6 of your affidavit, how are you aware of
10 this day-long group training and the quiz and --
11 sorry. I am going to take you down to paragraph 7,
12 the last sentence:

13 "I observed the hiring process
14 described above occur each week
15 at the Toronto and Ottawa
16 office." (as read)

17 A. Like I explained. So after we
18 would leave, they would bring in the agents, and then
19 they would get trained. They would get quizzed.
20 Sorry. And then it was mostly just the quiz and
21 orientation, based on what the agents would tell me
22 when they would come out of it. Right? So that is
23 all they would get.

24 And then the training, the two-day
25 training, was given by us on the field. So they would

1 come and follow us for about a few days, until we felt
2 like they were ready, and then they would go on their
3 own.

4 For me, I would usually keep my guys
5 with me for over a week. But, you know, some guys
6 were good within a few days and they were able to go
7 on their own. But if they needed help, they would
8 just stay and shadow for as long as they needed to.

9 136 Q. So the field shadowing, you are
10 referring to?

11 A. Yes.

12 137 Q. And that was something that took
13 place at the outset for everybody? Or was it
14 generally just for the sales agents that didn't have
15 as much experience?

16 A. Yeah. Someone that needed the
17 help.

18 138 Q. So it wasn't mandatory?

19 A. The shadowing, for the first two
20 days, was mandatory.

21 139 Q. And then --

22 A. After that, it was based on your
23 crew coordinator. How much they cared and how much
24 they wanted to put in effort. Like, there was another
25 gentleman -- I don't want to bring names, but he would

1 literally spend one day at most, two days at most,
2 with his guys. And then, after that, he would just
3 drop them off and see them in 12 hours. I didn't do
4 that. I would take care of my guys, come pick them
5 up, shadow them, make sure they can follow me. I
6 would give them my deals, again, just to make sure
7 that they were actually, like, interested in staying
8 and not wanting to leave after --

9 140 Q. So who is that gentleman you are
10 referring to?

11 A. Dom. Dominic.

12 141 Q. And he was out of Dundas or --

13 A. Dundas. Yes.

14 142 Q. Okay. So it was essentially up
15 to the respective crew coordinators as to whether or
16 not they wanted to invest the time in shadowing sale
17 agents --

18 A. Correct. Yes.

19 143 Q. -- post that two-day shadowing
20 that you have in your evidence?

21 A. Yes.

22 144 Q. Okay. So did you generally have
23 people come to you requesting for field shadowing at
24 various times during their time at Just Energy?

25 A. Yeah. With me, it was okay

1 whenever they needed help. Whenever they felt like,
2 you know, they were having a bad day, I would
3 definitely go and help them out.

4 145 Q. And it was because you wanted to
5 help improve their sales skill-set so they could make
6 more sales and success at the company?

7 A. Absolutely. Yes.

8 146 Q. So it wasn't in any way you
9 forcing them to shadow you or for you to shadow them?

10 A. No.

11 147 Q. It was more just you wanting to
12 mentor them?

13 A. That is correct. That is right.
14 Yes.

15 148 Q. And role-playing. Is that
16 something that you engaged in often with sale agents?

17 A. In most cases every single
18 morning, when they would come in, we had to do some
19 rebuttals and role-playing. So one time you would be
20 the customer and they would be the agent, and then
21 they would be the agent and you would be the customer.
22 And you are just supposed to go back and forth based
23 on what customers usually tell you on the field, and
24 you just try to have answers ready for them so...

25 149 Q. And that was to help them?

1 A. Yes. But it was pretty much a
2 mandatory thing that we had to do every morning. So
3 in the meetings, if we didn't have a meeting by the
4 nationals being done that morning, we were just
5 expected to do rebuttals with our agents for about an
6 hour. And then, at around 11:00, 11:30 we would get
7 in the cars and head out to the assigned areas that
8 were given to us.

9 150 Q. And was there not a meeting --
10 the meeting you just referred to, whether or not it
11 occurred. Was that the daily meeting or the -- is it
12 the daily meeting you are referring to?

13 A. Yes. It is the daily meeting.
14 But, again, it didn't -- like, the nationals didn't
15 always come and speak to us every morning, but they
16 did like three times out of the week, let's say, give
17 or take. But the rest of the times we were just
18 practising rebuttals. And that is what was expected
19 for us to do in the first hour. So if we weren't
20 doing that, the nationals would come -- say, if we are
21 sitting down, for example, on our phone, the nationals
22 would be like, "What are you doing? You have to be
23 training your guys. You can't just be sitting there."
24 So we were expected to train our guys pretty much
25 every day, make sure that they are sharp, make sure

March 22, 2019

1 that they are on point. And believe it or not, if we
2 didn't do that, it would -- people would get affected.
3 So it was kind of, like, mandatory we had to do that
4 every day.

5 151 Q. And who is this national you are
6 referring to?

7 A. Sorry. Regional. Jahan Safari.
8 And when we were at the thing, it is Scott Edgar.
9 When we were in Ottawa. But it was always overlooked
10 by the national, Johnny Lavoie. Right? It was the
11 structure that was given down to them, and they passed
12 it down to us.

13 152 Q. And you mentioned your team.
14 What was the size of your team again?

15 A. Seven to nine agents.

16 153 Q. And did those agents attend the
17 office every day?

18 A. Yes. They had to.

19 154 Q. According to?

20 A. The regionals. So it was
21 mandatory. If they weren't in, I would get asked
22 where they are and had to call them up, follow up
23 where they were, make sure they were on time. If they
24 were late, I had to give them warnings and make sure,
25 again, that they were on time, that they were wearing

1 their uniform. It was all -- like, based on how we
2 felt, it was mandatory to have all of that. Which,
3 based on every other job that I worked at -- again,
4 this was my only contract job, but it just seemed like
5 a normal thing. You know, like, the boss is asking
6 you to have your uniform. The boss is asking you to
7 be on time.

8 Now that I am looking at it, like,
9 even parts of this contract say that, you know, you
10 should be free to do whatever you want, whenever you
11 want. So now it makes -- like, you know, it is
12 different. But when I was working there, it was kind
13 of like the norm. You had to have -- you have to be
14 on time in the mornings. You have to be there for the
15 morning meetings. It wasn't like you can just walk in
16 any time you want and no one would say anything to
17 you.

18 155 Q. But there was a high turnover.
19 So the sales agents that were working under your team.
20 Those individuals weren't attending the office every
21 single day?

22 A. Everyone was, every single day.

23 156 Q. But was it common that
24 individuals would come in one day and never come back
25 the next day?

1 A. Never come back? Yes.

2 157 Q. On your team?

3 A. It happened with every team.

4 Again, the turnover rate was really, really bad.

5 People staying -- one out of every 20 or 30 would stay
6 probably like a month, two months. And then one out
7 of -- I think we were saying one out of 100 or one out
8 of every 200 people would stay for longer. But it was
9 a really, really bad turnover rate. Because, again,
10 people would come for three weeks. Some people would
11 really push and try to, like, you know -- they would
12 be like, "Okay. We are not qualified enough. We are
13 not good enough." So they would stay and work, work,
14 work, and then they would get their first cheque. It
15 was like \$100 or \$200. Then they would get their
16 second cheque. It was, like, probably the same thing.
17 And then, by the third cheque, the guy was ready to
18 leave. So he would stay maybe a month, month and a
19 half, the majority of the people. And then -- yeah.
20 The ones that would stay was just a really, really,
21 like, small percentage of that.

22 158 Q. And you mentioned that on your
23 cheques -- you weren't aware that there weren't any
24 deductions being made? Is that your evidence?

25 A. Sorry. As far as what

1 deductions?

2 159 Q. Were you aware of whether or not
3 deductions were being made?

4 A. Deductions were being made for
5 uniforms. They were being made for hotel expenses
6 that sometimes the regionals or the nationals would
7 pay for us in advance. If not, when I was a crew
8 coordinator, sometimes I would pay for my own credit
9 card for the hotels, and then I would collect money
10 from my guys. But, yeah, deductions were made based
11 on if they felt like it was necessary for them to
12 deduct you for something.

13 But we weren't informed of any of the
14 approval -- like, they would tell us which deals got
15 approved and didn't, but we didn't know clearly. It
16 was just based on what they told us, so...

17 160 Q. And the expenses. You incurred
18 those expenses because -- was it not your
19 understanding that you were self-employed?

20 A. No. It was just what was
21 mandated of us. They said, "If you are a crew
22 coordinator, you have to have your own car. You have
23 to pay for your own insurance." That was part of the
24 things of being a crew coordinator. So you needed
25 your own vehicle. You needed to be able to transport

March 22, 2019

1 your guys. You had to pay for your own gas.

2 But, again, the extra stuff that I
3 did, like pay for my agents' foods, take them out for
4 lunch and all of that stuff, that was on me, because I
5 just -- you know, I couldn't watch them starve when I
6 am eating and, you know --

7 161 Q. You also wanted them to come out
8 and sell?

9 A. It wasn't always that. Again, a
10 lot of times they had no money. A lot of the people
11 coming and working there, they were really, really
12 broke. They would just see, like, an easy opportunity
13 online. Because they would bring in everyone. As
14 long as you could pass the quiz and, you know, get
15 through the training, they would hire you. And then
16 it was just up to you how long you can stay and take
17 it. Yeah.

18 162 Q. A lot of these individuals. They
19 didn't have a lot of money, you are saying. Did they
20 have their own cars?

21 A. No. Most of them --

22 163 Q. No. So if they didn't come with
23 you in your vehicle, or any of the other agents or
24 crew coordinators that had vehicles, then would they
25 be able to get to the field?

1 A. No. So that is why the crew
2 coordinators were assigned: So that they can drive
3 their agents to the field. Because everyone would
4 come by bus. Dundas is right by the subway. So the
5 people who didn't have a car, they would bus. Other
6 people would either carpool or, you know, figure out
7 their own way. But as soon as you are in the office,
8 you had a guaranteed ride from your crew coordinator.

9 164 Q. And did anybody ever meet you in
10 the field? Any sales agents --

11 A. Never. Not a single time.
12 Whoever came in the mornings, came with us. Because
13 we never worked near the office. We were always an
14 hour, an hour and a half. We drove -- like, we
15 wouldn't even work in the same areas. We would drive
16 for at least an hour, every day, out of the city. As
17 far as we can get from the office, pretty much.

18 165 Q. So your team was about seven to
19 nine agents. So how --

20 A. At the most, in Ottawa, yes.

21 166 Q. And how big was it in Viking?

22 A. Viking, I just had one or two
23 agents underneath. But I was an assistant crew
24 coordinator, so I didn't -- I was still in Jennifer's,
25 like, vehicle, but I was her assistant crew

1 coordinator. So my job was to kind of start training
2 people and, you know, just getting myself familiar as
3 with her position later on. Right? I was just trying
4 to learn. Like, assistant crew coordinator, you
5 pretty much -- you are not a coordinator. Because you
6 don't have a car, you are not driving people around.
7 But, you know, you are still training and you are
8 still, like, expected to...

9 167 Q. So the individuals in your team
10 at Viking. They didn't have vehicles. So how big was
11 your vehicle?

12 A. It was a van. It was a Dodge
13 Caravan.

14 168 Q. Okay.

15 A. So it was like six passengers.
16 And the driver is the seventh person. The seventh
17 passenger. But the crew in Viking, like Jennifer's
18 crew, which was probably the biggest, was like a van
19 full of seven people.

20 169 Q. And Jennifer had her own van?

21 A. Yeah.

22 170 Q. And did you ever just go directly
23 to the field, without coming to the office?

24 A. No. Never.

25 171 Q. Did you ever take any time off

1 during your time at Just Energy?

2 A. No. Just when I went to
3 vacation, after I quit. So I was just working for
4 about two, two and a half years.

5 172 Q. And did you ever have to inform
6 anybody as to whether you were taking vacation?

7 A. Sick days were a big no-no. So
8 even if we took them, we would pretty much get reamed
9 out the next day for it. They would pull us aside and
10 be like, "What is going on? Why aren't you showing
11 up? You can't be doing this." And we would feel like
12 our job was on the line if we weren't there.

13 173 Q. And who would say that to you?
14 Jahan?

15 A. Jahan when we were in Dundas.
16 When we were in Ottawa, it was either Scott until he
17 was there, and then Johnny Lavoie. So at any point
18 during my work time I worked there, it was always the
19 same. Like, if you weren't -- like, it was a very
20 high-push environment. They always pushed you. So if
21 you weren't on time, if you didn't have your uniform,
22 they would come down and pull you aside and talk to
23 you and make sure, like, you are not going to repeat
24 that the next day.

25 174 Q. Did you not encourage your own

1 sales agents on your team to come out to the field?

2 A. It just wasn't realistic.

3 Because, again, the areas that we were assigned were
4 just so far away. For them to come to the office,
5 again, they would maybe use a subway and get there,
6 because it was right from the subway station. But to
7 come on the field, we could have been, for them, maybe
8 like a two- or three-hour bus ride.

9 175 Q. Sorry. I am referring to what
10 you characterized as pressure. That pressure. Was
11 that not just various regionals and crew coordinators
12 encouraging individuals to get out there and sell so
13 that everybody could benefit from those sales?

14 A. I think encouraging and
15 pressuring is a little bit different, because it
16 wasn't like, "Go get it." You know? It was more
17 like, "If you are not here --" like, you know, pretty
18 much saying, like, you know, you are not welcome back.
19 So it was like you have to be there on time, you have
20 to have your uniform, you have to be in the morning
21 meetings, you have to participate in the morning
22 meetings. It was all, like, mandatory of you to do.

23 176 Q. Did you buy a uniform?

24 A. Yes.

25 177 Q. And you wore it?

1 A. Several times. Yes. Even
2 lanyards. Everything was purchased through -- like,
3 it would get deducted from your pay cheque. So you
4 would fill out a form saying what you need, your size,
5 and then it took a few weeks before your stuff came
6 in, and then you would get deducted from your pay
7 cheque, either in portions or as a whole. So you
8 could choose which you want. Like four weeks, you
9 want it from two pay cheques or you want it all at
10 once.

11 178 Q. Are you aware of anyone ever --
12 you mentioned that -- sorry. Are you aware of anyone
13 ever getting threats or fired as a result of not
14 coming into the office?

15 A. Yes. People did get fired for
16 not showing up on time or not coming in enough.
17 Specifically, I don't remember names.

18 179 Q. By who?

19 A. By the regionals at the time. So
20 Scott or Jahan Safari. And then later on, again,
21 Johnny Lavoie took regional and national in Ottawa.
22 So he took control of both because Scott left.

23 180 Q. And Johnny and Jahan. You are
24 saying that they terminated sales agents' independent
25 contractor agreements?

1 A. Yeah. If you didn't come for
2 enough days, they would call you and be like, "Okay.
3 Don't come back." Because it was bad. Like, you see,
4 for them, this is how they viewed it: If people
5 weren't showing up on time, then everyone would feel
6 like it is okay. So if there were one or two guys who
7 weren't serious, in their words serious enough, then
8 they would get let go. They would be asked not to
9 come back.

10 181 Q. Are you aware that the contract
11 you signed, and all of the other sales agents signed,
12 was between Just Energy and the sales agent?

13 A. No. I was not aware. But I was
14 just reading this while you were away, and it clearly
15 states that, actually.

16 182 Q. So Jahan and Johnny and any other
17 regional wouldn't have the authority to terminate the
18 independent contractor agreement with any of these
19 sales agents that didn't show up?

20 MR. ROSENFELD: I think that is a
21 legal question, to be honest.

22 THE WITNESS: Again, I wasn't aware
23 of -- yeah. I wasn't aware of that, no.

24 MS. REKLITIS:

25 183 Q. You weren't aware of the contract

1 being with Just Energy?

2 A. Yeah. Of what the contract
3 clearly stated. I wasn't aware that they weren't
4 allowed to terminate people. I just thought they were
5 the boss, it was their office and they could do
6 whatever they want because we were working for them.

7 184 Q. Well, was it your
8 understanding --

9 A. Like, to be honest, my
10 understanding was I was working for the regionals and
11 the nationals.

12 185 Q. They were receiving an override
13 off of any of your sales and your sales agents' sales?

14 A. Mm-hmm.

15 186 Q. So was it your understanding that
16 they were also in the a hundred percent commission
17 structure at Just Energy, and that they were also
18 independent contractors?

19 A. We weren't aware of any of their
20 pay structures or how they were paid.

21 187 Q. So from the outset, when you
22 started with the company, did you have knowledge of
23 the fact that you could start as a sales agent and
24 progress through assistant crew coordinator, crew
25 coordinator and regional distributor, and that those

1 were all independent contractor positions?

2 MR. ROSENFELD: There are two
3 components to that question.

4 THE WITNESS: Yeah. There is two
5 components.

6 The first part is, yes, I knew that
7 was the structure.

8 The second part. Did I know it was
9 fully independent? No. Again, like I said, they made
10 us feel like we were working for the regionals and the
11 regionals were working for the nationals and the
12 nationals worked for Just Energy. So how they were
13 getting paid, we weren't aware of. We weren't told of
14 what their pay structure was or whether they were
15 getting hourly salary, commission salary. We don't
16 know how -- like, no one knew how they were getting
17 paid. They weren't disclosing that information. All
18 we knew was the pay structure for agents, assistant
19 crew coordinator and crew coordinator. And not even
20 regional, because I never made it to that step.

21 MS. REKLITIS:

22 188 Q. And if you go to -- so exhibit G
23 of Richard Teixeira's affidavit includes a chart, but
24 we don't have the full data in that exhibit, so I
25 printed a copy just --

1 MR. ROSENFELD: You said G?

2 MS. REKLITIS: Exhibit G. GG.

3 MR. ROSENFELD: Oh, GG?

4 MS. REKLITIS: Yeah.

5 MR. ROSENFELD: Sorry.

6 MS. REKLITIS: But it is incomplete,
7 so I have just printed another copy.

8 MR. ROSENFELD: Sorry. What is
9 incomplete?

10 MS. REKLITIS: The exhibit. So we
11 included a date range in the exhibit that is shorter
12 than the date range that I am going to be referring to
13 today, so I just printed a full copy.

14 MR. ROSENFELD: Well, I don't know
15 what this is. Maybe you could ask the witness if he
16 has seen this before.

17 MS. REKLITIS:

18 189 Q. So this is a chart with your
19 sales during your time at Just Energy.

20 A. Okay.

21 190 Q. And we have included the same
22 chart in Richard Teixeira's affidavit.

23 A. I just see two names here,
24 though: Jennifer and Bahram. Oh, there we go.

25 191 Q. Everyone's name is also on the

1 other chart.

2 MR. ROSENFELD: I can't really see any
3 of the names.

4 MS. REKLITIS: Yeah. So we have
5 printed another copy, and I wanted to enter it as an
6 exhibit to this examination.

7 MR. ROSENFELD: Again, have you seen
8 this document before?

9 THE WITNESS: I haven't seen this
10 document, no.

11 MS. REKLITIS:

12 192 Q. You mentioned that you took
13 vacation only at the end of your time at Just Energy?

14 A. Yes.

15 193 Q. So do you recall taking any other
16 time off during your time at Just Energy?

17 A. No. Just, like, during the time
18 when I was transitioning from Ottawa. I mean from
19 Dundas to Ottawa. There was a few weeks that we were,
20 like, kind of not working good. But we were still
21 always employed under Just Energy. And, you know,
22 when I moved over to Ottawa, I just switched over my
23 iPads from one office to another. So we were always
24 employed under Just Energy. During that time, I
25 didn't work for anyone else.

1 194 Q. So it is our understanding that
2 between September 12, 2014, and up until the time you
3 left, you were not making sales consistently anymore,
4 but you did come back and make a few sales between
5 that time. Do you recall coming back and forth
6 between September of 2014 and December of 2015?

7 A. Again, there is just one
8 instance, during the whole time that I worked there,
9 that we had a little bit -- like, me and Jahan Safari
10 and Jennifer Borg. We kind of had an issue. So that
11 is why we just -- Johnny Lavoie asked us to come over
12 to the Ottawa office instead of quitting. So we were
13 planning on quitting, but we didn't quit. No one
14 quit. No one...

15 MR. ROSENFELD: Is that the time
16 frame? I am sorry. September 2014, you said?

17 MS. REKLITIS: Yes.

18 195 Q. September 11, 2014, to the end of
19 December 2015, when you left.

20 MR. ROSENFELD: September '14 to
21 December '15. That is a year and a bit.

22 MS. REKLITIS:

23 196 Q. So you were still engaging in
24 sales, but it wasn't consistent?

25 A. Yeah.

1 197 Q. And at that time had anybody
2 expressed any -- had you been threatened to be
3 terminated or disciplined as a result of --

4 A. Yes. By Jahan Safari. But,
5 again, we weren't good with him. So it was coming to
6 the point where we were both going to quit and go work
7 for someone else, and then Johnny Lavoie contacted us
8 and said, "Okay. If you want, come over to Ottawa.
9 There is a position for you guys." Because Scott was
10 going to get promoted. So Jennifer, at the time, was
11 one of their highest sales in the Dundas office, so
12 they didn't want to lose her. And we ended up going
13 to Ottawa.

14 198 Q. So you were still engaging in
15 sales with Just Energy during that time?

16 A. Yes.

17 199 Q. And you were not terminated for
18 taking any time off, or threatened to be terminated?

19 A. I was threatened. Yeah. But the
20 threat didn't matter, because the national was
21 overseeing everything. So we -- like, he told us,
22 like -- again, I was in the mindset of quitting until
23 we got the phone call from Jahan Safari asking us to
24 come up, and with the better opportunity. Right?

25 200 Q. But in the Ottawa office, you

1 were still working. You didn't work for almost a
2 year?

3 A. I worked for a whole year. A
4 year and a bit.

5 201 Q. September of 2014 until December
6 of 2015, you hardly made any sales?

7 A. No. I made a lot of sales. I
8 had -- those are my best times. Maybe you are looking
9 at the Dundas report.

10 202 Q. No. This is the history of your
11 sales at the company.

12 A. No. I was on top ten a lot of
13 the time. Yeah. No. I made a lot of sales during
14 that time. I actually broke a few records during that
15 time.

16 203 Q. And on any given day, would you
17 know whether or not any sales agents from your team
18 would be coming into the office or out into the field?

19 A. They were always mandated to come
20 to the office first for the meetings, for the
21 training, and then to get assigned where the location
22 of the date was going to be. So it was mandatory.
23 You had to come in. It wasn't like you could choose
24 your own area or just go work from your house.

25 204 Q. And if they didn't come to the

1 office, would you follow up with them?

2 A. Absolutely. It was my job as an
3 -- or as a crew coordinator to make sure that they
4 were there on time.

5 205 Q. And how did you follow up with
6 them?

7 A. I would just call them, text them
8 and make sure, like, you know, that they are there or
9 what is going on. If they have an appointment or a --
10 you know, I had to inform my regional, to let them
11 know what is going on.

12 206 Q. And do you still have any of
13 those text messages?

14 A. No.

15 207 Q. Do you have any records from your
16 time at Just Energy? Any documents that you kept.

17 A. No.

18 208 Q. And are you aware of any Just
19 Energy policy precluding sales agents from being able
20 to drive their own vehicles or go out -- or drive
21 their own vehicles?

22 A. Do I have any...

23 209 Q. Any knowledge of any policy at
24 Just Energy that prevents sales agents from being able
25 to drive their own vehicles to the field.

1 A. No. I am not sure.

2 210 Q. And were there times where sales
3 agents from your team were marketing in a location
4 that was different from where you were marketing that
5 day?

6 A. No. It was always -- so it was
7 sometimes -- as a crew coordinator, it was sometimes
8 our responsibility, when I was in Ottawa. But before
9 that, it was always the regionals would, like, mark a
10 section, give it to the crew coordinators, and then
11 they would drive around and be like, "Okay. This
12 little area is yours. These five streets are yours.
13 These five streets are yours," and they would just
14 drop us off at the end of the street. And you would
15 just work your way up and were given areas not to
16 cross, so that people wouldn't bump into each other.

17 211 Q. Bump into each other? You mean
18 --

19 A. Again, in the area we were
20 working in. Like, the crews had to know what streets
21 they were working on so that you didn't go and knock
22 on the same street that your partner just knocked on.

23 212 Q. So they wouldn't overlap?

24 A. Yes.

25 213 Q. And that was in your best

1 interests because, otherwise, if they went to the same
2 place that their colleague had just gone to, they
3 wouldn't get the sale and they wouldn't make a
4 commission?

5 A. You could still get deals. We
6 proved them wrong a few times on that. People would
7 come and say, "I knocked this whole street. We didn't
8 get a deal." We would go in after them. But, yes,
9 that was the general idea, was to make sure that
10 people didn't overlap and we didn't bother the same
11 person twice in the one day. Right? It just wouldn't
12 look professional to knock on the same door twice.

13 214 Q. Exactly. Because otherwise they
14 wouldn't get the sale and they wouldn't get the
15 commission?

16 A. Yes. But, again, what I just
17 said earlier is it didn't really affect on you getting
18 a deal or not. You could have knocked that same door
19 an hour later and still wrote a deal if, you know, you
20 knew how to talk and you knew how to approach the
21 situation.

22 215 Q. You would still make -- you would
23 make another deal with the same customer on the same
24 day?

25 A. Not with the same customer. I am

1 saying, like, some area where people would knock, you
2 could re-knock them the same day and still write deals
3 on the same streets that nobody got anything.

4 216 Q. All right.

5 A. So it didn't really matter who
6 knocked where. Just, as long as you are knocking on
7 doors, you should be getting deals. Right?

8 217 Q. Once you have exhausted an area,
9 were sales agents directed to go to another area? Or
10 was it other --

11 A. Yeah. They would call the crew
12 coordinators. And we would go pick them up and just
13 give them another area.

14 218 Q. And you would give them the other
15 area based on just your own intelligence and knowing
16 that that area was a good place to market in?

17 A. It had nothing to do with being
18 good or bad. And that is what Johnny Lavoie and Jahan
19 Safari always told us. An area is just an area, as
20 long as you are just knocking on doors. So, again,
21 they would just -- based on the map that we had left,
22 we would just bring the guy back in the vehicle, go
23 pick him up, and then just look on the map and see
24 what area wasn't taken. And we would just say, "Okay.
25 For the rest of the day, you are going to work

1 there." And then we would take them and drop them
2 off, and they would continue working.

3 219 Q. And there were areas that sales
4 agents could not market in. Correct?

5 A. Some condos. Yes. Some, like,
6 townhouse areas. Yes.

7 220 Q. And were there areas that
8 required a permit?

9 A. Not for gas and hydro. No. Not
10 that I was aware of. Again, it was either -- like,
11 some areas have just banned door-knockers in general.
12 So we weren't allowed to knock in those areas.

13 221 Q. You were never aware of permits
14 being required in a marketing location?

15 A. No.

16 222 Q. And were you aware of various
17 incentives at Just Energy? Bonuses, trips.

18 A. At the end of the year, they told
19 us if you have a certain amount of sales, you go on a
20 trip. But I almost made it for the first year, and
21 then I started late during the year, so I didn't make
22 that one. And then, in the second year, I quit before
23 it happened. So, no, I knew about it, but I never
24 went on any of them.

25 223 Q. So you never participated in any

1 double-points weeks or any push weeks that were
2 associated with an incentive?

3 A. Well, no. We were part of the
4 push weeks and double-points weeks. Yeah. But the
5 points weren't related for the trips. So I never went
6 on any of the trips. So I didn't get reimbursed for
7 any of that.

8 224 Q. Did you ever encourage or
9 promote, or encourage your sales agents to participate
10 in those incentive weeks or --

11 A. Absolutely. Yeah. It was
12 mandatory to push your guys on the push week, even if
13 you knew they weren't going to make it on the trip.
14 Because, again, like I said, maybe you didn't come on
15 time. Based on the quarters, you weren't there and
16 you didn't have enough time to actually make the
17 required amount of sales to go on the trip. But we
18 still would push the agents to get points for the
19 trip.

20 225 Q. So people could come and go,
21 though? There were some people that didn't come on
22 the trip. Is that your evidence?

23 A. Sorry. That is two different --
24 people couldn't come and go. Everyone had to come.

25 226 Q. There were some sales agents that

March 22, 2019

1 could not come on the push week?

2 A. No, no. Push week, everyone had
3 to come. They had to participate in the push week.
4 They all had to work for the push week. But I am
5 saying some people weren't -- like, it made no
6 difference for them to go on the trip or not, because
7 their points wouldn't have equaled out to the push
8 week. I mean to the trips. To the points they needed
9 for the trips. So...

10 227 Q. I am just speaking about whether
11 or not they -- realistically, not every sales agent
12 could attend a push week that was scheduled?

13 A. They had to. You had to.
14 Especially for road trips, too. That was the majority
15 of the push weeks, were road trips. That is what we
16 called push week. I don't know about push -- like,
17 you are talking about double-points weeks and stuff
18 like that.

19 228 Q. A road trip was separate from a
20 push week?

21 A. That was what we called a push
22 week, because we were working for the whole week.

23 229 Q. And this was in the Dundas
24 office?

25 A. And in the Ottawa office. The

1 Dundas office was once a month, we went for one week.
2 In Ottawa, we would usually go between one to two
3 times a month. We would go on trips.

4 230 Q. Did you go on those every month?

5 A. Every single one of them, yes.

6 And it was mandatory. You had to be there for the
7 road trips. It wasn't a choice where, you know, you
8 could just say, "I am not coming for this push week."

9 231 Q. I understand. Okay.

10 A. Yeah.

11 232 Q. And did you go into the office on
12 a Sunday?

13 A. No. The offices were closed on
14 Sundays. But on push weeks -- again, for the road
15 trips, we worked from Monday to Sunday, and then we
16 would get the Monday off from that week. If not, it
17 was just Monday through Saturday, and we would get
18 Sundays off.

19 233 Q. And did you have an iPad?

20 A. Yes.

21 234 Q. And did you buy the iPad
22 yourself?

23 A. They made us pay to the month.

24 They would take \$20, I think, off each pay cheque. Or
25 \$50. \$20.

1 235 Q. And did you pay for the data
2 plan?

3 A. Yes. We had to -- data I don't
4 remember. But I am pretty sure, yes, we were
5 responsible for all of the payments for everything.

6 236 Q. You paid for everything
7 associated with the iPad?

8 A. Yes.

9 237 Q. Are you aware of the Ontario
10 Energy Board rules that related to door-to-door sales
11 at Just Energy?

12 A. Can you clarify on the rules?

13 238 Q. Were you aware of the fact that
14 sales agents had to follow Ontario Energy Board rules
15 when engaging in a customer interaction at the door?

16 A. We were informed of whatever they
17 told us. So as far as like...

18 239 Q. So in terms of, like,
19 objection-handling, for example, and how to handle
20 that in a compliant way.

21 A. We were just told not to say we
22 are the utilities and just -- like, I don't remember
23 all of the things that they told us at that time,
24 because it has been so long. But there was some stuff
25 that was told to us based on the Ontario Energy Board

1 regulations that we had to follow. Yeah.

2 240 Q. As a crew coordinator, you would
3 be conveying those rules to your sales agents --

4 A. Yeah. The number one was just
5 don't say you are the utilities. Don't walk up to a
6 customer's door and say, "I am here from the
7 utilities. Can I get your bills, please?" That was a
8 big no-no.

9 241 Q. What about scripts that were
10 related to compliance?

11 A. Scripts were just given to us by
12 the regionals. Whatever they felt was good, they
13 would give it to us. And then we would take that.
14 And everyone obviously, based on how you talk and
15 whatnot, kind of made their own little script, but --

16 242 Q. But the script was -- I am
17 talking about the scripts that were related to the
18 Ontario Energy Board.

19 MR. ROSENFELD: I am not sure he
20 mentioned that they were Ontario Energy Board. They
21 were just given to them.

22 THE WITNESS: Yeah. We were given
23 them by the regionals. It is what worked for them.
24 They would just say, "This is what works, so this is
25 --" like, "Hey. How are you doing? I am here from

1 Just Energy," and so forth. Right? So I guess they
2 relied everything that was -- based on our knowledge,
3 they relied everything that was required from the
4 Ontario Energy Board into the script that they
5 provided to us.

6 MS. REKLITIS: Okay. Can we take a
7 brief break?

8 --- Recess taken at 3:04 p.m.

9 --- Upon resuming at 3:17 p.m.

10 MS. REKLITIS:

11 243 Q. Did you ever do commercial or
12 renewal sales at Just Energy?

13 A. No. Never.

14 244 Q. Were you aware of sales agents
15 doing commercial and renewal sales?

16 A. Yes. There was agents. But we
17 weren't allowed to engage in those sort of sales.
18 Even, I wanted to switch over to water tanks and sell
19 those, and I wasn't allowed. It was just like --

20 245 Q. You asked?

21 A. Yeah. I asked, like, if I can go
22 and work with them. And they were like, "No. You
23 know, you are in gas and hydro. You have to stay
24 here."

25 246 Q. Who is "them"?

1 A. I believe it was Johnny Lavoie.
2 When I asked, I was in the Ottawa office. I wanted to
3 switch over to furnaces and water heaters, because
4 they were making a lot more money. And for them, the
5 structure was a little bit easier. But for gas and
6 hydro, it was very like you have to be on time. You
7 have to -- everything was more structured. So when I
8 kind of wanted to work a little bit more on my own, I
9 was trying to go on to the furnace and water tank
10 side, but they didn't let me.

11 247 Q. By "furnace and water tank side,"
12 you are referring to --

13 A. National Home Services, at the
14 time. Now it is Reliance, I think.

15 248 Q. That is not commercial sales,
16 though?

17 A. No, no, no. I am just saying
18 they didn't let me leave to go there, so they
19 definitely wouldn't let me do commercial. They never
20 let me, no.

21 249 Q. So you didn't do any other
22 contract work for any other companies while you were
23 with Just Energy?

24 A. No. No. Just Just Energy gas
25 and hydro.

1 250 Q. But are you aware of any policy
2 that would prevent you from being able to engage in
3 commercial or renewal sales?

4 A. No.

5 251 Q. A policy at Just Energy.

6 A. No. Not that I was aware of.

7 252 Q. So you say that you were in the
8 Ottawa office, then, until December of 2015?

9 A. Correct. Yeah.

10 253 Q. And, again, we don't have any
11 records of sales from you between -- there is just a
12 few sales between September 11, 2014...

13 A. For that whole year?

14 254 Q. Mm-hmm.

15 A. No. That is not accurate. A
16 hundred percent. Because I have all my, like, banking
17 statements and all of that. I was making good money.
18 Even my T4. You don't have my T4?

19 255 Q. We have a copy of your T4 as
20 well. T4A.

21 A. For -- well, 2015. Right?

22 256 Q. So we do not have the T4A for
23 2015. Can we get a copy of that?

24 MR. ROSENFELD: Sorry. Do you have
25 one for any T4A?

1 MS. REKLITIS: We have 2013 and 2014.

2 MR. ROSENFELD: Is that in the record?

3 MS. REKLITIS: No. It is not.

4 MR. ROSENFELD: Okay. So you want to
5 ask me for?

6 MS. REKLITIS:

7 257 Q. A copy of his tax returns for
8 2013, 2014, 2015, and his T4A for 2015.

9 REF MR. ROSENFELD: That is a lot there.
10 So the tax returns, no, on the one question. And no
11 for the T4A. I am not sure he would -- no.

12 MS. REKLITIS:

13 258 Q. Did you not file a tax return in
14 2015?

15 A. Yeah. I made around \$36,000, I
16 think, that year.

17 259 Q. So we have -- this is your T4A
18 from 2014?

19 MR. ROSENFELD: Have you seen that
20 before?

21 THE WITNESS: Yeah. Thirty-six.

22 MR. ROSENFELD: This is -- it says T4A
23 for 2014. So the 2014 year.

24 THE WITNESS: So about what 2015?

25

March 22, 2019

1 MS. REKLITIS:

2 260 Q. Did you file a tax return in
3 2015?

4 MR. ROSENFELD: For the 2015 year?

5 MS. REKLITIS: Yes.

6 261 Q. For the 2015 year.

7 MR. ROSENFELD: So that would be 2016,
8 for the 2015 year.

9 THE WITNESS: I thought this was it.

10 MR. ROSENFELD: This would be for the
11 2014 year, which you would have filed in 2015 at some
12 point in time. The tax return would have been filed.
13 The T4A, I don't know when you would have gotten it.
14 I think her question was about --

15 THE WITNESS: I don't know where the
16 2015 is. I have to...

17 MR. ROSENFELD: I don't think that was
18 the question anyways.

19 MS. REKLITIS:

20 262 Q. So the question was: You said
21 you were in the Ottawa office until 2015, engaging in
22 sales?

23 A. Yes.

24 263 Q. And you earned commissions during
25 that period?

1 A. Yes. That is correct.

2 264 Q. We don't have any record of those
3 sales, other than a few sales in between September
4 of 2014 and December of 2015. So we want -- we are
5 asking for --

6 A. That is a whole year and a bit.
7 Right?

8 MR. ROSENFELD: Sorry. That was a
9 statement. You are asking?

10 MS. REKLITIS:

11 265 Q. We are asking for any documents
12 supporting your income during that year.

13 A. Probably my online bank
14 statements. That is probably --

15 REF MR. ROSENFELD: Yeah. We are not
16 giving online bank statements. His evidence was that
17 he made commission during that time frame.

18 THE WITNESS: Yeah. Full-time, I was
19 working for them. Until the day I quit, I was working
20 for them full-time. There was no off time with them.

21 MS. REKLITIS:

22 266 Q. And did you keep any --

23 A. Because even I got my passport
24 renewed. I got my passport renewed in 2015 for ten
25 years, because my passport is until 2025. So my mom

1 got me my passport in December of 2015. And that is
2 right when I quit and I stopped going. So before all
3 of that -- I am just trying to make sure that, in
4 2015, I was working, and I was. All of 2015. Because
5 when I stopped, I stopped. There was no working in
6 between, or anything like that. I was fully working
7 for them.

8 267 Q. Well, that is not what we have in
9 -- that is not what Just Energy has in their records.
10 Okay.

11 MR. ROSENFELD: You can make
12 statements that it is not what you have in the
13 records. You have a piece of paper that is attached
14 as exhibit GG that doesn't have it, and he is saying
15 -- he is giving evidence otherwise.

16 MS. REKLITIS:

17 268 Q. Did you keep any receipts from
18 the various expenses that you incurred?

19 A. Everything was through my debit
20 accounts. So I would get a pay cheque and it would go
21 into my account and I would just spend with my debit.
22 So it is very clear, because you can see, in like a
23 daytime, I would spend -- every day, I would spend
24 like \$50 or \$60 on gas. All of my fee expenses --

25 MR. ROSENFELD: I think the question

1 was: Did you keep receipts?

2 THE WITNESS: If I do, my accountant
3 has them. I do have some receipts. Yeah. I kept a
4 whole bunch of stuff. But I gave them all to my
5 accountant.

6 MS. REKLITIS:

7 269 Q. So you submitted your receipts to
8 your accountant --

9 A. Yes.

10 270 Q. -- to deduct that from your
11 taxes?

12 A. Absolutely. Yes. Because there
13 was so much.

14 271 Q. And is that something that is
15 generally characteristic of an independent contractor?

16 MR. ROSENFELD: I am sorry. Is it
17 characteristic --

18 MS. REKLITIS:

19 272 Q. Did you understand that you were
20 an independent -- did you understand that, by doing
21 that, you were an independent contractor?

22 MR. ROSENFELD: By doing it, you are
23 an independent contractor?

24 MS. REKLITIS:

25 273 Q. That independent contractors

1 would generally deduct expenses from their taxes. You
2 were self-employed. Did you understand that you were
3 self-employed?

4 A. Yes and no, in that respect.

5 274 Q. What is no?

6 A. Like, we knew we were independent
7 contractors. But as far as the expenses, we were just
8 told to -- you know, we are responsible for the gas.
9 We are responsible for the food. Like, everything
10 under -- like, the regionals and the nationals didn't
11 take responsibility for any of the fees for anything.
12 Like I said, the hotels. Everything was on the crew
13 coordinator.

14 275 Q. So employees don't generally
15 deduct their expenses from their taxes in a given
16 year. Is that correct?

17 MR. ROSENFELD: Do you know?

18 THE WITNESS: I don't know.

19 MS. REKLITIS:

20 276 Q. Do you understand that by a T4A,
21 what distinguishes by filing a T4A -- that that is
22 different from a T4?

23 A. I don't know this, no. I don't

24 --

25 277 Q. That a T4A is something a tax --

1 a T4A is related to an independent contractor or
2 self-employed individual earning --

3 A. I know, when I did my taxes, that
4 I told my accountant I was an independent contractor.

5 278 Q. You told your accountant that you
6 were --

7 A. Yes.

8 279 Q. -- an independent contractor?

9 A. So they did all of my taxes.

10 Again, I don't do taxes. Personally, I don't know how
11 it works. I just give them all my information and I
12 give them all my paperwork and pay them, and they are
13 supposed to do their job. Right? So...

14 280 Q. You mentioned earlier that the
15 turnover at your office was so great, and that people
16 often left because they were --

17 A. That wasn't so great? Yes. It
18 wasn't.

19 281 Q. People would come and go, and
20 they didn't stick around to sell?

21 A. Yes.

22 282 Q. But your office needed people to
23 sell?

24 A. Yes. And, again, they would
25 recruit them from anywhere they could. Kijiji. Like,

March 22, 2019

1 posting ads on all of the different recruiting sites
2 under -- like, it wasn't even clear what the job was,
3 under the descriptions. It was more like, you know,
4 "Do you want to make \$1,000 a week? Come on in. No
5 experience required." Something to those respects.

6 283 Q. And your evidence was that if
7 people didn't show up for selling on a given day, or
8 attend road trips or push weeks, that there would be
9 threats of terminating them?

10 A. Absolutely. Yes. If you didn't
11 show up for the push weeks and road trips, you were
12 definitely threatened to be terminated.

13 284 Q. Why would you want to terminate
14 them if Just Energy was short of sales agents at the
15 time?

16 A. It wasn't my choice. Again, it
17 was the regionals and the nationals. And they just
18 wanted to set an example for the people who were
19 staying. Because the ones who did stay were very
20 loyal, so they didn't want to ruin the way that they
21 were working. Because if, you know, one person, two
22 people, new guys are not coming in, coming in whenever
23 they feel, it would just give us the impression that
24 we can do the same.

25 285 Q. So you never threatened any sales

Page 75

1 agents as a result of them not coming in?

2 A. I just -- you know, I would make
3 sure that they were there on time, but I wasn't the
4 one to make the threats. That was Johnny Lavoie or
5 the regional's position. I would just inform to them,
6 like, "Okay. This person is not going to show up
7 today." And if it kept happening, then Johnny Lavoie
8 or Jahan Safari would come down and speak to that
9 person individually.

10 286 Q. Why would the regionals do that,
11 if they were also earning an override off these
12 individuals, and given that sales agents were scarce
13 as it is?

14 A. You would have to ask them that
15 question. But most of the time the people who weren't
16 staying, they weren't writing more than a deal or two
17 a week. So for them, it wasn't like -- they didn't
18 need that money. It was, again, more for the idea of
19 the structure. They didn't want to ruin what they had
20 in place. Because it was very, very strict, the
21 timing --

22 287 Q. Okay. Thank you. Are you aware
23 of any other sales agents that left Just Energy to go
24 work for another door-to-door sales competitor?

25 A. I know Scott left, the regional

1 at the time, to go work for -- I don't know the
2 company, but he left to go work for another company.

3 288 Q. And it was a hundred percent
4 commission-based position?

5 A. I don't know.

6 MS. REKLITIS: Subject to any
7 undertakings or refusals, those are all my questions.

8 MR. ROSENFELD: I don't have any
9 questions.

10 --- Whereupon the matter adjourned at 3:29 p.m.

11

12

13

14

15

16

17

18

19

20

21

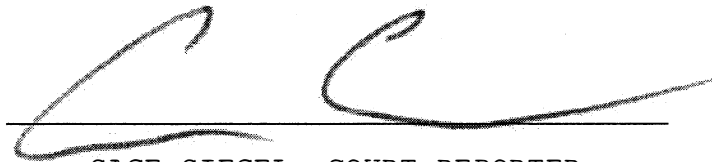
22

23

24

25

I HEREBY CERTIFY THAT I have, to the best of my skill and ability accurately recorded by shorthand, and transcribed therefrom, the foregoing proceeding using real time computer aided transcription.

A handwritten signature in black ink, consisting of two large, stylized, cursive letters 'S' and 'S' connected together, positioned above a horizontal line.

SAGE SIEGEL, COURT REPORTER

Court File No. CV-15-527493-00CP

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

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

CROSS-EXAMINATION OF ROLAND LAVIGNE
held at the offices of ASAP Reporting Services Inc.,
333 Bay Street, Suite 900, Toronto, Ontario,
on Friday, March 22, 2019, at 9:58 a.m.

APPEARANCES:

Janeta Zurakowski

David Rosenfeld

for the Plaintiff

Anastasia Reklitis

Paul J. Martin

for the Defendants

A.S.A.P. Reporting Services Inc.© 2019

940-100 Queen Street

900-333 Bay Street

Ottawa, Ontario K1P 1J9

Toronto, Ontario M5H 2R2

(613) 564-2727

(416) 861-8720

INDEX

	PAGE
Affirmed: Roland Lavigne	3
Cross-examination by Mr. Martin	3

LIST OF UNDERTAKINGS, REFUSALS AND UNDER
ADVISEMENTS

Undertakings (U/T) found at pages: N/A

Refusals (REF) found at pages: 13-14, 19-21, 70, 72,
74, 78-79, 82-85

Under advisements (U/A) found at pages: N/A

March 22, 2019

1 Toronto, Ontario

2 --- Upon commencing on Friday, March 22, 2019, at

3 9:58 a.m.

4 AFFIRMED: Roland Lavigne

5 CROSS-EXAMINATION BY MR. MARTIN:

6 1 Q. Sir, could you state your name
7 for the record, please?

8 A. Roland Lavigne.

9 2 Q. Mr. Lavigne, where do you reside?

10 A. In Kitchener currently.

11 3 Q. Could I have your address,
12 please?

13 A. 22 Hugo Crescent, Apartment 15.

14 4 Q. And you swore an affidavit in
15 this matter September -- I think that is a nine -- 9,
16 2018. Is that correct?

17 MR. ROSENFELD: It looks like a four.

18 MR. MARTIN: Is that a four?

19 MS. REKLITIS: Yeah.

20 MR. MARTIN:

21 5 Q. Is that correct?

22 A. Yeah.

23 6 Q. And I gather you reviewed your
24 affidavit for the purposes of today?

25 A. Yes.

Page 3

1 7 Q. And would you care to make any
2 changes, corrections and amendments to your affidavit?

3 A. No.

4 8 Q. We are going to talk today about
5 some time you spent engaged with Just Energy. But can
6 I just start just generally? Could you tell me,
7 generally, what is your educational background?

8 A. I have a college education. I
9 went to college for Police Foundations.

10 9 Q. And when was that?

11 A. 2012.

12 10 Q. And did you graduate?

13 A. No. I have a few credits left to
14 graduate.

15 11 Q. Do you have any other sort of
16 post-secondary education?

17 A. No.

18 12 Q. You are how old?

19 A. Thirty-four.

20 13 Q. And I gather you have been in the
21 workforce, then, generally since you graduated high
22 school?

23 A. Yes.

24 14 Q. You currently are engaged doing
25 what?

1 A. I work at Toyota. TMMC.

2 15 Q. And what is that?

3 A. Auto manufacturing.

4 16 Q. And what is your position?

5 A. Materials. So I deliver parts to

6 the assembly line.

7 17 Q. How long have you done that for?

8 A. This would be my fourth month.

9 18 Q. That is in Cambridge?

10 A. Yes.

11 19 Q. And I gather you still reside in

12 Cambridge, of course?

13 A. Kitchener.

14 20 Q. Kitchener. Okay. At the time

15 that you were with Just Energy, which I gather is a

16 period between March and December of 2015, did you

17 reside in Kitchener then?

18 A. I lived in Cambridge then.

19 21 Q. Okay. In that period of time,

20 were you continuously with Just Energy?

21 A. I left for about three weeks.

22 22 Q. And when you say "left," what do

23 you mean by that?

24 A. At the time, the regional

25 director and the national director took the entire

1 office, all of the agents, to a new company, Greenlife
2 Water, and brought myself with them. I did not like
3 that job. I was not doing well at it. So I went back
4 to Just Energy.

5 23 Q. Do you know roughly when that
6 was, as you say, you left?

7 A. So I left Just Energy in about
8 December. And I had left maybe a month before.
9 Roughly a month before.

10 24 Q. Okay. Sorry. I hadn't
11 understood that. My understanding was that you say in
12 your affidavit you were with Just Energy from
13 approximately March until December of 2015. Correct?

14 A. Correct.

15 25 Q. Sorry. And I am looking at
16 paragraph 1 there.

17 Again, my understanding is you left
18 for a period of time and came back. Correct?

19 A. I had left for roughly three
20 weeks, yes.

21 26 Q. Right. When was that?

22 A. Roughly November.

23 27 Q. Okay. So sometime in November of
24 2015, you left. And when you say you left, by that I
25 take it to mean you stopped selling for them?

1 MR. ROSENFELD: For Just Energy?

2 MR. MARTIN: For Just Energy. Sorry.

3 Yes.

4 28 Q. You stopped selling for Just
5 Energy for, as you say, a period of three weeks in
6 November of 2015?

7 A. Yes.

8 29 Q. And you were with a company
9 Greenlife Water. Is that correct?

10 A. Yes.

11 30 Q. And is that a -- what kind of a
12 company is that?

13 A. That is a door-to-door job as
14 well.

15 31 Q. And did you do door-to-door
16 sales, then, for a period of time with Greenlife
17 Water?

18 A. I spent roughly three weeks
19 working for them, yes.

20 32 Q. Door-to-door sales?

21 A. Yes.

22 33 Q. And what type of position did you
23 have? What was your title?

24 A. I was -- at Just Energy, it is
25 called a crew coordinator. At Greenlife Water, they

1 didn't have any sort of, like, said position like
2 that. But I was one of their managers.

3 34 Q. You were a manager?

4 A. Yes.

5 35 Q. And when you say "a manager," I
6 take it, then, you had people under you who you
7 managed and supervised?

8 A. Yes.

9 36 Q. Similar to your position, as you
10 describe in your affidavit, as a crew coordinator
11 where you had a --

12 A. Yeah.

13 37 Q. -- crew or team that you managed
14 and supervised?

15 A. Correct.

16 38 Q. And did you call them a team or a
17 crew? What did you refer to them as?

18 A. A team. A crew.

19 39 Q. And with Greenlife Water, what
20 did you call them?

21 A. The same thing.

22 40 Q. And at Greenlife Water, how large
23 a crew or team did you have?

24 A. Roughly six people.

25 41 Q. And that was again, you say,

1 door-to-door sales?

2 A. Yes.

3 42 Q. In what area? Ontario?

4 A. Ontario.

5 43 Q. All of Ontario. Okay. And did

6 you in fact travel through all of Ontario in that

7 period of time?

8 A. Yes.

9 44 Q. And obviously its name relates to
10 water. What actually was the product you were
11 selling?

12 A. Water filters. Home water
13 filtration units.

14 45 Q. And you say that was with someone
15 who had been at Just Energy previously. Who was that?

16 A. Our national distributor from
17 Just Energy, Dan Camirand.

18 46 Q. Dan Camirand. Yes.

19 A. And Joel Stewart.

20 47 Q. Yes.

21 A. Who was the regional at the
22 Kitchener location of Just Energy.

23 48 Q. And were those people at Just
24 Energy at the time you started with Just Energy in
25 March of 2015?

1 A. Yes.

2 49 Q. And when you returned to Just
3 Energy, returned to doing sales for Just Energy, I
4 gather then there were different regional --

5 A. Yes.

6 50 Q. -- distributors?

7 Who were they?

8 A. It was Dan Gadoua.

9 51 Q. Dan Gadoua. And was there a
10 different national distributor?

11 A. I am not sure.

12 52 Q. And did you return to the same
13 crew coordinator position?

14 A. Yes.

15 53 Q. Okay. And I gather, when you
16 left Just Energy, when you stopped selling for them
17 in, I think you were telling me, November, you didn't
18 provide any formal resignation letter or such thing to
19 Just Energy. Did you?

20 A. No.

21 54 Q. No. And in fact you provided no
22 comment or notice to anyone at all, in that regard, at
23 Just Energy?

24 A. No. No.

25 55 Q. And at Greenlife Water, I presume

1 you signed a contract with Greenlife Water?

2 A. I don't remember, to be honest.

3 56 Q. And was Greenlife Water a similar
4 door-to-door operation? And I mean similar to what
5 you had experienced between March and November at Just
6 Energy.

7 A. With Greenlife Water, I was
8 basically there only for training. And I actually did
9 work, like sales, for a couple of weeks. So I can't
10 really say how similar it was.

11 57 Q. So you were a trainer for
12 Greenlife Water?

13 A. No. I was being trained by their
14 other employees that were already working for them.
15 And then we did a push week, which I went on, and that
16 was pretty much it.

17 58 Q. And when you say you were being
18 trained --

19 A. Job shadowing.

20 59 Q. And was that to improve your
21 sales technique, or to learn about the product?

22 MR. ROSENFELD: I am sorry. We are
23 still talking about something that is not Just Energy.
24 So are you almost done with the questions about
25 Greenlife Water?

1 MR. MARTIN: Correct. I am talking of
2 Greenlife Water. That is correct.

3 MR. ROSENFELD: No. Are you done
4 about them, the questions about Greenlife Water?

5 MR. MARTIN: I have a few more. No.
6 I am not done. No. We are talking about Greenlife
7 Water.

8 MR. ROSENFELD: Yeah. What purpose
9 are we serving by talking of Greenlife Water?

10 MR. MARTIN: I am trying to understand
11 what this gentleman did at Greenlife Water. It is
12 very relevant. It is right in the middle of his
13 experience, with Just Energy, as an independent
14 contractor.

15 MR. ROSENFELD: And he has answered
16 questions about it. I am not sure how far we are
17 getting into it.

18 MR. MARTIN: I don't intend to spend
19 much time on it, but I do want to at least understand
20 this man's evidence in that regard.

21 60 Q. Greenlife Water. A hundred
22 percent commission position?

23 A. Yeah.

24 61 Q. And you would receive overrides
25 from your team's sales?

1 A. Yeah.

2 62 Q. And I gather that you were free
3 to sell wherever you might --

4 A. No.

5 63 Q. -- determine where --

6 A. No.

7 64 Q. -- it was appropriate to sell?

8 A. No.

9 65 Q. I am talking about Greenlife
10 Water now.

11 A. No.

12 66 Q. Were there restrictions on where
13 you could sell?

14 REF MR. ROSENFELD: We are done with the
15 line of questioning about Greenlife Water. It is not
16 relevant anymore. You have asked a lot of questions
17 about it. I have given you a lot of leeway.

18 MR. MARTIN: I am going to continue
19 to.

20 67 Q. In the period of time you were
21 there, did you travel across the province?

22 REF MR. ROSENFELD: Don't answer the
23 question. Thank you.

24 MR. MARTIN:

25 68 Q. And was it suggested to you, at

1 Greenlife Water, that you could become a regional
2 distributor yourself?

3 REF MR. ROSENFELD: Don't answer the
4 question.

5 MR. MARTIN:

6 69 Q. When you returned to Just Energy,
7 I gather you at one point had been badged by Just
8 Energy. You know what that means? Being badged?

9 A. Yeah.

10 70 Q. You weren't re-badged, if I can
11 put it that way? You didn't obtain another badge?
12 You continued to use the badge you had previously?

13 A. I was given a new badge at the
14 time. I lost my original.

15 71 Q. Okay. Let me be more precise.
16 You didn't get a new badge number?

17 A. Not that I am aware of, no.

18 72 Q. And when you recommenced sales
19 with Just Energy, you had, I gather, a team again
20 under you?

21 A. One or two people.

22 73 Q. And you would receive overrides
23 from the sales of those people?

24 A. Yes.

25 74 Q. And they would train and job

1 shadow and take direction from you?

2 A. Yeah.

3 75 Q. And would you have again
4 travelled to various towns and cities in Ontario?

5 A. Yes.

6 76 Q. I am talking now when you
7 returned to Just Energy.

8 A. Yeah.

9 77 Q. And I gather you left again
10 sometime -- you say sometime in 2015. Is that
11 correct? You left again, Just Energy, the second
12 time?

13 A. The final time?

14 78 Q. Well, the second time.

15 A. The second time was the final
16 time, when I left.

17 79 Q. Yes. Okay.

18 A. When I quit.

19 80 Q. And when you say you quit, again
20 you didn't provide any formal notice or letter of
21 resignation or anything like that to Just Energy?

22 A. No letter of resignation. I
23 spoke to their national distributor and let him know I
24 was quitting.

25 81 Q. Yes. And who was that?

- 1 A. Dan Gadoua.
- 2 82 Q. And did you move to some other
3 position involving sales after that?
- 4 A. I worked for another sales
5 company later, like a year or so after, yes.
- 6 83 Q. What was that?
- 7 A. Ontario Consumers.
- 8 84 Q. Is that a gas or electricity
9 company?
- 10 A. We sell -- we sold HVAC products.
- 11 85 Q. And were you similarly a crew
12 coordinator for them?
- 13 A. Yes.
- 14 86 Q. That was door-to-door sales?
- 15 A. Yes.
- 16 87 Q. A hundred percent commission?
- 17 A. Yes.
- 18 88 Q. Did you have an independent
19 contractor agreement with that company?
- 20 A. I don't recall signing anything
21 with them.
- 22 89 Q. But you may have?
- 23 A. I couldn't tell you.
- 24 90 Q. Because you just don't remember?
- 25 A. I don't remember, no.

1 91 Q. That was more recently than your
2 time with Just Energy. I am just suggesting that --

3 A. You know, it was three years ago.
4 I don't remember.

5 92 Q. And other than that company and
6 Greenlife Water and Just Energy, have you been engaged
7 in any other door-to-door sales activities?

8 A. In the early 2000s, I worked for
9 a door-to-door company as well.

10 93 Q. And what was that company?

11 A. Summitt Energy.

12 94 Q. And what does Summitt Energy
13 sell?

14 A. Hydro and gas contracts.

15 95 Q. So they were a competitor to Just
16 Energy?

17 A. Yes.

18 96 Q. And my understanding is Summitt
19 Energy again has a door-to-door sales model similar to
20 what you would have experienced at Just Energy.

21 A. Similar, yes.

22 97 Q. And would anyone who worked at
23 Summitt Energy -- back in the day when you were there,
24 would they ultimately have moved on to Just Energy?
25 Are you aware of that?

1 A. No. I am not aware of that.

2 Nobody from Summitt worked at Just Energy when I was
3 there.

4 98 Q. Okay. And, again, would you have
5 signed an independent contractor agreement with
6 Summitt when you worked with them?

7 A. I do not remember. That was
8 about 2003.

9 99 Q. But again it was a
10 hundred percent commission position?

11 A. Yes.

12 100 Q. And when I refer to a
13 hundred percent commission position with these
14 various -- let's just finish it off. So were those
15 the only four door-to-door sales positions you have
16 engaged in?

17 A. Yes. But Summitt, when I worked
18 for Summitt, it was a marketing company that sold for
19 Summitt. And we sold for various products over the
20 years of working for, ultimately, Ontario Consumers.

21 101 Q. I understand. But my question
22 was: Were there other companies, other than those
23 four, that you did door-to-door sales for, ever?

24 A. No.

25 102 Q. And then each one of those was a

1 hundred percent sales commission position. Correct?

2 A. Correct.

3 103 Q. And by that I mean you didn't
4 have taxes deducted at source.

5 A. No. I didn't.

6 104 Q. Those companies didn't contribute
7 to Unemployment Insurance or Employment Insurance,
8 however it may have been styled, or Canada Pension
9 Plan. Correct?

10 A. I couldn't tell you.

11 105 Q. Would you have incurred, at any
12 of these positions, including Just Energy, expenses
13 that you would have expended on your income tax
14 returns?

15 A. I have never claimed anything on
16 my income tax returns from working at any of those
17 companies.

18 106 Q. Did you have an accountant,
19 throughout any of that period of time, who prepared
20 your taxes?

21 REF MR. ROSENFELD: No more questions
22 about the time prior to Just Energy --

23 MR. MARTIN: Well, I am including Just
24 Energy in that.

25 MR. ROSENFELD: Then ask specifically

1 about Just Energy.

2 MR. MARTIN:

3 107 Q. Well, I want to know, first of
4 all, for any of them.

5 REF MR. ROSENFELD: Then the answer is no.
6 We are going to refuse that question.

7 MR. MARTIN:

8 108 Q. For the tax year 2015, when you
9 were with Just Energy doing door-to-door sales, I
10 presume you would have filed your income tax returns
11 in the spring of 2016?

12 A. I actually am behind in my income
13 tax. So no.

14 109 Q. So you didn't file a tax return
15 in 2016?

16 A. No.

17 110 Q. For the tax year 2015?

18 A. No. I didn't.

19 111 Q. Do you intend to do so at some
20 point?

21 A. Yeah. I actually hired an
22 accountant to help me with my taxes.

23 112 Q. Did you maintain your receipts
24 with respect to any expenses you may have had while
25 engaged with Just Energy in 2015?

March 22, 2019

1 A. No.

2 113 Q. What about with respect to your
3 position with Greenlife Water?4 REF MR. ROSENFELD: Don't answer the
5 question.

6 MR. MARTIN:

7 114 Q. And what about with your position
8 with the other subsequent energy company?9 REF MR. ROSENFELD: Don't answer the
10 question.

11 MR. MARTIN:

12 115 Q. Were you aware, during your
13 tenure with Just Energy, that other independent
14 contractors were in fact maintaining their receipts
15 and expenses and claiming them for tax purposes?

16 A. No.

17 116 Q. Did you ever have any of those
18 discussions with either Mr. Camirand or Mr. Stewart?

19 A. No.

20 117 Q. You were aware that Mr. Camirand
21 and Mr. Stewart were independent contractors
22 themselves. Correct?23 MR. ROSENFELD: What do you mean by
24 "independent contractors"?

25

1 MR. MARTIN:

2 118 Q. That they were not employees of
3 Just Energy, but they had their own separate contracts
4 --

5 A. No. I was under the impression
6 that Dan Camirand was employed by Just Energy. And I
7 would assume the same thing about Joel.

8 119 Q. But you didn't have discussions
9 with them in terms of what their contractual
10 relationships were with Just Energy. Did you?

11 A. No.

12 120 Q. But you are telling me you
13 weren't aware of, for example, Mr. Stewart being an
14 independent contractor as well?

15 A. No. I was not.

16 121 Q. You were aware, though, that Mr.
17 Camirand and Mr. Stewart received overrides on sales?

18 A. Yes.

19 122 Q. And in fact that that is how they
20 were remunerated based on commissions, sales?

21 MR. ROSENFELD: That means that is how
22 they got paid.

23 MR. MARTIN:

24 123 Q. That is how they got paid?

25 A. No. That was just a bonus, as

1 far as I knew.

2 124 Q. So you just assumed they got a
3 bonus on sales?

4 A. Yeah.

5 125 Q. But you don't otherwise know how
6 they were paid?

7 A. Correct.

8 126 Q. But certainly from your
9 perspective as a crew coordinator, I gather, the
10 better the sales of your team, the better you did
11 financially?

12 A. Yeah.

13 127 Q. And the better your team did
14 financially, including yourself, the better Mr.
15 Stewart, for example, would do financially?

16 A. Yeah.

17 128 Q. Prior to March of 2015, had you
18 known either Mr. Stewart or Mr. Camirand?

19 A. No.

20 129 Q. Okay. Had you known anyone who
21 was in any way engaged in sales at Just Energy before
22 March of 2015?

23 A. No.

24 130 Q. And just immediately before your
25 commencing sales in March, roughly, of 2015, what were

1 you doing?

2 A. I worked at a call centre and --
3 I only recall working at a call centre.

4 131 Q. Sorry. I didn't catch that.

5 A. I can only recall working at a
6 call centre.

7 132 Q. Okay. Doing sales?

8 A. Yeah. Fundraising.

9 133 Q. What does that mean?

10 A. Fundraising. Raising donations.

11 134 Q. And were you paid --

12 A. Hourly.

13 135 Q. -- on a commission basis?

14 A. Hourly.

15 136 Q. And then how did you first learn
16 of the Just Energy opportunity?

17 A. It was either I replied to their
18 ad on -- I replied to their ad on Kijiji. And I
19 called the number they had posted.

20 137 Q. How soon after you commenced
21 sales with Just Energy did you become a crew
22 coordinator?

23 A. Roughly a month.

24 138 Q. And I gather that Joel Stewart
25 would have been involved in the decision to advance

1 you to crew coordinator status?

2 A. Joel and Ryan Clarkson.

3 139 Q. And who is Ryan Clarkson?

4 A. He was the assistant regional.

5 140 Q. So Ryan Clarkson. In terms of
6 there being a hierarchy, was he equivalent or below
7 Joel --

8 A. He was just one step below Joel.

9 141 Q. Okay. And did you have your own
10 vehicle at the time?

11 A. Yes.

12 142 Q. And did you use your vehicle
13 while engaged with sales for Just Energy?

14 A. Yes.

15 143 Q. What kind of vehicle did you have
16 then?

17 A. A 2015 Honda CR-V.

18 144 Q. So among other things, would you
19 take your team, a team, out into the field?

20 A. Yeah.

21 145 Q. And in the period of March
22 through December -- and I appreciate you are telling
23 me it wasn't continuous. I understand that. And I am
24 just looking for a sort of a sense of the broad
25 numbers. How many team members would have been passed

1 through your team during that period of time, roughly?

2 A. Ten to 15.

3 146 Q. So people would come and go.

4 Would they also come back, like you did, from time to
5 time?

6 A. Nobody on my team, no.

7 147 Q. Okay. But others that you are
8 aware of? I don't mean that went to Greenlife Water,
9 but just would leave and then come back.

10 A. Would leave and come back? Not
11 that I -- if somebody left, they usually left for
12 good.

13 148 Q. Okay. But are you aware of
14 someone ever coming back?

15 A. No.

16 149 Q. I appreciate that you were saying
17 you didn't maintain -- you have not maintained your
18 receipts for any expenses. But I gather you did incur
19 some expenses as a salesperson for Just Energy in that
20 March to December period?

21 A. I would pay for gas to get to and
22 from area.

23 150 Q. That is it?

24 A. Yeah.

25 151 Q. Okay. Gas. Anything else?

1 A. No.

2 152 Q. And you weren't reimbursed for
3 the gas by Just Energy?

4 A. No.

5 153 Q. So you understood that, to the
6 extent that was costing you money, you were making it
7 back on commissions and overrides?

8 A. Yes.

9 154 Q. Did you have a GST number?

10 A. No.

11 155 Q. Did others in the office have GST
12 numbers?

13 A. I couldn't tell you that.

14 156 Q. And I gather you haven't, for the
15 period of March to December of 2015, kept any records
16 of any sales activity that you engaged in during that
17 time?

18 A. No.

19 157 Q. And you didn't keep any records,
20 even at the time? By that I mean you didn't have a
21 daily diary.

22 A. No. I didn't.

23 158 Q. And you didn't keep records of
24 any of the people on your teams from time to time?

25 A. No.

1 159 Q. Did you do any renewal sales?

2 A. No.

3 160 Q. Do you know what renewal sales
4 are?

5 A. Yes. I know what they are.

6 161 Q. My understanding is that you did
7 the odd commercial sale, but that wasn't your
8 principal activity. Is that correct?

9 A. I believe, in the time I was with
10 them, I made one commercial sale.

11 162 Q. Yes. Who was that for?

12 A. I couldn't tell you. Just a
13 random business.

14 163 Q. And you weren't precluded from
15 doing that? It wasn't your main focus, but you were
16 not precluded from doing that? Commercial sales.

17 A. Not that I am aware of, no.

18 164 Q. And similarly, with respect to
19 renewal sales, did you ever ask to do some renewal
20 sales?

21 A. No.

22 165 Q. But at the time you were there,
23 there were renewal sales out of the Cambridge office.
24 Are you aware of that?

25 A. I was never working from the

1 Cambridge office.

2 166 Q. But you were aware that the
3 Cambridge office did renewal sales?

4 A. No.

5 167 Q. Were you aware there was a
6 Cambridge office?

7 A. That is where I had my original
8 interview. So yes.

9 168 Q. When you say "Cambridge office,"
10 was there an office known as the Hespeler office?

11 A. Yes.

12 169 Q. Are they the same?

13 A. Yes. They are the same.

14 Cambridge is Hespeler, Preston and Galt. So it is a
15 tri-city.

16 170 Q. Okay. You were interviewed at
17 Hespeler, but you didn't work out of that office?
18 Let's call it Cambridge.

19 A. Yeah. Correct.

20 171 Q. Okay. And why was that?

21 A. The lady that interviewed me told
22 me that they don't do residential sales, and sent me
23 to Kitchener.

24 172 Q. Okay. So then your orientation
25 process. The training. The learning about gas and

1 electricity. That was done at Cambridge, or at
2 Kitchener?

3 A. Kitchener.

4 173 Q. And then, when you were badged --
5 I think I understand you know what that means -- you
6 were badged out of the Kitchener office. Correct?

7 A. Yes.

8 174 Q. And the training, the
9 orientation, was conducted by who at Kitchener?
10 Yours.

11 A. Joel Stewart.

12 175 Q. And I know you talk about taking
13 a quiz, but that is the OEB required test. Correct?

14 A. That is.

15 176 Q. Okay. When you worked first for
16 Summitt, did you do an OEB test then?

17 A. I do not remember.

18 177 Q. And one has to pass that test
19 before one can be badged. Correct?

20 A. Yes.

21 178 Q. So you have to go through the
22 orientation process. Correct?

23 A. You do. But you don't need to
24 know the answers, because they give you the answers.

25 179 Q. "They" being who?

1 A. Joel.

2 180 Q. Do you know that Joel -- let's go
3 back. Are you saying that Joel was -- what is the
4 word? -- conducting the test?

5 A. How do you mean conducting?

6 181 Q. Well, I suggest to you that in
7 fact a Just Energy person -- the phrase is proctor --
8 conducts the test, not the regional.

9 A. Joel is the regional.

10 182 Q. I appreciate that. But my point
11 to you is: Is it not the case that it was a Just
12 Energy person who conducts the test? A Just Energy
13 person in that office, not Joel, who conducted the
14 test?

15 A. I don't remember. There was an
16 assistant. I don't remember if she was the one
17 conducting the test or not.

18 183 Q. There is an -- I don't know what
19 the full title was, but there was an administrator at
20 the Kitchener office who worked for Just Energy. Are
21 you aware of that?

22 A. I was aware there was an
23 administrator, yes.

24 184 Q. What was that person's name?

25 A. What was her name? I forget her

1 name.

2 185 Q. When Joel left -- and I know you
3 left at the same time -- he physically left that
4 building, did he not, and moved to another location?

5 A. Yeah.

6 186 Q. Because that was a Just Energy
7 office, not a Joel Stewart office. Correct?

8 A. Yes.

9 187 Q. And you only ever worked for Just
10 Energy, in sales, out of the Kitchener office.
11 Correct?

12 A. Yes.

13 188 Q. You never worked out of any of
14 the other offices?

15 A. Correct.

16 189 Q. And you can't give any evidence
17 as to how business was conducted out of any of those
18 other offices. Correct?

19 A. Correct.

20 190 Q. Of the 15-odd team members that
21 were with you over the March through December period,
22 can I assume some of them were students?

23 MR. ROSENFELD: Sorry. We established
24 15?

25 MR. MARTIN: He said ten to 15.

1 MR. ROSENFELD: I might have missed
2 the understanding.

3 Did you say that before?

4 THE WITNESS: Yeah.

5 MR. ROSENFELD: Okay.

6 MR. MARTIN:

7 191 Q. Were some of them students?

8 A. I don't know.

9 192 Q. And by that I mean people who
10 were there for a period of time, and then were going
11 back to do something else like studies.

12 A. I am not sure.

13 193 Q. I presume some of those people
14 did not have cars themselves?

15 A. I am not -- I couldn't tell you.

16 194 Q. As in they required a ride to go
17 out to conduct sales in the field.

18 A. Well, I was told to drive them
19 out to the field.

20 195 Q. But my point is: But for having
21 someone like yourself with a vehicle, they would not
22 otherwise be able to conduct field sales?

23 A. No. Incorrect.

24 196 Q. So every one of those, say,
25 roughly 15 people all had their own vehicles?

1 A. I couldn't tell you if all of
2 them had their own vehicles, no.

3 197 Q. So how many people could you get
4 in your vehicle?

5 A. Six.

6 198 Q. Okay. Was it ever the case that
7 there were more people needing rides out to the field
8 than there were seats in the vehicle?

9 A. Yes.

10 199 Q. And so those people then -- how
11 did you then determine who got to go out with you in
12 your vehicle?

13 A. Joel would dictate that.

14 200 Q. And typically speaking, I gather,
15 from your experience, people who were better at sales
16 had priority in terms of getting into a vehicle, if
17 there were more people than seats in the vehicles?

18 A. I am not sure.

19 201 Q. But certainly, from your
20 perspective, it was in your financial interest to have
21 the better salespeople go out into the field.

22 Correct?

23 MR. ROSENFELD: As a hypothetical?

24 MR. MARTIN: Yeah.

25 THE WITNESS: Yeah.

March 22, 2019

1 MR. MARTIN:

2 202 Q. And would you have those
3 discussions with Joel?

4 A. No.

5 203 Q. And if someone didn't get to be
6 in a vehicle, that didn't preclude them from selling
7 wherever they may wish to sell, themselves, that day.
8 Correct?9 A. If they couldn't come into the
10 vehicle?

11 204 Q. Yes.

12 A. Well, I am not sure. You are not
13 allowed to sell in Kitchener. The laws state you
14 can't sell in Kitchener.15 205 Q. Correct. But that wouldn't
16 preclude them from selling in Cambridge? Cambridge
17 didn't have that restriction. Did it?

18 A. No.

19 206 Q. Waterloo?

20 A. Not that I am aware of.

21 MR. ROSENFELD: Did Waterloo have the
22 restriction? Is that what you are asking the question
23 --24 MR. MARTIN: No. No. They weren't
25 restricted from selling in Waterloo.

1 MR. ROSENFELD: Well, the first
2 question was: Was there a legal restriction in
3 Cambridge?

4 MR. MARTIN: No. Kitchener.

5 MR. ROSENFELD: In Kitchener.

6 MR. MARTIN: And he said not in
7 Cambridge. And now he said not in Waterloo.

8 MR. ROSENFELD: That there is no legal
9 restriction?

10 MR. MARTIN: Correct.

11 MR. ROSENFELD: Okay.

12 MR. MARTIN:

13 207 Q. The Kitchener office didn't open
14 on a Sunday. Did it?

15 A. Yes. They were open seven days a
16 week. Sorry. The actual office --

17 208 Q. Yes.

18 A. -- itself, you couldn't get into
19 on a Sunday.

20 209 Q. Okay. In that March to December
21 period, apart from the time that you left to sell for
22 Greenlife Water, did you take any extended vacation?

23 A. Just Energy sent me to -- in
24 October, they sent us to the Dominican.

25 210 Q. For --

- 1 A. A vacation bonus.
- 2 211 Q. For what period of time?
- 3 A. For about a week in October.
- 4 October 16, I believe we left.
- 5 212 Q. And other than that, any other
- 6 extended, extended vacation time for yourself?
- 7 A. No.
- 8 213 Q. Okay. Did you have any period of
- 9 illness, where you might have been off for a period of
- 10 time, that you couldn't just physically sell?
- 11 A. Yeah.
- 12 214 Q. I am sorry?
- 13 A. Yes.
- 14 215 Q. When was that?
- 15 A. I don't remember the exact dates.
- 16 216 Q. Okay. Were you --
- 17 A. But I was sick. My child was
- 18 sick.
- 19 217 Q. Yes.
- 20 A. And I took time off.
- 21 218 Q. You weren't hospitalized?
- 22 A. No.
- 23 219 Q. Was your child hospitalized?
- 24 A. Seeing a doctor.
- 25 220 Q. But not put in hospital?

1 A. No.

2 221 Q. Okay. I gather you earned the
3 trip to the Dominican?

4 A. Yes.

5 222 Q. You earned it because of your
6 sales performance?

7 A. Yes.

8 223 Q. And I gather that you would set
9 goals for yourself from time to time?

10 A. Yeah.

11 224 Q. And would you marry those goals
12 up to bonus or incentive rewards such as trips?

13 A. Yeah.

14 225 Q. And did you far exceed the goal
15 that won the trip for you, or did you just get across
16 the line?

17 A. I doubled it, that particular
18 trip.

19 226 Q. And did others from your office
20 go on the trip?

21 A. Yes.

22 227 Q. How many?

23 A. I would say at least ten.

24 228 Q. Okay. So am I to take from that
25 that it was a highly performing office?

1 A. Yeah. It was the number one
2 office in the entire company.

3 229 Q. And did that include your team?
4 Did any of your team members make the trip as well?

5 A. Yeah.

6 230 Q. How many?

7 A. I think at least two. One for
8 sure, and possibly two.

9 231 Q. And to the extent that there were
10 things like trips available, is that something that
11 you would encourage your team to strive toward?

12 A. Yes.

13 232 Q. As part of your management of
14 your team, you would make it known to them, "Look, if
15 we can achieve certain sales goals, in addition to
16 your commissions, there are these other benefits."
17 Correct?

18 A. Yes.

19 233 Q. And apart from trips, what other
20 benefits would there have been?

21 A. You get daily points, which are
22 called JE Nation points --

23 234 Q. Yes.

24 A. -- for the Just Energy website.
25 You can go on and purchase Just Energy-branded

1 clothing, gift cards for restaurants, different, like,
2 everyday items with their points.

3 235 Q. Okay.

4 A. Kind of like their currency.

5 236 Q. I understand. I gather you are
6 going to tell me you were a fairly good performer.
7 Fair enough?

8 A. I was decent, yes.

9 237 Q. And in addition to trips, you
10 would earn points yourself?

11 A. Yes.

12 238 Q. And did you get overrides that
13 got points for you as well? By that I mean,
14 personally, would you, as a crew coordinator, get
15 points based on the sales of your team?

16 A. Like JE Nation points to buy
17 stuff in the store?

18 239 Q. What you were just talking about.
19 Yes.

20 A. No.

21 240 Q. Okay. Were there financial
22 bonuses from performance?

23 A. There was a performance bonus,
24 yes.

25 241 Q. And did you ever achieve that?

1 A. Yeah.

2 242 Q. And monetarily, what are we
3 talking about?

4 A. So part of the product we sold
5 was a thermostat. And it is broken up into different
6 levels. If you get, say, three to five thermostats
7 installed in a customer's home, you get a \$120 bonus.
8 I believe 20 and up was a \$1,000 bonus.

9 243 Q. And did it go up after that,
10 even?

11 A. I am not sure. I know that -- I
12 am not sure.

13 244 Q. Did you ever achieve the
14 superstar bonus?

15 A. No.

16 245 Q. Do you know what that is?

17 A. No.

18 246 Q. There was a bonus, it was called
19 a superstar bonus, of upwards of \$5,000. Are you
20 aware of anyone achieving that in your office?

21 A. No.

22 247 Q. And did you ever take your team
23 on road trips?

24 A. Yes.

25 248 Q. And some people call them push

1 weeks, and some people call them road trips. How did
2 you define them for your team?

3 A. Either or.

4 249 Q. And would they be further afield?

5 I am thinking would you have gone, for example, to
6 Thunder Bay or Kingston or Windsor? Where would you
7 have taken your team?

8 A. Kingston. Windsor. Somewhere
9 that is, like, a long distance away, that we don't
10 normally go to.

11 250 Q. The goal being what?

12 A. To work seven days a week, 9:00
13 to 9:00, and get as many sales as possible.

14 251 Q. And you would encourage your team
15 members to come on those trips?

16 A. Yeah.

17 252 Q. I presume not everybody could
18 come on those trips for various reasons, family and
19 otherwise?

20 A. Some agents, if they have a
21 legitimate reason, like sickness, family sickness,
22 they wouldn't come. But other than that, it was
23 mandatory.

24 253 Q. And when you say "mandatory,"
25 what do you mean by that?

March 22, 2019

1 A. If you don't come, you get fired.

2 254 Q. Who would fire you?

3 A. Joel.

4 255 Q. Would you understand that Joel
5 didn't have the ability to fire, because he didn't
6 contract with those agents?

7 A. No. He made it known that if you
8 don't come for a legitimate reason -- that is, you are
9 really sick, or a family member -- don't come back to
10 the office. You are fired.

11 256 Q. All right. And what I am saying
12 to you is, I am telling you that contractually -- and
13 I am going to get to your contract in a moment -- Joel
14 didn't have that authority. And I am asking whether
15 you were aware of him not having the authority to
16 terminate people.

17 A. No.

18 257 Q. To terminate their contracts with
19 Just Energy.

20 A. No. He made it clear that he
21 was.

22 258 Q. And if someone was a performer --
23 they were, like yourself perhaps, good at sales -- it
24 wasn't in Joel's interest to terminate a performer.
25 Was it?

1 A. I, myself, would assume it
2 wouldn't be.

3 259 Q. And in fact it wouldn't have been
4 in your interest for Joel to terminate any performer
5 on your team?

6 A. It wouldn't benefit me, no.

7 260 Q. And I gather, if he even
8 suggested such a thing, you would have spoken up and
9 said, "I am against that, because this person is
10 making money for us." Correct?

11 A. Not in those -- that specific way
12 you just said it.

13 261 Q. Well, and I am going to suggest
14 to you that in fact that never even happened, because
15 of course no performers were ever pushed out, if you
16 will.

17 MR. ROSENFELD: There are a couple of
18 assumptions in there. It didn't happen and --

19 MR. MARTIN:

20 262 Q. That it never happened. That
21 there was never anyone who was performing who in any
22 way was discouraged from continuing with Just Energy.

23 A. Well, there was actually people
24 that were performers that were threatened to be fired.
25 Yes.

- 1 263 Q. Were they fired?
- 2 A. Not that I can recall.
- 3 Can I have a washroom break?
- 4 MR. MARTIN: I am sorry. Absolutely.
- 5 --- Recess taken at 10:40 a.m.
- 6 --- Upon resuming at 10:46 a.m.
- 7 MR. MARTIN:
- 8 264 Q. The nature of door-to-door
- 9 sales -- and I appreciate you have got quite a bit of
- 10 experience in this -- is that obviously you need to
- 11 knock on more doors to create more opportunities.
- 12 Correct?
- 13 A. Yes.
- 14 265 Q. And so there inherently is a
- 15 motivation to work harder if you want to make more
- 16 money?
- 17 A. Yeah.
- 18 266 Q. And similarly, when someone like
- 19 yourself has a team and you make more money when they
- 20 make more money, it is just natural that you want to
- 21 push them to do well?
- 22 A. Yes.
- 23 267 Q. And to push them to do well, you
- 24 want them to knock on doors successfully. Correct?
- 25 A. Sorry?

1 268 Q. You want them to be more
2 successful in knocking on doors?

3 A. Yeah.

4 269 Q. And to obviously increase the
5 financial benefit to you, the more door-knocking that
6 they do, and do it successfully, the better off you
7 are?

8 A. Yeah.

9 270 Q. Did you know of any other people
10 from your office who would have transferred or moved
11 on to other Just Energy offices? Were you aware of
12 that?

13 A. Any of the agents I met moved on
14 to another location?

15 271 Q. Yes. Yeah.

16 A. Well, I know our assistant
17 regional, Ryan, was preparing to open an office in
18 Ottawa.

19 272 Q. His own office?

20 A. As far as I know.

21 273 Q. You moved into a crew coordinator
22 position. I certainly know, in the orientation
23 process, it is discussed about opportunities to move
24 into assistant regional, potentially regional,
25 potentially national positions. Was that a goal that

1 you had thought about for yourself?

2 A. Well, they never discussed that
3 in orientation.

4 274 Q. You don't recall the ability to
5 move from a sales agent role to an assistant crew
6 coordinator and crew coordinator role, and then maybe
7 on to a regional role?

8 A. I didn't find out about, like,
9 becoming that until I was doing sales for them.

10 275 Q. And then, at a certain point when
11 you did discover that, had you set a goal, perhaps, of
12 yourself some day becoming a regional?

13 A. Yes.

14 276 Q. And did you at any point, while a
15 crew coordinator, pursue any further opportunities to
16 become a regional yourself?

17 A. Other than going to work every
18 day?

19 277 Q. Nothing beyond that?

20 A. No.

21 278 Q. You personally didn't purchase
22 Just Energy clothing, I gather?

23 A. I was given their clothing.

24 279 Q. By Joel Stewart?

25 A. Yeah.

1 280 Q. So he paid for it?

2 A. I couldn't tell you if he paid
3 for it or not.

4 281 Q. Any sale that you conducted for
5 Just Energy at a residential door required third-party
6 verification. Did it not?

7 A. Yes.

8 282 Q. And did you understand the need
9 for a third-party verification was, among other
10 things, a regulatory requirement of the government?

11 A. I wasn't aware it was, like,
12 mandated by the government.

13 283 Q. But were you aware, for example,
14 that one of the requirements was a potential
15 cooling-off period for the consumer?

16 A. Yeah.

17 284 Q. So --

18 A. Just --

19 285 Q. Sorry. Go ahead.

20 A. Just like they can cancel within
21 X amount of time.

22 286 Q. Yes. You were aware of that?

23 A. Yeah.

24 287 Q. Okay. But apart from those kinds
25 of verification procedures, if you completed a sale at

1 a door, but for the verification procedures, you would
2 be earning your commission. Correct?

3 A. If I made a sale at the door?

4 288 Q. Yes.

5 A. Yeah.

6 289 Q. And the parameters of that sale.

7 And by that I mean the volume purchased or the length
8 of the contract. That would all be, then, fixed at
9 the door. It wasn't subject to any sort of changes
10 that Just Energy could make to it after the fact?

11 A. What was your question? Sorry.

12 290 Q. There is no variability beyond
13 what you conducted, the sale at the door, with the
14 consumer?

15 A. I don't understand your question.

16 291 Q. So what I am saying to you is
17 that once you completed whatever the sale was,
18 whatever the product was, whatever the volume was,
19 whatever the length of term of the contract was, that
20 was then set in stone and Just Energy couldn't change
21 that after the fact.

22 A. I don't know.

23 292 Q. Okay. And at the door, there
24 were certain procedures that had to be gone through
25 that were essentially dictated by the Ontario Energy

1 Board or other regulations. Correct?

2 A. I am not sure.

3 293 Q. So, for example, how you
4 identified yourself. The fact that you needed to wear
5 a badge. Certain things that could or could not be
6 said. Those were -- as you know from your training,
7 those were something that was dictated by the
8 government, let's say?

9 A. Well, I know that --

10 MR. ROSENFELD: It is dictated by the
11 government?

12 MR. MARTIN:

13 294 Q. A requirement --

14 MR. ROSENFELD: As opposed to dictated
15 by somebody else?

16 MR. MARTIN:

17 295 Q. A requirement of government
18 regulation. Let me put it that way.

19 A. I know they had some
20 requirements, yes.

21 296 Q. And to the extent they had some
22 requirements, as a crew coordinator, one of your
23 supervisory tasks would be to ensure that the people
24 under your supervision adhere to those rules?

25 A. I was given, at the time, like,

1 rules for the agents, to tell them to stick to those
2 rules.

3 297 Q. And there was a compliance
4 process at Just Energy that dealt with people not
5 sticking to the rules. Correct?

6 A. I am not aware of what the
7 compliance was.

8 298 Q. So did you ever have any
9 compliance concerns with respect to what your
10 performance was at the door-to-door sales?

11 A. As far as I am aware, I have
12 never had any complaints, personally.

13 299 Q. Did any of your team members have
14 any complaints against them?

15 A. Not that was brought to my
16 attention.

17 300 Q. You never had to engage in
18 retraining or other discipline, with any of your
19 agents, because of complaints about what they may have
20 done or said at a door?

21 A. I don't remember.

22 301 Q. I gather that, given you don't
23 remember -- personally, do you have any knowledge of
24 any of your team members having been financially
25 penalized because of any complaint that may have been

1 laid against them?

2 A. I am not aware, no.

3 302 Q. And were any prevented from
4 working, even for a day or two, because of any
5 complaint process?

6 A. I don't recall.

7 303 Q. And generally speaking, if you
8 went out in the field for a day, you would make sales?

9 A. Yeah.

10 304 Q. And that was true for your team?

11 A. For the most part, yes.

12 305 Q. In paragraph 5, if you go to the
13 page in here...

14 MR. ROSENFELD: Take a second to read
15 the whole paragraph.

16 MR. MARTIN:

17 306 Q. You talk about:

18 "The same form contract." (as
19 read)

20 So I understand what you are saying
21 there to mean that every agent was given the same
22 contract to sign. Correct?

23 A. Correct.

24 307 Q. They all signed the same
25 contract?

March 22, 2019

1 A. Yeah.

2 308 Q. And is that because you -- it is
3 not because you saw every single agent sign the same
4 contract? It is that you were aware that, in the
5 office, there were these standard contracts?

6 A. Yes.

7 309 Q. And you were aware of that
8 because, I gather, you would be there from day to day,
9 for whatever the number of months you were there,
10 seeing, in fact, people sign those contracts?

11 A. I only seen -- I have never seen
12 anybody. I never watched anybody sign the contracts.
13 I just know, the day I signed my contract, they were
14 handed out to the group of people that was there.

15 310 Q. Yeah. But you say here:
16 "The same form contract." (as
17 read)

18 I am trying to get at: How do you
19 know that everyone signed the same contract?

20 A. Because they would have said,
21 "Here is our independent contractor contract. We need
22 you to sign it."

23 311 Q. And was that the case, then, for
24 the entire March through December period?

25 MR. ROSENFELD: I think he just said

1 he saw them give it to him during his interview.

2 MR. MARTIN: But what he says in his
3 affidavit is much broader. He says as part of the
4 hiring process, new agents are given the same
5 contract.

6 MR. ROSENFELD: I guess that is for
7 Roland to say, but I think he was saying that this was
8 a part of his process.

9 MR. MARTIN: I understand that, too.
10 But his affidavit is much broader than that.

11 MR. ROSENFELD: I don't agree. But
12 you can ask Mr. Lavigne about that.

13 MR. MARTIN:

14 312 Q. So that is my point.

15 A. During my hiring process.

16 313 Q. So just on the day that you were
17 hired?

18 A. Yeah.

19 314 Q. Your impression was that whoever
20 was hired with you signed the same contract?

21 A. Yeah.

22 315 Q. Although you didn't look at
23 everyone else's contract to see if they were the same.
24 Correct?

25 A. That is right.

1 316 Q. Similarly, any other agent within
2 that March to December period, whatever contracts they
3 may have signed, you are not aware specifically of
4 that contract?

5 A. I never looked at them, no.

6 317 Q. You say here no time is provided
7 to review the contract prior to signing it. Did you
8 ask for time, and were denied?

9 A. I did not ask for time, no.

10 318 Q. I presume that you are not in the
11 habit of generally just signing contracts without
12 reading them. Correct?

13 A. Well, it was for work. And the
14 way that they are trying to rush you through it, I
15 never even thought to say, "Give me a minute to read
16 over this."

17 319 Q. But if you had, I presume they
18 would have given you the opportunity to not only study
19 it, but ask questions?

20 A. I couldn't tell you.

21 320 Q. But again, if you didn't agree
22 with any of it, you had the ability to refuse to sign
23 it. Correct?

24 A. I can refuse to do anything I
25 don't want to do.

1 321 Q. Exactly. Right. And, similarly,
2 you say you never received a copy of the agreement.

3 Did you ask for a copy?

4 A. No.

5 322 Q. Have you ever asked for a copy?

6 A. No.

7 323 Q. I mean, you went off and
8 continued to work with Joel Stewart at a different
9 business, and still didn't ask for a copy of your
10 agreement. Correct?

11 A. Correct.

12 324 Q. And when the people on your
13 team -- I gather your sense is that others signed
14 those contracts as well. Right?

15 A. At Just Energy?

16 325 Q. Yes. At Just Energy, yes.

17 A. Yeah.

18 326 Q. And in fact it was made plain
19 that if you don't sign a contract, you can't get
20 badged. Correct?

21 A. Yeah.

22 327 Q. And to the extent, then, others
23 on your team had questions about the contract, they
24 could come to you, as their supervisor, and ask
25 questions?

March 22, 2019

1 A. They could ask questions, but I
2 couldn't answer them.

3 328 Q. You couldn't answer them because
4 why?

5 A. I don't know what is -- the
6 answers.

7 329 Q. Well, all you would need to do is
8 ask for a copy of your contract.

9 A. I would send them to Joel.

10 MR. ROSENFELD: This is a whole
11 hypothetical. Why don't you ask him if he received
12 questions about contracts?

13 MR. MARTIN:

14 330 Q. Did it ever happen that you went
15 and asked Joel with respect to interpreting any part
16 of the contract?

17 A. No.

18 331 Q. Did you at any time participate
19 in the training, in the office, of new sales agents in
20 the office?

21 A. Every morning.

22 332 Q. Okay. I am talking about the new
23 ones. Sorry. Let me rephrase that.

24 The very initial training of people
25 who come into the office as a new recruit. Did you

1 participate in any of that training?

2 A. As in their first day being --

3 333 Q. Before they even go in the field.

4 A. No.

5 334 Q. So you would get involved in

6 training after they were badged, I gather, and they

7 were about to go into the field?

8 A. Right.

9 335 Q. And then they would have first

10 day, second day, first week training with you in the

11 field. Correct?

12 A. Half a day, their first day. And

13 then we send them on their own.

14 336 Q. Okay. And they are free to do

15 whatever they may do in that regard, sales-wise, as

16 you send them on their own. Is that fair?

17 A. No.

18 337 Q. Okay. It is not fair because,

19 again, you still continue to supervise and manage

20 them. Is that correct?

21 A. Yes.

22 338 Q. And that involved both further

23 shadowing, further role-playing, motivation --

24 A. If needed, yeah.

25 339 Q. Yeah. And some people need more

1 than others?

2 A. Yes.

3 340 Q. I gather, because of your
4 ascendancy to crew coordinator, you were a person who
5 needed less than others, perhaps?

6 A. Yes.

7 341 Q. And you already had experience,
8 with Summitt for example, doing door-to-door sales?

9 A. Yeah.

10 342 Q. So you had a pre-existing
11 skill-set?

12 A. Yes.

13 343 Q. But sales isn't for everybody,
14 and certainly outdoor sales is a tough job?

15 A. Yeah.

16 344 Q. But there are skills that can be
17 trained?

18 A. Correct.

19 345 Q. And you were, among other things,
20 a trainer of those skills? You passed along your
21 sales knowledge?

22 A. Yeah.

23 346 Q. And experience?

24 A. Yes.

25 347 Q. And I presume you would even say

1 expertise?

2 A. Yeah.

3 348 Q. And, for that, you received
4 overrides?

5 A. I did.

6 349 Q. And I gather you would see people
7 come into this weekly -- let me put it this way. I
8 think you say, in your affidavit, that just about
9 every week there were new recruits.

10 A. Yeah.

11 350 Q. Roughly how many per week?

12 A. I couldn't tell you, to be
13 honest.

14 351 Q. Dozens?

15 A. Dozens? No.

16 352 Q. And many of those people who were
17 badged -- would you agree with me many, many of those
18 people never actually make a sale?

19 A. Yeah. I agree with that.

20 353 Q. I don't know -- beyond your
21 affidavit, have you read any of the other materials in
22 this proceeding?

23 A. Yeah.

24 354 Q. What did you read?

25 A. I read Richard Teixeira's, Dan

March 22, 2019

1 Gadoua's and Brian's affidavit.

2 355 Q. Brian Marsellus?

3 A. Yeah. I don't know who he is,
4 though.

5 356 Q. Were you aware there is a
6 Fairview office for Just Energy?

7 A. I wasn't until I read it.

8 357 Q. Okay. That is fair enough.
9 Mr. Teixeira. Have you ever met Mr.
10 Teixeira?

11 A. For about 30 seconds. And he
12 stood up and did a speech in front of our office.

13 358 Q. Okay. But if you read his
14 affidavit, he provides a statistic that says something
15 like -- he uses sixty-nine percent. I won't get you
16 to agree with that number or not. But that is
17 basically him saying seven out of ten people who get
18 badged don't make a sale. From your experience at the
19 Kitchener office, is that sort of roughly -- would
20 that be similar to your experience? Some seven out of
21 ten who are badged never make a sale?

22 A. I couldn't -- I never kept track
23 of that, so I couldn't tell you.

24 359 Q. But it was a significant number?

25 A. A significant number didn't make

1 sales.

2 360 Q. Correct. And a significant
3 number probably don't even make it past the first
4 couple of days?

5 A. I couldn't really answer that.

6 361 Q. And when I say they didn't make
7 it past it, people who get badged and they decide, for
8 whatever reason, that this isn't for them. Maybe you
9 have taken them out in the field. They just wonder
10 what they are doing, they find it to be too tough.
11 Whatever. They simply don't come back the next day.
12 Correct?

13 A. Some people. Yeah.

14 362 Q. Some people might even stick it
15 out for a week, and then decide, again, "This isn't
16 for me," and they don't come back?

17 A. Yeah.

18 363 Q. And when I say they don't come
19 back, they just simply don't come and they don't show
20 up at the office on Monday morning?

21 A. Yeah.

22 364 Q. Because this is an entry-level
23 sales position. Correct?

24 MR. ROSENFELD: You said because?

25

March 22, 2019

1 MR. MARTIN: No, no.

2 365 Q. I am saying: This is an
3 entry-level sales position. Correct?

4 A. You come in as just a normal
5 sales agent, like everybody else.

6 366 Q. Right. But unlike yourself, who
7 had sales experience, many of the people who do come
8 in have no sales experience at all?

9 A. That is right.

10 367 Q. And are they more likely than not
11 to be the ones that don't --

12 A. No.

13 368 Q. -- last?

14 A. No.

15 369 Q. Because it is peculiar to a
16 person's skill-set as to whether they do successful
17 sales or not. Correct?

18 A. I would say yes and no. So-so.

19 370 Q. So-so. And to the extent that
20 you personally, you said earlier, set goals to -- I
21 know, obviously, to achieve more money all of the
22 time. We are all, in that regard, doing sales, if you
23 will, on a commission basis, to receive more money.
24 But did you set specific targets for yourself in terms
25 of number of contracts or dollar values of what you

1 personally wanted to achieve?

2 A. I set the dollar values of what I
3 wanted to make. But targets were set by the regional.

4 371 Q. So the dollars that you wanted to
5 make. Was that a weekly? Monthly? How did you set
6 your own --

7 A. All. Weekly, monthly, yearly.

8 372 Q. Okay. And do you recall what,
9 for example, you would set yourself yearly? What your
10 goal was.

11 A. It was \$150,000.

12 373 Q. Okay. So were you aware of any
13 sales agents, during the time you were in the
14 Kitchener office, who worked on their own? Wholly on
15 their own.

16 A. No.

17 374 Q. Were there any who worked in just
18 two-person teams?

19 A. Not that I recall.

20 375 Q. And did you have any contact with
21 the renewal salespeople?

22 A. No.

23 376 Q. And the people who did,
24 exclusively, commercial sales. Did you have any
25 contact with them?

1 A. No.

2 377 Q. So you don't know how they
3 operated in terms of --

4 A. No idea.

5 378 Q. If a residential lead came into
6 the office, a consumer reaches out to the office and
7 says, "I am interested. I have heard something on the
8 news," or the website or whatever, how were those
9 leads distributed out of the Kitchener office?

10 A. I was never aware of anything
11 like that.

12 379 Q. It didn't go to you, obviously?

13 A. No.

14 380 Q. You didn't incorporate?

15 A. No.

16 381 Q. Were you aware of other agents
17 who did incorporate?

18 A. No.

19 382 Q. Did Joel Stewart incorporate, to
20 the best of your knowledge?

21 A. I couldn't tell you.

22 383 Q. Is it fair to say that the people
23 on the team, your team, who maybe were struggling a
24 bit in terms of their performance -- are those the
25 people you spend more time on, in terms of trying to

1 encourage and boost their performance?

2 A. Yeah.

3 384 Q. You mentioned that sometimes you
4 didn't work because of illness or a family illness or
5 whatever. You weren't obliged to bring in a doctor's
6 note, or anything like that, when you were not coming
7 into the office?

8 A. No. I would just let Joel know.

9 385 Q. And at any time in that March to
10 December period, did you ever just simply go out on
11 your own?

12 A. When I couldn't make it to the
13 office, I went out a few times by myself, yes.

14 386 Q. And where would you go?

15 A. Locally. Another time, I think I
16 went to London, and then another city.

17 387 Q. And I assume others in the same
18 situation as you would do the same from time to time?

19 A. No.

20 388 Q. Not that you are aware of?

21 A. Not that I am aware of, no.

22 389 Q. How many other crew coordinators
23 would there have been when you were there?

24 A. There was two.

25 MR. ROSENFELD: Sorry. Two others?

March 22, 2019

1 THE WITNESS: Two others. Yes.

2 MR. MARTIN:

3 390 Q. And do you know whether or not
4 they went, from time to time, out on their own?

5 A. No. I don't know.

6 391 Q. You don't know. Or whether their
7 team members would have gone out on their own from
8 time to time?

9 A. I don't know.

10 392 Q. You don't know. At the time you
11 went to London on your own, why did you pick London?

12 A. No particular reason. Just...

13 393 Q. Did it turn out to be a good
14 choice?

15 A. I don't remember, to be honest.

16 394 Q. And you talked about the trips
17 and other incentives, and the bonuses. Were those all
18 provided by Just Energy? And by that I mean: Did
19 Joel, as the regional, have his own separate
20 incentives for the office?

21 A. No. It was provided by Just
22 Energy. It was company-wide.

23 395 Q. And Joel himself. As I say,
24 though, he didn't add on to that by having particular
25 office incentives, bonuses or --

1 A. The only office incentives were
2 the daily Just Energy Nation points that he would put
3 up daily.

4 396 Q. But that came from Just Energy as
5 well, though. Correct? Or he had his own?

6 A. As far as I am aware -- actually,
7 I couldn't tell you if they were Joel's points or if
8 they came from Just Energy.

9 397 Q. Okay. And did you use an iPad in
10 the field?

11 A. Yeah.

12 398 Q. Did you pay for your own iPad?

13 A. I did.

14 399 Q. And you paid for your own data
15 plan?

16 A. No.

17 400 Q. Who paid for that?

18 A. Joel.

19 401 Q. Okay.

20 A. I would use his SIM card.

21 402 Q. Okay. And did Joel provide iPads
22 or SIM cards to other people in the office?

23 A. If you couldn't afford to buy
24 your own, he would give out iPads to agents.

25 403 Q. So he had a supply of iPads in

1 the office?

2 A. Yeah.

3 404 Q. Sorry. So I understand that, did
4 you have your own iPad that you brought to the office,
5 or you purposely purchased an iPad to do the job?

6 A. I purchased one to do the job.

7 405 Q. Okay. And you weren't reimbursed
8 for that?

9 A. No.

10 406 Q. Can we look at paragraph 21 of
11 your affidavit for a moment? You say there that,
12 while working for Just Energy, you never received any
13 compensation for overtime, vacation pay, minimum wage
14 or public holiday and premium pay. Correct?

15 A. Yeah.

16 407 Q. But, again, you didn't have an
17 expectation that you would receive any of that
18 compensation. Correct?

19 A. Myself personally? No.

20 408 Q. Because you knew that it was a
21 hundred percent commission?

22 A. Yes.

23 409 Q. And I gather that was similar to
24 the other hundred percent commission sales jobs you
25 told us about earlier?

1 A. Yeah.

2 410 Q. And in fact you actually chose
3 the option of having a hundred percent commission
4 position because that meant that there really wasn't
5 any limit on the upside you could earn. Correct?

6 A. I chose it because I needed work.

7 411 Q. Yes.

8 A. Not because there was unlimited
9 earning potential.

10 412 Q. But the unlimited earning
11 potential was certainly attractive?

12 A. If you can make that, yeah.

13 413 Q. And can I assume you were
14 similarly successful when you were with Summitt on a
15 hundred percent commission position?

16 REF MR. ROSENFELD: Don't answer the
17 question.

18 MR. MARTIN:

19 414 Q. Such that, again, you realized
20 the benefit of having that kind of a position,
21 because, using your skill-set, you could do very well
22 financially. Correct?

23 REF MR. ROSENFELD: I am sorry. Don't
24 answer that.

25 It is the "such that." You are

1 relating it back to a time frame. If you want to ask
2 the question independent of the previous time frame,
3 then it is okay.

4 MR. MARTIN:

5 415 Q. Well, to address what your
6 counsel just said, that was your mindset. That
7 regardless of what had happened previous, that was
8 your expectation: You would do well, and you would
9 earn a very good compensation. Correct?

10 A. I wouldn't say very good. I
11 would say average.

12 416 Q. So, to you, \$150,000 a year is
13 average?

14 MR. ROSENFELD: That is not what he
15 made. That was a goal.

16 MR. MARTIN:

17 417 Q. Well, that was his goal. That
18 was his goal. Correct?

19 A. That was my goal. Yeah.

20 418 Q. Is that considered average by
21 you?

22 A. Well, I don't think that is a lot
23 of money, no.

24 419 Q. Okay. But prior to 2015, had you
25 ever made, in any particular year, \$150,000 or more?

1 REF MR. ROSENFELD: Don't answer the
2 question.

3 MR. MARTIN:

4 420 Q. When you left in December of
5 2015, did you have any Just Energy materials that you
6 left behind or returned?

7 A. All of the contracts.

8 421 Q. Anything else?

9 A. Sorry. I left contracts behind
10 with another company that I worked for. Not Just
11 Energy, because we would do it on our iPads. So I
12 left nothing behind, no.

13 422 Q. I find it hard to understand
14 that.

15 A. I worked for another sales
16 company.

17 423 Q. Yes.

18 A. Before -- or after Just Energy.

19 424 Q. Yes.

20 A. I left behind the contracts with
21 them when I left. With Just Energy, we signed
22 contracts on the iPad, so I didn't leave anything
23 behind.

24 425 Q. Did you take anything with you?

25 A. Just my iPad.

March 22, 2019

1 MR. ROSENFELD: Paul, how is your
2 timing?

3 MR. MARTIN: I am doing really well.

4 MR. ROSENFELD: I just need a break,
5 very quickly, if you don't mind.

6 MR. MARTIN: Go ahead.

7 --- Recess taken at 11:23 a.m.

8 --- Upon resuming at 11:33 a.m.

9 MR. MARTIN:

10 426 Q. So the iPad that you used, then.
11 When you left Just Energy, you would have information
12 on who Just Energy's customers were on your iPad?

13 A. I don't recall having their --
14 always having their information, no.

15 427 Q. But my point is that it was still
16 loaded on your iPad when you left.

17 MR. ROSENFELD: What was still loaded
18 on the iPad?

19 MR. MARTIN:

20 428 Q. The information regarding
21 consumers who you had sold contracts to.

22 MR. ROSENFELD: Do you know?

23 THE WITNESS: I don't know.

24 MR. MARTIN:

25 429 Q. Did you approach any of those

1 same consumers, in your position after Just Energy, to
2 have them cancel their contracts and re-up with your
3 new company?

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

6 MR. MARTIN:

7 430 Q. Did Just Energy not reach out to
8 you and advise you that they were concerned about you
9 doing that?

10 A. No.

11 431 Q. But you are aware of that
12 concern, though. Correct?

13 A. No.

14 MR. ROSENFELD: What concern? Sorry.
15 They didn't reach out, so what concern do we have?

16 MR. MARTIN:

17 432 Q. That he was approaching customers
18 of Just Energy, when he was working with a competitor,
19 based on the information he had taken when he left
20 Just Energy.

21 REF MR. ROSENFELD: Don't answer the
22 question.

23 MR. MARTIN:

24 433 Q. At page 317 of our record, Mr.
25 Lavigne -- I will just ask you to go there, please.

March 22, 2019

1 This appears to be the independent contractor
2 agreement that you executed with Just Energy. And I
3 would ask you to first go to page 318. 318 is the
4 final information form. There is the signature. I am
5 sorry. That is not one of those things -- I am going
6 to 319. Sorry. Is that your signature at 319? This
7 is the consent to disclosure of personal information.

8 MR. ROSENFELD: Where it says:

9 "Candidate's signature." (as
10 read)

11 MR. MARTIN:

12 434 Q. Where it says:

13 "Candidate's signature." (as
14 read)

15 A. Yeah. That is my signature.

16 435 Q. The Just Energy representative is
17 a Gloria Herrera. Do you remember Gloria Herrera?

18 A. I do remember her.

19 436 Q. She witnessed your signature and,
20 I gather, participated in presenting the independent
21 contractor agreement to you. Correct?

22 A. I don't remember who actually
23 gave me the contract.

24 437 Q. Okay. And then, if I go over to
25 -- through the contract, to page 325 of the record, it

Page 75

1 says:

2 "Contractor's signature" (as
3 read)

4 Again. And there is, printed, your
5 name, Roland Lavigne, and then the signature. Is that
6 your signature?

7 A. Yeah.

8 438 Q. March 17, 2015. Does that seem
9 to meet with your recollection that that was when you
10 may have signed this?

11 A. Yeah.

12 439 Q. And just above your signature on
13 page 325, in all caps, bold, underlined, it says:

14 "By signing below, you confirm
15 and acknowledge that you read and
16 understood this agreement before
17 signing." (as read)

18 Do you see that?

19 A. I do.

20 440 Q. And seeing that now, does that
21 bring back your memory of having reviewed and signed
22 this independent contractor agreement?

23 A. No.

24 441 Q. And just looking at this today --
25 and I am happy to have you take a moment. I am

March 22, 2019

1 particularly drawing your attention from pages 320 on
2 in the independent contractor agreement. If you could
3 just take a moment.

4 Can you tell me, having just reviewed
5 this again, does this come back to mind that you in
6 fact did have an opportunity to review, consider, ask
7 questions and the like at the time that you signed and
8 acknowledged that you had read and understood the
9 agreement?

10 A. Did I have time to go over it?

11 No.

12 442 Q. Looking at it now, does it come
13 back to mind that you did in fact do that?

14 A. No.

15 443 Q. And so I am sure that at no time
16 did you ever raise an issue with Just Energy that you
17 felt you were entitled to any, as you say in paragraph
18 21, overtime, vacation pay, minimum wage or public
19 holiday and premium pay.

20 A. No. I didn't.

21 444 Q. You haven't, I guess is my point.

22 A. Correct.

23 445 Q. And Katlyn Schwantz has filed an
24 affidavit in this proceeding. Do you know Ms.
25 Schwantz?

1 A. I have met her a few times.

2 446 Q. At any point in time was she
3 working with Just Energy when you were working with
4 Just Energy?

5 A. No.

6 447 Q. And how, then, would you happen
7 to know Ms. Schwantz?

8 A. My girlfriend at the time worked
9 with her, and they were competitive with each other.

10 448 Q. They were which?

11 A. Competitive with each other.
12 Like, they competed against each other.

13 449 Q. I don't know what that means.
14 You mean work?

15 A. Yeah. They worked together.
16 They would compete against each other.

17 450 Q. Okay. Your girlfriend, currently
18 or at the time, was who?

19 REF MR. ROSENFELD: Don't answer the
20 question.

21 I don't understand. What does it have
22 to do with anything?

23 MR. MARTIN: I don't know. I am
24 exploring.

25 MR. ROSENFELD: That sounds like

1 fishing to me, Mr. Martin.

2 MR. MARTIN: Well, it sounds like
3 exploring to me.

4 REF MR. ROSENFELD: So then don't answer
5 the question.

6 MR. MARTIN:

7 451 Q. And what was your girlfriend's
8 name?

9 REF MR. ROSENFELD: Don't answer the
10 question.

11 MR. MARTIN:

12 452 Q. And when you say they were
13 competing, meaning they were motivating each other to
14 do better in terms of performance?

15 REF MR. ROSENFELD: Don't answer the
16 question.

17 MR. MARTIN:

18 453 Q. And I gather that, given your
19 girlfriend's experience with Just Energy, you would
20 have learned from her something about the business of
21 Just Energy?

22 A. No.

23 454 Q. But you certainly knew what she
24 was doing from a sales perspective. Correct?

25 A. She was not on my team. So I

1 don't know what she was doing.

2 455 Q. Okay. I will try it a different
3 way. My understanding is that Ms. Schwantz had left
4 Just Energy before you were with Just Energy.
5 Correct?

6 A. As far as I know, yes.

7 456 Q. Right. And then I gather, the
8 way you just described it, that your girlfriend was at
9 Just Energy at a time when Ms. Schwantz was with Just
10 Energy. Correct?

11 MR. ROSENFELD: I don't understand
12 what this has to do with anything.

13 MR. MARTIN: I am getting there. And
14 that time --

15 MR. ROSENFELD: So that wasn't an
16 answer to a question.

17 MR. MARTIN: I am still asking the
18 question.

19 MR. ROSENFELD: Well, the question you
20 already asked was, "Were they there at the same time?"
21 There was no answer yet.

22 Do you know?

23 MR. MARTIN: Well, no. He knows. He
24 was saying they were competitive.

25 457 Q. They couldn't compete without

1 being there at the same time. Correct?

2 MR. ROSENFELD: Competitive at what?

3 We haven't discussed any of this. So I don't really
4 know what we are getting at, at all.

5 MR. MARTIN: Wait for it. Let him
6 answer.

7 MR. ROSENFELD: Let him answer the
8 question you asked the first time? Whether they were
9 there at the same time?

10 MR. MARTIN:

11 458 Q. Well, how could they compete if
12 they weren't?

13 MR. ROSENFELD: You asked him the
14 question, and then you didn't wait for the response.

15 MR. MARTIN:

16 459 Q. Well, what is the response?

17 A. As far as I know, they were, yes.

18 460 Q. Yes.

19 A. Yeah.

20 461 Q. Was your girlfriend a crew
21 coordinator?

22 A. No.

23 462 Q. Was she an assistant regional?

24 A. No. She was just a regular
25 agent.

1 463 Q. Okay. And when you say she was
2 competing with Ms. Schwantz, they were competing
3 against each other with respect to successful
4 performance?

5 A. Who the better agent was.

6 464 Q. And so were they comparing
7 results?

8 A. Couldn't tell you.

9 465 Q. But I gather you at least gleaned
10 some knowledge of how the Just Energy sales model
11 worked, before you were even there, based on your
12 relationship with your girlfriend?

13 A. No. She wasn't my girlfriend
14 until six months into me working there.

15 466 Q. So she then relayed back her
16 experience, after the fact?

17 A. Experience in what way?

18 467 Q. Six months in. So March, April,
19 May, June, July, August. Somewhere in September of
20 2015 was the first time that you and your girlfriend
21 were in a relationship, I gather. Is that what you
22 are telling me?

23 REF MR. ROSENFELD: You know what? Stop
24 asking the questions. Enough.

25 MR. MARTIN: I am just trying to make

1 the connection to Katlyn Schwantz.

2 MR. ROSENFELD: And I don't know why.

3 MR. MARTIN: Well, I haven't figured
4 it out yet. So I haven't led the questions yet.

5 MR. ROSENFELD: Then there is no basis
6 for these questions.

7 MR. MARTIN: Well, there is.

8 MR. ROSENFELD: For what? Because
9 another affiant swore an affidavit in this matter? Do
10 you have some other evidence to suggest there is
11 anything else that relates to this proceeding of --

12 MR. MARTIN: I don't know. I am
13 trying to find out.

14 REF MR. ROSENFELD: So there won't be any
15 more questions.

16 MR. MARTIN: I am trying to find out.

17 468 Q. So did you know Katlyn Schwantz
18 prior to being engaged in sales with Just Energy?

19 A. No.

20 469 Q. So you only learned of her
21 through a girlfriend who had worked with Just Energy,
22 but who you didn't know until after you started with
23 Just Energy. Is that what you are saying?

24 A. Yeah.

25 470 Q. Okay. Have you met with Ms.

1 Schwantz with respect to giving your evidence here
2 today?

3 REF MR. ROSENFELD: Don't answer the
4 question.

5 MR. MARTIN:

6 471 Q. Have you and Ms. Schwantz
7 rehearsed your answers for today together?

8 A. No.

9 472 Q. When is the last time you met
10 with Ms. Schwantz?

11 REF MR. ROSENFELD: Don't answer the
12 question. I don't understand what this has to do with
13 anything.

14 MR. MARTIN: It is perfectly fine
15 cross-examination.

16 MR. ROSENFELD: On what? On what
17 basis? What is the relevance?

18 MR. MARTIN: On his evidence. His
19 credibility.

20 MR. ROSENFELD: Credibility in that
21 you are suggesting that they conspired together? Is
22 that what --

23 MR. MARTIN:

24 473 Q. Did they?

25 MR. ROSENFELD: I am asking you. That

1 is --

2 MR. MARTIN:

3 474 Q. Well, I am asking you. Isn't
4 that a fair question?

5 MR. ROSENFELD: I don't think so.

6 MR. MARTIN: You can refuse it if you
7 would like, but I have got to ask the question.

8 REF MR. ROSENFELD: I think I have. I am
9 trying to understand the relevance of it.

10 MR. MARTIN: They compared their
11 stories.

12 475 Q: Do you know any of the other
13 affiants in this proceeding?

14 A. No.

15 476 Q. So just Ms. Schwantz?

16 A. I don't even know her. I met her
17 three times, briefly.

18 477 Q. And when was the last time?

19 A. Years ago.

20 MR. MARTIN: Subject to any
21 undertakings, and the refusals, those are all of the
22 questions that I have for you today, Mr. Lavigne.
23 Thank you.

24 MR. ROSENFELD: I have no questions.

25 --- Whereupon the matter adjourned at 11:48 a.m.

I HEREBY CERTIFY THAT I have, to the best of my skill and ability accurately recorded by shorthand, and transcribed therefrom, the foregoing proceeding using real time computer aided transcription.



SAGE SIEGEL, COURT REPORTER

Court File No. CV-15-527493-00CP

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

Haidar Omarali

Plaintiff

- and -

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

Defendants

CROSS-EXAMINATION OF JAMIE ACTON
on his Affidavits sworn August 29, 2018,
and February 14, 2019,
held at the offices of ASAP Reporting Services Inc.,
100 Queen Street, Suite 940, Ottawa, Ontario,
on Thursday, March 28, 2019 at 1:10 p.m.

APPEARANCES:

David Rosenfeld

for the Plaintiff

Paul J. Martin

for the Defendants

Laura F. Cooper

Anatasia Reklitis

A.S.A.P. Reporting Services Inc. © 2019

940-100 Queen Street

900-333 Bay Street

Ottawa, Ontario K1P 1J9

Toronto, Ontario M5H 2R2

(613) 564-2727

(416) 861-8720

INDEX

	PAGE
JAMIE ACTON, AFFIRMED	3
CROSS-EXAMINATION BY MS. REKLITIS	3

LIST OF OBJECTION/REFUSALS

Objections/Refusals can be found on pages:

5, 6, 7, 17, 18, 21, 22, 24, 27, 30, 32, 61, 75

March 28, 2019

1 Ottawa, Ontario

2 --- Upon commencing on Thursday, March 28, 2019 at

3 1:10 p.m.

4 JAMIE ACTON, AFFIRMED

5 CROSS-EXAMINATION BY MS. REKLITIS:

6 1. Q. Please state your name, for
7 the record...

8 A. James Acton.

9 2. Q. And where do you live?

10 A. I live in Greeley.

11 3. Q. And how long have you lived
12 there?

13 A. I just bought the house in
14 December.

15 4. Q. You affirmed an Affidavit on
16 th
17 August 29 , 2018.

18 Is that correct?

19 A. Yes.

20 5. Q. And have you had an
21 opportunity to review your Affidavit recently?

22 A. Yeah. I looked over it before
23 I did the other one and when I read over the
24 Affidavits from the other people.

25 6. Q. And what other Affidavits did

Page 3

1 you review?

2 A. It would have been Brian
3 Marsellus, Richard Teixeira...

4 I forget the other one.

5 7. Q. And Daniel Gadoua?

6 A. I think so, yeah.

7 8. Q. And are there any changes or
8 corrections you wish to make to your Affidavit?

9 A. None of the ones I made ---
10 The second one I did was in
11 response to the three Affidavits that I read.

12 9. Q. The "second one you did"?

13 A. Yeah. There are two there.

14 th

15 There is one on August 29 and one on February

16 th

17 14 .

18 MR. ROSENFELD: The question was:

19 Do you have any corrections to either one of the
20 Affidavits?

21 THE WITNESS: Oh! No.

22 MS. REKLITIS:

23 10. Q. And you have reviewed both
24 Affidavits recently?

25 A. Yeah.

March 28, 2019

1 11. Q. And what do you currently do
2 for work?

3 A. I work at the Airport, and I
4 have my Real Estate Licence.

5 12. Q. And are you paid on a
6 commission basis at any of those jobs?

7 OBJECTION/REFUSAL NOTED:

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

10 THE WITNESS: All right.

11 MS. REKLITIS:

12 13. Q. And how long have you worked
13 for ---

14 Sorry. You have two employments
15 right now, two employment opportunities right now?

16 A. Yeah.

17 14. Q. And how long have you worked
18 for both?

19 OBJECTION/REFUSAL NOTED:

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

22 MS. REKLITIS:

23 15. Q. What did you do before working
24 at these companies?

25 OBJECTION/REFUSAL NOTED:

1 MR. ROSENFELD: Don't answer the
2 question.

3 MS. REKLITIS:

4 16. Q. Apart from what you did at
5 Just Energy as an Independent Contractor, have you
6 held any other Sales Positions in your Working
7 Life?

8 A. The Real Estate; and I sold
9 furnaces.

10 17. Q. And at the Furnaces job, was
11 that an Independent Contractor opportunity?

12 OBJECTION/REFUSAL NOTED:

13 MR. ROSENFELD: Don't answer the
14 question.

15 MS. REKLITIS:

16 18. Q. Are you making a commission
17 only at that job?

18 OBJECTION/REFUSAL NOTED:

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

21 MS. REKLITIS:

22 19. Q. Do you recall whether you
23 signed a Contract with the Furnaces company?

24 OBJECTION/REFUSAL NOTED:

25 MR. ROSENFELD: Don't answer the

1 question.

2 MS. REKLITIS:

3 20. Q. Was the Furnaces job a door-
4 to-door sales opportunity?

5 OBJECTION/REFUSAL NOTED:

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

8 MS. REKLITIS:

9 21. Q. And you do Real Estate as
10 well.

11 Are you self-employed?

12 OBJECTION/REFUSAL NOTED:

13 MR. ROSENFELD: Don't answer the
14 question.

15 MS. REKLITIS:

16 22. Q. You state in your Affidavit of
17 th
18 August 29 , 2018, that you became a Crew
19 Coordinator in November 2013...

20 A. Yeah. That was just after
21 Remembrance Day.

22 23. Q. I understand that you had just
23 become an Assistant Crew Coordinator at the end of
24 January/beginning of February 2014.

25 Do you recall that?

1 A. No.

2 24. Q. I understand that your first
3 override as an Assistant Crew Coordinator at Just
4 th
5 Energy was around January 24 , 2014.

6 Does that seem familiar?

7 A. No. They actually never paid
8 me any overrides.

9 25. Q. They didn't pay you any
10 overrides?

11 A. Not as a Crew Coordinator at
12 Just Energy, no.

13 26. Q. Would that not have been
14 because you became a Crew Coordinator ---

15 I understand that you became a
16 Crew Coordinator around March of 2014 and not
17 November of 2013.

18 So if it was March 2014, it would
19 make sense that you didn't make an override.

20 I believe your last sale was March
21 nd

22 22 , 2014.

23 A. I came there and they told me
24 I was going to be a Crew Coordinator. I was there
25 two weeks as an Agent, to get to know the product,

1 and that was just when I transferred over. It was
2 Remembrance Day that year.

3 27. Q. So November of 2013, you
4 signed an Independent Contractor Agreement with
5 Just Energy?

6 A. I don't remember what I
7 signed. They moved me from the one part of the
8 company to the Energy side.

9 28. Q. So you went to ---
10 Was it NHS that you went to,
11 following signing an Agreement with Just Energy in
12 2013?

13 A. I started at National Home
14 Services.

15 29. Q. You started at National Home
16 Services?

17 A. Yeah.

18 30. Q. And that was in November of
19 2013?

20 That is your recollection?

21 A. No. That was in July of 2011.
22 2010, '11.

23 31. Q. Okay. So you started at
24 National Home Services and then went to Just Energy
25 ---

1 A. Yes.

2 32. Q. -- to sell Energy products, in
3 November of 2013, and started as a Sales Agent?

4 A. Yes.

5 33. Q. So you weren't a Crew
6 Coordinator from November 2013?

7 A. They brought me over as a Crew
8 Coordinator, but they wanted me to just learn the
9 product. So I was just ---

10 It was just me for two weeks
11 before they made me a Crew Coordinator.

12 34. Q. Based on Just Energy's
13 records, I suggest to you that you did not become
14 an Assistant Crew Coordinator until around January
15 or February of 2014 ---

16 A. I was never an Assistant Crew
17 Coordinator. They told me that I was going to come
18 over and start out as a Crew Coordinator.

19 I don't know what their records
20 say, but this is what was told to me, and I was
21 acting as a Crew Coordinator from two weeks after I
22 joined.

23 35. Q. And did you have a Team from
24 the outset at that time?

25 A. From two weeks on, yes.

1 36. Q. Yes. And how large was your
2 Team?

3 A. At the height, it was seven or
4 eight people.

5 37. Q. And your evidence is that you
6 didn't get any overrides from Just Energy?

7 A. I never received one, no.

8 38. Q. Well, I suggest to you that
9 th
10 you had received your first override on March 10
11 of 2014, as a Crew Coordinator, and were receiving
12 overrides as an Assistant Crew Coordinator starting
13 around January/February of 2014.

14 A. That's news to me. I kept
15 asking for the overrides, but they never gave them
16 to me.

17 39. Q. And who did you ask?

18 A. Scott Eger and Johnny Lavoie.

19 40. Q. Do you have any records of you
20 requesting information regarding the status of your
21 overrides, either between you and Scott Eger or you
22 and Johnny Lavoie?

23 A. It was just verbal.

24 41. Q. Do you recall when you had
25 those conversations?

1 A. Three weeks in.

2 42. Q. And you were with Just Energy
3 until March of 2014?

4 A. Yeah. About then. I was
5 there for about three or four months.

6 43. Q. And at any time between when
7 you say you should have been receiving overrides,
8 around two weeks after you came to Just Energy in
9 November 2013, and March of 2014, did you ever ask
10 why you weren't receiving overrides?

11 A. Yeah. They just kept telling
12 me "You should have them".

13 44. Q. And did you check to see
14 whether you had them?

15 A. Yeah. I looked at my Pay
16 Stubs, and I never got them.

17 45. Q. And are you aware that you
18 signed a Contract with Just Energy?

19 A. Just the same as any other
20 employee or job.

21 46. Q. It was an Independent
22 Contractor Agreement, though, which is different
23 from an Employment Agreement.

24 A. Yeah.

25 47. Q. Do you agree?

March 28, 2019

1 A. I don't know if I read it.

2 MS. REKLITIS: Counsel, can you
3 please show Mr. Acton a copy of his Independent
4 Contractor Agreement...

5 MR. ROSENFELD: Exhibit "G" to Mr.
6 Teixeira's Affidavit?

7 MS. REKLITIS: Yes. Page 269 of
8 the Record.

9 MR. ROSENFELD: I have that first
10 page out.

11 I think the first page is
12 "Independent Contractor File Information".

13 MS. REKLITIS: Yes.

14 --- (Document Produced to the Witness)

15 48. Q. Have you recently seen this
16 document?

17 A. That was National Home
18 Services.

19 Teixeira was a Recruiter for
20 National Home Services, and in July, that's when I
21 started. July 19, 2011.

22 Yeah.

23 So that wasn't Just Energy.

24 49. Q. I suggest to you that the
25 Contract is between Just Energy and you.

1 Do you see "National Home
2 Services" on this Contract?

3 MR. ROSENFELD (To the Witness):
4 Have you seen this Agreement before? (Referencing
5 documentation)

6 THE WITNESS: I would have signed
7 a long time ago. I wouldn't have read through it.

8 I was working for National Home
9 Services when I started there.

10 MS. REKLITIS:
11 50. Q. If you go to Page 4 of the
12 Agreement, Page 273 of the Record, where it says
13 "Contractor's Signature", is that your signature?

14 A. Yeah. That's my signature.

15 51. Q. And you don't recall signing
16 this within the confines of Just Energy?

17 A. I wasn't working for Just
18 Energy. I was hired for National Home Services.

19 At that time, in Ottawa, Just
20 Energy didn't have a Residential Department. There
21 was only the Commercial one.

22 52. Q. Are you referring to National
23 Home Services?

24 A. It was National Home Services
25 that I got hired by.

March 28, 2019

1 53. Q. This Agreement is with Just
2 Energy. So at this time, you were retained by Just
3 Energy to provide services as an Independent
4 Contractor.

5 Whether you went to National Home
6 Services after that or not...

7 I suggest to you that you signed
8 the Agreement with Just Energy but then you went to
9 National Home Services.

10 Does that seem accurate, based on
11 the timeline?

12 So in 2011, you signed an
13 Agreement with Just Energy.

14 And did you go to National Home
15 Services after signing the Agreement with Just
16 Energy?

17 A. When I signed that, I was
18 coming in straight to National Home Services.
19 (Referencing documentation)

20 I didn't know that they were Just
21 Energy.

22 I replied to an Ad on -- I guess
23 Kijiji.

24 I went in for the Interview. They
25 never said anything about Energy Sales. That was

Page 15

1 all just "water tanks and furnaces".

2 54. Q. And the Ad said ---

3 A. It was National Home Services.

4 55. Q. -- that there was an
5 opportunity at National Home Services?

6 A. Yes. There was no "Just
7 Energy" talk until after ---

8 After I got hired, then they told
9 us that National Home Services was a Department or
10 was owned by Just Energy.

11 56. Q. So when you saw the Ad, did
12 you respond to the Ad with a telephone call, or...

13 Do you remember?

14 A. I just replied to the Kijiji
15 Ad. So I e-mailed them.

16 57. Q. And did you speak to a
17 Recruiter?

18 A. Yeah. A Recruiter called me
19 and set up an Appointment to come meet for an
20 Interview.

21 58. Q. And that Recruiter was from
22 National Home Services, or Just Energy?

23 A. I imagine it was from
24 National.

25 I don't remember who called me.

March 28, 2019

1 59. Q. And you started making sales
2 with Just Energy in November of 2013?

3 A. Yes.

4 60. Q. Did you understand that at
5 National Home Services you were self-employed?

6 OBJECTION/REFUSAL NOTED:

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

9 MS. REKLITIS:

10 61. Q. And were you making a
11 commission-based pay at National Home Services?

12 OBJECTION/REFUSAL NOTED:

13 MR. ROSENFELD: Don't answer the
14 question.

15 MS. REKLITIS:

16 62. Q. Did you receive any benefits,
17 Vacation Pay or any other types of employment
18 benefits at National Home Services?

19 OBJECTION/REFUSAL NOTED:

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

22 MS. REKLITIS:

23 63. Q. When you came to Just Energy
24 in November of 2013, you didn't ---

25 Did you sign another Agreement

Page 17

1 with Just Energy?

2 A. I imagine I probably did, just
3 to transfer over. But again I don't really read
4 those things.

5 These were people that I trusted,
6 and they just said "Okay. We're going to move you
7 to this part", and I went in and did the Paperwork.

8 64. Q. Why did you want in? Why did
9 you sign something without understanding -- if that
10 is your evidence -- without understanding what the
11 opportunity was?

12 A. Because these were people that
13 I trusted and they told me that if I wanted to have
14 my office in California -- which I was working
15 towards -- they weren't going to send me there
16 unless I knew the Energy side.

17 So that is why they moved me over
18 to Just Energy, and that is why they started me as
19 a Crew Coordinator.

20 65. Q. At Just Energy, did you
21 understand that this was an Independent Contractor
22 arrangement?

23 OBJECTION/REFUSAL NOTED:

24 MR. ROSENFELD: Sorry. There is a
25 legal conclusion associated with that question.

March 28, 2019

1 (To the Witness): Don't answer
2 the question.

3 MS. REKLITIS:

4 66. Q. Did you understand that you
5 were self-employed when selling energy products at
6 Just Energy?

7 MR. ROSENFELD: To me, that is the
8 same question. It is the characterization of that
9 that is at dispute in this Case.

10 MS. REKLITIS:

11 67. Q. Were you making ---
12 Did you understand that you were
13 not making a wage or salary at Just Energy?

14 A. Yes. It was a commission.
15 But at no time did I ever feel like I had an option
16 to not show up on a day.

17 68. Q. Okay. But you knew you were
18 only entitled to commission for the work that you
19 were doing there?

20 A. And overrides.

21 69. Q. And overrides. And that you
22 were not entitled to any type of Employment
23 Benefit?

24 MR. ROSENFELD: Can you expand on
25 that, please...

1 MS. REKLITIS:

2 70. Q. Such as Vacation Pay, Holiday
3 Pay, Insurance...

4 MR. ROSENFELD: Sorry. You said
5 "not entitled to it", as opposed to "did not
6 receive it from them".

7 "Entitlement" is another component
8 to the Case.

9 MS. REKLITIS:

10 71. Q. Did you understand that you
11 were not receiving any kind of Employment Benefit,
12 whether it be Vacation Pay or Employment Insurance,
13 from Just Energy?

14 A. Yeah. We didn't get Vacation.

15 72. Q. Are you aware that you would
16 not have been able to market energy products, such
17 as energy, without having signed an Independent
18 Contractor Agreement with Just Energy?

19 A. Yeah. I mean, you had to work
20 for them to sell.

21 Right?

22 73. Q. But my question is: You had
23 to sign an Agreement with them in order to be able
24 to market on their behalf?

25 A. Yeah. Everybody had to sign.

March 28, 2019

1 74. Q. At National Home Services,
2 they had ---

3 What was their model there, as a
4 Salesperson?

5 OBJECTION/REFUSAL NOTED:

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

8 MS. REKLITIS:

9 75. Q. Were you a Crew Coordinator at
10 National Home Services?

11 OBJECTION/REFUSAL NOTED:

12 MR. ROSENFELD: Don't answer the
13 question.

14 MS. REKLITIS:

15 76. Q. Did you have a Team that was
16 selling under you at National Home Services?

17 OBJECTION/REFUSAL NOTED:

18 MR. ROSENFELD: Don't answer the
19 question.

20 MS. REKLITIS:

21 77. Q. Was there a similar commission
22 structure at National Home Services to that at Just
23 Energy?

24 OBJECTION/REFUSAL NOTED:

25 MR. ROSENFELD: Don't answer the

Page 21

1 question.

2 MS. REKLITIS:

3 78. Q. Did you understand that the
4 Team structure at National Home Services was
5 equivalent to the Team structure at Just Energy?

6 OBJECTION/REFUSAL NOTED:

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

9 MS. REKLITIS:

10 79. Q. As a Sales Agent and Crew
11 Coordinator at Just Energy, did you incur expenses?

12 A. Yeah.

13 80. Q. Such as...?

14 A. Hotels. They wanted me to pay
15 for everybody's hotel and I was supposed to be
16 reimbursed.

17 81. Q. And were you reimbursed?

18 A. Sometimes. But most of the
19 time, I did not, no.

20 82. Q. So between November of 2013
21 and March of 2014, were you reimbursed for ---

22 What was the amount of expenses,
23 do you think?

24 A. With Just Energy, I wasn't
25 paying for hotels, no.

March 28, 2019

1 83. Q. You were not paying for hotels
2 at Just Energy?

3 A. Not when I was at Just Energy,
4 no. No. Our Manager paid for them.

5 84. Q. But there were other expenses;
6 right?--Cell phone or clothing...

7 --- (A Short Pause)

8 MR. ROSENFELD: At Just Energy.

9 THE WITNESS: Yeah.

10 MS. REKLITIS:

11 85. Q. This is all about Just Energy.

12 A. No, I don't think I paid for
13 the clothes...

14 86. Q. Did you have clothing?

15 A. Yeah. Yeah. We had to have
16 "Just Energy"-branded stuff.

17 I couldn't just show up to your
18 door with just so much as the Badge.

19 87. Q. But you had the option to
20 purchase "Just Energy" clothing?

21 A. I don't believe I purchased
22 it, no.

23 88. Q. So you didn't actually wear
24 "Just Energy" clothing?

25 A. No, I did. Yeah. I had a

Page 23

1 shirt and a jacket.

2 89. Q. But you didn't purchase them?

3 A. I don't believe I did, no.

4 90. Q. How did you receive them?

5 A. They were handed to me at the
6 office.

7 91. Q. And were they given to you
8 just so that you would ---

9 Did they encourage wearing "Just
10 Energy" clothing because it would appear to be more
11 professional and ---

12 OBJECTION/REFUSAL NOTED:

13 MR. ROSENFELD: Don't answer the
14 question.

15 MS. REKLITIS:

16 92. Q. -- and would give you more
17 credibility as a Sales Agent?

18 A. They told us we had to wear
19 "Just Energy"-branded clothes. The only thing they
20 would talk about would be to wear nicer pants.
21 "Don't show up in ripped jeans"; "to look
22 presentable".

23 93. Q. Right. And which would be in
24 your best interests to do?

25 You wouldn't want to show up

March 28, 2019

1 looking like you were not a professional
2 Salesperson.

3 Right?

4 Otherwise, you probably wouldn't
5 appear to be credible and would be less likely to
6 make a sale.

7 A. Yeah. You want to look
8 presentable. But we had...

9 The affirmed that we had "Just
10 Energy"-branded clothing, so that we looked more
11 credible.

12 94. Q. Right. But they ---

13 A. And we had to have the Badge.

14 95. Q. So you were required to wear
15 the Badge. But they recommended "Just Energy"
16 clothing so that you could appear more
17 professional. But they didn't require that you
18 purchase and wear it at all times?

19 A. No. They required to wear the
20 shirt.

21 For a period of time, I was just
22 wearing a regular tee shirt under my jacket and in
23 the Morning Meeting, I got in trouble because I was
24 wearing just a plain white tee shirt and I wasn't
25 showing "Just Energy" branding, in the Meeting.

Page 25

1 96. Q. So you incurred expenses. Did
2 you keep receipts for any of these expenses?

3 MR. ROSENFELD: Keep them to date,
4 or keep them back then?

5 THE WITNESS: I don't have them
6 now.

7 MS. REKLITIS: Both.

8 THE WITNESS: Yeah. I kept them.

9 MS. REKLITIS:

10 97. Q. Did anyone give you advice to
11 keep these receipts?

12 A. I just kept them for Taxes.

13 98. Q. Did you do that of your own
14 will? Or did an Accountant advise you to do that?

15 A. I think my Dad told me to keep
16 them all.

17 99. Q. And did you deduct these
18 expenses from your Taxes?

19 A. I believe so. I went to the
20 Accountant that they recommended, that our Manager
21 used, and I just gave him all my receipts.

22 100. Q. And would you agree that
23 deducting expenses from your Taxes is something
24 that you would do as a self-employed worker?

25 MR. ROSENFELD: I don't agree with

March 28, 2019

1 the characterization or asking him about the
2 characterization of that.

3 MS. REKLITIS:

4 101. Q. As an employee where you are
5 paid a wage or a salary, deducting expenses from
6 your Taxes, is that something that you have done?

7 MR. ROSENFELD: In other ---

8 MS. REKLITIS:

9 102. Q. In other jobs.

10 OBJECTION/REFUSAL NOTED:

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

13 MS. REKLITIS:

14 103. Q. Can you give me a ballpark
15 figure of the amount of deductions you took off
16 your Taxes for your expenses during the time that
17 you were at Just Energy?

18 A. At the time I was at Just
19 Energy, I didn't really even make that much money.
20 So I didn't take that much expenses.

21 104. Q. Do you have an estimate as to
22 how many expenses you incurred?

23 MR. ROSENFELD: Is the amount
24 relevant?

25 He said he did.

Page 27

1 THE WITNESS: I mean, most of my
2 expenses were just going out to restaurants, and it
3 was mostly alcohol.

4 MS. REKLITIS:

5 105. Q. Alcohol?

6 A. Yeah.

7 106. Q. So you weren't working a lot?

8 A. No. We worked all day. But
9 we had nothing to do at nights.

10 107. Q. "Nothing to do at night".

11 What does that mean?

12 A. We would be in a hotel room.
13 So we would just go to the bar.

14 108. Q. Are you referring to Road
15 Trips or "Push Weeks"?

16 A. To Road Trips.

17 109. Q. So you would stay in hotels
18 when you were on Road Trips? Not the day-to-day
19 just going out to the field in Ottawa?

20 A. No, not in Ottawa.

21 110. Q. And how many Road Trips did
22 you go on in that period between November 2013 and
23 March 2014?

24 A. Every second week. Sometimes
25 we would be out for two weeks in a row, if there

1 was a Push Week.

2 111. Q. I understand that there was
3 only one Push Week per month in Ottawa.

4 Is that correct?

5 A. Every third week was a Push
6 Week.

7 112. Q. So you would have gone on
8 about four Push Weeks, probably?

9 A. Three or four, yeah. But I
10 believe I was away from Ottawa more than I was
11 here.

12 113. Q. I am just going back to your
13 Taxes.

14 Did you receive any T-4As while
15 you were at Just Energy?

16 A. We get whatever the Form was.
17 A T-4; T-4A.

18 114. Q. A T-4A. Did you receive a T-
19 4A?

20 It is different from a T-4.

21 A. Yeah. I received the...
22 Whatever I made that year.

23 I don't remember what the Form is.

24 115. Q. Do you have a copy of that T-
25 4A?

1 It would have been one T-4A.

2 A. Probably not now, no.

3 116. Q. You don't?

4 A. Probably not. That was six
5 years ago.

6 Yeah. I doubt I have it still.

7 117. Q. So you haven't given a copy to
8 your Counsel?

9 OBJECTION/REFUSAL NOTED:

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

12 MS. REKLITIS:

13 118. Q. And did you have a GST Number
14 while you were at Just Energy?

15 A. Yeah.

16 119. Q. And why did you have a GST
17 Number?

18 A. My Accountant got it for me.

19 120. Q. And why did your Accountant
20 get ---

21 Did your Accountant advise you to
22 get a GST Number through them?

23 A. Actually, my Dad went in while
24 I was on a Road Trip, when I was working at
25 National, and the Accountant set one up for me.

March 28, 2019

1 121. Q. So your Accountant would have
2 advised you to do that, before setting it up for
3 you?

4 A. Well, with my Dad.

5 122. Q. With your Dad.

6 The GST Number is yours, though,
7 not your Dad's?

8 A. It's mine, yes. But I was
9 away, and my Dad went and took my Tax info in.

10 123. Q. And were you incorporated
11 while you were at Just Energy?

12 A. No.

13 124. Q. Did you have any other income
14 sources other than Just Energy during 2013 and
15 2014?

16 MR. ROSENFELD: While he was
17 working at Just Energy?

18 MS. REKLITIS: Yes.

19 MR. ROSENFELD (To the Witness):
20 So just during the period you were at Just Energy.

21 THE WITNESS: No. I had no time.

22 MS. REKLITIS:

23 125. Q. And would you agree that ---
24 So there were Crew Coordinators,
25 Regionals, and as Crew Coordinators, Regionals,

Page 31

1 part of the responsibility was to provide Training
2 to Sales Agents, both during Orientation and out in
3 the field?

4 A. I never did the Orientation.
5 I would ---

6 People would shadow me as a Crew
7 Coordinator on their first day in the field, and I
8 would be there for support whenever they needed
9 help from then on.

10 126. Q. And Sales Agents had the
11 choice to come to you and ask, if they needed extra
12 help, and you, as Crew Coordinator, would be
13 willing to provide that help through shadowing?

14 A. Or just answering questions.

15 127. Q. What kinds of questions?

16 A. It was mostly information on
17 the product.

18 128. Q. And how to sell the product?

19 A. Yeah. What to say if
20 somebody...

21 How to respond if somebody has
22 "this objection".

23 129. Q. Or just how to engage with the
24 customer so that you are more likely to sell
25 product and earn a commission?

March 28, 2019

1 A. Yeah. That was part of it.

2 130. Q. And do you agree that most
3 individuals engaging in door-to-door sales are not
4 very experienced Sales People?

5 MR. ROSENFELD: At Just Energy?

6 MS. REKLITIS: At Just Energy.

7 THE WITNESS: Yeah. Everybody
8 that came in, it would be their first time trying
9 to sell something, for the most part.

10 MS. REKLITIS:

11 131. Q. And do you agree that most
12 individuals that don't have experience selling an
13 Energy product would require some guidance to be
14 able to be successful in a sale with a customer?

15 A. I don't think it matters what
16 the product is. Any time you come and try to sell
17 anything when you've never sold anything before,
18 you are going to require assistance.

19 132. Q. Especially door-to-door sales
20 because it's just a harder type of market, just
21 given the context of the sale: that you are
22 knocking on people's doors.

23 A. Yeah. It's harder knocking on
24 somebody's door than if they came into a store to
25 ask you about it.

Page 33

1 133. Q. Right. And did you find that
2 you were providing any kind of shadowing and role-
3 playing and any kind of other support to Sales
4 Agents who hadn't had that experience before?

5 A. Most of the people that came
6 there hadn't had that experience before.

7 134. Q. But those people were the
8 people that you generally provided field shadowing
9 and role-playing support to?

10 A. Yeah. We did it for
11 everybody. Everybody had to spend one day
12 shadowing.

13 135. Q. Right. But after that, any
14 field shadowing that was offered in the field, you
15 said that you would provide it if a Sales Agent
16 requested for it?

17 A. Yeah. If they had a bad day
18 and they wanted to watch for a couple of hours,
19 then I would bring them along with me.

20 136. Q. Because it was in your
21 interest to help them become better Sales People
22 and to earn commissions so that you could, in turn,
23 obtain an override from them?

24 A. Yes. I never got the
25 overrides. But it was more that I just liked to

1 see everybody to succeed.

2 It was more fun when there were
3 people there.

4 137. Q. Right. Do you agree that for
5 door-to-door sales, there is a motivational aspect
6 to it and that without that encouraging of one
7 another, it could become fairly discouraging and
8 people would be less likely to succeed?

9 A. I don't think it's just door-
10 to-door sales. I think that is Sales in general.

11 138. Q. Right. And you understand, as
12 a Crew Coordinator, that you got overrides from
13 Sales Agents?

14 A. I was supposed to. I never
15 did.

16 139. Q. I understand that to be your
17 evidence. But did you understand that in your
18 Position as a Crew Coordinator, that arrangement
19 was intended to allow you to get overrides off of
20 Sales Agents' commissions?

21 A. Yes.

22 140. Q. And would you agree that it
23 was in the Regional Distributors and Crew
24 Coordinators best interests to encourage Sales
25 Agents to sell in order for them to be able to earn

1 an override?

2 A. Yes.

3 141. Q. And whether that
4 encouragement was through Training or Shadowing,
5 or any other type of role-playing or support?

6 A. Yeah.

7 142. Q. And would you agree that some
8 Sales Agents did not really respond to the whole
9 Team structure at Just Energy; that some of them
10 chose to be more independent and chose to not
11 market in the Team structure and just be on their
12 own?

13 A. I never saw it. People tried,
14 but they were told that they were supposed to be
15 part of the Office and everybody had to go
16 together.

17 143. Q. They encouraged them to be
18 part of a Team and go out together?

19 A. It was more than "encouraged".
20 We were told that we had to go together.

21 144. Q. It was the Team model that had
22 proven to be successful that had become something
23 that they recommended to everybody?

24 A. It was more than a
25 recommendation. It was mandatory.

March 28, 2019

1 145. Q. So on your Team, did everybody
2 show up every day to sell with you?

3 A. Yes.

4 146. Q. And your Team, you said, was
5 approximately seven...

6 A. At the height, the most I had
7 was, I believe, twelve people.

8 We had two different Crews, and
9 for everybody, every day, it was mandatory to show
10 up.

11 147. Q. So you had ---

12 I understand that you became a
13 Crew Coordinator less than two weeks before your
14 last sale at Just Energy.

15 That is not your evidence; but
16 that is what Just Energy's records show.

17 So ---

18 MR. ROSENFELD: You keep saying
19 that as a statement. But that is not his evidence.

20 THE WITNESS: I wouldn't have gone
21 over there if I was just going to be an Agent.

22 MS. REKLITIS:

23 148. Q. When you were part of a Team
24 as a Sales Agent, did you go to work every day?

25 A. Yeah. We were told "If you

Page 37

1 don't show up to work at McDonald's, you don't have
2 a job. It's no different here."

3 149. Q. And who told you that?

4 A. Johnny Lavoie; Joey Kelly;
5 Scott Eger...

6 I can't think of the name...

7 Yeah. Those were the only people
8 when I was with Just Energy.

9 150. Q. And do you know anybody who
10 was actually terminated as a result of not coming
11 in on a given day?

12 A. At Just Energy, no. At
13 National ---

14 151. Q. We are just talking about Just
15 Energy.

16 A. Yeah. At National, yes. At
17 Just Energy...

18 --- (A Short Pause)

19 I can't remember.

20 152. Q. Your evidence is that people
21 would be threatened to be disciplined or terminated
22 if they didn't come in.

23 Now you are saying you can't
24 remember?

25 A. I don't remember if anybody

March 28, 2019

1 actually was terminated, but we would be told ---

2 For instance, Johnny Lavoie would
3 take us out for drinks at night some days and he'd
4 say "I'll pay for your drinks tonight; but if you
5 don't show up for work tomorrow, don't come back
6 the next day. You're done."

7 153. Q. You state in your Affidavit
8 that you drove Sales Agents to a specific location
9 to market.

10 Did you have your own vehicle?

11 A. I had a van provided by them.

12 154. Q. A van provided by Just Energy?

13 A. Yeah.

14 155. Q. And did you choose who got to
15 come in the van with you every day?

16 A. It was my Crew. So the people
17 that were given to me, that I trained, would be on
18 my Crew.

19 156. Q. Your whole Crew didn't fit in
20 your van, though, on any given day? They had to
21 split up?

22 A. At some times, yes.

23 157. Q. Did they drive themselves to
24 the field?

25 A. No. Usually Scott would be

Page 39

1 there. He had a van as well.

2 158. Q. And these vans were just
3 offered ---

4 They were there to offer
5 transportation to Sales Agents to get to the field?

6 Otherwise, would they have been
7 able to get to the field on their own?

8 A. Not everyone, no.

9 159. Q. Did many of these Sales Agents
10 that you encountered in your four months at the
11 Ottawa Office have their own vehicles?

12 A. Some did.

13 160. Q. Were many of these Sales
14 Agents students that didn't have a lot of money and
15 didn't have their own vehicles?

16 A. Some were.

17 161. Q. Would you agree that for
18 younger Sales Agents who were coming out of school,
19 with little in common and without a car, that
20 offering these vans to them benefitted them,
21 because otherwise they wouldn't have a way out and
22 they wouldn't be able to make any income?

23 A. I don't think it matters what
24 their circumstance was. The vans were there to get
25 everybody out to the field, no matter who they

March 28, 2019

1 were.

2 162. Q. But if they didn't have a van
3 and they didn't have another way, if they didn't
4 have a vehicle, they wouldn't be able to get out
5 and they wouldn't make a sale.

6 So these vans offered them a
7 resource in order to go out and make a sale?

8 A. Even if they had a car or
9 their own transportation, we would leave from the
10 Meeting; we would go to, usually, either Bayshore
11 Mall or St. Laurent Mall, and we would eat, and
12 then they would be forced to leave their car in the
13 parking lot and then hop in the van.

14 So it didn't matter if they had a
15 car or not. They weren't allowed to take it.

16 163. Q. Are you aware of any Policy at
17 Just Energy that prevents people from being able to
18 drive themselves to the field?

19 A. Yes.

20 164. Q. What Policy is that?

21 A. Johnny didn't want anybody
22 driving themselves to the field because then they
23 could leave on their own or they could go and take
24 breaks on their own.

25 165. Q. "Johnny" is not Just Energy.

Page 41

1 Are you aware of a Just Energy Policy that prevents
2 Sales Agents from going out to the field on their
3 own?

4 A. All I am aware of is what
5 Johnny would tell us.

6 166. Q. Are you aware that Johnny was
7 not an employee of Just Energy?

8 MR. ROSENFELD: The
9 characterization again...

10 It is now a different person that
11 you are asking him to identify...

12 MS. REKLITIS:

13 167. Q. So Johnny ---

14 Was it your understanding that he
15 was an employee of Just Energy?

16 MR. ROSENFELD: Again, it is the
17 same question. Just the characterization of it.

18 He is not being asked in this Case
19 to identify whether you are an employee or an
20 Independent Contractor.

21 That is the Judge's determination.

22 MS. REKLITIS:

23 168. Q. Was Johnny receiving a salary
24 at Just Energy?

25 Are you aware of that?

March 28, 2019

1 A. I don't know how Johnny got
2 paid.

3 169. Q. Are you aware that he received
4 overrides off of sales that you made and that Sales
5 Agents made?

6 A. Yeah.

7 170. Q. So receiving overrides was
8 part of the exact same arrangement that you had.
9 It was just a different proportion.

10 And your arrangement was
11 commission only and overrides.

12 Right?

13 A. Mine was, yes. I don't know
14 how people above me got paid.

15 171. Q. Did you ever do Commercial or
16 Renewal Sales in Ottawa?

17 A. No.

18 172. Q. Are you aware of any other
19 Sales Agents in the Ottawa Office or in any of the
20 other Just Energy Offices that did Commercial and
21 Renewal Sales?

22 A. I knew one guy that did
23 Commercial sales. But I never really saw him.

24 That was a different part ---

25 173. Q. He was in the Ottawa Office?

Page 43

1 A. And when I was at Just Energy,
2 they didn't have a Commercial Division. I think it
3 was just one person.

4 When I first started for National,
5 there was a separate Commercial ---

6 174. Q. We are talking about Just
7 Energy.

8 A. Yes. I know. There used to
9 be a separate Commercial Division.

10 To my knowledge, when I was at
11 Just Energy, that was closed down in Ottawa.

12 175. Q. Okay. At any point in the
13 four months, was Commercial an option in the Ottawa
14 Office or in any neighbouring Offices?

15 A. No. We had one product that
16 we could sell, and that was the JECP.

17 176. Q. And are you aware that you can
18 move Offices within Ontario, or even within
19 Provinces, at Just Energy?

20 A. To move Offices?

21 177. Q. So be Badged at multiple
22 Offices.

23 A. It's not something I ever
24 looked into.

25 178. Q. Do you know anybody that was

March 28, 2019

1 Badged at multiple Offices?

2 A. I know people that had moved.

3 179. Q. And at their own request?

4 A. I don't know their motivation
5 for moving.

6 180. Q. But do you know if they
7 requested to move?

8 A. I don't know their motivation.
9 Sorry.

10 181. Q. But they can request it and
11 there could be motivation behind that request.

12 So do you know whether they
13 requested to move?

14 A. That, I don't know.

15 182. Q. In your Affidavit, you said
16 you "observed" the hiring process in the Ottawa
17 Office every week between the period you were at
18 Just Energy, from November 2013 to February 2014.

19 Is that correct?

20 A. The hiring process was the
21 same. People would come in; they would do their
22 Training.

23 Interviews would be Monday,
24 Tuesday; Training would be Wednesday; and Field
25 Shadowing would be Thursday.

Page 45

1 183. Q. You are aware of that. But
2 did you actually observe it every week during those
3 four months?

4 A. I never observed the Training
5 Classes.

6 They happened in the afternoon,
7 while we were gone. But I definitely observed the
8 people that came into the field for shadowing.

9 184. Q. But did you observe the actual
10 hiring process?

11 A. Not the Interviews.

12 185. Q. All right.

13 And did you take any time off from
14 time to time while you were selling at Just Energy?

15 A. I tried; but they never let
16 me.

17 186. Q. Who is "they"?

18 A. Johnny.

19 187. Q. When did you ask him?

20 A. Just before I left I asked for
21 a day off because I was feeling burnt out. We were
22 working 89 hours a week and I asked for a couple of
23 days off, and he told me "I need you this week; I
24 will give you the next week off."

25 That turned out to be a Push Week,

1 and when I told him I wasn't going on the Road
2 Trip, he said "I'm taking your Crew away and..."

3 188. Q. Did he take your Crew away?

4 A. He split them up to other
5 people. So then I just told him "I'm done".

6 So, no, I did not receive any time
7 off.

8 189. Q. Did you ever choose to just
9 not go into the Office and work around your own
10 neighbourhood?

11 A. It was never an option.

12 190. Q. Are you aware of any other
13 Sales Agents that worked other jobs, while you were
14 in the Ottawa Office?

15 A. We worked six days a week. We
16 got to the Office at nine in the morning and we
17 worked 'til nine at night.

18 So nobody had any time for other
19 jobs.

20 191. Q. But you know for a fact that
21 nobody else had another job?

22 A. As far as I know, nobody had
23 another job.

24 192. Q. Would you agree that there is
25 a high turnover at Just Energy?

1 A. Yes.

2 193. Q. And your evidence is that if
3 people asked for a day off or vacation, they would
4 be threatened with termination?

5 A. I don't believe that's the
6 reason for the high turnover, no.

7 194. Q. No. Those are two separate
8 things, though.

9 So, there is a high turnover at
10 Just Energy?

11 A. Yes.

12 195. Q. And then your evidence is also
13 that people would be threatened if they asked for a
14 day off?

15 A. Yes.

16 196. Q. If they were destitute ---
17 Would you agree that Just Energy
18 needed these individuals, these Sales Agents, given
19 the high turnover?

20 A. Yes.

21 197. Q. So would it not be against
22 Just Energy's interests to deter people from taking
23 a day off, if the alternative was that they would
24 let them go and not earn anything off of their
25 sales?

March 28, 2019

1 MR. ROSENFELD: Sorry. I don't...

2 THE WITNESS: Can you re-word

3 that?

4 MS. REKLITIS:

5 198. Q. If Just Energy is threatening

6 ---

7 If there is a high turnover and
8 they need Sales Agents, why would Just Energy, or
9 the Regionals, independent from Just Energy, be
10 threatening to termination if the alternative was
11 terminating them and then not having somebody to
12 make money off of?

13 MR. ROSENFELD (To the Witness):

14 Do you know why?

15 THE WITNESS: Do I know why?

16 --- (A Short Pause)

17 From my experience, they just
18 viewed everyone as replaceable.

19 MS. REKLITIS:

20 199. Q. But they weren't replaceable.

21 A. They would have new people in
22 every week.

23 200. Q. So in fact there is a high
24 turnover, but there were people ready to step in,
25 you are saying, to replace those who were let go or

Page 49

1 who left?

2 A. They would be replaced.

3 Every week, we would have a new
4 Training Class -- unless we were on the road.

5 201. Q. Do you understand that
6 Regional Distributors cannot terminate a Sales
7 Agent at Just Energy?

8 A. They made it at least seem
9 like they could.

10 202. Q. But is it your understanding
11 that they would have that authority: to terminate
12 a Sales Agent?

13 A. They would threaten it all the
14 time.

15 203. Q. But I am asking: Is it your
16 understanding that they would have the authority to
17 do that?

18 Do you think that they would have
19 the authority to do that?

20 A. I thought they did when I was
21 working there.

22 204. Q. Are you aware that the
23 Independent Contractor Agreements that Sales Agents
24 sign are between Just Energy and that Sales Agent?

25 A. Yeah.

March 28, 2019

1 205. Q. So these Agreements are not
2 between Regionals at the different Offices and the
3 Sales Agents at those Offices?

4 A. I don't believe so, no.

5 206. Q. Were you aware of any Sales
6 Agents that did not go on Push Weeks in the Ottawa
7 Office?

8 A. No. Everyone went.

9 207. Q. So even individuals with
10 families or with prior obligations that precluded
11 them from being able to go out, they would have to
12 go out?

13 A. If they didn't come on a Road
14 Trip, then they would basically just quit.

15 208. Q. They would quit?

16 A. They wouldn't be part of the
17 Office anymore.

18 209. Q. Why would they quit if they
19 couldn't go on a Push Week?

20 A. On more than one occasion, I
21 overheard Johnny say "If you're not part of the
22 Office, then we don't want you."

23 210. Q. My question was: Did people
24 have previous obligations that didn't allow them to
25 be able to go on a Push Week that was scheduled?

Page 51

1 And your response was that if they
2 couldn't go, they would quit.

3 But what you are saying right now
4 is different.

5 You are saying ---

6 MR. ROSENFELD: Again, the
7 characterization of "quit" is the key component
8 here, for the evidence.

9 MS. REKLITIS:

10 211. Q. If somebody couldn't go on a
11 Push Week, they would just quit? They wouldn't
12 stay and then sell on their own?

13 A. I never saw it.

14 212. Q. So they would willingly walk
15 away if they couldn't attend a Push Week?

16 A. I don't know if it was so much
17 as "willingly". It was either you were part of the
18 Office or you weren't.

19 213. Q. Okay. Were you aware of
20 various incentives that were offered at Just Energy
21 for Sales Agents?

22 A. Yes.

23 214. Q. Such as...?

24 A. We had a Program where you
25 would get a certain number of points which you then

March 28, 2019

1 could redeem, similar to, like, a Visa Awards
2 Program.

3 215. Q. So the more sales, you were
4 more likely to be able to redeem points for prizes
5 that were associated with this Points system?

6 A. It wasn't based on sales...

7 It was more, like, daily
8 competitions. So sometimes there would be "next
9 sale gets a hundred points" or "most sales for the
10 day gets a thousand points".

11 216. Q. So the more sales you made,
12 the more points you got?

13 A. For the most part, yeah. And
14 then sometimes they would just give them randomly.

15 217. Q. So did you set goals for
16 yourself to achieve a certain amount of sales in
17 order for you to achieve a certain number of points
18 and to ultimately redeem for a prize or just cash?

19 A. No, they wouldn't give cash-
20 out through the points. But every day, part of the
21 Office Meeting was we would have to tell them what
22 our goal was for the day.

23 218. Q. I am asking something
24 separate, though.

25 So the incentives ---

1 My question is whether you or
2 other Sales Agents would try to achieve the
3 different awards that were part of the Just Energy
4 Incentives Program.

5 A. I can't speak for other
6 people.

7 Q. Including yourself?

8 A. For myself, yeah. Obviously,
9 I would want to get as many points as I could.
10 219.

11 Q. So you would set goals for
12 yourself in order to obtain points?

13 A. The points were never the
14 driving factor. They were just a bonus on top of
15 the ---

16 220. Q. Right. The driving factor was
17 the money, the commission that you could earn.

18 There was unlimited potential for
19 you to earn commission.

20 A. My driving factor was the
21 California Office.

22 221. Q. So you had a goal ---

23 A. I did, yes.

24 222. Q. -- to become a Regional out of
25 California Office?

A. Yes.

1 223. Q. And in order to obtain that
2 opportunity, you had to have a Team, and a
3 successful Team, that you would have to encourage,
4 to drive sales in order for you to be able to reach
5 that next step in your career with Just Energy?

6 A. Yeah.

7 224. Q. And you walked away from that
8 opportunity?

9 A. I found out that it was never
10 even on the table.

11 225. Q. And who represented to you
12 that that was on the table?

13 A. Who told me it was on the
14 table?

15 That was Johnny Lavoie.

16 226. Q. And how is Johnny Lavoie
17 connected to California?

18 A. He has...

19 I think he was in charge of seven
20 Offices and he oversaw one, I believe, in San Jose
21 and one in San Francisco.

22 So he told me that if I worked
23 hard enough, eventually I could get one in
24 California.

25 227. Q. And did you have any previous

1 Sales experience before Just Energy?

2 A. Just with National.

3 228. Q. Right. So before 2011, when
4 you joined National Home Services, did you have any
5 Sales experience?

6 A. Not really.

7 229. Q. And you would agree that it
8 takes experience to become a successful
9 Salesperson?

10 A. Yeah.

11 230. Q. And it would probably take
12 years to achieve the experience and success that
13 would lead you to a Position like being a Regional
14 in a California Office?

15 A. Some people would do it
16 faster.

17 231. Q. Right. But in your case, you
18 only stayed for just under four months at Just
19 Energy?

20 A. That was after the three
21 years, almost four years, at ---

22 232. Q. We are talking about Just
23 Energy, though.

24 So you stayed there four months...

25 Sorry. You stayed there for four

March 28, 2019

1 months, and then you just walked away?

2 You didn't ---

3 If you wanted to achieve the
4 Regional Position in California, would you agree
5 that you would need some more time at Just Energy
6 in order to obtain more sales and success, to prove
7 yourself?

8 A. I don't see how you can move
9 past the experience at National Home Services as
10 well.

11 In that case, they would work
12 together.

13 It wasn't just the four months at
14 Just Energy.

15 233. Q. The Regional opportunity at a
16 Just Energy Office is only relevant to Just Energy.
17 It is not part of National Home Services.

18 MR. ROSENFELD: He has already
19 given the evidence that he was told he needed
20 experience in the Energy component to have the
21 California Office.

22 There already is evidence about
23 that.

24 MS. REKLITIS:

25 234. Q. And when you left Just Energy,

Page 57

1 did you tell anybody that you were leaving?

2 A. Yes.

3 235. Q. Who did you tell?

4 A. I told Johnny.

5 236. Q. Do you remember what date you
6 told Johnny?

7 A. Not exactly.

8 237. Q. Did you tell him in a written
9 communication?

10 A. I believe it was over the
11 phone.

12 MS. REKLITIS: Let's take just a
13 brief break.

14 --- (A Short Recess)

15 --- Upon Resuming:

16 MS. REKLITIS: We can go back on
17 the record.

18 238. Q. The California opportunity
19 that you did not end up obtaining, was that ---
20 That was between you and Johnny
21 Lavoie?

22 A. Yeah.

23 239. Q. And was this arrangement in
24 writing?

25 A. No. There was never anything

March 28, 2019

1 in writing.

2 240. Q. And what was the expected
3 timeline on that opportunity?

4 A. They never gave me a timeline.
5 I asked numerous times just to
6 tell me what I needed to do to get there, and they
7 just said "When I was ready".

8 241. Q. I believe you mentioned that
9 he communicated that you needed a certain number of
10 years of experience selling Energy products...

11 A. He never said a certain amount
12 of years. He just told me that he wasn't going to
13 send me out there without learning the products.

14 242. Q. So would he check in with you
15 to see how you were doing in your sales?

16 A. He would check in two times a
17 day; maybe more. And it was an Update on how my
18 Team was doing, and it was always: "You're not
19 enough. What are you doing!?! Don't take breaks,
20 unless you have sales."

21 243. Q. But I am referring to the
22 California opportunity. So there was this
23 arrangement between the two of you that after a
24 certain amount of time of selling Energy products,
25 you would be able to have this opportunity as a

Page 59

1 Regional in the California Office.

2 So was there some kind of ongoing
3 communication as to your progress and the expected
4 timeframe for that opportunity?

5 A. No timeframe. It turned out
6 to be more of a pipe dream.

7 244. Q. So you just relied on
8 something that ---

9 Like, there was absolutely no
10 tangible plan between you and Johnny?

11 A. No. As I said before, these
12 were people that I trusted.

13 245. Q. But this was between you and
14 Johnny? It wasn't between you and Just Energy?

15 A. Johnny was the only one I ever
16 talked to.

17 246. Q. And he was not representing
18 Just Energy?

19 A. Johnny and Jody Kelly.

20 247. Q. But they were not representing
21 Just Energy?

22 That opportunity was between you
23 and Johnny -- and Jody, I guess...

24 MR. ROSENFELD: How did you
25 perceive that?

1 THE WITNESS: As far as I
2 understood, they were Just Energy.

3 MS. REKLITIS:

4 248. Q. And before you left, did you
5 approach ---

6 "Jody" is new.

7 So Jody was also part of this
8 arrangement?

9 A. Jody was ---

10 He was a partner with Johnny.

11 When I was with National, he was
12 my Regional Manager.

13 I am not sure what his Position
14 was, but he had a Desk job at Just Energy.

15 249. Q. He was an employee at Just
16 Energy?

17 A. Yeah. He worked in the
18 Office.

19 250. Q. So would you agree that they
20 were individuals that worked in the office; that
21 they were not self-employed; that they were
22 earning a wage or a salary?

23 OBJECTION/REFUSAL NOTED:

24 MR. ROSENFELD: Again...

25 "Knowledge about wages or

1 salaries" is fine; but the "self-employed"
2 characterization, I object to.

3 MS. REKLITIS:

4 251. Q. So the individuals that were
5 working in the office, they were earning a wage?

6 They were not on a commission
7 basis, like you were?

8 --- (A Short Pause)

9 MR. ROSENFELD: Do you ---

10 MS. REKLITIS:

11 252. Q. Do you acknowledge that there
12 is a distinction ---

13 MR. ROSENFELD: Do you know that?

14 THE WITNESS: Do I know ---

15 Most of the office people were,
16 like, the secretaries and the recruiters.

17 So they weren't Sales.

18 MS. REKLITIS:

19 253. Q. And your evidence was that you
20 never received overrides in your time at Just
21 Energy?

22 A. Yes.

23 254. Q. Did you ever raise that with
24 Just Energy, that you were not getting overrides
25 that you were entitled to?

1 A. I talked to Johnny and Scott.

2 255. Q. Did you ever raise it with
3 somebody in the Corporate Office at Just Energy?

4 A. No.

5 256. Q. So you never raised it with
6 Just Energy, the company? It was to a Regional
7 Distributor?

8 A. He was ---

9 Like I said before, as far as I
10 knew, anything company-wise, those were the two
11 people that I would talk to.

12 257. Q. But your Contract was with
13 Just Energy and your entitlement to overrides was
14 within that Agreement with Just Energy. So would
15 you not agree that any question that arose as a
16 result of the overrides that are contemplated in
17 your Agreement with Just Energy, the person to go
18 to or the entity to go to would be Just Energy?

19 A. To my knowledge, that was
20 Johnny Lavoie.

21 258. Q. Would you agree, though, that
22 that would make more sense than going to a
23 Regional?

24 A. Again ---

25 259. Q. Just Energy would be the

1 entity to go to regarding that issue?

2 A. Again, to my knowledge, any
3 issues I had, I would talk to Johnny, and he would
4 talk to Head Office.

5 260. Q. Did he talk to Head Office on
6 your behalf?

7 A. That, I don't know.

8 261. Q. You gave evidence that
9 sometimes you were reimbursed expenses.

10 Do you recall who reimbursed you?

11 A. At Just Energy, I never was
12 reimbursed anything.

13 262. Q. You mentioned earlier that you
14 incurred expenses and sometimes you were
15 reimbursed.

16 Is that correct?

17 A. That was more in National.
18 I had a different role there.

19 263. Q. My questions are with respect
20 to Just Energy.

21 A. Yeah, I know. So, yeah ---

22 MR. ROSENFELD: I think he gave
23 the evidence earlier that he didn't get reimbursed.

24 MS. REKLITIS: I recall his
25 evidence being that "sometimes he was reimbursed".

1 THE WITNESS: And again, I am
2 positive I confused the two, between Just Energy
3 and National.

4 MS. REKLITIS:

5 264. Q. So is it your evidence that
6 you incurred expenses with Just Energy?

7 A. Yes. Gas.

8 265. Q. Sorry...?

9 A. Gas.

10 266. Q. Gas. And were you reimbursed
11 those expenses?

12 A. One time...

13 --- (A Short Pause)

14 Yeah. One time, Johnny gave me
15 cash.

16 267. Q. Okay. So not Just Energy?
17 Johnny?

18 A. It was cash, though.

19 I don't know if he got it back, or
20 whatever.

21 268. Q. You never received a cheque
22 from Just Energy for that expense?

23 A. I did for an Advance.

24 269. Q. And Advance on what?

25 A. On Pay and Commissions.

1 270. Q. So your commissions?

2 A. I asked Johnny ---

3 He said he would give me an
4 Advance, and it came in the form of a cheque from
5 Just Energy.

6 271. Q. Because Just Energy pays you
7 commissions?

8 A. Yeah. But he ---

9 It was my understanding that
10 Johnny was going to give me the Advance and then
11 take it off of my paycheques.

12 272. Q. Okay. But you never received
13 a reimbursement for an expense from Just Energy? A
14 cheque issued by Just Energy?

15 A. No.

16 273. Q. And the vans at the Ottawa
17 Office, who owned those vans?

18 A. I don't know. I just assumed
19 it was the company.

20 274. Q. Did Johnny have a van?

21 A. He had a pick-up truck.

22 275. Q. He owned the pick-up truck?

23 A. Yeah. It was his personal
24 car.

25 276. Q. Who were some of the Crew

March 28, 2019

1 Coordinators at the Ottawa Office while you were
2 there?

3 A. So we had myself; Jenn Borg;
4 and another gentleman named Cliff Allen, who I
5 trained and he then got promoted to Crew.

6 277. Q. And did Jenn Borg have her own
7 vehicle?

8 A. I don't remember what Jenn
9 drove.

10 278. Q. Did she own her own vehicle?

11 MR. ROSENFELD: Do you know these
12 things?

13 Don't speculate.

14 THE WITNESS: I don't, no.

15 I assume she had her own. I can't
16 recall ---

17 I believe sometimes she drove with
18 Scott. But...

19 MR. ROSENFELD: The question was
20 whether she owned it or not.

21 THE WITNESS: That, I don't know.
22 Cliff was given a van, the same as me, though.

23 MS. REKLITIS:

24 279. Q. And Cliff was part of your
25 Team?

1 A. He started off, yes, and then
2 he got promoted.

3 280. Q. To Crew Coordinator?

4 A. (Nodding in the Affirmative)

5 --- (A Short Pause)

6 MR. ROSENFELD: You have to say
7 "yes" or "no".

8 THE WITNESS: Oh!

9 Yes. Sorry.

10 MS. REKLITIS:

11 281. Q. You said you knew one of the
12 Sales Agents that did Commercial Sales while you
13 were at the Ottawa Office...

14 A. I knew of him when I was at
15 National. I don't know if he was doing it while I
16 was at Just Energy, though.

17 282. Q. Are you aware of how
18 Commercial Sales were conducted at Just Energy at
19 the time that you were with the company?

20 A. As I said before, I don't
21 believe there were any Commercial Sales going on
22 when I was at the Ottawa Just Energy Office.

23 283. Q. Your evidence is that Sales
24 Agents never had the option to market on their own?

25 A. No...

March 28, 2019

1 Sorry. Yes, they were never ---

2 It was not an option to market on
3 their own.

4 284. Q. If they chose to market on
5 their own and they made sales, would those sales
6 not be approved by Just Energy?

7 A. I assume they would; but we
8 were never allowed ---

9 We always had to go out as the
10 Crews.

11 285. Q. But if they did make sales,
12 they would not be rejected?

13 MR. ROSENFELD: I think he said he
14 didn't know of any that existed.

15 THE WITNESS: While I was in
16 Ottawa, when I was in that Office, I never saw
17 anybody go out on their own. People asked if they
18 could and they were told that they weren't allowed.

19 MS. REKLITIS:

20 286. Q. And were they told that if
21 they did and they made sales, that those sales
22 would not be approved?

23 A. The conversation never got
24 that far.

25 287. Q. Would you agree that a part of

Page 69

1 the Incentives Program at Just Energy is to try and
2 identify top performers at the company?

3 A. I think they had an idea of
4 who the top performers were.

5 288. Q. Through what?

6 A. Just through the sales in
7 general.

8 289. Q. Right. But the Incentives
9 Program, is that part of motivating Sales Agents to
10 perform better?

11 A. It is a part of it, yes.

12 290. Q. And it is in the company's
13 best interests to have these individuals who were
14 identified as top performers, because that
15 ultimately means that they are earning more money
16 for the company?

17 A. What do you mean?

18 291. Q. So, top performers ---
19 Just Energy offered various
20 incentives to individuals in order to encourage
21 them to make more sales and perform better; right?

22 A. Yes.

23 292. Q. And your evidence is that
24 there was a high turnover at the company?

25 A. Yes.

March 28, 2019

1 293. Q. So would it make sense to
2 deter top performers from being able to stay at the
3 company by terminating them or threatening any kind
4 of termination if they wanted to take a day off?

5 MR. ROSENFELD: I am sorry...

6 Would it make sense?

7 Is that what you are asking?

8 MS. REKLITIS: Um-umm.

9 THE WITNESS: I think we already
10 went over this.

11 MS. REKLITIS:

12 294. Q. I just want to clarify.

13 So individuals who are top
14 performers at the company, did Just Energy want to
15 retain those top performers?

16 MR. ROSENFELD: You should ask
17 Just Energy these questions.

18 MS. REKLITIS:

19 295. Q. The Regionals at your Office
20 or Just Energy ---

21 MR. ROSENFELD: As the Regionals.

22 MS. REKLITIS:

23 296. Q. -- would it not be in their
24 best interests to keep these top performers in
25 order to earn overrides off of their commissions?

Page 71

1 MR. ROSENFELD: I am not sure that
2 this Witness knows what is in the best interests of
3 the Regional Distributors, period.

4 I appreciate ---

5 We have already gone through this
6 evidence about incentives and the more likely it is
7 that they will make more money with people who are
8 successful.

9 That is pretty straightforward.

10 MS. REKLITIS:

11 297. Q. Do you know why a Regional
12 wouldn't want to upset or discourage a top
13 performer?

14 A. I don't know a lot of reasons
15 for what the Regionals did. But, I mean, common
16 sense would be that you would want to keep those
17 people happy.

18 298. Q. Right. And would you ever
19 communicate to any of these Sales Agents that if
20 they didn't come in, they would be fired?

21 A. Yes.

22 299. Q. You did?

23 A. Yes. I was told to.

24 300. Q. And did you believe that that
25 was the commonsense thing to do?

1 A. I don't think a lot of what
2 went on there would be common sense.

3 301. Q. So you would agree that it
4 would not make sense to terminate a top performer
5 just because they wanted to take a day off?

6 A. I would argue with them, with
7 Johnny, that it would be better not to force people
8 to work seven days and then straight through the
9 next week; that it would be better to give
10 everybody at least one day off, and he would
11 disagree with me on that.

12 302. Q. And do you recall why he
13 disagreed with you on that?

14 A. Because he wanted the people
15 out as many hours of the day, knocking on as many
16 doors as they could.

17 303. Q. And if they didn't want to,
18 he'd rather just let them go than get a few sales
19 from that individual on another day?

20 A. Yeah. It happened with me.
21 He didn't give me time off. I left.

22 304. Q. Was it more that you left
23 because you didn't get the California opportunity?

24 A. No. I found out afterwards
25 that there was not an opportunity for me. I left

1 because he split my Crew up.

2 305. Q. And who did your Crew go to?

3 A. He split them up among Cliff
4 Allen and Jenn Borg.

5 306. Q. And around what time was your
6 Crew split up?

7 A. When did I leave? In March?
8 So it would have been, I guess,
9 the third...

10 Every third week of the month is a
11 Push Week.

12 So the third week of March.

13 307. Q. Are you aware of whether
14 Jennifer Borg was ever promised a Regional Position
15 at the Ottawa Office?

16 A. Any conversation of that would
17 have been private between her and Johnny.

18 308. Q. Is Johnny the Regional that
19 encouraged her to come to the Ottawa Office?

20 MR. ROSENFELD: Do you know?

21 THE WITNESS: Like I said before,
22 I don't know her motivation in coming to Ottawa.

23 MS. REKLITIS:

24 309. Q. Do you recall how often you
25 saw her when you were at the Ottawa Office?

March 28, 2019

1 OBJECTION/REFUSAL NOTED:

2 MR. ROSENFELD: Don't answer the
3 question.

4 (To Counsel): I don't see how
5 this has anything to do with the Questions in this
6 case.

7 THE WITNESS: I saw her at the
8 office.

9 OBJECTION/REFUSAL NOTED:

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

12 MS. REKLITIS:
13 310. Q. Do you know any of the other
14 witnesses that the Plaintiff has put forward in
15 this Case?

16 MR. ROSENFELD: Does he know who
17 they are?

18 MS. REKLITIS: Um-umm.

19 311. Q. Have you reviewed their
20 Affidavits?

21 A. The ones that were sent to me,
22 yes, that I stated earlier.

23 312. Q. Do you know Bahram Nemati?

24 MR. ROSENFELD: Why?

25 MS. REKLITIS:

1 313. Q. He was also in the Ottawa
2 Office, so I want to know if you had come into
3 contact with him.

4 MR. ROSENFELD: For what purpose?
5 --- (A Short Pause)

6 MS. REKLITIS: We will just break
7 for one minute...

8 --- (A Short Recess)

9 --- Upon Resuming:

10 MS. REKLITIS: Back on the record.

11 314. Q. Mr. Acton, your experience at
12 Just Energy as a Sales Agent and Crew Coordinator
13 was solely with Johnny Lavoie ---

14 Is that correct?

15 A. Yes.

16 315. Q. -- in terms of the Regional
17 and Crew Coordinator and Sales Agent relationship?

18 A. Yeah. He was our Regional,
19 and Scotty here was the ---

20 Sorry.

21 Johnny Lavoie was the National;
22 Scotty was the Regional.

23 316. Q. So Johnny was the National ---

24 A. Yeah.

25 317. Q. -- and Ottawa was within the

March 28, 2019

1 Offices that were within his oversight?

2 A. Yeah. But Ottawa was his
3 home. So he was here all the time pretty much.

4 318. Q. And are you aware of how the
5 Sales Teams worked in any of the other Offices
6 throughout Ontario?

7 A. No.

8 319. Q. So would you agree that you
9 cannot speak to how Regionals at the other Offices
10 ran the "day-to-day" at each Office; ran the Crew
11 Coordinators and how they ran their "day-to-day"?

12 A. I've only ever been in the
13 Ottawa Just Energy Office.

14 320. Q. Do you have any knowledge of
15 sales out of the Kitchener Office?

16 A. No.

17 321. Q. Do you have any knowledge of
18 the "day-to-day" at the Viking Office?

19 A. To my knowledge, that would be
20 run the same.

21 322. Q. And how do you know that?

22 A. Because it was Johnny.

23 323. Q. Who was the Regional at that
24 Office?

25 A. That was, I believe, Johan.

Page 77

1 Johan Saffari.

2 324. Q. And Johnny was at the Ottawa
3 Office?

4 A. Yes.

5 325. Q. So Johnny wasn't there on a
6 day-to-day basis, at that Office, with Johan?

7 A. Most of the time, in Ottawa.

8 326. Q. So would you agree that you
9 don't have knowledge of how Johan ran the Viking
10 Office?

11 A. No.

12 327. Q. And do you have any knowledge
13 of the sales that were out of the Fairview Office?

14 A. No.

15 328. Q. Did you know any Sales Agents
16 at the Fairview Office?

17 A. No.

18 329. Q. Do you have any knowledge of
19 the structure at the Fairview Office?

20 A. No.

21 MS. REKLITIS: Subject to the
22 Refusals, those are all of my questions.

23 Thank you.

24 MR. ROSENFELD: I have no
25 questions in Re-Examination.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Thank you.

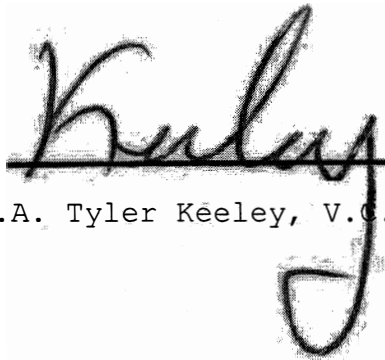
THE WITNESS: That's it?

MR. ROSENFELD: That's it. Thank
you.

THE WITNESS: Thank you.

--- Whereupon the cross-examination concluded at
2:45 p.m.

I HEREBY CERTIFY THAT I have, to the best
of my skill and ability, accurately recorded
by Steno mask and transcribed therefrom,
the foregoing proceeding.

A handwritten signature in black ink, appearing to read "Tyler Keeley", is written over a horizontal line. The signature is cursive and somewhat stylized.

S.A. Tyler Keeley, V.C.R.

Court File No. CV-15-527493-00CP

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

Haidar Omarali

Plaintiff

- and -

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

Defendants

CROSS-EXAMINATION OF JENNIFER BORG
on her Affidavit sworn August 29, 2018,
held at the offices of ASAP Reporting Services Inc.,
100 Queen Street, Suite 940, Ottawa, Ontario,
on Thursday, March 28, 2019 at 9:50 a.m.

APPEARANCES:

David Rosenfeld

for the Plaintiff

Paul J. Martin

for the Defendants

Laura F. Cooper

Anatasia Reklitis

A.S.A.P. Reporting Services Inc. © 2019

940-100 Queen Street
Ottawa, Ontario K1P 1J9
(613) 564-2727

900-333 Bay Street
Toronto, Ontario M5H 2R2
(416) 861-8720

INDEX

	PAGE
JENNIFER BORG, SWORN	3
CROSS-EXAMINATION BY MR. MARTIN	3
RE-EXAMINATION BY MR. ROSENFELD	130

LIST OF OBJECTION/REFUSALS

Objections/Refusals can be found on pages:

4, 6, 7, 8, 11, 17, 18, 20, 21, 22, 23, 30,
31, 32, 35, 39, 71, 72, 77, 78, 80, 81, 82,
101, 104, 106, 107

March 28, 2019

1 Ottawa, Ontario

2 --- Upon commencing on Thursday, March 28, 2019 at
3 at 9:50 a.m.

4 JENNIFER BORG, SWORN

5 MR. MARTIN: Thank you.

6 Good morning, Ms. Borg.

7 THE WITNESS: Good morning.

8 MR. MARTIN: If you need a break
9 at any time, please let us know.

10 THE WITNESS: Okay.

11 CROSS-EXAMINATION BY MR. MARTIN:

12 1. Q. Would you please state your
13 full name, for the record?14 A. My first name is Jennifer;
15 the last name is Borg.16 2. Q. And where do you reside, Ms.
17 Borg?

18 --- (A Short Pause)

19 MR. ROSENFELD: What town or city?

20 THE WITNESS: Oh!

21 (To Mr. Martin): Gatineau.

22 MR. MARTIN:

23 3. Q. Gatineau, Québec?

24 A. Yes.

25 4. Q. And how long have you lived

Page 3

1 there?

2 A. Five years.

3 5. Q. And what do you currently do?

4 A. I work in Real Estate.

5 6. Q. And when you say "work in Real
6 Estate", are you a Real Estate Sales Person?

7 A. No.

8 7. Q. What do you do?

9 A. I make phone calls to book
10 appointments for Real Estate Appointments.

11 8. Q. And are you paid by commission
12 in that Position?

13 OBJECTION/REFUSAL NOTED:

14 MR. ROSENFELD: Don't answer the
15 question.

16 MR. MARTIN:

17 9. Q. We are here today to examine
18 you with respect to an Affidavit you swore on
19 August 29th, 2018.

20 Is that what you have before you?

21 A. Yes, it is.

22 10. Q. And I take it you have had a
23 chance recently to review it?

24 A. Yes, I did.

25 11. Q. And are its contents true and

1 correct?

2 A. There is one thing that needs
3 to be corrected. It is on Page 2, Number 7.

4 12. Q. Let's just go there, then.

5 So it is Paragraph 7 on Page 2.

6 Yes. It says that you "worked at
7 the Toronto office...from...June 2012 to June 2016"
8 and that you "observed the hiring process described
9 above occur each week at the Toronto office".

10 So that paragraph requires
11 amendment?

12 A. Yes. I worked for Just Energy
13 from 2012 to 2016; but I only worked in the
14 Toronto Office from 2012 to 2014, and then I moved
15 to Ottawa in 2014.

16 13. Q. Okay. And the work you did
17 with Just Energy, am I understanding correctly that
18 it was door-to-door sales that you did?

19 A. That is correct.

20 14. Q. And do I understand as well
21 that you have done other door-to-door sales work
22 for other companies?

23 A. I started in National Home
24 Services, which National Home Services is still
25 owned by Just Energy.

1 15. Q. To the best of your knowledge?

2 A. Yes.

3 16. Q. Okay. So you commenced door-
4 to-door sales at National Home Services?

5 A. That is correct.

6 17. Q. When was that?

7 A. That was back in 2011.

8 18. Q. 2011. Okay. And what were
9 you selling?

10 A. I was selling furnaces, air
11 conditioners and water tanks.

12 19. Q. On a door-to-door basis?

13 A. Yes.

14 20. Q. Door-to-Door Residential?

15 A. Yes.

16 21. Q. Did you do any Commercial
17 sales?

18 A. No.

19 22. Q. And I gather you were doing
20 that on a 100 percent commission basis?

21 A. Yes.

22 OBJECTION/REFUSAL NOTED:

23 MR. ROSENFELD: Don't answer the
24 question.

25 MR. MARTIN:

1 23. Q. And I gather that in working
2 on Sales for National Home Services, you had
3 entered into a Contract with National Home
4 Services?

5 OBJECTION/REFUSAL NOTED:

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

8 MR. MARTIN:

9 24. Q. And that would have been a
10 written contract with them ---

11 OBJECTION/REFUSAL NOTED:

12 MR. ROSENFELD: Don't answer the
13 question.

14 MR. MARTIN:

15 25. Q. -- which set out the Terms and
16 Conditions of the Work in Sales for National Home
17 Services?

18 OBJECTION/REFUSAL NOTED:

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

21 MR. MARTIN:

22 26. Q. And the work you did for
23 National Home Services, I gather, didn't provide
24 you with any payment with respect to overtime,
25 vacation pay, or similar types of Pay that would

1 have been available if one were an employee?

2 OBJECTION/REFUSAL NOTED:

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

5 MR. MARTIN:

6 27. Q. Other than National Home
7 Services and the work you did, door-to-door sales,
8 with Just Energy, I understand that you have done
9 other door-to-door sales.

10 Correct?

11 OBJECTION/REFUSAL NOTED:

12 MR. ROSENFELD: Don't answer the
13 question.

14 MR. MARTIN:

15 28. Q. And in fact you have done
16 door-to-door sales with respect to other
17 gas/electricity products?

18 OBJECTION/REFUSAL NOTED:

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

21 MR. MARTIN:

22 29. Q. And you have done door-to-door
23 sales with respect to water heater/water filtration
24 products?

25 OBJECTION/REFUSAL NOTED:

March 28, 2019

1 MR. ROSENFELD: Don't answer the
2 question.

3 To the extent that they are
4 outside the period of the Affidavit, don't answer
5 the questions.

6 MR. MARTIN:

7 30. Q. I don't know if you understood
8 what Mr. Rosenfeld said there in terms of being
9 "outside the period of the Affidavit", but in the
10 period 2012 to 2016, it is fair to say that you
11 didn't exclusively do door-to-door sales for Just
12 Energy.

13 Correct?

14 THE WITNESS (To Mr. Rosenfeld):
15 Can I answer that?

16 MR. ROSENFELD: Yes. Go ahead.

17 THE WITNESS: Yes.

18 THE COURT REPORTER: Please ensure
19 that you keep your voice up.

20 THE WITNESS: Oh!

21 (To Mr. Martin): Yes.

22 MR. ROSENFELD: You have to answer
23 "Yes" or "No" and not simply a nodding gesture.

24 THE WITNESS: "Yes", "No".

25 MR. ROSENFELD: Yes.

Page 9

1 MR. MARTIN: Sorry...?
2 THE WITNESS: What?
3 Are we all good!?
4 MR. ROSENFELD: Yes.
5 --- (Laughter)
6 MR. MARTIN:
7 31. Q. There was a period of time
8 where you left the role of doing door-to-door sales
9 with Just Energy to do some other work but then
10 came back to Just Energy; correct?
11 A. Yes.
12 31A. Q. Okay. And can you recall when
13 that was?
14 A. Yes. That was in January
15 2015, I believe.
16 32. Q. Okay. And for how long?
17 A. I was gone for five months.
18 33. Q. Okay. And you left to do
19 other door-to-door sales for a different company?
20 A. Yes.
21 34. Q. And what was the different
22 company?--The name of it.
23 A. The name of it was Summit
24 Energy.
25 35. Q. Summit Energy. Okay.

1 And at Summit Energy, was that
2 Residential door-to-door sales?

3 A. Yes.

4 36. Q. Did you do any Commercial
5 sales with Summit?

6 A. No.

7 37. Q. Did you do any Renewal Sales
8 with Summit?

9 A. No, I didn't.

10 38. Q. And, of course, you entered
11 into an Independent Contractor Agreement with
12 Summit Energy?

13 OBJECTION/REFUSAL NOTED:

14 MR. ROSENFELD: Don't answer the
15 question.

16 MR. MARTIN:

17 39. Q. And your door-to-door sales
18 work with Summit Energy was done on a 100 percent
19 commission basis?

20 OBJECTION/REFUSAL NOTED:

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

23 MR. MARTIN:

24 40. Q. My understanding is that you
25 were Badged at various Offices of Just Energy.

1 Is that correct?

2 A. Yes.

3 41. Q. I am going to take you to them
4 in a moment, but I understand you were Badged at
5 what is known as the "Viking Office"; correct?

6 A. Yes.

7 42. Q. And you were Badged at the
8 Ottawa Office; correct?

9 A. Yes.

10 43. Q. And you were Badged at the
11 Kitchener Office; correct?

12 A. Yes.

13 44. Q. And you were Badged at what
14 was known as the "Fairview Office"; correct?

15 A. "Fairview"?

16 45. Q. Yes.

17 A. No.

18 46. Q. We will come to that in a
19 moment.

20 My understanding is that in
21 September of 2016, you were Badged at Fairview but
22 didn't engage in any sales out of the Fairview
23 Office.

24 Do you recall that?

25 A. No.

March 28, 2019

1 47. Q. Okay. We will come to that in
2 a moment, then...

3 --- (A Short Pause)

4 Well, let's deal with that, now
5 that we are at it for the moment.

6 I understand the first time you
7 were Badged with Just Energy, it was out of the
8 Viking Office, and that would have been in 2012.

9 Does that accord with your
10 recollection?

11 A. Yes.

12 48. Q. Okay. And the Viking Office
13 was where?

14 A. In Toronto.

15 49. Q. Where? Do you know?

16 A. On Dundas Street.

17 50. Q. Let me just show you a copy of
18 an Independent Contractor Agreement...

19 MR. ROSENFELD: Is this in the
20 Record?

21 MR. MARTIN: That one is not in
22 the Record. There are two that are in the Record.

23 MR. ROSENFELD: Then, we won't
24 speak to that.

25 MR. MARTIN:

1 51. Q. Do you recall that you signed
2 an Independent Contractor Agreement with Just
3 Energy ---

4 A. Yes.

5 52. Q. -- with respect to working at
6 the Viking Office?

7 A. Yes.

8 53. Q. And in the document that I
9 have there is a Section of the document that says
10 ---

11 And I am happy to show it to you,
12 if your Counsel would like.

13 -- that says "Have you previously
14 entered into an Independent Contractor Agreement
15 with Just Energy Corp. or any of its affiliates",
16 and the Box is marked "Yes".

17 So I gather that in marking that
18 Box, you were indicating you had signed and
19 executed an Independent Contractor Agreement with
20 National Home Services?

21 A. Yes.

22 54. Q. And was it...

23 --- (A Short Pause)

24 I just trying to make this
25 understandable.

March 28, 2019

1 Was it that one day you were
2 working for National Home Services and the next day
3 you signed a Contract with Just Energy and moved to
4 doing gas and electricity?

5 Was it a smooth transition, I
6 guess is a way of putting it?

7 A. No.

8 55. Q. "No". So there was a period
9 of time where you were doing something different
10 again?

11 And when I say "something
12 different"...

13 You were with National Home
14 Services. You didn't immediately go to Just
15 Energy.

16 Is that what you are telling me?

17 A. Yes.

18 56. Q. Okay. And what did you do in
19 the interim period?

20 A. Something...

21 I worked for a different company.

22 57. Q. Okay. And what company was
23 that?

24 A. Summit Energy.

25 58. Q. And that is the same "Summit

Page 15

1 Energy" that you then went to work for in 2015?

2 A. Yes.

3 59. Q. Okay. And with National Home
4 Services, you were selling ---

5 I am sorry. I know you have
6 already said this.

7 But it was water heaters?

8 A. Yes.

9 60. Q. Okay. Door-to-door?

10 A. Yes.

11 61. Q. And with Summit Energy, the
12 first time, was that gas and electricity door-to-
13 door sales?

14 A. Yes. But they did, like, gas,
15 hydro, water tanks, and HVAC.

16 62. Q. So they did an array of
17 products door-to-door?

18 A. That is correct.

19 63. Q. Okay. And ---

20 I don't need to get into it. But
21 approximately how long was your stint at that time
22 with Summit Energy?

23 A. Four, five months.

24 64. Q. And again on a 100 percent
25 commission basis?

1 OBJECTION/REFUSAL NOTED:

2 MR. ROSENFELD: Don't answer the
3 question.

4 (To Mr. Martin): Let's get to
5 Just Energy. I am happy to talk about the
6 transition to Just Energy.

7 MR. MARTIN: Yes. We are getting
8 there.

9 65. Q. Broadly speaking, was the role
10 you performed at Summit Energy in any way different
11 from the role you initially performed with Just
12 Energy back in 2012?

13 A. The Summit that I went to the
14 first time, you mean?

15 66. Q. Yes.

16 A. Yes, it was different.

17 67. Q. And how was the ---

18 OBJECTION/REFUSAL NOTED:

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

21 MR. MARTIN:

22 67A. Q. -- the role at Just Energy
23 different?

24 OBJECTION/REFUSAL NOTED:

25 MR. ROSENFELD: Don't answer the

1 question.

2 MR. MARTIN:

3 68. Q. Other than that you were
4 selling additional products, how was it different?

5 OBJECTION/REFUSAL NOTED:

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

8 MR. MARTIN:

9 69. Q. In the Position you undertook
10 with Just Energy in September of 2012, did you
11 become a Sales Agent? Or did you become an
12 Assistant Crew Coordinator or Crew Coordinator upon
13 commencing with Just Energy?

14 MR. ROSENFELD: I am sorry...

15 Just the date. "September 2012",
16 you mentioned.

17 Her Affidavit says "July 2012".

18 I don't know that it amounts to
19 anything here or there, but what is the date that
20 we are talking about?

21 MR. MARTIN: You won't let me show
22 her the Agreement. Her Agreement is "September
23 2012".

24 MR. ROSENFELD (To the Witness):
25 Does that sound right as to when you started with

March 28, 2019

1 Just Energy?

2 THE WITNESS: Yeah. Around that
3 time.

4 MR. MARTIN:

5 70. Q. And again, I appreciate it was
6 some years ago ---

7 A. That is why I have to stop and
8 think sometimes.

9 71. Q. Yes. I know. You can't be
10 definitive. But what I was going to say is: You
11 don't have any written records going back to that
12 period of time so as to be able to definitively
13 assess when you started or finished with either
14 company, do you?

15 A. No, because I don't have a
16 copy of the Contract.

17 THE COURT REPORTER: Once again, I
18 will ask you keep your voice up.

19 THE WITNESS: Oh! Sorry.

20 MR. MARTIN:

21 71. Q. But I am talking about other
22 records as well.

23 You don't have any other
24 documentation that would assist you as to when you
25 ended with one company and started with another?

Page 19

1 A. No.

2 MR. MARTIN:

3 72. Q. And in fact with most door-to-
4 door sales businesses, there really isn't record
5 keeping in terms of Attendances or Time Keeping, or
6 anything like that, is there?

7 OBJECTION/REFUSAL NOTED:

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

10 MR. MARTIN:

11 73. Q. There certainly wasn't in
12 terms of your experience with either Summit or Just
13 Energy; correct?

14 OBJECTION/REFUSAL NOTED:

15 MR. ROSENFELD: Don't answer the
16 questions.

17 You can answer the question about
18 Just Energy, but not about Summit.

19 So what Time Keeping Records at
20 Just Energy?

21 --- (A Short Pause)

22 MR. MARTIN:

23 74. Q. You didn't keep records when
24 you were working at Just Energy, is what your
25 Counsel is allowing you to say.

March 28, 2019

1 A. Oh! No.

2 75. Q. "No". Of any kind?

3 A. No.

4 76. Q. With the exception, perhaps,
5 that ---

6 We will start at the top.

7 Did you file Income Tax Returns
8 continuously from the 2011 period to the present?

9 A. Yes.

10 77. Q. So during the various years
11 you were with, not with, and back with Just Energy,
12 you would have filed Income Tax Returns?

13 A. Yes.

14 78. Q. Could you produce your Income
15 Tax Returns for the years that you were working for
16 Just Energy, please?

17 OBJECTION/REFUSAL NOTED:

18 MR. ROSENFELD: No.

19 MR. MARTIN:

20 79. Q. And for some of those years --
21 and I am talking, roughly, 2012 through to 2016-ish
22 -- you told us that you worked at least with one
23 other entity, Summit Energy.

24 Correct?

25 A. Yes.

Page 21

1 80. Q. Did you work, in that period
2 of time, with anyone else?

3 A. No.

4 81. Q. Did you have any other income
5 sources in that period of time but for Summit
6 Energy and Just Energy?

7 A. No.

8 82. Q. And I presume -- I am talking,
9 now, about Record Keeping -- that Summit Energy
10 would have, for certain periods of time in that
11 period, provided you with T-4A Slips for Income Tax
12 purposes?

13 OBJECTION/REFUSAL NOTED:

14 MR. ROSENFELD: Don't answer the
15 question.

16 (To Mr. Martin): You said "for
17 Summit Energy".

18 MR. MARTIN: Summit Energy, yes.

19 83. Q. And as part of your Tax Filing
20 -- which you say you did do -- you would have
21 included your T-4As for either Summit Energy or
22 Just Energy in your Tax Filing.

23 Correct?

24 OBJECTION/REFUSAL NOTED:

25 MR. ROSENFELD: Again, can we ---

March 28, 2019

1 "No" to the "Summit" component of
2 the question. But...

3 Now I don't remember what the
4 question was for the "Just Energy" component...

5 MR. MARTIN:

6 84. Q. So, you would have included
7 your T-4A Filing from Just Energy in your Tax
8 Filing for the particular years you were engaged
9 with Just Energy?

10 A. Yes.

11 85. Q. And in that period of time,
12 did you prepare your own Taxes? Or did you have an
13 Accountant prepare them for you?

14 OBJECTION/REFUSAL NOTED:

15 MR. ROSENFELD: Don't answer the
16 question.

17 MR. MARTIN:

18 86. Q. And in that time, with respect
19 to your Income Tax Returns -- and again, I am
20 really interested in documentation here -- would
21 you have claimed deductions for expenses incurred
22 to do door-to-door sales?

23 A. Yes.

24 87. Q. And in fact, you did incur, I
25 gather, expenses over that period of time doing

Page 23

1 door-to-door sales?

2 A. Yes.

3 88. Q. Okay. Things like gas
4 expenses?

5 A. Yes.

6 89. Q. Meals?

7 A. Yes.

8 90. Q. Other "travel" expenses?

9 A. Yes.

10 91. Q. Accommodation?

11 A. Yes.

12 92. Q. Clothing?

13 --- (A Short Pause)

14 A. I'm not sure about the
15 clothing. Probably.

16 93. Q. Did you purchase "Just Energy"
17 clothing?

18 A. Yes, I did purchase "Just
19 Energy" clothing.

20 94. Q. And you would have expensed
21 that?

22 A. Probably. Yes.

23 MR. ROSENFELD (To the Witness):
24 For precision, "would you have"? Or "did you"?

25 MR. MARTIN: She said, I think...

1 MR. ROSENFELD: You said "Would
2 you have ----"

3 MR. MARTIN: I am happy to have it
4 that way...

5 95. Q. I am assuming that what you
6 are saying is that you did purchase "Just Energy"
7 clothing...

8 A. Yes, I did.

9 96. Q. And you expensed it?

10 A. Yes, I did.

11 97. Q. Did you expense ---

12 I gather, to expense gas, you must
13 have had at least at some point a vehicle...

14 A. Yes.

15 98. Q. And in terms of other
16 maintenance and upkeep on your vehicle, you would
17 expense that as well?

18 A. Yes.

19 99. Q. Help me out here. What else
20 might ---

21 I can't imagine everything.

22 What else comes to mind that you
23 would have expensed in that period of time?

24 A. I know it's, like, food,
25 clothing, gas, cell phone...

1 100. Q. So the purchase of a cell
2 phone, and probably the purchase of a Data Plan.

3 You would expense that?

4 A. Not the purchase of a cell
5 phone, because I had my own cell phone. Mainly,
6 like, the Bill that I got every month.

7 101. Q. Understood.

8 I mentioned to you the idea of
9 "Badging" or being "Badged".

10 What did you understand that to
11 mean in the "Just Energy" legal sense?

12 A. If someone gets "Badged", it
13 means you bring in two pieces of I.D., you do an
14 O.E.B. test, and then you get Badged.

15 102. Q. And each time you moved or
16 were under the responsibility, let's say, of a
17 particular Just Energy Office, you would get Badged
18 anew again.

19 Correct?

20 A. Yes.

21 103. Q. Okay. And my understanding is
22 that one of the reasons to be Badged each time you
23 change Offices is for tracking purposes for
24 commissions.

25 Correct?

1 A. Yes.

2 104. Q. Including, if one were an
3 Assistant Crew Coordinator or a Crew Coordinator,
4 or a Regional, to assist in tracking overrides.

5 Correct?

6 A. (Witness Nodding in the
7 Affirmative)

8 105. Q. And overrides are payments you
9 would receive for sales made by people under you.

10 Correct?

11 A. Yes.

12 106. Q. And you were in fact a Crew
13 Coordinator?

14 A. Yes.

15 107. Q. Were you ever an Assistant
16 Crew Coordinator?

17 A. No.

18 108. Q. Were you ever a Regional?

19 A. No.

20 109. Q. And I gather that for much of
21 the time that you were working in Sales for Just
22 Energy, you were a Crew Coordinator of sorts?

23 A. Yes.

24 110. Q. And that would mean, for some
25 of that time, you would have had various Teams?

1 A. Yes.

2 111. Q. And approximately how large
3 were the Teams that you might have from time to
4 time?

5 A. Anywhere between seven to
6 twenty-one.

7 112. Q. You might have a Team as big
8 as twenty-one under you?

9 A. Yes.

10 113. Q. And would you have had
11 Assistant Crew Coordinators under you at the time?

12 A. Yes.

13 114. Q. Typically, a Team is as large
14 as perhaps one could get in a vehicle?

15 A. Seven people in one vehicle.

16 Right.

17 115. Q. So if there was ever an
18 occasion when you may have had twenty-one Agents
19 under you, is it fair to say there would have been
20 three Assistant Crew Coordinators under you?

21 A. Not necessarily.

22 116. Q. But that could have been the
23 case?

24 A. Could have.

25 117. Q. And then you would have gotten

March 28, 2019

1 overrides from all of those people below you in the
2 chain?

3 A. That is correct.

4 118. Q. Each time you were Badged, did
5 you also undertake the Ontario Energy Board test?

6 A. No.

7 119. Q. So once you had passed the
8 test to be Badged in another Office, the first time
9 you passed the test was sufficient?

10 A. No. Like, a few times I had
11 to re-take the test.

12 120. Q. And do you recall why that was
13 the case?

14 A. I don't remember. So if I
15 tell you, I will be lying. So...

16 121. Q. I am not asking you to lie.

17 A. Okay. I don't remember.

18 MR. ROSENFELD: If you don't
19 remember, that's fine. Don't speculate. If you
20 don't remember, say you don't remember.

21 MR. MARTIN: And I just want your
22 honest answers today. So please don't lie.

23 I know your Counsel doesn't want
24 you to lie!

25 THE WITNESS: Okay.

1 MR. ROSENFELD: If you don't
2 remember, just say you don't remember.

3 THE WITNESS: Okay. I don't want
4 to say the wrong thing.

5 MR. ROSENFELD: Don't speculate.

6 MR. MARTIN: Are you okay, then?

7 THE WITNESS: Yeah.

8 MR. MARTIN:

9 122. Q. I assume that when you moved
10 from Summit Energy to Just Energy, a reason for
11 moving to Just Energy was that the commission
12 structure was more attractive...

13 MR. ROSENFELD: Sorry...?

14 Repeat the question. I apologize.

15 MR. MARTIN: That a reason for Ms.
16 Borg moving from Summit Energy to Just Energy on
17 the first occasion was that, among other reasons,
18 the commission structure at Just Energy was more
19 attractive to her.

20 OBJECTION/REFUSAL NOTED:

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

23 MR. MARTIN:

24 123. Q. And by "more attractive", I
25 mean that you anticipated you would make more

March 28, 2019

1 money.

2 Correct?

3 OBJECTION/REFUSAL NOTED:

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

6 MR. MARTIN:

7 124. Q. And similarly, when you
8 subsequently moved from Just Energy to Summit
9 Energy -- in, I think you said, 2015; around there
10 -- again you saw a more attractive financial
11 opportunity with Summit Energy at that time.

12 Correct?

13 OBJECTION/REFUSAL NOTED:

14 MR. ROSENFELD: Don't answer the
15 question.

16 MR. MARTIN:

17 125. Q. And then I gather either that
18 didn't work out or things had changed such that
19 when you moved back to Just Energy from Summit
20 Energy the second time, you again saw your
21 financial opportunity to be more attractive with
22 Just Energy.

23 Correct.

24 OBJECTION/REFUSAL NOTED:

25 MR. ROSENFELD: Don't answer the

Page 31

1 question.

2 MR. MARTIN:

3 126. Q. And throughout all of that
4 period of time -- first with Summit; then with
5 Just Energy; then with Summit; then back to Just
6 Energy -- you understood clearly that you were
7 never going to be paid for overtime.

8 Correct?

9 MR. ROSENFELD: Sorry...

10 At Just Energy?

11 MR. MARTIN: At either.

12 OBJECTION/REFUSAL NOTED:

13 MR. ROSENFELD: No.

14 (To the Witness): Don't answer
15 the question.

16 You can answer the question as to
17 whether you knew you were going to be paid overtime
18 at Just Energy.

19 MR. MARTIN: So I take that as a
20 Refusal.

21 MR. ROSENFELD: Yes.

22 MR. MARTIN: I will accept the
23 answer with respect to Just Energy.

24 (To the Witness): So let me
25 rephrase the question, just so you understand what

1 I am saying.

2 THE WITNESS: Okay.

3 MR. MARTIN:

4 127. Q. Having been at Summit and
5 going to Just Energy, then going to Summit and then
6 going to Just Energy again ---

7 So that is roughly over a five,
8 six-year period.

9 Correct?

10 A. Yes.

11 128. Q. -- you understood that you
12 were not going to be paid overtime by Just Energy?

13 A. Yes.

14 129. Q. Nor were you going to be paid
15 for Holiday or Vacation Pay.

16 Correct?

17 A. Yes.

18 130. Q. And you knew that they were
19 not taking or making withholdings in respect of
20 Employment Insurance or Canada Pension Plan.

21 Correct?

22 A. Yes.

23 131. Q. And you understood that to be
24 the case because, as an Independent Contractor, you
25 were self-employed.

1 Correct?

2 MR. ROSENFELD: Sorry...

3 There were a few components in
4 there, along with a legal determination in there.

5 Can you ask the question with a
6 little bit more specificity?

7 MR. MARTIN:

8 132. Q. You understood that the reason
9 those types of benefits or deductions, if we can
10 label them in that way, were not made is that you
11 were an Independent Contractor.

12 Correct?

13 MR. ROSENFELD: Again, the
14 determination as to who is an Independent
15 Contractor is exactly what is happening in this
16 case.

17 Just Energy deemed them to be
18 Independent Contractor.

19 Sure.

20 MR. MARTIN:

21 133. Q. But you understood that the
22 reason that was the case is that you had signed an
23 Independent Contractor Agreement which spoke to
24 those very issues.

25 Correct?

March 28, 2019

1 MR. ROSENFELD: The reason of Just
2 Energy. Sure.

3 MR. MARTIN: No. As compared to
4 her understanding of it.

5 I want her understanding.

6 MR. ROSENFELD: But whose reason?
7 Just Energy's reason for doing those things.

8 MR. MARTIN: Well, let's try it
9 this way.

10 I guess your Counsel wants to
11 assist you here.

12 134. Q. At no time did you speak to
13 anyone at Just Energy or Summit Energy to raise
14 with them issues surrounding Overtime Pay?

15 OBJECTION/REFUSAL NOTED:

16 MR. ROSENFELD: Don't answer the
17 question, particularly in relation to Summit
18 Energy.

19 (To Mr. Martin): If you would
20 like to ask it again with respect to Just Energy...

21 MR. MARTIN: I am happy to take
22 the answer with respect to Just Energy, then, as
23 well. But I take the Refusal. We will deal with
24 that later.

25 135. Q. You never raised with Just

Page 35

1 Energy, at any time you were employed ---

2 "Employed".

3 -- engaged by them, issues

4 relating to Overtime Pay?

5 A. No.

6 136. Q. Nor the other benefits or

7 deductions we talked about?

8 Did you?

9 You never raised those issues with
10 them?

11 A. No.

12 137. Q. And that is because you
13 understood that that was the relationship you had
14 with them?

15 They would pay you 100 percent
16 commission, which provided you with unlimited
17 financial reward. But the give-and-take with that
18 was that you were not to then be entitled, in terms
19 of the relationship, to Overtime Pay.

20 Correct?

21 MR. ROSENFELD: There were a lot
22 of statements in that question.

23 I am sorry, Mr. Martin.

24 MR. MARTIN: I think she
25 understood that one, though...

March 28, 2019

1 MR. ROSENFELD: I don't think I
2 understood it!

3 There were a lot of caveats within
4 it.

5 MR. MARTIN: Okay. I will try
6 again.

7 138. Q. Whether you were with National
8 Home Services or Just Energy, or Summit Energy, you
9 knew that, on a 100 percent commission basis,
10 potentially your income could be unlimited.

11 Correct?

12 MR. ROSENFELD: You can answer
13 that question with respect to Just Energy, not with
14 respect to Summit or Home Services; National Home
15 Services.

16 So did you know that your income
17 could be unlimited at Just Energy?

18 THE WITNESS: Yes.

19 MR. MARTIN:

20 139. Q. And that was something that
21 attracted you to the Position; correct?

22 A. Yes.

23 140. Q. And I gather, having stayed in
24 the door-to-door sales field for some six years,
25 that was something that was attractive to you?--The

Page 37

1 unlimited aspect of the income return.

2 A. Yes.

3 141. Q. And you felt ---

4 I gather you are going to tell me
5 that you felt that you were a rather successful
6 Salesperson.

7 A. Yes.

8 142. Q. And I gather you would agree
9 with me that door-to-door sales is not an easy
10 job...

11 A. No.

12 143. Q. And it does take a certain
13 skillset to be successful?

14 A. Yes.

15 144. Q. And not everyone who attempts
16 that Position is necessarily successful in the
17 role?

18 A. Yes.

19 145. Q. And in fact the turnover in
20 the door-to-door sales field is significant?

21 MR. ROSENFELD: Can we talk about
22 Just Energy...

23 MR. MARTIN: Well, her experience
24 is broader than that. I think that is a fair
25 question.

March 28, 2019

1 MR. ROSENFELD: And I am happy for
2 her to answer as to Just Energy.

3 MR. MARTIN (To the Witness): We
4 will take your answer and then come back to the
5 other experiences you have had.

6 146. Q. So my point to you, Ms. Borg,
7 is that turnover in the area of door-to-door sales
8 -- and your Counsel will want to restrict it to
9 Just Energy -- is significant. The Sales Agents.
10 The turnover.

11 MR. ROSENFELD: The turnover was
12 significant with Just Energy?

13 THE WITNESS: Just Energy. Yes.

14 MR. MARTIN:

15 147. Q. But that is not unique? That
16 was the same as your experience with Summit and
17 with National Home Services.

18 Correct?

19 OBJECTION/REFUSAL NOTED:

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

22 MR. MARTIN:

23 148. Q. Throughout the period of time
24 that we are talking about, 2012, September-ish,
25 through to some time in 2016, did you have your own

Page 39

1 vehicle throughout that entire period of time?

2 A. From which day?

3 149. Q. I have your Engagement, your
4 Contractual Engagement with Just Energy, to be from
5 September 18th, 2012 through to having executed an
6 Agreement with the Fairview Office on September
7 8th, 2016.

8 So that period of time.

9 A. I did have a vehicle at a
10 certain point, and then at one point I decided to
11 stop driving.

12 MR. MARTIN: I am sorry. I didn't
13 understand that. Say that again. You had a...

14 THE WITNESS: I did have a vehicle
15 I used to drive, and then at one point, because I
16 drove so much working for Just Energy, in between,
17 like, Thunder Bay, Timmins, one day I said "I'm not
18 driving any more".

19 150. Q. And can you tell me when that
20 might have been?

21 A. I don't remember exactly, but
22 at one point I'd had enough with driving.

23 151. Q. How close to ---

24 Was that in 2016, or 2015, when
25 that happened?

March 28, 2019

1 MR. ROSENFELD: Maybe by Office...

2 THE WITNESS: When I came to the
3 Ottawa Office, I wasn't driving. I was done
4 driving.

5 MR. MARTIN:

6 152. Q. So you had only driven when
7 working out of the Viking Office?

8 A. Yes. So what I did is, I had
9 someone drive for me and I paid the gas.

10 153. Q. All right.

11 So you were still a Crew
12 Coordinator ---

13 A. Yes.

14 154. Q. -- but you yourself were not a
15 Driver. But you, I guess, subsidized some of the
16 expenses.

17 A. What do you mean "subsidized
18 some of the expenses"?

19 155. Q. You paid whoever the Driver...
20 Who was the Driver?

21 A. I had multiple Drivers.

22 156. Q. And did they have their own
23 vehicles?

24 A. No. They drove my vehicle.

25 157. Q. Okay.

1 So you would expense your
2 vehicle's gas and maintenance, and whatnot, but you
3 weren't the actual Driver?

4 A. No.

5 158. Q. Okay. At some point in time,
6 had you lost your Licence?

7 A. Yes.

8 159. Q. And do you know when that was?

9 A. No.

10 160. Q. So isn't that really the
11 reason why you weren't driving anymore?--That you
12 weren't licensed to drive.

13 A. I was tired of driving. I
14 could have renewed my Licence. But I chose to pay
15 someone to drive for me.

16 161. Q. Okay. So you didn't lose your
17 licence because of any criminality or whatever --
18 and I mean that in the softest of ways; you simply
19 let it lapse.

20 Is that the case?

21 MR. ROSENFELD: Sorry. I don't
22 know what this has to do with anything ---

23 MR. MARTIN: I am simply trying to
24 understand what she is saying when she says she
25 didn't have a licence.

1 MR. ROSENFELD: You said it and
2 then she answered it.

3 So clearly you had some piece of
4 information. But I still don't see how it is
5 relevant to whether she was an employee, or whether
6 the Sales Agents were employees or Independent
7 Contractors.

8 MR. MARTIN:

9 162. Q. Just to go back to the
10 Badging...

11 --- (A Short Pause)

12 I have a Contract that I
13 understand is ---

14 And I am not a handwriting expert;
15 but it certainly appears to be your signature.

16 -- with respect to the Fairview
17 Office.

18 You are aware that Just Energy had
19 a Fairview Office in Toronto?

20 A. Yes.

21 163. Q. Did you ever attend at the
22 Fairview Office?

23 A. I went one time.

24 164. Q. And was that to sign the
25 Agreement?

1 A. No.

2 165. Q. Do you know why you happened
3 to execute an Independent Contractor Agreement in
4 September of 2016 out of the Fairview Office?

5 A. Oh! What they used to do is
6 they used to like use Purolator and ship all these
7 things to me and I would sign and ship back.

8 I don't remember the Fairview
9 Office. I don't remember the Regional ---
10 The last I was Badged was
11 Kitchener.

12 So...

13 I remember signing something they
14 had brought ---

15 Just Energy brought an Office here
16 in Ottawa, on Preston Street, and I signed
17 something there.

18 So I don't know which Office that
19 Paper would have come from.

20 166. Q. I was suggesting to you that
21 it was the Fairview Office.

22 Was there a discussion about you
23 going back to Toronto at some point in 2016?

24 A. I wasn't moving to Toronto.

25 167. Q. So you have no recollection as

1 to why you would have signed an Agreement to become
2 Badged out of the Fairview Office in September of
3 2016?

4 A. I remember signing one for a
5 Kitchener Office. But not a Fairview Office.

6 168. Q. And do you know who Nadia
7 Fertile is?--F-E-R-T-I-L-E.

8 A. No.

9 --- (A Short Pause)

10 Does it say where it was signed?

11 MR. MARTIN: Well, I will show it
12 to you, if it helps with your recollection...

13 MR. ROSENFELD: Is this in the
14 Record anywhere?

15 MR. MARTIN: That one is not in
16 the Record.

17 MR. ROSENFELD: Then, we won't be
18 answering questions about this document.

19 Are you going to give it to us?

20 MR. MARTIN: If I am not going to
21 show it to the Witness, I am not going to give it
22 to you.

23 --- (A Short Pause)

24 169. Q. If I can show you the ---

25 I am showing you, just to cut to

1 the chase, what I understand ---

2 (To Mr. Rosenfeld): This is in
3 the Record.

4 MR. ROSENFELD: As...?

5 MR. MARTIN: Exhibit "G".

6 MR. ROSENFELD: Thank you. And do
7 you have the page reference for that?

8 MR. MARTIN: It is Page 290...

9 Sorry. Page 305. The "Ottawa"
10 one is at Page 290. But the "Kitchener" one is at
11 Page 305.

12 --- (A Short Pause)

13 MR. ROSENFELD: All right. It
14 starts at Page 301. This document starts at Page
15 301, the Health Card...

16 --- (A Short Pause)

17 Well, this is not the same
18 document. (Referencing documentation)

19 MR. MARTIN: Just bear with me for
20 a moment...

21 --- (A Short Pause)

22 MR. ROSENFELD: Oh, I see. I have
23 it here. (Referencing documentation)

24 MR. MARTIN: You have it now.

25 Okay.

1 MR. ROSENFELD: Page 305.

2 MR. MARTIN: Okay. And you have

3 it?

4 MR. ROSENFELD: Yes.

5 MR. MARTIN: Okay.

6 170. Q. So at this point in time ---

7 MR. ROSENFELD (To the Witness):

8 Please take a look at the document.

9 MR. MARTIN:

10 171. Q. My understanding is that in

11 June of 2015, you were still living in the Ottawa

12 area.

13 Correct?

14 A. Yes.

15 172. Q. And you were being, though --

16 and this is my phrase -- rebadged out of Kitchener.

17 Correct?

18 A. Yes. Correct.

19 173. Q. And do you recall why that was

20 the case?

21 --- (A Short Pause)

22 A. 2015...

23 --- (A Short Pause)

24 I don't recall.

25 174. Q. I know you mentioned ---

1 MR. ROSENFELD: Do you not recall
2 the date, or the switch from Ottawa to Kitchener?

3 THE WITNESS: There is, like, a
4 timing that...

5 --- (A Short Pause)

6 I am trying to think...

7 --- (A Short Pause)

8 MR. MARTIN:

9 175. Q. My understanding is that in
10 January of 2014, you personally moved to the Ottawa
11 Region.

12 A. Yes.

13 176. Q. It may have been Gatineau.
14 But "Ottawa".

15 Correct?

16 A. Yeah.

17 177. Q. But then a year and a half
18 later ---

19 And I appreciate that in between
20 there some time, you spent time at Summit Energy.

21 -- you were then rebadged at Just
22 Energy, having come back, but out of Kitchener.

23 A. So that was the date I came
24 back to Just Energy.

25 178. Q. And what was the date?

1 Sorry.

2 A. It was on the 4th of June
3 2015.

4 179. Q. But you were working out of --
5 although maybe not physically -- out of the
6 Kitchener Office.

7 Correct?

8 A. Yes.

9 180. Q. And who was the Regional in
10 Kitchener at the time?

11 A. At that time, it was Joel
12 Stewart.

13 181. Q. You didn't, though, attend in
14 Kitchener to conduct your door-to-door sales, did
15 you?

16 A. No. That would be a far
17 drive!

18 MR. MARTIN: Yes! I agree.

19 --- (Laughter)

20 MR. ROSENFELD: Did you ask the
21 "why" before, that you didn't give him an answer
22 for?

23 MR. MARTIN: No. We are getting
24 there. I am not there yet.

25 I did; but she had to put her

1 timelines together.

2 182. Q. So this Joel Stewart who was
3 the Regional at the time ---

4 And can I ask you this: For a
5 period of time thereafter, did you have Dan Gadoua
6 as the Regional in Kitchener?

7 Do you remember that name?

8 A. Yes.

9 183. Q. "Yes". And Mr. Stewart and
10 Mr. Gadoua ---

11 MR. ROSENFELD: I am sorry, Mr.
12 Martin.

13 There were two questions. There
14 was "Do you remember the name?", and then you
15 mentioned "Mr. Gadoua".

16 (To the Witness): Which answer
17 did you provide?

18 THE WITNESS: Well, my Regional
19 was...

20 I don't know what Dave (sic)
21 Gadoua's real role was, but my Regional was Joel
22 Stewart. I had to report to Joel Stewart.

23 MR. MARTIN:

24 184. Q. But at some point, Mr.
25 Stewart, I understand, stopped being the Regional

1 and Mr. Gadoua became the Regional and you were,
2 for lack of a better term, reporting to Mr. Gadoua.

3 A. No.

4 185. Q. Okay. You don't recall that?

5 A. Not...

6 I recall that. But he was never
7 my Regional. There was another guy.

8 186. Q. And who was the other guy?

9 A. Mike Dunn.

10 187. Q. And did Mr. Gadoua work for
11 Mike Dunn? Was he in between you and Mike Dunn?

12 A. Mike Dunn worked for David
13 (sic).

14 Like, Mike Dunn was my Regional.
15 Mike Dunn replaced Joel Stewart.

16 188. Q. Okay. Maybe I have it wrong,
17 then.

18 Did Dan Gadoua replace Mike Dunn,
19 to the best of your knowledge?

20 A. No. He was ---

21 189. Q. In between ---

22 A. -- a National. He was above.

23 190. Q. Above. Okay.

24 A. So he stands here (Indicatin).

25 That was Joel Stewart. Joel Stewart left to do

1 something else. Mike Dunn replaced Joel Stewart.

2 Dave (sic) stays up here.

3 (Indicating)

4 MR. MARTIN: I understand.

5 MR. ROSENFELD: "Daniel". I think
6 it is "Dan" Gadoua.

7 THE WITNESS: Dan Gadoua.

8 MR. MARTIN:

9 191. Q. And so Mr. Gadoua and Mr. Dunn
10 -- and maybe before Mr. Dunn, Mr. Stewart -- they
11 would have received overrides on any sales you
12 effected.

13 Right?

14 A. Yes. Right.

15 192. Q. And my understanding is that
16 you didn't attend at the Kitchener Office at any
17 point in time after having been Badged in June of
18 2015.

19 Correct?

20 A. False. I did attend that
21 Office.

22 193. Q. You did attend that Office.
23 Okay. But not on a regular basis?

24 A. No.

25 194. Q. And again, why would you,

March 28, 2019

1 given that you are in Gatineau and they are in
2 Kitchener, Ontario.

3 Correct?

4 A. Yes.

5 195. Q. Okay. And you conducted, I
6 gather, at that time, your sales out of the Ottawa
7 Region?

8 A. Not the whole time.

9 196. Q. Okay. But you didn't conduct
10 sales with Kitchener as your base, although you
11 were Badged in Kitchener.

12 Correct?

13 A. Yes and no.

14 197. Q. Well, let's understand that.
15 My understanding is that you
16 didn't conduct sales with Kitchener as your base--
17 Is that correct?--at this period of time.

18 A. Yes.

19 198. Q. And at this period of time,
20 had the Ottawa Office of Just Energy closed?

21 A. Yes. Not when I signed this.
22 (Referencing documentation)

23 I believe in January of 2016,
24 their Contract was up.

25 199. Q. So there actually wasn't an

1 Ottawa Office, was there?

2 A. No.

3 200. Q. But you wanted to continue --
4 and I use that term loosely. I appreciate that you
5 were away for a bit.

6 But you wanted to continue doing
7 door-to-door sales for Just Energy with Ottawa as
8 your base, as Jennifer Borg's base.

9 Correct?

10 A. Yes.

11 201. Q. And you did so for what period
12 of time?

13 A. About a year.

14 202. Q. So from June of 2015 to
15 roughly June of 2016?

16 A. Yes.

17 203. Q. Okay. And my understanding is
18 that you principally did that work on your own.

19 Correct?

20 That period of time: June 2015 to
21 June 2016.

22 A. Yes. I wasn't alone. There
23 was someone else working with me.

24 204. Q. I said "alone". So if you say
25 "not alone", who else was working with you?

March 28, 2019

1 A. There was me and another
2 Agent, that lives in Ottawa, that worked with me.

3 205. Q. Did you work as a Team?

4 A. Yes.

5 206. Q. All the time?

6 A. Yes.

7 207. Q. And who was that Team person?

8 A. That Team person, his name is

9 John. The last name is Zafiriou.

10 208. Q. Could you spell that?

11 A. Z-A-F-I-R-I-O-U.

12 209. Q. And in that period of time,
13 was it Mr. Zafiriou who would do the driving?

14 A. Yes.

15 210. Q. And was he a Crew Coordinator
16 as well?

17 A. No.

18 211. Q. Was he an Assistant Crew
19 Coordinator?

20 A. No.

21 212. Q. Was he an experienced Sales
22 Representative?

23 And by that I mean, he didn't just
24 arrive on the scene in June of 2015; correct?

25 A. Correct.

1 213. Q. You talk about, as a Crew
2 Coordinator, your responsibility is "to manage and
3 supervise Sales Agents".

4 Correct?

5 A. Yes.

6 214. Q. I gather that Mr. Zafiriou was
7 experienced. He didn't need much management or
8 supervision.

9 Is that correct?

10 A. Yes.

11 215. Q. He didn't. He did not.

12 Correct?

13 A. What?

14 216. Q. He did not need management or
15 supervision because he was experienced?

16 A. Yes.

17 217. Q. And in that period of time,
18 you didn't have responsibilities for training new
19 Sales Agents?

20 A. No.

21 218. Q. And that was because there
22 wasn't an office in Ottawa at the time?

23 A. That is correct.

24 219. Q. So you and Mr. Zafiriou
25 largely engaged in sales that the two of you, as a

1 Team, might organize?

2 A. Yes.

3 220. Q. And that would be without any
4 input or support from the Kitchener Office.

5 Correct?

6 A. When you say "support", what
7 do you mean by "support"?

8 221. Q. Training, motivation...

9 A. Motivation was given. We
10 would get phone calls.

11 When the Kitchener Office would be
12 on a "Push Week", me and Mr. Zafirou would go meet
13 them on the "Push Week".

14 So we worked with them.

15 222. Q. Okay.

16 And a "Push Week" is a week where
17 there are, I gather, more incentives for Agents to
18 make more money...

19 A. Yes.

20 223. Q. And that would be attractive
21 to you because, obviously, at the end of the day,
22 the goal is to make as much money as you can.

23 Correct?

24 A. Yes.

25 224. Q. Yes. But I gather that if it

1 wasn't a "Push Week", you could pretty much
2 determine where you wanted to work.

3 Correct?

4 A. Not really.

5 225. Q. Well, my sense would be that
6 the Kitchener Office wouldn't know the Ottawa area
7 as well as someone like yourself, an experienced
8 Salesperson, would know it.

9 Correct?

10 A. Correct.

11 226. Q. And similarly, the Kitchener
12 Office wouldn't know as much about the Ottawa area
13 that Mr. Zafiriou would know about it.

14 Correct?

15 A. Correct.

16 227. Q. And I understand there wasn't
17 any day-to-day record-keeping or the like. So on
18 any particular day, there is no reason why the
19 Kitchener Office would even know what areas you
20 were selling in.

21 Correct?

22 A. Correct.

23 228. Q. I mean, you had quite a bit of
24 independence in terms of how you determined where
25 to sell.

1 A. In my last year at Just
2 Energy, yes.

3 229. Q. You mentioned about going on
4 "Push Weeks".

5 You wouldn't always go on a
6 particular Push Week yourself, though, if there
7 were a trip to any particular locale away from
8 Ottawa, would you?

9 A. When I lived in Ottawa?

10 230. Q. In Ottawa, yes.

11 A. No, I wouldn't go to every
12 Push Week.

13 231. Q. Right. My understanding is
14 that you have a family and that sometimes, like the
15 rest of us, family commitments come before work.

16 Correct?

17 A. No, no. They didn't care
18 about that.

19 232. Q. No. You personally.

20 A. Me. Yes, I care about that.

21 233. Q. Yes. That is my point.

22 A. Oh! That, they didn't.

23 234. Q. Right. But you may choose to
24 say "I am not working this weekend because I have
25 family commitments".

1 Correct?

2 A. When I was in the Ottawa

3 Office ---

4 235. Q. Ottawa, yes. From that point

5 ---

6 A. -- Badged under Kitchener, the

7 last year at Just Energy ---

8 236. Q. Yes.

9 A. -- yes.

10 237. Q. And my understanding is that,

11 as an experienced Salesperson, typically if you

12 went out in the field on a particular day, you

13 would make sales.

14 Correct?

15 A. Correct.

16 238. Q. And is that true for Mr.

17 Zafirion as well?

18 A. Sometimes yes; sometimes no.

19 239. Q. Okay. So he may not have been

20 quite as talented or as skilled as you in that

21 regard?

22 A. Yes.

23 240. Q. Okay. And if one were to look

24 at your personal daily sales records, if one were

25 to see many days or weeks where there are no sales

1 recorded, it is fair to say that the reason there
2 aren't any sales recorded is that you didn't go in
3 the field those days; correct?

4 MR. ROSENFELD: Are there specific
5 periods that you want to refer to?

6 MR. MARTIN: I can. But I want to
7 start with just the premise first.

8 THE WITNESS: I can't say "yes" or
9 "no". I would need times and dates so that I can
10 answer correctly.

11 MR. MARTIN:

12 241. Q. Okay. I am going to suggest
13 to you that my understanding is that, for example,
14 from ---

15 --- (A Short Pause)

16 Well, let me try it this way: Do
17 you know when your last sale was with Just Energy?

18 A. No.

19 242. Q. "No". And that period of
20 time, that last year, the Sales Records are rather
21 sporadic.

22 You have a sale a week here and
23 then you go a couple of weeks without sales, and
24 then maybe you will have three sales on one
25 particular day.

1 Is that because ---

2 I don't know if you were doing
3 other things.

4 -- sometimes you just didn't go in
5 the field or you just didn't ---

6 A. I wasn't doing other things;
7 but for the last few months I was at Just Energy,
8 my mindset wasn't in it anymore.

9 243. Q. Okay. And is that true for
10 Mr. Zafiriou as well?

11 A. Yeah.

12 244. Q. And was he doing other things
13 at the same time as well?

14 A. No.

15 245. Q. So you would collectively
16 decide, as a Team, "We are not going to sell this
17 week", or "this particular day"?

18 Is that how it worked?

19 A. Well, for this job, you have
20 to basically self-motivate yourself. So if it is
21 minus 40 outside and you have the option to stay at
22 home ---

23 Would you really go knock on doors
24 when the windchill is minus 48!?

25 MR. MARTIN: Personally...

1 So you wouldn't do that. I get
2 the point.

3 Can I ---

4 MR. ROSENFELD: Let's be clear
5 about the timeframes that we are talking about.

6 Is this when you were in the
7 Kitchener Office, Badged out of the Kitchener
8 Office?

9 THE WITNESS: Yes. It's like
10 January I was Badged under the Kitchener Office.

11 So the last six months that I was
12 employed ---

13 MR. MARTIN:

14 246. Q. Well, you were never employed
15 with Just Energy.

16 A. Yeah. I was trying to think
17 of a better word.

18 That is why I stopped.

19 MR. ROSENFELD: I think it is a
20 perfectly fine word.

21 MR. MARTIN:

22 247. Q. And it was more than a year,
23 quite frankly. It was from June 2015, and we have
24 you still entering into Contracts in September of
25 2016 with Just Energy.

1 So it is fourteen months at least.

2 MR. ROSENFELD: So you say.

3 MR. MARTIN: I am happy to show

4 her the ---

5 248. Q. Is that your signature, Ms.

6 Borg?

7 (Referencing documentation)

8 MR. ROSENFELD: We have already
9 talked about this. You had an opportunity to put
10 this in the Record, both for ---

11 MR. MARTIN: Yes. I know.

12 MR. ROSENFELD: -- regular
13 Disclosure purposes and in this Motion.

14 So we are not answering questions
15 on this. (Referencing documentation)

16 MR. MARTIN: That's fine. I am
17 simply saying that our records indicate that she
18 signed an Agreement out of Fairview in September of
19 2016.

20 So she was still connected to Just
21 Energy ---

22 MR. ROSENFELD: Great. And that
23 will be the evidence on that.

24 MR. MARTIN:

25 249. Q. Do you understand that there

March 28, 2019

1 is a concept of being an "active" Agent with Just
2 Energy?

3 Do you know what I mean by being
4 "active"?

5 A. Yep.

6 250. Q. And what does that mean?

7 A. You have to have certain sales
8 per month, I believe, to be "active".

9 251. Q. And even though you didn't
10 have particular sales in a month, that still didn't
11 prevent you from again making sales; correct?

12 A. Yes.

13 252. Q. And in fact it strikes me that
14 you were a person who maybe from time to time fell
15 into that category--Correct?--where you weren't
16 making sales for a while but then you went back out
17 into the field and made -- I am calling them
18 "sporadic" sales -- sales from time to time.

19 Correct?

20 A. Yes.

21 253. Q. And the fact that you weren't
22 making sales from time to time, you were never
23 terminated ---

24 Your Contract was never
25 terminated, was it?

1 A. In what year?

2 254. Q. Ever.

3 A. My Contract was terminated one
4 year.

5 255. Q. When was your Contract
6 terminated?

7 A. When I used to work for
8 National Home Services.

9 256. Q. I am talking about Just
10 Energy.

11 A. Oh! No.

12 257. Q. "No". And did you understand,
13 with respect to the various Contracts that you
14 signed, that it was only Just Energy that could
15 terminate the Contract?

16 A. No.

17 258. Q. By that I mean...

18 People above you at an Office --
19 say a Regional Distributor or a National
20 Distributor -- did you know that they were
21 Independent Contractors of Just Energy as well?

22 A. Yeah. But they could ---

23 259. Q. Sorry. The question was: Did
24 you know that?

25 A. Yes.

1 260. Q. You did know that. Okay.

2 And did you know that, pursuant to
3 their Contracts, they had no ability to terminate
4 any Sales Agent?

5 A. No.

6 261. Q. And is that because you have
7 never reviewed a Contract between Just Energy and a
8 Regional Distributor, let's say?

9 A. I've never reviewed that.

10 262. Q. The Independent Contractor
11 Agreements that you have signed with Just Energy...

12 I have four of them.

13 Do you have copies of any of them?

14 A. No.

15 263. Q. Did you ever ask to obtain
16 copies of your Agreements?

17 A. Yes.

18 264. Q. And do you have any record of
19 having asked for a copy of the Agreement?

20 A. No, I don't have a record of
21 that.

22 265. Q. Do you have any e-mail or
23 letter, or such, that would say "I am asking for a
24 copy of my Independent Contractor Agreement"?

25 A. No.

1 266. Q. I understand that on a weekly
2 basis, people would be engaged by Just Energy in
3 the Orientation/Badging/Contracting process.

4 Correct?

5 A. Yes.

6 267. Q. You are familiar with that in
7 the various Offices you worked out of?

8 A. Yes.

9 268. Q. And when I say "various", I
10 mean Viking and Ottawa.

11 Correct?

12 A. Yes.

13 269. Q. And you understood that no one
14 would be engaged to do door-to-door sales for Just
15 Energy without signing an Independent Contractor
16 Agreement.

17 Correct?

18 A. Yes.

19 270. Q. And again, as I say, you have
20 signed four of them, and I suspect that you have
21 signed similar Contracts with other door-to-door
22 sales companies.

23 Correct?

24 A. Yes.

25 271. Q. And the Agreements themselves

March 28, 2019

1 were readily available in each of the Offices;
2 correct?

3 A. What do you mean "available"?

4 272. Q. If, for example, at any point
5 you wanted to see a copy, you could ask the
6 Regional Distributor?

7 A. No.

8 273. Q. Did you ever ask the Regional
9 Distributor?

10 A. No.

11 274. Q. You mentioned that at times
12 you could have had as many as twenty-one Agents
13 underneath you; correct?

14 A. Yes.

15 275. Q. And as the person, as you say
16 in your Affidavit, who "supervised and managed"
17 them, I gather, from time to time, an Agent may
18 have asked you questions about the Agreement.

19 A. Many times.

20 276. Q. And they would ask you because
21 they looked to you as the person supervising and
22 managing them; correct?

23 A. Yes.

24 277. Q. And would those be questions,
25 for example, about the commission structure?

Page 69

1 A. Yes.

2 278. Q. And I gather, as the
3 Supervisor and Manager of those people, you would
4 provide them with answers to those questions..

5 A. Yes.

6 279. Q. And having been a long-time --
7 someone over the course of five years -- person
8 with Just Energy, you understood the commission
9 structure?

10 A. Yes.

11 280. Q. You were able, I guess, to put
12 it simply, to satisfy any enquiries/questions they
13 might have?

14 A. Yes.

15 281. Q. And in fact many of these
16 people were people who may have been Sales Agents
17 that were in their first week or two; correct?

18 A. Yes.

19 282. Q. They may not even have seen
20 their first Just Energy cheque; correct?

21 A. Correct.

22 283. Q. And sometimes when people
23 receive their first cheques, they might come to you
24 and ask you "Ms. Borg, can you help explain to me
25 why there aren't deductions and the like from my

1 cheque?"

2 Would that ever occur?

3 A. Yes.

4 284. Q. And you would explain to them
5 "this is a 100 percent commission opportunity";
6 correct?

7 A. Well, no.

8 285. Q. But you would explain to them
9 why, for example, there weren't deductions for CPP
10 and EI--Correct?--if that question came up.

11 A. Yes.

12 286. Q. Right. And similarly with
13 respect to -- if it ever came up -- questions
14 regarding payment for any overtime that anyone
15 might perform; correct?

16 A. Correct.

17 287. Q. And did it ever come up?

18 A. Not that I know of.

19 288. Q. Did you do door-to-door sales
20 for a company called Home Water?

21 OBJECTION/REFUSAL NOTED:

22 MR. ROSENFELD: Don't answer the
23 question.

24 MR. MARTIN:

25 289. Q. I gather that if you did in

1 fact do -- as I understand to be the case -- door-
2 to-door sales with Home Water, you would have
3 entered into an Independent Contractor Agreement
4 with them?

5 OBJECTION/REFUSAL NOTED:

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

8 MR. MARTIN:

9 290. Q. And that working with Home
10 Water, you were on a 100 percent commission basis?

11 OBJECTION/REFUSAL NOTED:

12 MR. ROSENFELD: Don't answer the
13 question.

14 MR. MARTIN:

15 291. Q. Am I correct in saying that
16 when you worked at Home Water, you worked with, or
17 under the supervision of, Joel Stewart?

18 OBJECTION/REFUSAL NOTED:

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

21 MR. MARTIN:

22 292. Q. The same Joel Stewart who you
23 mentioned was, for a period of time, at the
24 Kitchener Office ---

25 MR. ROSENFELD: Sorry. Can we

1 just clarify the timeframe?

2 MR. MARTIN: The Kitchener Office
3 was June of 2015.

4 293. Q. Correct?

5 A. Yes.

6 MR. ROSENFELD: Can you just
7 repeat ---

8 Sorry. Let's go back a step. I
9 apologize.

10 I am trying to understand the
11 timeframe for the Home Water: whether this was
12 during the "Class" period and what ---

13 Sorry.

14 -- during the period in which she
15 is providing evidence about Just Energy.

16 In what period.

17 MR. MARTIN: Right. Me, too.

18 MR. ROSENFELD: Okay. So we are
19 not going to answer that question. We are not
20 answering questions about her position ---

21 MR. MARTIN: I understand that.

22 I first wanted to deal with it
23 more simply and just get her to confirm that she
24 did work with Home Water as an Independent
25 Contractor.

1 295. Q. Correct?

2 MR. ROSENFELD: In the period 2012
3 to 2016?

4 MR. MARTIN: I am just trying to
5 understand, first and foremost, whether she did it.

6 MR. ROSENFELD (To the Witness):
7 Go ahead.

8 Did you work for them?

9 THE WITNESS: During that period
10 of time, Home Water, no.

11 MR. MARTIN:

12 296. Q. No, no. At all.

13 A. At all? Yeah, I did, in ---
14 --- (Witness Indicating)

15 MR. MARTIN: Sorry. That doesn't
16 get ---

17 THE WITNESS: It was like ---

18 MR. MARTIN: That doesn't get on
19 the record.

20 Sorry about that.

21 --- (Referencing Witness's Indicating)

22 THE WITNESS: It was like 2017.
23 January.

24 MR. MARTIN: Okay.

25 297. Q. I have -- and maybe you can

March 28, 2019

1 clarify this.

2 I have you signing your fourth
3 Independent Contractor Agreement with the Fairview
4 Office in September of 2016.

5 After September of 2016, did you
6 conduct any sales -- attempted, even -- sales for
7 Just Energy?

8 A. No.

9 298. Q. And I say "attempted sales"
10 because I appreciate what "not being active" may
11 mean. But you said that that didn't prevent you
12 from going out and doing sales.

13 I don't know when you actually
14 stopped trying to make any sales ---

15 A. Neither do I. No.

16 299. Q. Well, you may not. That's
17 fair enough.

18 Did you just one day decide "I'm
19 just not going to go in the field any more"?

20 A. No. My Badge expired. So I
21 couldn't work.

22 300. Q. But you weren't attempting to
23 work, I guess is what I am getting at.

24 Right?

25 A. You can't work if your Badge

Page 75

1 is expired.

2 301. Q. Right. But you can get it re-
3 activated?

4 A. Yeah.

5 302. Q. So you just decided not to re-
6 activate it at some point in time; correct?

7 A. Correct.

8 303. Q. When was that?

9 A. I'm not sure.

10 304. Q. Okay. I am assuming it was
11 some time after September of 2016 ---

12 MR. ROSENFELD: That is not her
13 evidence. Her evidence is that she stopped working
14 in June 2016.

15 MR. MARTIN: Well, I have the
16 sense that those dates are not necessarily cast in
17 stone. That is why I am asking the question.

18 We have a record of her having
19 signed an Agreement in September of 2016 ---

20 MR. ROSENFELD: But her evidence
21 is that she didn't. She doesn't recall that.

22 THE WITNESS: My Badge for Just
23 Energy expired in June 2016.

24 MR. MARTIN:

25 305. Q. How did it expire?

1 A. Because there is an Expiry
2 Date on it.

3 306. Q. Yes. Okay.

4 Is that perhaps why you, in
5 September, signed a new Agreement with the Fairview
6 Office?

7 A. Maybe. But, I never worked
8 under the Fairview Office.

9 307. Q. Was there a period of time
10 when you stopped conducting sales for Just Energy
11 before you started conducting sales for Home Water?
12 Or was it continuous?

13 A. No. There was maybe a seven-
14 month period in between the two.

15 308. Q. Okay. And what did you do in
16 that seven-month period?

17 OBJECTION/REFUSAL NOTED:

18 MR. ROSENFELD: Don't answer the
19 question.

20 MR. MARTIN:

21 309. Q. Was it door-to-door sales?

22 A. I didn't work during that
23 time.

24 310. Q. At all?

25 OBJECTION/REFUSAL NOTED:

1 MR. ROSENFELD: Don't answer the
2 question.

3 She stopped work at Just Energy.
4 That's it.

5 MR. MARTIN: She has answered the
6 question!

7 MR. ROSENFELD: I know. She is
8 not listening!--To me, anyways.

9 THE WITNESS: I just ---

10 MR. ROSENFELD: It's okay. Don't
11 worry about it.

12 MR. MARTIN: It's okay. Don't
13 worry about it. No, no.

14 THE WITNESS: It's the truth,
15 though.

16 MR. MARTIN: No, no. I appreciate
17 that that is the truth. That is not the issue.

18 311. Q. And for how long did you
19 conduct door-to-door sales with Home Water?

20 OBJECTION/REFUSAL NOTED:

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

23 MR. MARTIN:

24 312. Q. On the document that your
25 Counsel has there, I will ask you to turn to Page

March 28, 2019

1 8...

2 --- (Witness complies)

3 This document is the Kitchener
4 Independent Contractor Agreement of June 4, 2015.5 Ms. Borg, is that your signature
6 on that page? (Referencing documentation)7 MR. ROSENFELD: This is Page 312
8 of the Record, for the benefit of the transcript.

9 MR. MARTIN: Yes. Thank you.

10 THE WITNESS: Yes.

11 MR. MARTIN:

12 313. Q. And the person witnessing your
13 signature is a Brinna Roseman.

14 Do you recall a Ms. Roseman?

15 A. Yes, I do.

16 314. Q. And Ms. Roseman worked where?

17 A. In the Ottawa Office.

18 315. Q. Just above your signature, it
19 says "By signing below, you confirm and acknowledge
20 that you have read and understood this Agreement
21 before signing".

22 Do you see that?

23 A. I see that.

24 316. Q. And can I ask -- and I
25 appreciate that this wasn't the first time you

Page 79

1 signed an Agreement like this.

2 Do you recall, at this particular
3 time, whether you had any questions or posed any
4 questions to any Just Energy person in regard to
5 any of the content of this Agreement?

6 A. No.

7 --- (A Short Pause)

8 317. Q. There is one question I meant
9 to ask you but didn't. I apologize.

10 Did you sign an Independent
11 Contractor Agreement with Home Water?

12 OBJECTION/REFUSAL NOTED:

13 MR. ROSENFELD: Don't answer the
14 question.

15 You have asked it and ---

16 MR. MARTIN: I don't think she
17 answered that question.

18 MR. ROSENFELD: Either way.

19 MR. MARTIN:

20 318. Q. Do you have in your possession
21 any copies of any Independent Contractor Agreements
22 you have ever signed, whether they be for National
23 Home Services, Just Energy, Summit Energy, or Home
24 Water?

25 OBJECTION/REFUSAL NOTED:

March 28, 2019

1 MR. ROSENFELD: Don't answer the
2 question.

3 MR. MARTIN:

4 319. Q. I would like you, if you have
5 any of those, to produce any of those to me,
6 please.

7 OBJECTION/REFUSAL NOTED:

8 MR. ROSENFELD: And we will not.

9 --- (A Short Pause)

10 MR. MARTIN:

11 320. Q. Ms. Borg -- and I know your
12 Counsel has refused to have you produce your Tax
13 Returns for the period 2012 to...

14 Well, I would say 2017, given that
15 you worked through to June 2016.

16 Do I understand that, having filed
17 Tax Returns, you would have, on each Return,
18 included all of the income from whatever source in
19 any particular year on that Year's particular
20 Return?

21 OBJECTION/REFUSAL NOTED:

22 MR. ROSENFELD: I don't see how
23 this is relevant.

24 (To the Witness): Don't answer
25 the question.

1 MR. MARTIN:

2 321. Q. And just to make it even
3 simpler, for any particular Year -- and we will
4 just deal with your Counsel's view of the relevant
5 Years here.

6 For any particular Year, you would
7 have included any T-4A or T-4 Income Slip in each
8 of your Tax Returns.

9 Correct?

10 OBJECTION/REFUSAL NOTED:

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

13 MR. MARTIN:

14 322. Q. So that if one had your Tax
15 Returns, one could fairly determine all of the
16 sources of income that you had in any particular
17 year.

18 Correct?

19 OBJECTION/REFUSAL NOTED:

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

22 MR. MARTIN: Let's take ten
23 minutes.

24 --- (A Short Recess)

25 --- Upon Resuming:

1 MR. MARTIN: We are back on the
2 record.

3 323. Q. Ms. Borg, you said that your
4 Badge expired.

5 I had not heard that before. I am
6 not disputing it. I simply want to explore that a
7 little bit.

8 Was it your understanding that
9 your Badge was only outstanding for a certain
10 period of time?

11 A. Yes.

12 324. Q. How long?

13 A. Two years.

14 325. Q. So after two years, it
15 expired?

16 A. Yes.

17 326. Q. And it said right on the Badge
18 that it had an Expiry Date?

19 Is that your evidence?

20 A. Yes.

21 327. Q. You were at Just Energy over
22 the course of a five-year period.

23 Had you had a Badge expire
24 previously?

25 A. Yes.

1 328. Q. And just simply by passage of
2 time; correct?

3 A. Yes.

4 329. Q. And then what did you have to
5 do to ensure you became actively-Badged?

6 A. You had to do the O.E.B. test
7 again.

8 330. Q. And you would have done so?

9 A. Yes.

10 331. Q. Did you have a GST Number?

11 A. No.

12 332. Q. Were you aware that other Crew
13 Coordinators may have had a GST Number?

14 A. No.

15 333. Q. And were you aware that a
16 Regional may have had a GST Number?

17 A. No.

18 334. Q. Is it fair to say that in your
19 last year -- and I am talking, now, about the mid-
20 2015 to mid-2016 period -- you would principally
21 market in the Ottawa Region?

22 A. Yes.

23 335. Q. Did you require any Permitting
24 to market in the Ottawa Region?

25 A. In Ottawa?

1 336. Q. Yes.

2 A. No.

3 337. Q. Were you ever personally
4 responsible, at any time in working with Just
5 Energy, for acquiring Permits to market?

6 Were you ever ---

7 A. What do you mean?

8 338. Q. So you go to a Municipality
9 and you required a Peddlers' Permit, let's say.

10 A. I never did.

11 339. Q. Did you ever go to areas where
12 a Permit was required?

13 A. One time I did.

14 340. Q. And where was that?

15 A. It was one of the towns on the
16 outskirts of Ottawa. I think it was called
17 Cardinal.

18 341. Q. Yes.

19 A. I worked there and I didn't
20 know that we needed a Permit. So all of my
21 Contracts were cancelled.

22 342. Q. Because a Permit had not been
23 acquired?

24 A. Yeah. I didn't know I needed
25 a Permit to work that town.

1 343. Q. Were you ever involved in any
2 marketing where a Permit had been acquired for a
3 particular area where it was necessary?

4 A. Yes.

5 344. Q. And where was that, for
6 example?

7 A. In...

8 I am not sure if it was Thunder
9 Bay or Sudbury.

10 345. Q. And as the Crew Coordinator,
11 would you have been the person responsible for
12 acquiring the Permit?

13 A. At that time, no. My Regional
14 did it for me.

15 346. Q. And did the Regional charge
16 you for acquiring the Permit?

17 A. Well, I backed out at the end
18 because I didn't want to drive so far.

19 347. Q. To Thunder Bay or Sudbury?

20 A. Yes.

21 348. Q. Okay. But did they still
22 charge you the expense of the Permit?

23 A. No, because they didn't go
24 through.

25 349. Q. They didn't go on that trip?

March 28, 2019

1 A. Yeah. I didn't want to go.

2 350. Q. Did you ever do any Commercial
3 sales?

4 A. No.

5 351. Q. Did you ask to do Commercial
6 sales?

7 A. No.

8 352. Q. Did you have the opportunity
9 to do Commercial sales?

10 A. Yes.

11 353. Q. And why -- and I appreciate
12 you were there for quite some period of time.

13 Did you make a personal choice to
14 do Residential and not Commercial?

15 A. Yes.

16 354. Q. And may I ask why you made
17 that choice?

18 A. I wasn't sure how Commercial
19 sales would go. I was more comfortable doing
20 Residential sales.

21 355. Q. And did you ever do any
22 Renewal Sales?

23 A. No.

24 356. Q. Did you ever have the
25 opportunity to do Renewal Sales?

1 A. No.

2 357. Q. Did you ever make enquiries
3 about being able to do Renewal Sales?

4 A. No.

5 358. Q. My understanding would be that
6 for a period of time that you were with Just Energy
7 under contract as a Sales Agent, Just Energy would
8 not have had dedicated Renewal Offices and that
9 various Agents would do Renewals.

10 Is that your understanding as
11 well?

12 A. What do you mean?

13 359. Q. My understanding is that for a
14 period of time they had a dedicated Renewal Office
15 out of Cambridge but that that didn't come into
16 play until some time after you had commenced as an
17 Agent for Just Energy.

18 Do you know ---

19 A. I don't know about that.

20 360. Q. Prior to the Ottawa Office
21 actually closing, as you described it, before that
22 time, was the Ottawa Office open on Sundays?

23 A. Yes.

24 361. Q. Physically open on a Sunday?

25 A. Yes.

March 28, 2019

1 362. Q. The Office was?

2 A. Yeah.

3 363. Q. And did the Regional
4 Distributor attend at the Office on a Sunday?

5 A. Sometimes.

6 364. Q. At the Ottawa Office, when it
7 was open, there weren't Sign-In Sheets for Agents
8 at that Office, were there?

9 A. Yes, there was.

10 365. Q. And when I say a "Sign-In
11 Sheet", I mean that someone would come to the
12 Office that day and physically sign that they were
13 in attendance at that time.

14 A. Yes, there was.

15 366. Q. And who was obliged to sign
16 in?

17 A. Anyone that came in to work.

18 367. Q. And what was the purpose of
19 the Sign-In?

20 A. Until this day, I am not even
21 sure. I was told the Sign-In Sheet was at the desk
22 before you enter into where we did our Morning
23 Meetings. So you just had to sign your name and
24 the time you showed up at the office.

25 368. Q. And in Ottawa ---

1 I know that the Ottawa Office --
2 and I appreciate that you may not have been the
3 Driver. But you had a van; correct?

4 A. Yes.

5 369. Q. What make was it?

6 A. A Dodge Caravan.

7 370. Q. And the available seating was
8 what?

9 A. Seven people.

10 371. Q. And on any particular day,
11 were you the person to assign people to the seats
12 in the van?

13 A. No.

14 372. Q. And on any day, I gather,
15 there may have been two or three, or possibly even
16 more, vans available?

17 A. Yes.

18 373. Q. When you say you weren't the
19 person responsible for assigning seats -- and I am
20 talking about your van.

21 Did you have a dedicated Team? Or
22 was it kind of haphazard?

23 A. I had my own Team that stayed
24 with me, and then there were other people that had
25 their own Team. So all Teams went with their

1 Coordinators.

2 374. Q. Right. And when I say "Did
3 you assign people to your van" ---

4 Your Team would go in your van,
5 though; correct?

6 A. Yes.

7 375. Q. And if a particular Agent
8 assigned to your Team didn't come in that day, were
9 there other Agents available to put in your van?

10 A. Well, if an Agent didn't show
11 up to work, I would either go to their house and
12 pick him up or call them.

13 376. Q. Right. But if they weren't
14 working that day, were there other Agents available
15 to go in your van?

16 A. I'm pretty sure there would
17 have been.

18 377. Q. Was there an Agent Pool?
19 How would you describe it?

20 A. No. Usually, like, they try
21 to keep ---

22 The people that you train stay
23 close to you.

24 There were different Teams in the
25 Office.

1 378. Q. But there is a significant
2 turnover on a--What?--daily or weekly basis, in
3 terms of the Agents who would come through the
4 Ottawa Office?

5 A. Yes.

6 379. Q. So your own Team would change
7 on a daily or weekly basis?

8 A. Yes.

9 380. Q. So on any given day or week,
10 you wouldn't necessarily know who was going to be
11 in your van on that day or that week; correct?

12 A. Correct.

13 381. Q. And even, I presume, whether
14 you would fill your van that day, or not?

15 A. What do you mean?

16 382. Q. Whether there would be enough
17 people available to put seven people in your van.

18 A. Yeah. If there are seven
19 people or eight people, or ten people...

20 Like, it didn't matter.

21 383. Q. I am talking about the
22 turnover, though.

23 There wasn't such an influx of new
24 people that you could always fill your seven-person
25 van, was there?

March 28, 2019

1 A. Well, pretty much it was
2 always seven people.

3 384. Q. Just maybe a different seven
4 people from day-to-day and week-to-week?

5 A. Yeah. Or seven. But
6 different names.

7 385. Q. Yes. And do you know what the
8 concept of "Badge Never Used" means?

9 A. "Never..."

10 386. Q. Have you ever heard that
11 phrase?--"Badge Never Used".

12 A. It means, when the Badge
13 people, after they passed the O.E.B. test and then
14 they spend the first day of shadowing and then the
15 third day, when they have to do it by themselves,
16 they don't show up. So that Badge is "Never Used".

17 387. Q. I know you have done an
18 Affidavit in this Lawsuit. Have you read any of
19 the other Affidavits in the Lawsuit? Have you read
20 any of the other materials?

21 A. I've read what Johhan Saffri
22 had to say; Joel Stewart; David Gadoua ---
23 MR. ROSENFELD: Dan Gadoua.
24 Mr. Saffri's Evidence; his
25 Affidavit?

1 THE WITNESS: Yes. I skimmed
2 through them.

3 MR. MARTIN:

4 388. Q. Okay. So you have skimmed
5 through those Affidavits?

6 A. (Witness Nodding in the
7 Affirmative)

8 MR. ROSENFELD: You have to say
9 "Yes", for the recording.

10 THE WITNESS: Okay. Yes.
11 I forget.

12 MR. MARTIN:

13 389. Q. In Mr. Saffari's Affidavit --
14 and I appreciate that you just skimmed it -- there
15 is some evidence ---

16 The figure he uses is "69 percent
17 of all Badged Agents never make a sale".

18 And I am not trying to hold you to
19 any sort of statistics. But that would be, like,
20 seven out of ten Agents who are Badged never make a
21 sale.

22 Was that typically your experience
23 while with Just Energy?

24 A. Yeah. Pretty much.

25 390. Q. And in fact in your

March 28, 2019

1 experience, there could be people who would be
2 Badged -- and by that I mean people who would go
3 through the Training and Orientation and write the
4 O.E.B. Exam -- but who in fact would never show up
5 to go into the field?

6 A. Yes.

7 391. Q. And people who then show up
8 and go out into the field -- and again, I am
9 talking about the people who never made a sale.

10 In your experience, there would be
11 lots who maybe lasted a day or two in the field,
12 before they just said "it's not for me"?

13 A. Um-umm. (Nodding in the
14 Affirmative)

15 Sometimes three weeks; sometimes
16 even a month without a sale.

17 392. Q. Without making a sale?

18 A. Yes.

19 393. Q. You indicated that although
20 there might have been a Sign-In Sheet in Ottawa,
21 the Agents didn't themselves keep Diaries, let's
22 say, on an individual basis?

23 A. No.

24 394. Q. And they didn't keep Street
25 Sheets on an individual basis?

1 A. They were supposed to.

2 395. Q. But they didn't?

3 A. I don't know what they did.

4 But I did.

5 396. Q. And do you have those records
6 still?

7 A. No, no. They are long gone.

8 397. Q. And you kept those Street
9 Sheets for what purpose?

10 A. So I can know where I've
11 worked and where not to re-work.

12 398. Q. So, for lack of a better term,
13 market intelligence?

14 A. Yes.

15 399. Q. And would you share that
16 market intelligence with other Agents?

17 A. Yes.

18 400. Q. Would you share that market
19 intelligence with other Crew Coordinators?

20 A. Yes. But by then we had I-
21 Pads. So everything was on the I-Pad. So
22 everybody can see what's been worked and what's not
23 been worked.

24 401. Q. And when you say "by then", do
25 you recall specifically ---

1 You had been with Just Energy
2 since September of 2012.

3 A. When I got an I-Pad, I was
4 still in the Toronto Office.

5 402. Q. Do you recall what the date
6 was?

7 A. Not really. But it was
8 summertime, and it was, like, maybe 2013.

9 403. Q. Did you pay for that I-Pad?

10 A. Yes.

11 404. Q. And did you pay for the Data
12 Plan for that I-Pad?

13 A. Yes, I did.

14 405. Q. Would you have paid for any I-
15 Pads of any of your Team Members?

16 A. Sometimes.

17 406. Q. And when you paid for that,
18 would that be as an Advance to them? Or would you
19 outright pay for it?

20 A. It would be an Advance.

21 407. Q. So you would recover it back?

22 A. Yes. Sometimes.

23 408. Q. So if you didn't think someone
24 was going to potentially work out as a successful
25 Agent, I presume you wouldn't have advanced

1 payments to those people.

2 A. Well, you can't really tell
3 who will be good and who won't. Like, you can't
4 tell.

5 So many times I've lost I-Pads
6 because someone quits and you try to call them to
7 get your I-Pad back...

8 They are not giving you back the
9 I-Pad.

10 409. Q. And when you say they
11 "quit"...

12 I mean, frequently you wouldn't
13 know. They just didn't show up for work.

14 A. Yeah.

15 410. Q. And you would like to get your
16 I-Pad back?

17 A. Yes.

18 411. Q. You have paid for it for them?

19 A. Yes. Well, I had, like, two
20 or three I-Pads and I would lend my I-Pad to
21 someone for, like, two weeks, and then they
22 disappear.

23 So now I'm out an I-Pad.

24 412. Q. But any I-Pads that you
25 purchased, you would expense for tax purposes?

March 28, 2019

1 A. No. I couldn't, because I
2 never got a receipt from Just Energy.

3 413. Q. I don't understand that.

4 So you would purchase your I-Pads
5 from Just Energy?

6 A. That's where you had to
7 purchase them.

8 414. Q. Yes. And you are saying that,
9 on occasion, you did not get a receipt?

10 A. Every time I didn't get a
11 receipt.

12 415. Q. And you never asked for a
13 receipt?

14 A. No. I asked my Regional, and
15 they are like "It's \$600 and it's a flat price, and
16 that's the price of it. \$600. And there's no
17 receipt."

18 416. Q. So you could have receipted it
19 for tax purposes.

20 You appreciate that--Correct?--
21 like you receipted gas and other car expenses?

22 A. Yes. But it was never given
23 to me. Every I-Pad I purchased, there was no
24 receipt for the I-Pad.

25 417. Q. And did you ever ask for a

Page 99

1 receipt?

2 A. I did, and my Regional said
3 "They don't issue receipts." So what they did is,
4 they give you the I-Pad and they deduct \$600 off
5 your paycheque.

6 418. Q. And so then you own an I-Pad.

7 A. Yeah. But no receipt.

8 419. Q. Did you ever ask for a receipt
9 for the I-Pad?

10 A. Yes, I did.

11 420. Q. Of Just Energy?

12 A. I asked my Regional.

13 421. Q. Did you ever ask Just Energy?

14 A. No, because I didn't really
15 have communication with Just Energy. My
16 communications source was my Regional.

17 422. Q. And I gather, like yourself,
18 someone who has had various door-to-door sales
19 positions, including with other gas and electricity
20 companies, you would encounter other Agents who had
21 similarly come and gone to other gas and
22 electricity companies?

23 MR. ROSENFELD: I am sorry...

24 Can you ask the question again?

25 MR. MARTIN:

March 28, 2019

1 423. Q. You were aware of other Agents
2 who you worked with who had been at times with
3 other gas and electricity companies, like
4 yourself?

5 A. Yes.

6 424. Q. And in this industry, people
7 frequently move from competitor to competitor, like
8 you did?

9 OBJECTION/REFUSAL NOTED:

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

12 MR. MARTIN:

13 425. Q. In fact, when you moved to
14 Summit Energy, there were other people from Just
15 Energy who you worked with who left with you.

16 Correct?

17 OBJECTION/REFUSAL NOTED:

18 MR. ROSENFELD: Don't answer the
19 question.

20 MR. MARTIN:

21 426. Q. And did they similarly return
22 to Just Energy from Summit Energy when you did?

23 OBJECTION/REFUSAL NOTED:

24 MR. ROSENFELD: Don't answer the
25 question.

1 MR. MARTIN:

2 427. Q. And during your time with Just
3 Energy, did you ever work with any students who
4 were off on Break?

5 A. Yes.

6 428. Q. And they would go back to
7 school at the end of the Summer Break, let's say?

8 A. Yes.

9 429. Q. When you engage with a
10 customer at a residential doorstep and they agree
11 to contract with Just Energy, that sale -- by you,
12 let's say -- still needs to be verified by Just
13 Energy; correct?

14 A. Correct.

15 430. Q. And the verification done by
16 Just Energy, did you understand what that related
17 to?

18 A. To speak to the customer to
19 explain to them exactly what they are signing and
20 that the Contract is for five years.

21 431. Q. And that verification was a
22 Regulatory requirement?

23 Did you understand that?

24 A. Yes.

25 432. Q. And the Terms of the Contract

1 itself -- the length of time; the price -- Just
2 Energy could change those during the Verification
3 Call; correct?

4 A. Correct.

5 433. Q. And part of that process,
6 then, from a Regulatory perspective, was to ensure
7 that it was a valid sale at the door; correct?

8 A. Yes.

9 434. Q. That there wasn't undue
10 pressure, let's say, on the consumer?

11 A. Correct.

12 435. Q. And I gather, from time to
13 time, consumers would make complaints about the
14 experience they had with a Salesperson at the door.

15 A. Yes.

16 436. Q. And I suspect, given how long
17 you were with Just Energy doing sales, that there
18 was the odd complaint involving your interactions
19 with customers?

20 A. Yes.

21 437. Q. Did any of that complaint
22 process result in any action being taken against
23 you?

24 A. Yes.

25 438. Q. And what kind of action was

1 that?

2 A. I got suspended for a week,
3 and I got fined \$100.

4 439. Q. And that was all part of what
5 is referred to as "Complaints" by Just Energy?

6 A. Yes.

7 440. Q. And your week's suspension was
8 in relation to what kind of activity?

9 A. There was ---

10 MR. ROSENFELD: What does this
11 have to do with the issues in dispute?

12 MR. MARTIN: You can refuse, if
13 you like.

14 OBJECTION/REFUSAL NOTED:

15 MR. ROSENFELD: Don't answer the
16 question, then.

17 (To Mr. Martin): I will refuse
18 the question.

19 MR. MARTIN:

20 441. Q. Your activity related to
21 concerns from a Regulatory perspective by Just
22 Energy; correct?

23 A. Correct.

24 442. Q. And you were aware that the
25 Energy Board, or "the Regulator", was concerned

March 28, 2019

1 about sales tactics with regard to door-to-door
2 energy sales; correct?

3 A. Yes.

4 443. Q. And so much of that Training
5 related to advising Sales Agents about proper
6 practices; correct?

7 A. Yes.

8 444. Q. And in fact as a Crew
9 Coordinator, one of your responsibilities was to
10 manage your Sales Team in a manner that met with
11 the Regulatory standards; correct?

12 A. Yes.

13 445. Q. And that if a Sales Force
14 didn't act in accordance with Regulatory standards,
15 there could be consequences for Just Energy with
16 the Regulator?

17 A. Yes.

18 446. Q. And in fact part of your
19 having been suspended for a week related to those
20 very kinds of concerns that a Regulator might have;
21 correct?

22 A. No.

23 447. Q. Whether or not you may have
24 felt it was justified or not; correct?

25 A. No.

1 448. Q. The suspension you received
2 was for what kind of activity, what kind of conduct
3 ---

4 OBJECTION/REFUSAL NOTED:

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

7 MR. MARTIN:

8 449. Q. And at the end of your
9 suspension, you went back to conducting sales and
10 marketing; correct?

11 A. Yes.

12 450. Q. Your \$100 fine, what was that
13 in relation to?

14 OBJECTION/REFUSAL NOTED:

15 MR. ROSENFELD: Don't answer the
16 question.

17 I am not sure...

18 (To the Witness): Did you even
19 reference a \$100 fine?

20 THE WITNESS: Yes.

21 OBJECTION/REFUSAL NOTED:

22 MR. ROSENFELD: Don't answer the
23 question.

24 MR. MARTIN:

25 451. Q. And that was in regard to

1 improper conduct; correct?

2 --- (A Short Pause)

3 MR. ROSENFELD (To the Witness):

4 Go ahead.

5 THE WITNESS: Oh!

6 (To Mr. Martin): Yes.

7 MR. MARTIN:

8 452. Q. As part of the Compliance
9 Program of Just Energy; correct?

10 A. Yes.

11 453. Q. As a consequence of a
12 consumer's complaint; correct?

13 A. No.

14 454. Q. What was the \$100 fine for?

15 OBJECTION/REFUSAL NOTED:

16 MR. ROSENFELD: Don't answer the
17 question.

18 MR. MARTIN:

19 455. Q. In addition to overrides, did
20 you receive residual commissions?

21 A. Yes.

22 456. Q. And what are "residual
23 commissions"?

24 A. Residual commissions are if
25 you sign up someone and then they are still with

1 Just Energy over a year, you get \$5 for Gas and \$5
2 for Hydro.

3 457. Q. And to get residuals, you
4 needed to maintain an "Active" status?

5 A. Yes.

6 458. Q. And to maintain an "Active"
7 status, you had to continue to make sales within a
8 period of time?

9 A. That is correct.

10 459. Q. Let's deal with the Ottawa
11 Office work you did.

12 On any particular day, would it
13 take some period of time to drive out to the field?

14 A. Yes.

15 460. Q. How far afield from the Ottawa
16 Office ---

17 I am not talking about Road Trips
18 or "Push Weeks".

19 How far afield generally would you
20 go from the Ottawa Office? What would the range
21 be?

22 A. It could be anywhere from half
23 an hour to an hour.

24 461. Q. So it could be an hour out and
25 an hour back?

1 A. Yes.

2 462. Q. Anything further than that?

3 A. Sometimes.

4 463. Q. And whatever the commute time
5 may have been to the field, you would never record
6 that time in any Diary or Log?

7 A. No.

8 464. Q. And to the extent that you had
9 a Team on any particular day, you never recorded
10 how long any individual member or the Team itself
11 took for breaks?

12 A. We didn't have breaks.

13 465. Q. Ever? Never?

14 A. Never.

15 466. Q. You never had lunch?

16 A. We had lunch before we started
17 knocking, and that was it. You weren't allowed to
18 have a break.

19 467. Q. And you are talking about the
20 period of time when there was an Office and you had
21 a van with people ---

22 A. Whether it was in Toronto or
23 whether it was in Ottawa, it was the same.

24 468. Q. Well, not when you were with
25 Mr. Zafirou, though; correct?

1 A. Who? Zafiriou?

2 MS. COOPER: Zafiriou.

3 --- (Correcting pronunciation)

4 MR. MARTIN: Zafiriou.

5 THE WITNESS: Zafiriou. My
6 Regional in Toronto?

7 MR. MARTIN: No, no...

8 MS. REKLITIS: Zafiriou, yes.

9 THE WITNESS: Zafiriou.

10 MR. MARTIN: Zafiriou.

11 MR. ROSENFELD: Badged out of
12 Kitchener.

13 THE WITNESS: Badged out of
14 Kitchener, that was a whole different ballpark.

15 That was like once in a blue moon,
16 to have the opportunity that I did.

17 MR. MARTIN:

18 469. Q. That was a year, quite
19 frankly.

20 A. Yes. I was Badged in
21 Kitchener the whole year. But before that, when I
22 was in the Ottawa Office, you go eat before you
23 start knocking on doors. Once you start knocking
24 on doors, you are not leaving the field.

25 If you've got to use a washroom,

1 you would use it in the customer's house.

2 470. Q. So one could never use a
3 washroom when you were in the field?

4 A. They don't leave ---
5 If someone asked me to go to the
6 washroom ---

7 471. Q. You would say "no"?

8 A. "You either can walk to some
9 place, but I am not going to come pick you up and
10 take you to a washroom."

11 No.

12 472. Q. So you are not saying that
13 people didn't take breaks; you are just saying
14 that you wouldn't pick them up to take a break?

15 A. Well, if you got caught taking
16 a break, you would be in trouble.

17 473. Q. With whom?

18 A. With the Regional.

19 474. Q. But the Regional couldn't
20 terminate anyone?

21 A. Yeah, he could.

22 475. Q. No, he couldn't.

23 A. Well, to us, he could.

24 476. Q. And so the Regional, just so I
25 understand this, they get an override, the same way

1 that you got an override; correct?

2 A. Yes.

3 477. Q. And if someone is performing--
4 Right?-- they are making sales--Right?-- the
5 Regional benefits.

6 Correct?

7 A. Correct.

8 478. Q. Okay. And you benefit;
9 correct?

10 A. Correct.

11 479. Q. So if I were a Salesperson and
12 I was a reasonable performer, you would benefit
13 from my sales activity, if I were working on your
14 Team.

15 Correct?

16 A. Correct.

17 480. Q. And if I were in fact someone
18 who was a regular person coming out for sales, if I
19 wanted to take a break -- and you said one of your
20 roles is to motivate me -- you are not going to
21 deny me a break, are you?

22 A. Yes.

23 481. Q. So even though I am a
24 performer ---

25 So your evidence is that even

1 though I am a performer, you would threaten me with
2 termination, when you have all of these other vast
3 number of people who aren't performing and have all
4 this turnover ---

5 Is that your evidence?

6 A. What my Regional said to me to
7 say to people is: "If you get caught taking a
8 break, you'll get fired."

9 That was the word given to me for
10 me to give to my Agents.

11 482. Q. That is not my point. My
12 point is: A performing Agent, you would never say
13 that to them?

14 You were not trying to upset an
15 Agent who was a performer.

16 Correct?

17 A. No. I would not want to upset
18 anyone.

19 483. Q. Right. So you wouldn't say
20 that, then, would you?

21 MR. ROSENFELD: Say what?

22 MR. MARTIN: The threat to fire
23 someone who wanted to take a break.

24 THE WITNESS: That would be like
25 "Don't get caught".

1 MR. MARTIN:

2 484. Q. But again, you are not telling
3 me that you didn't have discussions with whoever
4 the Regional may have been about motivating people
5 by threatening to fire them?

6 A. I wasn't ---

7 485. Q. Certainly, that wasn't
8 anything you would discuss.

9 Would it be?

10 A. A lot of us got threatened, on
11 a daily basis: that we can be replaced.

12 486. Q. Right. But you didn't believe
13 it?

14 A. No, no. I believed it.

15 487. Q. But you couldn't be replaced?

16 A. Yeah. I was terminated once.

17 488. Q. Not by Just Energy?

18 --- (A Short Pause)

19 Correct?

20 Not by Just Energy?

21 A. Yeah. By Just Energy.

22 489. Q. You said National Home
23 Services...

24 A. Yeah. National Home Services
25 is owned by Just Energy. The Termination Paper

March 28, 2019

1 came from Just Energy.

2 I wish I had it. The stamp said
3 "Just Energy" on it.

4 But this was back in, like, 2012,
5 when all ---

6 MR. MARTIN: You Counsel doesn't
7 want me to get into the conduct that caused you to
8 be terminated...

9 THE WITNESS: My Contract got
10 terminated by Just Energy.

11 MR. MARTIN: Yes. For conduct.
12 Of course.

13 THE WITNESS: No.

14 MR. MARTIN: Yes.

15 THE WITNESS: No.

16 MR. MARTIN: We are not going to
17 debate it, because your Counsel doesn't want me to
18 get into it.

19 THE WITNESS: Yeah. Then, I'll
20 explain to you exactly why my Contract was
21 terminated.

22 MR. MARTIN: Yes. We will produce
23 the materials -- which you don't have, of course,
24 to produce.

25 Do you?

1 THE WITNESS: But if you would
2 like ---

3 MR. ROSENFELD: I am sorry. Was
4 that a question, or a statement.

5 MR. MARTIN: It was a statement.

6 MR. ROSENFELD: Okay.

7 MR. MARTIN:

8 490. Q. Just to come back to the ---
9 So your evidence is that even if
10 one were a very best performer, you would threaten
11 to fire them, rather than allow them a washroom
12 break, let's say?

13 That is your evidence?

14 A. No. Many people had to go to
15 the washroom. Like, they wouldn't go look for me,
16 because we are all not working in one area, you
17 know.

18 There were certain Agents that
19 wouldn't even work. They would just sit at Tim
20 Horton's, and then when I pick them up at the end
21 of the night, they cry the blues. Like: "Oh, the
22 territory is not good. People weren't opening
23 doors."

24 You know.

25 Everybody always had a different

1 story.

2 491. Q. Exactly. Yes. But you
3 wouldn't fire them, because (a) you couldn't fire
4 them; and (b), you wanted people who at least were
5 working for you, making you money.

6 Correct?

7 A. Like me personally, I've never
8 fired anyone.

9 492. Q. Right. Even if they were
10 sitting at Tim Horton's?

11 A. Well, if they were sitting at
12 Tim Horton's, then I would tell my Regional and
13 then my Regional would fire them.

14 493. Q. Even if they were performers?

15 A. You can't be sitting at Tim
16 Horton's. You are supposed to be working.

17 494. Q. But they were working either
18 that week or they were posting sales that week.

19 Right?

20 So it was all benefiting you
21 financially.

22 A. But my Regional didn't care
23 about that. He cared about setting examples in the
24 Office.

25 495. Q. He didn't care about money?

1 A. Everybody cares about money.

2 496. Q. He didn't care about the
3 finances?

4 A. Yeah. Well, there were a lot
5 of top Producers that lost their jobs.

6 497. Q. How does that make any sense,
7 though?

8 A. But that's the way it was.

9 498. Q. In a Business that turns over
10 the way that this turns over, your evidence is that
11 they would fire top performers?

12 A. Not like Regionals; not like
13 Coordinators.

14 Like, Coordinators were allowed
15 to, like, leave the field, like, basically if we
16 wanted to.

17 Right?

18 But people that didn't have a
19 vehicle...

20 You know, people would, like,
21 sneak and go to Tim Horton's and then come back
22 fast.

23 You know.

24 499. Q. Of course. Spend the
25 afternoon there and you wouldn't know, because they

1 are all over a vast field.

2 Correct?

3 A. Yeah. Like, you can't keep
4 track of seven people.

5 It's kinda hard, you know.

6 500. Q. Right. And sometimes the
7 areas you would market in would be very big areas?

8 A. Yeah. But then I could keep
9 track of people.

10 501. Q. When I talk about the areas
11 that you did work in -- and I appreciate some were
12 reasonably far afield from the Ottawa Region.

13 Correct?

14 A. Yes.

15 502. Q. You did from time to time go
16 even farther afield; correct?

17 A. Yes.

18 503. Q. Okay. And some people call
19 these "Field Trips"; correct?

20 They are often referred to as
21 "Field Trips", or "Road Trips".

22 Sorry.

23 "Road Trips"?

24 A. Yeah. "Road Trips" were when
25 you leave for the week.

1 504. Q. Yes. Okay.

2 And would you ever go do Road
3 Trips where you would have dropped off one or two
4 Agents in a particular community, a town or a
5 village, let's say, and you would have other
6 members of the Team in neighbouring towns and
7 neighbouring villages?

8 A. What do you mean by ---

9 505. Q. How far apart would your
10 Agents tend to be on some Road Trips?

11 A. I would always try to keep
12 them close, just in case something happens. Or in
13 our case, if the OPP shows up.

14 So we always try to be close.

15 506. Q. When you say "close", how
16 close do you mean? Within the same town?

17 A. Yeah. Like, in the same town.

18 507. Q. You never incorporated? You
19 never created a Corporation to do your sales,
20 yourself personally?

21 A. What do you mean

22 "Corporation"?

23 508. Q. You didn't have "Jennifer Borg
24 Incorporated" as your separate sales entity?

25 A. No.

1 509. Q. Are you aware that others did?

2 A. No.

3 510. Q. The people who were less
4 successful Sales People -- let's say on your Team
5 -- I gather they ---

6 Is it fair to say that you would
7 spend more time, say, shadowing or mentoring them
8 than the more successful Sales people?

9 A. Yes.

10 511. Q. And you saw that as one of
11 your roles or functions as a Manager or Supervisor
12 of the Team?--To train, motivate, shadow, in the
13 field?

14 A. Yes.

15 512. Q. Did you ever set personal
16 sales goals for yourself?

17 A. Not really.

18 513. Q. You are aware of the Incentive
19 and Bonus Plans that were available for particular
20 sales levels; correct?

21 A. Yes.

22 514. Q. And did you ever use those as
23 targets to achieve, yourself?

24 A. Yes, I did.

25 515. Q. And did you achieve some of

1 those targets? Did you receive bonuses or
2 incentive benefits, yourself?
3 A. Yes.
4 516. Q. Did you ever win a trip?
5 A. Yes.
6 517. Q. How many trips?
7 A. Two.
8 518. Q. Where to?
9 A. Punta Cana, Dominican, and Los
10 Cabos.
11 519. Q. Week-long trips?
12 A. Yes.
13 520. Q. And did you go?
14 A. I went to two; and one, I
15 cashed out.
16 521. Q. What does that mean?
17 A. That means they gave me the
18 money, instead of going on the trip.
19 522. Q. And it was your option to do
20 that?
21 A. Yes.
22 523. Q. Where was that trip supposed
23 to be to?
24 A. I think it was to Punta Cana.
25 524. Q. And those were Just Energy

March 28, 2019

1 bonuses, incentives, or whatever? They came from
2 the company.

3 Correct?

4 A. Yes.

5 525. Q. Did your Regional Distributors
6 ever have their own separate Incentives or Bonus
7 Plans?

8 A. I wouldn't know.

9 526. Q. For example, did any
10 particular Regional that you worked under ever
11 offer you monetary bonuses for certain sales
12 targets?

13 A. No.

14 --- (A Short Pause)

15 When you say "bonuses", did you
16 mean for the trip? Or something different?

17 527. Q. For anything.

18 A. Yeah.

19 528. Q. "Something different". I
20 meant something different.

21 A. Yeah.

22 529. Q. I meant something apart from
23 the company Just Energy providing it.

24 A. Yes.

25 530. Q. And what was that?

1 A. That was cash.

2 531. Q. Okay. And who provided cash?

3 A. My Regional.

4 532. Q. Okay. Cash incentives for
5 particular sales levels? Or for what?

6 A. Well, sometimes there will be
7 a competition for the week. Like, "Most Sales in
8 the Week" will get, like, \$500.

9 533. Q. And that would be from the ---

10 A. From my Regional.

11 534. Q. -- Regional.

12 A. Yes.

13 535. Q. That was the Ottawa Regional?

14 A. Yes.

15 536. Q. And who was that?

16 A. Johnny Lavoie. And it was the
17 same in the Toronto Office, too.

18 537. Q. In Viking?

19 A. In Viking, yeah. Back then,
20 my Regional was Johan Saffari, and he used to do
21 that as well. And there used to be this thing
22 online called ---

23 It was like a Just Energy Store.

24 So basically, you would get, like,
25 Just Energy points and you could buy things from

March 28, 2019

1 the Store.

2 I've forgot what it's called.

3 So you accumulate points and you
4 can buy things from the Just Energy Store.

5 538. Q. Right. And did you ever do
6 that?

7 A. Yeah, I did that.

8 539. Q. When you ultimately stopped
9 marketing for Just Energy...

10 You just stopped, didn't you? You
11 didn't notify anyone when you just stopped selling?

12 A. Well, they knew my Badge
13 expired. So I can't sell for them.

14 540. Q. Again, I am not clear about
15 that. We have a copy of your signature on a fourth
16 Badging with the Fairview Office.

17 A. That Fairview Office...

18 That was when they opened an
19 Office in Toronto (sic).

20 It was on Preston Street.

21 541. Q. Preston?

22 A. Preston Street. Preston
23 Street in Ottawa.

24 Oh! You are not from here.

25 Okay.

1 Preston Street is somewhere

2 like...

3 It's not far from here.

4 They opened an Ottawa Office.

5 542. Q. Fairview did?

6 A. Yes.

7 543. Q. So you signed on with them?

8 A. Yeah. I remember being at
9 that Preston Office. I was speaking to the girl
10 and...

11 I'm trying to think who the
12 Regional was.

13 His name was "Dan".

14 Not the Dan Gadoua. Like, "Dan".
15 But I don't remember his last name.

16 544. Q. But you never did any sales
17 under that Badge?

18 A. No. Like, I thought it was an
19 Ottawa Badge. But I guess he was from Cambridge.

20 That's why it says "Cambridge" on
21 the Paper.

22 But I remember going to Preston
23 Street and going to that Office of Just Energy.

24 545. Q. Fairview. Not Cambridge.

25 Fairview.

1 A. Fairview.

2 546. Q. Toronto Fairview.

3 MR. ROSENFELD: We are confused a

4 lot about what is happening. Her evidence is that

5 it was "Cambridge".

6 That is what it said.

7 So...

8 THE WITNESS: It was ---

9 MR. ROSENFELD: Or "Fairview" ---

10 MR. MARTIN: No.

11 547. Q. I am telling you it was the

12 Fairview Office. But you are telling me that they

13 opened a Branch in Ottawa.

14 A. Not, like, Fairview.

15 I've been Badged under, like, the

16 Toronto Office, the Ottawa Office, and then the

17 Kitchener Office.

18 And then there was another

19 Office...

20 I believe it was Brian Marsellus's

21 Office.

22 548. Q. Yes. That's Fairview.

23 A. Yeah. But they opened it here

24 in Ottawa.

25 So when I signed that Paper, I

1 thought I was going to be Badged under Ottawa.

2 So you are saying it's ---

3 549. Q. Brian Marsellus is Fairview.

4 Yes.

5 A. It is under Fairview.

6 So that is how it came about.

7 550. Q. Right. So you do recall that,
8 then?

9 A. But not for "Fairview". For
10 "Ottawa".

11 551. Q. I hear what you are saying.
12 But you made no sales under that

13 Badge?

14 A. No. I didn't work.

15 552. Q. And that was my point about
16 how you sort of ended your relationship. You
17 executed the Agreement, didn't make any sales, and
18 didn't provide them with any sort of Notice or
19 anything. You didn't write them a letter saying
20 "Oh by the way, I'm Badged here, but I am not going
21 to make any more sales" or "I'm not making any
22 sales".

23 You didn't do anything like that?

24 A. No.

25 553. Q. You just kind of walked away?

March 28, 2019

1 A. Yes.

2 554. Q. Although having signed that
3 last Independent Contractor Agreement, you could
4 have gone and made sales?

5 That is what enabled you to make
6 sales, if you so chose.

7 Correct?

8 A. Yes.

9 MR. MARTIN: Just give me a
10 moment...

11 --- (A Short Pause)

12 555. Q. You mentioned a Johan Saffari.
13 Who is that?

14 A. He was to be my Regional at
15 the Toronto Office.

16 --- (A Short Pause)

17 556. Q. And Johnny Lavoie, was he ever
18 your Regional?

19 A. Johnny Lavoie was the National
20 Distributor. So Johnny Lavoie was Johan Saffari's
21 Boss.

22 MR. MARTIN: We will take two
23 minutes...

24 --- (A Short Recess)

25 --- Upon Resuming:

1 MR. MARTIN: Ms. Borg, subject to
2 the Refusals and the Undertakings and Advisements,
3 if there were any, those are all of the questions I
4 have for you today.

5 Thank you for coming here today.

6 MR. ROSENFELD: Thank you. I have
7 a couple of questions on Re-Examination.

8 ---

9 RE-EXAMINATION BY MR. ROSENFELD:

10 1. Q. You were asked a lot of
11 questions about your time in Ottawa when you were
12 Badged under the Kitchener Office and how that work
13 occurred, its structure.

14 Was that the same as or different
15 from your work in your time being Badged out of the
16 Ottawa Office and out of the Toronto Office?

17 A. Well, when I was Badged under
18 Kitchener, I had some freedom. I didn't have to go
19 to an Office and I didn't have to work eleven to
20 twelve-hour shifts every day.

21 2. Q. Was your time being Badged out
22 of Kitchener Office typical or unique as compared
23 to your time being Badged out of the Ottawa Office
24 or the Toronto Office?

25 A. Oh, it was really unique.

March 28, 2019

1 3. Q. And how many other Sales
2 Agents, if you know, during the timeframe that you
3 were Badged out of the Toronto or the Ottawa
4 Offices had the same structure or experience as you
5 did being Badged out of the Kitchener Office?

6 A. Just me.

7 MR. ROSENFELD: Those are my
8 questions.

9 Thank you.

10 MR. MARTIN: Just a follow-up on
11 that.

12

13

14

15 Further Cross-Examination by Mr. Martin:

16 556. Q. Ms. Borg, there are some 8,000
17 Sales Agents that are in this Claim. How many of
18 those 8,000 have you spoken to, to ask what their
19 experiences were?

20 A. I've only spoken to two
21 people.

22 557. Q. And who are those two?

23 MR. ROSENFELD: Let's be clear.
24 She worked, at the time, in the Toronto Office and
25 the Ottawa Office.

Page 131

1 So that is based on her
2 experiences.

3 MR. MARTIN: I am asking her: Out
4 of the 8,000 people, how many she spoke to.

5 THE WITNESS: I don't know the
6 8,000 people.

7 558. Q. Who are the two you have
8 spoken to?

9 A. So it was ---
10 When Haidar's name came up, that
11 was, like...

12 I spoke to him, like, two years
13 ago.

14 He worked with me the whole time.
15 The six, seven months he was at Just Energy, he was
16 always right beside me.

17 559. Q. He was at Just Energy for
18 longer than six or eight months.

19 A. Yeah. But...

20 No. Like, the time that he spent
21 with me.

22 560. Q. That you were there.

23 A. Yeah.

24 561. Q. Yes. Okay. And other than
25 Haidar Omarali, the other person you spoke to

March 28, 2019

1 was...?

2 A. There was a person that called
3 me...

4 His name was Rob.

5 He asked me what do I think about
6 this, and I said: Oh, my God, I don't even
7 know..."

8 562. Q. About the experiences that you
9 just talked about, anyways.

10 That's fine.

11 Other than those two, you didn't
12 speak to any of the other 8,000-odd people about
13 what might have been unique about their
14 experiences, have you?

15 A. No.

16 MR. MARTIN: Those are my
17 questions. Thank you.

18 MR. ROSENFELD: Thank you.

19 THE WITNESS: That's it?

20 MR. MARTIN: Yes. Thank you.

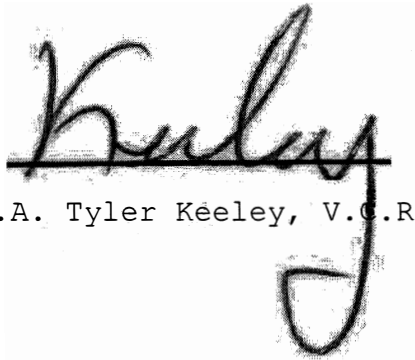
21 THE WITNESS: Thank you.

22 --- Whereupon the cross-examination concluded at
23 12:20 p.m.

24

25

I HEREBY CERTIFY THAT I have, to the best
of my skill and ability, accurately recorded
by Steno mask and transcribed therefrom,
the foregoing proceeding.

A handwritten signature in black ink, appearing to read "Tyler Keeley", is written over a horizontal line. The signature is stylized and cursive. Below the signature, the text "S.A. Tyler Keeley, V.C.R." is printed in a standard serif font.

S.A. Tyler Keeley, V.C.R.

**Haidar Omarali
Plaintiff**

and **JUST ENERGY GROUP INC., ET AL
Defendants**

Court File No: CV-15-52749300CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at **TORONTO**

Proceeding under the *Class Proceedings Act, 1992*

**TRANSCRIPT BRIEF
(Summary Judgment Motion)
Returnable June 11-13, 2019**

KOSKIE MINSKY LLP
900-20 Queen Street West
Toronto, ON M5H 3R3

David Rosenfeld LSO#: 51143A
Tel: 416-595-2700
Fax: 416-204-2894

Janeta Zurakowski LSO #75326P
Tel: 416-595-2124
Fax: 416-204-2890

Lawyers for the Plaintiff