

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
14487893 CANADA INC., 11368, LLC, 12175592 CANADA INC., DRAG
MARKETING LLC, JUST SOLAR HOLDINGS CORP., JUST ENERGY
CONNECTICUT CORP., AND JUST ENERGY (FINANCE) HUNGARY ZRT.
(each, an "**Applicant**", and collectively, the "**Applicants**")

**Case Conference Brief of Haidar Omarali, in his capacity as
Representative Plaintiff of the certified class (the "Class) in
Omarali v. Just Energy, Court File No. CV-15-527493-00CP**

1. This case conference has a threefold purpose: first, to schedule a motion to determine if Class members are entitled to certain insurance proceeds in respect of unpaid wages and benefits; second, to the extent necessary, to obtain directions with respect to the conduct of that motion; and third, to address the production of certain additional information in Just Energy's possession.

Class Members' Claim to Insurance Proceeds

2. The moving party, Haidar Omarali, represents a Class of 7,723 employees who worked for Just Energy Group Inc., Just Energy Corp., and Just Energy Ontario L.P. (collectively, "**Just Energy**") but were misclassified as "independent contractors". These misclassified employees formed a host of door-to-door marketers that Just Energy used to sign up its customers, and generate hundreds of millions of dollars in revenue. Just Energy never paid Class members minimum wage, overtime, holiday and vacation pay to which they would be entitled as employees, giving rise to a class action (the "**Omarali Action**") that was certified nearly seven years ago.

3. On the eve of the common issues trial, Just Energy filed for CCAA protection, staying the Omarali Action. Instead of the crucible of a trial, Class members took part in a CCAA claims process. As part of that claims process and given the state of affairs of Just Energy, the Class filed a claim for unpaid wages against Just Energy's then-current directors and officers, who are liable for unpaid wage debts pursuant to the Ontario *Business Corporations Act* ("**OBCA**") and *Canada Business Corporations Act* ("**CBCA**"). Class members' claims were disputed but never determined in the claims process, which stalled in light of a restructuring transaction that did not generate any meaningful recovery for unsecured creditors.

4. Just Energy has no ability to pay debts owing to its employees. Just Energy does have insurance indemnifying its directors and officers ("**D&Os**") for statutory claims as a result of unpaid wages to employees, purchased on the day of its CCAA filing. The insurance indemnifies the D&Os for "salary, wages and related amounts such as vacation pay or holiday pay that are or were payable by [Just Energy] to an employee for services performed if [the D&O] has become personally liable to make such payment under any applicable federal, provincial, territorial or municipal statutory provision". These insurance policies cover employees' unpaid wage claims.

5. In approving a restructuring transaction involving Just Energy, this Court made an order permitting Class members to pursue statutory wage claims and join applicable insurers.¹ This was a practical and sensible solution given the outcome of the restructuring transaction and the Class members' statutory rights, and to facilitate a determination of Class members' post-filing wage claims in a single proceeding limited to the only funds not already accounted for in the CCAA. Mr. Omarali, on the Class members' behalf, seeks to schedule that motion seeking such relief.

¹ [Approval and Vesting Order dated November 3, 2023](#), ss. 26 to 31.

Procedure for Adjudication of Class Members' Motion

6. The gravamen of the motion is Class members' statutory entitlement to seek unpaid wages from Just Energy's D&Os in circumstances where Just Energy cannot satisfy the debt. The prayer for relief is built around that entitlement, the extent of insurance coverage, and the status of these CCAA proceedings. The certified Omarali Action – including its common issues and evidentiary record – forms the backdrop of this motion but this motion is not a continuation of that litigation. The Class members' claim for relief arises out of the distinct circumstances of Just Energy's CCAA.

7. The Class members' motion gives rise to a three-step inquiry, which can be determined through a one-day hearing. The first issue is whether class members are employees for purposes of s. 131 of the OBCA and/or s. 119 of the CBCA (the "**Statutory Wage Provisions**"). The second issue is whether Just Energy is unable to satisfy the debts owing to these employees for the purposes of the Statutory Wage Provisions. The third issue is whether, if such claims were made against Just Energy's D&Os, their insurance coverage is triggered. If the answer to all three is "yes", Class members should be permitted to claim against insurance proceeds directly.

8. The misclassification issue should have been determined as part of Just Energy's claims process in the CCAA proceeding. As the claim was initially disallowed and then subject to a Notice of Dispute, it would have been decided on the abbreviated process typically applied to such dispute in these CCAA proceedings. The claims process was not fully completed in the nearly 3 years of the CCAA proceedings before the restructuring transaction concluded.² Had the misclassification issue been decided in Class members' favour, the Class would have had their claims under the Statutory Wage Provisions against Just Energy's D&Os determined in the same claims process.

² See [Just Energy Group Inc. et. al. v. Morgan Stanley Capital Group Inc. et. al., 2022 ONSC 3470](#) at paras. 48-55 and [Unofficial Transcript of the Endorsement of Justice McEwen dated August 18, 2022](#) pg. 6 ([link to handwritten](#)).

Just Energy's D&Os would have, in turn, sought to have coverage determined in the CCAA if they could not work out a deal with their insurers. The Class members' motion is, practically, a request to have all of these steps determined in one motion brought by them, after which the last outstanding matter in the CCAA would be resolved and the proceedings may end.

9. This case conference is an opportunity for the insurers to set out their position regarding the foregoing adjudication procedure, for Class Counsel to answer any questions the Court may have regarding the proposed adjudication procedure, for all the parties to obtain any direction necessary to ensure these questions may be determined at a one dispositive motion, and to schedule the necessary hearing date.

Additional Information in Just Energy's Possession

10. Depending on the Court's direction, the Class members may require additional information from Just Energy. This is information in Just Energy's possession relating to each Class member (such as commencement dates, termination dates, wages paid), that will assist in calculating the debt owed to each Class member. The information is required prior to the hearing only if the Court determines that the Class members' damages have to be precisely quantified.

11. In Mr. Omarali's view, the motion could be decided without proving the quantum of class members damages or, alternatively, using only Mr. Omarali's circumstances as a "test case" to precisely quantify the debt. If so, collecting this information could be deferred to a later date. If not, then the information will have to be produced prior to the hearing to permit an aggregate damages assessment. If the Court considers quantification of the debt to be a necessary element in deciding the motion, the test case option will achieve greater efficiency and judicial economy.

Schedule "A" - Proposed Litigation Timetable

The following deadlines are designed to work backwards from the scheduled hearing date:

- **Claimants' Motion Record:** Served and filed on August 25, 2023
- **Insurers' Responding Record:** 10 weeks before the hearing.
- **Cross-Examination Completed:** 7 weeks before the hearing.
- **Claimants' Factum (25 pages or less):** 5 weeks before the hearing.
- **Insurers' Factum (25 pages or less):** 3 weeks before the hearing.
- **Claimants' Reply (5 pages or less):** 2 weeks before the hearing.
- **Pre-Motion Case Conference:** 1 week before the hearing.

JUST ENERGY GROUP INC., et al.
Applicants

and

Haidar Omarali
Respondent

Court File No.: CV-21-00658423-00CL

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SUPERIOR COURT OF JUSTICE - COMMERCIAL LIST

Proceeding commenced at Toronto

CASE CONFERENCE BRIEF OF HAIDAR OMARALI

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