

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

BETWEEN:

**KINGSETT MORTGAGE CORPORATION**

Applicant

- and -

**30 ROE INVESTMENTS CORP.**

Respondent

**IN THE MATTER OF AN APPLICATION UNDER SUBSECTION 243(1) OF THE  
*BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED, AND  
SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C.43, AS AMENDED**

**AFFIDAVIT OF LORRAINE KLEMENS**

I, **LORRAINE KLEMENS**, of the City of Mississauga, in the Province of Ontario,

**MAKE OATH AND SAY:**

1. I am a Law Clerk at the law firm of Bennett Jones LLP, counsel for KingSett Mortgage Corporation (the "Applicant") in the above-noted proceeding (the "Receivership Proceedings"). As such, I have personal knowledge of the matters to which I hereinafter depose in this Affidavit. Where I do not have personal knowledge of the matters set out herein, I have stated the source of my information and, in all cases, believe it to be true.

2. By email endorsement issued on April 20, 2022 (the "Endorsement"), the Honourable Justice Cavanagh set a timetable (the "Timetable") with respect to the hearing of the Applicant's application in the Receivership Proceedings and directed the Applicant and 30 Roe Investments

Corp. (the "**Respondent**") to comply with the Timetable. A copy of the Endorsement is attached hereto as **Exhibit "A"**.

3. A copy of an email dated April 21, 2022 from Raymond Zar, the Respondent's Chief Executive Officer, to Sean Zweig, counsel to the Applicant, with respect to the Respondent's requisition for an assessment under subsection 43(4) of the *Mortgages Act* (Ontario), together with the form included therewith, is attached hereto as **Exhibit "B"**.

4. A copy of an email dated April 22, 2022 (the "**April 22 Email**") from Mr. Zar to Richard Swan, counsel to the Applicant, and Mr. Zweig regarding the Respondent's intention to bring a motion to remove Bennett Jones LLP as counsel of record for the Applicant and serve its responding record in the Receivership Proceedings only once such a motion is heard is attached hereto as **Exhibit "C"**.

5. A copy of a chain of email correspondence between Mr. Zar and Mr. Swan originating from the April 22 Email and culminating in an email dated April 25, 2022 (the "**April 25 Email**") from Mr. Zar to Mr. Swan is attached hereto as **Exhibit "D"**. In addition to the April 22 Email and the April 25 Email, this email chain is comprised of the following:

- (a) an email dated April 22, 2022 from Mr. Swan to Mr. Zar attached hereto as **Exhibit "E"**;
- (b) an email dated April 22, 2022 from Mr. Zar to Mr. Swan attached hereto as **Exhibit "F"**;
- (c) an email dated April 22, 2022 from Mr. Swan to Mr. Zar attached hereto as **Exhibit "G"**;

- (d) an email dated April 22, 2022 from Mr. Zar to Mr. Swan attached hereto as **Exhibit "H";**
- (e) an email dated April 23, 2022 from Mr. Swan to Mr. Zar attached hereto as **Exhibit "I";** and
- (f) an email dated April 23, 2022 from Mr. Zar to Mr. Swan attached hereto as **Exhibit "J".**

SWORN BEFORE ME over videoconference on )  
this 26<sup>th</sup> day of April 2022. The affiant was located )  
in the City of Toronto, in the Province of Ontario, )  
and the Commissioner was located in the City of )  
Oakville, in the Province of Ontario. This affidavit )  
was commissioned remotely as a result of COVID- )  
19 and the declaration was administered in )  
accordance with Ontario *Regulation 431/20.* )

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*Joshua Foster*)  
\_\_\_\_\_  
**JOSHUA FOSTER**)  
A Commissioner for Oaths in and for the Province )  
of Ontario )

*Lorraine Klemens*)

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**LORRAINE KLEMENS**)

THIS IS EXHIBIT "A" REFERRED TO IN THE  
AFFIDAVIT OF LORRAINE KLEMENS  
SWORN BEFORE ME THIS 26<sup>th</sup> DAY OF APRIL, 2022

*Joshua Foster*  
A Commissioner for taking Affidavits, etc.  
Joshua Foster

**From:** [Cavanagh, Justice Peter \(SC\)](#)  
**To:** [Joshua Foster](#); [Richard Swan](#); [rz@roehamptoncapital.com](mailto:rz@roehamptoncapital.com)  
**Cc:** [JUS-G-MAG-CSD-Toronto-SCJ Commercial List](#); [Dao, Mai \(MAG\)](#)  
**Subject:** In the Matter of an Application Under Subsection 243(1) of the Bankruptcy and Insolvency Act and Section 101 of the Courts of Justice Act - CV-22-00674810-00CL  
**Date:** Wednesday, April 20, 2022 2:13:59 PM

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**Appearances:**

Richard Swan and Joshua Foster for Applicant  
Raymond Zar – A director of the Respondent

**Endorsement:**

This application for the appointment of a receiver is scheduled for a hearing on May 6, 2022. The application was adjourned, most recently on March 8, 2022, when a date was set for a motion by counsel for the Respondent to be removed as counsel of record. At that scheduling hearing, I also set a hearing date for the application. On April 11, 2022, Justice Penny released an endorsement and ordered that counsel of record for the Respondent be removed.

The Applicant requests a timetable for steps leading to the May 6, 2022 hearing. Mr. Zar advises that the Respondent intends to move to remove counsel of record for the Applicant and he asked that the May 6 hearing date be reserved for this proposed motion. No motion has been brought by the Respondent. I declined this request.

The following timetable is approved and the parties are directed to comply with it:

Monday at 10:00 a.m. on April 25	Deadline for Respondent's Responding Record
Tuesday at 6:00 p.m. on April 26	Deadline for Applicant's Reply Record, if any
April 28-29	Cross-examinations, if any
Monday, May 2	Deadline for applicant's factum
Tuesday, May 3	Deadline for Respondent's factum



Cavanagh J.

THIS IS EXHIBIT "B" REFERRED TO IN THE  
AFFIDAVIT OF LORRAINE KLEMENS  
SWORN BEFORE ME THIS 26<sup>th</sup> DAY OF APRIL, 2022

*Joshua Foster*  
A Commissioner for taking Affidavits, etc.  
Joshua Foster

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**From:** Raymond Zar <rz@roehamptoncapital.com>  
**Sent:** Thursday, April 21, 2022 5:47 PM  
**To:** Sean Zweig  
**Cc:** Richard Swan; Joshua Foster  
**Subject:** Re: IN THE MATTER OF THE MORTGAGES ACT, R.S.O., 1990, C.M - Court File No. CV-22-00679985-0000  
**Attachments:** 2022-04-14 \_ 30\_Roe\_Investments\_Corp \_ Mortgages\_Act\_Form  
CV-22-00679985-0000.pdf

Mr. Swan and Mr. Zweig,

I have attached the court-issued Mortgages Act Assessment Form, which the court has marked up to indicate the date and time of the hearing. This is how the court sent the document to us, and this is how we are serving it upon you. All of the invoices you sent us have been filed with the court and are part of this assessment. Please let me know if you have any questions.



**Raymond Zar, MBA**  
CEO  
rz@roehamptoncapital.com | D: 416-322-8509  
**ROEHAMPTON CAPITAL**  
416-322-8500 | RoehamptonCapital.com  
Two Bloor Street East, Suite 3505, Toronto ON, M4W 1A8

On Tue, Apr 19, 2022 at 6:08 PM Raymond Zar <[rz@roehamptoncapital.com](mailto:rz@roehamptoncapital.com)> wrote:

Mr. Zweig,

As you know, you will be a witness at trial and have a conflict, and 30 Roe objects to you and your firm continuing to represent KingSett in these matters. While we appreciate your thoughtfulness in having Mr. Swan take the lead on the file since you discovered your conflict, that step is not sufficient, and Bennett Jones must resign entirely, just as Paliare Roland did since discovering it will be a witness.

Notwithstanding the preceding, as an added measure to ensure KingSett does not cause more delays by evading service, you have been served with the below and attached Section 43 Assessment as the current counsel of record for KingSett.

Given that there are pending factual corrections to Justice Penny's Endorsement, and as of this writing, the Order removing Paliare Roland as 30 Roe's counsel of record has not been finalized and entered, I have also copied Mr. Rosenberg and Mr. Starnino, who remain counsel of record to 30 Roe.

Should KingSett continue to act unlawfully by refusing to issue proper payout statements, we will seek a court-ordered discharge and have the funds remain in court pending trial, or we may move under the Kwinch procedure and extend the mortgage until completion of the Section 43 assessment.

The mortgagee can call itself "King," but it is bound by the same laws as us commoners, and no amount of petulant tantrums will change that.



**Raymond Zar, MBA**

CEO

[rz@roehamptoncapital.com](mailto:rz@roehamptoncapital.com) | D: 416-322-8509

**ROEHAMPTON CAPITAL**

416-322-8500 | [RoehamptonCapital.com](http://RoehamptonCapital.com)

Two Bloor Street East, Suite 3505, Toronto ON, M4W 1A8

----- Forwarded message -----

From: **Raymond Zar** <[rz@roehamptoncapital.com](mailto:rz@roehamptoncapital.com)>

Date: Tue, Apr 19, 2022 at 5:08 PM

Subject: IN THE MATTER OF THE MORTGAGES ACT, R.S.O., 1990, C.M - Court File No. CV-22-00679985-0000

To: Scott Coates <[SCoates@kingsettcapital.com](mailto:SCoates@kingsettcapital.com)>

Cc: Jon Love <[jlove@kingsettcapital.com](mailto:jlove@kingsettcapital.com)>, Rob Kumer <[RKumer@kingsettcapital.com](mailto:RKumer@kingsettcapital.com)>

April 19, 2022

**DELIVERED VIA EMAIL**

KingSett Mortgage Corporation  
Attention: Scott Coats, President  
40 King Street West, Suite 3700  
Toronto ON, M5H 3Y2

Dear Mr. Coates:

**Re: Court File No. CV-22-00679985-0000**  
**IN THE MATTER OF THE MORTGAGES ACT, R.S.O., 1990, C.M**  
**30 Roe Investments Corp. ("Mortgagor")**  
**KingSett Mortgage Corporation. ("Mortgagee")**

Pursuant to Section 43(4) of the *Mortgages Act*, the Mortgagee's costs have been requisitioned for assessment by the Assessment Office of the Superior Court of Justice.

Enclosed and served upon you is the issued Mortgage Act Assessment form bearing court file number: CV-22-00679985-0000.

The Assessment Office has designated April 27, 2022, at 10:45 am for a virtual preliminary hearing to schedule the full assessment, the details of which are enclosed as Schedule A.

Yours truly,

**30 ROE INVESTMENTS CORP.**  
Per: "Raymond Zar"

Raymond Zar

Encl. Issued Mortgages Act Assessment Form (CV-22-00679985-0000)



**Raymond Zar, MBA**

CEO

[rz@roehamptoncapital.com](mailto:rz@roehamptoncapital.com) | D: 416-322-8509

**ROEHAMPTON CAPITAL**

416-322-8500 | [RoehamptonCapital.com](http://RoehamptonCapital.com)

Two Bloor Street East, Suite 3505, Toronto ON, M4W 1A8

**ONTARIO**

*Superior Court of Justice  
Cour Supérieure De Justice*

IN THE MATTER OF THE MORTGAGES ACT, R.S.O., 1990, C.M. 40 AND IN THE MATTER OF  
*dans l'affaire concernant la loi sur les hypothèques, r.s.o., 1990, c.m. 40 et act, r.s.o., 1990, c.m. 40 et dans l'affaire entre*  
BETWEEN/entre

MORTGAGOR  
*débiteur hypothécaire*

30 ROE INVESTMENTS CORP.

AND/et

KINGSETT MORTGAGE CORPORATION

MORTGAGEE  
*créancier hypothécaire*

**I HEREBY APPOINT**

*je désigne par la présente*

THE DAY OF/ le jour de APRIL 27 20 22 AT/à THE HOUR OF/l'heure de: 10:45 A.M/P.M

TO ASSESS THE COSTS OF THE ABOVE-NAMED MORTGAGEE PURSUANT TO SUBSECTION 43(4) OF THE MORTGAGES ACT. *évaluer les coûts de l'above nommé créancier hypothécaire conformément au paragraphe 43(4) de la loi sur les prêts hypothécaires.*

**VIRTUALLY BY ZOOM, COORDINATES TO FOLLOW**

PLEASE ATTEND AT THE ASSESSMENT ~~ONLINE~~ COURTHOUSE AT 393 UNIVERSITY AVENUE, 6<sup>TH</sup> FLOOR TORONTO, *ontario veuillez assister au comptoir d'évaluation au palais de justice au 393 university avenue, 6<sup>e</sup> floor toronto, ontario*

TO ASCERTAIN WHERE YOUR HEARING WILL BE CONDUCTED  
*pour déterminer où votre audition aura lieu*

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Dated/daté

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Assessment Officer/Liquidateur

NAME, ADDRESS, TELEPHONE & EMAIL OF THE PARTY/SOLICITOR WHO REQUISITIONED THE ASSESSMENT/nom, adresse, téléphone et courriel de la partie/avocat qui a réquisitionné l'évaluation	NAME, ADDRESS, TELEPHONE & EMAIL OF THE PARTY/SOLICITOR OF WHO NOTICE IS SERVED/nom, adresse, téléphone et courriel de la partie/avocat de l'avis de personne qui est signifié
Raymond Zar 3500-2 Bloor Street East, Toronto ON, M4W 1A8 Tel: 416-322-8509 Email: rz@roehamptoncapital.com	KINGSETT MORTGAGE CORPORATION Care of: Sean Zweig 3400 One First Canadian Place, P.O. Box 130, Toronto ON, M5X 1A4 Tel: 416-863-1200 Email: zweigs@bennettjones.com

THIS IS EXHIBIT "C" REFERRED TO IN THE  
AFFIDAVIT OF LORRAINE KLEMENS  
SWORN BEFORE ME THIS 26<sup>th</sup> DAY OF APRIL, 2022

Joshua Foster  
A Commissioner for taking Affidavits, etc.  
Joshua Foster

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**From:** Raymond Zar <rz@roehamptoncapital.com>  
**Sent:** Friday, April 22, 2022 9:49 AM  
**To:** Richard Swan; Sean Zweig  
**Cc:** Joshua Foster  
**Subject:** Motion to remove Bennett Jones as Counsel for KingSett

Mr. Swan and Mr. Zweig,

Given we will be bringing a motion in short order to remove Bennett Jones as counsel of record for KingSett, you should not expect to receive our responding record for the receivership Application until our removal motion is heard and dealt with.



**Raymond Zar, MBA**

CEO

[rz@roehamptoncapital.com](mailto:rz@roehamptoncapital.com) | D: 416-322-8509

**ROEHAMPTON CAPITAL**

416-322-8500 | [RoehamptonCapital.com](http://RoehamptonCapital.com)

Two Bloor Street East, Suite 3505, Toronto ON, M4W 1A8

THIS IS EXHIBIT "D" REFERRED TO IN THE  
AFFIDAVIT OF LORRAINE KLEMENS  
SWORN BEFORE ME THIS 26<sup>th</sup> DAY OF APRIL, 2022

*Joshua Foster*  
A Commissioner for taking Affidavits, etc.  
Joshua Foster

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**From:** Raymond Zar <rz@roehamptoncapital.com>  
**Sent:** Monday, April 25, 2022 2:34 PM  
**To:** Richard Swan  
**Cc:** Joshua Foster; Sean Zweig  
**Subject:** Re: Motion to remove Bennett Jones as Counsel for KingSett

Mr. Swan,

While we object to Bennett Jones acting as counsel for KingSett, at this time, we are of the view that bringing a motion to remove your firm for a receivership hearing that will not proceed would be a waste of the court's time.

As such, KingSett should expect to receive our formal request for discharges as we will be tendering the \$1,875,000 and relying on Section 43(3) of the *Mortgages Act* for costs to only be payable after the court's assessment process, which is presently underway, is completed.

We will not be providing any releases. We will rely on KingSett's undertaking as to damages in seeking a receivership as one of the grounds to pursue KingSett for the significantly higher interest expense we will incur to payout KingSett before May 6, 2022. Should we face any other damages arising from KingSett's improper enforcement, we will claim those costs as well in our action against KingSett.

Finally, I note that missing from your motion record is a copy of the executed Fifth Amendment, extending the Loan to January 1, 2022. As you know, we extended the Loan once more to April 1, 2022. All interest is up to date, and there is no default under the Loan.

The Borrower categorically denies the validity and veracity of KingSett's claims, demands and notices.



**Raymond Zar, MBA**

CEO

[rz@roehamptoncapital.com](mailto:rz@roehamptoncapital.com) | D: 416-322-8509

**ROEHAMPTON CAPITAL**

416-322-8500 | [RoehamptonCapital.com](http://RoehamptonCapital.com)

Two Bloor Street East, Suite 3505, Toronto ON, M4W 1A8

On Sat, Apr 23, 2022 at 5:03 PM Raymond Zar <[rz@roehamptoncapital.com](mailto:rz@roehamptoncapital.com)> wrote:

Mr. Swan,

You seem to misunderstand the situation.

The tapes concerning Mr. Zweig and Mr. Rosenberg entirely exonerate 30 Roe but are highly damaging to the profession. There is a reason Justice Cavanagh said what he said on Wednesday, and it is in line with the sentiments made by Justice Penny, who listened to the tapes. Justice Firestone has also been apprised of the situation. If you are still confused - the court is not pleased about the recordings and does not look forward to having them played again.

Your unsolicited advice and warnings are appreciated, but please worry about yourself - half of my family was murdered by the regime that overthrew the Persian monarchy, and at seven years old, I was held hostage. If you think that I am intimidated by a fund manager or that I don't have contingency after contingency lined up, then you don't understand what an opponent that had to fight for his life is made of.

Either engage in the settlement discussion or decline. But please, make up your mind so we can move this along.

On Sat, Apr 23, 2022 at 4:10 PM Richard Swan <[SwanR@bennettjones.com](mailto:SwanR@bennettjones.com)> wrote:

Mr. Zar,

I don't intend to repeatedly respond to the same untenable assertions that you keep making, but I will reply one last time so that the record is clear and unambiguous and there can be no doubt that you have been repeatedly warned of the consequences of failing to serve your substantive responding application material by Monday April 25, 2022 at 10 am ET in accord with the court-ordered schedule directed by Justice Cavanagh on April 20. If you fail to serve responding application material by April 25 at 10 am, you will have exhausted your last opportunity to do so in this proceeding (having been given multiple opportunities and second chances by the Court), and the receivership application is almost certain to proceed and be heard on the merits on May 6 in the absence of any responding material from you. Consider yourself warned, multiple times and in the clearest of terms.

1. All of the contentions you raise in your string of emails below – (a) that you intend to bring a removal motion against Bennett Jones; (b) that you believe that such a potential motion should be heard before the receivership application is heard on May 6; (c) that you intend to finally engage new counsel; (d) that you intend to rely on the *Kwinch* procedure -- were raised before Justice Cavanagh on April 20, and His Honour despite your contentions set a schedule leading to the May 6 hearing date and made clear that the receivership application would proceed on the merits on May, just as His Honour had first directed on March 8, at which time he also said that you needed to line up alternative counsel in a timely manner.
2. You have been talking about bringing a Bennett Jones removal motion for almost two weeks (knowing all the while of the May 6 application hearing date), and have still not served anything. Presumably your delay in doing so is strictly tactical, or perhaps the threat of such an un-brought motion is the tactical maneuver.
3. If you were to bring a removal motion against Bennett Jones, we would of course review and consider its contents, but our present expectation (subject to actually seeing such a motion) is that we would ask Justice Cavanagh to hear the motion at the outset of the hearing slot on May 6. In the event that Bennett Jones were removed (which at present we consider highly unlikely), KingSett likely intends to have alternative counsel briefed and available to argue the receivership application on May 6. In other words, if any such removal motion were brought, and even if it were to succeed (however unlikely), such an event would have no impact on KingSett's ability to proceed with the receivership application on the merits on May 6. Therefore, you should assume with near certainty that the receivership application will proceed on May 6 even if you bring such a motion to remove Bennett Jones.

4. You have known since February 28 (at the very latest) that Paliare Roland was moving to get off the record as your counsel. At the case conference before Justice Cavanagh on March 8, and reiterated in His Honour's Endorsement of March 8 when he set an April 11 date for the Paliare removal motion, Justice Cavanagh stated: "The Applicant's application will be heard before me on May 6, 2022 at 10:00 for 2 hours. The Respondent is responsible for retaining counsel, if necessary, and following a timetable to meet this hearing date." Justice Penny in his April 11 Endorsement on the Paliare removal motion reiterated the same point, stating: "The May 6 return date for the receivership application was set on March 8 knowing of today's pending motion. The Client has had since February 23 to seek out new counsel." You challenge the February 23 date, but you certainly knew of the coming Paliare removal motion by no later than February 28 (when we were first told of it in an email copied to you), and likely earlier. The point is that you have had almost two months to line up new counsel, and you have apparently done so (you told Justice Cavanagh on the April 20 attendance that you had new counsel lined up if needed), but no new counsel has yet gone on the record. Presumably you have delayed having your new counsel go on the record for tactical reasons. This has a notable parallel in your decision to have Paliare Roland not go on the record until the morning of the February 22 hearing date. The court will be well aware of the history set out in this paragraph. Delaying engaging and having new counsel go on the record, in view of all of these well-established circumstances, will almost certainly not gain another adjournment (there have been three adjournments already at your request).

5. You have referred several times to employing the *Kwinch* procedure (stating below that you have used it "countless times"). If you were indeed serious about using the *Kwinch* procedure, you presumably would have by now tendered the principal amount etc. owing under the Loan. The evident inference is that 30 Roe does not have the funds or alternative financing to do so. In any event, there is good reason to believe that the *Kwinch* procedure would be either inapplicable or inappropriate in the present case

In all of these circumstances, it would be quite clear to any objective observer (including the Court) that the receivership application will proceed on the merits on May 6, and you should fully assume that it will, or take a contrary approach very strictly at your own peril, including as to the materials deadline. I cannot state this any more emphatically or clearly, and don't intend to do so again. If necessary, this email chain will be put before the court.

**Richard B. Swan**

Partner and Department Co-Head, Litigation, Bennett Jones LLP  
3400 One First Canadian Place, P.O. Box 130, Toronto, ON, M5X 1A4  
T. 416 777 7479 | F. 416 863 1716

**From:** Raymond Zar <[rz@roehamptoncapital.com](mailto:rz@roehamptoncapital.com)>  
**Sent:** Friday, April 22, 2022 8:06 PM  
**To:** Richard Swan <[SwanR@bennettjones.com](mailto:SwanR@bennettjones.com)>  
**Cc:** Joshua Foster <[FosterJ@bennettjones.com](mailto:FosterJ@bennettjones.com)>; Sean Zweig <[ZweigS@bennettjones.com](mailto:ZweigS@bennettjones.com)>  
**Subject:** Re: Motion to remove Bennett Jones as Counsel for KingSett

Mr. Swan,

If that were true, then the last time a motion was brought seeking to remove counsel for one of the parties, the Judge would have left the receivership hearing date the same. I don't believe you can enforce a timeline that was established prior to a motion being brought to remove counsel of record. I expect the Court will follow the precedent set in these proceedings and suspend the receivership hearing pending the determination of the motion to remove Bennett Jones.

In any event, I don't believe there is a Judge in the country that would grant a receivership as the remedy for a mortgage that is current and with the Borrower tendering the entire principal amount while awaiting completion of the court's assessment process under Section 43 of the *Mortgages Act*. The *Kwinch* procedure is well established, and I have used it countless times in response to lenders that try to take advantage of Borrowers by gouging them with exorbitant costs. The Court will not punish the Borrower for exercising its statutory rights, nor will it deviate from the established procedure under *Kwinch*.

The receivership application will not proceed on May 6, and you should not expect any responding materials from us until our motion to remove Bennett Jones is adjudicated.

As for examining counsel for the opposing law firm - I am sure you are correct and imagine that is why you took over from Mr. Zweig. However, I am advised that Bennett Jones' risk committee would be reluctant to approve Mr. Zweig being examined while the firm represents KingSett. The conflict of interest would be too great, and given that LawPro is already apprised of Mr. Rosenberg's situation and the tapes, Mr. Zweig and your firm would likely lose insurance coverage were you to act despite the clear conflict of interest.

With all of that said, I hope that none of this will be necessary.



**Raymond Zar, MBA**

CEO

[rz@roehamptoncapital.com](mailto:rz@roehamptoncapital.com) | D: 416-322-8509

**ROEHAMPTON CAPITAL**  
416-322-8500 | RoehamptonCapital.com

Two [Bloor Street East, Suite 3505, Toronto ON, M4W 1A8](#)

On Fri, Apr 22, 2022 at 2:52 PM Richard Swan <[SwanR@bennettjones.com](mailto:SwanR@bennettjones.com)> wrote:

Mr. Zar,

You are incorrect in your email below. I reiterate my email two below and the statements contained therein. Whether or not you bring a motion to seek to disqualify Bennett Jones, the receivership application will proceed on the merits on May 6 (whether argued by Bennett Jones as is likely, or someone else), and if you fail to deliver responding application material in accordance with His Honour's scheduling Endorsement by April 25 at 10 am, the matter will proceed without evidence from 30 Roe.

While we were not present during the substance of the Paliare removal motion, Justice Penny's Endorsement does not contain such a finding.

Moreover, you are incorrect that proposing to examine or examining a witness from the opposing law firm disqualifies that law firm from continuing to act (if that were the case (which it is not) parties could readily knock out the opposing party's counsel simply by examining that counsel). There are recognized procedures for dealing with this circumstance if it arises.

**Richard B. Swan**

Partner and Department Co-Head, Litigation, Bennett Jones LLP  
3400 One First Canadian Place, P.O. Box 130, Toronto, ON, M5X 1A4  
[T. 416 777 7479](#) | [F. 416 863 1716](#)



**From:** Raymond Zar <[rz@roehamptoncapital.com](mailto:rz@roehamptoncapital.com)>  
**Sent:** Friday, April 22, 2022 1:55 PM  
**To:** Richard Swan <[SwanR@bennettjones.com](mailto:SwanR@bennettjones.com)>  
**Cc:** Joshua Foster <[FosterJ@bennettjones.com](mailto:FosterJ@bennettjones.com)>; Sean Zweig <[ZweigS@bennettjones.com](mailto:ZweigS@bennettjones.com)>  
**Subject:** Re: Motion to remove Bennett Jones as Counsel for KingSett

Mr. Swan,

Respectfully, that is not my recollection. I recall that His Honour directed the Respondent to prepare its materials for the removal motion if it intended on bringing such a motion and that failing which, the May 6 hearing would proceed.

Given the judicial finding by Justice Penny that Mr. Rosenberg could not continue as counsel to 30 Roe because of statements made to him by Mr. Zweig, it is the Respondent's position that Bennett Jones is conflicted from representing KingSett because Mr. Zweig will be a witness in the matter as well.

In any event, even if 30 Roe were to proceed with the May 6 hearing, we would require Mr. Zweig to be examined, and that summons would trigger provisions of the *Rules of Professional Conduct* that would bar Bennett Jones from continuing to represent KingSett. This is precisely why Paliare Roland had to resign, and I remind you that your firm initiated these events - we certainly did not ask Mr. Zweig to turn our counsel into a witness and would have much preferred Mr. Rosenberg to continue representing us, given it took seven attempts to find a firm without a conflict.

**Raymond Zar, MBA**

CEO

[rz@roehamptoncapital.com](mailto:rz@roehamptoncapital.com) | D: 416-322-8509

**ROEHAMPTON CAPITAL**  
416-322-8500 | [RoehamptonCapital.com](http://RoehamptonCapital.com)

Two [Bloor Street East, Suite 3505, Toronto ON, M4W 1A8](http://Bloor Street East, Suite 3505, Toronto ON, M4W 1A8)

On Fri, Apr 22, 2022 at 11:16 AM Richard Swan <[SwanR@bennettjones.com](mailto:SwanR@bennettjones.com)> wrote:

Mr. Zar,

As you very well know, this precise issue was raised by you and dealt with at some length before Justice Cavanagh on our April 20 Chambers appointment, and you sought at that time to have the Court adjourn the May 6 Application hearing date and to have your proposed removal motion heard first. You also indicated that 30 Roe might be engaging new counsel (something that you have had multiple weeks to line up). Despite your submission, His Honour directed that the Receivership Application would proceed and be heard on the merits on May 6, and that 30 Roe was obliged to serve its responding record (if any) on that Application by no later than 10 am on Monday April 25, 2022.

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**Richard B. Swan**

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3400 One First Canadian Place, P.O. Box 130, Toronto, ON, M5X 1A4  
T. 416 777 7479 | F. 416 863 1716



BennettJones.com/100Years

**From:** Raymond Zar <[rz@roehamptoncapital.com](mailto:rz@roehamptoncapital.com)>

**Sent:** Friday, April 22, 2022 9:49 AM

**To:** Richard Swan <[SwanR@bennettjones.com](mailto:SwanR@bennettjones.com)>; Sean Zweig <[ZweigS@bennettjones.com](mailto:ZweigS@bennettjones.com)>

**Cc:** Joshua Foster <[FosterJ@bennettjones.com](mailto:FosterJ@bennettjones.com)>  
**Subject:** Motion to remove Bennett Jones as Counsel for KingSett

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SWORN BEFORE ME THIS 26<sup>th</sup> DAY OF APRIL, 2022

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*Joshua Foster*  
A Commissioner for taking Affidavits, etc.  
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**Sent:** Friday, April 22, 2022 11:16 AM  
**To:** Raymond Zar  
**Cc:** Joshua Foster; Sean Zweig  
**Subject:** RE: Motion to remove Bennett Jones as Counsel for KingSett

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**Sent:** Friday, April 22, 2022 8:06 PM  
**To:** Richard Swan  
**Cc:** Joshua Foster; Sean Zweig  
**Subject:** Re: Motion to remove Bennett Jones as Counsel for KingSett

Mr. Swan,

If that were true, then the last time a motion was brought seeking to remove counsel for one of the parties, the Judge would have left the receivership hearing date the same. I don't believe you can enforce a timeline that was established prior to a motion being brought to remove counsel of record. I expect the Court will follow the precedent set in these proceedings and suspend the receivership hearing pending the determination of the motion to remove Bennett Jones.

In any event, I don't believe there is a Judge in the country that would grant a receivership as the remedy for a mortgage that is current and with the Borrower tendering the entire principal amount while awaiting completion of the court's assessment process under Section 43 of the *Mortgages Act*. The *Kwinch* procedure is well established, and I have used it countless times in response to lenders that try to take advantage of Borrowers by gouging them with exorbitant costs. The Court will not punish the Borrower for exercising its statutory rights, nor will it deviate from the established procedure under *Kwinch*.

The receivership application will not proceed on May 6, and you should not expect any responding materials from us until our motion to remove Bennett Jones is adjudicated.

As for examining counsel for the opposing law firm - I am sure you are correct and imagine that is why you took over from Mr. Zweig. However, I am advised that Bennett Jones' risk committee would be reluctant to approve Mr. Zweig being examined while the firm represents KingSett. The conflict of interest would be too great, and given that LawPro is already apprised of Mr. Rosenberg's situation and the tapes, Mr. Zweig and your firm would likely lose insurance coverage were you to act despite the clear conflict of interest.

With all of that said, I hope that none of this will be necessary.

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THIS IS EXHIBIT "I" REFERRED TO IN THE  
AFFIDAVIT OF LORRAINE KLEMENS  
SWORN BEFORE ME THIS 26<sup>th</sup> DAY OF APRIL, 2022

---

*Joshua Foster*  
A Commissioner for taking Affidavits, etc.  
Joshua Foster

---

**From:** Richard Swan  
**Sent:** Saturday, April 23, 2022 4:10 PM  
**To:** Raymond Zar  
**Cc:** Joshua Foster; Sean Zweig  
**Subject:** RE: Motion to remove Bennett Jones as Counsel for KingSett

Mr. Zar,

I don't intend to repeatedly respond to the same untenable assertions that you keep making, but I will reply one last time so that the record is clear and unambiguous and there can be no doubt that you have been repeatedly warned of the consequences of failing to serve your substantive responding application material by Monday April 25, 2022 at 10 am ET in accord with the court-ordered schedule directed by Justice Cavanagh on April 20. If you fail to serve responding application material by April 25 at 10 am, you will have exhausted your last opportunity to do so in this proceeding (having been given multiple opportunities and second chances by the Court), and the receivership application is almost certain to proceed and be heard on the merits on May 6 in the absence of any responding material from you. Consider yourself warned, multiple times and in the clearest of terms.

1. All of the contentions you raise in your string of emails below – (a) that you intend to bring a removal motion against Bennett Jones; (b) that you believe that such a potential motion should be heard before the receivership application is heard on May 6; (c) that you intend to finally engage new counsel; (d) that you intend to rely on the *Kwinch* procedure -- were raised before Justice Cavanagh on April 20, and His Honour despite your contentions set a schedule leading to the May 6 hearing date and made clear that the receivership application would proceed on the merits on May, just as His Honour had first directed on March 8, at which time he also said that you needed to line up alternative counsel in a timely manner.
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In all of these circumstances, it would be quite clear to any objective observer (including the Court) that the receivership application will proceed on the merits on May 6, and you should fully assume that it will, or take a contrary approach very strictly at your own peril, including as to the materials deadline. I cannot state this any more emphatically or clearly, and don't intend to do so again. If necessary, this email chain will be put before the court.

**Richard B. Swan**

*Partner and Department Co-Head, Litigation*, Bennett Jones LLP  
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T. 416 777 7479 | F. 416 863 1716



[BennettJones.com/100Years](http://BennettJones.com/100Years)

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**Sent:** Friday, April 22, 2022 8:06 PM  
**To:** Richard Swan <[SwanR@bennettjones.com](mailto:SwanR@bennettjones.com)>  
**Cc:** Joshua Foster <[FosterJ@bennettjones.com](mailto:FosterJ@bennettjones.com)>; Sean Zweig <[ZweigS@bennettjones.com](mailto:ZweigS@bennettjones.com)>  
**Subject:** Re: Motion to remove Bennett Jones as Counsel for KingSett

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With all of that said, I hope that none of this will be necessary.



**Raymond Zar, MBA**

CEO

[rz@roehamptoncapital.com](mailto:rz@roehamptoncapital.com) | D: 416-322-8509

**ROEHAMPTON CAPITAL**

416-322-8500 | [RoehamptonCapital.com](http://RoehamptonCapital.com)

Two Bloor Street East, Suite 3505, Toronto ON, M4W 1A8

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**Sent:** Friday, April 22, 2022 1:55 PM

**To:** Richard Swan <[SwanR@bennettjones.com](mailto:SwanR@bennettjones.com)>

**Cc:** Joshua Foster <[FosterJ@bennettjones.com](mailto:FosterJ@bennettjones.com)>; Sean Zweig <[ZweigS@bennettjones.com](mailto:ZweigS@bennettjones.com)>

**Subject:** Re: Motion to remove Bennett Jones as Counsel for KingSett

Mr. Swan,

Respectfully, that is not my recollection. I recall that His Honour directed the Respondent to prepare its materials for the removal motion if it intended on bringing such a motion and that failing which, the May 6 hearing would proceed.

Given the judicial finding by Justice Penny that Mr. Rosenberg could not continue as counsel to 30 Roe because of statements made to him by Mr. Zweig, it is the Respondent's position that Bennett Jones is conflicted from representing KingSett because Mr. Zweig will be a witness in the matter as well.

In any event, even if 30 Roe were to proceed with the May 6 hearing, we would require Mr. Zweig to be examined, and that summons would trigger provisions of the *Rules of Professional Conduct* that would bar Bennett Jones from continuing to represent KingSett. This is precisely why Paliare Roland had to resign, and I remind you that your firm initiated these events - we certainly did not ask Mr. Zweig to turn our counsel into a witness and would have much preferred Mr. Rosenberg to continue representing us, given it took seven attempts to find a firm without a conflict.

**Raymond Zar, MBA**

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Let me be as clear as possible so that there is no uncertainty: By the Direction of the Court on April 20 the Receivership Application will be proceeding and be heard on the merits on May 6, 2022, and if 30 Roe elects not to or fails to serve a responding record by April 25, 2022 at 10 am, the Receivership Application will proceed on May 6, 2022 in the absence of any evidence from 30 Roe. Service of a motion to remove Bennett Jones, or engaging new counsel when you have had multiple weeks to do so, will almost certainly have no impact on this. Justice Cavanagh has already heard these very submissions from you.

If you proceed as you set out below, you would be doing so at your peril and with an unambiguous advance warning.

If 30 Roe serves a motion to remove Bennett Jones as counsel of record, KingSett will consider (after review of such a record) the process to address that, including *potentially* agreeing to have that heard on May 6 before Justice Cavanagh as well. However, and to be absolutely clear, under no circumstances will KingSett agree to any adjournment of the May 6 hearing on the merits for the Receivership Application.

**Richard B. Swan**

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**Sent:** Friday, April 22, 2022 9:49 AM  
**To:** Richard Swan <[SwanR@bennettjones.com](mailto:SwanR@bennettjones.com)>; Sean Zweig <[ZweigS@bennettjones.com](mailto:ZweigS@bennettjones.com)>  
**Cc:** Joshua Foster <[FosterJ@bennettjones.com](mailto:FosterJ@bennettjones.com)>  
**Subject:** Motion to remove Bennett Jones as Counsel for KingSett

Mr. Swan and Mr. Zweig,

Given we will be bringing a motion in short order to remove Bennett Jones as counsel of record for KingSett, you should not expect to receive our responding record for the receivership Application until our removal motion is heard and dealt with.

**Raymond Zar, MBA**

CEO

[rz@roehamptoncapital.com](mailto:rz@roehamptoncapital.com) | D: 416-322-8509

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*Joshua Foster*  
A Commissioner for taking Affidavits, etc.  
Joshua Foster

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**From:** Raymond Zar <rz@roehamptoncapital.com>  
**Sent:** Saturday, April 23, 2022 5:04 PM  
**To:** Richard Swan  
**Cc:** Joshua Foster; Sean Zweig  
**Subject:** Re: Motion to remove Bennett Jones as Counsel for KingSett

Mr. Swan,

You seem to misunderstand the situation.

The tapes concerning Mr. Zweig and Mr. Rosenberg entirely exonerate 30 Roe but are highly damaging to the profession. There is a reason Justice Cavanagh said what he said on Wednesday, and it is in line with the sentiments made by Justice Penny, who listened to the tapes. Justice Firestone has also been apprised of the situation. If you are still confused - the court is not pleased about the recordings and does not look forward to having them played again.

Your unsolicited advice and warnings are appreciated, but please worry about yourself - half of my family was murdered by the regime that overthrew the Persian monarchy, and at seven years old, I was held hostage. If you think that I am intimidated by a fund manager or that I don't have contingency after contingency lined up, then you don't understand what an opponent that had to fight for his life is made of.

Either engage in the settlement discussion or decline. But please, make up your mind so we can move this along.

On Sat, Apr 23, 2022 at 4:10 PM Richard Swan <[SwanR@bennettjones.com](mailto:SwanR@bennettjones.com)> wrote:

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**Sent:** Friday, April 22, 2022 8:06 PM

**To:** Richard Swan <[SwanR@bennettjones.com](mailto:SwanR@bennettjones.com)>

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**From:** Raymond Zar <[rz@roehamptoncapital.com](mailto:rz@roehamptoncapital.com)>

**Sent:** Friday, April 22, 2022 9:49 AM

**To:** Richard Swan <[SwanR@bennettjones.com](mailto:SwanR@bennettjones.com)>; Sean Zweig <[ZweigS@bennettjones.com](mailto:ZweigS@bennettjones.com)>

**Cc:** Joshua Foster <[FosterJ@bennettjones.com](mailto:FosterJ@bennettjones.com)>

**Subject:** Motion to remove Bennett Jones as Counsel for KingSett

Mr. Swan and Mr. Zweig,

Given we will be bringing a motion in short order to remove Bennett Jones as counsel of record for KingSett, you should not expect to receive our responding record for the receivership Application until our removal motion is heard and dealt with.

**Raymond Zar, MBA**

CEO

[rz@roehamptoncapital.com](mailto:rz@roehamptoncapital.com) | D: 416-322-8509

**ROEHAMPTON CAPITAL**  
416-322-8500 | [RoehamptonCapital.com](http://RoehamptonCapital.com)

Two [Bloor Street East, Suite 3505, Toronto ON, M4W 1A8](http://Bloor Street East, Suite 3505, Toronto ON, M4W 1A8)

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[rz@roehamptoncapital.com](mailto:rz@roehamptoncapital.com) | D: 416-322-8509

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**IN THE MATTER OF AN APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*,  
R.S.C. 1985, c. B-3, AS AMENDED, AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C.43, AS AMENDED**

**KINGSETT MORTGAGE CORPORATION**

and

**30 ROE INVESTMENTS CORP.**

Applicant

Respondent

Court File No.: CV-22-00674810-00CL

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**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**  
Proceedings commenced in Toronto

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**AFFIDAVIT OF LORRAINE KLEMENS  
(Sworn April 26, 2022)**

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**BENNETT JONES LLP**  
One First Canadian Place, Suite 3400  
P.O. Box 130  
Toronto, ON M5X 1A4

Richard Swan (LSO# 32076A)  
Tel: (416) 777-7479  
Email: [swanr@bennettjones.com](mailto:swanr@bennettjones.com)

Sean Zweig (LSO# 57307I)  
Tel: (416) 777-6254  
Email: [zweigs@bennettjones.com](mailto:zweigs@bennettjones.com)

Joshua Foster (LSO# 79447K)  
Tel: (416) 777-7906  
Email: [fosterj@bennettjones.com](mailto:fosterj@bennettjones.com)

Lawyers for the Applicant