

**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 PROPOSED PLAN
OF COMPROMISE OR ARRANGEMENT WITH RESPECT TO
GROWTHWORKS CANADIAN FUND LTD.

**FACTUM OF THE APPLICANT
(Second Amended and Restated Discharge and Dissolution Order and Ancillary Relief
Order)
(Returnable April 22, 2026)**

April 20, 2026

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PART I. INTRODUCTION

1. After resolving all of its secured and unsecured creditor claims, GrowthWorks Canadian Fund Ltd. (the “**Fund**”), is seeking to make a Distribution¹ to its Shareholders. This motion is for minor amendments to the Amended Discharge and Dissolution Order (the “**ARDDO**”) – an order already approved by the Court setting out the process for such Distribution – which amendments will facilitate the Distribution and any further Distributions, if any.
2. The Fund obtained the original Discharge and Dissolution Order in January 2023 and has been dealing with various challenges since that time, which have delayed the Distribution.²
3. Among those challenges, have been issues associated with obtaining the record of the Fund’s shareholders, shareholder addresses, shareholdings needed to make the distribution (the “**Shareholder Register**”) from the Fund’s administrative services provider, IAS. Multiple court appearances have occurred between the Fund, the Monitor, and IAS in this regard.³
4. In order to be in a position to move forward with the Distribution without further delay, the Fund entered into a settlement of the most recent dispute with IAS in February, 2026. However, after reaching that settlement, counsel to IAS wrote to advise the Fund that there had been “more than 2,000 ...updates to the Shareholder Register since the last request for data

¹ All capitalized terms used but not otherwise defined herein have the meanings provided to them in the Affidavit of C. Ian Ross dated April 15, 2026 (the “**Ross Affidavit**”) at Tab 2 of the Applicant’s Motion Record dated April 15, 2026 (“**MR**”), [A3406](#).

² Ross Affidavit, at para. 7, Tab 2, MR, [A3407](#); Thirty-Fifth Report of FTI Consulting Canada Inc., in its capacity as Monitor, dated April 20, 2026 (the “**Thirty-Fifth Monitor’s Report**”) at para. 25.

³ Ross Affidavit at para. 25, Tab 2, MR, [A3411](#); Exhibit “J” to the Ross Affidavit, Tab 2, MR, [A3579](#); Thirty-Fifth Monitor’s Report at paras. 25-44.

extracts on November 6, 2025 and asserting that it would be necessary to obtain updates “until, and upon, any windup and dissolution.”⁴

5. The latter assertion does not align with the distribution process described in the ARDDO.

6. The ARDDO authorizes the Fund (or the Monitor on behalf of the Fund) to make one or more Distributions and refers to the “Distribution Record Date” throughout, which is “in respect of any Distribution, the date that is seven Business Days prior to the date upon which such Distribution is made.” For instance, a “Class A Eligible Shareholder” is determined as of the close of business on the Distribution Record Date – meaning seven Business Days before a Distribution.⁵

7. The Fund, in consultation with the Monitor, requested an update of the Shareholder Register from IAS in order to be able to determine the Shareholder entitlements shortly prior to a Distribution and has agreed to pay an additional \$21,000 plus HST for such update on a date to be specified (presently anticipated to be April 30, 2026).⁶

8. The amendments to the ARDDO sought on this motion are to address the following:

- (a) it is anticipated that the time between obtaining the updated Shareholder Register and the Distribution will be 14 calendar days rather than 7 business days; as a result, minor amendments are sought to address this additional period, which is expected to be brief; and

⁴ Exhibit “J” to the Ross Affidavit, Tab 2, MR, [A3579](#); Thirty-Fifth Monitor’s Report at para. 47.

⁵ ARDDO, Exhibit “C” to the Ross Affidavit, Tab 2, MR, [A3497](#).

⁶ Ross Affidavit at para. 28, Tab 2, MR, [A3412](#).

(b) in the event of a further Distribution (which is possible but not anticipated), the Fund seeks to be able to rely on the Shareholder Register obtained in respect of the upcoming Distribution, without obtaining a further update except if such updates are communicated directly to the Fund and/or Monitor. A further Distribution is not presently anticipated and it would not be prudent to incur additional costs of updating the Shareholder Register after making the upcoming Distribution.

9. Unfortunately, when the Fund declined a quote from IAS to provide additional services beyond the requested update (for \$103,200 plus HST), IAS asserted that the planned Distribution would be “reckless” and has indicated that it will bring its own cross-motion seeking relief.⁷ The Fund reserves the right to respond to any such motion when the materials are received.

10. However, the Fund denies that the proposed Distribution process would be “reckless” and notes that it was always intended that the Distribution would be made based on a Distribution Record Date. The only modifications sought on this motion are to extend that date marginally to account for current Distribution realities and to clarify that no further updates will be obtained in respect of future Distributions (if any) unless such updates are provided directly to the Fund and/or Monitor.

⁷ Thirty-Fifth Monitor’s Report at para. 49; Appendix G to the Thirty-Fifth Monitor’s Report.

PART II. THE FACTS

A. Overview of CCAA Proceedings

11. The Fund has been subject to CCAA protection since October 1, 2013 pursuant to the Initial Order dated October 1, 2013 (as amended and restated on October 29, 2013, the “**Initial Order**”). FTI Consulting Canada Inc. was appointed as monitor (the “**Monitor**”).⁸

12. During the course of these CCAA Proceedings, the Fund has realized on a substantial amount of its illiquid assets. The realization process has resulted in the satisfaction of all of the secured and unsecured creditor claims against the Fund (other than current claims for professional fees in the ordinary course).⁹

13. The Fund obtained the ARDDO to approve the amended process to make a distribution to its Class A shareholders and to wind-up and terminate the CCAA Proceedings.¹⁰

14. In order to bring finality to these proceedings and to enable a distribution to investors, the Fund made clear that it intended to proceed with a Distribution even if it continued to hold interests in certain Portfolio Companies that it had not been able to liquidate at the time of the distribution. A mechanism was provided in the ARDDO to donate any remaining illiquid investments to charity.¹¹

⁸ Ross Affidavit at para. 5, Tab 2, MR, [A3407](#); Exhibit “B” to the Ross Affidavit, Tab 2, MR, [A3439](#).

⁹ Ross Affidavit at para. 6, Tab 2, MR, [A3407](#).

¹⁰ Ross Affidavit at paras. 10-11, Tab 2, MR, [A3408](#); Exhibit “C” to the Ross Affidavit, Tab 2, MR, [A3497](#).

¹¹ Ross Affidavit at para. 12, Tab 2, MR, [A3409](#).

B. Distribution Challenges

Shareholder Register

15. Since obtaining the ARDDO, the Fund has dealt with various complications that delayed the Distribution. Among other things, there were extensive negotiations, a number of appearances before the Court, and additional invoices issued to the Fund, relating to obtaining the Fund's Shareholder information and updates thereto from its administration services provider, IAS. The Fund has never maintained such relevant shareholder information itself.¹²

16. Unfortunately, the Fund and/or Monitor had to seek relief from the Court on several occasions in respect of its request for production of the Shareholder Register, updates thereto and related matters:¹³

- (a) on March 4, 2025 the Honourable Justice Osborne ordered IAS to provide all data in its possession relating to the Shareholder Register in a readable format;¹⁴
- (b) on July 10, 2025, after IAS brought a motion against the Monitor seeking to have the Monitor change its description of the March 4, 2025 Order on its website, the Honourable Justice Kimmel dismissed the motion by IAS and ordered IAS to provide to the Fund any updated information about the Shareholders listed on the Shareholder Register and to pay \$60,000 in costs;¹⁵ and,

¹² Ross Affidavit at paras. 13-14, Tab 2, MR, [A3409](#).

¹³ Ross Affidavit at para. 17, Tab 2, MR, [A3410](#).

¹⁴ Ross Affidavit at para. 18, Tab 2, MR, [A3410](#); Exhibit "E" to the Ross Affidavit, Tab 2, MR, [A3543](#).

¹⁵ Ross Affidavit at para. 19, Tab 2, MR, [A3410](#); Exhibit "F" to the Ross Affidavit, Tab 2, MR, [A3546](#).

(c) on November 17, 2025, the Honourable Justice Osborne stated “I direct IAS to provide all information necessary to permit the Fund to make the distribution forthwith” and that this was “the third attendance required to compel [IAS] to provide information, which has now been ordered three times.”¹⁶

17. On November 20, 2025, IAS provided a series of documents consisting of an update of the Shareholder Register (the “**November Shareholder Register**”), which constitutes the most recent Shareholder Register presently in possession of the Fund.¹⁷

18. IAS has indicated in an affidavit in February 2026 that they had every confidence the data provided in March, 2025 (which was updated in November 2025) “was sufficient to make the Distribution.”¹⁸

19. In late February, 2026, IAS informed the Fund that there had been over two thousand updates to the Shareholders’ information since the November Shareholder Register. The Fund requested and has agreed to pay \$21,000 + HST to IAS to update the November Shareholder Register with an effective date to be set by the Fund, presently anticipated to be April 30, 2026 (the “**Updated Shareholder Register**”).¹⁹

20. However, the Fund also declined an offer by IAS to provide unspecified additional services at a cost of \$103,200 plus HST.²⁰

¹⁶ Ross Affidavit at para. 20, Tab 2, MR, [A3410](#); Exhibit “G” to the Ross Affidavit, Tab 2, MR, [A3552](#).

¹⁷ Ross Affidavit at para. 23, Tab 2, MR, [A3411](#).

¹⁸ Ross Affidavit at para. 22, Tab 2, [A3411](#); Exhibit “H” to the Ross Affidavit, Tab 2, MR, [A3563](#) and [A3566](#); Thirty-Fifth Monitor’s Report at para 46.

¹⁹ Exhibit “J” to the Ross Affidavit, Tab 2, MR, [A3579](#); Thirty-Fifth Monitor’s Report at paras. 47, 51.

²⁰ Thirty-Fifth Monitor’s Report at para. 49.

21. Subsequently, IAS asserted that the planned Distribution would be “reckless” and has indicated that it will bring its own cross-motion seeking relief, including amendments to the ARDDO to give effect to a termination of the IAS Agreement (notwithstanding that the Fund has paid for services thereunder to the end of 2026) and to provide “liability limitations” to IAS (notwithstanding that IAS previously took the position in its February 2026 affidavit that “IAS does not seek any kind of release, as has been suggested by other parties in this proceeding...”²¹).

22. The Fund reserves the right to respond to any such motion when the materials are received.

C. Proposed Amendments to the ARDDO

23. The Fund and Monitor have coordinated with the replacement services provider and understands that all steps are in order to make the Distribution once the Updated Shareholder Register is received. The Fund and Monitor already have Court approval to make distributions to the Fund’s shareholders, with appropriate releases already approved by the Court.²²

24. Presently, the ARDDO requires that a Distribution be made to the Shareholders as determined on the Distribution Record Date - seven business days prior to a Distribution.²³ As the replacement services provider requires approximately two weeks to prepare for a Distribution after receiving the Updated Shareholder Register, the Distribution will be made once the Fund has received the Updated Shareholder Register, and its alternate service provider has thereafter

²¹ Exhibit “H” to the Ross Affidavit, Tab 2, MR, [A3563](#) and [A3566](#); Thirty-Fifth Monitor’s Report at paras. 49-50; Appendix G to the Thirty-Fifth Monitor’s Report.

²² Ross Affidavit at paras. 33-35, Tab 2, MR, [A3414](#); ARDDO at paras. 26-28, Exhibit “C” to the Ross Affidavit, Tab 2, MR, [A5307](#).

²³ ARDDO, Exhibit “C” to the Ross Affidavit, Tab 2, MR, [A3498](#).

had an opportunity to take the necessary steps to effect the Distribution, which, under the present circumstances, will be approximately 14 calendar days rather than seven business days.

25. In order to allow for this brief potential additional time period, and to prevent additional costs and delays incurred by requiring a further Shareholder Register seven business days prior to any further Distribution, the Fund seeks an ARDDO Amendment Order to account for the use of the Updated Shareholder Register as the latest record of the Fund's shareholders.

PART III. ISSUES AND THE LAW

26. The key issue on this motion is: should the Court approve the requested amendments to the ARDDO in the form of the draft Second Amended and Restated Discharge and Dissolution Order? The Fund respectfully submits that it is appropriate and in furtherance of an efficient completion of this CCAA process to approve such amendments, which are supported by the Monitor.

A. Approval of the Amendments are Appropriate

27. This Court has the authority to make any order it considers appropriate pursuant to section 11 of the CCAA.²⁴ In exercising its discretion pursuant to this provision, the Court must be satisfied that the order sought is appropriate by considering whether the order would advance the objectives of the CCAA and that the applicant has acted in good faith and with due diligence.²⁵

²⁴ s. 11, *Companies' Creditors Arrangement Act*, [R.S.C. 1985, c. C-36](#) [CCAA].

²⁵ *Canada v. Canada North Group Inc.*, [2021 SCC 30 \(CanLII\)](#), [2021] 2 SCR 571, at [paras. 21-24](#); *Century Services Inc. v. Canada (Attorney General)*, [2010 SCC 60 \(CanLII\)](#), [2010] 3 SCR 379, at paras. [60](#), [69-70](#).

28. In this case, the requested Second ARDDO will further the remedial objectives of the CCAA by facilitating a timely distribution to the Shareholders by allowing all Distribution(s) to be effected in reliance on one Updated Shareholder Register.

29. Among other things:

- (a) the Fund is obtaining an Updated Shareholder Register at this time to reflect any updates since the November Shareholder Register. It is anticipated that the Distribution will be made approximately two weeks after production of the Updated Shareholder Register based on the effective date of the Updated Shareholder Register;
- (b) the Fund presently does not anticipate that a further Distribution will be required;
- (c) in the event that a further Distribution is required, the Fund and Monitor intend to post a notice on the Monitor's website and include with the Distribution cheques a notice to Shareholders that any future updates to their information must be made to the Monitor (rather than to IAS or other parties). Accordingly, Shareholders will be made aware of the process to provide any further updates to the Monitor in the event there are further Distributions;
- (d) the ARDDO already provides a Distribution Record Date of 7 Business Days ahead of the Distribution and the ARDDO was not appealed or disputed by IAS or others;
- (e) it is common in insolvency proceedings to provide a set date on which to calculate claims. For instance, claims procedure orders regularly set "bar dates" by which

claims are calculated. To have no set date would be administratively unmanageable and costly; and,

- (f) the Fund has already incurred substantial costs associated with obtaining the Shareholder Register to date. Costs incurred only serve to reduce the amounts available for Distribution to the Shareholders, many of whom are retirees who have been awaiting a distribution for many years. The proposed amendments will enable the Fund to limit its costs and reduce potential associated delays in the event a further Distribution(s) is required.²⁶

30. The relief sought will minimize costs and delays to the Distribution thereby maintaining the amounts available for distribution to the Fund's shareholders and permitting the Fund to move forward to completion of these CCAA proceedings.

31. These outcomes are consistent with the purposes of the CCAA and the amendments to the ARDDO are therefore appropriate relief pursuant to section 11 of the CCAA.

B. IAS Cross-Motion

32. The Fund reserves the right to respond to any cross-motion of IAS once served.

However, the Fund notes:

²⁶ Ross Affidavit at para. 41, Tab 2, MR, [A3417](#).

- (a) IAS is not participating in the Distribution or contributing to the resolution of these CCAA proceedings beyond providing the Updated Shareholder Register, which it has agreed to do and for which it will be fully compensated;
- (b) the ARDDO contains releases that would apply to any claims by IAS notwithstanding their assertion that such claims would be “post-filing” claims;
- (c) the IAS Agreement terminates at the end of 2026 and the Fund has paid IAS in full to that time pursuant to the IAS Agreement.²⁷ IAS has not been asked to complete the Distribution but the IAS Agreement does continue in force; and
- (d) the Fund and Monitor will rely upon the information provided by IAS to date and in the Updated Shareholder Register, which IAS has indicated they are confident is sufficient for the Distribution.

²⁷ Exhibit “I” to the Ross Affidavit, Tab 2, MR, [A3577](#).

PART IV. ORDER REQUESTED

33. For the reasons set out above, the Applicant requests that this Court grant the proposed Second Amended and Restated Discharge and Dissolution Order and Ancillary Relief Order.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 20th day of April, 2026.

Meene

McCarthy Tétrault LLP

Lawyers for the Applicant


SCHEDULE "A"
LIST OF AUTHORITIES

1. *Canada v. Canada North Group Inc.*, [2021 SCC 30 \(CanLII\)](#), [2021] 2 SCR 571
2. *Century Services Inc. v. Canada (Attorney General)*, [2010 SCC 60 \(CanLII\)](#), [2010] 3 SCR 379

I certify that I am satisfied as to the authenticity of every authority.

Date:

April 20, 2026



Signature

**SCHEDULE “B”
RELEVANT STATUTES**

Companies’ Creditors Arrangement Act, R.S.C. 1985, c. C-36, as amended

General power of court

11 Despite anything in the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*, if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.

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