

**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.**

SUPPLEMENTAL FACTUM OF THE APPLICANT

(RESPONDING PARTY)

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GROWTHWORKS CANADIAN FUND LTD.**

**FACTUM OF THE APPLICANT (RESPONDING PARTY),
GROWTHWORKS CANADIAN FUND LTD.**

**SUPPLEMENTAL FACTUM OF THE APPLICANT
(Sealing Confidential Exhibits)
(Returnable July 4, 2025)**

1. This is a motion brought by The Investment Administration Solution Inc. (“**IAS**”), a service provider to the CCAA Applicant, asserting that the Court-appointed Monitor posted false statements on its website and has not acted in good faith.
2. This is a supplemental factum of GrowthWorks Canadian Fund Ltd. (the “**Applicant**” or the “**Fund**”) seeking a sealing order as part of the order(s) granted in this motion that will have the effect of:

(a) sealing the Confidential Exhibits 1 and 2 to the Affidavit of C. Ian Ross dated June 13, 2025;¹ and

(b) sealing the confidential appendices (the “**Confidential Appendices**”) to the Thirty-Third Report of the Monitor, FTI Consulting Inc. (the “**Monitor’s Report**”)

together, the “**Confidential Material**”.

3. In order to grant the requested sealing order, the Court must be satisfied that:

(a) court openness poses a serious risk to an important public interest;

(b) the order sought is necessary to prevent this serious risk to the identified interest because reasonably alternative measures will not prevent this risk; and,

(c) as a matter of proportionality, the benefits of the order outweigh its negative effects.²

4. Courts have acknowledged that there is a public interest in the “general commercial interest of preserving confidential information” and in maximizing recoveries in an insolvency.³

¹ Capitalized terms referenced but not defined herein have the meanings given to them in the Affidavit of C. Ian Ross dated June 13, 2025 [the “**Ross Affidavit**”].

² *Sherman Estate v. Donovan*, [2021 SCC 25](#) at [para 38](#). [*Sherman Estate*]

³ *Sherman Estate* at [para. 41](#); *Danier Leather Inc., Re*, [2016 ONSC 1044](#) at [para. 84](#).

5. In this case, the sealing order is proportional as the Confidential Material has been described generally in the Ross Affidavit and the Monitor's Report. The only information not provided is: (i) the terms of commercial agreements between IAS and the Fund, namely the IAS Agreement and the Distribution Addendum and (ii) the monetary amounts related to proposed budgets and disputed invoices.

6. The terms of the commercial agreements and the monetary amounts are commercially sensitive information that, if released, may jeopardize the Fund's efforts to engage with the alternate service provider and effect a distribution. This would impede the commercial interests of maximizing recoveries to the detriment of the stakeholders. As such, it is in the public interest to seal the Confidential Material.⁴

7. The Fund and the Monitor have balanced the principle of court openness while minimizing risks to retention and privacy. The salutary effects of granting this order outweigh any deleterious effects. The three factors of *Sherman Estate* have been satisfied and the sealing order should be granted.

8. The Fund is therefore seeking a sealing order in the order(s) granted in this motion that will have the effect of sealing the Confidential Material.

⁴ *Sherman Estate* at [para. 41](#); *U.S. Steel Canada Inc. et al. v. The United Steel Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union et al.*, [2023 ONSC 2579](#) at [para. 54](#).

9. Accordingly, it is appropriate for the Court to grant the sealing order for the Confidential Material.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 3rd day of July, 2025.



Heather Meredith / Meena Alnajar

McCarthy Tétrault LLP

Lawyer for the Applicant (Responding
Party)

**SCHEDULE “A”
LIST OF AUTHORITIES**

Jurisprudence

1. *Danier Leather Inc., Re*, [2016 ONSC 1044](#)
2. *Just Energy Corp, (Re)*, [2021 ONSC 1793](#)
3. *Sherman Estate v. Donovan*, [2021 SCC 25](#)
4. *U.S. Steel Canada Inc. et al. v. The United Steel Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union et al.*, [2023 ONSC 2579](#)

**SCHEDULE “B”
RELEVANT STATUTES**

Companies' Creditors Arrangement Act, RSC 1985, c C-36

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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CANADIAN FUND LTD.

Court File No. CV-13-10279-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)

Proceeding commenced at Toronto

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