

**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  
(Amendment to Initial Order and Ancillary Relief Order)  
(Returnable February 4, 2026)**

February 3, 2026

**McCarthy Tétrault LLP**  
Suite 5300, Toronto Dominion Bank Tower  
Toronto, ON M5K 1E6  
Fax: 416-868-0673

**Heather Meredith** LSO#: 48354R  
Tel: 416-601-8342  
E-mail: [hmeredith@mccarthy.ca](mailto:hmeredith@mccarthy.ca)

**Meena Alnajar** LSO#: 89626N  
Tel: 416-601-8116  
Email: [malnajar@mccarthy.ca](mailto:malnajar@mccarthy.ca)

Lawyers for the Applicant

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**Contents**

PART I.	INTRODUCTION .....	1
PART II.	THE FACTS .....	3
A.	Overview of CCAA Proceedings .....	3
B.	Proposed Transaction and Amendment .....	4
C.	Report Re: Status of Proposed Distribution and IAS Issues .....	6
PART III.	ISSUES AND THE LAW .....	10
A.	Approval of the Amendment is Appropriate .....	10
PART IV.	ORDER REQUESTED .....	11

## PART I. INTRODUCTION

1. This is a motion for a minor amendment to the Initial Order<sup>1</sup> to facilitate an ordinary course Transaction. If completed, the Transaction would increase amounts available for distribution to the Fund's shareholders.
2. GrowthWorks Canadian Fund Ltd. (the “**Fund**”) is a labour-sponsored venture capital fund that had a portfolio of investments consisting primarily of minority equity interests in small and midsize private Canadian companies (the “**Portfolio Companies**”). Its investments in private companies were largely illiquid and required the Fund to wait for and seek to identify liquidity events in which it could realize on the investments for the benefit of its stakeholders.
3. The Initial Order clarified that sales of the Fund's investments in Portfolio Companies as part of a liquidity event are ordinary course transactions that can occur without Court approval.
4. The Fund has sold a number of investments in Portfolio Companies during these CCAA proceedings without issue. As part of a potential sale of the Fund's investment in a Portfolio Company that is presently under negotiation, the Purchaser requested a representation that such a sale would be free of encumbrances.
5. In relation to providing the requested representation, the Fund is seeking an amendment to the Initial Order to clarify that the Fund's interests in Portfolio Companies, when sold as permitted by the Initial Order, will not be subject to encumbrances created by the Initial Order, including the CCAA Charges.

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<sup>1</sup> All capitalized terms used but not otherwise defined herein have the meanings provided to them in the Affidavit of C. Ian Ross dated January 28, 2026 (the “**Ross Affidavit**”) at Tab 2 of the Applicant's Motion Record dated January 28, 2026 (“**MR**”).

6. It was the intention of the language in the Initial Order that the sale of the Fund's interest in a Portfolio Company would remove such interests from the "Property" of the Fund and, therefore, from application of the CCAA Charges. Moreover, there are no amounts outstanding under the CCAA Charges that will not be paid in the ordinary course from amounts held by the Fund.

7. As such, the requested amendment is appropriate and will further the purposes of the CCAA by helping to facilitate completion of the "sign and close" transaction involving the Target Company. If the Transaction can be completed, it will increase amounts available for distribution to the Fund's shareholders, which distribution is expected to happen shortly.

8. The Fund and Monitor already have Court approval to make distributions to the Fund's shareholders, with appropriate releases already approved by the Court.

9. To provide transparency with respect to the intended next steps in these proceedings, the Fund and Monitor have also included in their materials filed on this motion, a description of (i) the recent issues encountered in these proceedings with their services provider, IAS, and (ii) the fact that the Fund and the Monitor intend to make a distribution to the Fund's shareholders pursuant to the existing distribution approvals, without holding back funds for Disputed Invoices that were delivered to the Fund by IAS that the Fund and Monitor consider unfounded.

10. Neither the Fund nor the Monitor are seeking any changes to the distribution order or existing releases, which they continue to rely upon. The Fund and Monitor are providing these updates to the Court and all parties in interest to ensure that these intended steps are clear to everyone. The only approval sought is an ordinary course request for approval of the Monitor's

activities as outlined in the Thirty-Fourth Report of the Monitor dated February 2, 2026 (the “**Thirty-Fourth 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**”).<sup>2</sup>

12. The Initial Order provided as follows to clarify that sales of the Fund’s interests in Portfolio Companies are ordinary course events that did not require specific Court approvals:<sup>3</sup>

For greater clarity, dispositions of the Applicant’s interest in a Portfolio Company as part of a liquidity event, is an ordinary course transaction that does not require Court approval.

13. The Fund has disposed of a number of its interest in Portfolio Companies during the course of these CCAA proceedings.<sup>4</sup>

14. At this stage, all creditor claims against the Fund (except ordinary course post-filing obligations and amounts described below) have been resolved. This was confirmed in a pre-filing claims process (in which all pre-filing claims were addressed) and a post-filing claims process in 2022 (in which no post-filing claims were received other than a single equity claim).<sup>5</sup>

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<sup>2</sup> Ross Affidavit, para. 16, Tab 2, MR, [A3111](#); **Exhibit “B”** to the Ross Affidavit, Tab 2, MR, [A3148](#).

<sup>3</sup> **Exhibit “B”** to the Ross Affidavit at para. 11, Tab 2, MR, [A3155](#).

<sup>4</sup> Ross Affidavit, paras. 4-5, Tab 2, MR, [A3108](#).

<sup>5</sup> Ross Affidavit, para. 19, Tab 2, MR, [A3111](#); **Exhibit “B”** to the Ross Affidavit, Tab 2, MR, [A3148](#).

15. On January 19, 2023, the Fund obtained a Distribution, Termination and Discharge Order (the “**Original Distribution and Discharge Order**”). Among other things, the Original Distribution and Discharge Order extended the stay of proceedings to the earlier of December 31, 2024 and the “CCAA Termination Time”, and approved a process for the Fund to make a distribution to its Class A and B shareholders (a “**Distribution**”) and to wind-up and terminate the CCAA Proceedings.<sup>6</sup>

16. On December 18, 2024, with the December 31, 2024 date approaching and with a number of unresolved issues to address, the Fund obtained an Order to, among other things, change the date for terminating the CCAA proceedings to the CCAA Termination Time (the “**ARDDO**”).<sup>7</sup>

17. 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.<sup>8</sup>

## **B. Proposed Transaction and Amendment**

18. The Fund has encountered a number of issues, including issues with its services provider, IAS, that have delayed the distribution.<sup>9</sup> The Fund took advantage of the time required to address

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<sup>6</sup> Ross Affidavit, para. 20, Tab 2, MR, [A3111](#).

<sup>7</sup> Ross Affidavit, para. 21, Tab 2, MR, [A3112](#).

<sup>8</sup> Ross Affidavit, para. 6, Tab 2, MR, [A3108](#).

<sup>9</sup> Ross Affidavit, para. 25, Tab 2, MR, [A3113](#).

these issues to continue its realization efforts. This has led to the potential Transaction involving the Fund's investment in the Target Company.<sup>10</sup>

19. For the proposed Transaction to close, the proposed Purchaser has asked that the Fund provide a representation that (i) the Fund has the authority to sell its shares and (ii) the sale of these shares would not be subject to any liens, encumbrances, or restrictions.<sup>11</sup>

20. To facilitate responding to this request, the Fund is seeking an amendment to add the following language (underlined below) to paragraph 11 of the Initial Order (the “**Amendment**”):<sup>12</sup>

For greater clarity, dispositions of the Applicant's interest in a Portfolio Company as part of a liquidity event, is an ordinary course transaction that does not require Court approval, and any such disposition shall transfer and assign all of the Applicant's right, title and interest in such Portfolio Company interest (including, without limitation, any security of such Portfolio Company) free and clear of the Charges (defined below).

#### *Status of CCAA Charges*

21. The Fund and the Monitor are not aware of any amounts that would be secured by the CCAA Charges other than ordinary course payments that will be paid from the Fund's cash on hand.<sup>13</sup>

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<sup>10</sup> Ross Affidavit, para. 25, Tab 2, MR, [A3113](#).

<sup>11</sup> Ross Affidavit, para. 26, Tab 2, MR, [A3113](#).

<sup>12</sup> Ross Affidavit, para. 12, Tab 2, MR, [A3110](#).

<sup>13</sup> Ross Affidavit, para. 28, Tab 2, MR, [A3113](#); Thirty-Fourth Report at para. 26, [E13575](#).

**C. Report Re: Status of Proposed Distribution and IAS Issues**

22. As set out in the affidavit filed by the Fund in support of this motion and the Thirty-Fourth Report, after encountering issues with its services provider, IAS, the Fund determined to proceed with an alternate provider to complete the Distribution. For the alternate service provider to complete the Distribution, the Fund and Monitor required an updated Shareholder Register from IAS.<sup>14</sup>

23. This proved extremely challenging and required a number of appearances before the Court for assistance compelling IAS to provide the Shareholder Register.<sup>15</sup> In addition, the Fund and Monitor had to respond to a motion by IAS against the Monitor seeking, among other things, an order compelling the Monitor to “correct” statements made by the Monitor on its website. That motion was dismissed on July 10, 2025, with substantial indemnity costs of \$60,000 ordered against IAS by the Honourable Justice Kimmel (the “**July Dismissal Order**”).<sup>16</sup>

24. In response to the direction provided in connection with the July Dismissal Order, IAS provided certain Shareholder Register information to the Fund on August 29, 2025, containing information up to August 28, 2025 (the “**August Partial Register**”).<sup>17</sup> When it became clear that the August Partial Register was missing certain essential information related to Class A Shareholders who hold their shares in RRSPs or other registered accounts, the Fund was required

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<sup>14</sup> Ross Affidavit, para. 37, Tab 2, MR, [A3117](#).

<sup>15</sup> Ross Affidavit, para. 37, Tab 2, MR, [A3117](#).

<sup>16</sup> Ross Affidavit, para. 39, Tab 2, MR, [A3117](#); **Exhibit “G”** to the Ross Affidavit, Tab 2, MR, [A3277](#).

<sup>17</sup> Ross Affidavit, para. 41, Tab 2, MR, [A3118](#).

to seek further assistance from the Court on November 17, 2025 to compel IAS to produce this information.<sup>18</sup>

25. In his November 17, 2025 Endorsement, the Honourable Justice Osborne stated “I direct IAS to provide all information necessary to permit the Fund to make the distribution forthwith” and noted “As I advised IAS today (recognizing that counsel is new to this matter) this is the third attendance required to compel it to provide information, which has now been ordered three times. A fourth attendance ought not to be necessary.”<sup>19</sup>

26. In response to this direction, IAS provided a series of documents on November 20, 2025, including an updated shareholder register and a separate document containing RRSP information.<sup>20</sup> Since the RRSP information was in a separate document, the Monitor had to expend additional time and effort and to make an assumption to combine the information.<sup>21</sup> The Fund and Monitor remained concerned that they may not have received all information necessary to make the Distribution, as directed by the Court, and asked IAS to confirm this and to confirm the assumption made by the Monitor in combining the information.<sup>22</sup>

27. While IAS has not clearly confirmed these points, it has also not disputed them.<sup>23</sup> Accordingly, at this stage, the Fund and Monitor have worked with the alternate service provider

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<sup>18</sup> Ross Affidavit, paras. 41-43, Tab 2, MR, [A3118](#).

<sup>19</sup> Ross Affidavit, para. 44, Tab 2, MR, [A3118](#); **Exhibit “I”** to the Ross Affidavit, Tab 2, MR, [A3298](#).

<sup>20</sup> Ross Affidavit, para. 45, Tab 2, MR, [A3118](#)

<sup>21</sup> Ross Affidavit, para. 46, Tab 2, MR, [A3119](#); Thirty-Fourth Report at para. 33, [E1377](#).

<sup>22</sup> Ross Affidavit, paras. 47-51, Tab 2, MR, [A3119](#); **Exhibit “J”** to the Ross Affidavit, Tab 2, MR, [A3303](#); **Exhibit “L”** to the Ross Affidavit, Tab 2, MR, [A3325](#); Thirty-Fourth Report at para. 34, [E1377](#).

<sup>23</sup> Ross Affidavit, para. 49, 52, Tab 2, MR, [A3120](#); **Exhibit “K”** to the Ross Affidavit, Tab 2, MR, [A3310](#); **Exhibit “M”** to the Ross Affidavit, Tab 2, MR, [A3330](#).

and are prepared to make the Distribution on the basis of the information provided and the Monitor's Assumption, which the Monitor believes is reasonable.<sup>24</sup>

28. The Fund and the Monitor intend to proceed with the Distribution without holding back funds for Disputed Invoices delivered by IAS that total nearly \$60,000. This amount, perhaps coincidentally, is nearly the same as the costs award ordered against IAS in the July Dismissal Order.<sup>25</sup>

29. The Disputed Invoices have not been supported and are considered unfounded by the Fund and Monitor including because (i) no amount should be payable for production of the Shareholder Register, which was property of the Fund and should have been produced by IAS without charge pursuant to the IAS Agreement;<sup>26</sup> (ii) the Fund and IAS had previously reached a settlement where the Fund made a payment to IAS for production of the Shareholder Register (and any updates thereto) notwithstanding its position that no amounts were payable in order to provide finality;<sup>27</sup> (iii) IAS was required to obtain approval from the Fund before incurring additional charges, which approval was not obtained;<sup>28</sup> and (iv) any additional charges are not supported or supportable and were caused only as a result of IAS' failure to properly produce the Shareholder Register initially as ordered by the Court.<sup>29</sup>

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<sup>24</sup> Exhibit "J" to the Ross Affidavit, Tab 2, MR, [A3303](#); Thirty-Fourth Report at para. 34, [E1377](#).

<sup>25</sup> Ross Affidavit, para. 57, 69, Tab 2, MR, [A3121](#), [A3125](#); Exhibits "P"-“S” to the Ross Affidavit, Tab 2, MR, [A3344-A3353](#).

<sup>26</sup> Ross Affidavit, para. 60, Tab 2, MR, [A3122](#).

<sup>27</sup> Ross Affidavit, para. 61-63, Tab 2, MR, [A3123](#).

<sup>28</sup> Ross Affidavit, paras. 66-68, Tab 2, MR, [A3124](#).

<sup>29</sup> Ross Affidavit, para. 65, Tab 2, MR, [A3123](#).

30. In addition to the Disputed Invoices not being payable, IAS owes the Fund amounts related to the Court-ordered costs award and tax penalties, which are overdue and payable to the Fund:

- (a) **Costs Award:** Pursuant to the July Dismissal Order, IAS was ordered to pay \$60,000 to the Fund/Monitor no later than August 10, 2025. On October 6, 2025, IAS paid only \$47,460.39 to the Monitor and unilaterally deducted the remainder.<sup>30</sup>
- (b) **CRA Penalties:** The Fund recently received notice from the CRA that certain of the Fund's tax filings were submitted late, resulting in penalties and interest totaling \$8,308.00 which have been paid by the Fund. It is the Fund's position that IAS is responsible for the penalties and interest that were assessed by the CRA as a result of IAS failing to make these tax filings on time.<sup>31</sup>

***Timing of Proposed Distribution***

31. At this stage, if the Amendment is provided, then the Fund and Monitor intend to wait until the anticipated closing time for the Transaction in order to include proceeds thereof in the Distribution.<sup>32</sup>

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<sup>30</sup> Ross Affidavit, para. 54, Tab 2, MR, [A3120](#); **Exhibit “N”** to the Ross Affidavit, Tab 2, MR, [A3335](#).

<sup>31</sup> Ross Affidavit, paras. 55-56, Tab 2, MR, [A3121](#); **Exhibit “O”** to the Ross Affidavit, Tab 2, MR, [A3339](#).

<sup>32</sup> Ross Affidavit, paras. 32-33, Tab 2, MR, [A3115](#), Thirty-Fourth Report at para. 12, [E1372](#).

32. As the Fund is of the view that the Distribution needs to proceed expeditiously for the benefit of the Class A and B Shareholders, should the Transaction not close as anticipated in the next few weeks, the Fund and the Monitor intend to move forward with the Distribution.<sup>33</sup>

### **PART III. ISSUES AND THE LAW**

33. The key issue on this motion is whether the Court should grant approve the requested Amendment to the Initial Order.

#### **A. Approval of the Amendment is Appropriate**

34. This Court has the authority to make any order it considers appropriate pursuant to section 11 of the CCAA.<sup>34</sup> 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.<sup>35</sup>

35. In this case, the requested amendment will further the remedial objectives of the CCAA by facilitating the closing of the Transaction, allowing additional proceeds to be available to its shareholders and the Fund's creditor, an equity holder, on a distribution.

36. The Amendment is appropriate and will not affect any creditor. The Amendment is merely a clarification that accurately reflects that: (i) when sold in the ordinary course, the Fund's interest in the Target Company would cease to be "property" of the Fund to which the Charges attach

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<sup>33</sup> Ross Affidavit, paras. 32-33, Tab 2, MR, [A3115](#).

<sup>34</sup> s. 11, *Companies' Creditors Arrangement Act*, [R.S.C. 1985, c. C-36](#) [CCAA].

<sup>35</sup> *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](#).

(with the Charges then attaching to proceeds of sale); and (ii) there are no amounts owed under the CCAA Charges that will not be paid by the Fund's cash on hand in the ordinary course.

37. While this result appears clear and straightforward, the requested amendment will assist the Fund in providing the requested representation and delivering clarity to the purchaser in relation to the proposed Transaction.<sup>36</sup>

38. Further, because the proposed Transaction is a "sign and close" transaction, there would not be sufficient time after signing deal documents to seek a vesting order.<sup>37</sup>

39. The relief sought will help to facilitate the Transaction. If the Transaction closes, this will increase amounts available for distribution to the Fund's shareholders, which is consistent with the purposes of the CCAA and is, therefore, appropriate relief pursuant to section 11 of the CCAA.

#### **PART IV. ORDER REQUESTED**

40. For the reasons set out above, the Applicant requests that this Court grant the proposed Amendment to Initial Order and Ancillary Relief Order.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 3<sup>rd</sup> day of February, 2026.



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McCarthy Tétrault LLP

Lawyers for the Applicant

<sup>36</sup> This is also consistent with [section 28\(1\)](#) of the *Personal Property Security Act (Ontario)*, [R.S.O. 1990, c P.10](#), which provides that "A buyer of goods from a seller who sells the goods in the ordinary course of business takes them free from any security interest therein given by the seller even though it is perfected and the buyer knows of it, unless the buyer also knew that the sale constituted a breach of the security agreement."

<sup>37</sup> Ross Affidavit, para. 8, Tab 2, MR, [A3109](#).

**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:

February 3, 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.

**Personal Property Security Act (Ontario), R.S.O 1990, c P.10**

**Transactions in ordinary course of business**

**Buyers of goods**

**28 (1)** A buyer of goods from a seller who sells the goods in the ordinary course of business takes them free from any security interest therein given by the seller even though it is perfected and the buyer knows of it, unless the buyer also knew that the sale constituted a breach of the security agreement.

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Proceeding commenced at Toronto

**FACTUM**

**McCarthy Tétrault LLP**  
Suite 5300, TD Bank Tower  
66 Wellington Street West  
Toronto, ON M5K 1E6

**Heather Meredith** LSO#: 48354R  
Tel: 416-601-8342  
E-mail: [hmeredith@mccarthy.ca](mailto:hmeredith@mccarthy.ca)

**Meena Alnajar** LSO#: 89626N  
Tel: 416-601-8116  
E-mail: [malnajar@mccarthy.ca](mailto:malnajar@mccarthy.ca)

Lawyers for the Applicant,  
GrowthWorks Canadian Fund Ltd.