CITATION: GROWTHWORKS CANADIAN FUND LTD., 2026 ONSC 2488
COURT FILE NO.: CV-13-00010279-00CL
DATE: 20260427

SUPERIOR COURT OF JUSTICE – ONTARIO
(COMMERCIAL LIST)

RE: **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.

BEFORE: W.D. Black J.

COUNSEL: *Heather Meredith and Meena Alnajar*, for the Applicant Growthworks Canadian Fund Ltd.

Brian Kolenda and Julien Sicco, for Investment Administration Solution Inc.

Caitlin Fell and Gabrielle Schachter, for the Monitor

HEARD: April 22, 2024

ENDORSEMENT

Overview

[1] There were two motions before me in this matter. In this endorsement I will use terms as defined in the parties' materials.

[2] The applicant Fund, having resolved all of its secured and unsecured creditor claims, is seeking to make a Distribution to its Shareholders. The Fund's motion seeks minor amendments to the ARDDO (the Amended Discharge and Dissolution Order), which was approved by this court over three years ago (in January of 2023). The Fund says that these amendments will facilitate the Distribution.

[3] The Fund explains the delay since the original Discharge and Distribution Order in January of 2023 on the basis of various challenges it has faced since that time.

[4] Prominent and conspicuous among those challenges, as the underlying record reflects, have been issues associated with obtaining the record of the Fund's shareholders, shareholder addresses, and details of individual shareholdings needed in order to make the distribution.

[5] IAS has been the Fund's transfer agent for roughly a decade. Over the years there have been multiple court appearances reflecting contentious issues between the Fund, joined in recent years within the CCAA proceedings by the Monitor on one side, and IAS on the other.

[6] With a view to moving ahead with the Distribution without further delay, the Fund settled the most recent dispute with IAS in February, 2026. However, notwithstanding that the settlement was premised on confirming and crystallizing the identities, locations and status of shareholders and their shareholdings in the Fund, counsel for IAS wrote to counsel for the Fund shortly after the settlement, advising that there had been: "…more than 2000…updates to the Shareholder Register since the last request for data extracts on November 6, 2025" and asserting that it would be necessary to obtain updates "until, and upon, any windup and dissolution."

[7] In that regard, the ARDDO authorizes 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 the Distribution is made." As an example, the Fund notes that a "Class A Eligible Shareholder" is determined as of the close of business on the Distribution Record Date – being seven Business Days before a Distribution.

[8] In the circumstances of IAS's stated concerns about the need for updates, the Fund, in consultation with the Monitor, requested from IAS an update of the Shareholder Register in order to be in a position to determine the Shareholder entitlements shortly prior to a Distribution. The Fund agreed to pay an additional $21,000 plus HST to IAS for the update, up to a date to be specified (expected to be April 30, 2026).

[9] Against this backdrop, the amendments the Fund seeks on this motion (supported by the Monitor) are to address the following:

(a) The Fund anticipates that the time between obtaining the updated Shareholder Register and the Distribution will be 14 calendar days rather than seven business days and, as a result, minor amendments are sought to address this additional period; and

(b) In the event of a further Distribution (which is not expected but is possible), the Fund seeks the ability to rely on the Shareholder Register obtained in connection with the upcoming Distribution, without the need to obtain a further update, except if such updates are communicated directly to the Fund and/or Monitor. A further Distribution is not currently anticipated and so the Fund suggests that it would not be prudent to incur further additional costs (in the form of further payments to IAS) to update the Shareholder Register after making the upcoming Distribution.

[10] Recently, the Fund declined a quote from IAS to provide additional services beyond the requested update for an additional fee of $103,200 plus HST. There is no specific evidence to confirm that the two events are linked, but, coincidentally, IAS asserted, shortly after the Fund declined the quote and further services from IAS, that it would be "reckless" for

the Fund to proceed with the planned Distribution, and that IAS would be bringing its own cross-motion seeking relief.

[11] In keeping with that statement, IAS served materials on the literal eve of the Fund's motion, not seeking to derail the Second ARDDO (and/or the related Distribution) – in fact counsel for IAS confirmed before me that IAS takes no position on the relief sought by the Fund – but rather asking for a further amendment to the ARDDO to release IAS from any responsibility or liability relative to the Distribution over which, it argues, it has no control.

The Order Sought by the Fund is Granted

[12] In the absence of opposition from IAS, or any other apparent opposition to the amendments to the ARDDO sought by the Fund – and supported by the Monitor – and finding as I do that it is reasonable and appropriate to move these proceedings to conclusion, I am granting the amendments to the ARDDO sought by the Fund. I find that the Fund has acted in good faith and with due diligence, and that the proposed amended ARDDO advances the objectives of the CCAA.

The Release Sought by IAS and IAS's Submissions

[13] That leaves the question of whether or not I will also grant the further amendments sought by IAS, which I will refer to hereafter as the "IAS Release." This was the issue to which most of the submissions before me were directed.

[14] As noted, the stated basis for the IAS Release is IAS's purported concern that, if the Distribution proceeds without the IAS Release, IAS will face potential claims for liability for what it predicts will or may be ill-informed and erroneous distributions.

[15] IAS notes that the amended ARDDO sought by the Fund does not provide for any "holdback" or reserve, such that there will be no funds available to address any shareholder complaints or claims arising from the purportedly ill-informed distribution about which IAS warns.

[16] Counsel for IAS does fairly concede that the amended ARDDO, in providing for releases from liability for the Fund, the Monitor *and their Representatives*, given that the definition of "Representatives" under the ARDDO includes "agents", does in fact afford IAS a measure of protection from liability.

[17] In addition, again fairly, IAS's counsel acknowledges that there is also protection for IAS within the IAS Agreement, which contains provisions expressly limiting IAS's liability for work performed thereunder.

[18] However, IAS submits that nonetheless, given that there is no reserve fund contemplated under the amended ARDDO to respond to post-Distribution claims, IAS will be faced with the costs of responding to any such claims or complaints against it, in circumstances over which it has no control, and in respect of which it has expressed a concern that the data underlying the pending Distribution is "stale-dated" and to some (as yet unknown) extent unreliable.

Response of the Fund (and the Monitor)

[19] The Fund and the Monitor, in their respective submissions in response to IAS's cross-motion seeking the IAS Release, were necessarily making arguments "on the fly" and without having had an opportunity to deliver fulsome written submissions in response to IAS's late-breaking materials. The Fund had included arguments in its factum anticipating the potential opposition from IAS, but only saw the full sweep of IAS's argument in IAS's last-minute submissions. Likewise, in its Thirty-Fifth Report, the Monitor included relevant background information concerning the past and present disagreements with IAS (to some of which I will refer below), again anticipating but not fully encapsulating the opposition ultimately mounted by IAS.

[20] The Fund and the Monitor did not request an adjournment in the circumstances, in which the proposed Distribution and these proceedings have already been considerably delayed. Rather, they necessarily referred to caselaw that in some instances was not front and center in the materials before me (in certain cases for example only accessible by links to footnotes and in other cases only by CanLII citations).

[21] Nonetheless, the argument assembled and marshalled by the Fund and the Monitor on short notice was concise and compelling.

Relevant Caselaw

[22] The starting point for that argument is the decision of Pinsonnault J.S.C. in the Quebec Superior Court in *Lion Electric (Re)*, 2025 QCCS 4192.

[23] In a lengthy and comprehensive decision, Pinsonnault J.S.C., referring and relying on the factors established in *Lydian International Limited (Re)*, 2020 ONSC 4006, confirmed that a party seeking third party releases "bears the burden of establishing that said third party releases meet the "Nexus Test" and, more particularly, that they are justified in the context of the restructuring."

[24] Among other considerations, Pinsonnault J.S.C. emphasized that third party releases should be granted (only) in exchange for a meaningful contribution to the restructuring process of the debtor.

[25] Justice Pinsonnault confirmed the limited availability of third party releases in this context, saying:

> "All in all, third-party releases are the exception, not the rule. Where not necessary to the restructuring, they should not be approved blindly and systematically, especially on the basis that in the past, several judges granted third-party releases in similar CCAA proceedings."

[26] The Fund points, to similar effect, to Kimmel J.'s decision in *Tacoma Resources Inc. (Re)*, 2024 ONSC 4436, in which Her Honour emphasized that "Third party releases are to be carefully scrutinized by the court." Justice Kimmel also references the *Lydian* factors, as well as the landmark decision of Penny J. in *Harte Gold Corp. (Re)*.

[27] In *Harte Gold*, Penny J., following his oft-quoted discussion of the advent and evaluation of RVOs, turned to consider the appropriateness of a third-party release sought before him.

[28] In doing so, His Honour also specifically referenced the *Lydian* factors, and recited the following list of considerations guiding the determination of whether or not to grant a third-party release, noting that "As is often the case in the exercise of discretionary powers, it is not necessary for each of the factors to apply for the release to be approved." Justice Penny set out the following touchstones:

(a) Whether the claims to be released are rationally connected to the purpose of the restructuring;

(b) Whether the releasees contributed to the restructuring;

(c) Whether the Release is fair, reasonable and not overly broad;

(d) Whether the restructuring could succeed without the Release;

(e) Whether the Release benefits *Harte Gold* as well as the creditors generally; and

(f) Creditors' knowledge of the nature and effect of the Release.

[29] The Fund argues that IAS's request for the IAS Release meets virtually none of these factors.

[30] Touching first on one of the overarching considerations in particular, the Fund asserts that not only has IAS not made a meaningful contribution to the restructuring, it has in fact thwarted and delayed the restructuring at various junctures.

[31] In that regard, the Fund (echoed by the Monitor's 35th Report and submissions), refers to certain decisions of this court made during the course of these proceedings.

Past Endorsements in this Proceeding

[32] On March 4, 2025, Osborne J. (as he then was) confronted a scenario in which the Monitor was seeking an order to compel IAS to turn over Shareholder Register Information to the Monitor and the Fund. In making the order requested, with immediate effect, His Honour said:

> "Delivery of the Shareholder Registry Information is holding up the distribution. That is unfair to stakeholders. I am not persuaded there are any issues with respect to the information and materials to be provided, but if there are, I am satisfied they could be readily sorted out and resolved, and indeed ought to have been done so already. Providing such information, and indeed effecting such distributions, are the very business of IAS. There is no reason they cannot do so immediately."

[33] On July 10, 2025, relative to a motion brought by IAS against the Monitor seeking to have the Monitor change its description of the March 4, 2025 order (the order of Osborne J., discussed above) on the Monitor's website, Kimmel J. dismissed the motion by IAS and ordered IAS to provide to the Fund any updated information about the Shareholders listed on the Shareholder Register. Justice Kimmel found IAS's conduct to be problematic, and ordered IAS to pay $60,000 in costs on an elevated scale.

[34] Then on November 17, 2025, in an endorsement arising from a case conference before him that day, Osborne J. (as he then was) made clear his palpable frustration with the continued conduct of IAS.

[35] His Honour started by noting that:

> "Yet again, the Fund requires the intervention of this Court to require its former administrative services provider, IAS, to deliver a complete Register of Shareholders, including certain information that was missing from the information previously provided and which is required for the Fund to complete a distribution."

[36] Justice Osborne went on:

> "This case conference, like the two before it, ought not to have been necessary."

His Honour then referred to his order of March 4, 2025, and Kimmel J.'s order of July 10, 2025, and noted that the information provided by IAS pursuant to those orders omitted certain essential information.

[37] Justice Osborne recorded that counsel for IAS (not IAS's current counsel), acknowledged that the information in question was readily available and could be provided, but that IAS was taking the opportunity to clarify "its role going forward" and ultimately acknowledged that what it was really seeking – of note for the decision I am being asked to make - was "a release in respect of all of its actions and activities."

[38] Justice Osborne emphatically directed IAS to provide all information to permit the Fund to make the distribution "forthwith". His Honour noted having advised IAS that day the "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."

[39] Relative to the release, again tellingly, Osborne J. said:

> "If IAS still seeks to pursue a court-ordered release, as I advised IAS today, it would need to persuade the Court that such was appropriate, both generally and specifically given the issues encountered to date and the lack of cooperation…"

[40] On November 20, 2025, pursuant to His Honour's direction, IAS provided a series of documents comprising an update of the Shareholder Register.

[41] Of note, IAS then indicated in an affidavit in February of this year that it was confident that the data provided in March of 2025 (updated by the information IAS provided in November of 2025), was "sufficient to make the Distribution." As set out above, in the discussions about what additional services and updates the Fund should purchase from IAS, IAS purported to resile from this representation about the sufficiency of the data it had produced, and raised doubts, in that context, about the reliability of the November Shareholder Register for purposes of the proposed Distribution.

[42] Of particular note for present purposes, in that same February 2026 affidavit, the principal of IAS, David Chan, deposed (in paragraph 40), that IAS "does not seek any kind of release, as has been suggested by other parties to this proceeding."

[43] IAS submits that, since making the specific representation in February of this year that it was not seeking a release, IAS has learned that there will be no holdback of funds, which IAS characterizes as a change of circumstances now necessitating and justifying the IAS Release.

Conclusions

[44] I disagree.

[45] None of the factors set out above in the relevant cases concerning third party releases focus on the need or desire for a service-provider to protect itself from a potential future claim. Presumably that notion animates all requests for releases and, if found in and of itself to justify a release, would open the proverbial "floodgates."

[46] Rather, the enumerated factors focus, instead, on the third party's contribution to and the benefits for the restructuring. If the focus were changed to emphasize prophylaxis for the benefit of third parties, rather than benefit to the estate, the spectre of release-creep would increase exponentially. Such expansion would run contrary to the admonitions in *Lion Electric*, *Tacoma*, *Harte Gold* and other authoritative cases that third party releases should be viewed as exceptional and carefully scrutinized to confirm that such releases are based on an indispensable contribution to the restructuring effort.

[47] As confirmed in the endorsements of Osborne J. and Kimmel J. excerpted above, IAS has in fact been more of an impediment than a beneficial contributor to the progress of the restructuring, thus failing to meet each of the tests listed, for example, in *Harte Gold*.

[48] In addition, given IAS's late-breaking "about-face" in the cross-motion materials delivered at the 11th hour, now seeking the IAS Release contrary to its assurances in February that it did "not seek any kind of release", it cannot be said with confidence that the Fund's creditors have knowledge of the "nature and effect of the release" sought by IAS, or even knowledge of the claim for a release at all.

[49] While this is not a substantive consideration, the evidence before me also shows that there is approximately $7.7 million available for distribution among the Fund's 90,000 Shareholders, meaning that the average claim per shareholder would be less than $100. Appreciating that shareholdings will vary such that reliance on the average thus calculated

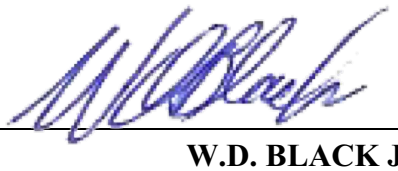
is somewhat tenuous, there is nonetheless reason to accept that the picture painted by IAS of extensive errors and claims in relation to the proposed final Distribution is likely overstated.

[50] In effect, IAS is asking the court to expand the envelope for third party releases in circumstances in which not only does IAS fail to satisfy the established factors for granting such releases, but in which potential claims, if any, are likely to be circumscribed and modest.

[51] The evidence before me also shows that IAS has been fully paid for its services to date.

[52] In all of the circumstances, I am dismissing IAS's cross-motion.

[53] Accordingly, and in sum, I am granting the Second ARDDO sought by the Fund, and have signed a copy of the proposed order provided, and am dismissing IAS's cross-motion seeking the IAS Release.



W.D. BLACK J.

RELEASE DATE: APRIL 27, 2026