

**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 (RESPONDING PARTY)

McCarthy Tétrault LLP
Suite 5300, TD Bank Tower
66 Wellington Street West
Toronto, ON M5K 1E6
Fax: (416) 868-0673

Heather Meredith LSO#: 48354R
Tel: 416-601-8342
E-mail: hmeredith@mccarthy.ca

Meena Alnajar LSO#: 89626N
Tel: 416-601-8116
E-mail: malnajar@mccarthy.ca

Lawyers for the Applicant
(Responding Party)
GrowthWorks Canadian Fund Ltd.

TO: **KEYSER MASON BALL LLP**
Suite 900, 3 Robert Speck Parkway
Mississauga, ON L4Z 2G5
Fax: (905) 276-2298

Justin Chan LSO#: 63970M
Tel: 905-276-0408
Email: jchan@kmblaw.com

Lawyers for The Investment Administration Solution Inc.
(Moving Party)

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

**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 (RESPONDING PARTY)
(RETURNABLE JULY 4, 2025)**

TABLE OF CONTENTS

	PAGE
PART I— INTRODUCTION	3
PART II— THE FACTS.....	4
A. The Parties.....	4
B. CCAA Process Background.....	4
C. Distribution and Wind-Up Order	5
D. Decision of Osborne J.	8
E. Monitor's Website.....	9
F. Alternate Service Provider	10
PART III— ISSUES AND THE LAW	10
A. No Basis to Declare IAS was Not the Cause of Any Delay	11
B. IAS' Allegation that it Could Have Completed a Distribution Earlier is Untrue .	15
C. Other Arguments Raised by IAS Should Be Dismissed	17
D. No Basis to Compel Monitor to Alter its Website	18
PART IV— ORDER REQUESTED	20
SCHEDULE "A" LIST OF AUTHORITIES	
SCHEDULE "B" RELEVANT STATUTES	

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

**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 (RESPONDING PARTY),
GROWTHWORKS CANADIAN FUND LTD.
(returnable July 4, 2025)**

PART I—INTRODUCTION

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 Monitor¹ posted false statements on its website and has not acted in good faith.
2. There is no basis to those assertions.
3. This is an ill-conceived and unnecessary motion that is causing cost and delay to the CCAA Applicant at a time when it is seeking to preserve assets to make a final distribution to its shareholders.
4. The Monitor, a highly experienced and well-respected Court officer, posted to its website a fair and accurate description of the facts of this case that was entirely consistent with the endorsement of Justice Osborne from March 4, 2025.

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**”].

5. The motion should be dismissed, with costs.

PART II—THE FACTS

A. The Parties

6. The Fund is a labour-sponsored venture capital fund, has been under the protection of the *Companies' Creditors Arrangement Act* (CCAA) since October 1, 2013, to allow for an orderly realization of its investments.²

7. IAS has provided administration services to the Fund for over ten years pursuant to a services agreement dated January 6, 2015 (the “**IAS Agreement**”).³ Such services include managing the Fund's shareholder register, including maintaining and updating unitholder names, addresses and shareholdings.⁴

B. CCAA Process Background

8. Throughout the CCAA proceeding, the Fund has been realizing on its interests in portfolio investments. Since the investments are primarily minority equity interests in small and mid-sized private Canadian Companies, the Fund has had to wait for and identify realization opportunities for its illiquid investments.⁵

9. The Fund made considerable progress in realizing on its assets and has satisfied all secured and unsecured creditor claims against it.⁶

² Ross Affidavit at para. 7.

³ Ross Affidavit at para. 21.

⁴ Ross Affidavit at paras. 19 and 22.

⁵ Ross Affidavit at paras. 8-9.

⁶ Other than ongoing professional fee claims in the ordinary course.

C. Distribution and Wind-Up Order

10. On January 19, 2023, the Fund obtained the Original Distribution and Discharge Order that, among other things, approved a process for the Fund to make a distribution to its Class A shareholders (a “**Distribution**”) and to wind-up and terminate the CCAA Proceedings.⁷ At the time, various steps remained to be completed prior to a Distribution taking place, but it was anticipated that the Distribution would occur before December 31, 2024.

11. While dealing with various remaining issues, the Fund approached IAS in October 2024 to discuss the terms on which IAS would provide services to the Fund to effect the Distribution and the wind-up of the Fund (the “**Distribution Services**”).

12. IAS provided a budget to the Fund of over \$500,000 to provide such Distribution Services. IAS and the Fund, in consultation with the Monitor, agreed in principle on this budget and embarked on negotiations in respect of the terms on which IAS would deliver the Distribution Services.⁸ Counsel to the Fund had provided drafts of the agreement for the Distribution Services on December 9, 2024 and December 27, 2024, which IAS had refused to review or meaningfully engage with.⁹

13. On December 18, 2024, the Fund brought a motion for an amended distribution and discharge order (the “**Amended Distribution and Discharge Order**”). In the motion materials, the Fund described certain remaining issues that needed to be addressed before a Distribution

⁷ Ross Affidavit at para. 11.

⁸ Confidential Exhibit “1” to the Ross Affidavit; Cross-Examination of David Chan dated June 23, 2025, at p.6, Q. 23 [“**Chan Transcript**”].

⁹ Ross Affidavit at paras. 31-35; Affidavit of David Chan dated June 6, 2025 at paras. 13-14 [“**Chan Affidavit**”].

could be completed. Such issues (the “**Remaining Issues**”) included but were not limited to reaching a definitive agreement with IAS in respect of the Distribution Services.

14. In the Amended Distribution and Discharge Order, the Court approved a form of amendment to the IAS Agreement to address the Distribution Services (the “**IAS Amendment**”). At the time, the Distribution was expected to occur around March 31, 2025.¹⁰

15. By January 30, 2025, all Remaining Issues other than the IAS agreement in respect of the Distribution Services had been completed. This included that the Fund had obtained a necessary approval from CRA and a consent from Manitoba Finance and that the Canada Post strike was concluded.¹¹

16. Notwithstanding that all of the other Remaining Issues had been addressed by January 30, 2025, no agreement was yet in place with IAS to deliver the Distribution Services. Indeed, rather than providing substantive comments in respect of the proposed draft agreement, on January 23, 2025, IAS asked for an additional \$30,000 from the Fund for IAS to review the draft Distribution Addendum and indicated that there would be a “significant increase to the approved budget.”¹²

17. In late January, 2025, more than three months had elapsed since the Fund had requested the Distribution Services from IAS and no agreement had been reached in respect of IAS providing the Distribution Services. Worse, IAS was continuing to indicate that it anticipated

¹⁰ Exhibit “A” to the Ross Affidavit at para. 27.

¹¹ Ross Affidavit at para. 18.

¹² Ross Affidavit at para. 37.

materially increasing the agreed-upon Budget such that the Fund had no agreement in respect of the Distribution Services and no clear budget for such services.¹³

18. The lack of clarity regarding the budget for the Distribution Services – including the costs to wind-up and dissolve the Fund – meant that the Fund could not proceed to a Distribution while these issues remained unresolved. Unless additional recoveries are achieved from the Fund’s remaining investments, the Fund has a limited amount of cash available and it is necessary to deduct the anticipated wind-up and dissolution costs to determine the amount available for a Distribution.¹⁴

19. In light of these challenges, the Fund, with the support of the Monitor, began to seek out alternative providers to deliver the Distribution Services, while also continuing its negotiations with IAS to try to finalize the Distribution Addendum.¹⁵

20. To facilitate moving to a new service provider, on January 27, 2025, Fund counsel asked IAS to produce the Shareholder Register to the Fund. The Shareholder Register refers to the Fund’s shareholder information that IAS had been managing, including the names, addresses and other information relating to the shareholders of the Fund. The Shareholder Register is (i) a standard record contained in the minute book of any company (ii) Property (as defined in the IAS Agreement) and (iii) required for the Fund to proceed with an alternate service provider to complete the Distribution Services.¹⁶

¹³ Ross Affidavit at para. 40.

¹⁴ Cross-Examination of C. Ian Ross dated June 23, 2025, at p. 93, Q. 423 [**“Ross Transcript”**].

¹⁵ Ross Affidavit at para. 40.

¹⁶ Ross Affidavit at paras. 39, 48.

21. The Fund made numerous requests for a telephone call or meeting to resolve the issues and stated explicitly on February 4, 2025 that IAS' response to steadfastly refuse to speak about the issues "causes us to be concerned that no resolution will be reached and that the Fund will need to proceed with an alternate service provider for the distribution work."¹⁷

22. Instead of engaging in a discussion with the Fund or delivering the Shareholder Register to the Fund, IAS began to refuse to produce the Shareholder Register on the purported grounds that it was "proprietary and confidential."¹⁸

23. Fund counsel made clear to IAS that it had no interest in receiving any proprietary information from IAS and rather that it was solely interested in the Fund's own Property. On February 7, 2025, Fund counsel also provided a list of fields that the Fund and Monitor believed would be required for production of the Shareholder Register. Despite these requests, IAS continued to refuse to produce the Shareholder Register or such information fields to the Fund.

24. Ultimately, the Monitor brought a motion to compel IAS to produce the Shareholder Register, which was returnable March 4, 2025.

D. Decision of Osborne J.

25. On March 4, 2025, Justice Osborne granted the Monitor's motion and rejected the various arguments raised by IAS to avoid producing the Shareholder Register. In His Honour's endorsement (the "**Osborne Endorsement**"), Justice Osborne stated:

Delivery of the Shareholder Register 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 they are, I am satisfied they could be readily sorted out and resolved, and indeed ought to

¹⁷ Ross Affidavit at para. 42.

¹⁸ Ross Affidavit at para. 44.

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.¹⁹

26. IAS eventually produced the Shareholder Register on March 7, 2025.²⁰ IAS has acknowledged that they produced the Shareholder Register within three days of beginning work to produce it and that they did so in reliance on the information request provided to them on February 7, 2025.²¹

E. Monitor's Website

27. Following the March 4, 2025 Order, the Monitor provided an update on its website. IAS has taken issue with this update, specifically the paragraph below (the “**Monitor's Statement**”):²²

As referenced above, on December 18, 2024, the Fund obtained an amended and restated order of the Ontario Superior Court of Justice (the "Court") relating to the proposed wind-up of the Fund, including a possible cash distribution to the Fund's Class A shareholders utilizing the services of the Fund's existing transfer agent, The Investment Administration Solution Inc. (the "Transfer Agent"). Following receipt of that Court order, the Fund and the Transfer Agent were unable to agree on the terms governing the delivery of those services. Accordingly, the Monitor requested that the Transfer Agent deliver the Fund's shareholder register (the "Shareholder Register") to the Monitor. **The Transfer Agent did not deliver the Shareholder Register when requested, causing a delay in the proposed distribution process.** As set out in the Monitor's 31st Report, the Monitor sought an order of the Court compelling the Transfer Agent to deliver the Shareholder Register. On March 4, 2025, the Court granted the requested order requiring the Transfer Agent to promptly turn over the Shareholder Register to the Monitor. The Shareholder Register was delivered to the Monitor on March 7, 2025. The Fund and the Monitor are currently working with an alternate service provider in relation to the proposed distribution; however, the distribution will be delayed beyond the previously anticipated date of March 31, 2025. The Monitor will post

¹⁹ Ross Affidavit at para. 4; Exhibit “Q” to the Ross Affidavit.

²⁰ Ross Affidavit at para. 52.

²¹ Exhibit “L” to the Chan Affidavit; Chan Transcript at pp. 15-16.

²² Ross Affidavit at para. 3.

additional updates on the its website when the timing of the proposed distribution is finalized. [emphasis added]

28. IAS served its notice of motion on June 1, 2025 seeking, among other things:
- (a) a declaration that IAS was not the cause of any of the delays with respect to the proposed distribution by the Fund to its Class “A” Shareholders originally planned for December 31, 2024; and
 - (b) to compel the Monitor to revise the statements made on its website with a new post to be agreed between IAS and the Monitor. IAS has filed the Affidavit of David Chan, founder and managing director of IAS, in support of the motion.

F. Alternate Service Provider

29. Following receipt of the Shareholder Register, the Fund proceeded to advance discussions with an alternate service provider to complete the Distribution Services.²³

30. The Fund anticipates that the alternate service provider can be ready to complete the Distribution within four weeks of the Fund providing instructions to proceed with the Distribution Services, which the Fund expects could be provided promptly after a final resolution of this motion.²⁴

PART III—ISSUES AND THE LAW

31. The issues on this motion are as follows:

- (a) Should the Court make a declaration that IAS was not the cause of any of the delays with respect to the Fund’s planned Distribution? *No. IAS plainly caused*

²³ Ross Affidavit at para. 54.

²⁴ Ross Affidavit at para. 54.

a delay with respect to the Distribution as confirmed by Justice Osborne in his endorsement, including by failing to produce the Shareholder Register when requested after all other Remaining Issues required for the Distribution had been resolved.

- (b) Should the Court compel the Monitor to revise the Monitor's Statement on the Monitor's Website? *No. The Court should be loath to interfere with the Court officer's description of the case and there is no basis to compel a change to language that is accurate and entirely consistent with the Osborne Endorsement.*

A. No Basis to Declare IAS was Not the Cause of Any Delay

32. The Monitor's Statement provides that the Transfer Agent caused "a delay in the proposed distribution process" when it did not deliver the Shareholder Register when requested.

33. This is accurate.

34. As set out above, by January 30, 2025 all other Remaining Issues that needed to be resolved to make a Distribution had been resolved. The only Remaining Issue left to be addressed was reaching an agreement with IAS in respect of the Distribution Services.

35. Unfortunately, no agreement was reached with IAS to provide the Distribution Services. Negotiations with IAS continued past January 30, 2025 and instead of providing substantive comments regarding the draft agreements, IAS continued to ask for additional amounts to

review the draft Distribution Addendum and indicated that there would be a “significant increase to the approved budget.”²⁵

36. In light of the lack of progress with IAS, the Fund and Monitor determined that it was appropriate to seek an alternate service provider to deliver the Distribution Services. In essence, the Fund and Monitor lost faith in IAS’ ability to complete the Distribution within the necessary timeframes as a result of the lack of progress in the discussions.²⁶

37. In order to proceed with the alternate service provider, the Fund needed to receive the information relating to its shareholders, including their names, shareholdings, age, address and other information necessary to make a Distribution. The Fund referred to that as a Shareholder Register and clarified for IAS that this information was Property of the Fund.²⁷

38. IAS did not produce the Shareholder Register when requested, leading to the Monitor bringing a motion requiring IAS to produce it.²⁸

39. At that motion, Justice Osborne agreed with the Monitor and ordered IAS to produce the Shareholder Register.²⁹

40. The Monitor’s Statement is an accurate summary of the Osborne Endorsement:

²⁵ Ross Affidavit at para. 37; Exhibit “G” to the Ross Affidavit.

²⁶ Ross Affidavit at para. 48.

²⁷ Exhibit “M” to the Ross Affidavit.

²⁸ Ross Affidavit at para. 53.

²⁹ Ross Affidavit at paras. 49-50; Exhibit “Q” to the Ross Affidavit.

Monitor's Statement	The Court's Endorsement ³⁰
<p>... The Transfer Agent did not deliver the Shareholder Register when requested, causing a delay in the proposed distribution process. As set out in the Monitor's 31st Report, the Monitor sought an order of the Court compelling the Transfer Agent to deliver the Shareholder Register. On March 4, 2025, the Court granted the requested order requiring the Transfer Agent to promptly turn over the Shareholder Register to the Monitor.</p>	<p>[7] IAS will not turn it over, relying, variously on the fact that certain fees have not yet been paid, and that it is confused about what information is required.</p> <p>[8] Delivery of the Shareholder Register 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 they 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.</p>

(i) IAS Did Not Deliver the Shareholder Register When Requested

41. IAS does not dispute that it did not deliver the Shareholder Register when requested. Rather, it claims that there were valid reasons why it failed to do so. Among other things, it argues that this was “proprietary” information or that the request was unclear and used different names.

42. These arguments are irrelevant to the Monitor's Statement, which simply states the uncontested fact that “IAS did not deliver the Shareholder Register when requested.”

43. In addition, the arguments advanced by IAS:

³⁰ Exhibit “Q” to the Ross Affidavit.

- (a) were rejected by Justice Osborne who concluded that there was no reason why IAS could not produce the Shareholder Register “immediately;”
- (b) are not supported by the facts, including that the Fund clearly stated it was not interested in proprietary information and that the Fund continued to use plain language to convey the request for basic shareholder information, using examples such as age and birthdate, to illustrate the nature of the information sought and minimize further delays;³¹
- (c) are contrary to IAS’ repeated admissions that it knows what Shareholder Register information is required for a distribution;³² and
- (d) are belied by the fact that, when IAS eventually did produce the Shareholder Register on March 7, 2025, it expressly did so in reliance on the February 7, 2025 information request, providing no explanation as to why the information was not produced promptly after the February 7th request.³³

(ii) *Failure to Deliver Shareholder Register When Requested Caused a Delay*

44. The Monitor’s Statement does not provide that IAS was the sole cause of delay. Rather, it simply states that when IAS did not deliver the Shareholder Register as requested, this caused a delay in the distribution process.

³¹ Exhibit “M” to the Ross Affidavit; Exhibit “V” to the Ross Affidavit.

³² Chan Transcript at p. 18.

³³ Chan Affidavit at para. 35; Page 3 of Exhibit “L” to the Chan Affidavit; Ross Affidavit at para. 52.

45. This is true. The Shareholder Register was requested from IAS in January 2025. It was not produced until March 7, 2025 and was only produced after the Monitor brought a motion compelling its production.

46. The Fund needed the Shareholder Register in order to proceed with an alternate service provider. Once the Shareholder Register was produced in March, the Fund was able to advance discussions with the alternate Distribution Services provider. Had the Shareholder Register been produced sooner such discussions would have advanced sooner as well.

47. In addition to the delay caused by the failure to produce the Shareholder Register when requested, the Fund also notes that IAS has caused delay and cost to the Fund by (i) complicating and extending the negotiations in respect of the Distribution Addendum, including by failing to speak or meet to discuss the issues; and (ii) bringing this motion, which has further delayed the Distribution while the Fund and Monitor address the issues raised by this motion.

48. Once this motion is resolved, the Fund expects the Distribution can proceed with the alternate provider within four weeks.

B. IAS' Allegation that it Could Have Completed a Distribution Earlier is Untrue

49. IAS has repeatedly emphasized that it was prepared to carry out the Distribution for the Fund, suggesting that the Distribution could have occurred without a final agreement in respect of the Distribution Services and without production of the Shareholder Register. This is untrue.

50. The Fund could not reasonably be expected to give IAS instructions to make a Distribution unless and until the costs for the wind-up and dissolution of the Fund were

determined.³⁴ The Fund has limited assets and in order to calculate the amount available for Distribution, it must first determine and deduct the costs required by the Fund through to its dissolution. The Fund was negotiating the Distribution Addendum with IAS in order to provide certainty with respect to such costs. This was a necessary precursor to any Distribution.³⁵

51. It is irrelevant to the delay whether IAS can or cannot complete a Distribution or what it would charge to do so. IAS' argument that it could have completed a Distribution pursuant to the existing IAS Agreement is a red herring.

52. The Fund also notes that at no time in the negotiations did IAS suggest that the Distribution could be completed at no additional cost; rather, IAS sought significant additional costs in excess of \$500,000 in respect of the Distribution Services and only referenced providing the Distribution at no cost after the Monitor's Statement had been posted.

53. In any event, the Fund and Monitor have lost confidence in the ability of IAS to complete the Distribution within the relevant timeframes in light of the circumstances to date, including the protracted negotiations, IAS' refusal to speak or meet about key issues, IAS' threats of increased costs, and the cost and delay caused by two unnecessary motions relating to IAS. The Fund and the Monitor cannot risk being subject to further motions by IAS that would stand in the way of the Fund's proposed distribution.

54. Accordingly, even if IAS now purports that the cost of completing a Distribution is included in the original IAS Agreement, the Fund has already engaged in an alternate service

³⁴ Ross Transcript at p. 93.

³⁵ Ross Transcript at pp. 27, 46.

provider and cannot risk the costs of terminating this agreement.³⁶ The Fund does not accept that the ultimate costs of the Distribution Services with IAS will in fact be lower than with an alternate service provider nor does it have confidence that the necessary agreements can be reached such that the work will be completed by IAS in the timeframes required.

C. Other Arguments Raised by IAS Should Be Dismissed

55. IAS argues that it has confirmed there are no issues in the Shareholder Register. The Fund does not accept this self-serving statement by IAS that there were no anomalies or errors in the Shareholder Register produced by IAS. IAS' arguments that the Fund or Monitor delayed in responding to IAS' self-serving statements, which were sent after IAS commenced this motion and well after the delay caused by IAS,³⁷ should be dismissed outright.

56. IAS argues that the Fund demanded access to IAS knowledge and expertise. This too should be rejected. The Fund asked for the return of its Property, which it has paid IAS for years to maintain. It is reasonable to expect IAS to be able to produce the Shareholder Register to the Fund. As Justice Osborne held, "Providing such information, and indeed effecting such distributions, are the very business of IAS. There is no reason they cannot do so immediately."³⁸

57. IAS asserts that the Fund was never in a position to make a Distribution unless it used IAS. This is untrue. As noted above and as clearly stated in the Ross Affidavit, the Fund expects to be able to complete a Distribution with the alternate service provider within 4 weeks of resolving this motion.

³⁶ Ross Affidavit at para. 54.

³⁷ Exhibits "F" and "G" to the Chan Affidavit.

³⁸ Exhibit "Q" to the Ross Affidavit.

58. IAS' suggestion that the Fund would have completed the Distribution by now if it could have done so should also be rejected. This argument illustrates IAS' fundamental misunderstanding about a Distribution by the Fund: a Distribution cannot be made at this time while costs are uncertain and continue to be incurred by the Fund and Monitor in relation to this motion that has been brought by IAS. Unless and until the costs to be borne by the Fund up to its wind-up and dissolution are clear, the Fund cannot reasonably determine the amount available for Distribution.

D. No Basis to Compel Monitor to Alter its Website

59. As described above, the Monitor's Statement is accurate and reflects the facts of this case and the Osborne Endorsement.

60. It was carefully crafted by the experienced Court officer to accurately and appropriately describe the facts. Courts should be loath to interfere with the good faith exercise of the judgment of highly qualified professionals with great experience in restructuring, such as the Monitor.³⁹

61. IAS has pointed to no case supporting the Court interfering with the exercise of the Monitor's judgement regarding the description of the status of a CCAA case.

62. The one case relied upon by IAS to assert that the Monitor is obliged to modify the Monitor's Statement does not apply as IAS suggests.⁴⁰ In *Nelson*, Justice Morawetz (as he then was) approved a Monitor's Report to which the Monitor had attached certain memoranda regarding its investigation into certain claims (concluding that such claims were equity claims)

³⁹ *Essar Steel Algoma Inc. et al Re*, [2016 ONSC 3205](#) at [para. 29](#).

⁴⁰ Factum of IAS served June 26, 2025 at para. 71 [**IAS Factum**]; *Nelson Financial Group Ltd., Re*, 2011 CarswellOnt 19453 (On Sup Ct J [Commercial List]), at Tab 1 of the Responding Party's Book of Authorities. [*Nelson*]

as well as a memoranda with its review of preferential transactions and transfers at undervalue.⁴¹ The Court held that approval of the report is not to be construed as a determination by the Court of the facts stated or alleged in various memoranda that were attached to the report.⁴² Also, far from directing the Monitor to update its website, His Honour simply stated that the Court “has no objection to the Monitor and Representative Counsel taking steps to modify their respective websites to reflect up to date information.”⁴³

63. IAS has pointed to no case law in which a Court has required a Monitor to alter its website because of concerns expressed by a stakeholder. Most certainly there is no basis to do so when the statements are accurate and reflect the language of the Court’s endorsement, as they do in this case. Providing otherwise would be a dangerous precedent that would cause court officers to be beholden to the whims of stakeholders with respect to wording changes and expose them to the risk of costs of unnecessary and wasteful motions such as this one if stakeholders would prefer different language.

64. In essence, IAS is seeking to vary the order of Justice Osborne and the Osborne Endorsement. This is a collateral attack on that order and should not be tolerated.⁴⁴

65. Finally, IAS’ various assertions that the Monitor has acted in bad faith, “is attempting to unfairly and wrongfully shift the blame of any delays...to IAS”, is attempting to use IAS as a “scapegoat”⁴⁵ or that the Monitor has an improper motive are all inflammatory and unfounded. The Monitor has acted appropriately and in good faith at all times.

⁴¹ *Nelson* at para. 5; [Monitor’s Report](#) as referred to in *Nelson*.

⁴² *Nelson* at para. 5.

⁴³ *Nelson* at para. 6.

⁴⁴ *R v Irwin*, [2020 ONCA 776](#) at [paras. 23-26](#).

⁴⁵ IAS Factum at paras. 88, 90.

PART IV—ORDER REQUESTED

66. The Fund requests that the Court dismiss IAS' motion with costs.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 27th day of June, 2025.



Heather Meredith / Meena Alnajar

McCarthy Tétrault LLP

Lawyer for the Applicant (Responding Party)

SCHEDULE “A”
LIST OF AUTHORITIES

1. *Essar Steel Algoma Inc. et al Re*, [2016 ONSC 3205](#).
2. *R v Irwin*, [2020 ONCA 776](#).
3. *Nelson Financial Group Ltd., Re*, 2011 CarswellOnt 19453 (On Sup Ct J [Commercial List]).

**SCHEDULE “B”
RELEVANT STATUTES**

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

Monitors

Duties and functions

23 (1) The monitor shall

(a) except as otherwise ordered by the court, when an order is made on the initial application in respect of a debtor company,

(i) publish, without delay after the order is made, once a week for two consecutive weeks, or as otherwise directed by the court, in one or more newspapers in Canada specified by the court, a notice containing the prescribed information, and

(ii) within five days after the day on which the order is made,

(A) make the order publicly available in the prescribed manner,

(B) send, in the prescribed manner, a notice to every known creditor who has a claim against the company of more than \$1,000 advising them that the order is publicly available, and

(C) prepare a list, showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner;

(b) review the company's cash-flow statement as to its reasonableness and file a report with the court on the monitor's findings;

(c) make, or cause to be made, any appraisal or investigation the monitor considers necessary to determine with reasonable accuracy the state of the company's business and financial affairs and the cause of its financial difficulties or insolvency and file a report with the court on the monitor's findings;

(d) file a report with the court on the state of the company's business and financial affairs — containing the prescribed information, if any —

(i) without delay after ascertaining a material adverse change in the company's projected cash-flow or financial circumstances,

(ii) not later than 45 days, or any longer period that the court may specify, after the day on which each of the company's fiscal quarters ends, and

(iii) at any other time that the court may order;

(d.1) file a report with the court on the state of the company's business and financial affairs — containing the monitor's opinion as to the reasonableness of a decision, if any, to include in a compromise or arrangement a provision that sections 38 and 95 to 101 of the Bankruptcy and Insolvency Act do not apply in respect of the compromise or arrangement and containing the prescribed information, if any — at least seven days before the day on which the meeting of creditors referred to in section 4 or 5 is to be held;

(e) advise the company's creditors of the filing of the report referred to in any of paragraphs (b) to (d.1);

(f) file with the Superintendent of Bankruptcy, in the prescribed manner and at the prescribed time, a copy of the documents specified in the regulations;

(f.1) for the purpose of defraying the expenses of the Superintendent of Bankruptcy incurred in performing his or her functions under this Act, pay the prescribed levy at the prescribed time to the Superintendent for deposit with the Receiver General;

(g) attend court proceedings held under this Act that relate to the company, and meetings of the company's creditors, if the monitor considers that his or her attendance is necessary for the fulfilment of his or her duties or functions;

(h) if the monitor is of the opinion that it would be more beneficial to the company's creditors if proceedings in respect of the company were taken under the Bankruptcy and Insolvency Act, so advise the court without delay after coming to that opinion;

(i) advise the court on the reasonableness and fairness of any compromise or arrangement that is proposed between the company and its creditors;

(j) make the prescribed documents publicly available in the prescribed manner and at the prescribed time and provide the company's creditors with information as to how they may access those documents; and

(k) carry out any other functions in relation to the company that the court may direct.

Obligation to act honestly and in good faith

25 In exercising any of his or her powers or in performing any of his or her duties and functions, the monitor must act honestly and in good faith and comply with the Code of Ethics referred to in section 13.5 of the Bankruptcy and Insolvency Act.

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.

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)

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

Meena Alnajar LSO#: 89626N
Tel: 416-601-8116
E-mail: malnajar@mccarthy.ca

Lawyers for the Applicant,
GrowthWorks Canadian Fund Ltd.