



ONTARIO SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

COUNSEL/ENDORSEMENT SLIP

COURT FILE NO.: CV-23-00696017-00CL

DATE: 23-APR-2024

NO. ON LIST: 2

TITLE OF PROCEEDING: RE LOYALTYONE, CO.

BEFORE: JUSTICE CONWAY

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party:

Name of Person Appearing	Name of Party	Contact Info
Tim Pinos Kiyam Jamal	LOYALTYONE, CO.	tpinos@cassels.com ; khamal@cassels.com
Peter Ruby Kirby Cohen	KSV, Monitor	pruby@goodmans.ca ; kcohen@goodmans.ca

For Defendant, Respondent, Responding Party:

Name of Person Appearing	Name of Party	Contact Info
Lesley Mercer Maria Konyukhova	BREAD FINANCIAL HOLDINGS, INC.	lmercer@stikeman.com ; mkonyukhova@stikeman.com

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
David Bish	BANK OF MONTREAL	dbish@torys.com
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Graham Splawski	BANK OF AMERICA	gsplawski@blg.com

ENDORSEMENT OF JUSTICE CONWAY:

- [1] **All defined terms used in this Endorsement shall, unless otherwise defined, have the meanings ascribed to them in the Joint Factum of the Applicant and the Monitor dated April 21, 2024.**
- [2] LoyaltyOne and the Monitor bring this motion for a sealing order with respect to certain confidentially sensitive information in the Hageman Affidavit and the Harington Report. Those materials were prepared in connection with litigation between Bread and LoyaltyOne and the TMA Motion that is scheduled to be heard before me in June 2024. The materials are contained in LoyaltyOne's reply motion record.
- [3] In the LoyaltyOne CCAA proceedings, BMO acquired substantially all of the Air Miles business through the court-approved CCAA Sale Transaction. In that transaction, BMO negotiated a confidentiality clause requiring LoyaltyOne to hold all information about the Air Miles business in confidence following the transaction. BMO is nonetheless prepared to permit LoyaltyOne to use some of this information for purposes of advancing its case on the TMA Motion.
- [4] The Confidential Information pertains to the Air Miles business, including pricing, performance metrics, and costs per mile paid by certain customers. The record before me shows that LoyaltyOne has worked closely with BMO to limit the number of redactions to protect only very specific information about the Air Miles business that would impact BMO's competitive position in that industry.
- [5] I am satisfied that the test in *Sherman Estate v. Donovan*, 2021 SCC 25 and *Sierra Club of Canada v. Canada (Minister of Finance)*, 2002 SCC 41 has been met. Disclosure of this information poses a serious risk to an important public interest – namely, protection of stakeholders in a CCAA proceeding through the sale of the business as a going concern. This is particularly so in this case where BMO negotiated a confidentiality clause as part of its acquisition of the Air Miles business.
- [6] There are no reasonable alternatives to the sealing order. As noted, LoyaltyOne, working with the Monitor and BMO, restricted the redactions to the minimum required in order for LoyaltyOne to still be able to use these materials to advance its case on the TMA Motion.
- [7] The benefits of the order outweigh its negative effects. The redacted materials will be publicly available in the court file and on the Monitor's website. The public will have access to materials that are relevant to the live issues on the TMA Motion, subject to

redaction of very limited details. LoyaltyOne and the Monitor state that they are not aware of any party that will be prejudiced by these redactions.

[8] I required counsel to remove paragraph 6 from the draft order as it is not necessary.

[9] I have signed the amended order. This order is effective from today's date and is enforceable without the need for entry and filing.

[10] **I direct counsel for LoyaltyOne to file a hard copy of the unredacted materials with the Commercial List office in a sealed envelope with a copy of the order and this Endorsement.**

A handwritten signature in blue ink, appearing to read "Conway J.", with a stylized flourish at the end.