

Court File No. CV-23-00696017-00CL

**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 PLAN OF COMPROMISE OR
ARRANGEMENT OF LOYALTYONE, CO.

Applicant

**MOTION RECORD
(SEALING ORDER)**

April 19, 2024

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AND TO: **THE SERVICE LIST**

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TAB 1

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Applicant

**NOTICE OF MOTION
(SEALING ORDER – TMA MOTION)**

The Applicant LoyaltyOne, Co. ("**LoyaltyOne**") and KSV Restructuring Inc. in its capacity as Monitor of the Applicant (the "**Monitor**") will make a motion jointly to Justice Conway or another judge presiding over the Commercial List.

PROPOSED METHOD OF HEARING: The motion is to be heard virtually on April 23, 2024.

THE MOTION IS FOR:

- (a) a Sealing Order in the form attached as Schedule A to this Notice of Motion; and
- (b) such further and other relief as to this Honourable Court may seem just.

THE GROUNDS FOR THE MOTION ARE:**Background**

- (c) on March 10, 2023, LoyaltyOne was granted protection under the CCAA pursuant to an initial order of the Court (as amended and restated, the “**Initial Order**”) in this proceeding (the “**CCAA Proceeding**”);
- (d) pursuant to the Initial Order, the Monitor was appointed as monitor of LoyaltyOne;
- (e) in July 2020, LoyaltyOne filed an appeal of an assessment issued by the Canada Revenue Agency (the “**CRA**”) with the Tax Court of Canada (the “**Tax Dispute**”). A trial of the Tax Dispute is scheduled for the fall of 2024;
- (f) Bread Financial Holdings, Inc. (“**Bread**”) has asserted entitlement to the proceeds resulting from the Tax Dispute (the “**Disputed Amount**”) and LoyaltyOne and Bread have engaged in litigation vis a vis this entitlement (the “**TMA Motion**”);
- (g) as part of the TMA Motion, LoyaltyOne served and filed their Motion Record dated November 9, 2023, and Bread served and filed their Motion Record dated February 14, 2024;
- (h) on March 14, 2024, LoyaltyOne notified the service list that their reply motion record (the “**LoyaltyOne Reply Record**”) had been served upon Bread and would be provided to others on the service list on an individualized basis pursuant to an undertaking that they treat the materials as confidential;
- (i) LoyaltyOne began a dialogue with Bank of Montreal (“**BMO**”), the purchaser of LoyaltyOne’s operating assets through the CCAA sales process with respect to

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any confidential information contained or referred to in the LoyaltyOne Reply Record;

- (j) LoyaltyOne and the Monitor have continued to work with BMO regarding any proposed redactions and have no interest in disclosing their confidential interests;
- (k) the LoyaltyOne Reply Record has not yet been filed in the public court file and has only been provided to parties who have agreed to treat the LoyaltyOne Reply Record as confidential pending the hearing of this Motion;

The Documents May Contain Sensitive Information that If Disclosed, Pose a Serious Risk to the Parties or Their Commercial Counterparties

- (l) the prospective public disclosure by LoyaltyOne and the Monitor of confidential information relating to the AIR MILES® Reward Program (“**Air Miles Program**”) would result in significant harm to BMO and to Air Miles Loyalty, Inc. (“**Air Miles**”).
- (m) the confidential information includes, but is not limited to: (i) copies of program agreements between Air Miles and certain past and present sponsors/members of the Air Miles Program (namely, Sobeys, Shell and BMO); (ii) pricing information, key performance indicators (“**KPIs**”), and the cost per mile paid by certain program sponsors/members; (iii) the term of the agreements; and (iv) other information about the inner workings and economics of the Air Miles Program all of which were considered confidential by LoyaltyOne and which are considered confidential by BMO (collectively, the “**Confidential Information**”)
- (n) the Confidential Information is not available or accessible to the public and disclosure of aspects of Air Miles’ business and the Air Miles Program that are commercially sensitive would impair BMO and Air Miles’ abilities to conduct their

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operations without risk of competitors, customers or other interested persons as applicable using this information to their advantage;

Alternative Measures Will Not Prevent This Risk and the Parties' Proposal Is Reasonable in Light of the Circumstances

- (o) there is no adequate alternative measure to prevent the risk, short of not using any of the Confidential Information in the TMA Motion; this will obstruct the ability of LoyaltyOne and the Monitor to litigate the TMA Motion and would deny the Court relevant information necessary to determine the TMA Motion;
- (p) a sealing order preserves the integrity of the CCAA process, while also enabling LoyaltyOne and the Monitor to rely on this information to assist them in their conduct of the TMA Motion;

As a Matter of Proportionality, The Benefits of the Order Outweigh its Negative Effects

- (q) the salutary effects of sealing such information from the public record greatly outweigh the deleterious effects of doing so under the circumstances;
- (r) LoyaltyOne and the Monitor are not aware of any party that will be prejudiced if the information is sealed on the basis requested or any public interest that will be served if such details are disclosed in full at this time;

Other Grounds

- (s) such further and other grounds as the lawyers may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

- (t) The proposed Sealing Order;
- (u) the Affidavit of Shawn Stewart sworn April 16, 2024;
- (v) the Affidavit of Jennifer Hawkins sworn April 16, 2024 and
- (w) such further and other evidence as the lawyers may advise and this Honourable Court may permit.

April 19, 2024

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Lawyers for Bread Financial Holdings Inc.

AND TO: **THE SERVICE LIST**

SCHEDULE A

Court File No. CV-23-00696017-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE)	TUESDAY, THE 23 rd
)	
JUSTICE CONWAY)	DAY OF APRIL, 2024

IN THE MATTER OF THE *COMPANIES' CREDITORS
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF LOYALTYONE, CO.

Applicant

SEALING ORDER

THIS MOTION, made by the Applicant, LoyaltyOne, Co. ("**LoyaltyOne**") and KSV Restructuring Inc. in its capacity as monitor of the Applicant (in such capacity, the "**Monitor**"), for an order sealing portions of the Fresh as Amended affidavit of Cynthia Hageman affirmed March 8, 2024 and April 17, 2024 (the "**Hageman Affidavit**") and portions of Exhibit A to the affidavit of Andrew Harington affirmed March 13, 2024 (the "**Harington Report**").

ON READING the Notice of Motion of the Applicant and Monitor dated April 19, 2024 (the "**Notice of Motion**"), the Motion Record of the Applicant and Monitor dated April 19, 2024 (the "**Sealing Motion Record**") and the Sixth Report of the Monitor dated April 19, 2024, and on hearing submissions of counsel for the Applicant and the Monitor and the other parties listed on the counsel slip and no one appearing for any other party although duly served.

SERVICE AND DEFINITIONS

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that capitalized terms used in this Order and not otherwise defined shall have the meanings ascribed to them in the Notice of Motion and Sealing Motion Record.

CONFIDENTIAL INFORMATION AND SEALING

3. **THIS COURT ORDERS** that the Confidential Information, which consists of the passages highlighted in Hageman Affidavit and the Harington Report, is hereby sealed, kept confidential and shall not form part of the public record until further Order of this Court (such order to be obtained on not less than seven (7) days' notice to the Applicant, the Monitor, and Air Miles Loyalty, Inc.).
4. **THIS COURT ORDERS** that the Applicant shall prepare public versions of the Hageman Affidavit and the Harington Report in which the Confidential Information is redacted, which shall be served on the Service List, filed with the Court and posted on the Monitor's website for this CCAA Proceeding (the "**Monitor's Website**").
5. **THIS COURT ORDERS** that the Confidential Information shall not be served on the Service List or posted on the Monitor's Website.
6. **THIS COURT ORDERS** that in this CCAA Proceeding, the confidentiality of the Confidential Information will be maintained by any person that has been provided with the Confidential Information and will not form part of the public record, and portions of documents and examinations reproducing or otherwise disclosing the Confidential Information – whether now existing or prepared hereafter – shall remain confidential and sealed without further Order of this Court. Where any such future documents or examinations reproduce or otherwise disclose Confidential Information, the parties shall prepare: (i) unredacted versions of the documents to be filed under seal with the Court; and (ii) public version of documents in which the Confidential Information is redacted to be served on the Service List in the within proceedings, posted on the Monitor's Website, and filed with the Court.

GENERAL

7. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Applicant, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicant and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicant and the Monitor and their respective agents in carrying out the terms of this Order.

8. **THIS COURT ORDERS** that each of the Applicant and the Monitor be at liberty and are hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

9. **THIS COURT ORDERS** that this Order and all its provisions are effective as of 12:01 a.m. (Eastern Time) on the date of this Order without the need for entry or filing.

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF LOYALTYONE, CO.

**ONTARIO
SUPERIOR COURT OF JUSTICE
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PROCEEDING COMMENCED AT TORONTO

SEALING ORDER

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**NOTICE OF MOTION
(SEALING ORDER – TMA MOTION)**

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- and -

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
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AFFIDAVIT OF SHAWN STEWART
(sworn April 16, 2024)

I, Shawn Stewart, of the City of Toronto, in the Province of Ontario MAKE OATH
AND SAY:

1. I was the President of LoyaltyOne, Co., (the “**Applicant**”) from May 2022 until the closing of the court-approved sale of all or substantially all of the business and property of the Applicant to Bank of Montreal (“**BMO**”) on June 1, 2023 (the “**CCAA Sale Transaction**”). Since closing the CCAA Sale Transaction, I have been and continue to be the President of Air Miles Loyalty, Inc. (“**Air Miles**”), the wholly-owned company that BMO used to complete its acquisition pursuant to the CCAA Sale Transaction. As such, I am familiar with, and have personal knowledge of, the day-to-day operations, business, financial affairs, and books and records of the Applicant (to the time of the closing of the CCAA Sale Transaction) and Air Miles and the matters contained in this Affidavit. Where I do not possess personal knowledge, I have stated the source of my information and, in all such cases, believe it to be true.

OVERVIEW

2. This Affidavit is made in support of the granting of the Sealing Order (as defined below). The Affidavit sets out the background to the request for the Sealing Order and the harm that would result to BMO and Air Miles, among others, should the Sealing Order not be granted.

BACKGROUND

3. The Applicant commenced its proceeding under the *Companies' Creditors Arrangement Act (Canada)* ("CCAA") in March of 2023.

4. The principal objective of the CCAA proceedings was to complete a sale of the Applicant's business and property, which occurred in June 2023 with the closing of the CCAA Sale Transaction.

5. The Applicant had no continuing directors, officers or employees following the closing of the CCAA Sale Transaction. The controlling mind of the Applicant is now the Monitor in the CCAA proceedings, pursuant to expanded powers granted to the Monitor by Ancillary Relief Order dated May 12, 2023.

6. Although all or substantially all of the business and property of the Applicant were sold pursuant to the CCAA Sale Transaction, the CCAA proceedings continued and remain ongoing as of the date hereof, principally in order that the Applicant may pursue certain tax-related claims against Canada Revenue Agency ("CRA").

7. A dispute has arisen between the Applicant and Bread Financial Holdings Inc. ("**Bread**") as to which of them is entitled to any proceeds resulting from the claims being litigated by the Applicant with CRA (the "**Bread/LO Litigation**"). The Bread/LO

Litigation has been commenced by the Monitor pursuant to an order authorizing the commencement of such litigation dated December 15, 2023. The Bread/LO Litigation is not a separate civil action; rather, it is being conducted within the CCAA proceedings.

8. Neither BMO nor Air Miles has any interest or involvement in the claims against CRA, the proceeds of the claims against CRA, if any, or the Bread/LO Litigation. Without limitation, the claims against CRA and the proceeds thereof, if any, were excluded assets not acquired by BMO in the CCAA Sale Transaction.

9. Nonetheless, the Bread/LO Litigation now threatens to result in significant harm to BMO and to Air Miles as a result of the potential public disclosure by the Monitor and/or Applicant of confidential information relating to Air Miles and the loyalty program operated by Air Miles (collectively, the “**Confidential Information**”). The Confidential Information that would be made public as a result of the Bread/LO Litigation (absent a sealing order) includes, but is not limited to: (i) copies of program agreements between Air Miles and certain past and present sponsors/members of the Air Miles loyalty program (namely, Sobeys, Shell and BMO); (ii) pricing information, key performance indicators (“**KPIs**”), and the cost per mile paid by certain program sponsors/members; (iii) the term of the agreements; and (iv) other information about the inner workings and economics of the Air Miles program.

10. The Monitor and/or Applicant are using and potentially disclosing the Confidential Information in the Bread/LO Litigation principally as a result of, and in conjunction with, expert evidence that relies on or refers to the Confidential Information.

11. I am advised by David Bish of Torys LLP (“**Torys**”), counsel to BMO and Air Miles, that on March 13, 2024, the service list in the Applicant’s CCAA proceedings

(including Torys) was served by counsel to the Applicant with a notice that the Monitor and the Applicant had served Bread with a Reply Record in the Bread/LO Litigation (the “**LO Reply Record**”) that contained potentially sensitive information and proposed to make available an unredacted copy of the LO Reply Record to anyone on the CCAA service list that agreed to treat the record as confidential. A copy of this email to the CCAA service list is attached hereto as Exhibit “A”.

12. The CCAA service list includes persons that are:

- (a) former and current sponsors/members of the Air Miles program;
- (b) service providers to the Air Miles Program, including counterparties to contracts assigned and assumed as part of the CCAA Sale Transaction; and
- (c) competitors to the Air Miles programs (i.e., persons who operate competing loyalty or points programs in Canada).

13. Torys contacted counsel to the Applicant to express the concerns of BMO and Air Miles forthwith upon receiving the aforementioned email to the service list. Neither BMO nor Air Miles had any prior notice of the prospective disclosure of the Confidential Information. BMO and Air Miles have acted as quickly as possible in the circumstances.

14. This Affidavit is made in support of the Monitor and Applicant’s request for an order (the “**Sealing Order**”):

- (a) sealing the Confidential Information;
- (b) directing the Monitor, the Applicant and Bread not to provide an unredacted copy of the LO Reply Record to any person (other than their legal advisors and experts in respect of the Bread/LO Litigation), including any person on the CCAA service list, subject to further order of the court obtained on notice to BMO and Air Miles; and

- (c) approving a protocol for the Monitor, the Applicant and Bread to treat the Confidential Information as confidential in the course of conducting the Bread/LO Litigation, including in the course of conducting examinations, filing further written materials, and in making oral submissions in open court in further hearings in respect of the Bread/LO Litigation.

15. I am advised by David Bish of Torys that counsel to the Applicant has confirmed that: (i) no party other than Bread and counsel for the Applicant's secured lenders (on a confidential basis) has been or will be provided with the Confidential Information by the Monitor or Applicant pending a determination by this Honourable Court in respect of the Sealing Order; and (ii) the LO Reply Record has not yet been filed in the public court file.

HARM RESULTING FROM DISCLOSURE

16. I have reviewed the LO Reply Record, as provided to Torys by counsel to the Applicant. This document contains highly confidential, proprietary and competitively sensitive information that would be harmful to the value and success of the Applicant's business if publicly released.

I. Agreement Not to Disclose

17. Maintaining the confidentiality of the Confidential Information was of the utmost importance to BMO and Air Miles in negotiating and closing the CCAA Sale Transaction. The central document in that transaction is the Asset Purchase Agreement dated March 9, 2023 (the "**APA**"). Section 12.1 of the APA provides:

12.1 Confidentiality

The Buyer and the Seller acknowledge and agree that the terms of the Confidentiality Agreement are hereby incorporated by reference and shall

continue in full force and effect until the Closing, at which time the obligations thereunder shall terminate. From and after the Closing, the Seller shall, and shall cause its affiliates to, hold, and shall use its reasonable best efforts to cause its or their respective Representatives to hold, in confidence any and all information, whether written or oral, concerning the Business, the Purchased Assets and Assumed Liabilities, except to the extent that Seller can show that such information: (a) is generally available to, and known by, the public through no fault of Seller, any of its affiliates or any of their respective Representatives; or (b) is lawfully acquired by Seller, any of its affiliates or any of their respective Representatives from sources that are not prohibited from disclosing such information by a legal, contractual or fiduciary obligation. If Seller, any of its affiliates or any of their respective Representatives are compelled to disclose any information by judicial or administrative process or by other requirements of Applicable Law, Seller shall promptly notify Buyer in writing and shall disclose only that portion of such information that Seller is advised by its counsel in writing is legally required to be disclosed; provided that Seller shall use its reasonable best efforts to obtain an appropriate protective order or other reasonable assurance that confidential treatment will be accorded such information.

18. Section 12.1 of the APA is not mere boilerplate. It was an essential term of the APA that was expressly negotiated to protect the interests of BMO as purchaser and to preserve the value of the Air Miles business and property. At all times, BMO and Air

Miles have held a reasonable expectation that the Confidential Information would remain confidential.

19. Prior to closing the CCAA Sale Transaction, the Applicant would have been similarly alarmed at the prospect of any public disclosure of the Confidential Information.

20. The Applicant – as now directed by the Monitor – is not able to make public the Confidential Information: it expressly agreed not to do so in the APA. The APA was approved by this Honourable Court by Approval and Vesting Order dated May 12, 2024. The public disclosure of the Confidential Information would undermine the integrity of the CCAA process, including sale transactions approved by the courts thereunder and confidence in court-appointed monitors should they be permitted to cause applicants to breach or ignore their obligations.

21. A copy of the APA, the Approval and Vesting Order, and all other Orders and CCAA court materials referred to in this affidavit are available on the Monitor's website at: www.ksvadvisory.com/experience/case/loyaltyone.

II. Harm Resulting From Disclosure

22. The Confidential Information is commercially sensitive, and its public disclosure would be economically and reputationally devastating to Air Miles (and as a result, to BMO both as owner of Air Miles and as a program sponsor/member). The Confidential Information is not available or accessible to the public. Publicly releasing any of the Confidential Information would be especially devastating at this time (i.e., on the heels of the predecessor program operated by the Applicant having been insolvent and as BMO brings stability to the business it has acquired).

23. The program agreements that Air Miles negotiates with its sponsors/members are bespoke. Each sponsor/member's program agreement has unique terms, including the duration of the agreement and pricing and KPIs. It would be highly prejudicial to Air Miles if sponsors/members learned the terms of other sponsors/members' respective program agreements or of the inner workings of the program generally. Among other things, this could make future negotiations with sponsors/members more difficult, adversely affect the profitability of the Air Miles program, lead to dissatisfaction with the Air Miles program among its existing sponsors/members, or discourage companies not presently participating in the program from doing so.

24. It would also be highly distressing to the sponsors/members to learn that their program agreements had been made public, whether in full or in part. Each program agreement contains detailed confidentiality provisions in favour of the sponsors/members, and the Applicant – and now Air Miles through the assignment and assumption of these agreements – is contractually obligated to treat as confidential this information. Sponsor/member dissatisfaction with the program and potential harm due to the failure to keep confidential the terms of their program agreements could have serious repercussions on Air Miles' business.

25. Similarly, there is intense competition among competing loyalty programs in Canada. If a competitor to Air Miles learned of the Confidential Information, including the time at which certain program agreements are expiring and the pricing and economics of such agreements, it could target these Air Miles sponsors/members in a bid to have them leave the Air Miles program and join a competitive loyalty program.

26. The foregoing considerations apply to Sobeys, even though Sobeys is no longer a sponsor/member of the Air Miles program. Sobeys' agreements with the Applicant are important documents and were assigned and assumed, with Sobeys' consent, as part of the CCAA Sale Transaction notwithstanding Sobeys' withdrawal from the program. Sobeys' program agreement contains confidentiality provisions in favour of Sobeys, and representatives of Sobeys actively engaged with the Applicant and with BMO prior to completion of the CCAA Sale Transaction to, among other things, address confidentiality concerns. It would be harmful to BMO, Air Miles, and Sobeys for this information to now be made public irrespective of Sobeys having left the program. Even though Sobeys is no longer participating in the program, its program agreement reveals commercially sensitive information about the term of the agreement, pricing, KPIs, and the inner workings of the program.

27. Finally, BMO and Air Miles have been growing the Air Miles program since the closing of the CCAA Sale Transaction. The release of the Confidential Information would have a negative impact on Air Miles' prospects for business development with new partners, including impairing Air Miles' leverage in negotiating the terms of new and renewing program agreements.

28. In short, any public disclosure of the Confidential Information would result in: (i) a failure to uphold confidentiality agreements (both as set out in the APA approved by the Court and also as set out in the respective program agreements with sponsors/members); (ii) a failure to protect economically sensitive information; and (iii) an impairment of the integrity of, and public confidence in, the CCAA process, particularly with respect to sale

transactions and court approvals of same and the role of the court-appointed monitor in CCAA proceedings.

THE SEALING ORDER

29. The Sealing Order is necessary to prevent harm to BMO and Air Miles, and collateral damage to others (e.g., program sponsors/members who negotiated for and expect confidentiality). The terms and scope of the Sealing Order are proportionate and balanced. I and others at BMO and Air Miles have carefully reviewed the LO Reply Record with a view to redacting only such information as is particularly sensitive. I and others at BMO and Air Miles that have reviewed the LO Reply Record have conscientiously avoided seeking to have sealed more information than is truly necessary or appropriate in the circumstances.

30. I have considered whether there are reasonable alternatives that would protect BMO and Air Miles without the need for the Sealing Order. There are not, short of the Confidential Information not being produced at all in the Bread/LO Litigation. While BMO and Air Miles would certainly be pleased not to have the Confidential Information disclosed in any form, I understand that the Monitor and Applicant believe that this would impair their ability to conduct the Bread/LO Litigation. Rather than insist on strict performance of section 12.1 of the APA, BMO and Air Miles have accepted the proposed Sealing Order as an acceptable means to resolve this matter. Should the Sealing Order not be granted, BMO and Air Miles reserve their rights to seek to enforce section 12.1 of the APA.

31. The Sealing Order protects the *bona fide* rights, interests, and expectations of BMO and Air Miles, and preserves the integrity of the CCAA process, while also enabling the

Monitor and the Applicant to rely on this information to assist them in their conduct of the Bread/LO Litigation. Maintaining the confidentiality of the Confidential Information will not limit or impair Bread's conduct of the Bread/LO Litigation, and there is no prejudice to Bread in the granting of the Sealing Order. It is not necessary for Bread's conduct of the Bread/LO Litigation that the Confidential Information be publicly available.

32. I do not believe there is any prejudice to any other person should the Sealing Order be granted. No one – including Air Miles' competitors – has a reasonable expectation that it should be provided with this information, and no one save the Monitor, the Applicant and Bread (each of whom already has this information) is participating in or requires such information for the conduct of the Bread/LO Litigation. The Sealing Order will not adversely affect the conduct of the Bread/LO Litigation or prejudice any person with an interest in that litigation (such litigation being the sole reason for the potential disclosure of this information in the first place).

33. Because the future conduct of the Bread/LO Litigation may result in participants referring to or repeating the Confidential Information – including in the course of examinations, further written court materials, and oral submissions at hearings in the course of the litigation – it is appropriate that the Sealing Order proactively approve a protocol to safeguard the Confidential Information going forward. Doing so now will avoid costs and delays – including unnecessarily expending judicial resources – in future motions to seal and redact subsequent incidents of the Confidential Information being referred to or repeated.

34. I swear this affidavit in support of the Applicant’s motion for the Sealing Order.

SWORN REMOTELY BY Shawn Stewart,
from the City of Toronto, in the Province of
Ontario, before me at the City of Toronto, in
the Province of Ontario, on April 16, 2024, in
accordance with O.Reg. 431/20,
Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits
(or as may be)

David Bish (LSO #: 41629A)

Shawn Stewart

THIS IS **EXHIBIT "A"** REFERRED TO
IN THE AFFIDAVIT OF SHAWN STEWART
SWORN REMOTELY BY SHAWN STEWART
BEFORE ME *BY VIDEO CONFERENCE*, THIS 16TH
DAY OF APRIL, 2024



DAVID BISH
Commissioner for Taking Affidavits

Nigro, Elizabeth

From: Jamal, Kiyani <kjamal@cassels.com>
Sent: Thursday, March 14, 2024 10:15 AM
To: RJ Reid; Jacobs, Ryan; Dietrich, Jane; Kukulowicz, R. Shayne; Levine, Natalie; Wunder, Michael; Bornstein, Jeremy; generalcounsel@loyalty.com; pdublin@akingump.com; mlahaie@akingump.com; rbibloblock@akingump.com; ngoldstein@ksvadvisory.com; dsieradzki@ksvadvisory.com; mtallat@ksvadvisory.com; mostling@ksvadvisory.com; boneill@goodmans.ca; carmstrong@goodmans.ca; aharmes@goodmans.ca; pruby@goodmans.ca; ahutchens@alvarezandmarsal.com; jkarayannopoulos@alvarezandmarsal.com; bfox@alvarezandmarsal.com; rbehrens@alvarezandmarsal.com; baird@pjtpartners.com; daniel.degosztanyi@pjtpartners.com; amacfarlane@blg.com; spearlman@blg.com; eli.columbus@haynesboone.com; frasher.murphy@haynesboone.com; matt.ferris@haynesboone.com; zychk@bennettjones.com; mightonj@bennettjones.com; fosterj@bennettjones.com; staleyr@bennettjones.com; sgreenberg@gibsondunn.com; sdomanowski@gibsondunn.com; ssilverman@gibsondunn.com; agains@gibsondunn.com; mike.genereux@psc.com; james.kang@psc.com; alvin.kibaara@psc.com; Bish, David; Bomhof, Scott; Noel, Mike; kranzleya@sullcrom.com; gerlacha@sullcrom.com; christopher.r.lee@morganstanley.com; sarah.gore@morganstanley.com; winston.callaway@morganstanley.com; generalcounsel@breadfinancial.com; ben.kaminetzky@davispolk.com; brian.resnick@davispolk.com; pat.confalone@cra-arc.gc.ca; ministryofjustice@gov.ab.ca; jus.minister@gov.sk.ca; minjus@leg.gov.mb.ca; leslie.crawford@ontario.ca; insolvency.unit@ontario.ca; justice.comments@gnb.ca; deptjps@gov.pe.ca; justice@gov.nl.ca; notif-montreal@revenuquebec.ca; danielcantin@revenuquebec.ca; normand.berube@revenuquebec.ca; grayt@bennettjones.com; legalteam@reorg.com; Adham.shalabi@aircanada.ca; Louisehelene.senecal@aircanada.ca; heidi.clark@dentons.com; john.salmas@dentons.com; mark.freake@dentons.com; chardeep.minhas@rbc.com; aperzow@blg.com; rjaipargas@blg.com; rbrailovski@firstgulf.com; kathryn.borgatti@greatgulf.com; Pinos, Timothy; Steve.Kahansky@metro.ca; Roy.Shimron@metro.ca; alain.tadros@metro.ca; srivet@metro.ca; bgiroux@millerthomson.com; hmeredith@mccarthy.ca; peter.karam@avisonyoung.com; Edward.park@justice.gc.ca; Maria Konyukhova; Eliot Kolers; Ashley Taylor; Lesley Mercer Merskey, Alan; Picone, John M.; Pinos, Timothy
Cc:
Subject: RE: LoyaltyOne Co. - Motions re Tax Matters Agreement [IWOV-LEGAL.FID4058681]

**This message needs your attention**

- Someone new has been added to this email. Please review the recipients.

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Good Morning,

This is to advise the service list that yesterday, LoyaltyOne and the Monitor served their Reply Record. Due to potentially sensitive information and possible redactions, if you wish to have a copy of the unredacted record at this stage, please confirm that you will treat it as confidential until any issues regarding redactions or sealing are dealt with.

Please contact Tim Pinos and me under separate cover.

Thank you,

Cassels

KIYAN JAMAL

Associate

t: +1 416 869 5483

e: kjamal@cassels.com

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Suite 3200, Bay Adelaide Centre – North Tower

40 Temperance St.

Toronto, Ontario M5H 0B4 Canada

From: RJ Reid <RReid@stikeman.com>

Sent: Thursday, February 15, 2024 2:08 PM

To: Jacobs, Ryan <rjacobs@cassels.com>; Dietrich, Jane <jdietrich@cassels.com>; Kukulowicz, R. Shayne <skukulowicz@cassels.com>; Levine, Natalie <nlevine@cassels.com>; Wunder, Michael <mwunder@cassels.com>; Bornstein, Jeremy <jbarnstein@cassels.com>; generalcounsel@loyalty.com; pduhlin@akingump.com; mlahaie@akingump.com; rbibloblock@akingump.com; ngoldstein@ksvadvisory.com; dsieradzki@ksvadvisory.com; mtallat@ksvadvisory.com; mostling@ksvadvisory.com; boneill@goodmans.ca; carmstrong@goodmans.ca; aharmes@goodmans.ca; pruby@goodmans.ca; ahutchens@alvarezandmarsal.com; jkarayannopoulos@alvarezandmarsal.com; bfox@alvarezandmarsal.com; rbehrens@alvarezandmarsal.com; baird@pjtpartners.com; daniel.degosztanyi@pjtpartners.com; amacfarlane@blg.com; spearlman@blg.com; eli.columbus@haynesboone.com; frasher.murphy@haynesboone.com; matt.ferris@haynesboone.com; zychk@bennettjones.com; mightonj@bennettjones.com; fosterj@bennettjones.com; staley@bennettjones.com; sgreenberg@gibsondunn.com; sdomanowski@gibsondunn.com; ssilverman@gibsondunn.com; agains@gibsondunn.com; mike.genereux@psc.com; james.kang@psc.com; alvin.kibaara@psc.com; dbish@torys.com; sbomhof@torys.com; mnoel@torys.com; kranzleya@sullcrom.com; gerlacha@sullcrom.com; christopher.r.lee@morganstanley.com; sarah.gore@morganstanley.com; winston.callaway@morganstanley.com; generalcounsel@breadfinancial.com; ben.kamintzky@davispolk.com; brian.resnick@davispolk.com; pat.confalone@cra-arc.gc.ca; ministryofjustice@gov.ab.ca; jus.minister@gov.sk.ca; minjus@leg.gov.mb.ca; leslie.crawford@ontario.ca; insolvency.unit@ontario.ca; justice.comments@gnb.ca; deptjps@gov.pe.ca; justice@gov.nl.ca; notif-montreal@revenuquebec.ca; danielcantin@revenuquebec.ca; normand.berube@revenuquebec.ca; grayt@bennettjones.com; legalteam@reorg.com; Adham.shalabi@aircanada.ca; Louisehelene.senecal@aircanada.ca; heidi.clark@dentons.com; john.salmas@dentons.com; mark.freake@dentons.com; charndeeep.minhas@rbc.com; aperzow@blg.com; rjaipargas@blg.com; rbrailovski@firstgulf.com; kathryn.borgatti@greatgulf.com; Pinos, Timothy <tpinos@cassels.com>; Steve.Kahansky@metro.ca; Roy.Shimron@metro.ca; alain.tadros@metro.ca; sriwet@metro.ca; bgiroux@millertthomson.com; hmeredith@mccarthy.ca; peter.karam@avisonyoung.com; Edward.park@justice.gc.ca

Cc: Maria Konyukhova <MKonyukhova@stikeman.com>; Eliot Kolers <EKolers@stikeman.com>; Ashley Taylor <ATAYLOR@stikeman.com>; Lesley Mercer <LMercer@stikeman.com>

Subject: LoyaltyOne Co. - Motions re Tax Matters Agreement

CAUTION: External Email

To the Service List:

The motion record of Bread Financial Holdings Inc., in support of Bread's motion opposing the disclaimer of the Tax Matters Agreement and in response to LoyaltyOne's motion regarding the enforceability of the Tax Matters Agreement, can be accessed at the following link and is hereby served upon you in accordance with the *Rules*:

<https://stikeman.sharefile.com/public/share/web-se15829ccb73d4b93997338875963a07b>

Sincerely,
RJ

RJ Reid (he/him)

Direct: +1 416 869 5614
Mobile: +1 778 875 6242
Email: rreid@stikeman.com

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Stikeman Elliott LLP Barristers & Solicitors

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TAB ' '

Court File No. CV-23-00696017-00CL

**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 -

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF LOYALTYONE, CO.

AFFIDAVIT OF JENNIFER HAWKINS
(sworn April 16, 2024)

I, Jennifer Hawkins, of the City of Toronto, in the Province of Ontario MAKE
OATH AND SAY:

1. Since February 2022, I have been the Senior Vice President & Head of Emerging Businesses at BMO Financial Group, and I have held various prior positions at Bank of Montreal (“**BMO**”) or its affiliates since October 2015. I have worked extensively on the acquisition by BMO of the business and property of LoyaltyOne, Co. (the “**Applicant**”) that closed on June 1, 2023, and on post-closing matters following this acquisition. As such, I am familiar with, and have personal knowledge of, the day-to-day operations, business, financial affairs, and books and records of BMO and of Air Miles Loyalty, Inc. (“**Air Miles**”, which is the wholly-owned company that BMO used to complete its acquisition of the Applicant’s business and property). Where I do not possess personal knowledge, I have stated the source of my information and, in all such cases, believe it to be true.

REQUEST FOR SEALING ORDER

2. I have read the Affidavit of Shawn Stewart, sworn April 16, 2023 (the “**Stewart Affidavit**”) and I have reviewed the LO Reply Record (as defined in the Stewart Affidavit). Capitalized terms used but not defined herein have the meaning given to such terms in the Stewart Affidavit.

3. I adopt and affirm the statements that Mr. Stewart makes in the Stewart Affidavit with respect to BMO, including the harm to BMO – both in BMO’s capacity as the purchaser and owner of the Applicant’s business and property and also as the largest sponsor/member participating in the Air Miles program – that would be suffered should the Sealing Order not be granted. I further adopt and affirm Mr. Stewart’s conclusions as to the need for, and reasonableness of, the Sealing Order.

4. Without limiting the foregoing, I confirm that:

- (a) BMO, as purchaser of the Applicant’s business and property, negotiated for and relied upon section 12.1 of the APA. BMO would not have been prepared to enter into and perform the APA on the terms thereof (including the purchase price paid thereunder) had it known that the Confidential Information would in fact be publicly disclosed contrary to section 12.1 of the APA. BMO views section 12.1 of the APA as an essential term of the APA;
- (b) BMO, as an Air Miles plan sponsor/member, negotiated for and relied upon the protection of confidential information contractually set out in its program agreement with the Applicant (as now assigned to, and assumed

by, Air Miles). BMO views those confidentiality protections as an essential term of its program agreement with the Applicant (as now assigned to, and assumed by, Air Miles); and

(c) The public release of the Confidential Information would materially diminish the value of the business and property that BMO purchased pursuant to the CCAA Sale Transaction.

5. I swear this affidavit in support of the Applicant’s motion for the Sealing Order.

SWORN REMOTELY BY Jennifer Hawkins, from the City of Toronto, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on April 16, 2024, in accordance with O.Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits
(or as may be)

David Bish (LSO #: 41629A)

Jennifer Hawkins

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF LOYALTYONE, CO.

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT TORONTO

**MOTION RECORD
(SEALING ORDER)**

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Lawyers for the Monitor, KSV Restructuring Inc.