

Federal Court



Cour fédérale

Date: 20251120

Docket: T-1686-23

Citation: 2025 FC 1843

Ottawa, Ontario, November 20, 2025

PRESENT: The Honourable Mr. Justice Ahmed

BETWEEN:

HANS MCCARTHY

Applicant

and

MINISTER OF INDIGENOUS SERVICES

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This is an application for judicial review of the Respondent’s decision to withhold records requested by the Applicant, Hans McCarthy, under subsection 19(1) and paragraph 20(1)(b) of the *Access to Information Act*, RSC 1985, c A-1 (the “ATIA”). The Applicant seeks a declaration that the Respondent was not authorized to refuse disclosure under subsection 19(1) and paragraph 20(1)(b) of the ATIA. The Applicant also seeks an order under section 49 of the

ATIA directing the Respondent to disclose the requested records or, in the alternative, an order remitting his request for redetermination due the Respondent's failure to consider subsection 19(2) of the ATIA.

[2] For the reasons that follow, I agree with the Applicant. The Respondent was not authorized to refuse his requests under subsection 19(1) and paragraph 20(1)(b) of the ATIA. The Respondent failed to consider whether to exercise their discretion under subsection 19(2) of the ATIA. I find that an order under section 49 of the ATIA is warranted, subject to a minor remission regarding the exact compensation for individual members of the Chief and Council. This application for judicial review is allowed, with costs.

II. Legal Framework

[3] The Respondent, Indigenous Services Canada, is a federal agency that holds the trust funds of First Nations pursuant to sections 61 to 69 of the *Indian Act*, RSC 1985, c I-5 (the "Act"). To access these funds, First Nations must submit Band Council Resolutions ("BCRs") to the Respondent confirming that their Chief and Council have authorized the release of moneys held in trust. The requested records at issue in this matter are BCRs submitted to the Respondent by Frog Lake First Nation to access their moneys in trust.

[4] The disclosure of these documents is governed by the ATIA and *Privacy Act*, RSC, 1985, c P-21 ("*Privacy Act*") in conjunction with the *First Nations Financial Transparency Act*, SC 2013, c 7 ("FNFTA"), the *Indian Bands Revenue Moneys Regulations*, CRC, c 953 ("IBRMR"), and the *Manual for the Administration of Band Moneys* (Aboriginal Affairs and Northern

Development Canada, *Manual for the Administration of Band Moneys*, (Ottawa: Resolution and Individual Affairs Sector, 2012) (“MABM”).

A. *The ATIA and the Privacy Act*

[5] The ATIA establishes the framework for individuals to access records the federal government held or controlled. According to subsection 2(1) of the ATIA, “[t]he purpose of this Act is to enhance the accountability and transparency of federal institutions in order to promote an open and democratic society and to enable public debate on the conduct of those institutions.”

[6] Subsection 4(1) of the ATIA stipulates that every Canadian citizen or permanent resident “has a right to and shall, on request, be given access to any record under the control of a government institution.”

[7] The presumptive right of access established in subsection 4(1) of the ATIA is curtailed by certain exemptions (ATIA, ss 16-21). Under sections 19 and 20 of the ATIA, government institutions are barred from disclosing records that contain personal information and third party information, respectively.

[8] The applicability of an exemption is not sufficient to justify the refusal of all requested records. Under section 25 of the ATIA, government institutions are obliged to assess the severability of exempted information and “disclose any part of the record that does not contain” or “can reasonably be severed from any part that contains” exempted material.

[9] If a government institution refuses access to a record, the requesting party may submit a complaint to the Information Commissioner (ATIA, s 30(1)). If the Information Commissioner finds that their complaint is not well-founded, the individual may seek judicial review of the refusal before this Court (ATIA, s 41(1)).

[10] Under section 49 of the ATIA, this Court may order a government institution “to disclose the record or part thereof, subject to such conditions as the Court deems appropriate” or “make such other order as the Court deems appropriate” if the refusal was not authorized under the ATIA.

(1) Exemption for Personal Information

[11] The exemption in section 19 of the ATIA applies to “personal information” as defined in section 3 of the *Privacy Act*. Section 3 of the *Privacy Act* defines personal information as “information about an identifiable individual that is recorded in any form,” including information relating to an individual’s employment history, financial transactions in which an individual has been involved, and “the name of the individual where it appears with other personal information...or where the disclosure of the name itself would reveal information about the individual” (*Privacy Act*, ss 3(b), 3(i)).

[12] Personal information is subject to specific exclusions. For the purpose of section 19 of the ATIA, personal information does not refer to information “that relates to the position or functions” of an individual who works as “an officer or employee of a government institution,”

including the “classification, salary range and responsibilities” of their position (*Privacy Act*, s 3(j)(iii)).

[13] If a record contains personal information, subsection 19(2) of the ATIA provides that the government institution may nonetheless disclose the record if “the individual to whom it relates consents to the disclosure,” “the information is publicly available,” or “the disclosure is in accordance with section 8 of the *Privacy Act*.”

[14] Section 8 of the *Privacy Act* provides for the disclosure of personal information in certain circumstances, including when it is requested “for the purpose for which the information was obtained...or for a use consistent with that purpose”; “for the purpose of researching or validating the claims, disputes or grievances” of Indigenous peoples by “any aboriginal government, association of aboriginal people, Indian band, government institution, or part thereof;” or “for any purpose” where “the public interest in disclosure clearly outweighs any invasion of privacy that could result from the disclosure” and “disclosure would clearly benefit the individual to whom the information relates” (*Privacy Act*, ss 8(2)(a), 8(2)(k), 8(2)(m)).

(2) Exemption for Third Party Information

[15] Under paragraph 20(1)(b) of the ATIA, government institutions must refuse to disclose records that contain “financial, commercial, scientific or technical information that is confidential information supplied to a government institution by a third party and is treated consistently in a confidential manner by the third party.”

B. *The Financial Disclosure Obligations of First Nations*

[16] In assessing whether the exemptions in sections 19 and 20 of the ATIA apply, the Court may consider other statutory provisions which allow or require the disclosure of the requested records (ATIA, s 20(1)(b)). The disclosure of the requested records at issue in this matter is governed by the FNFTA, the IBRMR, and the MABM.

[17] The purpose of the FNFTA is “to enhance the financial accountability and transparency of First Nations by requiring the preparation and public disclosure of their audited consolidated financial statements and of the schedules of remuneration paid and expenses reimbursed to a First Nation’s chief and each of its councillors” (s 3).

[18] Subsection 6(1) of the FNFTA stipulates that First Nations must “annually prepare a document entitled ‘Schedule of Remuneration and Expenses’ that sets out, separately, the remuneration paid, and the expenses reimbursed to its chief and each of its councillors.”

[19] The Schedule of Remuneration and Expenses forms part of the Transparency Documents of a First Nation. The Transparency Documents include a First Nation’s “audited consolidated financial statements,” “Schedule of Remuneration and Expenses,” “the auditor’s written report respecting the consolidated financial statements,” and “the auditor’s report or the review engagement report...respecting the Schedule of Remuneration and Expenses” (FNFTA, s 7(1)).

[20] Under subsection 7(1) of the FNFTA, First Nations must provide copies of their Transparency Documents to members upon request. First Nations must also publish their

Transparency Documents online “within 120 days after the end of each financial year” (FNFTA, s 8(1)). These documents must “remain accessible to the public, on an Internet site, for at least 10 years” (FNFTA, s 8(2)). The FNFTA also imposes an obligation on the Respondent to publish a First Nation’s Transparency Documents on their website “without delay” (FNFTA, s 9).

[21] The IBRMR contains parallel provisions concerning the disclosure of a First Nation’s financial records. Subsection 8(1) of the IBRMR requires First Nations to “engage an auditor to audit [their] account and to render an annual report in respect thereof.” Subsection 8(2) of the IBRMR requires that the auditor’s annual report “be supplied to the [Respondent]” and “posted in conspicuous places on the Band Reserve for examination by members of the Band.”

[22] The disclosure obligations in the FNFTA and IBRMR are consistent with section 7.2 of chapter 9 of the MABM, which states that “[a] Band council has a fiduciary duty to account to its own members for prior moneys management and the moneys management decisions it has made and will make.”

[23] Sections 7.0 and 7.1 of the MABM outline how information about a First Nation’s moneys held in trust may be accessed through the ATIA. Section 7.0 states that any entities other than a Band Council “must provide the Department with written consent from the Band [C]ouncil” in order to be granted access to records about a First Nation’s trust moneys. Section 7.1 states that this requirement applies to individual members of a First Nation, as “[e]ven though registered members of a Band have an interest in the moneys held in trust on their behalf

of their communities, only their Band council represents the Band as a whole and can authorize access to those records.”

III. Background

[24] The Applicant is a member of Frog Lake First Nation. He was employed by Frog Lake First Nation from March 10, 2014, to October 30, 2015. In 2016, the Applicant reached a settlement agreement with Frog Lake First Nation concerning allegations that he was wrongfully terminated for raising concerns about the management of Frog Lake First Nation’s trusts funds.

[25] In January 2022, shortly after the publication of a news article about the alleged mismanagement of moneys in trust by the leadership of Frog Lake First Nation (the “Article”), the Applicant authorized the Canadian Taxpayers Federation (“CTF”) to submit access to information requests on his behalf.

[26] On February 7, 2022, the CTF submitted two access to information requests: ISC A-2021-00347 (the “First Request”) and ISC A-2021-00348 (the “Second Request”). In the Requests, the CTF wrote: “On behalf of Frog Lake First Nation band member Hans McCarthy, please provide copies of all [BCRs] (or equivalent records) allowing withdrawals from the trust fund detailed in [the Article].”

[27] Around this time, the Applicant requested a copy of the Schedule of Remuneration and Expenses of Frog Lake First Nation for “the fiscal years of 2019, 2020, and 2021,” pursuant to

subsection 7(1) of the FNFTA. These documents had not been published online as required under sections 8 and 9 of the FNFTA. The Applicant did not receive a response.

[28] In March and April 2022, the Respondent sent letters to Frog Lake First Nation seeking written representations as to “whether section 20 [of the ATIA] can be applied” to the First and Second Requests, pursuant to section 27 of the ATIA.

[29] Frog Lake First Nation provided written responses on May 12 and May 20, 2022. Frog Lake First Nation recommended “withhold[ing] in full the BCRs,” as they contained confidential financial information which cannot be severed while “still provid[ing] meaningful information to the requesting party.”

[30] On May 30, 2022, apparently giving significant weight to Frog Lake First Nation’s submissions, the Respondent sent letters to the CTF stating that “[t]he records which were found to be relevant to your request have been withheld from disclosure pursuant to sections 19(1), 20(1)(b) of the Act.”

[31] The CTF subsequently contacted the Respondent, asserting that the Respondent’s decision to withhold the requested records was incorrect. On July 25, 2022, the Respondent stated: “We have reviewed your concerns...and still stand by our decisions.”

[32] The CTF then submitted complaints to the Office of the Information Commissioner (“OIC”) concerning the refusal of the First and Second Requests. On June 20, 2023, the OIC

found that the CTF's complaints were not well-founded, as the requested records met the requirements for the exemptions in sections 19(1) and 20(1)(b) of the ATIA.

[33] The Applicant filed the notice of application for this proceeding on August 8, 2023, seeking relief from this Court under subsection 41(1) and section 49 of the ATIA.

[34] The requested records which were withheld from disclosure form part of the record for this proceeding. These documents are subject to a confidentiality order under Rules 151 and 152 of the *Federal Courts Rules*, SOR/98-106 (the "*Rules*") and section 47 of the ATIA.

IV. Issues and Standard of Review

[35] The two issues in this application are: (1) whether the Respondent was authorized to withhold the requested records under subsection 19(1) and paragraph 20(1)(b) of the ATIA; and (2) whether an order under section 49 of the ATIA directing the Respondent to disclose the requested records is warranted.

[36] This application was made under subsection 41(1) of the ATIA, which means the Court conducts a *de novo* review pursuant to section 44.1 of the ATIA (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 37; *Matas v Canada (Global Affairs)*, 2024 FC 88 ("*Matas*") at paras 10-11).

[37] The parties submit – and I agree – that the standard of review for subsection 19(1) and paragraph 20(1)(b) of the ATIA is correctness because the provisions allow no discretion (*Merck*

Frost Canada Ltd v Canada (Health), 2012 SCC 3 (“*Merck Frost*”) at paras 53, 251; *Perreault v Canada (Foreign Affairs)*, 2023 FC 1051 at para 32).

[38] The Applicant submits that a standard of reasonableness applies with respect to subsection 19(2) of the ATIA, as this provision confers discretionary powers on the Respondent.

[39] I agree with the Applicant. Where “[t]here are no discretionary decisions,” the role of this Court is “to determine whether the exemptions have been applied correctly to the contested records” (*Merck Frost* at para 53). Where discretionary powers have been exercised, the standard of reasonableness applies (*Canada (Office of the Information Commissioner) v Canada (Prime Minister)*, 2019 FCA 95 at para 31; *Matas* at para 14). Consequently, this decision considers whether the exemptions in subsection 19(1) and 20(1)(b) were “applied correctly” by the Respondent (*Merck Frost* at para 53). This decision further considers whether the Respondent’s failure to consider exercising their discretionary powers under subsection 19(2) of the ATIA was reasonable.

V. Analysis

A. *The Respondent was Not Authorized to Refuse Disclosure under Subsection 19(1) of the ATIA*

[40] The Applicant submits that the Respondent was not authorized to refuse disclosure under subsection 19(1) of the ATIA. The Applicant submits that the requested records do not constitute personal information within the meaning of section 3 of the *Privacy Act*, as they do not relate to the “intimacy, identity, dignity, and integrity of the individuals” named in the requested

records. If this Court finds that they do constitute personal information, the Applicant submits that the requested records fall under the exclusion set out in paragraph 3(j) of the *Privacy Act* for officers and employees of government institutions. If this Court finds that they do not fall under this exclusion, the Applicant submits that the Respondent held the discretion to nonetheless disclose the requested records under subsection 19(2) of the ATIA, as the requested records were “publicly available” and their “disclosure is in accordance with section 8 of the *Privacy Act*.”

[41] The Respondent submits that the requested records are exempt from disclosure under subsection 19(1) of the ATIA. According to the Respondent, the requested records constitute personal information under paragraphs 3(b), 3(d), and 3(i) of the *Privacy Act*, which concern the employment history and financial transactions, addresses, and names of individuals, respectively. The Respondent submits that the discretion set out in paragraph 19(2)(c) of the ATIA is not applicable, as the requested records do not fall under the categories of documents that may be disclosed under subsection 8(2) of the *Privacy Act*.

[42] In my view, the requested records contain personal information. The requested records contain the names, titles, signatures, and compensation of the Chief and Council of Frog Lake First Nation. They also contain the names, titles, and signatures of individuals who are not part of Chief and Council, including government officers, employees of private companies, and members of Frog Lake First Nation.

[43] The Applicant submits that this information does not constitute personal information as the information at issue “is of a professional and non-personal nature” (*Canada (Information Commissioner) v Canada (Transportation Accident Investigation and Safety Board)* (FCA), 2006

FCA 157 (“*NavCanada*”) at para 54). Citing *Husky Oil Operations Limited v Canada-Newfoundland and Labrador Offshore Petroleum Board*, 2018 FCA 10 (“*Husky Oil*”), the Applicant submitted at the hearing that the names and titles of third parties are not personal information where they disclose only the affiliation with the party in question. The Applicant equated this to the third-party invoices in the requested documents.

[44] I find that the information in *Husky Oil* is distinguishable from the information at issue here. In *Husky Oil*, the information at issue was “of little import” because the documents simply contained correspondence and standard forms that sought business-related information (at para 39). These documents revealed only that the employees made them in the course of their employment, which was publicly available online (at paras 39, 48). In contrast, the requested records in this matter are BCRs that are internal to a First Nation. The BCRs contain information about the identity of the leadership of Frog Lake First Nation, members of Frog Lake First Nation, and other individuals that are not affiliated with Frog Lake First Nation, including names, signatures, and compensation. This reveals more about these individuals than a publicly known employment. Although this information may have been gathered for the purposes of financial administration under the Act, I find that it nonetheless engages the privacy rights of identifiable individuals and therefore falls under the definition of personal information for the purposes of section 19 of the ATIA.

[45] However, I agree with the Applicant that some of this information is excluded from the definition of personal information under paragraph 3(j) of the *Privacy Act*. In particular, the names and titles of Chief and Council and staff of Frog Lake First Nation do not constitute

personal information, as these individuals form part of a “government institution” with respect to the Applicant in this matter.

[46] To be clear, this finding does not draw an equivalence between the staff or Chief and Council of a First Nation and “officer[s] or employee[s] of a government institution” in every circumstance (*Privacy Act*, s 3(j)). The governance bodies of First Nations are imbued with the sovereignty and unique character which set them apart from non-Indigenous governance structures in Canada’s constitutional framework. However, as in *Canada (Indian Affairs and Northern Development) v Sawridge Band*, 2009 FCA 245 (“*Sawridge Band*”), the Applicant in this matter is a member of the First Nation whose records have been requested. If the purpose of the ATIA is to enhance “accountability” and “transparency,” “promote an open and democratic society,” and “enable public debate,” the governance relationship between the Applicant and Frog Lake First Nation cannot be ignored. In keeping with the purpose of the ATIA and the particular relationship between the requester and the organization whose records are sought in this matter, I find that section 3(j) of the *Privacy Act* applies. As a result, the names and titles of the Chief and Council and employees of Frog Lake First Nation do not constitute personal information for the purposes of section 19 of the ATIA (*Privacy Act*, ss 3(j)(ii), 3(j)(iv)).

[47] The remaining information – including the signatures and compensation of Chief and Council and the names, titles, and signatures of individuals who are not part of the staff or Chief and Council of Frog Lake First Nation – qualify as personal information.

[48] Signatures “fall within the general definition of ‘personal information,’” as they confer “information about an identifiable individual” even if made in the context of a professional

relationship (*UCANU Manufacturing Corp v Defence Construction Canada*, 2015 FC 1001 at para 52). Regarding Compensation, the requested records disclose the exact payments to Chief and Council. As such, they do not fall under subparagraph 3(j)(iii) of the *Privacy Act*, which excludes the “salary range...of the position held by an individual” from the definition of personal information when section 19 of the ATIA is invoked. The names, titles, and signatures of individuals who are not part of the staff or Chief and Council of Frog Lake First Nation plainly meet the definition of personal information, as they reveal the identity of the individuals in question and do not fall under any of the exclusions in paragraphs 3(j) to 3(m) of the *Privacy Act* (*Privacy Act*, s 3(b)). I further note that some of the information concerning individuals who are not staff or Chief and Council of Frog Lake First Nation “relat[es] to financial transactions in which the individual[s] ha[ve] been involved,” engaging paragraph 3(b) of the definition of personal information in the *Privacy Act*.

[49] However, it does not follow that all of this information is exempt from disclosure. In my view, information about the compensation of the Chief and Council of Frog Lake First Nation engages the Respondent’s discretionary powers under subsection 19(2) of the ATIA. Specifically, paragraph 19(2)(b) of the ATIA provides that a record containing personal information may be disclosed if the information it contains is publicly available.

[50] Under subsection 7(1) of the FNFTA, “[a] First Nation must, on the request of any of its members, provide the member with copies of” their Transparency Documents, including their Schedule of Remuneration and Expenses (FNFTA, s 7(1)(b)). Subsection 6(1) of the FNFTA stipulates that the Schedule of Remuneration and Expenses includes:

the remuneration paid and the expenses reimbursed to its chief and each of its councillors – acting in their capacity as such and in any other capacity, including their personal capacity – by the First Nation and by any entity that, in accordance with generally accepted accounting principles, is required to be consolidated with the First Nation.

[51] These provisions demonstrate that information about the compensation of Chief and Council is “publicly available” within the meaning of paragraph 19(2)(b) of the ATIA. The Federal Court of Appeal has previously determined that “the identity of the requester” and the relationship between the requester and the organization whose records are being sought informs the confidentiality assessment under section 20 of the ATIA (*Sawridge Band* at para 36). I find that these factors similarly inform the analysis under paragraph 19(2)(b) of the ATIA given Parliament’s clear intention for members of a First Nation to have access to documents that may otherwise be considered personal information under section 3 of the *Privacy Act* (*Sutherland v Canada (Minister of Indian and Northern Affairs)* (TD), 1994 CanLII 3493 (FC), [1994] 3 FC 527 (“*Sutherland*”) at 537-539). *Sawridge Band* recognized that “otherwise confidential documents” may not be “confidential v[i]s-à-vis [the requester]” when the requester “has an independent legal right to the documents in question” (at paras 34-35). In the same way, personal information may be considered “publicly available” when the requester has an independent legal right to access the requested records (*Sawridge Band* at paras 35-36, 3; ATIA, s 19(2)(b)).

[52] This reading of paragraph 19(2)(b) of the ATIA accords with the Federal Court of Appeal’s decision in *Canada (Information Commissioner) v Canada (Minister of Industry)* (FCA), 2007 FCA 212 (“*Minister of Industry*”). In *Minister of Industry*, the Federal Court of

Appeal assessed “the scope intended by the use of the word ‘public’ in paragraph 17(2)(d) of the *Statistics Act*, RSC 1985, c S-19, which allows for the disclosure of “information available to the public under any statutory or other law” (s 17(2)(d)). The parties in *Minister of Industry* disputed whether paragraph 8(2)(k) of the *Privacy Act* made the disputed information “available to the public,” as paragraph 8(2)(k) permits the disclosure of personal information “to any aboriginal government, association of aboriginal people, Indian band, government institution or part thereof.” The Federal Court of Appeal held that, in light of paragraph 8(2)(k) of the *Privacy Act*, “the words ‘available to the public’...must be interpreted to mean a segment of the population, such as Aboriginal groups, as opposed to the entire population” (*Minister of Industry* at para 18). Similarly, the words “publicly available” in paragraph 19(2)(b) of the ATIA must be understood to mean “available to the members of a First Nation” in light of subsection 7(1) of the FNFTA.

[53] In this case, it is not simply a contextual definition of the word “public” or the Applicant’s “independent legal right” to the information at issue that engages paragraph 19(2)(b) of the ATIA (*Minister of Industry* at para 20; *Sawridge Band* at paras 3, 5). Parliament also intended for information about the compensation of Chief and Council to be “publicly available” in the general sense, as demonstrated by the requirement to publish the Schedule of Remuneration and Expenses on a First Nation’s website and Respondent’s website and to ensure the document “remain[s] accessible to the public” online “for at least 10 years” (ATIA, s 19(2)(b); FNFTA, ss 8(1), 9, 8(2) [emphasis added]). Per these provisions, information about the compensation of Chief and Council should already be accessible, not only to the Applicant as a member of Frog Lake First Nation but also to any person online. This is sufficient to render them “publicly available” under paragraph 19(2)(b) of the ATIA. As held by the Federal Court

of Appeal in *Minister of Industry*, “if a statutory provision allows for the disclosure of information to the public...then the information is ‘available’ to the public” (at para 20).

[54] As a result, I find that the compensation of Chief and Council engages paragraph 19(2)(b) of the ATIA. The Respondent’s failure to consider the applicability of this provision constitutes a reviewable error.

[55] In my view, the Respondent similarly erred with respect to paragraph 19(2)(c) of the ATIA. Paragraph 19(2)(c) allows for the disclosure of personal information if disclosure “is in accordance with section 8 of the *Privacy Act*.” The provisions of section 8 of the *Privacy Act* which the Applicant invokes are paragraphs 8(2)(a), 8(2)(b), 8(2)(k) and 8(2)(m). Although I do not find that paragraphs 8(2)(a), 8(2)(m) or 8(2)(k) of the *Privacy Act* apply, I find that paragraph 8(2)(b) is applicable in this matter.

[56] I first note that the Applicant’s submissions with respect to paragraph 19(2)(c) of the ATIA largely address information that is beyond the scope of this provision. Paragraph 19(2)(c) of the ATIA allows for the disclosure of personal information. The personal information at issue in this matter are the signatures and compensation of Chief and Council and the names, titles, and signatures of individuals who are not part of the staff or Chief and Council of Frog Lake First Nation (*Privacy Act*, s 3(j)). Rather than addressing this material, the Applicant seeks the disclosure of information about the withdrawal of funds held in trust. Paragraph 19(2)(c) of the ATIA is not capable of authorizing the disclosure of this information because it does not qualify as personal information under paragraph 3 of the *Privacy Act*.

[57] Disclosure of the personal information in this proceeding is not authorized under paragraphs 8(2)(a) and 8(2)(m) of the *Privacy Act*. These provisions permit the disclosure of personal information “for the purpose for which the information was obtained” and “for any purpose where...the public interest in disclosure clearly outweighs any invasion of privacy that could result from the disclosure,” respectively (*Privacy Act*, ss 8(2)(a), 8(2)(m)(i)).

[58] During the hearing, the Applicant submitted that the proposed use of the information does not need to be identical with the purpose for which the information was obtained so long as there was “sufficient direct connection” between these two purposes (*Bernard v Canada (Attorney General)*, 2012 FCA 92 at para 53). This is not the case here. The Respondent obtained the requested records for the purpose of administering Frog Lake First Nation’s funds held in trust. Disclosing the signatures and compensation of Chief and Council and the names, titles, and signatures of individuals who are not part of the staff or Chief and Council of Frog Lake First Nation has no connection to this objective. I also note that there is limited “public interest in disclosure” with respect to the personal information at issue. The public interest in disclosing the signatures and compensation of Chief and Council and the names, titles, and signatures of individuals who are not part of the staff or Chief and Council of Frog Lake First Nation do not outweigh the “invasion of privacy that could result from the disclosure” (*Privacy Act*, s 8(2)(m)(i)).

[59] Turning to paragraph 8(2)(k) of the *Privacy Act*, this provision provides that personal information may be disclosed:

to any aboriginal government, association of aboriginal people, Indian band, government institution or part thereof, or to any person acting on behalf of such government, association, band,

institution or part thereof, for the purpose of researching or validating the claims, disputes or grievances of any of the aboriginal peoples of Canada.

The Applicant submits that he meets the requirements of paragraph 8(2)(k), despite this Court's determination in *Sutherland* that "[a]pplications by individuals, not purporting to act on behalf of an association of aboriginal people, Indian band, or government institution or part thereof, are not contemplated by paragraph 8(2)(k)" (at 544). The Applicant submits that this holding must be revisited in light of the Federal Court of Appeal's decision in *Minister of Industry*. In particular, the Applicant relies on Justice Evans' dissenting judgment that "members of Aboriginal bands, or persons acting on their behalf, may obtain [personal information] for the purpose of researching an Aboriginal claim" under paragraph 8(2)(k) of the *Privacy Act* (at para 87). At the hearing, the Applicant submitted that this statement applies to individual members rather than collectives.

[60] I do not accept the Applicant's submissions on this issue. *Minister of Industry* concerned an access request by a researcher for the "Algonquin Nation Secretariat (ANS), a Tribal Council representing three Algonquin bands" (at para 38). This organization plainly meets the requirements of paragraph 8(2)(k) of the *Privacy Act* (at para 38). Moreover, the findings of all judgments in *Minister of Industry* addressed the definition of the word "public," rather than the right of an individual to seek disclosure of personal information under paragraph 8(2)(k) of the *Privacy Act*. In fact, the passage cited by the Applicant occurs in a paragraph where Justice Evans makes findings on precisely this issue (*Minister of Industry* at paras 87, 89).

[61] I also note that it is evident throughout the decision in *Minister of Industry* that paragraph 8(2)(k) of the *Privacy Act* was understood to apply to groups rather than individuals. For instance, Chief Justice Richard stated in his majority judgment that “the statutory requirements imposed under paragraph 8(2)(k) of the *Privacy Act* have been met,” as “the census information is requested by Aboriginal groups for the purposes of research and claims” (*Minister of Industry* at para 21 [emphasis added]). Similarly, Justice Décary made the following comments in his concurring judgment: “[t]he Chief Statistician would only allow the information to be examined for the limited purpose set out in paragraph 8(2)(k) of the *Privacy Act* and solely by a researcher engaged by the Indian bands... paragraph 8(2)(k) of the *Privacy Act*...addresses the specific concerns of an identified group of persons” (*Minister of Industry* at paras 34 [emphasis added]). Justice Evans himself notes that, “[i]n order to access information through paragraph 8(2)(k), a person must establish a connection with particular groups within the Canadian population” (*Minister of Industry* at para 87 [emphasis added]).

[62] The Applicant submits that individual members of a First Nation are included in paragraph 8(2)(k) as they are “a part” of the groups and associations listed in this provision. I disagree. In my view, “the words of [the provision],” “read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament,” demonstrate that paragraph 8(2)(k) of the *Privacy Act* upholds collective rights of access (Elmer A Driedger, *Construction of Statutes*, 2nd ed (Toronto: Butterworths, 1983) at 87, cited in *Rizzo & Rizzo Shoes Ltd (Re)*, 1998 CanLII 837 at para 21 (SCC)). As noted by Justice Décary at paragraph 34 of *Minister of Industry*:

Of the provisions at issue, paragraph 8(2)(k) of the *Privacy Act* is the only one which addresses the specific concerns of an identified

group of persons. It is significant that this paragraph allows Indian bands access to personal information which was provided by present or past members of the bands. Parliament intended to ensure that privacy of information about individual members of Indian bands could be set aside for the purpose of enhancing the rights of the present and future members. It is a form of quid pro quo between the protection of the privacy of individual members and the enhancement of their collective rights. To the extent that privacy could stand in the way of the recognition of collective rights, it was expressly allowed to be lifted.

[Emphasis added]

[63] I therefore do not find that the passage cited by the Applicant warrants disturbing this Court's holding in *Sutherland*. As a result, the access request of the Applicant as an individual member of Frog Lake First Nation does not fall under the scope of paragraph 8(2)(k) of the *Privacy Act*.

[64] However, paragraph 8(2)(b) of the *Privacy Act* does apply. Paragraph 8(2)(b) states that personal information may be disclosed "for any purpose in accordance with any Act of Parliament or any regulation made thereunder that authorizes its disclosure." As previously noted, the FNFTA authorizes the disclosure of the compensation of Chief and Council. The Respondent was thus required to consider whether to exercise their discretion to disclose this information under both paragraphs 19(2)(c) and 19(2)(b) of the ATIA. The Respondent's failure to consider either of these provisions constitutes a reviewable error.

B. *The Respondent was Not Authorized to Refuse Disclosure under Paragraph 20(1)(b) of the ATIA*

[65] The Applicant submits that the Respondent was not authorized to refuse disclosure under paragraph 20(1)(b) of the ATIA. The Applicant submits that the requested records do not qualify as confidential third-party information because they were not treated as confidential by Frog Lake First Nation. Citing *Timiskaming Indian Band v Canada*, 1997 CanLII 5125 (FC) (“*Timiskaming Band*”) and *Chippewas of Nawash First Nation v Canada (Minister of Indian and Northern Affairs)*, [1996] FCJ No 991, 116 FTR 37 (FC) (“*Chippewas of Nawash First Nation*”), the Applicant submits that the fiduciary relationship between the Respondent and Frog Lake First Nation is not sufficient to render the requested records confidential under paragraph 20(1)(b) of the ATIA. If the Court finds that the records do contain confidential third-party information, the Applicant submits that his request falls under the “very unusual circumstances” where disclosure may nonetheless be warranted per *Sawridge Band and Najm v Canada (Indigenous Services)*, 2023 FC 744, as he is a member of the First Nation whose records have been sought.

[66] The Respondent submits that the exemption for third-party information in paragraph 20(1)(b) of the ATIA was correctly applied. The Respondent submits that the requested records match the dictionary definition for confidential financial information. The Respondent submits that the requested records were treated in a confidential manner, and that Frog Lake First Nation’s decision to disclose these documents to the Respondent must be understood in light of the requirement for First Nations to submit BCRs in order to access funds that the Respondent holds in trust. Noting that the MABM explicitly contemplates and precludes the release of

financial information to individual members of a First Nation, the Respondent asserts that the information which the Applicant has a right to access under the FNFTA, IBRMR, and *Indian Band Council Procedure Regulations*, CRC, c 950, is of a different scope than that sought in the First and Second Request.

[67] As noted by both parties, the test for the exemption in paragraph 20(1)(b) of the ATIA is set out in *Air Atonabee Ltd v Canada (Minister of Transport)*, 27 CPR (3d), 1989 CanLII 10334 (FC) (“*Air Atonabee*”). For a record to be exempt from disclosure under this section, it must be:

- (1) financial, commercial, scientific or technical information,
- (2) confidential information,
- (3) supplied to a government institution by a third party, and
- (4) treated consistently in a confidential manner by the third party (*Air Atonabee* at 197).

[68] The only dispute with respect to the first factor is whether “the BCRs’ directions to [Indian and Northern Affairs Canada] to approve the release of Revenue Trust Funds to [Frog Lake First Nation]” constitutes financial information. The parties agree that the other information in the requested records – including bank account numbers; budget; loan details; individual employees’ salaries; amounts of per capita distributions made to members; private, internal projects such as research on land claims and development of [Frog Lake First Nation]’s membership and election code; legal fees; and investments made into private corporations – satisfy the first step of the test.

[69] The Applicant submits that the directions in the BCR are simply directions, and do not constitute financial information. The Respondent submits that these directions meet the dictionary definition for financial information and that the first step of the test in *Air Atonabee* has therefore been met.

[70] I agree with the Respondent. In *Air Atonabee*, this Court endorsed “dictionary meanings” as “the best guide” for interpreting whether a record meets the first step of the test for the exemption in section 20 of the ATIA (at 198). The dictionary definition of “financial” in the Oxford English Dictionary is “[o]f or relating to finance or money matters.” The directions in dispute relate to money matters, as they disclose the amounts authorized to be withdrawn from Frog Lake First Nation’s funds held in trust. In my view, this is sufficient to establish that the directions in the BCRs qualify as financial information.

[71] The second requirement in the test for the exemption in paragraph 20(1)(b) of the ATIA is confidentiality. *Air Atonabee* sets out the test for confidentiality as follows (at 202):

- (1) the content of the record be such that the information it contains is not available from sources otherwise accessible by the public or that could not be obtained by observation or independent study by a member of the public acting on his own,
- (2) that the information originate and be communicated in a reasonable expectation of confidence that it will not be disclosed, and
- (3) that the information be communicated, whether required by law or supplied gratuitously, in a relationship between government and the party supplying it that is either a fiduciary relationship or one that is not contrary to the public interest, and which relationship will be fostered for public benefit by confidential communication.

[72] In my view, the confidentiality of the requested records in this matter fails at the second and third steps of the test.

[73] The BCRs at issue in this matter did not “originate...in a reasonable expectation of confidence that [they would] not be disclosed” (*Air Atonabee* at 202). The Respondent submitted at the hearing that the BCRs were consistently treated as confidential because they are never provided to the public at large or to band members but rather stored on a password-protected computer and in a locked filing cabinet. However, as the Applicant aptly noted, almost all of the BCRs in the requested records conclude with the following text:

Books and Records will be maintained in accordance with the Generally Accepted Accounting Principles (GAAP) and shall be open to departmental inspections upon reasonable request. Financial Statements reporting these transfers will be prepared by the end of the fiscal year in accordance with the Year End Reporting Handbook (YERH) and will be forwarded to the Department by [XXXX], A copy of the audit will be posted in a conspicuous place on the reserve for examination by members of the band.

[74] The Applicant submits that this text reflects the financial reporting obligations set out in the FNFTA and IBRMR. I agree. The Transparency Documents listed in section 7 of the FNFTA include a First Nation’s “audited consolidated financial statements” and “the auditor’s written report respecting the consolidated financial statements” (FNFTA, ss 7(1)(a), 7(1)(c)). Subsection 8(2) of the IBRMR stipulates that “[a] copy of the auditor’s annual report shall...be posted in conspicuous places on the Band Reserve for examination by members of the Band” and “be supplied to the Minister of Indian Affairs and Northern Development” (IBRMR, ss 8(2)(a), 8(2)(b)).

[75] I find that the concluding text of each BCR demonstrates that information about transfers from moneys held in trust was intended to be shared not just with members of Frog Lake First Nation but with the general public. The BCRs demonstrate Frog Lake First Nation's intention to prepare "Financial Statements reporting these transfers...by the end of the fiscal year" and to forward this information to the Respondent. I note that First Nation's financial statements comprise part of their Transparency Documents, which must be made "available to the public, on an Internet site, for at least 10 years" (FNFTA, s 8(2)). As a result, I do not find that the requested records "originated...in a reasonable expectation of confidence that [they would] not be disclosed" (*Air Atonabee* at 202). For this same reason, I do not find that the third parties who supplied the information treated it as confidential (*Air Atonabee* at 205-206).

[76] The fiduciary relationship between Frog Lake First Nation and the Respondent does not alter these findings. As in *Timiskaming Band*, where the disputed records were "already within the public domain," the records sought by the Applicant in this manner are required to be disclosed and "accessible to the public" (FNFTA, s 8(2)). Even if the publication of the requested records was not mandated by statute, the fiduciary relationship between the Respondent and Frog Lake First Nation would still not warrant the exemption in paragraph 20(1)(b) of the ATIA, as "[t]he fiduciary relationship between the Crown and the Indian bands does not...encompass band council resolutions, regardless of their subject matter" (*Chippewas of Nawash First Nation* at para 17).

[77] This is sufficient to determine that the Respondent was not authorized to withhold the requested records under paragraph 20(1)(b) of the ATIA. The exemption for confidential third-party documents cannot apply when the documents at issue are not confidential.

C. *An Order under Section 49 of the ATIA is Warranted*

[78] The Applicant seeks an order under section 49 of the ATIA requiring the Respondent to disclose the requested records. I find that such an order is warranted in this case.

[79] In my view, the personal information contained in the requested records is reasonably severable under section 25 of the ATIA. Following the exclusions in paragraph 3(j) of the *Privacy Act*, the only personal information contained in the requested records are the signatures and compensation of Chief and Council and the names, titles, and signatures of individuals who are not part of the staff or Chief and Council of Frog Lake First Nation. Setting aside the compensation of Chief and Council, which engages the Respondent's discretion under subsection 19(2) of the ATIA, I find that the remaining personal information is a discrete and minor component of the requested records that "can reasonably be severed" from the remaining material (ATIA, s 25). Under subsection 25 of the ATIA, the Respondent is required to "disclose any part of the record that does not contain" this information.

[80] With respect to the compensation of Chief and Council, I note that this information is provided in two parts: (1) BCRs which state the amount in aggregate that was authorized to be removed from Frog Lake First Nation's trust moneys for this purpose; and (2) tables appended to the BCRs disclosing the particular amounts paid to individual members of Chief and Council. In my view, the aggregate amounts in the BCRs must be disclosed, as this information "is not about an individual" and does not engage the exemption in subsection 19(1) of the ATIA (*NavCanada* at para 54 [emphasis in original]). However, I find that the tables attached to each BCR do contain personal information within the scope of subsection 19(2)(b) of the ATIA. I therefore

remit the requests for redetermination on the sole issue of whether the tables listing the specific amounts paid to individual members of Chief and Council may be disclosed (*Canada (Information Commissioner) v Canada (Commissioner of the Royal Canadian Mounted Police)* (CA), 2001 FCA 56 at paras 10-11; *Canada (Information Commissioner) v Canada (Public Safety and Emergency Preparedness)*, 2019 FC 1279 at para 4).

VI. Costs

[81] Following the hearing, the parties agreed that, in the event the judicial review were allowed, costs should be assessed in accordance with column III of the table in Tariff B of the *Rules*. Costs are discretionary and will ordinarily follow this type of proceeding under the ATIA, with specific consideration as to whether an important new principle in relation to the statute arises (ATIA, s 53(1), (2)).

[82] The judicial review is allowed, and I have found no new important principle was raised. Consequently, I agree with the parties that costs should be awarded as defined in column III of the table in Tariff B.

[83] Considering this context, I award the Applicant \$4,000 in costs based on the applicable tariff.

VII. Conclusion

[84] For these reasons, this application for judicial review is allowed, with costs. I agree with the Applicant that the Respondent was not authorized to withhold the requested records under subsection 19(1) or paragraph 20(1)(b) of the ATIA. I further determine that the Respondent erred by failing to consider whether to exercise their discretionary powers under subsection 19(2) of the ATIA with respect to the specific compensation paid to individual members of Chief and Council. Consequently, this Court remits the Applicant's request for redetermination on the sole issue of whether the specific amounts paid to individual members of Chief and Council may be disclosed. This Court orders the Respondent to disclose the remainder of the requested records, subject to the redactions in paragraphs 79 and 80 of this decision.

JUDGMENT in T-1686-23

THIS COURT’S JUDGMENT is that:

1. This application for judicial review is allowed.
2. The Respondent shall release the BCRs, subject to the redaction of personal information identified herein, within thirty (30) days of this Judgement pursuant to section 49 of the *Access to Information Act*.
3. Whether to release the tables listing the specific amounts paid to individual members of Chief and Council is referred back to a different decision maker to exercise their discretion anew.
4. Costs are awarded to the Applicant in the amount of \$4,000.

“Shirzad A.”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1686-23

STYLE OF CAUSE: HANS MCCARTHY v MINISTER OF INDIGENOUS SERVICES

PLACE OF HEARING: VANCOUVER, BRITISH COLUMBIA

DATE OF HEARING: SEPTEMBER 10, 2025

JUDGMENT AND REASONS: AHMED J.

DATED: NOVEMBER 20, 2025

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