

**Date: 20090812**

**Docket: A-12-08**

**Citation: 2009 FCA 245**

**CORAM: EVANS J.A.  
LAYDEN-STEVENSON J.A.  
RYER J.A.**

**BETWEEN:**

**THE MINISTER OF INDIAN AFFAIRS  
AND NORTHERN DEVELOPMENT**

**Appellant**

**and**

**SAWRIDGE BAND**

**Respondent**

Heard at Toronto, Ontario, on May 12, 2009.

Judgment delivered at Ottawa, Ontario, on August 12, 2009.

**REASONS FOR JUDGMENT BY:**

**EVANS J.A.**

**CONCURRED IN BY:**

**LAYDEN-STEVENSON J.A.  
RYER J.A.**

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**Appellant**

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**REASONS FOR JUDGMENT**

**EVANS J.A.**

**A. INTRODUCTION**

[1] This is an appeal by the Minister of Indian Affairs and Northern Development (“INAC”) from a decision of the Federal Court, in which Justice Gibson granted an application by the Sawridge Band under subsection 44(1) of the *Access to Information Act*, R.S.C. 1985, c. A-1 (“AIA”). The order under appeal prohibits INAC from disclosing to the requester, a member of the Band, the Band’s audited consolidated financial statements for the year ending March 31, 2002: *Sawridge Band v. Canada (Minister of Indian Affairs and Northern Development)*, 2007 FC 1231.

[2] The Band had supplied the financial statements to INAC pursuant to paragraph 8(2)(b) of the *Indian Bands Revenue Moneys Regulations*, C.R.C. c. 953 (“Regulations”). The Regulations also require Bands that have been given control of their revenues by INAC to have their accounts audited, and to post a copy of the auditor’s annual reports in conspicuous places on the reserve “for examination by members of the Band”: paragraph 8(2)(a). Nonetheless, the Judge held that, even when requested from INAC by a Band member, the financial statements were “confidential”, and thus exempt from disclosure by virtue of paragraph 20(1)(b) of the AIA.

[3] This appeal raises two questions. First, can otherwise confidential information supplied by a third party to a government institution cease to be “confidential” for the purpose of paragraph 20(1)(b) of the AIA when its disclosure is requested by a person who has an independent legal right to the documents in question? If the answer is yes, the second question is whether the right of the requester in this case, a member of the Sawridge Band, to examine the auditor’s annual report of the Band’s financial statements, removes them from the category of confidential financial information *vis-à-vis* the requester.

[4] I approach the interpretation of paragraph 20(1)(b) of the AIA on the basis that statutory limitations on the broad scope of government institutions’ duty to disclose records under their control must be construed narrowly: AIA, subsection 2(1). I interpret subsection 8(2) of the Regulations in a manner that is consistent with its purpose, namely enhancing the accountability to Band members and INAC of the Band Chief and Council for their management of the Band’s revenues.

[5] In my view, information cannot be “confidential” for the purpose for paragraph 20(1)(b) of the AIA *vis-à-vis* a requester who has a right to it under another legal provision. Because paragraph 8(2)(a) of the Regulations gives Band members a right to examine auditors’ annual reports, INAC may not refuse to disclose a Band’s financial statements on the ground of confidentiality when one of its members requests their disclosure under the AIA.

[6] Accordingly, I would allow the appeal and dismiss the Band’s application respecting INAC’s decision to disclose the Band’s financial statements to the requester.

**B. FACTUAL BACKGROUND**

**(i) Ms Poitras’ status**

[7] Like other women in her situation, Elizabeth Bernadette Poitras lost her Indian status and membership in her Band when she married a non-Indian. For the purpose of this appeal, it is accepted that Ms Poitras was reinstated as a member of the Sawridge Band as of 1985 when *Bill C-31* repealed former paragraph 12(1)(b) of the *Indian Act*, R.S.C. 1985, c. I-5.

[8] The Band has continued to resist the reinstatement as Band members of women who married non-Indians. The Federal Court issued an interlocutory mandatory injunction requiring the Band to enter Ms Poitras and 10 other women on the Band List of the Sawridge Band and immediately to grant them all the rights and privileges of Band membership, pending the outcome of the Band’s challenge to the validity of *Bill C-31: Sawridge Band v. The Queen*, 2003 FCT 347, [2003] 4 F.C. 748 at para. 39.

[9] The Band's action challenging the constitutional validity of *Bill C-31* was subsequently dismissed by the Federal Court: *Sawridge Band v. The Queen*, 2008 FC 322, 319 F.T.R. 217. This Court recently dismissed the Band's appeal from that decision: *Sawridge Band v. The Queen*, 2009 FCA 123. The Band has applied to the Supreme Court of Canada for leave to appeal: Docket 33219.

**(ii) Ms Poitras' requests for information**

[10] As of September 2005, the Sawridge Band had only 44 members, but substantial reserves of oil and gas. Concerned about the Band's failure to distribute any of its revenues to her, Ms Poitras sought information about the Band's finances.

[11] On April 27, 2003, she requested Chief Roland Twinn of the Sawridge Band to disclose to her information about the Band's finances, including the financial statements at issue in this appeal. She also requested that the agenda of the Band meeting to be held in June 26, 2003, include an item on the distribution to members of the Band's oil and gas royalties.

[12] In addition, on May 23, 2003, Ms Poitras requested INAC to disclose to her information concerning the Band's finances, including its financial statements, which the Band had supplied to INAC under paragraph 8(2)(b) of the Regulations. She identified herself to INAC as a member of the Sawridge Band and, in a letter dated June 3, 2003, consented to the disclosure to the Band of her identity.

[13] Following the Band meeting on June 26, 2003, Ms Poitras wrote again to the INAC Access to Information and Privacy (“ATIP”) officer in charge of her file to say that the Band Council would only permit her to see the financial statements if she took an “Oath of Confidentiality”. This she had refused to do because she wanted to use the financial information to argue that Band members should be benefiting from the Band’s mineral rights. In a subsequent letter to the ATIP officer, dated October 1, 2003, Ms Poitras indicated that she intended to share the financial information with named relatives, who are also Band members.

[14] In a letter to Chief Twinn, dated July 24, 2003, INAC informed the Band of Ms Poitras’ request for disclosure under the AIA. On July 29, 2003, the Band’s Executive Director replied to INAC on behalf of Chief Twinn. He refused to disclose the financial information to the requester, stating that it was available to any Band member, subject to the restrictions contained in the Band’s Financial Disclosure Policy (“Policy”) designed to protect the confidentiality of the information.

**(iii) Band’s Financial Disclosure Policy**

[15] The Band Council adopted the Policy, without a Band Council Resolution, on June 19, 2003. This was after Ms Poitras had made her request to Chief Twinn for financial information, but before the Band meeting of June 26, 2003, at which she raised questions about the Band’s revenues. The Policy is said to formalize what had previously been the Band’s practice respecting the confidentiality of its financial information.

[16] Pursuant to its statutory duty to post conspicuously on the Band Reserve “a copy of the auditor’s annual report”, the Band posted on a bulletin board in the Band Council Office, for review by Band members, the one-page opinion letters signed by the auditor respecting the Band’s financial statements. These cover letters from the auditor do not reveal the content of the financial statements underlying the report. The statements are kept in filing cabinets in a locked office on the reserve that is equipped with an alarm, and are only available for inspection by Band members in accordance with the Band’s Financial Disclosure Policy.

[17] I note parenthetically that, in discharging its duty to supply INAC with “a copy of the auditor’s annual report”, the Band delivered the complete audited financial statements, and not just the auditor’s opinion that it posted at the Band Council Office for examination by Band members.

[18] The stated aim of the Policy is to strike a balance between the interest of Band members in the “transparency” of the Band Council, and the need to protect the Band from the negative consequences of disclosing its confidential financial information to the general public. The Policy requires Band members to sign a confidentiality agreement before reviewing at the Band Office a “Financial Report”. The confidentiality agreement provides that members may not use the information in the Report, except for the purpose of discussing it with the Council or with other members who have signed the confidentiality agreement. Nor may members disclose the information to any other person without the prior written consent of the Band.

[19] The Band attempted to settle the proceeding in the Federal Court by offering to make an exception to the Policy: Ms Poitras could be accompanied by a lawyer or an accountant while she was examining the financial statements, provided that they signed the confidentiality agreement. The offer was rejected.

**C. LEGISLATIVE AND POLICY FRAMEWORK**

[20] The provisions of the AIA relevant to this appeal are as follows.

2. (1) The purpose of this Act is to extend the present laws of Canada to provide a right of access to information in records under the control of a government institution in accordance with the principles that government information should be available to the public, that necessary exceptions to the right of access should be limited and specific and that decisions on the disclosure of government information should be reviewed independently of government.

...

4. (1) Subject to this Act, but notwithstanding any other Act of Parliament, every person who is

(a) a Canadian citizen, or

(b) a permanent resident within the meaning of subsection 2(1) of the *Immigration and Refugee Protection Act*,

has a right to and shall, on request, be given access to any record under the control of a government institution

...

2. (1) La présente loi a pour objet d'élargir l'accès aux documents de l'administration fédérale en consacrant le principe du droit du public à leur communication, les exceptions indispensables à ce droit étant précises et limitées et les décisions quant à la communication étant susceptibles de recours indépendants du pouvoir exécutif.

[...]

4. (1) Sous réserve des autres dispositions de la présente loi mais nonobstant toute autre loi fédérale, ont droit à l'accès aux documents relevant d'une institution fédérale et peuvent se les faire communiquer sur demande :

a) les citoyens canadiens;

b) les résidents permanents au sens du paragraphe 2(1) de la *Loi sur l'immigration et la protection des réfugiés*.

[...]



20. (1) Subject to this section, the head of a government institution shall refuse to disclose any record requested under this Act that contains

...

(b) 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;

20. (1) Le responsable d'une institution fédérale est tenu, sous réserve des autres dispositions du présent article, de refuser la communication de documents contenant :

[...]

b) des renseignements financiers, commerciaux, scientifiques ou techniques fournis à une institution fédérale par un tiers, qui sont de nature confidentielle et qui sont traités comme tels de façon constante par ce tiers

[21] Section 69 and subsection 81(1) of the *Indian Act* read as follows:

69. (1) The Governor in Council may by order permit a band to control, manage and expend in whole or in part its revenue moneys and may amend or revoke any such order.

(2) The Governor in Council may make regulations to give effect to subsection (1) and may declare therein the extent to which this Act and the *Financial Administration Act* shall not apply to a band to which an order made under subsection (1) applies.

81. (1) The council of a band may make by-laws not inconsistent with this Act or with any regulation made by the Governor in Council or the Minister, for any or all of the following purposes, namely,

...

69. (1) Le gouverneur en conseil peut, par décret, permettre à une bande de contrôler, administrer et dépenser la totalité ou une partie de l'argent de son compte de revenu; il peut aussi modifier ou révoquer un tel décret.

(2) Le gouverneur en conseil peut prendre des règlements pour donner effet au paragraphe (1) et y déclarer dans quelle mesure la présente loi et la *Loi sur la gestion des finances publiques* ne s'appliquent pas à une bande visée par un décret pris sous le régime du paragraphe (1).

81. (1) Le conseil d'une bande peut prendre des règlements administratifs, non incompatibles avec la présente loi ou avec un règlement pris par le gouverneur en conseil ou par le ministre, pour l'une ou l'ensemble des fins suivantes :

[...]

[22] Section 8 of the *Indian Bands Revenue Moneys Regulations* provides as follows:

8. (1) Every Band shall engage an auditor to audit its account and to render an annual report in respect thereof.

8. (1) Une bande doit engager un vérificateur qui sera chargé d'examiner le compte et d'établir un rapport annuel à ce sujet.

(2) A copy of the auditor's annual report shall, within seven days of its completion,

(2) Dans les sept jours qui suivent la date à laquelle le vérificateur termine son rapport annuel, un exemplaire dudit rapport doit être

(a) be posted in conspicuous places on the Band Reserve for examination by members of the Band; and

a) placé en des endroits bien en vue de la réserve pour que les membres de la bande puissent l'examiner; et

(b) be supplied to the Minister of Indian Affairs and Northern Development.

b) remis au ministre des Affaires indiennes et du Nord canadien.

[23] The relevant provisions of the Band's Financial Disclosure Policy are as follows.

#### **SAWRIDGE INDIAN BAND FINANCIAL DISCLOSURE POLICY**

Whereas the Sawridge Indian Band Council recognizes the importance of transparency to its members in the good government of the Band; and

Whereas the Sawridge Indian Band Council has balanced the interest of transparency to its members with the interest of protecting the Band from the negative impacts which would occur if the Band's financial information were disclosed to the general public; and

Whereas the Sawridge Indian Band wishes to formalize the Financial Disclosure Policy which has been followed in the past; and

Now therefore the following policy shall govern the disclosure of the financial information of the Sawridge Indian Band:

#### **DEFINITIONS**

1. In this policy the following words shall be defined as indicated:

**Audit** – means the audit report together with the financial statements, notes and schedules prepared annually by the Auditor.

...

**FINANCIAL INFORMATION IS CONFIDENTIAL**

2. The Financial Information is confidential information of the Band and shall not be disclosed to anyone except in accordance with this policy.

...

**DUTY OF CONFIDENTIALITY**

4. All persons who are given access to the Financial Information shall be made aware of the confidential nature of the information and shall be bound by a duty to keep the information confidential.

...

**MEMBERS**

7. A member may review the Financial Report at the Band Office at a prearranged time. Each member who is permitted to review the Financial Report shall first complete a Confidentiality Agreement as set out in the appended form and submit it to the Band Council. A member who is given access to the Financial Report shall not be permitted to take copies or notes of the Financial Report. The review of the Financial Report may be done alone or in the presence of other members who have completed the Confidentiality Agreement. No other persons are permitted to review or attend at the review of the Financial Report except Band employees charged with supervising the review.

**USE OF INFORMATION**

8. No member shall make any use of any of the information contained in the Financial Report other than to discuss it with the Council or other members who have completed and submitted a Confidentiality Agreement in the appended form to the Council.

**CONFIDENTIALITY AGREEMENT**

The member acknowledges that, in the course of its review of the Band's financial information it will have access to information from various sources including the Band and that all such information constitutes valuable, special and unique property of the Band. The Member will not, during or after the term of examination disclose any such information in any manner, in whole or in part, including any information prepared by the Member to any person, firm, corporation, association, government, media or other entity for any reason or purpose whatsoever without the prior express written consent of the Band.

***D. DECISION OF THE FEDERAL COURT***

[24] On the Band's application to the Federal Court under subsection 44(1) of the AIA to review INAC's decision to disclose to Ms Poitras the financial information that she had requested, Justice Gibson rejected the Band's argument that the AIA did not apply to the requested documents because they were not "under the control" of INAC. Justice Gibson held that this was a broad phrase denoting possession and it was immaterial that the Band had purported to attach restrictive conditions when it supplied the financial information to INAC pursuant to paragraph 8(2)(b) of the Regulations.

[25] However, Justice Gibson accepted the Band's submission that the documents had been supplied to INAC by a third party (that is, the Band) and contained confidential financial information. As such, he found, they were exempt from disclosure by paragraph 20(1)(b) of the AIA. In reaching this conclusion, he relied on *Montana Band of Indians v. Canada (Minister of Indian and Northern Affairs)*, [1989] 1 F.C. 143 (T.D.) ("*Montana Band*"), reasoning that, like the journalist who had requested the confidential financial information in that case, Ms Poitras' interest is not consistent with that of the Band, as represented by its Chief and Council.

[26] Accordingly, he granted the Band's application and ordered INAC not to disclose the information that Ms Poitras had requested under the AIA.

## ***E. ISSUES AND ANALYSIS***

**Issue 1: Standard of Review**

[27] Two issues must be decided in this appeal. First, can information cease to be “confidential” for the purpose of paragraph 20(1)(b) of the AIA when its disclosure is requested by a person who is entitled to the information by virtue of another legal right? This is a question of statutory interpretation and is reviewable on appeal from the Federal Court on a standard of correctness.

[28] The second issue arises if the first is answered in the affirmative. It is this: does a Band member’s ability to examine a copy of the “auditor’s report” by virtue of paragraph 8(2)(a) of the Regulations remove the “confidential” character of the Band’s financial statements to which the report relates, so that Ms Poitras is entitled to their disclosure under the AIA? Since Justice Gibson did not address this question, this Court must answer it *de novo*.

**Issue 2: Can information be “confidential” within the meaning of paragraph 20(1)(b) of the AIA against some requesters, but not others?**

[29] INAC accepts that, for most purposes, Sawridge’s annual consolidated financial statements are “confidential” under the criteria established in *Montana Band*. However, counsel argues that, since paragraph 8(2)(a) of the Regulations requires the Band to post “a copy of the auditor’s annual report” in conspicuous places on the reserve for examination by members, they are not confidential as against Ms Poitras. Accordingly, counsel says, her request for their disclosure cannot be refused under paragraph 20(1)(b) of the AIA.

[30] For the purpose of considering this argument, I shall assume that Band members' statutory right to have the "auditor's annual report" posted in conspicuous places on the reserve extends to the financial statements to which the report refers. I shall also assume that Band members' right to examine the financial statements includes a right to read and use them. I consider later if these assumptions are warranted.

[31] The Band relies on *Montana Band* as authority for the proposition that, although she is a Band member, Ms Poitras may not obtain under the AIA confidential financial information supplied to INAC by the Band because her interests are not the same as the Band's. The requester in *Montana Band* was a journalist who, unlike Ms Poitras, could not otherwise examine the documents. Associate Chief Justice Jerome rejected the argument that, because members of the Band could examine the requested documents, they were not confidential for the purpose of paragraph 20(1)(b) of the AIA.

[32] He distinguished *DMR & Associates v. Minister of Supply and Services* (1984), 11 C.P.R. (3d) 87 (F.C.T.D.), where information was found not to be confidential because it would be disclosed to the successful bidder's competitors later in the project. In contrast, while Band members had a right to examine the Band's confidential financial information,

The respondent has not demonstrated even a reasonable likelihood that persons whose interests differ from those of the Band will be allowed to review this material.  
(at 156)

[33] In my view, the Judge was here contrasting Band members with non-members. While members are free to examine the documents because of the Band's statutory duty to post them, the

Band could, and did, prohibit others from viewing them. He did not mean that Band members who disagreed with the policy of the Chief and Council are not entitled to the disclosure of the Band's confidential financial information by requesting it under the AIA. The facts of the case did not raise that question, because the journalist who requested the information was not a Band member.

[34] Hence, *Montana Band* is not applicable to the present case. The documents requested in that case were confidential *vis-à-vis* the requester because she did not have access to them. Indeed, *Montana Band* supports the proposition that confidentiality for the purpose of paragraph 20(1)(b) of the AIA is a relative concept: the fact that Band members could examine the documents did not destroy their confidentiality *vis-à-vis* others. Conversely, while financial statements are confidential for the purpose of paragraph 20(1)(b) *vis-à-vis* those who are not Band members, they are not confidential *vis-à-vis* Band members if their right to examine "the auditor's annual report" under paragraph 8(2)(a) of the Regulations is as broad as I have assumed.

[35] Since the identity of a requester under the AIA is normally confidential, it may be argued that the identity of a particular requester cannot determine whether information is exempt from disclosure under paragraph 20(1)(b). Of course, if the identity of the requester is not disclosed, it will generally not be possible to establish that otherwise confidential documents are not confidential *vis-à-vis* that person.

[36] In this case, however, Ms Poitras consented to the disclosure to the Band of her identity, in order to establish her status as a Band member. In these very unusual circumstances, and

consistently with a broad interpretation of the AIA and a narrow interpretation of the exceptions, I see no reason why the identity of the requester cannot be taken into account to determine whether the information was confidential as against her.

[37] Consequently, in my respectful opinion, Justice Gibson erred in regarding *Montana Band* as authority for the proposition that Ms Poitras was not entitled to the disclosure of the Band's financial statements by virtue of paragraph 20(1)(b).

**Issue 3: Does Band members' right to examine the "auditor's annual report" remove the Sawridge Band's consolidated financial statements from the category of confidential financial information when their disclosure is requested by a member of the Band?**

[38] In my opinion, whether INAC was correct in its decision to release to Ms Poitras the Band's consolidated financial statements for the year ending March 31, 2002, depends primarily on the interpretation of subsection 8(2) of the Regulations, which, for convenience, I set out again.

8. (2) A copy of the auditor's annual report shall, within seven days of its completion,

(a) be posted in conspicuous places on the Band Reserve for examination by members of the Band; and

(b) be supplied to the Minister of Indian Affairs and Northern Development.

8. (2) Dans les sept jours qui suivent la date à laquelle le vérificateur termine son rapport annuel, un exemplaire dudit rapport doit être

a) placé en des endroits bien en vue de la réserve pour que les membres de la bande puissent l'examiner; et

b) remis au ministre des Affaires indiennes et du Nord canadien.

[39] The question to be decided is whether paragraph 8(2)(a) gives to Ms Poitras, as a member of the Sawridge Band, a sufficiently broad right of access to the Band's financial statements that they



are not “confidential” for the purpose of determining whether she is entitled to their disclosure under paragraph 20(1)(b) of the AIA. This turns on two questions: the meaning of the phrase “auditor’s annual report” and of the word “examination”.

**(i) “auditor’s annual report”**

[40] What documents are included in the phrase “the auditor’s annual report” in subsection 8(2): only the page entitled “auditor’s report” or the report and the financial statements that are the subject of it? I interpret the phrase “auditor’s annual report” to include the auditor’s report itself and the financial statements to which it relates.

[41] The purpose of subsection 8(2) is to provide the information necessary for INAC and interested Band members to scrutinise how the Band’s revenues are being managed, to raise questions about them, and to use the information in order to attempt to ensure that problems are addressed and, if appropriate, rectified. In other words, the provisions are designed to enhance Bands’ accountability to their members for the management of their finances.

[42] This purpose is also implicit in section 69 of the *Indian Act*. Subsection 69(1) authorizes INAC to permit a Band to “control, manage and expend” its revenue, while subsection 69(2), under which the *Indian Bands Revenue Moneys Regulations* were made, empowers the Governor in Council to issue regulations giving effect to that permission. Thus, the delegation to a Band of control over its revenues is accompanied by a power in the Governor in Council to create mechanisms for ensuring accountability for the Band’s exercise of that control.

[43] The page posted by the Band, entitled “Auditor’s Report”, only explains the basis on which the audit was conducted and contains the auditor’s opinion that the Band’s financial statements fairly present the consolidated financial position of the Band. It reveals little of what members, or INAC, would need to know in order to hold the Chief and Band Council accountable for their management of the Band’s revenues. It is the financial statements themselves that are useful for this purpose.

[44] Indeed, the Sawridge Band itself appears to interpret the legislation in this manner because, as I have already noted, it gave its complete consolidated financial statements to INAC pursuant to the duty in paragraph 8(2)(b) to supply to INAC “a copy of the auditor’s report”.

[45] Accordingly, I conclude that the duty to post “a copy of the auditor’s report” in conspicuous places on the reserve for examination by Band members refers to the “auditor’s annual report” and the financial statements that are the subject of the report. However, in order to protect the confidentiality of the financial statements *vis-à-vis* non-members, Bands may take measures to ensure that the postings are in places on the reserve to which only members have access.

**(ii) “examination”**

[46] The next question concerns the scope of Band members’ right under paragraph 8(2)(a) of the Regulations to examine their Band’s financial statements. An “examination” of financial statements obviously includes reading and assimilating them. The fact that the statements must be

posted conspicuously on the reserve for examination by members suggests that members do not require permission to read them.

[47] A purposive interpretation of paragraph 8(2)(a), and subsection 69(2) of the *Indian Act* under which the Regulations were made, also indicates that Band members' right to examine the financial statements must also include a right to use them for the purpose of holding the Band Chief and Council accountable for their management of the Band's finances.

[48] The Band's Confidential Disclosure Policy is inconsistent with members' rights under paragraph 8(2)(a) in at least two respects. First, it requires Band members to sign a confidentiality agreement as a condition precedent to their being able to see the Band's financial statements. Second, without the prior written consent of the Band, members who have read them are prohibited from discussing them with, or disclosing them to, anyone, except Band members who have themselves signed the confidentiality agreement.

[49] Whether or not the Policy was duly enacted by the Band Council as a by-law, it cannot validly be applied to Band members in derogation of the rights that I have concluded are conferred by paragraph 8(2)(a). Subsection 81(1) of the *Indian Act* provides that by-laws made by a Band Council may not be "inconsistent with this Act or with any regulation made by the Governor in Council or the Minister."

[50] Band members are entitled under paragraph 8(2)(a) to read and assimilate their Band's financial statements, and to use them for the purpose of holding the Band Chief and Council accountable for the management of the Band's revenues. Consequently, the Sawridge Band's consolidated financial statements for the year ending March 31, 2002, are not "confidential" for the purpose of paragraph 20(1)(b) of the AIA when the requester is a Band member. Hence, INAC was correct to conclude that it could not refuse Ms Poitras' request for their disclosure.

***F. CONCLUSIONS***

[51] For these reasons, I would allow the appeal, with costs in this Court and in the Federal Court, set aside the order of the Federal Court, and dismiss the Band's application.

\_\_\_\_\_  
"John M. Evans"

J.A.

"I agree.

Carolyn Layden-Stevenson, J.A."

"I agree.

C. Michael Ryer J.A."

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-12-08

**(APPEAL FROM A JUDGMENT OR ORDER OF THE HONOURABLE MR. JUSTICE GIBSON DATED NOV. 23, 2007, NO. T-2194-03)**

**STYLE OF CAUSE:** THE MINISTER OF INDIAN AFFAIRS AND NORTHERN DEVELOPMENT v. SAWRIDGE BAND

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** May 12, 2009

**REASONS FOR JUDGMENT BY:** Evans J.A.

**CONCURRED IN BY:** Layden-Stevenson J.A.  
Ryer J.A.

**DATED:** August 12, 2009

**APPEARANCES:**

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