DECISION OF
THE ḤAẆIIḤ COUNCIL

Application # HCR 2

Determination re Risk to Public Safety – Bobby Nookemus

2024 HCD 2

Place and date of hearing:	Port Alberni, BC June 24 and July 16, 2024
Date of judgment:	July 19, 2024

Panel:

Yaalthuuaa-uks (Sherri Cook), head of Yaałuuwaštakʼamałtḥ house,

ḥapinyook (Tommy Happynook), head of Čačaaḥsiʔas house

Sarah Johnson, representing Kuukw'iis house

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I. BACKGROUND

1. On January 24, 2024, Bobby Nookemus (“Bobby”) was convicted of the offence of assault under section 266 of the Criminal Code. As a result, the Executive Director issued an exclusion order against Bobby as required under section 6(1) of the *Community Safety Act*, HFNA 4/2021 (the “Act”) prohibiting him from being on Huu-ay-aht treaty lands.
2. Bobby made an application under section 10(1) of the Act for a determination that he does not pose an unreasonable risk to public safety and as a result the exclusion order should be varied or rescinded. The Ḥawiiḥ Council arranged to hold a hearing to consider the matter. Public notice of the application was given on May 30, 2024, and public notice of the hearing was given on June 7, 2024.
3. The public notice advised how people designated as “impacted individuals” under the Act, and others, could seek to participate in the hearing.
4. The hearing was commenced in person in Port Alberni on June 24, 2024. Participants had the option of speaking at the hearing or of providing written submissions. There was also an option to attend by Zoom.
5. A panel of three members of the Ḥawiiḥ Council (the “panel”), made up of Yaalthuuaa-uks (Sherri Cook), head of Yaałuuwaštakʼamałtḥ house, ḥapinyuuk (Tommy Happynook), head of Čačaaḥsiʔas house, and Sarah Johnson, representing Kuukw’iis house on behalf of Ciicaacistuł (Andy Clappis) (with ḥapinyuuk and Sarah Johnson attending remotely) heard the matter on behalf of the Ḥawiiḥ.
6. After hearing from the individuals listed below, the panel had some follow up questions for Bobby, and met with him again via Zoom on July 16, 2024.
7. The panel heard from the following individuals:
    - Bobby
    - Richard Nookemus
    - Theresa Nookemus
    - Melanie Nookemus

- Benson Nookemus
- Linnea Bowes
- Christine Pearson

8. Additionally, the Ḥaẃiiḥ Council received letters from the following individuals:

    - Marie Cummings
    - Amber Severinson
    - Deb Coates
    - Donna Brown
    - Roberta Bowes

II. WHAT THE ḤAẂIIḤ COUNCIL HEARD

Bobby

9. Bobby is a Huu-ay-aht citizen. He is currently residing in lower Anacla with his parents. Bobby has two children who live with their mother, from whom Bobby is separated. Bobby has contact with his children but there are no formal parenting arrangements in place.

10. Bobby confirmed that he was charged with assault and assault with a weapon in relation to an incident which occurred in spring 2023. The victim is a minor and will not be named in these reasons. Bobby pled guilty in January 2024 and has not yet been sentenced.

11. Bobby told the panel that he believes the assault occurred due to his anger and frustration and as a result of him going through a lot at the time. He advised that the offence did not involve the use of drugs or alcohol.

12. Bobby expressed remorse for his actions and a desire to get back on track. In his application to the panel, he stated that he would like to be a good role model to his children.

13. Bobby has been working full-time in housekeeping at the Bamfield Marine Sciences Center since February 2024. His supervisor, Marie Cummings, provided a letter confirming his employment and describing Bobby as a pleasant

and conscientious coworker. Bobby advised that since gaining employment, he has made support payments for his children.

14. Bobby has been attending counselling with Amber Severinson at Huu-Miis and Tuhmaht Counselling. He told the panel that he has found counselling very helpful. He has attended upwards of 9 sessions with Ms. Severinson. In 2023, Bobby also attended counselling with a different counsellor.

15. Ms. Severinson provided the panel with a letter confirming Bobby's participation in counselling. She indicated that Bobby has reached out to his probation officer regarding taking an anger management course. She also recommended that he attend one or more residential programs at Kackaamin Family Development Centre.

16. Bobby has also been recently begun attending a one-on-one parenting course with Margaret Bird. This is an 8-week program which Bobby attends at the Anacla government office.

17. Bobby told the panel that he has been doing work for elders in the community, such as mowing lawns. He also helps his parents with yard work and home renovations.

18. Bobby advised that he has a support network which includes his parents and his sister Melanie, all of whom attended the hearing.

19. The panel was advised that there is a no-contact order in place between Bobby and his former common-law spouse, Linnea Bowes, as well as some of her children. When asked about the feasibility of complying with the order in such a small community, Bobby advised that he has been able to do so and told the panel that he had recently left an event where Linnea was present in order to comply with the order.

20. After hearing from all the participants discussed below, and considering their evidence, the panel asked Bobby some follow-up questions.

21. The panel advised Bobby that it was very concerned that a Huu-ay-aht child was afraid to return to their homelands and that a family had been separated as a result of this offence and asked Bobby to respond to these concerns.

22. Bobby expressed that he was truly sorry for what he did to the victim. He reiterated that since the offence, he has been working on his mental health and attending counselling.

23. The panel also asked Bobby about his plans and willingness to continue on his healing journey. In particular, the panel asked about his participation in cultural wellness or healing activities. Bobby indicated that he does not have much experience with cultural activities but that he would be willing to participate in such activities with the Nation's support.

24. He also stated that he does not have an end date for his counselling sessions and intends to continue. He advised that both his counselling and parenting course are court-ordered.

25. Bobby advised that he has been complying with the terms of the Ḥa'wiih Council's interim order, which has been in place since July 3, 2024.

Richard Nookemus

26. Richard is Bobby's father. He told the panel that he is proud of his son, who has been working Monday to Friday and has been sober for about four years. Bobby's mother Bonnie was also in attendance to support Bobby, but did not provide comments to the panel.

Melanie Nookemus

27. Melanie Nookemus is Bobby's sister. She provided a letter of support for Bobby. She also spoke directly to the panel.

28. Melanie advised that Bobby has been working hard and making new friends at work. She noted that she has seen an improvement in his work ethic and punctuality. She also stated that he has been doing yard work for elders.

Thlut' as aksup (Theresa Nookemus)

29. Thlut' as aksup is the head of Ḥaw'eḥtak'amłatḥ house, to which Bobby belongs. She has met with Bobby and his parents and told the panel that in her view this experience has brought them closer together. She advised that she has heard Bobby express regret and shame about his past actions and sees him making progress and trying to do better. She noted that he helps elders with tasks without being asked to do so.

Benson Nookemus

30. Benson Nookemus was the head of Ḥaw'eḥtak'amłatḥ house prior to Thlut' as aksup and attended the hearing in that capacity. He encouraged Bobby to consider what brought him to this point and what factors were involved in causing him to commit the offence.

Linnea Bowes

31. Linnea Bowes is Bobby's former common-law spouse. They had a relationship that lasted several years and they have two children together. Linnea resides in Anacla with those children and children from a previous relationship.

32. Linnea told the panel about her experiences as a victim of abuse in her relationship with Bobby, as well as the impacts of this on her children. She advised that Usma Nuu-chah-nulth Child and Family Services ("Usma") has been involved with the family in the past as a result of family violence.

33. There has been a no-contact order in place which prohibits Bobby from having contact with Linnea and with the victim, as well as two of Linnea's other children. Linnea told the panel that the no-contact order has not always been followed by Bobby and she expressed concerns and frustration about the ability of the RCMP to enforce this order in the community in a timely way.

34. Linnea gave the panel further information about the assault giving rise to the exclusion order and its effects on the victim and on their family more generally.

35. Linnea advised that because of the assault, the victim has chosen to leave the community and is living away from their mother and siblings, in the care of Usma.

Although they want to visit and eventually return home, they are fearful of doing so while Bobby is in the community.

36. Linnea explained that it has been very difficult for the victim to be away from home. Aside from missing their family, it is a strange environment that is unfamiliar to them. Moreover, the victim wants to attend school in Bamfield this year, but will not be able to do so unless they are able to return to the community because remote schooling is not an option. The separation has also been very difficult for Linnea's other children, who miss their sibling and want them to return home.

37. Linnea spoke to the importance of being able to raise her children on their traditional lands and to be connected to the Huu-ay-aht territory and culture.

38. The panel also received letters from Deb Coates and Donna Brown. Ms. Coates is the Lead Specialized Trauma Informed Behaviour Consultant with Usma's care Support Team. She has been working with the victim for two years. She described some of the impacts that witnessing and experiencing abuse has had on the victim as well as some of the therapeutic work they been doing to heal. She confirmed that the victim wishes to visit home but is fearful of doing so.

39. Ms. Brown is a Registered Clinical Counsellor who has worked with Linnea since fall 2023. She described the significant impacts of family violence on Linnea and some of the work Linnea has been doing on her own growth and healing.

40. Linnea described experiencing a great deal of stress, fear, and anxiety. The panel recognizes that coming forward to speak with us was a very difficult experience for Linnea. We also wish to acknowledge the individuals who attended with Linnea to provide support for her and encourage Ms. Bowes to continue to seek out such support as she works on her own healing.

Christine Pearson

41. Christine Pearson is a team lead and protection and family support liaison with the Huu-ay-aht Child and Family Wellness Department. She told the panel that it is her understanding that Usma is not in support of the victim returning home if

Bobby remains in the community. She also advised that the victim would be able to continue accessing therapeutic supports and services, including working with Ms. Coates, if they were to return to Anacla.

Roberta Bowes

42. Roberta Bowes is Linnea's mother and the grandmother of the victim. She was unable to attend the hearing but provided comments in writing to the panel.

43. Roberta pointed out that the Huu-ay-aht First Nations website states "Safe, healthy and connected, bringing our children home". She expressed the view that these words must be acted upon or cycles will never be broken and children will never be brought home.

III. WHAT THE ḤAẆIIḤ MUST CONSIDER

44. Section 11 of the Act sets out the factors that the Ḥaẇiiḥ must take into account in determining whether an excluded person poses an unreasonable risk to public safety, and deciding whether to uphold, rescind, or vary an exclusion order as follows:

    a) the time that has elapsed since the actions giving rise to the conviction and the excluded person's behaviour during that time;
    b) the role of substance use in the offence and the excluded person's current status with respect to substance use, including participation in any treatment program;
    c) the excluded person's ties to the Huu-ay-aht community;
    d) the potential impacts of the exclusion order on the excluded person, impacted individuals, and the Huu-ay-aht community;
    e) the nexus between the offence and the potential risk posed by the person to people on Treaty Lands and to the Huu-ay-aht community;
    f) any proposed mitigation plan;
    g) participation of the individual in a restorative program;
    h) any supports put in place by the excluded person's Huu-ay-aht Maht Mahs;

i) whether the excluded person has a criminal history beyond the commission of the prescribed offence giving rise to the exclusion order;
j) whether the excluded person has a history of non-compliance with court orders;
k) any expressions of remorse or attempts to make restitution undertaken by the person; and
l) any other factors it considers relevant.

IV. APPLICATION

45. The panel listened carefully to all the evidence and comments received at the hearing, and to those provided in writing. In making a decision, the panel considered the factors set out in section 11 of the Act. In particular, the panel's considerations included the matters discussed below.

46. The offence is a serious one involving an assault on a child, and it has had a very significant impact on that child and on their family. The panel wishes to be clear that violence against children is never acceptable. Our children are our future and must be treated with care, love, and respect in accordance with our traditional ways.

47. The offence occurred on treaty lands and the victim is a member of the Huu-ay-aht community.

48. Over one year has passed since the offence took place. In that time, Bobby has made progress by finding steady employment and participating in court-ordered counselling and parenting courses. Bobby also has the support of family.

49. Bobby has expressed remorse for his conduct and has demonstrated some willingness to take responsibility by pleading guilty to the offence. He has also expressed an awareness of the need to take steps to improve his mental health and control his anger and frustration.

50. The panel recognizes that Bobby has made progress and that he is working on himself, and commends him for the steps he has taken to date. However, the panel does not consider that Bobby's journey is complete.

51. There are many people who are affected by Bobby's exclusion order, all of whom have close ties to the Huu-ay-aht community.

52. Bobby is a citizen with family on treaty lands and is a source of support to his parents. His full-time job, which the panel views as an important and positive factor in his journey, is located in Bamfield.

53. Bobby also has two children who live on treaty lands. The panel understands that there are no court orders prohibiting Bobby from having contact with these children, and that parenting arrangements have not been formalized. The panel wishes to note that it does not have authority to make decisions involving family law matters, such as parenting time and responsibilities or visits for extended family. However, the panel recognizes that challenges in co-parenting matters can give rise to conflict and encourages Bobby and Linnea to take steps to resolve any outstanding family law issues in a timely way.

54. The victim is also a citizen who has spent much of their childhood on treaty lands. The impact of Bobby's conduct has been devastating for them and has resulted in their separation from their family, culture, and community. This has impacted not only the victim themselves but also their immediate and extended family. These individuals also have a right to live safe, peaceful lives on treaty lands.

55. The panel recognizes the importance of supporting Huu-ay-aht children to grow up in their territory, embedded in their culture, and with their family.

V. DECISION

56. The panel has determined that, if Bobby complies with certain conditions, his presence on treaty lands does not pose an unreasonable risk to public safety.

57. The panel has determined that it is necessary to impose strict conditions on Bobby to ensure that his presence on treaty lands does not pose a risk to public safety or to the safety of the victim and their family. These conditions are set out in our order below.

58. In addition to these conditions, the panel also recommends that Bobby participate in cultural wellness and healing activities such as a ʔuusimc or brushing. The panel does not impose this as a condition at this time; however, we invite Bobby to reach out to the Quu'asa Wellness Program through Teechuktl Mental Health, or to the Huu-ay-aht Cultural Wellness Administrator at 1-888-644-4555, if he would like support in accessing cultural activities.

VI. ORDER

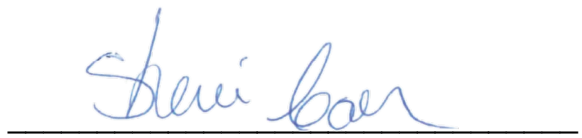
The Ḥaw̓iiḥ Council orders as follows:

1. The exclusion order is varied to allow Bobby Nookemus to enter or remain on treaty lands, subject to the following conditions:
   a) Bobby is only permitted to be at his parents' home and is not permitted to be at any other location on treaty lands except for the sole purpose of
      - travelling on or off treaty lands,
      - attending at the Anacla government office for his parenting course with Margaret Bird, and
      - attending at the Anacla government office for another pre-arranged purpose.
   b) At least 48 hours prior to any appointment at the Anacla government office, Bobby must notify the Acting Law Clerk by phone at 250.723.0100 ext. 110 or by email at lawclerk@huuayaht.org that he will be attending the government office and of the date and time of his appointment.
   c) When leaving treaty lands or returning to his parents' home after being off treaty lands, Bobby must travel directly to and from his parents' home and is not to make any other stops or detours.
   d) Bobby must not have any direct or indirect contact with Linnea Bowes except with her express consent.
   e) Bobby must not have any direct or indirect contact with the victim.
   f) Bobby must comply with all court orders, probation conditions, and any other conditions imposed upon him by courts or law enforcement, including any orders made in family law or child protection proceedings.

g) Bobby must not be under the influence of alcohol or drugs on treaty lands.
h) Bobby must uphold the sacred principles of ʔiisaak (greater respect), ʔuuʔałuk (taking care of), and Hišuk ma c̓awak (everything is connected).
i) Bobby must not act in a manner that constitutes or poses a risk to public safety.
j) Bobby must provide updates to the Ḥa'wiih Council on his compliance with these conditions as requested.
k) Bobby must appear before Ḥa'wiih Council as requested.

2. Ḥa'wiih Council will consider any failure by Bobby to meet these conditions, and if Bobby does not comply with these conditions, Ḥa'wiih Council may reinstate the exclusion order or impose additional conditions.

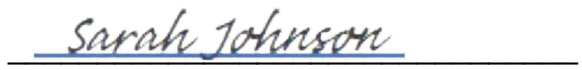
Decided this 19th day of July, 2024.



Yaalthuuaa-uks (Sherri Cook)



ḥapinyook (Tommy Happynook)



Sarah Johnson