



huu ayaht

ANCIENT SPIRIT, MODERN MIND

**DECISION OF
THE ʻĀWĀIIH COUNCIL**

Application # HCR 22-001

Determination re Risk to Public Safety - Kenneth Johnson, 2022 HCD 01

Place and date of hearing: Videoconference
February 23, 2022

Date of judgment: March 1, 2022

Panel:

Tayii Hawilth tliishin (Derek Peters), head of ʻApwinisathʻ house
Yaalthuu-a (Jeff Cook), head of Yaaluuwaštakamałh house
Hup-in-yook (Tom Happynook), head of Čačaahsiʻas house

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I. BACKGROUND

1. On June 25, 2019, Kenneth Paul “Paulo” Johnson was convicted of the following offences:
 - aggravated assault (*Criminal Code*, s. 268(2))
 - assault (*Criminal Code*, s. 266)
 - assault causing bodily harm (*Criminal Code*, s. 267(b))
2. As a result of these convictions, the Executive Director issued an exclusion order against Paulo 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.
3. Paulo 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that he does not pose an unreasonable risk to public safety and as a result the exclusion order should be varied or rescinded.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 H̱aw̱ii̱ẖ Council arranged to hold a hearing to consider the matter. Public notice of the application was given on January 27, 2022 and public notice of the hearing was given on February 8, 2022. Both notices advised how people designated as “impacted individuals” under the *Act*, and others, could seek to participate in the hearing.
4. The hearing was held by videoconference on February 23, 2022. Participants had the option of speaking at the hearing or of providing written submissions.
5. A panel of three members of the H̱aw̱ii̱ẖ Council made up of Tayii Hawilth tliishin (Derek Peters), head of ʔApwinisathʔ house; Yaalthuu-a (Jeff Cook), head of Yaaʔuuwaštakamałth house; and Hup-in-yook (Tom Happynook), head of Čačaaḥsiʔas house heard the matter on behalf of the H̱aw̱ii̱ẖ. hii-ni-naa-sim (Tommy Happynook) acted as registrar and chaired the hearing on behalf of the panel.

A. Participants

6. The following individuals participated at the hearing:
 - Paulo
 - Larry Johnson

- Karen Haugen
- Duane Nookemis
- Connie Waddell
- Rose Charles

Coraleah Bauer did not attend, but participated in writing through a letter that was read into the record.

II. WHAT THE ḤAWĪIḤ COUNCIL HEARD

A. Testimony of participants

Paulo

7. Paulo spoke about his desire to return home to Grappler Creek. He spoke about some of the work he has been doing to help community members since he was released from prison. Paulo said that his plan if the exclusion order is rescinded is to live alone at Grappler and work on his house there, and that he wants to fish and catch sockeye for the Nation this summer.
8. Paulo said that he meets weekly with counsellor David Zyrd and that he meets with his parole officer once a month.
9. Paulo was provided with an opportunity to respond to comments made by each participant listed below and was given an opportunity to elaborate on his comments in response to questions from members of the panel.

Coraleah Bauer

10. A letter from Paulo's daughter Coraleah was read into the record. Coraleah described how she has watched her father struggle with his addictions, but that he has also instilled important values in her and her brother. She voiced her support for rescinding the exclusion order on the condition that Paulo be required to live alone at Grappler and that he does not engage in unhealthy relationships.

She raised concerns about her father's living situation if he cannot reside at Grappler.

Larry Johnson

11. Paulo's brother, Larry Johnson, attended the hearing with Paulo and spoke in support of him. Larry said that Paulo had apologized to his victims while in court. He also said that while Paulo was incarcerated at Brandon Lake Penitentiary, he participated in 12-step recovery programs for alcohol and drug abuse and participated in cultural activities and in a men's group. Larry said that although Paulo was eligible for parole, he declined to live in a halfway house and preferred to stay in prison for a longer period in order to keep accessing these programs.
12. Larry said that since Paulo was released on parole, he has not been convicted of any further offences and that he is currently required to comply with a probation order which expires later this year.

Karen Haugen

13. Karen Haugen is the sister of Roseanne Young, one of the victims of the offences for which Paulo was convicted. Karen spoke about the impacts of Paulo's actions on her sister, and the need for restorative justice to consider victims and their families. She voiced concern that apologies made in court may not be genuine, and said that Paulo had not apologized to her family.
14. Karen said that Paulo needs his lands and his teachings to heal, but that she did not think he was ready to be in Anacla. She asked that Hāwiih Council allow Paulo to return to Grappler but be prohibited from going to Anacla, and wanted Paulo to provide a public apology and to continue his treatment.

Duane Nookemis

15. Duane's comments echoed those of his sister, Karen Haugen. He said that he thought it would be good for Paulo to be at home, but that it is also important to respect victims and their families.

Connie Waddell

16. Connie said that she is part of both the Johnson and Nookemus families. She spoke about the importance of supporting family, rather than removing them from the community, in light of the fact that all HUU-ay-aht people are family.

Rose Charles

17. Rose voiced her support of Paulo as a family member going through a hard time and wanted to wish him luck.

B. Questions from the Hāwiih

18. Hup-in-yook read into the record a letter he sent to Paulo as head of his house. The letter proposed a number of actions that Paulo could take that would assist the Hāwiih in feeling comfortable that he does not pose a risk to the community. The letter also asked Paulo about his own needs and what his house could do to support him in his healing.
19. Hup-in-yook then asked Paulo to respond to each suggested action in the letter and indicate whether he could commit to taking those actions. After some discussion and further comment and questions from the panel members, Paulo said that he could commit to:
 - writing an apology letter to be published in the Anacla community newsletter,
 - living alone in Grappler,
 - continuing to provide community service, such as cutting grass and smoking fish,
 - hosting a dinner to apologize to the victims' families and the community,
 - doing everything in his power to make amends with his children and family, and
 - continuing with his recovery programs and treatment.

III. WHAT THE HAWIIH MUST CONSIDER

20. Section 11 of the *Act* sets out the factors that the Hāwiih 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 Hūu-ay-aht community;
- d) the potential impacts of the exclusion order on the excluded person, impacted individuals, and the Hūu-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 Hūu-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 Hūu-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

21. In reaching its decision, the panel considered all of the evidence and comments received at the hearing and the factors set out in section 11. In particular, we note:

- Paulo is a Huu-ay-aht citizen who grew up on treaty lands and has a house in Grappler.
- Paulo has family residing on treaty lands.
- Paulo has also expressed an intention to reconnect with his culture and live a more traditional life, as well as to make amends with his family.
- The offences occurred three years ago, in February 2019. Paulo was sentenced in June 2019 and released from prison over a year ago. There is no evidence that Paulo has been convicted of any other offences since that time.
- Paulo has a support system that includes family members and the Čačaaḥsi?as house, including Hup-in-yook and hii-ni-naa-sim.
- It is important to the affected family that Paulo take responsibility for his actions. Paulo apologized to the victim's family during the hearing and committed to issuing a public apology through the Anacla newsletter and by holding a dinner.
- Paulo has acknowledged his challenges with substance abuse and has engaged in recovery programs, both while in prison and since his release. He intends to continue his meetings and counselling.
- Prior to the issuance of the exclusion order, Paulo provided community service by helping elders and other community members and intends to continue to do so if allowed to return to treaty lands. Paulo expressed that he follows the Huu-ay-aht value of helping without being asked. Paulo has also offered to provide sockeye for a potlatch in October.

- Tayii Hawilth tliishin has made arrangements with Wišqii for Paulo to participate in a four-day ʔuusimč, for the purposes of reconnecting Paulo to his culture and traditions and supporting his recovery.

V. DECISION

22. We are satisfied that Paulo’s return to Huu-ay-aht treaty lands does not pose an unreasonable risk to public safety, as long as certain conditions are met. As a result, the panel has decided to vary the exclusion order to allow Paulo to return to treaty lands subject to conditions.

VI. ORDER

The H̄aw̄iih̄ Council orders as follows:

1. The exclusion order dated November 22, 2021 in respect of Kenneth Paul “Paulo” Johnson is varied to allow Paulo to enter on treaty lands, except that he is not permitted in the Anacla Village (Upper and Lower) or Pachena Beach area, subject to the following conditions:
 - a) Paulo will reside alone at his home in Grappler,
 - b) Paulo will only go to the Huu-ay-aht government offices in Port Alberni if he has booked an appointment in advance,
 - c) Paulo will continue to participate in recovery programs,
 - d) Within one month of the date of this decision, Paulo will provide to the Anacla community newsletter a letter to the community that includes
 - i) an apology for his past behaviour;
 - ii) a commitment to live within the laws and regulations of the Huu-ay-aht, the Province and the Federal governments, including the requirements of the Harvester’s Card;
 - iii) a commitment to living a more traditional life in Grappler Creek, including learning more Huu-ay-aht culture and songs; and

- iv) a commitment to living alone in Grappler, in recognition of the need to reset his life following the toxic relationship he was previously in,
 - e) Before May 21, 2022, Paulo will participate in a ʔuusimč with Wišqii;
 - f) On May 21, 2022, Paulo will host a community dinner.
 - g) Paulo will commit in writing to following these conditions and the commitments made under paragraph d.
2. The H̄aw̄iih̄ Council will consider any failure by Paulo to meet these conditions, which may result in a reinstatement of the exclusion order or the imposition of additional conditions.
 3. Following the community dinner, the H̄aw̄iih̄ Council will consider whether the exclusion order should be further varied, including potentially to allow Paulo to also return to the Anacla Village and Pachena Beach areas.

Decided this 1st day of March, 2022



Tayii Hawilth tliishin (Derek Peters)

Jeff Cook

Yaalthuu-a (Jeff Cook)

Tom Happynook

Hup-in-yook (Tom Happynook)