

**DECISION OF
THE ȤAWIIȤ COUNCIL**

Application # HCR 23-001

**Determination re Risk to Public Safety – Darin Robert Martin
2023 HCD 02**

Place and date of hearing: Port Alberni, BC
March 23, 2023

Date of judgment: March 28, 2023

Panel:

Yaalthuu-a (Jeff Cook), head of YaaluwaštakamatȤ house
hii-ni-naa-sim (Tommy Happynook), head of ČačaahsiȤas house
Theresa Nookemis, head of Ȥaw'eȤtak'amlatȤ house

CONTENTS

I.	BACKGROUND	2
A.	Participants	3
II.	WHAT THE ȤAWIIȤ COUNCIL HEARD	3
A.	Testimony of participants	3
III.	WHAT THE ȤAWIIȤ MUST CONSIDER	5
IV.	APPLICATION	6
V.	DECISION	7
VI.	ORDER	7

I. BACKGROUND

1. On January 19, 2022, Darin Robert Martin (“Darin”) was found guilty of the offence of assault contrary to the *Criminal Code*, s. 266.
2. As a result, the Executive Director issued an exclusion order against Darin 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. Darin 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that he does not pose an unreasonable risk to public safety and as a result the exclusion order should be varied or rescinded.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 H̱aw̱iiẖ Council arranged to hold a hearing to consider the matter. Public notice of the application was given on February 1, 2023.
4. On February 1, 2023, the H̱aw̱iiẖ Council issued an interim order suspending the effect of the exclusion order until the sooner of February 10, 2023 or further order of the Council. This interim order was extended on February 10, 2023, until the sooner of the determination of the application or until further order of the H̱aw̱iiẖ Council. The interim order means that Darin has been permitted to be on treaty lands pending the outcome of the hearing.
5. Public notice of the hearing was given on March 1, 2023. The public notice advised how people designated as “impacted individuals” under the Act, and others, could seek to participate in the hearing.
6. The hearing was held in Port Alberni on March 23, 2023. Participants had the option of speaking at the hearing or of providing written submissions. There was also an option to attend by Zoom.
7. A panel of three members of the H̱aw̱iiẖ Council (the “panel”) made up of Yaalthuu-a (Jeff Cook), head of Yaaluuwaštakamatẖ house; hii-ni-naa-sim (Tommy Happynook), head of Čačaaẖsiʔas house, and Theresa Nookemus, head of H̱aw̱'ehtak'am̱atẖ house (with hii-ni-naa-sim attending remotely) heard the matter on behalf of the H̱aw̱iiẖ. λaacmiik (Alec Frank), head of Maatsaas house, observed the hearing but took no part in the decision.

A. Participants

8. The following individuals participated at the hearing:
 - Darin
 - Kori Wiowod
 - Robert Dennis
 - Rena Johnson
9. Additionally, the Hāwiih Council received a letter of support from Rena Johnson.
10. The victim and their family did not participate in the hearing.

II. WHAT THE HĀWIIH COUNCIL HEARD

A. Testimony of participants

Darin

11. Darin informed the panel that he is currently attending a treatment program which will conclude in mid-April. From there, he plans to move to Victoria to reside in second-stage housing and eventually look for work there. Darin explained that he can remain in second-stage housing indefinitely and expressed that he does not wish to reside in Anacla as he does not believe it is good for his sobriety.
12. Darin also informed the panel that he has been attending counselling with Rena Johnson regularly.
13. Darin told the panel that he does not have a criminal history other than the offence which led to the exclusion order. He stated that he has complied with his court-ordered conditions, except for one instance of having contact with the victim contrary to a no-contact order, which he stated occurred shortly after the offence. Darin regularly checks in with his probation officer by telephone although he indicated that his probation officer does not return his calls.

14. Darin also advised that although his probation order requires him to participate in a restorative justice circle led by his grandfather Robert Dennis, he has not heard anything about this and does not know how it would work.
15. Darin said that much of his family lives in Anacapa and he would like to be able to visit them. He expressed the view that preventing him from seeing his family would not be good for him or for them.
16. Darin expressed remorse for having committed the assault.
17. Darin indicated that although he did not agree with the process set out by the *Community Safety Act*, he would comply with any conditions imposed by the Hāwiih Council.

Robert Dennis (“Robert”)

18. Robert is Darin’s grandfather. He told the panel that he was very proud of his grandson for the steps he has taken to deal with his addiction and mental health challenges. Robert emphasized that making the decision to attend treatment is a very difficult one and Darin has done this of his own volition.
19. Robert also spoke about Darin’s work ethic. He informed the panel that Darin has been consistently employed since he was a teenager and is a hard worker and a team player. He described Darin as independent and self-supporting.
20. Robert also described Darin as carrying out an important aspect of Hui-ay-aht culture by demonstrating his respect for elders through helping them. He stated that Darin offers to help him around the house and has a very positive relationship with his grandmother, who will one day pass on her seat to Darin.
21. Robert indicated that he supports Darin to participate in Hui-ay-aht culture; for example, through drumming and songs.

Rena Johnson (“Rena”)

22. Rena is Darin’s counsellor. She told the panel that she has been working with Darin since March 2022. She confirmed that Darin is currently in treatment and

planning to move to second-stage housing in Victoria, which the Nation is supporting. Rena noted that Darin will have access to programming in second-stage housing, will have to abide by treatment discharge conditions, and will also be able to continue counselling sessions with her virtually.

23. Rena described Darin as someone who has taken the lead in finding supports to improve his mental health and deal with his addiction. She expressed that in her view, it would be detrimental to Darin's mental and emotional health to be excluded from treaty lands.

Kori Wiowod ("Kori")

24. Kori is Darin's mother. She informed the panel of the recent death of Darin's father and asked the panel to take this into consideration. She also described being proud of Darin for attending treatment and fighting for a better life. Kori noted that Darin has worked for the Huu-ay-aht group of businesses on and off since he was 16.
25. Kori also expressed frustration with the process. She stated that Darin has taken all the right steps and shared that in her view it would be harmful to prevent Darin from visiting his family.

III. WHAT THE ḤAWĪIḤ MUST CONSIDER

26. Section 11 of the *Act* sets out the factors that the ḤawīiḤ 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

27. 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:

- Darin is a Huu-ay-aht citizen with strong connections to the community. He has many family members who live in Anacla as well as relationships with friends and coworkers. The panel understands that Darin has experienced the recent loss of his father, and recognizes that it is especially important for him to maintain family relationships in light of this.
- Darin is currently attending treatment and participating in counselling, and intends to continue second stage treatment. He has a plan for housing, for financially supporting himself over the next few months, and for looking for work.

- Darin does not intend to live on treaty lands. He demonstrates insight by acknowledging that being in Bamfield or Anacla poses risks for his sobriety.
- Although the panel did not hear directly from the victim, the panel understands that they do not currently reside on treaty lands, although they may visit family there. However, the panel notes that in any event Darin is still bound by his probation conditions not to have any contact with them.
- The offence occurred in September 2021. Darin told the panel that he has generally complied with his court-ordered conditions and has not been convicted of any other criminal offences. The panel appreciates Darin's honesty in informing us of one occasion on which he did not comply with his no-contact order. We understand this occurred over a year ago and has not happened since.

V. DECISION

28. We are satisfied that Darin being on Hūu-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 Darin to be on treaty lands subject to certain conditions.

VI. ORDER

The Hāwiih Council orders as follows:


1. The exclusion order dated January 9, 2023 in respect of Darin Martin is varied to allow Darin to enter or remain on treaty lands, subject to the following conditions:
 - a) Darin will complete his current treatment program;
 - b) Darin will work with his family to host a community dinner in a location of his choice within 6 months of completing his second-stage treatment; and
 - c) Darin will continue to engage with his grandfather Robert Dennis to learn about and participate in Hūu-ay-aht culture.

2. The Hāwiih Council will consider any failure by Darin to meet these conditions, which may result in a reinstatement of the exclusion order or the imposition of additional conditions.


Decided this 28th day of March, 2023



Yaalthuu-a (Jeff Cook)



hii-ni-naa-sim (Tommy Happynook)



Theresa Nookemus