FAMILY COURT OF NOVA SCOTIA

Citation: *Nova Scotia (Community Services) v. J.R.*, 2018 NSFC 19

Date: 2018-10-09
Docket: FT No. 104579
Registry: Truro

Between:

Minister of Community Services

Applicant

v.

J.R. and C.L.

Respondents

Restriction on Publication: Pursuant to s. 94(1) of the *Children and Family Services act*, S.N.S. 1190, c.5.

Judge:	The Honourable Associate Chief Judge S. Raymond Morse
Heard:	July 11, 13 and 30, 2018, in Truro, Nova Scotia
Written Decision:	October 09, 2018
Counsel:	S. Dellapinna, for the Applicant T. Smith, for the Respondent, J.R. N. Mahoney, for the Respondent, C.L.

By the Court:

Introduction

[1] J.R. and C.L. are the parents of A.R. (DOB January **, 2016) and J.R. (DOB January **, 2016). The mother, J.R., was 19 when the twins were born. The father, C.L., was 17. C.L. was attending high school and living with his parents and expecting to graduate in June 2017. J.R. was living with family members.

[2] The Agency became involved with the respondents in July 2016 after C.L. and a public health nurse made referrals to the Agency. In August 2016 the Agency opened a file to provide voluntary services to J.R., as a single parent.

[3] On December 9, 2016 the Agency learned that J.R. was at C.L.'s home in Colchester County. Workers attended at the home and determined that it was not a safe environment for the children. J.R. agreed to sign a voluntary care agreement.

[4] A protection proceeding was subsequently commenced in March 2017.

[5] Pursuant to Review Application and Notice of Hearing dated November 7, 2017, the Minister requested that the two children be placed in the permanent care and custody of the Minister.

[6] Initially, both respondents indicated their opposition to the Minister's Plan of Care premised upon permanent care and custody. However, following the parties' participation in a settlement conference on May 23, 2018, the respondent mother confirmed that she was consenting to permanent care and custody. The respondent father remained opposed to the Minister's application and requested dismissal of the application and that the twins be placed in his care and custody.

Proceedings

[7] Pursuant to Protection Application and Notice of Hearing dated March 27, 2017, the Minister maintained that the twins were in need of protective services pursuant to Section 22 (2), sub-paragraphs (b), (g), (j) and (k) of the *Children and Family Services Act* ("the *Act*").

[8] An initial interim order for temporary care and custody was granted at the five day hearing held March 30, 2017. A further order for temporary care and custody was granted at the conclusion of the interim hearing on April 20, 2017.

[9] A combined pre-hearing and protection hearing was held June 15, 2017. Both respondents consented to the Minister's request for a protection finding. The Court made the protection finding and confirmed a further order for temporary care and custody of the children pending disposition.

[10] A combined pre-hearing and disposition hearing was held September 12, 2017. Both respondents confirmed that they were not contesting the Minister's application for an order for temporary care and custody, subject to a reservation of rights. The Court granted the Minister's disposition application.

[11] Pursuant to Review Application and Notice of Hearing dated November 7, 2017, the Minister requested an order for permanent care and custody pursuant to Section 46 (5)(c) of the *Act*. The application was supported by a Supplementary Plan of Care dated November 7, 2017.

[12] At the review hearing held November 14, 2017, counsel for the respondent parents confirmed that the respondents were both contesting the Minister's application for permanent care. The respondents did not contest the Minister's request that the existing order for temporary care and custody be maintained in the interim.

[13] At the Review Hearing held February 8, 2018, the respondents indicated that they remained opposed to the Minister's application for permanent care but confirmed their willingness to participate in a settlement conference. The respondents did not contest the Minister's request to extend the existing order for temporary care and custody subject to a reservation of rights. The Court assigned dates for settlement conference and scheduled the final review hearing to commence July 11, 2018 and to continue on July 13, 16, 18 and 20.

[14] At the review hearing held May 3, 2018, counsel confirmed that the matter remained scheduled for settlement conference on May 18. The respondents indicated that they were not contesting the Minister's request for extension of temporary care and custody and that they remained opposed to the Minister's request for permanent care. The matter was scheduled for pre-trial on June 28, 2018.

[15] The settlement conference held May 25, 2018 did not result in a settlement.

[16] At the pre-trial on June 28, 2018, counsel for the respondent mother confirmed the mother's willingness to consent to the Minister's request for

permanent care and custody. Counsel for the respondent father confirmed that he remained opposed to the Minister's application.

[17] The final review hearing commenced July 11, 2018, continued on July 13, and concluded on July 30, at which point the Court reserved decision.

[18] At the outset of trial, counsel for the Minister made a motion requesting that the notes prepared by the involved family support worker be admitted into evidence pursuant to Section 23 (2) of the *Evidence Act,* without the worker being called as a witness. This request was opposed by counsel for the respondent father who requested that the family support worker be made available for cross-examination.

[19] Following submissions by counsel, the Court provided an oral decision on the Minister's motion. The Court confirmed its conclusion that a principled approach should be adopted in determining the request of the Minister for admissibility of the records pursuant to Section 23 (2). The Court acknowledged its obligation to ensure that the hearing process undertaken was fair to all parties, with appropriate opportunity for the respondents to challenge the Minister's case.

[20] The Court indicated its willingness to admit the worker's notes as business records pursuant to Section 23 (2), subject to the Minister establishing the criteria for admissibility of the records by way of an appropriate affidavit. The Court confirmed that the family support worker would be made available for cross-examination.

Review of Evidence

[21] The following exhibits were entered on behalf of the applicant; Exhibit Book 1, included copies of all pleadings; Exhibit 2, a booklet containing expert reports and CVs; Exhibit 3 containing photographs of the L.'s home; Exhibit 4, affidavit of case aide Laura McClellan sworn June 11, 2018; Exhibit 5, a Progress Summary Report submitted by Nikita Archibald dated June 26, 2018 and Exhibit 6 containing the case recordings of the involved family support worker. Exhibit 12 was the affidavit of family support worker Colleen Reddy, sworn July 23, 2018 with case recordings attached as Exhibit A.

[22] The following exhibits were entered on behalf of the respondent father; Exhibit 7, the affidavit of the respondent C.L., sworn June 25, 2018; Exhibit 8, the affidavit of C.L.'s mother, Z.L., sworn June 25, 2018; Exhibit 9, the affidavit of

C.L.'s father, A.L., sworn June 25, 2018; Exhibit 10 was C.L.'s Plan for the Children's Care dated June 25, 2018 and Exhibit 11 was a series of text messages between J.R. and C.L..

[23] Five witnesses testified on behalf of the Minister including Melissa Gendron, psychologist; Nakita Archibald, registered counselling therapist-candidate; Laura McClellan, case aide; Christine Riordan, long-term social worker; Caroline Jeppesen, long-term social worker and Colleen Reddy, family support worker.

[24] C.L. and his parents also testified.

[25] No evidence was presented on behalf of J.R.. The respondent mother did not personally attend the hearing, however her counsel was present throughout. Ms. Smith undertook a very brief cross-examination of C.L. and made closing submissions on behalf of J.R..

[26] The paragraphs that follow contain a summary of the evidence, both documentary and *viva voce*. It is a summary and therefore not comprehensive. I have reviewed all the documentary exhibits and considered the testimony of all the witnesses in determining the Minister's application.

[27] Melissa Gendron, psychologist, was the first witness to testify on behalf of the Minister. She identified her CV and her psychological assessment for the respondent father as set forth in Exhibit 2. Respondents' counsel consented to Ms. Gendron being qualified to give opinion evidence as a psychologist.

[28] In discussing the test results intended to assist in assessing executive function, Ms. Gendron confirmed that C.L. demonstrated significant difficulties with planning and organization.

[29] In relation to the questionnaire utilized to assess parenting attitudes, she confirmed that C.L.'s scores across almost all scales were identified as medium risk and indicated that he responded appropriately to some questions and inappropriately to others. By way of example, she stated that one of the statements is, "children who are one-year-old should be able to stay away from things that could harm them" and C.L. selected the response of "agree". She indicated that such responses can be red flags indicating an individual who could benefit from education and may not know what to expect developmentally from kids at different stages of development.

[30] Ms. Gendron confirmed that, overall, C.L.'s intellectual functioning was approaching age typical expectations. She did indicate that the results of the assessment indicated that he might require assistance when he needs to problem solve something more complex, like complex health care decisions.

[31] With respect to adaptive functioning, Ms. Gendron commented as follows at page 25 of her assessment report as set forth in tab B of Exhibit 2:

> The present psychological assessment demonstrates that many of (C.L.'s) cognitive skills are approaching age expectations or fall at the level expected for his age. However, significant difficulties were revealed with regards to his attention, and some aspects of reasoning and executive function. These difficulties may be causing impairment in (C.L.'s) planning, judgment, and aspects of adaptive functioning.

[32] During her testimony Ms. Gendron testified that she would be concerned about the ability of any 19 to 20-year-old to independently provide primary care for twins under the age of three. She suggested that a factor that could contribute to success for such a parent would be if they have excellent support.

[33] She testified that based upon the red flags suggested by her assessment such as inattention, impulsivity, hyperactivity, the red flags in terms of executive dysfunction and then the red flags in terms of his overall cognitive ability, she would have concerns about C.L. independently being a primary caregiver.

[34] During cross-examination Ms. Gendron was asked whether or not any risks identified with respect to C.L.'s care of the children could be alleviated if support was provided. Ms. Gendron responded in the affirmative, but then qualified her answer by indicating that it depends on the support and, if the support was deemed appropriate, whether it would be available 24 hours a day.

[35] When asked whether or not C.L.'s plan for he and the boys to reside with his parents on a full-time basis was the kind of support she was referring to, Ms. Gendron replied by indicating as long as the supports were deemed appropriate, then yes, in terms of 24-hour in-home access to appropriate caregivers, there would be more potential for success.

[36] The next witness to testify was Nakita Archibald, registered counselling therapist-candidate. Ms. Archibald was qualified to give opinion evidence as a counsellor/therapist. She identified the various progress reports that she had

submitted as set forth in Exhibit 2. She also identified her final report, dated June 26, 2018, as Exhibit 5.

[37] Ms. Archibald stated that the respondent mother's decision to consent to permanent care and custody was a very hard decision for her but J.R.'s main priority was that the boys be safe and loved.

[38] Ms. Archibald's conclusion with respect to the relationship between the respondents was that there was an overarching theme of control, manipulation and domestic violence. She expressed her belief that J.R. was a very vulnerable individual, vulnerable to other people's opinions, threats or directives.

[39] Laura MacLellan, case aide, testified on behalf of the Minister. She confirmed that she has been supervising access visits since they started in January 2017.

[40] Ms. MacLellan indicated that on occasion there have been visits when both boys do cry and occasionally C.L. is able to settle them, but if he can't the children come to her. She agreed that C.L. was interactive with the children during visits.

[41] She indicated that the grandparents were also interactive with the boys if they were present for a visit and she has not noted any concerns about their interaction.

[42] She acknowledged that there have been no occasions when she has had to intervene because she thought C.L. might be getting angry or frustrated. She's never witnessed any inappropriate behaviour on the part of C.L. towards the boys.

[43] At paragraph 20 of her affidavit, Ms. MacLellan expresses her belief that C.L. has become accustomed to her being present during the visits and knows that she will intervene if need be. She indicates that he does not treat the visits as a single parent visit where he would be solely responsible for the safety and wellbeing of the boys.

[44] At paragraph 33 of her affidavit Ms. MacLellan indicates that she has not observed the respondent father read the children's cues when it comes to the children being hungry, tired or cranky.

[45] At paragraph 44 Ms. MacLellan indicates that the respondent father does not wash his hands when he has finished changing the children's diapers.

[46] Christine Riordan testified on behalf of the Minister. She is presently employed as a long-term social worker with the Sackville District office. Previously she had held a similar position at the Truro office.

[47] During direct examination she was referred to Exhibit 3, tab 1, sub tab C, and indicated that she had taken the photographs found in tab C in June 2017.

[48] Ms. Riordan was referred to paragraph 29 of C.L.'s affidavit, Exhibit 7, and testified that by September 2017 she was not involved in the case and that she never attended at Shoppers Drug Mart to inquire about C.L..

[49] Ms. Riordan testified that the first occasion that she attended at the L. household was in December 2016. She testified that the house was not in great repair. There was a lot of debris in the yard. The deck going up to the back door was filled with what looked like garbage.

[50] The backdoor wouldn't open the whole way because there was "stuff" behind it. The hallway in front of the door was piled high with stuff so that you couldn't easily walk through the hallway. The kitchen was small. Stuff was piled up on the kitchen counters, there were dishes in the sink and dog food all over the floor. There were bags full of recycling clogging the area. There was a dining room with large plastic tubs with covers on them stacked underneath the table and the table was full of stuff. The living room had lots of furniture and there were at least two ashtrays full of cigarette butts on the coffee tables.

[51] She proceeded downstairs to check on the babies. She noted that the temperature declined substantially as she went downstairs. She said the downstairs was really cold and it smelled damp like mold or mildew. The smell of mold or mildew was really strong.

[52] She opened the door to the room where the children were and noted a temperature change. There was a space heater in the room. The room was very crowded and she had to crawl over a bed to access the children. There were two beds in the room including the children's crib. She had to step over one of the beds to get to a space where she could stand next to the crib. The children were sleeping.

[53] Ms. Riordan confirmed that she observed the home on the outside, as well as inside, and noted that there was a hole in the ceiling in the living room and that

there was a garbage bag placed over whatever was sticking out of the hole and taped up to the ceiling.

[54] When she returned to the L. residence in February 2017, the roof remained damaged and was covered with a blue tarp. She indicated that on two other occasions she asked for permission to take pictures of the home and A.L. and Z.L. refused.

[55] Ms. Riordan was referred to paragraph 36 of her affidavit, at tab 5 of Exhibit 1, and testified that as of June 7, 2017 there really wasn't much improvement in the home. She did indicate that it appeared the ceiling had been repaired at that point.

[56] During cross-examination she testified that J.R. changed her plan multiple times and that on occasion the plan was to move out and live with C.L., sometimes the plan was to stay with C.L. and his parents and sometimes the plan was that she was going to move out on her own. It was difficult to pin J.R. down. She testified that the Minister did not have a preference but wanted J.R. to work towards a safe environment for herself and the children and that the Agency did not feel that that would be possible in Mr. and Mrs. L.'s home.

[57] When she was asked by the Court to compare the condition of the home as depicted in the photographs taken in June 2017 with the condition of the residence and the exterior of the residence in December 2016, she indicated that maybe some garbage and debris had been removed but safety was still an issue.

[58] Ms. Riordan's affidavit of March 27, 2017, as set forth at tab 2 of Exhibit 1, confirms her conversation with J.R. on December 9, 2016 in which she informed J.R. that the home was not safe for the children and that the children could not remain there. J.R. responded by indicating she had no other options that would allow her to feel safe and keep her children with her and alleged that her father had been verbally abusive. Following consultation with Ms. Riordan's supervisor, it was decided that J.R. would be offered the option to place the children in voluntary care. The affidavit outlines Ms. Riordan's subsequent conversation with J.R.. Ms. Riordan explained voluntary care and told J.R. that it would allow her time to recover from her illness and find a way to feel safe in her apartment or find a new apartment. J.R. signed a voluntary care agreement.

[59] Ms. Riordan's affidavit, sworn June 8, 2017, as set forth in Exhibit 1, tab 5, notes that on March 24, 2017 Ms. Riordan spoke privately with C.L. and asked him about his long-term plan for himself, J.R. and the children. C.L. appeared to be

taken aback by the question and advised Ms. Riordan that it was none of her concern. When Ms. Riordan suggested that he and J.R. needed to work with the Agency in order to have the children returned to their care, C.L. suggested that it was not up to Ms. Riordan to determine if they get the children back and that it was up to her supervisor and then left the room.

[60] The affidavit confirms her observation of the L. home on May 11, 2017, May 19, 2017 and June 7, 2017. She noted continuing concerns with respect to the condition of the home on May 11 and indicated that there was little change between May 11 and May 19. On June 7 it appeared that some of the garbage had been removed but there was still a lot of debris around the yard. As of June 7 the interior of the home was still cluttered, albeit the worker did note that the respondents' room was reasonably tidy.

[61] Carolyn Jeppesen, the current long-term worker for the Truro Agency, testified on behalf of the Minister.

[62] She was referred to Exhibit 3, tab D and indicated the pictures were photographs of the L. residence that she had taken on April 25, 2018. Ms. Jeppesen confirmed that she has only been in the upstairs portion of the L. home and has never been downstairs because she was denied access to the downstairs.

[63] Ms. Jeppesen testified that access never progressed to take place in the L. family home because it was never determined to be appropriate for the boys. She also indicated that throughout Agency involvement the respondents continued to state their intention of finding their own housing but that there appeared to be frequent changes in the respondents' plan.

[64] There was a case conference in August 2017 in which the concerns relating to the L. home were discussed and the respondent parents were informed that as soon as they had made an appropriate plan and had appropriate housing, services would progress to the home. When the respondents found an appropriate apartment in December 2017 family support services very quickly started in the apartment.

[65] In approximately mid-January 2018 the respondents separated. C.L. stayed in the apartment for a period of time and family support work continued in the apartment for C.L.. The respondents reconciled and again services resumed in the apartment until a second separation occurred in March 2018. At that point C.L. returned to his parents' home and the respondent mother was admitted to a transition house.

[66] When asked to explain the Agency's current concerns, Ms. Jeppesen testified that the housing issue continues to be a concern. She acknowledged that there had been some very slow improvement in the condition of the home, but noted that it had taken a very significant period of time to get to that point and expressed concern about whether the progress would be maintained.

[67] She expressed concern that C.L. would be responsible for the safety and welfare of the children if they were in his care and he would therefore be responsible for ensuring that they were living in an appropriate home environment. She suggested that this would effectively mean that C.L. would be responsible for his parents' home and did not believe that this would be a very realistic position to put him in. She indicated continuing concerns with respect to the home and again noted that she'd not seen the entirety of the home.

[68] Ms. Jeppesen talked about her attendance at the home in September 2017 noting that she was led directly into the living room and that was really all of the home that she saw. She recalled the dining room area being very piled with things, "just a lot of stuff", and noted that there was so much everywhere it really was difficult to determine what was garbage, what was reasonable, and what just hadn't been put away.

[69] When she went back in April 2018 to the home, she and C.L. spent most of the time in the boys' room discussing the changes that needed to occur. She again expressed concern about the fact that there was just too much stuff and that it needed to be cleared out. She testified that when she returned in May 2018 they had made some very good improvements with the boys' room and the amount of stuff had diminished, but there was still a lot of stuff around. She expressed concern about the safety issues associated with the back deck.

[70] She noted that it had taken 18 months for the three rooms in the upstairs to come to the point as depicted in the photographs taken by C.L.. She, again, expressed concern about the fact that she had been denied access to the basement of the home and therefore had been unable to identify whether or not there were any safety concerns or issues relating to the basement.

[71] In relation to C.L.'s parenting, she noted that his access contact has not progressed from supervised to unsupervised because he has been not able to manage the children on his own. She expressed concern that C.L. is not willing to apply what he has been taught.

[72] Ms. Jeppesen indicated that if C.L. would follow through with what he has been taught by the family support worker it would demonstrate that he is internalizing what he has been taught and developing insight. She testified that there has not been a great deal of change or growth in the visits from the beginning to where they are at present, and that C.L. does not demonstrate a lot of insight. She suggested that while C.L.'s plan sounds lovely in theory, the reality is that he would be responsible for the maintenance of the home, responsible for the cleanliness of the home, and for full-time care of the twins and expressed her belief that there are a significant number of concerns in relation to his ability to parent these children.

[73] Ms. Jeppesen noted that C.L. identifies his parents as his supports and that his plan is premised upon his intention to live in his parents' home and have them assist with child care. The Agency does not feel that C.L.'s parents would be appropriate supports.

[74] Ms. Jeppesen indicated that C.L.'s parents actually impeded, rather than assisted, the respondent parents' ability to engage in services. They have been extremely resistant to Agency involvement and did not appear to understand the concerns with their home, or their son's ability to parent.

[75] Ms. Jeppesen confirmed her belief that C.L. has demonstrated little progress over the period of Agency involvement. She reiterated that C.L. has not taken the Agency's concerns seriously throughout the proceeding.

[76] During cross-examination Ms. Jeppesen confirmed that the decision to apply for permanent care and custody was made at a risk conference meeting held October 2017. At that point in time the plan being presented was that J.R. would be the primary caregiver and C.L.'s parenting was being assessed in relation to his ability to support J.R.. At that point, the respondents had failed to address any of the housing issues, J.R.'s mental health had deteriorated and she was no longer taking her medication, there was no notable progress in the parenting skills area and as of October 2017 the children would have been in the care of the Agency for approximately one year with little change in circumstance or progress.

[77] Ms. Jeppesen expressed her belief that C.L. has not taken the situation seriously and has not applied the skills he had been taught in family support sessions, even during his access visits when Ms. Reddy was present. She indicated there might have been some very slight gains during the last couple of visits but overall she did not see that C.L. was applying or demonstrating family skills.

[78] In reviewing the photographs that she had taken of the L. residence in May, Ms. Jeppeson acknowledged that there had been some improvement in the upstairs level of the home. However, she also noted that it was still difficult to maneuver through the house because of the clutter and she identified this as a hazard for a two and a half-year-old child who could easily get tangled up in something, bang their head or pull something over on themselves.

[79] Ms. Jeppesen's affidavit sworn June 8, 2018, tab 21 of Exhibit 1, confirms that during a home visit on April 25, 2018 she reviewed the Agency's concerns with C.L.. The issues discussed included his lack of parenting skills, the psychological assessment indicating that C.L. does not understand the protection concerns, the lack of attachment between C.L. and the boys, as well as the fact that he has never parented the boys.

[80] C.L.'s father, A.L., was the first witness to testify on behalf of C.L.. A.L. identified his affidavit, Exhibit 9.

[81] A.L. testified that at the time the children were taken into voluntary care in December 2016 he couldn't see why his home would not be appropriate for the boys to live in.

[82] He also agreed that until he had the opportunity to review Ms. Riordan's affidavit, he wasn't aware that the concerns related to the fact that there was a hole in the roof of his home, that the deck wasn't safe and the home looked like a hoarding situation. However, he also indicated that after he had the opportunity to read the affidavit he did not agree with the concerns.

[83] A.L. was referred to paragraph 21 of his affidavit and agreed that throughout the whole process it was fair to suggest that he'd only smoked a few times in the home. When asked what he meant by a few times over the past year he suggested 20 or 30 times. He then went on to suggest that he and his wife were cutting down on smoking and stated that they had quit. He agreed that there had often been ashtrays with cigarette butts in the home.

[84] A.L. testified that at present he is smoking off and on inside the home when it rains. He said his wife does the same thing and they smoke right by the kitchen door.

[85] A.L. agreed that he doesn't see the children often enough to be able to tell them apart.

[86] When asked how long the back deck had been in the condition depicted in the photographs in tab C of Exhibit 3, he suggested not more than two days.

[87] A paragraph 21 of his affidavit, Exhibit 9, A.L. states that due to his son's asthma and allergies, he and his wife smoke outside. He suggests there had been a few times during the winter months when they smoked in the house.

[88] C.L.'s mother, Z.L., also testified. She identified and confirmed her affidavit, Exhibit 8 .

[89] During her testimony, Z.L. suggested that they get stuck with a lot of garbage coming from other properties. When asked if the municipality provides trash removal, she testified that they do when they want to come through but you never know what day it is or anything.

[90] During cross-examination Z.L. was referred to the photographs in Exhibit 3 and suggested at one point that she does not know where the items shown in the photographs came from, they just ended up in their yard. Again, she testified that a lot of the debris just ends up in their backyard and how it gets there, she is not quite sure.

[91] At one point during her cross-examination, Z.L. testified that it is her belief that the Agency is lying in its materials.

[92] Responding to questions from the Court, she confirmed that her son J.L.'s bedroom is in the downstairs level but right now he's upstairs because he has to be close to the bathroom. She suggested that they no longer smoke in the house. When asked if she was saying that they no longer smoke in the basement at all, she indicated that now that it's nice they're not going to be and suggested that they have an air purification system in the basement. Z.L. indicated that she feels she maintains her home in a manner that is intended to avoid creating any health issues for her son J.L. because his breathing is that bad.

[93] In her affidavit, Exhibit 8, Z.L. indicates that the house was messy on December 9, 2016 when social worker Christine Riordan visited at their home, but suggested at paragraph 16 that it was cleaned up later that day.

[94] At paragraph 34 Z.L. confirms that she and her husband will provide child care if their son is accepted into the Nova Scotia Community College. At

paragraph 35 she also indicates that as the boys' father, C.L. will be doing most of the parenting.

[95] C.L. testified on his own behalf.

[96] During his direct examination C.L. testified that it wasn't until the end of March 2016 that he lost contact with J.R. because of her moving so frequently. He confirmed that he did not see the boys at all between March 2016 and December 2016, except on one occasion.

[97] C.L. denied that he was physically, emotionally and sexually abusive of J.R..

[98] C.L. testified that his mother has back problems and as a result can't get up and run all of her craft stuff to the garbage when she cuts it and therefore uses a garbage bucket where she puts the material and he empties it at the end of the night.

[99] C.L. initially testified that J.R. moved in with his family shortly after she obtained her own place, but then changed his answer to indicate she did not move in but came for a visit.

[100] C.L. testified that he did not agree there was a need for the children to go into care in December 2016. He felt he should have been allowed to care for the children in his parents' home. He did not have any understanding as to why the Agency did not support the boys staying in his home.

[101] He testified that he believes his parents' home is good enough for the boys to reside in.

[102] He was asked if, when he and J.R. made the decision to get an apartment, they did so because they agreed there were issues with the home or were they just appeasing the Agency and he responded by indicating that they were just appeasing the Agency. He also indicated he applied for income assistance just to appease the Agency.

[103] Later in his cross-examination, C.L. testified that he shares his mother's view that Christine Riordan is a liar and that he holds a similar view of the family support worker, Colleen Reddy.

[104] When asked about his short-term plan to reside with his parents he testified that short-term would mean until he finishes school and gets a job and has enough

money to afford an apartment or house, because he doesn't want to move out and then find himself without any money or a job. He confirmed that his plan was based upon attending school during the daytime, then coming home for supper and bath time and putting the children to bed and then going to work.

[105] C.L. agreed that when the child protection proceeding was commenced it was fair to say that he did not think he needed any services. He also indicated that when services were put in place, specifically family support services, he did not see family support services as helping him. He also agreed that that he did not think he needed counselling. He acknowledged that he had never tried to self refer for any counselling. He agreed that Ms. Jeppesen had offered specific individual counselling at least twice but maintained that he understood that he'd have to pay for it.

[106] Responding to questions from the Court, C.L. confirmed that Ms. Riordan was being truthful when she said on December 9 that she had to crawl over a bed to access the crib. C.L. said that he did not have any concerns about the condition in that part of the home. He did indicate that they were trying to take apart the downstairs bathroom and that there was a fan going. When asked why that was necessary he said it was because of his brother's breathing problems. He was then asked if there was a moisture issue down the basement and he testified that it wasn't a moisture issue, but then stated that he guessed that it could be considered a moisture issue because the pipes had broken after they had run out of oil. He acknowledged that there had been a freeze and stated that they were just trying to put it all back together around the time that the boys came to the home. He indicated that the freeze had happened in November and that they were trying to raise the monies to get the pipes and everything but it was pretty expensive. He confirmed that the downstairs bathroom was not in working order at that point in time and that his brother, J.L., was sleeping in the basement.

[107] In relation to the leak in the roof, he explained that they had buckets underneath a tarp on the ceiling to catch water in the event of rain and he indicated that that had happened on occasion with heavy rain. He indicated that had been a problem for a month or two.

[108] Again, he was asked if he saw the condition of the outside of the home or the condition of the inside of the home as a concern as far as the home being an appropriate place for the boys as of December 9, 2016 and he testified that he did not because they were just there for a couple of days to visit.

[109] In his affidavit sworn June 25, 2018, paragraph 10, C.L. confirms that in December 2016 J.R. and the boys left her apartment to stay with C.L.'s parents.

[110] At paragraph 38 of his affidavit, C.L. indicates that he cleaned and painted the smoke stains on the walls in the boys' bedroom.

[111] At paragraph 60 of his affidavit he indicates that he does let the boys play and wander in the library because he wants them to explore things on their own.

[112] In paragraph 80 of his affidavit C.L. maintains that the boys are always happy to see him and are comfortable with him.

[113] At paragraph 81 he suggests that his limited opportunity for contact associated with supervised access has made it difficult to show his parenting skills.

[114] At paragraph 82 he expresses his confidence in his parenting skills and ability to parent the boys.

[115] Exhibit 10 is C.L.'s Plan of Care for the children. His plan is premised upon he and the children residing with his parents. On the days that he is not working he will care for the children. The plan indicates various programs that C.L. has identified as potentially appropriate for the boys. In his plan he suggests that if he's not working he will take the boys to a children's play group. If he is working he suggests that his parents will take the boys to the play group. In his plan he talks about other activities he would like to participate in with the children. He indicates his mother will prepare most meals, but if he's not working he will prepare the boys' lunches. He refers to a large support system comprised of family members, as well as extended family in Cape Breton. He indicates he's an avid reader and has been reading books on child development and searching the Internet.

[116] The plan confirms that he has applied for the automotive service and repair program at the Nova Scotia Community College Akerley Campus. He is on the waitlist for the program. If he is accepted he will commute to and from Dartmouth every day and will be home with the boys in the evening. If he is not accepted in the program he will continue his current employment at Dairy Queen. On the days that he's working his parents will care for the children. If he attends school in September his parents will care for the children while he is at school.

[117] Colleen Reddy, family support worker, testified on July 30, 2018. Ms. Reddy confirmed that she teaches parents, through education and hands-on support, about child development and homemaking skills and domestic violence.

[118] Ms. Reddy identified and confirmed her affidavit sworn July 23, 2018, Exhibit 12.

[119] Ms. Reddy testified that during one of the access visits she attended at the library, C.L. plainly stated that he did not need her help and that he thought the boys should just be able to run and that he should be able to learn from the boys and did not see the need for her help. She indicated that C.L. wasn't able to contain the boys at the library and this created difficulty for teaching purposes, and as a result the visits were switched back to the Agency office. She testified that towards the end of her involvement he did at times take her advice and try to implement some of it, but she indicated that he was just not consistent. At the end of her involvement she had a lot of concerns about C.L.'s attachment with the boys and his inability to read their cues.

[120] During cross-examination Ms. Reddy described the routine that was put in place for access visits. When asked if C.L. followed the routine she indicated that he was not consistent.

[121] When asked if she saw an improvement in his ability to manage the boys she responded in the negative. When asked if the boys were always running around during the visit she indicated they were and that she was really supervising and making suggestions in the moment. Oftentimes she would spend a lot of time modelling and explaining and she would cue C.L. a lot and then she would see some follow through. But when she left him to his own devices he might try here or there but there was no follow through and the boys would be running around again. When asked if C.L. explained why he wasn't following Ms. Reddy's directions, she indicated he just thought that the boys should be able to run.

[122] Ms. Reddy did acknowledge that she saw C.L. make attempts to comfort or console the boys as she has suggested but indicated that he wasn't successful because he did not have a trusting relationship with his children and noted that C.L. himself acknowledged that to her.

[123] When asked if the children seem comfortable spending time with their father, she indicated at times, but often times not. Ms. Reddy suggested that the boys would often seek out or turn to herself, or the access facilitator, because they

knew they could count on her or the access facilitator to be responsive in the moment and she suggested that that was an important part of establishing a trusting relationship. She attributed the children's discomfort with their father to C.L. not being able to consistently read the children's cues and meet their needs in the moment.

[124] When asked if over time C.L. was better able to read the boys cues she answered in the negative. She indicated that she did not see any improvement. She acknowledged that at times he was interacting with the boys but oftentimes he was quiet and just observing them and so she would make suggestions. Her observation was that left to his own devices C.L. was inconsistent and it took her continued modelling and cueing to be able to get him to interact appropriately.

[125] Ms. Reddy testified that C.L. was not consistent in setting limits for the boys.

[126] Ms. Reddy's notes confirm that she met with respondents on June 27, 2018 at which time she explained her inability to do any work with the respondents because of the continued lack of a plan on their part. Towards the end of the meeting C.L. expressed concern that he did not know why he had to do all of this as he knows other people were getting their children back without doing anything. Ms. Reddy's notes confirm her impression that neither parent presented as able to understand the need and importance of services such as family support or counselling and presented as though they believed their children should simply be placed back in their care as there are no issues.

[127] On July 7, 2017 Ms. Reddy attended C.L.'s access visit at the library. Her notes confirm that she observed that C.L. had a difficult time handling both boys and that the boys would run off in different directions and C.L. had a difficult time collecting them and engaging them in play. When one of the boy's diaper required changing C.L. was not able to handle both boys at the same time. Ms. Reddy had to assist. Ms. Reddy had to explain to C.L. that while it was difficult because the boys were busy, they are C.L.'s children and the access facilitator should not be parenting the boys, that is his job as the parent. After changing the boys C.L. had to be asked to wash his hands.

[128] On August 14, Ms. Reddy attended another access visit at the library. Again, she observed that C.L. had a lot of difficulty managing the boys. He continued to chase the boys around, leaving one boy on his own to go chase the other and then vice versa. Often times she observed that C.L. left one boy in an unsafe situation to

go and retrieve the other child who was running away from the area. Many times she had to intervene to ensure the safety of either child. Her recordings confirm that there was very little positive interaction observed between C.L. and the boys for much of the visit.

[129] Ms. Reddy attended another access visit between C.L. and the boys on August 21, 2017. Again, she noted that when C.L. changed the boys diapers, he did not wash his hands and after the diaper change he allowed the boys to roam in the library.

[130] Ms. Reddy attended another access visit at the library on September 11, 2017. Again, she observed that C.L. allowed the boys to roam freely in the library and this often resulted in her having to ensure the safety of the twin that C.L. did not go and retrieve. Her records confirm that C.L. did not model what she was suggesting and continued to allow the boys to roam the library. When C.L. changed the boys' diapers in the washroom he did not wash his hands. C.L. indicated his intention to take parenting classes at Maggie's Place. Ms. Reddy explained that he would not get the hands-on assistance that she was trying to give him at Maggie's Place. C.L. then informed her that he did not need her help and just wanted to parent the boys on his own and that he would learn from the boys as they grow. He suggested that the boys were at a stage where they were just discovering their legs and he thought they should be allowed to just run.

[131] During the access visit on February 26, 2018, Ms. Reddy's notes confirm that she observed a nice moment between C.L. and one of the twins and where C.L. engaged with the child and she saw appropriate back and forth interactions.

[132] Ms. Reddy attended an access visit between C.L. and the children on March 26, 2018. This was a visit where he brought a large coffee can with the hole cut in top for the boys to play with as a shape sorter type toy. Ms. Reddy had to point out to C.L. that the boys might cut themselves because of the sharp edges of the cut plastic. Her notes confirm that C.L. made an attempt to engage the boys in the activity but that the boys quickly became bored and wandered away. She observed a lack of engagement between C.L. and the boys.

[133] The case recordings for April 9, 2018 confirm that on that date C.L. attended the scheduled family support teaching session with Ms. Reddy. When asked if he had created a list of activities for the boys as they had discussed a few weeks previous, C.L. said that he hadn't done this yet. Attachment was discussed during the session. Ms. Reddy's notes indicate that C.L. admitted that he doesn't

have an attachment with the boys and that he blamed this on J.R. as she would not let him see the boys in the past. Ms. Reddy explained to C.L. that his absence from their life may have impacted on this but it also was being impacted by his current responses to the boys. She gave C.L. some advice as to how to build a trusting relationship with the boys such as reading their cues appropriately and comforting them when they are upset. When asked if C.L. understood why the Agency was so concerned with his parents' home and how unsafe and unclean it was he said yes, he now understood that it is because the children would not be safe and would not be able to play in that environment.

Issues

1. Are the children still in need of protective services?

2. Is an order for permanent care and custody in the best interests of the children?

General Principles Applicable to a Request for Permanent Care and Custody Pursuant to Section 46 (5) as per Case Authorities

[134] The case authorities referred to in the following paragraphs identify general principles applicable to determination of an application for permanent care and custody. The cases also provide guidance with respect to consideration of the statutory provisions relevant to determination of an application for permanent care and custody.

[135] In Minister of Community Services v. C. B., 2012 NSSC 358, Justice Jollimore determined an application by the Minister for an order for permanent care and custody without provision for access for the respondent mother. In granting the Minister's application Justice Jollimore offered the following analysis commencing at paragraph 19:

> [19] The purposes of the *Children and Family Services Act* are to protect children from harm, to promote the family's integrity and to assure children's best interests. These purposes are expressed in the *Act*'s preamble and they are also repeated in the articulation of "best interests" found in subsection 3(2).
>
> [20] In *Children and Family Services Act* proceedings, the children's best interests are paramount. At different points in a child protection application, the *Act* directs me to consider "the best interests of a child" when making an order or a determination. When that happens, subsection 3(2) dictates that I consider those of enumerated circumstances which are relevant.

> [21] This is an application to review a temporary care and custody order. Section 46 of the *Children and Family Services Act* outlines the process I'm to follow in this review. Before I make an order in a review, I must consider: whether the circumstances have changed since the previous disposition order was made; whether the plan for the children's care applied in that order is being executed; the least intrusive alternative that's in the children's best interests; and whether the requirements of subsection 46(6) have been met. Subsection 46(6) says that I may make a further temporary care and custody order unless I am satisfied that the circumstances which justified the earlier order are unlikely to change within a reasonably foreseeable time that doesn't exceed the statutory deadline….
>
> [33] The Minister asks that I order the children be placed in its permanent care and custody pursuant to section 42(1) (f). Before I may do this, I must consider subsections 42(2) and 42(4) of the *Act*. The former section mandates that I do not make an order that removes the children from their mother unless I am satisfied that less intrusive alternatives have been tried and have failed, have been refused, or would be inadequate to protect them. The latter section instructs that I shall not make a permanent care and custody order unless I am satisfied that the circumstances which justify the order are unlikely to change within a reasonably foreseeable time, not exceeding the maximum time limits. I have already addressed the latter point, above, but will return to it, briefly, below…..
>
> [42] According to subsection 42(3) of the *Children and Family Services Act*, I am not to place children in the Minister's permanent care and custody without considering whether there is a possible placement with a relative, neighbor or other member of the children's community or with extended family. Here, no such placement has been identified for J or C.

[136] In Mi'Kmaw Family and Children Services v. KDo, 2012 NSSC 379, Justice Forgeron considered an application for permanent care and custody. Justice Forgeron identified the following principles commencing at paragraph 18:

> [18] In this case, the Agency is assigned the burden of proof. It is the civil burden of the proof. The Agency must prove its case on a balance of probabilities by providing the Court with "clear, convincing, and cogent evidence": **C. (R.) v. McDougall**, 2008 SCC 53. The Agency must prove why it is in the best interests of the children to be placed in the permanent care and custody of the Agency, according to the legislative requirements, at this time.
>
> [19] In making my decision, I must be mindful of the legislative purpose. The threefold purpose is to promote the integrity of the family, protect children from harm, and ensure the best interests of children. The overriding consideration is, however, the best interests of children as stated in sec. 2(2) of the *Act*.
>
> [20] The *Act* must be interpreted according to a child centred approach, in keeping with the best interests principle as defined in sec. 3(2). This definition is

multifaceted. It directs the Court to consider various factors unique to each child, including those associated with the child's emotional, physical, cultural, and social development needs, and those associated with risk of harm.

[21] In addition, sec. 42(2) of the *Act* states that the Court is not to remove children from the care of their parents, unless less intrusive alternatives have been attempted and have failed, or have been refused by the parent, or would be inadequate to protect the children.

[22] When a Court conducts a disposition review, the Court assumes that the orders previously made were correct, based upon the circumstances existing at the time. At a review hearing, the Court must determine whether the circumstances which resulted in the original order, still exist, or whether there have been changes such that the children are no longer children in need of protective services: sec. 46 of the *Act*; and **Catholic Children's Aid Society of Metropolitan Toronto v. M. (C.)** [1994] 2 S.C.R. 165.

[23] Past parenting history is also relevant as it may be used in assessing present circumstances. An examination of past circumstances helps the Court determine the probability of the event reoccurring. The Court is concerned with probabilities, not possibilities. Therefore, where past history aids in the determination of future probabilities, it is admissible, germane, and relevant: **Nova Scotia (Minister of Community Services) v. Z.S.** 1999 NSCA 155 at para. 13; **Nova Scotia (Minister of Community Services) v. G.R.** 2011 NSSC 88, para. 22, as affirmed at **Nova Scotia (Minister of Community Services) v. G.R.** 2011 NSCA 61.

[24] Section 42(4) of the *Act* provides the Court with the authority to make a permanent care order, even when the legislative time lines have not been exhausted, if circumstances are unlikely to change within a reasonably foreseeable time. Section 42(4) states as follows:

> (4) The Court shall not make an order for permanent care and custody pursuant to clause (f) of subsection (1), unless the Court is satisfied that the circumstances justifying the order are unlikely to change within a reasonably foreseeable time not exceeding the maximum time limits, based upon the age of the child, set out in subsection (1) of Section 45, so that the child can be returned to the parent or guardian. 1990, c. 5, s. 42.

Legal Analysis

[137] The Minister is requesting an order for permanent care and custody with respect to both children pursuant to Section 47 of the *Children and Family Services Act*.

[138] The Minister bears the burden of proof with respect to the application. The burden of proof is the civil burden based upon balance of probabilities. (F. H. v.

McDougall, 2008 SCC 53). The Minister must adequately establish that it would be in the best interests of the children that they be placed in permanent care and custody.

[139] In determining whether or not the Minister has adequately discharged the burden of proof, it is the responsibility of the trial judge to carefully consider and review the evidence.

[140] The Court must also consider the relevant provisions of the *Children and Family Services Act* S.N.S. 1990, c. 5.

[141] In determining the Minister's application, I've considered the preamble to the legislation which confirms the objectives and philosophy of the *Act* and clearly emphasizes that children are only to be removed from the care of their parents when all other measures are inappropriate.

[142] The purpose of the *Children Family Services Act* is set forth in Section 2 (1), namely, to protect children from harm, to promote the integrity of the family and assure the best interests of children must be kept in mind throughout.

[143] It is important to acknowledge that in all proceedings under the *Act* the paramount consideration is the best interests of the child as per Section 2 (2). That provision underscores the need for a child-focused or centric approach to the determination of child protection proceedings.

[144] I have taken note of the relevant provisions as set forth in Section 22 (2) in determining whether the children continue to be in need of protective services.

[145] I have considered Section 3 (2), and the relevant circumstances as listed therein, in determining the best interests of the children.

[146] I have also considered Sections 42, 45, 46 and 47 in determining the Minister's application.

[147] The outside limit for disposition orders in this proceeding is September 12, 2018.

[148] Case authorities clearly establish that if a child is still in need of protective services at the outside limit the matter cannot be dismissed and the Court has no jurisdiction to order either supervision or temporary care and custody.

[149] In Nova Scotia (Community Services) v. R. F., 2012 NSSC 125, Justice Jollimore indicated as follows commencing at paragraph 165 of her decision:

> [165] According to Justice Saunders in *Children's Aid Society of Halifax v. B.(T.)*, 2001 NSCA 99 at paragraph 19, I'm to consider each of the possible dispositions in section 46(5) and, by virtue of section 46(5)(c), section 42(1). His Lordship's reasons limit my considerations. At paragraph 23, he explained:
>
> > As the proceeding nears a conclusion, the opportunity to grant disposition orders under s. 42(1) (c) diminishes until the maximum time is reached at which point the Court is left with only two choices: one or the other of the two "terminal orders". That is to say, either a dismissal order pursuant to s. 42(1) (a) or an order for permanent care and custody pursuant to s. 42(1) (f).
>
> [166] This proceeding is nearing its conclusion: the deadline for a final disposition is April 7, 2012. As a result, the only two options available for my consideration are dismissing the Minister's application or placing C in the Agency's permanent care and custody.

[150] Given that the outside limit applicable to this proceeding has now been reached, the Court must determine whether to dismiss the Minister's application or place the children in permanent care and custody.

[151] The Minister maintains that the children are need of protective services in accordance with Section 22 (2) (b), (g), (j) and (k). Section 22 includes the following:

> 22 (2) A child is in need of protective services where
>
> (a) the child has suffered physical harm, inflicted by a parent or guardian of the child or caused by the failure of a parent or guardian to supervise and protect the child adequately;
>
> 36
>
> (b) there is a substantial risk that the child will suffer physical harm inflicted or caused as described in clause (a); ….
>
> (g) there is substantial risk that the child will suffer emotional abuse and the parent or guardian does not provide, refuses or is unavailable or unable to consent to, or fails to co-operate with the provision of, services or treatment to remedy or alleviate the abuse; ….
>
> (j) the child is experiencing neglect by a parent or guardian of the child;
>
> (k) there is a substantial risk that the child will experience neglect by a parent or guardian of the child, and the parent or guardian does not provide, refuses or is

> unavailable or unable to consent to, or fails to co-operate with the provision of, services or treatment to remedy or alleviate the harm;
>
> ….

[152] Subparagraphs (b), (g) and (k) are protection grounds based upon "substantial risk".

[153] Section 22 (1) indicates as follows; "In this section, "substantial risk" means "a real chance of danger that is apparent on the evidence."

[154] In Nova Scotia (Minister of Community Services) v. S. C., 2017 NSSC 336 Justice Jollimore commented upon the meaning of "substantial risk", indicating as follows at paragraph 35 of her decision:

> [35] "Substantial risk" is a real chance of danger that is apparent on the evidence: subsection 22(1) of the *Children and Family Services Act*. It is the real chance of physical or emotional harm or neglect that must be proved to the civil standard. That future physical or emotional harm or neglect will actually occur need not be established on a balance of probabilities: *MJB v. Family and Children Services of Kings County*, 2008 NSCA 64 at paragraph 77, adopting *B.S. v. British Columbia (Director of Child, Family and Community Services)*, 1998 CanLII 5958 (BC CA), at paragraphs 26 to 30.
>
> [36] If the Minister establishes that there is a real chance of harm, the question is purely one of D's best interests, as between permanent care and a return to the parents. If the Minister does not establish this that there is a real chance of harm, then D must be returned to her parents.

[155] The protection finding was made June 15, 2017. Both respondents consented to the Minister's request for protection finding. The protection finding was made pursuant to subparagraphs (b), (g), (j) and (k).

[156] The Court must determine whether or not the children remain in need of protective services at this point in time. If the children are no longer in need of protection the Minister's application for permanent care and custody must be dismissed. Given the outside limit for the proceeding has been reached, if the Court finds the children are still in need of protection the Court must place the children in permanent care and custody in the absence of any other appropriate placement options.

[157] The Plan of Care as filed on behalf of the Minister in support of the Minister's application for permanent care and custody dated November 7, 2017 identified the following issues of concern:

1. inappropriate housing and ability to meet the basic needs of the children
2. inadequate parenting skills
3. parent's emotional mental health

[158] These same concerns had also been identified in the Minister's original Plan of Care dated August 28, 2017.

[159] The third concern relates to the respondent mother and not C.L.. J.R. is supportive of the Minister's request for permanent care and custody and agrees with the Minister that the children continue to be in need of protective services. I am satisfied that there is no need to consider the third concern in determining whether or not the children continue to be need of protective services vis-à-vis C.L..

[160] I have considered the issue of inappropriate housing separate and apart from the issue of the ability to meet the basic needs of the children. In addition, I believe there is significant overlap between the concern relating to ability to meet the basic needs of the children and inadequate parenting skills such that it would be appropriate to amalgamate these concerns in determining whether or not the children continue to be in need of protection.

Inappropriate Housing

[161] The Agency's decision to ask the respondent mother to consent to voluntary care on December 9, 2016 was made as a result of Ms. Riordan's attendance at the L.'s residence on that date.

[162] Ms. Riordan confirmed her observations of the exterior and interior of the L. home as of December 9, 2016 in her evidence. Her observations are also set forth in her affidavit dated March 27, 2017. The Court accepts Ms. Riordan's evidence with respect to the condition of the home as of December 9, 2016. The Court finds that the exterior and interior condition of the L. home as of December 9, 2016 posed obvious risks for the health and safety of the children.

[163] Ms. Riordan's affidavit confirms that she visited the L. home on February 28, 2017 and she observed that the home's condition had not improved from her earlier visit.

[164] Ms. Riordan took photographs of the exterior and interior of the L. residence in June 2017. Copies of the photographs are contained within Exhibit Book 3, at tab C. Most of the photographs relate to the exterior of the residence. The Court is satisfied based upon Ms. Riordan's evidence, as well as consideration of the photographs, that the condition of the L. home continued to pose obvious safety and health hazards for the children as of June 2017, even though repairs had been made to the roof by that point in time.

[165] Ms. Jeppesen testified that over the period of time that she was the responsible worker there was some slow improvement in the home condition but expressed concern about the length of time it had taken for improvement and whether or not the progress would be maintained.

[166] She talked about her attendance at the home in September 2017 where she was only able to observe part of the upstairs of the home. Again, she observed a lot of "stuff" and that there was so much stuff everywhere that it was difficult to determine what was garbage or what just hadn't been put away.

[167] When she visited the home in April 2018 she spent most of the time in the room that was being proposed as the boys' bedroom in the upstairs identifying changes that needed to occur. Again, she noted that there was just too much stuff and that it needed to be cleared out.

[168] She testified that when she returned in May 2018 she felt that there had been some good improvements made with respect to the boys' room but while the amount of stuff had diminished, there were was still a lot of stuff around.

[169] While acknowledging the improvements that had been made by C.L., she reiterated that it was still difficult to maneuver through the house because of the clutter, and expressed her belief that the situation created a hazard for a two and half-year-old who could easily get tangled up in something or pull something over on themselves. She also expressed concern about safety issues associated with the condition of the back deck.

[170] Ms. Jeppesen noted that it had taken 18 months for some improvements to have been made and expressed significant concern about the fact that she been

denied access to the basement of the home and therefore had not been able to identify what, if any, safety concerns existed in relation to the basement.

[171] Exhibit Book 3, tab D contains photographs taken by Ms. Jeppesen on May 24, 2018 which show the improvements to the children's bedroom. However, the photographs still show clutter in the bathroom (photograph 6) and living room (photograph 10). Exterior photographs do show some reduction in the extent of debris outside the home as of that date compared with earlier photographs, albeit there appears to be debris shown in photograph 21, some of which has been covered by a tarp.

[172] A.L. testified that he couldn't see why his home would not be appropriate for the boys to live in as of December 9, 2016. He acknowledged that he had had the opportunity to review Ms. Riordan's affidavit and indicated that after having that opportunity he still did not agree with the concerns respecting the home.

[173] In response to questions from the Court A.L. testified that he never had the time to fix the front steps because he'd had a heart attack in 2010 and had to travel back and forth to the city for medical appointments. A.L. explained that due to his heart attack he gets winded and if he does something requiring a lot of exertion he can get tired. He is on medication and still seeing a specialist.

[174] Z.L. was also referred to the photographs as contained in Exhibit 3 during cross-examination and suggested at one point she does not know where the items shown in the photographs came from, they just end up in their yard. She was asked if her home was appropriate in December 2016 for the boys and she suggested a couple of shingles had blown off the roof and she never heard of children being placed in care because of a couple shingles being blown off the roof.

[175] Z.L. would not agree that there were smoke stains in the home, stating that it is actually dust due to traffic on the dirt road. When it was suggested to her that her son had indicated that there were smoke stains in the home she suggested that was because he was listening to everyone else and insisted that it was dust and that her son doesn't understand what's on the walls.

[176] She also insisted that it was not true to suggest that there were smoke stains or mold or mildew in the home because she can't have mold or mildew in her home because her son is highly allergic to it.

[177] In responding to questions from the Court, Z.L. indicated that they were thinking of putting their son J.L.'s bedroom down in the basement which would mean all new gyprock and all new everything. She suggested that they could not bring him down into the basement until they get proper tile, gyprock and everything they need done, because of the dust and stuff. She denied that there was ever a problem with mold or water in the basement.

[178] During his cross-examination the respondent father testified that he did not agree there was any need for the children to be placed in voluntary care in December 2016 and that he felt that he and J.R. should have been allowed to care for the children in his home. C.L. testified that he believes his parents' home is good enough for the boys to reside in. He did not see any issues or concerns with respect to the condition of the home as of December 9, 2016 and denied that as of December 9 there were any issues with clutter. He went on to testify that the eventual decision on the part of he and J.R. to get their own apartment was not based upon any conclusion that his parents' home was inappropriate, but instead made to appease the Agency.

[179] Ms. Reddy's case recording for April 19, 2018 (page 193 of 306) indicates that she specifically asked the respondent if he now understood why the Agency was so concerned with his parents' home and how unsafe and unclean it was. The notes indicate that, on that occasion, C.L. responded in the affirmative and stated that he now understood that it is because the children would not be safe and would not be able to play in that environment. Ms. Reddy's notes indicate that she felt that C.L. was appropriate throughout the discussion on that date and appeared to be paying more attention than he had in the past and again noted that he was able to acknowledge the issues with his parents' home. This is the only occasion where C.L. admitted that the children would not be safe living at his parents' home because of its condition.

[180] During his testimony at trial, C.L. did not indicate insight or understanding with respect to the Agency's concerns regarding his parents' home or any safety issues for the children associated with the condition of the home.

[181] When questioned by the Court, C.L. said he did not have any concerns about the condition of the downstairs or basement portion of the home where the twins were sleeping on December 9, 2016. He then suggested that they were trying to take apart the downstairs bathroom and that there was a fan going. When asked

why that was necessary he suggested it was because of his brother's breathing problems. He confirmed his brother's bedroom was in the basement.

[182] When asked if there was a moisture issue down in the basement he testified that it wasn't a moisture issue but then stated that he guessed that it could be considered a moisture issue because the pipes had broken earlier in the winter because they had run out of oil. He acknowledged that there been a freeze and that they were just trying to put it all back together around the time the boys came to the home. He testified that the freeze had happened in November and that they were trying to raise the money to get the pipes and everything but it was pretty expensive. At that point the downstairs bathroom was not in working order.

[183] When the Court referred to Ms. Riordan's testimony that she could smell dampness or moisture and possibly mildew, he testified that she probably smelled the water on the gyprock but still maintained there was no mildew at that time. He acknowledged that the gyprock was wet because the pipes in the shower in the bathroom area had all burst and they had to take the walls out and everything.

[184] Initially, the respondent told the Court that as of December 9 the outside of the house was okay other than the front deck which they knew needed to be taken apart. He then acknowledged that with the garbage and everything around it wasn't the best outdoors. When asked how long the yard had looked like that he said it been a while because anytime they would start to clean the garbage up more would be added from next door. He suggested that it would be blown over from next door and when the Court pointed out that there were bigger items involved, he agreed to not everything would blow over. He testified that the oil drum had just been brought over and left there and he wasn't exactly sure why. He testified that he'd offered numerous times to drag it over, noting that even now he could still drag it by himself. When asked if it was still there he said it had been removed within the last month or two.

[185] Ms. Riordan's affidavit of June 8, 2017 at paragraph 34 (d) may provide the best explanation for the presence of significant garbage and debris outside the L. home. A.L. told Ms. Riordan that he had gotten sick of having their garbage bags rejected and ticketed by the Municipality. As a result, he was just depositing the garbage in a pile in the yard until it would be removed by a friend with a front end loader and a truck. The extent of garbage and debris as depicted in the photographs of June 2017, suggests that the removal would happen infrequently. The fact that

garbage would accumulate to the point where a front end loader was required is certainly concerning and raises obvious health and safety issues for the children.

[186] C.L.'s Plan of Care, Exhibit 10, confirms that his plan is based upon he and the boys residing in his parents' home.

[187] The condition of the L. home was one of the primary concerns leading to the children coming into voluntary care in December 2016. The exterior of the home was filled with debris posing obvious safety hazards for infant children. There were also safety hazards associated with the rear deck of the home. The roof was leaking and in need of repair. Temporary repairs had been made but had not been totally effective in so far as they had not eliminated the leak issue, requiring buckets to be positioned in the living room in the event of heavy rain. The interior of the residence was extremely cluttered. There were concerns about the cleanliness of the interior and the amount of clutter, which the workers felt indicated a hoarding issue.

[188] The basement of the residence was observed by the worker to be damp and smelled of mold and mildew. C.L.'s testimony confirms that there were significant problems with respect to the condition of the downstairs of the home. The downstairs water pipes had frozen and ruptured due to lack of heat and as a result the gyprock had gotten wet. While suggesting that the rupture of the pipes had happened in November, C.L. also testified that the downstairs had been in that condition for approximately two months as of December 9, 2016, and that his parents were struggling to come up with the money to cover the costs of repairs.

[189] There was little change in the exterior and interior condition of the home for many months. The roof was not repaired until the spring of 2017. Clutter in the yard and interior of the home remained a problem. The front steps were eventually replaced but the rear deck continued to be a source of concern and was identified as a continuing safety issue at time of trial. Clutter within the interior of the residence remained a problem. The Agency was not able to ascertain the condition of the basement following December 9, 2016 because the workers were not permitted access to that part of the home. As of late May 2018 some of the garbage and debris had been removed from the exterior of the property.

[190] The respondent father did make some improvements to the upstairs of the home in May of this year as suggested by Ms. Jeppesen. He painted the boys' bedroom. He undertook some decluttering but had to be encouraged by the worker to undertake further decluttering. While acknowledging the improvements, Ms.

Jeppesen indicated that there was still work to be done. At no point in time was Ms. Jeppesen permitted to observe the basement of the residence. The respondent's mother talked of extensive renovations being required for the basement, but offered no explanation as to why Ms. Jeppeson was not permitted to see the basement.

[191] The lengthy delay in taking steps to improve the condition of the interior and exterior of the home is concerning. Many of the improvements that were made appear to have occurred in the two months immediately preceding the final review hearing.

[192] In Nova Scotia (Minister of Community Services) v. S. C., supra., Justice Jollimore recognized the importance of distinguishing between parents who are poor, and poor parents. Justice Jollimore concluded that lack of income forced the parents from their first home and required that they rely on family support for their second home. Unfortunately, the tensions of crowding made that arrangement untenable and required that they find another place to stay until they could secure a longer-term home. Justice Jollimore rejected the Minister's position that the parents were failing for living in these homes in the first place, and acknowledged that with limited means the parents had limited choices. Justice Jollimore concluded that the parents could not be faulted for their inability to afford homes in better neighborhoods and noted that the parents were aware of the need to provide the child with appropriate housing. She concluded that the parents' housing instability did not place the child at risk.

[193] In the case at Bar, the Minister identified significant concerns with respect to the condition of the L. family home in December 2016. It took months to repair a leak in the roof of the home. It took many more months to take steps to meaningfully reduce the amount of garbage or debris scattered around the property outside the home. It was approximately 18 months before any steps were taken to improve the clutter in some parts of the upstairs of the family residence.

[194] The respondent father and his parents all testified that they did not consider the home to be an unfit or unsafe residence for the children as of December 2016, despite the condition of the exterior and interior of the home at that point in time. Neither the respondent father or his parents, in their affidavits or testimony, conceded any health or safety issues for the children associated with the condition of the home at any point in time. Only when responding to questions from the Court did C.L. acknowledge that as of December 9, his parents' home "wasn't the

best" outside due to the garbage and everything around. He did not say that the outside of the home constituted a safety or health hazard for the boys.

[195] Again, in response to questions asked by the Court, C.L. testified that the pipes in the basement had burst in the fall of 2016 when his parents had been unable to afford heating oil. The pipes, and associated water damage, remained unrepaired as of December 9, 2016. C.L. testified that his parents were having difficulty coming up with the money to repair the pipes. When the pipes had burst the drywall in the basement had gotten wet. Neither the respondent or his parents included any reference to the bursting of the pipes, or the impact it had on the downstairs of the home in their affidavits. Neither of the respondent's parents made any reference to this incident in their testimony. Indeed, Z.L. testified that there were never any water problems in the downstairs or basement.

[196] The Court acknowledges that limited financial means or resources has likely impacted upon A.L. and Z.L.'s ability to maintain their home and effect any necessary or required repairs on a timely basis. However, one of the critical distinctions between this case and the S.C. case, is the lack of insight or acknowledgement on the part of the respondent and his parents regarding the serious health and safety issues associated with the exterior and interior condition of their home. A.L. and Z.L. steadfastly maintained that there were no concerns at any point in time that would have rendered their home inappropriate or unsafe for the children. C.L. maintained that his parents' home was at all times safe and appropriate for the children.

[197] The financial challenges associated with costs of repairs and the associated delay in coming up with the funds to pay for repairs is understandable, given the fact that A.L. and Z.L. are both on fixed or limited incomes. Nevertheless, the nature and extent of repairs required, or state of repair or disrepair, can certainly impact upon whether a home is safe or suitable for occupation by infant children.

[198] However, there would be minimal costs associated with ensuring the condition of the interior of the home is adequately clean and relatively clutter free. Similarly, taking the necessary steps or action to ensure garbage and debris does not accumulate in the yard of the home to the extent that it poses health or safety issues should not involve significant expense if tended to properly and on a regular basis.

[199] Based upon the evidence of the respondent father and his parents, the Court can only conclude that either C.L. or his parents do not appreciate or understand

the safety issues, risks or hazards associated with the condition of the home as of December 2016, or they understand the Agency's concerns but have chosen to discount or ignore them in an effort to oppose the Minister's application.

[200] The respondent father is essentially asking the Court to rely upon him to provide for the safety and welfare of the children if they are placed in his care. In essence, the Court is being asked to rely upon C.L. to make sure the children's home environment, his parents' home, is at all times appropriate for the children.

[201] The evidence indicates that the children are healthy and physically active. The evidence confirms the difficulty the respondent has had controlling the children during access visits at the library when he allows them to roam. He has had to rely upon Agency staff for assistance during the supervised visits to ensure the safety of the children. The concerns identified with respect to the exterior and interior of A.L. and Z.L.'s home create obvious and significant risk for the health and safety of two active young children living within that environment.

[202] The fact that A.L., Z.L., and C.L. all testified that they do not see the condition of the home as creating any health or safety issues for the children only serves to underscore the risk. The evidence simply does not support or justify the conclusion that C.L. or his parents would be able to adequately ensure the health and safety of the children if placed in C.L.'s care.

[203] The evidence also raises significant doubt as to the paternal grandparents' physical ability to provide the necessary level of parenting support and supervision required to ensure the health and safety of the children if they were placed with their father.

[204] Based upon careful review and consideration of all the evidence, the Court concludes on balance that the respondent will not be able to ensure that his parents' home is a reasonably appropriate and safe environment for the children on an adequate or consistent basis.

[205] The Court has significant reservations with respect to the reliability of the testimony of the respondent, as well as, his parents. The Court's credibility concerns will be reviewed later in this decision. The Court is unable to accept C.L.'s assertion that the boys will be adequately cared for in accordance with his Plan of Care.

[206] The Court therefore finds that there continues to be a substantial risk that the children will suffer physical harm inflicted or caused as described in clause (b) of Section 22 (2) if placed in the care and custody of the respondent father given that his Plan of Care is premised upon he and the children residing in his parents' home.

[207] In light of the testimony of the respondent and his parents, the Court concludes that neither the respondent or his parents adequately appreciate and understand the importance of consistently maintaining a safe and hazard free home environment for the children. The evidence suggests that there are continuing safety concerns relating to the home environment. The evidence also indicates that it is likely or probable that the improvements to the exterior or yard of the home, and the decluttering of some parts of the upstairs of the home, are only temporary and will not be maintained or long-lasting given that neither C.L. or his parents saw the condition of the home as of December 9, 2016 as posing any risk for the children.

[208] The Court is satisfied on balance of probability that the evidence supports and justifies the conclusion that there is a real chance of danger apparent on the evidence associated with the respondent's plan premised upon he and the children residing in his parents' home.

Ability to Meet the Basic Needs of the Children/ Inadequate Parenting

[209] The Minister has significant concerns with respect to C.L.'s ability to meet the basic needs of the children.

[210] C.L. takes the position that he is confident that his parenting skills have improved during the period of time he has been involved with the Agency and that he can adequately care for the boys.

[211] When the children were born January **, 2016, C.L. was still attending high school. He and J.R. were not living together.

[212] While C.L. maintains that he had contact with the children after they were born, he also testified that he did not have any contact with the children starting in March 2016. He attributed the lack of contact to difficulties in his relationship with the mother's father.

[213] C.L. has not been solely responsible for parenting of the children at any point in time. Other than the contact he suggests that he had prior to March 2016 and immediately prior to the children being placed in voluntary care, his contact and interaction with the children has been subject to Agency supervision. Again, other than the brief period of time the respondent mother and the children were at the L. home prior to December 9, 2016, the children have never resided with C.L.. He has never enjoyed unsupervised access to the children since commencement of the protection proceeding.

[214] C.L. expressed concern about the need for family support services as early as June 27, 2017. During a meeting with Ms. Reddy on that date he said that he did not know why he had to participate in family support services as he knew other people were getting their children back without doing anything. He became frustrated and angry and left the room slamming the door behind him. Ms. Reddy's notes confirm that she felt that neither parent appeared to be able to understand the need and importance of family support services or that there were any issues that required Agency involvement.

[215] During an access visit at the library on September 11, 2017, C.L. informed Ms. Reddy that he did not need her help and just wanted to parent the boys on his own and that he would learn from the boys as they grow. He suggested that the boys were at a stage where they were just discovering their legs and he thought they should be allowed to just run.

[216] In his affidavit, Exhibit 7, at paragraph 42, the respondent indicates that the visits attended by Ms. Reddy tend to be very structured and confirms that during the visits she does not attend, he generally does not plan activities with the boys. He indicates that he wants the boys to have fun during the visits and basically allows them to have some free time.

[217] Ms. Reddy's testimony confirms that C.L. was inconsistent in following the routine she had suggested for his access visits. Planning for access visits was inconsistent. Over the period of her involvement she did not see improvement in his ability to manage the boys. He would not follow through on the recommendations that she made and when asked if the respondent explained why he wasn't following her directions she indicated that he just thought that the boys should be able to run.

[218] She testified that over time the respondent was not able to improve on his ability to read the boy's cues. C.L. was inconsistent in his interaction with the boys

requiring her to continue to model and to cue to be able to get him to interact appropriately. She observed him to be inconsistent in setting limits for the boys.

[219] In response to questions from the Court, Ms. Reddy testified that she felt that C.L. understood superficially what she was teaching, but she did not think that he ever really bought into the need for family support services. She stated that at one point the respondent said he was just going to let the boys teach him and she identified that as a huge red flag explaining that "when you're the parent you are the teacher, you're the guider, you're the protector" and while parents learn as they go, what C.L. was suggesting was role reversal.

[220] Ms. Reddy's notes, as attached to her affidavit, contain detailed accounts of her observations of C.L.'s interaction with the children. The notes are consistent with her testimony on direct and cross examination. The notes confirm that C.L. consistently had difficulty managing the children during access visits at the library. He permitted the children to roam and as a result had difficulty controlling the children. Frequently, Ms. Reddy would have to intervene to ensure the safety of one of the children while C.L. attempted to corral the other child. On several occasions her notes confirm that C.L. did not wash his hands after changing the boys' diapers. The notes also confirm that Ms. Reddy frequently modelled appropriate parenting for C.L. to help him improve his interaction with the children, without much impact. C.L. was inconsistent in preplanning for access visits.

[221] C.L. did not appreciate the importance of applying the family skills techniques provided by Ms. Reddy during his access visits with the children. C.L.'s affidavit confirms that during the visits when Ms. Reddy was not present he does not plan activities because he wanted the boys to have fun and have free time.

[222] The evidence also indicated a concern with respect to C.L.'s ability to recognize health hazards for the children. Ms. Reddy testified about an incident where C.L. had brought apple juice for the children to drink. She testified that she saw something floating in both cups and on closer observation identified mold in each cup. She brought the situation to the attention of C.L. and he told her that he had filled the sippy cups a few days earlier and that his parents' fridge had broken so he figured it was a result of that. Until Ms. Reddy brought the situation to C.L.'s attention he was oblivious to it. (See family support worker's note for March 26, 2018, page 194)

[223] In her affidavit, Exhibit 4, at paragraph 28, case aide Laura MacLellan confirmed that on June 6, 2018 C.L. brought blueberry applesauce as a snack to the boys and she noted that it had expired in February 2018 after the children had eaten the applesauce. In his affidavit, Exhibit 7, at paragraph 53, C.L. responds to paragraph 28 and indicates that he checked the label on the applesauce and the label said the applesauce was packaged in February 2018 and that the expiry date was not until May 2018. Attached to his affidavit as exhibit D is a photograph of another container from the same package. The "Best Before" date is clear in the photograph. It is February 16, 2018, not May. C.L. appears to have mistakenly interpreted the initial lettering "BB/MA" as being a reference to May rather than the French abbreviation for "Best Before".

[224] The Court has significant reservations with respect to C.L.'s ability to meet the basic needs of the children on a consistent and adequate basis.

[225] While C.L. has little parenting experience, he maintains that he has the ability to adequately parent his children. There is nothing to indicate that he appreciates or understands any distinction between parenting one infant child as opposed to twins. There is nothing in his affidavit to suggest that he appreciates or understands the unique challenges associated with parenting of twin children as noted by Ms. Gendron in her assessment (at paragraph 28). His simplistic approach to parenting seems to be best explained by the results of his psychological assessment.

[226] Ms. Gendron identified a number of red flags during the course of her assessment which led her to have concerns about C.L.'s ability to independently be a primary caregiver for the children. The difficulties that she identified in her assessment report indicated the possibility of impaired planning, judgment and other aspects of adaptive functioning. She identified red flags in terms of C.L.'s executive dysfunction and overall cognitive ability in association with concerns relating to inattention, impulsivity and hyperactivity. Her evidence indicated that the risks she had identified might be alleviated, providing C.L. was provided with appropriate support, 24 hours a day.

[227] C.L.'s plan is premised upon the support of his mother and father. The evidence indicates that both his mother and father are suffering from health issues at this point in time and as a result both are in receipt of disability income. A.L. and Z.L. have indicated and confirmed their willingness to assist their son with care of the children.

[228] During his evidence C.L. testified that his mother has back problems and as a result can't get up and take all of her craft materials to the garbage when she cuts it. She uses a garbage bucket where she puts the material and he empties it at the end of the night.

[229] A.L. spoke about his health issues. As a result of having had a heart attack, he is currently on medication and sees a specialist on a regular basis. A.L. confirmed that as a result of his health condition he gets winded on occasion and if he does something requiring a lot of exertion he can get tired and may have to take a break or rest.

[230] The Court has serious reservations with respect to whether or not A.L. and Z.L. are capable of providing the necessary support as referred to by Ms. Gendron. The evidence establishes that the twins are very physically active children. Even the respondent has difficulty controlling the children and ensuring their safety without frequent assistance during supervised access visits. They require close supervision and hands-on parenting.

[231] While acknowledging that the grandparents have been observed to interact appropriately with the children during access visits, the evidence with respect to the grandparents' interaction is extremely limited. Under C.L.'s Plan of Care, either or both of his parents would be responsible for care and supervision of the children for extended periods while he is at work or while he is attending school. There is no evidence indicating the extent to which A.L. and Z.L. recognize the need for close supervision in order to ensure the safety and welfare of the children or how they would manage in keeping up with two very physically active infant children. Their health issues call into question whether either grandparent would be physically capable of ensuring the health and safety of the children on their own, or even together, without assistance.

[232] The Court finds that the paternal grandparents would not be able to provide the level of support required to adequately mitigate the risks associated with their son's inadequate parenting and lack of parenting skills. They are not capable of providing the type of support contemplated or recommended by Ms. Gendron.

[233] Neither A.L. or Z.L. were prepared to acknowledge the Minister's concerns with respect to their home or the risks that their home might present for the children. Indeed both grandparents indicated that they saw no reason why the children could not have been permitted to remain in the home as at December 9, 2016. If A.L. and Z.L. are not willing to recognize the obvious safety and health

issues posed by the condition of the home on December 9, 2016, the Court concludes that it is unlikely that they would recognize the importance of providing adequate supervision for the children within or outside the home.

[234] Having carefully considered the evidence, I have concluded that the role contemplated for A.L. and Z.L. by their son, and which is such a critical component of his Plan of Care, is not one that the Court can accept as adequate, reliable or likely to ensure that the needs of the children will be adequately met on a consistent basis (the needs of the children include their physical, emotional and developmental needs, as well their need for safety and security).

[235] Ms. Reddy's evidence was clear. Her role as a family support worker involved an effort to assist the respondent father in improving and developing his parenting skills.

[236] Unfortunately, C.L. from the outset of Ms. Reddy's involvement seemed unwilling to recognize the need for, or importance of, family support worker involvement.

[237] Despite the fact that he had no prior parenting experience, let alone experience in parenting twins, C.L. took the position that he was capable of parenting the boys.

[238] During his cross examination C.L. indicated that it would be fair to say that he did not think he needed any services when the formal child protection proceeding was commenced. In particular, he did not see the need for family support services and he did not think that he needed counselling. Indeed Ms. Reddy testified that during some of the access visits C.L. plainly stated that he did not need her help.

[239] C.L. took a laissez-faire attitude towards parenting of the children during his access visits, especially the visits where Ms. Reddy was not present, basically letting the children do what they wanted to do based upon his belief that the access visit should be fun and they should be allowed free time.

[240] C.L. never used the access visits when Ms. Reddy was not present to demonstrate or apply the learning or techniques that she was trying to teach him. Despite his awareness that the Agency obviously had concerns about his ability to parent the twins, he did not take advantage of the opportunity afforded by access

visits to demonstrate his understanding of and ability to apply what Ms. Reddy was trying to teach.

[241] The outcome was predictable. Ms. Reddy, as the assigned family support worker, testified that she saw no improvement in his ability to manage the boys. She testified she saw no improvement over time in C.L.'s ability to read the boys' cues. She expressed concerns with respect to his attachment with the boys based upon her observations of his interaction. Her conclusion, based upon observation, was that left to his own devices C.L. was inconsistent in his parenting and it took continued modelling and cuing to attempt to get him to interact appropriately.

[242] The Court accepts Ms. Reddy's conclusion that C.L. never really bought into the need for family support services.

[243] The Court finds that C.L. is unable to provide adequate or good enough parenting for the children on a consistent basis. The supportive role contemplated for his parents would not offset the risks associated with C.L. being the children's primary caregiver.

[244] Based upon consideration of the evidence, I find that the Minister has adequately established that the respondent father does not have a present ability to adequately meet the needs of the children on a consistent basis. The evidence establishes a real chance of danger if the children were to be placed in the care and custody of the respondent due to his inadequate parenting skills.

Conclusion Regarding Need of Protective Services

[245] I therefore find that the evidence supports and justifies the conclusion that the children remain in need of protective services pursuant to Section 22 (2) subparagraphs (b) and (k).

[246] The evidence does not support and justify the conclusion that the children are in need of protective services pursuant to subparagraphs (g) and (j) of Section 22 (2).

Credibility

[247] In relation to credibility I would refer to the decision of the Nova Scotia Court of Appeal in G. L. T. v. Nova Scotia (Community Services), 2017 NSCA 68 (CA). In denying the appeal, the Court referred approvingly to the decision of the

trial judge setting forth a lengthy excerpt from Justice Forgeron's decision wherein she identified case authorities which set forth legal principles and guidelines applicable to the assessment of credibility including, C.R. v. McDougall, 2008 SCC 53 (S.C.C.), Baker-Warren v. Denault, 2009 NSSC 59 and Novak Estate, Re, 2008 NSSC 283 (N.S.S.C.)

[248] I have attempted to undertake the credibility assessment required in this case in accordance with the principles and case authorities as referred to by Justice Forgeron and approved by the Nova Scotia Court of Appeal in G.L.T., supra.

[249] I have significant reservations with respect to the reliability of the evidence of the respondent father and his parents.

[250] In the paragraphs that follow I provide some examples of where the testimony of the respondent, C.L., was contradicted by, or inconsistent with, the evidence of other witnesses.

- During his direct examination, C.L. testified that when he showed up for his shift at Shoppers Drug Mart he found out he was fired. During cross he reiterated his belief that he was fired from Shoppers Drug Mart and that he did not quit. In his affidavit at paragraph 29 he indicates that he was fired from his job at Shoppers Drug Mart. Carolyn Jeppesen testified that C.L.'s Record of Employment from Shoppers Drug Mart indicated that he quit and not that he was dismissed. More importantly, Ms. Jeppesen's affidavit of November 7, 2017 confirms at paragraph 11, subparagraphs(f) that on September 27, 2017 C.L. himself advised that he had quit his job.

- During cross-examination C.L. denied that in the referral he made in July 2016 he advised that he hadn't seen the boys since the day they were born. Similarly he denied that during his psychological assessment he told the assessor that he hadn't seen the boys during the first six months. C.L. maintained that he had told the assessor that he had seen the children every two weeks for a couple of months and stated that the assessor had gotten the information wrong. The affidavit of Christine Riordan sworn March 27, 2017, at page 2 of Exhibit 1, contains a summary of the referral information received from C.L. on July 6, 2016. Subparagraph (a) of paragraph 6 confirms that C.L. advised that he had not seen the twins since the day after they were born. At page 18 of Ms.

Gendron's assessment, Exhibit 2 she confirms that C.L. told her "…that (J.R.) and her father generally did not allow him to see his children for the first six months of their lives".

- C.L. would not agree with the suggestion that his access with the children was started before May 2017. Even after being referred to Ms. Riordan's affidavit of June 8, 2017, Exhibit 1,paragraph 21, he maintained that the information in Ms. Riordan's affidavit was inaccurate. Paragraph 21 confirms that on April 19, 2017 Ms. Riordan received a voicemail for C.L. advising that he could not make his access visit on that date. I note that paragraph 19 of Ms. Riordan's affidavit confirms a telephone conversation with J.R. on April 11 at which time she and Ms. Riordan discussed that C.L. had not been to his access visit the previous day because he had school. Paragraph 18 also indicates a conversation with her and J.R. on April 7 at which time she told Ms. Riordan that C.L. would not be at his access visit on April 7.

- During cross-examination C.L. suggested that the family support worker had lied about the incident where she suggested there was mold in a juice cup. In his cross he insisted that what she had seen was not mold. He testified that it was just a gel that developed after the juice had sat for a couple of hours and would not be harmful. The family support worker's notes attached to Ms. Reddy's affidavit provides a detailed account of what transpired during the visit. (See page 194 of 306) Her notes confirm that she observed something floating in each of the sippy cups and examined them closely and saw moldy filaments growing in the cups. She also noted a strong smell of mold coming from each cup. C.L. informed her that he had filled the cups a few days before and did not look at the cups again before putting them in his bag. He also advised that his parents fridge had been broken for a few days. During her direct Ms. Reddy was asked about the incident and her *viva voce* testimony was consistent with the information contained in her notes.

- During cross-examination C.L. specifically denied that there were any issues or concerns with the home so as to justify the children being placed in voluntary care as opposed to remaining in the residence as of December 9, 2016. When responding to questions from the Court he again indicated that he did not have any concerns about the condition of the home in the basement where the twins were sleeping on December 9.

He then proceeded to testify that they were trying to take apart the downstairs bathroom and that there was a fan going. When asked why that was necessary he said it was because of his brother's breathing problems. When asked if there was a moisture issue down the basement, he testified that it wasn't a moisture issue but then stated that he guessed that it could be a moisture issue because the pipes had broken earlier in the winter because they had run out of oil. He denied there was any mildew in the basement. He testified that there had been a freeze and stated that they were just trying to put it all back together around the time the boys came to the home. Ms. Riordan's testimony and affidavit confirm her observations with respect to the condition of the home, including the basement, as of December 9, 2016.

- In his affidavit, C.L. states at paragraph 66, that he washes his hands every time he changes the boys' diapers. This is contrary to the evidence of the case aide and the repeated observations of the family support worker as documented in her notes.

- His assertion in paragraph 53 of his affidavit with respect to the best before date is clearly in error based upon Exhibit D to his affidavit.

[251] In assessing C.L.'s credibility I have considered the totality of the evidence and not just C.L.'s testimony in isolation.

[252] On occasion his evidence was not only inconsistent with the evidence of the Minister's witnesses, but also inconsistent with the evidence of his parents. Throughout his testimony C.L. attempted to minimize the Agency's protection concerns relating to the condition of his parents home and his parenting abilities. In many instances C.L.'s evidence was obviously self-serving.

[253] C.L. candidly admitted during his cross-examination that he did not see the need for family support services or counselling and that the decision to obtain an apartment was made simply to appease the Agency. Unfortunately, those admissions do not assist his case but rather underscore his lack of understanding and insight with respect to the protection issues.

[254] The Court finds much of C.L.'s testimony to be unreliable. In any instance where C.L.'s testimony conflicts with that of Ms. Jeppeson, Ms. Reddy or Ms. Riordan, the Court accepts and relies upon the testimony of the Minister's witness.

[255] The Court also has credibility concerns with respect to the testimony of A.L. and Z.L..

[256] During cross-examination A.L. was referred to paragraph 21 of his affidavit, Exhibit 9, wherein he indicates that he and his wife smoke outside because of his son, J.L.'s, asthma and allergies and suggests that there have been a few times during the winter months that he and his wife smoke in the house. When asked what he meant by a few times A.L. responded by suggesting 20 or 30 times. He also went on to suggest at one point that he and his wife had quit smoking. However, later in his cross-examination he testified that at present he is smoking inside the home when it rains and that he and his wife smoke by the kitchen door.

[257] In his affidavit Exhibit 9 at paragraph 20 he suggests that they are currently renovating the basement so that J.L. can sleep down there. He makes no reference whatsoever to the freezing and rupture of the basement water pipes in November 2016, the extent of the resulting damage, or the necessity of having to effect significant repairs as a result.

[258] When the Court referred A.L. to photographs of the back deck taken in June 2017 (Exhibit Book 3, tab C) and asked how long that situation had existed, A.L. suggested not more than 2 days. The affidavit of Christine Riordan, tab 5 of Exhibit 1, at paragraph 27 (b), confirms that when she attended the L. home on May 11, 2017 it appeared to her that the family was throwing garbage from the kitchen onto the back deck as there was a pile of mixed garbage on the deck.

[259] During her testimony, Z.L. suggested that they get stuck with a lot of garbage coming from other properties. When asked if the Municipality provides trash removal she testified that they do when they want to come through but you never know what day it is or anything.

[260] In Ms. Riordan's affidavit of June 8, 2017 paragraph 34 (d) she confirms that she spoke with A.L. on May 29,2017 and asked him whether they had regular garbage pickup. A.L. responded in the affirmative but when asked about the garbage in the yard explained that if you put the wrong piece of paper in the wrong bag they will slap a sticker on it and leave it there. He indicated that he had gotten sick of that so they just collected the garbage in a pile in the yard and his friend with a front end loader and truck would come and take it away.

[261] Later in her cross-examination, Z.L. testified that a lot of debris just ends up in their backyard and she is not quite sure how it gets there. C.L. gave similar

testimony, but told Ms. Gendron during his assessment that they don't get municipal waste collection and therefore all their garbage is burned in a pit in the back of the house by their father (page16 of tab B, Exhibit Book 2).

[262] During her cross-examination Z.L. denied that there was ever a problem with water in the basement. She made no reference to the freezing and rupture of the basement water pipes in November 2016 as testified to by her son.

[263] When asked if her home was appropriate for the twins to live in in December 2016, she suggested a couple of shingles had blown off the roof and she had never heard of children being placed in care because of a couple of shingles being blown off the roof. She testified that her home should have been appropriate for the boys if the shingle issue was ignored.

[264] When asked if she still smokes in the home, Z.L. responded in the negative. She then went on to testify that they smoke on the back deck or downstairs in the basement part. When asked if they also smoke in the kitchen by the door, she testified if the door is open, other than that she said that they could not smoke in her home. She indicated that her son's asthma was too bad. She then confirmed that they smoke downstairs in their home in the basement.

[265] Z.L.'s testimony with respect to her commitment to cleanliness was inconsistent with the observations of the involved workers who had the opportunity to visit the home and view at least a portion of the interior on more than one occasion. Her assertion in her affidavit that the clutter observed by Ms. Riordan on December 9, 2016 was due to her making Christmas crafts and decorating for Christmas and that, while the house was messy, it was cleaned up later that day is contradicted by the testimony of Ms. Riordan and Ms. Jeppeson. Both workers reported continuing concerns regarding the extent of clutter or "stuff" within the home after December 9, 2016.

[266] Z.L.'s insistence that the mark on the wall, in the bedroom proposed for the twins, was dust and not smoke was contradicted by the evidence of her son and the observations of Carolyn Jeppesen.

[267] It was clear to the Court that A.L. and Z.L.'s testimony was intended to support their son's request for dismissal of the protection proceeding. Neither of them were willing to acknowledge or admit any issues or concerns relating to the condition of their home as of December 9, 2016. They both did their best to discount or minimize the Agency's concerns with respect to their home.

[268] The Court has significant reservations with respect to the reliability of the testimony of both A.L. and Z.L.

Best Interests

[269] The legislation confirms that the best interests of the children is the paramount consideration in determining this application.

[270] In determining best interests I've considered the applicable circumstances as referred to in Section 3 (2) in light of the evidence presented.

[271] I make the following findings:

1. I find that it would be in the children's best interest that they have the opportunity for development of a positive relationship with a parent or guardian as a member of a family in accordance with the Minister's current Plan of Care, which is premised upon adoption placement.
2. I have considered the children's relationships with the paternal grandparents. The relationship between the paternal grandparents and the children has been affected by limited or infrequent contact. While the paternal grandparents have participated in some of the supervised access visits, there is little evidence supporting or justifying the conclusion that the paternal grandparents enjoy a significant or close relationship with the children. Indeed the evidence suggested that the paternal grandfather is not able to differentiate between the twins due to infrequent contact.
3. The children have been in foster care since the respondent mother entered into a voluntary care agreement. They would have been approximately 11 months old at that point in time. Accordingly, the children have spent the majority of their life in foster care. The evidence indicates that the children have done well in foster care and they appear healthy and happy. Placing the children in the care and custody of the respondent would certainly represent a significant change and constitute a disruption in the continuity of the care that the children have enjoyed since being placed in foster care.
4. The evidence does not justify or support the conclusion that there is a significant bond between the children and the respondent father. The lack of bond is likely due to the limited contact the father has had with the children since they were born. The Court acknowledges that

workers have observed positive interaction between C.L. and the boys during supervised access. However, C.L. himself acknowledged the lack of attachment between himself and the boys in discussions with the family support worker and attributed it to lack of contact or involvement.

5. The two children require that their physical, mental and emotional needs be adequately met on a consistent basis within a safe and secure home environment. There is no evidence at this point of any special physical, mental or emotional need on the part of either child. The evidence does not support or justify the conclusion that the respondent father is able to adequately and consistently meet the children's needs. In particular, the evidence does not support or justify the conclusion that the respondent father is able to provide adequate or good enough parenting.

6. No evidence was presented with respect to the children's physical, mental and emotional level of development other than the evidence describing the children's behaviour and interaction during supervised access visits. The Court therefore assumes that the children's physical, mental and emotional level of development is consistent with other children of similar age. The evidence did identify concerns with respect to the respondent father's appreciation or understanding of the children's physical, mental and emotional level of development.

7. The Court finds that the Minister's plan for the children's care premised upon adoption has more merit than the respondent father's plan premised upon the children being placed in his day-to-day care. The Court has confirmed its conclusion, based upon the evidence, that there would be a substantial risk for the children if they were placed in the day-to-day care of C.L.. The Court does not believe that the Plan of Care, as proposed by the father, is consistent with the best interests of the children. His Plan of Care includes a number of commitments depending upon future events. Some aspects of the plan appear vague and imprecise.

8. The Court finds that the children would be exposed to substantial risk of harm if placed in the care and custody of C.L..

9. The degree of risk that justified the finding that the children are need of protective services was substantial. The Court's conclusion that the children remain in need of protective services is based upon the

finding that the evidence establishes a real chance of danger in accordance with Section 22 (2) subparagraphs(b) and (k).

Consideration of Section 42 (2)

[272] Based upon the evidence I am satisfied that less intrusive alternatives, including services to promote the integrity of the family, were offered during the course of the protection proceeding in accordance with Section 13. The services included counselling services for the mother, the offer of counselling and anger management services for the respondent father, family support services for both parents, a psychiatric assessment for the respondent mother and a psychological assessment for the respondent father. Despite the services offered, the respondents were not able to adequately address the Minister's protection concerns. The children remain in need of protective services as of the outside limit for the preceding, namely September 12, 2018.

Consideration of Section 42 (3)

[273] The evidence supports and justifies the conclusion that it is not possible to place the children with a relative, neighbour or other member of the children's community or extended family with the consent of the relative or other person.

[274] The respondent father did not present any alternative plan premised upon placement with a relative or member of his extended family or member of the community at large.

[275] The respondent mother consented to the Minister's application for permanent care and custody and did not submit any plan for alternative placement.

Consideration of Section 42 (4)

[276] The outside limit for this case expired September 12, 2018 and therefore a finding under Section 42 (4) is neither appropriate or required.

Consideration of Section 46

[277] The Minister's request for an order for permanent care and custody is made pursuant to Section 46 of the *Children Family Services Act*. I am mindful of subsection 4 of Section 46. I would confirm the following findings:

1. There has been a negative change in circumstance since the original disposition hearing in so far as the respondent parents have not been able to address the Minister's protection concerns despite the services offered and the opportunities afforded to them and the children remain in need of protective services.
2. The original Plan of Care was premised upon both respondents participating in services intended to assist them in addressing the Minister's protection concerns. Unfortunately, the respondents were not able to address the protection concerns despite the opportunity afforded to them to participate in counselling, family support services and assessments, such that the original Plan of Care was not carried out.
3. The evidence confirms that an order for permanent care and custody is in the best interests of the children at this point in the proceeding, and necessary to ensure their safety and welfare.
4. In light of the expiration of the outside time limit, this is not a case where the Court must consider the requirements of s. 46 (4)(d).

Access

[278] The Court acknowledges Section 47 (2) which indicates;

> Where the Court makes an order for permanent care and custody the Court shall not make any order for access by a parent, guardian or other person.

[279] The order for permanent care and custody will not include an order for access.

Determination of Religion

[280] No evidence was offered with respect to the religious denomination of the children. The religious denomination of the children is therefore noted as undetermined.

Conclusion

[281] I find the Minister has adequately discharged the burden of proof in relation to a request for an order for permanent care and custody.

[282] The Minister's application for an order for permanent care and custody is granted.

[283] I thank counsel for their cooperation and assistance.

S. Raymond Morse, JFC