SUPREME COURT OF NOVA SCOTIA

Citation: *Nova Scotia (Minister of Opportunities and Social Development) v. L. L.*, 2026 NSSC 100

Date: 20260408
Docket: *Syd*, No. 135213
Registry: Sydney

Between:

Nova Scotia (Minister of Opportunities and Social Development)

Applicant

v.

L.L and J.W.

Respondents

Judge:	The Honourable Justice Shannon B. Mason
Heard:	March 11, 2026, in Sydney, Nova Scotia
Final Written Submissions:	Applicant – March 19, 2026
	Respondents – March 27, 2026
Counsel:	Adam Neal, for the Applicant
	Jennifer MacDonald, for the Respondent, L.L.
	Alan Stanwick, for the Respondent, J.W.

By the Court:

Introduction

[1] CJW is seven years old. His sister, NW, is four. These siblings have been in temporary care of the Minister of Opportunities and Social Development ("the Minister") for 18 months. The Minister now seeks an order for permanent care and custody. The Minister claims that the protection concerns that gave rise to the protection application persist.

[2] LL is the children's mother. JW is NW's biological father and has stood in the place of a parent to CJW. They believe that LL has mitigated the protection concerns and the children are no longer in need of protection. They oppose the Minister's plan and ask that the children be returned to the care of LL and the Minister's application be dismissed.

Background Information and Procedural History

[3] The Minister has a history of involvement with LL dating back to 2018, in relation to concerns around marijuana use and domestic violence with a former partner. The Minister engaged in safety planning with LL at various times, but no prior court proceedings or voluntary case plans were initiated.

[4] In May 2024, workers visited the parties' home in response to a referral from CJW's teacher. The home was found to be unsanitary and unsafe for the children. The Respondents worked diligently throughout the summer to clean and maintain the home but by September 21, the condition of the home had deteriorated and was again deemed unsafe for the children.

[5] On September 22, 2024, the Minister took the children into care. A protection application was filed on September 26, citing concerns of drug use, anger issues, parenting deficits and neglect by the Respondents.

[6] Interim orders were granted at the 5 and 30 day stage placing the children in the temporary care of the Minister.

[7] In October, 2024, the Minister agreed to move to periods of unsupervised access for the Respondents, as they were cooperating with the Minister and the condition of the home had improved. In December, overnight access in the family home was approved.

[8] On December 19, 2024, a protection order was granted by consent, based on a finding that the children were in need of protective services pursuant to s. 22(2)(b) of the *Children and Family Services Act*. The temporary care order was continued.

[9] In early January 2025, the condition of the home had deteriorated again. Access at the home was suspended. Access resumed at the home for a brief period in February but by early March, the home was once again deemed unsafe for access.

[10] On March 19, 2025, the Respondents consented to a disposition order with the children remaining in the temporary care of the Minister. The Order required LL to participate in remedial services as set out in the Minister's plan of care. Services were not requested of JW, as the Respondents had separated by this time, JW was not engaging with the Minister and was not seeing the children. The plan then was to support extended access for LL, and to work towards reunifying the family, provided that her home did not pose a risk to the children.

[11] The Minister reinstituted supervised access in May after LL allowed JW to have contact with the children during one of her access visits, contrary to the court order. In June, access was reduced to one visit per week in the community, as LL had acknowledged using cocaine, had missed drug tests and wasn't attending access visits with the children.

[12] Review hearings were held on June 16, September 15, December 15 and January 8, and the prior orders renewed by consent.

[13] The Minister filed a new plan of care seeking permanent care of the children in September 2025.

[14] A contested permanent care hearing was held on March 11, 2026. The court heard evidence from Renee Wilson (intake worker), Lucy Kendall (family support worker), Jessica Levangie (long term worker), KW (friend of LL) and LL. The Minister's case notes were tendered by consent. Written submissions were received from the Minister's counsel on March 19, 2026. Submissions from LL's counsel were received on March 27.

[15] The statutory deadline for this matter was March 19, 2026.

Issues

[16] This decision will address the following issues:

1. **Do the children remain in need of protection?**
2. **Should a Protective Intervention Order be granted?**
3. **What order is in the children's best interests?**

Positions of the Parties

Position of the Minister

[17] The Minister seeks an order for permanent care and custody, as the timeline has been exhausted and the children remain at substantial risk of physical harm. The Minister says that although LL has shown she is able to make short term gains to alleviate protection concerns, particularly as it relates to the condition of her home, she is unable to maintain those gains despite assistance from the Minister. Ms. Wilson confirmed during cross examination that the Minister's primary concern at the beginning of the proceeding was the condition of the parties' home.

[18] The Minister also has unresolved concerns of drug use by LL. They point to LL's acknowledgment of cocaine use in June 2025 and missed drug tests around this time. The Minister notes that this drug use occurred around the same time that LL reunited with JW.

[19] The Minister states that LL did not complete programming; specifically, she did not complete the self esteem program though the Elizabeth Fry Society and refused to participate in a mental health assessment or counselling.

[20] Finally, the Minister argues that LL's decision to allow JW to have unauthorized contact with the children and her decision to resume a relationship with him knowing that the Minister has unresolved protection concerns with JW show a

lack of insight by LL into the risk that JW poses to the children. The unresolved protection concerns include drug use, criminality and domestic violence.

Position of LL

[21] LL says that the children are no longer in need of protective services. She seeks the return of the children to her care and a termination of the child protection proceeding.

[22] LL argues that although her house is not perfect, it does not pose a risk to the children. She claims that the poor condition of her home resulted primarily from the large number of pets that she has had at various times throughout the Minister's involvement, including dogs, cats, fish and turtles. LL's evidence is that she followed the direction of the Minister and rehomed most of the animals and by the date of the hearing, had only one dog and three cats in the home. LL argues that she has developed cleaning routines and has replaced much of the flooring in the home. Finally, she argues that workers have not visited her home since December 17, 2025.

[23] LL acknowledges a prior history with drug use dating back 7-8 years but denies any current illicit drug use. She admits using cocaine on one occasion in June 2025, but states that this was an isolated incident and she does not have an addiction.

She claims that she has not used drugs since her slip in June, aside from occasional marijuana use.

[24] LL readily admits to reconciling with JW and letting him move back into her home. Her plan, should the children be returned to her care, is for her and JW to remain as a couple, but that JW will leave the home. She says that she is prepared to abide by an order prohibiting contact between JW and the children, if necessary. She also offered to comply with a protective intervention Order. Her ultimate plan is for she, JW and the children to live together as a family.

[25] LL maintains that JW had unauthorized contact with the children on one occasion. She claims that this contact was unintentional; that they were essentially in the same place at the same time, that the children were excited to see JW, so she did not intervene. She said JW was with the children for only a few minutes. She says in hindsight, she should have immediately asked JW to leave. She admits that she did not tell workers about this contact and that it was only discovered through comments made by one of the children.

[26] LL states that she has completed some programming, has re-started the self esteem program and has exercised access consistently. She argues that she does not

need a mental health assessment and that this was not a reasonable request of the Minister.

[27] LL states that she has been responsive to workers throughout the proceeding, has been generally honest with them and has been consistent in following up with workers in relation to the children's health needs.

[28] LL says that her children deserve to be home, and that it is in their best interests to be returned to her care.

Position of JW

[29] JW, though counsel, advised the court that he supports LL's plan. He did not participate in the hearing.

Legal Framework

[30] The Minister seeks permanent care of CJW and NW. The burden rests with the Minister to prove its case on a balance of probabilities. The Minister is required to provide the court with clear, convincing and cogent evidence that the children remain at substantial risk of physical harm, and that their best interests will be served by placing them in the permanent care of the Minister: ***F.H. v. McDougall***, 2008 SCC 53 and ***Nova Scotia (Community Services) v. CKZ,*** 2016 NSCA 61. I must

closely examine the evidence to decide whether it is more likely than not that an event occurred.

[31] The legislative framework is found in the *Children and Family Services Act (the Act)*. All decisions involving the care of children pursuant to this *Act* must reflect its threefold purpose*:* to protect children from harm, to promote integrity of the family and to ensure the best interests of the children. In all proceedings under the *Act*, the paramount consideration is the best interests of the child: s. 2(2).

[32] The preamble of the *Act* reminds us that children are entitled to protection from abuse and neglect, that children have a different sense of time than adults (which necessitates strict timelines under the legislation) and that parents have a responsibility to care for their children. The preamble cautions courts that parents should only lose care of their children when all other measures have proven (or would prove) inadequate to protect the children.

[33] Section 3 of the *Act* outlines the factors to be considered when looking at the best interests of a child. It is a non-exhaustive list. I am required to look at the various factors unique to the needs of each child and how those needs relate to risk of harm: ***Nova Scotia (Community Services) v. RMN and MC,*** 2017 NSSC 270.

[34] The Minister relies on s. 22(2)(b) of the *Act* in support of a protection finding which requires proof of a substantial risk of physical harm. I am mindful of the definition of substantial risk, found at s. 22(1): "a real chance of danger that is apparent on the evidence." The chance of danger cannot be illusionary or speculative. It must be substantial in that there is a serious risk of harm. The Minister does not have to prove that future physical harm will actually occur, only that there is a real chance of same, based on the evidence: ***CR v. Minister of Community Services,*** 2019 NSCA 89; ***MJB v. Family and Children's Services of King's County,*** 2008 NSCA 64; ***Nova Scotia (Minister of Opportunities and Social Development) v. RP and AD,*** 2026 NSSC 77.

[35] At a disposition review hearing, the Court assumes that the previously granted orders were correct based upon the circumstances existing at the time. The court does not retry the original finding. I 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 in need of protective services: ***Nova Scotia (Community Services) v. RMN***, *supra,* para. 17.

[36] Sections 42(2), (3) and (4) of the *Act* direct that the court must not make an order for permanent care and custody unless the court is satisfied that certain requirements are met.

[37] Section 42(2) 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.

[38] Section 42(3) requires consideration of possible placement of the children with a relative, neighbour, or other member of the child's community or extended family before removing that child from the care of a parent.

[39] Section 42(4) states that I cannot make an order for permanent care and custody unless I am satisfied that the circumstances justifying the order are unlikely to change within a reasonably foreseeable time, not exceeding the maximum legislative time limits, based upon the ages of the children.

[40] The statutory time limit for child protection proceedings is found at s. 45. Once the time limit has been reached, I have only two options: (1) dismiss the proceeding and return the children to LL's care, or (2) place the children in the permanent care and custody of the Minister. I cannot dismiss the proceeding if the children remain in need of protective services.

[41] LL asks me to consider a protective intervention order. Protective intervention orders (PIO) provide the Minister with a less intrusive alternative to taking a child into care and commencing a protection application. The rationale

behind such orders is that it is better to remove a person who is a source of risk to a child, rather than remove the child. PIO applications and orders are free-standing, in that the *Act* does not require a child to already be before the court, or a child in care (McVey, P. (2017). *Annotated Children and Family Services Act* 3rd ed, pp. 88-89, Lexis Nexis.

[42] My authority to grant a PIO is found at s. 30 of the *Act*:

> (1) Upon the application of an agency, a judge of the Supreme Court may make a protective-intervention order pursuant to this Section directed to any person where the judge is satisfied that the person's contact with a child is causing, or is likely to cause, the child to be a child in need of protective services.
>
> (2) The judge may make a protective-intervention order in the child's best interests, ordering that the person named in the order
>
> (a)cease to reside with the child;
>
> (b)not contact the child or associate in any way with the child,
>
> and imposing such terms and conditions as the judge considers appropriate for implementing the order and protecting the child.
>
> (3) A protective-intervention order made pursuant to this Section is in force for such period, not exceeding six months, as the order specifies.
>
> (4) Upon the application of the agency or the person named in the protective-intervention order, a judge of the Supreme Court may from time to time vary or terminate the order or extend the order for a further period, each not exceeding six months.
>
> (5) Where an order is made pursuant to this Section, the agency may enlist the assistance of a peace officer to enforce the order.
>
> (6) Any person who contravenes a protective-intervention order is guilty of an offence and upon summary conviction is liable to a fine of not more than five thousand dollars or to imprisonment for a period not exceeding one year or to both.
>
> (7) Section 94 applies mutatis mutandis to a hearing pursuant to this Section.

[43] There are very few reported decisions in Nova Scotia relating to s.30 of the *Act*.

Findings and Decision

[44] Parents in child protection proceedings are not held to a standard of perfection. The standard is whether adequate parenting can be achieved within the legislative time frame.

[45] In reaching my decision, I have reviewed the evidence and the submissions of the parties. I have applied the civil burden of proof upon the Minister. I have considered the applicable law, including that related to credibility: ***Baker v. Warren Denault,*** 2009 NSSC 59; ***Hurst v. Gill,*** 2011 NSCA 100; ***Peters v. Reginato,*** 2016 NSSC 345 and ***Re: Novak Estate,*** 2008 NSSC 283.

Credibility

[46] LL's evidence, and the evidence of her friend, KW, was not always credible. For example:

- LL advised Ms. Levangie in April 2025 that she had been unable to clean her home as she has been helping her friend KW clean her home

all weekend. However, workers attended KW's home that same weekend and found her home to be in such poor condition that it was determined that KW's child could not reside there.

- LL stated in her affidavit that she understands the risks posed by JW and that it is not in the children's best interest to be around him at this time. However, during cross examination, she stated that she did not believe limitations on JW's contact with the children were necessary.
- KW was insistent during cross examination that it was not her home, but her neighbour's home (where her teenage child had been staying) that workers had concerns with during a home visit on April 11, 2025. However, case notes tendered from that date clearly indicate that workers attended KW's address and discussed making a family plan for her child until progress could be made with her home.
- KW had difficulties with recall. She said that she could not remember whether LL was at her home cleaning the day workers visited her home and told her that her child could not live there. She could not recall prior discussions with workers about an historic allegation of

> sexual abuse in relation to her child and CJW. It is difficult to accept that one would forget such conversations.

[47] As a result, I prefer the evidence of the Minister's witnesses, all of whom I found to be credible and impartial.

1. Do the children remain in need of protection?

[48] I have carefully reviewed the affidavit and *viva voce* evidence and the applicable law. I find that there is clear, convincing and cogent evidence that CJW and NW continue to be at substantial risk of physical harm for the following reasons:

Condition of the Home

[49] I agree with LL that the primary concern in relation to the home has been the large number of animals in the home and the frequent presence of animal waste and dirt throughout the home. LL was initially compliant with suggestions from workers in relation to how to keep the condition of the home adequate and to rehome her pets. However, LL has been unable to maintain the home in adequate condition for a sustained period. LL tendered a photo from January 3, 2025 showing that a portion of her kitchen space was in adequate condition. However, workers who attended her home that day noted that the home overall was in poor condition, with dirt and garbage on the floors throughout the home, including CJW's room. There were

several cats observed in the home. After access was moved into the community in March 2025, problems persisted with the home's overall cleanliness, overflowing cat litter and animal waste in the home. During a home visit on November 7, there were 4 newborn kittens in the home, at least 1 cat, 1 dog and a turtle. The bathtub was filled with turtle urine and feces. Dog urine was observed on the kitchen floor. The bathroom sink and toilet were dirty. During a home visit on December 17, Ms. Levangie noted that the living room looked good and was adequate. It is not clear from the evidence whether she assessed other areas of the home on that date. I have no evidence in relation to the current state of the home. That said, the cleanliness of LL's home has been a persistent and serious problem throughout these proceedings. She has struggled greatly with maintaining any progress that she makes during a time where her children have not been in her care. If the children are returned, this struggle will undoubtedly worsen.

[50] LL argues that she has limited financial means, which made removing larger items from the home such as fish tanks and turtle pools very difficult. LL feels that the Minister was overly critical of her inability to remove garbage and refuse in her yard, given her limited means and lack of access to a vehicle to properly dispose of the items. To be clear, the basis for my finding that the condition of LL's home continues to pose a risk to the children is not made on the fact that LL was unable to

discard items from her yard. It is based on the continued presence of animal urine, feces, dirt and garbage throughout the interior of the home. I find that LL's inability to maintain a clean and safe home for the children, coupled with a lack of insight into the reasons for her inability to do so, lead me to conclude that the protection concerns presented by the condition of her home have not been sufficiently mitigated.

Completion of Services

[51] LL appears to understand the negative effect that an unsanitary home can have on her children's wellbeing, but she has not been willing to explore the reasons that underlie her inability to maintain her home. LL disputes the legitimacy and reasonableness of the Minister's request for a mental health assessment, arguing that there is no evidence that she has mental health issues. It is unfortunate, in my view, that she refused this service, as it may have helped to expose barriers that have prevented her from maintaining the home and may have identified corresponding services to address those barriers.

Relationship with JW

[52] JW has made no effort to address identified protection concerns throughout the entirety of this proceeding. He has had no access with the children in over a year. He did not participate in the hearing, except to say that he supports LL.

[53] The fact that JW did not engage in services is deeply concerning. In *Nova Scotia (Minister of Community Services) v. C.T*. 2022 NSSC 188, Justice Forgeron stated:

> **A parent's refusal to participate in services speaks "volumes both as to his commitment to the process and his lack of insight into the difficulties confronting him**": DAB v Family and Children's Services of Kings County, 2000 NSCA 38, para 51. In such circumstances, "it is difficult to imagine what further services could reasonably have been offered by the Agency": DAB v Family and Children's Services of Kings County, supra, para 51 (emphasis added).

[54] LL's knowledge of the protection concerns associated with JW and the status of their relationship are relevant to the issue of current risk.

[55] I find, based upon the evidence before me, that JW continues to pose a substantial risk of harm to the children.

[56] Some of this evidence came from LL directly. On January 20, 2025, LL reported to her worker that she felt that JW should attend "AA" before having visits with the children because he had been abusing alcohol. LL reported to Ms. Kendall that JW had cheated on her and that she had punched him in the face, threw his clothes into the yard and smashed his car mirrors. She also stated that JW was back

to drinking and using cocaine. She later qualified these statements, saying that she suspected that he was using drugs. LL described her relationship with JW as unhealthy and blamed him for not helping her to keep the home clean. She stated that she had learned from her services and would not be resuming a relationship with JW. LL was warned by Ms. Levangie that JW could not attend LL's unsupervised visits due to his drug/alcohol use and that if he did, she would risk losing her unsupervised visits.

[57] In early July, LL acknowledged that things had been deteriorating since JW had come back into her life. She said that she had been trying to get him to leave and stated that he was "too far gone." She admitted that she struggled with boundaries, that she let people take advantage of her and didn't understand why she was unable to say no. However, LL resumed a relationship with JW and now asks the court to trust her to remove JW from the home if the children are returned to her care.

[58] In her affidavit, LL claims to be aware that JW is not safe to be around the children at this time and says that she is willing to comply with an order restricting his access, including a protective intervention order "*if deemed appropriate and necessary*." She goes on to say: "I understand that JW has not engaged in services and the Agency isn't allowing contact with the kids right now. I am willing to

enforce this *if directed to do so* and to consent to a Protective Intervention Order *if necessary*" (emphasis added).

[59] The qualifications "if directed to do so" and "if deemed appropriate and necessary" call the sincerity of her stated belief that JW is not safe to be around the children into question. It is also difficult to reconcile her stated belief with her acknowledgment during cross examination that she does not believe that supervision of JW with the children is necessary. As such, I have little faith that LL has the willingness or ability to protect the children from risk associated with JW, because she does not appear to understand the risk that he poses to them. This likely explains why she chose to resume a relationship with him in the midst of these proceedings. Her words simply do not align with her actions.

Substance Use

[60] LL was honest with workers about her cocaine use in June 2025. Her random urinalysis testing was put on hold after she missed three consecutive tests around this time. The testing did not resume, notwithstanding the fact that LL requested in July that testing be re-started. In the nine months following her admission, there is insufficient evidence to suggest that LL has continued to use illicit drugs. Workers have had many interactions with LL and no concerns of drug use have been noted.

The Minister has not proven that protection concerns persist in relation to drug use by LL.

2. Should a protective intervention order be granted?

[61] LL asks me to grant a protective intervention order restricting JW's contact with the children, should I deem such an order necessary to protect the children if they are returned to her care. LL suggests that a PIO would essentially provide an extra layer of reassurance to the court that she will keep JW away from the children, if ordered to do so.

[62] The Minister argues that I cannot order a termination of the *CFSA* proceedings and return the children to LL's care, if a PIO is necessary to facilitate same.

[63] I find that LL does not have standing to seek a PIO. Section 30 permits such orders to be made "*upon the application of an agency*." The Court of Appeal has likewise interpreted s. 30 to mean that only the Minister has standing to seek a PIO: ***R. v. Finck*****,** 2005 NSCA 20 at para. 3.

[64] LL suggests that the Minister failed in its duty to attempt less intrusive measures to protect the children by not exploring a PIO. I disagree. The Respondents were presenting as a couple at the outset of the proceedings and the

evidence suggests that JW initially expressed willingness to work with the Minister. Concerns about illicit drug use on the part of JW do not appear to have crystallized until after the Respondents separated. The Minister was entitled to rely on the court orders that have issued, all of which placed limitations on JW's access; specifically, access upon terms and conditions as may be arranged by the Minister. A PIO in this circumstance would have been duplicative.

[65] LL argues that I can still order a PIO in the absence of an application by the Minister, if I find that it is in the best interests of the children to do so. I find that a PIO would not be appropriate, nor in the children's best interests at this stage of the proceeding. The granting of a PIO implies that the person who is the subject of the order is causing, or is likely to cause, the children to be in need of protective services. I have already found that JW continues to pose a risk to the children and I am not satisfied that LL is willing or able to limit his contact with them. I cannot terminate a *CFSA* proceeding if the risk to the children persists. A PIO is not appropriate in this case as a way to mitigate risk at the end of the legislative timeline.

3. What order is in the children's best interests?

[66] LL loves her children and they love her. Despite having faced many struggles in her life with little support, LL has been described as having a "big heart." She has

been described as a kind and generous person who often puts the needs of others ahead of her own. However, LL has been unable to show the court that she can put her children's needs first and the decision that I am required to make must be based solely on their best interests. I find that LL has been unable to make the lasting changes necessary to allow me to safely return the children to her care. I have considered and applied the legislative requirements, including the best interests factors as required by the *Act.* I find that less intrusive alternatives have been attempted and failed or have been refused. I find that it is not possible to place the children with a family member, neighbor or other member of the children's community. Finally, I find that the circumstances justifying a permanent care order have not changed by the final deadline. As a result, I have no choice but to order that the children be placed in the permanent care and custody of the Minister.

Conclusion

[67] The Minister's application is granted. The children remain in need of protective services. Regrettably, LL's plan is inadequate to address the risk. The legislative timeline has expired. It is in the children's best interests to be placed in the permanent care and custody of the Minister.

Mason, J.