**IN THE SUPREME COURT OF NOVA SCOTIA**
**Citation:** Nova Scotia (Community Services) v. E. C., 2010 NSSC 479

**Date:** 20110208
**Docket:** SFHCFSA 067086
**Registry:** Halifax

**Between:**

Nova Scotia (Community Services)

Applicant

and

E. C. and J. L.

Respondents

**Editorial Notice**

Identifying information has been removed from this electronic version of the judgment.

**Restriction on publication:** Publishers of this case please take note that s.94(1) of the *Children and Family Services Act* applies and may require editing of this judgment or its heading before publication.

> Section 94(1) provides:
>
> "No person shall publish or make public information that has the effect of identifying a child who is a witness at or a participant in a hearing or the subject of a proceeding pursuant to this Act, or a parent or guardian, a foster parent or relative of the child."

**Judge:** Justice Lawrence I. O'Neil

**Heard:** October 18, 19, 20; November 20; and December 17, 2010 in Halifax, Nova Scotia
*Two hearings were held in 2007 pertaining to the subject child X. C. The proceeding terminated in February 2008.

*evidence admitted pursuant to s.96 of the *Children and Family Services Act*, S.N.S. 1990, c.5 in relation to the child X. C. being C047885.

**Oral Decision:** December 30, 2010

**Counsel:** Peter McVey, for the Minister
Bryen Hebert, for the Respondent, E. C.
Eugene Tan, for the Respondent, J. L.

**By the Court: (Orally)**

## Index

**Introduction**

This is a decision in the matter of Nova Scotia Department of Community Services, Applicant and E. C. and J. L., Respondents. They will be referred by their initials for the most part in the course of this decision.

By way of introductory explanation, there will be references to texts of statutes. I will be incorporating them by reference. I do not propose to read verbatim the sections of the *Act*. Certainly there will be references to documents that form part of the evidence and again, I may read parts of the text or simply incorporate it by reference. I have typed notes here that require editing. Perhaps if I had another day, I would release them or give a copy of them to you as notes of my oral decision. However, they are not in that form and for that reason, I will be reading a lot of it.

I reserve the right to add reasons and references to evidence and further discussions of the law in a written decision, which is to follow. However, given the pressing nature of this matter and the need for a decision prepared over the Christmas, practical limitations have prevented my presenting a fully edited text or note to counsel on today's date, which would have been my preference given the significant issue and issues that we have been called upon to address. The essence of my decision will be communicated today and the rationale for it will of course, be unchanged from today when contrasted with a written decision.

I want to thank counsel and the parties for the work that they have done in preparing for the hearing and in summation, and acknowledge the nature of the participation by the Respondents, in particular and the stressful nature of this proceeding for them.

[1] The Respondent, E. C. has two biological children, X. C., 4 ½ years of age and C. C., 1 ½ years of age. The Respondent, J. L. is the biological father of the younger child and for purposes of this proceeding is a parent or guardian of the older child.

[2] The children were taken into care on October 30, 2009. The older child was the subject of a previous proceeding in 2006. That proceeding included two hearings. After both hearings, the Minister's application for permanent care and custody of X. C. was dismissed.

[3] This matter was first before the court on November 4, 2009 for an interim hearing under the *Children and Family Services Act*, S.N.S. 1990, c.5, hereinafter, also referred to as the "*CFSA*" or as "the *Act*". Herein, when section numbers alone are used, the references are to the "*CFSA*".

[4] As a result of the November 4, 2009 appearance, a temporary care and custody order was put in place. The children were placed in the care and custody of the Minister of Community Services, also referred to as "the Minister". Since then, the children have been in the temporary care of the Minister of Community Services.

[5] The Minister of Community Services is now asking the court to order that the children be placed in the permanent care and custody of the Minister of Community Services. Each of the Respondents has applied to have the children returned to them. E. C. is now a * , residing in *. J. L. resides in metropolitan Halifax.

[6] An application by the Respondents to adjourn a hearing of the Minister's application for permanent care and custody of the children until a time closer to the outside date for concluding the Minister's involvement, was heard at the commencement of the hearing on October 14, 2010. The application was dismissed. This review of disposition commenced that day.

[7] Evidence in this matter was received in October and November 2010. Evidence taken in two 2007 hearings involving the child X. C. forms part of the record of this matter, as provided by s.96 of the "*CFSA*". As stated, in each hearing in 2007, the Minister sought permanent care and custody of X. C. The proceeding was ultimately terminated by the Minister by order dated February, 2008.

**Legal principles**

**- outside date for conclusion of proceedings**

[8] Section 45 of the *Children and Family Services Act* provides that proceedings involving children must be completed within identifiable time frames. These time frames vary, reflecting the age of the child. The proceeding itself has several stages and each of these stages must be completed within shorter time frames. Typically, a proceeding that runs the entire time line has an interim hearing stage; a protection stage; a disposition stage and reviews of disposition.

[9] This proceeding commenced on November 4, 2010 (Exhibit 1); by virtue of Section 45 it is to be completed within 18 months. Counsel disagree on what that specific date is, that is the outside date, but there is agreement it is in the Spring of 2011. I believe the Minister identified May 25, 2011. Regardless, the estimates were sufficiently close in time that they do not bear on the outcome of this proceeding. We are at the review stage. The time for completing this stage has passed but was extended by the court on the basis of an assessment of the best interests of the children.

**-identifiable risk and burden of proof**

[10] The Minister must establish on a balance of probability that the children are in need of protective services because of a substantial risk of future harm to the children or that their current needs are not and can not be met by the parents/guardians. The specific risks identified by the Minister are described by paragraphs (b), (e), (g), (h), (ja) and (k) of Section 22 of the *Children and Family Services Act*.

**-options for this disposition**

[11] Among the options for disposition outlined by Section 42 of the “CFSA”, the court may (1) dismiss the Minister's case; or (2) the court may order that the child(ren) be placed in the permanent care and custody of the Minister.

[12] The court may order that the child(ren) remain (3) in temporary care; or (4) be placed in the care of a parent or guardian or other person subject to a supervision order until a review date when the disposition will be reconsidered.

**- criteria to be applied**

[13] Section 2 (1) of the *Act* identifies the purposes of that *Act* to be the protection of children from harm; the promotion of the integrity of the family and the need to assure the best interests of children. Throughout its deliberations the court must have as its paramount consideration the best interests of the child. This directive is contained in section 2(2) of the *Children and Family Services Act*.

[14] Section 3(2) of that *Act* gives a list of criteria that assist in determining the best interests of a child. The text of that sub section is reproduced at paragraph 105 following. Section 3(2) must be read with s. 22 (2) of the *CFSA*, reproduced in part at paragraph 95.

**Minister's Involvement - A Chronology**

[15] The Minister has a long history of involvement, in particular with E. C. and X. C. As stated, the Department of Community Services were involved in proceedings that commenced in 2006. In that proceeding, the Minister twice sought permanent care of X. C. Two hearings were held. Justice Lynch, based on the evidence presented, rejected that disposition and ultimately returned X. C. to E. C.'s care. Her decisions are dated February 6, 2007, found at [2007] N.S.J. No. 46 and October 18, 2007, found at [2007] N.S.J. No. 421. As indicated, the proceeding terminated in February 2008.

[16] In May of 2008, E. C. left Nova Scotia with X. C. She remained in * for a week or so. She then moved to * where she remained for one year. She met J. L. there. They developed a relationship and she became pregnant with his child. C. C. was born in * on June *, 2009 and the Respondents and both children moved to Nova Scotia within days.

[17] In * and * , child welfare workers were involved on a voluntary basis. In each case, they communicated with the Department of Community Services in Nova Scotia as part of their investigatory role.

[18] Although a formal proceeding was not in existence in Nova Scotia at that time, Ms. Muise, from the Dartmouth office of the Minister of Community Services, remained in telephone contact with E. C. while she lived in * . Ms. Muise had been contacted by a * child welfare agency on June 6, 2008. She was later contacted by the * child welfare agency on October 29, 2008 (Exhibit 2, Tab2 and Exhibit 2, Tab 3). When E. C. returned to Nova Scotia, Ms. Muise's contact with her continued. Her contact was augmented by visits to E. C.'s home by social workers employed by the I.W.K. and others employed by the Department of Community Services. These visits began on or about July 13, 2009 and continued until the children were apprehended on October 30, 2009 (Exhibit 2, Tab 3).

**Profile of Children**

**- X. C. (D.O.B. May 16, 2006)**

[19] X. C. was first taken into care on July 31, 2006, when 2 ½ months of age.

[20] Justice Lynch, in her first decision in 2007 (*NS Minister of Community Services v. E. C.* [2007] NSSC 37) reviewed X. C.'s history and his circumstances as they then existed. The Minister, as indicated, was seeking permanent care and custody at the first disposition stage. X. C. was below the second percentile in weight. Concern about his health resulted in the IWK admitting him. Rib fractures were discovered.

[21] X. C. was put on a high calorie formula and eventually discharged from the hospital.

[22] At the January 2007 hearing before Justice Lynch, the Minister argued that X. C. had failed to thrive in his mother's care and that the court should infer that the mother was to blame for this. Justice Lynch found that the necessary evidentiary basis did not exist to make that inference. In addition, the evidence resulted in E. C.'s then boyfriend being charged with injuring X. C. E. C.'s failure at that time was found to be a failure to supervise and to protect the child.

[23] Justice Lynch commented on the extensive support E. C. received prior to the Minister's involvement and as part of it. The fact that E. C. received this support is also relevant to this proceeding.

[24] Justice Lynch observed (at paragraph 51 of her decision) that E. C. expressed concern about her ability to bond with X. C. Again, E. C.'s difficulty bonding with her children has been the subject of comment in this proceeding.

[25] Ultimately, Justice Lynch concluded following a hearing at the first disposition stage, that the evidence did not support a conclusion that the circumstances were unlikely to change within the time lines available. She continued the temporary care and custody order.

[26] The Minister once again sought permanent care and custody of X. C., in September 2007. Following the second hearing, Justice Lynch again ruled that the evidence did not support that outcome. Her decision is reported at *NS (Minister of Community Services) v. E.C.*, [2007] NSSC 302.

[27] The outside date for concluding the proceeding was February 6, 2008. The proceeding terminated at that time.

[28] X. C. remained in care through 2007. Nevertheless, he exhibited behaviour that was a concern, such as rocking behaviour; fluttering his eyes when eating; putting too much food in his mouth and being bothered by air planes flying overhead (paragraph 6 of Justice Lynch's decision).

[29] Commenting on E. C.'s ability to respond to X. C.'s needs, in her second decision, Justice Lynch observed at paragraph 39:

> 39 The MCS expresses concern about the special needs that J.X.C. may have and the mother's ability to respond to those needs. As noted, J.X.C. has been sent for a hearing and speech assessment and another assessment to explore the possibility of autism and to explore the recent behavioural concerns. Without the results of the assessments it would be pure speculation to suggest that the mother can or cannot respond to any special needs that J.X.C. may or may not have.

[30] Ultimately, Justice Lynch found that E. C.'s parenting was improving and the evidence did not support a conclusion that sufficient improvement could not occur by the outside date. She therefore continued the temporary care order.

[31] From February 2008 until October 30, 2009, E. C. was free of the imposed involvement of the child welfare agency. Notwithstanding the optimism concerning X. C.'s progress and that of his mother E. C., she has failed.

[32] This court knows significantly more about X. C.'s needs than did the court in 2007. In October 2009, circumstances were very different for X. C. and for E. C. An assessment of their circumstances in December 2010 results in yet another context for E. C.

[33] After the children were taken into care on October 30, 2009, they were assessed by Doctors at the IWK Health Centre.

[34] The Minister relies heavily on the evidence of Dr. Kim Blake, M.B., M.R.C.P., F.R.C.P.C., a specialist and a member of the Royal College of Physicians and Surgeons. She is a pediatrician at the IWK Health Centre and a professor of Pediatrics at Dalhousie Medical School. I agree that on the issue of X. C.'s current and past health, her evidence is significant. Her reports form part of Exhibit 3.

[35] She was accepted by all parties as an expert in the area of pediatrics with a further specialization in the assessment of child abuse and neglect. I am not bound by her opinion and I am free to disagree with her conclusions after considering all of the evidence.

[36] X. C. was 3 ½ years old when Dr. Blake first saw X. C. on October 30, 2009. He had spent 18 of his first 21 months in foster care (Exhibit 3, Tab A).

[37] Dr. Blake found that X. C. had a problem speaking; had a wide-based gait; and showed a failure to thrive with his weight being on the third percentile and his height in the tenth percentile. It is worth noting, however, his difficulty speaking and his low percentile for weight were not recent concerns as observed earlier. Given that the child was in foster care for most of his first two years, it is somewhat puzzling that the explanation for concerns do not appear to consider the care that X. C. received when in foster care and whether that care explains some of the circumstances of concern or perhaps lessens E. C.'s responsibility for the fact of their existence. This omission in the analysis is a cause for some concern.

[38] In a follow up report dated November 17, 2009 (Exhibit 3, Tab B) Dr. Blake noted progress made over the preceding two weeks following the children being taken into care. She expressed concern about X. C. rocking himself.

[39] In her report dated August 16, 2010 (Exhibit 3) she described X. C.'s speech as half understandable.

[40] His weight was on the tenth percentile and his height remained on the tenth percentile. He was continuing to rock, although less. He was exhibiting gorging of food substances.

[41] Dr. Blake testified that X. C. had failed to thrive prior to being examined by her. A failure to thrive encompasses a broad spectrum. A decrease in a child's position on a percentile charting of the child's height and weight is strong evidence of a failure of a child to thrive. Dr. Blake explained that a child placed in an environment where the child can have nurturing can overcome a failure to thrive and return to that child's normal trajectile on a growth chart.

[42] The child X. C. had demonstrated significant positive changes in his well being within days of being taken into care. Dr. Blake testified that his percentile score had changed. His social skills and motor activity also showed improvement. His difficulty with language has been a long standing issue and continued to be a concern.

[43] Dr. Blake expressed the following opinion:

> . . . I followed [X]., as you say, over this year and I've read the previous notes of my colleague who is no longer with us in child protection and putting the whole picture together [X] is very typical of a child that has undergone, in my opinion, deprivation, maltreatment, and taking him out of an environment and putting him into a more conducive environment for general well being and health. He's thrived in that environment but with still some delays.

[44] Dr. Blake concluded her August 16, 2010 report by recommending a plan for X. C. which included a referral to the IWK ENT Clinic, which had been done at the time of that report; ongoing speech language therapy; a recommendation that the Department of Community Services consider an assessment for attachment disorder by the child; referral to the IWK Immunology Clinic; ongoing follow up by general pediatrics and a continuation of early intervention program; and a suggestion given his delay, that he start school in 2012 (Exhibit 3, Tab d, p.2).

[45] Dr. Chris Ponnambalam was the family doctor for X. C. over the summer of 2009 and into the fall. In her report (Exhibit 5, Tab 2), she reported that X. C. was seen by her on three occasions, the first time regarding his growth, i.e. height and weight. On July 16, 2006 she found his height to be at the 25th percentile and his weight to be below the 3rd percentile. Her intention in July 2009 was to check his weight in three to six months. Her chart note for July 16, 2009 records E. C. as expressing concern about X. C.'s eating habits and poor appetite. Significantly, she did not raise any concern that X. C. was being neglected by his parents/guardians.

**- C. C. (D.O.B. June * , 2009)**

[46] Dr. Ponnambalam also examined C. C. during the Summer of 2009. In her report dated November 12, 2009 (Exhibit 5, Tab 2), Dr. Ponnambalam described C. C.'s health when she was C. C.'s primary care physician:

> The last time I saw [C] was on September 18, 2009. On this day, the dad walked into my office at the end of the day, they did not have an appointment and stated she needed her needles. They had missed their appointment the previous week and I did not want to postpone the vaccination further. This was my mistake and I should have checked the file. It was after the vaccine was given that I realized she was a little over three months.
>
> At the time [C's] weight and length were appropriate for three months. She was somewhat sleepy and I often see this at this age if they have been given Tylenol prior to receiving their vaccine. I'd therefore rely more on the history of development. On physical examination at this time, fontanelle was open, red reflex normal, heart and lungs normal, and tone appeared normal. Developmentally by history, she seemed age appropriate, she was smiling according to Dad. She was not rolling over however, as I do sometimes see this lag at three months. I was not too concerned. Particularly as I expected to see her in about three to four weeks.
>
> Unfortunately I did not see [C.] at four months of age.

[47] Dr. Blake first saw C. C. on October 30, 2009. Her description of C. C.'s state of health was very different. In her November 4, 2009 report she summarized development as follows (Exhibit 5, Tab 3A):

> Development
>
> [E], who's chronological age is 4 ½ months, had extensive delay and was at less than 2 months of age in all areas of development, and in many ways she was less

> than 6 weeks of age. Although she regarded a face, she did not smile totally spontaneously. She couldn't follow past midline. There was very minimal vocalization. She was hyper alert when responding to sounds and when lifting her up from a supine or prone position she showed significant hypotonia. She disliked being put in the prone position (on her belly). She wasn't able to bring her hands up at all beyond midline. This would make her at significant risk for sudden infant death or aspiration if left in this position. On her back, [E] showed significant head lag when pulled to sit and no ability to try and obtain weight on her feet. A newborn baby would have some motor skills better than [E]'s are at present.
>
> There were no abnormal neurological signs to suspect an underlying organic cause.
>
> Given the concerns with [E], a skeletal survey and MRI of her head has been organized and this will be completed on Thursday, November 5th.

[48] Later in the same month, November 17th, 2009, Dr. Blake reported (Exhibit 5, Tab 3C):

> She has a distinctive less scared look on her face. Starey eyes were quite obvious last time. Frightened and hyper alert. This was not obvious this time and pictures were taken. She has increased her weight since her last visit and she is 5.5 kilos, which puts her just below the 3rd percentile but improving. The weight that was taken when she came in for her MRI and skeletal survey was probably an errored weight. It was 5.8 kilos.
>
> The increase in her weight and the increase in her development over a very short period of time in care has shown a significant degree of failure to thrive and failure to develop in the home circumstances that she was taken from.

[49] These excerpts confirm that one week after Dr. Blake first saw C. C., she observed significant progress. C. C. had better head control, her hands were being held together near the midline, her eyes were less starry, and her head shape had improved.

[50] In Dr. Blake's view, these were huge changes over a short period of time. By January 2010, her weight had gone to the 25th percentile and her height percentile had also increased.

[51] In her January 12, 2010 report, Dr. Blake wrote (Exhibit 5, Tab 3D):

> On examination today, [E] looks well and is generally developmentally healthy. Her weight is now 6.8 kg which puts her on the 25th percentile. As such, she has

> gone from being below the 3rd percentile up to the 25th percentile for weight and has therefore crossed numerous centiles. Her height is on the 3rd percentile. It was way below the 3rd percentile when she came into foster care at 59 cm. Her head circumference is 43.5 cm which puts her above the 50th percentile.
>
> On examination of her development, she was sitting with moderate support. When on her back she was pulling herself up into sitting, rolling over. She brings her arms into midline although still has a degree of posturing with her arms out to the side. She is following and looking for people, cooing, and laughing out loud. Really she is acting as an infant between a 5 and 6 month old level, and has therefore gained and caught up both developmentally and physically since her short time in foster care.

[52] In addition, C. C. was described as floppy when first seen, which gave rise to a concern that the child had not received adequate stimulation. A part of the child's head was flattened which other evidence established is natural at a certain stage of development but for a child of five months is indicative of poor caring and of a child spending too much time on her back, i. e. not having enough tummy time.

[53] In Dr. Blake's opinion, as expressed in her oral evidence, C. C. had been neglected:

> . . . Well, I've seen a number of children like this and in my own practice over the many years and certainly one of the top differentials would be a child that's been neglected, a child that hasn't been given the emotional support that they needed to nurture them as they could grow, so they could develop their motor skills, their - all the skills they need to then move onto the next developmental level. So this would be in the raw basis, this is a child that's been neglected and hasn't been given enough of the support to do the - to develop the motor skills and the five motor skills, bringing your hands together, that the child needs.

[54] Dr. Blake testified that C. C. will continue to need ongoing help because management of her developmental issues will continue to be required.

[55] In her direct evidence, Dr. Blake expanded upon her reports without changing the essence of them. When subject to cross examination, she was asked to interpret the medical file of Dr. Ponnambalam. The court was provided with a transcript of Dr. Blake's evidence by the Minister and I wish to incorporate by a reference, line 12 on page 84 of the transcript to line 14, page 89, in particular, into the decision. This is an exchange between Dr. Blake and counsel for J. L. on cross examination. It contains Dr. Blake's comment, when looking at the chart

concerning C. C. She, for example was asked about page 32 of the exhibit that was shown to her. She expressed the view that the chart evidence indicated that this is a reasonable healthy baby.

[56] She was asked a follow up question and she responded (line 6 and 7, page 87), "well I agree with you, this looks like a reasonably healthy baby". She was then asked if changes could happen quickly and substantial changes with children at this age, to which she responded "yes". Later on, she was asked at page 89 (line 6 through to 14), the question, "I just want to ask you first of all, Mr. McVey asked you yesterday about C's flattened head. And I understand that that could occur over a period of a number of weeks?". Answer "yes". Question, "okay. And so within that seven week period that's something that could have developed?". Answer, "yes".

[57] The exchange is as follows:

> Line 12, page 84 of the transcript to line 14, page 89
>
> Q. Well let me ask you, according to Dr. Ponnambalam as recently as September 18th, 2009 Chanel appeared to be tracking along the third percentile?
>
> A. Yes.
>
> Q. And it was your finding at the beginning of November that she was, was it substantially or a little below the third percentile in terms of weight?
>
> A. I think she was a little below, I'd have to look at my - because my growth chart isn't in the documents that were in the exhibit chit from yesterday.
>
> Q. Okay.
>
> A. But I thin she was a little below.
>
> Q. Okay. Now assuming that [C] was tracking along the third percentile in terms of both length and weight between July 2009 and the middle of September 2009, if you had that information would you have had any particular concerns if you had seen [C] sometime in mid or late September?
>
> A. It looks like here she is certainly thriving well, she's thriving, she's growing along her centiles there. I think what you're looking at is any drop off in growth. So if she was, if she was sort of dropping off, length is always harder to measure because you've got to sort of pull them out and they scoot around.

Q. Yes.

A. Weight is easier and it's nice to be weighed on the same scales. It looks like she was weighed on the same scales there. So that looks quite, you know, that looks good.

Q. Okay. Now I'm also going to refer, if you could, the page immediately before Dr. Ponnambalam identified this, I believe she described it as a work screening test or . . .

A. Yes.

Q. Is this something that you're familiar with?

A. I am.

Q. Okay. I wonder if you might take a moment, take a look at Page 32, 34 and 35. And the notes are fairly limited on each page.

A. Thank you.

Q. Okay. Just to start with Page 32 please, is there anything on that page that you see that might be any cause for alarm or would this be indicative of a reasonably healthy baby?

A. I thing this is indicative of a reasonably healthy baby.

Q. Okay. And then actually turn to Page 34 please, Dr. Blake. And just the same question really, if whether there's any cause for alarm or whether you suggest that this is probably reasonably healthy baby?

A. Well I agree with you, this looks like a reasonably healthy baby.

Q. Okay. And then on Page 35, and perhaps we can ask the same question Dr. Blake?

A. Yes.

Q. Okay. Now Dr. Blake there was something that struck me in your testimony yesterday. You said that changes could happen very quickly and very substantially with children at that age. So when you were talking about that you were referring to gains that [C] was making?

A. Yes.

Q. Weight gains, whatever. Can, I guess for lack of a better term, can a child at that age slide backwards in a very short period of time?

A. They certainly can slide backwards.

Q. Okay.

A. Yes, I'm not sure how quickly that can occur.

Q. Okay.

A. We see it sort of - the next we see the sort of the progression of change the other way.

Q. Yes.

A. More than we would actually see it.

Q. I understand.

A. We have many, many conditions that can cause a seizure disorder for instance, can have a baby slide back.

Q. Okay.

A. But I would say it's hard to say how quickly.

Q. Yes, okay. And I appreciate that. What we do have here, we seem to have a bit of a gap. Our last medical records that are available to us really are September 18th, 2009. And then the next time that we really have anything substantial is the report of Janice K. Hatfield on October 29th, so a gap of about five, six, almost seven weeks.

A. Right.

Q. I just want to ask you first of all, Mr. McVey asked you yesterday about [C]'s flattened head. And I understand that that could occur over a period of a number of weeks?

A. Yes.

Q. Okay. And so within that seven week period that's something that could have developed?

A. Yes.

[58] I understand and acknowledge that there may be explanations that more thoroughly explain the evidence, or that make the evidence of Dr. Ponnambalam

consistent with the evidence of Dr. Blake. In particular, on the time line as to the development of some of the deficiencies in C. C., in particular that have been highlighted. The cross examination does force a consideration of the full meaning of the evidence of Dr. Blake with respect to the time line and history of the children, and as I commented in the course of the trial, and I believe Dr. Blake herself indicated, it would have been helpful for her to have the benefit of Dr. Ponnambalam's chart and record.

[59] I want to put these comments on record so that it is clear that I have considered that line of cross examination and balanced it with the evidence the Doctor gave orally on direct.

[60] J. L. was prohibited from being in E. C.'s home after October 4, 2009 because of a domestic incident between the Respondents.

**The Minister's Concerns**

[61] Ms. Sly's affidavit, sworn November 4, 2009 (Exhibit 2) and filed in support of the Protection Application describes, in part, the rationale for taking the children into care days earlier. Paragraphs 29-34 read as follows:

> 29. On October 22, 2009, I completed a further home visit to the residence of [E.C.] , [X.C.] was again in his room, behind a child gate, watching television on a mattress with no sheets or bedding. [C.C.]was in the process of being changed by her mother when we arrived. The residence presented again as untidy, with takeout food containers on the kitchen counters and a mattress in the middle of the floor in the livingroom.
>
> 30. On October 22, 2009, I spoke with Janice Hatfield, Public Health Nurse, who was also following [E.C.]. We discussed the mental health of [E.C.] and how it may have an impact on her parenting of her children. We agreed to schedule a home visit together with [E.C.].
>
> 31. On October 29, 2009, Janice Hatfield and I completed a home visit to the residence of [E.C.]. [E.C.] acknowledged that her children required stimulation and [X] required speech therapy, but she presented as pessimistic about obtaining services for her children or affecting change in her own life. Janice Hatfield, whom had provided services to [E.C.] when [X] was first born in 2006, as well as following her return to the Province of Nova Scotia in 2009, was very direct with [E.C.] about her need to be motivated to address her circumstances and those of her children. [E.C.] defended her practice of leaving [X.C.] in his room alone.

> ([C.C.] was also in her room when we arrived for a home visit, lying in her crib, looking at the ceiling.)
>
> 32. Following the home visit on October 29, 2009, I was concerned about the persistent clutter and dirty state of the home. However, I was particularly concerned by the persistent lack of stimulation and isolation of the children. I arranged for a Risk Management Conference to be held, in order that the full circumstances of the family could be reviewed by the Agency.
>
> 33. On October 30, 2009, the Minister of Community Services held a Risk Management Conference, reviewing both the historical and recent information concerning the children of [E.C.]. A decision was made that there appeared to be a substantial risk to the health and safety of the children in the care and custody of [E.C.]and they appeared to be in need of protective services.
>
> 34. On October 30, 2009, the children were taken into care.

[62] In its pre-hearing brief and oral submissions, the Minister asked the court to conclude that the only appropriate disposition is to order that the children be placed in the permanent care and custody. In the Minister's opinion, considering the plans of each Respondent; their histories and deficiencies as parents; the needs of the children and the legislated definition of how a child's best interests is to be determined, permanent care and custody is the only option.

**Profile of E. C. and her plan of care**

[63] It is observed that E. C. was born January *, 1974. She has delivered four children. In 2004, her son, then six months of age, died from sudden infant death syndrome. X. C., a child subject to this proceeding was born May *, 2006. A third child, A. C. was taken into care in 2007 at birth and voluntarily placed for adoption by E. C. in 2008. Her fourth child, C. C. was born June *, 2009 and is also the subject of this proceeding.

[64] E. C. attended * while in her twenties. This pursuit over lapped with day time employment as an *, a job she held for several years. She lived in the Annapolis Valley during this period.

[65] In 2010, E. C. gained admission to *. She agreed to pursue training to become a * and relocated to * . [information removed to protect identity] I accept her evidence that she is successfully completing the various phases of her program of study.

[66] She explained that her decision in August 2010 to support the Minister's plan for permanent care and custody of the children was a choice she felt imposed upon her. She testified that she believed she could not have unresolved litigation and *. She later learned that this was not correct and put forward a plan for the children's care.

[67] It has also been suggested that she changed her position when J. L. put forward a plan to care for the children. In any case, not much turns on her motivation as between those two explanations.

[68] She wishes to have the children returned to her care in *. She proposes to access recommended services in the * area.

[69] I do not propose to review the details of E. C.'s childhood experiences and upbringing. These are commented upon by Dr. Kronfli, M. B., F.R.C.P.C. at Tab 5 of Exhibit 5; the 2006 parental capacity assessment of her completed by Debra Garland in 2006 (Exhibit 1A, Tab 7) and in the decisions of Justice Lynch, which decisions are referenced *supra* at paragraph 14. Suffice it to say E. C.'s childhood life was chaotic and unstable. She began using drugs and alcohol at the age of 14.

[70] She has a history of short term relationships, many of which also have a short genesis and a tenuous foundation. She has a history of unstable residences. After dating X. C.'s father for one month, she became pregnant with X. C. and X. C.'s father ended contact with her while E. C. was pregnant. In the Spring of 2006 when X. C. was still only weeks old, he was injured by her then room mate, Mr. M.. She began her relationship with one Mr. B., after that.

[71] In recent years, her plans have had dramatic changes:

> - In February 2006, her plan was to move to * to live with [R.B.]. By October 2007, the relationship ended
>
> - In May 2008, she relocated to * to join a person she met on line with a view to working in *. After a few days, she moved to *
>
> - From June 2008 until June 2009, she was involved with J. L., whom she met in *

- In August of 2010, she relocated to *

[72] In 2006, E. C. began taking Clorazepam to treat anxiety and emotional issues flowing from the death of her child in 2004, and the pending birth of her second child, X. C.

[73] Dr. Kronfli completed a psychiatric assessment of E. C. His report is dated July 16, 2010. Dr. Kronfli is a consultant psychiatrist for the Capital District Health Authority in Nova Scotia.

[74] The 2006 parental capacity assessment of Ms. Garland, referenced supra, is summarized by Dr. Kronfli at pages 10-11 of his report (Exhibit 5, Tab 5):

> Ms. Garland's Parental Capacity Assessment report, dated December 22, 2006 identified several risk factors with regard to Ms. [C.]'s capacity to parent, which provide pertinent information with respect to the current psychiatric assessment:
>
> > Ms. [C]'s presentation is a significant concern and her attention and focus are tangential;
> >
> > Ms. [C] has a history of ongoing and largely untreated mental health issues which would include an eating disorder, anxiety, and grief;
> >
> > Ms. [C]'s long-term use/abuse of Benzodiazepines and minimization of this use;
> >
> > Ms. [C] does not have a support system other than the formal system which if not mandated, she would probably terminate;
> >
> > Ms. [C] is an unskilled parent who fails to recognize her skill and knowledge deficits;
> >
> > Ms. [C] is not especially open to learning, presenting with superficial compliance, which is supported by her small progress following involvement with services.
>
> In 2007, as per a recommendation arising form Ms. Garland's Parental Capacity Assessment, Ms. [C] underwent a psychiatric assessment by Dr. Khalil Ahmad of the IWK Parent-Child Assessment Team. Dr. Ahmad diagnosed Ms. [C] as follows: Axis 1: Chronic Anxiety Disorder with panic attacks and Post Traumatic Stress Disorder (PTSD); Axis II: Dependent Personality Disorder; Axis III: Arthritis of the hand and knee joints; Axis Iv: Psycho-social Stressors (Moderate to Severe); and Axis V: GAF = 60. Dr. Ahmad went on to state that Ms. [C]'s chronic anxiety disorder and PTSD affected her day to day functioning, such that she required psychiatric and psychological help to deal with these disorders.

[75] Dr. Kronfli summarizes his impression of E. C. at pages 13-14 of Exhibit 5, Tab 5:

> Although her children have reportedly suffered significantly as a result of their exposure to domestic violence on the part of their mother and Mr. [L], Ms. [C] failed to express any regrets. Despite the many services that have been put in place by the Agency to assist her in meeting the children's needs, Ms. [C] remains unable to follow through with treatment to address the significant medical and developmental deficits that her children display. Although Ms. [C] has expressed her willingness to accept Agency assistance and cooperation in following their recommendations, she fails to make the necessary changes to remedy the situation and expresses little insight and no remorse with respect to the children's exposure to the grave concerns that brought them into care.
>
> Ms. [C] seems to have a reduced ability to provide for the basic needs of her children, in addition to their emotional and developmental needs. Ms. [C]'s superficial approach to these serious problems demonstrates that she is incapable of fully acknowledging her children's needs. Although she was agreeable to mental health services, she accepted these services on her own terms. Of particular note throughout this assessment, was Ms. [C]'s attempt to control the interview process. Her ability to remember details about her physical and mental health was much stronger than her ability to provide historical information. This is indicative of her primary focus on having her own needs met. Although Ms. [C] has participated in supportive counselling, her lifelong victimization issues continue to present a significant challenge to her interpersonal relationships and her ability to parent her children safely and effectively.
>
> As a result of Ms. [C]'s current level of functioning, she is not emotionally equipped to parent her children effectively and safely at this time. Although it is not know whether she suffered from a disorder such as Attention Deficit Hyperactivity Disorder (ADHD) as a child, it is possible that Ms. [C] may have suffered from some form of ADHD throughout her lifetime, which would respond to pharmacological intervention. As a child she suffered from nightmares, and during adolescence she experiences sleep disruption, defied authority, used drugs and alcohol, and made many unwise, impulsive decisions with respect to her lifestyle choices and the partners she chose.
>
> Ms. [C]'s tangential thinking, memory deficits, thought blocking, and incongruence with respect to her thought process and her serious circumstances, in addition to her tendency toward dependence on mediation is of concern

[76] Many of the references to factual conclusions about E. C. and her role as a parent are acknowledged to be based on hearsay that came to Dr. Kronfli and in and of themselves, of limited probative value. Dr. Kronfli's comments are read with this in mind. However, although his opinions are based on hearsay, the bulk

of the other evidence that has been submitted establishes the essence of factual observations that underlie the opinion of Dr. Kronfli and that form part of the basis for the opinion he expresses.

[77] The parental capacity assessment of E.C. completed by Debra Garland and dated December 22, 2006 (Exhibit 1A, Tab 7) beginning at page 30, identified a number of additional concerns. These included the following:

- a difficulty in relationships

- a lack of willingness to learn how to parent better

- a lack of confidence and comfort when handling X. C.

- a difficulty identifying and responding appropriately to the child's needs

- her lack of appreciation for the consequences of introducing new boy friends to X. C.

- a failure to accept responsibility

[78] I am satisfied that E. C. has deep rooted and irreparable deficiencies as a parent. I am satisfied that she is not motivated to address her parenting issues. This may be explained by a lack of awareness or simply on the basis of an unwillingness. Regardless, I am satisfied, after considering her history as a parent, that she will not change. She can not currently parent to an acceptable level and will not be able to do so.

[79] I am also satisfied that her recent stability is a result of her enlistment in * and her having removed herself from the role as a participating parent, even that of a non custodial parent.

[80] I am satisfied on a balance of probabilities that E. C. can now function but her resumption of parenting responsibilities would jeopardize her current progress toward becoming a functioning and self supporting individual. Any future role for her in the lives of either child will place them at risk and cause her to "relapse".

[81] I am also persuaded that she does not want responsibility for the care of the children. I agree with Dr. Kronfli that she will not and can not voluntarily give up the children at this time.

**Profile of J. L. and his plan of care**

[82] J. L. was born September *, 1972. He completed training as a * at a community college. However, he worked as a * throughout his twenties and early thirties.

[83] Mr. Cox, a psychologist, whose report is identified as Exhibit 5, Tab 4, offered some insight into J. L.'s personality, abilities and emotional health. He saw J. L. on July 30, 2010. I am satisfied on a balance of probabilities that J. L. is highly intelligent, of a gentle and kind nature and capable of communicating warmth and love.

[84] He is also managing a tendency to become dependent and anxious. Mr. Cox commented on this aspect of his personality, as did the social workers. After hearing the evidence of E. C. and considering all of the evidence, I am satisfied that within his relationship with E. C., J. L. was not assertive, that he deferred to her when he should not have and that she was the authority figure and not very open to deviating from a course of conduct or a chosen approach to parenting, regardless of the merits of doing so. Regrettably, the combination of J. L.'s and E. C.'s deficiencies as adults had negative consequences for the subject children.

[85] J. L. recently scored in the 87$^{th}$ percentile for verbal intellectual ability, a score in the upper portion of the high average range. At the same time, he scored in the 98$^{th}$ percentile in non verbal intellectual ability. His personality is suggestive of submissive personality traits. He also scored a moderate elevation on the anxiety disorder scale.

[86] J. L.'s scores as an adult - adolescent parenting inventory resulted in scores in the low to medium risk range and did not suggest parenting problems in a range of areas.

[87] Mr. Cox expressed concern that J. L.'s "perception of events and relationships reflect personality and emotional factors rather than cognitive weaknesses", (Exhibit 5, Tab 4 at p.68). There are other indications that he may have a depressive and pessimistic outlook.

[88] J. L. has a serious and in my view, an unexplained problem with accomplishing tasks. It may be that this ongoing litigation has had a somewhat disabling impact on his functioning? The court is not satisfied with his explanations for his not being employed and for not communicating in clearer terms why he is not organized in a functioning household, even a modest one. This litigation obviously results in uncertainty. Nevertheless, his answers were not reassuring.

[89] It is acknowledged that the fact of unemployment or an inability to work is not prejudicial to a parent's case in and of themselves. However, when the factors that explain the unemployment or inability to work also call into question a person's ability to parent to an appropriate standard, these factors are a concern.

[90] As stated, the evidence presented does not explain J. L.'s functional deficiencies fully nor does it justify my coming to negative conclusions about his potential to parent appropriately. I would say that the evidence raises a concern.

[91] J. L. met E. C. in * in 2008 and they relocated to Halifax together in June 2009. I am satisfied that their lives became increasingly dependant while in *. Strains in their relationship developed after moving to Nova Scotia and ultimately resulted in their discontinuing their relationship. J. L. moved to * for a few weeks in June-July 2009 but returned to Nova Scotia. He remained a frequent, if not daily visitor to E. C.'s home over the summer. He was frequently there when social workers arrived. I can not conclude for what period he may have lived with her after they returned to Nova Scotia.

[92] Witnesses testified that J. L. was observed taking the lead in nurturing C. C. and that the Respondent, E. C. appeared to accept this dynamic. E. C. described herself in general terms as less nurturing. She clearly communicated concern about her willingness to nurture. In these circumstances, J. L.'s role *vis a vis* C. C. was without significant resistance from E. C.

**Services to promote the integrity of the family, s.13 and s.42(2)**

[93] The Minister has been subject to a duty to "take reasonable measures to provide services to families and children that promote the integrity of the family". Section 13(1) and (2) of the *"CFSA"* provide as follows:

Services to promote integrity of family

13 (1) Where it appears to the Minister or an agency that services are necessary to promote the principle of using the least intrusive means of intervention and, in particular, to enable a child to remain with the child's parent or guardian or be returned to the care of the child's parent or guardian, the Minister and the agency shall take reasonable measures to provide services to families and children that promote the integrity of the family.

(2) Services to promote the integrity of the family include, but are not limited to, services provided by the agency or provided by others with the assistance of the agency for the following purposes:

(a) improving the family's financial situation;

(b) improving the family's housing situation;

(c) improving parenting skills;

(d) improving child-care and child-rearing capabilities;

(e) improving homemaking skills;

(f) counselling and assessment;

(g) drug or alcohol treatment and rehabilitation;

(h) child care;

(i) mediation of disputes;

(j) self-help and empowerment of parents whose children have been, are or may be in need of protective services;

(k) such matters prescribed by the regulations. 1990, c. 5, s. 13.

## Need for protective services

[94] The Minister has asked that both children be found in need of protection and that the disposition be their placement in the permanent care and custody of the Minister. The Respondents argue that the children are not in need of protection and the proceeding should terminate and the children should be returned to them. Each wants the care of both children.

[95] The Minister relies upon the following sub-sections of the *Children and Family Services Act supra*, as a legal basis for its application: s.22(2)(b), (e), (g), (h), (k) and (ja). Any one of these may be the legal basis for an order for permanent care and custody. For ease of reference, they are produced below. Since s.22(2)(a) and (f) are referenced in (b), (g) and (ja) respectively, they too are reproduced:

> s.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;
> >
> > (b) there is a substantial risk that the child will suffer physical harm inflicted or caused as described in clause (a);
> >
> > . . . . .
> >
> > (e) a child requires medical treatment to cure, prevent or alleviate physical harm or suffering, and the child's parent or guardian does not provide, or refuses or is unavailable or is unable to consent to, the treatment;
> >
> > (f) the child has suffered emotional harm, demonstrated by severe anxiety, depression, withdrawal, or self-destructive or aggressive behaviour and the child's parent or guardian does not provide, or refuses or is unavailable or unable to consent to, services or treatment to remedy or alleviate the harm;
> >
> > (g) there is a substantial risk that the child will suffer emotional harm of the kind described in clause (f), and the parent or guardian does not provide, or refuses or is unavailable or unable to consent to, services or treatment to remedy or alleviate the harm;
> >
> > (h) the child suffers from a mental, emotional or developmental condition that, if not remedied, could seriously impair the child's development and the child's parent or guardian does not provide, or refuses or is unavailable or unable to consent to, services or treatment to remedy or alleviate the condition;
> >
> > . . . . .
> >
> > (j) the child has suffered physical harm caused by chronic and serious neglect by a parent or guardian of the child, and the parent or guardian

> does not provide, or refuses or is unavailable or unable to consent to, services or treatment to remedy or alleviate the harm;
>
> (ja) there is a substantial risk that the child will suffer physical harm inflicted or caused as described in clause (j);
>
> . . . . .
>
> (k) the child has been abandoned, the child's only parent or guardian has died or is unavailable to exercise custodial rights over the child and has not made adequate provisions for the child's care and custody, or the child is in the care of an agency or another person and the parent or guardian of the child refuses or is unable or unwilling to resume the child's care and custody;
>
> . . . . .

[96] Following a disposition hearing the court, prior to removing a child from the care of a parent or guardian must conclude that leaving the child with the parent or guardian would not protect the child. Section 42(2) and (3) provides as follows:

> Disposition order
>
> 42.(2) The court shall not make an order removing the child from the care of a parent or guardian unless the court is satisfied that less intrusive alternatives, including services to promote the integrity of the family pursuant to Section 13,
>
> (a) have been attempted and have failed;
>
> (b) have been refused by the parent or guardian; or
>
> (c) would be inadequate to protect the child.
>
> (3) Where the court determines that it is necessary to remove the child from the care of a parent or guardian, the court shall, before making an order for temporary or permanent care and custody pursuant to clause (d), (e) or (f) of subsection (1), consider whether it is possible to place the child with a relative, neighbour or other member of the child's community or extended family pursuant to clause (c) of subsection (1), with the consent of the relative or other person.

[97] Extensive services were provided to E. C. beginning in 2006. She was involved in a lengthy proceeding ending in February 2008 and received extensive support. Since October 30, 2009, she has been involved in this proceeding. Her progress has been minimal.

[98] Shortly after the Respondents returned to Nova Scotia from * in June 2009, Janis Hatfield, a public health nurse employed by the local health authority was assigned to assist in the parenting of the children. She assisted the Respondents although her involvement and communication was principally with E. C.

[99] Social workers Lori Muise and Susan Sly were also available and offered their assistance to the Respondents.

[100] After the children were taken into care, social worker Ms. Briggs, accepted a supportive role with the Respondents. She gave the Respondents guidance in the area of family skills. M.B., L.M., K.S. and J.W.also gave evidence as to their role in the Respondents' lives. I will not repeat their evidence, only acknowledge that I have considered it. J. L. enrolled in a program dealing with domestic violence and attended sessions in the New Start Program.

[101] It is difficult to understand E. C.'s inability to appreciate the negative implications for herself and her children that flowed from her unstable lifestyle and choices following termination of the earlier proceeding in February 2008.

[102] With respect to J. L., his history of involvement with the Minister is much shorter and I am satisfied that he has made progress. He now has greater insight into his deficiencies and is motivated to address them.

[103] He also has a greater appreciation for the needs of the children. Nevertheless, he will continue to require support and services for a period of time to come should the children be entrusted to him.

**Best interests criteria**

[104] The *Children and Family Services Act* requires that the ultimate decision of the court when determining the appropriate disposition following this hearing be that which is in a child's best interests. (see *Children and Family Services Act*, s.2(2), s.42(1)).

[105] When determining the best interests of a child, I am required by s.3(2) of the *Children and Family Services Act* to consider fourteen enumerated circumstances if deemed relevant. I am not prohibited from considering additional relevant circumstances. For ease of reference, I reproduce s.3(2):

Best Interests of Child

3(2) Where a person is directed pursuant to this Act, except in respect of a proposed adoption, to make an order or determination in the best interests of a child, the person shall consider those of the following circumstances that are relevant:

> (a) the importance for the child's development of a positive relationship with a parent or guardian and a secure place as a member of a family;
>
> (b) the child's relationships with relatives;
>
> (c) the importance of continuity in the child's care and the possible effect on the child of the disruption of that continuity;
>
> (d) the bonding that exists between the child and the child's parent or guardian;
>
> (e) the child's physical, mental and emotional needs, and the appropriate care or treatment to meet those needs;
>
> (f) the child's physical, mental and emotional level of development;
>
> (g) the child's cultural, racial and linguistic heritage;
>
> (h) the religious faith, if any, in which the child is being raised;
>
> (i) the merits of a plan for the child's care proposed by an agency, including a proposal that the child be placed for adoption, compared with the merits of the child remaining with or returning to a parent or guardian;
>
> (j) the child's views and wishes, if they can be reasonably ascertained;
>
> (k) the effect on the child of delay in the disposition of the case;
>
> (l) the risk that the child may suffer harm through being removed from, kept away from, returned to or allowed to remain in the care of a parent or guardian;
>
> (m) the degree of risk, if any, that justified the finding that the child is in need of protective services;
>
> (n) any other relevant circumstances.

[106] Extensive evidence was received in this proceeding over four (4) days in 2010. In addition, evidence received over a total of nine (9) days in January and

September 2007 in the two hearings pertaining to X. C. forms part of the record. Expert reports were received, social workers evidence was also tendered. Extensive pleadings with detailed affidavits have been filed since the proceeding commenced in October 2009. Both Respondents testified.

[107] This court is required to assess the evidence, to determine whether the Minister has met its burden of proof, that is to establish on a balance of probabilities that the children are in need of protective services and finally, to determine by reference to the circumstances enumerated in s.3(2) what disposition is in the children's best interests. There are, of course, other statutory considerations.

[108] This *Children and Family Services Act* proceeding is not beyond the statutory time line.

[109] The court has a number of options. These are (1) to terminate the proceeding and order the return of either child or both children; (2) to order the permanent care and custody of the child or children; (3) to continue the temporary care and custody order; or to (4) return the children subject to a supervision order. Conditions may be attached to a number of these options.

[110] Should the court terminate the *Children and Family Services Act* proceeding and return the children to either parent? After considering the best interests of the children, I am satisfied on a balance of probabilities that a less intrusive measure than removal of the children from the Respondents would be inadequate to protect the children.

[111] What relevant conclusions have been reached by the court on a balance of probabilities. This requires a critical assessment of the evidence as it relates to the circumstances that give rise to the alleged risk, a conclusion as to whether a risk continues to exist and the merits of plans put forward for the children's care.

[112] Commenting on the need for a future plan for caring for the children, Dr. Blake recommended in her oral evidence:

> . . . Well I think first off they need to be in a very stable - these kids have been moving around quite a lot so they need to be in a very stable, loving, caring environment. That goes without saying. All the other sort of appointments and

> things like this need to happen but stability for these children is going to be very, very important and then with that stability should come the ongoing. I mean these are quite a few appointments for both of these children and they probably need to be done separately. So to have backup and people around that can help out with appointments and go with caregivers and to offer them a stable upbringing that they need.

[113] To further underline the significance of the recommendation in this respect, Dr. Blake also described the long term consequences that can result from emotional trauma and emotional neglect experienced by a child:

> . . . One of the things that we are seeing in the literature is that, I mean, the physical and sexual abuse can be seen, can be recorded. But it's often the emotional and the deprivation that you don't see until years down the road. And the years down the road can be from a number of things to attention deficit problems to appositional defiant, to encompasses, bowel problems, smearing toilet bowls, it's actually a list a mile long.

[114] I must now turn to a consideration of the risks and needs identified by the Minister as a basis for its application for permanent care of the children.

**- risk of physical harm s.22(2)(b)**

[115] I am not satisfied that the children are at risk of physical harm if in the care of either Respondent. I have considered the circumstances that gave rise to a contrary finding in the 2007 proceeding involving X. C.

[116] There is no other evidence on this issue arising from E. C.'s care of the children.

[117] I am not concerned that J. L.'s standard of care will result in physical harm of the children. I have considered the evidence which described an event in the access room and pertaining to his supervision of C. C. It does not justify a generalized finding concerning his ability to supervise and to protect the children or create a risk in this respect.

**- risk of not receiving medical treatment, s.22(2)(e)**

[118] I am satisfied that E. C. can not be relied upon to ensure the children receive medical treatment. She has consistently demonstrated that she is not appropriately vigilant in doing so. The same conclusion can not be as easily reached with respect to J. L. His involvement in X. C.'s life and C. C.'s life was secondary to that of E. C. He also demonstrated more diligence in having the children cared for by Dr. Ponnambalam. With E. C. out of his life, he is better positioned to ensure medical treatment for the children, however, the risk exists because of the special needs of X. C. and the possibility of J. L. becoming over whelmed by the responsibility of meeting the children's medical needs; gaining employment and establishing a residence. This risk is substantial.

**- risk of emotional harm**, **s.22(2)(g)**

[119] Given the special needs of the children and the parents' deficiencies, the risk of emotional harm to the children continues to be substantial if either or both are placed in the care of either Respondent. E. C. is not offering a stable alternative and continuity of service providers. J. L. is offering a continuity of services but his current state of transition to a life in a stable residence has inherent risks. This transition is a significant undertaking and challenge for him. The over lap of

parenting responsibilities creates a significant risk of his being over whelmed and unable to protect the children or child in his care from emotional harm.

**- risk that a parent/guardian will not attend appropriately to a child's mental, emotional or developmental condition that the child suffers from, s.22(2)(h)**

[120] The children both have needs that require special attention. My conclusions about the existence of a risk described by s.22(2)(g) are applicable.

**- risk of abandonment of the child, s.22(2)(k)**

[121] There is insufficient evidence upon which this risk could be found to exist.

**- risk of physical harm caused by neglect, s.22(2)(ja)**

[122] For reasons already stated, there is compelling evidence of this risk should either or both children be placed in E. C.'s care. Should both children be returned to J. L., the risk also exists although for different reasons. At this time, J. L. can not manage the needs of the children and his own needs. In the event that X. C. or C. C. is placed with him, the risk continues to exist but at a lesser level. The risk is higher in the case of X. C. because his needs are greater. In both cases however, the risk is substantial.

**Conclusion**

[123] This proceeding is a review of a disposition order first made on May 25, 2010. That order placed the subject children in the temporary care and custody of the Minister. They continue in the temporary care of the Minister. The outside date for concluding this proceeding is on May 25, 2011 or close to that date. Months remain before the proceeding must be dismissed, terminated or a permanent care and custody order issued for one or both children. Section 42 of the '*CFSA*' authorizes this court to make a range of orders.

[124] Before making any order, s.46(5) also requires that the court may do so only if the order is judged in the child's best interests. As discussed *supra* at paragraph 105, in determining a child's best interests, a range of factors must be considered *inter alia*. I have done so.

[125] When called upon to review a temporary care and custody order, s.46(6) provides that a further order for temporary care and custody is not to be made unless the circumstances justifying the earlier order are unlikely to change within a reasonable period of time not exceeding the remainder of the time period, so that the child can be returned to the parent or guardian. I have turned my mind to this requirement.

**- X. C.**

[126] E. C. appears to be functioning as a member of *. She has a history of not having functioned. I will not repeat the observations made *supra* about her history.

[127] I am satisfied that she is coping with her current responsibilities because she does not have additional responsibility for X. C. and C. C. Her plan to relocate the children to * is not in their best interests.

[128] She could not cope with the challenge of parenting in Nova Scotia, * or *. That inability will not change.

[129] In addition, the children have service providers here. They both require stability and attention which E. C. can not provide.

[130] I accept and agree with the opinion of Dr. Kronfli, who testified that E. C. is simply not capable of parenting these children or either of them.

[131] I am further satisfied that the children's placement in temporary care is a relief to her. Based on all of the evidence, she is either not willing or unable to care for the children. Her inability to parent, even after the extensive support offered to her over many years, can not be explained on the basis of cognitive deficiencies. Her problems are deep rooted and the children have suffered significantly as a consequence.

[132] The children would be at risk and in need of protection if returned to her care. That is not likely to change within the time frame remaining in the period for this proceeding.

[133] These conclusions are applicable to her parenting ability pertaining to both children.

[134] The parenting challenge in this case is now further complicated by the needs of these children. These needs increase the significance of the parenting deficiencies of E. C. and reinforce the conclusion that it is not in the best interests of these children to be placed in her care and this assessment is unlikely to change within the time line.

[135] Following the statutory checklist for assessing the best interests of the children, I offer the following conclusions as they relate to E. C.:

> - the children's best opportunity for a positive relationship with a parent or guardian and for a secure place as a member of a family will be in a home, other than that offered to them by E. C.
>
> - there is no involvement in the children's lives by relatives, this will not be a benefit to them if they remain with E. C., their placement in another home may offer this opportunity to them.
>
> - placement of the children with E. C. will result in a significant and immediate disruption of the children's lives and given E.C.'s history, it is probable that other disruptions will follow, the best opportunity for continuity of the children's care is for them to remain in Nova Scotia.
>
> - the bonding between E. C. and the children is very weak and this is unlikely to change, the best prospect for these children to bond with care givers is for them to be place with others.
>
> - these children have special needs and E. C. will not be able to address these needs or to ensure they are monitored closely and managed with diligence.
>
> - the cultural, racial and linguistic heritage of the children is not a consideration nor is the religion of the children.
>
> - adoption - The Minister proposes adoption of the two children, preferably by the same family. Separating siblings is not desirable. I have considered this factor and concluded that in the circumstances, a balancing of all of the factors favours placing one of the children in permanent care. In the case of *Nova Scotia (Community Services) v. J. E., M. A. and S. A.*, 2010 NSSC 422, the Minister's plan was to leave one child with the biological mother and to place the younger child in permanent care. Obviously, keeping the children together is only one of the factors to consider
>
> - the children's wishes can not be determined.

> - delay in the disposition of the case, particularly in the case of X. C. is not in his best interests, he requires a high standard of care and given his age, he can not afford a further disruption in that care.
>
> E. C. is not capable or is unwilling of parenting as demonstrated by her history and returning one or both children to her will put the child(ren) at risk; keeping the children away from her minimizes the risk.
>
> - the risk that resulted in finding the children in need of protective services was significant.

[136] Given the foregoing conclusion with respect to E. C., a consideration of the plan of J. L. and the Minister is as follows:

> I am not satisfied that J. L's plan in as much as it pertains to X. C., is in X. C.'s best interests. J. L. has a history of instability and his parenting deficiencies, combined with X. C.'s special needs, would result in a living circumstance that is not in X. C.'s best interests. His plan to also parent C. C. serves to further dilute the attention he can devote to X. C.
>
> The evidence establishes, on a balance of probabilities, that J. L. favours C. C. with his attention. This is partly because C. C. is his biological child. It is also because E. C. preferred that he attend to C. C.'s needs. Regardless, this was his history with these children prior to temporary care of them.
>
> X. C., as stated, has significant needs and J. L. can not meet these needs. It is not in X. C.'s best interests that he be placed with J. L. and this is not likely to change within the time line remaining for this proceeding (s.42(4)). My conclusion would be the same whether X. C. is the only child placed with J. L.

[137] The evidence clearly establishes that extensive services to promote the integrity of the family have failed and continuing these services would not protect X. C., whether in E. C. or J. L.'s care (s.13(1) in s.42(3)). No plans to place the child with anyone else has been placed before the court (s.42(3)).

[138] After considering the criteria of s.3(2) when assessing the best interests of both X. C. and C. C. in the context of the plan put forward by J. L., I have come to the following conclusions:

> - with respect to X. C., many of my observations about his bonding with E. C. also apply, J. L.'s bonding with X. C. is weak; however I am satisfied that J. L. began bonding with C. C.; the evidence supports the conclusion that he was a nurturing parent to her; it is acknowledged that C. C.'s placement in temporary care has disrupted this process; nevertheless, with respect to C. C., there is an

opportunity for C. C. to develop a positive relationship with a parent and a secure place as a member of a family.

- the evidence does not permit a conclusion about the opportunity for the children to have a relationship with relatives.

- continuity of the children's care can be maintained in metropolitan Halifax by J. L., however I am satisfied that J. L. can not manage the needs of both children; I am satisfied that he can meet that responsibility for C. C., but not X. C.

- the bonding of J. L. with the children is commented upon above.

- the extent of the children's physical, mental and emotional needs and the appropriate care or treatment to meet those needs supports a conclusion that J. L. can not parent both of these children together to an appropriate level, nor X. C. alone; these children have special needs and will need the involvement of a parent.

- the children's cultural, racial, linguistic and religious faith are not factors.

- J. L.'s plan has some merit but it will not meet the needs of both children; his plan to work in the Halifax region will permit a continuation of special services for C. C. and established relationships can be preserved for C. C. and for J. L. as well.

- the children's wishes are not a consideration.

- delay in returning C. C. to J. L. is an obstacle to C. C.'s bonding with J. L., a child's sense of time is different than that of an adult in the case of X. C., any delay or disruption in the continuity of the services he receives will be harmful.

- as stated, given J. L.'s deficiencies as a parent, X. C. faces a significant risk if returned to J. L.; in the case of C. C., the risk is less, so given he would be the only child entrusted to J. L., and given the availability of ongoing support and J. L.'s ability to learn, as a conclusion derived from evidence of his motivation and intelligence.

- the children were at significant risk when taken into care; they were primarily in the care of E. C. at that time.

[139] Section 42(4) requires that I consider whether the circumstances justifying the order for permanent care and custody of the children are unlikely to change within the time remaining for this proceeding. I am satisfied that in the case of J. L. and the prospect of his care of X. C., they will not change. However, with respect to C. C., I do not conclude that the circumstances are unlikely to change within a reasonable time within the time frame.

[140] In fact, I am satisfied on a balance of probabilities that the circumstances giving rise to the proceeding involving C. C. will change in a positive way if C. C. remains in temporary care. E. C. will not be involved and J. L. has had the benefit of ongoing services to support his parenting of C. C. He has the intelligence and motivation to parent C. C. I am satisfied that he can achieve an appropriate standard within the remaining time for doing so.

**- the plan for adoption: s.3(2)(i) and s.3(3)** (I need not repeat the comments I made earlier)

[141] It is therefore ordered that with respect to the child X. C., an order for permanent care and custody will issue as provided for by s.42(1)(f).

[142] An order for temporary care and custody will issue with respect to the child C. C. The order will provide for access by J. L. but will not provide for access by E. C.

[143] Dr. Kronfli gave important evidence on the level of contact that should exist between a child and a caregiver to establish a secure bond between them. It is important that J. L. and C. C. be given the best opportunity to achieve that bond, subject of course to a consideration of the child's overall best interests. Given that only a short period remains before this proceeding must end, it is important that the matter of C. C.'s care and her time with J. L. be reviewed at the earliest opportunity.

[144] Therefore, a review of this order will be scheduled for a hearing in 4-6 weeks to permit J. L. to put forward further and more current details of his plan for the return of C. C. to his care subject to a supervision order. J. L.'s living arrangement, child care plan and employment circumstances were not clearly defined by the evidence and I accept that given the litigation and the uncertainty that it creates, some of that is understandable.

[145] In summary, the older child is ordered to be in permanent care and the younger child, a temporary care and custody order will continue and there shall be no contact for E. C. with the younger child.

[146] I am asking that the matter return near the end of February 2011 so that the parties may be heard on the issue of a supervision order being put in place that would permit the child to be placed in J. L.'s care.

[147] I will be away for a couple of weeks. I say that only because if any of the parties are looking for a text, it may be a few weeks. What I have before me is a somewhat complete typed comments with a lot of handwritten notes and no one will really have an opportunity to do the editing until probably the first week of January. So you can just let Ms. . . . . know. Her number is 424-. . . . . Obviously, in the event that appeals are planned, it is nice to have a text to work from. But in any case, the staff here will copy the audio record.

[148] An order for permanent care and custody of X. C. will issue.

**J.**