

Citation: *J.A. (Re)*, 2017 YKTC 7

Date: 20170217
Docket: 14-T0056
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before His Honour Judge Luther

IN THE MATTER OF THE *CHILD AND FAMILY SERVICES ACT*,
R.S.Y. 2008, C. 1, and *J.A.*, *L.A.*, *J.A.*, and *L.A.*

Publication of the name of a child, the child's parent or identifying information about the child is prohibited by section 173(2) of the *Children's Act* or section 162(2) of the *Child and Family Services Act*.

Appearances:

Lauren Whyte

Counsel for the Director of Family and
Children's Services

Lynn MacDiarmid

Counsel for the Mother

Andre Roothman

Counsel for the Children

RULING ON APPLICATION

[1] On January 19, 2017, I issued my ruling on the application of the Director of Family and Children's Services, *J.A. (Re)*, 2017 YKTC 1, thereby granting a six months' Temporary Custody Order.

[2] Further to the judgment of October 1, 2015, *J.A. (Re)*, 2015 YKTC 36, this Court ruled that *J.A.*, who was born on April 2, 2006, continues to be a child in need of protective intervention. The following are my reasons for this second determination.

[3] After the first decision, it must be asked what is new or what has changed? There have certainly been some significant changes in the lives of J.A. and his mother L.A., some positive, others not.

[4] During the course of this decision, I will review the reports of the Director's two experts and efforts by L.A. to establish a safe, caring, stable, and consistent environment at home for her son J.A. Furthermore, J.A.'s life in the care of the Director will be examined.

[5] The Director maintains that on a balance of probabilities, there is risk of harm to J.A. in the future and that there is likely to be emotional or physical harm if J.A. is returned to L.A.'s care at this time.

[6] In presenting the case, the Director largely relies on the reports of two experts plus two incidents; one from August 2015 and one from August 2016.

[7] Firstly, I shall analyze, to the degree necessary for this decision, the conclusions of the two experts, Dr. Geoffrey Ainsworth, a child and family psychiatrist and Dr. Richard Lucardie, a registered psychologist. Both men have considerable experience.

[8] Dr. Ainsworth met with J.A. on September 17, 2016 and was "finally able to do a complete interview" with J.A. He was aware of the contents of the reports of Yukon psychologist, Nicole Bringsli and Dr. Richard Lucardie. He also spoke to J.A.'s family physician, Dr. Sheila Curran, and some of her colleagues.

[9] At the actual interview, which lasted close to one and one half hours, Dr. Ainsworth and J.A. were joined by his therapist. Afterwards, Dr. Ainsworth spoke to a male staff member at the group home.

[10] The psychiatrist concluded that J.A. has a Disinhibited Social Engagement Disorder. "This is a pervasive persistent disorder that is difficult to treat and, in a 10½ year old, is likely to cause severe long-term difficulties for him".

[11] He was in agreement "with the psychological reports that he needs to be in a stable environment, such as the group home, for the time being". Dr. Ainsworth was of the opinion that J.A. "needs to be in a place where he can get skilled care on a consistent basis for the long term, until he is able to show that his behaviour really has settled".

[12] Dr. Lucardie has prepared a few thousand psychological evaluations for child protection court decisions. For the purposes of this case, he completed a parenting evaluation on L.A. and a psychological assessment on J.A. Dr. Lucardie met with L.A. on January 15, 16, and 17, 2016 and clinically for about eight hours. The psychologist first met J.A. on January 15. More time was spent together on January 16 and 17. He conducted his psychological evaluation with J.A. on January 18.

[13] On this particular day, J.A. did complete psychometric measurements but refused to do any more as he was previously unaware of the scheduled appointment. J.A. does well with structure and schedule but has considerable difficulty adjusting to unknown changes. He refused to co-operate, crawled under the desk, and deliberately

annoyed others and intruded into their workspaces as he was being oppositional and defiant.

[14] Dr. Lucardie's report on L.A. and her children was voluminous. It is outside the scope of this judgment to comment on all the observations and conclusions. He gave lengthy testimony on November 8, 2016 and was not seriously challenged on cross-examination in any respect.

[15] In terms of L.A., Dr. Lucardie was concerned about her perception of her children and her inconsistent disclosure. At pages 38 and 39 of the report, there was at least five times that the psychologist, in writing about various subjects involving the mother and her children, had to conclude these paragraphs with words such as "not fully supported by background...information" or "not fully supported by client's clinical interview disclosures".

[16] In discussing L.A.'s profile, Dr. Lucardie emphasized that she was defensive, minimized problems, and underestimated problems. In illustrating that this shielding is a defence, the psychologist explained how she thus reduced her stress and responsibility with the inner conclusion that if she is not accountable, she does not need to change. Somewhat atypical of defensive respondents were some areas "where L.A. described problems of greater intensity". They are listed in the penultimate paragraph on page 29.

...poor control over anger; preoccupation with physical functioning; impact of traumatic events; unusual sensory-motor problems; unusual ideas or beliefs; rumination and worry; alcohol abuse or dependence; suspiciousness; history of antisocial behaviour; stress in the environment; unhappiness; failures in close relationships; disruptions in thought

process; poor sense of identity; frequent routine physical complaints; feelings of helplessness; sensation-seeking behaviour; and thoughts of death or suicide.

[17] Also on page 29, Dr. Lucardie listed the personality configuration for L.A.:

Narcissistic Personality Disorder
with Obsessive Compulsive Personality Traits
Paranoid Personality Features
and Schizotypal Personality Features

[18] These were repeated in the Recommendations at page 44, wherein Dr. Lucardie felt that L.A. “may benefit from continued counselling by a trained individual specialized to help her address” the personality configuration and rule out other diagnostic possibilities such as Personality Disorder not otherwise specified.

[19] Also, a capable therapist, counsellor, or psychologist could help her with:

- childhood and adult history of abuse familial and parent;
- child relationships;
- interpersonal communications;
- anger management/conflict resolution;
- empathetic awareness;
- defensiveness;
- insight/self-awareness;
- trust issues;
- stress management/crisis management, and
- relaxation training, parenting and parenting stress.

[20] Dr. Lucardie also listed a number of other areas of concern for which L.A. may benefit from parenting education.

- a. Application of empathetic awareness.
- b. Understanding of children's developmental capabilities and limitations.
- c. Parent-child role reversal.
- d. Rigidity in one's attitudes towards the appearance and behavior of children.
- e. Understanding and awareness of the possible impact a parent's mental health concerns may have on self-care, child care, and children's emotional behavioural functioning.
- f. Understanding and awareness of the possible impact a child's exposure to domestic violence may have on his/her emotional behavioural functioning.
- g. Application of child empowerment.
- h. Understanding and awareness of the possible impact abuse and neglect may have on a child's emotional behavioural functioning.
- i. Application of age-appropriate child discipline.
- j. Understanding and awareness of the possible impact abuse and neglect may have on a child's emotional behavioural functioning.
- k. Understanding and awareness of the importance medical care, hygiene, environmental stimulation and attention to a child's special needs on children's emotional, physical and intellectual development.
- l. Understanding and awareness of the risk factors associated with children's physical, sexual, and emotional abuse and neglect and their prevention.
- m. Parenting stress.

[21] Also listed on page 45 are reasons why participation in an anger management program may be of some assistance.

- a. Relaxation training/stress management
- b. Cognitive restructuring or changing the way you think when angry
- c. Problem-solving/conflict resolution
- d. Interpersonal communication
- e. Alternatives to anger expression
- f. Changing one's environment
- g. Insight/self-awareness
- h. Empathic awareness

[22] As to J.A., Dr. Lucardie stressed the importance of the recognition and sensitivity of the realistic capabilities and limitations of J.A.

2. It is recommended that those working with and providing services to [J.A.] be informed of his developmental abilities and limitations in order to help set appropriate expectations for him and to assist him with self-regulation, socialization, cognitive functioning, and academic achievement.
4. Continuity of relationships and surroundings are some variables that may impact children's emotional development. Background file information and these psychological evaluation findings suggest that when [J.A.'s] basic needs are provided for, he benefits emotionally, behaviorally and adaptively. It is recommended that the Director continues to be sensitive to [J's] needs and provides him with a home and community environment that can consistently meet his basic needs.

[23] Of utmost importance is the safety of J.A. As of now, L.A. is not a "reliable reporter". Therefore, for the time being, there must be supervised visits. While J.A. has a valid desire for a relationship with his mother, which must be encouraged, his safety is paramount.

[24] It also appears that J.A. has expressed an interest in staying with his father in Nova Scotia. This needs far more examination and scrutiny. That J.A. did so well with his father on his recent visit to Whitehorse from Nova Scotia, tends to confirm his confused emotional state with attachment issues.

[25] Returning to J.A.'s safety, Dr. Lucardie had no hesitation in stating clearly that his community and First Nations culture are secondary to his safety. Also, the educational and developmental needs of J.A. are to be addressed, as opposed to the social needs of L.A. in having her son home.

[26] On the subject of the August 2016 incident, which will be outlined later, this report of Dr. Lucardie was dated April 29, 2016, some three and one half months or so before. Nonetheless, Dr. Lucardie was not at all surprised by that incident, testifying that it fits within the profile. These events were predictable. “My report is correct. The only new thing is the alcohol.”

[27] As to J.A.’s placement in the group home and his attendance at school, the psychologist views these as “very positive environment[s]”. Learning is tough for J.A. and he could barely write his name at age nine. While J.A. is often a caring “people person”, he still poses a threat to himself, other children, and adults.

[28] While L.A. can sometimes properly parent J.A., there is considerable risk in the long term to his safety and personal development, including emotional stability.

[29] Thus, it would be, even as acknowledged by L.A., a premature move to send him home now, even with local supports in place. To have J.A. experience failure in being protected and nurtured as he needs to be, would undoubtedly cause a major regression, with consequences which may well go beyond undoing what has already been accomplished.

[30] The main recommendation of Dr. Lucardie is that J.A. remain in the care of the Director “until such time as L.A. is able to consistently demonstrate the ability to provide for her son’s safety, security, stability, consistency, emotional, and behavioural well-being, and special needs ...”

[31] Furthermore, the visits with his mother should be supervised with an emphasis on quality and quantity of time.

[32] These recommendations are spelled out in detail on pp. 84 to 86 of the report.

[33] Not surprisingly, they include graduation to unsupervised visits and that the “return should be gradual with increased and prolonged visitation over time”.

[34] It is important to note that for Christmas 2016, J.A. was home and his grandfather A. was the supervisor for that three to four day period in which, according to J.A., he spent more time with his grandfather than his mother. Subsequently, according to the affidavits and evidence of Social Worker Angela Jobbin, visits have been stepped up, certainly between January 2016 and October 2016.

[35] As to the visits home, most have gone well, although there is still concern expressed about how J.A. acts when he returns to the group home. To a degree, this is understandable, given the emotional aspect of being transitioned from family to professional care and his problem adjusting to changes in routine.

[36] What took place in August 2016 is of some concern to the Court. What had taken place in August 2015 is of less concern, given that there were no criminal charges laid by the R.C.M.P., the passage of time and curtailed visitation by L.A. The criminal standard of proof beyond a reasonable doubt is much higher than the civil standard.

[37] In terms of August 2015, based on what J.A. told the Whitehorse staff and social worker about his mother prying his mouth open, and that he started to well up as he spoke, tend to its truthfulness, plus the visual observation of his mouth immediately

upon his return to the group home. There were consequences to L.A. for that in terms of curtailment of visiting. Enough said.

[38] Let's move on to August 2016, the Discovery Days Festival weekend. J.A. was home from August 11 to 16 "to attend part of a Bible day camp and to attend the Discovery Days long weekend festivities". Disclosures were made by J.A. to Social Worker Chrissy Sands, after intake back in Whitehorse.

[39] Ms. Sands has a Bachelor of Social Work and has taken a two day course on the subject of forensic interviewing of children. In addition to her *viva voce* evidence from November 7, 2016, we have her two and one half page affidavit dated October 14, 2016. She had never met L.A. or J.A. before. In addition to J.A. and herself, a group home residential care worker was present, who didn't participate in any way during the interview. The evidence of Chrissy Sands was unchallenged on cross examination.

[40] Paragraphs 9 to 18 set out in detail what information was passed on to Ms. Sands.

9. I asked [J.A.] if he knew why I wanted to talk to him today. He replied "yes, because his mom and sister hit him." I asked him when this happened and he said on Monday (it was Thursday in the same week when I interviewed [J.A.]).
10. I asked how it started and [J.A.] said the following:
 - (a) He and his sister [L.A.] were arguing over a pocket knife.
 - (b) [Sister L.A.] said the knife was hers and told their mom.
 - (c) [Sister L.A.] then hit him on the head and left a bump. At this point, [J.A.] felt his head and said that the bump was still there.
11. I asked [J.A.] what happened after that, and [J.A.] said that I should just read the notes. He appeared to be frustrated when he said this.

12. I told him that he had initially said that his mom was involved, and I asked him how she was involved. [J.A.] replied that his mom pushed him.
13. [J.A.] was not willing to elaborate on this point, but he did say that his mom pushed him one time and his sister hit him multiple times. I asked what happened after this and [J.A.] did not answer.
14. I then asked whether the hitting has happened before and [J.A.] said “all the time.” He said that when he lived at home, mom, [sister L.A.] and [sister J.A.] would “beat him up” all of the time.
15. I asked about drinking in the home, and [J.A.] confirmed that he knows what alcohol is and what it means to be drunk. [J.A.] said that his mom drinks until she is drunk every night. I asked [J.A.] if his mom was drunk over the weekend, and he said yes.
16. I asked [J.A.] about what he would like to see happen. [J.A.] said that he would like to live with his father in Nova Scotia. He said that his father does not drink, but that he has not seen his father since he was six years old. When I asked [J.A.] about how he feels about his mom’s home, [J.A.] said that he does not want to go there for 2 – 3 weeks.
17. I also asked [J.A.] about how he feels about his sisters being in the home, and whether they are safe. [J.A.] said that he did not know if they are safe. When I asked whether they are hit, he said “yes, all of them are hit.”
18. I then asked him if there was anything else he thinks that I should know that would help me keep him safe. [J.A.] said that on the weekend, he went to his [Uncle T’s] house with his sisters and that when he called his mom from there, she was really mad on the phone. I asked how he got back home from [his Uncle’s] house and he said that his [Aunt] drove him home.

[41] Chrissy Sands testified that in her opinion J.A. was truthful and genuine.

[42] Residential Carer Worker, Shane Rollins, gave us the background as to how J.A. came to disclose the information about the Discovery Days weekend events. Upon his return to the group home on August 16, 2016 at snack time, approximately 7:45 p.m., J.A. told Mr. Rollins, another staff, and two other youth that things had not gone well on

the home visit. Tactfully, Shane Rollins arranged that discussion to occur with only the two staff, absent the other youth, just before bedtime.

[43] What J.A. disclosed to Mr. Rollins and the other staff member was set out in detail in paragraphs 7 to 12 of his affidavit dated October 7, 2016.

7. During “down time,” I told [J.A.] that I had to get a pad and paper so that I could take notes, and he said, “of course.” Once I had the pad and paper, [J.A.] told me the following:
 - (a) At some point during the visit [home], his sister took his pocket knife and would not give it back to him.
 - (b) His sister went to their mom, who was on the phone, and told her that the knife was hers, which [J.A.] disputed.
 - (c) His sister then started to hit [J.A.], and he used self-defense to protect himself against her blows.
 - (d) His mom told them to stop it and said “they are at it again.”
 - (e) The fight moved into the kitchen, where his sister threw a plate at [J.A.], but he was able to move out of the way and it smashed to the floor.
 - (f) His sister then hit [J.A.] on the top of his head with her fist, which left a bump on his head.
 - (g) [J.A.] blocked other hits from his sister and ended up holding on to her arm.
 - (h) At this point, his mom stepped in and pushed him to the ground, where he banged his head again in the same spot. His sister then gave him the middle finger.
 - (i) He got in trouble and his sister did not. His mom seemed okay with his sister attacking him.
 - (j) His mom told him that when he comes back that he may be grounded or that she would just hit him.

8. I do not recall [J.A.] telling me which sister he was talking about, but I now understand that he was referring to [sister L.] during his disclosure.
9. [J.A.] also told me that his mother was drunk one night during his visit and he and his sister had to stay at his aunt's place. He said that he and a friend walked around [...] unsupervised during the visit.
10. [J.A.] told me that he did not want to see or visit with his mom for 1 – 2 weeks. He was adamant on this point. During our conversation, he repeated a few times that he could not believe that his mom just sat back and watched his sister hit him. [J.A.] seemed to be shocked and hurt about this.
11. I looked at his head and I could see and feel the bump on his head.
12. This disclosure was very unusual for [J.A.], as he had never really wanted to talk about what happened during visits with his family [...] before if the visit did not go well.

[44] The events of the Discovery Days weekend are very troubling to the Court, primarily due to the lack of priority that J.A. was given by L.A. for those days, coupled with the physical altercation.

[45] The best explanation L.A. can give for J.A. and his altercation with his older sister is that L.A. left her room where she was talking to R.J. because she could hear matters escalating. L.A. got in the middle of it to break it up, raised her arm, and did not intend for J.A. to fall. The mother told the daughter to leave and to give J.A. some space. J.A. threw a brush at his sister. L.A. told him to go to his room to calm down. Before leaving the immediate area, J.A. threw a plate to the floor and a jar at his sister. After 30 minutes, the mother made supper.

[46] The account given by J.A. referred to above in the paragraphs from the two affidavits is significantly different. J.A. was physically hurt by two blows to his head, one caused directly by his older sister hitting him and the other when L.A. pushed him to the

floor. J.A. was emotionally hurt because he couldn't believe that his mother just "sat back and watched his sister hit him."

[47] The weekend also involved a significant amount of drinking by L.A. She had caesars the morning before the fight occurred. Apparently this was the third morning in a row she had been to such a "breakfast club".

[48] L.A. was clearly intoxicated when she got into a fight at a community dance. The victim herself confirmed that they were both intoxicated but no charges were laid as witnesses were unhelpful to the police.

[49] One evening, J.A. and a friend were outside until 11:15 pm walking around. In some sense, this is not unusual in northern towns, where in August it is still daylight at that time of night. What is unusual though, is that a mother who is so intent on having her 10-year-old son returned to her care and knowing that she is under close scrutiny, would have allowed this to happen.

[50] At other times, while L.A. pursued her social interests, she did make some arrangements for an adult to look in on, monitor, or care for J.A. At least one night, J.A. and his sister had to stay overnight with a relative. Note what happened during Christmas 2016, when J.A. spent more time with his grandfather than with his mother.

[51] None of these Discovery Days events were reported to the social workers. Thanks to their contacts, the R.C.M.P., J.A., and Facebook, this important information came to the attention of the Director.

[52] L.A. knew, or ought to have known, at all times since my decision of October 1, 2015, that for J.A. structure, routine, and consistency were vital. Also, he is a child with special needs who is very, very sensitive to changes.

[53] L.A.'s life has unfolded in a tragic way. She has had unstable and unhealthy relationships with men. Before her 20th birthday, she was pregnant with twins. Through decisions which she was unable to responsibly make, she has largely deprived herself of a personal life for herself. Hence the perceived need for socialization during the Discovery Days weekend.

[54] While I don't expect L.A. to be with J.A. every minute of the day while he is home on visits, her desire to have him return to her care is certainly justifiably brought into question because of the low priority afforded him during that time. Despite all her supports and this continuing court case, she still does not fully appreciate the big picture here. Simply, she does not get it.

[55] That is not to say that there has not been some progress. Indeed, one must acknowledge and give credit for L.A.'s efforts at seeing J.A., including the important dance, taking him to Edmonton on a successful trip, regular contact with her supports, increased cooperation with social workers, engaging her First Nation, working with Big Brothers, self-recognition of some of the narcissism identified by Dr. Lucardie, plus her falling short as a good parent. All of these are steps in the right direction, but constant awareness and response to J.A.'s needs, plus the significant risk of harm to J.A., as clearly seen in the Discovery Days incidents, are certainly part of the big picture, which L.A. does not fully grasp.

[56] I would reiterate paragraph 11 of the October 1, 2015 judgment.

Before analyzing the nature of the abuse alleged, I want to make it abundantly clear that I am not ruling whether the Director can provide better for a child than a single mother can. I am not ruling whether J.A. can get better education in Whitehorse... . I am not ruling whether J.A. is a bad kid and a young criminal who is out of control. I am not ruling whether Ms. A. is a bad mother who does not love her children. I am not ruling whether Ms. A. needs to be punished for any past wrongdoings or neglect. This is not the purpose of child protection cases. The paramount test here is: What is in J.A.'s best interests? We all want J.A. to flourish in a stable, caring, and long-term family environment.

[57] In that regard, I must again address the issue of education. L.A. has been working closely and creatively with her First Nation and the staff at the Public School. I am satisfied that every possible effort will be made locally to not only accommodate J.A. but to nurture him in his educational endeavours. This will present tough challenges. All involved should be fully aware of the experts' reports, especially that of Dr. Lucardie, in setting realistic goals and means to attain them.

[58] K.J. has been J.A.'s school teacher since January 2015. J.A. is in a programme for students with intensive behavioural needs. He enjoys school and his attendance has been good.

[59] We have the benefit of K.J.'s affidavit and her sworn testimony. J.A. is her most challenging and complex student.

[60] Just as there was an adjustment problem after visits with L.A. at the group home, so also at the school. K.J. observed both before and after visits, significant issues with defiance, sadness, and refusals to participate.

[61] Academically, J.A. struggles severely with writing and reading, whereas math, social sciences, and science are approaching grade level. Her best hope is that with huge efforts all around, J.A. will bring the writing and reading closer to grade level. Dr. Lucardie was concerned about this and made a direct observation about his barely being able to write his name.

[62] It would appear that it will be a major uphill struggle to integrate him into the mainstream classroom anywhere. So far there have been several unsuccessful attempts. It may very well be that J.A. will never achieve a full high school education. Nonetheless, perceptive educators may be able to steer him in a direction in which he is capable and seriously interested. If so, he may latch on to certain life and job skills which will lead to a relatively good life. If not, as opined by the experts, he may be doomed to an introduction to the Youth Criminal Justice System and remain fully in its grip continuing on through adulthood. All reasonable steps must be taken to avoid this miserable life.

[63] While his current school model may be partially replicated in his home community, there are very real concerns about how much time each day J.A. would spend in school there, how he would socialize with the other students, and whether he would be capable at all of being in the mandatory French immersion programme that starts in Grade 5. These are all major hurdles which certainly wouldn't be meaningfully addressed within a couple of months. Indeed, they may well not be realized, even for the next school year starting in August 2017.

[64] Schooling, though, is not the deciding issue in this case. First and foremost, I must be satisfied that J.A. will be in a safe environment in which he will not be suffering from physical and emotional harm. In the home setting, he must be nurtured, loved, guided, and cared for on a constant continuous basis. This must be provided by his mother, L.A. as the primary caregiver, with only secondary assistance provided by her family and other supports.

[65] I was heartened to hear from R.J., S.T., and A.T. on November 9 and 10, 2016. These women all deeply care for L.A. and J.A. and, if the main home setting is such that my concerns are met, they, and no doubt others, in the community will be able to provide secondary care.

[66] R.J. is a very capable and caring woman who had J.A. staying with her for a while when he was apprehended. She has made the effort to visit him in Whitehorse and on at least one occasion to bring him back to his home community. We were told of the First Nation homework club which would be helpful to J.A. As a cousin to L.A., she has known the family their whole life. It is regrettable that there is such a wide, seemingly untraversable chasm between L.A. and R.J. on the one side and D.S. on the other. I am still optimistic that this will be healed in time. It would have some beneficial effect on J.A., his older brother, and his grandmother, and should serve as an additional substantial support to L.A.

[67] Of note, R.J. was not made aware of the reports of the two experts.

[68] S.T. was, as recently as 2014, caused to be rightfully afraid of J.A. by his actions and words. Over the years, she has helped as a nanny for all four children of L.A. A

child care worker, she presently fosters an eight-year-old girl and plans to do so until the end of May 2017. When that ceases, she may be in a position to provide some respite care at her home.

[69] A.T. lived with the troubled family in 2009 in Nova Scotia. Now living in the Yukon, she has a close relationship with L.A. and her children. Surprisingly, she has never seen any anger issues with J.A. As to the visits, she has supervised many of them. She described J.A. as smart, kind, caring, and energetic, as well as proud of his art work. A.T. told us she would be willing to take J.A. on a full time basis into her two bedroom home. Like R.J., she was not aware of the experts' reports.

[70] L.A. has mentioned, in some detail, concerns that she has observed or heard of about the care J.A. has received since being placed in Whitehorse after the apprehension. No human system is perfect. While mistakes have been made, most are understandable, although not sanctioned. There is bound to be, from time to time, various miscommunications or slow responses to emails and telephone calls. The group home facility is well staffed with less than a handful of residents.

[71] The major incident at the group home was the sexual touching by one resident to another at a time when there was only one worker on duty in November 2015 and the boys built a makeshift fort in a bedroom. One boy tried to have the other boy touch his genitals by mouth or hand. J.A. was shocked as he witnessed this, but he was not physically victimized. Nonetheless, he witnessed something that should never have occurred in a professionally staffed residence. J.A. was a true friend to the young victim

and brought it to the attention of the staff, who have taken steps to prevent this from ever happening again. J.A. was commended by the staff for his positive response.

[72] In conclusion, it is unwise to disagree with the recommendations of two highly regarded experts in the absence of a credible and viable plan which realistically addresses the genuine concerns for his physical safety and emotional well-being. L.A. herself recognized that she was not seeking J.A.'s return right away as expressed during the November court dates.

[73] The challenge for L.A. will be to show the Court, when we turn our minds to this case again this summer, that a further finding that J.A. continues to be a child in need of protective intervention is no longer warranted. The Court will have to be satisfied then that there no longer exists a likelihood of risk of physical or emotional harm to J.A. There is still significant work to be done on L.A.'s part for sure, but clearly some progress has been made. The fact is that with the passage of time, we are drawing ever closer to the maximum cumulative periods for temporary custody orders.

LUTHER T.C.J.