

**Transracial Adoption: The Attitudes of
Black, White, and Mi'kmaw Social Workers**

by

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Dedication

This thesis is dedicated to my brother Malcolm Leon Borden Lumsden. He has been the inspiration behind this work. Malcolm has not only brought a great deal of love into our family, he has also opened a channel for us to learn about the history of people of African descent, and especially the history of blacks in Nova Scotia. In return I hope we are able to provide him with everything he needs for the continuation of his success in this world.

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Abstract

The purpose of this research was to study the social construction of transracial adoption (TRA) from the perspectives of different ethno-cultural groups, and to explore the perceptions of ethno-cultural identities and professionalism for social workers. The sample consisted of 15 social workers, with three categories including six black participants, six white participants, and three native participants. Fourteen of the participants were female, and one was male. The study was conducted using elite interviews. The information obtained during the interviews revealed some differences in the construction of TRA between the three groups, but differences within groups also surfaced. Social work values emerged as one of the main differences between groups, especially on the topics of permanence, what degree of involvement the birth families should have in adoption processes, and views of subjectivity and objectivity for social work practice. Assessments of identity and professionalism revealed that all ethno-cultural groups, but not all individual participants claimed to be objective and/or to value objectivity. Most individuals linked adherence to social work guidelines, being professional, and being objective together. However the individual's perception of fact can differ causing people to interpret objectivity differently. In discussions of TRA sometimes the perceptions of 'fact' were indeed different causing the interviewees to make claims to objectivity in different ways.

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Introduction

This study will explore and compare the attitudes of black, white, and native social workers toward transracial adoption (TRA) to better understand how TRA is constructed by different people, and what factors are thought to influence these constructs. Differing opinions of TRA could be attributed to various influences including race¹, perceived risks of transracial adoption, age, years of experience and many other possibilities. The theoretical focus of this study is on the social construction of TRA, and the issue of identity for professionals who are also members of interest groups. The research done here will allow black, white, and native social workers to voice their thoughts and concerns on TRA, while furthering our understanding of how and why their attitudes are formed.

The research to date has shown that there are mixed reactions to TRA. Some studies have shown that the black community is generally not opposed to TRA, while others concentrate on the opposition coming from some organized black and native groups (McRoy 1989; Howard, Royse and Skeryl 1977). The National Association of Black Social Workers and American Indian groups criticize TRA for the perceived harm it induces on the individual and on the wider black and native communities. Still, there are other individuals and groups coming from various racial and ethnic backgrounds who have shown support for TRA. Among those in support of TRA are, of course, a number of transracially adopting white parents who feel permanence, a sense of belonging to a family of one's own, and having a loving family life are most important for the healthy development of children. The range in attitudes on TRA led

us to explore the different ways in which people attach meaning to situations. We all have a unique way of seeing the world that is real to us. Our perception allows us to be confident that the claims we make in support of our arguments are also true. The TRA debate has produced competing truths.

Social workers have been chosen as subjects due to the likelihood that their exposure in the class room and on the job to TRA has enabled them to form informed opinions on the subject. The decisions made by social workers have an impact on adoptive families, children, communities, as well as policies. It is important that we, as social scientists, make attempts to understand to what extent different elements influence their decisions, and in turn what effects their decisions could have on others.

Chapter One

Literature Review

Transracial Adoptions Debated

Transracial adoption (TRA) has remained for almost thirty years a controversial, and emotional debate. It is a topic that has brought the discussion of 'race' into the lives and homes of white families that may have otherwise been unaware of the significant influence 'race' has on the lives of non-white and minority peoples. At first glance the TRA debate appears to be a concern focused on the well-being of black, and other minority, children in the instillment of a healthy ethno-cultural identity, but probing deeper reveals the debate also as controversial and in fact confrontational regarding the interests of different groups and the broader issue of race-based social constructionisms. What begins as a debate over the best interests of minority children in state care can develop as a socio-political and legal war over human rights and group interests. The transracial adoption debate is linked in a most fundamental way to broader discussions of 'race' relations.

The relationship between people of European descent with people of African descent, and people with native background in Canada, and in the United States has historically and traditionally been one of division. The roots of this diversity in Canada cannot be forgotten. M. Nourbese Philip (1992: 181) describes the nation as having been built on the basis of white supremacy. Simply implementing programs such as Affirmative Action, or the promotion of multiculturalism and tolerance for diversity, do not erase the divides caused by: slavery, segregation laws, reservations, discrimination, assimilation, mistreated treaties, poverty, and racism. The remnants of

all these things have kept white people, and people of colour in different worlds. Attempts to unite the 'races' have lead to the overlapping of cultures, if not the erosion of cultural identity for black, and native peoples rather than a solidarity among all human beings. One result of this amalgamation of the 'races' is that adoptions have ceased to be 'race' exclusive, and the racial boundary of what constitutes an acceptable, or appropriate family has been obscured.

One of the early definitions of a general adoption as found in the Oxford English Dictionary claims, (1933: 124) "Adoption to be a legitimate act imitating nature, found out for their solace and comfort, which have no children." It was often thought of as "[raising] someone else's child" (Adamec and Peirce 1991: 18). The older definitions implying ownership have been disregarded by professional workers such as social workers. Today adoption is viewed more as a taking over of parental rights and responsibilities of a child that was not born to one biologically (Adamec and Peirce 1991: 17). People adopting do so for various reasons, many of them already have biological and adopted children in their families, and some of them are even single parents.

Transracial adoption is defined as adoption "across or crossing racial boundaries" (Simpson and Weiner 1989: 426). It is usually in reference to the adoption of black or mixed-race children by white parents, but this study includes natives in its exploration as well. The children awaiting adoption had been labelled as "Special Needs" children because they tended to wait long periods for good adoptive homes (Adamec and Peirce 1991: 297). There are many perceived problems

associated with TRA which stem from the differences in 'race' of the parents, and the child(ren). These perceived problems are not universally agreed upon which has led to the debates over the harmful, or benign nature of TRA.

Ladner (1977) reports that the courts in the United States were permitting transracial adoptions as early as 1948, and since that time many authors have put forward relevant theories as to why TRA later became a widespread practice, and why it continues today. Some scholars have suggested that social welfare workers were becoming increasingly concerned with the large number of black, native and bi-racial children remaining in foster care, and institutions long after their white counterparts were being adopted (Madison & Schapiro 1973). Madison and Schapiro (1973: 531-532) stated:

. . . the National Adoption Survey of Child Welfare League of America (CWLA) and the National Conference on Adoption in 1955 . . . had indicated that, although their need for adoption service was great, black children were less likely to be adopted than other youngsters and they were more likely to be placed independently, without court action. Moreover, black children accepted for placement were remaining under agency care about twice as long as other children. Hence their placement was both difficult and costly.

The concerns of the social workers at the time were probably many, but two that were most likely to have contributed to TRA were a concern for the well being of the kids, and a concern for the rising costs of caring for the kids. Chimezie (1975: 296) commented that one reason TRA was occurring was due to the “. . . belief that children raised in institutions or foster homes develop behaviour problems and are often maladjusted.” The second concern that may not have been as big issue in the

beginning as it is now is the cost of keeping and caring for the growing number of these children, as Curtis (1996: 158) points out in his recent work:

Decisions to place a child are at times influenced by concerns about the costs of out-of-home placements. The State of New York, for example, issued a legislative mandate to place over 6,000 children in adoptive homes during the 1994-95 fiscal year. Typically, fewer than approximately 2,000 children per year are placed for adoption. This policy change was likely to affect the number of children placed transracially

The minority children were commonly leftovers, and became labelled as “Special Needs” children, or as “‘hard to place’ children, a term which has slipped into the language of social workers in the field of fostering and adopting. It alludes to children with physical and mental handicaps, sibling groups, those who have spent long periods in care and those who are black, that is, children with one or more black parents” (Arnold & James 1989: 417). It has been suggested that the large number of children in care has grown, in part, because of the reluctance of black families to adopt (Chimezie 1975). Madison and Schapiro (1973: 547) quote a study by Fowler:

For quite understandable socio-psychological reasons, relatively few economically secure, childless negro couples appear to be interested in adopting eligible children at present time. Seeking an emotionally secure place amid discriminatory practices, many of them had little energy left for the risks of parenthood. Thus both series of studies imply that current efforts to persuade childless, middle-class couples to adopt are not likely to be easily or massively successful in the immediate future [78:524].

Social workers were seeking a way to alleviate what was viewed as a crisis (Stubbs 1987: 475), and they made it a top priority to find what they called “good adoptive homes” for the children (Stubbs 1987; Madison & Schapiro 1973).

Prior to the late 1950's and 1960's, most social workers had largely followed a philosophy that minority children should be placed with 'their own kind' (Stubbs 1987: 475). Hayes (1995: 1) suggests that the political climate of the time promoted racial integration. Policy and practices began to shift and social workers adopted a philosophy viewing children in a "non-racial" manner (Stubbs 1987: 476). The child care policies began to reflect a concern that was coined as "the needs of the children", and "the best interest of the child" (Howe 1995; Stubbs 1987). It was recorded that the social workers of the time referred to it as the "little revolution" (Madison & Schapiro 1973), revealing the progressive nature of allowing non-white children to be adopted into white homes.

TRA was advocated by the British Adoption Project (BAP) who played down colour in its placement of children (Stubbs 1987: 476). Another movement took place involving the Bureau of Indian Affairs and the Child Welfare League of America placing about 400 of the American Indian children available for adoption in transracial placements between the years of 1958-1968 (McRoy 1989: 149). The TRA placements were treated as a good alternative to the problem of no homes for minority children in care (Stubbs 1987: 477). White couples received children, needy children received homes, and the burden on the state was lessened.

After the transracial placement of a large number of minority children in a span of about ten years, the movement met with organized opposition from black and native groups. The surfacing concerns over the perceived possible damage that might be

inflicted by TRA were growing. The voice of the National Association of Black Social Workers (NABSW) was one of the loudest when it proclaimed in 1972:

Black children belong physically and psychologically and culturally in black families where they receive the total sense of themselves and develop a sound projection of their future. Only a black family can transmit the emotional and sensitive subtleties of perceptions and reactions essential for a black child's survival in a racist society. Human beings are products of their environment and develop their sense of values, attitudes, and self-concept within their own family structures. Black children in white homes are cut off from the healthy development of themselves as black people. (McRoy 1989:150)

The times when placing a black child in a 'good home' with approved white parents was thought to be a happy ending, were ending themselves. It may have been a good experience for some, but others have told a different story, and TRA has had to face numerous criticisms on various levels. This chapter has allowed for only a brief introduction to the criticisms of TRA, but even here the deep rooted opposition to the practice can be seen.

As Howard, Royse, & Skeryl (1977: 188) state not all members of the black community are strictly opposed to TRA; it is acceptable to many if it means a child will have a home instead of being institutionalized. But most members of the black community do tend to hold some form of the view that “. . . minority children have a right and need to develop a positive ethnic identity and awareness of their cultural heritage within their own community. Without this identity they will face inevitable problems as they get older and will be unable to develop survival skills or coping mechanism to deal with the reality of racism” (Hayes 1995: 4). Tizard and Phoenix (1989: 427) describe the problem as, “. . . black children living in white families fail

to develop a positive racial identity. Instead, they suffer identity confusion and develop a negative self-concept, believing or wishing they were white.” Zuniga (1991: 21) claims that, “If the family adheres only to a middle-class white lifestyle, the child will not obtain the interactions with the diverse cultural systems that support his/her ethnic identity. The child will not have an ethnic awareness or learn how to adapt as a minority child who can value his/her diversity.”

A study by Simon (1978: 141) revealed that over 50% of her sample believed that “. . . white parents do not know how to rear black children and those black children who are adopted by whites will be lost to the black community. They will not perceive themselves to be ‘black’ and will not identify with the black community, or they will not be accepted by the black community.” The development of racial identity happens differently in white homes than it does in black homes (Shireman and Johnson 1986: 175).

Critics have maintained that white parents who adopt transracially cannot convey a sense of ethnic pride or teach their black children how to survive in a racist society “because they are not black, because they probably tend to play down the harshness and inhumanity of oppressive racism, and because they live in a white neighbourhood.”(Shireman et al. 1986: 174).

It is claimed that white parents may not recognize racism when it occurs; they may not be able to teach their child how to recognize, and deal with instances of racism, and they may play down racism by comparing it to name calling (Chimezie 1975; Simon 1978; Hayes 1995; Tizard & Phoenix 1989; Shireman & Johnson 1986). In essence the white parents are accused of being incapable of giving their black child the tools they need to survive in this racist society; the children lack “survival skills”

to cope with racism (Ladner 1977). One has to remember that this viewpoint is one of the many possible realities. That whites are incapable of giving a black child a healthy racial identity is factual and goes into the objective reality of some, but not all individuals.

Without this self-concept, or positive racial identity, it has been suggested by some opponents of TRA that “. . . the transracial adoptee is likely to experience a deep sense of personal isolation, identity confusion, and poor self-esteem, and that transracially adopted children will be unable to effectively cope with hostility and rejection of white society” (Feigelman & Silverman 1984: 589). Macey (1995: 477) also brought out in her research the “Fletcher-Smith (1984) [warning] that black ‘children who grow up isolated from their racial group risk psychological damage’.” Feigelman & Silverman (1984: 589) outline the assertions by the opposition: “[That] the practice [of TRA] is psychologically crippling to the children involved, leaving them in a cultural no man’s land, never fully being accepted in the majority culture, and maladapted for effective participation within the culture of their birth.”

Although the negative effects on the transracially adopted child’s black identity have not been conclusively proven, it continues to be introduced as evidence against the act of TRA. As Harris (1995: 238) remarks “The question of how childhood interracial contact and parental socialization affect identity remains unanswered.” This type of remark is common in social research when the results run counter to the researcher’s desired outcome. In this case, Harris did not find any negative effects of

TRA on black identity. Instead of suggesting that there may not be any, he chooses to report that we need to look harder. Hayes reports on the same issue,

Similarly, Gill and Jackson conclude their study of transracially adopted children by writing: 'It is not necessary to imply that many children who have been adopted transracially are suffering from major difficulties in order for us to support the call for same race placements'. As these researchers actually found that the children suffered no difficulties at all as a result of being transracially adopted, their conclusion ignores their own findings (Hayes 1995: 6).

It may be preferable for black children to be placed in black homes to prevent any possible damage to their identity. For this to occur there must be available black homes with willing black parents. When such homes cannot be provided, is it then reasonable to raise a black child in a white home? "Such factors as the family's nurturance of the child's black identity, the child's access to black role models and peers in the community and in school, and the parent's attention to the child's black heritage [are] . . . influential in the shaping of a positive racial identity" (McRoy et al. 1982: 526). With these factors present, the white family may be able to provide the necessary tools for the child to build a strong black identity.

Opposition to transracial adoption regards a confused racial identity as leading to further problems for the black child. One such problem is in the area of development of self-esteem. "Those opposed to transracial adoption argue that, as a consequence of their negative attitude to their race, the self-esteem and mental health of transracially adopted children will be damaged" (Tizard and Phoenix 1989: 431).

Tizard and Phoenix (1989: 431-432) admit that there is significant "conflict of evidence" over whether or not levels of self-esteem are actually lower for transracially

adopted blacks. They claim that studies testing racial identity and self-esteem in the same children are rare, and the studies that do test them show no significant relationship (Tizard and Phoenix 1989: 431-432). There may be no link between racial attitude and self-esteem.

Hughes and Hertel (1990: 1114) conducted their study including self-esteem as an indicator of black consciousness. Their results showed that while black identity and black separatism affect black consciousness, self-esteem showed no relationship. It is possible that researchers are again trying to find relationships that do not exist, or that are at least disputable. McRoy et al. (1982: 525) make more observations that run counter to the claims that TRA children have lower levels of self-esteem than inracially adopted children.

This exploratory study indicated that there were no differences in overall self-esteem between the sampled transracially and inracially adopted children. Furthermore, the level of self-esteem of the adoptees was as high as that reported among individuals in the general population. This suggests that positive self-esteem can be generated as effectively among black children in white adoptive families as in black adoptive families.

The battle over whether or not whites raising blacks/natives is detrimental to the black, or native individual's identity and self-esteem could go on endlessly; those in opposition will restate that it is, and those in favour will claim that it is not. All sides of the debate will continue to search for evidence supporting their own views. However, the debate is not limited to concern for the individual child, and it moves onto attacks of institutions, and the disputes of group interests.

Concern for the individual is debated passionately in reference to TRA, but when group interests become involved the debate takes on a socio-political and legal aspect, that illuminates a powerful struggle between black, native and white interest groups. There are several issues of major interest here. One is the issue of the failure of mainstream agencies to successfully recruit the numbers of black, and native foster and adoptive families required, and their failure to adequately service non-white people. Another is the accusation made that TRA is an intentional plot by whites to weaken and erase the history of the black and native communities. The current legal application of whites who propose that same-race placement requirements deny them their constitutional 'right to adopt' is another issue of interest in this area.

Chimezie's (1975) article points out institutional discrimination and prejudicial perceptions of blacks as underlying causes of TRA. The adoption agencies, their practices, policies, and their workers did not escape criticism, and they were accused of institutional, as well as individual racism (Stubbs 1987; McRoy 1989). It was proposed that the adoption agencies had an image of mainly servicing whites, and that the all white staff and the strict criteria for parents made them inaccessible to interested, potential, black adopters (Simon 1978; Ladner 1977).

Virtually all the people on the boards and staffs of adoption are white. They do not involve black people in policy formulation or in day-to-day programming. They do not know the black community; they insist on doing "business as usual" and then are surprised when they cannot recruit black families for adoption. They do not reach the black community because they do not know it, and they perpetuate their ignorance because, actually, they do not care about placing black children [58: 160] (Kahn cited in Madison and Schapiro 1973: 542).

Social workers were accused of screening out black applicants instead of screening them in (Ladner 1977). American Indian groups also felt their children needed foster homes and adoptive homes that “reflected the unique values of [their] culture” (McRoy 1989: 151). It was reported that while over 80% of the American Indian children adopted were transracially adopted, and that native families were being rejected because they did not meet the criteria set out by the near all white social service or adoption agencies (McRoy 1989: 151). To rectify any perceived injustices, the agencies were encouraged (by those in opposition) to hire more minority workers, to learn to deal with prospective minority parents in a more culturally sensitive nature, and to actively recruit black and native adopters (Macey 1995; McRoy 1989).

Some commentators have argued that the active recruitment of black homes could be successful if social workers had the resources to do so (Arnold & James 1989; Hairston & Williams 1989). It should be noted that in this analysis the criteria required of the black homes were less than what was expected from white applicants. The black adoptive applicant did not have to comply with the following criteria: having two parents, having one parent in the home, age restrictions, and made available to them was subsidy adoptions, in which the government partially funded the adoption much like foster care, so that black families could afford to adopt without facing economic hardship (Macey 1995; Ladner 1977). It may be considered unfair that black children should be given to homes with lower standards than white children. In fact, the practice could reinforce the stereotype that these children are worth less. For some people the importance of the racial component in adoption is worthy of

relaxing the other requirements of adoptive parents; in recruiting homes for black children, being black is the featured requirement. The issue here is of priorities and weights, as to relevant factors, in other words how people socially construct the issue of TRA.

Although there are many similarities between the black and native concerns for TRA, there are some specific issues that need to be addressed for native people. Adoption agencies were criticized for racism, and discrimination towards many non-white members of society, but native people have a further critique of the adoption practices of the mainstream offices which were in conflict with their own traditional adoption customs. As Durst (1992: 195-196) writes:

Hunting societies also have adoption processes and customs but these are rationalized on the basis of community survival (Morrow, 1984: 248). As the parents aged, the young adults assumed the responsibility of providing the necessities for the family and the community. But raising a child was also a costly venture; hence for the overall interests of the community, child rearing was shared by its members. In Inuit families, a childless couple may assume the major responsibility of a child of a mother or family who were having difficulty due to illness or death (Henriksen 1973: 62). In such exchanges the adoption is 'permanent' but not secret. The child has regular contact and full knowledge about his or her natural parents and siblings. Should the adoption break down for any number of reasons, the natural parents or even grandparents would have the first opportunity to reaccept the child or be consulted regarding with whom he or she would be placed. Normally the community in a hunting culture is small, so ideals of Western adoption, secrecy and separation are irrelevant and absurd.

The "concealment policy" is not only unrealistic for TRA since often the difference is visible (McGillivray 1984: 465), but it was also undermines the very traditions of the native people. Native people organized to stop the agency mismanagement of their children.

Confidentiality and total separation from biological parents were unknown. Children who were not cared for by the biological parent were traditionally placed with members of the family or other tribal members. Non-Indian adoption policies, radically different in procedure and impact on the tribe, were repeatedly criticized throughout the congressional hearing. The high rate of adoption placement in non-Indian homes drew concern (Johnson 1981: 439).

Moreover for the native child there is the issue of Indian status that needs to be considered as well. If a status child is raised with non-status parents, and the records are sealed then the child is being denied certain benefits, or rights that they may be entitled to (McGillivray 1984).

The motivations of TRA have come under further attack as being politically aimed at assimilation and integration (Hayes 1995: 2). Kim (1978) brings to light the notion of minority groups, and the cultural assimilation that is a part of TRA. Marshall (1994: 20) describes assimilation as “when an outsider becomes indistinguishably integrated into the dominate host society.” There is some suggestion that its policy is rooted in a fear in the United States of too many immigrants. Assimilation was a means to assure the acceptance and internalization of the dominate majority (Marshall 1991: 20). Assimilation in Canada, and the United States is used to assert a Eurocentric view (discussed in chapter 5 of this thesis) of the world on individuals that do not have a European history. TRA is viewed by some as a sneaky form of assimilation of minority groups into the dominate white society (Hayes 1995). As Hayes (1995) reveals, not everyone who advocated the advancement of Black civil rights was in favour of TRA, or assimilation. It surfaced as previously mentioned at

the 1972 conference for the National Association of Black Social Workers (Hayes 1995; Simon 1978; Howard et.al. 1977; Howe 1995).

The opposition was headed by Audrey Russell, who, according to Hayes (1995) in her speeches to whites and liberals, expressed the belief that while whites had good intentions they were more harmful than helpful. Her claim was that whites may be able to provide for the material needs of black children, but they are unable to give the child a black identity since they do not have it to give (Hayes 1995: 2). According to Hayes, Russell's standpoint was much more severe when she spoke to the NABSW. There she argued that "TRA was a deliberately hostile attack on blacks by whites. It was a policy designed to perpetuate the unequal power relationship between these ethnic groups by weakening the black community" (Hayes 1995:2). She also attacked the adoption of mixed-race children claiming that these children had been discriminately black by law and now when whites want to parent them, they adopt and highlight the white in these children (Hayes 1995: 2-3).

The NABSW reasserted that same-race placements are preferable and argued for it to be reinstated as policy (Hayes 1995: 3). They experienced such great success that today the effects can be seen in our policies. The Children and Family Services Act 1990 in Nova Scotia (see appendix A) states "Where practical, a child, who is the subject of an order for permanent care and custody, shall be placed with a family of the child's own culture, race, or language but, if such placement is not available within a reasonable time, the child may be placed in the most suitable home available with the approval of the Minister." (Children and Family Services Act. 1990, c. 5, s. 47.).

The consequence has been that many black children remain waiting unadopted by anyone in foster care and institutions (Hayes 1995: 3-4).

The intent of the [Indian Child Welfare Act of 1978 in the United States] is to stabilize Indian Families by reducing the number of Indian children removed and placed in non-Indian adoptive or foster homes. The act establishes minimum federal standards for removal of Indian children and outlines procedures that aid their placement in homes reflecting Indian culture. (Johnson 1981: 435)

The Children and Family Services Act 1990 in Nova Scotia outlines that Mi'kmaq Family and Children's Services must be notified by other non-native agencies who have in their care a child who is, or may be native and "subject of an adoption agreement" (Children and Family Services Act. 1990, c. 5, s. 12.)

Most, if not all, individuals and groups involved in this debate claim to have the best interest of the child in mind. Some claim that the child primarily needs a secure loving home with parents, permanence, and a sense of belonging regardless of the racial differences between the child and the family. Others claim that non-white children need to be in homes that share their ethnicity, culture, and history, and that these things are essential to finding a good home for the child. The debate moves a step further when people start to introduce their own interests, and the interests of their groups.

Howe (1995) explains the position of a white group involved in the battle over constitutional rights. It is here that the central focus of the debate is revealed. Somehow the debate has become about the rights of whites and not the best interest of the child. Currently there is no constitutional right to adopt, but it has been argued that it is a fundamental right being denied whites:

Proponents of transracial adoption who claim that same-race placement preferences are victimizing the increasing numbers of Black children in foster care are employing a diversionary 'smokescreen' strategy. This smokescreen obfuscates important systemic problems and creates additional barriers to meeting the needs of Black children, Black families, and the Black community. The focus of attention should be shifted from the illusionary debate about the merits of transracial adoption to the real issue: whether it is appropriate to establish new rights for adults seeking to adopt children (Howe 1995: 2).

It is argued by some other individuals, and groups, that fighting to keep black children in the black community is in the best interest of the child, and not aimed at the interest of the group. "Detractors of transracial adoption contend that it takes children away from their homelands and strips them of their connection to their community and culture" (cited in Feigelman and Silverman 1984: 589). This claim supports the belief that the child needs to be with people of the same ethno-cultural identity to learn about their roots. However, keeping the children in the community is also beneficial to the survival of the group, since without the children there would be no one to pass on the history and the culture to. "One of the objections levelled against transracial adoption is that it results in cultural genocide" (Feigelman and Silverman 1984: 589).

The social construction of the act of transracial adoption happens very differently for different people. Some whites are arguing for what they believe is their right to adopt these children. Other groups are stating that the best interest of the child is tied to group survival, which means it is necessary for the children to remain in their communities. All sides stating what they believe to be fact, and here emerges the 'contested terrain' of objectivity. What we perceive to be fact will influence our

opinions, and those opinions are then believed to be based on fact. So all individuals in this debate may reasonably perceive themselves as objective, whether there is adequate evidence to support their position or not. One can see how the child is lost in the shuffle, and how group interests overshadow and shift the discussion further away from the best interest of the child.

This literature provides a foundation for further inquiries into the social construction of TRA. This study is focused on revealing how social workers feel about the issue. The responsibility of social workers involved in decision making, policy writing, and also in the day-to-day implementation of the policies makes them an important group for this topic of discussion. Beyond their personal feelings and into individual perceptions of fact, opinions are formed and called objective. These opinions could then influence the outcomes of the frequency and success of TRA. Themes for the interviews were often modelled after themes in the literature. Since some of the participants have done their own research on TRA, it is possible that some of the literature discussed here also influenced their perceptions of TRA.

Chapter Two

Conceptualization

The controversial literature produced by the TRA debate certainly provides stimulating reading material. For the social scientist, however, it may serve to further discussions in a more theoretical manner. The two main theoretical perspectives explored in this section are the social construction of transracial adoption, and the significance of professional identity for those who are members of interest groups. Discussions of social construction often include views on subjectivity and objectivity (Holzner & Marx 1979; Berger & Luckmann 1967). Although each individual may view their reality as a concrete objective reality, we cannot ignore that each of us has our own “frame of reference” from where we draw on past experiences that allow us to make sense of the world we live in (Holzner & Marx 1979). How we make sense of our world then defines how we will choose to act within it. As Holzner & Marx (1979:82) state more specifically “the meaning a person attaches to a situation determines how that person will act out in a situation. [Regardless of whether we think we are objective, or subjective in our views we still should be aware of] W. I. Thomas’ observation, situations that are perceived and experienced as real are real in their consequences for what people do” (Holzner & Marx 1979:82).

In what ways do people attach meanings to TRA, and how do they act upon them? Perhaps some people view it as a positive act and encourage it, but there may also be others who see TRA as dangerous and destructive and would not recommend it under any circumstances. When TRA was implemented on a wide scale it implied racial integration, the building of families, and the stabilization of ‘race’ relations

which supported TRA as a positive social act. The situation later became defined in a negative manner, or as a social problem. Herbert Haines (1979:120) describes Spector and Kitsuse's four staged outline on how social problems develop through the use of claims-making.

Stage I: The attempts by some group(s) to assert the existence of some condition, define it as offensive, harmful, and otherwise undesirable, to publicize the assertions and stimulate controversy and to create a public or political issue over the matter.

Stage II: The recognition by some official organization, agency, or institution of the group(s) legitimate standing. This may lead to an official investigation of the matter, proposals for reform, and the establishment of an agency to respond to those claims and demands.

Stage III: The re-emergence of the claims and demands by the group(s), expressing dissatisfaction with established procedures for dealing with the imputed conditions, the bureaucratic handing of complaints, and the failure to generate a condition of trust and confidence in the procedures as sympathetic to the complaints, etc.

Stage IV: The rejection by complainant group(s) of the response or lack of response of the agency or institution to their claims and demands, and the development of activities to create alternative, parallel, or counter-institutions as responses to the established procedures.

This general theory can be applied to the claims-making activities that go on as part of the TRA debates. For example, stage I in the TRA debate is the assertion by groups such as the NABSW and native groups that TRA is a discriminatory practice, it is an assault on the black and native communities, and it is damaging the children in the process. Stage II is the recognition by social services and adoption agencies of TRA as problematic. Investigations take place resulting in same-race placement policies, and the Indian Child Welfare Act is passed curbing the TRA of native

children (McRoy 1989). This is also the time when social scientists explored and provided possible reforms.

Stages III and IV are possibly connected to the uncovering of problems with individual and institutional discrimination and exclusionary practices. There is a distrust of social services who continue to place children in white homes against the wishes of black, and native groups. This is perpetuated since minority groups are still suffering from racism in their attempts to study and be successful in areas of employment in the social services field, as well as possible personal instances of racism when in contact with these agencies (Haines 1979). A close watch is kept over adoption agencies to enforce same-race placement policies, and there also exist social service systems that exclusively service native communities.

TRA is constructed in different ways by different interests groups, and not everyone views it as a social problem. There are “different ways of seeing the ‘same problem’ [reflecting] powerful political and economic interests” (Bockman 1991: 454). Both those in favour and those opposed to TRA use claims-making activities to support their positions. Those in favour of TRA construct it as providing children with good, caring homes and parents regardless of colour, or ‘race’. Those in opposition construct it as an act causing damage to individuals and to larger minority communities. The TRA debate has the competing truths of those in favour, and those against with both sides trying to solicit support.

A second theoretical issue in this study concerns identity construction, with a focus on the position of individuals who are both professionals, and members of

interest groups. What role does self-concept, or identity have in the TRA situation for social workers? What aspect of their individual identities is strongest? How does their ethno-cultural identity influence their role as a professional social worker?

The self is many things potentially drawing from any number of areas: biology (sex); religion (catholic); phenotypical characteristics (skin colour); occupation (doctor); social standing (middle class); culture (Scottish) etc.. We can choose to play up, or play down certain aspects of our identities. I may be identified as a white, French-Scottish, female. There are elements that I cannot readily change such as my sex and skin colour, but I could choose to identify as Scottish and deny or play down my Frenchness. The key concern for this study is how we manage our identities, and how they could influence our judgments and actions.

When a social worker is an active member in the black, or native community and responds to the needs and fears present there, how do they then carry out this aspect of themselves at work? Professionalism is an important consideration since professional guidelines could interfere with ones loyalty to their community or ethno-cultural group. For example, if an adoption agency made it their professional policy to view children in a non-racial manner when placing them in approved adoptive homes, how might this affect a native/black social worker who feels that it is against the best interest of the child to be removed from their community? Voicing concerns could be interpreted as catering to their personal interests or those of one's interests group. This is especially important in cases where an interest group claims to be the only

qualified authority to make adoption decisions for the children of their ethno-cultural grouping.

There is a relationship between these two perspectives since elements of an identity, such as race, will affect the life experiences that person will have. A black person will have a different frame of reference to draw from than a white person. Black and native individuals may construct the TRA situation from the viewpoint of a group who stands to lose children to a group which has discriminated against, and oppressed it. The lived experience, and consciousness of racism will undoubtedly have some level of influence on the perceptions of TRA.

One can speculate that the differences in lived experience and identity may affect the results of this study. It would not, however, be correct to assume that all blacks, or natives will oppose TRA. What needs to be recognized is that there are genuine concerns such as cultural assimilation that involve all members of these groups. Neither would it be fair to label all whites as in favour of TRA since many whites sincerely side with black and native groups on this issue. They too want minority groups to be able to exercise their right to protect their cultural identity, and histories. What does need to be remembered is that all people come from different frames of references, and there are possibly more differences between two people of different racial groups than for two people belonging to the same racial group. All people are entitled to their opinions, and there are likely a mixture of black, native and white people who view TRA in various ways. These individuals will also have unique

ways of constructing the TRA situation that are dependent on their individual identities.

Chapter Three Methodology

To better our understanding of the attitudes held by social workers towards TRA, this study is aimed at revealing the experiences, opinions, and feelings of social workers on the subject of TRA. There are two perspectives discussed in this research. The first is concerned with the social construction of TRA, and the claims-making activities used to support different positions. The second perspective is concerned with issues of identity. Since the perspectives have been discussed in the conceptual stage of this study, attention will now turn to the specific application of these perspectives in this study.

Elite interviews were chosen as the best approach to gain insights from the social worker's point of view. This type of interview allowed the interviewee to define problems, questions, and situations from their own frame of reference (Dexter 1970: 5). This style of interviewing gave the interviewee a chance to teach (Dexter 1970: 37) while enabling the researcher to better understand "How individuals make sense of their social world and act within it" (May 1993: 108). The interviews provided a situation of social interaction between the researcher and the subject that could not be obtained through survey research. It created an opportunity for interactive learning, and probing with responsive subjects.

The interviews were conducted with a question guide (see appendix B), and most were completed in 45 minutes to one hour. Thirteen of the fifteen interviews were transcribed, but two of the interviews were not taped, and therefore were not transcribed. All subjects were presented with consent forms enabling them to request

to view the transcript and to have a summary of the findings forwarded to them upon completion of the study. A select number of the interviewees felt that some questions were non-applicable to their particular situations, but no one flatly refused to answer questions.

The sample for this study was drawn from a population of registered social workers, and social work candidates in Nova Scotia. Social work candidates are individuals with social work degrees who are in the process of fulfilling the required approximate 3000 hours of actual social work practice time to become registered social workers. Two of the participants in this study were social work candidates. Of the 15 interviewees there were 14 female, and one male. The sample included black, white, and native social workers. The years of experience working as social workers ranged from less than one year to over thirty years of experience.

Selection of participants was in the form of a snowballing sample in which participants introduced the researcher to further possible interviewees. One strength of this sampling selection was that the participants were able to direct the researcher to other similar individuals that were familiar and interested in the topic. A weakness of this type of selection is that the researcher risks missing out on differentiation in attitudes.

The analysis of the interviews was a creative process involving the organization, or coding of raw data according to relevant themes. The coding allowed for comparisons between interviews, interpretations, and conclusions that otherwise could not be made from the raw data. Most of the themes were predetermined, and

clearly indicated by interview questions while others emerged during the actual interviews. One advantage of elite interviewing is that the emerging themes can often extend beyond what was originally thought possible with predetermined themes.

It was expected that individuals would interpret their environments in ways that would agree with their own values and sentiments. Their individual experiences would determine how they attached meanings to situations and formed attitudes, this then would influence their decision making (Hogarth 1971). In the interviews several themes were explored around the values and sentiments of the social workers, as well as the importance of their professional and ethno-cultural identities. The claims-making activities and the evidence introduced allowed for probing beyond the questions outlined in the interview guide.

To establish initial rapport, and to place the interviewee in context the following questions were discussed. Why did you become a social worker? How many years have you been a social worker? What experience do you have in the area of adoption? Are you satisfied with the accomplishments produced by your work? These questions allowed the researcher to move into questions concerning professionalism and identity, and questions more closely related to adoption.

Themes were explored around identity issues for social workers, and the ways in which they related to the issue of TRA. Self concept is part of determining how we attach meaning to situations, and form the attitudes influencing our decisions. This research does not make any claims that membership in an ethno-cultural, or racial group determines one's position on TRA. Human beings are made up of a multiplicity

of experiences and influences, and it would be unfair to suggest that all members of one racial, ethnic, or cultural group experienced life in the same way. We cannot ignore that context will influence how we attach meanings and develop attitudes. However, it is possible that members of the same groups may have similar life experiences that would lead them to have shared opinions on the subject of TRA.

During the interviews the participants were questioned about how they perceived themselves as to their professional, and ethno-cultural identities, and what weight they gave to different aspects of their identity? This was accomplished by asking them to what extent their profession is part of their identity, and what role does their ethno-cultural identity have in their professional life? It was thought that some would perceive the ethno-cultural, or racial aspect as the key to their identity, while others might feel that their contribution as a social worker is what defines their identity. It was also possible to probe into whether or not the interviewees felt their identity had influenced their attitude on TRA.

It was then important to further frame discussions by setting the social context for each interviewee. Perceptions of society were explored with some of the following questions; do you see ethno-cultural relations as worsening, or improving, and to what degree? Does it influence your work in any way? These questions are relevant in several ways: (1) White parents are accused of being unable to arm their black children with the tools necessary to combat racism, and parents tend to play it down, or ignore it. (2) Research suggests that blacks and natives have been discriminated against, and excluded from adoption processes. (3) It has also been claimed that to

prevent TRA is reverse discrimination, and that it perpetuates racial division. If society was not viewed as having strained ethno-cultural relations would TRA be acceptable?

How the individual social worker weighs their commitment to their personal views with those of the agency they are employed by was explored with questions like: Are social workers allowed any discretion in their work, or are they totally bound by regulations set out for them by employers, be they private, or public practitioners? How are conflicting views between social workers and agencies, or employers dealt with if they occur? Do social workers ever play down agency policies, or do they always follow the rules and regulations set out by the agency?

Under discussions of adoption, the first objective was to see how social workers weighed and prioritized the different criteria in adoption processes, and why they did so. There was probing as to whether or not there are any special considerations for the adoption of black, native, or mixed-race children. Views on cultural heritage, and native languages were discussed since they are often made as claims for why black and native children should only be adopted within their own group. How the participants weighed cultural heritage was also a theme; is it seen as unimportant, important, or essential for the development of the child's identity? The participants were also asked to briefly define for the researcher their concept of the culture that needs preserving. Feelings on assimilation and integration were probed here since the strength of feelings about the importance of cultural heritage could be linked to perceived consequences of natives and blacks being assimilated, and integrated into white, or mainstream culture.

Since the child is often too young to be involved in the decision making, who decides what is in their best interest (Ladner 1977) was brought up. Is it the right and responsibility of the biological parent, the state, or the child's ethno-cultural group to decide for them? Social workers were expected to have varying commitments to these different institutions. Factors such as the perceived intentions of governments on race issues, perceived discrimination in social services, and perceived strength of biological ties will have different meanings attached to them, and be weighed accordingly when decisions are made. It would also be interesting to see who the interviewees believe control decision making now.

An issue that needed to be addressed in the area of identity and professionalism was the position of white social workers who may appear to have nothing but professional objectives in mind, while black and native social workers could be seen as having a vested interest in stopping TRA. This was handled through open discussions with most of the social workers about the issue. It is doubtful that any of the subjects could be totally objective, since personal experiences, attitudes, and values are all part of the process of decision making? When they did make claims to objectivity, it was of interest to see how they recommended doing it, and what was included in the 'objective' framework.

There was an opportunity for probing around issues of TRA to clarify answers, or to draw connections that previous questions missed on. It was also possible to get the interviewees to discuss some past cases, and to see how they dealt with transracial adoption cases, or potential cases. The actual number of TRA seemed to be very low,

and there was limited contemporary experiences with placing children across racial boundaries.

Chapter Four

Results

This study has provided an opportunity for people to voice their personal and professional opinions and feelings in an open and confidential environment. Their willingness to talk candidly has provided us all with a chance to be educated by them about the danger, hurdles, boundaries, limitations and joys of transracial adoptions. The women and man who participated in this study not only revealed their transracial adoption standpoints, but also made accessible their perceptions of professional and ethno-cultural identity. The original aim in this study was to explore the attitudes and opinions of blacks (some prefer African Nova Scotian, or African Canadian), whites, and natives (Mi'kmaw), and then to compare them. To maintain this format the results have been broken down into subtitles.

Mi'kmaw Social Workers

Adoption criticisms

This category was the smallest, containing only three participants, but it also provided some of the most thought provoking results. One finding that had not been anticipated was that all of the Mi'kmaw social workers expressed that they did not "believe in adoptions". All were in agreement that adoptions under the provincial jurisdiction did not service the native community well, and they provided several criticisms of the current legislation they are bound to work within.

One criticism mentioned by all three Mi'kmaw social workers was that the provincial policies are unsuitable for native communities. Native issues are under the jurisdiction of Indian Affairs at the federal government level and there was displeasure

expressed among the social workers that the native agency was bound to follow the same provincial adoption policies as the non-native agencies. It is felt that what may work well in non-native agencies is not appropriate for the native agencies. This became clearer as the subjects were able to express their feelings on adoptions. Several of the subjects talked about the province's failure to recognize 'custom' adoptions, and informal adoptions. 'Custom' adoptions were described by one subject as:

Custom adoptions are a practice, that was always practiced for centuries by the native people, and it was practiced when a parent or parents cannot care for their children that . . . the community and the elders in the community would come together and the child could be placed with a relative or somebody that could raise that child. [The] child would normally keep the last name of the biological parents. They would be raised knowing who the biological parents were, and probably the parents would have involvement in decisions that were important in the child's life, depending on how appropriate they are. Each band would have their different involvements, and . . . it would come to a point that when, and if, the parent could ever have the child back for some reason, the community would then come together and say the parent is able to come back. If the child knows, and they have a bond, and it is a natural thing the child has grown up with. 'I know that you're my mom I just don't live with you now', it is easier for the child to go back there to live.

Informal adoptions tend to be cases where "[if] as a girl is too young to look after her child then her mother, or her older sisters may informally adopt a child, maybe not formally, but informally." Although these techniques are claimed to have been successful in the native communities for generations, they are not recognized, or legitimized by the provincial government.

A second criticism of adoptions also in connection with the provincial legislation is that the native agencies are forced to abide by are the rules concerning

sealed records. One Mi'kmaw social worker said that the problem with the small size of the native community, is that it tends to be close knit with people in close contact with each other, and if a girl in one location gives up her child and a couple somewhere close by adopts the child, it is very hard to ensure confidentiality for either party. On the other hand, all three Mi'kmaw social workers agreed that when adoption records are successfully sealed it is highly dangerous (in terms of incest) for the native community. If a child is adopted and no one knows where the child is, that child could come back and marry a relative without knowing it.

Beyond problems with the provincial policies the Mi'kmaw social workers all expressed the sentiment that it is fundamentally wrong to totally separate a child from their birth family ties.

[In] the native community . . . we don't often make children free for adoption. In N.S. if there is no access order for the parents after wardship then they are freed for adoption, if there is an access order they are not free. We always, not always that is too strong, we often build in access to the natural parents after the children are even in our permanent care. Because of their age when they come into care for one, they know their families and they want contact. We don't want to make them nuttier. . . hopefully our intervention is helping these children not making their lives worse, and sometimes separating them from their birth families is making their lives miserable.

In cases where a child cannot live with their birth parents the child is placed with extended family or friends of the family. Most often it is someone the child knows already, and rarely is it a 'stranger to stranger' situation. Family preservation is an important Mi'kmaw value which was expressed by all and can be clearly seen in their aversion to adoptions, their 'custom' adoption practice, and informal adoption practices. One Mi'kmaw social worker showed her dedication to the value when she

declared that if the child was bi-racial, Mi'kmaw and white, she would feel comfortable placing the child with a white relative. She stated that she was sometimes hassled for it, but her response was, "Family is still important whether they are native or not. If we believe in the value of family preservation in that way, family cultural preservation, then why couldn't they be with their blood grandmother. So what if she is white, she is part of their culture too."

The Mi'kmaw social workers were proud of and valued their practice of Indian Child Welfare, and one woman made clear that "[The] practice of Indian Child Welfare is fundamentally different than the practice of Child Welfare in the mainstream society in Nova Scotia." The Mi'kmaw social workers all seemed to share the opinion that they found it difficult to follow some of the rules set out by the province since they consider them ineffective, if not damaging when applied in the native community. They felt strongly that the secrecy of adoptions, and sealed records leads to identity problems and fantasizing about natural parents that could be avoided with more access to birth family, or more access to information about birth families. The consensus among these women was best stated by one Mi'kmaw social worker who said,

I do not believe in adoptions. If we have a child that cannot live with their parents, then we try to place them with their extended family, or close friends. This way a child doesn't have to go through identity crisis, the secrecy, the not knowing where they come from. The child must stay in their own community [used here meaning neighbourhood, and ethno-cultural group] near some of their relatives so they grow up knowing who they are.

Social Construction of Transracial Adoption

Considering the view the Mi'kmaw social workers held about adoptions in general, it followed that they constructed a negative view of transracial adoption. According to the Mi'kmaw social workers who participated in this study, placing a child outside of their ethno-cultural group would be nothing less than destructive. All of the Mi'kmaw social workers had been working as social workers for a minimum of 10 years. They all viewed ethno-cultural relations as slowly improving. Two reasons suggested for why the ethno-cultural relations are slowly improving is that people are no longer able to ignore that there is a problem, and that native people are becoming more aware of their legal rights. Another of the women felt that although things are slowly improving you don't have to go far to find something labelled as an ethno-cultural, or 'race-relation' problem. She also felt that more time and money should be spent in the class rooms culturally educating youth in society. They all commented that preservation of cultural heritage should be given the most, if not all, of the weight when placing native children in foster care, and adoptive homes.

The main reason the Mi'kmaw social workers gave for their negative views of transracial adoption were that it was not in the best interest of the child. They expressed that the native children who were adopted into white families were often dealt a double blow, they had to deal with adoptive separation from biological parents, but also separation from their ethno-cultural, or racial roots. One Mi'kmaw social worker said plainly that transracial adoptions with native children don't work. "The children are confused and angry, and troubled."

It was expressed that while many children experience some degree of turmoil in their adolescent years, for an adopted child this may be heightened by an identity crisis; furthermore for the transracially adopted child this may be aggravated by an alienation from their cultural, or ethnic group and this may increase the chances of adoption break down. It was mentioned by one Mi'kmaw social worker that in many cases if there are complications with the child during adolescence, the adoptive parents can blame the cultural aspect of the child for the break down, rather than attributing the problems to actual issues of adolescent rebellion, or adoption identity crisis.

According to the Mi'kmaw social workers transracial adoption put the children at risk for loss of identity, both personal and cultural. This was described as a major cause of many other related problems for the young adoptees, such as alcoholism, and death through self-abuse, and suicide. As one of the Mi'kmaw social workers described it,

I think you have to recognize the child's need to belong . . . and developmental [psychology] stuff tells you about child's need for identity, and their identity crisis that can happen in their adolescence. There are so many issues that can add, and if your parents ignore that, and pretend 'this is just like all our other children', it is not. It is like the ugly duckling and the swan. It doesn't look the same. When you're babies everybody looks the same, when they're big they're not.

This attitude is understandable if one takes the time to explore the cultural descriptions provided by the Mi'kmaw social workers. According to the social workers, the children are not only separated from their birth families, but they are missing out on learning an entire way of life.

When asked to describe the type of culture that was trying to be persevered, the Mi'kmaw social workers all spoke with a great deal of pride for their culture. It became apparent that culture for them was much more than the external signs of a culture. One woman's feelings were that "It is not the way you talk or dress, it is the way you think. [It is viewing the world in a circular way, as everything being connected, the earth and the people]. White people tend to see things in black and white, they see things in the horizontal." Another felt that the language was an essential part of the culture, and from language much could be learned about the culture. The third Mi'kmaw social worker described it as:

The culture is all of your life, your day to day living. It is everything, it's your heritage, it's your music, it's your history, it's your bands, it's everything. It's your language, it's your interaction with other people, . . . your view of the world, your view of everything within the world. I have often said I feel very much a Mi'kmaw person. I don't need beads, I don't need feathers. But a lot of people need that kind of external validation to feel a part of their culture. When you live there you don't need that, I don't need that, I don't need to have beads, I don't need to have feathers, I don't need fringe clothes. I mean if I was a disco queen I would, but not to be Mi'kmaw. I know a lot of people who haven't grown up around members of their own culture, their own native culture, you can spot them a mile away, they are the ones with the big hangy earrings, and the big . . . neck choker, and the silver everywhere, and turquoise, they borrow their kind of pan Indian thing across North America.

Another risk for the children that was brought up involved a rescue fantasy held by the adoptive parents. This particular Mi'kmaw social worker said,

The biggest risk is that children grow up with attitudes that are foreign to them, that children grow up feeling very confused, very inferior, feeling that they are saved, . . . many times what you will hear too, which I find, is that if non-native people want to adopt native children it is because they want to save them, to give them a better life. That sort of attitude is very dangerous for the children growing up. To realize

that there is something inherently wrong with me right from the beginning that they want to save me from something. To save me from who I am. I think that is inherently wrong and very dangerous for children.

It was said by a Mi'kmaw social worker that it would be very difficult for a white person to teach a native child how to be native. It was suggested by two of the participants that maybe if the white adoptive couple knew someone that was native that they would have some help in teaching the child about their native culture. However, other than "hanging around the fringes of Indian activities", like pow wows, there was little that could really be done by white parents. One of the Mi'kmaw social workers stated,

In my experience I do not feel that non-native people should adopt native people, because even with the best intentions, and a lot of people have a lot of really good intentions, and say 'yes we will get them involved with their cultural identity', and they may take them to a pow wow or something, and the kids get lost when they get to be teenagers, and that is when they come back to me. We have to try to deal with these kids who are stuck, and they don't know who they are. I think if they don't have the opportunity, I am not saying that native children should grow up in a native community, however they should grow up with somebody, that at least one parent is native that can understand the issues that have been faced by natives for centuries to explain that. Not to see it as their fault, or that they are inferior, or less than just because they are native, but to have a different look, and because they are native they are special. So I don't think they get that message from non-native people.

It is possible that since the Mi'kmaw social workers do not ever appear to place native children with white adoptive parents that this was not really a serious option anyway.

Part of the discussions about native children being brought up in white homes raised concerns about racism in the adoptive homes. A risk claimed by the Mi'kmaw social workers was that children have in the past been adopted into very racist white

homes. Here there is not only a worry about lack of knowledge about one's own cultural heritage, but the threat that that heritage could be treated with disrespect, prejudice, and ignorance, and then that these elements would be incorporated into the native child's own identity.

One very important point that needs to be noted is that two of the Mi'kmaw social workers expressed that they did not believe in permanence. One of these women stated that she firmly believed children could form multiple attachments. This is an important finding because many times permanence is used to support the placement of children outside of their ethno-cultural group. In the literature, and in some of the interviews from this study many people make the claim that it is better to have a child in a loving home outside of their ethno-cultural group than for them to be "in limbo", in permanent foster care, or they may claim that agencies do not make good parents. The Mi'kmaw social worker's response was, "my personal experience says that children can make multiple attachments, they can love their adopted parents, or their foster parents in one way, and not lose their love and attachment for their natural parents that they had in the beginning." She felt that the foster homes were much like subsidized adoptive homes.

The placement of native children outside of their ethno-cultural group is still a real fear. Even though there is legislation in place that supports the placement of children within their own ethnic, cultural, and religious groups, not all native children get placed in native, or part native homes. Sometimes mothers who have a negative perception of the native community fail to self-identify themselves as native, or fail to

provide adequate information about the father's native heritage. In these cases the children are truly viewed as lost to the community because no one knows their heritage to even attempt to teach them about it. One of the Mi'kmaw women felt that the agencies in the mainstream would be placing native children in their approved white homes if not for that mandate, and that private agencies are indeed doing it. It did seem as though the Mi'kmaw Family and Children's services was a large step toward lessening the number of children being placed outside of their native culture.

[We] will keep an eye on native children that are available for adoption, and we will hopefully help facilitate adoptions. We are not perfect, nobody is perfect. We are not perfect we are going to do some lousy ones too. . . . we are doing the best we can, and we will minimize the placement of children outside of their culture by having us available to recruit families.

The Mi'kmaw social workers seemed to feel that they were somewhat in control of their situation with Indian Child Welfare system. They viewed the court system, and social workers as having the biggest voice in the decision making, and they expressed some dissatisfaction with that. They all felt that it was the responsibility of the Mi'kmaw people to decide the fate of Mi'kmaw children. One woman stated that self determination was something the native people had prior to the European settlers and it should be restored. Another woman felt that as the native community got stronger there would be native rules for a National Native Child Welfare, and that it would be federal instead of provincial.

The opinions held by the three Mi'kmaw social workers were build on one, or all of three areas: the private realm, the professional realm, or the academic realm. One of the Mi'kmaw women had spent time studying the issue which only

strengthened her conviction on the subject. She felt that her research had validated empirically what she already knew to be true from her personal experiences. All of the women had been in the position of a professional who had to deal with the adoption break down survivors, the adult, or teenage transracial adoptees who later return to the agencies for help in dealing with adoption problems, or related identity problems. Likewise in their private lives they all knew personally people who were raised by white families. The best of situations had left native people, to some degree, disconnected from their white families, and their native communities. The worse of the situations had left alcoholism, and death for those who had been transracially adopted. In closing one woman stated that,

I never would place a child in a white home. I guess I have come close by adopting two native children to a family in a rural part of this province. The father has no connection to being native, the mother has some connection, but they don't have a lot of cultural identity. That was in my early years, and in hindsight, I wish I could do it all over again and they never would have got the children.

Mi'kmaw Ethno-Cultural Identity and Professionalism

The exploration, in this study, of identity issues and how it could influence views of transracial adoption was important for understanding why the Mi'kmaw social workers constructed transracial adoption as they did. The native women presented themselves as being deeply in touch with their ethno-cultural identities, and they seemed to have a clear perception of how their ethno-cultural identities influenced their professional identities, and their opinions of transracial adoption.

The three women expressed that they were satisfied with their own accomplishments at work. Two of the women pointed out that they had other

elements that went into their self-identity, and social work was not the only identifying element. One woman did note that she found the atmosphere of being a social worker in a native community uncomfortably political at times, but she was generally happy with her own work. They all felt that their native identity was an asset to their work.

When asked how their ethno-cultural identity factored into their professional identities, all three women expressed that it had a large impact on it. One of the women reported that,

Being Native, and specifically Mi'kmaw, and being a social worker are all a part of who I see myself as, all encompassing, all integrated. I bring who I am into the social work. It is who I am as a person that allows me to do my work well. The way of living as a native person is what makes it work so well. If I wasn't a native person, I would not be the person I am, or be able to do the work I do. It influences my work in a way that makes it possible for me to do it best. Being native allows for more understanding, a comprehension of the feelings, thoughts, the issues faced by native people.

In answering the same question another of the women replied,

Greatly, in a word. You can't practice social work apart from who you are as a person, I don't think. Some people maybe think you can, but personally I don't think you can. What you do in everyday practice is because of who you are. The way I have experienced my life affects how I treat the people I work with, and like motherhood is the biggest example, I am much more empathetic to clients who are parents which is mostly my practice in Child Welfare.

The third woman had a unique situation since she had one parent that was non-native. Her position of having one non-native parent was also a large part of how she defined herself, and her social work. She felt that her composition of native and non-native opened her to be better able to handle cases where children had been exposed to living with white people. She saw herself as someone who could relate to both sides of the

issue, and hopefully someone who could really help the kids who had adoption break downs.

Two of the Mi'kmaw women did view objectivity in social work as a valuable goal, but felt that when it came to the native community it was white workers who could not be objective. The feeling was that white workers have not understood the cultural differences between the white and native communities, especially in areas of child rearing. As it was described, in the native community children are the responsibility of all, so if the mother of a child is not present at a particular moment someone else is watching after her children, and she is not being inappropriate in her behaviour. For white people, the parents, and especially the mother, are responsible for watching the children, if the child is left unattended the mother is viewed as being neglectful. This lack of cultural understanding could possibly lead to white workers removing children from natives homes when they perhaps they should not be removed. The notion of cultural misunderstanding leads one to question, how is it that professionalism is defined for native social workers, and other social workers in the mainstream; is there a universal professionalism; is a universal professionalism even possible?

One of the women argued that the key to objectivity is what is considered to be the best interest of the child, and who decides what that is. Her view was that the best interest of the child should include, and does by the mandate, the cultural, racial, and linguistic heritage. She said if a non-native social worker was an ethical, culturally competent, and 'professional' person he/she would be aware of the issues for native

children, and would do what was best for the child which could mean doing everything possible to place the child in a native home. She also added that this type of person might not be easy to find.

For the women in this group the objectivity questions were slanted because all the women were working for native agencies. Since they all practiced Indian Child Welfare, their objective decisions would be based on which was the better native family for the children. One woman emphasized that she wanted the subjective view, "The objectivity between if it was a non-native family and a native family, I want the subjective opinion, I don't want the objective one. I want someone to say native children placed with native families." It seems as though this group did have great input into defining their own professional guidelines; in the same instance, they were defining what would be considered to be 'objective' concepts.

Professionalism was respected by all the women. Although they were unhappy with having to follow provincial rules, they all abided by the regulations and standards. One woman reported that the Mi'kmaw agencies actually had to work harder than the non-native agencies, just to prove that they could be successful.

When we first started our agency it was dubbed the "Mickey Mouse" of agencies. It may have been because the other agencies lost the funding they were getting to service the native community. They did not see us as a real agency, and they said it would never work. These were the same social workers I had gone to school with, and that was hard. We had to show them, not only that we could do it, but that we could do it better. We had to be the cream of the crop, and to make everything perfect. It was hard because at first we had to follow all the same procedures, since then we have been able to develop a better system of working together with the community, and the culture.

It was mentioned that now the native agencies are often approached for help in writing policies, and they are active in policy writing. It was also reported that the native agencies are encouraged to interpret the policies so that they work best for the native clients. It is apparent that the Mi'kmaw identity of these women influences their professional, and personal lives, that subjectivity is viewed as a part of how they should do their job. ..

Black Social Workers

Social Construction of Transracial Adoption

To understand how the different members of this group constructed TRA, it is also important to have a profile on the composition of the group. The black category of social workers consisted of six people with five female participants, and the one male participant in this study. Two of the participants were social work candidates, and they were in the process of fulfilling the required number of actual social work practice hours to become registered social workers. The number of years of experience among the black social workers spanned from just under one year to 21 years of service. The participants had worked in a wide range of social work areas. At the time of this study three of the participants were involved with Child Protection, foster care, or adoptions which will be described as directly involved in the placement of children, and the remaining three were employed in other areas not directly involved with the placement of children.

When asked what direction they felt ethno-cultural relations were heading today, the six black social workers produced similar answers. Three of the social workers, one of them male, claimed that they were aware of a “new racism” that had come into being. One woman who had been working in social work for 21 years described ethno-cultural relations in her following quotation:

Oh they are getting worse. We are dealing with a new racism. The face of racism I think is much more subtle, more underground, and therefore much more dangerous, and potentially destructive. I think for ethno-cultural groups in this country, we have always had . . . more than an attitude, an awareness that we have to work twice as hard. Now

what we are telling our children and grandchildren is that you have to work three times as hard. It is getting tougher. The worse the economy is, the worse the racism is.

Her feeling was shared by two other black social workers. One who said, “there is a niceness that is not really a niceness, not a genuine niceness, it is sort of like the rattle snake without the rattle. So you never know where it is at.” The second claimed, “You have gone from a switch from where things are out and out done racist, that you can see them to subtle little things that are done.” This particular woman did feel that there had been some mild improvement in ethno-cultural relations. One of the female black social workers thought that ethno-cultural relations were getting worse; this notion was shared by at least one other black social worker. Her observation of ethno-cultural relations was that:

I think things are getting worse. People are tired of hearing what blacks have to say. People think that we are just hollering for nothing, that things are not as bad as we say they are, that racism isn't as big a problem as we are making it out to be. That we are just complaining for nothing.

The reasons suggested for the perceived environment of ethno-cultural relations varied among the individuals. One woman felt that it was really an issue of struggling over power. She reasoned that people with power don't want to give it up, which is what they would have to do to equalize the disadvantaged with the advantaged. Another suggestion was that the media played a role in poor ethno-cultural relations by accentuating minor events making small problems appear large, thus worsening them. A poor economy was also perceived as a possible reason for poor ethno-cultural relations. One person felt that Canadians who were suffering from unemployment

were also searching for someone to blame for their situation. Frequently the blame for the poor economy is laid on immigrants and minority groups. As briefly mentioned, two of the women did note that ethno-cultural relations could be said to be improving, but they added that it was a slow process. One of them stated:

There are days when I feel we are making some progress, by virtue today that we have a black district manager, where we never had a black district manager in community services before we are making some progress. But then when I hear a worker in the office make an overt racist statement, I think oh God, gee have we gone anywhere. You take two steps ahead and three steps back. We have made some gains, but we still have a heck of a way to go.

The perceived improvements in ethno-cultural relations that were reported were attributed to such things as education, sensitivity courses, and a heightened awareness, or emerging raised consciousness among some willing people. It was pointed out that positive changes only occurred where and when individuals desired it; in reality many people are still very resistant to changes in ethno-cultural relations.

Unlike the Mi'kmaw social workers, there was not a unanimous negative construction of TRA with the black group of individuals. Some of the people in the black group considered TRA to be an acceptable alternative when same-race placements were not possible. On the contrary, others described TRA as cultural genocide, and felt it bared comparison to slavery. There was no question that all people of every group who participated in this study wished that all children available for adoption could be placed within their own ethnic, cultural, religious, or linguistic group with an appropriately matching family. This is reported, for whatever reasons, as sometimes not possible. For the black social workers who constructed TRA in a

positive way, the scarce prospect of finding a black home for a black child would have to have been demonstrated prior to permitting the child to be placed with a family outside of their ethno-cultural group.

Four of the female black social workers constructed TRA in a positive way, or showed support for TRA. Two of these women were working in areas directly related to the placement of children and two were not. Three of the four women who supported TRA reported having encountered some individuals suffering from the negative effects of a TRA. These women did not condemn TRA because of their experiences, instead they used what they had learned to improve the success of future transracial adoptions.

The black social workers who showed support for TRA were also aware of the possible risks in such adoptions. As in the Mi'kmaw group, a concern for the well being of the child was paramount, and the loss of identity was one of the biggest perceived risks. One woman, who supported TRA, explained from her point of view what can result from TRA:

[We] have got a lot of black kids who were raised in white homes, in totally white communities, that were totally isolated from any sense of identity that are saying, 'I love my parents, I had a good life, but when I went out into the real world and found out that I was black I couldn't deal with it'. To me I think we have learned enough to say that it is very important for a person to know their cultural background.

Another of those in support stated:

You know that child looks at them self and looks at everyone else in the family and they know they are different, but they need to be acknowledged and validated on being different and being positive about that difference, and not all the negative things they see on tv.

It was also the feeling shared by this third woman:

The biggest risk is the self-identity, and knowing your history, those are the biggest risks. If you are bi-racial to know both histories, it is important to know both. I believe so because the child will be very confused and they need to be proud of both too.

Even though these four women supported TRA, they still had concerns about how whites would deal with situations of racism. How will white parents be able to teach the child how to deal with racism? Will they be able to recognize it themselves? One woman was concerned:

I guess that they [white parents] are not going to be able to understand when things happen that they may not think are racist, or discrimination, and it really is, just because they haven't grown up with this, and they won't see the . . . signs of this is what is happening. I guess to pass that on to their children. Some people don't register. They don't see the real message around the actions of others.

One woman expressed her concerns for the white adoptive family, "The sense of failure on the adoptive parent's side . . . the more they hear about this now, oh you should not take black kids, and they are sitting back saying what have we done?"

The evidence of negative effects of TRA tended to be presented as things that produced bad results, such as isolating a child from their culture and history, and not dealing with racism in an appropriate manner. These women appeared to want to stop doing the wrong things with TRA, and to apply their knowledge to make transracial adoptions work rather than discontinue them altogether. The awareness of the risks among the women became a tool for improving TRA. They all had some criteria they felt would improve transracial adoptions. These criteria have been put into the following points:

- Supports are needed for the adoptive family; who are they going to go to for help in raising a child of another 'race'?
- The family must be willing to make connections in the community the child (black, or otherwise) has come from.
- The family must make the home culturally sensitive, including dolls, books, and pictures of all races.
- Resources are necessary for the parents; many adoptive parents want to do the right things, but they need access to learning tools that will help them.
- The parents should be trained to deal with all the possible situations and issues, such as discrimination, that could arise (this was also a criteria for all adoptive parents, black, white, or native).
- The parents should be dedicated to learning about their child's culture, and teaching the child about their culture and heritage.
- At an appropriate time the child should have access to information about where they came from and their circumstances surrounding their adoption.
- The child should be comfortable, and feel a connection to both their adopted, and birth families.

The four black social workers who displayed support for TRA claimed that they wanted the best possible homes available for children. Same-race placements were their first choice, but an appropriate white home was viewed as a better fate than to be "in limbo" as one woman described it. The strong desire for a loving family with a stable, permanent environment appears to have had the greatest influence on the acceptance of TRA among the black social workers. In spite of their caution around TRA, all four of the women made a point of clearly stating that they believed non-

black parents could successfully rear black, or bi-racial children with the proper resources.

One point in question is how are whites going to handle the concerns expressed by the black social workers? Several suggestions were made as how to improve on TRA, but there was limited information on exactly how whites would accomplish two things; how will white parents convey the tools necessary to combat, and cope with racism, and how will they teach the history if they do not know themselves? Only one woman recommended that whites, and all adoptive parents, should be trained in dealing with racist situations. The other three were open about their doubts as to how a white person could teach a child what they needed to know about racism, and cultural background. It was unclear from the interviews whether the all social workers thought that all the risks of TRA could be eliminated with proper resources, or if the need for permanent and caring families was outweighing the perceived risks of TRA. For one woman it was a matter of permanence over the risks. As can be seen, she knew the risks of inter-racial adoptions, but also felt that it was better than no home.

I guess personally being a black person I would like to see that a child grow up in their own culture where they would be able to do whatever, whether they be French, or Native, I would like to see that, but if we don't have that, and a child needs a permanent home that would outweigh keeping them in foster care, or ever waiting for a family they are never going to get. Or growing up in a system, you know calling an agency their family. I guess there are a lot of things, race is one thing, but a child's needs, you have to balance it, you got to look at the child's needs.

Two of the black social workers were not in favour of TRA. One of the social workers was directly involved in the placement of children, and the other was not.

They both made claims against TRA through four major risk areas they described. Like most of the people who participated in this study the two black social workers who were opposed had major concerns for the loss of identity for the children. It was the male social worker who explained that a family does not have to be racist to damage the child's identity. He feared that some people, including some blacks, come from the "Human Race" philosophy. This philosophy claims that we are all part of the same race, and there is no difference between the different 'races'. Raising a child of colour in this way could be said to strip the child of their unique cultural identity and pride in diversity. He felt this taught a "falsehood", and to bring a child up in an environment would be to do so under false pretenses since 'race' does have real consequences in this world. The child must face the experience of a loss of identity, but then they must also face the reality that they will be treated different because of a 'difference' they have been taught does not exist.

The female who was in opposition to TRA agreed that loss of identity was a serious threat for the child, in addition she included a threat of the loss of connection to the black community. This loss of connection seems similar to loss of identity, since most people had argued that to build identity one would need to be in contact with the community of their origin. She commented that adopted people, who later returned, were not always readily accepted by the communities of their birth. In her words, the loss of connection results in, "[the] world that they should be a natural part of is totally foreign to them . . . they have to negotiate their ways into their own communities that they should be a part of, that they were born into, but were taken

away for whatever reason, taken away, or given away whatever.” This particular sentiment is close to that expressed by the Mi’kmaw women. It could be a criticism of general adoptions, since an in-racial adoption with sealed records could also remove a child from their community of origin while keeping the child in the wider black community. The second person in opposition to TRA shared this feeling, and said that TRA could result in the child having a confused sense of self, and feeling alienated from their ethno-cultural community.

Racism was another major concern for the two individuals who were not in favour of TRA. The male felt that the ways in which blacks families subtly teach their children about racism, and how to deal with it, is the best way for the child. He did not believe that white parents could do it effectively, and he felt that blacks did it effortlessly. The woman expressed that to give black children the best possible chance in life they should have all the tools deemed necessary to deal with the racist world ahead of them. It was her position that the family is the child’s first school and “because ethno-cultural groups of colour in this society are subjected to so much racism then I think the best place for them to deal with that and learn how to cope with it is to be with their own peoples.”

The same woman claimed that one of the biggest risks associated with TRA was cultural genocide. She argued that TRA, “is the wiping out of a culture. It is whiting out a race when we do that.” Interestingly, while this individual viewed assimilation through TRA as a threat, another black woman had claimed that the transracial adoptees had difficulties because they wanted to assimilate into white

society, but that that society would not let them. The view of TRA as cultural genocide was expressed by one individual in this group. There was however, a comparable sentiment shared by the other person in opposition to TRA, who likened TRA to a modern slavery.

The two black social workers who opposed TRA did appear to agree with adoptions in general, and they seemed to value permanence in loving homes, but they wanted those homes to share the child's racial background. They both expressed a desire to see kids get homes, but not at a risk to the children, or the black culture. The difference in the opinions of those who were in favour, and those who were opposed to TRA is a fundamental difference in the perception of the capabilities of white adoptive parents, and in weighing of the importance of permanence in loving white homes with the consideration of 'race' as the top priority in adoption placements. The bottom line is that some individuals felt that whites were capable of raising well adjusted black children, and some others did not have the same confidence in whites to do the job. It can also be said that the social workers in favour probably have a stronger commitment to finding a good permanent home, and those who were opposed to TRA probably have a stronger commitment to finding families the same 'race' as the child.

All six of the black social workers agreed that cultural preservation should be heavily weighed or have all of the weight in adoption placements. People on both sides of the debate held this attitude; they differed however when it came to how this preservation could be done. Four of the black social workers felt that white parents

could successfully do it, and two had strong doubts. One of the individuals who was opposed to TRA made the following comment:

My personal and professional opinion is that it should be given top priority. I would not consider bringing a white child into my family, and raising it, and calling it my own. I think that it is ridiculous, a white child is not going to look at me and think 'oh yeah, that is my mom'. . . . that we have allowed this to happen is quite inappropriate.

When asked to describe the black culture that was trying to be preserved the social workers named the following areas. History was the most frequently talked about area of culture. Preserving history for the children meant teaching them about the history of slavery; the history of how blacks came to Nova Scotia; the history of the particular black settlement the child was from, and the child's family history. One woman said she could see how it would be difficult for a white family to teach the child about their history, since blacks are just learning it themselves. Family was an important element of the culture as well including both the nucleus, and the extended family. The family was seen as important in terms of the lineage that connects one generation to the next, and the knowledge that is passed down. A sense of community was described as an important part of the culture trying to be preserved. Community was described by one woman as part of her concept of family. One person said that there had once been an openness in their black community that was declining. The way of living was given as an answer to this question. It was made in reference to living as community oriented people, and how everyone was involved in many things including the raising of children. Another answer suggested traditional values were seen as part of the black culture that needed to be preserved, but this was not

expanded on. Religion and the church were also talked about as an important element of culture, and especially faith and spirituality. Some external signs of culture were also brought up as important elements of culture, such as music (jazz, blues, gospel), foods, clothing, and hair. These are the perceived elements that could be lost in a poorly done TRA. The ongoing debate is over whether or not whites can do it

It should not be forgotten that TRA is always a second choice, the best situation is to have children placed within their own 'racial' group. So why are children not just placed in black, or biracial homes? The answer to this might be that there are no approved black and bi-racial foster and adoption homes available. However, not everyone agrees with that assumption.

There are people in this province who have been hired to recruit black and bi-racial foster and adoptive homes for black, and bi-racial children. One woman said that some of the ways they tried to recruit homes was to make contacts in the black community; they have adoption days; they advertise in the news paper; they have kitchen talks; they check with other agencies for available parents, and they use word of mouth. Still two of the women did not feel that all these things were actually being done to recruit homes, and that if more effort was really being put into the search that more black families would be adopting. One of them suggested that for people who are not members in the black community it is possible that they think they have exhausted all resources when they actually have not:

I still think it comes with their own sensitivity. I think a lot of times they think . . . we have exhausted, when they say that they really believe it, because they don't know that there are other ways that they can do it. [They] haven't been informed, or educated of all these other

different routes, and they are dealing with their own fears and phobia, and if they are racist or prejudice, they are not going to think that they can go and sit in someone's house and talk to them about adoption, or foster care. To them they have exhausted all of them.

Black ethno-cultural Identity and Professionalism

All of the black social workers perceived their profession as social workers to be a large part of their self-concept. One person did say that sometimes the values of social work conflicted with his personal values, and he sought to keep a balance between the two. This person saw social work as a learning tool in life, and did not plan on remaining in social work for all of his career. Two of the women who had been involved in social work for many years described themselves as having a holistic approach which encompassed their professional as well as their personal lives.

Four of the black social workers reported that they were either happy or satisfied with the accomplishments produced by their work. The male participant did say that although he was satisfied, he was discontent with the fact that while there were so many good things that could be done, at the same time there was so much bad that he could not change. One female reported that she was not happy with her current position. She said that to earn a decent wage she could not afford to work in the areas she would prefer to with women, and troubled teens. Another black female reported that she was not satisfied by the accomplishments produced by her work.

There is too much work. The need is far greater than any of us can ever do. There is a level of satisfaction, but not where it should be. It is not really meeting the real need, that is always a frustration.

The black social workers were similar to the native social workers in that they all perceived their ethno-cultural identities as having a profound influence on their

professional identities. Half of the black social workers claimed that their ethno-cultural identity influenced their decisions to become social workers. Experiences as children, and as members of a ethno-cultural group of colour lead them to want to help others. Being a black individual practicing social work had had both positive, and negative consequences.

On the positive side many of the social workers felt a great deal of satisfaction at being able to service other black members of their communities. It also seemed to be an area that they felt needed them. It was especially important to them that black youth had people of their own ethno-cultural group to turn to for help. One woman felt that she was a role model for all races to see that black people can achieve, and they do not have to fit into some stereotype.

As a role model, as a role model for other blacks, or for other African Canadians, or Nova Scotians to see that I can do it, so you can do it too. To give them something to achieve at, and even do better if they can . . . This is not just for African Canadians too, I see this as other youth, all races to see that black people can do better. Because we are stereotyped so negatively in the media, and tv, and whatever. I want them to see I worked for where I am, nothing came easy.

Three of the social workers said that they felt that being black had allowed them insight into what others were sometimes feeling; being outside the mainstream was an advantage when trying to relate to how others were feeling. Some of the black social workers also said that their ethno-cultural identity had forced them to be more vocal, or political than they thought they were naturally because they often felt the need to speak out on behalf of their communities. One woman said, "It has made me more of

an activist, it has forced me to speak up on issues when I am normally a low key kind of person. But things need to be said, and someone has to say them.”

Being a black social worker had many negative consequences as well. Two people reported that sometimes clients did not want to be serviced by black workers. In such cases the black worker would have to work through the 'race' issue with the client first, and they felt that it was not their job to do that. This account demonstrates the power differentiation between the ethno-cultural groups, in that an individual in need of help would consider them self to be above that of a trained professional due to the ethno-cultural identity of that professional person. Another hardship faced by some black social workers is that they feel they have to work harder, and be better than everyone else just to be viewed as as good. A black social worker would have to be a better writer, pay more attention to details, document things better, and be more professional than other workers to receive recognition. Sometimes black social workers reported that they were subjected to having their skills and abilities questioned because of their ethno-cultural identity. Some people will accuse them of getting into an academic program, or a job due to affirmative action, rather than on their own merits.

Some of the black social workers did on occasion feel torn between standing with the black community on an issue, or standing by the agency they worked for. In most cases this situation was attributed to policies that all workers have to follow. Two women noted that when people do not understand how things work in the agencies it can lead to them thinking that the social worker has turned their back on

the black community, or does not share their concerns. The black social workers wanted to remain faithful to their profession as well as their communities, but ultimately they did not do anything that would compromise their professional standards, or regulations.

The discussions concerning objectivity were addressing judgements at work, and with reference to TRA. Some of the people who were participating in this study did not take part in some parts of this discussion. Four of the black social workers saw professional objectivity as a desirable goal, but they had different ways of trying to stay objective at work, or dealing with it when they felt they could not. Two of the women felt that experience, discussion among colleagues, flexibility, and a willingness to remove oneself from a situation were all helpful ways to protect objectivity. One woman felt that by staying close to her ethical guidelines she could prevent her personal feelings from entering into her professional decisions. Another said that objectivity in TRA was not really a problem because they were forced to follow the mandate set out in the Children and Family Services Act 1990.

Some of the black social workers were of the opinion that TRA was a subject that should involve subjective ideas from black people, and they considered this to be a part of conducting themselves in a professional, and responsible manner. One of them felt that it was inhuman to think that you could be totally objective on any issue, since we all bring elements of our self into the work we do. One woman expressed that:

All of us have subjectivity, all social workers, all researchers bring subjectivity to the work they do. Now how do you control for that is

the question. And I think one of the things that you do is you bring it up and into the open, you bring subjectivity out into the open. We don't apologize for having a vested interest, and in fact what we say is, we do have a vested interest because these children are our children, and it is the way we view our world, and it is the way we view our responsibility to the children of our communities. So we say it very clearly these are our children, and so we have some responsibilities to work and act and make decisions that are the best interest of these children, not our best interest, but the best interest of the children.

This group was also questioned on whether or not they felt people outside of the social work field may perceive them as being less objective than whites on the subject of TRA. Some responded by saying that it could really go either way, some people may view blacks as better able to be objective, and some others may see whites as better able to be objective; it was really a matter of where you are standing. It was said that, whoever they are, the social workers are responsible for finding a black home if they can, and then to demonstrate that the chosen home, black or white, is a good home. One person felt that it was not something that could be determined by 'race', and they thought that the answer to that question depended on individuals. Three of the social workers admitted to having a vested interest and said that they hoped, and expected that their white co-workers would have the same level of interest in what was best for the child as they did.

The group of black social workers all wanted to see decisions about placements of children to be made by birth families, or a team of birth family with a state representative (judge, or social worker). The workers were all keenly aware that the state had the final word on where children were placed. The sentiment that increased involvement from the birth families is necessary was consistent through out this study,

and across all ethno-cultural categories. The reality is that a birth family may request certain things for their child, and this may be taken into consideration when placing the child, but the social worker is not bound to ensure any of them. Birth parents are often given profiles of potential adoptive parents for their children, but the state still decides which profiles they get to see, and they reserve the final word in all cases.

The black category of social workers is in a very different position than the native category of social workers. Although both of them are labelled as minority groups, the natives have been able to use that status to removed themselves from social work practice in the mainstream. The Mi'kmaw social workers have their own Indian Child Welfare practice, and they work in their own Mi'kmaw Family and Children's Services. Black social workers today are still practicing within the mainstream framework of social work. Two of the black women did introduce the concept of Africentric social work values (discussed in chapter 5 of this thesis), and practice in the interviews, but only one of them was advocating for a separate black social work practice equivalent to that of the Mi'kmaw's.

Interviews suggested that the remaining five black social workers were committed to the current social work practice, and its values. This is not to say that they do not want to improve it by increasing cultural, and racial sensitivity, or by incorporating some Africentric social work values and traditions into the current practice. What it does appear to say is that some black social workers have accepted the fundamental values of mainstream social work. One woman talking about the social work system stated:

I appreciate it, I understand some of the complexities of the whole issue of being in care . . . and the whole structure of it. All of my work along, I don't see even at this point in my career some almost twenty years later a career move, or career change on my part. I am still very much involved in, and inspired by what we can do within the whole social work realm.

Another individual who had accepted the values of mainstream social work practice wanted to make stronger connections between blacks, and whites in the mainstream practice, rather than to divide them:

[The] position I am in is to liaison with the white community and 'the agencies' as far as that has been mistrusted, agencies and government offices by the black community. So have someone who can bridge that, and explain things to the black community, you know share information. I think it is a two way street, if an agency is making a step forward to make the black community feel comfortable, and invite them on input, and how things should be done, then the black community too has to make a step too.

The criticisms of social practice tended to be surrounding issues of: low funding and government cutbacks, poorly paid foster parents, being short staffed, and heavy case loads. They did not usually attack the value system of the social work practice. Most of social workers seemed to be satisfied with the level of power, or discretion they had at their jobs. They did not express dissatisfaction with their professional control, or input into what happened with the children they were responsible for. For the most part it seemed as though the black social workers wanted to build bridges by developing the current system rather than totally branching out into a solely black practice².

White Social Workers

Social Construction of Transracial Adoption

If we are to understand how people construct TRA then we must also be acquainted with the point of reference for those people. In this group there were six white female social workers. Unknown to the researcher at the onset of the interviews, five of the women were adoptive parents, and three of those adoptions were transracial adoptions. Five of the social workers were employed in areas directly related to the placement of children in foster care, or adoptive homes, either in a full-time, or part time capacity. One of the women was employed in a area not directly related to the placement of children in foster, or adoptive homes. The years of experience for this group ranged from no less than ten years to more than 30 years of social work practice.

The discrepancy between the high number of white adoptive parents, and the lack of adoptive parents in the other two groups warrants some attention. It is highly doubtful that the number of white adoptive social workers is the norm among the total social work population. It is most probably that with the snow-ball sampling used in the selection of subjects, that the researcher was directed by contacts to individuals thought to be 'good' subjects for this topic. It is suspected that while black and native social workers were actively pursued to participate in this study, the population of white workers was greater and contacts were trying to be 'helpful' by selecting individuals with personal experience, over those without. It should also be noted that

two of the adoptive parents (one TRA, and one not) approached the researcher requesting to participate in the study.

Discussions on the direction of ethno-cultural relations revealed a pessimistic view. Only one person said that ethno-cultural relations were improving. She said that the existence of the mandate for the same-race placement of children was proof of that improvement. Three other women said that there were signs of a slow moving progress in ethno-cultural relations, and they felt that there was an increase in the level of awareness about cultural sensitivity among people today. Four of the white social workers said that they perceived a lot of hidden racism still persisting in society. Several of the women described a resistance and a backlash against improved relations. The feeling among these social workers was that many people do not want to change. One woman argued that ethno-cultural relations were becoming more divisive. She felt that there were no bridges being built to increase understanding between the different 'races'. It was her opinion that 'race' often became a barrier in discussions on what she considered to be other issues, and once that barrier went up there was no way around it.

The white social workers attributed the current poor environment of ethno-cultural relations to several areas. The economy and the poor job market were claimed to be adding to the stress and strain on society contributing to poor race relations. Affirmative action was mentioned as a sore spot between whites and other groups. It was suggested that some whites feel that they lose educational, and employment opportunities to less qualified minority people due to Affirmative Action.

Consequently, some minority people suffer criticisms, and are sometimes assumed to hold their positions in schools and occupations solely due to the benefit of Affirmative Action. Parents of children of all 'races' who continued to teach, and reinforce in their children racist ideologies also were handed some of the blame for poor ethno-cultural relations. It was said that racism is so ingrained in our society, and stereotypes are still so widespread that a real effort needs to be made to dispel them. As one woman pointed out the communities themselves are still separated with blacks living in one area, and whites living in another, it is difficult for the two to interact. Interaction and face to face personal contact were advanced as the best way for people to get to know and understand one another.

Among the six white social workers four of the women, all worked in areas directly related to the placement of children, showed support for TRA, and two, one who was involved with the placement of children, and one who was not, felt that it may not be the best alternative for children. Those who were in support of TRA had a strong commitment to permanence in loving homes, and many argued that 'race' was one factor among many that needed to be considered when placing a child. For the other two, it is not totally accurate to say that they were opposed to TRA; they did however have stronger reservations than the others. Their stance was that the risks of TRA needed to be more heavily weighted when decisions were being made concerning the placement of children in foster care and adoption. One of these women in particular was reserved in her opinion of TRA due to her "structural analysis" of why it is occurring, this analysis discussed in detailed later in this section.

The women who supported TRA were not oblivious to the risks of it, and they voiced their concerns for the children. Like the other two ethno-cultural categories, they perceived the loss of identity as a risk for the child. The social workers felt it was their responsibility to ensure that whatever family adopted the child was dedicated to teaching that child about their culture. One of their worries was that the child might not be acknowledged as different, or that the family would not identify itself as a mixed-race family. This was perceived as a high risk for bi-racial children since only one side of their culture might be focused on and the other side ignored. The threat of the child being discriminated by members of the child's own ethno-cultural group was also a possibility. These types of risks and threats are why all those involved in this study wanted children to be placed in families of their own ethno-cultural group. However most of the women in this group firmly believed that homes of the child's own ethno-cultural group were not available, and that TRA was a good alternative. They believed that with the right resources white parents could successfully parent black, or bi-racial children.

I have a friend who adopted a bi-racial child, and they are white, the parents and the other two children in the family are white. This child was adopted as an infant, and is now a young adult. Those parents provided every opportunity for that child to learn and to love his cultural background. He actually stayed within close proximity of the community of his cultural background, his heritage. His cultural background was highly respected, that was a belief system in his family. He has grown into an extremely nice young man, very caring individual, very respectful individual. He has done well. I know that a big part of that was the fact that he got the parents that he got. I can only speak on this level about this particular family. I see the major factors are first of all the basic belief system of the family, the parents, and their respect for diverse cultures, and racial groups. The fact that they did impart that value system to him. The respect that they had for his

heritage was passed on to him, he learned to like himself through their example, through their modelling. He learned about his roots, he probably learned more about his roots than most of the black kids growing up in black families. I think those were all things that contributed to the success of his placement with his family, and the success of him as an individual.

The four white women who supported TRA did not feel that there were enough black, or bi-racial foster, and adoptive homes to service the children in care. They claimed that children who sat in foster care waiting for a home that was never going to materialize suffered a great deal of damage from never having a constant, loving home environment. One woman stated:

I think it is important to try to fulfil those needs with respect to the racial background, and I think that is a big factor, especially if you are talking about a newborn. However, if it is going to mean no home, for whatever length of time while you search for, I guess I have a problem with that. I think to keep children in an agency rather than to place them in a stable, loving family home, I think we do them a great disservice.

Another woman agreed:

[When] we go across Canada twice and have no black family, and we decide this child has no where to live, this child has been bounced around from home to home. It has no home, so we need to find a home, so what do we do? Is it better to bounce a child around forever, and have no attachment, no security, no home, or do we choose then a white home, and is that a racist act? I think not.

The point of view that a loving, stable white home is better than no home was repeated by several of the social workers in favour of TRA. To add credence to this position one woman told of her connection with a native man who had spent much time in foster care and then was adopted by a white family. She said that he had expressed that he would rather be loved by a white family than no family at all. It

was his standpoint that he could learn about his culture later in life, but he could not replace the role of a family later in life. She was aware, “This is not the popular thinking. And that is why [some black groups] want children placed with families of colour, and I don’t disagree with that, but we have to do some searching to find them, and we aren’t able to find them.”

One of the women who was in favour of TRA seemed to be tired of the criticisms surrounding it. She felt that ‘race’ had been placed on centre stage, and that some of the criticisms assumed that the workers were not placing with black, or bi-racial families by choice. She recognized the risks, but was adamant that everything had to come into consideration in adoption placements, not just ‘race’.

[The] choices you make aren’t just based on race, you could place a native child with a native family, but if there is alcohol abuse, and physical abuse then that is going to be more damaging than grieving your identity. So we are always weighing all kinds of factors. It is not just race, but when things get reduced to that as being the only issue, that is where it makes it harder to talk about things, because race is the only thing there, and that is not the only thing we are dealing with.

Two of the white women could not precisely be labelled as for or against TRA. They each had their own very specific ways of viewing the situation. One of the women is involved in a TRA, and that influenced her feelings on the subject. The second woman is involved in international adoptions as part of her part-time work, but she viewed TRA here as a different situation.

For the woman who had adopted outside of her ethno-cultural group, the experience had left her questioning the wisdom of TRA. There was no uncertainty about the love, and good intentions that were a part of this mixed-race family; at the

same time it was a responsibility filled with complexities, and this individual claimed that there have been limited resources for her family, and others like them. This is a key point due to the fact that the resources for white adoptive parents have been posited as essential in TRA. According to this interviewee, they have been scarce in the past, and they are indeed absolutely necessary for a successful TRA outcome.

The top concern of this woman was for the children, she talked about a philosophy she referred to as the “good enough” philosophy which described some adoptive homes as good enough for children. She was dissatisfied with a philosophy that agreed with children being placed in “good enough” homes, rather than in the best homes possible. Her description of the risks of TRA was multi-pronged. There are the practical issues of care of the hair, and skin. There are issues of how to teach the child about their culture in a subtle way. There are issues about how to deal with the fact that the child will not want to stand out anymore than they already do, so if they are gifted, or have learning problems the parents may not be aware of that to help. She claimed that regardless of what was considered to be good enough for kids, there would need to be supports built in for any family and child involved in adoptions. She did view permanence in a loving home as a goal, but she was willing to side with caution when it came to the risks:

At this point I would hope that the people who are making the decisions about these things really know what they are talking about. And they have listened to the consumers, they have listened to the children, that they have done good studies as to, this isn't just a vibration they have about being in white foster homes and adoptive homes, so based on that I'll take their word for it.

She added later in the conversation, “if you can separate out from the personal . . . I trust, I think black researchers and whoever or whatever definition you want to give these people, and the native, and whoever, they know what they are talking about.”

The second white woman, who was not in favour of TRA, approached TRA on a different level than did her white colleagues. Her specific design of the problem with TRA was on the structural level, and many of her criticisms struck there. Like many others, she wanted to see children stay in connection with their roots. This woman is a supporter of subsidized adoptions and she felt there were good black and bi-racial homes out there that just could not afford to adopt. Her perception of the risks for these children were that once they were placed outside of their ethno-cultural group that they would lose any connection with their culture, or be turned away from their culture. She did remark that TRA could be positive if the results went the other way, “and the white parents try to learn themselves and are proud of that culture, and that race and be part of it as well.” This particular woman commented that the black, native, and Acadian people have already been subjected to so much assimilation that it is unfair to continue it through adoptions outside of ethno-cultural groups. She did not feel there was cause to further remove the children of these groups from their specific roots, when the groups as a whole have already suffered such a great dispossession.

This woman felt that children should be moving out of foster homes and into adoptive homes, however she did not blame the time spent in care on the failure of recruitment. She laid the blame on the downsizing by government. To best convey what she meant a small section from the transcript has been reprinted here:

M-What is your feeling on the length of stay for the children in foster care?

I-My feeling is that they should be moving, and move to adoptions. I'll tell you what has happened I think part of the problem is that with the down sizing of civil service it has had an effect right through the Department of Community Services too, and Family Child Welfare, now they have increased the workers in the child protection area, because by law they have to respond to crisis. But anything that is not a crisis, which adoption from their perspective is not a crisis unless the foster home breaks down. If it is not a crisis it does not get dealt with, and I think it is just a matter of not having enough people and commitment. There is very little time put into adoption services period, so if those kids in foster care are looking at long term plans it should be up to the worker, she probably has enough on her hands with kids that are having trouble somewhere in the system. Since it is not crisis under the act, it is the protection workers that are increased and the other non-protection workers they have decreased.

M-Someone said to me that agencies don't make good parents.

I-They can't, and I think the expectation is that they should when they cannot do it. The agencies being the workers, and they work their butts off, and it has nothing to do with their commitment, and their work, they work very hard.

M-Do you think it is a problem with recruitment?

I-It s a problem with government money, it is a commitment from the government. Social Services is very low on the totem pole in terms of getting money from the government. They don't get money that is the reality. Roads get more money, economic development. This is the structural analysis of where does the money go, it goes if there is a mess in a family, and the government gets some flak, and they put more money into protection services. It is because the new act forces people to work in such a stringent time frame. Now the support system is in the act like mediation, and foster care, but there isn't enough money for that, so everything is prices oriented. You have deadlines for court. As economics have deteriorated, there have been more social problems, more families breakdown, more pressure on the protection workers so that is where the money going, just to keep things quiet. But you don't get money for adoption, and foster care for kids.

M-Lets say they had more money?

I- If they had the money then they would be recruiting more adoption homes.

M-Do you think they could find the number of black, or biracial homes, or do you think that is an unrealistic idea?

I- I think they could, but I shouldn't be the one to speak because I don't know the communities that well. If they would subsidize, or had the supports built in. I think the workers would have to approach them from their perspective, and their culture and evaluate them from their own perspective. There are cultural differences, and our value systems, and how we operate as parents, our expectations, but again I don't know. It is so tied into the economy, and access to the educational system, but I think that is a good question for people who know those communities, and I shouldn't speak for those communities. That is the other thing we learn we cannot speak for other people.

Preservation of Cultural Heritage: the Perceptions of White Social Workers

The white social workers were also presented with an opportunity to express their perceptions of the cultures that were trying to be preserved. It seemed appropriate to mark this discussion more so than the other black, and native categories, since white people here are talking about cultures they are not a part of. Although three of the women were in mixed-race families, they had indicated that they considered themselves to be white middle class individuals. In this section are the perceptions of white social workers as to what elements of black, or native culture are trying to be preserved or what 'culture' in general is.

Five of the white social workers reported that they believed preservation of cultural heritage needed to be heavily weighed when deciding where a child would be permanently placed. One woman felt that, "We are mandated. The only answer to that question is that it is the number one criteria within the best interest of the child. We are mandated to do that, there is no choice." It was important to see how white workers perceived the cultural heritage that they were trying to weigh and preserve. Since social workers may be placing children outside of their ethno-cultural group,

their perception of what constitutes a certain 'culture' could bear on the success of that TRA outcome.

When asked to describe what they thought the culture or elements of culture were trying to preserved in the black, or native communities, the following themes emerged. Religious affiliation and a strong connection to the church were recognized as part of the black culture. One woman said that blacks and "aboriginals" both have an extended way of looking at family, and the community. One woman, who was an adoptive parent of a bi-racial child, said that it was a broad topic that would vary from community to community, but she commented on what she called the outward signs, "the writing, the art that you'd pick, music style."

One of the women discussed here the issue of culture as specific and particular to a geographical area, but she also made reference to the issue of colour versus culture that was on many minds, and emerged from several different interviews.

To me it is a way of being and who you are. The group that you identify with, and the unfortunate thing to me is that has been talked about as if that is based on colour. I disagree that it is, for example if you have in your home . . . if you live in a certain world and you believe certain things and eat certain things and dress a certain way, and you listen to certain music, and you talk a certain way, whatever the colour the skin of the child is, those are the things the children will be identifying with their learning. It is not because the child is black that they would have certain cultural characteristics at all, it is because of the environment that they grow up in, but that to me is skin colour not mattering. It doesn't, but it becomes the issue, and it really is not the issue. The issue is that most of the people who live according to that culture may be either black or white, and that child may be a different colour than the majority of the people who have those beliefs who do those things, who eat those foods, whatever. So that to me is the critical piece, and their skin colour hasn't changed. Nothing is different about that, so the culture is what is being transmitted to that person, and so the only thing you can do is educate that sometimes people who have

your skin colour sometimes live in different places in different ways. For example, within the black community there are a lot of different communities, and a lot of different cultures, it doesn't have to do with skin. There are different cultures, so it is not about race it is about the beliefs, and the values, and the community and the connection and all of that kind of thing.

. . . it is like going to China and asking what is the Chinese culture, well it depends on where you are. Different dialects, people don't even understand each other for heavens sake. So it is about language, it is about a whole lot of things. It is not about where you were born, or your ancestry, yet it becomes about that, but it is not that. It is like saying that Canadian culture . . . NS has a very different culture than a lot of other provinces, Cape Breton, NFLD have unique cultures in terms of music, language, beliefs, values, how people function and how people relate to each other, the kinds of ways they talk to each other, the kinds of things you do, or don't do. There are all those unspoken rules, and they are very different in different parts of the country and that to me is culture. So there are different levels of culture. There is an assumption that there is one cultural heritage, and which cultural heritage, and it assumes that because they are a certain colour that is the heritage they should be learning, but that is a very judgmental stance.

An interest point here is that another of the white social workers had disagreed on the point of skin colour and culture, and her immediate response to the question of cultural preservation was that colour was very important because it plays such a large role in defining who we are. This was not to say that it determines who we are inside, but that in this world colour is a major identifying factor for people.

Accept for the one woman who regarded 'culture' as the lived experience on the individual level, the rest of the women were able to provide fairly substantial knowledge about what was important to black culture at least in the Halifax region. It generally appeared as though the women were doing their best to draw from their personal knowledge about the black community. They did talk about religious traditions, and spirituality in the black community. They were able to talk about the

perception of community strength and community connections among the blacks. The white social workers were also aware of the diversity within the wider black community. Discussions were similar to those with the black participants, but certainly not in as great of depth. There was limited information provided about the native culture. This may be due to the separate social work agencies of the mainstream and native systems, but it is more likely that the white workers chose to talk about black culture because they knew it best between the two.

White Ethno-Cultural Identity and Professionalism

Some of the social workers claimed that they chose social work because of their desire to help people. Unlike the other two categories, ethno-cultural identity did not appear to be a factor drawing them to social work. Most of the women appeared to be clear on how their professional, and ethno-cultural identities factored into their concept of self, and how it influenced their work.

Most of the women claimed to either love their work, or were content and satisfied with their personal accomplishments at work. One woman felt that she had not been working at her present job long enough to judge whether or not she was satisfied by it. It was stated by another woman that her personal happiness with her work was possible because she felt she was working to the best of her ability, and the larger structural problems were out of her hands. She felt that to be happy in this work you had to accept that.

All of the white social workers viewed their profession as a part of their self-concept, but the degree to which it was a part varied. For some of them it was

described blandly as a part, but one woman felt so strongly about her work that she viewed it as 99.9% of who she would define herself as. Two of the women said that they tried very hard to incorporate, and integrate their values and beliefs systems with those of the social work practice. One woman in private practice said it was “a natural fit”. Those who had to deal with a bureaucracy in their work described it as a challenging experience. A response from one woman was that her personal qualities enhanced her abilities as a social worker, and made the job work well for her.

When describing how their ethno-cultural identities factored into their professional identities, the white category was in a very different position than the other two categories, and it was apparent in their answers. Only one of the women claimed that her ethno-cultural identity did not have any influence on her profession. She stated, “I guess the biggest thing is that I’ve never felt any negative feelings toward any black, or bi-racial people, or any of other cultural identities. I have never let it effect my . . . I am not racist.” Three women plainly said that they could not pretend that they were not white middle class people. They felt that they had to be consciously sensitive to the feelings of others, they knew they had to stay aware of the power differentiation, and their position of advantage. One of these women felt that being who she was sometimes made clients feel like she would not understand anything they had to say because they could not imagine her going through it. Another woman reported:

We can only see the world through the eyes we have to the world, so I suppose that automatically would influence what you see and how you see it. If you believe that, and you come from that place which I would say that . . . there has been a process over history for me, like I now see

the world like we need to be a part of a human race, and that by focusing on race per se, in terms of colour and ethnocentricity, then we are actually divisive, it is a divisive process that can happen socially, and . . . it separates us all from being human in some way.

On a positive side another woman felt that knowing how important her own culture was to her, she encouraged others to enhance their own cultural identity.

Discussions on objectivity, in relation to social work professionalism, and TRA, revealed that all six social workers saw it as a desirable goal. All but one person thought it was difficult to be objective in this social work practice, and on the topic of TRA. Her opinion was that if you have acquired age and experience, you are less worried about making a mistake, and you are less inclined to allow your personal feelings to enter into your professional decisions. It was generally agreed that the best way to deal with objectivity was to work as a team with your co-workers, so no person is making the decisions alone. Another suggestion was to stay in close touch with agency guidelines, and to know the limitations on personal discretion. One woman who was in private practice suggested, "it is always difficult in social work, if you are doing a good job, to measure everything you do and think, but particularly what you do against the value system of your profession constantly."

When questioned about the black, and native social workers and whether their particular position of having a possible vested interest could be viewed by some as affecting their professional objectivity in judgments of TRA, most answered that it would depend on the individual, and not the 'race'. Three women felt that blacks, or natives may be opened to criticism of being out for themselves, or being unprofessional, rather than being concerned for the child. One of these women stated

that to do so would be a racist act. Another woman felt that it probably happened, and she felt that minority groups probably faced the same problem in other work places as well. Not all of the white social workers noted that such a criticism could go both ways; there was no substantial discussion about whites just as easily being viewed as 'interested' parties.

When deciding what is in the best interest of the child all the white participants in this study agreed that the birth parents should be involved in the process. It was one person's opinion that the birth mother should have all the say in what happened with her child. Most agreed that the placement of children could be best done as a group effort, with the birth parents, the social workers/agency/state all to be involved. One woman felt that the communities from which the child comes from were also entitled to some input on the standards that should be set for the placement of their children.

Chapter Five

Discussion and Conclusion

One purpose of this research was to gain insights into what different individuals think, and feel about TRA. The next task for this research is to question what relevance, or significance the findings have. This new found knowledge serves little purpose if it is never discussed, or challenged, and in this final chapter time has been taken to discuss the outcomes of the research, and perhaps to even drawn some conclusions. This chapter has been broken into subthemes for clarity.

A Cross Group Comparison

The finding from this research that was the most unexpected, and which raised some questions was the discovery of marked differences between the Mi'kmaw and black categories of social workers. Of course it is quite obvious that the two groups differ in history, culture, and in terms of identity issues, but it had been assumed that these two groups would be fairly close in social work values, and in terms of their perceptions of TRA. This false assumption was not supported by the findings of this study. In fact evidence suggests that the black category and the white category may actually be closest in terms of social work values, and social construction of TRA.

The first indication of the group differences was in the unique responses of the Mi'kmaw women. This finding was consistent with the comments suggested by other scholars in the area (McGillivray 1984; Johnson 1981; Durst 1992). The Mi'kmaw women were opposed to adoptions, secrecy in adoptions, the separation of children from biological families, and the concept of permanence. These findings were unique

to this group. While it is noted that all participants across all ethno-cultural groups in this study wanted to see an increase in the involvement of birth families in adoption procedures, the Mi'kmaws advocated for the consistent post-adoption involvement of birth families in the rearing of their children. It may be beneficial for the Mi'kmaq social workers to be against many of the provincial regulations since they desire significant sovereignty from the province in this area.

Some readers may argue that the informal family adoptions that occur in the black community are comparable to the custom adoptions of the native people, but they have specific differences. In the native community apparently the entire band can come together and decide what is best for the child, and the birth parents are involved in the future decision making in the lives of the child. No evidence was brought forward to show this was the case in the informal adoptions in the black community. Furthermore, while natives are attempting to have 'custom' adoptions recognized and legitimized by the government, the government is trying to bring informal adoptions into formal agencies so they can be legalized as formal adoptions.

The Mi'kmaq group has its own Indian Child Welfare practice, and they are involved in the writing of their own policies. The Mi'kmaq respondents contended that they had a good deal of discretion in terms of interpretation of their policies, and one woman claimed that they were encouraged to interpret the policies in the most effective way for their clients. This group also expressed a desire to eventually practice under a National Indian Child Welfare system further removing themselves from accountability to the province.

The black social workers are in a very different position than the Mi'kmaw women. The black social workers are employed in what can be described as the mainstream social work practice, because it is practiced by the majority of social workers. Since no social workers from either the black or white categories reported ever practicing Indian Child Welfare, most of them tended to talk about TRA in terms of black children being raised in white homes. The results indicated that people from black and white categories had similar constructions of TRA. Although some of the black social workers did make reference to the Africentric social work practices (which will be discussed in further detail in this chapter), findings suggest that most of the black social workers in this study have accepted and internalized the social work values of the mainstream.

While Mi'kmaw social workers were strictly opposed to TRA, the majority of the black and white social workers were not opposed to TRA under appropriate circumstances if meaning that black homes were unavailable. Even the four individual black and white social workers who were opposed to TRA provided similar reasons for their opposition. The black social workers, generally, expressed a commitment to the values of social work practice with which they were currently working. However, it would be misleading to portray the black social workers as having totally accepted all the mainstream values, and this was recognized in their reference to Africentric social work practices.

To better understand the introduction of Africentric perspectives in social work, one must first gain an understanding of Africentrism, and Eurocentrism. Eurocentrism

is described as having placed the perspectives and thrusts of white Europeans and their descendants in a dominant position, while the rest of the world is expected to accept this one-sided view; it is a hegemonic position. Moreover, this hegemony also entails that the major 'western' paradigms (such as Marxism) have been the only significant contributors to the social sciences and other fields of intellectual thought (Seidman 1994; Taylor 1994). "Asante describes Eurocentrism of American culture as a kind of cultural colonization of African Americans" (Seidman 1994: 256). The obvious criticism of the Eurocentric view of the world is that it places itself at the centre of epistemology and fails to recognize or mis-recognizes alternative ways of interpreting the world (Taylor 1994).

Eurocentric theories of human behaviour are claimed to marginalize the experiences of people of colour, propagate oppression, and justify racism.

"Eurocentrism is ethnocentric because of the cultural, economic, and epistemological hegemony that have historically become associated with it" (Swigonski 1996: 157).

The application of these attitudes in social practice can result in, "representatives of the dominant culture, practitioners often help clients adapt their lifestyles to fit with the dominant culture . . . [the] outcome of that kind of work is acculturation and assimilation. It serves to support existing social patterns and structure" (Swigonski 1996: 159).

Africentrism, as described by Asante (cited in Horde and Lee 1994) is an approach acknowledging the point of view of African experiences and traditions. It places the African individual at the centre of every situation, serving as a positive

influence for blacks by reflecting their lives (Hord and Lee 1995; Seidman 1994). As Swigonski (1996: 156) writes “theories are powerful tools for the creation of shared realities. Africentric theory shows how developing knowledge of another culture from the perspective of that culture can transform social work practice. Knowledge developed in this way enables the professions to work more profoundly for the empowerment of clients.” A differentiation between the two paradigms is illustrated by Swigonski (1996: 157):

The Africentric perspective is holistic and includes recognition of the interconnectedness of all things and the oneness of mind, body, and spirit; development of collective rather than individual identity; consanguine family structure; consequential morality; analog thinking rather than dualistic thinking (recognizing all points along the continuum, in contrast to only either-or, right-wrong); phenomenological time (present oriented, tied to events); and a pervasive, experiential, and participatory spirituality (Turner, 1991). The European American world view is individualistic and mastery oriented, whereas the African worldview is cooperative and harmony oriented. (Harvey, 1985)

The affects of such a Africentric social work practice would hopefully:

. . . challenge the social work profession to work with clients to develop alternative social structures that are empowering and that confront the hegemony of existing systems and structures of oppression and domination. Too often social work has been content to look at culturally diverse groups as representing problems, anomalies, or victims for study and remediation. Social workers must learn to centre the culture and lives of African Americans, Latinos, Asian Americans, and American Indians as unique groups. They need to explicitly incorporate those insights when working with individuals from that culture or group. (Swigonski 1996: 159-160)

One can infer from the representations of these two paradigms that the Eurocentric perspective is describing the mainstream social work practice, and that Africentric social work practices are intended to re-vamp the existing social work

structure. The values suggested for improvement appear to be good ones: holistic treatment of clients; combating oppression and racism; learning social situation from the client's cultural perspective; and the introduction of morality and spirituality. But how is this relevant to this study?

The first point to make is that only two of the six black social workers mentioned Africentric values, and they were vague in their description of exactly what the "values" were. For one of the women these values were meant to be incorporated by all workers into the mainstream social work practice, which is consistent with the suggestions made by (Swigonski 1986; Schiele 1996). The other woman was more interested in a separate black social work practice. The second point to mention is that the values above were claimed to be the values of many people across all ethno-cultural groups in this study. Several of the white women mention their commitment to a holistic outlook; strong spiritual aspect to their living and working; and there also seemed to be a genuine desire on the part of some of the white women to learn, and understand what was going on in other cultural communities.

There was limited evidence to show that Africentric values were in widespread use in the current social work practice. The bottom line is that Africentric values as defined above appear to be mildly moving into the mainstream (ie., being acknowledged); both black and white social workers are adopting them, although it is not clear what particular advantages or insights derive from referring to Africentrism. Africentrism cannot be used to differentiate people along the lines of social work

“values”, it does of course represent people differently in terms of identity, and where individuals will locate themselves culturally.

It is possible too that all participants in this study would like to identify themselves with the positive social work values, as opposed to those outlined as Eurocentric. Few people would want to be associated with a theory that is described with words like: hegemony, domineering, oppressive, arrogant, and racist. At the same time most of the social workers in the black, and white categories accepted the values of: adoptions; permanence; objectivity; professionalism; and standardized social work ethics, all of which could be said to originate from a Eurocentric location. This contradiction lead to further questioning for one black social worker in particular. She did possess a strong commitment to Africentric social work values, and her viewpoint was that the subjective point of view was better for her than the objective one highlighted in discussions of TRA. When questioned as to why so many people accepted objectivity, she responded by claiming that “They are trained. I mean that is a very Eurocentric dogma. So they have been trained to think that they are being objective. That is how racism, and classism, and the other ‘isms’ perpetuate themselves, because we are trained not to see it.” It is intriguing to consider the notion of our concepts of objectivity, and subjectivity as learned, and as constructed; this lead to the discussion in the following section.

Subjectively Objective

To be objective is to base opinions on what you believe to be fact, and to be subjective is to allow the personal values and preference to enter into opinions. In the

current study, many of the respondents claimed that objectivity was important to them in terms of social work judgments, and decisions on TRA. It was the opinion of these workers that one had to work hard to maintain objectivity, which implies that subjectivity is more natural. There were also a few respondents who supported subjectivity in their views of TRA.

To give a subjective point of view is something most of us are capable of doing. Almost anyone can tell how they feel about something using their own feelings and emotions to support their position. To give an objective opinion on the other hand is not as easily accomplished. We value being able to claim that we can abandon our personal opinions, and form opinions devoid of emotion on some other level, perhaps even a higher level. Such phrases as “Don’t let your emotions blind you” or the accusation “ You are not being objective” serve to belittle opinions, and devalue subjective points of view. It is the traditional scientific notions of fact, truth, and objectivity that are what really gain credibility. Many of us make claims to objectivity, but how can we truly ensure that nothing but the facts are involved in the formation of any opinion? We cannot. What we can do is attempt to set aside what we know to be our own prejudices, and then work from that position. Once we are speaking from what we believe to be fact, we are being objective, the TRA debates arise because individuals disagree about the facts of the matter. Individuals and groups involved in the TRA debate draw their facts from different areas, and have different ideas about what constitutes objective reality.

As previously discussed most of the participants in this study were questioned on the position of black and native social workers as compared to white ones when it came to objectivity on opinions of TRA. The premise on this line of questioning was the possible perception of white social workers as better able to “handle”, or be objective in TRA cases since they would not be members of the children’s racial group, and would not be viewed as an ‘interested’ party. Of course this assumes that priority consideration is not racial identity and belonging. It is certainly possible to argue that whites can indeed be an ‘interested’ party, but the concern in this study was how the social workers thought they were perceived by others. It was thought that the black and native social workers may be perceived as unable to be objective. Many of the social workers responded that they did not believe that ‘race’ had any bearing on objectivity, and that it was determinable on an individual basis only. One black woman felt that the onus was greatest on the white worker to prove that they were being professional, because if a white worker places in TRA they must be able to prove that they had good cause to do so. She also said the black worker is obligated to prove that any black home they approve is a good home. Two of the Mi’kmaw workers felt that it was the white workers who could not be objective, since they did not or could not understand the cultural differences, they did not have access to all the facts and aspects of a TRA for a native child.

Some of the people who participated in this study held the opinion that the subjective view was what served them best when discussing TRA. This standpoint was not considered to be self-serving or in their own best interest; rather it was seen as

an alternative to the exclusion of feeling from opinion. This alternative allows people to admit their emotional investment in the children of their ethno-cultural, or racial communities. One woman added that if a social worker was truly an ethical, professional individual they too would be taking all the angles and interests into consideration on behalf of the child. In other words, if a social worker was truly professional their objective opinion of TRA would consider racial and ethnic identity as a primary concern.

We as individuals, and as a society can benefit from widening our understanding of the perceptions of others. People from minority groups, and groups that have traditionally suffered from racism, oppression, and disadvantage deserve an opportunity to share their perspectives and to enjoy respect, recognition and validation for them. However, we run into trouble when we try to accept all subjective views as equally valid. In doing this there would be nothing to measure different opinions against. There would be no wrong perceptions, and social problems would be open to all possible explanations. If we abandon the search for commonality in our perspectives of social situations like TRA, then we risk the chance of never reaching any agreement on what is in the best interest of the child. This is not to say that one perspective should dominate others, and certainly is not intended to maintain the status quo. It is however intended as a critique of the multiple subjective realities that could endlessly surface preventing the improvement of relations between ethno-cultural groups, and perhaps sacrificing children's interests to larger "causes".

It could be said that there are already subjective opinions involved in the TRA debate, with whites claiming that they “want” kids, and other groups saying that they cannot have them. Both sides of this conflict may have their own vested interests, or personal emotions as part of their social constructions of the situation. However, it is objectivity that checks on the level of subjectivity that is allowed to enter into legislation involving TRA, and that is where it counts. In The Children and Family Services Act 1990, it is the child who counts. We can take into consideration the subjective views, but it we cannot rely totally on them and still produce a fair policy.

For the people in this study who did make claims to objectivity, they reported that they were able to be objective by staying close to policies, regulations, ethics, and through personal checks, and the checks of co-workers. It appears as though objectivity is considered to be closely linked to ideas of professionalism. At the same time those who were keen on subjectivity viewed it as a part of responsible professionalism. It is the opinion of this researcher that all the participants in this research were very professional regardless of their standpoint on the objectivity/subjectivity debate.

Can professionalism be judged by the perceived level of objectivity? Some might respond by saying that emotions should be excluded from our work. Our society tends to be secular, separating the occupational realm from the realm of home and family, and the spiritual realm. People do function differently both between and within cultures, and several of the women in this study reported their own attempts to live in a holistic way. While the women showed how their realms of life overlapped,

they also revealed their loyalty to the regulations, and policies of the occupational realm. Many of the social workers tried to live their lives in such a way as to be consistent in their beliefs at home and at work, however on occasion if they were faced with an obstacle, they reported that they followed outlined procedures and hoped that they would be personally happy with what they had to do professionally. This is about more than personal feelings at work, or overlapping realms of living, it is the task of judging professionalism for different people who all may believe their different judgements are objective and justified in fact.

The issue of objectivity versus subjectivity in professional social work will not be resolved in this thesis. It seems as though there should be room for both, but the question of how to make it work still lingers. It is possible for someone to have some subjective views and still be professional. It is unlikely that any of us are ever completely without any personal bias', and it would be wrong to condemn people for being open about it. The ability to hide our personal feelings is what we accomplish with objectivity, but we cannot erase them.

Differences in Perceptions of 'Race'

This study revealed interesting differences between white social workers, and black and native social workers in their perceptions of ethno-cultural, or racial identities, and the world we live in. The differences in responses revealed more than just the perceptions people have of themselves, and how they think others perceive them, or even how they think their ethno-cultural identities influence their lives. The different answers showed that the black, and native individuals were aware of 'race'

daily, in almost everything they do, but the white people were able to turn it off in their minds and forget about 'race'. This is one of the perks to being in a privileged position; you do not have to be burdened with thinking about how you came to be there, or how it affects others.

For the most part the Mi'kmaw and black participants were open about the negative experiences they encountered as non-white people, on the job, and in their daily lives. They were also very positive about how their ethno-cultural identities had influenced their choices to work in social work. Some reported how their ethno-cultural identities sometimes allowed them to relate to clients, and the satisfaction they felt at showing that all 'races' can be successful in life.

The discussions with the white social workers were very different. Most of the white women were aware of, and reported being in an advantaged position to other ethno-cultural groups. Some commented that they had to remember the power differential between themselves and other ethno-cultural groups. The white social workers generally reported themselves to be, and appeared to be culturally sensitive people. However, there were a few examples where one begins to see a 'race' blindness. For example, there was one white worker who claimed her ethno-cultural identity had not influenced her work in any way. She felt that it had not had any affect on how she felt about, or dealt with other ethno-cultural groups. She claimed that as a protection worker when she had to remove a child from a non-white home, she was viewed only as a protection worker, not identified by her 'race' but by her job. This is a limited perception. Unless she asked them, she is guessing at how the

clients perceived her. She does not seem to recognize that minority groups who have traditionally been oppressed by white government may find it difficult to trust government officials such as white protection workers. At least two other social workers in this study, one who was black, and the other native, reported that their childhood experiences of seeing minority children being removed from their communities by white workers had influenced them to become social workers.

Although all groups had painted a similar portrait of ethno-cultural relations as slowly improving, there was recognition of a heightened awareness, and an acknowledgment of a resistance and backlash. One perception that was unique to some members of the white group of social workers was that once 'race' was introduced to a discussion it then became a barrier to progress in building better 'race' relations. Some of the white social workers felt that once 'race' was introduced as a factor in a discussion it became the most important factor. One white social worker in particular felt that this did nothing to further understanding, or to build bridges between the different 'races'. She said it was counter-productive to allow 'race' to become the dominant factor in adoption placements, because there are so many other factors that need to be considered as well.

The flip side to the idea of 'race' as a barrier to discussions is that it can, in reality, be a barrier for people of colour, and for people of other ethno-cultural identities outside of the mainstream. All the black, and Mi'kmaw social workers commented that their ethno-cultural identity had had some influence on their job and their entire lives, and often as a limitation rather than a link to the mainstream world.

It was these two groups who voiced the greatest concerns over racism, and it was they who have to face it the most.

Many of the white social workers had responded to the questions about ethno-cultural identity and work by saying they had to try and stay aware of their power position in relation to other ethno-cultural groups. The black and Mi'kmaw social workers would not have this concern since they could not be in that position. 'Race' is defined as the most important factor by some black, and Mi'kmaw people, so for them it is not an insurmountable barrier, but a barrier to be understood and conquered. One woman claimed that once someone brings up 'race' in talks you cannot get passed it while the sentiment among many of the blacks was you cannot ignore it.

It was claimed by one woman that to be happy in social work a person had to be able to accept that they could not change structural problems. While this was not necessarily the opinion of all white workers, it differed greatly from the things that many black, and Mi'kmaw social workers talked about. For several of the black, and Mi'kmaw social workers the opposite seemed true; they seemed to have accepted that part of their role as a person from a different ethno-cultural group is to challenge the structural problems. The Mi'kmaw groups are fighting for self-determination, they are currently practicing their own Indian Child Welfare, and they want a National Child Welfare. The black social workers expressed that their ethno-cultural identity had forced them to be more vocal, political, to stand up for their rights, and fight for the rights of their communities.

If no one ever struggled against the structural problems, than there would never be any changes, and racism would be dominant. The minority groups are the ones who have been forced to stand up for what they believe to be in the best interest of their communities. This was recognized by at least one white worker who said that black groups were doing well because they were demanding that things change.

'Race' and Culture

There were times during the interviews when both the researcher and the interviewees seemed to experience confusion over the finer details, and interconnectedness of 'race' and culture. Although it has been called transracial adoption, and 'race' has been given the primary attention here, culture also has a large role to play in this discussion. One of the reasons people claimed to be opposed to TRA is because they want to preserve the cultural heritage for the child, and the entire community. The problem with this is that two people could belong to the same 'race' without sharing the same culture.

Imagine a black Haitian immigrant adopting a black Canadian born child from Preston; there would be severe cultural differences. Since a child of colour will have to deal with racism it might be better for them to be raised in a family of the same 'race', even if that family is not of the same culture. Black families should be adequately capable of dealing with, and teaching children about racism, but how do they intend to teach the child of another culture about his history, and background? They would have to follow the advice given to whites in the same position, and learn it themselves.

Many of the participants in this study said that the adopted child should remain, not only within their 'racial' group, but also in close proximity to their own geographical, and historical roots. This of course would mean limiting even further the number of candidate parents for black, and bi-racial children. It would also render impractical the efforts of confidentiality in adoptions.

Arguably 'race' and culture are both important to adoptions, but how do we weigh them in choosing homes for children? The 'custom' adoptions, and informal adoptions in the native and black communities have been able to meet the criteria of both 'race' and culture. However this type of adoption is not always available. One woman asked, "What do you want to deal with, culture or race specifically? Cause if you tie the two together you got to deal with race first." Her point of view is understandable considering that 'race' is often the first thing we notice about a person, and it may result in negative consequences.

We cannot ever change the racial category we are forced into, however we do learn our culture, and that could be altered. It is not the culture itself that changes but the relationship between the individual and their culture. If we are raised away from our historical, or birth culture, we may never learn about it. We are also capable of learning a culture different than that of the rest of our birth family. 'Race' is inescapable and therefore it deserves attention. Culture on the other hand is more changeable, and we also have the opportunity of learning different cultures at different stages of our lives.

It could be that the visible aspect of 'race' make it more urgent to accommodate than culture. The ability to 'pass' for another culture may make it easier to place a child outside of their culture, than their 'race'. There is still the question of a bi-racial child who may be able to 'pass' for another 'race'. In these situations of 'race' versus culture there is a challenge to the opposition to TRA. The preservation of culture argument does not work in a situation where a child remains within the racial category and not the cultural category. The remaining factor is the difference in skin colour. This has the scent of separatism on it, in terms of keeping children within the 'racial' group. The primary reason in these cases may be to keep children within the wider black or native communities, where it is thought their own people can best teach them how to cope with racism.

Conclusion

The findings of this research suggest that 'race', or ethno-cultural identity can influence the social constructions of TRA, but that it is not a definite predictor of how individuals will perceive TRA. The research showed variation in attitudes across ethno-cultural, or racial lines.

Evidence pointed to similarities between the black and white categories of social workers in their construction of TRA, with a majority of them being in favour of TRA. It is thought that this may be due to the fact that they both practice the same social work, and they both seem to have internalized many of the mainstream social work values. The Mi'kmaw social workers held consistent negative attitudes toward, and opinions of TRA. There was a positive value placed on objectivity across all

ethno-cultural groups, but not all individual participants. There was also a link made between objectivity and professionalism which was also consistent across all ethno-cultural groups, but again not including all participants. Some evidence was found to support the notion that white social workers were not as aware as the other ethno-cultural groups of the extent of the influence ethno-cultural identity can have on the lives of people. It was also found that 'race' and culture although sometimes talked about interchangeably, sometimes need to be talked about separately.

There were some aspects of this research that may have limited its value. The most obvious is the small sample size. Having only 15 social workers to interview prevented the researcher from generalizing in any way. It also resulted in limited variation in responses. This is evident within the Mi'kmaw category, where there was virtually no variation in responses. It would have been interesting to hear what a native social worker who was not opposed to TRA would say on the issue. Perhaps a native social worker who was not practicing Indian Child Welfare would have a different opinion than the other native workers.

Time constraints also had a role to play in this research. The hectic schedules of social workers caused many delays, and this may have resulted in a fewer number of interviews and in missing out on persons who would have provided beneficial information to the research. The length of the actual interviews was limited as well. The average interview was one hour, and a few interviews were cut short when social workers were called to their busy schedules.

This research lacks statistical information. One reason for this is that the study was focusing on the opinions and perceptions of social workers, and how their thoughts were influenced by their ethno-cultural identity. The theoretical focus was in social construction of TRA from different perspectives, and it was concerned with varying perceptives rather than a focus on isolating fact. Still what has been done here would be of more use if corroborated with facts about actual adoption practices in Nova Scotia. Future research in the area would be beneficial if it were to focus on the statistical aspect of TRA.

Future research in the area could benefit from a closer look at the strength of the participants views and their actual level of involvement in their own cultural community. Are people more militant in their views when they are deeply involved in community work, and cultural activities? Does a cultural comfortability result from high levels of community activity causing individuals to be more relaxed about alternative ideas, and ways?

Future research in the area could also provide valuable information concerning the more current TRA situations. Contemporary TRA are much more geared toward a concern for the child's more widely defined needs than they have been in the past. In the past non-white children were sometimes placed in inappropriate (racist) homes, and in inappropriate (all white) communities. Due to new legislation, efforts are now made to place all children within their own racial, cultural, religious, and linguistic groups. The white parents who are able to adopt children from a different ethno-cultural, or racial group must be approved as culturally sensitive, and committed to

learning and teaching the child about his/her own culture. It will be interesting to see the outcomes of the 'new and improved' transracial adoptions. Surely the new criteria expected of the new TRA will have better results than the transracial adoptions of twenty and thirty years ago.

ENDNOTES

1. Race is a term that has adapted over time, it was once regarded as a biologically distinguishable characteristic in mankind, and now biologists and social scientists have demonstrated that 'race' is not "biologically real". 'Race' is recognized as a social construct with real social consequences. The rejection of biology as the basis of 'race' has resulted in some difficulty in determining a clear definition of the word, "The term is often used imprecisely; even among anthropologists there is no generally accepted classification or terminology" (Simpson and Weiner 1989: 69).

The term 'race' is generally defined as "One of the major zoological subdivisions of mankind" (Funk and Wagnalls 1983: 245). This same dictionary further describes 'race' as deriving from a "common origin and exhibiting a relatively constant set of physical traits" (Funk and Wagnalls 1983: 245). The common definition recognizes that 'race' is a term used to describe "Any group or groupings of people assumed to have or having common characteristics, habits, or appearance" (Funk and Wagnalls 1983: 245).

The common definition is not incorrect, but it does emphasize genetic traits of humans as a means to define 'race'. The definition would better serve the general population in the fight against racism if more emphasis was placed on 'race' as a social construct rather than a focus on physical characteristics and common origins. This line of thought is present in the social sciences where it is accepted that "phenotypical differences do not correlate with genotypical differences" (Marshall 1994: 434). As Marshall points out many scholars today choose to use inverted commas around 'race' to show "that this manner of categorizing individuals and populations is not based on biological distinctions" (Marshall 1994: 434). For this study 'race' is recognized as groups categorized by common histories, social experiences, and political goals.

The term ethno-cultural has been employed as a synonym for 'race' throughout this thesis. This was an attempt to show that while 'race' is not biologically distinguishable, there are real ethnic and cultural differences between individuals, and groups of individuals. In cases where the researcher is making reference to a perceived racial difference, or in cases where visible differences in phenotypical characteristics are relevant the word 'race' may be used with inverted commas.

2. Although black social workers do not have their own black social work practice, many do participate in the Association of Black social Workers (ABSW). ABSW is an organized group of black social workers who may be employed in various areas of the social work arena. This association provides black social workers with the opportunity to meet with colleagues. It provides a forum for discussions on such issues as the Africentric paradigm, and social work.

APPENDICES

APPENDIX A

CHAPTER 5 OF THE ACTS OF 1990
amended 1994-95, c. 7, ss. 11-15, 150; 1996, c. 10

**An Act Respecting Services
to Children and their Families,
the Protection of Children and Adoption**

NOTE - Certain provisions of this Act are subject to proclamation. See Section 109.

WHEREAS the family exists as the basic unit of society, and its well-being is inseparable from the common well-being;

AND WHEREAS children are entitled to protection from abuse and neglect;

AND WHEREAS the rights of children are enjoyed either personally or with their family;

AND WHEREAS children have basic rights and fundamental freedoms no less than those of adults and a right to special safeguards and assistance in the preservation of those rights and freedoms;

AND WHEREAS children are entitled, to the extent they are capable of understanding, to be informed of their rights and freedoms, to be heard in the course of and to participate in the processes that lead to decisions that affect them;

AND WHEREAS the basic rights and fundamental freedoms of children and their families include a right to the least invasion of privacy and interference with freedom that is compatible with their own interests and of society's interest in protecting children from abuse and neglect;

AND WHEREAS parents or guardians have responsibility for the care and supervision of their children and children should only be removed from that supervision,

either partly or entirely, when all other measures are inappropriate;

AND WHEREAS when it is necessary to remove children from the care and supervision of their parents or guardians, they should be provided for, as nearly as possible, as if they were under the care and protection of wise and conscientious parents;

AND WHEREAS children have a sense of time that is different from that of adults and services provided pursuant to this Act and proceedings taken pursuant to it must respect the child's sense of time;

AND WHEREAS social services are essential to prevent or alleviate the social and related economic problems of individuals and families;

AND WHEREAS the rights of children, families and individuals are guaranteed by the rule of law and intervention into the affairs of individuals and families so as to protect and affirm these rights must be governed by the rule of law;

AND WHEREAS the preservation of a child's cultural, racial and linguistic heritage promotes the healthy development of the child:

Short title

1 This Act may be cited as the *Children and Family Services Act*. 1990, c. 5, s. 1.

Purpose

2 (1) The purpose of this Act is to protect children from harm, promote the integrity of the family and assure the best interests of children.

Paramount consideration

(2) In all proceedings and matters pursuant to this Act, the paramount consideration is the best interests of the child. 1990, c. 5, s. 2.

Interpretation

3 (1) In this Act,

(a) "agency" means an agency continued by or established and incorporated pursuant to this Act and includes the Minister where the Minister is acting as an agency;

(b) "agent" means a person appointed as an agent of the Minister or of an agency pursuant to this Act;

(c) "care" means the physical care and control of a child;

(d) "care and custody" means the care and custody of a child pursuant to this Act or an order or agreement made pursuant to this Act;

(e) "child" means a person under sixteen years of age unless the context otherwise requires;

(f) "child in care" means, except in Sections 67 to 87, a child who is in the care and custody of an agency

(i) pursuant to an agreement made pursuant to this Act,

(ii) as a result of being taken into care, or

(iii) pursuant to a court order made pursuant to this Act;

(g) "child-care services" means

(i) assessment, counselling and referral services,

(ii) child-protection and child-placing services,

(iii) homemaker, day-care and similar services.

(iv) consulting, research and evaluation services with respect to child-care services,

(v) such other services as the Minister may approve or license as child-care services;

(h) "child-caring facility" means

(i) a foster home,

(ii) a licensed boarding home for a child,

(iii) a group home,

(iv) a secure treatment facility,

(v) a residential centre,

(vi) a residential treatment centre,

(vii) a receiving centre,

(viii) a training centre,

(ix) an assessment centre,

(x) a young-offender facility, or

(xi) such other facility as the Minister may approve or license as a child-caring facility;

(i) "child-placing agency" means an agency approved by the Minister as a child-placing agency;

(j) "county court" means the county court for a county court district and includes, unless the context otherwise requires, a judge thereof;

(k) "court" means, unless the context otherwise requires and subject to Section 106, the Family Court and includes a judge thereof;

(l) "custody" means lawful custody, whether by operation of law, written agreement or order of a court of competent jurisdiction;

(m) "former Act" means Chapter 68 of the Revised Statutes, 1989, the *Children's Services Act*;

(n) "foster parent" means a foster parent approved by an agency pursuant to this Act;

(o) "Minister" means the Minister of Community Services;

(p) "municipality" means a city, incorporated town or municipality of a county or district;

(q) "order" includes the refusal to make an order;

(r) "parent or guardian" of a child means

(i) the mother of the child,

(ii) the father of the child where the child is a legitimate or legitimated child,

(iii) an individual having the custody of the child,

(iv) an individual residing with and having the care of the child,

(v) a step-parent,

(vi) an individual who, under a written agreement or a court order, is required to provide support for the child or has a right of access to the child,

(vii) an individual who has acknowledged paternity of the child and who

(A) has an application before a court respecting custody or access or against whom there is an application before a court for support for the child at the time proceedings are commenced pursuant to this Act, or

(B) is providing support or exercising access to the child at the time proceedings are commenced pursuant to this Act,

but does not include a foster parent;

(s) "peace officer" means a member of the Royal Canadian Mounted Police, a police officer appointed by a municipality, a sheriff, a deputy sheriff or a member of the military police of the Canadian Armed Forces;

(t) "relative" of a person means a person related by blood or marriage or, where the person is adopted, adoption or marriage.

Best interests of child

(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.

Best interests of child respecting adoption

(3) Where a person is directed pursuant to this Act in respect of a proposed adoption to make an order or determination in the best interests of a child, the person shall take into consideration those of the circumstances

enumerated in subsection (2) that are relevant, except clauses (i), (l) and (m) thereof. 1990, c. 5, s. 3.

Supervision of Act

4 (1) The Minister has the general supervision and management of this Act and the regulations.

Right of Minister to appear

(2) The Minister may appear and be heard in any court with respect to any matter arising pursuant to this Act. 1990, c. 5, s. 4.

Delegation by Minister

5 (1) The Minister may designate, in writing, a person to have, perform and exercise any of the powers, privileges, duties and functions of the Minister pursuant to this Act and shall, when so designating, specify the powers, privileges, duties and functions to be had, performed and exercised by the person so designated.

Additional duties

(2) A person designated pursuant to subsection (1) shall, in addition, perform such duties as the Governor in Council or the Minister prescribes. 1990, c. 5, s. 5.

Personnel

6 (1) There may be appointed by the Minister, in accordance with the *Civil Service Act*, such persons as the Minister may designate to carry out duties in accordance with this Act and the regulations.

Proof of appointment

(2) Where an appointment of a person is made pursuant to subsection (1) and the person signs or executes a document in the exercise of a power or function conferred upon the person by this Section, the person shall refer to the name of the person's office together with the words "Authorized pursuant to Section 6 of the *Children and Family Services Act*" and, where a document contains such a reference, the document

(a) shall be received in evidence without further proof of the authority of the person who signed or executed the same; and

(b) may be relied upon by the person to whom the document is directed or given and by all other persons as an effective exercise of the power or function to which the document relates.
1990, c. 5, s. 6.

Payment by Minister of appropriations

7 The Minister may make payments in respect of child-care services, child-caring facilities and child-placing agencies in such amounts as are appropriated annually for those purposes. 1990, c. 5, s. 7.

Existing societies continued

8 (1) Every society within the meaning of the former Act is continued as an agency within the meaning of this Act.

Establishment of agency

(2) On the recommendation of the Minister and the approval of the Governor in Council, an agency may be established and, upon the approval by the Governor in Council of the name, constitution, territorial jurisdiction and by-laws and upon the filing of the constitution and by-laws with the Registrar of Joint Stock Companies, the agency is a body corporate under the name of "The Children's Aid Society of ..." or "Family and Children's Services of ..." or such other name as the Governor in Council approves.

Alteration of territorial jurisdiction

(3) The Minister may alter the territorial jurisdiction of an agency.

Powers of agency

(4) An agency may

(a) with the approval of the Minister, change its name or amend its constitution and by-laws;

(b) engage such persons as may be necessary for carrying on its affairs;

(c) do such acts and things as may be convenient or necessary for the attainment of its objects, the carrying out of its functions and the exercise of its powers.

Minister as agency

(5) The Minister may, in any part of the Province, act as an agency and, whether or not acting as an agency, has throughout the Province all the powers, rights and privileges of an agency. 1990, c. 5, s. 8.

Functions of agency

9 The functions of an agency are to

- (a) protect children from harm;
- (b) work with other community and social services to prevent, alleviate and remedy the personal, social and economic conditions that might place children and families at risk;
- (c) provide guidance, counselling and other services to families for the prevention of circumstances that might require intervention by an agency;
- (d) investigate allegations or evidence that children may be in need of protective services;
- (e) develop and provide services to families to promote the integrity of families, before and after intervention pursuant to this Act;
- (f) supervise children assigned to its supervision pursuant to this Act;
- (g) provide care for children in its care or care and custody pursuant to this Act;
- (h) provide adoption services and place children for adoption pursuant to this Act;

(i) provide services that respect and preserve the cultural, racial and linguistic heritage of children and their families;

(j) take reasonable measures to make known in the community the services the agency provides; and

(k) perform any other duties given to the agency by this Act or the regulations. 1990, c. 5, s. 9.

Inspection of agency

10 The Minister or a person authorized by the Minister may enter, inspect and evaluate an agency and examine the records, books and accounts of the agency. 1990, c. 5, s. 10.

Suspension of agency board

11 (1) On the recommendation of the Minister, the Governor in Council may, by order, declare that on or after a day specified in the order the powers of the agency's board of directors are revoked or suspended, for the reasons specified in the order.

Consequences of order

(2) Where an order has been made pursuant to subsection (1), the functions of the agency may be assumed by the Minister from the date specified in the order and the Minister may provide for the operation and management of the agency and has all the powers of the agency's board of directors. 1990, c. 5, s. 11.

Agents

12 The Minister or an agency with the approval of the Minister may appoint agents in accordance with the regulations to exercise the powers, duties and functions of agents pursuant to this Act and may prescribe the territorial jurisdiction of the agents to be the whole of the Province or a part thereof. 1990, c. 5, s. 12.

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.

Types of service

(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.

Duty to provide services to child

14 (1) Where it appears to the Minister that

(a) there is no parent or guardian willing to assume responsibility for a child; or

(b) a child in care requires child-care services or placement in a child-caring facility,

the Minister shall provide to the child appropriate services or placement.

Services to persons 16 to 18

(2) The Minister may provide to a person sixteen years of age or more but under nineteen years of age the same services or placement as to a child. 1990, c. 5, s. 14.

Approval of facilities and services

15 (1) The Minister may approve or license child-caring facilities and child-care services for the purpose of this Act, and a foster home approved by an agency is deemed to have been approved by the Minister.

Prohibition

(2) No person shall conduct, maintain, operate or manage a child-caring facility or a child-care service that is not approved or licensed by the Minister.

Suspension or cancellation

(3) An approval or licence given or issued pursuant to this Act to any person or agency to conduct, maintain, operate or manage a child-caring facility or a child-care service may be suspended or cancelled by the Minister.

Supervision by Minister

(4) A child-caring facility or child-care service is subject to the supervision of the Minister and the Minister or a person authorized by the Minister may enter, inspect and evaluate a child-caring facility or child-care service and examine the records, books and accounts thereof.

Offence and penalty

(5) A person who contravenes subsection (2) and a director, officer or employee of a corporation who authorizes, permits or concurs in such contravention by the corporation is guilty of an offence and upon summary conviction is liable to a fine of not more than five thousand

dollars or to imprisonment for one year or to both. 1990, c. 5, s. 15.

Ministerial operation of facilities

16 (1) The Minister may maintain and conduct

(a) training centres for the care, treatment, education and training of mentally handicapped children;

(b) young-offender facilities;

(c) residential centres;

(d) assessment centres;

(e) residential treatment centres for the care and treatment of emotionally disturbed children;

(f) secure treatment facilities;

(g) such child-caring facilities and child-care services as the Minister approves for the purpose of this Act.

Advisory board

(2) The Governor in Council may appoint an advisory board for a facility, centre or service referred to in subsection (1), to assist and advise in the administration and operation of the facility, centre or service and to perform such functions and exercise such powers as are prescribed by the regulations.

Chair and terms of office

(3) The Governor in Council may designate a member of a board to chair the meetings of the board and may prescribe the terms of office of the members of the board.

Allowances and expenses

(4) The members of a board shall be reimbursed for necessary and reasonable expenses incurred by them in

carrying out their duties and may be paid such allowances as the Governor in Council prescribes. 1990, c. 5, s. 16

Temporary-care agreement

17 (1) A parent or guardian who is temporarily unable to care adequately for a child in that person's custody and an agency may enter into a written agreement for the agency's temporary care and custody of the child.

Prerequisites to agreement

(2) An agency shall not enter into a temporary-care agreement unless the agency

(a) has determined that an appropriate placement that is likely to benefit the child is available; and

(b) is satisfied that no less restrictive course of action, such as care in the child's own home, is appropriate for the child in the circumstances.

Duration of agreement

(3) No temporary-care agreement shall be made for a period exceeding six months, but the parties to a temporary-care agreement may extend it for further periods if the total term of the temporary-care agreement, including its extensions, does not exceed an aggregate of twelve months.

Consent to medical treatment

(4) A temporary-care agreement may empower the agency to consent to medical treatment for the child where a parent's consent would otherwise be necessary.

Form of agreement

(5) A temporary-care agreement shall be in the form prescribed by the regulations. 1990, c. 5, s. 17.

Special-needs agreement

18 (1) A parent or guardian who is unable to provide the services required by a child in the parent or guardian's custody because the child has special needs, as

prescribed by the regulations, may enter into a written agreement with an agency or the Minister for the care and custody of the child or provision of services to meet the child's special needs.

Duration of agreement

(2) A special-needs agreement made pursuant to this Section shall be made for a period not exceeding one year, but may be extended for further periods each not exceeding one year, with the approval of the Minister.

Consent to medical treatment

(3) A special-needs agreement made pursuant to this Section may empower the agency or the Minister to consent to medical treatment for the child where a parent or guardian's consent would otherwise be required.

Form of agreement

(4) A special-needs agreement made pursuant to this Section shall be in the form prescribed by the regulations. 1990, c. 5, s. 18.

Special-needs agreement with child 16 to 18

19 (1) A child who is sixteen years of age or more but under the age of nineteen years, is not in the care of the child's parent or guardian and has a special need as prescribed by the regulations may enter into a written agreement with an agency or the Minister for the provision of services to meet the child's special needs.

Duration of agreement

(2) A special-needs agreement made pursuant to this Section shall be made for a period not exceeding one year, but may be extended for further periods each not exceeding one year, with the approval of the Minister.

Form of agreement

(3) A special-needs agreement made pursuant to this Section shall be in the form prescribed by the regulations. 1990, c. 5, s. 19

Placement considerations

20 Where the Minister or an agency enters into an agreement pursuant to Section 17, 18 or 19, the Minister or the agency shall, where practicable, in order to ensure the child's best interests are served, take into account

(a) the maintenance of regular contact between the child and the parent or guardian;

(b) the desirability of keeping brothers and sisters in the same family unit;

(c) the child's need to maintain contact with the child's relatives and friends;

(d) the preservation of the child's cultural, racial and linguistic heritage; and

(e) the continuity of the child's education and religion. 1990, c. 5, s. 20.

Mediator

21 (1) An agency and a parent or guardian of a child may, at any time, agree to the appointment of a mediator to attempt to resolve matters relating to the child who is or may become a child in need of protective services.

Stay of proceedings

(2) Where a mediator is appointed pursuant to subsection (1) after proceedings to determine whether the child is in need of protective services have been commenced, the court, on the application of the parties, may grant a stay of the proceedings for a period not exceeding three months.

Extension of time limits

(3) While a stay of proceedings pursuant to subsection (2) is in effect, any time limits applicable to the proceedings are extended accordingly. 1990, c. 5, s. 21

"substantial risk" defined

22 (1) In this Section, "substantial risk" means a real chance of danger that is apparent on the evidence.

Child is in need of protective services

(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);

(c) the child has been sexually abused by a parent or guardian of the child, or by another person where a parent or guardian of the child knows or should know of the possibility of sexual abuse and fails to protect the child;

(d) there is a substantial risk that the child will be sexually abused as described in clause (c);

(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;

(i) the child has suffered physical or emotional harm caused by being exposed to repeated domestic violence by or towards a parent or guardian of the child, and the child's parent or guardian fails or refuses to obtain services or treatment to remedy or alleviate the violence;

(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;

(l) the child is under twelve years of age and has killed or seriously injured another person or caused serious damage to another person's property, and services or treatment are necessary to prevent a recurrence and a parent or guardian of the child does not provide, or refuses or is unavailable or unable to consent to, the necessary services or treatment;

(m) the child is under twelve years of age and has on more than one occasion injured another person or caused loss or damage to another person's property, with the encouragement of a parent or guardian of the child or because of the parent or guardian's failure or inability to supervise the child adequately. 1990, c. 5, s. 22; 1996, c. 10, s. 1.

Duty to report

23 (1) Every person who has information, whether or not it is confidential or privileged, indicating that a child is in need of protective services shall forthwith report that information to an agency.

Restriction on civil action

(2) No action lies against a person by reason of that person reporting information pursuant to subsection (1), unless the reporting of that information is done falsely and maliciously.

Offence and penalty

(3) Every person who contravenes subsection (1) is guilty of an offence and upon summary conviction is liable to a fine of not more than two thousand dollars or to imprisonment for a period not exceeding six months or to both.

Limitation period

(4) No proceedings shall be instituted pursuant to subsection (3) more than two years after the contravention occurred.

Offence and penalty

(5) Every person who falsely and maliciously reports information to an agency indicating that a child is in need of protective services is guilty of an offence and upon summary conviction is liable to a fine of not more than two thousand dollars or to imprisonment for a period not exceeding six months or to both. 1990, c. 5, s. 23; 1996, c. 10, s. 2.

Offence and penalty

(6) Every person who contravenes subsection (2) is guilty of an offence and upon summary conviction is liable to a fine of not more than five thousand dollars or to imprisonment for a period not exceeding one year or to both.

Limitation period

(7) No proceedings shall be instituted pursuant to subsection (6) more than two years after the contravention occurred.

Offence and penalty

(8) Every person who falsely and maliciously reports information to an agency indicating that a child is or may be suffering or may have suffered abuse is guilty of an offence and upon summary conviction is liable to a fine of not more than two thousand dollars or to imprisonment for a period not exceeding six months or to both. 1990, c. 5, s. 24; 1996, c. 10, s. 3.

Interpretation of Section

25 (1) In this Section, "abuse by a person other than a parent or guardian" means that a child

(a) has suffered physical harm, inflicted by a person other than a parent or guardian of the child or caused by the failure of a person other than a parent or guardian of the child to supervise and protect the child adequately;

(b) has been sexually abused by a person other than a parent or guardian or by another person where the person, not being a parent or guardian, with the care of the child knows or should know of the possibility of sexual abuse and fails to protect the child;

(c) has suffered serious emotional harm, demonstrated by severe anxiety, depression, withdrawal, or self-destructive or aggressive behaviour, caused by the intentional conduct of a person other than a parent or guardian.

"suffer abuse" defined

24 (1) In this Section, "suffer abuse", when used in reference to a child, means be in need of protective service within the meaning of clause (a), (c), (e), (f), (h), (i) or (j) of subsection (2) of Section 22.

Duty of professionals and officials to report

(2) Notwithstanding any other Act, every person who performs professional or official duties with respect to a child, including

(a) a health care professional, including physician, nurse, dentist, pharmacist or psychologist;

(b) a teacher, school principal, social worker, family counsellor, member of the clergy, operator or employee of a day-care facility;

(c) a peace officer or a medical examiner;

(d) an operator or employee of a child caring facility or child-care service;

(e) a youth or recreation worker,

who, in the course of that person's professional or official duties, has reasonable grounds to suspect that a child is or may be suffering or may have suffered abuse shall forthwith report the suspicion and the information upon which it is based to an agency.

Application of Section

(3) This Section applies whether or not the information reported is confidential or privileged.

Effect on Section 23

(4) Nothing in this Section affects the obligation of a person referred to in subsection (2) to report information pursuant to Section 23.

Restriction on civil action

(5) No action lies against a person by reason of that person reporting information pursuant to subsection (2), unless the reporting is done falsely and maliciously.

Duty to report third-party abuse

(2) Every person who has information, whether or not it is confidential or privileged, indicating that a child is or may be suffering or may have suffered abuse by a person other than a parent or guardian shall forthwith report the information to an agency.

Offence and penalty

(3) Every person who contravenes subsection (2) is guilty of an offence and upon summary conviction is liable to a fine of not more than two thousand dollars or to imprisonment for a period not exceeding six months or to both.

Limitation period

(4) No proceedings shall be instituted pursuant to subsection (3) more than two years after the contravention occurred.

Restriction on civil action

(5) No action lies against a person by reason of that person reporting information pursuant to subsection (2) unless the reporting of that information is done falsely and maliciously.

Offence and penalty

(6) Every person who falsely and maliciously reports information to an agency indicating that a child is or may be suffering or may have suffered abuse by a person other than a parent or guardian is guilty of an offence and upon summary conviction is liable to a fine or not more than two thousand dollars or to imprisonment for a period not exceeding six months or to both. 1990, c. 5, s. 25; 1996, c. 10, s. 4.

Order to produce documents for inspection

26 (1) Upon the *ex parte* application of an agency where the court is satisfied that

(a) there are reasonable and probable grounds to believe that a person or organization has possession, custody or control of records or documents containing information necessary for the agency to determine whether a child is in need of protective services; and

(b) that person or organization has refused or is unwilling to permit the production and inspection of those records or documents,

the court may grant an order directing that person or organization to produce the records or documents for inspection by an agent.

Order for access or entry

(2) Where an agent has been refused access to a child or entry to premises where a child resides or is located, the agency may apply *ex parte* to the court and, where the court is satisfied that there are reasonable and probable grounds to believe that the child may be in need of protective services and that it is necessary to

- (a) enter specified premises;
- (b) conduct a physical examination of the child;
- (c) interview the child;
- (d) search specified premises and take possession of anything that there are reasonable and probable grounds to believe will afford evidence that a child is in need of protective services;
- (e) remove the child and attend with the child for a medical examination of, or interview, the child on such reasonable terms and conditions as the court may order, including the presence of a parent or guardian or, in their absence, some other suitable adult person,

to determine whether the child is in need of protective services, the court may grant an order authorizing an agent named therein to do anything referred to in clauses (a) to (e) as the court considers necessary to so determine.

Assistance of peace officer

(3) An agent acting pursuant to subsection (2) may enlist the assistance of a peace officer.

In camera hearing

(4) A hearing in respect of an application made pursuant to this Section shall be held *in camera* except that the court may permit any person to be present if the court considers it appropriate. 1990, c. 5, s. 26.

shall make all reasonable efforts to locate or contact a parent or guardian or, in the absence of a parent or guardian, a relative of the child who is willing and able to provide for the child's care.

Duty of agency

(2) Where a parent or guardian is located or contacted, the agency shall immediately

(a) return the child to the parent or guardian;

(b) at the request of the parent or guardian, place the child with another person with the consent of that other person; or

(c) take the child into care as permitted by and in accordance with Section 33.

Duty of agent

(3) Where the agency is unable within seventy-two hours to locate or contact a parent or guardian or, in the absence of a parent or guardian, a relative of the child who is willing and able to provide for the child's care, the agent shall take the child into care as permitted by and in accordance with Section 33. 1990, c. 5, s. 28.

Run-away child

29 (1) Upon the *ex parte* application of a parent or guardian, or an agency having the care and custody of a child, where the court is satisfied that

(a) the child has withdrawn from the care and control of the parent or guardian or the agency, as the case may be, without the consent of the parent or guardian or the agency, respectively; and

(b) the parent or guardian or the agency, as the case may be, has reasonable and probable grounds to believe that the child's health or safety may be at risk,

Right of peace officer to detain child

27 (1) Where a peace officer has reasonable and probable grounds to believe that a child is in need of protective services, the peace officer may detain the child and shall forthwith take such reasonable steps as are necessary to

(a) notify an agency and the child's parent or guardian of the detention; and

(b) deliver the child to an agent or, with the approval of the agent, return the child to the child's parent or guardian.

Duty of peace officer

(2) Where a peace officer has reasonable and probable grounds to believe that a child has committed an offence for which the child cannot be convicted because the child was under twelve years of age, the peace officer may detain the child and shall forthwith take such reasonable steps as are necessary to

(a) return the child to the child's parent or guardian; or

(b) deliver the child to an agent or, where an agent so instructs, return the child to the child's parent or guardian.

Duty of agent

(3) Where a child is delivered to an agent pursuant to subsection (1) or (2), the agent shall immediately return the child to the child's parent or guardian or, as permitted by and in accordance with Section 33, take the child into care. 1990, c. 5, s. 27.

Abandoned child

28 (1) Where it appears to an agent that a child has been abandoned, a child's only parent or guardian has died, or no parent or guardian of the child is available to exercise custodial rights over the child or has made adequate provision for the child's care, the agency may assume the temporary care and custody of the child, for a period not to exceed seventy-two hours, during which time the agency

the court may issue an order authorizing a peace officer to locate and detain the child and, upon detaining the child, the peace officer shall, as soon as is practicable,

(c) return the child to the parent or guardian or the agency named in the order; or

(d) deliver the child to an agent.

Duty of agent

(2) Where a child is delivered to an agent pursuant to subsection (1), the agent shall immediately either return the child to the child's parent or guardian or, as permitted by and in accordance with Section 33, take the child into care.

In camera hearing

(3) A hearing in respect of an application made pursuant to this Section shall be held *in camera* except that the court may permit any person to be present if the court considers it appropriate. 1990, c. 5, s. 29.

Protective-intervention order

30 (1) Upon the application of an agency, a judge of the Trial Division of the Supreme Court, including a local judge thereof, may make a protective-intervention order pursuant to this Section directed to any person where the judge is satisfied that the person's contact with a child is causing, or is likely to cause, the child to be a child in need of protective services.

Contents of order

(2) The judge may make a protective-intervention order in the child's best interests, ordering that the person named in the order

(a) cease to reside with the child;

(b) not contact the child or associate in any way with the child,

and imposing such terms and conditions as the judge considers appropriate for implementing the order and protecting the child.

Duration of order

(3) A protective-intervention order made pursuant to this Section is in force for such period, not exceeding six months, as the order specifies.

Variation of order

(4) Upon the application of the agency or the person named in the protective-intervention order, a judge of the Trial Division of the Supreme Court, including a local judge thereof, may from time to time vary or terminate the order or extend the order for a further period, each not exceeding six months.

Assistance of peace officer

(5) Where an order is made pursuant to this Section, the agency may enlist the assistance of a peace officer to enforce the order.

Offence and penalty

(6) Any person who contravenes a protective-intervention order is guilty of an offence and upon summary conviction is liable to a fine of not more than five thousand dollars or to imprisonment for a period not exceeding one year or to both.

Application of Section 94

(7) Section 94 applies *mutatis mutandis* to a hearing pursuant to this Section. 1990, c. 5, s. 30.

"proceeding" defined

31 In Sections 32 to 49, "proceeding" means a proceeding pursuant to those Sections. 1990, c. 5, s. 31.

Court application by agency

32 An agency may make application to the court to determine whether a child is in need of protective services or, where an agent has taken a child into care pursuant to Section 33 without an application having been made pursuant to this Section, the agency shall make such application. 1990, c. 5, s. 32.

Taking into care

33 (1) An agent may, at any time before or after an application to determine whether a child is in need of protective services has been commenced, without warrant or court order take a child into care where the agent has reasonable and probable grounds to believe that the child is in need of protective services and the child's health or safety cannot be protected adequately otherwise than by taking the child into care.

Notice

(2) On taking a child into care, an agent shall forthwith serve a notice of taking a child into care upon the parent or guardian if known and available to be served.

Assistance of peace officer

(3) An agent taking a child into care may enlist the assistance of a peace officer.

Temporary care and custody

(4) Where a child has been taken into care pursuant to this Section, an agency has the temporary care and custody of the child until a court orders otherwise or the child is returned to the parent or guardian. 1990, c. 5, s. 33.

Order authorizing entry and search

34 (1) Where a parent or guardian or other person has refused to give up the child or to permit entry to premises where the child may be located and the court is satisfied on the basis of an agent's sworn information that there are reasonable and probable grounds to believe that

(a) the child is in need of protective services; and

(b) the child's health or safety cannot be protected adequately otherwise than by taking the child into care,

the court may issue an order *ex parte* authorizing an agent named therein to enter, by force if necessary, any premises specified in the order and to search for the child for the purpose of taking the child into care as permitted by and in accordance with Section 33.

Contents of order

(2) Where it is not practicable, an order made pursuant to subsection (1) need not describe the child by name or specify any particular premises.

Entry and search without order

(3) Where an agent has reasonable and probable grounds to believe a child is in need of protective services and the health or safety of a child is in immediate jeopardy, the agent may, without warrant or court order, enter, by force if necessary, any premises and search for the child for the purpose of taking the child into care as permitted by and in accordance with Section 33.

Assistance of peace officer

(4) An agent acting pursuant to this Section may enlist the assistance of a peace officer.

In camera hearing

(5) A hearing pursuant to this Section shall be held *in camera* except that the court may permit any person to be present if the court considers it appropriate. 1990, c. 5, s. 34.

Return of child

35 An agent may, at any time prior to the first hearing of an application to determine whether a child is a child in need of protective services, return the child taken into care to the parent or guardian, where such return would be consistent with the purpose of this Act and not contrary to any outstanding court order or written agreement, and, where the child is returned, the agency may withdraw its application. 1990, c. 5, s. 35.

Parties to proceeding

36 (1) The parties to a proceeding pursuant to Sections 32 to 49 are

- (a) the agency;
- (b) the child's parent or guardian;

(c) the child, where the child is sixteen years of age or more, unless the court otherwise orders pursuant to subsection (1) of Section 37;

(d) the child, where the child is twelve years of age or more, if so ordered by the court pursuant to subsection (2) of Section 37;

(e) the child, if so ordered by the court pursuant to subsection (3) of Section 37; and

(f) any other person added as a party at any stage in the proceeding pursuant to the *Family Court Rules*.

Minister as party

(2) At any stage of a proceeding, where an agency other than the Minister is a party, the court shall add the Minister as a party upon application by the Minister.

Indian child

(3) Where the child who is the subject of a proceeding is known to be Indian or may be Indian, the Mi'kmaq Family and Children's Services of Nova Scotia shall receive notice in the same manner as a party to the proceedings and may, with its consent, be substituted for the agency that commenced the proceeding.

Rights of foster parent

(4) On a hearing to review a disposition order pursuant to Section 46 or on an application to terminate, or vary access under, an order for permanent care and custody pursuant to Section 48, a foster parent, who has cared for the child continuously during the six months immediately before the hearing or application,

(a) is entitled to the same notice of the proceeding as a party;

(b) may be present at the hearing;

(c) may be represented by counsel; and

(d) may make submissions to the court,

but shall take no further part in the hearing without leave of the court. 1990, c. 5, s. 36; 1996, c. 10, s. 5.

Child 16 or more as party

37 (1) A child who is sixteen years of age or more is a party to a proceeding unless the court otherwise orders and, if a party, is, upon the request of the child, entitled to counsel for the purposes of a proceeding.

Child 12 or more as party

(2) A child who is twelve years of age or more shall receive notice of a proceeding and, upon request by the child at any stage of the proceeding, the court may order that the child be made a party to the proceeding and be represented by counsel, where the court determines that such status and representation is desirable to protect the child's interests.

Appointment of guardian

(3) Upon the application of a party or on its own motion, the court may, at any stage of a proceeding, order that a guardian *ad litem* be appointed for a child who is the subject of the proceeding and, where the child is not a party to the proceeding, that the child be made a party to the proceeding, if the court determines that such a guardian is desirable to protect the child's interests and, where the child is twelve years of age or more, that the child is not capable of instructing counsel.

Fees and disbursements of guardian

(4) Where a child is represented by counsel or a guardian *ad litem* pursuant to this Section, the Minister shall in accordance with the regulations, pay the reasonable fees and disbursements of the counsel or guardian as the case may be, including the reasonable fees and disbursements of counsel for the guardian. 1990, c. 5, s. 37.

Full disclosure

38 (1) Subject to any claims of privilege, an agency shall make full, adequate and timely disclosure, to a parent or guardian and to any other party, of the allegations, intended evidence and orders sought in a proceeding.

Order for disclosure or discovery

(2) Upon the application by a party, the court may order disclosure or discovery by any other party in accordance with the *Family Court Rules* and the *Civil Procedure Rules*. 1990, c. 5, s. 38.

Interim hearing

39 (1) As soon as practicable, but in any event no later than five working days after an application is made to determine whether a child is in need of protective services or a child has been taken into care, whichever is earlier, the agency shall bring the matter before the court for an interim hearing, on two days' notice to the parties, but the notice may be waived by the parties or by the court.

No reasonable and probable grounds

(2) Where at an interim hearing pursuant to subsection (1) the court finds that there are no reasonable and probable grounds to believe that the child is in need of protective services, the court shall dismiss the application and the child, if in the care and custody of the agency, shall be returned forthwith to the parent or guardian.

Adjournment

(3) Where the parties cannot agree upon, or the court is unable to complete an interim hearing respecting, interim orders pursuant to subsection (4), the court may adjourn the interim hearing and make such interim orders pursuant to subsection (4) as may be necessary pending completion of the hearing and subsection (7) does not apply to the making of an interim order pursuant to this subsection, but the court shall not adjourn the matter until it has determined whether there are reasonable and probable grounds to believe that the child is in need of protective services.

Completion of interim hearing

(4) Within thirty days after the child has been taken into care or an application is made, whichever is earlier, the court shall complete the interim hearing and make one or more of the following interim orders:

(a) the child shall remain in or be returned to the care and custody of a parent or guardian;

(b) the child shall remain in or be returned to the care and custody of a parent or guardian, subject to the supervision of the agency and on such reasonable terms and conditions as the court considers appropriate, including the future taking into care of the child by the agency in the event of non-compliance by the parent or guardian with any specific terms or conditions;

(c) a parent or guardian or other person shall not reside with or contact or associate in any way with the child;

(d) the child shall be placed in the care and custody of a person other than a parent or guardian, with the consent of that other person, subject to the supervision of the agency and on such reasonable terms and conditions as the court considers appropriate;

(e) the child shall remain or be placed in the care and custody of the agency;

(f) a parent or guardian or other person shall have access to the child on such reasonable terms and conditions as the court considers appropriate and, where an order is made pursuant to clause (d) or (e), access shall be granted to a parent or guardian unless the court is satisfied that continued contact with the parent or guardian would not be in the child's best interests;

(g) referral of the child or a parent or guardian for psychiatric, medical or other examination or assessment.

Child taken into care subsequent to interim order

(5) Where, subsequent to an interim order being made pursuant to subsection (4), the agency takes a child into care pursuant to Section 33 or clause (b) of subsection (4), the agency shall, as soon as practicable but in

any event within five working days after the child is taken into care, bring the matter before the court and the court may pursuant to subsection (9) vary the interim order.

"substantial risk" defined

(6) In subsection (7), "substantial risk" means a real chance of danger that is apparent on the evidence.

Limitation on clauses (4)(d) and (e)

(7) The court shall not make an order pursuant to clause (d) or (e) of subsection (4) unless the court is satisfied that there are reasonable and probable grounds to believe that there is a substantial risk to the child's health or safety and that the child cannot be protected adequately by an order pursuant to clause (a), (b) or (c).

Placement considerations

(8) Where the agency places a child who is the subject of an order pursuant to clause (e) of subsection (4), the agency shall, where practicable, in order to ensure the best interests of the child are served, take into account

(a) the desirability of keeping brothers and sisters in the same family unit;

(b) the need to maintain contact with the child's relatives and friends;

(c) the preservation of the child's cultural, racial and linguistic heritage; and

(d) the continuity of the child's education and religion.

Variation or termination of order

(9) The court may, at any time prior to the making of a disposition order pursuant to Section 42, vary or terminate an order made pursuant to subsection (4).

Application of Sections 32 to 49

(10) Sections 32 to 49 apply notwithstanding that the child becomes sixteen years of age after the child is taken into care or after the making of the application to determine whether the child is in need of protective services.

Evidence

(11) For the purpose of this Section, the court may admit and act on evidence that the court considers credible and trustworthy in the circumstances. 1990, c. 5, s. 39.

Protection hearing

40 (1) Where an application is made to the court to determine whether a child is in need of protective services, the court shall, not later than ninety days after the date of the application, hold a protection hearing and determine whether the child is in need of protective services.

Evidence

(2) In a hearing pursuant to this Section, the court shall not admit evidence relating only to the making of a disposition order pursuant to Section 42 unless all parties consent to the admission of such evidence or consent to the consolidation of the protection and disposition hearings.

Admissions

(3) A parent or guardian may admit that the child is in need of protective services as alleged by the agency.

Determination by court

(4) The court shall determine whether the child is in need of protective services as of the date of the protection hearing and shall, at the conclusion of the protection hearing, state, either in writing or orally on the record, the court's findings of fact and the evidence upon which those findings are based.

Child not in need of protective services

(5) Where the court finds that the child is not in need of protective services, the court shall dismiss the application. 1990, c. 5, s. 40.

Disposition hearing

41 (1) Where the court finds the child is in need of protective services, the court shall, not later than ninety days after so finding, hold a disposition hearing and make a disposition order pursuant to Section 42.

Evidence

(2) The evidence taken on the protection hearing shall be considered by the court in making a disposition order.

Plan for child

(3) The court shall, before making a disposition order, obtain and consider a plan for the child's care, prepared in writing by the agency and including

(a) a description of the services to be provided to remedy the condition or situation on the basis of which the child was found in need of protective services;

(b) a statement of the criteria by which the agency will determine when its care and custody or supervision is no longer required;

(c) an estimate of the time required to achieve the purpose of the agency's intervention;

(d) where the agency proposes to remove the child from the care of a parent or guardian,

(i) an explanation of why the child cannot be adequately protected while in the care of the parent or guardian, and a description of any past efforts to do so, and

(ii) a statement of what efforts, if any, are planned to maintain the child's contact with the parent or guardian; and

(e) where the agency proposes to remove the child permanently from the care or custody of the parent or guardian, a description of the arrangements made or being made for the child's long-term stable placement.

Consequences of consent order

(4) Where a parent or guardian consents to a disposition order being made pursuant to Section 42 that would remove the child from the parent or guardian's care and custody, the court shall

(a) ask whether the agency has offered the parent or guardian services that would enable the child to remain with the parent or guardian;

(b) ask whether the parent or guardian has consulted and, where the child is twelve years of age or more, whether the child has consulted independent legal counsel in connection with the consent; and

(c) satisfy itself that the parent or guardian understands and, where the child is twelve years of age or older, that the child understands the nature and consequences of the consent and consents to the order being sought and every consent is voluntary.

Duty of court upon making order

(5) Where the court makes a disposition order, the court shall give

(a) a statement of the plan for the child's care that the court is applying in its decision; and

(b) the reasons for its decision, including

(i) a statement of the evidence on which the court bases its decision, and

(ii) where the disposition order has the effect of removing or keeping the child from the care or custody of the parent or guardian, a statement of the reasons why the child cannot be adequately protected while in the care or custody of the parent or guardian. 1990, c. 5, s. 41.

Disposition order

42 (1) At the conclusion of the disposition hearing, the court shall make one of the following orders, in the child's best interests:

(a) dismiss the matter;

(b) the child shall remain in or be returned to the care and custody of a parent or guardian, subject to the supervision of the agency, for a specified period, in accordance with Section 43;

(c) the child shall remain in or be placed in the care and custody of a person other than a parent or guardian, with the consent of that other person, subject to the supervision of the agency, for a specified period, in accordance with Section 43;

(d) the child shall be placed in the temporary care and custody of the agency for a specified period, in accordance with Sections 44 and 45;

(e) the child shall be placed in the temporary care and custody of the agency pursuant to clause (d) for a specified period and then be returned to a parent or guardian or other person pursuant to clauses (b) or (c) for a specified period, in accordance with Sections 43 to 45;

(f) the child shall be placed in the permanent care and custody of the agency, in accordance with Section 47.

Restriction on removal of child

(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.

Placement considerations

(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.

Limitation on clause (1)(f)

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

Terms of supervision order

43 (1) Where the court makes a supervision order pursuant to clause (b), (c) or (e) of subsection (1) of Section 42, the court may impose reasonable terms and conditions relating to the child's care and supervision, including

(a) a requirement that the agency supervise the child within the residence of the child;

(b) the place of residence of the child and the person with whom the child must, with the consent of that person, reside;

(c) the frequency of visits at the residence of the child by the agency;

(d) that a parent or guardian or other person shall not reside with or contact or associate in any way with the child;

(e) access to the child by a parent or guardian or other person;

(f) the assessment, treatment or services to be obtained for the child by a parent or guardian or other person having the care and custody of the child;

(g) the assessment, treatment or services to be obtained by a parent or guardian or other person residing with the child; and

(h) any other terms the court considers necessary.

Right of entry

(2) Where the court makes a supervision order, any representative of the supervising agency has the right to enter the residence of the child to provide guidance and assistance and to ascertain that the child is being properly cared for.

Provision for non-compliance

(3) As a term of the supervision order, the court may provide that non-compliance with any specific term or condition of the order may entitle the agency to take the child into care and, where the agency takes the child into care pursuant to this subsection or Section 33, as soon as is practicable, but in any event within five working days after the child is taken into care, the agency shall bring the matter before the court and the court may review and vary the order pursuant to Section 46.

Duration of order

(4) A supervision order made pursuant to clause (b), (c) or (e) of subsection (1) of Section 42 may be for a period less than twelve months, but in no case shall a supervision order or orders extend beyond twelve consecutive months of supervision from the date of the initial supervision order pursuant to Section 42, subject to the maximum time limits set out in subsection (1) of Section 45 where an order is made pursuant to clause (e) of subsection (1) of Section 42. 1990, c. 5, s. 43.

Terms of temporary care and custody order

44 (1) Where the court makes an order for temporary care and custody pursuant to clauses (d) or (e) of sub-

section (1) of Section 42, the court may impose reasonable terms and conditions, including

(a) access by a parent or guardian to the child, unless the court is satisfied that continued contact with the parent or guardian would not be in the best interests of the child;

(b) access by any other person to the child;

(c) the assessment, treatment or services to be obtained for the child by a parent or guardian or other person seeking the care and custody of the child;

(d) the assessment, treatment or services to be obtained by a parent or guardian, or other person residing with the child;

(e) where an order is being made pursuant to clause (e) of subsection (1) of Section 42, the circumstances or time when the child may be returned to the parent or guardian or other person under a supervision order; and

(f) any terms the court considers necessary.

Medical treatment

(2) Where an order for temporary care and custody is made, the court may impose as a term or condition of the order that the parent or guardian shall retain any right that the parent or guardian may have to give or refuse consent to medical treatment for the child.

Placement considerations

(3) Where the agency places a child who is the subject of an order for temporary care and custody, the agency shall, where practicable, in order to ensure the best interests of the child are served, take into account

(a) the desirability of keeping brothers and sisters in the same family unit;

(b) the need to maintain contact with the child's relatives and friends;

(c) the preservation of the child's cultural, racial and linguistic heritage; and

(d) the continuity of the child's education and religion. 1990, c. 5, s. 44.

Total duration of disposition orders

45 (1) Where the court has made an order for temporary care and custody, the total period of duration of all disposition orders, including any supervision orders, shall not exceed

(a) where the child was under six years of age at the time of the application commencing the proceedings, twelve months; or

(b) where the child was six years of age or more but under twelve years of age at the time of the application commencing the proceedings, eighteen months,

from the date of the initial disposition order.

Duration of order for temporary care and custody

(2) The period of duration of an order for temporary care and custody, made pursuant to clause (d) or (e) of subsection (1) of Section 42, shall not exceed

(a) where the child or youngest child that is the subject of the disposition hearing is under three years of age at the time of the application commencing the proceedings, three months;

(b) where the child or youngest child that is the subject of the disposition hearing is three years of age or more but under the age of twelve years, six months; or

(c) where the child or youngest child that is the subject of the disposition hearing is twelve years of age or more, twelve months.

Application of time limits

(3) Where a child that is the subject of an order for temporary care and custody becomes twelve years of age, the time limits set out in subsection (1) no longer apply and clause (c) of subsection (2) applies to any further orders for temporary care and custody. 1990, c. 5, s. 45.

Application for review

46 (1) A party may at any time apply for review of a supervision order or an order for temporary care and custody, but in any event the agency shall apply to the court for review prior to the expiry of the order or where the child is taken into care while under a supervision order.

Transfer of supervision to another agency

(2) Where all parties consent, the supervision by an agency of a child under a supervision order or the care and custody of a child under an order for temporary care and custody may be transferred to another agency, with the other agency's consent, and, where all parties, including the other agency, do not so consent, the court may, upon application, order the transfer of an agency's supervision or care and custody to another agency, in the child's best interests.

Care and custody pending hearing

(3) Where an application is made pursuant to this Section, the child shall, prior to the hearing, remain in the care and custody of the person or agency having care and custody of the child, unless the court is satisfied, upon application, that the child's best interests require a change in the child's care and custody.

Matters to be considered

(4) Before making an order pursuant to subsection (5), the court shall consider

(a) whether the circumstances have changed since the previous disposition order was made;

(b) whether the plan for the child's care that the court applied in its decision is being carried out;

(c) what is the least intrusive alternative that is in the child's best interests; and

(d) whether the requirements of subsection (6) have been met.

Powers of court on review

(5) On the hearing of an application for review, the court may, in the child's best interests,

(a) vary or terminate the disposition order made pursuant to subsection (1) of Section 42, including any term or condition that is part of that order;

(b) order that the disposition order terminate on a specified future date; or

(c) make a further or another order pursuant to subsection (1) of Section 42, subject to the time limits specified in Section 43 for supervisor orders and in Section 45 for orders for temporary care and custody.

Further order for temporary care and custody

(6) Where the court reviews an order for temporary care and custody, the court may make a further order for temporary care and custody unless the court is satisfied that the circumstances justifying the earlier order for temporary care and custody are unlikely to change within a reasonably foreseeable time not exceeding the remainder of the applicable maximum time period pursuant to subsection (1) of Section 45, so that the child can be returned to the parent or guardian. 1990, c. 5, s. 46.

Consequences of permanent care and custody order

47 (1) Where the court makes an order for permanent care and custody pursuant to clause (f) of subsection (1) of Section 42, the agency is the legal guardian of the child and as such has all the rights, powers and responsibilities of a parent or guardian for the child's care and custody.

Order for access

(2) Where an order for permanent care and custody is made, the court may make an order for access by a parent or guardian or other person, but the court shall not make such an order unless the court is satisfied that

(a) permanent placement in a family setting has not been planned or is not possible and the person's access will not impair the child's future opportunities for such placement;

(b) the child is at least twelve years of age and wishes to maintain contact with that person;

(c) the child has been or will be placed with a person who does not wish to adopt the child; or

(d) some other special circumstance justifies making an order for access.

Variation or termination of order

(3) Any access ordered pursuant to subsection (2) may be varied or terminated in accordance with Section 48.

Restriction on granting order

(3A) Where the child has been placed and is residing in the home of a person who has given notice of proposed adoption by filing the notice with the Minister, no application for an order granting access may be made during the continuance of the adoption placement until

(a) an application for adoption is made and the application is dismissed, discontinued or unduly delayed; or

(b) there is an undue delay in the making of an application for adoption.

Religion

(4) Where practicable, a child who is the subject of an order for permanent care and custody shall be placed with a family of the child's own religious faith but, where such placement is not available within a reasonable time,

the child may, with the approval of the Minister, be placed in the most suitable home available.

Culture, race or language

(5) Where practicable, a child, who is the subject of an order for permanent care and custody, shall be placed with a family of the child's own culture, race or language but, if such placement is not available within a reasonable time, the child may be placed in the most suitable home available with the approval of the Minister.

Transfer of permanent care and custody

(6) An agency may, with the approval of the Minister, transfer the permanent care and custody of a child to another agency.

Consequence of transfer

(7) Where the permanent care and custody of a child is transferred from one agency to another agency, the agency to which the permanent care and custody is transferred is the legal guardian of the child and as such has all the rights, powers and responsibilities of a parent, and the agency making the transfer ceases to have those rights, powers and responsibilities in relation to the child. 1990, c. 5 s. 47; 1996, c. 10, s. 6.

Termination of permanent care and custody order

48 (1) An order for permanent care and custody terminates when

(a) the child reaches nineteen years of age, unless, because the child is pursuing an education program or because the child is under a disability, the court orders that the agency's permanent care and custody be extended until the child reaches twenty-one years of age;

(b) the child is adopted;

(c) the child marries; or

(d) the court terminates the order for permanent care and custody pursuant to this Section.

Age of Majority Act

(2) In subsection (1), "twenty-one years of age" means twenty-one years of age notwithstanding the *Age of Majority Act*.

Application to vary or terminate order

(3) A party to a proceeding may apply to terminate an order for permanent care and custody or to vary access under such an order, in accordance with this Section, including the child where the child is sixteen years of age or more at the time of application for termination or variation of access.

Restriction on application for order

(4) Where the child has been placed and is residing in the home of a person who has given notice of proposed adoption by filing the notice with the Minister, no application to terminate an order for permanent care and custody may be made during the continuance of the adoption placement until

(a) the application for adoption is made and the application is dismissed, discontinued or unduly delayed; or

(b) there is an undue delay in the making of an application for adoption.

Application by agency

(5) Subject to subsection (4), the agency may apply at any time to terminate an order for permanent care and custody.

Restriction on right to apply

(6) Notwithstanding subsection (3), a party, other than the agency, may not apply to terminate an order for permanent care and custody

(a) within thirty days of the making of the order for permanent care and custody;

(b) while the order for permanent care and custody is being appealed pursuant to Section 49;

(c) except with leave of the court, within

(i) five months after the expiry of the time referred to in clause (a),

(ii) six months after the date of the dismissal or discontinuance of a previous application by a party, other than the agency, to terminate an order for permanent care and custody, or

(iii) six months after the date of the final disposition or discontinuance of an appeal of an order for permanent care and custody or of a dismissal of an application to terminate an order for permanent care and custody pursuant to subsection (8),

whichever is the later; or

(d) except with leave of the court, after two years from

(i) the expiry of the time referred to in clause (a), or

(ii) the date of the final disposition or discontinuance of an appeal of an order for permanent care and custody pursuant to Section 49,

whichever is the later.

Powers of court on application to vary access

(7) On the hearing of an application to vary access under an order for permanent care and custody, the court may, in the child's best interests, confirm, vary or terminate the access.

On application to terminate care and custody

(8) On the hearing of an application to terminate an order for permanent care and custody, the court may

(a) dismiss the application;

(b) adjourn the hearing of the application for a period not to exceed ninety days and refer the child, parent or guardian or other person seeking care and custody of the child for psychiatric, medical or other examination or assessment;

(c) adjourn the hearing of the application for a period not to exceed six months and place the child in the care and custody of a parent or guardian, subject to the supervision of the agency;

(d) adjourn the hearing of the application for a period not to exceed six months and place the child in the care and custody of a person other than a parent or guardian, with the consent of that other person, subject to the supervision of the agency; or

(e) terminate the order for permanent care and custody and order the return of the child to the care and custody of a parent or guardian or other person.

Application of certain provisions

(9) Where the court makes a supervision order pursuant to clause (c) or (d) of subsection (8), subsections (1), (2) and (3) of Section 43 and subsection (1) of Section 46 apply.

Matters to be considered

(10) Before making an order pursuant to subsection (8), the court shall consider

(a) whether the circumstances have changed since the making of the order for permanent care and custody; and

(b) the child's best interests.

Report to Minister

(11) Where

(a) a child is and has been throughout the immediately preceding year in the permanent care and custody of an agency;

(b) no application to terminate or to vary access to the child has been heard during that time; and

(c) subsection (4) does not apply,

the agency shall at least once during each calendar year thereafter submit a written report to the Minister in the form prescribed by the regulations concerning the circumstances of the child and the agency's plan for the child's care and placement and the Minister shall review the report and make such further inquiries as are considered necessary. 1990, c. 5, s. 48; 1996, c. 10, s. 7.

Appeal

49 (1) An order of the court pursuant to any of Sections 32 to 48 may be appealed by a party to the Appeal Division of the Supreme Court by filing a notice of appeal with the Registrar of the Appeal Division within thirty days of the order.

Stay

(2) A party may apply to the court at the time of the order for an order staying the execution of the order, or any part of the order, for a period not to exceed ten days.

Stay by Appeal Division

(3) Where a notice of appeal is filed pursuant to this Section, a party may apply to the Appeal Division of the Supreme Court for an order staying the execution of the order, or any part of the order, appealed.

Hearing of appeal

(4) Where a notice of appeal is filed pursuant to this Section, the Minister is responsible for the timely preparation of the transcript and the appeal shall be heard by the Appeal Division of the Supreme Court within ninety days of the filing of the notice of appeal or such longer period of time, not to exceed sixty days, as the Court deems appropriate.

Further evidence

(5) On an appeal pursuant to this Section, the Appeal Division of the Supreme Court may in its discretion receive further evidence relating to events after the appealed order.

Duty of Appeal Division

(6) The Appeal Division of the Supreme Court shall

- (a) confirm the order appealed;
- (b) rescind or vary the order; or
- (c) make any order the court could have made. 1990, c. 5, s. 49; 1996, c. 10, s. 8.

Determination of religion and maintenance

50 (1) Where an application is made to determine whether a child is in need of protective services, the court shall, after the court has determined whether the child is in need of protective services and made a disposition order pursuant to Section 42, determine the child's religion, if any, and maintenance issues.

Religion

(2) For the purposes of the determination pursuant to subsection (1), a child has the religious faith agreed upon by the child's parents or guardians, subject to the child's views and wishes if they can be reasonably ascertained, but where there is no agreement or the court cannot readily determine what the religious faith agreed upon is or whether any religious faith is agreed upon, the court may determine what the child's religious faith is, if any. 1990, c. 5, s. 50; 1994-95, c. 7, s. 11.

51 *repealed 1994-95, c. 7, s. 12.*

Inquiry by court into maintenance

52 (1) Upon the application of the agency or the Minister, the court shall inquire into the ability to support a child of a parent or guardian or other person liable under the law for the maintenance of the child.

Order to pay

(2) Where the court is satisfied that the parent or guardian or other person has sufficient means to enable the parent or guardian or other person to contribute towards the maintenance of the child, the court may order the parent or guardian or other person to pay to

(a) the Minister; or

(b) the court for payment to the agency,

a sum not exceeding the maintenance costs for maintaining the child pursuant to this Act, during the time which the child is cared for by an agency prior to and after the making of the order and a sum equal to the expenses incurred for

taking the child into care, or in lieu thereof, a lump sum determined by the Governor in Council.

Review of ability to pay

(3) Upon the application of the agency, the Minister or the person against whom an order is made, the court shall review the ability to pay of the person against whom the order is made, and upon such a review the court may vary the order as the court deems proper. 1990, c. 5, s. 52; 1994-95, c. 7, s. 13.

Effect of maintenance order

53 Where a maintenance order is made, pursuant to Section 52, the order may be appealed or enforced as an order made pursuant to the *Family Maintenance Act*. 1990, c. 5, s. 53.

Interpretation of Sections 55 to 60

54 In Sections 55 to 60,

(a) "legal-aid office" means an office providing legal aid pursuant to the *Legal Aid Act*;

(b) "secure treatment facility" means a facility or part of a facility approved or licensed by the Minister as a secure treatment facility. 1990, c. 5, s. 54.

Secure-treatment certificate

55 (1) Upon the request of an agency, the Minister may issue a secure-treatment certificate for a period of not more than five days in respect of a child in care, if the Minister has reasonable and probable grounds to believe that

(a) the child is suffering from an emotional or behavioural disorder;

(b) it is necessary to confine the child in order to remedy or alleviate the disorder; and

(c) the child refuses or is unable to consent to treatment.

Form of certificate

(2) A secure-treatment certificate shall be in the form prescribed by the regulations and shall include

(a) the reason for the confinement;

(b) the duration of the certificate;

(c) the date, place and time of the hearing pursuant to subsection (4); and

(d) a statement that the child may be represented by counsel at any hearing, including the address and telephone number of the nearest legal-aid office.

Service of certificate

(3) A secure-treatment certificate shall be served upon the child who is the subject of the certificate and upon the nearest legal-aid office not more than one day after it is issued.

Appearance before court

(4) Where a secure-treatment certificate has been issued pursuant to this Section, the Minister or the agency shall appear before the court before the certificate expires, to satisfy the court that this Section has been complied with and, if an application is made pursuant to Section 56, for the application to be heard pursuant to that Section. 1990, c. 5, s. 55.

Application for secure-treatment order

56 (1) The Minister or an agency with the consent of the Minister may make an application to the court for a secure-treatment order in respect of a child in care.

Service of application

(2) The Minister shall serve the application upon the child and upon the nearest legal-aid office and, where the child in care is not a child in permanent care and custody, upon the child's parent or guardian.

Powers of court

(3) After a hearing, the court may make a secure-treatment order in respect of the child for a period of not more than thirty days if the court is satisfied that

(a) the child is suffering from an emotional or behavioural disorder;

(b) it is necessary to confine the child in order to remedy or alleviate the disorder; and

(c) the child refuses or is unable to consent to treatment.

Renewal of order

(4) Upon the application of the Minister or the agency and after a hearing before the expiry of a secure-treatment order, a secure-treatment order may be renewed in respect of the child, for a period of not more than ninety days in the case of a first or subsequent renewal, if the court is satisfied that

(a) the child is suffering from an emotional or behavioural disorder;

(b) it is necessary to confine the child in order to remedy or alleviate the disorder;

(c) the child refuses or is unable to consent to treatment; and

(d) there is an appropriate plan of treatment for the child. 1990, c. 5, s. 56.

Application for review of secure-treatment order

57 (1) A child who is the subject of a secure-treatment order, a parent or guardian of a child other than the parent or guardian of a child in permanent care and custody,

the Minister or the agency may apply to the court for review of a secure-treatment order.

Restriction on right to apply

(2) An application for review may be made at any time by the Minister or the agency but, except with leave of the court, an application for review may otherwise be made only once during the period of any secure-treatment order or during the period of any renewal of a secure-treatment order.

Power of court on review

(3) After hearing an application for review and after considering clauses (a) to (d) of subsection (4) of Section 56, the court may make an order confirming, varying or terminating the secure-treatment order, but in no case shall the period of the secure-treatment order be extended. 1990, c. 5, s. 57.

Duty of court

58 (1) Upon making, renewing or reviewing a secure-treatment order, the court shall give reasons for its decision and shall inform the child and the parent or guardian, other than the parent or guardian of a child in permanent care and custody, of the review, renewal and appeal provisions pursuant to Section 56 and 57 and subsection (2).

Appeal

(2) An order pursuant to Section 56 or 57 may be appealed in accordance with Section 49 by the Minister, the agency, the child or the parent or guardian other than the parent or guardian of a child in the permanent care and custody. 1990, c. 5, s. 58.

Secure-treatment certificate as authority

59 (1) A secure-treatment certificate or order is sufficient authority for a peace officer or agent to apprehend and convey the child named in the certificate or order to a secure treatment facility and to detain the child while being conveyed to a secure treatment facility.

Duty of secure-treatment facility

(2) Upon a secure-treatment certificate or order being issued, the person in charge of a secure treatment facility shall admit the child to the facility, if the child is not already resident in the facility, and shall be responsible for ensuring that the child is provided with the diagnostic and treatment services in accordance with the terms of the certificate or order and the needs of the child.

Apprehension of child

(3) Where the child who is the subject of a secure-treatment certificate or order leaves a secure treatment facility when a leave of absence has not been granted or fails to return to a facility in accordance with the terms of a leave of absence, a peace officer or agent may apprehend the child and return the child to the secure treatment facility. 1990, c. 5, s. 59.

Leave of absence from secure-treatment facility

60 (1) During the period of a secure-treatment certificate or order, the person in charge of the secure treatment facility may grant the child a leave of absence from the facility for medical, humanitarian or rehabilitative reasons on any terms or conditions that the person in charge considers necessary.

Transfer of child

(2) Where the child named in the secure-treatment certificate or order is in a secure treatment facility, the child may, with the approval of the Minister, be transferred to another secure treatment facility and subsection (1) of Section 59 applies while the child is being transferred. 1990, c. 5, s. 60.

Refusal to consent to medical treatment

61 (1) Where a child is in the care or custody of a parent or guardian who refuses to consent to the provision of proper medical or other recognized remedial care or treatment that is considered essential by two duly qualified medical practitioners for the preservation of life, limb or vital organs of a child and the Minister is notified thereof, the Minister shall apply to the court forthwith for a hearing.

Prompt hearing

(2) Where an application is made pursuant to subsection (1), the court shall hear the matter as soon as possible upon such notice to the parent or guardian as is practical.

Parties

(3) The parties to the proceeding are the Minister, the parent or guardian and such other persons as the court may order.

Order

(4) Upon hearing the matter, the court may make an order

(a) dismissing the matter;

(b) authorizing the provision of proper medical or other recognized remedial care or treatment that is considered essential by a duly qualified medical practitioner for the preservation of life, limb or vital organs or the prevention of unnecessary suffering of the child;

(c) prohibiting the parent or guardian or any other person from obstructing the provision of the care or treatment ordered pursuant to clause (b);

(d) requiring the parent or guardian to deliver the child to the place where the care or treatment will be provided;

(e) including any other terms, including the duration of the order, that the court considers necessary.

Variation of order

(5) The court may confirm, vary, rescind or terminate an order made pursuant to subsection (4) upon the application of a party. 1990, c. 5, s. 61.

"abuse" defined

62 In Sections 63 to 66, "abuse" of a child by the person means that the child

(a) has suffered physical harm, inflicted by the person or caused by the person's failure to supervise and protect the child adequately;

(b) has been sexually abused by the person or by another person where the person, having the care of the child, knows or should know of the possibility of sexual abuse and fails to protect the child; or

(c) has suffered serious emotional harm, demonstrated by severe anxiety, depression, withdrawal, or self-destructive or aggressive behaviour, caused by the intentional conduct of the person. 1990, c. 5, s. 62.

Child Abuse Register

63 (1) The Minister shall establish and maintain a Child Abuse Register.

Entry of information

(2) The Minister shall enter the name of a person and such information as is prescribed by the regulations in the Child Abuse Register where

(a) the court finds that a child is in need of protective services in respect of the person within the meaning of clause (a) or (c) of subsection (2) of Section 22;

(b) the person is convicted of an offence against a child pursuant to the *Criminal Code* (Canada) as prescribed in the regulations; or

(c) the court makes a finding pursuant to subsection (3).

Application for finding of abuse

(3) The Minister or an agency may apply to the court, upon notice to the person whose name is intended to be entered in the Child Abuse Register, for a finding that, on the balance of probabilities, the person has abused a child.

In camera hearing

(4) A hearing pursuant to subsection (3) shall be held *in camera* except the court may permit any person to be present if the court considers it appropriate. 1990, c. 5, s. 63.

Notice of entry in Child Abuse Register

64 (1) A person whose name is entered in the Child Abuse Register shall be given written notice of registration in the form prescribed by the regulations.

Application to remove name

(2) A person whose name is entered on the Child Abuse Register may apply to the court at any time to have the person's name removed from the Register and, if the court is satisfied by the person that the person does not pose a risk to children, the court shall order that the person's name be removed from the Register. 1990, c. 5, s. 64.

Appeal respecting Child Abuse Register

65 A decision of the court pursuant to subsection (3) of Section 63 or subsection (2) of Section 64 may, within thirty days of the decision, be appealed to the Appeal Division of the Supreme Court and subsection (4) of Section 63 applies *mutatis mutandis* to the hearing of an appeal. 1990, c. 5, s. 65.

Confidentiality of information in Child Abuse Register

66 (1) The information in the Child Abuse Register is confidential and shall be available only as provided in this Section.

Right to inspect

(2) A person whose name is entered in the Child Abuse Register is entitled to inspect the information relating to that person entered in the Register.

Release of information with consent of Minister

(3) With the approval of the Minister, the information in the Child Abuse Register may be

(a) disclosed to an agency, including any corporation, society, federal, provincial, municipi-

pal or foreign state, government department, board or agency authorized or mandated to investigate whether or not a child is in need of protective services;

(aa) disclosed to the police by an agency where the police and the agency are conducting a joint child abuse investigation;

(b) used for the purposes of research as prescribed by the regulations.

Release of information with consent of person

(4) Upon the receipt of a request in writing from a person as prescribed by the regulations and with the written consent of the person to whom the request relates, the Minister may disclose information in the Child Abuse Register concerning

(a) a person applying to adopt a child or to be a foster parent; or

(b) a person, including a volunteer, who is or would be caring for or working with children,

and the person who receives the information shall treat the information as confidential.

Offence and penalty

(5) Every person who contravenes subsection (4) and every director, officer or employee of a corporation who authorizes, permits or concurs in such a contravention by the corporation is guilty of an offence and upon summary conviction is liable to a fine of not more than five thousand dollars or to imprisonment for a period not exceeding one year or to both. 1990, c. 5, s. 66; 1996, c. 10, s. 9.

Interpretation of Sections 67 to 87

67 (1) In this Section and Sections 68 to 87,

(a) "adopting parent" means a person who has filed a notice of proposed adoption or has commenced an application for adoption;

(b) "adoptive parent" means a person who has acquired the legal status of parent of a child by virtue of an order for adoption;

(c) "child in care" means a child in respect of whom there exists an order for permanent care and custody or a child in respect of whom there exists an adoption agreement;

(d) "father" of a child means the biological father of the child except where the child is adopted and in such case means, subject to subsection (4) of Section 72, the father by adoption;

(e) "mother" means the biological mother of the child except where the child is adopted and in such case means, subject to subsection (4) of Section 72, the mother by adoption;

(f) "parent" of a child means

(i) the mother of the child,

(ii) the father of the child where the child is a legitimate or legitimated child,

(iii) an individual having custody of the child,

(iv) an individual who, during the twelve months before proceedings for adoption are commenced, has stood *in loco parentis* to the child

(v) an individual who, under a written agreement or a court order, is required to provide support for the child or has right of access to the child and has, at any time during the two years before proceedings for adoption are commenced, provided support for the child or exercised a right of access,

(vi) an individual who has acknowledged paternity of the child and who

(A) has an application before a court respecting custody, support or access for the child at the time proceedings for adoption are commenced, or

(B) has provided support for or has exercised access to the child at any time during the two years before proceedings for adoption are commenced,

but does not include a foster parent.

Time of commencement of adoption proceedings

(2) Proceedings for adoption are commenced within the meaning of this Section on the day when

(a) a notice of proposed adoption is filed with the Minister pursuant to this Act; or

(b) in the case of a child sixteen years of age or more for whom no notice of proposed adoption has been given, an application for adoption is commenced. 1990, c. 5, s. 67.

Adoption agreement

68 (1) A parent of a child may enter into an adoption agreement with a child-placing agency whereby the child is voluntarily given up to the child-placing agency for the purpose of adoption.

Duration of agreement

(2) The term of an adoption agreement shall be for a period not to exceed one year and, in the case of a newborn child, shall not be effective until fifteen days after the birth of the child.

Prerequisite for placement

(3) A child shall not be placed in a home for the purpose of adoption pursuant to an adoption agreement unless and until every parent of the child has entered into such an agreement.

Termination of agreement

(4) Subject to subsection (5), where the child has not been placed in a home for the purpose of adoption, a parent who entered into the adoption agreement may, in writing, at any time during the term of the agreement, notify the child-placing agency that the parent wishes to terminate the agreement and have the child returned to the parent.

Restriction on termination

(5) Where a child has been placed in a home for the purpose of adoption as a result of an adoption agreement, and the persons with whom the child is placed have filed a notice of proposed adoption with the Minister prior to the expiration of the term of the agreement, then, notwithstanding subsection (2), the adoption agreement continues in force and may not be terminated by the parent who entered into the agreement, unless and until the application for adoption is dismissed, discontinued or unduly delayed.

Return of child

(6) On receipt of a notice pursuant to subsection (4) from, or the expiry of the adoption agreement with, the parent from whom the child was received, the child-placing agency shall return the child to that parent unless the child is taken into care as permitted by and in accordance with Section 33.

Duty of agency on termination of agreement

(7) On receipt of a notice pursuant to subsection (4) from, or the expiry of the adoption agreement with, a parent who is not the parent from whom the child was received, the child-placing agency shall

(a) declare in writing that all adoption agreements respecting the child are terminated, notifying where possible the other parties to such adoption agreements, and return the child to the parent from whom the child was received; or

(b) take appropriate steps to have the child taken into care as permitted by and in accordance with Section 33, in which case all adoption agreements are terminated as and when the child is taken into care.

Notice to parent

(8) Where a parent has entered into an adoption agreement, the child-placing agency shall, where the parent's whereabouts are known to the agency, advise the parent when the child has been placed in a home for the purpose of adoption or provide such information upon request by a parent.

Form of adoption agreement

(9) An adoption agreement shall be in the form prescribed by the regulations.

Consequence of agreement

(10) Where a parent has entered into an agreement pursuant to subsection (1), the child-placing agency has all the rights, powers and responsibilities of that parent so long as the adoption agreement continues in force.

Notice to Mi'kmaq Family and Children's Services

(11) Where an agency other than the Mi'kmaq Family and Children's Services has reason to believe that a child who is to be the subject of an adoption agreement is or may be an Indian child, the agency shall not enter into an adoption agreement respecting the child until fifteen days after the agency has notified the Mi'kmaq Family and Children's Services.

Notice to Mi'kmaq Family and Children's Services

(12) Where, subsequent to the execution of an adoption agreement and prior to the placement for adoption of the child who is the subject of the adoption agreement, the agency determines that the child is or may be an Indian child, the agency shall, as soon as possible, notify the Mi'kmaq Family and Children's Services and shall not place the child for adoption until fifteen days have elapsed from the date of such notification. 1990, c. 5, s. 68; 1996, c. 10, s. 10.

Notice to Minister of placement for adoption

69 (1) Every person who receives a child from another person for the purpose of adoption shall within ten days of such reception inform the Minister.

Application of subsection (1)

(2) Subsection (1) does not apply where the person who receives the child is the father or mother of the child.

Offence and penalty

(3) Any person who gives or receives, or agrees to give or to receive, any payment or reward, directly or indirectly,

(a) in consideration of the placement for adoption of a child; or

(b) to procure a child for the purpose of adoption,

is guilty of an offence and upon summary conviction is liable to a fine of not more than ten thousand dollars or to imprisonment for a term of not more than two years or to both.

1990, c. 5, s. 69.

Restriction on placement for adoption

70 (1) No person shall place or receive a child for the purpose of adoption unless

(a) all necessary consents for adoption have been obtained;

(b) a parent whose consent to the adoption is required has, before giving the consent, received professional counselling by a person or a member of a class of persons approved for that purpose by the Minister;

(c) a social and medical history respecting the biological father and biological mother has been prepared, if the biological father and biological mother or either of them are known and available, by a person or a member of a class of persons approved for that purpose by the Minister; and

(d) the home where the child is to be placed has been identified to an agency in the area where the adopting parents reside,

except where

(e) the child is placed by a child-placing agency;

(f) the child is placed by the father or mother with a relative of the father or mother;

(g) one of the applicants for adoption is the father or mother of the child.

Offence and penalty

(2) A person who places or receives a child for the purpose of adoption where subsection (1) has not been complied with is guilty of an offence and upon summary conviction is liable to a fine of not more than ten thousand dollars or to imprisonment for a term of not more than two years or to both.

Child in permanent care and custody with access order

(3) No child in permanent care and custody and in respect of whom there is an order for access pursuant to subsection (2) of Section 47 may be placed for adoption unless and until the order for access is terminated pursuant to Section 48. 1990, c. 5, s. 70.

Taking child outside Province without certificate

71 (1) No person shall take or attempt to take any child under twelve years of age, who is a resident of or was born in the Province, out of the Province for the purpose of being adopted or brought up outside of the Province unless the person is in possession of a certificate issued by the Minister pursuant to this Section except where a child is being taken by

(a) the father or mother of the child; or

(b) a relative of the father or mother of the child to be adopted by or to reside with that relative.

Appeal from refusal of certificate

(2) There is an appeal to the court from the refusal of the Minister to grant a certificate pursuant to subsection (1).

Service of notice of appeal

(3) Notice of the appeal shall be given to the Minister within thirty days of the refusal or within such further period as the court may allow.

Record and evidence

(4) Upon such notice the Minister shall forward to the court the Minister's complete record of the case and either party to the appeal may give evidence and call witnesses.

Hearing and determination

(5) The court shall conduct a hearing into the matter and cause to be made such further inquiries as it deems necessary, and may confirm the refusal of the Minister or direct the Minister to issue a certificate.

Offence and penalty

(6) Every one who violates subsection (1) is guilty of an offence and upon summary conviction is liable to a fine of not more than ten thousand dollars or to imprisonment for a period not exceeding two years or to both.
1990, c. 5, s. 71.

Right to adopt

72 (1) A person of the age of majority may, in the manner herein provided, adopt as that person's child another person younger than that person where

(a) the applicant resides or is domiciled in the Province; or

(b) the person proposed to be adopted was born, resides or is domiciled in the Province or is a child in care.

Spouse of applicant as co-applicant

(2) Subject to this Section, if the applicant has a husband or wife, who is over the age of majority and is of sound mind, the husband or wife shall join in the application.

Spouse of applicant is father or mother

(3) If the husband or wife of the applicant is the father or mother of the person proposed to be adopted, although not over the age of majority, he or she may join in the application.

Legitimate parent

(4) The husband or wife of the applicant if he or she is also the legitimate parent of the person proposed to be adopted, need not join in the application, and in that case the relationship of such husband or wife or of his or her kindred with the person proposed to be adopted continues and is in no way altered by any order for adoption made in favour of the applicant, who becomes the other parent of the person proposed to be adopted by such an order.

Effect of death of one applicant

(5) Where one of the applicants for an adoption dies after notice of the proposed adoption has been given to

the Minister, the surviving applicant may proceed with the application and an order for adoption by the surviving applicant alone may be made.

Consenting person as adopting parent

(6) A person whose consent to an adoption is required by this Act is not prohibited from becoming a father or mother by adoption of the person in respect of whom the person has given consent to adopt. 1990, c. 5, s. 72.

Application for adoption

73 An application for adoption shall be made to the court. 1990, c. 5, ss. 73, 109.

Adoption of person 12 or more

74 (1) Where the person proposed to be adopted is twelve years of age or more and of sound mind, no order for the person's adoption shall be made without the person's written consent.

Consent of spouse of proposed adoptee

(2) Where the person proposed to be adopted is married, no order for the person's adoption shall be made without the written consent of the person's spouse.

Consent of parents

(3) Where the person proposed to be adopted is under the age of majority and is not a child in care, no order for the child's adoption shall be made, except as herein provided, without the written consent to adoption of the child's parents which consent may not be revoked unless the court is satisfied that the revocation is in the best interests of the child.

When consent to be given

(4) A written consent to adoption referred to in subsection (3) has no force and effect unless it is given not less than fifteen clear days after the birth of the child.

Subsection (4) does not apply

(5) Subsection (4) does not apply

(a) where the child is placed for the purpose of adoption by a child-placing agency;

(b) where the child is placed for the purpose of adoption by a father or mother of the child with a relative of the father or mother;

(c) where one of the applicants for adoption is the father or mother of the child; or

(d) to an adoption agreement made pursuant to Section 68.

Limitation on civil action

(6) No action may be taken and no damages may be awarded against a person who does not give a consent for adoption, notwithstanding any representation by the person that the consent would be given.

Child in care of Minister or agency

(7) No order for the adoption of a child in care of the Minister shall be made without the written consent of the Minister and no order for the adoption of a child in care of an agency shall be made without the written consent of the agency or the Minister.

Consent of Minister or agency

(8) Subject to subsection (1) and pursuant to subsection (7), where a child proposed to be adopted is a child in care, the written consent of the agency or the Minister is the only consent required.

Child given up for adoption

(9) Where a child has been given up for the purpose of adoption pursuant to Section 68, the child-placing agency to which the child has been given is entitled, while the agreement is in force, to give any consent that otherwise may be given by or is required from a person executing the agreement, and, while the agreement is in force, the person executing the agreement is not required or entitled to give any such consent.

Out-of-province consent

(10) Where the person proposed to be adopted is under the age of majority and either does not reside in the

Province or was brought to the Province for the purpose of adoption, the written consent referred to in subsection (3) may be given by the officer or person who under the law of the province, state or country in which the child resides or from which the child was brought may consent to the child's adoption.

Consent by minor parent

(11) Where the parent of a child is under the age of majority, the parent may, notwithstanding the parent's age,

(a) consent to the adoption of the child; or

(b) enter into an agreement pursuant to Section 68.

Marriage of biological parents of adoptee

(12) Notwithstanding Sections 49 and 50 of the *Family Maintenance Act*, the marriage of the biological father to the mother of a person subsequent to the granting of an adoption order respecting that person does not invalidate or affect the adoption. 1990, c. 5, s. 74.

Application to dispense with consent to adoption

75 (1) Where the applicant seeks to dispense with the consent of any living person, the applicant shall give that person notice of the time and place of the adoption hearing together with a copy of the application and all material proposed to be used in support of it not later than one month before the hearing of the application.

Service of notice of adoption

(2) Notice shall be given by personal service or, if the person cannot be so served, by substituted service as directed by the court.

Effect of non-appearance

(3) Any person served pursuant to subsections (1) and (2) who does not appear at the hearing of the application and object to the adoption is deemed to have consented to the adoption.

Dispensing with consent

(4) Where the court is satisfied that a person, whose consent is required pursuant to subsection (2) or (3) of Section 74,

- (a) is dead;
- (b) is unable to consent by reason of disability;
- (c) is missing or cannot be found;
- (d) has had no contact with the child for the two years immediately preceding the adoption placement;
- (e) has failed, where able, to provide financial support for the child for the two years immediately preceding the adoption placement; or
- (f) is a person whose consent in all the circumstances of the case ought to be dispensed with,

the court may order that the person's consent be dispensed with if it is in the best interests of the person to be adopted to do so. 1990, c. 5, s. 75.

Prerequisites to adoption

76 (1) Except as herein provided, where the person sought to be adopted is under sixteen years of age, the court shall not make an order for the child's adoption unless

- (a) notice of the proposed adoption has been given to the Minister not later than six months before the application to the court for an order for adoption, or where one of the applicants for adoption is a parent of the child, notice of the proposed adoption has been given to the Minister not later than one month before the application to the court for an order for adoption;

(b) notice of the hearing of the application and a copy of the application and all material to be used in support of it have been filed with the Minister not later than one month before the date of the application; and

(c) the child sought to be adopted has for a period of not less than six months immediately prior to the application, lived with the applicant under conditions that, in the opinion of the court, justify the making of the order.

Modification of prerequisites by Minister

(2) The Minister may, by certificate in writing, shorten the length of any notice or the period of residence required by subsection (1) or dispense with any notice or period of residence.

Effect of appeal

(3) In the case of a child who is a child in permanent care and custody, the notice of the proposed adoption shall not be given until any appeal from an order for permanent care and custody of the child or from a decision granting or refusing an application to terminate an order for permanent care and custody is heard and finally determined or until the time for taking an appeal has expired. 1990, c. 5, s. 76; 1996, c. 10, s. 14.

Adoption hearing in camera

77 (1) Every hearing of an application for adoption pursuant to this Act shall be held *in camera* except that the court may permit any person to be present if the court considers it appropriate.

Rights of Minister on hearing

(2) Where the application is for the adoption of a person under the age of sixteen years and where neither of the applicants is a parent of the child, or one of the applicants is a parent of the child and there is a dispute as to whether the consent of the other parent ought to be dispensed with, the Minister may

(a) submit a written recommendation to the court in favour of the adoption; or

(b) appear on the hearing of the application and call evidence respecting the fitness and propriety of the proposed adoption having regard to the best interests of the person to be adopted.

Appearance by Minister

(3) The Minister may appear at the hearing and may assist the applicant or a party with respect to the application.

Required information

(4) The applicant shall, if possible, identify the person to be adopted by the birth registration number assigned by the proper authority of the person's place of birth and not by the person's name, in the title of the application and in the adoption order, and, in any such case, the applicant shall provide the court with a certificate of registration of the birth containing the fullest particulars of the birth available. 1990, c. 5, s. 77.

Adoption order

78 (1) Where the court is satisfied

(a) as to the ages and identities of the parties;

(b) that every person whose consent is necessary and has not been dispensed with has given consent freely, understanding its nature and effect and, in the case of a parent, understanding that its effect is to deprive the parent permanently of all parental rights; and

(c) that the adoption is proper and in the best interests of the person to be adopted,

the court shall make an order granting the application to adopt.

Change of name

(2) The court, by an order for adoption, may order such change of name of the person adopted as the applicant requests, or may order that the name of the person adopted shall not be changed by the adoption.

Surname

(3) Unless the court otherwise orders, the surname of an adopted person shall be the surname of the person who adopts that person.

Indian child

(4) Where an adoption order is granted in respect to a child who is or may be an Indian child, the Minister shall be so advised by the court and the Minister shall forward notification of the adoption of the Indian child in such form as may be prescribed, to the federal Department of Indian and Northern Affairs and to the MicMac Family and Children's Services of Nova Scotia. 1990, c. 5, s. 78.

Joint custody order in lieu of adoption

79 (1) Where a step-parent and the father or mother with custody of the child make application for the adoption of a child, the court may in lieu thereof, in the best interests of the child, grant an order for joint custody by the step-parent and the father or mother rather than an order for adoption.

Application for joint custody

(2) A step-parent and the father or mother with custody of a child may make application to the court for an order granting them joint custody of the child.

Enforcement or variation of order

(3) Where the court makes an order pursuant to subsection (1) or (2), other than where subsection (4) applies, the order may be enforced, varied or rescinded in accordance with the *Family Maintenance Act*.

Where custody pursuant to Divorce Act

(4) Where the father or mother pursuant to subsection (1) or (2) has custody of the child pursuant to the *Divorce Act* (Canada), an application shall be made and the matter determined in accordance with the provisions of that Act and the *Civil Procedure Rules*. 1990, c. 5, s. 79

Effect of adoption order

80 (1) For all purposes, upon the adoption order being made,

(a) the adopted person becomes the child of the adopting parents and the adopting parents become the father and mother of the adopted

person as if the adopted person had been born in lawful wedlock to the adopting parents; and

(b) except as provided in subsection (4) of Section 72, the adopted person ceases to be the child of the persons who were the adopted person's father and mother before the adoption order was made and those persons cease to be the parents of the adopted person, and any care and custody or right of custody of the adopted person ceases.

Relationships

(2) The relationship to one another of all persons, whether the adopted person, the adopting parents, the kindred of the adopting parents, the father and mother before the making of the adoption order, the kindred of those parents and the father and mother or any other person, shall be determined in accordance with subsection (1).

Subsections (1) and (2) do not apply

(3) Subsections (1) and (2) do not apply for the purpose of the laws relating to incest and prohibited degrees of kindred for marriage to remove any person from a relationship in consanguinity that, but for this Section, would have existed.

"child" or "issue"

(4) In any enactment, conveyance, trust, settlement, devise, bequest or other instrument, "child" or "issue" or the equivalent of either includes an adopted child unless the contrary plainly appears by the terms of the enactment or instrument. 1990, c. 5, s. 80.

Effect of subsequent adoptions

81 Subject to subsection (4) of Section 72, all the legal consequences of the previous adoption order terminate upon a subsequent adoption, except so far as any interest in any property that has vested. 1990, c. 5, s. 81.

Application of Sections 80 and 81

82 Sections 80 and 81 apply to all orders for adoption made in the Province, whether before, on or after the first

day of August, 1967, but not so as to divest any interest in property that has vested on or before the first day of August, 1967. 1990, c. 5, s. 82.

Appeal from adoption order

83 (1) A person aggrieved by an order for adoption made by the court may appeal therefrom to the Appeal Division of the Supreme Court within thirty days of the order.

Application to set aside adoption order

(2) A person aggrieved by an order for adoption made without notice to the person hereunder may within one year after the date of the order apply to the court to set aside the order and, if, upon such application, the court is satisfied that

(a) the written consent of such person for the adoption was obtained by fraud, duress or oppressive or unfair means of any kind;

(b) the person is a person whose written consent was required pursuant to subsection (3) of Section 74 and was not obtained, dispensed with or deemed to have been given pursuant to subsection (3) of Section 75; or

(c) the person is a parent who was entitled to enter into an adoption agreement pursuant to Section 68 and who did not enter into such an agreement,

and the court considers it appropriate to set aside its order, the order may be set aside and, where the order is set aside, the court may make an order for custody or access in the best interests of the child.

Appeal by guardian

(3) A person under the age of majority whose adoption is sought may appeal by the person's guardian *ad litem* but no bond shall be required or costs awarded against a person who acts as a guardian *ad litem*. 1990, c. 5, s. 83.

Limitation period

84 Where one year has elapsed from the date of an order for adoption, the order shall not thereafter, in any direct or collateral proceeding, be subject to attack or to be set aside. 1990, c. 5, s. 84.

Copies of documents to Register General and Minister

85 (1) The court shall, within ten days after an order for an adoption is made by the court, forward a copy of such order, certified to be a true copy, to the Registrar General and to the Minister and, where the original name of the person to be adopted does not appear in the adoption order, a copy of the birth registration certificate shall be attached to each copy so forwarded.

Information in sealed packet

(2) The order for adoption, the application, the material filed and the record of the proceedings, and any other written information in the possession of the court, shall be kept in a sealed packet and shall not be open to inspection except upon leave of the court or upon an order in writing of the Minister.

Sealed packet to Minister

(3) Upon the expiry of the appeal period, or at such time as an appeal is concluded, the sealed packet containing all written documentation pursuant to an adoption shall be forwarded by the court to the Minister by, subject to the regulations, appropriate means having regard to the confidential nature of the material.

Certificate of adoption

(4) Upon the application of the person adopted or of either of the person's adoptive parents, the Minister shall, and in any other case the Minister may, issue a certificate of adoption which shall contain only the following particulars of the adoption:

(a) the name after adoption of the person adopted and, if known, the adopted person's sex, date of birth and birth registration number;

(b) the names of the adoptive parents; and

(c) the name of the court granting the order for adoption and the date of the order.

Opening of sealed packet

(5) The Minister may open the sealed packet kept by the Minister for the purpose of obtaining the information required to issue a certificate of adoption or such information as the Minister may disclose pursuant to the regulations respecting the person adopted as the Minister deems necessary and, having obtained that information, shall immediately reseal the packet.

Offence and penalty

(6) Any agency or employee thereof or servant of Her Majesty in right of the Province who discloses any information except in the manner prescribed in subsection (4) or (5), or as permitted by the regulations, or upon an order of the court or upon an order in writing of the Minister, is guilty of an offence and upon summary conviction is liable to a fine of not more than two thousand dollars or to imprisonment for a term of not more than six months or to both. 1990, c. 5, s. 85.

Effect of out-of-province adoption

86 Where a person has been adopted in another province, state or country according to the law of that place while domiciled or resident there or having been born there, or while the person's adoptive parent was domiciled or resident there, the person and the person's adoptive parent have for all purposes in the Province the same status, rights and duties as if the adoption had been done pursuant to this Act. 1990, c. 5, s. 86.

Adoption subsidy

87 The Minister may grant a subsidy to persons who adopt a child in the permanent care and custody of an agency. 1990, c. 5, s. 87.

Advisory committee

88 (1) The Minister shall establish an advisory committee whose function is to review annually the provisions of this Act and the services relating thereto and to

report annually to the Minister concerning the operation of the Act and whether the principles and purpose of the Act are being achieved.

Composition

(2) The advisory committee shall be appointed by the Minister, after consultation with the relevant groups and individuals, and shall include

- (a) two persons whose children have been, are or may be in need of protective services;
- (b) a representative from an agency;
- (c) a representative of the Minister;
- (d) a legal aid lawyer;
- (e) two persons drawn from the cultural, racial or linguistic minority communities; and
- (f) such other persons, not exceeding three, as the Minister may determine.

Term of office

(3) Appointments to the advisory committee shall be for one year and may be renewed.

Chair

(4) The advisory committee shall choose one of its number to chair the committee. 1990, c. 5, s. 88.

Order to bring child

89 Where an application respecting a child is pending before the court, the court may order that the child be brought before the court at any time, and for this purpose may make such order as the court deems proper. 1990, c. 5, s. 89.

Enforcement of order

90 Where a person, who is required by an order of the court pursuant to this Act to do an act or to abstain from doing an act in relation to the custody, care, or care and

custody of a child or access to a child, disobeys the order, the court may enforce the order or punish for contempt of court in the same manner and following the same procedure as provided for such a case in the Supreme Court. 1990, c. 5, s. 90.

Assistance by peace officers

91 (1) It is the duty of all peace officers to assist agents in carrying out the provisions of this Act.

Service of process

(2) It is the duty of peace officers to serve any process issued out of any court.

Fees of peace officers

(3) Where a court certifies that a peace officer has performed services pursuant to this Section, that peace officer is entitled to receive fees for services on the scale prescribed for an indictable offence from the municipality that would be liable to pay such fees if the proceeding had been such a prosecution. 1990, c. 5, s. 91.

Offence and penalty

92 (1) Where a child is the subject of an interim order pursuant to Section 39, a disposition order pursuant to Section 42, a secure-treatment certificate or a secure-treatment order a person who

(a) induces or attempts to induce the child to leave the care or care and custody of a person with whom the child is placed by the court or an agency, as the case may be;

(b) detains or harbours the child after the person or agency referred to in clause (a) requires that the child be returned;

(c) interferes with the child or removes or attempts to remove the child from any place; or

(d) for the purpose of interfering with the child, visits or communicates with the person referred to in clause (a),

is guilty of an offence and upon summary conviction is liable to a fine or not more than two thousand dollars or to imprisonment for a period not exceeding six months or to both.

Offence and penalty

(2) A person who induces or attempts to induce a child to leave a child-caring facility is guilty of an offence and upon summary conviction is liable to a fine of not more than two thousand dollars or to imprisonment for a period not exceeding six months or to both.

Offence and penalty

(3) A person who obstructs, interferes with or attempts to obstruct or interfere with an agent or agency employee in the discharge of duties pursuant to this Act is guilty of an offence and upon summary conviction is liable to a fine of not more than two thousand dollars or to imprisonment for six months or to both. 1990, c. 5, s. 92; 1996, c. 10, s. 15.

Hearings public

93 Except where this Act otherwise provides, a proceeding pursuant to this Act shall be held in public except that where the court is satisfied that

(a) the presence of the public could cause emotional harm to a child who is a witness at or a participant in the hearing or is the subject of the proceeding;

(b) it is necessary to exclude the public to obtain the full and candid testimony of a witness at the hearing; or

(c) it would otherwise be in the interest of the proper administration of justice to exclude any or all members of the public from the hearing,

the court may exclude any or all members of the public from all or any part of the hearing. 1990, c. 5, s. 93.

Prohibition on publication

94 (1) No person shall publish or make public information that has the effect of identifying a child who is :

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 a relative of the child.

Order prohibiting publication

(2) Where the court is satisfied that the publication of a report of a hearing or proceeding, or a part thereof, would cause emotional harm to a child who is a participant in or a witness at the hearing or is the subject of the proceeding, the court may make an order prohibiting the publication of a report of the hearing or proceeding, or the part thereof.

Effect of order

(3) Where the court makes an order pursuant to subsection (2), no person shall publish a report contrary to the order.

Offence and penalty

(4) A person who contravenes subsection (1) or (3), and a director, officer or employee of a corporation who authorizes, permits or concurs in such a contravention by the corporation, is guilty of an offence and upon summary conviction is liable to a fine of not more than ten thousand dollars or to imprisonment for two years or to both. 1990, c. 5, s. 94.

Jurisdiction of court

95 The court has exclusive original jurisdiction over the prosecution of an offence against this Act. 1990, c. 5, s. 95.

Admissible evidence

96 (1) At a proceeding pursuant to this Act other than Sections 68 to 87, the court may, subject to subsection (2) of Section 40, admit as evidence

(a) evidence from proceedings, pursuant to this Act or any other similar legislation, respecting the child that is the subject of the hearing, or respecting another child that was in the care or custody of a parent or guardian of the child that is the subject of the hearing; or

(b) evidence taken by a commissioner appointed by the court to take the evidence of a witness,

upon such terms as the court directs.

Sections 49 and 59 of Evidence Act do not apply

(2) In a proceeding pursuant to this Act other than Sections 68 to 87, the privileges pursuant to Sections 49 and 59 of the *Evidence Act* do not apply.

Child's evidence

(3) Upon consent of the parties or upon application by a party, the court may, having regard to the best interests of the child and the reliability of the statements of the child, make such order concerning the receipt of the child's evidence as the court considers appropriate and just, including

(a) the determination of the persons, including parties, who may be present while the child is giving *viva voce* evidence; and

(b) the admission into evidence of out-of-court statements made by the child. 1990, c. 5, s. 96.

Effect of out-of-province order

97 Where an order has been made by a court of competent jurisdiction in another province of Canada pursuant to provisions similar in effect to this Act, the order has the same force and effect in the Province as an order made pursuant to this Act unless the court otherwise orders. 1990, c. 5, s. 97.

Municipal contributions

98 (1) A municipality may pay annually to an agency having territorial jurisdiction within the municipality such sums as the council of the municipality may fix as a contribution toward the general expenses of the agency.

Source of funds

(2) Any sum required by a municipality for the purpose of this Section shall be raised, levied and collected in

the same manner in all respects as other sums required for the ordinary lawful purposes of the municipality are raised, levied and collected.

Exception

(3) A municipality is not required to make any payment to an agency or the Minister and is not otherwise liable for the costs of apprehension, maintenance or care of a child pursuant to this Act.

Treatment of sums owed on March 31, 1995

(4) For greater certainty, notwithstanding subsection (3), any sum owed by a municipality to an agency or the Minister on March 31, 1995, continues to be due and payable. 1990, c. 5, s. 98; 1994-95, c. 7, s. 14.

Regulations

99 (1) The Governor in Council may make regulations

(a) respecting the functions and duties of agencies;

(b) respecting the procedures for revocation or suspension of the powers and functions of an agency;

(c) respecting the qualifications, appointment and duties of agents;

(d) respecting services to promote the integrity of families;

(e) respecting the provision of services to persons sixteen years of age or more but under nineteen years of age;

(f) respecting standards and procedures for the licensing, approval, inspection, evaluation, and suspension or cancellation of licences or approvals of child-care services, child-caring facilities and child-placing agencies;

(g) providing for payments by the Minister to agencies, child-caring facilities, child-care services and child-placing agencies for services performed by them and prescribing the conditions and procedures under which payments are to be made;

(h) respecting the approval of foster homes;

(i) respecting procedures and conditions for admission to a child-caring facility;

(j) respecting the functions and duties of advisory boards appointed pursuant to Section 16;

(k) prescribing the procedures for temporary-care agreements, special-needs agreements, agreements with older adolescents and adoption agreements;

(l) respecting the qualifications, appointment and payment of mediators;

(m) respecting the reporting and investigation of reports of abuse by persons acting in the course of professional or official duties;

(n) respecting payment of the costs of taking a child into care and the maintenance of a child in care;

(o) respecting payment of the reasonable fees and disbursements of counsel appointed to represent the child;

(p) respecting payment of the reasonable fees and disbursements of a guardian *ad litem* appointed for a child;

(q) respecting the transfer between agencies of children in permanent care and custody;

(r) respecting procedures for the handling of complaints by agencies;

(s) *repealed 1994-95, c. 7, s. 15.*

(t) respecting the voluntary admission of children to secure treatment facilities;

(u) respecting the form and issuance of secure-treatment certificates;

(v) respecting leaves of absence from and transfers between secure treatment facilities;

(w) respecting the information to be entered in the Child Abuse Register;

(x) respecting the offences contrary to the *Criminal Code* (Canada) in respect of which a person may be entered in the Child Abuse Register;

(y) prescribing the procedures and notices for the registration of names and information in the Child Abuse Register;

(z) respecting the use of the Child Abuse Register for the purposes of research;

(aa) respecting procedures for the disclosure of information in the Child Abuse Register to persons requesting such information;

(ab) further defining when proceedings for adoption are commenced;

(ac) respecting the forwarding and retention of all records and documents pertaining to adoption;

(ad) respecting procedures for adoption inquiries, disclosure respecting adoptions and communication between adopted persons and their biological families;

(ae) prescribing the form of agreements for the purpose of this Act;

(af) prescribing forms for the purpose of this Act;

(ag) defining any word or expression used in this Act not defined herein;

(ah) respecting any matter the Governor in Council considers necessary or advisable to carry out effectively the intent and purpose of this Act.

Regulations Act

(2) The exercise by the Governor in Council of the authority contained in subsection (1) shall be regulations within the meaning of the *Regulations Act*. 1990, c. 5, s. 99; 1994-95, c. 7, s. 15.

Repeal of Children's Services Act

100 Chapter 68 of the Revised Statutes, 1989, the *Children's Services Act*, is repealed. 1990, c. 5, s. 100.

Voluntary care agreement under former Act

101 Where a voluntary care agreement made pursuant to Sections 8 and 9 of the former Act is to be renewed, the applicable provisions of Sections 17 and 18 of this Act apply to the renewal of the agreement. 1990, c. 5, s. 101.

Agreement under Section 10 of former Act

102 Where an agreement made pursuant to Section 10 of the former Act is to be renewed, Section 68 of this Act applies to the renewal of the agreement. 1990, c. 5, s. 102.

Care and custody under former Act

103 (1) Where a child has been committed to the care and custody of an agency pursuant to subclause (ii) of clause (c) of subsection (1) of to Section 50 of the former Act, the order shall be treated for all purposes as if it were an order for permanent care and custody pursuant to Section 47 of this Act.

Friendly supervision under former Act

(2) Where the court has ordered the placement of a child with a parent or guardian under friendly supervision pursuant to subclause (i) of clause (c) of subsection (1) of Section 50 of the former Act, the order shall be treated for all purposes as if it were a supervision order pursuant to Section 43 of this Act and shall be reviewed in accordance with Section 46 of this Act.

Adjourned disposition under former Act

(3) Where the court has adjourned disposition, with the child remaining in the care and custody of an agency, pursuant to subclause (i) of clause (c) of subsection (1) of Section 50 of the former Act, the order shall be treated for all purposes as if it were an order for temporary care and custody pursuant to subsection (1) of Section 44 of this Act and shall be reviewed in accordance with Sections 45 and 46 of this Act.

Date of review

(4) For the purposes of subsection (2) of Section 45 of this Act, in respect of an order to which subsection (3) applies, the order shall be reviewed on the date specified in the existing order.

Proceeding commenced under former Act

(5) Where a proceeding has been commenced pursuant to the former Act and the court has not made a finding that the child is in need of protection or has not made an order pursuant to clause (c) of subsection (1) of Section 50 of the former Act, the provisions of the former Act apply in

respect of that finding, but the provisions of this Act respecting the disposition orders available pursuant to Sections 42 to 47 apply to any disposition order to be made where the child is found in need of protection.

Child taken into care before this Act in force

(6) Where a child has been taken into care before the coming into force of this Act, but no hearing has yet taken place within the time prescribed by Section 48 of the former Act, when the matter comes on for hearing before the court, the court shall make interim orders in accordance with Section 39, excepting subsection (1) thereof, and this Act applies to all further proceedings respecting the child.

Existing appeals

(7) Where a notice of appeal to the county court has been filed before the coming into force of this Act, the appeal and any further appeal to the Appeal Division of the Supreme Court shall proceed pursuant to the provisions of the former Act, but any appeal commenced after the coming into force of this Act shall take place in accordance with Section 49.

Application commenced under former Act

(8) Where an application for an order terminating the committal of the care and custody of a child to an agency has been commenced pursuant to Section 53 of the former Act, the provisions of the former Act apply to that application. 1990, c. 5, s. 103.

"former Register" defined

104 (1) In this Section, "former Register" means the Child Abuse Register established and maintained pursuant to the former Act.

Entry on former Child Abuse Register

(2) Where a person's name appears on the former Register and the Minister is satisfied that the person has been convicted of an offence against a child contrary to the *Criminal Code* (Canada) as prescribed in the regulations and which relates to the matter upon which registration on the former Register was based, the name of the person and such information as is prescribed by the regulations shall be entered in the Child Abuse Register pursuant to this Act.

Further entry

(3) Where a person's name appears in the former Register and an application was made by that person to the court to have the information struck from the former Register and the application was dismissed, the name of the person and such information as is prescribed by the regulations shall be entered in the Child Abuse Register pursuant to this Act.

Notice of registration under subsection (2) or (3)

(4) Where a person's name is entered in the Child Abuse Register pursuant to subsection (2) or (3), the person shall be given written notice of registration in the form prescribed by the regulations. 1990, c. 5, s. 104.

Application of former Act to adoption

105 Where a child has been placed with and is residing in the home of a person who has given notice of proposed adoption by filing the notice with the Minister before the coming into force of this Act, the provisions of the former Act apply to the making of an adoption order in respect of that child. 1990, c. 5, s. 105.

Application of Section

106 (1) This Section applies until, but not after, Section 73 comes into force.

Supreme Court

(2) Notwithstanding Sections 67 to 87, the court for the purpose of those Sections is the Supreme Court of Nova Scotia.

Application for adoption

(3) An application for adoption may be made to the Supreme Court of Nova Scotia where

(a) either the applicant or the person to be adopted resides in the Province;

(b) either the applicant or the person to be adopted is domiciled in the Province;

(c) the person to be adopted is a child in care of an agency; or

(d) the person to be adopted was born in the Province.

Hearing of application

(4) An application for adoption pursuant to this Act may be presented to and heard by the Supreme Court of Nova Scotia, and a hearing pursuant to this Section in respect of an adoption shall be held in chambers and only those persons whose presence the Court permits may be present.

(5) to (7) *repealed 1996, c. 10, s. 16.*

Validation of certain proceedings

(8) No application or petition presented or proceedings had or powers or authority exercised or findings made or order for adoption made before the twenty-third day of April, 1923, shall be held invalid or ineffectual by reason of the same having been made by a judge of the county court and not by the county court.

Restriction on joint custody order

(9) The county court may only make a joint custody order pursuant to Section 79 where the father or mother pursuant to subsections (1) and (2) of Section 7 has custody of the child pursuant to the *Divorce Act* (Canada).

(10) *repealed 1996, c. 10, s. 16.*

1990, c. 5, s. 106; 1996, c. 10, s. 16.

Amendment to Family Maintenance Act

107 (1) Subsection (2) of Section 18 of Chapter 160 of the Revised Statutes, 1989, the *Family Maintenance Act*, is amended by striking out the words "authorized by the Minister" in the second and third lines thereof and substituting therefor the words "with leave of the court".

Further amendment

(2) Clauses (a) and (b) of subsection (3) of said Section 18 are repealed and the following clauses substituted therefor:

(a) where there is an adoption agreement respecting the child pursuant to the *Children and Family Services Act*, that has not expired or been terminated except with leave of the court upon application of a parent who is not a party to the adoption agreement;

(b) where the child has been placed for adoption and adoption proceedings under the *Children and Family Services Act* have not been dismissed, discontinued or unduly delayed; or 1990, c. 5, s. 107.

Repeal of Infants' Custody Act

108 Chapter 228 of the Revised Statutes 1989, the *Infants' Custody Act*, is repealed. 1990, c. 5, s. 108.

Effective date or proclamation

109 (1) This Act, excepting Sections 54 to 60 and Section 73, comes into force on and not before the third day of September, 1991, or such earlier day as the Governor in Council orders and declares by proclamation.

In force - September 3, 1991

Proclamation

(2) Sections 54 to 60 and Section 73 come into force on and not before such day as the Governor in Council orders and declares by proclamation. 1990, c. 5, s. 109.

Not proclaimed

APPENDIX B

- * This question guide was only used as a guide.
- * Not all of the questions listed here were posed to all of the subjects

Proposed Interview guide

Placing the subject in context:

- a) Why did you become a social worker?
- b) How many years have you been working as a social worker?
- c) What different areas have you worked in?
- d) What experience have you had in the field of adoption?
- e) Are you satisfied with the accomplishments produced by your work?

Discussions on professional identity:

- a) To what extent is your profession a part of your self-concept, or personal identity? A part of how you define yourself?
- b) Are there other elements of your identity that help you to do your work?
- c) How does your ethno-cultural identity factor into your professional identity?
- d) Has your ethno-cultural identity influenced the way you do your work? In what ways?

Social Context:

- a) What direction do you think ethno-cultural relations are heading today? Are they worsening, or is acceptance and tolerance growing?

- b) How do ethno-cultural relations influence your work?
- c) Are social workers bound by regulations and policy, or are they allowed discretion in their work?
- d) Do conflicts ever occur between workers and employers over regulations and policies? How are they dealt with?
- e) Do professional guidelines ever interfere with personal choices at work? How do you deal with this?
- f) Have you ever felt that you may need to stand with the black/native community on an issue rather than the agency you work with? have you ever felt torn between your community and your work?

Turning to discussions of adoption:

- a) What do you consider to be the criteria for a successful adoption? Why?
- b) Are there any special considerations for black, native, or mixed-race children?
- c) When deciding where a child will be placed for adoption how much weight is given to preservation of cultural heritage? (important, unimportant, essential)?
- d) Since culture is described in so many different ways, could you describe for me the culture, or elements of culture that is trying to be preserved? Are assimilation and integration a concern?
- e) Who (biological parents, state, social workers, ethnic groups) do you think should decide what is in the best interest of the child?
- f) Who would you say controls the decision making now? Why them?

- g) Is it difficult to be objective in this type of work? How do you deal with this issue?
- h) Do you feel that people outside of the social work profession perceive white social workers as better able to be objective with TRA? Why?
- i) We talked a bit about ethno-cultural relations and social work, do ethno-cultural relations influence your thoughts on TRA? In what ways? What if we had a racism free society, what then?
- j) Omitting any identifying information, could you tell me about the last two cases you had that were TRA, or had the potential for being TRA?
- k) What would you say are the biggest risks of TRA?
- l) Are there any good things about TRA?
- m) Are there any personal, or professional experiences that have led to your feelings on TRA? What has been the biggest influence on your thoughts of TRA?

Thank you

Bibliography

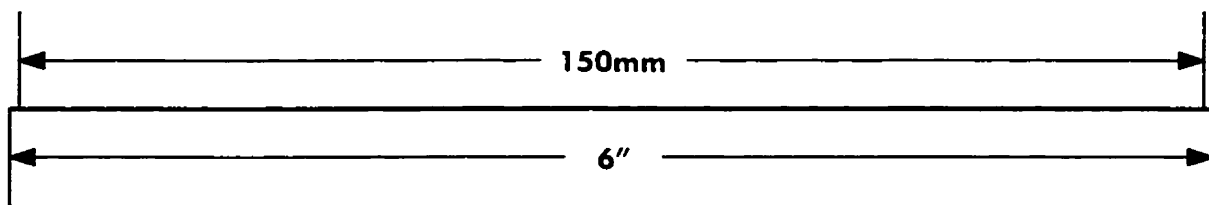
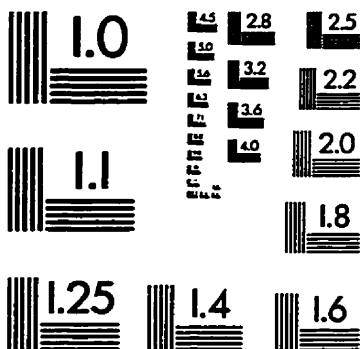
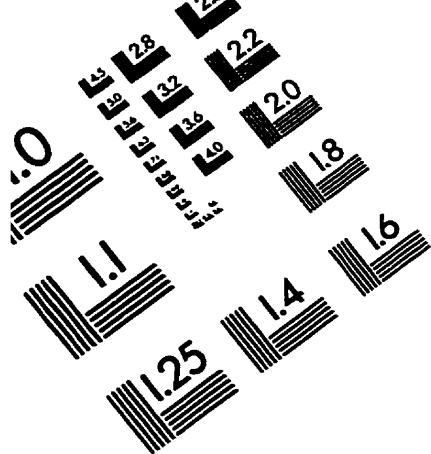
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