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## **Impacts of the 1985 *Indian Act* Amendments: A Case Study of Brokenhead Ojibway Nation**

Stewart Clatworthy

### **Introduction**

As noted by Clatworthy and Smith (1992) and many others, the 1985 Bill C-31 amendments to the *Indian Act* have the potential to affect First Nations in quite significant ways. In the short term, the populations of many First Nations have experienced considerable growth as a result of the reinstatement and registration provisions introduced in the 1985 *Indian Act*. In the longer term, the interplay of intermarriage and the rules governing entitlement to Indian registration (contained in section 6 of the 1985 amendments) is expected to result in growing numbers of descendants who lack registration entitlement.<sup>1</sup> As Clatworthy (2005a) has recently suggested, most of these “non-entitled” descendants will also not qualify for nation or band membership (see Chapter 5 this volume).

Several national or regional studies of demographic impacts have been completed (Clatworthy and Smith 1993, Clatworthy 1994, 2001a, 2001b, 2002a, 2005a, and 2005b) that serve to identify the nature and scale of population changes associated with Bill C-31. A few studies (Smith 1991, Clatworthy 1991, 1998, 1999, and 2002b, and United Anishnaabeg Councils 1999) have attempted to examine changes at the community level. In general, these latter studies have been rather narrow in scope and do not provide an adequate basis for constructing an informed view concerning what Bill C-31’s changes have meant to First Nations communities and populations.

This case study, which focuses on the experiences of Brokenhead Ojibway Nation (also referred to as Brokenhead), explores a broad range of the potential impacts associated with Bill C-31. Potential changes addressed in the study include population and demography, First Nation membership, the demand for (and use and costs of) key programs and services, and social and political changes within the community.<sup>2</sup>

### **Brokenhead Ojibway Nation**

Brokenhead Ojibway Nation is located in Manitoba, approximately 60 kilometres northeast of Winnipeg, along the eastern shore of Lake Winnipeg. Although located

within the boundaries of the Winnipeg Census Metropolitan Area (CMA), the community remains essentially rural in character. According to the 2002 Indian Register, the Registered Indian population of Brokenhead totalled 1,423. At that time, about 30% of the population (429 individuals) lived on-reserve. Although data concerning the location of the off-reserve component of the population are limited, most are believed to reside in the City of Winnipeg or in small communities located within the Winnipeg region.

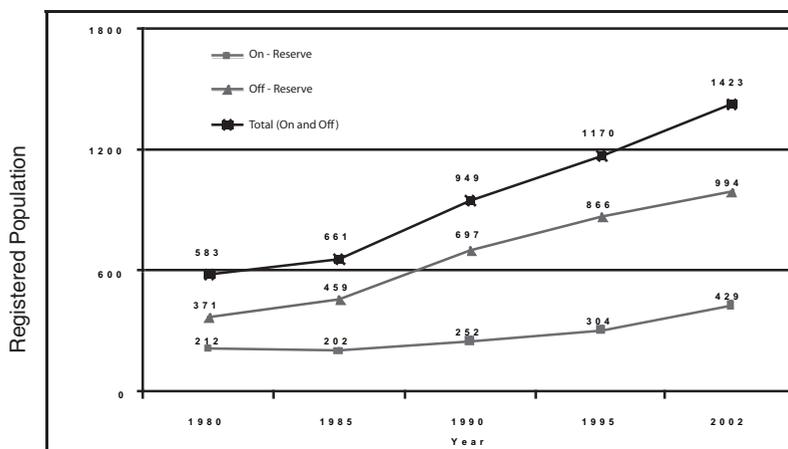
Brokenhead is governed by a Chief and a four member Council elected by band members. The community maintains its own membership list (pursuant to section 10 of the 1985 *Indian Act*).<sup>3</sup> Members may reside either on- or off-reserve. Brokenhead assumes responsibility for the provision of a wide range of services, including governance, housing and community infrastructure, elementary and secondary education, employment and training, social services, and health services. Most of these services relate to the population living on-reserve, although specific services, (e.g. employment and training) are also administered for the off-reserve population. Other services and programs available to Brokenhead members living on-reserve, (e.g. economic development, community futures) are administered by the Southeast Resources Development Council (SERDC), of which Brokenhead is a member.

## Study Approach and Data Sources

Research undertaken for this case study involved three main components. The initial component focused on estimating the role of the 1985 amendments to the *Indian Act* in contributing to changes in the size and composition of the Brokenhead population. This aspect of the study examined population changes that have occurred from the time of enactment of the 1985 *Indian Act* (in April of 1985) to December 31, 2002. In addition to documenting existing population impacts, this study component also explored future population changes over the course of the next 75 years (roughly three generations). A custom population projection was developed to explore these longer-term changes in relation to the populations entitled to Indian registration and eligible for membership with Brokenhead Ojibway Nation. Data used for the population impact components of the case study were obtained from the Indian Register and the Brokenhead membership list.

A second research component involved examining administrative data and records concerning changes in program and service usage, as well as conducting interviews with key staff and council members responsible for administering or overseeing programs and services delivered by Brokenhead. These interviews were designed to obtain views and opinions of staff and management concerning policies related to service provision and the impacts of Bill C-31 registrants on program and service demand and usage. In addition to records maintained by Brokenhead, this aspect of the study also examined data provided by Health Canada concerning Bill C-31 usage of the Non-Insured Health Benefits Program.

**Figure 4.1: Historic Estimates of the Registered Indian Population by Location of Residence, Brokenhead Ojibway Nation, 1985–2002**



Source: Indian Register, 1980–2002 (Unadjusted)

The third component of the research involved a survey designed to capture perceptions and opinions concerning Bill C-31 from the members of Brokenhead Ojibway Nation. The survey of members addressed a wide variety of issues, including:

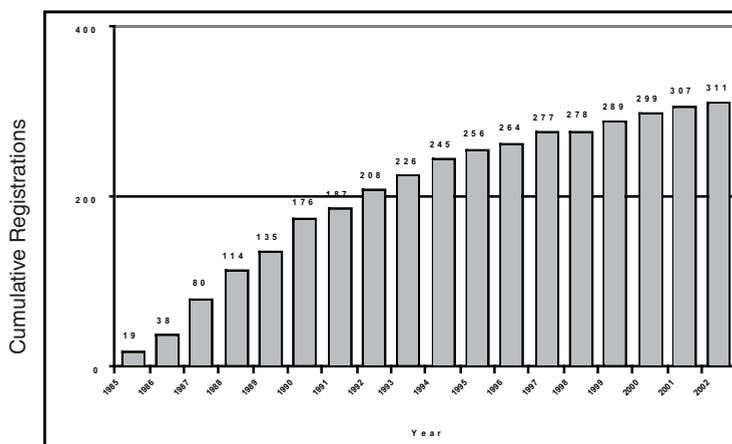
- Views and opinions about Bill C-31's impacts on themselves, their families, and the community
- Knowledge of and concerns about Brokenhead's rules governing membership
- Experiences and perceptions of equality in terms of accessing various programs and services administered by Brokenhead
- Concerns about potential future impacts of Bill C-31

The survey was administered using in-person or telephone interviews and included members residing both on- and off-reserve, as well as members who (re)acquired registration under Bill C-31 (i.e., Bill C-31 registrants) and those who were members prior to Bill C-31 (i.e., pre-Bill C-31 members).<sup>4</sup> A total of 170 individuals completed the survey, including 101 living on-reserve and 69 living off-reserve.<sup>5</sup> Thirty-six survey respondents (or about 21% of all) were registered under the reinstatement/registration provisions of Bill C-31.<sup>6</sup>

## Growth of the Brokenhead Ojibway Nation Population

Historic data from the Indian Register were used to identify changes in the size of the Brokenhead Registered Indian population over the 1980–2002 time period

**Figure 4.2: Cumulative Number of Bill C-31 Registrations, Brokenhead Ojibway Nation, 1985–2002**



Source: Indian Register as of December 31, 2002 (Unadjusted)

(See **Figure 4.1** – page 75). Between 1980 and 2002, the population increased by about 144% from 583 to 1,423. Most of this population growth has occurred since 1985, suggesting that changes introduced by the 1985 *Indian Act* have played a significant role in population growth.

### ***Estimating the Contribution of the 1985 Indian Act Amendments***

In order to understand the role played by the 1985 *Indian Act* amendments in promoting the population growth observed for Brokenhead, it is necessary to understand some specifics of the changes that were introduced by the *Act*. Prior to the 1985 amendments, Indian registration could be gained or lost through marriage or other events. Section 12 of the 1951/56 *Indian Act* excluded or authorized the removal from the Register of:

- Women who married non-Indian men (and any children born to such women prior to the marriage)<sup>7</sup>
- The descendants of these marriages
- “Illegitimate” children of Indian women and non-Indian men (through successful protest within 12 months of the child’s registration)
- Persons whose mother, and father’s mother, were non-Indian (the “double mother” clause).

Section 11 of the 1951/56 *Indian Act* allowed:

- Indian men (subject to the “double mother” clause) to transmit registration entitlement to any of their children, regardless of the child’s mother and without the consideration of marriage<sup>8</sup>
- Non-Indian women who married Indian men to gain Indian registration.

**Table 4.1: Distribution of Children by Parent Registration and Bill C-31 Registration Status, Brokenhead Ojibway Nation, April 17, 1985 to December 31, 2002**

Father's Registry Status		Mother's Registry Status				Total
		Pre-Bill C-31	Bill C-31		Not Registered	
			6(1)	6(1)		
Pre-Bill C-31	6(1)	86	8	4	84	182
Bill C-31	6(1)	13	3	1	4	21
	6(2)	12	5	2	n/a	19
Not Registered		81	8	n/a	n/a	89
Paternity Not Stated		85	8	n/a	n/a	93
Total		277	32	7	88	404

Source: Indian Register as of December 31, 2002 (Unadjusted)

In addition to removing the provisions of previous *Indian Act*'s that resulted in the loss of registration, the 1985 *Indian Act*:

- Allowed for the reinstatement of Indian registration to those who lost their registration under prior versions of the Act, as well as the "first-time" registration of their children
- Established new rules governing entitlement to Indian registration for all children born on or after April 17, 1985.

The revised rules governing Indian registration are contained in section 6 of the 1985 *Indian Act*, and provide for registration under one of two sub-sections:

- **Section 6(1)**, where both of the individual's parents are (or are entitled to be) registered
- **Section 6(2)**, where one of the individual's parents is (or is entitled to be) registered under Section 6(1) and the other parent is not registered

Unlike the previous rules governing registration entitlement, which were subject to widespread allegations and claims of gender discrimination, the revised rules are *gender-neutral*, meaning that they apply to children born to both males and females.

In relation to the prior *Act*, the 1985 *Indian Act* created four new sources of growth in the Registered Indian population. These sources of growth include:

- Bill C-31 reinstatements and registrations
- Children born to Bill C-31 and pre-Bill C-31 parents after April 16, 1985 who would not have qualified for registration under the prior rules
- Indian women who have not been removed from the Register after April 16, 1985 as a result of marriage to a non-Indian male

As non-Indian women cannot acquire registration through marriage under the 1985 *Indian Act*, this source of growth no longer applies.

### **Bill C-31 Reinstatements and Registrations**

**Figure 4.2** (page 78) illustrates the cumulative number of additions to the Registered Indian population of Brokenhead through Bill C-31's reinstatement and registration provisions. As revealed in the figure, the cumulative number of Bill C-31 registrants, as of December 31, 2002, was identified to be 311. The figure also reveals that growth in the number of Bill C-31 additions to the population has slowed dramatically since the mid-1990's. For the 1999–2002 portion of the period, new Bill C-31 registrants have averaged about seven annually, a level roughly one-quarter of that recorded annually at the outset of the 1990s.

As of December 31, 2002, the surviving population of Bill C-31 registrants (i.e., those still alive) numbered 298 individuals and represented about 21% of the total Registered Indian population of Brokenhead.

### **Other Population Growth Impacts of Bill C-31**

Although reinstatements and registrations form the largest component of incremental growth in the Registered Indian population attributable to Bill C-31, other changes made to the rules governing Indian registration have also contributed to significant incremental growth of the Brokenhead population during the 1985–2002 time period.

### **Children Born After April 16, 1985**

A custom data file linking children with their parents was created for this study. This file allows one to identify the parenting patterns of males and females and for the Bill C-31 and pre-Bill C-31 populations. Data on parenting patterns have been compiled for the parents of all children born and registered with Brokenhead since the adoption of Bill C-31 (April 17, 1985) to December 31, 2002.<sup>9</sup> These patterns, which are summarized in **Table 4.1** (page 79), provide a basis for estimating the scale of the secondary components of population growth associated with Bill C-31. Of particular interest in this regard, are children who qualify for Indian registration under the rules of the 1985 *Indian Act*, but who would not have qualified had the rules of the previous *Indian Act* remained in force during the period. These children include:

- Children born to two Bill C-31 parents
- Children born to a Bill C-31 parent registered under Section 6(1) and whose other parent is not registered
- Children born to a pre-Bill C-31 woman and non-Indian male
- Children born to a pre-Bill C-31 woman and a male registered under Bill C-31

The numbers of children born to these specific combinations of parents are identified in the shaded areas of **Table 4.1**. As of December 31, 2002, an estimated 137 children have been recorded on the Register who would not have qualified for registration under the pre-1985. About 59% of these children (81 in total) result

**Table 4.2: Incremental Growth Associated with the 1985 Indian Act by Component, Brokenhead Ojibway Nation, 1985–2002**

Component of Growth	Population Increase	% of Increase
Reinstatements and Registrations	298	67.4
Incremental Births	137	31.0
Net Women Retained	7	1.6
All Components	442	100

Source: Based on analysis of data contained in the December 31, 2002, Indian Register

from parenting between pre-Bill C-31 women and males who would not have qualified for registration under either Bill C-31 or the rules of the previous *Indian Act*. The remaining 41% (56 children) result from parenting by individuals who acquired or reacquired Indian registration under Bill C-31.

#### ***Retention of Women Who Married Non-Indians After April 16, 1985***

As Bill C-31 no longer allows for the removal of women from the Indian Register for marriage to a non-Indian, some portion of the growth in the Registered Indian population after April 16, 1985, derives from the retention (on the Register) of pre-Bill C-31 women who intermarried. Data concerning the actual marriage patterns of Registered Indians are not available for this time period and precise or *direct* estimates of the number of Indian women who would have been removed from the Register in the absence of Bill C-31 cannot be obtained. An approximation of this number, however, can be obtained by applying estimates of the total fertility rate (TFR) of Registered Indian females to the number of children born to pre-Bill C-31 women and non-registered (or Bill C-31) males.<sup>10</sup> Application of the TFR to the (106) children born to pre-Bill C-31 women (and non-Indian men) resulted in an estimate of 35 women who were not removed from the Indian Register during the 1985–2002 period through marriage to non-Indian males.

#### ***Women Not Added Through Marriage to Indian Males after April 16, 1985***

As noted previously, Bill C-31 also removed the provisions of the previous *Indian Act* which allowed non-Indian females to acquire Indian registration through marriage to Indian males. As recent marriage data were also unavailable on this topic, the total fertility rate procedure described above has also been used to provide a rough estimate of the number of women who did not gain registration during the study period. Application of the total fertility rate to the number of children (84) born to pre-Bill C-31 males and non-registered females, results in an estimate of 28 women who did not gain registration through marriage during the study period.

#### ***Summary of Total Incremental Population Growth Attributable to Bill C-31***

An estimate of the total incremental growth in the Registered Indian population can be obtained by aggregating the individual components discussed above. **Table 4.2**,

which provides a summary of results of the analysis, reveals that the total growth in the Registered Indian population of Brokenhead attributable to the changes introduced by the 1985 Indian Act is roughly 442 individuals, including 298 Bill C-31 registrants, 137 children (who would not have qualified under the previous rules) and 7 (35–28) women (resulting from Bill C-31's changes to the marriage provisions).

The incremental population attributable to Bill C-31's changes represents about 31.1% of the total registered Indian population of Brokenhead in 2002 and an increase in the Registered Indian population of about 45.1% over that expected, had the provisions of the previous *Indian Act* remained in force throughout the April 17, 1985 to December 31, 2002 time period.<sup>11</sup> Analysis conducted by location of residence indicates that Bill C-31 accounted for the majority of population growth reported during the period both on- and off-reserve (52.4% and 60.4% respectively).

## **Implications of Bill C-31 Population Growth**

Given the sizable increases in Brokenhead's population identified above, the possibility clearly exists that the 1985 *Indian Act* has contributed to significant changes in the demand for and use of programs and services administered by Brokenhead, as well as changes in the political and social fabric of the community.

As noted previously, these issues were examined through analysis of administrative data, interviews with program staff and management and the survey of members. In reporting the findings of the research, the discussion focuses initially on the topic of program and service impacts. Observations concerning impacts on the social and political fabric of the community are discussed later.

### ***Impacts on Demand for Programs and Services***

The case study's examination of the impacts of Bill C-31 population growth on programs and services administered by Brokenhead included eight service areas: social assistance, housing, elementary and secondary education, post-secondary education, community health service, non-insured health benefits, child and family services, and training and employment. A brief summary of the main findings of the research for each of these service areas is provided below.

### ***Social Assistance***

Social assistance support is provided on the basis of need and is available to all reserve residents, regardless of registration or membership status. Administrative records maintained by Brokenhead do not distinguish between Bill C-31 and pre-Bill C-31 recipients.<sup>12</sup> Brokenhead has established a relationship with the province for the recovery of expenditures for non-registered recipients of benefits. Resources for Registered Indians are provided by Indian and Northern Affairs Canada (INAC). Although the social assistance caseload on reserve has increased steadily in recent years, this increase is attributed by staff to changes in local and

regional employment opportunities and changes in the values or work ethics of those who maintain young families. Bill C-31 population growth was not viewed as a factor in the recently observed increase in the caseload.

### ***Housing On-Reserve***

Brokenhead's policy concerning allocation of reserve housing restricts access to band-owned housing to those who are members. Applicants are evaluated based on the time of application and needs in relation to housing availability. Historically, Bill C-31 status was believed to be a factor affecting access (i.e. in practice pre-Bill C-31 members were given preferential access), but this policy is no longer applied.

Brokenhead did receive a special INAC allocation in the late 1980s to provide incremental housing for Bill C-31 members. Administrative records concerning this allocation and occupants of Bill C-31 housing were unavailable to the study.

Population growth associated with Bill C-31 is believed by staff to have increased the demand for band housing resources during the late 1980s period. The current impact of Bill C-31 population growth on increases in housing demand is not documented and remains unknown.

### ***Elementary and Secondary Education***

All reserve residents are eligible for education services subject to school capacity restrictions. Brokenhead provides education service directly for grades kindergarten to eight. Junior to senior high school services are provided by off-reserve schools. Capital, operations and maintenance (O&M), and program resources for elementary and secondary education services are provided by INAC to the schools located on-reserve. No special resources were provided to Brokenhead following the enactment of the 1985 *Indian Act*, although educational program resources associated with any incremental demands associated with Bill C-31 students would have been funded by INAC based on nominal roll counts.

Elementary and secondary education enrolment has been growing steadily and the community requires more classroom space and resources for the elementary programs. This situation is not viewed by staff as an impact of Bill C-31 population growth.

### ***Post-Secondary Education Support***

Financial support for post-secondary education is available to members residing both on- and off-reserve subject to the availability of resources. Brokenhead does not have any specific policy concerning Bill C-31 members and did not receive any special allocations for this segment of the member population. The demand for post-secondary education funding has been growing steadily and more quickly than available resources. Population growth associated with Bill C-31 may have contributed to increased demand, but the extent of any impact cannot be documented from available records and remains unknown.

### ***Community Health Services and Non-Insured Health Benefits***

Basic community health services are available to all reserve residents, regardless of registration or membership status. The Non-Insured Health Benefits Program is available to those who are registered, regardless of residency. Community health services and the non-insured health benefits are resourced by Health Canada. Brokenhead did not receive any special allocation for the Bill C-31 population.

Demand for community health services has been growing rapidly on reserve. Although some portion of this growth may relate to the Bill C-31 population, staff believes that increases in service demand derive from increased incidence of substance abuse and diabetes among community residents.

Statistical data supplied to this study by Health Canada for the Non-Insured Health Benefits Program allow one to distinguish beneficiaries (and program service costs) on the basis of Bill C-31 status. Analyses of these data for the 1996 and 2001 time periods reveal rates of program usage and service costs to be quite similar for the Bill C-31 and pre-Bill C-31 components of the population. This finding implies that population growth associated with Bill C-31 has likely resulted in significant increases in the demand for and resources required to provide non-insured health benefits.

### ***Child and Family Services***

Child and family services are provided by the Southeast Resources Development Council (SERDC) and include some services to both on- and off-reserve residents. SERDC is mandated to provide a full range of services, including child protection and apprehension, to all reserve residents. Services off-reserve exclude child protection and apprehension.

Resources to support child and family services are provided by INAC, although some resources are also supplied by the province. Services being provided presently to members off-reserve are not currently funded by INAC.

According to SERDC staff, demand for child and family services is increasing both on- and off-reserve, and is outpacing available resources, resulting in growing waiting lists for some services. This situation is not viewed by staff as an impact of Bill C-31 population growth, but rather the increasing complexity of clients needs.

### ***Training and Employment Services***

Until recently, employment and training services to Brokenhead members residing on- and off-reserve were provided by SERDC. All members, regardless of location are now serviced by Brokenhead, which has received additional resources from Human Resources and Social Development Canada (HRSDC).

The employment and training program operated by Brokenhead is relatively small. Demand for services on reserve has been growing steadily on-reserve (now about 36 trainees per year), and more rapidly off-reserve (now about 14 trainees per year).

As the program does not differentiate trainees on the basis of Bill C-31 registration status, the extent of Bill C-31 participation in the program remains undocumented. Population growth associated with Bill C-31 may have contributed to increased demand for employment and training services, but the extent of any impact remains unknown.

### ***Community Perspectives Concerning Bill C-31 Impacts***

The survey of members conducted for this study attempted to address a broad range of potential impacts associated with Bill C-31 population growth. Issues explored included perceptions concerning equality of access to services, the use of specific programs and services, and perceptions concerning changes in the social and political fabric of the community. Some of the key findings of the member survey are highlighted below.

Results from the on-reserve component of the member survey provide additional evidence of the role played by Bill C-31 in promoting growth among the population living on-reserve. All of the on-reserve Bill C-31 members interviewed reported that they had moved to the community since (re)acquiring Indian registration under the 1985 *Indian Act*. Migration to the reserve of sizable numbers of Bill C-31 registrants appears to have played a significant role in the population increase observed on-reserve following Bill C-31.<sup>13</sup>

Roughly one-half of the on-reserve members interviewed for this study expressed the view that Bill C-31 had resulted in changes within their community. Among those who reported changes, most noted increased population growth. Many—although still a minority—of the on-reserve respondents also perceived some negative impacts of Bill C-31, including: increased levels of prejudice and discrimination (13%), housing shortages (12%), reduced access to other programs and services (6%) and greater difficulties obtaining employment (4%).<sup>14</sup>

Survey responses among members living both on- and off-reserve provide little evidence of inequality in access to or receipt of programs and services based on Bill C-31 registration status. Bill C-31 members were slightly more likely than pre-Bill C-31 members to report that they had applied for programs and services administered by Brokenhead. Among those who did apply for services, no differences were identified between Bill C-31 and pre-Bill C-31 respondents in terms of the proportion reporting receipt of services. With the exception of post-secondary education—and to a lesser extent, children's education services—a large majority of Bill C-31 members believed that they had the same level of access to services administered by Brokenhead as other (i.e. pre-Bill C-31) members. Of the small number of on-reserve respondents (23) who reported difficulties obtaining services, only 3 (or 13%) reported Bill C-31 status as the reason for not being able to obtain services.

The member survey results also provided very little evidence that profound changes have occurred in the social and political fabric of the community as a

consequence of Bill C-31. Less than 5% of all on-reserve respondents believed that Bill C-31 had resulted in increased friction among members of the community.

## First Nations Membership

As noted earlier, the 1985 *Indian Act* also introduced changes affecting membership. Under section 10 of the *Act*, First Nations were permitted to develop and apply their own rules governing membership. In cases where the rules for membership differ from the rules governing registration, the registered and member populations can differ.

As permitted under section 10, Brokenhead elected to adopt its own membership rule. The rule admitted into initial membership all individuals contained on the band list as of June 25, 1987, including all those who regained their registration under the reinstatement provisions of the 1985 *Indian Act*. Individuals who were not on the band list or born after June 25, 1987, are eligible to apply for membership if they are sponsored by a member and are entitled to Indian registration. This includes not only descendants of members but other Registered Indians as well (e.g. Indian spouses of members).

The membership rule also contains additional criteria which are used to evaluate adult applicants. These criteria include:

- The band's financial and housing capabilities
- The applicant's character and lifestyle
- Kinship and other community ties

The membership rule also contains residency provisions, although individuals living off-reserve can also apply for and be admitted into membership.

Decisions concerning applicants are made by a membership committee and in the case of adults, decisions require ratification by Chief and Council. Until recently, Brokenhead's membership rule was administered by the SERDC. According to Brokenhead staff now involved with membership, under SERDC's administration virtually everyone who applied for membership and met the Indian registration criterion, was approved for membership. Administration of the membership rule was assumed by Brokenhead in 2001 in response to a desire to exert more control over the applicant screening and approval process.<sup>15</sup>

As noted above, the membership rule requires that eligible individuals apply for membership and many individuals who are eligible for membership have not applied to become members. As of March 2002, the member population of Brokenhead numbered approximately 730 individuals, representing about 52% of the total registered Indian population. Although nearly all of those who were registered but not members, resided off-reserve, off-reserve members formed about 41% of the total population of members.

### ***Community Perspectives on Membership***

Based on the responses to the survey of members, issues surrounding membership do not appear to be well understood among those living either on- or off-reserve. Only 35% of respondents to the survey were aware that Brokenhead had adopted its own rule governing membership. Less than 25% reported that they had some knowledge of the details of the rule. Awareness and knowledge of the rule were especially low among off-reserve respondents (less than 8%).

Among those who reported some knowledge of the details of the rule, nearly one-half expressed concerns about the rule or its implementation. Concerns identified most frequently included lack of consistency in application of the rule (23%) and the rule's potential to deny membership in the future to descendants who do not qualify for Indian registration (19%). This latter issue (i.e. loss of registration entitlement and membership eligibility among descendants) was also noted by more than 25% of all survey respondents as a concern in relation to the future impacts of the 1985 *Indian Act* rules governing Indian registration and Brokenhead's membership rule.

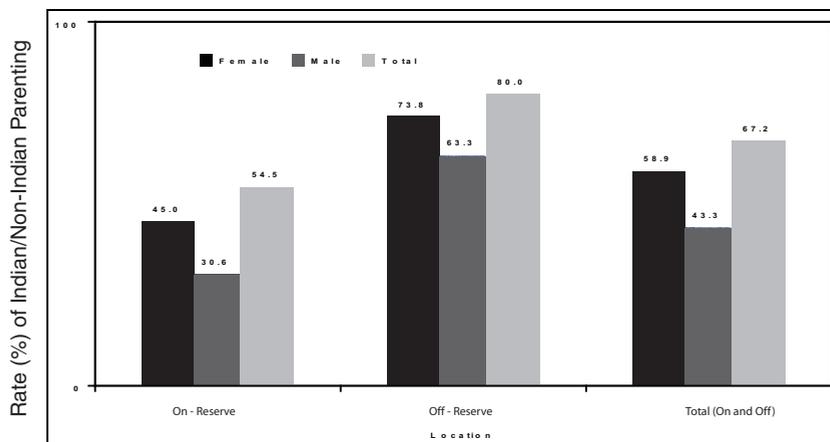
### **Longer-Term Impacts on Population and Membership**

As discussed above, Indian registration represents one of the main criteria for membership in Brokenhead Ojibway Nation. As such, the future population eligible for membership with Brokenhead will be affected by the 1985 *Indian Act's* rules governing Indian registration. As noted by Clatworthy and Smith (1992), in concert with intermarriage these rules have the potential to result in loss of registration entitlement among large and growing numbers of descendants. Responses to the survey conducted for this study suggest that many members are concerned about the future impacts of the registration rules of the 1985 *Indian Act* on their families and the community of Brokenhead.

As part of this case study, custom population projections were developed to explore the longer-term impacts of the 1985 *Indian Act* and Brokenhead's membership rule on the populations eligible for Indian registration and membership with Brokenhead Ojibway Nation.<sup>16</sup> Clatworthy and Smith (1992) have demonstrated that the rate of intermarriage (i.e. parenting between Registered Indians and non-Indians) is a critical factor affecting the future population entitled to Indian registration.

Estimates of intermarriage (i.e. Indian/non-Indian parenting) rates for the Brokenhead population were constructed using data contained on the 2002 Indian Register and are presented in **Figure 4.3** (page 88). As indicated in the figure, Indian/non-Indian parenting accounts for about 67% of all children born to Brokenhead Registered Indians during the 1985–2002 time period, a level considerably higher than the national average (48%). Rates of Indian/non-Indian parenting during this period, were considerably higher among females (59%) than

**Figure 4.3: Estimated Rate of Indian/Non-Indian Parenting by Gender and Location, Brokenhead Ojibway Nation, 1985–2002**



Source: Analysis of data contained on the December 31, 2002, Indian Register

males (43%) and also considerably higher among those living off-reserve than those living on-reserve (80% versus 55%).

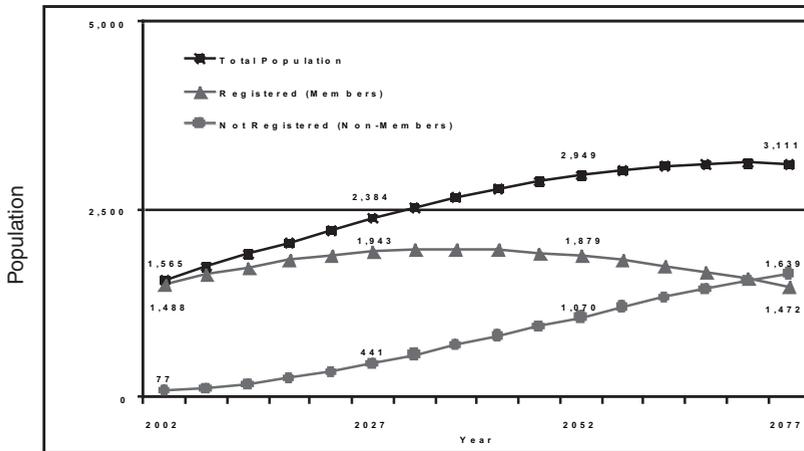
The high rates of Indian/non-Indian parenting which characterize the Brokenhead population imply that quite significant composition changes can be expected to occur among the populations residing both on- and off-reserve, as many descendants of the current population are likely to lack eligibility for Indian registration and consequently membership.

### **Projection Results**

Figure 4.4 illustrates the projected population of Brokenhead survivors and descendants by Indian registration and membership eligibility status, assuming the rates of Indian/non-Indian parenting as observed for the 1985–2002 time period remain stable in the future.<sup>17</sup> The projection spans a 75-year period, which can be roughly interpreted as three generations into the future.

As illustrated in the figure, the population entitled to Indian registration (and eligible for membership) is projected to rise for roughly one generation (25 years) from about 1,488 (adjusted for late reporting) in 2002 to 1,943 in 2027. Throughout the remainder of the period, this segment of the population is projected to decline at an accelerating pace and number 1,472 after three generations. Further declines in this population would be expected in the longer term. The population of survivors and descendants who do not qualify for Indian registration, and consequently will be ineligible for nation membership, is projected to increase rapidly throughout the period from just 77 individuals in 2002 to 1,639 after three generations. At that time, non-entitled individuals are expected to form a majority of the Brokenhead population.

**Figure 4.4: Projected Population of Brokenhead Ojibway Nation by Indian Registration and Membership Status, 2002–2077**



Source: Projection based on the December 31, 2002 Indian Register

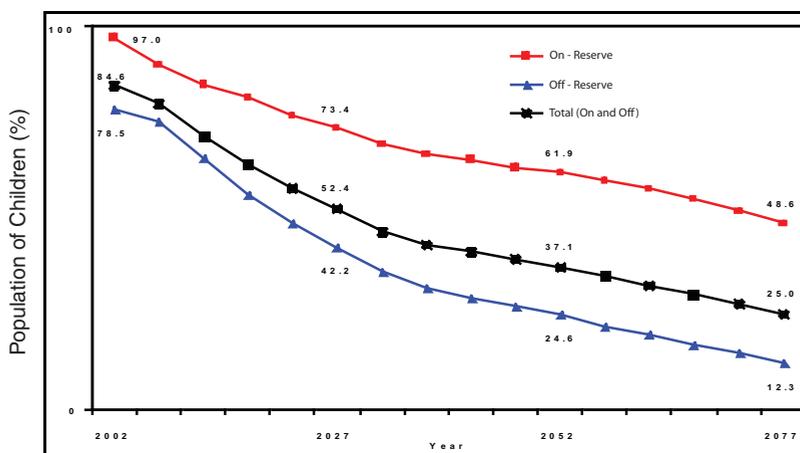
Loss of entitlement to Indian registration and membership is projected to affect large and growing numbers of descendants both on- and off-reserve. As illustrated in **Figure 4.5** (page 90), within one generation (25 years), about one in every four children born on-reserve is expected to lack registration entitlement and eligibility for membership. Within three generations, children who qualify for registration and membership are expected to form a minority. The figure also reveals that the process of loss of registration entitlement and membership eligibility is expected to occur much more rapidly off-reserve where rates of Indian/non-Indian parenting are considerably higher. Off-reserve children who are projected to qualify for registration and be eligible for membership are expected to form a minority within about 20 years. Within three generations (75 years), the projections suggest that only about one in every eight children off-reserve will qualify for registration and be eligible for membership.<sup>18</sup>

## Conclusion

The results of this analysis clearly suggest that the 1985 *Indian Act* amendments have had quite significant impacts on the size of the Brokenhead's Registered Indian population. In fact, the analysis reveals the changes introduced by the 1985 *Indian Act* have been the most important factors affecting growth both on- and off-reserve during the 1985–2002 period.

A significant minority of Brokenhead members believe that the population growth associated with the 1985 *Indian Act* has resulted in changes to their community, including population growth, greater competition for programs and services, and more competition for jobs. A much smaller minority (about 8%)

**Figure 4.5: Projected Proportion of Children Entitled to Indian Registration and Eligibility for Membership by Location, Brokenhead Ojibway Nation, 2002–2077**



Source: Projection based on the December 31, 2002, Indian Register

believe that the population changes associated with the 1985 *Act* have also contributed to erosion of social cohesion within the community.

There is very little evidence (statistical or otherwise) to suggest that inequality exists with respect to access to band-administered programs and services on the basis of Bill C-31 status. Rates of application for services and rates of receipt of services do not differ greatly between Bill C-31 and other members. Moreover, only a very small minority of members attribute difficulties in obtaining services to Bill C-31 residents or Bill C-31 status.

A significant minority (more than one-quarter) of the Brokenhead population expressed concerns about the future impacts of the 1985 *Indian Act*. These concerns relate to the potential impacts of the rules governing Indian registration and membership eligibility on descendants. Longer-term population projections developed for this study suggest that these concerns are well-founded, as high rates of intermarriage are expected to result in growing numbers of descendants who lack entitlement to Indian registration and consequently to membership under Brokenhead's current membership rule.

The transformation of Brokenhead's population from one which is almost entirely comprised of those who are both registered and eligible for membership to one in which a majority lacks both registration entitlement and eligibility for membership clearly presents a number of challenges to Brokenhead's population and leadership. Although Brokenhead also faced (and based on the findings of this research, responded constructively to) challenges associated with population growth and change during the 1985–2002 period, the challenges emerging in the future appear to be of significantly greater magnitude and complexity. Issues

related to membership, maintaining and promoting political and social equality, ensuring equality of access to needed programs and services, and responding to the differential rights and entitlements of different classes of citizens are likely to require the community's attention in the near future. These issues should also be an important part of the research agenda so that we can develop a better understanding of how these issues affect communities.

## Endnotes

- 1 The term intermarriage is used to refer to the process of exogamous parenting (i.e. parenting between someone who is a Registered Indian and someone who is not entitled to registration). Under the rules of the 1985 *Indian Act* governing registration, two successive generations of exogamous parenting results in descendants of the second generation lacking registration entitlement.
- 2 This research was undertaken as part of a broader examination of the 1985 amendments of the *Indian Act* supported by the Southern Chiefs Organization, Inc. of Manitoba and the Strategic Research and Analysis Directorate of Indian and Northern Affairs Canada (INAC).
- 3 One of the changes introduced by the 1985 *Indian Act* was the opportunity for individual First Nations to control their own membership. These provisions are found in section 10 of the 1985 *Indian Act*.
- 4 The term “pre-Bill C-31” is used to refer to those individuals who were entitled to Indian registration and membership prior to the enactment of Bill C-31 in April of 1985. This population is also frequently referred to as “original” members.
- 5 The on-reserve segment of the survey was administered to a sample of 101 individuals aged 16 or more years of age selected randomly from the membership list maintained by Brokenhead. The off-reserve sample for the survey was initially designed to survey a random sample of 160 individuals. More than one-half of the off-reserve sample could not be located or contacted.
- 6 The proportion of Bill C-31 respondents in the sample (21.2%) is roughly equal to the Bill C-31 share of the total Registered Indian population (20.9%) of Brokenhead.
- 7 The provision of the 1951/56 *Indian Act* that allowed for the removal from the Register of children born prior to a woman’s marriage to a non-Indian was successfully challenged in the courts with the 1979 the Ranville case.
- 8 In the case of “illegitimate” births to Indian males and non-Indian females, only the male children were permitted to register. The status rights of illegitimate male children was confirmed in the 1983 Martin Case ruling on section 11(1)(c). See Chapter 3 (endnote 9).
- 9 The Indian Register does not contain a complete record of all children born to registered Indian parents. Specifically, those children who have only one Indian parent registered under Section 6(2) are not in the Register, as they do not qualify for registration under the provisions of Bill C-31.
- 10 The total fertility rate estimate used in this study derives from recent research undertaken by Statistics Canada as part of the 2001-based projections of Canada’s Registered Indian population (prepared for Indian and Northern Affairs Canada). Fertility rate estimates for Registered Indian females in Manitoba were applied to estimate the number of women involved in child-bearing during the study period.
- 11 The estimated incremental impact of Bill C-31 on growth of the Brokenhead population (about 45%) is considerably larger than the national average, which was recently estimated by Clatworthy (2005a) to be about 33%.
- 12 As social assistance and some other administrative records maintained by Brokenhead identify the band number of program/service beneficiaries, Bill C-31 service users could be identified by linking the administrative data with the Indian Register. Requests to Indian Affairs to carry out such a linkage for purposes of this project could not be accommodated within the study time frame.
- 13 Some movement from on- to off-reserve was also identified by the off-reserve component of the member survey. About 22% of the off-reserve Bill C-31 members interviewed reported that they had moved from the reserve after the enactment of Bill C-31.
- 14 It is interesting to note that several respondents to the on-reserve component of the survey believed that although Bill C-31 population growth had contributed to increased competition for services, it also had the positive effect of increasing the incentive for some members to seek employment as an alternative to relying upon band resources for financial support.
- 15 Brokenhead’s reasons for assuming direct control of membership approval could not be clearly determined. Part of the motivation may be linked to the Supreme Court ruling on Corbière, (1999) which extended voting rights for First Nations elections to members living off-reserve.

- 16 As the Brokenhead membership rule contains discretionary provisions which cannot be reasonably included in the projections, the projections examine only the population that is eligible to apply to membership. It should be recognized that the actual number of future members is likely to be considerably smaller than the number who are eligible to apply, as some may not apply and some who do apply may not be approved for membership.
- 17 The projection uses a model developed by Clatworthy for the specific purpose of exploring the longer-term impacts of the 1985 *Indian Act* rules governing Indian registration entitlement and membership. For this study, the model was configured to reflect the fertility rate trends of the Brokenhead population and the mortality rate trends of Registered Indians in Manitoba. In addition to fertility and mortality, the projection model explicitly incorporates rates of Indian/non-Indian parenting and the rules governing entitlement to Indian registration. Readers interested in the specifics of the projection approach are encouraged to review Clatworthy (2005a) and Norris et al. (2001).
- 18 Projections developed to explore scenarios of increasing rates of Indian/non-Indian parenting reveal much more rapid rates of loss of registration and membership eligibility both on- and off-reserve. In the on-reserve context, for example, a 20% increase in rates of Indian/non-Indian parenting would result in a minority of children being eligible for registration and membership within 45 years.

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