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Stewart Clatworthy

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5

Indian Registration, Membership, and Population Change in First Nations Communities

Stewart Clatworthy

Introduction

The 1985 amendments to the *Indian Act* (commonly referred to as Bill C-31) introduced three key changes, including:

- The reinstatement of Registered Indian status to those individuals who had lost their registration through provisions of earlier versions of the *Indian Act*, and the first-time registration of many of their children
- New rules governing entitlement to Indian registration for all children born after April 16, 1985 (section 6)
- The opportunity for individual First Nations to develop and apply their own rules governing First Nations membership (section 10)

Until recently, most of the attention concerning the impacts of the 1985 changes to the *Indian Act* has focused on the reinstatement and registration provisions, which have resulted in substantial increases to the Registered Indian populations of many First Nations.¹ While the short-term impacts associated with Bill C-31's reinstatement and registration provisions have clearly been substantial, the latter two changes have the potential for more significant impacts on First Nations populations and communities in the medium- and longer-terms. These impacts emerge from the interplay of the new rules for determining entitlement to Indian registration, the rules adopted by First Nations for determining membership, and the parenting patterns of First Nations populations.

Prior to the 1985 *Indian Act*, the concepts of Registered Indian status and First Nation or band membership were equivalent. "Band members" were defined as individuals contained on the Indian Register (or Treaty List) for a given First Nation. Since the adoption of Bill C-31, the Indian Register continues to determine membership only in cases where a First Nation has *not* adopted its own membership rule.² For First Nations that have adopted membership rules under section 10 of the 1985 *Indian Act*, the "Band List" is maintained by the First Nation and is distinct from the Indian Register.³ For many First Nations, the population eligible for membership can differ from that entitled to Indian registration.

The distinction between Indian registration and First Nation membership is important, as registration and membership convey different sets of rights, entitlements

and benefits. For example, Indian registration guarantees freedom from taxation on-reserve, eligibility for post-secondary education support, and access to a broad range of health care services provided under Health Canada's Non-Insured Health Benefits (NIHB) Program. The Registered Indian population is also the basis for determining financial allocations to First Nations for some programs and services. For some Registered status may mean recognition of being an Indian. Membership, however, imparts a sense of belonging to a particular community. It also conveys political rights (including the right to vote in First Nation elections and run for Council), and in many First Nations is a defining criterion for access to a wide range of programs and services administered by the First Nation (see Clatworthy "Brokenhead" this volume).

As Clatworthy and Smith (1992) have noted, the separation of Indian registration from First Nation membership can result in the fragmentation of First Nations populations into "classes of citizens" with differing rights and entitlements. They also suggest that inequalities related to these class distinctions may serve as a source of conflict in First Nations communities⁴ and lead to legal challenges and jurisdictional squabbles among governments over responsibilities for providing and funding services to various segments of First Nations populations.

Although clearly important to the future well-being of First Nations communities and populations, the interplay of parenting patterns, the rules governing Indian registration, and First Nation membership rules have received little attention in prior research. The most comprehensive previous analysis in this regard remains that of Clatworthy and Smith (1992). Their study examined and classified all of the membership rules adopted by First Nations as of April 1992 and explored, via a series of case studies and hypothetical projections, the nature and scale of the longer-term population changes which are expected to occur among First Nations that apply various types of membership rules.⁵

This study seeks to both revise and extend upon the earlier work of Clatworthy and Smith by:

- Examining and classifying First Nations membership codes adopted subsequent to their research
- Identifying the nature of any changes to First Nations membership rules that have occurred since the time of initial adoption and reclassifying these rules in light of these changes
- Providing current (i.e., 2002) and projected estimates of the populations eligible for First Nations membership and for Indian registration
- Assessing the implications of expected population changes for service provision to First Nations populations

The study concludes that there are several important issues arising from the continuing operation of Bill C-31. For example, First Nations and other governments are likely to experience growing pressures to provide services to people who lack Indian registration and/or membership. The populations are changing

and we find a movement toward more and more individuals who do not meet the requirements for both Indian registration and First Nations membership. This is more pronounced off-reserve but that may shift in many reserve communities. There is going to be a period where jurisdictional and financial responsibilities for program and service provision to the various classes of residents that are created by the *Act* are unclear. If present policy is maintained, there may be many groups of citizens who lack access to needed services where allocation is restricted to those who qualify as band members. This may be magnified by the lack of appropriate funding levels under current intergovernmental transfer agreements which do not recognize the service needs of all subgroups or classes of citizens residing in First Nations communities. This could result in an increase of inequalities that, in turn, may result in community conflict and legal challenges.

A Review of First Nations Membership Rules

In their 1992 review, Clatworthy and Smith examined many features of the membership rules adopted by 236 First Nations as of April, 1992. These features included:

- Definition of the initial member population (i.e. those who qualify for membership at the time of adoption of the rule)
- The “descent or inheritance rules” by which descendants of the initial member population inherit or qualify for membership in the future
- Additional criteria (limitations or tests) applied to individuals who otherwise qualify based on kinship or descent
- Provisions and conditions related to extending membership to other individuals who do *not* qualify for initial membership or do *not* qualify on the basis of descent (e.g. spouses, adopted children, transfers from other First Nations)
- The mechanics associated with implementing the rules, including the nature and responsibilities of decision-making bodies involved in the review and approval/rejection of membership applicants

Using information concerning the population eligible for initial membership and the descent (or inheritance) rules which determine how membership eligibility is transferred to future generations, Clatworthy and Smith identified four main types of membership rules adopted under section 10 of the 1985 *Indian Act*.⁶ These rules included:

- **Limited One Parent (or Act Equivalent) rules**, where eligibility for membership requires that a person have at least one parent who is a member and that the person also be entitled to Indian registration
- **Unlimited One Parent rules**, where eligibility for membership requires that a person have at least one parent who is a member, regardless of the person’s entitlement to Indian registration

- **Two Parent rules**, where eligibility for membership requires that both parents of the person be members
- **Blood Quantum rules**, where a person's eligibility for membership is determined on the basis of the amount of "Indian blood" that person possesses in relation to a minimum standard

The four main types of membership rules were further divided into subgroups (22 in total) based on the definition of the population admitted into initial membership (i.e., the rules for determining who qualifies to be part of the original member population). This latter factor (i.e. the population admitted into initial membership) is important as First Nations that adopted membership rules prior to June 28, 1987, were allowed to exclude from membership certain groups of individuals whose (acquired) rights to membership were not protected under the 1985 *Indian Act*.⁷

In practice, the largest group of individuals excluded from initial membership included the children of women who lost Indian registration status (under the previous *Indian Act*) as a consequence of marriages to non-Indians and who were born subsequent to those marriages.⁸ The exclusion of this group of individuals from membership also has important implications for their descendants. Under the terms of most First Nations membership rules, the descendants of these individuals will also not qualify for membership. The failure of the revised *Act* to guarantee rights to membership for the children of women who were removed from the Indian Register as a consequence of intermarriage has given rise to claims of residual gender discrimination in the 1985 *Indian Act* and is the basis for several on-going legal challenges.

Revising the Clatworthy and Smith Typology

As the information compiled by Clatworthy and Smith is now somewhat dated, efforts were undertaken to extend and revise the results of their study. This involved two main activities including:

- Identifying and classifying membership rules adopted subsequent to the time of their initial study
- Identifying any amendments or revisions which have occurred since the time of initial adoption of the membership rules

Status of Membership Rules

All First Nations that propose to establish membership rules under section 10 of the 1985 *Indian Act* are required to submit the rules to Indian and Northern Affairs Canada for review and approval. As of December 31, 2002, department records indicate that 311 First Nations had submitted membership rules. Of these, 241 rules (about 77%) were identified to have received approval by the department. Of the 70 non-approved rules, only eight were currently under review by the department.⁹

Table 5.1: Summary of First Nations Membership Rules Adopted Since the 1992 Clatworthy/Smith Review

| First Nation | Type of Membership Rule (Clatworthy/Smith Typology) |
|-----------------------------|---|
| Loon River Cree Nation | One parent rule limited to Indians and including all Registered Indian descendants of members |
| Cheslatta T'en First Nation | Unlimited one parent rule open to all descendants of original members |
| Tsawataineuk Indian Band | Unlimited one parent rule open to all descendants of original members |
| Adams Lake Indian Band | One parent rule limited to Indians and including all Registered Indian descendants of members |
| Williams Lake Indian Band | One parent rule limited to Indians and including all Registered Indian descendants of members |

Source: INAC Administrative Data

Nine of the 241 First Nations who were identified with approved section 10 membership rules were no longer applying these rules. Eight of these First Nations now determine membership under alternative (self-government) legislation. The remaining First Nations now base membership on the rules governing Indian registration (section 6 of the *Indian Act*).

Membership Rules Adopted Since April 1992

The department's records revealed that only five First Nations had submitted membership rules that were approved since the time of the original review by Clatworthy and Smith in 1992. Membership rules for these First Nations were reviewed and classified using the same criteria developed by Clatworthy and Smith. The results of the review are summarized in **Table 5.1**.

Application, Amendments, and Revisions

There is no requirement under the 1985 *Indian Act* for First Nations that have adopted membership rules to inform or notify the department of subsequent changes or amendments. As a result, a survey of all First Nations that had adopted membership rules under section 10 of the *Indian Act* was undertaken to determine whether approved rules were actually being applied and to obtain information concerning the nature of any approved or planned amendments to the original rules.¹⁰ Information concerning changes to the status or nature of First Nations membership rules collected via the survey was then used to update the original classification of First Nations by type of membership rule, as presented by Clatworthy and Smith (1992).

The main findings of the survey are summarized below:

- A large majority of First Nations that adopted section 10 rules are applying these rules to determine membership. Of the 212 First Nations for which interviews were completed, only 18 (about 8.5%) reported that they are presently not using a membership rule.

Table 5.2: Distribution of First Nations by Type of Membership Rule and INAC Region, 2002

| Region | Section 10 First Nations | | | | Indian Act | All Types |
|---------------------------|--------------------------|----------------|---------------|-------------|-------------|--------------|
| | Unlimited One Parent | Act Equivalent | Blood Quantum | Two Parent | | |
| Atlantic Region | 4 | 2 | 0 | 5 | 22 | 33 |
| Quebec | 2 | 1 | 0 | 0 | 27 | 30 |
| Ontario | 18 | 12 | 13 | 10 | 85 | 138 |
| Manitoba | 8 | 10 | 2 | 0 | 42 | 62 |
| Saskatchewan | 6 | 0 | 1 | 23 | 40 | 70 |
| Alberta | 9 | 13 | 6 | 3 | 15 | 46 |
| British Columbia | 34 | 19 | 3 | 23 | 115 | 194 |
| Yukon | 2 | 1 | 1 | 0 | 6 | 10 |
| Northwest Territories | 1 | 0 | 0 | 0 | 25 | 26 |
| All Regions | 84 | 58 | 26 | 64 | 377 | 609 |
| % of First Nations | 13.8 | 9.5 | 4.3 | 10.5 | 61.9 | 100.0 |

Note: The total of 609 First Nations excludes 19 First Nations whose membership is determined through (self-government) legislation other than the Indian Act. These 19 First Nations have not been included in this study.

Source: Clatworthy and Smith (1992) revised on the basis of the study's survey

- Among the 18 First Nations not applying their membership rule, seven reported that they were currently using the *Indian Act* rules (section 6) for determining membership in their First Nations. Four First Nations reported that all decisions concerning membership were being made by Chief and Council. Another four First Nations reported that a moratorium was in place concerning membership. Two First Nations indicated that membership was being based on family or community sponsorship. One First Nation did not reveal the current basis for determining membership.
- Thirty-one First Nations reported that they had made amendments to their original membership rule. Respondents for six of these First Nations either refused to specify or were unsure of the nature of changes made. Rule amendments for all but six of the remaining 25 First Nations dealt with minor aspects of the rules and would appear to have little impact on membership eligibility.
- More substantive amendments were reported for six First Nations, including two that had made changes to the underlying descent provisions of the rule (i.e., the type of code). Both of these First Nations were originally identified to be using restrictive two-parent rules. One reported a change to the descent provisions governing Indian registration (i.e., section 6 of the 1985 *Indian Act*). The other reported a change to the

Table 5.3: First Nations Registered Indian Population by Type of Membership Rule and INAC Region, 2002

| Region | Section 10 First Nations | | | | Indian Act | All Types |
|-----------------------|--------------------------|----------------|---------------|------------|------------|-----------|
| | Unlimited One Parent | Act Equivalent | Blood Quantum | Two Parent | | |
| Atlantic Region | 2,598 | 566 | 0 | 6,111 | 20,261 | 29,536 |
| Quebec | 986 | 506 | 0 | 0 | 51,601 | 53,093 |
| Ontario | 25,080 | 12,149 | 13,058 | 9,068 | 109,745 | 169,100 |
| Manitoba | 18,471 | 15,345 | 12,604 | 0 | 70,244 | 116,664 |
| Saskatchewan | 7,748 | 0 | 925 | 30,430 | 76,147 | 115,250 |
| Alberta | 10,086 | 20,232 | 22,717 | 5,142 | 34,461 | 92,638 |
| British Columbia | 22,174 | 8,577 | 5,067 | 11,953 | 65,032 | 112,803 |
| Yukon | 1,229 | 139 | 379 | 0 | 3,255 | 5,002 |
| Northwest Territories | 1,316 | 0 | 0 | 0 | 14,499 | 15,815 |
| All Regions | 89,688 | 57,514 | 54,750 | 62,704 | 445,245 | 709,901 |
| % of First Nations | 12.6 | 8.1 | 7.7 | 8.8 | 62.7 | 100.0 |

Source: Derived from the December 31, 2002, Indian Register

more inclusive descent provisions of a one parent rule. In both cases, the expected effects of these changes would be to allow for a larger segment of future descendants to qualify for membership.

- Two other First Nations that had initially adopted rules which excluded the descendants of women who intermarried prior to the 1985 *Indian Act* amendments, reported changes that extended initial membership eligibility to all Bill C-31 registrants, including this group of descendants. In the future membership eligibility would also be extended to some of the descendants of this group.¹¹

Revised Summary of First Nations by Type of Membership Rule

Based on the findings of this component of the study, it is possible to reassign First Nations which have made changes to their membership rules according to the membership rule categories developed by Clatworthy and Smith. **Table 5.2** identifies the revised distribution of First Nations by membership rule type and province or region. As revealed in the table, membership in most First Nations (377 or about 62%) is determined by the rules governing Indian registration (Section 6 of the 1985 *Indian Act*). In addition to these First Nations that did not adopt their own membership rules, 58 First Nations are currently applying rules which are equivalent to the *Indian Act* rules. These First Nations account for about 10% of all First Nations. The remaining 174 First Nations are applying rules which differ significantly from the rules governing Indian registration. These include 84

First Nations (about 14%) using unlimited one parent rules, 64 First Nations (about 11%) using two parent rules, and 26 First Nations (about 4%) using blood quantum rules. A summary of the Registered Indian populations associated with First Nations using the various types of membership rules is provided in **Table 5.3** (page 105).

Projecting the Populations Eligible for Indian Registration and First Nation Membership

As noted in the introduction, the Clatworthy and Smith study contained a series of hypothetical and case study projections which were intended to illustrate the nature and scale of the impacts of various types of membership rules on the future populations of First Nations. This section of the report discusses the results from a new series of projections which estimate the future population *eligible* for First Nation membership and for Indian registration. The projections span a 75-year period (2003–2077), which can be roughly interpreted as three generations into the future.

It should be noted that the projections reported in this study focus on the population that is eligible for membership by virtue of satisfying the descent or inheritance requirements of First Nation membership rules and (if applicable) other limiting conditions such as entitlement to Indian registration. As noted earlier, other discretionary factors may also be applied to some groups of individuals and be important in determining the population that actually acquires membership. As these discretionary provisions generally have the ability to exclude some individuals from membership, the actual population of First Nation members is likely to be smaller than the population eligible for membership.¹²

Approach and Methodology

The projections developed for this study focus on the populations of 593 First Nations, including the 232 First Nations that adopted their own membership rules under Section 10 of the *Indian Act* and 377 First Nations that did not adopt their own rules and where membership continues to be determined by the rules governing Indian registration (section 6 of the 1985 *Indian Act*).

As the study's resources did not allow for projections to be constructed for each of the 593 First Nations, individual First Nations were aggregated into reasonably small groups on the basis of three key factors which are expected to influence their future populations. These factors include the type of membership rule in use, the rate of exogamous (i.e. Indian/non-Indian) parenting, and regional location. A total of 93 discrete First Nations groups were constructed. For each group, custom population projections were developed.

The projections were carried out using cohort-survival models that were customized to incorporate not only the standard features of fertility, aging, and mortality, but also the membership and Indian registration composition of the

Table 5.4: Estimated 2002 First Nations Populations by Membership Eligibility, Indian Registration Entitlement, and Type of Membership Rule, Canada, 2002

| Type of Membership Rule | Population (thousands) | | | | |
|--|------------------------|-----------------|-----------------|---------------------|------------------|
| | Reg. Member | Reg. Non-Member | Non-Reg. Member | Non-Reg. Non-Member | Total Population |
| Indian Act or Equivalent | 348.7 | 0.0 | 0.0 | 19.2 | 507.9 |
| Act Equivalent but excluding those without acquired rights as of June 28, 1987 | 4.7 | 1.0 | 0.0 | 0.3 | 6.0 |
| Unlimited One Parent | 74.6 | 0.0 | 2.8 | 0.0 | 77.4 |
| One parent but excluding those without acquired rights as of June 28, 1987 | 10.6 | 1.9 | 0.0 | 0.6 | 13.1 |
| Two Parent | 45.2 | 17.5 | 0.0 | 2.1 | 64.8 |
| 50% Blood Quantum | 45.8 | 0.6 | 0.0 | 1.6 | 47.9 |
| 25% Blood Quantum | 8.4 | 0.0 | 0.2 | 0.0 | 8.6 |
| All Types of Rules | 678.1 | 20.8 | 3.0 | 23.7 | 725.7 |

Note: Totals may not sum due to rounding

Source: Estimated from the December 31, 2002, Indian Register (adjusted for late reporting of births and deaths)

Totals may not sum due to rounding.

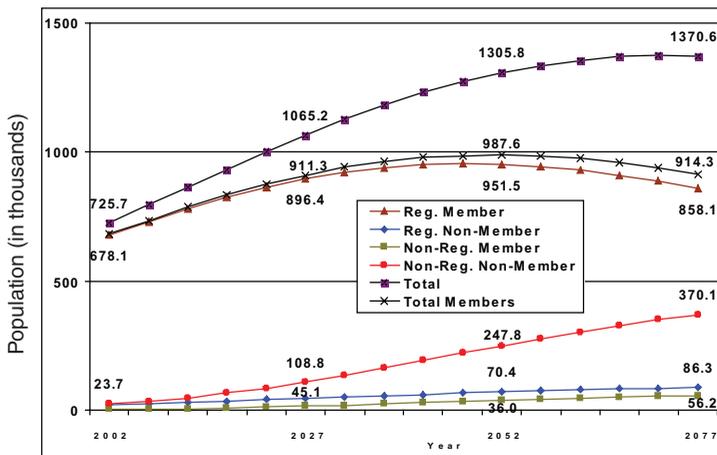
population, future population additions through the reinstatement provisions of the 1985 *Indian Act*, rates of exogamous (Indian/non-Indian) parenting, and assignment rules for allocating children born in the future to membership, Indian registration, and blood quantum categories (in the case of blood quantum rule). The baseline populations and key parameters of the projections (i.e. fertility, mortality, future Bill C-31 additions, rates of exogamous parenting, and assignment rules) were configured to reflect the specific circumstances of each of the 93 groups of First Nations. Separate projection models were also configured for the populations residing on- and off-reserve.

Depending upon the type of membership rule in use, four population subgroups are projected within the models. These subgroups include:

- Individuals entitled to Indian registration and also eligible for membership (**registered members**)
- Individuals entitled to Indian registration but *not* eligible for membership (**registered non-members**)
- Individuals not entitled to Indian registration but eligible for membership (**non-registered members**)
- Individuals neither entitled to Indian registration nor eligible for membership (**non-registered non-members**)

Table 5.4 presents estimates of the composition of the baseline (2002) population associated with First Nations that use various types of membership rules. As

Figure 5.1: Projected Population of Survivors and Descendants by Membership Eligibility and Indian Registration Entitlement, Canada, 2002–2077



Source: Custom projections based on the December 31, 2002 Indian Register

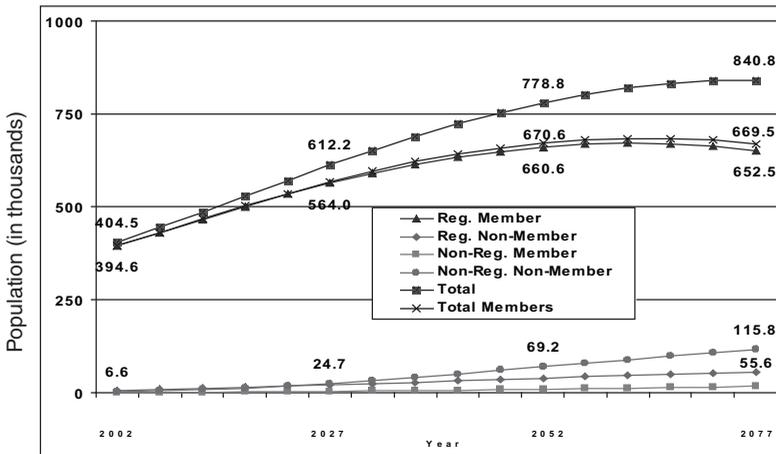
revealed in the table, registered members form the largest component of the First Nations population associated with each of the main groups of membership rules.

Significant numbers of individuals who were entitled to Indian registration but ineligible for First Nations membership (i.e. registered non-members), were common only among First Nations using two parent rules and one parent rules that excluded from initial membership individuals whose rights to membership were not protected under the *Indian Act* prior to June 28, 1987. Non-registered descendants who also lacked eligibility for membership (i.e., non-registered non-members) were common among First Nations using all types of rules except unlimited one parent and 25% blood quantum rules. Individuals who lacked entitlement to Indian registration but who met the conditions for First Nations membership (i.e., non-registered members) were common only among First Nations using unlimited one parent membership rules.

Most of the roughly 45,000 individuals who were ineligible for First Nations membership form one of two subgroups: the section 6(2) children born to women who intermarried (and lost their registration status under the prior *Indian Act*) and the descendants of these children.

Data aggregated to the national level mask quite large variations in the population composition of First Nations that use the same type of membership rule. In general, First Nations which experience higher rates of exogamous parenting have populations where those who are entitled to Indian registration and eligible for membership (i.e. registered members) form a smaller segment of the population.

Figure 5.2: Projected Population of Survivors and Descendants On-Reserve by Membership Eligibility and Indian Registration Entitlement, Canada, 2002–2077



Source: Custom projections based on the December 31, 2002 Indian Register

Some Projection Results

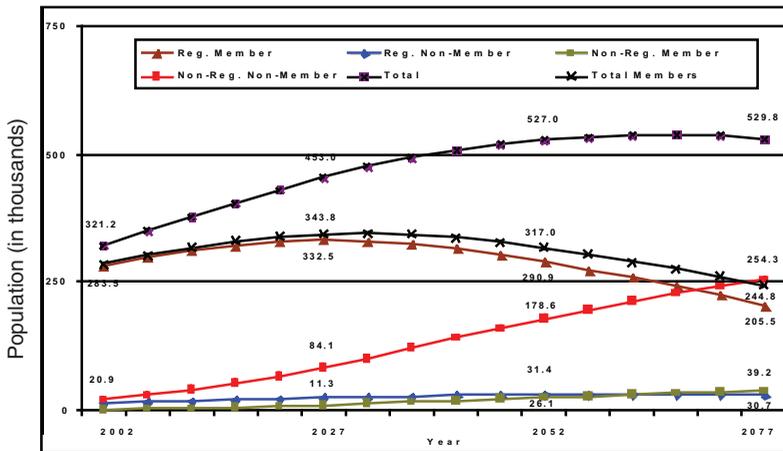
To simplify the presentation of projection findings, the results from the individual subgroup projections have been aggregated to the national level, as well as for the seven main types of membership rules considered in this study. Projection results at the national level are presented for the combined, as well as on- and off-reserve contexts. Results for First Nations using the various types of membership rules are presented for the combined on- and off-reserve populations only.¹³

National Estimates by Location On- and Off-Reserve

Figure 5.1 presents the projected estimates for the combined on- and off-reserve population at the national level by membership eligibility and Indian registration subgroup. The total population (i.e. all survivors and their descendants) is projected to increase throughout most of the 75-year time period reaching a maximum of about 1.371 million (in year 2072). The population eligible for First Nations membership is projected to rise over the initial 50-year period reaching about 987,600 individuals in year 2052. This population is projected to decline to about 914,300 individuals by year 2077.

Individuals who are entitled to Indian registration and eligible for First Nations membership (i.e., registered members) are expected to form a majority of the total population throughout the projection period. This population is expected to grow over the initial 45 year period to about 955,000, but decline to about 858,100 within 75 years. The population eligible for First Nations membership is expected to include a growing number of individuals who do not meet the requirements

Figure 5.3: Projected Population of Survivors and Descendants Off-Reserve by Membership Eligibility and Indian Registration Entitlement, Canada, 2002–2077



Source: Custom projections based on the December 31, 2002, Indian Register

for Indian registration. This segment of the population, which is estimated to total only about 3,000 individuals in 2002, is projected to increase throughout the period to about 56,200 within 75 years.

The population that does not qualify for First Nations membership is expected to increase throughout the entire time period from the current level of 44,600 to 456,400 individuals within 75 years. Although individuals who are not entitled to Indian registration are projected to form a large majority of those ineligible for membership, the population ineligible for membership is also projected to include a growing number of individuals who qualify for Indian registration (i.e. registered non-members). This latter group is expected to grow from about 20,900 individuals (in 2002) to about 45,100 individuals within 25 years and to about 86,300 individuals within 75 years.

Population changes at the national level are expected to be quite different on- and off-reserve. Population estimates for the context on reserve are presented in **Figure 5.2** (page 109).

Growth in the total population of survivors and descendants on-reserve is projected to occur throughout the entire projection period reaching about 840,800 individuals within 75 years. Rates of growth on-reserve, however, are expected to fall throughout the period and approach zero near the end of the period. The population eligible for First Nations membership is projected to increase for about 60 years peaking at about 688,700 in year 2062. A small decline in this segment of the population is projected to occur over the remainder of the period.

A large majority of the population eligible for membership on reserve is also expected to qualify for Indian registration. This population group (i.e., regis-

tered members) is expected to grow for about 60 years reaching about 670,900 in year 2062. This segment of the population is projected to decline gradually thereafter, and number about 652,500 within 75 years.

Growth in the on-reserve population ineligible for membership is expected to occur throughout the projection period. This population, which is currently estimated at about 9,500 individuals, is projected to rise to about 44,700 within 25 years and about 171,300 within 75 years. Although most of those ineligible for membership are also expected to lack entitlement to Indian registration, the Registered Indian component of those lacking eligibility for membership is expected to increase sharply over the period (from about 6,000 in 2002 to about 55,600 within 75 years).

Growth is also expected over the period in the on-reserve population that is eligible for membership but not entitled to Indian registration (i.e. non-registered members). This subgroup is projected to increase from about 500 individuals (in 2002) to about 17,000 individuals over the projection period.

As illustrated in **Figure 5.3**, much more pronounced changes are expected to occur in the composition of the off-reserve population. While the total population of survivors and descendants off-reserve is expected to increase for about 65 years, growth in the population eligible for membership is expected to occur for only 30 years. The member-eligible population is expected to peak at about 345,300 individuals in 2032 and fall to about 244,800 individuals within 75 years (a level roughly 40,000 lower than in 2002).

The off-reserve population entitled to Indian registration and eligible for First Nations membership (i.e., registered members) is projected to increase for only 25 years, peaking at about 332,500 individuals. Over the remainder of the projection period, this population is projected to decline to 205,500, roughly 78,000 lower than in 2002.

The high rates of exogamous parenting which characterize off-reserve populations are expected to result in very rapid growth in the population that lacks eligibility for membership. This population, which is estimated to number about 35,200 individuals in 2002, is projected to rise to about 109,200 within 25 years and to about 285,000 within 75 years. Within about 70 years, those ineligible for First Nations membership are expected to form a majority of the off-reserve population. The vast majority of those lacking eligibility for membership are also projected to lack entitlement to Indian registration.

Population Impacts of Various Types of Membership Rules

As noted by Clatworthy and Smith (1992), the implications of exogamous parenting vary widely among First Nations that employ different types of membership rules. This sub-section of the report provides a brief summary of the projection results associated with First Nations that have adopted different types of membership rules. The results are presented at the national level for the combined population living on- and off-reserve in **Table 5.5** (page 112).

Table 5.5: Projected Distribution of First Nations Population by Type of Membership Rule, Canada, 2002–2077 (Projected)

| Population Group | % of Population | | | |
|---|-----------------|------|------|------|
| | 2002 | 2027 | 2052 | 2077 |
| Indian Act of Equivalent | | | | |
| Registered Members | 96.2 | 88.0 | 77.3 | 67.4 |
| Registered Non-Members | 0.0 | 0.0 | 0.0 | 0.0 |
| Non-Registered Members | 0.0 | 0.0 | 0.0 | 0.0 |
| Non-Registered Non-Members | 3.8 | 12.0 | 22.7 | 32.6 |
| Indian Act or Equivalent but excluding those without acquired rights | | | | |
| Registered Members | 78.7 | 74.3 | 67.6 | 59.9 |
| Registered Non-Members | 16.3 | 11.2 | 5.5 | 2.1 |
| Non-Registered Members | 0.0 | 0.0 | 0.0 | 0.0 |
| Non-Registered Non-Members | 5.0 | 14.5 | 26.9 | 38.0 |
| Unlimited One Parent | | | | |
| Registered Members | 96.4 | 88.3 | 77.1 | 65.9 |
| Registered Non-Members | 0.0 | 0.0 | 0.0 | 0.0 |
| Non-Registered Members | 3.6 | 11.7 | 22.9 | 34.1 |
| Non-Registered Non-Members | 0.0 | 0.0 | 0.0 | 0.0 |
| Unlimited One Parent but excluding those without acquired rights | | | | |
| Registered Members | 81.2 | 78.9 | 73.7 | 67.6 |
| Registered Non-Members | 14.3 | 8.2 | 3.2 | 0.5 |
| Non-Registered Members | 0.1 | 4.9 | 13.3 | 21.9 |
| Non-Registered Non-Members | 4.4 | 8.1 | 9.7 | 10.0 |
| Two Parent | | | | |
| Registered Members | 69.7 | 49.8 | 32.3 | 18.6 |
| Registered Non-Members | 27.0 | 40.6 | 52.6 | 63.5 |
| Non-Registered Members | 0.0 | 0.0 | 0.0 | 0.0 |
| Non-Registered Non-Members | 3.3 | 9.6 | 15.1 | 17.9 |
| 50% Blood Quantum | | | | |
| Registered Members | 95.6 | 87.5 | 76.2 | 63.2 |
| Registered Non-Members | 1.2 | 2.4 | 4.6 | 8.7 |
| Non-Registered Members | 0.0 | 0.0 | 0.0 | 0.0 |
| Non-Registered Non-Members | 3.2 | 10.1 | 19.2 | 28.1 |
| 25% Blood Quantum | | | | |
| Registered Members | 97.9 | 92.2 | 83.6 | 73.9 |
| Registered Non-Members | 0.0 | 0.0 | 0.0 | 0.0 |
| Non-Registered Members | 2.1 | 7.0 | 12.4 | 15.3 |
| Non-Registered Non-Members | 0.0 | 0.9 | 4.0 | 10.9 |
| All First Nations | | | | |
| Registered Members | 93.4 | 84.2 | 72.9 | 62.6 |
| Registered Non-Members | 2.9 | 4.2 | 5.4 | 6.3 |
| Non-Registered Members | 0.4 | 1.4 | 2.8 | 4.1 |
| Non-Registered Non-Members | 3.3 | 10.2 | 19.0 | 27.0 |

Source: Custom projections based on the December 31, 2002 Indian Register

Some of the main observations concerning the results of this component of the projections are summarized below:

- The number of survivors and descendants ineligible for registration and membership in First Nations that base membership on the rules governing Indian registration (*Indian Act* or equivalent membership rules) is expected to increase sharply throughout the period. Within 25 years this population is expected to number about 89,300, representing about one in every eight individuals. This population is projected to grow to about 207,600 (about one in every five individuals) within 50 years and to about 316,000 (about one in every three individuals) within 75 years.
- The populations of First Nations that use rules equivalent to the *Indian Act* but exclude those whose rights were not protected under the 1985 *Indian Act*, are projected to experience rapid growth on the share of the population that is ineligible for membership. This population, which formed about 20% of the total population in 2002, is projected to increase to about 40% within 75 years.
- All survivors and descendants of First Nations that use unlimited one parent rules retain eligibility for membership. Over the course of the projection period, however, a growing segment of the population eligible for membership is expected to lack entitlement to Indian registration. Within 75 years, more than one in every three members of these populations is expected to lack Indian registration.
- Individuals who are eligible for membership are projected to form a majority of the populations of First Nations that use unlimited one parent rules but exclude those whose rights were not protected under the 1985 *Indian Act*. Within 75 years, however, about one in every four members is expected to lack entitlement to Indian registration.
- The share of the population eligible for membership in First Nations that use two parent membership rules is projected to decline rapidly throughout the period. Within 25 years, those ineligible for membership are projected to be a majority of the population. Most of those who do not qualify for membership are expected to qualify to Indian registration.
- Those who do not qualify for membership are expected to form a growing share of the populations of First Nations that use 50% blood quantum rules. Within 75 years about one-third of the population is expected to lack membership eligibility. About one in every four of those who lack membership eligibility are, however, expected to qualify for Indian registration.
- All survivors and descendants of First Nations that use 25% blood quantum rules are expected to retain eligibility for membership. Within 75 years, however, about one in every four individuals eligible for membership are expected to lack entitlement to Indian registration.

Implications for Service Provision to First Nations Populations

The projection results highlighted in the previous section suggest that the populations of most First Nations are in the process of changing from a context where those who are eligible for Indian registration and membership form a large majority to a context where those who lack eligibility for membership and Indian registration form a large and growing segment of community residents. These latter groups of residents are expected to form a majority of the population in many First Nations communities within two generations.

The emergence of different classes of citizens within First Nations populations raises a number of important questions and issues concerning individual and collective rights, social equality and cohesion, and jurisdictional, financial, and administrative responsibilities for the provision of a wide range of services to various citizen groups. Although the projected changes are likely to impact on First Nations communities and populations in many ways, the main focus of this study relates primarily to two key issues concerning the provision of services to the future populations of First Nations communities:

- The demand for services associated with various classes of First Nations citizens
- The scale of financial resources that would be required to provide comparable levels of services to the various citizen groups comprising First Nations populations

The study's interest in exploring compositional changes in the demand for various services over time emerges from the viewpoint that current policies and related funding mechanisms have evolved within a context where no distinctions between membership and Indian registration existed among First Nations populations. As the impacts of the interplay of membership rules, the rules governing Indian registration, and exogamous parenting unfold, First Nations and other governments are likely to experience growing pressures to provide a wide range of services to groups of citizens who have not traditionally formed a significant component of service demand on First Nations reserves.

How First Nations and other governments respond to these compositional shifts in service demand can be expected to have profound effects on First Nations communities. For example, if First Nations, either by policy (or as a consequence of existing funding mechanisms) decide to restrict the allocation of housing resources to *members* only, will this result in a "forced" exodus from reserve communities of large numbers of young adults and families who do not qualify for membership? Do current policies concerning service delivery jurisdiction and responsibility, and related financial transfer arrangements, allow for the provision of services to all of the groups of citizens which are expected to form part of future First Nations communities? If First Nations desire to provide equal access

Table 5.6: Projected Incremental Resources to Provide Comparable Levels of Service by Type of Service and Population Group, Canada, 2003-2027

| Program/Service | Estimated Incremental Service Cost 2003–2007 (millions, 2002 Constant \$) | | | | |
|-----------------------------|--|-------------------------------|-------------------------------|---------------------------------------|-----------------|
| | Population Group | | | | |
| | Registered Members | Registered Non- Members | Non- Registered Members | Non- Registered Non- Members | Total |
| Housing | 7,382.5 | 291.1 | 27.5 | 172.6 | 7,873.5 |
| Infrastructure ¹ | 1,572.7 | 110.0 | 24.7 | 160.6 | 1,868.0 |
| NIHB (Pharmacy) | 891.3 | 61.5 | 23.8 | 179.0 | 1,155.6 |
| NIHB (Dental) | 362.0 | 29.0 | 9.2 | 63.0 | 463.2 |
| Education | 1,685.8 | 265.9 | 90.1 | 657.9 | 2,699.8 |
| Post-Secondary Education | 927.6 | 176.6 | 62.9 | 483.7 | 1,650.8 |
| Children in Care | 107.3 | 74.6 | 31.4 | 227.1 | 440.3 |
| Social Assistance | 2,540.6 | 197.9 | 38.4 | 261.4 | 3,038.3 |
| All Services | 15,469.7 | 1,206.6 | 307.9 | 2,205.2 | 19,189.5 |

¹ Excludes education facility capital requirements

Source: Custom projections based on the December 31, 2002, Indian Register, INAC Administrative Data, 2001/2002 NIHB Program Annual Reports

to services for all groups of citizens, will new financial arrangements or intergovernmental transfer agreements be required to allow this to happen?

Providing answers to these important questions lies beyond the scope of the present study. In all likelihood, questions such as these will require difficult decisions to be made by First Nations' governments and negotiations with other governments. This study's contribution to the topic is limited to providing some information about the scale of the future demand for specific types of services which may be needed by the various groups of citizens that are expected to comprise First Nations populations, as well as some estimates of the approximate scale of financial resources associated with these services. Who eventually assumes responsibility for funding and delivering services to these various citizen groups remains to be determined.¹⁴

Resources, data, and methodological limitations do not permit examination of the full range of services directed to or presently available to First Nations populations. The study, however, does consider a wide range of programs and services, including housing, community infrastructure, pharmacy and dental benefits provided under Health Canada's Non-Insured Health Benefits (NIHB) Program, education programming services, post-education education support, services to children in care, and social assistance. Collectively, these programs and services account for a substantial portion of the total resources provided by the federal government to First Nations communities and populations.¹⁵

Estimating future levels of service demand and costs is a challenging exercise, as both demand and service costs can be influenced by a number of unforeseen factors and events. Among other things, these confounding factors include budgetary restrictions (which serve to limit the number of services provided or the number of individuals who are able to access services), changes to program eligibility criteria and service benefit levels, and changes in regional and local employment and economic conditions (which can alter the nature and level of services required by the population). For the most part, many of the underlying factors which can shape the future demand for and cost of services are quite difficult (if not impossible) to forecast accurately, especially in the medium- and longer-terms. In such contexts, the service demand and cost implications of population changes may be best examined using hypothetical scenarios.

Estimates prepared for this study are based on a specific hypothetical scenario which assumes that both the rate of service utilization (demand) and the unit cost of providing services (i.e. the cost per service or cost per client) remain stable in the future at levels estimated for the baseline year 2002. The scenario also assumes that the future service needs among individuals of different citizen groups within First Nations populations are the same. This scenario allows one to explore the requirements and related costs of providing comparable or equivalent levels of services to all classes of First Nations citizens, regardless of membership or Indian registration status. Service demand and cost implications are explored over a 25-year period spanning the years 2002–2027.

Although minor elements of the methodology vary by the type of service considered, the general approach employed involves three stages, including:

- Estimation of current rates of service use and the average cost per service user (or service)
- Application of rates of service use to the projected population to estimate the future number of service users (or services required) by citizen class
- Application of the average cost per service user (or service provided) to the number of projected service users (or services required) to estimate the future costs of providing the service

Demand and related financial estimates for housing, infrastructure, education, children in care, and social assistance have been carried for the population residing on First Nations reserves, as First Nations administrative responsibilities for these services are generally restricted to reserve residents. Estimates for post-secondary education support services and for NIHB's pharmacy and dental benefits also include the population residing off-reserve, as these programs do not contain residency restrictions.

Results of analysis are presented in **Table 5.6** (page 115). The estimates suggest that the levels of financial resources that would be required to extend comparable levels of services to all subgroups residing in First Nations communities are likely to become quite significant over the next 25-year period. While

registered members are expected to account for most of the incremental demand for future services, resources associated with providing comparable levels of the services to population subgroups that lack membership eligibility or Indian registration are expected to approach \$3.7 billion over the 2003–2027 period. Most of these resources would be associated with maintaining comparable levels of service to descendants who lack entitlement to Indian registration. Children are expected to form the largest segment of this population throughout the 25-year projection period.

The level of incremental resources required to support comparable levels of service provision among subgroups which lack eligibility for membership or Indian registration are expected to remain modest in the short term, but increase at an accelerating pace in medium- and longer-terms. Within 25 years, more than one-quarter of the projected increase in resources needed to provide the services highlighted in this report is expected to result from service demands associated with residents who lack Indian registration or First Nations membership.

Review and Discussion

As a consequence of the 1985 *Indian Act* changes to the rules governing Indian registration, and the adoption by many First Nations of membership rules which differ from those which govern Indian registration, the populations of most First Nations in Canada are undergoing significant transformations. The nature of change is generally one away from populations which are comprised largely of individuals who meet the requirements for both Indian registration and First Nation membership to populations which also include growing numbers of citizens who lack Indian registration or eligibility for membership or both. Shifts in the composition of First Nations populations are presently pronounced off-reserve and are expected to become significant in many reserve communities over the course of the next generation. Within this time frame, classes of citizens with differing rights and entitlements are expected to become the norm in most First Nations communities.

These population changes appear to raise a number of complex and multi-faceted issues with political, legal, social, cultural, and economic dimensions and ramifications. This study has highlighted some of the potential implications of the expected population shifts within the context of providing services to First Nations residents in the future. In this regard, the study's results suggest that First Nations and other governments are likely to experience growing pressures to provide a wide range of services to groups of citizens (i.e. descendants who lack Indian registration, membership, or both) who have not traditionally formed a significant component of service demand in First Nations communities. How First Nations and other governments respond to this changing context of service demand can be expected to have profound effects not only on individuals but also on many aspects of life in First Nations communities.

At the present time, jurisdictional and financial responsibilities for program and service provision to the various classes of residents that are expected to comprise First Nations communities in the future are unclear. Current First Nations policies surrounding service allocation (e.g. which, in general, tend to restrict or limit services to those who qualify as members) may result in some groups of citizens who lack access to needed services. Similarly, the basis for establishing funding levels under current intergovernmental transfer agreements may not recognize the service needs of all subgroups or classes of citizens residing in First Nations communities. Resulting inequalities among citizen groups with respect to access to services could lead to conflicts, legal challenges, and the erosion of social cohesion within communities.

Although the challenges confronting First Nations in responding to the changing population context have many dimensions, a central issue relates to the principle of establishing comparable levels of access to services among all community residents. In this regard, options available to First Nations within the confines of the *Indian Act* appear to be limited. Under the *Indian Act*, First Nations do (or can) exercise control over some aspects of the issue, including membership and (to some extent) service and program eligibility and allocation policies. Revisions to (or the adoption of) membership rules and the formulation of service allocation policies which are cognizant of the emerging changes in community populations may be an option for some First Nations. Such initiatives could mitigate some of the inequality among classes of citizens but are also likely to require new financial transfer arrangements with the federal (and perhaps provincial) government(s). It is not clear that suitable financial transfer arrangements could be achieved within the context of the current *Indian Act*. As such, First Nations may also want to explore the option of self-government. In theory, self-government financial transfer agreements (SGFTA's) can be configured to enable service provision to all citizens who reside in the community.¹⁶ Intergovernmental negotiations, however, are also likely to be required in the process of pursuing this latter approach.

Endnotes

- 1 A recent study by Clatworthy (2002) reveals that as of December 31, 2002, more than 114,000 individuals have been added to the Registered Indian population through these provisions.
- 2 For First Nations that did not adopt rules under section 10 of the *Indian Act*, membership is determined by the rules governing Indian registration. These rules are contained in section 6 of the 1985 *Indian Act* and allow for individuals to be registered under one of two sub-sections, including: section 6(1), where both of the individual's parents are entitled to Indian registration, and section 6(2), where one of the individual's parents is entitled to Indian registration under Section 6(1) and the other parent is not registered. Individuals who have only one Indian parent registered under section 6(2) do not qualify for Indian registration or First Nations membership.
- 3 This is also the case for those First Nations that have established self-government arrangements. The membership rules of self-governing First Nations are not considered in this study.
- 4 There is some existing evidence of the presence of conflict surrounding First Nations membership issues. Litigation involving citizen challenges to specific provisions of some First Nations membership rules has been undertaken (e.g. Corbière, Perron, Starlight [Sawridge], and L'Hirondelle [Tsuu T'ina]). Disagreements among citizen groups over membership issues have also been reported in other First Nations contexts (e.g. Buffalo Point and Kahnawake).
- 5 Some aspects of the relationship between Indian registration and First Nation membership are also discussed by Wherret (1990) and Smith (1991). Case studies exploring the longer-term populations of the membership rules of specific First Nations have been undertaken by Clatworthy (1991, 1998, 1999, 2001, and 2002b) and by United Anishnaabeg Councils (1999).
- 6 Several features found in some membership rules, although examined, were not incorporated into the typology. These included additional "discretionary" criteria (e.g. cultural/ language tests, tests of character, and considerations of context [e.g., reserve residency, availability of community resources]) that are applied to some applicants, provisions, and conditions for admitting other "non-descendants," and the mechanics of administering the rules. They noted that some of these other features could, depending upon how they are applied, have considerable impact on the population that is accepted into membership. The full impacts of these other features on future populations, however, cannot be determined.
- 7 First Nations that adopted membership rules prior to June 28, 1987 were required (at a minimum) to admit into initial membership individuals whose rights to membership were protected by the 1985 *Indian Act* (i.e. those with acquired rights). This included all those who were eligible to be on the band list as of April 17, 1985, all individuals who reacquired registration under the 1985 *Indian Act* and who had been removed from the Indian Register prior to April 16, 1985 as a consequence of their (or their mother's) marriage to a non-Indian, and individuals whose both parents were original or reinstated members and who traced their descent entirely through these members. All First Nations that adopted membership rules on or after June 28, 1987 were required to admit into membership all individuals who were entitled to Indian registration at that time, including all those who qualified for registration under the revised rules of the 1985 *Indian Act*.
- 8 Clatworthy and Smith reported that 85 (or roughly 36%) of the 236 First Nations that had adopted membership rules at the time of their review, elected to exclude this group of descendants from initial membership.
- 9 The remaining 62 First Nations, whose rules were not approved, do not appear to have submitted revised rules to the department. Most of these non-approved rules were submitted prior to 1993.
- 10 The survey was administered via telephone over the November 1, 2002 to January 30, 2003 time period to First Nations staff responsible for Indian registration or First Nation membership. Contact was made with 215 (or 93%) of the 232 First Nations that were identified to have current membership rules adopted under section 10 of the 1985 *Indian Act*. Interviews were completed for 212 of those contacted (three First Nations declined to be interviewed for the study).
- 11 In addition to those First Nations which had formally approved amendments or revisions to their membership rules, 86 First Nations reported that they were actively considering changes to their membership rules. Twenty-six of these First Nations reported changes that were considered to be major and would impact on significant numbers of individuals. In all of these cases, the

proposed changes would extend membership eligibility to additional groups of individuals who were denied membership under the original membership rule.

- 12 In addition to discretionary provisions, other factors are likely to influence the actual population of First Nations members. For example, membership in most First Nations is not automatically granted upon birth and individuals are required to apply to become members. Some individuals who meet all of the conditions necessary to become members, may not apply to become members for many reasons (see Clatworthy “Brokenhead” this volume for more comments on this issue).
- 13 The projection results presented in this study derive from a specific set of models that assume a gradual decline in fertility, gradual improvements in life expectancy, and stable rates of exogamous parenting over the course of the projection period.
- 14 The study is not attempting to suggest that services to all of these citizen groups will be necessarily assumed by any level of government. The possibility exists that some individuals or groups may be required to do without services or to pay directly for these services themselves.
- 15 Although not comprehensive, the range of programs and services addressed in the study is believed to be sufficiently broad to illustrate the nature and scale of changes in service needs (demand) and the related financial implications of these changes.
- 16 Although self-governing financial transfer agreements may allow for resolution of some service provision issues, it is unlikely that such arrangements can be structured to provide full equality for all citizen groups. For example, differences among residents with respect to income and sales tax exemption and Non-Insured Health Benefits (which are limited to those who are Registered Indians) are likely to remain.

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