CANADA

OFFICE OF THE
PARLIAMENTARY
BUDGET OFFICER

BUREAU DU DIRECTEUR
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Bill S-3: Addressing sex based inequities in Indian registration

Ottawa, Canada
5 December 2017
www.pbo-dpb.gc.ca

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The Honourable Senator Marilou McPhedran and Mr. Robert–Falcon Ouellette, M.P. (Winnipeg Centre) requested that the PBO estimate the financial cost of the proposed changes to the *Indian Act* set out in Bill S-3 *An Act to amend the Indian Act (elimination of sex based inequities in registration)*. The PBO was specifically asked to consider the financial costs associated with the amendments to Bill S-3 made by the Senate and the House of Commons.

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Executive Summary

Bill S-3 amends the *Indian Act* to address residual discrimination on the basis of sex with respect to eligibility for registration on the Indian Register. The Senate proposed an amendment which would effectively extend eligibility for registration to all persons with First Nations ancestry.

As Bill S-3 was initially proposed, 28,000-35,000 additional First Nations persons would be eligible to register. Approximately 90% of those persons are expected to register, of whom 2% are expected to return to reserves. The 3% of non-status First Nations persons already on reserve are assumed to be among those granted status.

Under the amendments passed by the Senate on 1 June 2017, approximately 670,000 additional First Nations persons would be eligible to register. This estimate reflects the number of persons self-reporting First Nations ancestry who are not already registered. Under this scenario, approximately 270,000 additional eligible persons (40%) are expected to register due to the more remote connection between this group and First Nations communities. None of these additional Status Indians are expected to return to reserves or to already reside on reserves.

The amendments made by the House of Commons on 21 June 2017 reversed the key change made by the Senate and would give Bill S-3 the same impact as it had when initially proposed.

Further amendments passed by the Senate on 9 November 2017, essentially restored the key changes made by the Senate on 1 June 2017, but delayed the coming into force of those changes until a date to be fixed by order of the Governor in Council.

We assume that Parliament will proportionately increase funding for benefits provided to registered persons in order to maintain current service levels. These expenditures consist mainly of health and education benefits and are expected to cost $1,311/y per registered person.

Where there is significant net migration to reserves, we also assume that Parliament will proportionately increase funding for programs provided on reserves to maintain current service levels. Income tax revenue lost to Status Indian specific tax exemptions will also increase proportionately. These program and tax expenditures cost an average of $18,433/y per resident on reserve, consisting primarily of education, healthcare, income assistance, and the tax exemption for income earned on reserve.

Currently, 3% of unregistered First Nations persons reside on reserve. The program costs associated with granting those persons status will be negligible as most programs on reserves are available to all persons residing on reserve. However, granting these individuals status will exempt their on-reserve income from taxation, a loss of approximately $322/y in income tax revenue per new registrant already residing on reserve.

Adding persons to the register will also create one-time administrative costs concentrated over a period of five years.

The total cost for Bill-S-3 as initially proposed or amended by the House of Commons is estimated to be $19 million in upfront administrative costs plus $55 million/year to maintain program service levels and tax exemptions. The additional cost associated with the Senate's amendment would be approximately $52 million in upfront administrative costs plus $352 million/year to maintain service levels and tax exemptions. The total cost of Bill S-3 as amended by the Senate is expected to be about $71 million in one-time administrative costs plus $407 million a year in ongoing costs.

This estimate is subject to a high degree of uncertainty due to a lack of evidence regarding registration rates, administration plans and long-term migration patterns. The full annual costs will not be realized until eligible persons are registered, which will take many years.

Summary Table 1 Total Cost of S-3

S-3 Version	Registrants		Current Residents on Reserves		Migrants		Admin	Total
	#	Cost ($M/y)	#	Cost ($M/y)	#	Cost ($M/y)	Cost ($M)	($M)
Initial/ House	31,500	$41	6,971	$2	630	$12	$19 M	$19 M $55 M/y
Senate	+268,180	+$352	+0	+$0	+0	+$0	+$52 M	+$52 M + $352 M/y
Total	299,680	$392	6,971	$2	630	$12	$71 M	$71 M $407 M/y

Source: Parliamentary Budget Officer.

1. Introduction

The Honourable Senator Marilou McPhedran and Mr. Robert–Falcon Ouellette, M.P. (Winnipeg Centre) requested that the PBO estimate the financial cost of the proposed changes to the *Indian Act* set out in Bill S-3 *An Act to amend the Indian Act (elimination of sex based inequities in registration)*. The PBO was specifically asked to consider the financial costs associated with the amendments to Bill S-3 made by the Senate and the House of Commons.

Bill S-3 amends the *Indian Act* to address residual discrimination on the basis of sex with respect to eligibility for registration on the Indian Register. Persons registered on the Indian Register are referred to as Registered Indians or described as having Indian Status.[1] Registration is used to determine eligibility of First Nations persons for many federal programs, legislative rights, and treaty rights.

Prior to 1985, the eligibility criteria for registration explicitly favoured men. Registered women who married unregistered men lost their status whereas registered men who married unregistered women retained their status and conferred that status on their wives and children. Amendments to the *Indian Act* in 1985 and 2010 were intended to address this inequity. Nevertheless, in *Descheneaux c. Canada (Procureur Général)* 2015 QCCS 3555, the Superior Court of Quebec found that discrimination against Aboriginal women and their descendants with regard to registration continues to exist.[2]

As initially introduced, Bill S-3 addressed three circumstances in which residual discrimination on the basis of sex was identified in *Descheneaux c. Canada (Procureur Général)*. Specifically, it addresses:

1. **The Cousins Issue:** Individuals whose grandmother lost status due to marriage to an unregistered man, when that marriage occurred before April 17, 1985
2. **The Siblings Issue**: Women who were born out of wedlock of registered fathers between September 4, 1951 and April 17, 1985
3. **The Issue of Omitted Minors:** Minor children, who were born of registered parents or of a registered mother, but lost entitlement to Indian Status because their mother married an unregistered person after their birth, and between September 4, 1951 and April 17, 1985
4. **Children of the above individuals.**

For a complete legislative summary, please consult the Library of Parliament's Legislative Summary of Bill S-3: An Act to amend the Indian Act (elimination of sex based inequities in registration).

The Standing Senate Committee on Aboriginal Peoples made a variety of amendments to Bill S-3, including the addition of section (6)(1)(a.1), which makes a person eligible for Indian Status if:

> that person was born prior to April 17, 1985 and is a direct descendant of the person referred to in paragraph (a) or of a person referred to in paragraph 11(1)(a), (b), (c), (d), (e) or (f) as they read immediately prior to April 17, 1985;[3]

The effect of this amendment is to make almost all individuals with First Nations ancestry born prior to 1985 and their children eligible for Indian Status. While broad, it does appear to exclude individuals with only Métis ancestry dating back to 1868. The House of Commons Standing Committee on Indigenous and Northern Affairs amended the Bill to remove section 6(1)(a.1).[4] Subsequently, the Senate amended the bill further to reinstate and clarify the initial amendment made by the Standing Senate Committee on Aboriginal Peoples. However, eligibility based on sex-based inequities involving circumstances that occurred before 1951, will be granted on a later date. The PBO assumes that all of the provisions of the Bill are in force for its analysis.

Being registered on the Indian Register is not the same thing as being a member of the First Nations band from which an individual traces their descent. The *Indian Act* allows First Nations to assume limited control over their band membership and sets out presumptive rules where they have not. A person may be registered but not a member of a band. While government benefits are available to all persons on the Indian Register, First Nations generally only allow members of their band to live on reserve, participate in elections and referendums, own property on reserve, or share in band assets.[5]

In all versions of Bill S-3, the specific classes of individuals affected by discrimination as identified in *Descheneaux c. Canada (Procureur Général)* are potentially eligible for band membership under amendments to section 11 of that Act. However, a band may have their own membership rules as provided for by section 10 of the Act. Of Canada's 618 First Nations, 229 have their own membership rules under section 10 and 38 have self-government agreements setting out different membership rules. These bands with their own membership rules represent 43% of Registered Indians on reserves.[6]

The amendments passed by the Senate on 1 June 2017 would not have granted band membership to all persons with First Nations ancestry who register. The amendments passed by the Senate on 9 November 2017 would grant those individuals band membership where the band has not assumed

control over their own membership. However, the rules adopted by First Nations regarding band membership would exclude virtually all additional individuals granted status under the Senate's amendment.[7]

2. Eligible Persons

In the form in which it was introduced or as amended by the House of Commons, Indigenous and Northern Affairs Canada (INAC) estimates that between 28,000 and 35,000 individuals will initially become eligible for Indian status as a result of Bill S-3. [8] That estimate is based on analysis of the Indian Register by expert demographer Stewart Clatworthy. Mr. Clatworthy's estimate is accepted as reasonable for the purposes of this report.

INAC testified that between 80,000 and 2,000,000 individual will be eligible to register under Bill S-3 as amended by the Senate.[9] A second report provided to the Senate by Mr. Clatworthy provides a variety of estimates depending on the interpretation given to the Senate's amendment and the data source used. [10]

The lower figures provided by INAC are based on analysis of the Indian Register. The main problem with this approach is that it does not include individuals who trace their First Nations ancestry to persons who died before 1951. The Indian Register was compiled from treaty and band lists following the 1951 *Indian Act*. Ancestors who died before 1951 would not be included in the Register. Ancestors would also be omitted from the Register if they were removed from the band list prior to 1951 and were entitled to be registered or reinstated under the 1985 amendments but died before 1985 or did not apply for registration or reinstatement after that date.[11]

INAC's higher estimates are based on the number of individuals who self-report having Aboriginal ancestry, with slight adjustments for under-coverage and the incomplete enumeration of Indian reserves.[12] INAC's initial estimate (2,000,000) was an estimate of the total population who would be entitled to register, including individuals who are already registered and those who would be entitled to register under other provisions of Bill S-3. It also included persons who only reported Métis or Inuit ancestry. The more recent estimates provided by Mr. Clatworthy appropriately focus on persons with North American Indian (First Nations) Ancestry, producing an estimate of 736,697 additional persons entitled to registration. That number rises to 1,113,296 when including persons with Métis ethnic origins and 1,231,942 when also including persons who self-identified as First Nations but did not report First Nations ancestry.

In the 2016 Census, 1,525,570 persons identified as having First Nations ancestry, of whom 820,120 reported being registered.[13] Up to 35,000 of those individuals would be extended status under other provisions of Bill S-3 according to INAC.[14] Based on these figures, it is estimated that 670,450

additional persons would be eligible under the Senate amendment (see Table 2-1).

Table 2-1 Estimated Number of additional eligible persons, 2016

	Poplulation
Persons Reporting First Nations Ancestry	1,525,570
- Persons Already Registered	820,120
- Persons Eligible Under Other Provisions	35,000
Additional Eligible Persons	**670,450**

Note: Excludes individuals reporting only Métis or Inuit ancestry.

Source: Parliamentary Budget Officer. Figures based on data from Statistics Canada 2016 Census and estimate by Stewart Clatworthy.

The difference between this figure and the 736,697 estimated by Mr. Clatworthy is attributable to

- the use of data from the 2016 Census, rather than the 2011 National Household Survey,
- Mr. Clatworthy's adjustments for incomplete enumeration and undercoverage, and
- the PBO's deduction of the 35,000 persons entitled under the initial/House of Commons versions of the legislation to produce an estimate of the incremental population impact.

Many descendants of the persons made eligible under Bill S-3 will be eligible to register under the rules set out in the *Indian Act*, so the number of additional persons granted status as a result of Bill S-3 will increase in decades to come. Children of those registered under the Senate Amendment will gain status under 6(1) if their other parent also had status. Otherwise, they will gain status under 6(2). If the child receives status under 6(2) and has children with someone without status, the grandchildren will not have status. Given high exogamous marriage rates among First Nations persons living off reserve, few grandchildren of persons registered under the Senate amendment are likely to be eligible for status.[15] However, no adjustment is made for this in the above figure as such excluded grandchildren represent a very small portion of the current First Nations population, as the combined child's age and mother's age at time of birth would have to be less than 32 years. The expansion of membership under the Senate Amendment is large enough that it would reduce exogamous marriage rates by significantly increasing the portion of Canadians with 6(1) Indian Status.

More individuals are self-reporting First Nations ancestry over time far in excess of what can be explained by natural growth.[16] This intragenerational ethnic mobility may reflect an ongoing correction of historical underreporting, or an increasing tendency to incorrectly report First Nations

ancestry. As a result, there is a risk that First Nations ancestry may be overreported or underreported in Census data.

The estimate in Table 2-1 does not include individuals who only reported Métis ancestry and not also First Nations ancestry. Métis people would not be eligible if they trace their most recent First Nations ancestry to prior to 1868. Some Métis people may have more recent First Nations ancestry despite not reporting that ancestry. Conversely, some persons reporting First Nations ancestry may trace their most recent First Nations ancestry to prior to 1868.

Some First Nations' reserves are unenumerated because a census was not permitted or undercovered because individuals or households were missed by the census. INAC reports that as of November 2017, 984,383 persons were registered, compared with 820,120 estimated by Statistics Canada based on the 2016 Census, suggesting about 164,000 registered First Nations individuals were unenumerated or undercovered in 2016.[17] However, the quality of the data in the Indian Register is unclear. For example, deceased persons are left on the register until a certificate or death or confirmation of presumed death is provided.[18] Persons residing on reserve are almost exclusively registered, so any underestimation of the number of persons with First Nations ancestry is likely offset by underestimation of the number of registered persons.[19] Urban under-coverage is low (~4%) and would not significantly affect the above estimate.[20]

3. Registration Rates

The analysis provided to the PBO by INAC implicitly assumes that all individuals who are eligible to register will register.

One point of reference for registration rates might be the difference between the estimated number of people who would be eligible and those who actually registered under prior amendments to the *Indian Act*. Mr. Clatworthy predicted that 45,000 individuals would be entitled to register under Bill C-3 (the 2010 amendment) and 39,000 have been registered since that time (87% of the estimate).[21] Additional registrations are ongoing, suggesting at least 90% uptake. Unfortunately, this approach is highly susceptible to error in the underlying estimate of the eligible population. INAC substantially underestimated the population who would be eligible under Bill C-31 (the 1985 amendment), expecting 56,800 registrations[22] but receiving 106,781 by 1999 (excluding the children of those registered under Bill C-31).[23]

Like Bill S-3 as it was initially proposed, Bill C-3 related primarily to children and grandchildren of First Nations women who lost status through marriage.[24] Because of this similarity, uptake under Bill C-3 is the best reference point for uptake under Bill S-3 as it was initially proposed. As a result, 90% uptake is assumed for the 28,000-35,000 persons estimate to be eligible under Bill S-3 as it was initially proposed.

It is unlikely that 90% of individuals who would be entitled to register under the Senate's proposed amendment will actually become registered. Most newly eligible persons will be many generations removed from their First Nations ancestry.

In 2016, there were 232,380 persons who identified as First Nations but were not registered, just 35% of the unregistered persons with First Nations ancestry who would be entitled to register.[25] An individuals' decision to self-identify as First Nations for the purposes of a census could be seen as a reasonable proxy for whether they will legally choose to identify themselves as Indians through registration.

Another indicator of the strength of individuals' connections to their First Nations ancestry might be whether they associate their ancestry with a particular First Nation, such as "Anishinaabe".[26] In the 2016 Census there were 1,065,655 persons who associated with a particular First Nation which, deducting the 820,120 already registered, suggests that there are about 245,535 unregistred persons who associate their ancestry with a particular First Nation, or 37% of unregistered persons with First Nation ancestry.[27] Since individuals will have to trace their ancestry to a specific First Nation and prove their ancestor was a member of that band, a person's awareness of

their association with a particular First Nation could be seen as a reasonable proxy for whether an individual will be able to compile the documentation needed to claim status.

Actual rates of registration will likely depend on how registrations are processed. If INAC proactively identifies individuals with First Nations ancestry and contacts them to invite them to apply, registration rates could be high. If no outreach is conducted by INAC or Indian Bands and applicants have to compile their own genealogical records, registration rates could be much lower.

As part of the Implementation of the Indian Residential Schools Settlement Agreement, settlement payments were offered to residential school survivors averaging $20,457. It was expected that there were 80,000 living Aboriginal former students of the residential school system.[28] 79,309 applied and received payments, or 99% of those thought to be eligible.[29] However, this process was well publicized by the media and First Nations groups, involved a large financial benefit, and only required individuals to establish that they attended residential school rather than a chain of ancestry. The redress for historical injustices provided in relation to the Chinese Head Tax and Japanese Internment apologies were similarly limited to survivors and figures regarding uptake are not available.

In the United States, each tribe establishes their own membership criteria based on customs, traditions, language, and/or blood. Unlike Canada, there is no general generational cut-off for membership, although specific tribes may impose blood quantum requirements, tribal residency requirements, or continued contact requirements.[30] A range of benefits, including health benefits, are available to persons who are members of a band.[31] It seems reasonable to assume that most persons who self-identify as American Indian would meet blood quorum requirements, which vary widely but generally require 1/4 tribal ancestry.[32] Nevertheless, only 2 million out of 4.5 million self-identified American Indians were enrolled in a federally recognized tribe.[33] This suggests that the burden of establishing ancestry several generations back is not seen as worthwhile for many. However, given that other requirements may be imposed by tribes, it is difficult to draw any conclusion about the precise portion of eligible persons who do not register.

The process involved in establishing First Nations ancestry may be similar to the process involved for Métis establishing their Métis ancestry for the purpose of registration on the Métis Nation of Canada's provincial registries. As of 2012, about 80,000 individuals had registered out of the 451,795 who self-identified as Métis in the 2011 National Household Survey (17%).[34] Adjusting for the fact that those Métis registries only include individuals over 16, this would suggest about 23% of eligible Métis have registered.

Take up of other government benefits in Canada varies depending on how those benefits are administered. Take up is high for programs which are

universal, automatic, subject to simple eligibility criteria, require information only about the individual, and where the government proactively identifies and contacts eligible persons. Take-up is also higher where individuals are informed of the benefit by professional advisors or income tax return software.[35] The value of the benefits provided is also a key factor in uptake.[36]

Excluding benefits which require individual contributions or do not require an application, uptake for benefits in Canada is far below 90% as shown for the programs below in Table 3-1.

Table 3-1 Benefit Uptake, various years

Benefit	Characteristics	Uptake
Allowance for widows/widowers	Must be 60-64 and widowed	39%
Allowance for spouses	Must be 60-64 and spouse 65+	55%
Canada Learning Bond	Requires application with SIN	16%

Source: Parliamentary Budget Officer. Uptake rates based on government estimates compiled by Richard Shillington and Tristat Resources, Financial Literacy and the Take-up of Government Benefits, 2011.

Experiences with other social programs suggests that up-take among the aboriginal ancestry population will be low. Little effort is made to promote awareness of the Indian Register and registration requires an application with detailed and difficult to collect information about ancestry. Eligible persons are not proactively identified and the annual benefits are of modest value compared to many other benefit programs. On the other hand, benefits are provided for a long period once an individual is registered.

Under Bill S-3 the appropriate Minister (i.e. the Minister responsible for INAC) must conduct consultations regarding the implementation of these changes to Indian registration, which may raise awareness of the changes. INAC may choose to make significant changes to how it processes applications and the burden of proof it requires in light of the large expected volume of applications and the unique challenges associated with tracing individuals' ancestry back many generations.

For the purposes of this analysis, it is assumed that 40% of persons with First Nations ancestry who are not currently registered will do so if made eligible by the Senate Amendment, a total of about 270,000 persons. Although Canada's historical experience with Amendments to the *Indian Act* would suggest that higher rates of registration are possible, the likelihood of a drop-off in registration rates the further back an individuals has to trace their ancestry, the characteristics of the population being granted Status, experiences in the United States and experiences with other social programs all suggest that lower rates of registration are likely to occur.

4. Residence on Reserve

Most services for registered Indians are only provided on reserve. As a result, producing a cost estimate requires estimating the current number of reserve residents who will receive status and potential net migration back to reserve.

Few unregistered individuals currently live on reserves. INAC reports that 3% of non-status First Nations lived on reserve in 2011.[37] Little information is available regarding this small group. These approximately 7,000 Non-Status First Nations persons on reserve are assumed to be included in the 35,000 persons granted status under Bill S-3 as it was initially proposed or as amended by the House of Commons, leaving no additional reserve residents to be granted Indian Status by the Senate Amendment. This assumption is made on the basis that individuals must generally be a band member to reside on reserve and the persons eligible to register under the initial or House of Commons versions of S-3 have sufficiently proximate relationships to be potentially eligible for band membership, unlike those made eligible under the Senate amendment. This has no impact on the total cost estimate for the Bill S-3 affecting only whether the cost of extending tax exemptions to Non-Status Indians on reserves is attributed to the initial/House versions of the legislation or to the Senate amendment.

Survey data suggests that of the 87,040 persons registered under the 1985 amendment as of 1991, 20,760 persons (24% of registrants) were already on reserves and remained there. 2,005 persons (2.3% of registrants) moved to reserves.[38]

The connection between the individuals with First Nations ancestry under S-3 and their communities would be weaker than the relationship between those whose Status was restored under C-31 in 1985, many of whom were women residing on reserve who had lost their status due to marriage to an unregistered person. So, the portion of persons returning to reserve would likely be substantially lower under Bill S-3.

Return migration is limited by the availability of adequate on-reserve housing.[39] As of 2011, 27.7% of First Nations persons on reserves were living in crowded homes (more than one person per room) and 42.9% were living in homes in need to major repairs.[40] The Assembly of First Nations reports that 94.1% of First Nations have waiting lists for housing, and 30.4% of people wait between 4 and 6 years for housing.[41] Where waitlists are being used, return migration by persons added under S-3 may replace migration to reserves by persons already registered, and therefore not reflect a net increase in migration.

As an upper bound estimate, return migration is predicted to be 2% of the registered population granted status under Bill S-3 (i.e. 636 persons) as initially proposed or amended by the House of Commons, approximately the rate of return migration observed in the first five years following Bill C-31. Because the additional individuals granted status under the Senate Amendment would have a more remote relationship to a reserve community, return migration for that group is assumed to be 0%.

There is no publically available evidence regarding long-term migration patterns, which creates uncertainty regarding the longer-term impact of Bill S-3.

5. Cost Implications

5.1. Expenditures in relation to all registrants

The PBO assumes that funding for programs which benefit all Status Indians regardless of whether they live on reserve will be increased in order to maintain current service levels.

There are two major programs offered to all Status Indians irrespective of whether they reside on reserve: supplemental health benefits and post-secondary education benefits.

Health Benefits

The Non Insured Health Benefits (NIHB) Program provides registered First Nations and recognized Inuit residents with a range of health-related goods and services.[42] It is run by the First Nations and Inuit Health Branch, which is being transferred from Health Canada to a new Department of Indigenous Services.[43] To maintain current levels of benefits, spending would have to be increased proportionately. The 2016 Census indicates that there are currently about 820,120 Registered Indians. [44] In 2015-16, $1,138,729,982 was spent on this program, per person costs of about $1,388 per registered Indian.[45]

Weighing health expenditures based on the regional allocation on Non-Status First Nations reduces expected costs by 12%. Medical transportation costs are excluded, as very few of the additional registrants will reside on the remote reserves which drive these costs. Medical transportation costs account for 35% of NIHB expenditures. Together, these adjustments reduce the expected per person costs by 39% to $841.31 per registered Indian.

Among the Canadians generally, 70% have private drug insurance directly or through a family member by employer-sponsored plans.[46] Provincial and private insurers act as first payer, with the NIHB program covering any remaining eligible costs not covered by those insurers.[47] Some persons gaining status may opt-out of private insurance plans, saving costs for them and their employer depending on who was paying the premiums. The average household (2.5 persons) spent $718/year on private health insurance plan premiums and $1,643 on direct health costs in 2015.[48]

Post-secondary Education

The Post-Secondary Education Program run by INAC provides funding to First Nations and Inuit groups to allow them to help eligible students to pay

for tuition fees, books, travel, and living expenses. It also supports entrance preparation programs and the design and delivery of courses for First Nations and Inuit students. Finally, the program funds Inspire, a national scholarship and career opportunity program for first Nations and Inuit students. To maintain current levels of benefits, i.e. the same portion of eligible students receiving the same amount of funding, it is assumed that spending would have to be increased proportionately. In 2015-16, $340,457,297 was spent on INAC's Post-Secondary Education Program, for the benefit of Status Indian and Inuit students, or an average cost of $415 per Registered Indian. An evaluation of the Post-Secondary Scholarship Fund administered by Indspire found that 46% recipients reported that the award was essential to their decision to pursue post-secondary studies, although the average value of awards was just $1,947.[49] Recipients of post-secondary education funding are about 70% women.[50] Some post-secondary education programs are already available to non-Status Indians which could mean cost increases are overestimated for this subprogram. Some funding is administered by First Nations bands, so funding may have to be reallocated to reflect the smaller portion of eligible Status Indians on band lists.

Weighing health and education benefits based on the age profile of Non-Status First Nations does not have a significant effect on expected spending, increasing health expenditures by about 3% and decreasing education expenditures by about 4%. These adjustments are excluded for the sake of simplicity.

Other expenses in relation to all Status Indians regardless of whether they are on reserve include administration of estates ($5/Indian/year), and support for Indigenous owned business ($49/Indian/year).

Table 5-1 Annual Cost of Benefits Avaliable to All Registrants

S-3 Version	Registrants	Cost per Registrant	Total Cost
Initial/House	31,500	$1,311	$41 million / y
Senate	268,180	$1,311	$351 million / y
Total	299,680	$1,311	$393 million / y

Note: Senate figures reflect the incremental population impact and cost associated with the Senate amendment, assuming the Initial/House changes have already been made.

Source: Parliamentary Budget Officer. Costs per registrant based on expenditures as reported in Departmental Performance Reports and Registered Indian populations as reported in the 2016 Census.

5.2. Expenditures in relation to reserves

Expenditures in relation to First Nations reserves can broadly be classified into (see Table 5-2):

- Governance expenditures, which are largely unrelated to the number persons ordinarily resident on reserve.
- Infrastructure investments and program expenditures, which are related to the number of persons ordinarily resident, but may exhibit economies of scale or step-wise cost functions.
- Social benefits, which are related to the number of persons ordinarily resident on reserve.
- Tax expenditures, which are related to the number of Status Indians ordinarily resident on reserve

Community infrastructure, program expenditures, and social benefits are generally available to all persons resident on a reserve. As a result, the PBO assumes that they will be increased proportional to migration to reserves but there is no incremental cost associated with extending status to non-status persons already resident on a reserve for these program costs.

Registered Indians are exempt from taxation only with regard to income earned on reserve. As a result, the PBO assumes that tax expenditures will increase proportional to migration to reserves and in proportion to the number of current residents on reserve granted status.

In other words, registering persons already on reserve only increases tax expenditures, but registering persons who migrate to reserves as a result gives rise to community infrastructure investments, program expenditures, social benefits, and tax expenditures.

Table 5-2 Expenditures in relation to residents on reserves, 2015-16

	2015-16 Actual Expenditures
Governance	$1,209,147,313
Community infrastructure investments and program expenditures	$4,897,323,335
Social benefits	$1,189,248,612
Tax Expenditures	Unknown Estimated at $108 million

Source: Parliamentary Budget Officer. Departmental expenditures reflect a summation of actual expenditures by sub-program as reported in INAC and Health Canada's 2016-17 Departmental Performance Reports. Tax expenditures are estimated based on the average income tax paid by First Nations off-reserve in the 2016 Census multiplied by the First Nations population on reserve from that census.

Of the above classes of expenditures, the greatest uncertainty surrounds the magnitude of the tax expenditures associated with First Nations persons.

Status Indians are exempt from taxation with regard to the ownership, occupation, possession and use of personal property situated on a reserve.[51] This generally exempts income earned on a reserve from taxation. The value of the income tax exemption for Status Indians on reserve was estimated based on the difference in tax paid between Status and Non-Status Indians, assuming that Status Indians off-reserve paid the same amount of tax as Non-Status Indians off-reserve.

Status Indians are also exempt from sales taxes for goods purchased by Status Indians on reserve, goods delivered to a reserve, and goods purchased from a remote store and transported to a reserve in the purchaser's own vehicle.[52] Services are exempted only if performed totally on reserve or if they relate to real property interest located on a reserve. The value of the sales tax exemption has been excluded from this analysis because it is not significant to the overall cost estimate and no data was available to support an accurate estimate.

Infrastructure, program expenditures and social benefits offered to individuals migrating to reserves would otherwise have been provided by their provincial government. The costs of comparable provincial programs may differ. So, to some extent, the below figures should be seen as a transfer of responsibility for certain costs from the provincial to the federal governments rather than an increase in costs to the government sector as a whole.

Table 5-3 Additional Annual Expenditures Associated with Registrants Who Migrate to a Reserve

S-3 Version	Registrants migrating to reserve	Cost per Migrant[53]	Total Cost
Initial/House	630	$18,433/y	$12 million/y
Senate	0	$18,433/y	$0/y
Total	630	$18,433/y	$12 million/y

Source: Parliamentary Budget Officer.

As noted above, the tax expenditure associated with exempting income earned by Registered Indians on reserve arises not only in relation to migrants (table above), but also for existing residents on reserve who gain status (table below).

Table 5-4 Additional Annual Expenditures Associated with Registrants Who Already Reside On-Reserves

S-3 Version	Persons residing on reserve made eligible	Cost per existing resident on reserve granted status[54]	Total Cost
Initial/House	6,971	$322/y	$2 million/y
Senate	0	$322/y	$0 million/y
Total	6,971	$322/y	$2 million/y

Source: Parliamentary Budget Officer.

5.3. Administrative Costs

Analysis provided by INAC suggests that the number of applications it expects to receive is about 23% higher than the number of persons it expects to be eligible. Some applicants may mistakenly believe they were eligible while others may have failed to include all the necessary evidence in their initial application. INAC anticipated that it would receive approximately 43,000 applications in relation to the 35,000 persons who would be eligible under S-3 as it was initially proposed.[55] Without accounting for differences in complexity and uncertainty, this suggests that there would be 329,861 applications in relation to the 268,180 additional persons registered under the Senate amendment.

INAC estimates the administrative cost for 43,000 applications over five years to be $19 million. [56] Using a logarithmic model based on the staffing requirements INAC anticipates for various levels of applications, it is projected that the administrative costs for the levels of applications expected for the Senate Amendment would total $52 million over five years (see table below).

Table 5-5 Total Administrative Cost of Processing Applications

S-3 Version	Applications	Total Cost
Initial/House	43,000	$19 million
Senate	329,861	$52 million
Total	374,478	$71 million

Source: Parliamentary Budget Officer.

5.4. Total Cost

As summarized below, the total cost of Bill S-3 as initially proposed or amended by the House of Commons is expected to be about $19 million in administrative costs plus $55 million a year in ongoing costs. The additional cost of Bill S-3 as amended by the Senate is expected to be about $52 million in one-time administrative costs plus $352 million a year in ongoing costs. The total cost of Bill S-3 as amended by the Senate is expected to be about $71 million in one-time administrative costs plus $407 million a year in ongoing costs. The full annual costs will not be realized until all eligible persons are registered, which will take many years.

Table 5-6 Total Cost of S-3

S-3 Version	Registrants		Current Residents on Reserves		Migrants		Admin	Total($M)
	#	Cost ($M/y)	#	Cost ($M/y)	#	Cost ($M/y)	Cost ($M)	
Initial/ House	31,500	$41	6,971	$2	630	$12	$19 M	$19 M $55 M/y
Senate	+268,180	+$352	+0	+$0	+0	+$0	+$52 M	+ $52 M + $352 M/y
Total	299,680	$392	6,971	$2	630	$12	$71 M	$71 M $407 M/y

Source: Parliamentary Budget Officer.

Notes

1. Where possible, this paper uses the term Aboriginal, First Nations, Métis, or Inuit as applicable. The term "Indian" is only used to refer to the legal status conferred by the *Indian Act*.
2. Descheneaux c. Canada (Procureur Général), 2015 QCCS 3555 at paras 7-9.
3. Senate Standing Committee on Aboriginal Peoples, 6th Report of the Committee, 20 May 2017.
4. House of Comments Standing Committee on Indigenous and Northern Affairs, 8th Report of the Committee, 16 June 2017.
5. Library of Parliament, *Indian Status and Band Membership Issues*, February 2003, section B.2.
6. Background First Nations Statistics provided by Indigenous and Northern Affairs Canada in November 2017.
7. First Nations have generally adopted rules which require one or two parents who are a member or require a ½ or ¼ blood quantum. They may or may not require that a parent be registered. See Stewart Clatworthy, *Indian Registration, Membership and Population Change in First Nations Communities*, February 2005, Table 2.
8. INAC Response to PBO IR0293, 11 July 2017.
9. Carolyn Bennett Minister of Indigenous and Northern Affairs, appearing before the Standing Senate Committee on Aboriginal Peoples, Issue 22 - Evidence - May 16, 2017 (afternoon meeting).
10. Senate, Sessional Paper No. 1/42-1689, 11 November 2017.
11. *Ibid* at 16.
12. *Supra* note 9 at 27-28.
13. Statistics Canada, *2016 Census Data Tables*, Catalogue no. 98-400-X2016167 and 98-400-X2016155.
14. INAC Response to PBO IR0293, 11 July 2017.
15. Stewart Clatworthy, Indian Registration, Membership and Population Change in First Nations Communities, February 2005, p. 17.
16. Statistics Canada, *Aboriginal peoples in Canada: Key results from the 2016 Census*, 25 October 2017.
17. Background First Nations Statistics provided by Indigenous and Northern Affairs Canada in November 2017..
18. *Ibid* at "Note to Users".

19. INAC, *Aboriginal Demographics from the 2011 National Household Survey*, June 2013.

20. Statistics Canada, Estimated population undercoverage rates and standard errors for Canada, provinces and territories, 2006 and 2011 Censuses, December 2015.

21. INAC Response to PBO IR0293 (11 July 2017).

22. Library of Parliament, *Indian Status and Band Membership Issues*, February 1996, revised February 2003.

23. Stewart Clatworthy, *Re-assessing the Population Impacts of Bill C-31*, February 2001.

24. Library of Parliament, *Legislative Summary of Bill S-3: An Act to amend the Indian Act (elimination of sex based inequities in registration)*, February 2017.

25. Statistics Canada, 2016 Census of Population, Catalogue no. 98-400-X2016164.

26. Anishinaabe would include more specific responses indicating Anishinaabe ancestry. Some smaller specific First Nations may not be captured in Statistics Canada's classification, resulting them being miscounted as not associating with a particular First Nations ancestry for the purposes of these figures.

27. Statistics Canada, 2016 Census of Population, Statistics Canada Catalogue no. 98-400-X2016167.

28. Residential Schools Settlement, *Detailed Notice*.

29. Indigenous and Northern Affairs Canada, Statistics on the Implementation of the Indian Residential Schools Settlement Agreement, June 2017.

30. United States Department of the Interior: Indian Affairs, *Tribal Enrollment Process*, October 2017

31. Benefits.gov, *American Indian/Alaska Native*, October 2017; Benefits.gov, *Urban Indian Health Program*, October 2017.

32. Russell Thornton, *Tribal Membership Requirements and the Demography of "Old" and "New" Native Americans*, 1996, Table 5-1

33. United States Department of the Interior: Indian Affairs, *Frequently Asked Questions*, October 2017.

34. Senate of Canada, The People Who Own Themselves: Recognition of Métis Identity in Canada, 2013, p. 34.

35. Richard Shillington and Tristat Resources, Financial Literacy and the Take-up of Government Benefits, 2011.

36. Virginia Hernanz, Franck Malherbet and Michele Pellizzari, *Take-up of Welfare Benefits in OECD Countries: A Review of the Evidence*, March 2004.

37. INAC, *Aboriginal Migration and Urbanization in Canada, 1961-2006*, 2013.

38. Stewart Clatworthy, *The Migration and Mobility Patterns of Canada's Aboriginal Population*, February 1995, p. 71. The increase of 9.7% calculated

as the net migration to reserves in the population (2,005) divided by the population already residing on reserve (20,760).

39. *Ibid*, p. 12
40. Statistics Canada, *Aboriginal Peoples: Fact Sheet for Canada*, November 2015.
41. Assembly of First Nations, *Fact Sheet – First Nations Housing On-Reserve*, June 2013.
42. Health Canada, *2015-16 – Departmental Performance Report*, Program 3.2: Supplementary Health Benefits for First Nations and Inuit.
43. Office of the Prime Minister of Canada, Minister of Indigenous Services Mandate Letter, 4 October 2017.
44. Statistics Canada, 2016 Census Data Tables, Catalogue no. 98-400-X2016155.
45. *Ibid*.
46. Office of the Parliamentary Budget Officer, Federal Cost of a National Pharmacare Program, September 2017.
47. Health Canada, Non-Insured Health Benefits Program Update, March 2017.
48. Statistics Canada. CANSIM Table 203-0021 - Survey of household spending (SHS), household spending, Canada, regions and provinces, annual (dollars).
49. Institute on Governance, Evaluation of the Government of Canada's Post-Secondary Scholarship Fund , November 2013, p 17, 18.
50. *Ibid*, p 28.
51. *Indian Act*, RSC 1985, c I-5, section 87.
52. Canada Revenue Agency, GST/HST and indigenous peoples, 2 November 2017.
53. Costs consists of community infrastructure investments and program expenditures, social benefits and tax expenditures.
54. Cost consists solely of tax expenditure.
55. INAC Response to PBO IR0293, 11 July 2017.
56. INAC Response to PBO IR0293, 11 July 2017.