

# Wills and Estates Research Project

On-the-ground realities of the  
Estate process for First Nation  
individuals living on-reserve:  
data analysis



The First Nations Lands Managers Association for Quebec and Labrador is a bilingual, non-profit, non-political organization whose mission is to unite and assist its members and Indigenous communities to exchange knowledge, ideas, and expertise in all areas of Land Management while incorporating our traditional values, beliefs and practices.





# Vision

All Quebec and Labrador Indigenous communities are empowered in autonomously managing their land.

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# Topics Discussed



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Introduction

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Methodology and limitations of project

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Participants

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What is expected from and by estate liaison officers

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Process: From the Death of an Individual to the appointment of an administrator

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Administering and transferring the estate: not a steady process across Canada

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Interactions between ELOs\* and ISC

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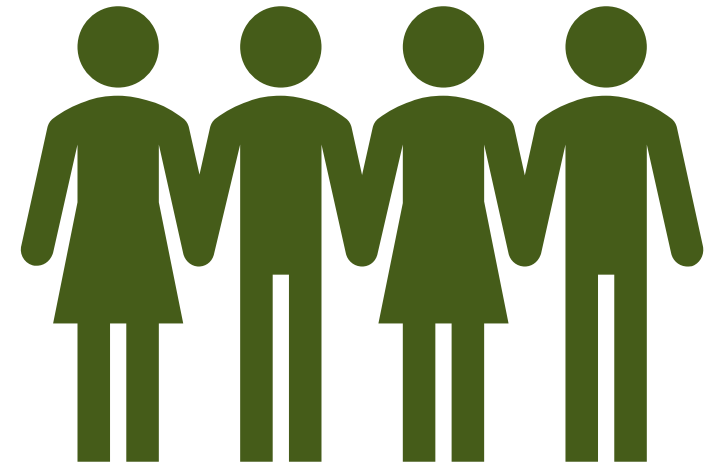
Training

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Recommendations

# Introduction

- Concerns raised by FNLMAQL members Over the last two years;
- Lack of understanding of the realities of community employees who assist individuals with various steps of the wills and estates process;
- Mandated by the Board of Directors
- Survey of realities on-the-ground, needs assessment



# Purpose

The overarching goal is to improve wills and estates services offered to FN individuals

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## CLARIFY

the roles, responsibilities and procedures involved in the Estate process;



## IDENTIFY

any disparities between the Estate process legal requirements and on-the-ground practices



## DETECT

any potential gaps in service



## RECOMMEND

Actions and approaches to improve practical on-the-ground wills and estates process

# Objectives

- identify the roles and responsibilities of ELOs across Canada;
- determine the current practice surrounding wills (writing, searches etc.);
- evaluate the interactions between the various actors involved in the Estate process;
- acknowledge disparities between on-the-ground practices and responsibilities as defined under the Indian Act;
- identify the main issues/challenges faced by ELOs;
- detect any potential gaps in services;
- propose ways to close potential gaps in service and suggest other ways to improve the administration of the Estate process.



It is important to note that:

- this research was done in good faith to help improve the wills and estates process on-reserve in Quebec
- The Project does not constitute a formal consultation
- even though recommendations are included herein, it is important to emphasize that a one-size-fits-all approach to FN communities regarding these topics is not recommended



# Methodology

Surveys

(Fall 2020)

Research

(Summer 2021)

Analysis

Report and  
Recommendations

Phase 1

- Survey (Fall 2020)

Phase 2

- Research Summer 2021
  - Discussion with FNLMAQL project team
  - Interviews with Estate Liaison Officers across Canada and other employees
- Interviews with ISC representatives
- Contextual literature review/research
- Analysis
- Report and Recommendations

# Limitations

- Small sample size
- Voluntary reporting
- Self-reporting

Even though there are limitations, the data collected reflects reality

- Consistency over time / phase
- Essential concerns raised significantly within sample
- Still points to significant parts of the realities of on-the-ground wills and estates process
- Information serves well as a starting off point, at the very least



# Participants



# Participants

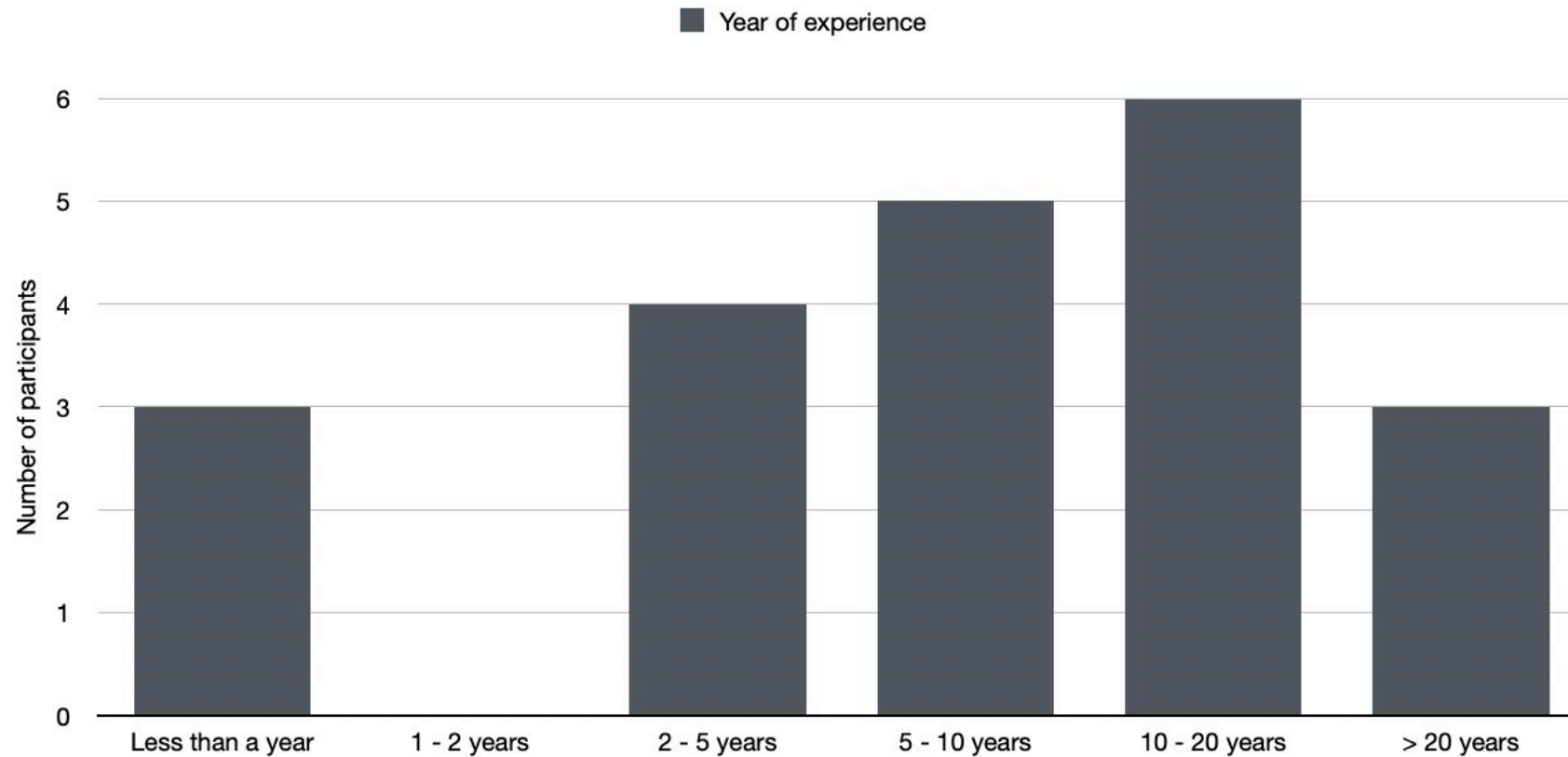
- Participants were invited to participate from across Canada (contacted through RLAs)
- Support NALMA's mission
- Share information with RLAs
- Focus on Quebec
- Point of comparison for Quebec processes



# Participants

- 21 participants
- Various titles
- Include 2 individual employed by their organizations to work solely on estates-related issues
- Total feedback from 19 communities
- 10 ELOs are in Quebec
- 6 ELOs are in Ontario
- 3 ELOs are in British-Colombia
- 1 ELO is in New Brunswick
- 1 ELO is in Nova Scotia

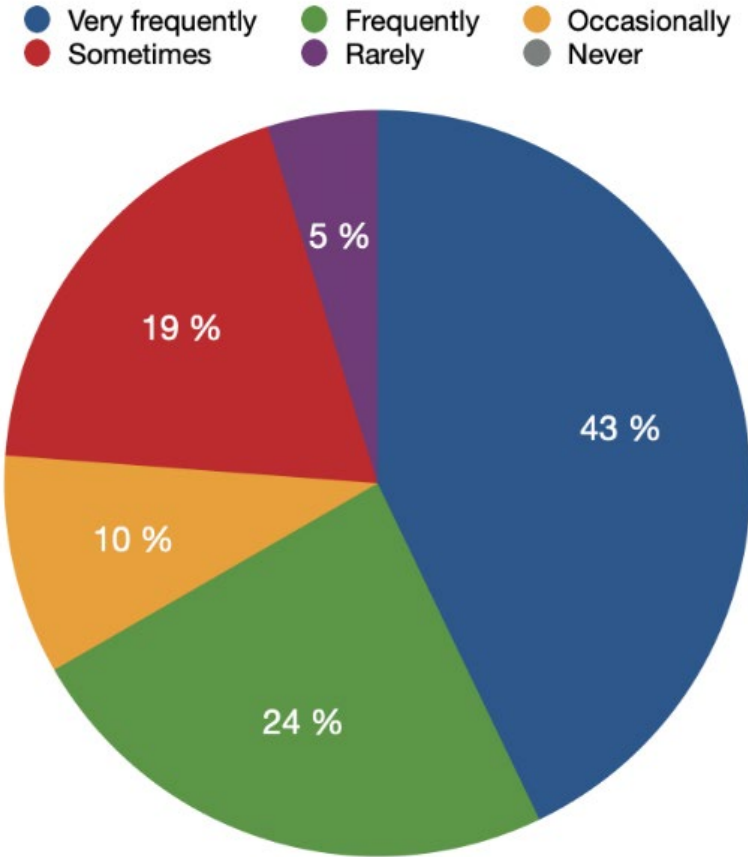
# Profiles of Participants



*Figure 1: How long have you been involved in the Estate process?*



# Frequency of work related to Wills and Estates

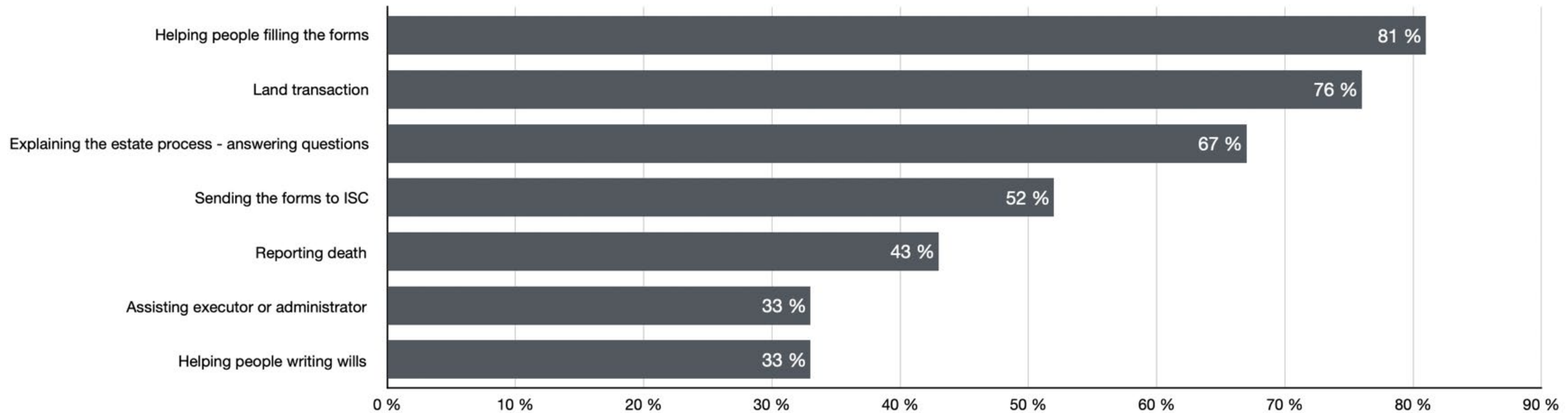


*Figure 2: How frequently do you undertake tasks related to Wills and Estates?*

What is expected  
from and by estate  
liaison officers



# Roles Participants report regarding Wills and Estates Process



*Figure 3: Activities surrounding the Estate process done by ELOs*

# Roles and Responsibilities

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- Vary across Canada
  - Forms;
  - Locating heirs,
  - Assistance in drafting wills;
  - Land transactions;
  - Assisting administrator or Executor;
  - etc.
- Can be a significant amount of work
- Lack of accessible services, legal or otherwise, mean individuals seek out the services of ELOs





“These are family members; they are our cousins and people of our community, so for sure we are going to help them even if we do not have sufficient resources! ISC is taking advantage of that community love to get the job done without assisting and funding it properly (...) That’s why we have to help as land managers, otherwise no one would do it.”



# Legal Risk

- Legal concerns regarding helping with drafting wills;
- Refraining from sharing their knowledge due to liability issues was a recurring issues when helping individuals:
  - “Every time I answer a person I engage a professional responsibility, and as a member of the community having knowledge regarding estates, I would not see myself refusing to help people. »
- On the other hand, some ELOs advise seeking legal counsel or direct the individual to ISC when appropriate.

# Areas of improvement

- Funding for ELOs can be a key way to support communities who choose to offer this service be sustainable;
- Funding ELOs would support the smooth running of estates files, encourage settlement of outstanding estates, encourage more outreach on reserve on these topics;
- Need for clarification from ISC regarding ELOs roles and responsibilities, while prioritizing the realities in communities.
  - Even though ISC does not officially seek help from ELOs, the services are sought and more accessible with many ELOs;
- If responsibilities are officially transferred, it must be after consultation and collaboration with stakeholders, consent from the communities, and appropriate resources (funding and training) to support the additional work.





“It is inevitable,  
people have  
questions and  
we’re going to  
help them.”

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# Recognition of Work

The recognition of the work undertaken at the community level to support the Estate Process does not in and of itself transfer in these responsibilities.

Recognition of work is important (including assistance writing wills), but should also translate to practical support and adequate resources.

**Process: From the Death of an Individual to the appointment of an administrator**





# Wills



General practices in FN  
communities



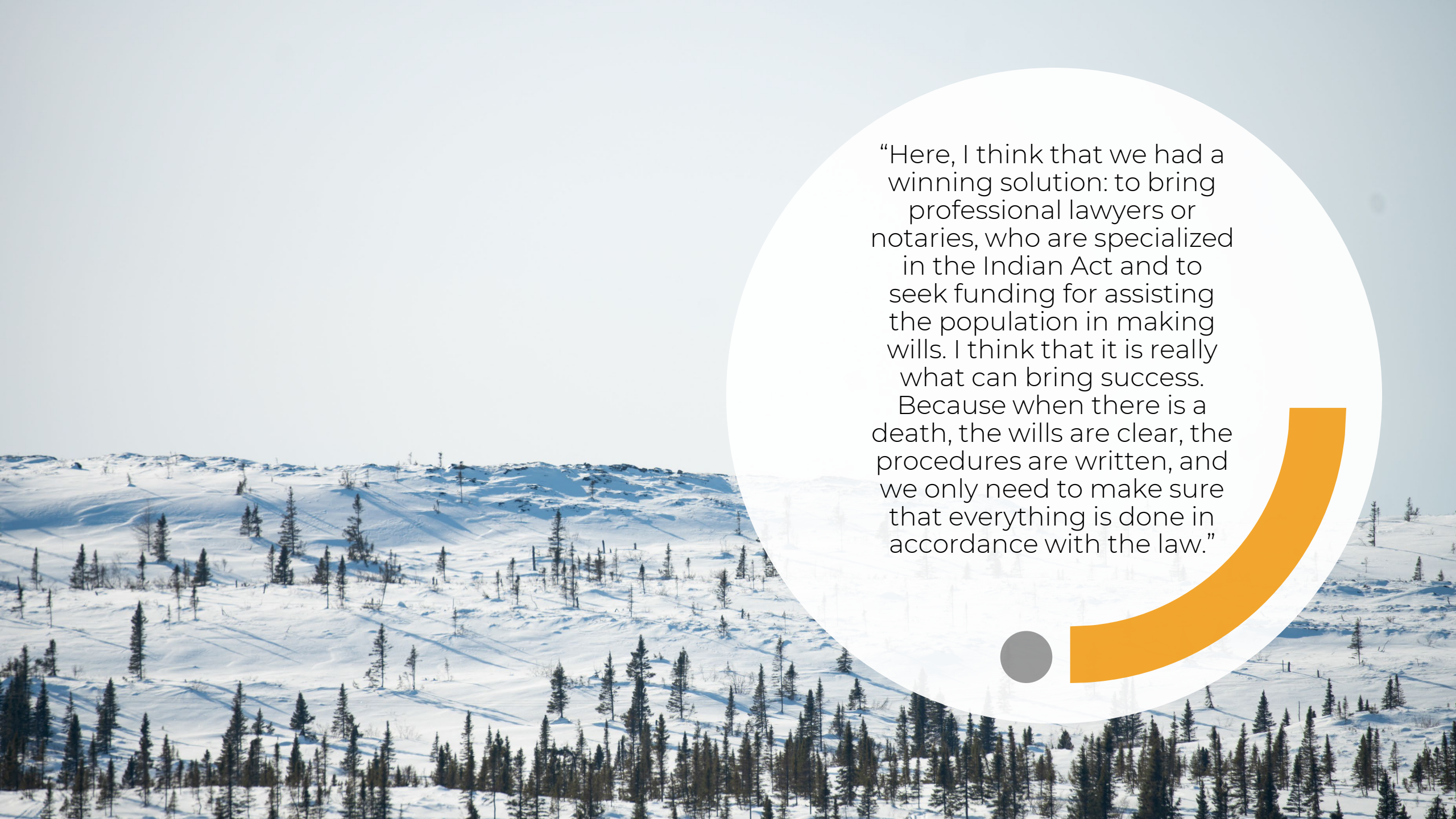
Appointment of administrator  
– a lengthy process



Will Searches in Quebec

# When there is no will

- More time to identify the heirs and administrators
- More coordination between departments (Membership and Lands, for example)
- In some communities, the practice of writing wills is increasing, however this data may be due to the sample that was interviewed.

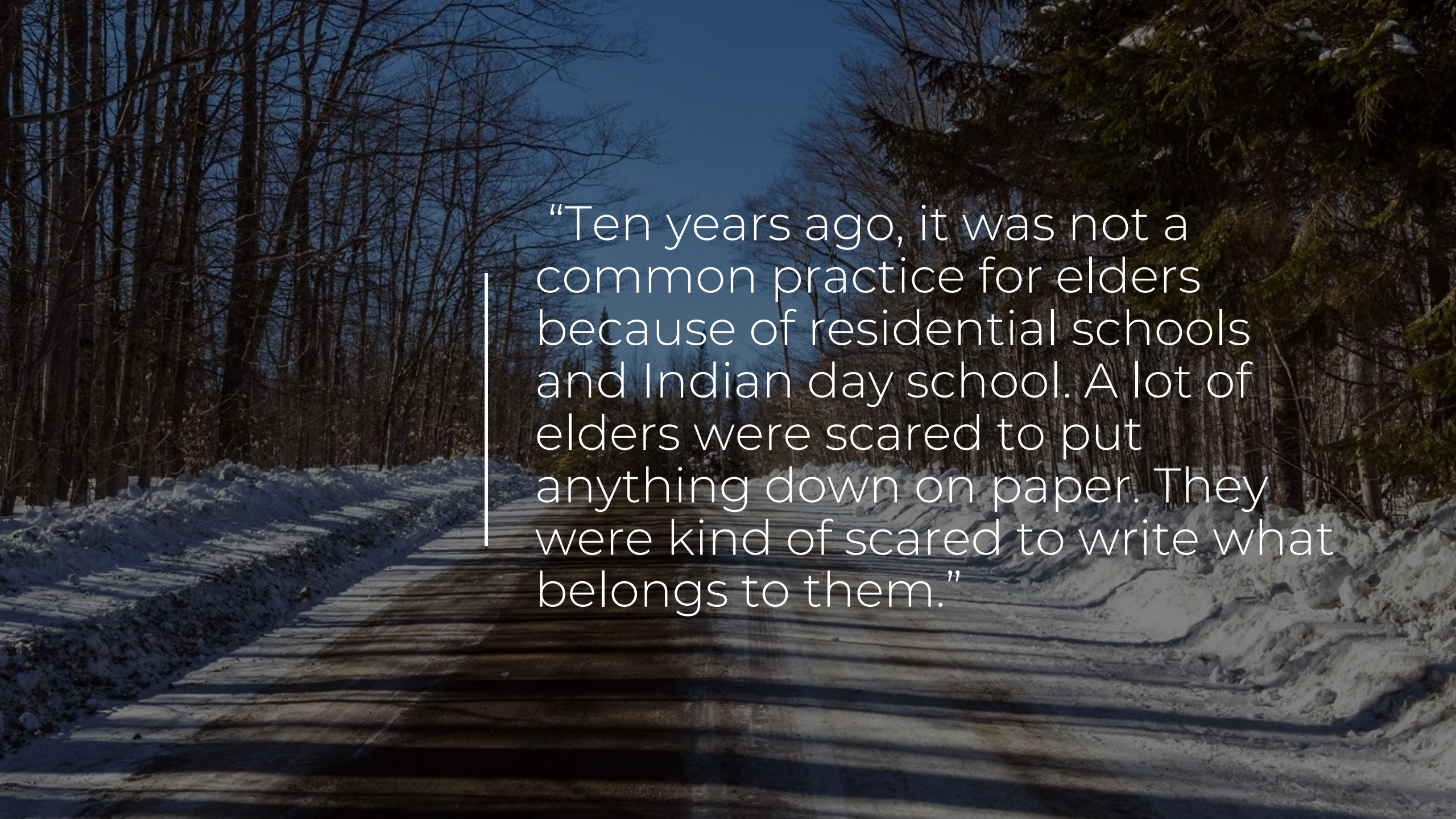


“Here, I think that we had a winning solution: to bring professional lawyers or notaries, who are specialized in the Indian Act and to seek funding for assisting the population in making wills. I think that it is really what can bring success. Because when there is a death, the wills are clear, the procedures are written, and we only need to make sure that everything is done in accordance with the law.”

# When there is no will

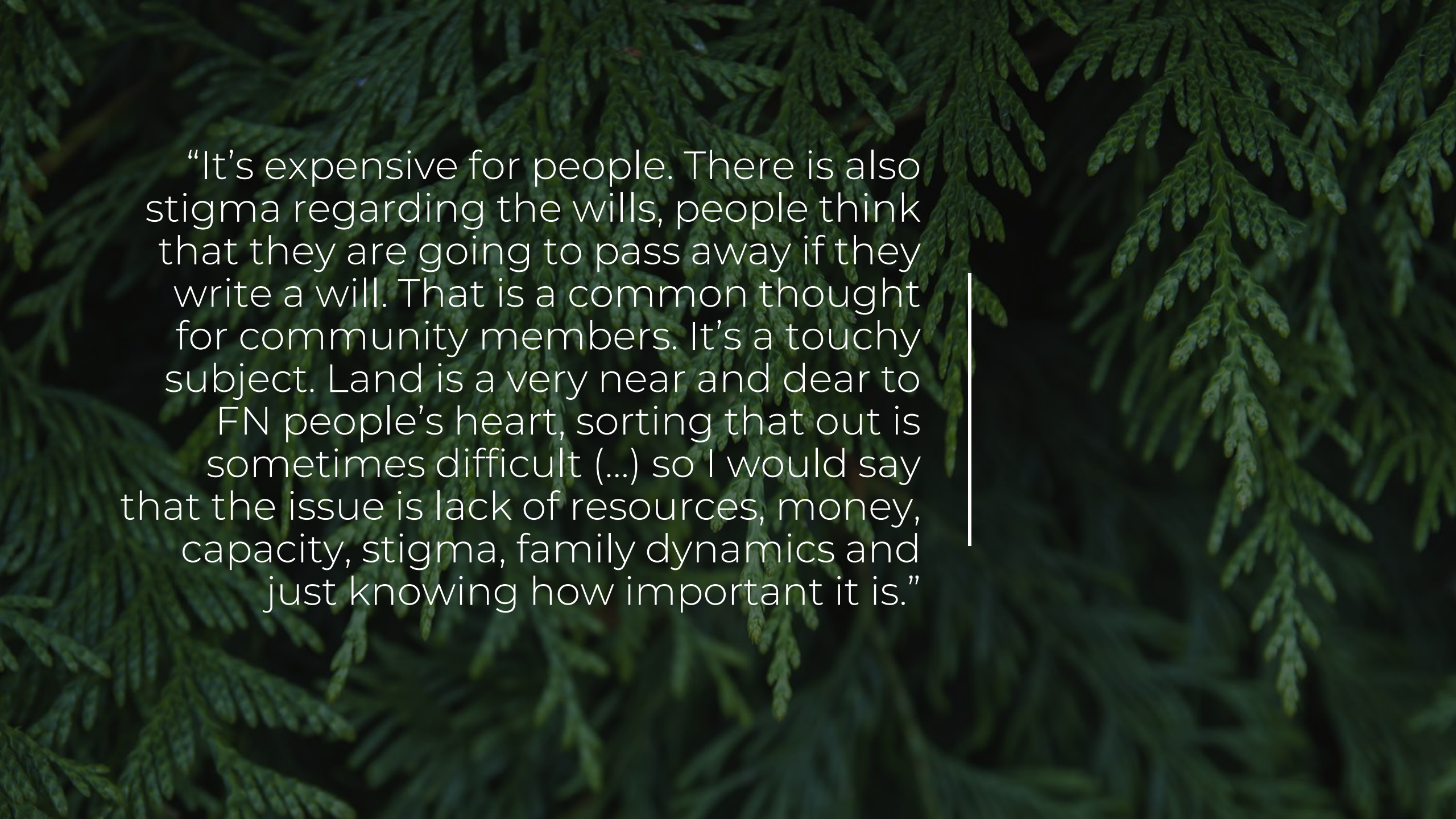
- Can be due to costs involved;
- Can be due to literacy or other language barrier;
- Can be due to not understanding why a will is important;
- Can be due to cultural reasons deeply inbedded in history.



A photograph of a snow-covered path in a forest. The path is made of wooden planks and leads into the distance. On the right side, there are evergreen trees with snow on their branches. On the left side, there are bare deciduous trees. The sky is a clear, pale blue. The text is overlaid on the right side of the image, enclosed in a white vertical line on the left.

“Ten years ago, it was not a common practice for elders because of residential schools and Indian day school. A lot of elders were scared to put anything down on paper. They were kind of scared to write what belongs to them.”





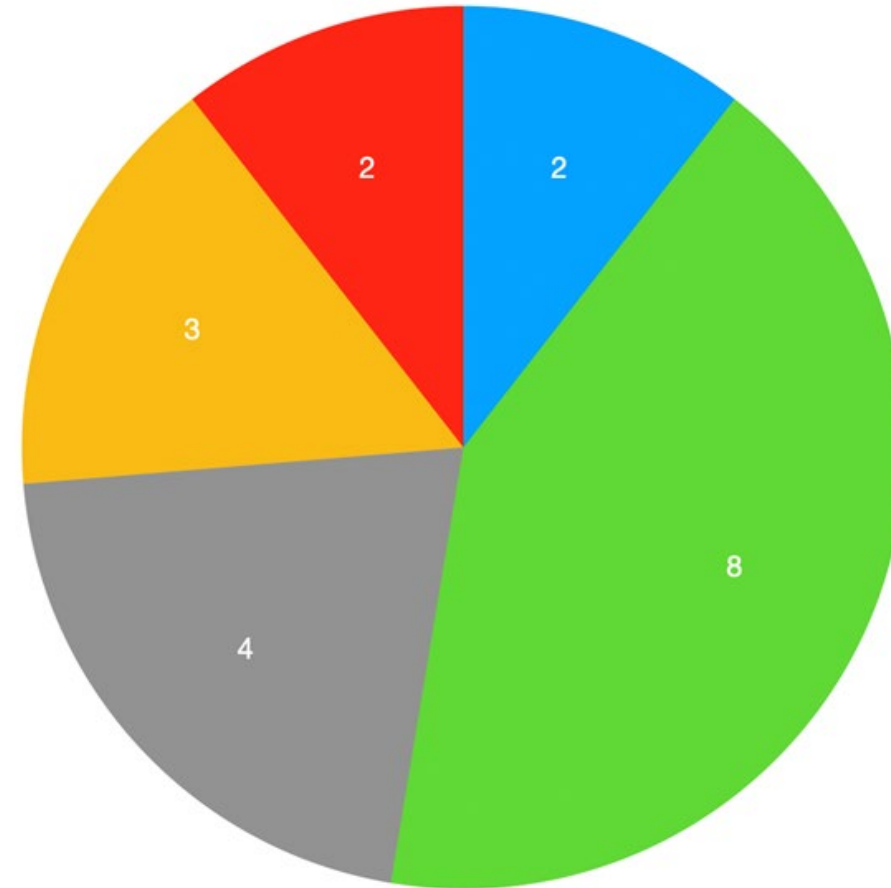
“It’s expensive for people. There is also stigma regarding the wills, people think that they are going to pass away if they write a will. That is a common thought for community members. It’s a touchy subject. Land is a very near and dear to FN people’s heart, sorting that out is sometimes difficult (...) so I would say that the issue is lack of resources, money, capacity, stigma, family dynamics and just knowing how important it is.”



# Wills Storage and searches

● Band ● Home ● Band and Home ● Home and Bank ● Don't know - wills are always registered

- Across Canada, respondents stated that if individuals have wills they are stored in the following places most commonly:



*Figure 9: Where do members of your community keep their unregistered wills ?*

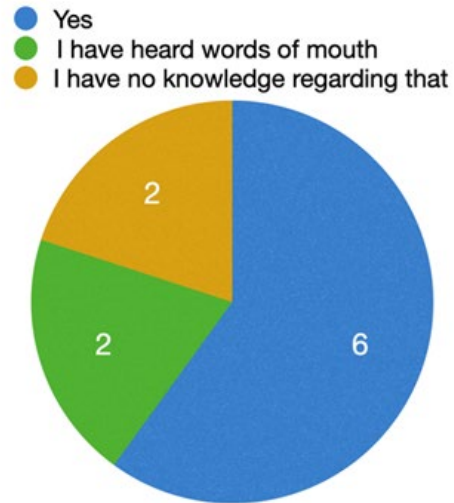
# Wills Storage and searches

- Few minutes
- Few days to one week
- Few weeks - within a month
- Few months
- I can't say - it depends



*Figure 10: Time for finding the will in effect*

# Wills Searches



*Figure 11: Has Québec ever been involved in the wills search process?*

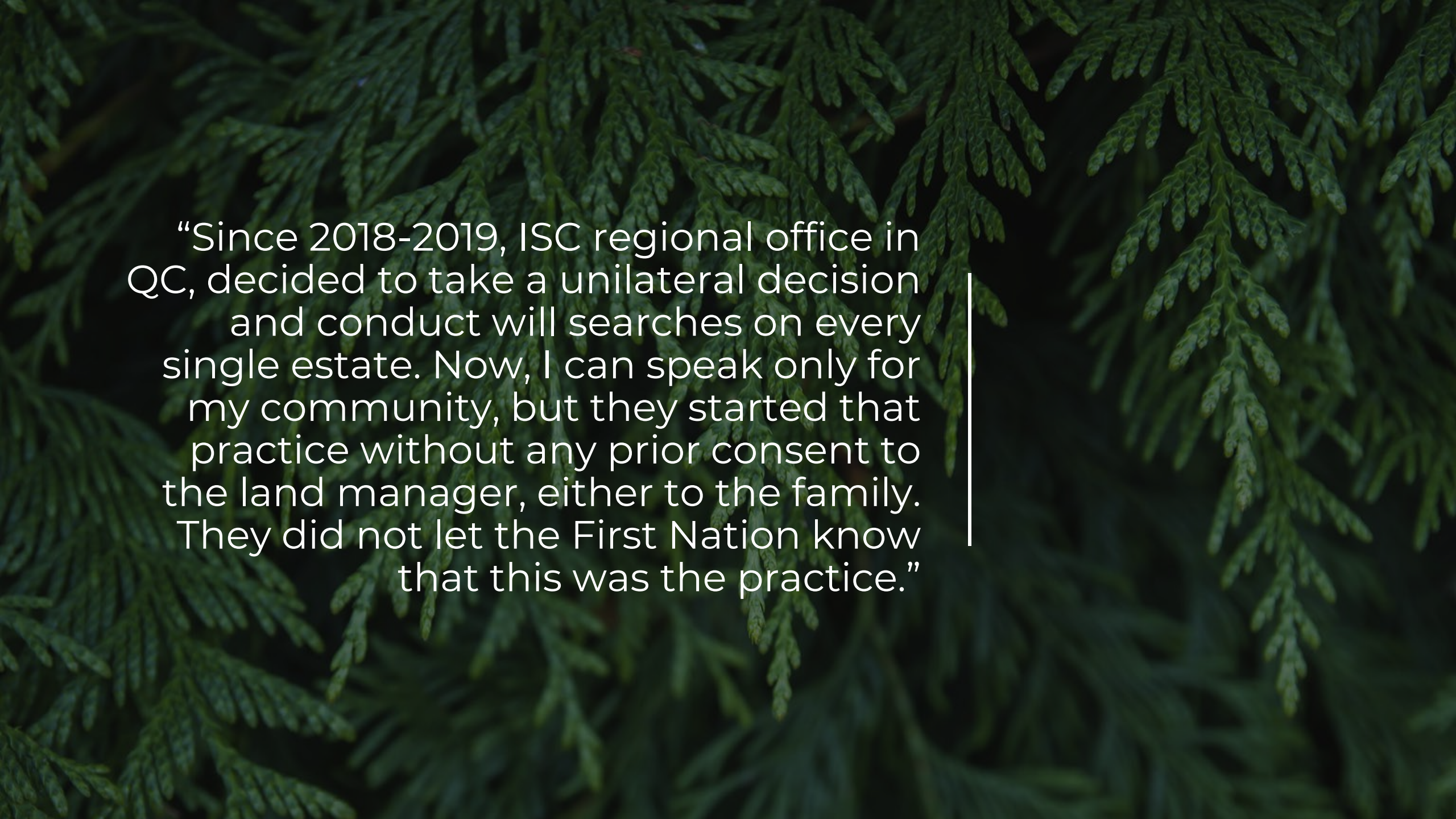
“It’s time-consuming to be waiting for the will search, and sometimes people do not have that amount of time, especially with the Indian day school fund that came out. For the residential one, ISC does not give you a lot of time especially for a will search.”

# Quebec Concerns

- Mandatory will search policy not being developed in consultation, no communication on the matter to stakeholders;
- Chambre des notaires and Barreau du Quebec under Civil Code, overstepping into federal jurisdiction;







“Since 2018-2019, ISC regional office in QC, decided to take a unilateral decision and conduct will searches on every single estate. Now, I can speak only for my community, but they started that practice without any prior consent to the land manager, either to the family. They did not let the First Nation know that this was the practice.”

# Areas of improvement

- The Association understands the legal and fiduciary duty of ISC, as well as the attempt to correct past errors;
- Changing processes without consultation or informing stakeholders does not support an efficient, fair or human intervention;
- When discovering an error or flaw in process, it would be beneficial to all parties and ensure the most successful implementation of a new process if stakeholders were consulted and kept in the loop.



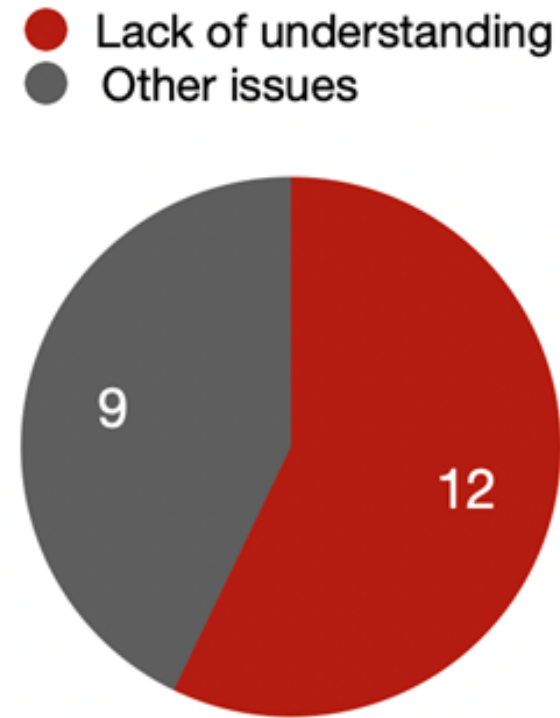
**ADMINISTERING AND  
TRANSFERRING THE ESTATE:  
NOT A STEADY PROCESS  
ACROSS CANADA**



## Transferring the Estate – Administrator’s Role

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“They don’t know what to do when there is no will. They need to be educated on what their roles are, a lot of don’t know, that’s the big issue here – they are lost.”



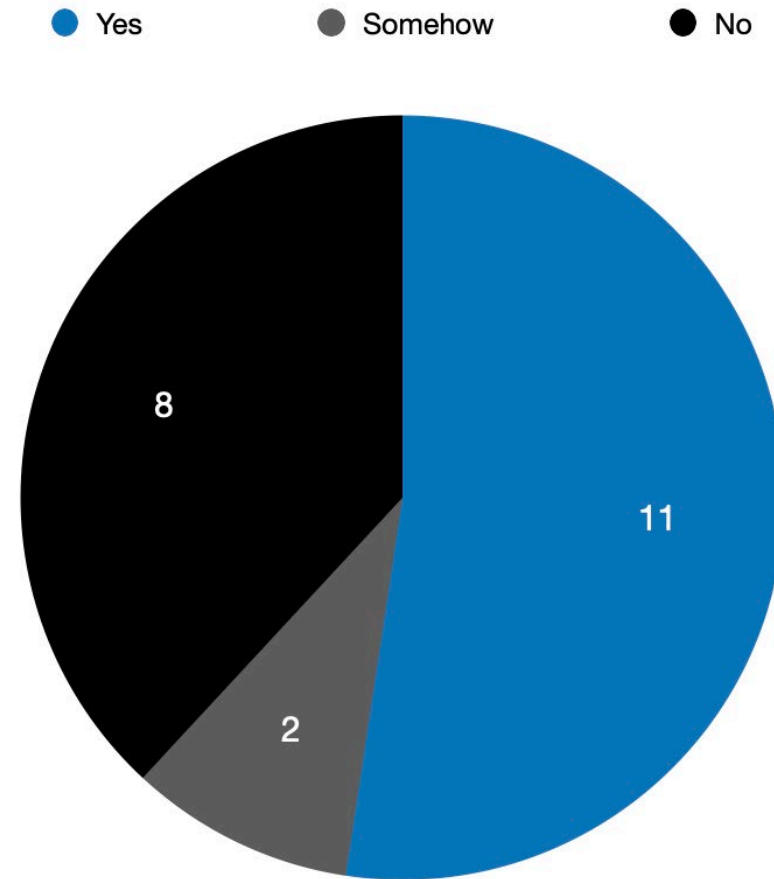
*Figure 13: Common issues faced by the Executor or administrator*

“The person needs to have a lot of administrative skills, and it’s hard work for administering an estate. (...) I found out it personally difficult to administer an estate without a will, and even with a will, some people say: ‘I can’t do it’, because there is no assistance anywhere and there are no lawyers. Our office was the one assisting them, and not all FNs have these kinds of services for helping individuals dealing with estates.”



## Transferring the Estate – ISC Roles and Responsibilities

”No, not all the time. We know legally what they require, what they are expected to do, but like I said: it varies over the year. When a new agent is appointed, he lays down new procedures and new processes while it might fail totally.”



*Figure 15: Are the responsibilities of ISC regarding the Estate process clear to you?*

# Concerns during Process

- Individuals have little knowledge about the process and require a lot of support;
- Complexity of forms;
- Services accessed at ISC are not consistent among ELOs and administrators seeking service (different information, different levels of service)



# Areas of improvement

Creating more accessible informational material (step-by-step guides)

- A new desktop guide, quick reference booklet including a checklist system;
- Having more user-friendly forms and having them be accessible (easy to find)
- Having more visual material (graphics, videos) to address some accessibility issues
- Consistency, reliability of information from staff

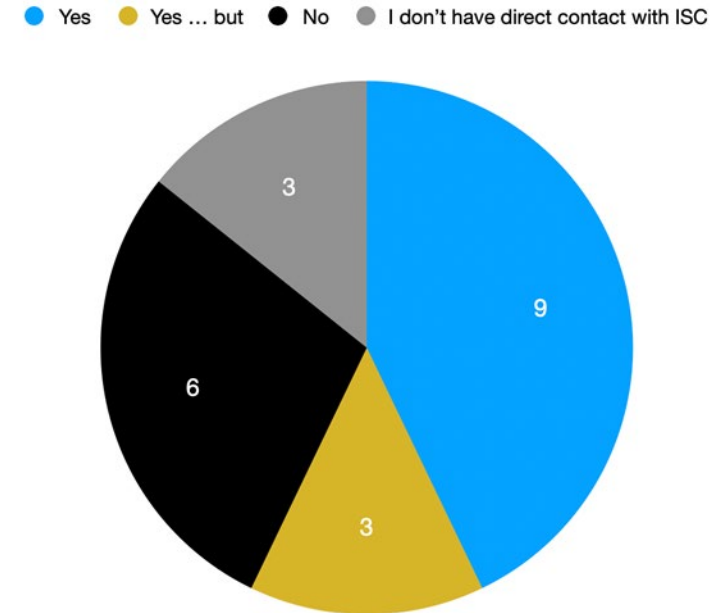


**INTERACTIONS BETWEEN  
ESTATES LIAISON OFFICERS  
AND INDIGENOUS SERVICES  
CANADA**



# Communications

- Quality & consistency
- Quebec-specific issues
  - Exclusion of ELOs from the estate process from ISC's side
  - No consistent line of communication: generic email and timing
- Towards better communication




*Figure 16: Are responses provided clearly and comprehensively and within a reasonable timeframe based on the nature of the request?*

# Satisfaction of Services and Communications

- Comparison between QC and ON regarding ISC assistance and resolution of challenges
- Overall indication mirrored in Phase 1 Survey
- Average across Canada is 7.5


<b>Total Average</b>	<b>7,5/10</b>
<b>Québec</b>	<b>5,5/10</b>
<b>Ontario</b>	<b>8/10</b>



# Types of responses and outcomes

Generally speaking, if the relationship and rating for support from ISC was high, the reported outcomes for assistance were higher as well.

*“The personnel of Indian Affairs are quite good for providing assistance when I asked. We try to speed up the process and have the individuals informed of the process.”*



# Types of responses and outcomes (cont)

Some of the responses that indicate a lower level of satisfaction with ISC response is related to:

- High turnover
- Not having the same point of contact for a file

*“The problem is the timeframe, the staff is rotated, staff retires. Sometimes they have difficulty in having someone in that position, so it would bring delays, and become challenging for our members to work with someone for resolving the estate. Sometimes it’s fast, sometimes it’s good, sometimes it [the file] sat there”*





## Summary regarding Communications

The satisfaction with service and assistance would likely improve with consistent, dedicated staff who are equipped and able to answer questions within a reasonable delay.

Being “on the same page” regarding services, specific files, and internal functioning would go a long way.



# Quebec-Specific Concerns

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Lack of flexibility: procedures manuals and personnel

*« If the intent is clear, they should go ahead (...) It does not make sense to stop everything just for a minor error. »*

Lack of access to information by ELOs

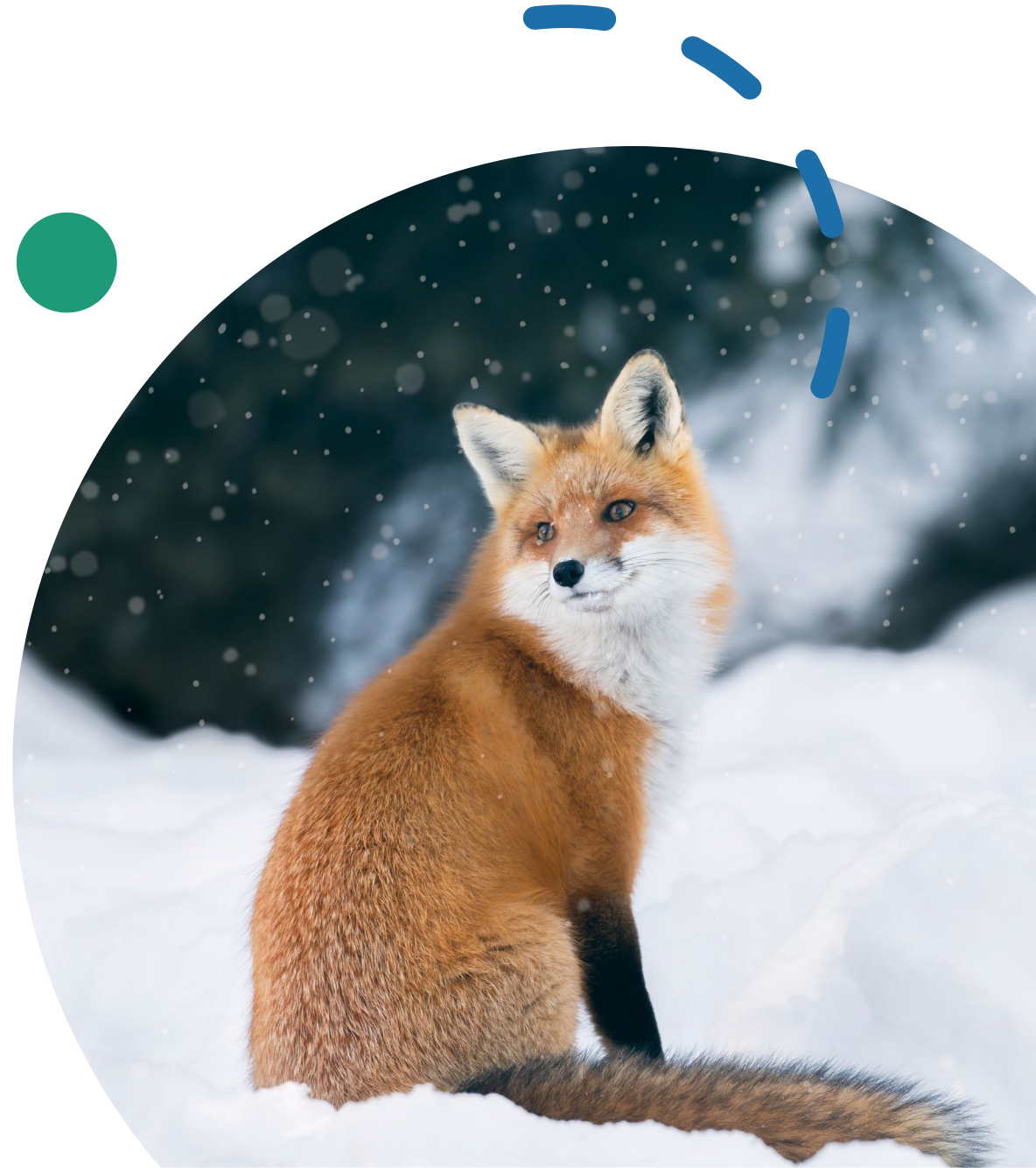
Recognition of the work of ELOs and granting access to information for files, as needed (if support is being asked of them from an individual)



“They follow the manual; however, a lot of the regulations and policies are vague, and subject to different interpretation. So, when a new agent is appointed, he would follow the document to the letter and consequently be stricter. So, the flexibility that we were used to with the previous agent working with us disappears because they switch the personnel frequently”



“For improving the communication, the communication needs first to be opened. Right now, there is no communication; I have to wait two to five days to get a business call.”





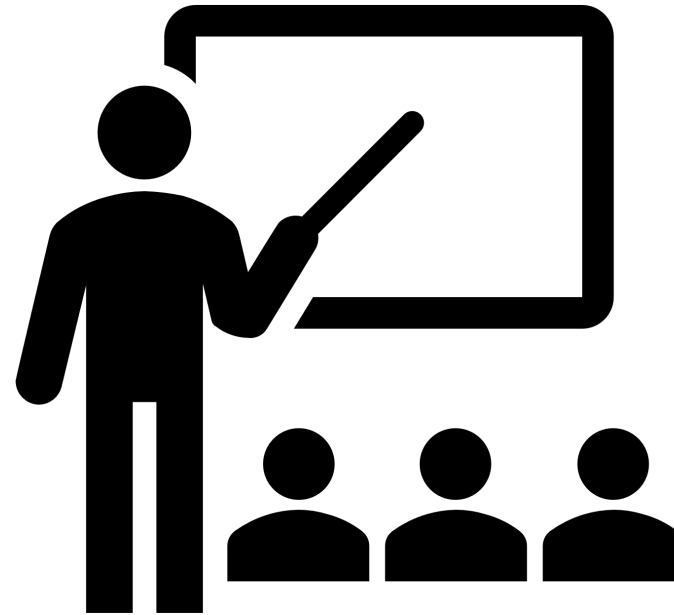
# TRAINING



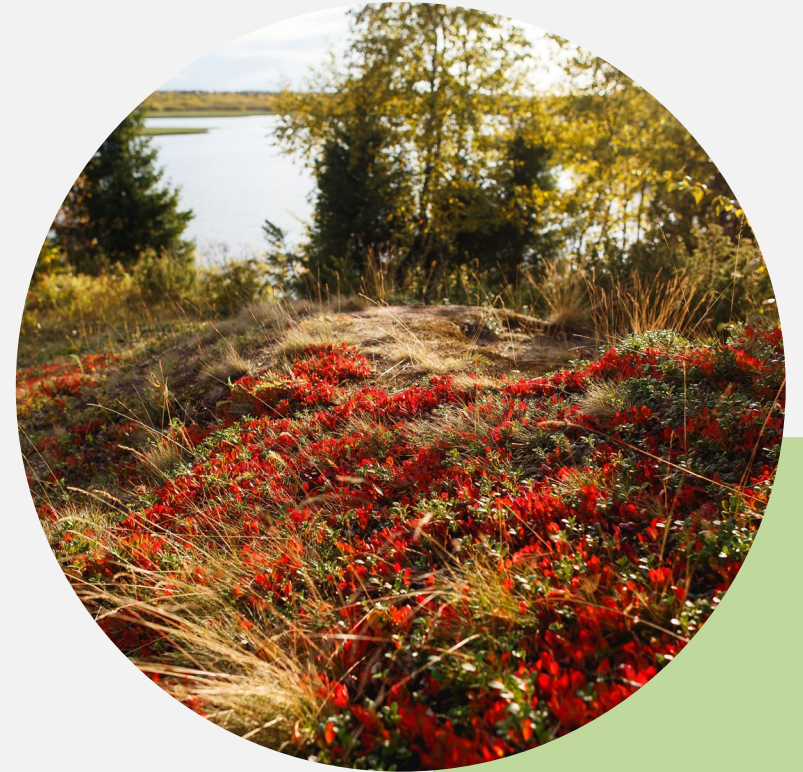


# Popular Education and Training

- Need for training for:
  - Community Employees dealing with wills and Estates
  - Popular education for individuals residing on-reserve
  - Consistent information coming from ISC representatives when
- Communication to ELOs regarding internal processes at ISC so that they can better support individuals



“We cannot receive the same training as people working at the department, however, this is that what we need. The more we understand their work, the better we can help them (...) It would be helpful to know how the regional office is coming to their determinations.”



# RECOMMENDATIONS



1

a working table, comprising representatives of the FNLMAQL, any QC FN community, ISC-HQ and ISC-Quebec Region, be established to:

- a) examine and prioritize the concerns with the Estate process in Quebec, using the present report as a guiding document *{see bullet (2) below for further information}*
- b) share ideas on how those concerns could be addressed in the short-, immediate- and long-terms;
- c) prepare a draft action plan that would be shared with all QC FNs that includes the outcomes of (a) and (b) and proposes a framework on how ISC-Quebec Region could engage with interested QC FNs, on an individual basis, to determine an approach to improve the administration of the Estate process that best suits their needs.

2

within the context of the foregoing recommendation, the Working Table prioritizes and addresses as a starting point the following concerns raised in the Research report:

- Roles and Responsibilities;
- Funding; and
- Training and Professional Development.





## Roles and Responsibilities

- i. clarify the fiduciary responsibilities of ISC in the Estate process and how they intersect with the application of the Civil Code of Quebec in various aspects of that process (i.e. will searches and storage);
- ii. seek a commitment from ISC to implement reasonable time limits for service and settling files, including re-opening files given the fast-approaching deadline of 13 July 2022 to submit claim applications to the federal Indian Day School settlement;
- iii. seek feedback from ISC regarding its position on the responsibilities of ELOs during the Estate process;
- iv. seek feedback from ISC regarding its position on the potential delegation of responsibilities to ELOs;



## Roles and Responsibilities (continued)

- i. establish a mechanism (possibly the Working Table) for including ELOs in ISC policy planning and changes related to the Estate process;
- ii. discuss the importance of having a designated ISC agent responsible for a community to ensure effective communication between parties (i.e., phone contact, e-mail);
- iii. seek a commitment from ISC to update its website and administrative forms on the Estate process to make them more user-friendly and have said forms accessible online.



## Funding

seek a commitment from ISC to secure ongoing funding to cover ELO responsibilities, the development and translation of culturally appropriate resources materials for FN members and annual workshops regarding the activities surrounding the Estate process;



## Training and Professional Development

- i. implement training for ELOs and yearly meetings with ISC to increase ELO capacities;
- ii. obtain a commitment from ISC to share procedural manuals with ELOs;
- iii. collaborate on the development of educational and training materials and workshops for FN members regarding the administration of the Estate process and discussing options for implementation.

# QUESTIONS AND DISCUSSION





# Thank you

## Contact Me

Questions, Feedback

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