



Special Research Project

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

for the First Nation Lands Managers Association for Québec and Labrador

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Abbreviations

CP	Certificate of possession
ELO	Estate Liaison Officer
FNLMAQL	First Nation Lands Managers Association for Québec and Labrador
FN	First Nation
ISC	Indigenous Services Canada
IRA	Indian Registration Administrator
MRP	Matrimonial Real Property
NALMA	National Aboriginal Lands Managers Association
OALA	Ontario Aboriginal Lands Association
RLEMP	Reserve Lands and Environment Management Program
1N, 2N (...)	1 participant, 2 participants (...)
1C, 2C (...)	1 community, 2 communities (...)
1QC, 2QC	1 participant from Québec, 2 participants from Québec

Introduction

The **FNLMAQL** is a regional non-profit, non-political organization whose mission is to unite and assist all members to exchange knowledge, ideas and expertise in all areas of Land Management while incorporating FN traditional values, beliefs and practices.

Over the last two years, the FNLMAQL has received feedback from its members regarding the wills and estates processes for **FNs** on-reserve in Quebec (the “**Estate process**”). Some of the feedback included concerns regarding the encroachment of the Civil Code of Quebec in the regional processes that should be solely under the *Indian Act* (especially during will searches), the absence of reasonable time delays for service and settling files, the need for additional and culturally relevant assistance with wills and estates, wills’ searches, and a lack of regular communication and consultation from **ISC**-Quebec Region about changes to the administration of the Estate process.

Some of the above concerns were raised in the context of the claims process for the federal Indian Day School settlement, which has an application deadline of 13 July 2022. For example, many estate files have been closed by ISC for persons who died on or after 31 July 2007 (eligibility date for settlement claimants) without identifying any representatives of the estate (executor, administrator or trustee). While the estates can be re-opened to appoint a representative, questions were raised about the process and the time delays for doing so.

After numerous discussions with ISC-Quebec Region, the FNLMAQL recognized that there are gaps between services offered within the Estates process and on-the-ground realities.

In good faith, and with the overarching goal to improving wills and estates services offered to FN individuals, the FNLMAQL decided to undertake a research project, open all FN members of NALMA, to identify more concretely the realities and needs of **ELOs** within the Estate Process, by:

- clarifying the roles, responsibilities and procedures involved in the Estate process;
- identifying any disparities between the Estate process legal requirements and on-the-ground practices; and
- identifying any potential gaps in service.

In this context, the data analysis (the “**research**”), which covers, among other items, the legal and on-the-ground realities of the Estate process, comprises an analysis of the results from the consultations that were undertaken with 21 individuals involved in the Estate process ¹ across 19 FN communities in Canada.

The objectives of the research are to:

- identify the roles and responsibilities of ELOs across Canada;
- determine the current practice surrounding wills (writing, searches etc.);

¹Given that the participants involved in the Estate process often occupy different employment positions within a particular organization, for ease of reference, the title “ELO” will be used herein.

- 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.

For a broader view of the on-the-ground realities, two interviews were also undertaken with five ISC representatives, comprising three Estate federal agents and two Land federal agents (“ISC representatives”).

Also, the results from the research will be supplemented by the results of the Wills & Estates Survey (“FNLMAQL Survey”) that was undertaken last year with 41 participants across the country.

It is hoped that the research will provide a better understanding and documentation of the situation faced by FN individuals and ELOs during the Estate process in Canada to assist the FNLMAQL in its efforts to encourage the provision of support and service to ELOs in Québec and across Canada.

That said, and 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. Each community should be able to determine what the best approach is for them. We are providing some recommendations based on observations and analysis, but they should not be forced on anyone. It is also noted that, while this research represents a preliminary step in a process aimed at improving the administration of the Estate process, it should not be considered as a consultation of participating FN communities, organizations or members.

Context and Methodology

Context – Phase 1: FNLMAQL Survey

In November 2020, the FNLMAQL designed a survey to gather input from ELOs across the country regarding Wills and Estates management within FNs (the “Survey”). The FNLMAQL then mandated Boreala Management to provide support in the deployment of the Survey, to analyze the data and to develop a report outlining key findings and recommendations for implementation.

The objectives of the Survey were to:

- 1) clarify the roles and tasks of persons responsible for wills and estates;
- 2) assess respondents' knowledge of wills and estates;
- 3) identify organizations that respondents contact for support and their reasons for doing so;
- 4) understand the roles and responsibilities of ISC in the Estate process and evaluate its effectiveness in carrying them out;

- 5) identify what training and additional support might be needed to help ELO's carry-out their roles and tasks.

The Survey was anonymous, with a total of 41 respondents.

Methodology – Phase 2: Research

Using the Survey results as a base document, the FNLMAQL mandated Atmacinta to design a questionnaire to gather more specific information regarding the management of the different phases of the Estate process (e.g., wills registration and search, the administration of the estate by the executor or administrator and land transactions), the roles and responsibilities of ISC, and as well as ELO training.

The collection of information was carried out by:

- a videoconference meeting with the FNLMAQL Executive Director and Board of Directors to draw up a portrait of the current situation faced by FN individuals during the Estate process;
- reviewing the FNLMAQL survey and existing documents pertinent to the Research; and
- holding one-on-one interviews by videoconference with FN and federal representatives involved in the Estate processes.

The interviews were carried out between August and September 2021. 21 ELOs and five ISC representatives participated in the process. Participant and community names are not used, and aside from identifying the geographic location of respondents (i.e. by province), the results are compiled into general themes, with the primary purpose of:

- 1) identifying the current on-the-ground challenges of the Estate process;
- 2) determining formal and informal roles and responsibilities of the Estate process' actors;
- 3) detecting any potential gaps in services;
- 4) recommending possible next steps to improve the administration of the Estates process.

Study Limitations / Opportunities

The primary limitations to the generalization of results obtained from the interviews are the small sample size and the differing ways that the Estate process is administered across the country.

That said, and after taking into account the practical nature of the concerns that arose during the interviews, we consider the points highlighted by the respondents to be representative of issues that are, or can be, encountered during the Estate process. We also maintain that interpreting the issues in this manner would not detract from the recommended discussions with ISC to improve the implementation of the Estate process. Doing so would serve as a useful starting point for those discussions and, if a

particular finding was determined to be too limiting in the context of possible policy discussions, it could be flagged and addressed in a different manner (for example, one that is more community specific).

Background Information (1)

In total, 21 **ELOs** participated in the research (phase 2).

19 are working as:

- *Lands Use Officer*
- *Lands Assistant*
- *Membership & Lands Manager*
- *Estates Trustee*
- *Land Manager*
- *Lands Officer*
- *Estates & Indian Registry Administrator*
- *Lands & Estates Administrator*
- *Land, Estates and Membership Manager*
- *General Manager of Land Management*
- *Registrar*
- *Land Officer*
- *Lands, Estates and Membership*
- *Lands, Estates and Membership*
- *Lands, Estates and Membership Clerk*
- *Directeur des terres et de l'habitation*
- *Executive Assistant*
- *Lands Coordinator*

2 other participants are working as:

- *Estate Coordinator and former land manager (policy level)*
- *Indian Day School Settlement Project Coordinator*

From 21 the participants:

- 10 ELOs are in Québec (“**QC**”)
- 6 ELOs are in Ontario (“**ON**”)
- 3 ELOs are in British-Colombia (“**BC**”)
- 1 ELO is in New Brunswick (“**NB**”)
- 1 ELO is in Nova Scotia (“**NS**”)

They represent a total of 19 communities from which:

- 9 are in QC
- 5 are in ON

- 3 are in BC
- 1 is in NB
- 1 is in NS

Background Information (2)

From the 21 ELOs participating in the research (phase 2), we find it interesting to have a first sense of the participant's degree of involvement in the Estate process by asking them introductory questions such as:

- (1) How long have you been involved in the Estate process?
- (2) How frequently do you undertake tasks related to Wills and Estates?

From the answers they provided (Figure 1):

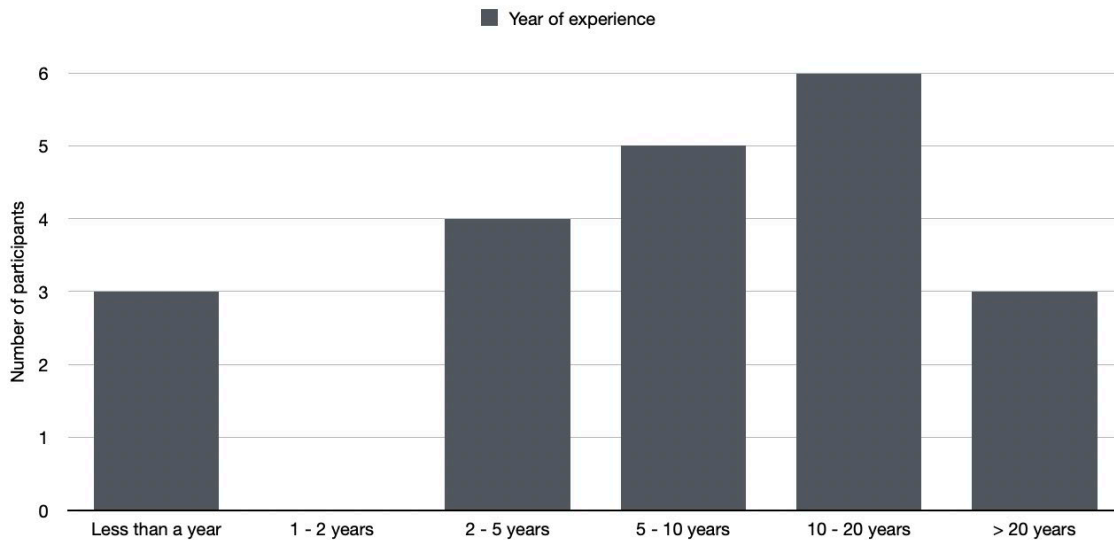


Figure 1: How long have you been involved in the Estate process?

- 7 ELOs have been involved in the Estate process at least for 5 years;
- 5 ELOs between 5 and 10 years; and
- 9 ELOs between 10 and more than 20 years.

In total, 67% of ELOs estimate undertaking tasks related to wills and estates from several times per month (frequently) to more than once a week or more (Figure 2).

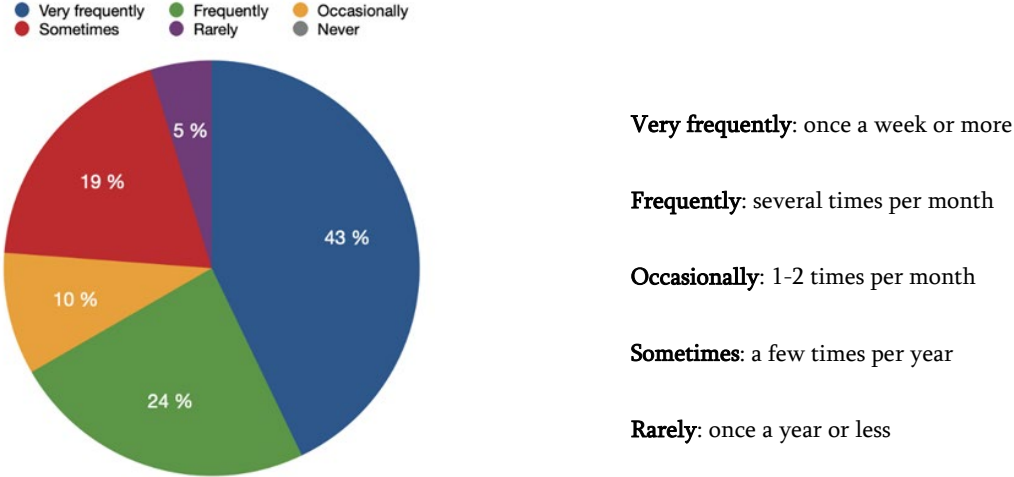


Figure 2: How frequently do you undertake tasks related to Wills and Estates?

Part I: What is expected from and by Estate Liaison Officers?

A. Roles and responsibilities across Canada

1. [From the answers of our participants](#)

« When someone dies, we are the first stop, it's always right from the beginning. » - (2N-QC)

Even though **14 ELOs** in the research (Phase 2) considered their involvement in the Estate process consistent, when asked which type of activities or day-to-day tasks they generally undertake, ELOs provided a total of 49 different answers. At first glance, one might think that the wide variety of answers could imply that ELOs' roles and responsibilities vary widely across the country; however, that does not seem to be the case. Most of the answers fit in the following activities summarized below (Figure 3):

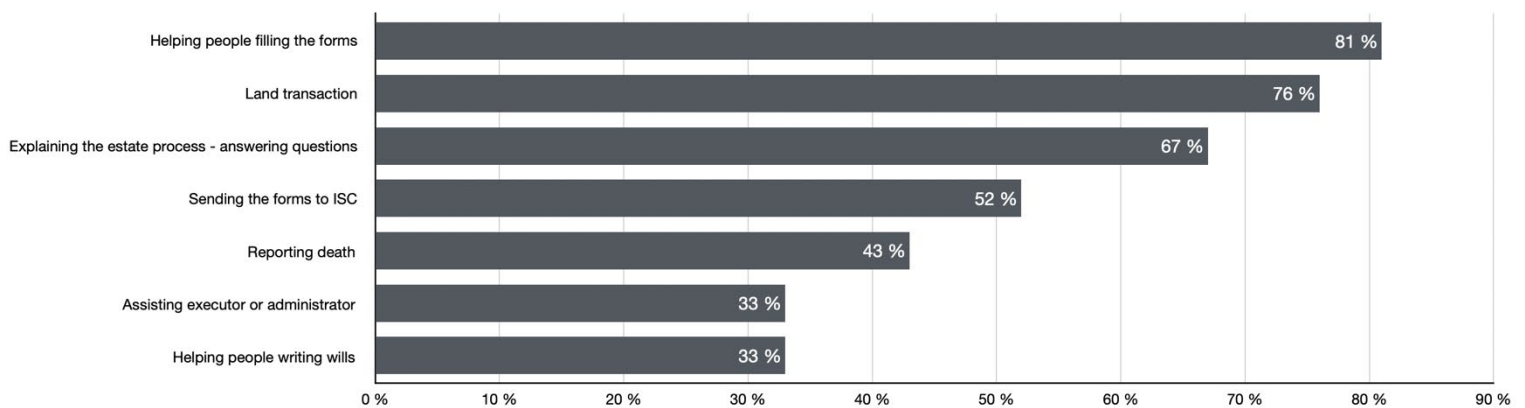


Figure 3: Activities surrounding the Estate process done by ELOs

Indeed, most ELOs across the country mentioned the administrative support given to individuals in filling ISC forms as their principal task. Part of this activity included assisting the executor or administrator to complete the application for administration and managing documents that families must send to ISC. Similarly, ELOs undertake the administrative tasks related to the documents that must be filed for land transfers. Also, ELOs would generally explain the estate process to the family members involved in the estate file by confirming, clarifying or managing their expectations, presenting the different choices, available to them in the process, informing them about their rights, and answering their questions.

Therefore, the roles and responsibilities mentioned by the participants closely match with the results of the FNLMAQL Survey (Phase 1), which revealed that the five tasks ELOs are asked to assist with the most are:

- Submitting documentation to ISC (**85%**)
- Explaining the wills and estate process (**85%**)
- Helping to complete forms and documentation to submit to ISC (**85%**)
- Writing wills (**72%**)
- Meeting with executors, administrators, beneficiaries, heirs, or other involved parties (**55%**)

Indeed, after an individual's death, most family members “do not know what to do” or “do not know where to start”. Some participants pointed out the general lack of understanding and information among their clients regarding the tasks, roles, and responsibilities that the executor or administrator supports. An ELO from Ontario also underlined that one difficulty for family members is “being put all that work without assistance while grieving”. Therefore, the role of an ELO mainly consists of assisting and helping the executor or administrator in the fulfillment of their responsibilities and being a liaison between FN members and ISC. One answer provided by a participant from Québec summarizes well the general understanding of ELO’s missions:

« After the death of someone, I explain them that first they have to call Indian Affairs to declare the death. I don't leave them by themselves, I tell them that once they have the papers, they can come back to me (...) Afterwards, I would help them. I check if the written information is in the right place and if everything matches. Then, I send back their papers and inform them that I am available if there are other questions. Often they would call me (...) » – (IN-QC)

2. A different degree of involvement in the Estate process

When looking at the tasks undertaken by ELOs, not many differences were observed across the country (Phase 2). Most ELOs fill ISC forms, complete land transactions, and explain all the Estate process to the FN members needing their assistance. However, some variations were identified between communities when it comes to the degree of involvement of the ELOs in the Estate process, which seems to be contingent on the community's needs, the services provided by ISC for the said community and the quality of communication between ELOs, families and ISC.

As an example, some are involved at the very beginning of the process – before the death of an individual – by helping individuals to prepare their wills and/or providing them with information about the Estate process:

« Often, I will take the time to explain the individual writing the will, what is going to happen to that document once he dies. I explain to him that it is important to choose a trustworthy executor who is willing to act; somebody who understands the responsibility of an administrator. » – (IN-QC)

In the other circumstances, some ELOs considered their role and their involvement in the activities surrounding the estates to be limited to facilitating the communication between FN members and ISC and filling out the forms that need to be submitted:

« My role in the Estate process is to facilitate the communication between the family and ISC. I don't take any larger role mostly because of the liability issue. Also, ISC told me to not provide advice because I am not a lawyer. So, my role is limited. » – (IN-ONT)

« When they do not have will, I refer them directly to ISC. However, for the one who do have will, I am more involved. I give them the proper form for appointing the administrator, and then they deal with ISC. I would say that I am a liaison between the band members and ISC. » – (IN-ONT)

Some ELOs even get involved in the deceased’s family dynamics and help members in the process of choosing an administrator if there is no will:

« When there is no will, I will be involved in the negotiation process of getting the family members to appoint somebody to administer the estate. » – (IN-QC)

Therefore, variations in the degree of ELOs' involvement in the Estate process show that multiple interpretations could be made regarding what is expected from them and emphasize a need for clarity regarding their roles and responsibilities. This necessity was underlined by several participants from Québec and will be explored in-depth through this research after analyzing general issues raised by participants from all over the country. Indeed, when speaking of the ELO position itself, one fact needs to be underlined: most ELOs are also involved in Lands and/or Membership Clerk departments.

3. Estates as one of the other responsibilities: the involvement of ELOs in Lands and Membership files

The FNLMAQL Survey (Phase 1) shows that approximately **60%** of the participating organizations have a designated employee or department to assist its members in the Estate process.

In addition to these results, the research (Phase 2) shows that even though ELOs are the designated employees for assisting members during the estate process, they are generally involved in other files such:

- Estates, Lands and Membership (**5N**)
- Estates and Lands (**3N**)
- Lands (**3N**)
- Membership (**1N**)
- Membership and Estates (**1N**)
- Membership and Lands (**4N**)
- Other (**3N**)

In fact, only **one out of the 21 ELOs** who participated in this study works full-time on the estate process, while the remainder undertakes duties separate from that process. This high number can be explained, for some communities, by either a lack of resources, a small population, many members living off-reserve and/or a low death rate. However, different concerns can be raised regarding the merging of these different roles.

During the interviews undertaken with ISC representatives, one respondent highlighted the benefit of having one person assigned as the ELO, IRA and Land manager since these files can be interrelated. Therefore, having one position for different files can facilitate the completion of the Estate process in a shorter period. Some ELOs also shared this viewpoint, especially when lands are involved:

« Someone cannot transfer land if he does not have access to membership. So, the marriage between the roles is very apparent. » – (1N-QC)

Conversely, some ELOs had concerns with combining these different responsibilities under one person:

« There can be a conflict of interest with helping to much as land managers and working with estates, if you have one department writing wills and administering estates it could be a little in too deep. » – (1N-ONT)

These varying perspectives and experiences highlight the need for clarity of roles in the Estates process, both overall and at the community level.

B. A general call for recognition and funding echoing in the country

1. Important responsibilities delegated to the ELOs

During the second phase of the research, some participants raised their concerns regarding the significant amount of time that they were spending on wills and estates files:

« Usually we do the background work, we have to take their address, take their phone number, get their contact information, answer their questions. We do a lot of more work that the department realizes. » - (2N-QC)

« I make wills during my time off! » - (1N-QC)

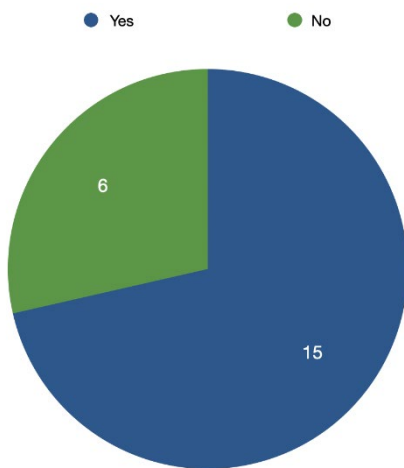


Figure 4: ELOs participants locating heirs

Some respondents questioned the extent of their roles and responsibilities within certain aspects of the Estate process, such as locating heirs and writing wills.

Indeed, in the present research, **15 ELOs** reported that ISC had requested them to locate heirs in cases with no will (Figure 4). This phase of the Estate process has been described as challenging since some communities have members who reside across Canada and the US. Also, members sometimes do not update their personal information on the Nation's database (e.g., address changes), which obliges the ELOs to contact family members or post announcements on social media to determine their whereabouts. On the other hand, some ELOs that do not undertake this task and have a firm position regarding this matter:

«They [ISC] have already asked me to do that [locating heirs], but I keep telling them that is their job! » - (1N-NS)

Regarding the activity of writing wills, the FNLMAQL Survey (Phase 1) also shows that approximately **70%** of respondents are involved in drafting wills.

This result differs from our research (Phase 2), in which only **7 participants** confirmed their involvement in this pre-stage of the Estate process. In any case, what is interesting regarding this statistic is that **6 out of the 7 ELOs** drafting wills are in Québec (Figure 5).

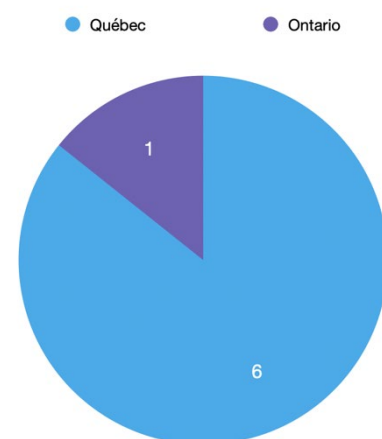


Figure 5: ELOs participants involved in drafting wills

Even though it would appear exaggerated to say that ELOs from Québec are more involved in the writing of the wills in comparison to ELOs located in other provinces, the fact that many ELOs across the country tend to question themselves regarding the legal issues behind that question shows that some clarifications from ISC are needed regarding the responsibility of writing wills. As one participant raised regarding her involvement in the writing of wills:

« The department have to recognize our efforts; do they want us to continue with that [writing wills]? Some open discussion is necessary with the Federal government. They must be clear and concise regarding what they expect from land managers. » – (1N-QC)

2. [A role without funding](#)

Next to the need for clarification regarding the roles and responsibilities attributed to ELOs, more funding from ISC has been requested by **14 ELOs** (Phase 2).

The FNLMAQL Survey (Phase 1) also shows that words related to funding such as “*budget*,” “*actual funding dollars*,” and “*funding*” are part of the most mentioned terms when answering the question: *What other support would help you in this role?*

Indeed, in general, the ELO role is not funded by ISC. This problem appears to be concerns from other regions, as mentioned by our participants:

« We need funding. The department gives us zero dollars for estate. The reasoning is, I guess, that when someone is appointed, they deal directly with that individual. ISC does not look at all the work we do on our hand. » – (2N-QC)

« As land managers, we are not funded for our efforts. The only thing we get paid for is to do the actual land transfer because it's an actual transaction. » – (1N-QC)

« We are heavily involved but not funded! » – (1N-ONT)

« We get nothing for estates at all! » – (1N-ONT)

« We would like to see the estate program back. » – (1N-NB)

« Our estate program project with ISC has about 20 years. Three years ago, ISC stops funding it, so we fund it internally (...) We are a large community, every day we are on cases (...) so having funding for this would be adequate for us to put files forward. » – (2N-ONT)

One participant added that:

« 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. » – (1N-ONT)

Funding can be considered the most efficient way to secure the fulfillment of roles and responsibilities related to the ELO position (and the Estate process itself). For example, it would allow the creation of official ELO roles in FN communities, ensure the smooth running of estates files, encourage the settlement of outstanding estates, authorize more outreach on-reserve regarding the importance of having a will.

This comment is even more relevant since ISC representatives have mentioned the potential delegation of new responsibilities to ELOs soon. According to the representatives, there seems to be a tendency within ISC to want to “*give more responsibilities and control*” to FNs by allocating increased funding to support different organizations responsible for ELO training (e.g., NALMA). Even though ISC has initiated no official announcement to expand the roles and responsibilities of the ELOs, some participants are already conscious of this possibility:

*« In the future, I can predict that the management of the Estate process is going to be delegated to FNs, and whether the Minister still signs off, we would be required to start registering (...) »
– (1N-ONT)*

Three participants from Québec added that if such a situation occurs:

« I think there will be a transfer of responsibilities. If it is to be done, it implies that someone finances these responsibilities. » – (1N-QC)

« They cannot operate without us, and we don't get funding, we don't get any legal responsibilities. One time I heard that the department wanted to delegate some of their responsibilities to us as well. My answer is that without funding, we are not doing their job. » – (2N-QC)

Although many respondents state that funding for the work related to the Estate Process would be a concrete step, it is to be noted that the legal responsibility of the topic remains under the purview of the federal government. The recognition of the work undertaken at the community level to support the Estate Process does not constitute a transfer in these responsibilities.

C. In Québec: clear directives needed from ISC

1. First liability issue: ELOs writing the wills

As previously mentioned, our research (Phase 2) shows that **6 out of the 7 ELOs** who assist in drafting wills are from Québec (Figure 5, p. 13).

Perhaps this fact tends to explain why legal concerns were pointed out several times during the consultations. Indeed, ELOs' involvement at this stage of the Estate process puts them at risk of legal actions undertaken against them. One ELO reported that this possibility resulted in her Band Council adopting a resolution to render her indemnified in such a situation. In another case, this concern resulted in one FN community in QC revising its previous position regarding the participation of ELOs in the writing of wills:

« The previous ELO in our community assisted members to draft the wills at our office. We would also store them. However, since I started in this position, I have been discouraged from doing this practice under the advice of my supervisor. He mentioned that writing wills constitutes a legal issue, and that it must be done by a notary or lawyer. Since we do not have this legal capacity, it has been decided to no longer provide those services. » – (1N-QC)

Nevertheless, as we will see later in the analysis, having a will allows the Estate process to go more smoothly; fewer questions arise between family members when all the deceased's wishes are written. As mentioned by one participant:

*« ISC needs to be clear if they want us to do this [writing wills], and if so, to fund land managers for continuing with that. They need to be clear on their expectations to the land manager as well as to FNs. People have to understand what legal role we play and what challenges it entails. »
– (IN-QC)*

Indeed, there is a strong need to encourage and protect this practice across the country since FN individuals generally have limited access to legal services as underlined by **16 ELOs** (Figure 6).

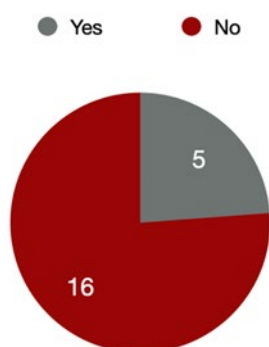


Figure 6: Do members of your community have reasonable access to legal services?

2. Second liability issue: ELOs counselling FN individuals

ELOs in Québec also have concerns regarding the answers they provide to FN members engaged in the Estate process. For example, one participant underlined her apprehensions regarding the explanations that she gives to executors or administrators:

« I explain to them that in principle the assets are frozen, and that no one can use them. For example, I warn them that even if they know the secret code of the deceased's credit card, they are not entitled to use the funds (...) That's why, I even ask myself the questions: Can I answer them that? Can I get involved? At the same time, I am doing this for their safety but at the same time I may also become a witness. » – (IN-QC)

She added that refraining from sharing her knowledge due to liability concerns was a recurring issue when helping individuals. From her perspective:

« If we take roles that ISC should normally support, the department have to transfer the fund too. We won't just take the blame. 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. » – (IN-QC)

Since access to legal services is limited for FN individuals, counselling members is somewhat inevitable given the position's responsibilities. Most of the time, ELOs are the only persons accessible on-reserve for this specific type of issue:

« It is inevitable, people have questions and we're going to help them. » – (2N-QC)

On the other hand, and as a point of comparison, participants from Ontario expressed that:

«We don't intervene. If something goes wrong or too complicated, we suggest them to seek legal counsel. I am only here to help with the application, not with the administration of the estate.»
– (1N-ONT)

«If members have legal questions, we refer them to ISC.» – (2N-ONT)

Since questions regarding the extent to which ELOs can be involved in drafting the wills or advising FN members were only raised by participants from Québec, we can say that there is a marked difference concerning the degree of ELO's involvement in the Estate process in our region. It further emphasizes a need for clarification and better delimitation from ISC regarding ELOs' roles and responsibilities when helping members write their wills or giving them advice.

3. ISC – Quebec regional office's perspective

Regarding the position of an ELO, ISC representatives expressed that the main operational issue is that the document which sets out ELOs roles and responsibilities, the *Reserve Lands and Environment Management Program* (RLEMP), contains very little detail on land managers responsibilities in regard to the Estate process. Also, they mentioned that the role undertaken by IRAs in the Estate process was informal and undefined, while at the same time acknowledging that "*families naturally go to them [IRAs].*"

ISC representatives added that, while improvements regarding the recognition of ELOs functions may be possible, it remains complex because the ISC department does not officially seek help from ELOs. Therefore, from ISC's perspective, IRAs are mainly implicated at the start of the process for getting information and being in touch with families. However, their contribution would stop once the administrator is appointed since the latter would deal mainly with ISC representatives.

The first part of the research shows that more than just submitting documentation to ISC and helping FN members complete forms, ELOs write wills, meet with executors, administrators, beneficiaries, and explain the Estate process. ELOs are undeniably involved after the administrator's appointment during the subsequent stages of the Estate process when helping FN members having difficulties with it. As acknowledged by the ISC representatives FN Land Managers or IRAs are the ones "*on-the-grounds*"; they "*know the forms and guide the family.*"

ELOs' involvement will be further explored in the research while analyzing the different steps occurring from the death of an individual to the administrator's appointment and during the administration of the estate.

PART II: From the death to the appointment of the administrator

A. Having a will: what are the general practices in FN communities?

1. The importance of having a will for the progression of the Estate process

Before getting more in-depth with the first phase of the Estate process, we thought it essential to address one aspect that challenges the administration of the process, which is the absence of a will. As mentioned by one participant regarding her community:

« 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. » – (IN-QC).

Indeed, when there is no will, the process is slowed by different requirements in which the family members need to choose one person to administer the estate, and sometimes, they do not agree on who that person should be. Also, more documents need to be sent to heirs and provided to ISC, such as the Heirs' Agreement. **9 ELOs** have pointed this aspect as a common issue faced when assisting the executor or administrator (Phase 2). As mentioned by one participant:

« When there is no will, it takes much longer because you have to find the heirs and you have more people to notify. That's why it takes long too. So, if there is a will and a death certificate, it's much easier for ISC. » – (IN-ONT)

Also, one participant from British Columbia underlined that when there is no will, more cooperation and coordination between the Membership Clerk and Land Department of her community is required:

« You actually need to find the heirs and find their land information (...) Our departments are working in silo so sometimes there are big issues. » – (IN-BC)

All these aspects slow down the settlement of the estate, and, as cited by one respondent, it could take up to “to several years” in the absence of a will. Therefore, encouraging FN individuals to have wills should be the top priority for every organization (governmental and non-governmental) dealing with Estate policy, training, and procedures.

2. A practice being slowly implemented

The research (Phase 2) shows that based on ELOs reports, having written wills (either registered or unregistered) a practice in **9 represented communities**. According to their answers, the percentage of individuals having wills in their community varies between 20% and 80%.

It is important to note that even though having wills is considered standard practice in some ELOs' communities, this likely is not the case for this proportion of communities on the whole. The limitations of this study, such as voluntary respondents, being involved in the NALMA Regional Lands Associations, and having interest in wills and estates, may suggest that the participating communities have higher than average involvement in this process, therefore likely providing more support than FN communities in general.

Regarding the **10 represented communities** where writing wills is not common practice, ELOs explain that this is partially due to the costs involved and cultural reasons deeply embedded in history. A participant mentioned that:

« 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's belong to them. » – (IN-QC)

Another one added that:

« 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. » – (IN-ONT)

However, it is still important to remember that ELOs now observe a positive trend regarding the preparation of wills in their communities which can be explained by successful workshops and *writing wills* sessions. This trend was also observed by the some ELOs who participate in the drafting of wills:

« I used to do one or two per year and now it's five or six per year. » – (IN-QC)

3. A practice to be encouraged by ISC

Due to the importance of having a will, ISC promoted the organization of workshops in some FN communities. Our research (Phase 2) shows that a total of **9 represented communities** had participated in at least one-time workshops regarding the “*Importance of having a will*” (Figure 7). In general, ISC usually organizes these workshops in partnership with Land Managers associations (e.g., NALMA, OALA), and the designated community ELO assists it. On average, the last workshop held in the participating communities varied between 2014 and 2018.

It is essential to mention that out of the 9 communities that had workshops, **3 are in Québec**. All their ELOs said that their last workshop was held in 2014 (Figure 7).

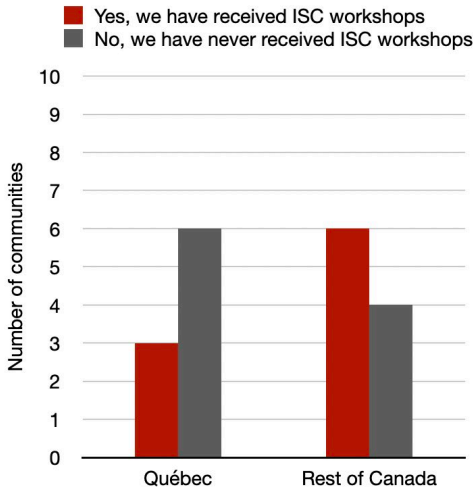


Figure 7: Number of ELOs' communities having received ISC workshops

Regarding drafting the wills, some activities are also organized by ISC but with less frequency. These activities involved sessions on how to write wills which were sometimes facilitated by lawyers, notaries, or consultants. The research (Phase 2) shows that a total of **6 represented communities** in Canada had benefited, at least once, from these activities (Figure 8):

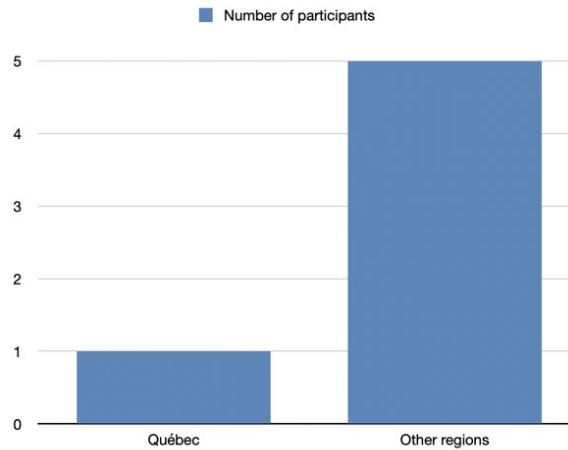


Figure 8: Number of ELOs participants having attended writing sessions

« I requested it. They [ISC], sent someone from their department here for wills and estates workshops. They brought will kit for community members. » – (IN-ONT)

« Once a year, someone from ISC come down for meeting the community members for giving information on how to write a will and administering the estate. » – (IN-BC)

It is important to mention that only **one represented community from Québec** had the possibility to benefit from ISC writing wills sessions (Figure 8). The lack of initiative from ISC regarding the organization of such activities have, therefore, led some ELOs to organize writing wills sessions with lawyers and notaries by themselves or, as previously mentioned, writing the wills for their clients:

« We were the ones who hired a notary and a lawyer to come and explain the process » – (IN-QC)

« Because of the consultation that I gave in my community, our members have a better understanding of the procedure of writing a will. I have created my own template for facilitating the process. » – (IN-QC)

An important question has therefore been raised by some of the Québec participants who had never received any workshops from ISC in their communities:

« They [ISC] don't think that it is their role. Whose responsibility is that? » – (IN-QC)

When asking ISC representatives for clarification regarding their role in organizing activities related to wills and estates management in Québec, representatives stated that the planning of writing wills sessions and/or workshops is not a common practice in Québec. Even though a past pilot project was undertaken in Wendake to provide financial support to members for making their will, the ISC department has lacked funding for programs for several years. Even if ISC representatives recognized that the planning of Wills and Estates workshops was desirable, the practical steps forward remain uncertain.

Moreover, the fact that no workshops have been organized for the past seven years is quite critical compared to the situation elsewhere in the country.

It is important to remember that sections 42 to 50 of the *Indian Act* were initially intended to protect and ensure the band land's integrity for the benefit of the band by putting in place limits on the distribution of interests in reserve lands (e.g., CP's ministerial approval, restrictions on the passing of land after an FN individual's death). Therefore, it can be argued that if the absence of a will puts at risk the integrity of reserve lands, ISC is responsible for putting in place all the means necessary to reduce that risk.

B. Wills search

1. Unregistered and registered wills: location and time of search

When it comes to the process itself, after the death of an individual, different steps can be undertaken by an ELO. The FNLMAQL Survey (Phase 1) reveals that based on their experience, ELOs put these steps in chronological order as follow:

- The report of the death
- The confirmation of official residency of the deceased person
- The confirmation of the most recent will (will search conducted either by family or ISC)
- Submit the original will to ISC for approval
- Receive, complete, and return the appointment package
- Appointment package signed by ISC
- Receive complete and return initial estates package

Regarding the third phase of the Estate process (will search), we thought it interesting to see which practices in FN communities could speed up or slow down the process (Phase 2). The first questions asked during the consultation were, therefore:

- (1) In the case of unregistered wills, what do FN members do with them once they are written?
- (2) How long does it usually take to find the will that is in effect?
- (3) Where are registered wills generally stored?
- (4) How long does it usually take to find a will that is registered?
- (5) Has Québec ever been involved in the wills search process?

For the first question, answers collected from our participants show that the most common practice for FN members having a will is to keep their will at home and – if possible – at the Band Office. Indeed, keeping the will at the Band Office is an option available in **6 represented communities** (Figure 9).

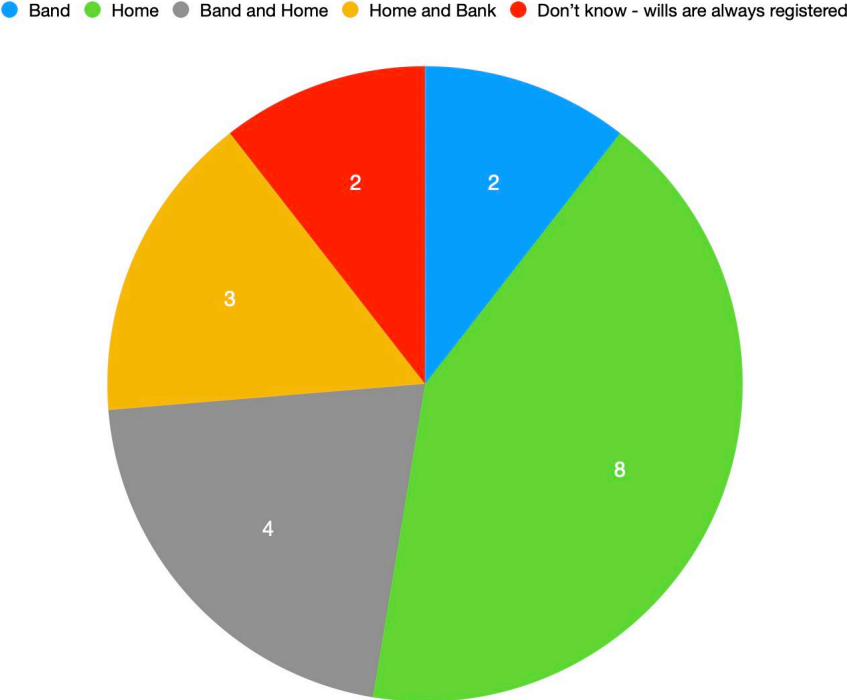


Figure 9: Where do members of your community keep their unregistered wills ?

The practice surrounding the will’s location varies between communities across the country and even across provinces. In some cases, the wills are kept only at the Band Office; in others, the individual would keep his original will and store a copy at the Band office. Some ELOs based in communities in which wills cannot be stored at the Band office raised their support of this approach:

« I’m not going to store them at the band office. It is a huge security concern for the legal governing body and to me personally, as the author of the will. Therefore, I refuse to do that, but I do tell community members to store their wills in a safe place within their homes or safety deposit boxes at the bank. » – (IN-QC)

On the other hand, some ELOs would like to have the possibility of keeping wills at a central location within the community to make the wills search process more manageable:

« We would like them [wills] to be all registered but also to be in our community. We are trying to develop this possibility in partnership with a notary. » – (IN-QC)

Indeed, when asked how long it usually takes to find the will in effect, some ELOs mentioned that it only takes a few minutes to find a will when it is at the Band Office. Nonetheless, the results are positive even without considering its location since it generally takes **less than a month** to find an unregistered will in effect in **12 represented communities** (Figure 10).

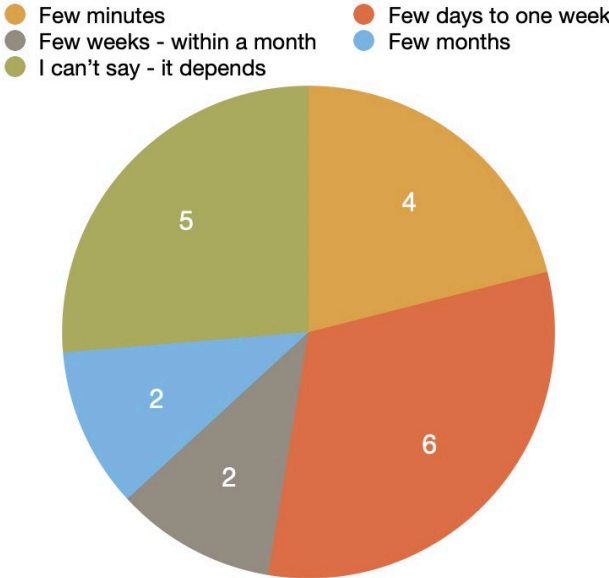


Figure 10: Time for finding the will in effect

When preparing the questionnaire, we also thought it would be interesting to compare the time needed for finding registered wills vs. and unregistered wills in Québec. Indeed, Québec is the only province in Canada having a wills registration system. When someone makes his will with a lawyer or notary, the official will is directly stored at le Barreau du Québec and/or la Chambre des notaires. This fact flows directly from the application of the *Civil Code of Quebec*.

When asking ELOs respondents from Québec how long it usually takes to find a registered will, they mentioned that the time would generally vary between a **few weeks (6C)** to a **few months (3C)**². Therefore, the timeframe is longer than the average “*less than month*” for finding an unregistered will.

Some ELOs from Québec also mentioned that this time frame could be even longer when ISC was involved in the will search. For this reason, we thought it essential to explore in-depth a practice that only applies to Québec.

² It is important to remember that for many FN members writing wills is not common (See. Part II – A) and that also if there is a will, the latter is not always registered. As shown by the answers provided by the respondents (Phase 2), the most common practice for their FN members having will is to keep their will at home.

2. ISC's involvement in the will search: some clarifications requested by ELOs in Québec

From the research results (Phase 2), **6 ELOs from Québec** have experienced a situation where ISC has been involved in the wills search. The others have either “heard words of mouth” regarding their involvement or do not know that issue exists (Figure 11).

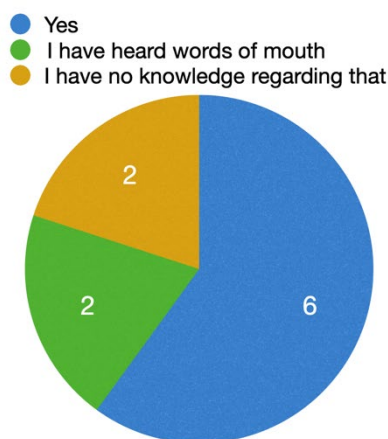


Figure 11: Has Québec ever been involved in the wills search process?

According to the participants having experienced such ISC involvement in the wills search, ISC has taken responsibility for doing the wills search and paying the costs involved. However, some ELOs have problems with the timeframes associated with ISC's intervention:

« Will searches went up in price. It's now about 300 dollars, and a lot of family do not have that money, that's why Indian affairs does the wills search. However, the problem that we run into is that it might six months or so before covid to get a will search done. » – (2N-QC)

« A will search done by an individual would take about three weeks and when it is the department it becomes three to nine months. » – (1N-QC)

« It's time consuming to be waiting for the wills 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. » – (1N-QC)

« It takes six months to find it [the will]! It makes the process difficult! » – (1N-QC)

Apart from the timeframes involved by the will search, ELOs also have concerns regarding a new requirement prescribed by the ISC Regional Office concerning will searches that is not mandatory under the *Indian Act*:

« Quebec made it [will search] a mandatory requirement, we had big issue with that since we have our process under the Indian Act. Nonetheless, they apply the Civil Code of Quebec and ask the community members to get a will search done by a notary or a lawyer whereas 98% of the time we know where it is and we usually have it. » – (2N-QC)

Indeed, the *Indian Act* does not contain any specific provisions regarding the wills search process. Also, under the *Civil Code of Quebec*, there is no obligation to carry out a will search. Nevertheless, this

process remains inevitable in the liquidation of estate since section 803 of the Code stipulates that the liquidator must trace the deceased person's last wishes.

Although ISC denies this process has any basis under the Civil Code, they have confirmed that will searches become a mandatory practice in early 2020.

The FNLMAQL believes that section 803 establishes a mandatory requirement of doing wills searches at le Barreau du Québec and/or la Chambre des notaires. Therefore, having ISC making wills searches mandatory indicates an indirect application of the *Civil Code of Quebec* on FN members who are under federal jurisdiction and the *Indian Act*. This practice that goes against the constitutional division of federal and provincial legislative powers needs to be officially recognized, justified, and clarified by ISC.

This fact is quite problematic, especially that reserve lands are under the exclusive legislative authority of the Parliament of Canada³, which means that federal jurisdiction and provincial jurisdiction are mutually exclusive. This principle operates as a shield against the application of provincial laws of general application on what directly touches the “*lands reserved for Indians*”⁴ – “*even if the federal power remains unexercised*”⁵.

Another point raised by one ELO was that this action had been taken unilaterally without informing either Land Managers or family members:

« 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. » – (1N-QC)

While raising that issue during interviews, ISC representatives reported that their intervention in the will searches resulted from a directive from ISC-HQ and/or a recommendation from Justice Canada. ISC-HQ requested the intervention of its regional office in this matter because of multiple issues that occurred in the past. These issues would, for example, include transfers of estate lands to the wrong person because the will considered was not the last one. Because risks are high, ISC representatives consider it important to ensure that transfers are done to the correct individuals. Indeed, according to them, this directive can also be justified because of their fiduciary role in respecting the deceased's last wishes.

This justification, which suggests that ELOs might not be able to respect the deceased's wishes, is not a fair one. Indeed, ELOs who are generally involved at the beginning of the process are the individuals on the ground, knowing the family dynamics. They intervene with executors, administrators, and beneficiaries, and therefore may be more in a position for supporting this goal.

Even though the Association understands the fiduciary and legislative responsibilities of the federal government and understands the need to correct against past errors, such a unilateral modification of process without consulting or reasonably informing stakeholder prior to the changes taking effect is not an approach that will support an efficient, fair and human intervention.

The FNLMAQL would also like to recall that, in the past, the ISC department had a repository of wills for FN members in Québec. Indeed, before registering FN members' wills at le Barreau du Québec and/or la Chambre des notaires, ISC was responsible for keeping the wills. However, it has been discovered that

³ S. 91(24) of the 1867 *Constitutional Act*

⁴ *Id.*

⁵ *Canadian Western Bank v. Alberta*, 2007 CSC 22, (2007) 2 R.C.S.3. para. 34.

ISC lost these wills. As mentioned by one participant from Québec, this loss has led some estates files in his community to be settled as there was no will, making the deceased's last wishes unrespected.

Therefore, there is still a necessity for ISC to:

- (1) Justify their intervention only occurs in Québec
- (2) Inform all ELOs, Band Council and FN members regarding this practice
- (3) Officialize publicly this practice by ISC

C. Appointment of the administrator: a lengthy process

Once the will search is done and sent with the death certificate and appropriate forms, family members and ELOs must wait for the approval of the will and the appointment by ISC of the executor or administrator (in case of absence of will). The fulfillment of these requirements has been deemed challenging because of some delays involved by **6 ELOs from Québec** (Phase 2). Indeed, from their answers, family members and ELOs must wait between **2 to 6 months** to have a will approved and the executor or administrator appointed (Figure 12).

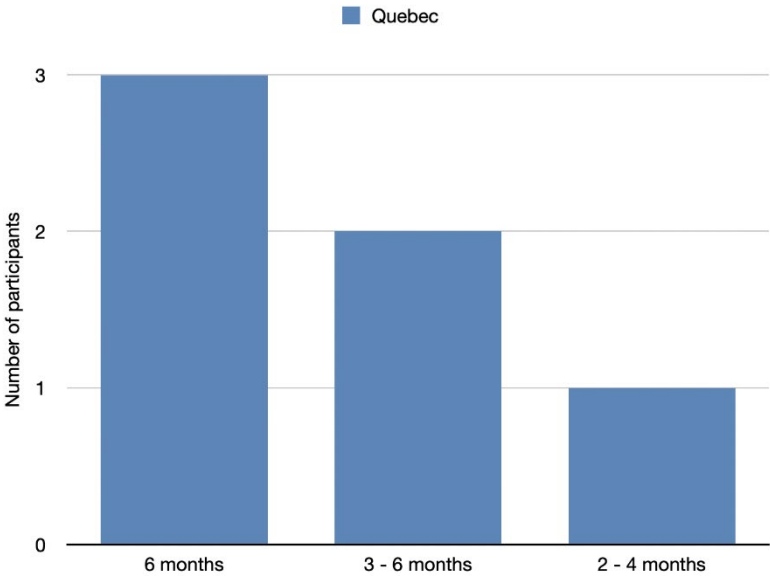


Figure 12: Will approval and administrator appointment timeframes

As mentioned by participants from Québec:

« During pre-covid, for someone to get appointed it takes four to five months. Now with Covid, for one case dated 2019, we just got someone appointed for an estate » – (2N-QC)

« I think for many people its time constraining because if you have to do banking: you have to settle the estate. If you don't have the will approved, it puts you in a limbo until you can be appointed as the proper executor, to be legally able to proceed all the steps that are required when a person is deceased. So, in my case, a person who may be the executor or could be the administrator cannot proceed until we get that document, and it can take up to three or four months. (...) It's time consuming because of the bureaucracy that's involved in it. So, you know

I send the request to our designated Indian Affairs Office. Then they send it to Quebec and the regional office does what they have to do. Then they send it back There are many steps. » – (IN-QC)

According to ISC's *Inheritance Manual*, approving the will and appointing the administrator can take up to **120 days** after receiving the will. Indeed, ISC representatives pointed out that this timeframe was necessary to confirm all relevant family information related to the Estate process, which can be long and/or complex. The timeframes are, therefore, highly variable, and dependent on the case that they are administering.

From ISC representatives' experiences, family members often have questions and call them regarding forms and documents to be filled and sent. The *back and forth* of that assistance can cause delays. They also underlined that ISC had a significant workload after the pandemic and now with the Indian day school files. According to ISC representatives, all these factors combined can influence the speed of the process and cause delays. However, even without considering the pandemic and the Indian day school files, the FNLMAQL was made aware of delays by ELOs in Québec well before the Covid-19 pandemic. More transparency is therefore required from ISC regarding the processing of approval of wills and applications for administration.

PART III: Administering and transferring the Estate: not a steady a process across Canada

A. Administrator's role

1. Lack of understanding

a. **FN members lack of information regarding the Estate process**

Once the will is approved and the executor or administrator appointed by ISC, the appointee becomes fully responsible for the estate's administration which must comply with the *Indian Act* (s.48) and the *Indian Estate Regulations* (s.10) and, as such, is accountable to the Minister. Nevertheless, when asked what common issues executors or administrators face in the Estate administration, **12 ELOs** mentioned that FN members “do not know what to do” or “do not know where to start.” (Phase 2) (Figure 13).

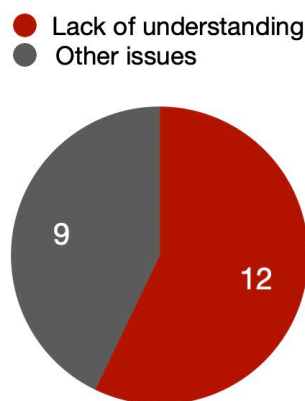


Figure 13: Common issues faced by the Executor or administrator

Indeed, many ELOs mentioned that their clients often lack information regarding the administrator's roles and responsibilities during the Estate's administration. Therefore, a primary role undertaken by ELOs' is to explain and clarify the actions that administrators are supposed to undertake. The following are some of the issues mentioned by ELOs regarding the executors and administrators:

« Once people have been appointed as administrator, they do not understand why all the heirs have to be notified. It is hard for them to understand that, or even the fact that they could co-administrate the estate. » – (1N-QC)

« A lot of administrators think that they have to pay for the bills of an estate personally. » – (2N-ONT)

« 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. » – (1N-ONT)

More than their roles and responsibilities, ELOs reported that some community members do not understand the Estate process itself:

« It is difficult to know who is involved in the estate process for them. » – (IN-QC)
« Our community members, they get confused in terms of the role of the land manger, and what his role is when he transfers land (...) So there is a problem of knowing the roles and responsibilities ... It's not clear. » – (IN-QC)

« When there is no will, they think they can transfer the land, I have to explain them that they have to follow the Indian Act. People sometimes think that I'm making up my own rule (...) I advise them to contact ISC directly in that case. I usually give them our officer's number when there is conflict with the family. I kind of take a step back. » – (IN-BC)

One participant from Ontario stated that many lands are dormant in her community because the estate has never been settled because of this lack of understanding. She said that ISC should be more transparent on its “outstanding estates policy” (i.e., sending letters to executors or administrators to explain what actions need to be taken to settle the estate).

b. Need for more educational material

To address the issues above-mentioned, ISC has taken the initiative to send packages regarding the roles and responsibilities of the administrator to some FN communities. However, this practice appears inconsistent or insufficient, as mentioned by some ELOs:

« In our community, they only give one paper for the executor and administrator, and it said: “settling a family member's estate”, “who may be appointed”, “some duties of the administrators” ... That's all they offer, and then they say contact us. » – (IN-QC)

« ISC sends them a package for them to know their responsibilities as an executor, or, as an administrator. » – (IN-ONT)

« Sometimes, ISC will give us an estate package for the executor, the person handling the estate or the family members. Sometimes, they [the family] would want me to fill out their application. » – (IN-ONT)

Even though this practice is implemented in some communities, it appears that all are not yet benefiting from estate packages.

Therefore, **6 ELOs**, mainly from Québec and Ontario, have been proposing different ideas that could be implemented to inform and help administrators in a more efficient way (Phase 2). Notably, they recommend creating information documents available at the very beginning of the process mentioning all roles and responsibilities of the various actors but also essential information regarding the Estate process:

« I think it would be useful if there was an information leaflet about what do at the time of death, what does that imply, what can't be done, what can't be touched. » – (IN-QC)

Because of language barriers and to ensure general accessibility, **2 ELOs** also mentioned that a good initiative would be that ISC creates more visual materials such as videos with durations of less than 20 minutes concerning the administration of estates.

The FNLMAQL Survey (Phase 1) also indicates that when asking ELOs: “What would make you feel more confident in your professional capacity to provide services regarding the estate process?” one comment mentioned by most of the 41 participants is to have a “step by step booklet”.

Even though the delivery of informational materials needs revisions and harmonization across the country, it is still important to mention that FN members have been receiving Estate management workshops provided and sponsored by ISC and NALMA. These workshops have provided an excellent opportunity for FN individuals to improve their knowledge of estate processes. However, even the respondents who have received training state that they would feel more confident with additional training. For more in-depth information on Training please refer to p. 41.

c. Another obstacle: the complexity of ISC forms

Next to the lack of understanding regarding roles and responsibilities by the actors involved in estate administration, the FNLMAQL Survey (Phase 1) and the present research (Phase 2) reveal that FN individuals and even ELOs also face difficulties with the forms provided by ISC (7N), the first being finding them on ISC website:

« When a person becomes an estate officer, they [ISC] don't give you all the forms to fill out, and most of the time they are hard to find on the web. It would make everybody's daily tasks easier if they would send out all the forms that need to be filled (...) They could make a regular distribution. » – (1N-QC)

«A lot of their forms are outdated; you don't know whether there are new forms that we should be using. Communication is vague ...» – (1N-ONT)

Additionally, most of the time, family members do not know how to fill the forms, or they have a fear of making a mistake in doing so:

« The ISC forms are poorly made. I still have some difficulties ... When a form arrives, I do not know exactly what to put as information (...) In the same form, we can find all the parts that have to be completed simultaneously by the executor, the administrator, and the heirs. It would be good to separate everything and have a form for each role. » – (1N-QC)

« Filling out the administrative land transfer, making a legal land description for example, who would know that? » – (1N-ONT)

According to the FNLMAQL Survey, most of the ELOs are therefore asking for documentation supports such as:

- (1) Sample forms and Best Practices Guides
- (2) Easier forms from ISC
- (3) A newly developed desktop guide, quick reference booklet including checklist system

2. Most pressing issue: delays

When assisting the executor or the administrator, one of the main issues faced by ELOs is delays (Phase 2). This issue has been mentioned by **14 ELOs** (Figure 14).

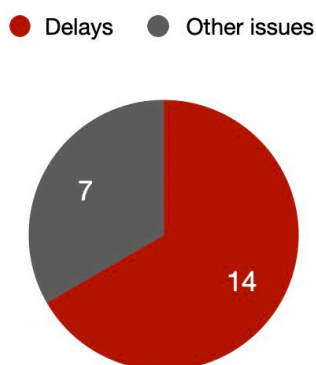


Figure 14: Common issues faced by ELOs when providing assistance to the administrator

As mentioned by different ELOs, these delays can be due to various factors such as the time required for appointing the administrator, ISC micromanaging (e.g., returning the files because of minor errors), ISC back and forth with family members, family dynamics, land surveys and others:

« When settling a land estate takes time, it is because of the land survey or micromanaging. People have concerns, but also Band Council (...) the Band motivate people for housing, but because of unsettled estates we cannot construct houses, so it creates more and more problems. » – (2N-QC)

« The length of the process can be frustrating for our members. If it is complicated, some of them feel stressed (...) Some family members have the frustration that some executor does not do anything (...) Our hands are tied regarding that situation (...) If there are complaints or concerns that can be addressed to ISC, we can only point them where they can go. » – (2N-ONT)

« For having document approveds: it takes years. Some CPs are not under the name of the good person ... In one case it took three years for registering a land transaction. Timeframe has to be in accordance with what is said in ISC procedural manual. » – (1N-QC)

From the perspective of ISC representatives, the gap around the administrator's roles and responsibilities is somehow linked to the factors leading to delays potentially encountered during the Estate process. One respondent said that ISC representatives are mainly in contact with ELOs to explain that the documents they received do not respect the will *or Indian Act*. Therefore, their role mainly comprises giving one or two options to resolve before proceeding with the administrative transfer.

According to ISC representatives, the role of the executor or administrator is more complex than one can imagine. Nonetheless, they do not consider that ISC's responsibility is to “educate people” regarding that aspect of the Estate process. All these challenges bring ambiguities and possible errors during land transfers, which creates unavoidable delays.

B. ISC roles and responsibilities

1. What are ISC responsibilities?

Under the *Indian Act*, the Minister of ISC, or more precisely, the Estate Agent to whom he delegates his powers, is vested of “*all jurisdiction and authority in relation to matters and causes testamentary, with respect to deceased Indians*” (s. 42.1) who were ordinarily residing on a reserve. According to sections 39, 42 and 43 of the *Indian Act*, in this capacity, it can:

- Approve a will;
- Appoint executors of wills and administrators of estates of deceased Indians;
- Authorize executors to carry out the terms of the wills of deceased Indians;
- Authorize administrators to administer the property of Indians who die intestate and;
- Approve a transfer of the right to occupy and use the land.

From the answers provided by our participants, **11 ELOs** consider ISC responsibilities to be clear to them (Figure 15) (Phase 2).

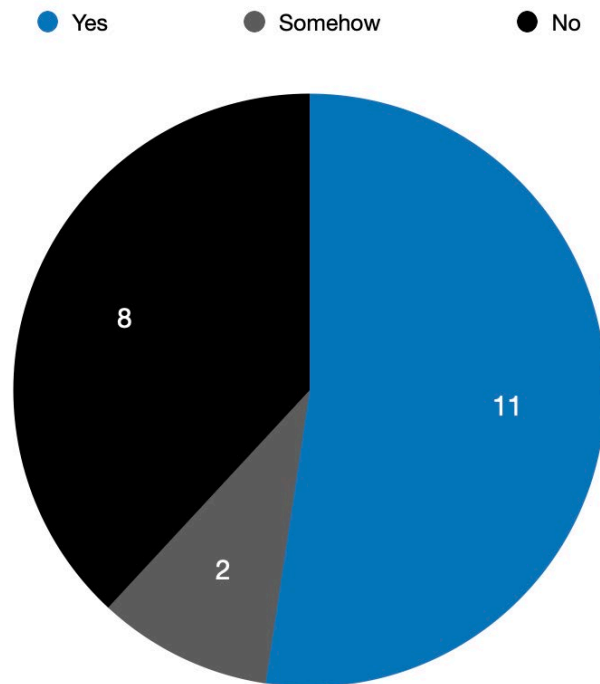


Figure 15: Are the responsibilities of ISC regarding the Estate process clear to you?

However, when looking at the results from the FNLMAQL Survey (Phase 1), only **30%** of respondents feel that they have a good understanding of the steps ISC must complete in the estate processes, which raises questions on the disparities between what is required by the law and what is done in practice.

As declared by one ELO when answering the question “Are the responsibilities of ISC regarding the Estate process clear to you?”:

« 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. » – (2N-QC)

Indeed, even though ISC legal responsibilities are clear for some ELOs, there seem to be uncertainties regarding “on-the-ground” roles and responsibilities of ISC representatives, such as the provision of assistance to the administrator and ELOs during the Estate process.

2. Varying degrees of assistance

a. Different practices across the country

During the administration of the Estate, executors and administrators have a high level of responsibility. As underlined by **5 ELOs**, an executor or an administrator must deal with provincial and federal institutions with outstanding taxes, loans, insurances etc. Sometimes, they also need to locate heirs:

« 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. » – (IN-ONT)

In this context, the research (Phase 2) shows that in some provinces, especially Ontario and British Columbia, ISC is providing in some cases significant help to the administrators, which results in ELOs intervening only at the very beginning of the process:

« When there is a will, the executor works in conjunction with ISC. » – (IN-ONT)
« I don't have much involvement with the individuals having a will because the process seems to run smoothly. The one that don't have a will – when they don't agree or have family challenges – I don't give them advises but instead I told them to work with ISC to try to reach an agreement. I guide them. » – (IN-BC)

« I let ISC telling them what they have to do during the administration of the estate. I'm just here to facilitate the after death and entering in the estate process (sending death certificate, wills, application) and facilitate the land transaction, I don't want to be involved in that [administration of the estate]. » – (IN-ONT)

On the other hand, one ELO affirms that ISC should provide more assistance when the administrator is appointed. She underlines that:

« Once the administrator is appointed, it is where the relationship ends. » – (IN-ONT)

The differences observed between ISC assistance to the administrators from community to community raise questions around the consistency of ISC's support across Canada and sometimes within the same region. The variations observed can be linked to the lack of clarity around the definition and distribution of the "assistance responsibilities" between ISC and ELOs. Indeed, in some cases, ELOs from the Québec region have mentioned that since they do not have much contact with ISC Agents, it was still unclear to determine what are their actual responsibilities:

« You don't know who does what, you don't know if they are just working on the wills or just working on the estate process or if they are trying to find the beneficiaries themselves. There are no clarifications. » – (IN-QC)

« ISC is not involved enough in the administration of the estate. I do more than I should. Since there is no communication between me and the agent, I do not know how far they do the work, maybe they do more, but I couldn't answer. » – (IN-QC)

b. ISC's perspective on their roles and responsibilities

In Québec, ISC representatives have mentioned that their role is to support FN individuals involved in the Estate process with all their abilities. Indeed, depending on the communities, ISC representatives will sometimes work more with ELOs, other times directly with the administrator who sometimes feels less comfortable working with the Land Agent of their community. ISC representatives wanted to clarify that helping is also part of their mandate and want both FN individuals and ELOs, to be supported. Moreover, ISC has a fiduciary role which makes them responsible for verifying if all requirements regarding the transmission of the Estate have been respected.

ISC representatives further emphasized that if the FNs were to have more responsibility in the Estate process, the ideal would be that ISC does not intervene as much. In fact, according to ISC representatives, more roles and responsibilities should be transferred to ELOs, so that FNs gain more autonomy “little by little”.

From the Association's perspective, having already mentioned in the research the tendency within ISC to “*give more responsibilities and control*” to FNs, it is essential to ensure that any additional responsibilities are only to be taken with the entire agreement from FNs, with a clear understanding of the risk associated with that “autonomy”. Indeed, even though ISC representatives give assurances that their role is to help and support FNs, considering the possibility of additional responsibilities to ELOs without any prior discussion or planning is not the appropriate way to develop a new policy.

Historically, FNs have been successively excluded from Estate policy when ISC unilaterally decided that:

- They would not administer FN members' estates anymore
- Land managers are to be responsible for conducting land transfer
- In the Quebec region ISC would undertake mandatory will searches rather than the family

To prevent the implementation of a unilateral decision again, official and meaningful discussions must be opened by ISC with the genuine intention and commitment to collaborate.

PART IV: Interactions between ELOs and ISC

A. Quality of communication

According to the FNLMAQL Survey (Phase 1), ISC is the organization ELOs reach out to out more than any other regarding wills and estates. However, they do so only **a few times per year** (41%) or approximately 1-2 times per month (25%). ELOs contact ISC mainly for:

- Following-up on behalf of the administrator (>75%)
- Requests for updates (>75%)
- Questions on behalf of heirs (**approximately <70%**)
- Questions about how to fill the forms (55%)
- Questions regarding will searches (<35%)
- Application to remove an administrator (25%)
- Application for voiding a will (<20%)

In the same manner, the research (Phase 2) reveals that ELOs are contacting ISC regarding questions on behalf of executors, follow-ups, forms, legal matters, unusual issues (e.g., there are two wills), outstanding estates, confirmation of heirs, land matters (e.g., confirmation of land status, CPs, land parcel issues etc.).

However, from the answers provided by all ELO respondents through the FNLMAQL Survey (Phase 1), the overall satisfaction with ISC's services is **only 30%** in Canada.

To determine the reasons behind this low percentage, we asked the participants two different questions (Phase 2):

- (1) On a scale from zero to ten (0 being poor and 10 being excellent), how would you rate the resolution of your challenges from ISC?
- (2) When you contact ISC with any questions regarding the Estate process, are responses provided clearly, comprehensively and within a reasonable timeframe based on the nature of the request?

(NB. Three participants from Québec decided not to answer any of the two questions since they are not dealing directly with ISC Agents during the Estate process. Also, one ELO from British Columbia chose not to answer the first question).

1. Assistance from ISC

The 17 respondents rate the resolution of their challenge from ISC with an average grade of **7.5/10** (Phase 2). Since there were not many participants from British Columbia, New Brunswick, and Nova Scotia; only we will focus only on the difference of grade between Québec and Ontario that remains pretty striking:

Total Average	7,5/10
Québec	5,5/10
Ontario	8/10

According to the positive answers provided by some of the ELOs, we can say that the resolution of their challenges depends much on the promptness of staff they are in contact with:

« We have a good work relationship, if there is any issue or concern that we have, they are really good at getting us information and making sure that there are resources to complete the tasks. They've been good to us. They've been keeping up updated on changes, and who to contact etc. » – (IN-BC)

« Everything I need assistance on; I e-mail, I phone, and ISC provides assistance right away. Everything I'm not clear on I get counsel from ISC because I don't want to give people the wrong information. » – (IN-BC)

« For simple thing 10/10 because I have great support. But when the province is involved, there is nobody assigned to land managers (...) When working on a particular case, they don't get back to you, they don't know what to say when it's a challenging case (...) They are not helpful at all, and that's the region, I need to be clear on that. » – (IN-QC)

2. Clarity, comprehensibility, and time

Regarding the second question, only **9 ELOs** consider ISC's responses to be provided clearly, comprehensively and within a reasonable timeframe (Figure 16).

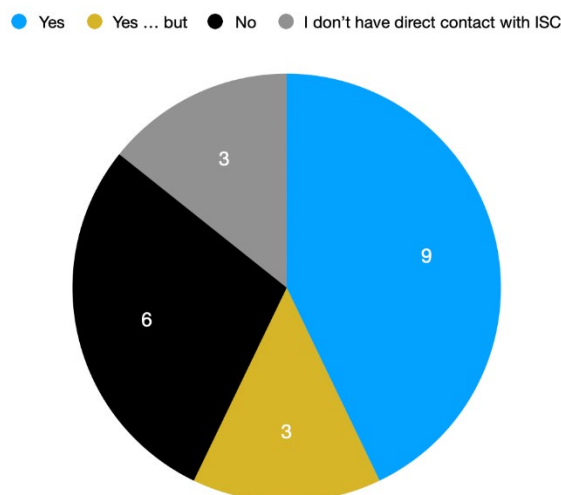


Figure 16: Are responses provided clearly and comprehensively and within a reasonable timeframe based on the nature of the request?

From the positive answers collected from ELOs, some indicated that the actual outcome is due to their excellent relationship with the designated Agent with whom they deal with:

« I have one contact at ISC; she is our executor of estate senior officer. I deal with her a lot. In general, I put her in contact with my clients that need help, and she helps me and guides me as well, and tells me what is needed to be done. » – (1N-BC)

« I work well with my colleague, I only require clarification occasionally, so we do have a good working relationship. » – (1N-BC)

« I have a contact reference from ISC (...) any questions that I send in, they are very prompt, I usually get an answer from 1 to 2 days. » – (1N-ONT)

« Now, the timeframes are better, I have a good email and phone contact, but in the past, they were going with many changes of staff. » – (1N-ONT)

« 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. » – (1N-QC)

From ELOs having answered “yes but” or “no” to our questions they added that:

« 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's sat there. » – (1N-ONT)

« Yes, when it's with my agent but no when it's dealing with the province. » – (1N-QC)

« When things go out of their way, they are lost, you go from one person to another. Here, we don't know the person with whom we deal with since a long time. The staff moves a lot » – (1N-QC)

Some others mentioned the length of the timeframes, which are “very long” (1QC) and can extend to “4 to 5 business days” (1QC), “one week or never” or “2 or 3 days” (1BC). This subject will be discussed further in-depth in section B.

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

B. Québec specific issues

The distribution graphic (Figure 17) shows that **5/6 ELOs participants** having answered “no” to the second question⁶ are from Québec (Phase 2). This fact leads us to explore in more detail their concerns since they also gave an average grade of **5.5/10** regarding the services provided by ISC (p.34).

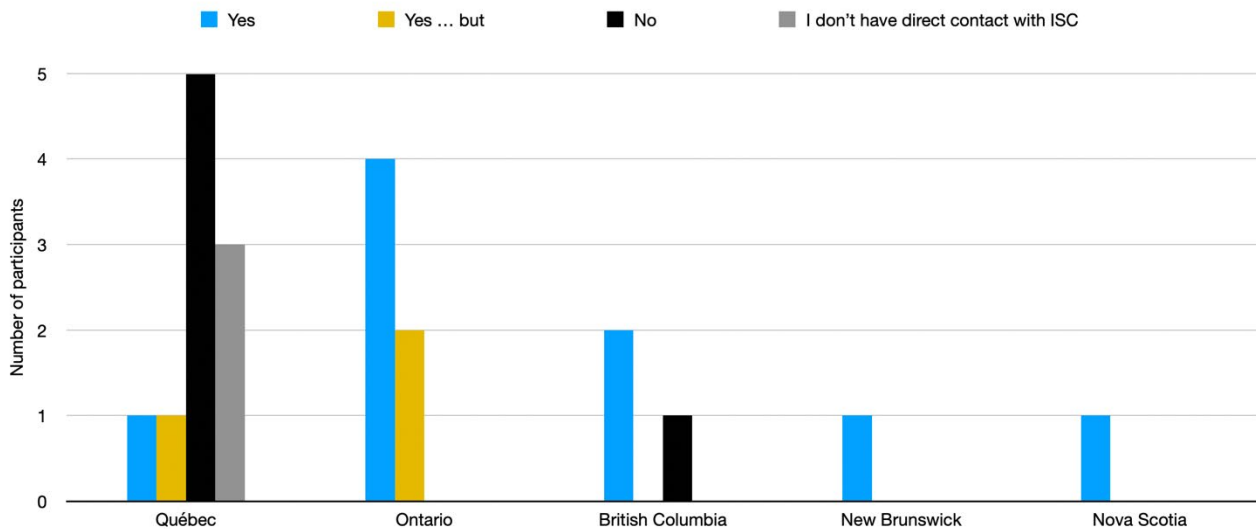


Figure 17: Distribution across Canada

1. ELOs excluded from the Estate process

One of the main issues mentioned by the **5 ELOs from Québec**, is their feeling of exclusion during the Estate process. As mentioned by some of them, not being informed of the different stages of a file, or not having proper information regarding forms and documents that have been sent can cause problems in the administration of the Estate process:

« In the past we had more authority, now we are just sending notices of death to the department. Once the department appoints someone, we are kind of out of the system. They deal directly with the individual appointed. I don't know anything regarding an estate file until a family member comes to our office and explain which problem they are having. » – (2N-QC)

« Once I do the paperwork to do the estate file, Indian Affairs deals directly with the individual. I have asked if I could be cc-ed, so I would know at what stage of the process we are at because some people don't do anything with the paperwork, and that's a problem (...) so if I'm cc-ed on the document at least I would have a way to follow-up, because family members come to me to do the follow up for them if there is an issue. » – (1N-QC)

« We should be involved because we are the one that deals with individuals. » – (1N-QC)

This fact can be explained by the department perspective that considers ELOs (e.g., IRAs) only being involved at the start of the process. According to ISC representatives, ELOs can help communicate with the families, but their role is not officially defined as previously mentioned in the research. After the

⁶ When you contact ISC with any questions regarding the Estate process, are responses provided clearly, comprehensively and within a reasonable timeframe based on the nature of the request

administrator's appointment, families are supposed to deal directly with ISC interns, who are the first contact from their department that would answer their questions. Therefore, the FNLMAQL suggests that one possible improvement would be to officially recognize the "liaison" role that ELOs play through programs and policies to further allow the sharing of information.

Indeed, according to one ELO, a reason given by ISC to her for not sharing information regarding one file was the "confidentiality issue":

« ISC told me that they cannot do that because of the confidentiality issue. I told them I am in Membership and in Land and Estates. I don't know which confidentiality they are trying to protect when I'm involved in all aspects of the system. » – (1N-QC).

2. No proper line of communication: generic-email and timing

From the answers provided by ELOs in other provinces, the quality of communication with ISC is enhanced by having one proper contact at the department.

Regarding that matter, **6 ELOs from Québec** consider that there is a general lack of communication between them and ISC representatives:

« I would appreciate to know who exactly I should reach out if I do have an estate question: someone who could get back to me ASAP. Now, I just have a generic e-mail and I have to wait a couple of months for an answer. That is probably the most important issue we have: the waiting time. Some people would like to settle the estate is due time, and I can't help them because we are waiting for an answer from ISC. » – (1N-QC)

« They don't provide us the contact of the person handling our community regarding estate. They keep us out of the loop, it almost feels blindsiding in some ways. » – (1N-QC)

« 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. » – (2N-QC)

« The timing is too slow especially with the covid ... There is a lack of communication. » – (2N-QC)

According to ISC's perspective, two weeks is a reasonable waiting period. ISC representatives mentioned that deadlines are most of the time not extended. It is only if some complexities or inconsistencies arise between what must be done on paper and what they receive. In the past, to avoid inconsistencies, ISC sent lists to make sure requested documents were sent. Perhaps this practice could be implemented again.

3. ISC's interference in the administrator's decision

Another issue raised by **3 ELOs from Québec** is that ISC representatives strongly suggest ELOs make the executors follow the will. However, some individuals do not consider that this duty is part of their responsibilities:

« We will do what the executor tells us. ISC used to be the administrator and now they appoint a family member to become the executor, but they don't allow the executors to do what they want (...) All we do is to work with the executor. » – (1N-QC)

Indeed, some consider that there is a big issue of liability behind this question. When reading and keeping the will, the onus will be on the ELOs to settle the estate as per the will. It can easily constitute

an issue if a family member is left without any part of the Estate. Therefore, it would be possible for them to engage in legal action against the Band instead of the executor who – under the Indian Act – is fully responsible for the Estate's administration.

Some ELOs qualify this type of intervention from ISC as “micro-management”:

« Theoretically, or practically it is supposed to be the department talking directly with the executor or administrator, but they don't. » – (2N-QC)

However, on the other hand, some ELOs consider it is challenging to assist during the estate process since they do not have access to the will:

«It's hard for me to do my part because in some cases I don't even have the will. I don't know who the heirs should be, I'm following the information given by the individual that comes to finalize the file. So, if the information is not correct ... But if I had all the information from my office, it would be easier, and less time consuming. » – (1N-QC)

According to ISC representatives, these aspects of the Estate process are closely linked to the lack of estate responsibilities mentioned in the RLEMP. Indeed, it is essential to note that ELOs are not legally entitled to have access to the will. Therefore, without being legally allowed to keep or read wills, ELOs cannot benefit from legal protection. Since there seem to be a need of having access to the will during the administration of the Estate, the issue mentioned above underlines the lack of clear definition and delimitation of ELOs responsibilities as well as the degree of assistance they should officially provide to executors and administrators.

Consequently, the FNLMAQ deems it necessary to discuss with ISC:

- (1) if it is useful for ELOs to have access to the will when they are implicated in supporting the administrator or executor (with the consent of the family)
- (2) if ELOs should be legally entitled to have access to the will and therefore benefit from legal protection.

4. Lack of flexibility: procedures, manuals, and personnel

Another issue raised by **5 ELOs from Québec** is their concern towards the strictness of the procedures implemented by ISC. Indeed, in some cases, outstanding estates dating from 30 to 50 years old remain unsettled because of some restrictions. For example, in one community, an Estate has been going on for 40 years because ISC does not honour an American death certificate. For more recent cases, land transfers are stopped because of minor errors. According to the concerned ELOs:

« If the intent is clear, they should go ahead (...) It does not make sense to stop everything just for a minor error. » – (2N-QC)

Others would like to see policy changes that prevent them from moving the process forward:

« There is an estate manual, but there is no manual for a person that starts working in estate our community. It would be good to have an Estate manual for ELOs given by ISC so we would know what to fill out exactly, or how it has to be done (...) It would make the process easier not just for me but for ISC too. » – (1N-QC)

From ISC's perspective, what must be considered is that, regardless of the land transfer, the Department has a fiduciary role in which ISC representatives are asked to ensure that they have all the relevant information for transferring the Estate to the right person. According to them, ISC's fiduciary role can explain the strictness of the process.

Therefore, the FNLMAQL recommends that policies and procedural manuals be shared, discussed, and reviewed by the two parties to allow the settlement of outstanding files, and more generally, to make the Estate process easier on both sides.

C. Towards better communication across Canada

From the previous results, it seems that the quality of assistance and services provided by ISC is much more dependent on the relationship that ELOs have with their designated ISC representatives (Phase 2).

One issue that has been mentioned by **11 ELOs from Québec and other provinces** that prevents such improvement is the turnover of the staff at the ISC department:

« Since I started this job there was one individual that I worked with. She was then transferred to another department. We were working on a more open basis, and now the person replacing her follows strictly all the policies. I find that following the policy should not prevent of being helpful and providing information to our community members. » – (1N-QC)

When speaking of the new personnel, one ELO mentioned:

« 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. » – (1N-QC)

Some recommendations have therefore been formulated by participants who are not satisfied with the services provided by ISC:

- Developing a relationship between designated ELOs and the ISC representative responsible for their communities
- Open a direct line of communication between ELOs and ISC representatives
- Having the phone contact and e-mail of the ISC representative responsible for a community
- Organizing one/two meetings per year between ELOs and ISC representatives
- Having ISC representatives explain the Estate process and discuss the files with ELOs
- Inclusion of ELOs in the policy planning
- Collaboration between ELOs and ISC representatives at the policy and procedural levels
- ISC sharing manuals with ELOs
- Follow-ups

The FNLMAQL Survey (Phase 1) also shows that ELOs across Canada mainly need support from ISC Agents, step-by-step guidance with a member of ISC and better contact and communication with the ISC representative for estates.

PART V: Training

A. FNLMAQL Survey (Phase 1)

In total, **90%** of the participants would benefit from training on processes for wills and estates to help their organization to provide services. Indeed, for most of the participants, what would make them feel more confident in their professional capacity would be more training, especially since there was not much opportunity to take training due to COVID. Some others mentioned that training regarding the *Indian Act*, MRP, and the estate process's legal issues would be more than welcome. Indeed, while 60% of respondents have received NALMA training on MRP and Estates Management, only **27%** say they are confident in their abilities.

Details:

The FNLMAQL Survey shows that from the 40 participants, **65%** of ELOs have received training on the Estate process provided by NALMA. From that percentage:

- 80% (32/40) have followed the *MRP Toolkit training*
- 68 % (27/40) have followed the *Estates Management Toolkit Training*

From the respondents having received training:

- 50% feel somewhat confident in their professional capacity to provide services regarding the Estate process
- 22% very confident
- 8 % extremely confident

Amongst that **15%** (6/40) who have not followed the training:

- 33 % are somewhat confident
- 17% (1) is not very confident
- 2 are not confident at all in their professional capacity to provide services regarding the Estate process
- 100% of them would benefit from training, information sessions, or workshops regarding the estate process
- 83 % (5/6) have concerns regarding the estate process

B. Need of a deeper collaboration between ISC, NALMA and ELOs for having all the tools necessary for efficient training (Phase 2)

From the participants in our research, **18 ELOs** have benefited from the training offered by NALMA. Some ELOs mentioned interesting issues that ISC should consider for ensuring better upholding the Estate process.

Notably **2 ELOs** mentioned the necessity of having training similar to the one provided to ISC agents:

«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. Why can't I look to their procedural manual? » – (2N- QC)

Indeed, sharing the manuals would allow associations responsible for the organization of training to develop more appropriate tools, workshops and information sessions with contents that would be based on ISC procedures and policies. A better harmonization of practice could therefore be implemented.

As mentioned by **10 ELOs** raining could, for example, therefore cover:

- (1) ISC procedures and requirements
- (2) Roles and responsibilities supported by ISC agents
- (3) Roles and responsibilities of ELOs

Recommendations

Considering the FNLMAQL's mandate, the present section focusses primarily on recommendations aimed at improving the Estate process in QC. That said and considering the participation of individuals from across Canada in the data gathering process, several of the recommendations could also be applicable to other regions.

The primary recommendation is to establish a mechanism and on-going dialogue with ISC to discuss and address the concerns with the Estate process in QC. The involvement of ISC-HQ in this process is essential considering that the implementation and administration of the Estate process appears to be applied differently in QC than in the rest of Canada.

With this said, it is recommended that:

- 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:
 - a. *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;

- v. establish a mechanism (possibly the Working Table) for including ELOs in ISC policy planning and changes related to the Estate process;
- vi. 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);
- vii. 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.

b. Funding

- i. 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;

c. 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.

Conclusion

The results of the present research and the FNLMAQL Survey illustrate that the Estate process varies widely across the country. With respect to the Quebec region, it is clear that gaps exist, including a lack of a shared understanding of roles and responsibilities, between the services offered by ISC and the on-the-ground realities experienced by ELOs.

Given the highly sensitive and on-going nature of the Estate process, it is critically important to address these service gaps, while at the same time recognizing that a *one-size-fits-all* approach to the issue will not be effective in improving on-the-ground realities of ELOs and FN individuals. To do so effectively, each QC FN must be provided the opportunity to become involved in the recommended discussions to improve the Estate process so that they can determine an approach that is best suited to their own realities.

While the issues facing the Estate process in Quebec are considerable, they are not insurmountable. The establishment of the recommended working table, combined with a commitment from all Parties to work in an open and constructive manner, represents an important first step in creating an on-going dialogue that could be instrumental in helping to improve the administration and implementation of that process.