The inheritance wars

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A generation living beyond its means is waiting for the biggest transfer of wealth in human history. Some are waiting more patiently than others.

David Bull had committed his share of indiscretions. As a teenager in the 1970s, he'd clashed with teachers and partaken in the illicit substances readily available at the time to the privileged kids of West Vancouver - at one point, facing charges for possession of hashish. His parents made no secret of their disapproval: Shortly before dying of cancer in 1973, his father, John, changed his will to dramatically curtail David's share of his estate, naming his wife, Emily, and daughter, Susan, as sole heirs.

But the greater rebuke came 39 years later, when David's mother died. Through savvy and steely resolve, Emily Bull had grown her husband's respectable holdings into a real estate fortune worth millions: commercial buildings and apartments in the Lower Mainland, a ranch in the B.C. Interior, a timeshare in Maui. And, once again, Susan was the big winner. Before dying, Emily had rearranged her affairs to ensure shares in the string of properties, trusts and holding companies worth millions would fall to her daughter, along with an oceanfront home on Vancouver Island. David, now 58, challenged Emily's will in court last year, only to receive another, more stinging slap: Anticipating his objections, his mother had left a poison-pen letter with her lawyer to be opened only if he contested the will.

"David was disowned and taken out of my husband John Bull's will," she wrote, "because, during David's teen years, he 1) was using and selling drugs, 2) ran away from private school and lived with a strange neighbour, Mrs. Wilburn, 3) when we were in Hawaii for Christmas, David had his friends burgle our house and sold John's war medals, my jewellery and my daughter's and other irreplaceable things."

Arrests on drug charges; expulsions from two public high schools; a week-long party David and his friends purportedly held at his parents' home while they were absent - no alleged misdeed escaped Emily's list of shame. "During his twenties, he lived with me and crashed six cars," she wrote, before taking a swipe at perceived shortcomings in her son's work ethic: "He spent 10 years at Capilano College taking a two-year program on business."

When his dispute with his mother's estate went to trial last December, David denied that he dealt drugs, orchestrated break-ins or crashed six cars. But if he thought he'd get a sympathetic ear, he was mistaken. Justice Gary Weatherill of the B.C. Supreme Court rejected key parts of his testimony as "unsatisfactory," and upheld the will. "Despite financial assistance from Emily in the nature of loans and gifts," the judge wrote in his decision, "David has felt bitter and jealous that Susan received disproportionately more financial benefits from John and Emily." What's more, Weatherill concluded, David's objection to his mother's will "was motivated by that bitterness and jealousy and his desire to secure more assets for himself."

Not a flattering portrait, and Bull responded this week in a handwritten letter to *Maclean's*, saying he was instead motivated by a desire to "restore family honour" and obtain a "corrected legacy for my three children.” But his longing for an inheritance windfall, and his sense of entitlement to it, are hardly unique. Surveys suggest nearly half of Baby Boomers are expecting some sort of inheritance, and that many have a grossly inflated idea of how much they’re about to receive. (On average, Canadians overestimate what they’ll get by about 50 per cent.) Undeniably, there is money at hand: According to the BMO Wealth Institute, as much as $1 trillion in family wealth is in the process of being passed down from the so-called “Greatest Generation,” raised during the Depression and the Second World War, over the next couple of decades. Even when adjusted for inflation, that’s an unprecedented migration of assets, with seniors’ Boomer-aged children as presumptive beneficiaries.

But for many Boomers, the money can’t come soon enough. Half of homeowners in their 50s still have mortgage debt. One in two Canadians say they expect to retire before they’ve paid off their homes.

Figures compiled by credit monitor Equifax, meanwhile, suggest the average person aged 56-65 is carrying $27,000 in consumer debt, such as credit cards and car loans. They’re going to need cash to maintain their standard of living, say experts, and their desperation is starting to show. Court files are replete with challenges to wills involving claimants nearing retirement age, while the sheer nastiness of family battles is on the rise. “There is a degree of entitlement there,” says Megan Connolly, a Toronto wills and estates specialist. “It’s this attitude that mom’s or dad’s savings are communal family property, that what’s my mom’s is mine.”

There’s no guarantee, alas, that the inter-generational asset transfer will benefit those feeling the most pressure. Wealth is more concentrated within the top economic classes of Canada than it has been since the Depression, notes Robin Boadway, a retired Queen’s University economist who has studied wealth and inheritance, and inheritance will help to ensure it stays that way. “If you have high wealth inequality,” he says, “then automatically, you’re going to have those inequalities transferred to the next generation.”

All of which suggests that our anticipation for the trillion-dollar wealth transfer may be blinding us to unforeseen costs, from economic tensions between generations to ruptures within families. Will all this money solve as many problems as it creates?

Les Kotzer has stories, many stories, and one of his favourites involves a posh-looking couple in their late 50s who arrived at his law office north of Toronto. The woman’s fur coat and the man’s bespoke clothing led Kotzer to think he’d be dealing in big numbers. But he soon learned otherwise. “She was working as a substitute teacher, and they were renting a house,” he recalls. “I asked her husband what he did, and the woman says, “Harry’s not going to tell you this, but he’s a waiter.“

Kotzer asked what restaurant the man worked at. (“I’m thinking the tips must be amazing!”) Once again, the woman answered: “Oh, Harry’s not that kind of waiter. He’s waiting for his inheritance.”

To Kotzer, a wills and estates lawyer, the parable encapsulates a gulf in values between free-spending Boomers and their thrifty parents - people who, as he puts it, “saved up their yogourt containers.” The “waiters” have become a punchline he uses to break the social taboo against discussing wills and estates - a reticence he believes has never been more misplaced. Along with his partner, Barry Fish, Kotzer has written three books that recount the family battles he has witnessed (names have been changed to protect the innocent) and that counsel readers on how to avoid these clashes.

As a result, he's achieved the improbable designation of celebrity inheritance lawyer - his wiry hair and spectacles appearing frequently in U.S. and Canadian media, from CNN to the Wall Street Journal. His latest book with Fish, The Wills Lawyers, features numerous examples of greed and betrayal rooted in that tension between the Greatest Generation and their children, pitting sibling against sibling and, in some cases, parent against child. In a way, he personifies our preoccupation with the subject.

Photograph by Cole Garside

Much as he thrives on the attention, Kotzer says the human fallout is all too real. He recounts in one of his books the tale of an elderly couple whose adult son moved to a remote mining town in northern Ontario and falsely claimed to be unemployed so his parents would keep sending cash. They finally uncovered their son's lies when they paid him a surprise visit. It turned out he had a well-paying office job as a geologist at the local mine; they arrived to find he'd flown off to Puerto Rico for a 10-day cruise with his wife. “He obviously couldn't wait for us to die,” the mother, who needed a walker to get around, told Kotzer. “He wanted his inheritance early, so he lied to us.”

Sometimes, the scorned seniors strike back. Last year in Vancouver, a judge upheld the will of a frugal mother of two who had built up about $300,000 in cash and property working as a waitress. Abrasive and quick to take offence, Olga Tobin lived briefly with daughter, Barbara, in her old age, but wore out her welcome by becoming verbally abusive to her grandchildren. Barbara moved her out, and Tobin's response was to transfer more than half her assets to her son, Robert, before she died in 2008. Barbara contested the will, but when fees from her long legal battle were tallied, the remaining amount was just enough to cover $15,000 bequests Tobin had left to each of her four grandkids.

Such cases illustrate the hazards of banking on a loved one's estate, say experts: Family spats become more likely when a senior senses that his offspring are prematurely sizing up his assets. Deepening those tensions is the fact that people are living longer than ever, meaning the money relatives are counting on coming their way may instead be needed to support the person to whom it actually belongs. "When an elderly parent who has living expenses and health costs and so on is spending the money," says Connolly, the Toronto inheritance lawyer, "the younger generation can start to see it almost as money from their own pockets."

It all has the potential to turn very ugly, very fast. Connolly has seen instances of adult heirs pressuring their parents for advances on their inheritance, or outright control of their assets. Lawyers call it power-of-attorney abuse, but it's not always driven by larcenous intent. "They start thinking, "Well, this money's coming to me anyway, Mom is 90 and in a long-term care home, so why not start taking it now?' " explains Connolly. "A lot of times, it's behaviour people feel they can justify."

The growing phenomenon of second, third and non-traditional families has further complicated the picture. In 1996, B.C. passed a law allowing second spouses and half-siblings to contest wills on the basis that they're not adequately provided for. The result has been a spike in fractious disputes in that province - many stemming from wills that weren't updated after the dead person remarried or had more children.

It's the sort of thing that goes on whenever large amounts of money are at stake and, viewed in aggregate, the sums awaiting Boomer-aged heirs look irresistible. Environics Analytics, a Toronto-based marketing consultancy, has calculated the average liquid assets of Canadians 65 and over at $440,561 per household - and that doesn't include fixed assets, such as houses and cars. To Peter Miron, a senior research associate with the firm, that mountain of wealth symbolizes the difference in values between seniors and their Baby Boom kids. "The generation who lived through the Depression and the war were mindful of what they went through," he says. "During the boom times of the 1950s, '60s and '70s, they had the opportunity to save, and they took advantage of it because they knew things would not always be this good."

By comparison, the average Boomer household has $252,674 in liquid assets (cash, stocks, term deposits and the like), and considerably more debt. According to Equifax, average non-mortgage debt within the 56-65 age bracket has climbed more than 40 per cent since early 2008, and is still rising. Nearly half of Boomers tell pollsters they've saved less than $100,000 for retirement, depending instead on the rising value of their homes. "If the real estate market goes soft, or if interest rates on debt go up dramatically," warns Miron, "a lot of people are going to be in trouble."

Piling blame on Boomers is easy, of course. And to suggest money hunger is something new requires one to ignore a couple of millennia of human history. Through nearly two decades of low interest rates and ballooning real estate prices, after all, Baby Boomers have had little incentive to save and every reason to mortgage up. At no point has their economic environment looked like that of their parents.

And the truth is that many won't ever see the sort of windfall the averages suggest. Perhaps the most sobering figure produced by Environics Analytics is a breakdown of total liquid assets according to economic class, showing that the most affluent 17 per cent of seniors in the country - people whose liquid savings average nearly $2 million per household - are sitting on an astounding third of the nation's wealth. That's more than three times the amount held by the remaining 83 per cent of seniors combined .

In short, rich Boomers are about to get richer, thanks to bequests from their affluent parents. Those retiring in dire financial straits, meanwhile, will remain on the ropes, forced to live off private and public pensions.

The scale of concentration is great enough that there have been rumblings in favour of a wealth tax in Canada, inspired in part by French economist Thomas Piketty's landmark research showing the inexorable rise in wealth inequality in market economies. Left-wing think tanks like the Broadbent Institute have called for an examination of the matter, while Boadway, the Queen's economist, favours an inheritance tax imposed on those receiving the most money. "It would be based on the idea that high inequality of wealth is largely a result of luck," he says. "There's definitely an argument to be made for it."

It won't be an easy sell. In the 1950s, Ottawa turned over inheritance taxes to the provinces, who raced each other to phase them out. By 1980, they were gone, and today they remain deeply unpopular. While the average inheritance of $100,000 might pale next to the rich bequests of the affluent 17 per cent, it's still a lot of money to most Canadians, after all. To them, even discussing an inheritance tax on the fattest estates fuels concern that the government is reaching into their pockets.

Those living comfortably, it goes without saying, are no less possessive toward what they see as family money. David Bull, for one, is continuing the fight against his mother's estate, though he hasn't exactly landed in penury. He's carved out a career as a building manager and commercial realtor and, in 1997, Emily gave him favourable terms to buy the family home in West Vancouver - a five-bedroom Tudor revival featuring a pool and tennis court that was last assessed at $1.5 million. Despite the written broadside she left with her lawyer, Emily did give David control of the family ranch in 108 Mile Ranch, B.C

Bull says he's appealing the B.C. court decision, in part because he wants to set the record straight as to his mother's depiction of his misspent youth. "Like many teens, I tried drugs in the late '60s and early '70s," he acknowledges in his letter to *Maclean's*. "I did not sell drugs." The burglary allegation stemmed from a misunderstanding, he adds: He'd once boasted he knew how to get in the house when it was

locked, but to this day, has no idea who actually did it. As for his college years, Bull says he spent just four years at Capilano College before transferring to the B.C. Institute of Technology, and later got a diploma in urban land economics from the University of British Columbia.

But there is something else embedded in his rebuttals - a discernible sense of loss, perhaps, for a loving and close-knit family. He sent pictures to *Maclean's* showing himself next to his smiling mother and other family members - at the ranch, at his house, at the Maui vacation home. He denies feeling jealous of Susan, and his explanation for what Emily described as a school expulsion was heartbreakingly frank:" I left private school because I was homesick. I missed my family.

Not, in short, the portrait of a wastrel his mother painted. Yet Bull battles on, fighting less against the findings of the court than the hard truths learned by many an expectant heir. Old grudges die hard and, until the will has been read and closed, the estate of an aging parent is of no more use than Monopoly money. Waiting, it turns out, doesn't always pay.