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Estates & Wills & Trusts

Avoid costly estate litigation by pre-planning wills



Canadian Baby Boomers will transfer \$750-billion to their heirs over the next 10 to 20 years, according to a recent CIBC study, and that means there will be an increase in estate litigation cases, says Toronto estate litigator and mediator [Charles B. Ticker](#).

Commenting on the [Financial Post](#) report, Ticker tells [AdvocateDaily.com](#) this upsurge is bound to rekindle long-standing family disputes in some cases, but that it's best to address the issue while everyone is alive and has their faculties.

"Families need to have heart-to-heart conversations about the will, including who the executor will be and why — long before the sun sets on someone's life," he says. "It avoids shock, and allows time to work things out without going to court. We're also seeing cases of estate litigation over wills while the testators are still living. Such is the nature of this sector."

An elderly grandfather, for example, could develop dementia, rendering it impossible for him to create a new will. That's when a conflict ends up in court while the testator is still alive, Ticker notes.

It's a tragedy, he adds, given their parents and elders spent their lifetimes working to amass those estates. They didn't intend large portions of their estates being spent on lawyers and court actions.

"If only 10 per cent of those estates go to court, that's \$75 billion. These cases can quickly get up to five — and sometimes six — figures in lawyers' fees. It's an awful lot of money."

Canada has 2.5 million people over the age of 75, and almost half of them are widowed, according to a recent report by [CIBC Deputy Chief Economist Benjamin Tal](#).

In the last decade, the number of people over the age of 75 has increased by 25 per cent.

"We estimate that the coming decade will see close to \$750 billion exchanging hands, almost 50 per cent more than the estimated amount of inheritance received over the past decade," says Tal, who authored the report, *The Looming Bequest Boom – What Should We Expect?*

"The transfer is estimated to boost the asset position of Canadians 50-75 years old by no less than 20 per cent."

The CIBC report suggests in the next decade there will be even more Canadians in the 75-and-over group, making them the wealthiest cohort of that age category on record, with an estimated total net worth of more than \$900 billion.

This wealth transfer, says CIBC, "could have a number of impacts on the Canadian economy, depending on how it is used. A typical household may increase current and future spending and save less. Depending on the size of the inheritance, some people will use their inheritance to retire or for leisure and travel, while others still may drop out of the workforce and become self-employed or start up small businesses. Some beneficiaries may take some of the money and re-gift it to their children and other family members."



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It underscores the need for tax planning and estate planning, suggests both CIBC and Ticker, if only to avoid litigation and family stress.

Litigation arises when someone in the family feels they were unfairly treated in the will. In some cases, the friction comes from a second marriage, which sets the children of the first marriage against those from the second relationship or, in some cases, the second spouse.

“Often it’s not even about money,” Ticker says. “It’s about something else. Emotions are high, much like family court and divorce and custody issues, but using the courts to right past wrongs is a bad strategy.”

Heels dig in, cases become protracted and costs go up. Moreover, the courts have held that estate wars will not be funded from the estate itself. They’ve shifted to a loser-pays concept, much like civil litigation.

“I’ve even seen cases where all the parties are extremely wealthy, they don’t need the money yet they are in court fighting and you have to ask, why?” he says. “In some cases, there’s nothing left after the bills have been paid.”

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