THE UNFAIR COMPETITION OF TRUST COMPANIES

It is obvious to anyone who follows the advertisements of various trust companies in the daily newspapers, that sometimes insidiously, and more often quite bluntly, they are in certain ways furthering their business and connections at the expense, because in violation of the legal rights, of the legal profession.

The planning and drafting of a will involve consultations with the testator, not only as to the nature and extent of his assets, but as to the legal testamentary means which he can adopt to dispose of his estate, taking into consideration various death and succession duties, questions of community or separation of property, the making of particular bequests, the disposal of the residue under law, the implication of the law in various provinces cancelling after marriage a will made before marriage, questions of conflict of laws depending upon the *situs* of property and the domicile of parties, and many other problems—all of them by their very nature involving substantive and adjectival law. Next worse to planning and drawing one's own will and having a fool for a client, is having it planned or drawn by third persons without legal capacity or special training.

Trust companies as a rule are authorized by their statutes of incorporation to act as executors and trustees, sometimes as guardians, tutors and curators. They are organized as commercial undertakings with share capital, under the necessity of earning dividends and profits. They usually have or take power to do business as insurance agents, real estate agents, financial agents, and so on. For these various special services they make and charge the usual commissions. A trust company handling an estate gets a commission on the fire insurance policies which it may place, on the sale of real estate which it may make, on the financial transactions which it may put through, in addition to its fee for general administration. The prime consideration for the trust company, naturally, is to have as many estates as possible to administer. From the point of view of the heirs, the quality and the complete disinterestedness of that administration are of unique importance. In spite of the self-confident and self-praising advertising of the trust companies extolling their qualifications, they do make mistakes and they do sell too soon, or even too late. Their judgment is not impeccable.

However, the lawyer does not and cannot object to the fact that trust companies are authorized to act and do act as

trustees, executors and administrators. He is entitled to object when these companies by their advertising confuse in the public mind their services as executors, trustees and administrators, with the appearance of capacity and legal right to advise upon the planning and preparation of wills.

By the Bar Act of the Province of Quebec, the legal profession is made a closed profession. For example, it is provided, among other things, that any person who has not a diploma as advocate, barrister, solicitor or attorney, under the laws of this province, may not practise as such, or usurp the functions of the profession, or act in such manner as will lead to the belief that he has authority to fulfil the office of or act as an advocate. The penalty is a fine of not less than one hundred dollars nor more than two hundred dollars for the first offence, and of not less than three hundred dollars nor more than five hundred dollars for any subsequent offence. The Act also provides that every person who does not hold a diploma, and every association, partnership or corporation, who or which advertises that he or it "will undertake, or cause to be undertaken, any legal business", shall be liable to the same penalties.

It is with some distaste, then, and considerable chagrin, that lawyers in Quebec, who do not wish to be or appear narrow, unfair, grasping, or envious, observe in our newspapers the pretentious and tendentious advertising of some of the trust companies.

There is one company in particular against which the lawyers have little, if any, complaint. It explains in its advertising that it is incorporated with trust powers, enabling it to handle estates, both through living trusts or in testamentary relationships. Lawyers and notaries are invited to think of it in the appointment of an executor or trustee, explaining that it regards its responsibilities as such as not conflicting with the responsibilities of lawyers, but as complementary to them. It suggests the part of wisdom to review a will already in existence, with one's attorney or notary, and if necessary to have the latter modify it to conform with present wishes and any changed conditions. Such an approach ensures the goodwill of lawyers and notaries toward that company.

Occasionally, however, it has stepped a little outside this friendly and fair attitude, by suggesting that a person about to make a will discuss in confidence his business relations and the "planning" of his will with the trust company, before he asks his lawyer or notary to draft the will, indicating that no

charge is made for such discussion. The implication is that there are mysteries about a will which the trust company should in confidence be allowed to breathe into the secret ear of the testator, before he risks letting his lawyer act as a mere draftsman to prepare the text of the document. There is no mystery in the possession of the trust companies which is not an open book to lawyers and notaries, and such advertising is mere " kidding " of the public. Lawyers and notaries, it may be remarked, understand the various taxing statutes quite as well as do the trust companies, indeed a good deal better, and they have the trained experience to enable them to interpret the statutes and regulations as texts of the law.

A trust company, having its head office outside of Quebec, but with a local office here, advertises that increases in taxation have put many wills out of date, and even made them sometimes unworkable. There is an underlying appeal to the public to come to that company and make a new will, in the suggestion that if the public addressed has any doubts as to the position of wife and family:

> "We invite you to consult our officers and make sure that your estate plan is workable today."

That appeal undermines the prerogatives of our profession. The " estate plan " is not merely a matter of how much a man has; it is much more a question of how under law he can dispose of it.

There is another trust company whose advertising is an open invitation to the public to:

> "Ask us to review your will and assist in the planning of a new will."

The public is admonished to:

> "Be sure your will is planned in such a manner as to fulfil exactly what you want it to accomplish . . . carefully prepared with full consideration of the effects of Succession Duties and other taxes. Let our Estate officers review it with you. They are *men of experience whose knowledge will prove invaluable in making sure your will is adequate in every respect*. Come in and talk it over with us." [1]

So anxious is this trust company to secure estates and to imply that it is ready to draw wills, "adequate in every respect", that it offers, if it is more convenient, that one of its

[1] The italics in all instances are the present writer's. The trust company would be too delicately modest to use them.

representatives will even call on the prospective testator at his house or office — a sort of will-chaser. The ambulance-chaser the profession has already dealt with. In other advertisements it advises that:

> "When you are preparing your will or reviewing your present one, it is a wise precaution to consult one of our Estates officers."

Again it announces that:

> "The best way to assure that your will disposes of your estate in accordance with your intentions, is to let *experienced men* assist you *in its preparation.* Men *with full knowledge* of income tax, etc., are always available to discuss with you how these imposts affect your estate. If you already have a will, perhaps it needs *revision* to meet present day conditions. We will gladly review it with you *without cost or obligation.*"

The trust company, drawing its income from many estates and various commissions, and in the hope of securing more, thus offers, and evidently can afford, to give legal advice to the general public, absolutely free of charge. *Concurrence déloyale?* Promising free legal advice in order to get a lucrative business connection!

In another advertisement it warns that:

> "Now is the time to review your will; and the need for *experienced advice* is greater than ever. Completely familiar with Estate and personal taxation, our trust officers will gladly assist you in planning your will."

In a French newspaper it announces:

> "Nous savons comment preparer un testament. . . . . Passez à nos bureaux. . . . . ."

Such advertisements are misleading, a danger to the public, and an infringement of the Bar Act.

Another trust company, also heedless of the rights of the legal profession, asks the public to:

> "Consult our experienced trust officers in strict confidence regarding a *sound* up-to-date plan of will for your own case. *Have your own lawyer or notary draft it in legal form.* Name the (blank) Trust Company *as one of your executors.*"

Again it announces that:

> "Every will should be reviewed periodically. . . . . *Before you make any changes,* consult *entirely without obligation* an experienced estates officer of the (blank) Trust Company. He will be pleased to give you *practical advice without cost* and *in the strictest confidence. Your legal adviser will then complete the document for you.*"

The implication given to the public by that advertising is, that the trust company in question is to give the sound, adequate and practical advice which the lawyer or the notary does not possess. It tries to trim its illegal advertising to avoid the Bar Act, by suggesting that, after it has given its practical advice, and planned the will, and had itself appointed executor, the client may then, with some confidence that he is fully protected in law, go to his lawyer or notary who will act as a kind of superior clerk, probably competent to act as draftsman of the document, already recommended by the trust company as a "sound up-to-date plan of will". Just what right has a clerk in a trust company to pronounce a will "sound", in all the necessary implications of that word, in law and in fact?

How long will the legal profession stand for that kind of cheap slurring of its skill, qualifications, and rights?

Consider, for a moment, the patter of these advertisers about taxation, as though it is some uncannily difficult, mysterious, and complex matter which they alone are practical or experienced enough to deal with. There is one small fact, for instance, well known to lawyers and notaries, and almost to the man in the street, that it is advisable, under present succession duty laws, to bequeath the capital of one's estate to one's children and the use to one's widow, so that there is only one transmission, and hence one taxation, instead of two. A man was recently attracted by the advertising chatter about taxation of a certain trust company. He had consulted it and been induced to have his will prepared by the company's notary. Before signing it he brought it to his lawyer, because, he said, he was not at all satisfied. The will appointed the trust company sole executor, with exclusive and unlimited power to sell the assets at its discretion, and to make a distribution without consulting the wishes of the heirs. It was under no obligation to consult the widow or the children under any circumstances. It was formally relieved of any and all responsibility whatever for any of its acts and decisions. There was a careful provision that it was always to be entitled to its commission, and the estate under the terms of the will would remain open for probably quite a few years. The man was disturbed over the carefully planned dictatorship under which his estate was to be left.

The estate was not large. His lawyer pointed out to him that if he proceeded with this will, he would leave his wife at the absolute discretion of an impersonal corporation which he

did not know except through its advertisements, whose officials were strangers to his wife, and that she would have to go to them for everything she needed, yet without the slightest right to make a suggestion or ask a favour.

He was asked why he had gone to the trust company. He said he had been impressed by its advertised knowledge of taxation. Asked as to just what was the advice given him on that deeply mysterious subject, he explained that the trust company had in strict confidence, without obligation, almost in a whisper, advised him that to avoid double taxation he should leave the capital of his estate to his children, and the use thereof to his wife during her lifetime.

He made a new will there and then, appointing his "beloved wife" his sole executrix, leaving her the use and the children the capital, and authorizing her to draw on capital in case of sickness or other emergency.

As to the effect of succession duty and income tax under present conditions, it is obvious that there is no Delphic oracle to be consulted in the form of a trust company — thought that subject is played upon *fortissimo* in all the advertising. If you made a will some years ago and left various bequests on the basis of your estate as it was then, it must be perfectly obvious to the ordinary intelligent man, and certainly no reserved mystery in the possession of trust companies, that heavier succession duties and income taxes may have made it impossible for the testator to provide for certain cash and other special bequests.

Where there is no such frumpery effort to impress the public with the mystery and wisdom of trust companies in the planning and preparation of wills, at the expense of the legal profession and in violation of its statutory rights, it must be because the advertising "front" presented daily to the public at such expense, pays for itself very handsomely.

The lawyer or notary, who probably has known his client for years, draws his will, discusses his problems and bequests and the merits of a proposed executor, "in confidence", too, in the quiet of his study, and who will quite possible wind up the estate, has a very special function, reserved to him by law. When he comes to wind up the estate, he gets no over-riding commission on the sale of real estate, he is not an insurance agent getting commissions, he is not sharing commissions with brokers on the sale of securities, he is not getting a commission on the administration. He is entitled to charge a reasonable fee for his services. Frequently, the executor who is a family friend

charges no fee. At most he can charge one fee only, and that a reasonable percentage on the value of the estate. The wife has probably been made a joint executrix. In any event, she can always approach the personal executor and the personal lawyer as friends, with an interest to discuss decisions that must be made. The sooner we lawyers and notaries undertake to bring back our clients to these more personal and less drastic ways of disposing of their affairs after death, the better for the clients.

And let us watch the advertisements of the trust companies in the newspapers; at least choose between them when we have to select one; and meanwhile take every legal measure against those that cynically infringe our statutes to relegate us to the position of scriveners and clerks, after they have, without lawful right, presumed to make all the important decisions and give all the significant advice and counsel toward the planning and preparation of the " sound " will — " adequate in every respect".

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