

that will be substantially greater than any damage likely to ensue to the alleged offender from an injunction, should it be subsequently determined that an offence has not been committed.¹¹

Where a person has done, is about to do or is likely to do any act or thing that would constitute an offence, subsection 30(2) of the Act allows the court to issue an order prohibiting that act. The Committee was not made aware of any misleading advertising cases in which section 29.1 has been used.

A number of witnesses felt that a cease and desist power or a more workable injunctive relief provision in the *Competition Act* would be appropriate for misleading advertising cases. The Canadian Council of Better Business Bureaus suggested that injunctions to stop a deceptive practice may be a more suitable remedy than the recovery of damages.¹² Ms Marilyn Anderson noted that an effective cease and desist power at the federal level would be particularly valuable in situations where a blatantly misleading activity affects large portions of the population.¹³ Both Mr. Robert Bertrand and Mr. Edward Belobaba were of the view that cease and desist or injunctive relief powers should be essential components of any package of administrative techniques and remedies.¹⁴

It is worth noting that a study conducted for the Department of Consumer and Corporate Affairs in 1976 (hereafter referred to as the "CCAC Study") suggested that the criteria for obtaining an injunction as set out in section 29.1 may be too stringent in misleading advertising cases,¹⁵ and recommended that they be modified to make injunctions easier to obtain. In addition, the study would have made available a host of other remedies such as corrective advertising, compensation for victims, rescission of contract, and divestment of profits.¹⁶

The Committee is of the view that there are significant shortcomings in the injunction and prohibition provisions of the *Competition Act* as they apply to misleading advertising offences and recognizes that the ability to stop a patently misleading practice pending a hearing or trial would minimize the damage to the public at large, and thus serve the public interest. The primary concern of the Committee in this regard is the need to make injunctive relief readily available. This would, among other things, involve a modification of the criteria currently set out in section 29.1 of the Act, as well as the burden of proof requirement. It would also require a provision