

CHAPTER 5 - CLASS ACTIONS AND OTHER FORMS OF CONSUMER REDRESS

A. Section 31.1 of the *Competition Act*

Section 31.1 of the *Competition Act* creates a civil cause of action for misleading advertising and other offences enumerated in Part V of the Act. Specifically, it allows any person who has suffered loss or damage as a result of misleading advertising to seek financial restitution in the courts. This provision was expected to constitute a major deterrent to violations of the Act and to prevent unjust enrichment.

More than 10 years have passed since the enactment of section 31.1, yet it has been used rarely in cases of misleading advertising. Why is this so? The answer is relatively simple. In situations where consumers are victims of misleading advertising, small amounts of money are usually at stake. It is neither practical nor cost-efficient for a consumer to pursue a \$10, \$50 or even a \$200 claim in the courts. The time and effort involved in seeing a case through the judicial system, even through Small Claims Court, deter civil action.

The Committee is of the view that consumers who have suffered financial loss as a result of misleading representations or deceptive marketing practices should have practical and effective methods for obtaining redress. The Committee heard a number of suggestions from witnesses as to how redress could be achieved. Among these are class actions, substitute actions by the Director of Investigation and Research, and restitution orders. Each of these proposals will be explored in this chapter.

B. Class Actions

1. *History and Description*

A class action has been described as an action which "brings together for a single determination the claims of a number of persons against the same defendant that essentially raise an identical question."¹ A judgment in a class action binds not only the defendant and the plaintiff who represents the class, but also all those whom the plaintiff represents. Basically, a class action is a substitute for what might be numerous individual actions involving the same issues against one defendant.