

competition...".⁷ This decision is now under appeal to the Supreme Court of Canada.

In his testimony to the Committee, Mr. Edward Belobaba noted that a major hurdle for federal parliamentarians and regulators is the "constitutional mindset" which stresses that the control of misleading advertising must be based on the criminal law power. In his opinion, the immediate need is to rediscover and resuscitate the trade and commerce power and to create a national trade practices policy beginning with the broadening of the techniques available to the federal government to deal with misleading advertising.⁸

The Committee agrees that it is time for the constitutional mindset to change. In concurring in the view that it is inappropriate to treat most cases of misleading advertising as a criminal offence, the Committee, while recognizing the attendant constitutional issues, supports an approach which would broaden the scope and the nature of the available remedies. In this regard, the *Rocois* decision has significant implications for the Committee's view of the manner in which misleading advertising should be regulated. The conclusion that the federal government may create civil remedies that are genuinely integral to an overall federal economic plan, along with the determination that the trade and commerce power is the appropriate jurisdictional foundation for these remedies, bodes well for the creation of administrative procedures and class actions to deal with misleading advertising.

2. Penal and Administrative Sanctions

Misleading advertising may be the result of an intentional fraudulent mis-statement, negligence on the part of an advertiser or simple inadvertence. The *Competition Act* does not distinguish among the various causes and applies penal sanctions in all situations.

Before discussing any system of administrative remedies, an initial question arises: should such remedies supplant penal sanctions under the *Competition Act* or complement them? In the Committee's view, the latter should be the case. Administrative remedies should be available both in the course of a criminal proceeding and as part of a separate system of remedies which the Director of Investigation and Research can draw upon when penal sanctions are deemed to be inappropriate. Administrative remedies are better suited to situations where a misleading representation occurs through