This raises another aspect of Canadian law that is, at least at first glance, not shared by the U.S. regime. Under U.S. law, a manufacturer can act unilaterally to affect prices; it is joint action or "agreement" that is the target of antitrust liability. In Canada, it is not an "agreement", or lack thereof, that is the threshold determination but an attempt, even a unilateral one, to influence prices upward. This unilateral action-joint action dichotomy, however, is more apparent than real. It can be argued that antitrust liability will be found in both the U.S. and Canada in those circumstances in which a manufacturer, acting alone, uses threats or some form of coercive pressure to ensure a particular level of resale price. U.S. courts would establish a basis for liability by finding an "agreement", albeit a coerced one, whereas Canadian courts would find a unilateral attempt to influence prices made through an "agreement, threat, promise or any other like means". Even though the legal approach to liability might be somewhat different, the conclusion would effectively be the same.

Subsection (3) raises a rebuttable presumption that a suggestion by a producer or supplier of a resale price or minimum resale price, in the absence of evidence that the person also made it clear that there was no obligation to accept the suggestion, is proof of an attempt to influence. Similarly, subsection (4) stipulates that an advertisement by a supplier of a product, other than a retailer, that mentions a resale price for that product is to be deemed an attempt to influence price unless it is also made clear that it may be sold at a lower price. These subsections were passed in 1976 in order to overcome the tendency of resellers to assume that they are required to sell at suggested retail prices, thereby making it more difficult for a suggested retail price to become a minimum resale price. It might be noted that, on a narrow interpretation of these two subsections, while a suggestion or advertisement is deemed to be an "attempt", it is not also deemed to be an "agreement, threat, promise, or any like means".

This interpretation of subsection (4) was put to the test in *R. v. Phillips Electronics.*[41] The accused placed advertisements for TV converters which specified a resale price but without the disclaimer that they could also be sold at a lesser price. The Crown argued that, although there was no evidence of an agreement, threat or promise, the advertisement itself constituted "like means" within the meaning of s. 61(1)(a). The Ontario Court of Appeal rejected the argument that simple failure to indicate any other price in the advertisement was to be considered "like means". The majority opinion indicated (at 134) that:

> ... the impugned advertisements standing by themselves are in no way similar to an agreement, threat or promise and accordingly are not included within the purview of the words "any like means."

[41] 30 O.R. (2d) (139), (1981).