

**Senator Cook:** Oh, no.

**The Chairman:** It appears in the common law that the element of the unlawful act must include conspiracy.

**Senator Cook:** I am referring to breach of an implied contract.

**Senator Flynn:** Could we not ask counsel for advice, Mr. Chairman?

**The Chairman:** Yes, but, as you know, the manner in which we operate is to debate matters here, after which we may hold a conference. "After which" does not mean later today, but after we have heard all representations, and the minister, if he wishes to do so, has attended. Some departmental officers may wish to attend to consider the bill clause by clause. We are simply attempting to establish all the possibilities inherent in the granting of this civil right and the conditions attaching thereto. We know now the attitude of this delegation.

Are there any other particular points, Mr. Hemens, to which you would like to call our attention at this time—for instance, trade practices such as misleading advertising, which are made criminal offences?

**Mr. Hemens:** In respect of misleading advertising, we have made proposals commencing at page 9 of our brief. You may also recall that in respect of a proposed defence of honest mistake we made a statement in our opening remarks.

This may be a personal reaction, but on page 10 of the brief reference is made to the problem raised by the term "general impression", which is found in section 36(5). As it stands at the moment, I consider it to be ambiguous, reading as follows:

In any prosecution for a violation of this section, the general impression conveyed by a representation as well as the literal meaning thereof shall be taken into account . . .

What is meant by "the general impression"? Does it mean the impression of the general public, or is it the general impression of a complainant? We are not sure. For instance, if I happened to be the complainant and the literal meaning is quite clear but I have the general impression that there has been a misleading statement, is that evidence, or is the court required somehow or other to arrive, by way of a survey, at the impression of the general public?

**Senator Cook:** It would have to bring into play the concept of a reasonable man.

**Mr. Hemens:** In my opinion, it is closer to the concept of a credulous man. I have always been opposed to that concept, which I believe means an idiot.

**Mr. Bruce:** This is the answer of the present minister to Mr. Basford, "credulous man".

**Mr. Hemens:** It needs at least clarification and if it means the impression of the general public, we suggest that it should be clear

that customer surveys by professionals should be considered to be relevant evidence, in which case, of course, there should be a right of cross-examination.

**Mr. Bruce:** As a general statement, I think it should be clear to the committee that we do not condone failure to meet the highest standards of advertising. It is just that the bill perhaps does not give due recognition to the fact that the problems of control, particularly in larger organizations, sometimes are tenuous and that honest mistakes should not be dealt with severely as long as there is good faith and an attempt to rectify them.

**Mr. Hemens:** Together with reasonable precautions to avoid them.

**Mr. Bruce:** Yes, but it is very difficult to argue against the need for the clean-up of many advertising practices we see today.

**The Chairman:** Is there anything else, Mr. Hemens?

**Mr. Hemens:** I do not believe we have any other major issues, but we would be glad to answer any further questions.

**Mr. Bruce:** I would like to mention one legal point, which is mentioned in our brief. It is our concern about the introduction of an interim injunction into the criminal law. One can understand why a bureaucrat would like it, but introducing into the criminal law the principle that something can be enjoined because it is thought it may happen in the future is almost an instrument of a police state. That is perhaps dramatizing it too much, but it is somewhat akin to seeing a person walking on the street and deciding in advance that he may commit a crime, and saying therefore, that he should be taken into custody. The injunction, at least in the common law, of course, has always been an extraordinary remedy in an attempt to hold a situation. It has never, however, been a feature of criminal law and this attempt by bureaucrats to introduce such power is worrisome. In my opinion, the interim injunction is an example of that and ought to be carefully considered, although I am sure that Mr. Gray can argue very strongly for it.

**The Chairman:** May I revert to the section containing the phrase "general impression"? It is most unusual in its wording, which is as follows:

In any prosecution for a violation of this section—

That is advertising.

—the general impression conveyed by a representation as well as the literal meaning thereof shall be taken into account in determining whether or not the representation is false or misleading in a material respect.

There are words in common use today which, when used, are not intended to convey the literal meaning. They have an acceptable meaning in conversation and reading but they would be 100 per cent removed from any literal interpretation of the words.

Why should it not be a case of, "Here is what was said"? Is there a representation of what was said, and what is that representation?