

Although the *Competition Act* does not specifically provide for a consent procedure, officials of the Department of Consumer and Corporate Affairs informed the Committee that, on occasion, the Director has negotiated a prohibition order with an advertiser and has had the order approved by a court under subsection 30(2) of the Act.²⁰ In this way, the Director can avoid initiating a criminal prosecution.

The Committee believes that there are distinct advantages to the use of consent orders and assurances of voluntary compliance. Among these are flexibility and the avoidance of litigation. In the Committee's view, use of such informal procedures would constitute a cost-effective approach to enforcement and should be formalized in the *Competition Act*.

Recommendation:

4.7 The Committee recommends that the *Competition Act* be amended to empower the Director of Investigation and Research to enter into consent agreements or assurances of voluntary compliance with advertisers whereby the latter agree to cease and desist from engaging in misleading advertising or deceptive marketing practices.

Because consent agreements would likely become a commonly used enforcement technique, the Committee strongly urges that they be part of the public record. The numbers of agreements entered into, a summary of their contents and the names of the parties involved should be reported in the *Misleading Advertising Bulletin* and in the Annual Report of the Director of Investigation and Research. This would allow for some form of public oversight of the use of the procedure. In addition, the Director should require advertisers who have signed consent agreements or voluntary undertakings to provide written evidence of compliance.

Recommendation:

4.8 The Committee recommends that the Director of Investigation and Research be required to maintain a publicly available record of all consent agreements or assurances of voluntary compliance and that this record should show the numbers of such agreements, a summary of their contents, the names of the parties involved and whether compliance has occurred.