

CHAPTER 4 - ADMINISTRATIVE APPROACHES TO CONSUMER REDRESS

A. Threshold Issues

As mentioned in the introduction to this report, the misleading advertising provisions of the *Competition Act* are not regulatory in nature. They do not prescribe the form and content of an advertisement nor do they allow for its correction or withdrawal. The statute adopts a criminal law approach by providing that misleading advertising is an offence punishable by fine and/or imprisonment.

Several witnesses felt that there were significant problems with the present approach. The criminal process was viewed as cumbersome, costly and slow, ill-suited to matters of this nature. One witness described it as a ridiculous misuse of society's resources, another said it was too blunt an instrument, while yet another questioned its deterrent effect.

Contending that the Director of Investigation and Research must have more effective tools for dealing with misleading advertising, some witnesses called for a system of administrative remedies that would be more responsive to the needs of both consumers and the business community. Among the remedies suggested were cease and desist powers, consent orders, and the ability to order corrective advertising and disclosure of information. In addition, the Committee heard claims that enforcement would be enhanced if advertisers were required by law to substantiate advertising claims prior to their dissemination and if appropriate rules and regulations could be promulgated.

The Committee feels that each of these suggestions warrants consideration. Before examining them in detail, however, the report will briefly outline two threshold issues in this area: constitutional concerns and the comparative advantages of penal and administrative remedies.

1. Constitutional Constraints on the Regulation of Advertising

Constitutional considerations are of utmost importance in the regulation of misleading advertising. In particular, they are relevant to any discussion of reforms which might include the use of administrative remedies and procedures in conjunction with or as an alternative to penal sanctions