

Legislative
Assembly
of Ontario



Assemblée
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de l'Ontario

STANDING COMMITTEE ON PUBLIC ACCOUNTS

REVIEW OF GOVERNMENT ADVERTISING

(CHAPTER 4, 2018 ANNUAL REPORT OF THE OFFICE OF THE AUDITOR
GENERAL OF ONTARIO)

1st Session, 42nd Parliament
68 Elizabeth II

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The Honourable Ted Arnott, MPP
Speaker of the Legislative Assembly

Sir,

Your Standing Committee on Public Accounts has the honour to present its Report and commends it to the House.

Catherine Fife, MPP
Chair of the Committee

Queen's Park
December 2019

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(as of October 28, 2019)

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INTRODUCTION

On May 15, 2019, the Standing Committee on Public Accounts held a public hearing on the “Review of Government Advertising” (Chapter 4 of the Auditor General’s *2018 Annual Report*).

The Committee endorses the Auditor’s findings, and presents its own findings and views in this report. The Committee requests that the Ministry provide the Clerk of the Committee with a written response to the recommendation within 120 calendar days of the tabling of this report with the Speaker of the Legislative Assembly, unless otherwise specified.

Acknowledgements

The Committee extends its appreciation to officials from the Treasury Board Secretariat and from the communications division of the Cabinet Office. The Committee also acknowledges the assistance provided during the hearings and report-writing deliberations by the Office of the Auditor General, the Clerk of the Committee, and staff in the Legislative Research Service.

BACKGROUND

Under the *Government Advertising Act, 2004 (Act)*, government offices are required to submit most proposed paid public advertisements to the Office of the Auditor General for review in order to determine whether the item meets certain standards, including that the advertisement must not be partisan.

In June 2015, a number of amendments to the Act took effect. The scope of the Act was widened to include digital and some other types of advertisements (e.g., cinema, digital billboards, website home pages, transit ads, and brochures sent by mail known as ‘householders’); require the government to submit a preliminary version of certain advertisements to the Auditor General’s office for review; and introduce rules for government advertising during an election period.

The amendments also removed the Auditor General’s discretionary authority to determine whether a specific advertisement is partisan by defining and limiting the criteria for making this assessment and provided a definition of what “partisan” means in the context of government advertising. Consequently, the Auditor must now rely on the definition provided in the revised Act under s. 6(2), which states that:

An item is partisan if,

(a) it includes the name, voice or image of a member of the Executive Council or of a member of the Assembly, unless the item’s primary target audience is located outside of Ontario;

(b) it includes the name or logo of a recognized party, within the meaning of subsection 62(5) of the *Legislative Assembly Act*;

(c) it directly identifies and criticizes a recognized party or a member of the Assembly; or

(d) it includes, to a significant degree, a colour associated with the governing party, subject to subsection (4).

The Auditor General has emphasized her concerns that, by removing the Auditor's discretionary authority, the 2015 amendments could "damage the credibility" of the Auditor's Office by associating it with advertisements that could be perceived to be partisan. The Auditor has also warned that the amended Act "opened the door to publicly funded partisan and self-congratulatory government advertisements."

Auditor's Recommendation

The Auditor recommended that:

The previous version of the *Government Advertising Act, 2004* as it appeared on June 3, 2015, be reinstated, while leaving in the amendments that included digital advertisements to be included as a reviewable medium.

2018 REVIEW OF GOVERNMENT ADVERTISING

Spending on Advertising

The Auditor found that for the 2017/18 fiscal year, the government spent \$62 million on advertising (compared to \$58 million in 2016/17; \$49.9 million in 2015/16; and \$30 million in 2014/15).

Of the total amount spent in 2017/18, the Auditor reported that some \$7.6 million was spent on digital advertising that was exempted from review, including \$5.95 million on social media websites and \$1.65 million on search services. This was a 60% increase from the previous fiscal year.

According to the Auditor's Office, of the 2018 total, "a sizeable proportion—just over 30%—was for advertisements we believe had as their primary objective to foster a positive impression of the governing party." The Auditor further reported that "although we had to approve these ads as compliant under the amended Act, we noted that they would not have passed our review under the original Act."

Other Issues

Government advertising before and during elections

The 2015 amendments to the Act stipulated that the government cannot advertise as of the day when an election writ is issued. Changes made in 2016 to election financing rules placed further limits that prohibit government advertising 60 days before the writ is issued. In both cases, these rules do not apply if the government determines that the advertising relates to a revenue-generating

activity, is time-sensitive, or meets any other criteria that it may prescribe. The Auditor reported that the government observed this statutory requirement in the period leading up to the June 7, 2018 election.

Advertising by third parties

The Act exempts advertising by government agencies from review by the Auditor. However, a 2005 agreement with the government gave the Auditor's Office the authority to review third-party advertising if it met all three of the following criteria:

- a government office provided the third party with funds intended to pay part or all of the cost of publishing, displaying, broadcasting or distributing the item;
- the government office approved the content of the item; and
- the government granted the third party permission to use the Ontario logo or another official provincial visual identifier in the item.

The Auditor reports that in 2017/18, a Ministry transferred an advertising campaign to a newly-created provincial agency, and removed the Ontario logo, thereby "exempting a significant portion of a \$3.98 million campaign from our review."

ISSUES RAISED IN THE AUDITOR'S REVIEW AND BEFORE THE COMMITTEE

Significant issues were raised in the Auditor's review and before the Committee. The Committee considers the issues below to be of particular importance.

Representatives explained that the Treasury Board Secretariat is responsible for, among other things, the administration of the *Government Advertising Act, 2004* and its supporting regulations. The Act sets out the rights and responsibilities of the government when choosing to advertise to the public. All government offices (defined as a ministry, Cabinet Office, and the Office of the Premier) must meet the requirements of this legislation. The Ministry of Government and Consumer Services (Ministry) also has a role in the governance of government advertising.

The Committee heard that, through advertising, the government pays to publish, display or broadcast an advertisement, or distribute printed matter to Ontario households. For example, the government may use advertising to inform the public about a new or existing program, plans, services or policies and their rationale; inform the public about their rights and responsibilities under law; encourage (or discourage) specific social behavior in the public's interest; promote Ontario and any economic activity within Ontario; and promote Ontario's interests in relation to other Canadian jurisdictions.

It was noted that, under the *Government Advertising Act, 2004*, any advertisement that is required by law is exempt from the Auditor General's review.

The Treasury Board administers the Bulk Media Buy Fund (the centralized fund for the government's purchase of most, but not all, advertising) in accordance with the *Financial Administration Act*. However, representatives explained that the Treasury Board is not responsible for individual ministry advertising campaigns or for determining how much funding is allocated to any particular campaign.

The Committee heard that centralized coordination of government advertising via the Bulk Media Buy Fund is intended to prevent oversaturation of the media landscape with too many competing ads in the market at any given time. It also helps to save government resources by identifying overlapping priorities and avoiding duplication.

With the continued emergence of advertising tools and social media that are excluded from the Auditor's review under the Act, the Committee raised questions about whether legislative changes might be needed to expand oversight of new types of advertising. A Cabinet Office representative explained while the government is doing more digital advertising, traditional media is still an important part of government communications, and something that all governments use extensively.

The Committee asked about the criteria a ministry might use in deciding whether to launch an advertising campaign. It was explained that most such campaigns are based on a core objective or mandate of the ministry. The nature of the campaign depends on the program or policy area that the ministry would like to advertise, and whether the ministry believes that advertising might advance the public's awareness of the program or policy area.

The Committee asked about the process for deciding the target audience for a specific advertisement or advertising campaign. They heard that when a ministry is developing an advertising campaign, the ministry would identify a target audience as well as consider what the ministry is trying to achieve and how best to achieve that. With larger campaigns, the ministry would typically work with a creative agency to determine the appropriate media channels to reach the target audience most effectively.

The Committee raised questions about whether checks and balances are in place to ensure that government advertising focuses on raising public awareness of policies or programs rather than 'feel good' advertisements meant to advance an electoral strategy. A Treasury Board representative explained that all ministries are required to be in compliance with relevant legislation, directives and policies.

COMMITTEE RECOMMENDATION

The Standing Committee on Public Accounts recommends that:

- 1. The *Government Advertising Act, 2004* as it appeared on June 3, 2015, be reinstated, while leaving in the amendment that added digital advertising as a reviewable medium.**