

Legislative
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of Ontario



Assemblée
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de l'Ontario

STANDING COMMITTEE ON PUBLIC ACCOUNTS

REVIEW OF GOVERNMENT ADVERTISING

(CHAPTER 5, 2016 ANNUAL REPORT OF THE OFFICE OF THE AUDITOR
GENERAL OF ONTARIO)

3rd Session, 41st Parliament
67 Elizabeth II

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The Honourable Dave Levac, 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.

Ernie Hardeman, MPP
Chair of the Committee

Queen's Park
May 2018

STANDING COMMITTEE ON PUBLIC ACCOUNTS

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3rd Session, 41st Parliament

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CONTENTS

INTRODUCTION	1
ACKNOWLEDGEMENTS	1
BACKGROUND	1
2016 REVIEW OF GOVERNMENT ADVERTISING	2
Digital Advertisements	2
Crown Corporations	2
Election Advertising	2
ISSUES RAISED IN THE AUDITOR'S REVIEW AND BEFORE THE COMMITTEE	3
APPENDIX: DISSENTING OPINION OF THE MEMBERS OF THE PROGRESSIVE CONSERVATIVE PARTY	5

INTRODUCTION

On November 15, 2017, the Standing Committee on Public Accounts held public hearings on the “Review of Government Advertising” (Chapter 5 of the Auditor General’s *2016 Annual Report*).

The Committee endorses the Auditor’s findings, and presents its own findings and views in this report.

ACKNOWLEDGEMENTS

The Committee extends its appreciation to officials from the Treasury Board Secretariat. 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 2015, a number of amendments were made to the Act, including widening the scope of the Act to include digital and some other types of advertisements, providing a definition of what “partisan” means in the context of government advertising, requiring the government to submit a preliminary version of certain advertisements to the Auditor General’s office for review, and introducing rules for government advertising during an election period.

The amendments 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. 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).

2016 REVIEW OF GOVERNMENT ADVERTISING

In the 2016 “Review of Government Advertising,” the Auditor General notes her concern that the amendments removing her Office’s discretionary authority “weakened the Act and opened the door to publicly funded partisan and self-congratulatory government advertising.” The Auditor states that she had previously alerted the government that proceeding with the amendments would “damage the credibility” of her Office by associating it with advertisements that could be perceived as partisan.

The Auditor found that for the year ending March 31, 2016, the government spent \$49.9 million on advertising, as compared to \$30 million the previous year. According to the Review:

The substantial increase from last year is partly attributable to the inclusion of some types of digital ads to our review mandate, but is likely due to the running of more ads that would not have been approved by our Office under the previous version of the Act.

Other issues of concern to the Auditor that are addressed in the Review include the following:

Digital Advertisements

While the amended Act allows the Auditor to review digital advertisements, the Auditor explains that a new regulation under the Act “specifically exempts advertisements on social media websites, including Facebook, Twitter, Instagram, etc., and advertisements displayed on a website by search-marketing services such as Google AdWords.” In the fiscal year ending March 31, 2016 the government spent just over \$3.78 million on digital ads that were exempt from the Auditor’s review.

Crown Corporations

Under the Act, provincial Crown corporations and agencies are not subject to the Auditor’s review. The Auditor notes: “We believe this has the potential to allow the government to benefit from favourable advertising by these exempt organizations.”

Election Advertising

In the report, the Auditor notes her concern that, unless the discretionary powers of the Auditor found in the former Act are reinstated, a governing party will be able to use partisan advertising to its advantage during pre-election and election periods. (Subsequent to the issuance of this Auditor’s report, election finance reform legislation came into effect that limits when the government can advertise prior to a scheduled election. Government advertising is now prohibited in the

sixty days prior to the writ period, and during the campaign period, unless the advertising relates to a revenue-generating activity, is time sensitive, or meets any other criteria that may be prescribed.)

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 mandate of the Treasury Board includes oversight of government expenditures. In 2015, the Treasury Board was also given responsibility for the administration of the *Government Advertising Act, 2004* and its supporting regulations (this was formerly the role of the Ministry of Government and Consumer Services). The Treasury Board administers the Bulk Media Buy program (the centralized fund for the government's purchase of advertising) in accordance with the *Financial Administration Act*. However, representatives emphasized that the Treasury Board is not responsible for specific ministry advertisements or campaigns.

The Committee heard that once a ministry identifies a need for an advertising campaign, the ministry then works with Cabinet Office on a strategy and to get approval for bulk media funding. The ministry then works with the Advertising Review Board to secure a vendor to create an advertising campaign. Once the advertisement is developed, it is then submitted to the Auditor General's office for review.

The Treasury Board examines the ministry's request to ensure that it is in accordance with relevant legislation, in particular the *Financial Administration Act*. (The Treasury Board does not assess advertisements for compliance with the *Government Advertising Act, 2004*.) It was explained that in addition to working with Cabinet Office on an advertising campaign, a ministry would attest (at the director, assistant deputy minister, and deputy minister levels), through the certificate-of-assurance process, that they have complied fully with legislation, directives, and policies that apply to advertising.

The Committee asked about the rationale for amendments to the *Government Advertising Act, 2004* (Act) removing the Auditor General's discretion to determine whether a proposed advertisement is partisan and whether this strengthened the Act. Treasury Board representatives responded that they believe the amendments strengthened the Act by providing an objective test and definition of exactly what is meant by "partisan" as well as by broadening the Auditor's mandate to include the review of some digital and other types of online advertisements.

Ministry staff noted that the amended *Government Advertising Act, 2004* (s. 1.1(2)) included examples of reasons why government offices might appropriately choose to advertise. Such reasons include

- (a) informing the public about existing, new or proposed government programs, plans, services or policies, including fiscal policies such as policies respecting pensions or taxes;
- (b) informing the public about changes or proposed changes to existing government programs, plans, services or policies;
- (c) informing the public about the goals, objectives, expected outcomes, or results of, or rationale for, a matter referred to in clause (a) or (b);
- (d) informing the public of their rights and responsibilities under the law;
- (e) encouraging or discouraging specific social behaviour, in the public interest;
- (f) promoting Ontario or any part of Ontario as a good place to live, work, invest, study or visit;
- (g) promoting any economic activity or sector of Ontario's economy or the government's plans to support that economic activity or sector; and
- (h) informing the public about Ontario's relationships with other Canadian governments, including promoting Ontario's interests in relation to those governments.

The Committee asked about the Auditor's finding that the government's expenditure on advertising increased by about \$20 million in 2015/16. Treasury Board staff explained that it resulted from the consolidation into the Bulk Media Buy fund of funds previously being spent across nearly 20 ministries on individual campaigns. They also noted the greater costs resulting from the increased use of digital advertising platforms as well as the costs associated with translation, given that many advertising campaigns are now conducted not only in English and French but in other languages.

The Committee asked about the process for ensuring that ministries adhere to the legislated deadline that restricts certain types of government advertising in the period before an election. Treasury Board staff pointed to the amendments to the *Government Advertising Act, 2004* that clarified and confirmed restrictions around advertising during the period before general elections. Staff also pointed to further amendments made in late 2016 by the *Election Finances Statute Law Amendment Act, 2016* that restricted advertising during the 60 days prior to the writ period for a scheduled general election. (For the June 7, 2018 general election, the government ceased most advertising on March 10, 2018.)

**APPENDIX: DISSENTING OPINION OF THE MEMBERS OF THE
PROGRESSIVE CONSERVATIVE PARTY**

Dissenting Opinion of the Members of the Progressive Conservative Party.

It is very seldom indeed that a dissenting opinion is appended to the majority report in the public accounts committee.

The rarity of dissenting opinions is due to two foundational principles that must be respected in order for the Committee to function in the best interests of taxpayers and the Legislative Assembly. These two principles are that of constraining partisanship; where membership on all sides prides themselves in being non-partisan and open to developing solutions in a concurrent manner, and deference to the impartiality of the Auditor General's office; through which the Committee recognizes the recommendations and views put forward by the Auditor General as being important, reputable, and worthy of proper consideration.

Dissenting opinions are the result of some committee members not fully respecting one or both of these principles.

The Committee has not addressed the concerns of the Auditor in this report, and it is worth noting that the Government members refused to advance or table any recommendations to address those concerns for inclusion in this report. In addition, every recommendation tabled by the official opposition was defeated by the government majority on committee, whilst being supported by the third party.

The overarching concern for the Committee members during the drafting of this report ought to have reflected on the Auditor's statements regarding how these legislative changes would give the public a false sense of oversight, which is cruelly absent. Furthermore, the Auditor's statements regarding an increase in partisan advertising using taxpayer funds remains unaddressed.

In the case of government advertising, a number of concerns and subsequent recommendations were brought forward by the Auditor General, primarily focused on solving identified issues related to the weakened oversight ability of the AG's office due to amendments to the Government Advertising Act, 2004 in 2015, and loopholes in digital and 3rd party advertising. The report should have included recommendations that addressed the concerns of the Auditor General, such as:

- Recommending that the Government restore the Auditor General's oversight of government advertising to the same level of criteria that existed in the Government Advertising Act, 2004 prior to the amendments introduced in Bill 91, Building Ontario Up Act (Budget Measures), 2015;
- Recommending that the Auditor General have the authority to review and disallow partisan government advertising for all digital and electronic mediums, including social media, and;
- Recommending that the Auditor General's authority to review or disallow partisan government advertising be extended to crown corporations and agencies.

However, It became clear to the members of the opposition party that there was a lack of interest by the government side to engage in any sort of thoughtful discourse on these recommendations, or the subject of government advertising in general. Discussion on this subject was skewed by partisanship throughout the committee process, and many of the

arguments that were put forward were specious, without merit, and influenced by a noticeable confusion on specifics, such as to how exactly oversight of digital advertising would work.

Unfortunately, this has resulted in no other option but to state officially on the record that the recommendations advanced in committee by the Official opposition were all rejected, therefore the committee majority report to cover the issue of oversight in government advertising has failed to execute its responsibility to provide recommendations to the government.